



South Bend

Redevelopment Commission

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

Agenda

Regular Meeting, November 8, 2018 9:30 a.m.

- 1. Roll Call**
- 2. Approval of Minutes**
 - A. Minutes of the Regular Meeting of Thursday, October 25, 2018
- 3. Approval of Claims**
 - A. Claims Submitted November 8, 2018
- 4. Old Business**
- 5. New Business**
 - A. River West Development Area
 1. Resolution No. 3462 (Pledging TIF Community Education Center Project) – D2
 2. Resolution No. 3463 (Authorizing and Delivery of MOU for St Joseph County Public Library Proposed Projects) – D2
 3. MOU (TIF Revenue to EDC for South Bend Community Learning Center Project) – D2
 4. Budget Request (Downtown Cross Streets #2) – D2
 5. Access Agreement (1019 S Michigan) – D2
 - B. Administrative
 1. Professional Services Agreement (Engineering)
- 6. Progress Reports**
 - A. Tax Abatement
 - B. Common Council
 - C. Other
- 7. Next Commission Meeting:**

Monday, November 19, 2018, 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.

ITEM: 2A



South Bend
Redevelopment Commission
227 West Jefferson Boulevard, Room 1308, South Bend, IN

SOUTH BEND REDEVELOPMENT COMMISSION REGULAR MEETING

October 25, 2018

9:30 a.m.

Presiding: Marcia Jones, President

227 West Jefferson Boulevard
South Bend, Indiana

The meeting was called to order at 9:33 a.m.

1. ROLL CALL

Members Present: Marcia Jones, President
 Dave Varner, Vice-President
 Quentin Phillips, Commissioner

Members Absent: Don Inks, Secretary
 Gavin Ferlic, Commissioner
 Leslie Wesley, Commissioner

Legal Counsel: Sandra Kennedy, Esq.

Redevelopment Staff: David Relos, RDC Staff
 Mary Brazinsky, Board Secretary

Others Present: James Mueller DCI
 Daniel Buckenmeyer DCI
 Elizabeth Leonard Inks DCI
 Tony Sergio DCI
 Caleb Bauer South Bend Tribune
 Eric Henderson Prism Environmental
 Conrad Damian 718 E Broadway

2. Approval of Minutes

A. Approval of Minutes of the Regular Meeting of Thursday, October 11, 2018

Upon a motion by Vice-President Varner, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved the minutes of the regular meeting of Thursday, October 11, 2018.

3. Approval of Claims

A. Claims Submitted October 25, 2018

	Claims submitted	Explanation of Project
REDEVELOPMENT COMMISSION Redevelopment Commission Claims October 25, 2018 for approval		
<u>324 RIVER WEST DEVELOPMENT AREA</u>		
Hull & Associates Inc.	3,665.18	GWS & Vapor Intrusion / General Consulting
Walsh & Kelly, Inc.	610,411.56	Downtown Cross Street Improvements
CBS Services, LLC	173,721.28	Berlin Place No. 2 Electrical, Mechanical & Plumbing - Division
Walsh & Kelly, Inc.	28,175.56	Monroe Street Parking Lot
Selge Construction Co	190,488.34	Lincoln Way West Charles Martin Sr. Dr. Improvements
Black & Veatch Corporation	35,476.40	Training and Updates on Water CAD and Task
H. J. Umbaugh & Associates	7,936.00	Property Taxes Receivable Collection VS Levy TIF
<u>422 FUND WEST WASHINGTON DEVELOPMENT AREA</u>		
H. J. Umbaugh & Associates	148.00	Property Taxes Receivable Collection VS Levy TIF
<u>429 FUND RIVER EAST DEVELOPMENT TIF</u>		
H. J. Umbaugh & Associates	1,334.00	Property Taxes Receivable Collection VS Levy TIF
<u>430 FUND SOUTH SIDE TIF AREA #1</u>		
H. J. Umbaugh & Associates	1,056.00	Property Taxes Receivable Collection VS Levy TIF
McCormick Engineering, LLC	3,040.00	Bowen St. Drainage Improvements
<u>436 FUND TIF NORTHEAST RESIDENTIAL</u>		
H. J. Umbaugh & Associates	2,026.00	Property Taxes Receivable Collection VS Levy TIF
<u>452 TIF PARK BOND CAPITAL</u>		
Lawson-Fisher Associates	17,427.00	Parks Improvements Program Manager
Total	1,074,905.32	

Upon a motion by Commissioner Phillips, seconded by Vice-President Varner, the motion carried unanimously, the Commission approved the claims submitted on Thursday, October 25, 2018.

4. Old Business

5. A. River West Development Area

1. Resolution No. 3460 (Setting the Disposition Offering Price 900-1002 S Lafayette)

Mr. Relos presented Resolution No. 3460. This Resolution sets the disposition offering price for the properties at the SE corner of Lafayette and Sample, which is the average of the two appraisals of \$55,500. This is part of the old Hamilton Towing and Airgas properties. Commission approval is requested to set the disposition offering price for these properties.

Upon a motion by Vice-President Varner, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved Resolution No. 3460 (Setting the Disposition Offering Price 900-1002 S Lafayette) submitted on Thursday, October 25, 2018.

2. Approval of Bid Specifications (900-1002 S Lafayette)

Mr. Relos presented the Bid Specifications and Design Considerations for 900-1002 S Lafayette. The Bid Specifications outline the uses and development requirements that will be considered for this site.

Upon a motion by Vice-President Varner, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved Approval of Bid Specifications (900-1002 S Lafayette) submitted on Thursday, October 25, 2018.

3. Request to Advertise (900-1002 S Lafayette)

Mr. Relos presented the Request to Advertise for 900-1002 S Lafayette. This disposition property will be advertised in the South Bend Tribune on November 2 and November 9, 2018.

Upon a motion by Vice-President Varner, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved Request to Advertise (900-1002 S Lafayette) submitted on Thursday, October 25, 2018.

B. River East Development Area

1. License Agreement for Use

Mr. Mueller presented the License Agreement for Use. In 2016 the Commission transferred a piece of land between where the Wharf project and Stephenson Mills are to the Board of Park Commissioners for the Hydro Project for Seitz Park reconstruction. This property was transferred back in August 2018 to get all the moving pieces working. This Agreement allows the University of Notre Dame to have access to the drive in off Colfax. This Agreement is effective October 25, 2018, and may be terminated by the Commission upon a 30 day notice.

Upon a motion by Vice-President Varner, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved License Agreement for Use submitted on Thursday, October 25, 2018.

6. Progress Reports

A. Tax Abatement

1. Two tax abatements were brought to Council.

B. Common Council

C. Other

7. Next Commission Meeting:

Thursday, November 8, 2018, 9:30 a.m.

8. Adjournment

Thursday, October 25, 2018, 9:39 a.m.

David Relos, Property Development Manager

Marcia I. Jones, President

ITEM: 3A

	Claims submitted	Explanation of Project
REDEVELOPMENT COMMISSION Redevelopment Commission Claims November 9, 2018 for approval		
<u>324 RIVER WEST DEVELOPMENT AREA</u>		
Barnes & Thornburg LLP	17,097.15	RC Legal Matters
Kil Architecture Planning	3,037.91	Lafayette Building
St. Joseph County Public Library	25,000.00	RAVSA Planning Cost
US Bank	600.00	So. Bend Redev District Special TIF Refunding Bonds of 2014
<u>429 FUND RIVER EAST DEVELOPMENT TIF</u>		
Alliance	16,000.00	Howard Park Redevelopment
<u>430 FUND SOUTH SIDE TIF AREA #1</u>		
Anderson, Agosting & Keller PC	2,421.87	Notre Dame Exemption
Kil Architecture Planning	2,103.17	Erskin Clubhouse Ph II
Botkin & Hall, LLP	146.25	South Bend Portion of Lowe's Appeal Doc.
Total	66,406.35	

RESOLUTION NO. 3462

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION
PLEDGING TAX INCREMENT FROM THE
RIVER WEST ECONOMIC DEVELOPMENT AREA ALLOCATION AREA
TO THE PAYMENT OF THE CITY OF SOUTH BEND, INDIANA, ECONOMIC
DEVELOPMENT TAX INCREMENT REVENUE BONDS (COMMUNITY
EDUCATION CENTER PROJECT) AND ALL MATTERS RELATED THERETO**

WHEREAS, the South Bend Redevelopment Commission (the “Commission”), the governing body of the South Bend Department of Redevelopment and the South Bend Redevelopment District, exists and operates under Indiana Code 36-7-14, as amended from time to time (the “Act”); and

WHEREAS, the South Bend Redevelopment Commission (the “Commission”) has previously consolidated existing redevelopment and economic development areas into and designated the River West Economic Development Area as an economic development area (the “Area”) within the City of South Bend, Indiana (the “City”), and declared an allocation area located within the Area known as the “River West Economic Development Area Allocation Area” (the “Allocation Area”), and adopted and approved an economic development plan (the “Plan”) for the Area, all in accordance with the Act; and

WHEREAS, the City is considering the issuance of its Economic Development Tax Increment Revenue Bonds (Community Education Center Project) in an aggregate principal amount of \$4,800,000 (the “Bonds”), pursuant to a Trust Indenture (the “Trust Indenture”) between the City and a corporate trustee to be selected by the City, the net proceeds of which will be provided to the St. Joseph County Public Library, St. Joseph County, Indiana (the “Public Library”), pursuant to a Financing Agreement between the Public Library and the City (the “Financing Agreement”), to be applied to a portion of the costs of the construction, equipping, and furnishing of a new approximately 38,000 square foot building for use as a community and education center to provide new and flexible spaces for community meeting and training, events and conferences and a larger auditorium to meet increasing demand for program space and allow for a more diverse range of programs and community events and any and all projects and improvements related thereto to be located near the Main Branch of the Public Library located at 304 South Main Street in the City and within the Allocation Area (collectively, the “Project”); and

WHEREAS, in order to provide a source of revenues to pay the principal of and interest on the Bonds to assist in financing a portion of the cost of the Project, the Commission has determined that it is in the best interests of the Area, the City, and the residents thereof to pledge the tax increment revenues received from the Allocation Area (the “TIF Revenues”) (determined in accordance with the Act and other provisions of Indiana law, and taking into account the prior pledge of TIF Revenues being used to pay the principal of and interest on the presently outstanding City of South Bend, Indiana, Redevelopment District Tax Increment Revenue Bonds, Series 2003 (South Bend Central Development Area) and the City of South Bend, Indiana, Redevelopment District Tax Increment Revenue Bonds, Series 2003 (Airport Economic

Development Area) (collectively, the “Prior Bonds”) issued pursuant to Resolution No. 2012 and Resolution No. 1965, respectively, previously adopted by the Commission, each as subsequently amended (collectively, the “Prior Resolutions”) to the extent the Prior Bonds remain outstanding when the Bonds are issued by the City) to the payment of the principal of and interest on the Bonds and the Annual Fees (as defined in the Trust Indenture); and

WHEREAS, the Commission believes that pledging the TIF Revenues will help further the accomplishment of the objectives set forth in the Plan; and

WHEREAS, the pledge of the TIF Revenues as set forth herein will be on parity with the Commission’s pledge of TIF Revenues to the payment of principal of and interest on the Prior Bonds.

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

1. The Commission hereby finds that the pledge of TIF Revenues in an amount sufficient for payment of the principal of and interest on the Bonds will help accomplish the Plan and will promote the redevelopment and economic development of the City and the Area.

2. Pursuant to Section 39(b)(3)(D) of the Act and I.C. 5-1-14-4, the Commission hereby irrevocably pledges the TIF Revenues to the payment of the principal of and interest on Bonds for a period of time not less than the term of the Bonds on a parity with the Prior Bonds to the extent the Prior Bonds remain outstanding when the City issues the Bonds.

3. The Commission agrees that TIF Revenues in an amount which, together with any amounts already on deposit in the Bond Fund (established under the Trust Indenture) for the Bonds, is sufficient to pay the maximum debt service coming due on the Bonds and Annual Fees during the following six-month period, shall be transferred to the trustee for the Bonds for deposit in the Bond Fund under the Trust Indenture on parity with any transfers made for the Prior Bonds. Any TIF Revenues remaining in the allocation fund for the Allocation Area after making the required transfers set forth above, and the required transfers to pay for the Prior Bonds, shall be transferred by the Commission in accordance with the Prior Resolutions and the Trust Indenture.

4. In the event the Prior Bonds remain outstanding when the Bonds are issued by the City, the Commission shall secure a report prior to the issuance of such Bonds, certifying the amount of the TIF Revenues estimated to be received in each succeeding year during the term of the Bonds is estimated to be equal to at least one hundred twenty-five percent (125%) of the principal and interest requirements of all obligations payable from the TIF Revenues, including the Bonds as required by the Prior Resolutions.

5. The Commission reserves the right to issue bonds or enter into other obligations or leases payable from TIF Revenues, in whole or in part, and to pledge the TIF Revenues therefor on a parity with the pledge of the TIF Revenues to the payment of the Bonds and Prior Bonds, in accordance with the following requirements for the purpose of raising money for future local public improvements in or serving the Allocation Area (collectively, the “Parity

Obligations”). The authorization and issuance of such Parity Obligations shall be subject to the following conditions precedent:

(a) All interest and principal payments with respect to all obligations payable from the TIF Revenues shall be current to date in accordance with the terms thereof, with no payment in arrears.

(b) The balance in the Reserve Account (as defined in the Prior Resolutions) shall equal the Debt Service Reserve Requirement (as defined in the Prior Resolutions).

(c) The Commission shall have received a certificate or report prepared by an independent certified public accountant or an independent financial consultant (the “Certifier”) certifying the amount of the TIF Revenues estimated to be received in each succeeding year, adjusted as provided below, is estimated to be equal to at least two hundred percent (200%) of the principal and interest requirements of all obligations of the Commission payable from TIF Revenues for each respective year during the term of the then outstanding obligations and Parity Obligations. If the Commission determines to enter into or issue Parity Obligations prior to the issuance of the Bonds by the City, for purposes of determining the principal and interest requirements for the Bonds, the debt service owed on the Bonds shall be deemed to be equal to \$310,000 annually for each of the first two (2) years of the Bonds and \$565,000 annually thereafter for a period not to exceed fourteen (14) years. In estimating the TIF Revenues to be received in any future year, the Certifier shall base the calculation on assessed valuation actually assessed or estimated to be assessed as of the assessment date immediately preceding the issuance of the Parity Obligations; provided, however, the Certifier shall adjust such assessed values for the current and future reductions of real and personal property tax abatements granted to property owners in the Allocation Area.

(d) Payments on any Parity Obligations or junior obligations payable from TIF Revenues (either principal maturities, mandatory sinking fund payments or otherwise) shall be payable semiannually on February 1 and August 1 of each year.

The Commission shall approve and confirm the findings and estimates set forth in the above-described certificate or report in any resolution authorizing the Parity Obligations. Except as provided in this Resolution, the terms and conditions of any Parity Obligations shall be set forth in the resolution authorizing such Parity Obligations.

6. The Commission reserves the right to enter into obligations payable from TIF Revenues or to otherwise make pledges of TIF Revenues that are junior and subordinate to the pledge of the TIF Revenues to the payment of principal of and interest on the Bonds, subject to the compliance with the condition set forth in Section 4 hereof.

7. The proper officers of the Commission are hereby authorized and directed to take such further action or execute such documents as they shall consider necessary or appropriate in order to effectuate the intent of this resolution.

8. This Resolution shall be effective upon passage with no further approvals of the Commission required prior to the issuance of the Bonds by the City.

ADOPTED at a meeting of the South Bend Redevelopment Commission held on November 8, 2018, in Room 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

RESOLUTION NO. 3463

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION
AUTHORIZING THE EXECUTION AND DELIVERY OF A MEMORANDUM OF
UNDERSTANDING REGARDING THE ST. JOSEPH COUNTY PUBLIC LIBRARY'S
PROPOSED PROJECTS**

WHEREAS, the South Bend Redevelopment Commission (the "Commission"), the governing body of the South Bend Department of Redevelopment and the South Bend Redevelopment District, exists and operates under Indiana Code 36-7-14, as amended from time to time (the "Act"); and

WHEREAS, the Commission, the St. Joseph County Public Library, St. Joseph County, Indiana (the "Public Library"), the City of South Bend, Indiana (the "City"), and the Community Foundation of St. Joseph County, Inc. are proposing to enter into a Memorandum of Understanding (the "Memorandum of Understanding") to set forth the agreements of each of the parties thereto with respect to the construction, equipping, and furnishing of a new approximately 38,000 square foot building for use as a community and education center to provide new and flexible spaces for community meeting and training, events and conferences and a larger auditorium to meet increasing demand for program space and allow for a more diverse range of programs and community events and any and all projects and improvements related thereto to be located near the Main Branch of the Public Library located at 304 South Main Street in the City (collectively, the "Project"); and

WHEREAS, in accordance with the Memorandum of Understanding, the City is considering the issuance of its Economic Development Revenue Bonds (Community Education Center Project) in an aggregate principal amount necessary to provide \$4,000,000 of proceeds to the Project (the "Bonds"), pursuant to a Trust Indenture between the City and a corporate trustee to be selected by the City, the net proceeds of which will be provided to the St. Joseph County Public Library (the "Public Library"), pursuant to a Financing Agreement between the Public Library and the City, to be applied to a portion of the costs of the Project and to fulfill the City's obligations under the Memorandum of Understanding; and

WHEREAS, the Project will be located in the River West Economic Development Area Allocation Area, previously established and designated by the Commission in accordance with the Act (the "Allocation Area"); and

WHEREAS, the Memorandum of Understanding provides for the Commission to adopt a resolution pledging tax increment revenues received by the Commission from the Allocation Area to the payment of the principal of and interest on the Bonds; and

WHEREAS, the Commission desires to approve the Memorandum of Understanding, in the form presented at this meeting, with such changes are deemed necessary by the President and other officers of the Commission prior to execution.

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

1. The Commission hereby approves the Memorandum of Understanding in the form presented to the Commission at this meeting and authorizes the President or Vice-President to execute the Memorandum of Understanding in the form presented to this meeting with such changes as such officer may deem necessary or appropriate with execution of the Memorandum of Understanding evidencing approval of any such changes.

2. The President and other proper officers of the Commission are hereby authorized and directed to take such further action or execute such documents as they deem necessary or appropriate in order to effectuate the intent of this Resolution.

3. This Resolution shall be effective upon passage with no further approvals of the Commission required to evidence the execution of the Memorandum of Understanding by the Commission.

[Signatures Follow on the Next Page]

ADOPTED at a meeting of the South Bend Redevelopment Commission held on November 8, 2018, in Room 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

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the “Agreement”), effective as of _____, 2018, is made and entered into by and among the St. Joseph County Public Library, Indiana (the “Public Library”), the City of South Bend, Indiana (the “City”), the South Bend Redevelopment Commission (the “Commission”) and the Community Foundation of St. Joseph County, Inc. (the “Foundation”), (the Public Library, the City, the Commission and the Foundation being sometimes collectively referred to herein as the “Parties”).

RECITALS

WHEREAS, the Parties to this Agreement have given consideration to (i) the construction and equipping of an approximately 38,000 square foot building for use as a community and education center to provide new and expanded flexible spaces for community meetings and training, events, and conferences and a larger auditorium to meet increasing demand for program space and allow for a more diverse range of programs and community events, and any other projects and improvements related thereto (collectively, the “Community Education Center Project”); (ii) miscellaneous renovations and improvements to the Main Branch of the Public Library located at 304 South Main Street, South Bend, Indiana (the “Main Library”), consisting of staff and meeting room reconfiguration in the lower level, replacement of windows and upgrades to the HVAC and mechanical systems in the building, and any other projects and improvements related thereto (collectively, the “Renovation Project”); (iii) outdoor improvements at the Main Library location consisting of the construction and equipping of a plaza adjacent to the Main Library and renovations and improvements to the existing surface parking area at the Main Library and any other projects and improvements related thereto (the “Outdoor Improvements”), and (iv) acquisition of equipment and furnishings for use in connection with any of the foregoing projects (the “Equipment Project”) (the Community Education Center Project, the Renovation Project, the Outdoor Improvements, and the Equipment Project are collectively referred to herein as the “2018/2019 Projects”); and

WHEREAS, the Public Library has given consideration to the issuance of one or more series of taxable or tax-exempt bonds (collectively, the “Library Bonds”), in a total, aggregate principal amount of \$20,000,000 (approximately \$5,000,000 for the first series (the “2018 Bonds”) and approximately \$15,000,000 for the second series (the “2019 Bonds”)), the proceeds of which would be utilized to finance a portion of the projects that constitute the 2018/2019 Projects; and

WHEREAS, the City, the Commission, the Public Library and the Foundation share a joint interest and concern in providing gathering places, facilities and space of the nature set forth above for the citizens of St. Joseph County, Indiana (the “County”), the Public Library and the City, both currently and for future generations and the Parties believe that the 2018/2019 Projects are necessary to meet such current needs of the citizens of our community and to convert the Main Library into a true community center that will spark public discourse, provide lifetime learning opportunities, engender civic pride grow social justice, provide environmental sustainability, encourage delight and nurture a sense of place within our community; and

WHEREAS, the 2018/2019 Projects will result in the rehabilitation and redevelopment of approximately the northern half and the preservation of the southern half of a block within the downtown area of the City bounded by Wayne Street on the north, Michigan Street on the east, Main Street on the west and Western Avenue on the South (known herein as the “Block”), as displayed on the rendering of the 2018/2019 Projects attached hereto as Exhibit A; and

WHEREAS, the total cost of the 2018/2019 Projects is estimated to be approximately \$36,000,000 to \$38,000,000 and the City, the Commission and the Foundation will agree herein to supplement the funds to be raised by the Library Bonds in order to pay for the entire cost of the 2018/2019 Projects; and

WHEREAS, the City will agree to issue economic development tax increment revenue bonds (the “EDC/TIF Bonds”), which will be secured by a pledge of tax increment revenues by the Commission, in order to finance an approximate \$4,000,000 portion of the 2018/2019 Projects and the Foundation will agree to fund a \$10,000,000 portion of the 2018/2019 Projects, all as set forth herein; and

WHEREAS, the Parties recognize that (i) the Public Library, the Commission and the City must take additional actions in order to implement certain of the undertakings set forth herein including, in some instances, completion of required statutory and regulatory proceedings, and the Public Library’s, Commission’s, and City’s respective obligations hereunder shall be subject to completing such additional actions, (ii) the obligations of the Parties hereunder are subject to the fulfillment of the respective obligations hereunder by the other Parties to this Agreement.

NOW, THEREFORE, the Parties hereby agree that the foregoing recitals are accurate and incorporated into this Agreement for all purposes, and further agree as follows:

SECTION 1. Public Library Agreements. The Public Library agrees with the other Parties as follows:

(a) Issuance of Library Bonds. The Public Library shall, subject to further proceedings required by law, issue the Library Bonds which will be issued in more than one series but will total an aggregate principal amount not more than \$20,000,000 to finance portions of the 2018/2019 Projects. The Public Library will take the necessary steps to close on the Library Bonds by the end of 2019, subject to proceedings required by law.

(b) Construction of the 2018/2019 Projects. Subject to the conditions set forth in this Agreement, the Public Library will undertake and oversee the design, bidding, construction and completion of the 2018/2019 Projects. The construction of the 2018/2019 Projects (the “Construction”) will be undertaken as soon as is reasonably practicable with an anticipated completion date for all such projects in 2022. The selection of the lead architect for design and the local architect of record for the 2018/2019 Projects will be made by the Public Library, and any contract with such lead architect for design and/or architect of record in connection with the 2018/2019 Projects will be approved by the Public Library.

(c) Consultation With City and Foundation. As part of the Construction, the Public Library agrees to review and seek the input of the City and the Foundation for (i) the preliminary and final construction plans and specifications (the “Plans and Specifications”) for the 2018/2019 Projects and (ii) all material decisions with regard to any changes to such Plans and Specifications, subject to final approval by the Public Library Board. The Parties agree that it would be inefficient and overly burdensome to review all decisions with regard to the construction of the 2018/2019 Projects with the City and the Foundation, and therefore, agree that “material decisions” requiring the review and input of the City and the Foundation will include any decision that would involve modifying the Plans and Specifications by an amount of \$1,000,000 or more. The Parties further agree that the review of the Plans and Specifications by the City and the Foundation will not create an obligation or duty on the City or Foundation to remedy or ensure compliance with (i) laws governing encroachments from the 2018/2019 Projects in the public right-of-way; (ii) any zoning laws applicable to the 2018/2019 Projects; or (iii) any other law applicable to the 2018/2019 Projects in connection with the construction and equipping of the 2018/2019 Projects.

(d) Main Library Furnishings. The Public Library agrees to use funds on hand with the Public Library to pay for the cost of furnishings for the Main Library as part of the 2018/2019 Projects in an amount up to \$2 million.

(e) Purchase of Option Property. The Public Library will exercise its option under an agreement with the Commission, dated November 14, 2013, as extended (the “Option”), to purchase the property (the “Additional Property”) east of and adjacent to the Main Library and which is part of the site of the 2018/2019 Projects. The Public Library and the Commission hereby (i) acknowledge and agree that the 2018/2019 Projects constitute a “Project” as defined in the Option that satisfies the contingencies for exercise of the Option by the Public Library, and (ii) agree to extend the Option in effect to December 31, 2019, pursuant to the terms of the Option.

(f) Future Development of Main Library Site. As stated above, the 2018/2019 Projects include improvements to the existing surface parking on the Block to be utilized by patrons of the Main Library. The Public Library recognizes the substantial investment to be made by the City to the 2018/2019 Projects, as well as the City’s responsibility to maximize the potential use of land in the core of the City to advance a vibrant and dynamic downtown for the benefit and enjoyment of the City’s residents and to generate property tax revenue to support the operations of the City and other taxing units. To facilitate these goals, the Public Library will consent to additional development on the site of the existing surface parking on the Block, so long as (i) the Public Library’s parking capacity within the Block would not be reduced, (ii) any proposed future development would be complimentary to the Public Library and support the redevelopment of the Block consistent with the existing zoning of the Block and immediately surrounding properties, as shall be determined by the mutual agreement of the Public Library and the City, and (iii) any such future development does not hinder or conflict with the mission of the Public Library and the programs undertaken by the Public Library in furtherance of that mission. The City will work together with the Public

Library to ensure that such additional development continuously meets the above listed criteria.

(g) Main Library Entrance. The Public Library agrees to maintain an entrance to the Main Library from Main Street within the City (the current location of the entrance to the Main Library) as part of the 2018/2019 Projects, although the design and placement of the doors to such entrance may change.

SECTION 2. City and Commission Agreements. The City and the Commission agree with the other Parties as follows:

(a) The City shall, subject to further proceedings required by law, issue the EDC/TIF Bonds, in an aggregate principal necessary to finance the City Contribution (as defined below) (subject to increase as provided within this Section 2(a), no later than the end of the first quarter of 2022). The City will undertake all actions necessary to approve the EDC/TIF Bonds by no later than December, 2018. The City and the Commission shall provide the other Parties with the approving opinion of bond counsel to the City as to the adequacy of all actions taken by the City and the Commission to authorize and issue the Bonds under Indiana law without the necessity of any further action to be taken by any City body, provided that bond counsel will not opine on the ability of any City body to take any future actions to repeal or rescind such prior actions approving the EDC/TIF Bonds. The City shall provide Four Million Dollars (\$4,000,000) of proceeds of the EDC/TIF Bonds (the "City Contribution"), to the Public Library, which, in turn, will reimburse the Foundation for the Additional Foundation Contribution (as defined below), provided that such Additional Foundation Contribution shall not exceed Four Million Dollars (\$4,000,000). The Public Library shall have no obligation to make such payment to the Foundation in the event the City fails to provide the proceeds of the EDC/TIF Bonds to the Library. The City shall pay the cost of issuance for the EDC/TIF Bonds from funds other than the proceeds of the EDC/TIF Bonds, or shall increase the principal amount of the EDC/TIF Bonds accordingly to cover such issuance costs.

(b) The Commission shall pledge tax increment revenues from the appropriate allocation area within the City of South Bend, Indiana Redevelopment District to the repayment of debt service on the EDC/TIF Bonds. The Commission shall take such action as is necessary to complete this pledge by no later than November, 2018.

(c) In accordance with the terms of the agreement therefor, the Commission will take all actions necessary to transfer the Additional Property to the Public Library after the exercise of the Option by the Public Library.

SECTION 3. Foundation Agreements. The Foundation agrees with the other Parties that the Foundation will contribute Ten Million Dollars (\$10,000,000) to pay for a portion of the cost of the CEC Building (the "Foundation Contribution"). The Foundation will also contribute an additional amount of Four Million Dollars (\$4,000,000) (the "Additional Foundation Contribution") to pay for a portion of the cost of CEC Building, which additional amount will cover the cost of the City Contribution prior to the time of the issuance of the EDC/TIF Bonds by the City. The Foundation Contribution and the Additional Foundation Contribution shall be

secured by the Foundation and pledged to the Public Library prior to such time as the construction of the CEC Building is put out for bid by the Public Library. The Parties agree and acknowledge that the Foundation is making the Additional Foundation Contribution so that all funds necessary to complete the 2018/2019 Projects will be committed and available to the Public Library at the time of bidding such projects, and can be bid simultaneously. The Parties also agree that the funds expended on the construction and equipping of the CEC Building shall be in the following order: first from the proceeds of the Library's 2018 Bonds; second from the Foundation Contribution funds; and finally from the funds constituting the Additional Foundation Contribution.

SECTION 4. Use of the CEC Building by the Foundation and the City. The Parties agree that the Foundation will lease from the Public Library (subject to compliance with Indiana law) space on the third floor of the CEC Building to be utilized as office space for the Foundation (the "Foundation Space"), under the terms of a mutually agreeable lease agreement (the "Lease") between the Public Library and the Foundation. The Foundation Space will be limited to the third floor of the CEC Building and shall be in the form of the conceptual drawing set forth on Exhibit B hereto, with the exact design, dimensions, and Lease terms to be agreed upon by the Public Library and the Foundation as set forth in the Lease. It is the intent of the Public Library and the Foundation to enter into a letter of intent setting forth the parameters of the Lease terms prior to entering into the Lease. In addition to the foregoing, all of the Parties, together with the general public, shall have access to all the public meeting and training spaces and the auditorium within the CEC Building, subject to scheduling which will be coordinated through the Public Library. All public areas of the CEC Building, the Main Library, the Outdoor Improvements, and any other structure or improvement that is part of the 2018/2019 Projects and is not leased to one of the Parties (such as the Foundation Space) shall be considered common area (the "Common Area") accessible to the general public and shall at all times be subject to the control and management of the Public Library.

SECTION 5. 2018/2019 Projects Gantt Chart. The Parties agree to utilize, and periodically update, a Gantt Chart (the "Gantt Chart") to be maintained and updated by the Public Library, in the form of the Gantt Chart attached hereto as Exhibit C. The Gantt Chart shall provide all of the necessary steps to be taken in connection with the approval of all official actions for the financing and Construction of the 2018/2019 Projects as set forth in this Agreement together with all actions to be taken by the various Parties in the financing, design and construction of the 2018/2019 Projects.

SECTION 6. Naming Rights/Donations. The Parties acknowledge that the Foundation will make donations and will be attempting to secure donations from third parties to help pay for the Foundation Contribution, and, in connection therewith, there may be a requirement by such third parties or the Foundation to have their names memorialized in some fashion or to make recommendations regarding the design, construction, and equipping of the 2018/2019 Projects as a condition of any donation by such third party or the Foundation. The Parties agree to use their best efforts to accommodate the reasonable requests of such third party donors or the Foundation in connection with the naming opportunities or other recommendations for the 2018/2019 Projects.

SECTION 7. Public Library Programs. The Parties agree and acknowledge that the services and programs currently offered by the Public Library to the citizens of the County and the City exceed the traditional view of services offered by a public library (i.e. pleasure reading and reference materials in hard copy format). The Public Library provides access to, oversight of, and assistance with modern technology, equipment, meeting space, and instruction that is necessary for those citizens to interact in the modern age and compete in the modern economy. Furthermore, without the Public Library, these services and programs would otherwise not be available to many of those citizens because they would be cost prohibitive. The above-referenced services and programs currently provided by the Public Library include, but are not limited to, access to digital programming, workforce development programming, open data portals, life-long learning initiatives, after school programming (including homework support) and other educational programming (collectively, the “Current Programming”). The 2018/2019 Projects will allow the Public Library to expand the Current Programming by providing for (i) increased children’s space allowing additional room for activities, age appropriate spaces and additional collection, (ii) increased digital capacity through additional spaces for technology and training, (iii) additional space for expanded after school programming, homework support and college prep, (iv) the ability to hold after hours programming and events, and (v) additional space for workforce training, community events and programs and collaborative work of various organizations. The Public Library agrees to continue the Current Programming, as expanded by the additional programming set forth in the preceding sentence (the “Additional Programming”) (the Current Programming and the Additional Programming collectively, the “Programming”) for so long as it is relevant and beneficial to the citizens of the County and the City and to add to or subtract from the Programming in order to best respond to the future needs of the citizens of the County and the City.

SECTION 8. Insurance and Indemnification. The Public Library and the Foundation agree as follows:

(a) **Insurance Maintained by the Public Library.** During Construction, the Public Library shall maintain Builder’s Risk Insurance with standard limits commensurate with the size of the 2018/2019 Projects. The Public Library shall also maintain General Liability and Property and Casualty insurance policies insuring the Main Library and any building or improvement that is part of the 2018/2019 Projects against loss, cost and expense by reason of injury to or the death of persons or damage to or the destruction of property arising out of or in connection with the occupancy or use of such buildings and, improvements and in amounts to cover the appraised value of Main Library and the 2018/2019 Projects and with such insurance carriers or companies as shall be decided upon by the Public Library within its sole discretion.

(b) **Insurance Maintained by the Foundation.** The Foundation shall maintain in force from the commencement date of the Lease, General Liability and Property and Casualty insurance policies insuring against loss, cost and expense by reason of injury to or the death of persons or damage to or the destruction of property arising out of or in connection with the occupancy or use of the Foundation Space by the Foundation, such insurance to include the Public Library as an additional insured, and the Foundation shall indemnify and save harmless the Public Library from any loss, liability, cost or expense (including attorneys’ fees and court costs incurred in the defense thereof) arising out of or

in connection with the Foundation's use and occupancy of the Foundation Space, including any injuries to persons or damages to property, unless caused by the acts or omissions of the Public Library.

(c) Waiver of Claims by the Foundation. The Public Library shall not be liable for and the Foundation waives all claims against the Public Library for damages to persons or property sustained by the Foundation or the Foundation's officers, employees, or agents resulting from the use by the Foundation of the Foundation Space or any equipment or appurtenances becoming out of repair, or resulting from any accident or occurrence in or about the Foundation Space.

(d) Damage to the Foundation Space. In the event the CEC Building is partially or totally destroyed by fire or other casualty, the Public Library, in its sole discretion, may restore, repair or demolish the CEC Building dependent upon the availability of insurance proceeds as more fully described in the Lease.

SECTION 9. Conditions to Obligations of the Parties. The Parties acknowledge and understand that notwithstanding anything in this Agreement to the contrary (i) the Parties must take future actions to undertake and implement certain obligations under this Agreement, (ii) the representations of and performance of the covenants and agreements of the City and the Commission are subject to and contingent upon compliance with and completion of applicable statutory and administrative procedures, including, without limitation, applicable public notice and public hearing requirements, official actions by governing bodies, and any remonstrance and appeal rights, (iii) the representations of and performance of the covenants and agreements of the Public Library are subject to and contingent upon compliance with and completion of applicable statutory and administrative procedures, including, without limitation, applicable public notice and public hearing requirements, official actions by governing bodies, and any remonstrance and appeal rights, (iv) the representations of and performance of the covenants and agreements of the Foundation are subject to and contingent upon (A) approval of this Agreement by the Board of Directors of the Foundation and/or such other corporate approval as is required by the governing documents of the Foundation, and (B) the satisfaction of the conditions and contingencies set forth in this Agreement. Each Party covenants that it shall use its best efforts to do all things lawfully within its power to take the necessary actions to effectuate the obligations contemplated hereby and otherwise implement this Agreement to the fullest extent possible in accordance with the time frames set forth herein, unless such dates are extended by mutual written consent of the Parties.

SECTION 10. General.

(a) The Parties agree that time is of the essence in the matters described herein and that the Parties agree to perform their respective obligations hereunder.

(b) The Public Library shall, in good faith, expedite the review and approval of all required environmental, health, safety, construction and other permits, licenses, commitments and approvals relating to the 2018/2019 Projects.

(c) The Parties agree that none of the Parties may assign their obligations under this Agreement to any other entity without the prior written consent of the remaining Parties, which consent will not be unreasonably withheld.

(d) The Foundation acknowledges that IND. CODE § 5-14-1.5 (the “Open Door Law”) and IND. CODE § 5-14-3 (the “Access to Public Records Law”) apply to governmental entities, including the Public Library, the City and the Commission, and the Open Door Law and the Access to Public Records Law may require disclosure of this Agreement and its Exhibits. Accordingly, the Foundation agrees and understands that any proprietary or confidential information should be withheld from a governmental entity, or designated as “confidential” in accordance with the Access to Public Records Law, unless specifically and reasonably requested by that governmental entity in order for that governmental entity to complete its commitments under this Agreement.

(e) The representations, covenants and agreements of the Parties are subject to and contingent upon the mutual performance by the Parties hereunder. The Parties acknowledge and agree that the Parties are entering into this Agreement in reliance upon the respective covenants, agreements and representations of all of the other Parties.

(f) If any one or more of the covenants or agreements provided in this Agreement on the part of any Party should be determined by a court of competent jurisdiction to be contrary to law, such covenants and agreements shall be null and void and shall be deemed separate from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

(g) This Agreement and all transactions contemplated hereby shall be governed by, construed in accordance with, and enforced under the laws of the State of Indiana, notwithstanding its choice of law rules to the contrary or any other state’s choice of law rules.

(h) This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be one and the same instrument.

(i) This Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns.

(j) Any covenant or agreement contained in this Agreement between any Party and any other Party may be amended only by a written instrument executed by the Parties impacted. Any condition precedent to any Party’s obligations hereunder may be waived in writing by such Party.

(k) All Exhibits attached hereto are incorporated herein by reference.

(l) This Agreement and the Exhibits hereto contain the entire understanding of the Parties and this Agreement supersedes all prior agreements and understandings, oral and written, with respect to this subject matter.

(m) In the event of the breach of this Agreement by any Party, such breaching Party shall not be liable to any other Party to this Agreement for any consequential, incidental, special or punitive damages.

(n) Before any failure by any Party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the Party claiming such failure shall notify in writing, the Party alleged to have failed to perform such obligation and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of the receipt of such notice. If performance has not commenced to the reasonable satisfaction of the complaining Party within thirty (30) days of receipt of such notice, the complaining Party may submit the dispute to mediation, and if mediation is unsuccessful, then the complaining Party may take whatever action at law or in equity the complaining Party deems necessary and desirable to enforce observance and performance of any obligation under this Agreement.

IN WITNESS HEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives effective as of the date set forth above.

ST. JOSEPH COUNTY PUBLIC LIBRARY

By: _____

Printed: _____

Title: _____

CITY OF SOUTH BEND, INDIANA

By: _____
Pete Buttigieg, Mayor

By: _____
Tim Scott, Common Council President

By: _____
Kareemah Fowler, City Clerk

SOUTH BEND REDEVELOPMENT COMMISSION

By: _____
Marcia I. Jones, President

By: _____
Donald E. Inks, Secretary

THE COMMUNITY FOUNDATION OF ST. JOSEPH COUNTY, INC.

By: _____

Printed: _____

Title: _____

EXHIBIT A



Exhibit A

EXHIBIT B

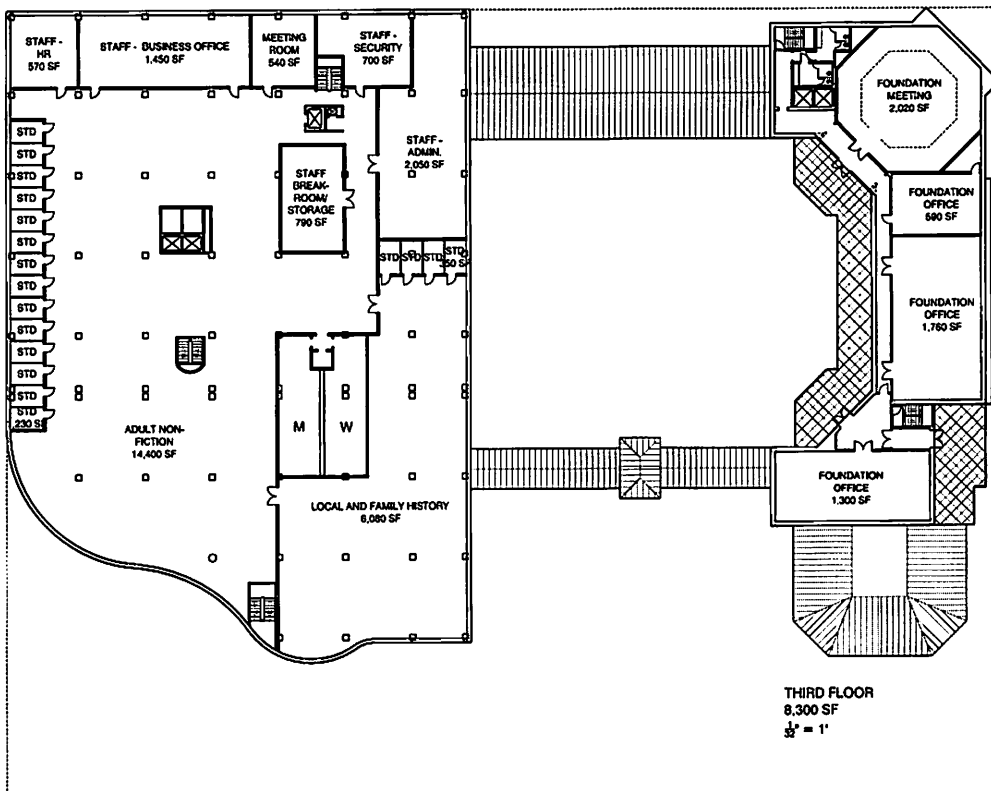


Exhibit B

EXHIBIT C



CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: October 22, 2018
FROM: Kara Boyles, City Engineer
SUBJECT: Budget Request/Adjustment - Downtown Cross Streets Streetscape 117-041A

Which TIF? (circle one) River West; River East; South Side; Douglas Road; West Washington

PURPOSE OF REQUEST: Additional funding request in the amount of \$29,000 to close out the project.

Specifics: As part of the City’s continuing effort to implement “complete streets”, and following up on the One-way to Two-way Conversion project, the first of our “Cross Streets” projects was under construction this past summer. The project focused on Colfax, between Main St. and Michigan St., and the portion of Michigan between Colfax and LaSalle – The Morris plaza right-of-way. This streetscape project addressed elements below ground as well as typical above ground lighting, landscaping, curbs and sidewalks, etc.

The Board of Public Works awarded this project to Walsh & Kelly on April 24, 2018 in the amount of \$1,659,060.60. In order to close out the project, I am requesting an additional appropriation of \$29,000 for change orders and final close-out of the project.

In order to reduce the impact of the request, I have reduced other projects, specifically, Sample and Sheridan and the LWE Road Diet to cover the change orders.

INTERNAL USE ONLY: Project Code: _____;
Total Amount new/change (inc/dec) in budget: _____; Break down:
Costs: Engineering Amt: _____; Other Prof Serv Amt _____;
Acquisition of Land/Bldg (circle one) Amt: _____; Street Const Amt _____;
Building Imp Amt _____; Sewers Amt _____; Other (specify) Amt: _____
_____. Going to BPW for Contracting? Y/N
Is this item ready to encumber now? ___ Existing PO# _____ Inc/Dec \$ _____

TEMPORARY ACCESS AGREEMENT

This Temporary Access Agreement (this “Agreement”) is made and entered into as of November 8, 2018 (the “Effective Date”), by and between the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment (the “Commission”), and Paapri LLC, an Indiana limited liability company with its registered office at 506 W. South Street, South Bend, Indiana 46601 (the “Company”).

RECITALS

A. Commission owns in fee simple certain real property located within the River West Development Area of the City of South Bend, Indiana (the “City”), located at 1019 South Michigan Street in the City and commonly known as the Burke Building, as more particularly described in attached **Exhibit A** (the “Property”).

B. Company is interested in accessing the Property in order to determine whether it is a suitable location for development.

C. Company desires to obtain from Commission a right of access to the Property to allow Company to obtain estimates for potential development purposes, and Commission has agreed to grant the same on the terms and conditions stated in this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Commission and Company, agree as follows:

1. Grant of Access to Company. Commission hereby grants to Company a non-exclusive, temporary access right to the Property for the limited purpose of allowing Company to enter the premises with Company’s architect, designer, engineer, and/or construction tradespeople to determine the potential cost and suitability for Company’s purposes of developing the Property. The parties agree that Company will have no right under this Agreement to install improvements of any kind on the Property.

2. Term and Termination. The term of this Agreement shall be ninety (90) days and may be extended by a written amendment to this Agreement signed by both Parties. Commission may terminate this Agreement at any time with or without cause by giving Company written notice of termination.

3. Maintenance; Restoration. Company will, at its sole expense, repair any damage to the Property made by Company or its invitees upon the Property. In the event Company fails to preserve the Property at all times in substantially the same condition and repair in which it exists on the date hereof, Commission or the City may, at its option, incur costs and expenses to maintain

and repair the Property, which costs and expenses Company will pay promptly upon the written demand of Commission or the City, as the case may be.

4. Ownership. Commission represents and warrants that it is lawfully seized of the Property, that it has full right and power to grant the access right, and that the Property is free from all encumbrances, except any matters of record.

5. Hazardous Materials. The Company shall not cause or permit, knowingly or unknowingly, any hazardous material to be brought or remain upon, kept, used, discharged, leaked, or emitted upon the Property.

6. Indemnification; Insurance. Company shall indemnify and hold Commission harmless from and against any and all claims resulting from damage to any property upon the Property or injury to any person upon the Property. In addition, Company will maintain commercial general liability insurance coverage in the minimum amount of at least \$1,000,000 per occurrence and will designate the Commission and the City as additional insureds under any such policy of insurance. Promptly following the Effective Date of this Agreement, Company will produce to Commission a certificate of insurance evidencing the same.

7. Reservation of Rights. Commission reserves for itself the free use of the Property in any manner not inconsistent with the terms of this Agreement.

8. Property Interest. The Parties acknowledge that the purpose of the Agreement is for Company to engage in further study regarding the feasibility of using the Property for office space. Therefore, Commission agrees that it will not enter into any agreement for the sale of the Property during the term of this Agreement.

9. Benefit. Commission and Company intend that each of the rights and obligations set forth herein shall inure to the burden or benefit of the respective parties and their related companies, successors, and assigns.

10. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Indiana.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties have signed this Temporary Access Agreement to be effective as of the Effective Date.

SOUTH BEND REDEVELOPMENT
COMMISSION

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

EXHIBIT A

Description of Property

A parcel of real property located in the City of South Bend, Indiana, and commonly known as 1019 S Michigan Ave., the Burke Building, and more particularly described as Lot 1 Weavers Garst St Minor Subdivision.

Parcel Key Number 018-8001-0049

**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).