



South Bend

# Redevelopment Commission

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

## Agenda

Regular Meeting, January 24, 2019 9:30 a.m.

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### 1. Roll Call

### 2. Approval of Minutes

- A. Minutes of the Regular Meeting of Thursday, December 13, 2018

### 3. Approval of Claims

- A. Claims Submitted January 24, 2019

### 4. Old Business

### 5. New Business

#### A. Administrative

1. Resolution No. 3467 (Setting 2019 Meeting Schedule)
2. Resolution No. 3468 (Setting Hearing Date for Appropriations)
3. Resolution No. 3469 (Procedures for Property Related Services)

#### B. River West Development Area

1. License Agreement (Ambassadors for Christ Church) – D2
2. Third Amendment to Real Estate Purchase Agreement (Cressy & Everett) – D2
3. Fourth Amendment to Real Estate Purchase Agreement (Franklin Street Tech Park, LLC) – D2
4. Memorandum of Understanding (South Bend Redevelopment and IRF) – D2
5. Budget Increase (Olive GAC Plant) – D2
6. Budget Request (North Station Filtration Plant) – D2
7. Development Agreement (Bald Mountain, LLC) – D2
8. First Amendment to Development Agreement (Unity Gardens) – D2
9. Agreement to Buy and Sell Real Estate (Marion/Scott St.) – D2

#### C. Other

1. TIF Realignment Professional Services (H.J. Umbaugh & Associates)

**6. Progress Reports**

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

**7. Next Commission Meeting:**

Thursday, February 14, 2019, 9:30 a.m.

**8. Adjournment**

**NOTICE FOR HEARING AND SIGHT IMPAIRED PERSONS**

Auxiliary Aid or Other Services are Available upon Request at No Charge.

Please Give Reasonable Advance Request when Possible.



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

**SOUTH BEND REDEVELOPMENT COMMISSION  
REGULAR MEETING**

December 13, 2018

9:30 a.m.

Presiding: Marcia Jones, President

227 West Jefferson Boulevard

South Bend, Indiana

The meeting was called to order at 9:30 a.m.

**1. ROLL CALL**

Members Present:	Marcia Jones, President
	Dave Varner, Vice-President
	Don Inks, Secretary
	Gavin Ferlic, Commissioner
	Quentin Phillips, Commissioner
Members Absent:	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
	Chris Dressel	DCI
	Andrew Netter	DCI
	Tony Sergio	DCI
	Jitin Kain	Engineering
	Kyle Silveus	Engineering
	Kara Boyles	Engineering
	Jacob Klosinski	Engineering
	Zach Hurst	Engineering
	Mark Peterson & Eric Watson	WNDU
	Tom Panzica	Wharf Partners
	Conrad Damian	Resident
Patti McNarney	Lake City Bank	
Sion Shepley	Clay High School Student	

## 2. Approval of Minutes

### A. Approval of Minutes of the Regular Meeting of Monday, November 19, 2018

Upon a motion by Secretary Inks, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved the minutes of the regular meeting of Monday, November 19, 2018.

## 3. Approval of Claims

### A. Claims Submitted December 13, 2018

	Claims submitted	Explanation of Project
<b>REDEVELOPMENT COMMISSION</b>		
Redevelopment Commission Claims December 13, 2018 for approval		
<b><u>324 RIVER WEST DEVELOPMENT AREA</u></b>		
Hull & Associates	777.10	Consulting Services / Studebaker Site
Reith Riley Construction	255,491.69	Berlin Place / Fellow St Raised Crosswalk
Lawson Fisher Associates	37,337.99	West Bank Corridor Improvements
Lochmuller Group	32,641.88	Lincolnway Rehabilitation
Abonmarche	2,852.50	Lincolnway West and Charles Martin St. Intersection
Barnes &* Thornburg LLP	892.50	410 W. Wayne St.
City of South Bend	45,000.00	Redevelopment Supervisory Services
Kolata Enterprises LLC	1,080.00	Professional Services
DLZ	33,772.50	Fat Daddy's Structural
Walsh & Kelly	369,436.04	Ameritech Dr. Pavement Improvements
Premier 1 Construction	19,978.00	Ziker - Sample St. Building
CBS Service, LLC	397,315.65	Berlin Place No. 2 Electrical, Mechanical & Plumbing - Division A
Abonmarche	27,000.00	Western Ave Streetscape from Falcon St. Dundee St
Abonmarche	1,165.00	Lincoln Way West and Charles Martin Sr. Intersection
United Consulting	9,261.00	Coal Line Trail (Ph I)
Lochmuller Group	690.81	Lincolnway Rehabilitation
Black & Veatch Corporation	8,186.70	Training & Updates on Water Cad and Task
Aecom	2,767.90	South Shore Feasibility Study
Kolata Enterprises LLC	2,347.31	Professional Services
Selge Construction Co., Inc.	111,833.43	Lincoln Way West and Charles Martin Sr. Intersection
<b><u>422 FUND WEST WASHINGTON DEVELOPMENT AREA</u></b>		
Dudeck Roofing & Sheet Metal, Inc.	4,251.25	Gemini at Washington-Colfax Roof Improvements
<b><u>429 FUND RIVER EAST DEVELOPMENT TIF</u></b>		
Christopher B. Birke Engineering, LLC	3,460.60	East Race Sewer Analysis
Rieth Riley Construction Co.	155,641.45	J.C. Lauber Site Improvements
<b><u>430 FUND SOUTH SIDE TIF AREA #1</u></b>		
Donohue & Associates	15,750.00	South Wellfield, Plant & Pressure Zone Improvement
DHA	1,783.50	Drainage Plan & Repair
Walsh & Kelly	300,297.82	St. Joseph Streetscape
<b><u>452 TIF PARK BOND CAPITAL</u></b>		
Lochmuller Group	6,186.18	Historic Leeper Park Improvements
Beam Longest NEFF	4,880.00	SB Leeper PK Improvement
Troyer Group	1,800.00	Pulaski Park
Walsh & Kelly	223,104.41	Lincoln Way East Corridor Improvements Sample St. to Twyckenham Dr.
Troyer Group	4,080.00	Pulaski Park
Lawson-Fisher Associates P.C.	8,086.50	Parks Improvements Program Manager
<b>Total</b>	<b>2,089,149.71</b>	

Upon a motion by Secretary Inks, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved the claims submitted on Thursday, December 13, 2018.

**4. Old Business**

**5. A. Public Hearing**

**1. Resolution No. 3465 (River East Residential TIF Appropriations 2019)**

Elizabeth Leonard Inks presented Resolution No. 3465 (River East Residential TIF Appropriations 2019). This Resolution will appropriate an additional \$945,000 in the River East Residential TIF, which will be for a change in the bond debt service.

President Jones opened up the floor for public comment. With no public comments, President Jones closed the public portion of the hearing.

Upon a motion by Vice-President Varner, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved Resolution No. 3465 (River East Residential TIF Appropriations 2019) submitted on Thursday, December 13, 2018.

**B. River West Development Area**

**1. Resolution No. 3466 (Declaring Certain Properties Blighted)**

Mr. Relos presented Resolution No. 3466 (Declaring Certain Properties Blighted). Last year a new Section 19.5 was added to the Redevelopment Statute which allows the Commission to acquire property that is blighted, unsafe, abandoned, foreclosed, or structurally damaged from a willing seller.

Resolution No. 3466 declares six properties blighted. The six properties are in a key target area of the West Side Main Streets Plan at Lincoln Way West, Marion and Scott streets. Five of the properties have been vacant for years, with the sixth being a vacant and boarded up house. Commission approval is requested.

Upon a motion by Secretary Inks, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved Resolution No. 3466 (Declaring Certain Properties Blighted) submitted on Thursday, December 13, 2018.

**2. Agreement To Buy And Sell Real Estate (620 W Marion St.)**

Mr. Relos presented the Agreement To Buy And Sell Real Estate for 620 W. Marion St. This is a vacant lot that went through the tax sale process in 2014. It is in the key target area of the West Side Main Street Plan for Lincoln Way West and Marion St. The owner has agreed to sell the property for its appraised value of \$675. Commission approval is requested.

Upon a motion by Commissioner Ferlic, seconded by Vice-President Varner, the motion carried unanimously, the Commission approved Agreement To Buy And Sell Real Estate (620 W Marion St Acquisition) submitted on Thursday, December 13, 2018.

**3. Budget Request (Fat Daddy's Demo)**

Mr. Relos presented a Budget Request for the Fat Daddy's Demo. On November 27, 2018 the Board of Public Works opened bids for this project, with the low bid being \$500,000, which includes \$30,000 environmental allowance, site restoration, and new sidewalks. Two alternates for the salvaging of 19 granite and terra cotta features on the northern two buildings would also be awarded. Commission approval for \$540,000 is requested.

Upon a motion by Commissioner Ferlic, seconded by Secretary Inks, the motion carried unanimously, the Commission approved \$540,000 Budget Request (Fat Daddy's Demo) submitted on Thursday, December 13, 2018.

**4. Budget Amendment (Coal Line Project)**

Mr. Dressel presented a Budget Amendment for the Coal Line Project. This is for Appraisal Problem Analysis costs, a required component of the appraisal process. An increase of \$28,455 is requested.

Upon a motion by Secretary Inks, seconded by Commissioner Ferlic, the motion carried unanimously, the Commission approved Budget Amendment (Coal Line Project) submitted on Thursday, December 13, 2018.

**5. Nipsco (Hibberd Easement)**

Mr. Silveus presented Nipsco (Hibberd Easement). This request is for a 5' x 20' easement to serve the Hibberd Development. The easement was initially created for AEP, and NIPSCO will occupy the same easement, located on Commission owned property at 322 S. Lafayette.

Upon a motion by Secretary Inks, seconded by Vice-President Varner, the motion carried unanimously, the Commission approved Nipsco (Hibberd Easement) submitted on Thursday, December 13, 2018.

**6. Budget Request (Sanitary Sewer Extension)**

Mr. Klosinski, City Engineer, presented a Budget Request (Sanitary Sewer Extension). This is to connect new development in the Airport Annexation Area for the South Bend Chocolate project, to our lift station. This will be approximately one-mile long on the south side of US 20. Commission approval of the total bid price of \$766,957, which was the low bid on the project is requested.

Upon a motion by Commissioner Ferlic, seconded by Vice-President Varner, the motion carried unanimously, the Commission approved the Budget Request (Sanitary Sewer Extension) submitted on Thursday, December 13, 2018.

**7. Budget Request (South Shore Study)**

Mr. Kain presented a Budget Request (South Shore Study). This project includes two separate studies to be conducted by AECOM in order to finalize the location of the new South Shore commuter line station in South Bend. The first study is for the Downtown Option Refined Concept Design which includes

further engineering analysis to determine construction feasibility and project costs in an anticipated cost of \$180,900.

The second study is the assessment of Airport Cargo. The Airport is considering the relocation of the South Shore commuter line next to the cargo park. This portion of the study is \$80,000, which will be reimbursed by the Airport. Commission approval in the amount of \$260,900 is requested.

Upon a motion by Commissioner Phillips, seconded by Commissioner Ferlic, the motion carried unanimously, the Commission approved Budget Request (South Shore Study) submitted on Thursday, December 13, 2018.

## **C. River East Development Area**

### **1. First Amendment to Development Agreement (Wharf Partners, LLC)**

Mr. Mueller presented the First Amendment to Development Agreement (Wharf Partners, LLC). Because of an underground storage tank on the property owned by the Commission, the City has agreed to provide the developer \$237,000 of additional local improvement costs to remove and remediate the tank. The property where the tank was located will become property of the developer as part of the Seitz Park property realignment.

Upon a motion by Secretary Inks, seconded by Vice-President Varner, the motion carried unanimously, the Commission approved First Amendment to Development Agreement (Wharf Partners, LLC) submitted on Thursday, December 13, 2018.

### **2. Collateral Assignment of Development Documents (Wharf Partners, LLC/Lake City Bank)**

Mr. Mueller presented Collateral Assignment of Development Documents (Wharf Partners, LLC/Lake City Bank). This will help to provide financing to Wharf Partners. This allows the Bank to step in to complete the project if necessary.

Upon a motion by Commissioner Ferlic, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved Collateral Assignment of Development Documents (Wharf Partners, LLC/Lake City Bank) submitted on Thursday, December 13, 2018.

### **3. Resolution No. 3461 (Pledging TIF for Wharf SDC)**

Mr. Mueller presented Resolution No. 3461 (Pledging TIF for Wharf SDC). This is for the System Development Charge on behalf of public improvements to the project, up to \$62,694. Commission approval is requested.

Upon a motion by Vice-President Varner, seconded by Commissioner Phillips, the motion carried unanimously, the Commission approved Resolution No. 3461 (Pledging TIF for Wharf SDC) submitted on Thursday, December 13, 2018.

**4. Memorandum Of Understanding (Wharf Project)**

Mr. Mueller presented MOU (Wharf Project). This MOU is to clear easements, transfers property for the ND Hydro, Parks, Commission, and Wharf Partners projects around Seitz Park. The Agreement also provides parking during development for the parties involved.

Upon a motion by Commissioner Ferlic, seconded by Vice-President Varner, the motion carried unanimously, the Commission approved MOU (Wharf Project) submitted on Thursday, December 13, 2018.

**5. Resolution No. 3459 (Accepting Transfer and Transferring Property)**

Mr. Mueller presented Resolution No. 3459 (Accepting Transfer and Transferring Property). This is authorizing the transferring property in the Seitz Park / Wharf area.

Upon a motion by Commissioner Ferlic, seconded by Commissioner Phillips, the motion carried unanimously, the Commission Resolution No. 3459 (Accepting Transfer and Transferring Property) submitted on Thursday, December 13, 2018.

**D. Douglas Road Development Area**

**1. Budget Request (Douglas Road Relocation)**

Ms. Boyles presented a Budget Request (Douglas Road Relocation). Funding in the amount of \$200,000 for professional engineering services related to the relocation of the Douglas Road Lift Station, force main, gravity sewer and potential water main conflicts.

In 2021, St. Joseph County plans to widen a section of Douglas Road that will affect various South Bend utilities located in, and that serve, the Douglas Road TIF District. Due to the widening of the roadway, the City will need to relocate a critical (high flow) lift station located near Juday Creek, as well as a 10" force main under the existing pavement. Potential gravity sewer relocations will also be necessary, pending conflicts with the proposed improvements. It is anticipated that water main conflicts may also require redesign.

Upon a motion by Vice-President Varner, seconded by Commissioner Ferlic, the motion carried unanimously, the Commission approved the Budget Request (Douglas Road Relocation) submitted on Thursday, December 13, 2018.

**E. South Side Development Area**

**1. Budget Request (O'Brien Center Allocation)**

Mr. Sherman presented a Budget Request (O'Brien Center Allocation). The budget request is to make improvements to the facilities located at O'Brien Park as part of the My South Bend Parks and Trails initiative. The existing Center requires improvements so that it meets the current and future needs of its users. These improvements will include several significant improvements to benefit the community and members of the O'Brien Fitness Center. Administration offices in the building will be eliminated to create additional programming space. Restrooms



South Bend Redevelopment Commission Regular Meeting – December 13, 2018

on the main level will be modernized and expanded to improve health and safety as well as meet modern ADA requirements. There will also be several space planning and programming improvements to activate more of the building and provide a better experience. Commission approval of a budget of \$580,000 to support the design and construction of improvements at O'Brien Recreation Center is requested.

Upon a motion by Vice-President Varner, seconded by Commissioner Ferlic, the motion carried unanimously, the Commission approved the Budget Request (O'Brien Center Allocation) submitted on Thursday, December 13, 2018.

**6. Progress Reports**

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

**7. Next Commission Meeting:**

Thursday, December 27, 2018, 9:30 a.m.  
Thursday, January 10, 2019, 9:30 a.m.

**8. Adjournment**

Thursday, December 13, 2018, 10:06 a.m.

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David Relos, Property Development Manager

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Marcia I. Jones, President

REDEVELOPMENT COMMISSION Redevelopment Commission Claims January 24, 2019 for approval	Claims submitted	Explanation of Project
<u>324 RIVER WEST DEVELOPMENT AREA</u>		
Walsh & Kelly, Inc.	190,985.72	Great Lakes Capital Spec
R. Yoder Construction, Inc.	64,582.03	Hibberd Pl Improvements
Walsh & Kelly, Inc.	95,293.89	Downtown Cross Street Improvements
St. Joseph County Auditor	124,969.65	2018 Fall Settlement
DLZ	1,620.00	Fat Daddy's Structural
Barnes & Thornburg LLP	4,981.50	South Shore Station Relocation
Zachary Hurst	9,975.00	Consultant Engineering Services
Hull & Associates	476.10	General Consultant Services
Kolata Enterprises LLC	1,539.45	Professional Services
City of South Bend	21,833.25	Legal Service Agreement
Selge Construction Co.,	9,978.32	Lincoln Way West & Charles Martin Sr. Dr. Improvements
Walsh & Kelly, Inc.	33,240.44	Marriott Hotel Site Development at Hall of Fame Ph 3 Division C
Premium Concrete Services, Inc	17,604.64	100 Wayne St. Plaza and Streetscape
<u>429 FUND RIVER EAST DEVELOPMENT TIF</u>		
St. Joseph County Auditor	790.35	2018 Fall Settlement
<u>430 FUND SOUTH SIDE TIF AREA #1</u>		
Walsh & Kelly, Inc.	91,920.72	St. Joseph Streetscape
HRP Construction	4,697.48	Miami St Basin Drainage Improvements
Ziolkowski Construction, Inc.	197,368.20	Erskine Clubhouse Renovation
<u>452 TIF PARK BOND CAPITAL</u>		
Lawson-Fisher Associates	10,711.50	Parks Improvements Program Manager
Total	882,568.24	

## RESOLUTION NO. 3467

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION  
APPROVING A SCHEDULE OF  
REGULAR MEETING TIMES FOR CALENDAR YEAR 2019**

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

WHEREAS, pursuant to Ind. Code § 36-7-14-8(g), the Commissioners may adopt the rules and bylaws it considers necessary for the proper conduct of Commission proceedings and the carrying out of Commission duties; and

WHEREAS, Article IV, Section 1 of the *Amended and Restated By-Laws of the South Bend Redevelopment Commission* effective July 16, 2015, provides that the Commission shall adopt a schedule of regular meetings at its first meeting of each year; and

WHEREAS, the Commission desires to approve and adopt a schedule of regular meeting dates and times for calendar year 2019; and

NOW, THEREFORE, BE IT RESOLVED by the South Bend Redevelopment Commission as follows:

1. The Commission approves and adopts as its regular meeting schedule for calendar year 2019 the meeting dates and times stated in the schedule attached hereto as **Exhibit A**.
2. Unless otherwise announced, regular meetings shall be held without further notice at 9:30 a.m., local time, at the Board of Public Works Meeting Room, 1308 County-City Building, 227 West Jefferson Street, South Bend, Indiana 46601.
3. This Resolution shall be in full force and effect after its adoption by the South Bend Redevelopment Commission.

ADOPTED at a meeting of the South Bend Redevelopment Commission held on January 24, 2019, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601.

SOUTH BEND REDEVELOPMENT COMMISSION

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Marcia I. Jones, President

ATTEST:

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Donald E. Inks, Secretary

## **2019 Meeting Schedule**

**The Redevelopment Commission will hold its regular meetings the  
2<sup>nd</sup> and 4<sup>th</sup> Thursdays at 9:30 a.m. in the  
Board of Public Works Conference Room unless otherwise noted below.**

January 10	9:30 a.m.	
January 24	9:30 a.m.	
February 14	9:30 a.m.	
February 28	9:30 a.m.	
March 14	9:30 a.m.	
March 28	9:30 a.m.	
April 11	9:30 a.m.	
April 25	9:30 a.m.	
May 9	9:30 a.m.	
May 23	9:30 a.m.	
June 13	9:30 a.m.	
June 27	9:30 a.m.	
July 11	9:30 a.m.	
July 25	9:30 a.m.	
August 8	9:30 a.m.	
August 22	9:30 a.m.	
September 12	9:30 a.m.	
September 26	9:30 a.m.	
October 10	9:30 a.m.	
October 24	9:30 a.m.	
November 14	9:30 a.m.	
November 25	9:30 a.m.	**Note this is the Monday before Thanksgiving
December 12	9:30 a.m.	
December 26	9:30 a.m.	

**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.**

**RESOLUTION NO. 3468**

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION  
 SETTING A PUBLIC HEARING ON THE APPROPRIATION OF TAX INCREMENT  
 FINANCING REVENUES FROM VARIOUS ALLOCATION AREAS FOR THE  
 PAYMENT OF CERTAIN OBLIGATIONS AND EXPENSES RELATED TO THEIR  
 RESPECTIVE ALLOCATION AREAS FOR CALENDAR YEAR 2019 AND OTHER  
 RELATED MATTERS**

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

WHEREAS, the Commission, from time to time, has declared, confirmed and established allocation areas for areas needing redevelopment and economic development areas within the District for purposes of tax increment financing pursuant to the Act; and

WHEREAS, the Commission has further created allocation area funds for the purpose of receiving tax increment financing revenues received from the allocation areas; and

WHEREAS, Resolutions No. 3471 through 3475 appropriating the funds from various allocations areas of the District (collectively, the “Resolutions”) will be presented to and considered by the Commission; and

WHEREAS, the Commission desires to appropriate the allocation area funds to pay certain expenses incurred by it or the City for local public improvements that are in or serving their respective allocation areas or otherwise in accordance with the Act, which appropriations are set forth in more detail in the Resolutions; and

WHEREAS, the proposed appropriations are not for the operating expenses of the Commission; and

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

1. The Commission desires to approve the use of the funds of the various allocation areas, as set forth in their respective Resolutions, which allocation areas, resolutions and not-to-exceed appropriation amounts are set forth below:

Allocation Area and Fund	Resolution No.	Fund No.	Not-to-Exceed
River West Development Area	Resolution No. 3471	324	\$22,000,000
River East Development Area	Resolution No. 3472	429	\$2,000,000
South Side Development Area, #1 General	Resolution No. 3473	430	\$7,000,000
Douglas Road Economic Development Area	Resolution No. 3474	435	\$240,000
Redevelopment Retail	Resolution No. 3475	425	\$15,000
Totals			\$31,255,000

2. The President and Secretary of the Commission are each hereby authorized and directed to take all necessary steps to obtain approval of the expenditures of such funds pursuant to applicable laws, including the publication in accordance with Indiana Code 5-3-1 of notice of a hearing on the appropriation of such funds to be held at 9:30 a.m. on February 14, 2019, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601.

3. This Resolution will be in full force and effect upon its adoption by the Commission.

ADOPTED at a regular meeting of the South Bend Redevelopment Commission held on January 24, 2019, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601.

SOUTH BEND REDEVELOPMENT  
COMMISSION

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Marcia I. Jones, President

ATTEST:

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Donald E. Inks, Secretary

**RESOLUTION NO. 3469**

**RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION  
SETTING PROCEDURES FOR CONTRACTS FOR PROPERTY  
RELATED SERVICES**

WHEREAS, I.C. 36-7-14-12.2 provides that the South Bend Redevelopment Commission (the "Commission") may acquire, hold, use, sell, exchange, lease, rent or otherwise dispose of property for the purposes set forth and described in I.C. 36-7-14 (the "Act"); and

WHEREAS, the Commissioners have the authority under I.C. 36-7-14-8(g) to adopt such rules and bylaws as they consider necessary for the proper conduct of their proceedings and the carrying out of their duties and the safeguarding of money and property placed in their custody; and

WHEREAS, the Commission enters into contracts, from time to time, with title companies, appraisers, surveyors, and environmental contractors so as to better understand the status of title and the condition of real estate in which the Commission has a current or prospective interest; and

WHEREAS, the Commission wishes to delegate to certain staff members of the City of South Bend (the "City") the authority to initiate certain contracts with title companies, appraisers, surveyors, and environmental contractors subject to the limitations stated in this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Commission as follows:

1. The following staff members or their successors ("Staff") are authorized to initiate contracts for services (the "Contracts") on behalf of the Commission:
  - a. James Mueller;
  - b. Daniel Buckenmeyer;
  - c. Tim Corcoran;
  - d. David Relos; and
  - e. Andrew Netter.
2. All Contracts initiated by Staff must be related to property the Commission owns, is interested in acquiring, or intends to sell, use, exchange, lease or otherwise dispose in furtherance of its purposes under the Act. The Contracts shall be strictly limited to the services identified in paragraph 5 of this Resolution.
3. Each Contract must be approved by the Executive Director or any properly appointed Acting Executive Director of the City's Department of Community Investment (the "Director").
4. Each Contract shall be entered into with a service provider duly licensed and/or authorized to do business in the State of Indiana.

5. Staff's authority to initiate the Contracts is limited to the following maximum amount for each respective service:

<u>SERVICE</u>	<u>MAXIMUM FEE</u>
Title Searches and Policies	\$ 200.00 per parcel
Appraisals (Commercial/Industrial)	\$ 5,000.00 per appraisal
Appraisals (Residential)	\$ 1,000.00 per appraisal
Land Surveys/Replats/Subdivisions	\$ 5,000.00 per survey/replat/subdivision
Environmental Assessments	\$ 5,000.00 per assessment

6. All Contracts initiated by Staff must be presented to the Commission as part of the Commission's regular claims approval process or separately for ratification by the Commission.
7. The authority granted under this Resolution shall continue until superseded or rescinded by a separate written resolution of the Commission.
8. This Resolution shall be in full force and effect after its adoption.

ADOPTED at a meeting of the Commission held on January 24, 2019, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601.

SOUTH BEND REDEVELOPMENT  
COMMISSION

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Marcia I. Jones, President

ATTEST:

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Donald E. Inks, Secretary





# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: January 24, 2019  
FROM: David Relos, Property Development Manager  
SUBJECT: License Agreement (Ambassadors for Christ Church)

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

PURPOSE OF REQUEST:

As part of the planned masonry and skylight repairs or replacement at the Lafayette Building, this License Agreement will allow the City, through its contractors, to access the north and west sides of the building on and above property owned by the Church.

Commission approval is requested.

INTERNAL USE ONLY: Project Code:           N/A          ;  
Total Amount new/change (inc/dec) in budget:       -0-          ; Breakdown:  
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?   N/A   Existing PO#                                    Inc/Dec \$                                   

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT

**LICENSE AGREEMENT  
FOR TEMPORARY USE OF PRIVATE PROPERTY**

This License Agreement (this "Agreement") is made on December 13, 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 Ambassadors for Christ Church, Inc., an Illinois non-profit corporation with a mailing address of 7859 S Ashland Avenue, Chicago, Illinois 60620 (the "Church") (each a "Party," and collectively, the "Parties").

**RECITALS**

WHEREAS, the Church owns certain real property and improvements located within the City of South Bend, Indiana (the "City"), located at 302 W. Washington Street, commonly known as the People's Church, and more particularly described in Exhibit A attached hereto (the "Property"); and

WHEREAS, the Commission is engaged in a project wherein it will be performing skylight and masonry repairs (the "Project") to a building commonly known as the Lafayette Building, located at 115 S. Lafayette Boulevard within the City, which adjoins the Property ("Lafayette Building"); and

WHEREAS, certain aspects of the Project will require the temporary use of the parking area and/or the area above the church located on the Property; and

WHEREAS, the Commission desires temporary access to the Property for the sole purpose of storing equipment and materials on the parking area, erecting scaffolding and otherwise performing repairs to the Lafayette Building (the "Activity"); and

WHEREAS, the Church is willing to permit the Commission to gain access to and temporarily use the Property for the Activity, subject to the terms and conditions set forth in this Agreement.

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

1. The Church grants to the Commission, its agents, contractors, employees, and invitees, a temporary, non-exclusive license to enter and use the Property for the sole purpose of conducting the Activity, provided that the Commission's use of the Property is reasonable at all times and comports with the terms of this Agreement and all applicable laws. The Commission understands that its access to the Property is limited to the areas required to complete the Activity and agrees that this Agreement does not allow it to access any structures on the Property.

2. The Commission's license to use the Property for the Activity shall be effective upon the execution date of this Agreement, and the Commission agrees that it will not use the Property for any purposes except in the furtherance of the Activity. Immediately upon the

completion of the Activity, the Commission will remove or cause to be removed from the Property all supplies, materials, goods; and personal property (including trash) used by it or its agents, employees, contractors, or invitees in connection with the Activity. At all times during the period of the Activity and the Project, the Commission will use or cause to be used commercially reasonable efforts to keep the Property in good order and condition.

3. The Commission understands and agrees that the Church shall not be liable for any loss, damage, destruction, or theft of the Commission's property or the property of the Commission's agents, contractors, employees, or invitees, or any bodily harm or injury that may result from the Commission's use of the Property. The Commission understands and agrees that it will be solely responsible for the safety and security of all persons on the Property and any personal property the Commission or its agents, contractors, employees, or invitees use in connection with the Activity while on the Property.

4. The Commission understands and agrees that it will secure in its own name (or the name of the City) and at its own expense all necessary permits and authorizations needed in order to conduct the Activity.

5. The Commission understands and agrees that it will, at its own expense, observe and comply with, or cause to be observed and complied with, all applicable statutes, laws, ordinances, requirements, orders, rules, and regulations of all governmental authorities in relation to the Activity.

6. The Church reserves the right to use the Property during the term of this Agreement for any purpose that does not substantially interfere with or obstruct the Commission's permitted use of the Property with regard to the Activity and the other terms of this Agreement.

7. To the extent that any portion of the Property is disturbed or damaged in connection with the Commission's use of the Property, the Commission, at its sole expense, shall restore or cause to be restored the Property substantially to the condition that existed immediately prior to such disturbance or damage to the reasonable satisfaction of the Church.

8. The Commission agrees and undertakes to indemnify and hold the Church and its agents, employees, successors, assigns, and licensees harmless from any liability, loss, costs, damages or expenses, including attorneys' fees, which the Church may suffer or incur as a result of any claims or actions which may be brought by any person or entity arising out of the Commission's use of the Property. If any action is brought against the Church, or its agents, employees, successors, or assigns, in connection with the Activity, the Commission agrees to defend such action or proceedings at its own expense and to pay any judgment rendered therein. Notwithstanding the foregoing or anything herein to the contrary, neither the Commission nor the City waive any governmental immunity or liability limitations available to them under Indiana law.

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

5. The Commission understands and agrees that it will, at its own expense, observe and comply with, or cause to be observed and complied with, all applicable statutes, laws, ordinances, requirements, orders, rules, and regulations of all governmental authorities in relation to the Activity.

6. The Church reserves the right to use the Property during the term of this Agreement for any purpose that does not substantially interfere with or obstruct the Commission's permitted use of the Property with regard to the Activity and the other terms of this Agreement.

7. To the extent that any portion of the Property is disturbed or damaged in connection with the Commission's use of the Property, the Commission, at its sole expense, shall restore or cause to be restored the Property substantially to the condition that existed immediately prior to such disturbance or damage to the reasonable satisfaction of the Church.

8. The Commission agrees and undertakes to indemnify and hold the Church and its agents, employees, successors, assigns, and licensees harmless from any liability, loss, costs, damages or expenses, including attorneys' fees, which the Church may suffer or incur as a result of any claims or actions which may be brought by any person or entity arising out of the Commission's use of the Property. If any action is brought against the Church, or its agents, employees, successors, or assigns, in connection with the Activity, the Commission agrees to defend such action or proceedings at its own expense and to pay any judgment rendered therein. Notwithstanding the foregoing or anything herein to the contrary, neither the Commission nor the City waive any governmental immunity or liability limitations available to them under Indiana law.

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

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

**SOUTH BEND REDEVELOPMENT  
COMMISSION**

By:

\_\_\_\_\_  
Marcia I. Jones, President  
South Bend Redevelopment Commission

ATTEST:


\_\_\_\_\_  
Donald E. Inks, Secretary  
South Bend Redevelopment Commission

**AMBASSADORS FOR CHRIST CHURCH, INC.**

By:

Printed:

Title:

  
DEBRA STANFORD  
Minister of A/C

**EXHIBIT A**

**Description of Property**

The following real property commonly known as 302 West Washington Boulevard, South Bend, Indiana, Parcel Key nos. 018-3009-0287 and 018-3009-0286:

Lots 391-92 E 105' Each Original Plat and Lots 391, 392, and 393 60'W End Original Plat

**THIRD AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT**

This Third Amendment To Real Estate Purchase Agreement (this “Third Amendment”) is made on January 24, 2019 (the “Effective Date”), by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (“Seller”), and Cressy & Everett Commercial Corporation, doing business as Newmark Grubb Cressy & Everett, an Indiana corporation with its principal place of business at 4100 Edison Lakes Parkway, Suite 350, Mishawaka, Indiana 46545 (“Buyer”) (each a “Party,” and collectively the “Parties”).

## RECITALS

A. Seller and Buyer entered into that certain Real Estate Purchase Agreement dated May 11, 2017, as amended by the First Amendment To Real Estate Purchase Agreement dated July 27, 2017 and the Second Amendment to Real Estate Purchase Agreement dated November 20, 2017 (collectively, the “Purchase Agreement”), for the purchase and sale of the Property (as defined in the Purchase Agreement) located in the City of South Bend (the “City”).

B. Buyer would like to extend the date for completion of its Property Improvements (as defined in the Purchase Agreement) obligation, and Seller has agreed to so extend the completion date as set forth herein.

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

1. In Section 11.A. of the Purchase Agreement, which created for the Buyer a post-closing obligation to redevelop of the Property, the term “twenty-four (24) months” shall be deleted and replaced with “thirty-six (36) months.”
2. Unless expressly modified by this Third Amendment, the terms and provisions of the Purchase Agreement remain in full force and effect.
3. Capitalized terms used in this Third Amendment will have the meanings set forth in the Purchase Agreement unless otherwise stated herein.

*Signature Page Follows*

IN WITNESS WHEREOF, the Parties hereby execute this Third Amendment to Real Estate Purchase Agreement to be effective on the Effective Date stated above.

BUYER:

Cressy & Everett Commercial Corporation,  
doing business as Newmark Grubb Cressy & Everett,  
an Indiana corporation

\_\_\_\_\_  
Edward Bradley, Senior VP and Principal  
Dated:

SELLER:

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

\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

\_\_\_\_\_  
Donald E. Inks, Secretary

**FOURTH AMENDMENT TO REAL ESTATE PURCHASE AGREEMENT**

This Fourth Amendment To Real Estate Purchase Agreement (this “Fourth Amendment”) is made effective as of January 24, 2019 (the “Effective Date”), by and between the City of South Bend, Indiana, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (“Seller”) and Franklin Street Technology Park LLC, an Indiana limited liability company with its principal place of business 814 Marietta Street, South Bend, Indiana 46601 (“Buyer”) (each a “Party” and together the “Parties”).

RECITALS

A. Buyer and Seller entered into that certain Real Estate Purchase Agreement, dated February 22, 2018 (“the “Purchase Agreement”), as subsequently amended on May 24, 2018 by that certain First Amendment to Real Estate Purchase Agreement (the “First Amendment”), on June 28, 2018 by that certain Second Amendment to Real Estate Purchase Agreement (the “Second Amendment”), and on September 13, 2018 by that certain Third Amendment to Real Estate Purchase Agreement (the “Third Amendment” and collectively, the “Agreement”), for the purchase and sale of the Property (as defined in the Purchase Agreement) located in the City of South Bend.

B. Buyer desires additional time to close on the purchase of the Property, and Seller wishes to provide Buyer with such additional time.

C. The Parties wish to further amend the Agreement as set forth herein.

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

1. Section 10.A. of the Agreement shall be deleted in its entirety and replaced with the following: “Unless this Agreement is earlier terminated, the Closing shall be held at the office of the Title Company, and the Closing Date shall be a mutually agreeable date not later than Three Hundred Thirty (330) days after the end of the Due Diligence Period.”

2. Unless expressly modified by this Fourth Amendment, the terms and provisions of the Agreement remain in full force and effect.

3. Capitalized terms used in this Fourth Amendment will have the meanings set forth in the Agreement unless otherwise stated herein.

*SIGNATURE PAGE FOLLOWS*



IN WITNESS WHEREOF, the Parties hereby execute this Fourth Amendment to Real Estate Purchase Agreement to be effective on the Effective Date stated above.

BUYER:

Franklin Street Technology Park LLC,  
an Indiana limited liability company

\_\_\_\_\_  
Charles S. Hayes, Managing Member

SELLER:

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

\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

\_\_\_\_\_  
Donald E. Inks, Secretary

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE SOUTH BEND REDEVELOPMENT COMMISSION AND  
THE INDUSTRIAL REVOLVING FUND OF SOUTH BEND, INDIANA**

This Memorandum of Understanding (this "Agreement") is made and executed between the South Bend Redevelopment Commission (the "RDC"), and The Industrial Revolving Fund of South Bend, Indiana (the "IRF").

**WHEREAS**, the IRF is the owner of the property located at 3315 N William Richardson Court, South Bend, IN 46628 (the "Property");

**WHEREAS**, IRF desires to market and sell the Property but does not have established procedures for so doing; and

**WHEREAS**, the RDC has established procedures for marketing and selling real estate (the "Procedures"); and

**WHEREAS**, the staff of the City of South Bend Department of Community Investment (the "Staff") understands the Procedures for the sale of real estate and has the expertise required to market and sell the Property pursuant to the Procedures; and

**WHEREAS**, IRF desires to work with RDC and the Staff, and RDC desires for itself and on behalf of the Staff to work with IRF to sell the Property.

**NOW, THEREFORE**, the RDC and IRF do hereby mutually agree as follows:

**I. TERM**

This Agreement shall commence on \_\_\_\_\_, \_\_, 2018 and continue until the Property is sold or the Parties otherwise mutually agree to terminate it.

**II. GENERAL TERMS**

The IRF will transfer the Property to RDC, which through the Staff, shall be responsible for marketing and selling the Property for a minimum sale price as determined in accordance with the Procedures. Upon the closing of a sale of the Property, RDC will transfer the proceeds of the sale, less any reasonable and documented expenses incurred by RDC, to IRF (the "Proceeds").

**III. RESPONSIBILITIES OF IRF**

- a) IRF shall transfer the Property to RDC for the sole purpose of RDC's sale of the Property in accordance with the Procedures, which purpose shall be set forth in a Special Warranty Deed regarding the same.
- b) IRF understands and agrees that it has reviewed the Procedures and is satisfied with them.

- c) IRF shall provide a contact person with whom Staff may communicate updates and other information related to the Property.
- d) IRF shall provide RDC with a reasonable procedure to transfer the Proceeds to IRF at the closing of the sale of the Property.
- e) IRF agrees to obey all applicable local, state and federal laws and regulations.

#### **IV. RESPONSIBILITIES OF THE RDC**

- a) RDC shall accept the Property from IRF for the sole purpose of selling the Property in accordance with the Procedures, which purpose shall be set forth in a Special Warranty Deed.
- b) RDC shall appoint a member of the Staff as a point of contact for communications with IRF regarding the sale of the Property.
- c) RDC shall transfer the Proceeds to IRF at the closing of the sale of the Property.
- d) RDC agrees to obey all applicable local, state and federal laws and regulations.

#### **V. ASSIGNMENT**

Neither party may assign this Agreement without first obtaining written consent from the other party.

#### **VI. ILLEGALITY**

If any provision of this Agreement is found by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected thereby, and in lieu of any provision that is found to be illegal, invalid, or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

#### **VII. ENTIRE AGREEMENT**

This document contains all of the Agreements between the parties regarding the issue of the sale of the Property and supersedes all prior negotiations, representations, or agreements, either written or oral, regarding the sole issue of the sale of the Property. This Agreement shall not be amended or modified except by written instrument signed by both parties.

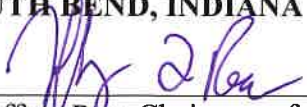
#### **VIII. LAW GOVERNING AGREEMENT**

This Agreement shall be governed by the laws of the State of Indiana and venue shall be in St. Joseph County, Indiana.

**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.

(Remainder of page intentionally left blank)

**INDUSTRIAL REVOLVING FUND  
OF SOUTH BEND, INDIANA**

By:   
Jeffrey Rea, Chairman of the Board

**SOUTH BEND REDEVELOPMENT COMMISSION**

By: \_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

\_\_\_\_\_  
Donald E. Inks, Secretary

### SPECIAL WARRANTY DEED

THIS INDENTURE WITNESSETH, that The Industrial Revolving Fund of South Bend, Indiana, 1400 S. County-City Building, 227 W. Jefferson Boulevard, South Bend, Indiana 46601 (the "Grantor")

CONVEYS AND SPECIALLY WARRANTS to City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission, 1400 S. County-City Building, 227 W. Jefferson Boulevard, South Bend, Indiana 46601 (the "Grantee"),

for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following real estate located in St. Joseph County, Indiana (the "Property"):

Midwest Embroidery Inc. Minor Subdivision Lot 1, Annexed from 04-1013-0212.02.

Parcel Key No. 025-1013-021202  
Commonly known as 3315 N. William Richardson Court, South Bend,  
Indiana 46628.

The Grantor warrants title to the Property only insofar as it might be affected by any act of the Grantor during its ownership thereof and not otherwise.

The Grantor hereby conveys the Property to the Grantee free and clear of all leases or licenses; subject to real property taxes and assessments; subject to all easements, covenants, conditions, restrictions, and other matters of record; subject to rights of way for roads and such matters as would be disclosed by an accurate survey and inspection of the Property; subject to all applicable building codes and zoning ordinances; and subject to all provisions and objectives contained in Grantor's development area plan and any design review guidelines associated therewith, as the same may be amended from time to time.

The Grantor conveys the Property to the Grantee pursuant to the terms of that certain Memorandum of Understanding dated December 13, 2018, by and between the Grantor and the Grantee (the "Agreement"). Capitalized terms not otherwise defined in this deed will have the meanings stated in the Agreement. Pursuant to Section III of the Agreement, the Grantor conveys the Property to the Grantee by this deed for the sole purpose of Grantee's marketing and sale of the Property to a third party in accordance with the Procedures. In the event the Grantee fails to perform any of its obligations, or satisfactorily prove such performance, under Section IV of the Agreement, then the Grantor shall have the right to re-enter and take possession of the Property and to terminate and re-vest in the Grantor the estate conveyed to the Grantee by this deed and all of the Grantee's rights and interests in the Property without

offset or compensation for the value of any investments improvements made by the Grantee after the delivery of this deed to the Grantee. The recordation of a subsequent deed to a third party in accordance with Section IV of the Agreement will forever release and discharge the Grantor's reversionary interest stated in the foregoing sentence.

The Grantor conveys the Property to the Grantee subject to the limitation that the Grantee, and its successors and assigns, shall not discriminate against any person on the basis of race, creed, color, sex, age, or national origin in the sale, lease, rental, use, occupancy, or enjoyment of the Property or any improvements constructed on the Property.

Each of the undersigned persons executing this deed on behalf of the Grantor represents and certifies that s/he is a duly authorized representative of the Grantor and has been fully empowered, by proper action of the governing body of the Grantor, to execute and deliver this deed, that the Grantor has full corporate capacity to convey the real estate described herein, and that all necessary action for the making of such conveyance has been taken and done.

GRANTOR:

THE INDUSTRIAL REVOLVING FUND OF SOUTH BEND, INDIANA

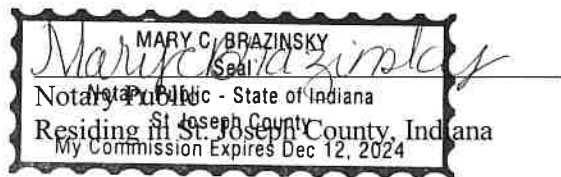
By: Jeff L. Rea  
 Printed: Jeffrey L. Rea  
 Title: Chairman

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Jeff Rea, known to me to be the Chairman, of The Industrial Revolving Fund of South Bend, Indiana and acknowledged the execution of the foregoing Special Warranty Deed, being authorized so to do.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the 13 day of December, 2018.

My Commission Expires:  
12-12-2024



I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Sandra L. Kennedy

This instrument was prepared by Sandra L. Kennedy, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.



# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: January 22, 2019  
FROM: Kara Boyles, City Engineer  
SUBJECT: Budget Increase Request – Water Works – Olive GAC Plant Improvements

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

PURPOSE OF REQUEST: Funding for professional engineering services in the amount of **\$250,000** for a total of \$1,036,000.

Specifics: The results of the preliminary engineering study recommended approximately \$700,000 in needed improvements to replace the chlorination and fluoride system. Various code updates will be required due to the corrosive nature of bulk sodium hypochlorite. In addition, the modified sodium hypochlorite room will include a 10' wide by 14' tall rollup door for future tank replacement.

History: This project involves the rehabilitation of Olive GAC plant. Replacement of the GAC media is needed for water quality and regulatory compliance. The project also includes upgrades to chlorination and the fluoride system. The natural gas heating unit is also to be replaced. This request for funding will help the South Bend Water Works complete a portion of their 6-Year Partial Capital Improvement and Replacement Plan. This project was listed as a critical project, and identified in the Indiana Utility Regulatory Commission (IURC) testimony as projects to be funded with TIF in 2018.

INTERNAL USE ONLY: Project Code: 18J009 ;

Total Amount new/change (inc/dec) in budget: \$250K ; Break down:  
Costs: Engineering Amt: \$310K ; Other Prof Serv Amt \_\_\_\_\_ ;  
Acquisition of Land/Bldg (circle one) Amt: \_\_\_\_\_ ; Street Const Amt \_\_\_\_\_ ;  
Building Imp Amt \$726K ; Sewers Amt \_\_\_\_\_ ; Other (specify) Amt: \_\_\_\_\_

Going to BPW for Contracting? Y/N  
Is this item ready to encumber now?    Existing PO# 245232 Inc/Dec \$ \_\_\_\_\_





# CITY OF SOUTH BEND REDEVELOPMENT COMMISSION

## Redevelopment Commission Agenda Item

DATE: January 22, 2019

FROM: Kara Boyles, City Engineer

SUBJECT: Budget Request – Water Works – North Station Filtration Plant

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

PURPOSE OF REQUEST: Total funding in the amount of \$950,000 for professional engineering services and construction of the improvements.

Specifics: Many of the assets, including the chemical storage and PLC, have been operating well beyond their useful lives and are in need of replacement to maintain operability/system reliability. This project involves the rehabilitation of the North Station Filtration plant. The list of upgrades and replacements includes: the outdated chlorine gas system, scrubber chemical, filter media, raw water piping, dehumidification system, HVAC compressors, outdated PLCs, and the high service motors and pumps. Funding for this project has been allocated in both 2019 and 2020 for a total of approximately \$1.6M.

This request for funding will help the South Bend Water Works complete a portion of their 6-Year Partial Capital Improvement and Replacement Plan. This project was listed as a critical project, and identified in the Indiana Utility Regulatory Commission (IURC) testimony as projects to be funded with TIF in 2018.

INTERNAL USE ONLY: Project Code: \_\_\_\_\_;  
Total Amount new/change (inc/dec) in budget: \_\_\_\$950K\_\_\_\_\_; Break down:  
Costs: Engineering Amt: \_\_\_\$200K\_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;  
Acquisition of Land/Bldg (circle one) Amt: \_\_\_\_\_; Street Const Amt \_\_\_\_\_;  
Building Imp Amt \_\_\_\$750K\_\_\_\_\_; Sewers Amt \_\_\_\_\_; Other (specify) Amt: \_\_\_\_\_  
\_\_\_\_\_. Going to BPW for Contracting? Y/N  
Is this item ready to encumber now? \_\_\_ Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

## DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”), is effective as of January 24, 2019 (the “Effective Date”), by and between the City of South Bend, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the “Commission”), and Bald Mountain LLC, an Indiana limited liability company (the “Developer”) (each, a “Party,” and collectively, the “Parties”).

### RECITALS

WHEREAS, the Commission exists and operates under the provisions of the Redevelopment of Cities and Towns Act of 1953, as amended (I.C. 36-7-14 *et seq.*, the “Act”); and

WHEREAS, the Act provides that the clearance, replanning, and redevelopment of redevelopment areas are public uses and purposes for which public money may be spent; and

WHEREAS, the Developer owns certain real property described in Exhibit A, together with all improvements thereon and all easements, rights, licenses, and other interests appurtenant thereto (collectively, the “Developer Property”); and

WHEREAS, the Developer desires to construct, renovate, or otherwise rehabilitate certain elements of the Developer Property (the “Project”) in accordance with the project plan (the “Project Plan”) attached hereto as Exhibit B; and

WHEREAS, the Developer Property is located within the corporate boundaries of the City of South Bend, Indiana (the “City”), within the River West Development Area (the “Area”); and

WHEREAS, the Commission has adopted (and subsequently amended, from time to time) a development plan, which contemplates development of the Area consistent with the Project; and

WHEREAS, the Commission believes that accomplishing the Project as described herein is in the best interests of the health, safety, and welfare of the City and its residents; and

WHEREAS, the Commission desires to facilitate and assist the Project by undertaking the local public improvements stated in Exhibit C (the “Local Public Improvements”) and the financing thereof, subject to the terms and conditions of this Agreement and in accordance with the Act.

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

### **SECTION 1. DEFINITIONS.**

Unless otherwise defined in this Agreement, capitalized terms used in this Agreement have the following meanings:

1.1 Assessed Value. “Assessed Value” means the market value-in-use of a property, used for property tax assessment purposes as determined by the St. Joseph County Assessor.

1.2 Board of Works. “Board of Works” means the Board of Public Works of the City, a public body granted the power to award contracts for public works pursuant to I.C. 36-1-12.

1.3 Funding Amount. “Funding Amount” means an amount not to exceed Three Hundred Fifty Thousand Dollars (\$350,000.00) of tax increment finance revenues to be used for paying the costs associated with the construction, equipping, inspection, and delivery of the Local Public Improvements.

1.4 Pavers. “Pavers” means any surplus pavers remaining in storage from a previous project, provided in “as-is” condition by the Commission for Developer’s use in connection with the Project.

1.5 Private Investment. “Private Investment” means an amount no less than Nine Million Dollars (\$9,000,000.00) to be expended by the Developer for the costs associated with constructing the improvements set forth in the Project Plan, including architectural, engineering, and any other costs directly related to completion of the Project that are expected to contribute to increases in the Assessed Value of the Developer Property. Developer’s failure to expend the Private Investment by the Mandatory Completion Date (as defined in Section 4.5 below) shall be considered a material default under this Agreement without any requirement of notice of or an opportunity to cure such failure.

## **SECTION 2. INTERPRETATION, TERMS, AND RECITALS.**

### **2.1 Interpretation.**

(a) The terms “herein,” “hereto,” “hereunder,” and all terms of similar import shall be deemed to refer to this Agreement as a whole rather than to any Article of, Section of, or Exhibit to this Agreement.

(b) Unless otherwise specified, references in this Agreement to (i) “Section” or “Article” shall be deemed to refer to the Section or Article of this Agreement bearing the number so specified, (ii) “Exhibit” shall be deemed to refer to the Exhibit of this Agreement bearing the letter or number so specified, and (iii) references to this “Agreement” shall mean this Agreement and any exhibits and attachments hereto.

(c) Captions used for or in Sections, Articles, and Exhibits of this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

(d) The terms “include”, “including” and “such as” shall each be construed as if followed by the phrase “without being limited to.”

2.2 Recitals. The Recitals set forth above are incorporated into and are a part of this Agreement for all purposes.

### **SECTION 3. ACCESS.**

3.1 Grant of Easement. The Developer will grant to the Commission a temporary, non-exclusive easement on, in, over, under and across any part(s) of the Developer Property (the “Easement”) in the form attached hereto as **Exhibit D**, to permit the Commission to fulfill its obligations under this Agreement, including the construction, equipping, inspection, and delivery of the Local Public Improvements. The Easement shall (a) inure to the benefit of the Commission and the Board of Works or any contractors acting on behalf of the Commission in connection with the construction, equipping, inspection, and delivery of the Local Public Improvements; (b) shall bind the Developer and its grantees, successors, and assigns; and (c) shall terminate no later than upon completion of the Local Public Improvements, as determined by the Board of Works.

### **SECTION 4. DEVELOPER’S OBLIGATIONS.**

4.1 Generally. The Parties acknowledge and agree that the Commission’s agreements to perform and abide by the covenants and obligations set forth in this Agreement are material consideration for the Developer’s commitment to perform and abide by the covenants and obligations of the Developer contained in this Agreement.

#### 4.2 The Project.

(a) The Developer will perform all necessary work to complete the improvements set forth in the Project Plan attached hereto as Exhibit B and the plans and specifications to be approved by the Commission pursuant to Section 4.8 of this Agreement, which improvements shall comply with all zoning and land use laws and ordinances.

(b) The Developer will expend the Private Investment to complete the Project in accordance with the Project Plan attached hereto as Exhibit B and the plans and specifications to be approved by the Commission pursuant to Section 4.8 of this Agreement.

4.3 Cooperation. The Developer agrees to endorse and support the Commission’s efforts to expedite the Local Public Improvements through any required planning, design, public bidding, construction, inspection, waiver, permitting, and related regulatory processes.

4.4 Obtain Necessary Easements. The Developer agrees to obtain any and all easements from any governmental entity and/or any other third parties that the Developer or the Commission deems necessary or advisable in order to complete the Local Public Improvements, and the obtaining of such easements is a condition precedent to the Commission’s obligations under this Agreement.

4.5 Timeframe for Completion. The Developer hereby agrees to complete the Project and any other obligations the Developer may have under this Agreement by the date by October 31, 2021 (the “Mandatory Project Completion Date”). Notwithstanding any provision of this Agreement to the contrary, the Developer’s failure to complete the Project, expend the entirety of the Private Investment on the Project, or perform any other obligations the Developer may have under this Agreement by the Mandatory Project Completion Date will constitute a material default under this Agreement without any requirement of notice of or an opportunity to cure such failure.

4.6 Developer's Employment Obligations. The Developer shall create Fifteen (15) new full-time jobs located at the Developer Property, with a total annual payroll of no less than Seven Hundred Fifty Thousand Dollars (\$750,000.00) per year (the "Job Creation Requirement") by the date that is Thirty-Six (36) months after the Effective Date of this Agreement (the "Job Creation Deadline") and maintain said jobs for at least the period of time described in Section 4.7(c) below. Notwithstanding any provision of this Agreement to the contrary, the Developer's failure to satisfy the Job Creation Requirement by the Job Creation Deadline will constitute a material default under this Agreement without any requirement of notice of or an opportunity to cure such failure.

4.7 Reporting Obligations.

(a) Upon the letting of contracts for substantial portions of the Project and again upon substantial completion of the Project, the Developer hereby agrees to report to the Commission the number of local contractors and local laborers involved in the Project, the amount of bid awards for each contract related to the Project, and information regarding which contractor is awarded each contract with respect to the Project.

(b) On or before June 30 and December 31 of each year until substantial completion of the Project, the Developer shall submit to the Commission a report demonstrating the Developer's good-faith compliance with the terms of this Agreement. The report shall include the following information and documents: (i) a status report of the construction completed to date, (ii) an update on the project schedule, (iii) an itemized accounting generally identifying the Private Investment to date, and (iv) a status report of the number of jobs created for employment at the Developer Property.

(c) On or before April 15 of the year that is one year after substantial completion of the Project and on each April 15 thereafter until April 15 of the year which is three (3) years after substantial completion of the Project, the Developer shall submit to the Commission a report with the following information: (i) the number of jobs created as a result of the Project and wage and benefit information for the jobs created; and (ii) a detailed description of the of the job and wage details for the number of people employed by the Developer in connection with the Project.

4.8 Submission of Plans and Specifications for Project. Promptly upon completion of all plans and specifications for the Project, or changes thereto, the Developer shall deliver a complete set thereof to the Commission. The Commission may approve or disapprove said plans and specifications for the Project in its sole discretion and may request revisions or amendments to be made to the same.

4.9 Costs and Expenses of Construction of Project. The Developer hereby agrees to pay, or cause to be paid, all costs and expenses of construction for the Project (including legal fees, architectural and engineering fees), exclusive of the Local Public Improvements, which shall be paid for by the Commission by and through the Funding Amount subject to the terms of this Agreement.

4.10 Specifications for Local Public Improvements. The Developer will be responsible for the preparation of all bid specifications related to the Local Public Improvements, and the Developer will pay all costs and expenses of such preparation, provided, however, that if the Commission pays any costs or expenses of such preparation, then the amount paid by the Commission will be deducted from the Funding Amount. The Developer will submit all bid specifications related to the Local Public Improvements to the City of South Bend Engineering Department (the “Engineering Department”). The Engineering Department may approve or disapprove said bid specifications for the Project in its sole discretion and may request revisions or amendments to be made to the same.

4.11 Non-Interference. Developer hereby agrees to use commercially reasonable efforts to minimize disruption for those living and working near the Developer Property during construction of the Project.

4.12 Insurance. The Developer shall purchase and maintain comprehensive insurance coverage as is appropriate for the work being performed with respect to the Project. The Developer shall provide proof of such adequate insurance to the Commission and shall notify the Commission and the City of any change in or termination of such insurance. During the period of construction or provision of services regarding any Local Public Improvements, the Developer shall maintain insurance in the kinds and for at least the minimum amounts as described in **Exhibit E** attached hereto and the Commission and the City shall be named as additional insureds on such policies (but not on any worker’s compensation policies).

4.13 Information. The Developer agrees to provide any and all due diligence items with respect to the Project reasonably requested by the Commission.

## **SECTION 5. COMMISSION’S OBLIGATIONS.**

5.1 Generally. The Parties acknowledge and agree that the Developer’s agreement to perform and abide by the covenants and obligations set forth in this Agreement is material consideration for the Commission’s commitment to perform and abide by the covenants and obligations of the Commission contained in this Agreement.

### 5.2 Completion of Local Public Improvements.

(a) The Commission hereby agrees to complete (or cause to be completed) the Local Public Improvements described in Exhibit C attached hereto on a schedule to be reasonably determined and agreed to by the Commission and the Developer, as may be modified due to unforeseen circumstances and delays.

(b) The Commission makes no guarantee that the Pavers will be of a quality or quantity sufficient for the Project, and any additional Pavers may be acquired using the Funding Amount in connection with the Local Public Improvements or at Developer’s sole expense.

(c) Before any work on the Local Public Improvements will commence, (a) the Commission will have received satisfactory plans and specifications for the Project and approved the same in accordance with Section 4.8 of this Agreement, and (b) the

Engineering Department will have received satisfactory bid specifications for the Local Public Improvements and approved the same in accordance with Section 4.10 of this Agreement.

(d) The Local Public Improvements will be completed in accordance with all applicable public bidding and contracting laws and will be subject to inspection by the Engineering Department or its designee.

(e) Notwithstanding anything contained herein to the contrary, in the event the costs associated with the Local Public Improvements are in excess of the Funding Amount, Developer, at its sole option, may determine to pay to the Commission the amount of the excess costs to permit timely completion of the Local Public Improvements by the Commission, or an agent of the Commission, which amounts shall be applied for such purpose. If Developer chooses not to pay any such excess costs of the Local Public Improvements (above the Funding Amount), the Commission may reduce the scope of the Local Public Improvements to the amount which may be funded with the Funding Amount. In no event will the Commission be required to spend more than the Funding Amount in connection with the Local Public Improvements.

5.3 Cooperation. The Commission agrees to endorse and support the Developer's efforts to expedite the Project through any required planning, design, permitting, waiver, and related regulatory processes, provided, however, that the Commission will not be required to expend any money in connection therewith.

5.4 Public Announcements, Press Releases, and Marketing Materials. The Commission hereby agrees to coordinate all public announcements and press releases relating to the Project with the Developer.

## **SECTION 6. COOPERATION IN THE EVENT OF LEGAL CHALLENGE.**

6.1 Cooperation. In the event of any administrative, legal, or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending such action or proceeding to settlement or final judgment including all appeals. Each Party shall select its own legal counsel and retain such counsel at its own expense, and in no event shall the Commission be required to bear the fees and costs of the Developer's attorneys nor shall the Developer be required to bear the fees and costs of the Commission's attorneys. The Parties agree that if any other provision of this Agreement, or this Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the Parties agree to be bound by the terms of this Section 6.1, which shall survive such invalidation, nullification, or setting aside.

## **SECTION 7. DEFAULT.**

7.1 Default. Any failure by either Party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. Upon the

occurrence of a default under this Agreement, the non-defaulting Party may (a) terminate this Agreement, or (b) institute legal proceedings at law or in equity (including any action to compel specific performance) seeking remedies for such default. If the default is cured within thirty (30) days after the notice described in this Section 7.1, then no default shall exist and the noticing Party shall take no further action.

7.2 Reimbursement Obligation for Material Default. In the event that the Developer fails (a) to complete the Project by the Mandatory Project Completion Date or (b) to expend the full amount of the Private Investment by the Mandatory Project Completion Date, then upon the written demand of the Commission, the Developer will repay the Commission One Hundred Fifty Percent (150%) of the portion of the Funding Amount expended by the Commission in furtherance of the Local Public Improvements as of the date of the Commission's demand. In the event that the Developer fails to satisfy the Job Creation Requirement by the Job Creation Deadline, then upon the written demand of the Commission, the Developer will repay the Commission an amount equal to Fifty Thousand Dollars (\$50,000.00) multiplied by the number of jobs by which the Developer fell short of the Job Creation Requirement as of the date of the Commission's demand.

7.3 Force Majeure. Notwithstanding anything to the contrary contained in this Agreement, none of the Parties shall be deemed to be in default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of terrorism, restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environments regulations, contract defaults by third parties, or similar basis for excused performance which is not within the reasonable control of the Party to be excused (each, an event of "Force Majeure"). Upon the request of any of the Parties, a reasonable extension of any date or deadline set forth in this Agreement due to such cause will be granted in writing for a period necessitated by the event of Force Majeure, or longer as may be mutually agreed upon by all the Parties.

## **SECTION 8. NO AGENCY, JOINT VENTURE, OR PARTNERSHIP; CONFLICT OF INTEREST; INDEMNITY.**

8.1 No Agency, Joint Venture or Partnership. The Parties acknowledge and agree that:

(a) The Project is a private development;

(b) None of the Commission, the Board of Works, or the Developer has any interest or responsibilities for, or due to, third parties concerning any improvements until such time, and only until such time, that the Commission, the Board of Works, and/or the Developer expressly accepts the same; and

(c) The Parties hereby renounce the existence of any form of agency relationship, joint venture, or partnership between the Commission, the Board of Works, and the Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the Commission, the Board of Works, and the Developer.



8.2 Conflict of Interest; Commission Representatives Not Individually Liable. No member, official, or employee of the Commission or the City may have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the Commission or the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Commission or for any amount which may become due to the Developer, or its successors and assigns, or on any obligations under the terms of this Agreement. No partner, member, employee, or agent of the Developer or successors of them shall be personally liable to the Commission under this Agreement.

8.3 Indemnity. The Developer agrees to indemnify, defend, and hold harmless the Commission and the City from and against any third-party claims suffered by the Commission or the City resulting from or incurred in connection with the Local Public Improvements or the Project.

## **SECTION 9. MISCELLANEOUS.**

9.1 Severability. If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining terms and provisions of this Agreement shall continue in full force and effect unless amended or modified by mutual consent of the parties.

9.2 Waiver. Neither the failure nor any delay on the part of a Party to exercise any right, remedy, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege preclude any other or further exercise of the same or of any right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of any such right, remedy, power, or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

9.3 Other Necessary Acts. Each Party shall execute and deliver to the other Parties all such other further instruments and documents as may be reasonably necessary to accomplish the Project and the Local Public Improvements contemplated by this Agreement and to provide and secure to the other Parties the full and complete enjoyment of its rights and privileges hereunder. Notwithstanding the foregoing, the Parties understand and agree that certain actions contemplated by this Agreement may be required to be undertaken by persons, agencies, or entities that are not a party to this Agreement, including, but not limited to certain permits, consents, and/or approvals (to the extent they have not yet been obtained and completed), and that any action by such third parties shall require independent approval by the respective person, agency, entity, or governing body thereof.

9.4 Dispute Resolution; Waiver of Jury Trial. Any action to enforce the terms or conditions of this Agreement or otherwise concerning a dispute under this Agreement will be commenced in the courts of St. Joseph County, Indiana, unless the Parties mutually agree to an alternative method of dispute resolution. The Parties acknowledge that disputes arising under this

Agreement are likely to be complex and they desire to streamline and minimize the cost of resolving such disputes. In any legal proceeding, each Party irrevocably waives the right to trial by jury in any action, counterclaim, dispute, or proceeding based upon, or related to, the subject matter of this Agreement. This waiver applies to all claims against all parties to such actions and proceedings. This waiver is knowingly, intentionally, and voluntarily made by both Parties.

9.5 Attorneys' Fees. In the event of any litigation, mediation, or arbitration between the Parties regarding an alleged breach of this Agreement, none of the Parties shall be entitled to any award of attorney's fees.

9.6 Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Project:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and

(b) The Developer will state, in all solicitations or advertisements for employees placed by or on behalf of the Developer, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

9.7 Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute one and the same instrument. Any electronically transmitted version of a manually executed original shall be deemed a manually executed original.

9.8 Notices and Demands. Any notice, demand, or other communication required or permitted under the terms of this Agreement may be delivered (a) by hand-delivery (which will be deemed delivered at the time of receipt), (b) by registered or certified mail, return receipt requested (which will be deemed delivered three (3) days after mailing), or (c) by overnight courier service (which will be deemed delivered on the next business day) to each Party's respective addresses and representatives stated below.

Developer: Bald Mountain LLC  
21953 Protecta Drive  
Elkhart, IN 46516  
Attn: E. Lewis Hansell, Manager

With a copy to: Great Lakes Capital LLC  
112 W. Jefferson Blvd., Ste. 200  
South Bend, IN 46601  
Attn: Jeff Smoke, Director of Development

Commission: South Bend Redevelopment Commission  
1400 S. County-City Building  
227 W. Jefferson Blvd.

South Bend, IN 46601  
Attn: Executive Director,  
South Bend Department of Community Investment

With a copy to: South Bend Legal Department  
1200 S. County-City Building  
227 W. Jefferson Blvd.  
South Bend, IN 46601  
Attn: Corporation Counsel

9.9 Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of Indiana.

9.10 Authority. Each undersigned person executing and delivering this Agreement on behalf of a Party represents and certifies that he or she is the duly authorized officer or representative of such Party, that he or she has been fully empowered to execute and deliver this Agreement on behalf of such Party, and that all necessary action to execute and deliver this Agreement has been taken by such Party.

9.11 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm, or corporation other than the Parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as third-party beneficiaries or otherwise, and all of the terms, covenants, and conditions hereof shall be for the sole and exclusive benefit of the Parties herein.

9.12 Assignment. The Developer's rights under this Agreement shall be personal to the Developer and shall not run with the land. The Developer may not assign its rights or obligations under this Agreement to any third party without obtaining the Commission's prior written consent to such assignment, which the Commission may give or withhold in its sole discretion. In the event the Developer seeks the Commission's consent to any such assignment, the Developer shall provide to the Commission all relevant information concerning the identities of the persons or entities proposed to be involved in and an explanation of the purposes for the proposed assignment(s).

9.13 Further Assurances. The Parties agree that they will each undertake in good faith, as permitted by law, any action and execute and deliver any document reasonably required to carry out the intents and purposes of this Agreement.

9.14 Exhibits. All exhibits described herein and attached hereto are incorporated into this Agreement by reference.

9.15 Entire Agreement. No representation, promise, or inducement not included in this Agreement will be binding upon the Parties hereto. This Agreement cannot be modified except by mutual agreement of the Parties set forth in a written instrument signed by the Parties' authorized representatives.

9.16 Time. Time is of the essence of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the Effective Date stated above.

SOUTH BEND REDEVELOPMENT  
COMMISSION

\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

\_\_\_\_\_  
Donald E. Inks, Secretary

BALD MOUNTAIN LLC

By: \_\_\_\_\_  
E. Lewis Hansell, Manager

## **EXHIBIT A**

### **Description of Developer Property**

A parcel of real property located in the City of South Bend, St. Joseph County, Indiana, more particularly described as follows:

Lot 260AA of the record plat of the Original Town of South Bend, Jefferson and Main, Second Replat, recorded on March 25, 2013, as Document No. 1308726 in the Office of the Recorder of St. Joseph County.

Parcel Key No. 018-3007-0231

## **EXHIBIT B**

### **Project Plan**

The Developer will complete the following work in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations: construct a minimum five-story mixed-use building containing retail, restaurant, and Class A office space.

## **EXHIBIT C**

### **Description of Local Public Improvements**

The Commission will complete, or cause to be completed, the following work in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations: site work and improvements in support of the construction of the Project.



**EXHIBIT D**

**Form of Easement**

## GRANT OF TEMPORARY EASEMENT

THIS INDENTURE, made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019 (the “Effective Date”), by and between Bald Mountain LLC, an Indiana limited liability company with offices at 21953 Protecta Drive, Elkhart, IN 46516 (the “Grantor”), and the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment, 1400 S. County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601 (the “Grantee”).

### WITNESSETH:

For the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which Grantor hereby acknowledges, Grantor hereby grants, conveys, and warrants to Grantee a temporary, non-exclusive easement (the “Easement”) on, in, over, under and across the real property described in attached Exhibit 1 (the “Property”) for the construction, equipping, and delivery of certain improvements on the Property (the “Local Public Improvements”), together with the right of ingress to and egress from the Easement for said purposes, all pursuant to a certain Development Agreement by and between Grantor and Grantee, dated January 24, 2019 (the “Development Agreement”). Capitalized terms not otherwise defined herein shall have the meanings set forth in the Development Agreement.

The Easement granted herein shall pertain to the air, surface, and subsurface rights and interests of Grantor, for the use and benefit of Grantee, and its successors and assigns, to the extent necessary to accomplish and carry out the construction, equipping, and delivery of the Local Improvements on the Property. The Easement hereby granted includes the right and privilege for Grantee at reasonable times to clean and remove from said Easement any debris or obstructions interfering with said Easement.

The Easement granted herein, and its associated benefits and obligations, shall inure to the benefit of Grantee and Grantee’s contractors acting on Grantee’s behalf in connection with the Local Public Improvements.

Notwithstanding anything contained herein to the contrary, unless extended in writing by Grantor, the Easement shall terminate and be of no further force and effect on the date (hereinafter, the “Construction Termination Date”) of the earliest of the following: (a) completion of the Local Public Improvements; (b) expiration or earlier termination of the Development Agreement; or (c) such earlier date as Grantor and Grantee may agree to in writing.

IN WITNESS WHEREOF, Grantor has executed this Grant of Temporary Easement on the date shown in the acknowledgment set forth below to be effective as of the Effective Date.

GRANTOR:

BALD MOUNTAIN LLC

By: \_\_\_\_\_  
E. Lewis Hansell, Manager

STATE OF INDIANA )  
 ) SS:  
COUNTY OF \_\_\_\_\_)

Before me, the undersigned, a Notary Public in and for said State, personally appeared E. Lewis Hansell, to me known to be the Manager of the Grantor in the above Grant of Temporary Easement, and acknowledged the execution of the same as the Grantor's free and voluntary act and deed.

WITNESS my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
Residing in \_\_\_\_\_ County, IN

My Commission Expires: \_\_\_\_\_

This instrument was prepared by Sandra L. Kennedy, Assistant City Attorney, City of South Bend, Department of Law, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, IN 46601.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Sandra L. Kennedy.

EXHIBIT 1

Description of Property

A parcel of real property located in the City of South Bend, St. Joseph County, Indiana, more particularly described as follows:

Lot 260AA of the record plat of the Original Town of South Bend, Jefferson and Main, Second Replat, recorded on March 25, 2013, as Document No. 1308726 in the Office of the Recorder of St. Joseph County.

Parcel Key No. 018-3007-0231

## EXHIBIT E

### Minimum Insurance Amounts

- |      |                                    |  |  |
|------|------------------------------------|--|--|
| A.   | Worker's Compensation              |  |  |
| 1.   | State                              |  | Statutory  |
| 2.   | Applicable Federal                 |  | Statutory  |
| 3.   | Employer's Liability               |  | \$100,000.00   |
| <br> |                                    |  |  |
| B.   | Comprehensive General Liability    |  |  |
| 1.   | Bodily Injury                      |  |  |
| a.   | \$5,000,000.00                     |  | Each Occurrence                                      |
| b.   | \$5,000,000.00                     |  | Annual Aggregate Products<br>and Completed Operation |
| <br> |                                    |  |  |
| 2.   | Property Damage                    |  |  |
| a.   | \$5,000,000.00                     |  | Each Occurrence                                      |
| b.   | \$5,000,000.00                     |  | Annual Aggregate                                     |
| <br> |                                    |  |  |
| C.   | Comprehensive Automobile Liability |  |  |
| 1.   | Bodily Injury                      |  |  |
| a.   | \$500,000.00                       |  | Each Person  |
| b.   | \$500,000.00                       |  | Each Accident  |
| <br> |                                    |  |  |
| 2.   | Property Damage                    |  |  |
| a.   | \$500,000.00                       |  | Each Occurrence                                      |

**FIRST AMENDMENT TO DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this “First Amendment”) is made on January 24, 2019, by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (the “Commission”), and Unity Gardens, Inc., an Indiana non-profit corporation (the “Developer”) (each a “Party,” and collectively the “Parties”).

**RECITALS**

A. The Commission and the Developer entered into a Development Agreement dated effective October 27, 2016 (the “Development Agreement”), for the development of a Project in the River West Development Area.

B. The Developer has been working with the City of South Bend (the “City”) Engineering Department to effectively connect portions of the Project to existing utility services, and the cost to make the connections is higher than initially anticipated.

C. The Parties now desire to modify the Development Agreement to reflect the Parties’ agreement, as set forth herein.

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

1. Section 1.2 of the Development Agreement shall be deleted in its entirety and replaced with the following:

1.2 Funding Amount. “Funding Amount” means an amount not to exceed Seventy-Five Thousand Dollars (\$75,000) of tax increment finance revenues to be used for paying the costs associated with the construction, equipping, inspection, and delivery of the Local Public Improvements in support of the Project. Further, the Parties agree that the Funding Amount shall be spent as set forth on Exhibit C.

2. Section 9.7 shall be revised to designate the Director of Economic Resources and Business Development as the contact person for the Commission.

3. Exhibit C, Description of Local Public Improvements, shall be deleted in its entirety and replaced with the attached Exhibit C.

4. The Developer hereby expressly reaffirms its obligations under the Development Agreement, and, unless expressly modified by this First Amendment, the terms and provisions of the Development Agreement remain in full force and effect.

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

6. The recitals set forth above are hereby incorporated into the operative provisions of this First Amendment.

7. This First Amendment will be governed and construed in accordance with the laws of the State of Indiana.

8. This First Amendment may be executed in separate counterparts, each of which when so executed shall be an original, but all of which together shall constitute one and the same instrument. Any electronically transmitted version of a manually executed original shall be deemed a manually executed original.

*Signature Page Follows*

IN WITNESS WHEREOF, the Parties hereby execute this First Amendment to Development Agreement as of the first date stated above.

COMMISSION:

SOUTH BEND REDEVELOPMENT  
COMMISSION

By: \_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

By: \_\_\_\_\_  
Donald E. Inks, Secretary

DEVELOPER:

UNITY GARDENS, INC.

By: \_\_\_\_\_  
Sara Stewart, President



## **EXHIBIT C**

### **Description of Local Public Improvements**

The Commission will complete, or cause to be completed, the following work in accordance with the terms and conditions of this Agreement and in compliance with all applicable laws and regulations: utility connections supporting the construction of the Project.



# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: January 24, 2019

FROM: David Relos, Property Development Manager

SUBJECT: Agreement to Buy and Sell Real Estate (Marion / Scott St.)

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

#### PURPOSE OF REQUEST:

Resolution No. 3466, approved by the Commission on December 13, 2018, declared six properties blighted, unsafe, abandoned, foreclosed, or structurally damaged. This Agreement to Buy and Sell is for four of those properties, all of which have been vacant for years. Purchase price of these four lots is \$8,000, with closing scheduled by March 31, 2019.

Staff requests approval of the Agreement To Buy and Sell Real Estate for these properties. EDIT funding approved for Community Investment will be used for the acquisition.

INTERNAL USE ONLY: Project Code: \_\_\_\_\_;  
 Total Amount **new**/change (inc/dec) in budget: \_\_\_\_\_; Breakdown:  
 Costs: Demolition Amt: \_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;  
**Acquisition of Land/Bldg** (circle one) Amt: \$8,000; Street Const Amt \_\_\_\_\_;  
 Building Imp Amt \_\_\_\_\_; Sewers Amt \_\_\_\_\_; Other (specify) Amt: \_\_\_\_\_  
 \_\_\_\_\_ Going to BPW for Contracting? **N**  
 Is this item ready to encumber now? No Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT

## AGREEMENT TO BUY AND SELL REAL ESTATE

This Agreement To Buy And Sell Real Estate ("Agreement") is made by and between Richard Wayne Knight of 16035 Darden Road, Granger, Indiana 46530 ("Seller") and the City of South Bend, Indiana, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission of Ste. 1400 S., 227 W. Jefferson Blvd., South Bend Indiana 46601 ("Buyer") (each a "Party" and together the "Parties").

### RECITALS

A. Buyer exists and operates pursuant to the Redevelopment of Cities and Towns Act of 1953, as amended, being Indiana Code 36-7-14 (the "Act").

B. Pursuant to Section 19.5 of the Act, Buyer may acquire property that meets certain conditions from a willing seller without an appraisal (the "Acquisition Section").

C. In furtherance of its purposes under the Act, Buyer desires to purchase from Seller certain real properties located in South Bend, Indiana (the "City"), and more particularly described in attached Exhibit A (the "Properties").

D. Seller desire to sell the Properties to the Buyer in accordance with the Acquisition Section and this Agreement.

THEREFORE, in consideration of the mutual covenants and promises in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, Buyer and Seller agree as follows:

### 1. PURCHASE AND SALE OBLIGATION

Seller agrees to sell the Properties to the Buyer upon the terms and conditions set forth herein. All the terms and conditions of this Agreement will be effective and binding upon the Parties and their successors and assigns at the time the Agreement is fully signed by Buyer and Seller (the "Contract Date").

### 2. PURCHASE PRICE

The purchase price for the Properties shall be Eight Thousand Dollars (\$8,000.00) (the "Purchase Price"), payable by Buyer to Seller as described in Section 7 (the "Closing," the date of which is the "Closing Date").

### 3. BUYER'S DUE DILIGENCE

A. Investigation. Seller acknowledges that Buyer's determination to purchase the Properties requires a process of investigation (Buyer's "Due Diligence")

into various matters. Therefore, Buyer's obligation to complete the purchase of the Properties is conditioned upon the satisfactory completion, in Buyer's discretion, of Buyer's Due Diligence, including, without limitation, Buyer's examination, at Buyer's sole expense, of zoning and land use matters, environmental matters, real property title matters, and the like, as applicable.

B. Authorizations During Due Diligence Period. Seller authorizes Buyer, as of the Contract Date and continuing until the end of the Due Diligence Period (as defined below) to enter upon the Properties or to cause agents to enter upon the Properties for purposes of examination; provided, that Buyer may not take any action upon the Properties which reduces the value thereof; further provided, that Buyer shall promptly restore the Properties to its condition prior to entry, and agrees to defend, indemnify and hold Seller harmless, before and after the Closing Date whether or not a closing occurs and regardless of any cancellations or termination of this Agreement, from any liability to any third party, loss or expense incurred by Seller, including without limitation, reasonable attorney fees and costs arising from acts or omissions of Buyer or Buyer's agents or representatives.

C. Due Diligence Period. Buyer shall have a period of thirty (30) days following the Contract Date to complete its examination of the Properties in accordance with this Section 3 (the "Due Diligence Period").

D. Termination of Agreement. If at any time within the Due Diligence Period, Buyer determines, in its sole discretion, not to proceed with the purchase of the Properties, Buyer may terminate this Agreement by written notice to Seller and with no liability to Buyer, except as set forth herein.

#### **4. PRESERVATION OF TITLE AND CONDITION**

A. After the date Seller receives a copy of this Agreement as described in Section 1, Seller shall not take any action or allow any action to be taken by others to cause the Properties to become subject to any new interests, liens, restrictions, easements, covenants, reservations or other matters affecting Seller's title (such matters are referred to as "Encumbrances").

B. Seller hereby covenant that Seller will not alter the condition of the Properties at any time after the date Seller receives a copy of this Agreement as described in Section 1. Further, Seller will not release any hazardous substances on or near the Properties and will not otherwise collect or store hazardous substances or other materials, goods, refuse or debris at the Properties.

#### **5. TITLE COMMITMENT AND SURVEY**

Seller acknowledges that Buyer has obtained, at Buyer's sole expense, a commitment for an owner's policy of title insurance (the "Title Commitment"), which shall be updated to identify any encumbrances affecting the Properties as of the Contract Date. Buyer, at its

option, may obtain a survey of the Properties, at its sole expense. The Properties shall be conveyed to Buyer free of all encumbrances, including but not limited to mortgages, judgments, and taxes, unless otherwise waived in writing by Buyer. The Title Commitment will be issued by a title company selected by Buyer and reasonably acceptable to Seller (the "Title Company"). The Title Commitment shall:

(1) Agree to insure good, marketable and indefeasible fee simple title to the Properties in the name of the Buyer for the full amount of the Purchase Price upon delivery and recordation of a special warranty deed from the Seller to the Buyer.

(2) Provide for issuance of a final ALTA owner's title insurance policy, with any endorsements requested by Buyer, subject only to any encumbrances waived by Buyer.

Regardless of whether this transaction closes, Buyer shall be responsible for the title search charges, the cost of the Title Commitment and owner's policy.

## **6. SELLER REPRESENTATIONS AND WARRANTIES**

The undersigned Seller represents and warrants to Buyer that Seller owns fee simple title to the Properties and is fully empowered to sell the Properties to Buyer under the terms and conditions stated in this Agreement. Additionally, Seller represents and warrants that it has disclosed to Buyer any notifications from any local, state, or federal authority regarding environmental matters pertaining to the Properties.

## **7. CLOSING**

A. **Timing of Closing.** If the Buyer does not terminate this Agreement due to a breach of this Agreement by Seller, or without cause during the Due Diligence Period, the transfer of title contemplated by this Agreement (the "Closing") shall be held at the office of the Title Company on a mutually agreeable date not later than the 31<sup>st</sup> of March, 2019.

### **B. Closing Procedure.**

(1) At Closing, Buyer shall deliver the Purchase Price to Seller, conditioned on Seller's delivery of a warranty deed, substantially in the form attached hereto as **Exhibit B**, conveying the Properties to the Buyer, free and clear of all liens, encumbrances, judgments, title defects and exceptions, except those expressly waived by Buyer, and the Title Company's delivery of the Title Commitment to Buyer in accordance with Section 5 above.

(2) The possession of the Properties shall be delivered to the Buyer at Closing, in substantially the same condition as it exists on the Contract Date, ordinary wear and tear and casualty excepted.

C. Conditions Precedent to Closing. Unless waived by the Parties before or at Closing, the following shall be a condition precedent to Closing:

(1) Buyer shall have no obligation to complete the transaction contemplated in this Agreement unless Seller removes from the Properties before the Closing Date all personal property, including furniture and all personal belongings, and any trash or refuse.

D. Closing Costs. Buyer shall pay the Title Company's closing fee and all recordation costs associated with the transaction contemplated in this Agreement.

E. Personal Property. Any personal property remaining at the Properties after Closing will be deemed to be abandoned by the Seller, and Buyer, in its sole discretion, may choose to exercise possession of and control over any such personal property.

F. Seller's Due Diligence. Seller acknowledges that Seller has conducted its own due diligence and acknowledges that the Purchase Price is fair and reasonable and waives any right that Seller may have to an appraisal or to contest or challenge the validity of compensation received under this Agreement.

## **8. ACCEPTANCE OF PROPERTIES "AS-IS"**

Except as otherwise set forth herein, Buyer agrees to purchase the Properties "as-is, where-is" and without any representations or warranties by Seller as to the condition of the property or its fitness for any particular use or purpose. Seller offers no such representation or warranty as to condition or fitness, and nothing in this Agreement shall be construed to constitute such a representation or warranty as to condition or fitness.

## **9. TAXES**

Seller will pay all real property taxes accrued as of the Closing Date. The Parties agree that the tax proration at Closing shall be based on the Properties' 2017 assessment value for all applicable tax years. Buyer will have no liability for any amount of real property taxes on the Properties as of the Closing Date.

## **10. COMMISSIONS**

The Parties acknowledge that neither Buyer nor Seller are represented by any broker in connection with the transaction contemplated in this Agreement. Buyer and Seller agree to indemnify and hold one another harmless from any claim for commissions in connection with the transaction contemplated in this Agreement.

## **11. APPLICABLE LAW; JURISDICTION**

This Agreement shall be interpreted and enforced according to the laws of the State of Indiana. Any action to enforce the terms or conditions of this Agreement or otherwise concerning a dispute under this Agreement will be commenced in the courts of St. Joseph County, Indiana.

**12. NOTICES**

All notices required or allowed by this Agreement, before or after Closing, shall be delivered in person or by certified mail, return receipt requested, postage prepaid, addressed to Seller, or to Buyer in care of Buyer's Representative (with a copy to South Bend Legal Department, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, IN 46601, Attn: Corporation Counsel) at the respective addresses stated in Section 1 above. Either Party may, by written notice, modify the address for future notices to such Party.

**13. ENTIRE AGREEMENT**

This Agreement embodies the entire agreement between Seller and Buyer and supersedes all prior discussions, understandings, or agreements between Seller and Buyer concerning the transaction contemplated in this Agreement, whether written or oral.

**14. COUNTERPARTS; SIGNATURES**

This Agreement may be separately executed in counterparts by Buyer and Seller, and the same, when taken together, will be regarded as one original Agreement. Facsimile signatures will be regarded as original signatures.

**15. AUTHORITY TO EXECUTE**

The undersigned persons executing and delivering this Agreement on behalf of Buyer represent and certify that they are the duly authorized representatives of Buyer and have been fully empowered to execute and deliver this Agreement and that all necessary action has been taken and done.

**16. ACKNOWLEDGMENT OF UNDERSTANDING**

**The Parties negotiated this Agreement at arms' length, and each Party has had an opportunity to consult with legal counsel. Each Party hereby acknowledges and affirms that it understands and is willing to be bound by the terms of this Agreement.**

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties hereby execute this Agreement to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_ 2019.

BUYER:

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

By:

\_\_\_\_\_  
Marcia I. Jones, President

ATTEST:

By:

\_\_\_\_\_  
Donald E. Inks, Secretary

SELLER:

By:

  
Richard Wayne Knight



## EXHIBIT A

### **Description of Properties**

Parcel I: Lot Numbered 26 in James D. Kent's Subdivision of Bank Out Lot Numbered 114, and one (1) acre off of the South side of Bank Out Lot Numbered 113 of the Third Plat of Out Lots of the Town, now City of South Bend, as per plat thereof recorded July 1, 1873 in Plat Book 3, page 27 in the Office of the Recorder of Saint Joseph County, Indiana, together with the South Half of the vacated alley lying North of and adjoining said Lot 26, EXCEPTING THEREFROM a lot or parcel of land 9.25 feet in width, North and South, taken off of and from the entire length of the South side thereof.

Commonly known as: 528 North Scott Street, South Bend, Indiana 46616  
State ID No. 71-08-02-476-022.000-026  
Parcel Key No. 018-1055-2336

Parcel II: Lot Numbered 6 in James D. Kent's Subdivision of Bank Out Lot Numbered 114, and one (1) acre off of the South side of Bank Out Lot Numbered 113 of the Third Plat of Out Lots of the Town, now City of South Bend, as per plat thereof recorded July 1, 1873 in Plat Book 3, page 27 in the Office of the Recorder of Saint Joseph County, Indiana.

Commonly known as: 602 North Scott Street, South Bend, Indiana 46616  
State ID No. 71-08-02-476-015.000-026  
Parcel Key No. 018-1054-2320

Parcel III: Lots Numbered 10 and 11 in Kent and Garrison's Subdivision of Out Lot Numbered 1 of Hendrick's and Grant's Addition to the Town, now City of South Bend, Indiana, as per plat thereof recorded August 13, 1881 in Plat Book 4, page 16 in the Office of the Recorder of Saint Joseph County, Indiana, EXCEPTING THEREFROM 6 feet off the Westerly side of said Lot 11.

Commonly known as: 611 Marion Street, South Bend, Indiana 46616  
State ID Nos. 71-08-02-476-048.000-026 and 71-08-02-476-046.000-026  
Parcel Key No. 018-1055-2342

Parcel IV: A tract of land 24 feet in width, North and South, taken off of and from the entire length of the North side of Lot Numbered 11 in William Miller's Subdivision of a part of Bank Out Lot Numbered 113 of the Third Plat of Out Lots of the Town, now City of South Bend, as per plat thereof recorded February 27, 1875 in Plat Book 3, page 42 in the Office of the Recorder of Saint Joseph County, Indiana.

Commonly known as: 620 North Scott Street, South Bend, Indiana 46616  
State ID No. 71-08-02-476-008.000-026  
Parcel Key No. 018-1056-2397

**EXHIBIT B**

**Form of Warranty Deed**

**AUDITOR'S RECORD**

TRANSFER NO. \_\_\_\_\_

TAXING UNIT \_\_\_\_\_

DATE \_\_\_\_\_

KEY NOS. 018-1055-2336

018-1054-2320

018-1055-2342

018-1056-2397

**WARRANTY DEED**

THIS INDENTURE WITNESSETH, that Richard Wayne Knight (the "Grantor")

CONVEYS AND WARRANTS to the Department of Redevelopment of the City of South Bend, for the use and benefit of the Department of Redevelopment by and through its governing body, the South Bend Redevelopment Commission, 1400 S. County-City Building, 227 W. Jefferson Boulevard, South Bend, Indiana (the "Grantee"),

for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following real estate in St. Joseph County, Indiana (the "Properties"):

**Parcel I:** Lot Numbered 26 in James D. Kent's Subdivision of Bank Out Lot Numbered 114, and one (1) acre off of the South side of Bank Out Lot Numbered 113 of the Third Plat of Out Lots of the Town, now City of South Bend, as per plat thereof recorded July 1, 1873 in Plat Book 3, page 27 in the Office of the Recorder of Saint Joseph County, Indiana, together with the South Half of the vacated alley lying North of and adjoining said Lot 26, EXCEPTING THEREFROM a lot or parcel of land 9.25 feet in width, North and South, taken off of and from the entire length of the South side thereof.

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Commonly known as: 620 North Scott Street, South Bend, Indiana 46616

State ID No. 71-08-02-476-008.000-026  
Parcel Key No. 018-1056-2397

The Grantor hereby conveys the Properties in fee simple to the Grantee free and clear of all leases, licenses, mortgages, or other encumbrances of any kind or character but subject to all easements, highways, and other matters of record.

*Signature Page Follows*

GRANTOR:

Richard Wayne Knight

\_\_\_\_\_

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Richard Wayne Knight, the Grantor, and acknowledged the execution of the foregoing Warranty Deed as his true act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the \_\_\_\_ day of \_\_\_\_\_, 2019.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public  
Residing in St. Joseph County, Indiana

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Sandra L. Kennedy.

This instrument was prepared by Sandra L. Kennedy, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601.



# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: January 24, 2019

FROM: David Relos, Property Development Manager

SUBJECT: TIF Realignment Professional Services (H.J. Umbaugh & Associates)

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

#### PURPOSE OF REQUEST:

This professional services proposal from H. J. Umbaugh & Associates is to provide analytical services for the proposed TIF Realignment. These services include analyzing the assessed value and financial impact of the realignment.

The analysis will include effects on tax rates, circuit breaker tax credits, projected income with tax abatement roll off and new projects coming on line.

Also included is the preparation of an Impact Statement, analyzing effects on overlapping taxing units, and attending various meetings and public hearings.

Staff requests approval of this professional services agreement in a not-to-exceed amount of \$30,000.

INTERNAL USE ONLY: Project Code: JOTHER;  
 Total Amount new/change (inc/dec) in budget: -0-; Breakdown:  
**Costs: Engineering Amt: \_\_\_\_\_; Other Prof Serv Amt: Fund 324: \$15,000, Fund 429: \$7,500; Fund 430: \$7,500**  
 Acquisition of Land/Bldg (circle one) Amt: \_\_\_\_\_; Street Const Amt \_\_\_\_\_;  
 Building Imp Amt \_\_\_\_\_; Sewers Amt \_\_\_\_\_; Other (specify) Amt: \_\_\_\_\_  
 \_\_\_\_\_ Going to BPW for Contracting? N  
 Is this item ready to encumber now? Yes Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT

# UMBAUGH

H. J. Umbaugh & Associates  
Certified Public Accountants, LLP  
8365 Keystone Crossing  
Suite 300  
Indianapolis, IN 46240-2687  
Phone: 317-465-1500  
Fax: 317-465-1550  
www.umbaugh.com

January 15, 2019

City of South Bend Redevelopment Commission  
227 W. Jefferson Blvd.  
South Bend, IN 46601

Re: City of South Bend Redevelopment Commission - Municipal Advisory and Consulting Services -  
Tax Increment Allocation Area Analyses

Dear Members of the Redevelopment Commission:

Thank you for requesting that H.J. Umbaugh & Associates, Certified Public Accountants, LLP (the "Firm") provide to the City of South Bend Redevelopment Commission (the "Client") those services more fully set forth in Exhibit A hereto (the "Services").

## Fees and Costs

Fees charged for work performed are generally based on hourly rates, as set forth in Exhibit B, for the time expended, a fixed amount or other arrangement as mutually agreed upon as more appropriate for a particular matter. Hourly rates for work performed by our professionals vary by individual and reflect the complexity of the engagement.

## Disclosure of Conflicts of Interest with Various Forms of Compensation

The Municipal Securities Rulemaking Board (MSRB) requires us, as your municipal advisor, to provide written disclosure to you about the actual or potential conflicts of interest presented by various forms of compensation. Exhibit C sets forth the potential conflicts of interest associated with various forms of compensation. By signing this letter of engagement, the signee acknowledges that he/she has received Exhibit C and that he/she has been given the opportunity to raise questions and discuss the matters contained within the exhibit with the municipal advisor.

## Billing Procedures

Normally, you will receive a monthly statement showing fees and costs incurred in the prior month. Occasionally, we may bill on a less frequent basis if the time involved in the prior month was minimal or if arrangements are made for the payment of fees from bond proceeds. The account balance is due and payable on receipt of the statement. Once our representation has been concluded or terminated, a final billing will be sent to you. If requested to provide an estimate of our fees for a given matter, we will endeavor in good faith to provide our best estimate, but unless there is a mutual agreement to a fixed fee, the actual fees incurred on any project may be less than or exceed the estimate. Any questions or errors in any fee statement should be brought to our attention in writing within sixty (60) days of the billing date.

## Termination

Both the Client and the Firm have the right to terminate the engagement at any time after reasonable advance written notice. On termination, all fees and charges incurred prior to termination shall be paid promptly. Unless otherwise agreed to by the Client and the Firm, the scope of services provided in Exhibit A will terminate 60 days after completion of the services in each Article.

City of South Bend Redevelopment Commission

Re: City of South Bend Redevelopment Commission - Municipal Advisory and Consulting Services -  
Tax Increment Allocation Area Analyses

January 15, 2019

Page 2

### Accountants' Opinion

In performing our engagement, we will be relying on the accuracy and reliability of information provided by Client personnel. The services provided may include financial advisory services, consulting services, and accounting report services such as compilation, preparation, and agreed upon procedures reports. Please see Exhibit A. We will not audit, review, or examine the information. Please also note that our engagement cannot be relied on to disclose errors, fraud, or other illegal acts that may exist. However, we will inform you of any material errors and any evidence or information that comes to our attention during the performance of our procedures that fraud may have occurred. In addition, we will report to you any evidence or information that comes to our attention during the performance of our procedures regarding illegal acts that may have occurred, unless they are clearly inconsequential. We have no responsibility to identify and communicate significant deficiencies or material weaknesses in your internal control as part of this engagement.

The procedures we perform in our engagement will be heavily influenced by the representations that we receive from Client personnel. Accordingly, false representations could cause material errors to go undetected. The Client, therefore, agrees to indemnify and hold us harmless for any liability and all reasonable costs (including legal fees) that we may incur in connection with claims based upon our failure to detect material errors resulting from false representations made to us by any Client personnel and our failure to provide an acceptable level of service due to those false representations.

The responsibility for auditing the records of the Client rests with the Indiana State Board of Accounts and the work performed by the Firm shall not include an audit or review of the records or the expression of an opinion on financial data.

### Client Responsibilities

It is understood that the Firm will serve in an advisory capacity with the Client. The Client is responsible for management decisions and functions, and for designating an individual with suitable skill, knowledge or experience to oversee the services we provide. The Client is responsible for evaluating adequacy and results of the services performed and accepting responsibility for such services. The Client is responsible for establishing and maintaining internal controls, including monitoring ongoing activities.

### Additional Services

Exhibit A sets forth the scope of the Services to be provided by the Firm. From time to time, additional services may be requested by the Client beyond the scope of Exhibit A. The Firm may provide these additional services and be paid at the Firm's customary fees and costs for such services. In the alternative, the Firm and the Client may complete a revised and supplemented Exhibit A to set forth the additional services (including revised fees and costs, as needed) to be provided. In either event, the terms and conditions of this letter shall remain in effect.

### E-Verify Program

The Firm participates in the E-Verify program. For the purpose of this paragraph, the E-Verify program means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, s.401(a), as amended, operated by the United States Department of Homeland Security or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603). The Firm does not employ any "unauthorized aliens" as that term is defined in 8 U.S.C. 1324a(h)(3).



City of South Bend Redevelopment Commission

Re: City of South Bend Redevelopment Commission - Municipal Advisory and Consulting Services -  
Tax Increment Allocation Area Analyses

January 15, 2019

Page 3

#### Investments

The Firm certifies that pursuant to Indiana Code 5-22-16.5 *et seq.* the Firm is not now engaged in investment activities in Iran. The Firm understands that providing a false certification could result in the fines, penalties, and civil action listed in I.C. 5-22-16.5-14.

#### Municipal Advisor Registration

The Firm is a Municipal Advisor registered with the Securities and Exchange Commission and the Municipal Securities Rulemaking Board. As such, the Firm is providing certain specific municipal advisory services to the Client. The Firm is neither a placement agent to the Client nor a broker/dealer.

The offer and sale of any Bonds shall be made by the Client, in the sole discretion of the Client, and under its control and supervision. The Client agrees that the Firm does not undertake to sell or attempt to sell the Bonds, and will take no part in the sale thereof.

#### Mediation Provision

The Client and the Firm agree that if any dispute (other than our efforts to collect any outstanding invoice(s)) arises out of or relates to this engagement, or any prior engagement we may have performed for you, and if the dispute cannot be settled through informal negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures (or such other administrator or rules as the parties may mutually agree) before resorting to litigation. The parties agree to engage in the mediation process in good faith once a written request to mediate has been given by any party to the engagement. Any mediation initiated as a result of this engagement shall take place in Mishawaka, Indiana, or such other location as the parties may mutually agree. If the parties are unable to mutually agree on the selection of a mediator, the mediator shall be determined in accordance with the American Arbitration Association's Commercial Mediation Procedures. The results of any such mediation shall be binding only upon a written settlement agreement executed by each party to be bound. Each party shall bear its own costs and fees, including attorneys' fees and expenses, in connection with the mediation. The costs of the mediation, including without limitation the mediator's fees and expenses, shall be shared equally by the participating parties. Any ensuing litigation shall be initiated and maintained exclusively before any state or federal court having appropriate subject matter jurisdiction located in Mishawaka, Indiana.

#### Other Financial Industry Activities and Affiliations

Umbaugh Cash Advisory Services, LLC ("UCAS") is a wholly-owned subsidiary of the Firm. UCAS is registered as an investment adviser with the Securities and Exchange Commission under the federal Investment Advisers Act. UCAS provides non-discretionary investment advice with the purpose of helping clients create and maintain a disciplined approach to investing their funds prudently and effectively. UCAS may provide advisory services to the clients of the Firm.

UCAS has no other activities or arrangements that are material to its advisory business or its clients with a related person who is a broker-dealer, an investment company, other investment adviser or financial planner, bank, law firm or other financial entity.

City of South Bend Redevelopment Commission

Re: City of South Bend Redevelopment Commission - Municipal Advisory and Consulting Services -  
Tax Increment Allocation Area Analyses

January 15, 2019

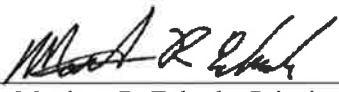
Page 4

If the foregoing accurately represents the basis upon which we may provide Services to the Client, we ask that you execute this letter, in the space provided below setting forth your agreement. Execution of this letter can be performed in counterparts each of which will be deemed an original and all of which together will constitute the same document.

If you have any questions, please let us know. We appreciate this opportunity to be of service to you and the City of South Bend Redevelopment Commission.

Very truly yours,

H.J. Umbaugh & Associates  
Certified Public Accountants, LLP

By:   
Matthew R. Eckerle, Principal

The undersigned hereby acknowledges and agrees to the foregoing letter of engagement.

City of South Bend Redevelopment Commission

Date: \_\_\_\_\_

By: \_\_\_\_\_

## **Exhibit A**

### **Services Provided**

#### **Scope of Services**

The Firm agrees to perform the following services for the South Bend Redevelopment Commission (the "Commission") with respect to the following Tax Increment Allocation Areas ("TIF Areas") located within the City of South Bend (the "City"): River West Development Area, River East Development Area, South Side Development Area, and West Washington Chapin Development Area.

#### **Article I. Analysis of and Assistance with the Amendments of Existing TIF Areas**

- A. Work with the Commission and its advisors to analyze the boundaries of the proposed TIF Area expansions, contractions, and consolidations, and the potential assessed value and tax increment revenue impacts of proposed new construction/demolition projects within the identified areas.
- B. Prepare an analysis of each of the identified TIF Areas that includes the estimated annual tax increment revenues, accounting for the items in Article I-A, and annual obligations for each TIF Area.
- C. Provide information needed by the Commission's attorney(s) for preparing resolutions and other legal documents required to amend the TIF Areas.
- D. Prepare, on behalf of the Commission, an analysis or analyses and a statement(s) disclosing the impact of the TIF Area amendments upon the overlapping taxing units (the "Impact Statement(s)") and facilitate the delivery of the Impact Statement(s) to the overlapping taxing units in accordance with Indiana Code.
- E. As needed, meet with representatives of the overlapping taxing units to discuss questions, comments or concerns related to the amendment of the TIF Areas.
- F. At the request of the Commission, attend meetings and required public hearings to explain the impact of the proposed TIF Area amendments.
- G. At the request of the Commission, assist the County Auditor's office with the implementation of the TIF Area amendments.
- H. At the request of the Commission, prepare an analysis on the potential Circuit Breaker Credit impacts on the City and the overlapping taxing units.

## Exhibit B

### Fees

The Firm's fees for services set forth in Exhibit A will be billed at the Firm's standard billing rates based upon the actual time and expenses incurred and will not exceed Thirty Thousand Dollars (\$30,000) without further authorization from the Client.

#### Standard Hourly Rates by Job Classification

1/1/2018

Partners / Principals	\$240.00	to	\$550.00
Managers	\$200.00	to	\$325.00
Senior Consultants	\$150.00	to	\$250.00
Consultants	\$135.00	to	\$200.00
Municipal Bond Disclosure Specialists	\$120.00	to	\$190.00
Support Personnel	\$110.00	to	\$150.00
Interns	\$90.00	to	\$110.00

- *Billing rates are subject to change periodically due to changing requirements and economic conditions. Actual fees will be based upon experience of the staff assigned and the complexity of the engagement.*

The above fees shall include all expenses incurred by the Firm with the exception of expenses incurred for mileage which will be billed on a separate line item. No such expenses will be incurred without the prior authorization of the Client. The fees do not include the charges of other entities such as rating agencies, bond and official statement printers, couriers, newspapers, bond insurance companies, bond counsel and local counsel, and electronic bidding services, including Parity<sup>®</sup>. Coordination of the printing and distribution of Official Statements or any other Offering Document are to be reimbursed by the Client based upon the time and expense for such services.

## Exhibit C

### Disclosure Statement of Municipal Advisor

#### PART A – Disclosures of Conflicts of Interest

MSRB Rule G-42 requires that municipal advisors provide to their clients disclosures relating to any actual or potential material conflicts of interest, including certain categories of potential conflicts of interest identified in Rule G-42, if applicable. If no such material conflicts of interest are known to exist based on the exercise of reasonable diligence by the municipal advisor, municipal advisors are required to provide a written statement to that effect.

***Material Conflicts of Interest*** – The Firm makes the disclosures set forth below with respect to material conflicts of interest in connection with the Scope of Services under this Agreement, together with explanations of how the Firm addresses or intends to manage or mitigate each conflict.

***General Mitigations*** – As general mitigations of the Firm's conflicts, with respect to all of the conflicts disclosed below, the Firm mitigates such conflicts through its adherence to its fiduciary duty to Client, which includes a duty of loyalty to Client in performing all municipal advisory activities for Client. This duty of loyalty obligates the Firm to deal honestly and with the utmost good faith with Client and to act in Client's best interests without regard to the Firm's financial or other interests. The disclosures below describe, as applicable, any additional mitigations that may be relevant with respect to any specific conflict disclosed below.

- I. **Compensation-Based Conflicts.** The fees due under this Agreement are based on hourly fees of the Firm's personnel, with the aggregate amount equaling the number of hours worked by such personnel times an agreed-upon hourly billing rate. This form of compensation presents a potential conflict of interest if Client and the Firm do not agree on a reasonable maximum amount at the outset of the engagement, because the Firm does not have a financial incentive to recommend alternatives that would result in fewer hours worked. This conflict of interest is mitigated by the general mitigations described above.
  
- II. **Other Municipal Advisor Relationships.** The Firm serves a wide variety of other clients that may from time to time have interests that could have a direct or indirect impact on the interests of Client. For example, the Firm serves as municipal advisor to other municipal advisory clients and, in such cases, owes a regulatory duty to such other clients just as it does to Client under this Agreement. These other clients may, from time to time and depending on the specific circumstances, have competing interests, such as accessing the new issue market with the most advantageous timing and with limited competition at the time of the offering. In acting in the interests of its various clients, the Firm could potentially face a conflict of interest arising from these competing client interests. This conflict of interest is mitigated by the general mitigations described above.

## Exhibit C

### Disclosure Statement of Municipal Advisor (cont'd)

#### **PART B – Disclosures of Information Regarding Legal Events and Disciplinary History**

MSRB Rule G-42 requires that municipal advisors provide to their clients certain disclosures of legal or disciplinary events material to its client's evaluation of the municipal advisor or the integrity of the municipal advisor's management or advisory personnel.

Accordingly, the Firm sets out below required disclosures and related information in connection with such disclosures.

- I. **Material Legal or Disciplinary Event.** There are no legal or disciplinary events that are material to Client's evaluation of the Firm or the integrity of the Firm's management or advisory personnel disclosed, or that should be disclosed, on any Form MA or Form MA-I filed with the SEC.
- II. **How to Access Form MA and Form MA-I Filings.** The Firm's most recent Form MA and each most recent Form MA-I filed with the SEC are available on the SEC's EDGAR system at <http://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001610268>.
- III. **Most Recent Change in Legal or Disciplinary Event Disclosure.** The Firm has not made any material legal or disciplinary event disclosures on Form MA or any Form MA-I filed with the SEC.

#### **PART C – Future Supplemental Disclosures**

As required by MSRB Rule G-42, this Disclosure Statement may be supplemented or amended, from time to time as needed, to reflect changed circumstances resulting in new conflicts of interest or changes in the conflicts of interest described above, or to provide updated information with regard to any legal or disciplinary events of the Firm. The Firm will provide Client with any such supplement or amendment as it becomes available throughout the term of the Agreement.

#### **PART D – Rule G-10: Investor and Municipal Advisory Client Education and Protection**

MSRB Rule G-10 requires that municipal advisors to notify their clients of the availability of a client brochure on the MSRB's website that provides information on the processes for filing a client complaint. Accordingly, the Firm sets out below the required information.

- I. The Firm is registered as a Municipal Advisor with the Securities and Exchange Commission (867-00278) and the Municipal Securities Rulemaking Board (K0171).
- II. The website address for the Municipal Securities Rulemaking Board is [www.msrb.org](http://www.msrb.org).
- III. The website for the Municipal Securities Rulemaking Board has a link to a brochure that describes (i) the protections that may be provided by the Municipal Securities Rulemaking Board rules and (ii) describes how to file a complaint with an appropriate regulatory authority.