

**AGREEMENT FOR PROFESSIONAL SERVICES  
BY AND BETWEEN  
THE SOUTH BEND REDEVELOPMENT COMMISSION  
AND  
EPOCH, A DIVISION OF SHIVE-HATTERY, INC.**

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**THIS AGREEMENT** is dated June 25, 2020 (the "Contract Date") with an effective date of September 13, 2018 (the "Effective Date") by and between the South Bend Redevelopment Commission, (the "Commission") the governing body of the Department of Redevelopment (the "Department") and Epoch, a division of Shive-Hattery, Inc., an Iowa corporation, with an address at 321 S. Main St., Suite 103, South Bend, Indiana 46601 (the "Consultant"), and each a "Party" and together the "Parties".

RECITALS

WHEREAS, the City, through the Commission, entered into a Development Agreement (the "Development Agreement") dated September 13, 2018, as subsequently amended, with 112 West Jeff LLC for certain local public improvements ("LPI") to a parking garage adjacent to and serving Robertson's Senior Apartments (the "Project"); and

WHEREAS, the Department, acting on behalf of the Commission, identified the Consultant as an organization with the experience and expertise necessary to fulfill the requirements of the services described as LPI in the Development Agreement; and

WHEREAS, due to an administrative oversight, the Department engaged the Consultant and the Consultant performed work prior to the execution of this Agreement, for which the Consultant has been paid in part; and

WHEREAS, to correct the administrative oversight, the Commission and the Department desire to formalize the arrangement between the Parties.

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

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

**Section 2. Project Information.** The Department shall provide reasonable access to, and use of, any documents, reports, and other data in the City's possession that is necessary for the Consultant to accomplish the Services. The Parties agree that the City may obtain at no additional cost and retain any and all documents prepared or caused to be prepared by the Consultant in connection with the Services, and the Consultant agrees to provide the City with said documents upon request. Said documents may be used by the City or others with respect to the City's reporting requirements and other purposes with respect to the Project.

The Board hereby designates the Director of Business Development or his designee ("City Staff") to serve on behalf of the Board as the Consultant's principal point of contact for purposes of this Agreement. City Staff will be responsible for the provision of relevant information to the Consultant concerning the Project and the Services to be rendered by the Consultant in connection with the Project.

**Section 3. Consideration.** The Consultant will be paid directly by the City within a reasonable time from the City's receipt of an undisputed invoice. Alternatively, because the work affects the Developer's Property, the Developer may pay the Consultant directly and submit a copy of the original invoice from the Consultant plus the Developer's proof of payment to the City for reimbursement within a reasonable time from the City's receipt of materials that meet the satisfaction of City Staff. The total consideration under this Agreement shall not exceed the sum of Sixty-six Thousand Nine Hundred Forty and 66/100 Dollars (\$66,940.66). Any payment that the City may deny or withhold or delay shall not be subject to penalty or interest under Indiana Code § 5-17-5.

**Section 4. Term and Renewal Option.** This Agreement shall commence on the Effective Date and shall end no later than December 31, 2020 ("Expiration Date").

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

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

Consultant is solely responsible for compliance with federal, state and local laws and regulations relating to taxes and social security payments that may be required to be made in connection with the compensation provided under this Agreement. The City, however, may file informational returns with the United States Internal Revenue Service or similar state agency regarding payment made to Consultant in accordance with this Agreement under conditions

imposed by federal, state or local laws applicable to such payment. The City shall provide IRS Form 1099, if applicable.

**Section 7. Confidentiality.** The Consultant acknowledges that information which the City regards as confidential or proprietary in nature (the "Information"), may come to the knowledge of the Consultant during the Consultant's performance of services. The Consultant shall treat the Information as strictly confidential and agrees that the Consultant will not, at any time or in any manner, either directly or indirectly, (i) use, or allowed to be used, any Information for the Consultant's own benefit or the benefit of any director, official, employee, or agent or any third party, or (ii) divulge, disclose, or communicate in any manner any Information to any third party without the written consent of the City. The Consultant shall be responsible for maintaining the confidentiality of any Information in its possession, including taking appropriate measures to secure said Information against such uses and dissemination and to inform any person to which it allows to access such information of the confidentiality thereof. Notwithstanding anything to the contrary contained in this Agreement, the Parties will adhere to their respective obligations under the Indiana Access to Public Records Act, and nothing herein will be construed to relieve either Party of such obligations. The confidentiality provisions of this Agreement remain in full force and effect after, and survive the termination of, the Term of this Agreement.

**Section 8. Indemnification.** The Consultant hereby agrees to defend, indemnify, and hold harmless the City, its officials, members, employees, and agents from any and all claims of any nature which arise from the performance by the Consultant under this Agreement and from all costs and attorney fees in connection therewith, excepting for claims pertaining to this Agreement that arise out of the negligence or intentional acts of the City, its officials, members, employees, and agents. The obligations of the Parties under this Section shall survive the termination of this Agreement.

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

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

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

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

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

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

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

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

**Section 15. Minority and Women's Enterprise Diversity Development.** Persons, partnerships, corporations, associations, or joint venturers awarded a contract by the City of South Bend through its agencies, boards, or commissions shall not discriminate against any employee or applicant for employment in the performance of a City contract with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment because of race, sex, religion, color, national origin, ancestry, age, or disability that does not affect that person's ability to perform the work.

In awarding contracts for the purchase of work, labor, services, supplies, equipment, materials, or any combination of the foregoing including, but not limited to, public works contracts awarded under public bidding laws or other contracts in which public bids are not required by law,

the City, its agencies, boards, or commissions may consider the Consultant's good faith efforts to obtain participation by those contractors certified by the State of Indiana as a Minority Business ("MBE") or as a Women's Business Enterprise ("WBE") as a factor in determining the lowest, responsible, responsive bidder.

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

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

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

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

**Section 18. No Waiver.** No failure or delay on the part of either Party in exercising any right under this Agreement will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will have effect unless given in a written document signed by the Party waiving such right. No waiver of any right will be deemed a waiver of any other right hereunder.

**Section 19. Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the Parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understanding of any and every nature between them.

*(Remainder of page intentionally left blank)*

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

**EPOCH, A DIVISION OF  
SHIVE-HATTERY, INC.**



Printed: Kyle Copelin  
Title: Principal

**SOUTH BEND REDEVELOPMENT COMMISSION**

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

ATTEST:

\_\_\_\_\_  
Quentin M. Phillips, Secretary

## **EXHIBIT A**

### **Scope of Services**

Consultant shall provide architectural design services for the parking structure at 119 W Wayne Street in South Bend, Indiana under the direction of 112 W Jeff LLC, pursuant to the Development Agreement.