

**AGREEMENT FOR SERVICES
BY AND BETWEEN THE CITY OF SOUTH BEND, DEPARTMENT OF
REDEVELOPMENT, ACTING BY AND THROUGH THE
SOUTH BEND REDEVELOPMENT COMMISSION,
AND THE CIVIL CITY OF SOUTH BEND**

THIS AGREEMENT FOR SERVICES (this “Agreement”) is made effective this ___ day of January, 2015, by and between the City of South Bend, Department of Redevelopment, acting by and through the South Bend Redevelopment Commission (the “Commission”) and the Civil City of South Bend, an Indiana municipal corporation, acting by and through the South Bend Board of Public Works (the “Provider”).

WITNESSETH:

WHEREAS, the Commission is the governing body of the City of South Bend Department of Redevelopment (the “Department”) and exists and operates under the provisions of I.C. 36-7-14, commonly known as the “Redevelopment of Cities and Towns Act of 1953”, as amended from time to time (the “Act”); and

WHEREAS, pursuant to the Act, the Commission has the power and duty to investigate, study, and survey areas within the corporate boundaries of the City of South Bend (the “City”) that the Commission has determined to be in need of redevelopment within the meaning of the Act and to redevelop said areas in a manner that will promote land use in order to serve the best interests of the City and its inhabitants; and

WHEREAS, under the authority of I.C. 36-7-14, the Commission has adopted Resolutions declaring various areas of the City (the “Areas”) to be areas in need of redevelopment within the meaning of the Act and has adopted Area Development Plans (the “Development Plans”) for each of the Areas in order to facilitate redevelopment of the Areas; and

WHEREAS, the Commission desires to undertake certain actions and promote certain activities within the Areas that are necessary to carry out the Development Plans for the Areas and facilitate development of the Areas (the “Projects”); and

WHEREAS, the Commission requires certain legal services related to the acquisition and redevelopment of property located in the Areas in connection with the Projects, which services the Commission may procure in accordance with I.C. 36-7-14-39(b)(2)(J) and I.C. 36-7-14-25.1(a) (the “Requested Services”); and

WHEREAS, the Provider is an Indiana municipal corporation and has a legal staff with the knowledge, experience, and expertise to provide the legal services associated with the Projects; and

WHEREAS, the Commission has determined that due to the Provider’s knowledge, experience, and expertise, it is in the best interests of the Commission to retain the Provider to assist the Commission in accomplishing the Projects; and

WHEREAS, the Provider is willing to assist the Commission in its efforts by providing the Requested Services, which are more specifically described below and in **EXHIBIT A** and are subject to the terms and conditions of this Agreement; and

WHEREAS, the Commission has appropriated funds for the Requested Services in the amount of Seventy-Two Thousand Four Hundred Fifty Dollars (\$72,450.00) for the Base Year (as defined below) of this contract, in accordance with I.C. 36-7-14 and I.C. 6-1.1-18-5; and

WHEREAS, the Provider agrees to provide legal services to the Commission for certain Projects, and the Commission intends to retain such services of the Provider as described in this Agreement.

NOW, THEREFORE, it is agreed between the parties as follows:

SECTION 1. **Definitions.** For purposes of this Agreement, the following terms have the meanings referred to in this Section:

Commission: The term “Commission” shall mean the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment.

Contract Administrator: The term “Contract Administrator” shall mean the Executive Director of the Department of Community Investment.

Requested Services: The term “Requested Services” shall mean the services described at **EXHIBIT A**.

Taxes: All governmental assessments, franchise fees, excises, license and permit fees, levies, charges and taxes, of every kind and nature whatsoever, which at any time during the Term may be assessed, levied, or imposed on, or become due and payable out of or in respect of, (i) activities conducted on behalf of the Commission.

SECTION 2. **Retention and Acceptance of Provider, Schedule of Services.**

A. The Commission hereby retains the Provider to provide to the Commission the Requested Services. The Provider hereby accepts the appointment to provide the Requested Services to the Commission and agrees to provide the Requested Services under the terms and conditions set forth in this Agreement.

B. The Provider shall commence the Requested Services in accordance with the terms and conditions of this Agreement including, but not limited to, the procedures prescribed

by I.C. 36-7-14, *et seq.* The Provider hereby certifies that it has sufficient experience and expertise to complete the Requested Services in a professional and timely manner.

C. Should the Provider fail to complete the Requested Services in accordance with the terms and conditions of this Agreement, the Commission may withhold payments due the Provider.

SECTION 3. Parties' Responsibilities.

A. Information and Communications. The Commission shall provide all documents, maps, reports, and other data requested by the Provider necessary for the Provider to accomplish the Requested Services. The Commission and the Provider agree that the Commission shall be permitted to obtain at no additional cost and to retain any and all documents prepared or caused to be prepared by the Provider in connection with the services to be provided by the Provider and the Provider agrees to provide the Commission with said documents upon request by the Commission. Said documents may be used by the Commission or others with respect to the Commission's undertakings with respect to the Projects.

B. Point of Contact. The Commission hereby designates the Contract Administrator as the Provider's point of contact with the Commission for purposes of this Agreement. The Contract Administrator shall be responsible for the provision of information to the Provider under this Agreement.

C. Revision of Requested Services. If, as a result of any review hereunder, the Commission determines that revisions to the scope of the Requested Services are necessary or the methods employed by the Provider are inappropriate, the Commission may require such revisions to the scope or methods by notifying the Provider in writing, subject to the professional and ethical rules concerning attorneys and staff of the Provider.

SECTION 4. Compensation.

A. Fees for Services. As compensation for services performed pursuant to this Agreement, the Commission agrees to pay the Provider an annual fee (the "Annual Fee"). For the first calendar year during which this Agreement is in effect (the "Base Year"), the Annual Fee shall be Seventy-Two Thousand Four Hundred Fifty Dollars (\$72,450.00). For any calendar year after the Base Year during which this Agreement remains in effect, the Annual Fee shall be equal to One Hundred Two percent (102%) of the Annual Fee for the previous calendar year.

B. Invoices. On a quarterly basis, the Provider shall submit to the Commission an invoice for a progress payment equal to one-quarter (1/4) of the effective Annual Fee, which invoice shall specify the Requested Services that the Provider rendered in relation to each Project and/or Area during such quarter. The Commission agrees to pay each such invoice within thirty (30) days of receipt. In the event of termination of this Agreement as provided in SECTION 6, all non-disputed sums owing and due the Provider for services rendered shall be paid within fifteen (15) days of receipt of any invoice.

C. Reimbursable Expenses. The Commission shall not reimburse the Provider for expenses unless such expenses have been approved in writing by the Commission. Expenses which may be reimbursed under this provision shall be reasonable and necessary, and shall relate to the Projects of the Commission. All claims for reimbursement of expenses shall be supported by a detailed itemization of the expense including invoices or receipts with the nature of the claim incurred.

SECTION 5. Term.

The term of this Agreement (the "Term") shall commence on January 1, 2015, and shall terminate on the Termination Date, as described at SECTION 6, below. If not terminated under SECTION 6 or by the parties' mutual agreement, this Agreement shall automatically renew on an annual basis. Notwithstanding the foregoing, this Agreement is subject to appropriations of the Commission in accordance with I.C. 36-7-14 and I.C. 6-1.1-18-5.

SECTION 6. Termination and Default.

A. Termination. This Agreement shall terminate within twenty (20) days of a party's receipt of a Default Notice (as defined below) from the other party if such default or failure continues and remains uncured as described in Section 6(B) below through no fault of the party initiating the termination (the "Termination Date").

Upon termination of this Agreement for any reason, copies of all data, electronic files, documents, procedures, reports, estimates, summaries other work papers, and any other supporting documents, whether completed or in process, accumulated by the Provider or prepared or provided by the Commission or the Provider relating to this Agreement or the Requested Services shall be and remain the property of the Commission and be delivered to the Commission upon request in a usable form within sixty (60) days of the Termination Date of this Agreement. The Commission shall retain or be granted by the Provider without restriction all title, ownership, or intellectual property rights, including copyright, patent, trademark, and trade secret rights, in any data gathered or generated by the Provider in performance of the Requested Services under this Agreement.

B. Default. Any failure by either party to perform any term or provision of this Agreement, which failure continues uncured for a period of Twenty (20) days following written notice of such failure from the other party (the "Default Notice"), unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any Default 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. If the nature of the alleged failure is such that it cannot reasonably be cured within such 20-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 20-day period. If the default is cured, then no default shall exist and the noticing party shall take no further action.

C. Misrepresentations. Notwithstanding any other provision of this Agreement to the contrary, if a party intentionally, knowingly, or recklessly makes a false written

representation materially related to the provision of the Requested Services or the obligations of said party under this Agreement, the other party may terminate this Agreement immediately upon delivery of a Default Notice.

SECTION 7. Confidentiality, Conflict of Interest and Disclosure.

A. Confidential Information. The Provider acknowledges that information which the Commission regards as confidential or proprietary in nature (the “Information”), may come to the knowledge of the Provider during the Provider’s performance of services. The Provider shall treat the Information as strictly confidential and agrees that the Provider will not, at any time or in any manner, either directly or indirectly, (i) use, or allowed to be used, any Information for the Provider’s own benefit or the benefit of any director, official, employee or agent or any third party, or (ii) divulge, disclose or communicate in any manner any Information to any third party without the written consent of the Commission. The Provider shall be responsible for maintaining the confidentiality of any Information in its possession, including taking appropriate measures to secure said Information against such uses and dissemination and to inform any person to which it allows to access such information of its confidentiality. The Provider shall be responsible for any actions taken by those individuals or organizations who or which receive or obtain such Information from the Provider. A violation of this section shall be deemed to be a material breach of this Agreement.

B. Covenants Survive Agreement. The confidentiality provisions of this Agreement remain in full force and effect after, and survive the termination of, the Term of this Agreement.

C. Conflict of Interest. The Provider hereby certifies and agrees that no member, officer, or employee of the Commission, or its designees or agents, (and no one with whom they have family or business ties) who exercises any functions or responsibilities with respect to the Project during his or her tenure or for one year thereafter, shall have any financial benefit, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project.

D. Uniform Conflict of Interest Disclosure Statement. The Provider acknowledges that its directors, officers, employees and agents, are “public servants” as defined by I.C. 35-41-1-24. The Provider hereby represents and certifies that it may enter into this Agreement under I.C. 35-44-1 and, to the extent applicable, will execute and file with the Commission and any other appropriate bodies a Uniform Conflict of Interest Disclosure Statement, the form of which is attached hereto and incorporated herein as **EXHIBIT B.**

E. Non-Collusion, Non-Debarment Affidavit, Employment Eligibility Verification and Non-Discrimination Commitment. The Provider hereby represents and acknowledges that it is subject to all requirements of the Non-Collusion, Non-Debarment, Employment Eligibility Verification (E-Verify) and Non-Discrimination statutes of the State of Indiana and, to the extent applicable, will execute and file with the Commission and any other appropriate bodies, a Commitment in the form of **EXHIBIT C,** attached hereto.

SECTION 8. Relationship.

A. Independent Contractor. The Provider shall at all times be an independent contractor rather than an employee of the Commission, and no act, action or omission to act by the Provider shall in any way bind or obligate the Commission, except as specifically provided under the terms of this Agreement.

B. Tax Obligations. The Provider 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 Commission, however, may file informational returns with the United States Internal Revenue Service or similar state agency regarding payments made to the Provider in accordance with this Agreement under conditions imposed by federal, state or local laws applicable to such payment.

SECTION 9. Indemnification.

The Provider hereby agrees to defend, indemnify, and hold harmless the Commission, its officials, directors, employees, and agents from any and all claims of any nature which arise from the performance by the Provider under this Agreement and from all costs and attorney fees in connection therewith, excepting for claims arising out of the negligence of the Commission, its officials, directors, employees, and agents. The obligations of the Provider under this Section shall survive the termination of this Agreement.

SECTION 10. Equal Opportunity.

The Provider shall comply with federal, state, and local law in its hiring and employment practices and policies for any activity covered by this Agreement.

SECTION 11. 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.

SECTION 12. Law Governing.

This Agreement shall be construed and interpreted according to the laws of the State of Indiana.

SECTION 13. Assignment.

The Provider's obligations under this Agreement may not be assigned or transferred to any other person or entity without the prior written consent of the Commission.

SECTION 14. Amendment.

This Agreement may be amended only by separate writing, approved by both the Provider and the Commission.

SECTION 15. Notices.

All notices or other communications which are required or permitted under the terms of this Agreement shall be sufficient if delivered personally, by registered or certified mail, return receipt requested, or by generally recognized, prepaid, overnight air courier services, to the address and individual set forth below. All such notices to either party shall be deemed to have been provided when delivered, if delivered personally, three (3) days after mailed, if sent by registered or certified mail, or the next business day, if sent by generally recognized, prepaid, overnight air courier services.

Commission: Scott Ford
 Executive Director
 Department of Community Investment
 1400 S. County-City Building
 South Bend, Indiana 46601

Provider: Corporation Counsel
 City of South Bend
 1200 S. County-City Building
 South Bend, Indiana 46601

SECTION 16. Counterparts.

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

SECTION 17. Corporate Authority.

The undersigned persons executing and delivering this Agreement on behalf of the Provider represent and certify that they are the duly authorized officers of the Provider with authority to execute this Agreement; that the Provider has the full legal right, power and authority to enter into this Agreement and to grant the rights and perform the obligations of the Provider herein; that no third party consent or approval is required to grant such rights or perform such obligations hereunder; that this Agreement has been duly executed and delivered by the Provider and constitutes a valid and binding obligation of the Provider.

The undersigned persons executing and delivering this Agreement on behalf of the Commission represent and certify that they are the duly authorized officers of the Commission with authority to execute this Agreement, that they have been fully empowered, by proper resolution or action of the Commission to execute and deliver this Agreement and that all necessary action has been taken and done by the Commission to enter into this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

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

Gary Gilot, President

Kathryn Roos, Member

David Relos, Member

Patrick Henthorn, Member

Brian Pawlowski, Member

ATTEST:

Linda Martin, Clerk

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

Signature

Printed Name and Title

South Bend Redevelopment Commission

ATTEST:

Signature

Printed Name and Title

South Bend Redevelopment Commission

EXHIBIT A

Requested Services

1. Drafting of documents related to the acquisition and redevelopment of property in the Areas pursuant to the Development Plans.
2. Review and approval of documents prepared by others related to the acquisition and redevelopment of property in the Areas pursuant to the Development Plans.
3. Consultation with and advising of members of the Department concerning legal issues related to the acquisition and redevelopment of property in the Areas pursuant to the Development Plans.
4. Other services related to the acquisition and redevelopment of property in the Areas pursuant to the Development Plans, as assigned by the Contract Administrator.

EXHIBIT B

(2/93) Form 236

**Uniform Conflict of Interest Disclosure Statement
Indiana Code 35-44-1-3**

A public servant who knowingly or intentionally has a pecuniary interest in or derives a profit from a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D Felony. A public servant has a pecuniary interest in a contract or purchase if the contract or purchase will result or is intended to result in an ascertainable increase in the income or net worth of the public servant or a dependent of the public servant who is under the direct or indirect administrative control of the public servant; or receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant. "Dependent" means any of the following: the spouse of a public servant; a child, stepchild, or adoptee (as defined in I.C. 31-3-4-1) of a public servant who is unemancipated and less than eighteen (18) years of age; and any individual more than one-half (1/2) of whose support is provided during a year by the public servant.

The foregoing consists only of excerpts from I.C. 35-44-1-3. Care should be taken to review I.C. 35-44-1-3 in its entirety.

1. Name and Address of Public Servant Submitting Statement:

2. Title or Position With Governmental Entity: _____

3. a. Governmental Entity: _____

b. County: _____

4. This statement is submitted (check one):

a. _____ as a "single transaction" disclosure statement, as to my financial interest in a specific contract or purchase connected with the governmental entity which I serve, proposed to be made by the governmental entity with or from a particular contractor or vendor; or

b. _____ as an "annual" disclosure statement, as to my financial interest connected with any contracts or purchases of the governmental entity which I serve, which are made on an ongoing basis with or from particular contractors or vendors.

9. **Effective Dates** (Conflict of interest statements must be submitted to the governmental entity prior to final action on the contract or purchase.):

Date Submitted	Date of Action on Contract or Purchase
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10. **Affirmation of Public Servant:** This disclosure was submitted to the governmental entity and accepted by the governmental entity in a public meeting to the governmental entity prior to final action on the contract or purchase. I affirm, under penalty of perjury, the truth and completeness of the statements made above, and that I am the above named public servant.

Signed: _____
(Signature of Public Servant)

Date: _____

Within 15 days after final action on the contract or purchase, copies of this statement must be filed with the State Board of Accounts, Indiana Government Center South, 302 West Washington Street, Room E418, Indianapolis, Indiana, 46204-2765 and the Clerk of the Circuit Court of the county in which the governmental entity executed the contract or purchase. A copy of this disclosure will be forwarded to the Indiana State Ethics Commission.

EXHIBIT C

**NON-COLLUSION, NON-DEBARMENT AFFIDAVIT, EMPLOYMENT ELIGIBILITY
VERIFICATION AND NON-DISCRIMINATION COMMITMENT**

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

The undersigned Contractor, being duly sworn upon his/her/its oath, affirms under the penalties of perjury that:

1. Contractor has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be bid by anyone at such letting nor to prevent any person from bidding nor to include anyone to refrain from bidding, and that this bid is made without reference to any other bid and without any agreement, understanding or combination with any other person in reference to such bidding. Contractor further says that no person or persons, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee, gift, commission or thing of value on account of such sale; and

2. Neither Contractor nor any of its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency; and

3. Contractor does not knowingly employ or contract with an unauthorized alien, nor retain any employee or contract with a person that the Contractor subsequently learns is an unauthorized alien. Contractor agrees that he/she/it shall enroll in and verify the work eligibility status of all of Contractor's newly hired employees through the E-Verify Program as defined by I.C. 22-5-1.7-3. Contractor's documentation of enrollment and participation in the E-Verify Program is included and attached as part of this bid/quote; and

4. Contractor shall require his/her/its subcontractors performing work under this public contract to certify that the subcontractors do not knowingly employ or contract with an unauthorized alien, nor retain any employee or contract with a person that the subcontractor subsequently learns is an unauthorized alien, and that the subcontractor has enrolled in and is participating in the E-Verify Program. The Contractor agrees to maintain this certification throughout the term of the contract with the City of South Bend, and understands that the City may terminate the contract for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the City; and

5. Contractor shall not discriminate against any employee or applicant for employment in the performance of this contract with privileges of employment, or any matter directly or indirectly related to employment, because of race, religion, color, sex, handicap, national origin or ancestry. Breach of this provision may be regarded as a material breach of the contract.

Dated this _____ day of _____, 20__

Contractor/Bidder (Firm)

Signature of Contractor/Bidder or Its Agent

Printed Name and Title

Subscribed and sworn to before me this _____ day of _____, 20__

My Commission Expires _____

Notary Public

County of Residence _____