



**ITEM: 6.B.(1)**

Department of  
**Community Investment**

## Memorandum

February 26, 2015

TO: Redevelopment Commission  
FROM: Liz Maradik, Staff  
SUBJECT: Professional Services Agreement with MGLM Architects – Southeast Neighborhood  
Master Plan

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Staff requests Redevelopment Commission approval of a professional services agreement with MGLM Architects in the amount of \$37,500 to complete a master plan for the Southeast Neighborhood. The agreement continues through August 26, 2015.

A group of stakeholders from the Southeast Neighborhood (bound by Sample St. to the north, Miami St. to the east, Ewing Ave. to the south, and Michigan St. to the west) have formed an organization called 466 Works. It recently obtained its 501c3 status and intends to pursue redevelopment efforts in the area as a community development corporation (CDC). The City wishes to partner with 466 Works to develop a vision for the future of the area which will also serve as a guide for 466 Works activities. The planning process will involve residents and stakeholders in order to create a master plan that is consistent with the community's goals, as well as market realities.



**AGREEMENT FOR PROFESSIONAL SERVICES  
BY AND BETWEEN THE CITY OF SOUTH BEND, INDIANA  
AND MGLM ARCHITECTS**

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**THIS AGREEMENT** is made effective the 26<sup>th</sup> day of February, 2015, by and between the City of South Bend, Indiana, Department of Community Investment, acting by and through the South Bend Redevelopment Commission (the “City”) and MGLM Architects having their principal place of business at 343 S. Dearborn St., Suite 1203, Chicago, IL 60604 (the “Contractor”).

For and in consideration of the mutual covenants and promises contained herein, the City and the Contractor hereby agree as follows:

**Section 1. Duties of the Contractor.**

The Contractor shall provide the Services which are more particularly described at *Exhibit A* attached hereto and incorporated herein. The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards.

**Section 2. Consideration.**

The Contractor will be paid as set forth at *Exhibit A*. The total consideration under this Agreement shall not exceed the sum of Thirty-Seven Thousand and Five Hundred Dollars (\$37,500). Any payment that the City may deny or withhold or delay shall not be subject to penalty or interest pursuant to Indiana Code §5-17-5.

**Section 3. Term.**

This Agreement shall be effective for a period of six (6) months commencing on February 26, 2015 (the “Effective Date”) and shall end on August 26, 2015 (the “Expiration Date”).

**Section 4. Assignment; Successors.**

The Contractor shall not assign or subcontract the whole or any part of this Agreement without the prior written consent of the City.

**Section 5. Changes in Scope of Services.**

The Contractor 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 Contractor in the absence of prior written approval by the City.

**Section 6. Reversion of Assets.**

At the conclusion, cancellation, assignment or termination of this Agreement, all work product in whatever form, written, electronic, or otherwise, shall be delivered to the City, and the Parties hereby agree the City and not the Contractor or any of the Contractor's subcontractors or agents, has any ownership interest in the work performed as part of this Agreement.

**Section 7. 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. The Contractor shall be solely responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

Contractor 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 Contractor 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 8. Funding Cancellation and Payments.**

In accordance with I.C. 36-1-12.5-5(d)(4), payments by the City are subject to appropriation by the South Bend Redevelopment Commission.

**Section 9. Non-Collusion and Acceptance.**

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement other than that which appears upon the fact of this Agreement.

**Section 10. E-Verify.**

The Contractor affirms under the penalties of perjury that he/she/it does not knowingly employ an unauthorized alien. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC 22-5-1.7-3. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor

shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.

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

The Contractor shall require his/her/its subcontractors, who perform work under this contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The City may terminate 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.

### **Section 11. Minority and Womens 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 Contractor'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 12. Signing Authority.**

The person signing on behalf of the Contractor represents that he/she has been duly authorized to execute this Agreement on behalf of the Contractor, and has obtained all necessary and applicable approvals to make this Agreement fully binding upon the Contractor after acceptance by the City.

**Section 13. Drug-Free Workplace.**

The Contractor hereby agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the City within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor within the State of Indiana has been convicted of a criminal drug violation occurring in the workplace.

**Section 14. Governing Law; Compliance with Laws.**

This Agreement shall be construed and interpreted according to the laws of the State of Indiana. The Contractor 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. The Contractor 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 15. Entire Agreement.**

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

*(Remainder of page intentionally left blank)*

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

*MGLM Architects*

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

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

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name and Title*

**South Bend Redevelopment Commission**

**ATTEST:**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name and Title*

**South Bend Redevelopment Commission**

*Signature Page to Service Agreement by and between Redevelopment Commission and MGLM Architects.*

**EXHIBIT A**

**See attached proposal from MGLM Architects dated February 13, 2015**



**MGLM ARCHITECTS**  
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Revised February 13, 2015

**Sent via Email**

Mr. Jitin Kain  
Director, Planning Department of Community Investment  
City of South Bend  
227 W. Jefferson Blvd., Suite 1400 S.  
South Bend, IN 46601

Dear Jitin:

It was a pleasure speaking with you and Liz last week. Reflecting our conversation, I am pleased to submit this Fee Proposal ("Proposal") on behalf of MGLM Architects, Ltd. ("Architect", "MGLM") to provide urban design services to you ("Client") as the authorized representative of the City of South Bend, for the Master Plan of the "Southeast Neighborhood" - the area bounded by Sample to the north, Miami to the east, Ewing to the south, and Michigan to the west ("Project").

The Project, as we understand it, consists of a generating a Master Plan for the Southeast Neighborhood. This will include meetings with city departments, stakeholders, and the public, and will include producing associated information and master plan graphics for use in a document created by the City of South Bend. More thorough descriptions of scope are in the attached Exhibit A. As discussed, we would be working with you and the rest of the City's team in an iterative manner.

### **I. Scope of Services**

MGLM shall document existing conditions where necessary, prepare drawings, renderings, graphics and associated information, as well as participate in meetings with Client and stakeholders, and public presentations in order to fulfill the Scope of Work attached in Exhibit A. Client will appoint a representative to act on their behalf, with the authority to provide or obtain any necessary information and approvals that may be required by MGLM.

### **II. Project Schedule**

Architect will coordinate and conduct meetings in tandem with Client for the stakeholder groups as necessary to provide the Services listed above and the Scope shown in Exhibit A. MGLM understands that the proposed Project Schedule shall be roughly 3 months from initial project meeting. Client agrees to provide full information for the project on which the Architect can rely (including but not limited to GIS Data, base maps, aerial imagery, site surveys, etc.) and agrees to render decisions in a timely fashion as necessary for Architect to provide services without undo interruption to the Project schedule.





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### III. Architect's Compensation

The fee for the Scope of Urban Design Services described under Section I above ("Basic Services") shall be billed as a not-to-exceed amount of \$35,000.

Hourly rates for Basic and Additional Services:

Principal:	\$175
Urban Designer/Associate Architect:	\$100
Admin. Staff:	\$ 85

Any services or scope beyond the "Basic Services" enumerated in Section I above and in Exhibit A, including but not limited to revisions to previously approved designs, additional work requested by Client, changes in the extent or increased complexity of any of the elements of the project, procurement of location for public meetings, procurement of equipment, supplies, and hospitality items (e.g. food, beverages, etc.) for public meetings, marketing and event promotion campaigns, shall constitute Additional Services, billed hourly at the rates listed below. Architect will secure Client's approval before commencing with Additional Services.

These rates apply for the current period and are subject to revision each January 1 and July 1. ~~An initial payment of \$7,000 that will be credited against the final invoice is required to begin work.~~ Payment for services is not contingent upon 466 Works Non-Profit or any other entity securing grants or funding.

### IV. Reimbursable Expenses

Reimbursable Expenses incurred by Architect in rendering the services for this Project shall be billed to Client at cost plus 10% and are separate from Architect's fee ("Reimbursable Expenses"). Expenses include, but are not limited to printing, plotting, postage, delivery, rendered animations, physical models, travel, and travel related expenses. Architect will secure the Client's approval for Reimbursable Expenses prior to incurring the cost and will provide receipts of all expenses. Architect can provide a preliminary estimate of potential Reimbursable Expenses, specifically estimated travel and travel-related expenses, upon request.

To the extent other engineering or consulting services (e.g. Audio/visual consultants) are necessary for completion of the design under this Proposal, these services will be added as an amendment to this proposal and billed as Reimbursable Expenses to Client at cost plus 10% and are separate from Architect's fee. Architect will secure Client's approval of any external engineering/consulting services prior to initiating their work.

### V. Invoicing Schedule

Fees for professional services and reimbursable expenses will be billed monthly and are due upon receipt of invoice. Invoices will be for work and expenses performed or incurred during the month prior to the date of invoice. Any amounts unpaid 30 days after the invoice date shall bear simple

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interest at the rate of 1.5% per month and will be assessed on the outstanding balance. If payment has not been received within 30 days, the Architect may suspend services on the project until such payment has been received.

### **VI. Liability and Cancellation**

There are a variety of risks that potentially affect Architect by virtue of entering into an agreement to perform professional services on Client's behalf. In order for Client to obtain the benefit of a fee that does not need to account for unlimited risks, Client agrees to limit Architect's liability to Client. To the fullest extent permitted by law, the total liability of Architect with regard to the Project under any and all theories of liability shall be limited to Architect's total aggregate fee received for services for the Project or Architect's available insurance coverage, whichever is less. No director, officer, shareholder, employee, representative, or agent of Architect shall have any individual liability to Client. Architect shall provide a certificate of insurance to Client upon request.

Either party may cancel or suspend the Project without breach of contract upon giving not less than ten (10) days prior written notice to the other party. Failure of Client to make payments in accordance with the Invoicing Schedule shall be considered substantial nonperformance and is sufficient cause for Architect to suspend or terminate services. Architect's sole obligation shall be to organize and archive the drawings, files, and other documents relating to the Project within ten (10) days of such notice. Client agrees to compensate Architect for all services completed, including organizing and archiving of files and other documents, and expenses incurred through the date of suspension or cancellation of the Project. In the event of cancellation neither party shall have any liability of any nature to the other.

If you have any questions or concerns regarding this proposal, please do not hesitate to contact me. I would be pleased to discuss it with you in more detail. We look forward to the opportunity to work with you and help realize the vision and potential of the Southeast Neighborhood.

Thank you,

MGLM Architects  
Represented by Matthew McNicholas, Principal



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## Exhibit A - Scope of Work

*Provided by Department of Community Investment, City of South Bend*

### **Southeast Master Plan Goals & Scope of Work**

January 30, 2015

#### **Goals**

- Involve the community and City in the design process and deliver a master plan that is consistent with the community's goals and aspirations for the study area
- Create a Land Use Plan consistent with the market realities
- Create a walkable, mixed use, mixed income, neighborhood
- Craft a strategy for the Michigan & Miami corridors that acknowledges market realities and provides retail hubs for the neighborhood and surrounding community

#### **Scope of Work**

The following provides an overview of the proposed work to be completed as part of this agreement.

#### **Phase I: Kick-Off Meeting & Fact Finding**

The Team will participate in a Kick-Off Meeting with the Department of Community Investment Team and 466 Works (the newly forming non-profit). The purpose of the meeting will be to introduce the team members, review the work plan and gather basic information.

The Team will gain an understanding of the current conditions within the study area through a site visit. Will work closely with City staff to determine what information exists and is readily available to assist with developing the Plan.

At least one day with a series of work sessions / charrette processes with various stakeholder groups (including, but not limited to: representatives of City Departments – Community Investment, Parks, Engineering, Sustainability; South Bend Community School Corporation; First Tee; business associations; Ivy Tech Community College; University of Notre Dame/Bowman Creek project group).

Using Existing Conditions Analysis, generate some big picture ideas for different development scenarios in the Southeast Neighborhood. These will serve as a starting point for soliciting input during the public meeting / charrette process.



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### **Phase II: Public Meeting / Charrette Workshop**

Host public input workshop to present finding of the Existing Conditions Analysis and big picture ideas to solicit public input.

- Present physical analysis and summary of kick-off meeting comments
- Brief presentation of big picture ideas
- Facilitate discussion based on presentation / solicit feedback
- Generate conceptual ideas for land use and urban design for the area and identify priority areas

### **Phase III: Draft Southeast Neighborhood Plan graphics**

Draft generalized land use plan for entire study area

Draft detailed Land Use Plan and Urban Design Plan for priority areas

Draft generalized housing types & styles that are consistent with the character of the study area which should be used for infill housing

Draft generalized diagrams examining transportation / street network with more detailed plans for streets identified for streetscape enhancements

Host community meeting to present draft plans and solicit final input

### **Phase IV: Revise and Deliver Final Graphics**

Prepare final documents based on community feedback and comments from City staff and key stakeholders.

Deliverables will include:

- All relevant materials that were used in previous phases and presentations
- Digital (both .pdf and .jpeg format) and hard copies of all graphics produced during process