




Department of  
**Community Investment**

**Memorandum**

July 30, 2015

TO: South Bend Redevelopment Commission  
FROM: David Relos, Economic Resources   
SUBJECT: Engineering Services Agreement with the Board of Public Works

---

To carry out Commission projects, Indiana Code allows it to contract for the construction of local public improvements, among other items. For years, the Commission has used the Board of Public Works (BPW) to oversee its projects, to ensure the public bid process is followed, projects are done to City standards, etc. This has been carried out via the Master Agency Agreement, where the Commission appoints BPW as its agent to carry out its projects, and BPW agrees to such appointment.

Because of the volume of Commission projects, it has become necessary for the Engineering Department to hire a dedicated Engineer to oversee these projects. This Engineering Services Agreement (Agreement) shares the cost of the new Engineer, with the Commission paying 80% of the Engineer's salary and benefits and the Engineering Department paying 20%.

The Agreement is effective May 26, 2015 and runs through December 31, 2016. A subsequent agreement could be entered in to if mutually agreed upon by the parties.

Staff requests approval of the Agreement for Services with the Board of Public Works.



**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 30th day of July, 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**, pursuant to the Act, the Commission has adopted resolutions declaring various areas of the City (the “Areas”) to be areas in need of redevelopment within the meaning of the Act and has adopted a development plan (the “Development Plans”) for each of the Areas in order to facilitate redevelopment of the Areas; 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 engineering services related to the acquisition and redevelopment of property located in the Areas in connection with the Projects, which services the Commission may procure in accordance with I.C. 36-7-14-39(b)(2)(J), I.C. 36-7-14-25.1(a)(2), and I.C. 36-7-14-12.2(a)(13); and

**WHEREAS**, the Provider is an Indiana municipal corporation and has an engineering staff with the knowledge, experience, and expertise to provide engineering 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, subject to the terms and conditions of this Agreement; and

**WHEREAS**, the Commission has appropriated funds to compensate the Provider in accordance with I.C. 36-7-14 and I.C. 6-1.1-18-5; and

**WHEREAS**, the Provider agrees to provide engineering 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 in **EXHIBIT A** attached hereto and incorporated herein.

***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.

**SECTION 4. Compensation.**

A. Fees for Services. As compensation for services performed pursuant to this Agreement, the Commission agrees to pay the Provider a fee (the "Fee") in the amount stated in the following table.

<u>Period</u>	<u>Fee</u>
May 26, 2015 to December 31, 2015	\$32,117.76
January 1, 2016 to December 31, 2016	\$54,596.74

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 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 thirty (30) days of receipt of any invoice. Notwithstanding the foregoing, the Provider's invoice for each of the two (2) quarters of calendar year 2015 following the date of this Agreement will request payment of one-half (1/2) of the effective Fee.

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 May 26, 2015, and shall terminate on December 31, 2016, unless earlier terminated in accordance with SECTION 6 of this Agreement or by the parties' mutual agreement. 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. Either party may terminate this Agreement upon the event of a Default (as defined below). 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 date of termination 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 thirty (30) 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 (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 30-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 30-day period.

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. 35-31.5-2-261. The Provider hereby represents and certifies that it may enter into this Agreement under I.C. 35-44.1-1 *et seq.* 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 agrees that it will execute and submit to the City and any other appropriate bodies, an affidavit in the form of **EXHIBIT C**, attached hereto and incorporated herein.

**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 or omission 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 signed by authorized representatives of 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:           Department of Community Investment  
                              1400 S. County-City Building  
                              South Bend, Indiana 46601  
                              Attn: Executive Director

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

**SECTION 16.**

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**

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

\_\_\_\_\_  
Gary Gilot, President

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

\_\_\_\_\_  
David Relos, Member

**ATTEST:**

\_\_\_\_\_  
Brian Pawlowski, Member

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

\_\_\_\_\_  
Elizabeth Maradik, Member

**ATTEST:**

\_\_\_\_\_  
Linda Martin, Clerk

4000.0000070 48412400.001

## **EXHIBIT A**

### **Requested Services**

1. Preparation of documents related to the redevelopment of property in the Areas pursuant to the Development Plans.
2. Review and approval of documents prepared by others related to the redevelopment of property in the Areas pursuant to the Development Plans.
3. Consultation with relevant departments and employees of the City of South Bend concerning the redevelopment of property in the Areas pursuant to the Development Plans.
4. Other services related to the Projects, as requested by the Contract Administrator.

**EXHIBIT B**

**Uniform Conflict of Interest Disclosure Statement**

[See attached.]



## UNIFORM CONFLICT OF INTEREST DISCLOSURE STATEMENT

State Form 54266 (R / 6-12) / Form 236  
STATE BOARD OF ACCOUNTS

### Indiana Code 35-44.1-1-4

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. "Dependent" means any of the following: the spouse of a public servant; a child, stepchild, or adoptee (as defined in IC 31-9-2-2) 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 IC 35-44.1-1-4. Care should be taken to review IC 35-44.1-1-4 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.
5. **Name(s) of Contractor(s) or Vendor(s):** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. **Description(s) of Contract(s) or Purchase(s)** (*Describe the kind of contract involved, and the effective date and term of the contract or purchase if reasonably determinable. Dates required if 4(a) is selected above. If "dependent" is involved, provide dependent's name and relationship.*):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. **Description of My Financial Interest** *(Describe in what manner the public servant or "dependent" expects to derive a profit or financial benefit from, or otherwise has a pecuniary interest in, the above contract(s) or purchase(s); if reasonably determinable, state the approximate dollar value of such profit or benefit.):*

---

---

---

---

---

*(Attach extra pages if additional space is needed.)*

8. **Approval of Appointing Officer or Body** *(To be completed if the public servant was appointed by an elected public servant or the board of trustees of a state-supported college or university.):*

I (We) being the \_\_\_\_\_ of  
*(Title of Officer or Name of Governing Body)*

\_\_\_\_\_ and having the power to appoint  
*(Name of Governmental Entity)*

the above named public servant to the public position to which he or she holds, hereby approve the participation to the appointed disclosing public servant in the above described contract(s) or purchase(s) in which said public servant has a conflict of interest as defined in Indiana Code 35-44.1-1-4; however, this approval does not waive any objection to any conflict prohibited by statute, rule, or regulation and is not to be construed as a consent to any illegal act.

_____	_____
_____	_____
_____	_____
Elected Official	Office

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 *(month, day, year)*      \_\_\_\_\_ Date of Action on Contract or Purchase *(month, day, year)*

10. **Affirmation of Public Servant:** This disclosure was submitted to the governmental entity and accepted by the governmental entity in a public meeting of 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: \_\_\_\_\_  
*(month, day, year)*

Within fifteen (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 where the governmental entity took final action on the contract or purchase.

**EXHIBIT C**

**Contractor's Affidavit**

[See attached.]



the energy sector in Iran; and (ii) at the time the financial institution extends credit, is a person identified on list published by the Indiana Department of Administration.

4. 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

5. 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.

6. 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 contract for which the discriminatory practice or noncompliance pertains.

7. The undersigned contractor agrees that the following nondiscrimination commitment shall be made a part of any contract which it may henceforth enter into with the City of South Bend, Indiana or any of its agencies, boards or commissions.



Contractor agrees not to discriminate against or intimidate 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 material breach of contract.

I, the undersigned bidder or agent as contractor on a public works project, understand my statutory obligations to the use of steel products or foundry products made in the United States (I.C. 5-16-8-1). I hereby certify that I and all subcontractors employed by me for this project will use steel products or foundry products on this project if awarded. I understand that violations hereunder may result in forfeiture of contractual payments.

\*\*\*

I hereby affirm under the penalties of perjury that the facts and information contained in the foregoing bid for public works are true and correct.

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 \_\_\_\_\_