



South Bend

# Redevelopment Commission

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

## Agenda

Regular Meeting, June 9, 2022 – 9:30 a.m.

<http://tiny.cc/RDC6922> or BPW 13th Floor Conference Room

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- 1. Roll Call**
- 2. Approval of Minutes**
  - A. Minutes of the Regular Meeting of Thursday, May 26, 2022
- 3. Approval of Claims**
  - A. Claims Allowance Request 05.23.22
- 4. Old Business**
  - A. River West Development Area
    1. Memorandum of Assignment of Lease (Lasalle)
- 5. New Business**
  - A. River West Development Area
    1. Accepting Property from BPW (Oliver Plow Memorial)
    2. First Amendment to Development Agreement (Bakery Group)
  - B. River East Development Area
    1. Real Estate Purchase Agreement (Connemara Holdings)
  - C. South Side Development Area
    1. Budget Request (Fire Station 8 Schematic Design)
- 6. Progress Reports**
  - A. Tax Abatement
  - B. Common Council
  - C. Other
- 7. Next Commission Meeting:**

Thursday, June 23, 2022, 9:30 am



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

**SOUTH BEND REDEVELOPMENT COMMISSION  
 RE-SCHEDULED REGULAR MEETING**

May 26, 2022 – 9:30 am

<https://tinyurl.com/RDC52622> or Common Council 4th Floor

Presiding: Donald Inks, Vice-President

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

**1. ROLL CALL**

Members Present:	Don Inks, Vice-President – IP Troy Warner, Secretary – IP Eli Wax, Commissioner – IP Vivian Sallie, Commissioner – IP Leslie Wesley, Commissioner - V	IP = In Person V = Virtual
Members Absent:	Marcia Jones, President	
Legal Counsel:	Sandra Kennedy, Esq. - IP Danielle Campbell-Weiss, Esq. - IP	
Redevelopment Staff:	Mary Brazinsky, Board Secretary - V	
Others Present:	Caleb Bauer Joseph Molnar Chris Dressel Tim Corcoran Laura Althoff Michael Divitia Rachel Boyles Jordan Smith Conrad Damian Emma Adlam Katrina	DCI – IP DCI – IP DCI – V DCI – IP DCI – V DCI – V DCI – V DCI – V Resident – V Resident – V Baker Tilly – V Resident - V

## 2. Approval of Minutes

- **Approval of Minutes of the Regular Meeting of Thursday, May 12, 2022**

Upon a motion by Commissioner Sallie, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved the minutes of the regular meeting of Thursday, May 12, 2022.

## 3. Approval of Claims

- **Claims Submitted for May 10, 17 and 24, 2022**

Secretary Warner asked about the first claim ROW site work with Robert Henry.

Mr. Bauer notes this was for street lighting, improvements, gas meter and water utility upsizing feed services at the United Way Center.

Upon a motion by Commissioner Sallie, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved the claims May 10, 17 and 24, 2022, submitted on Thursday, May 26, 2022.

## 4. Old Business

## 5. New Business

### A. River West Development Area

#### 1. **Resolution No. 3552 Accepting Property from BPW (117 and 119 Lafayette)**

Mr. Molnar presented Resolution No. 3552 Accepting Property from BPW (117 and 119 Lafayette). This resolution is transferring the property at 117 and 119 Lafayette Street. It is right across from the county-city building directly south of the Lafayette building. This will no longer be needed by the city. This will be tied to the future use of the Lafayette building. This was approved by the Board of Public Works on Tuesday. Commission approval is requested.

Secretary Warner noted that he likes the idea of adding parking to the building and getting business into that area again.

Upon a motion by Secretary Warner, seconded by Vice-President Inks, the motion carried unanimously, the Commission approved Resolution No. 3552 Accepting Property from BPW (117 and 119 Lafayette) submitted on Thursday, May 26, 2022.

#### 2. **Estoppel Certificate (Merchants LaSalle Apartments-Parking Lease)**

Mr. Bauer Presented an Estoppel Certificate (Merchants LaSalle Apartments-Parking Lease). This agenda item along with the next items 5A3, 5A4 and 5A5 are related to the parking lease for the lot owned by the Redevelopment Commission just south of the LaSalle Building. You may recall that lease is part of the original development agreement with RealAmerica, the company that

redeveloped the LaSalle building. These are negotiations we had with the developer related to the planned sale of the property to another entity. The parking lease does not require redevelopment. Commission is asked to approve this to transfer to a new buyer of the building. We had engaged with the new buyer TMO to gauge their interest and began potential negotiations, terminating that lease. The city Redevelopment Commission could potentially collect rent from the tenant. The tenants for parking spaces in a future parking garage as it relates to the Morris expansion plans. The senior lender for TMO indicate that an agreement to terminate the lease would threaten their financing for the closing of their deal with Real America, however, TMO has committed in writing in a letter with us to continue negotiations related to the termination of that lease following the close of the purchase. Real America did achieve their goals laid out in the development agreement and have exceeded their investment goals. Commission approval is requested.

Secretary Warner asked that in the future when submitting the certificate that we include the agreement so we can look back. He asked what some of the requirements were and can we summarize what the requirements were.

Mr. Bauer noted that Joseph Molnar will respond, however, it did include a timeline for the investment and conditions included in the parking lease. Both were met.

Joseph Molnar stated the original agreement was November 2014 and the main developer obligations were to develop a mixed use multi-family building providing 8000 sq ft. of retail and restaurant space. Develop sixty-seven apartments and invest \$7.5M. The investment was over \$10.6M and the space was completed as per the agreement.

Upon a motion by Secretary Warner, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved Estoppel Certificate (Merchants LaSalle Apartments-Parking Lease) submitted on Thursday, May 26, 2022.

**3. Assignment and Assumption of Agreements (COSB/LaSalle)**

Mr. Bauer Presented Assignment and Assumption of Agreements (COSB/LaSalle). As related to document 5A2. Commission approval is requested.

Upon a motion by Vivian Sallie, seconded by Secretary Warner, the motion carried unanimously, the Commission approved Assignment and Assumption of Agreements (COSB/LaSalle) submitted on Thursday, May 26, 2022.

**4. Acknowledgement of Substantial Completion (COSB/LaSalle)**

Mr. Bauer presented Acknowledgement of Substantial Completion (COSB/LaSalle). As related to document 5A2. Commission approval is requested.

Upon a motion by Commissioner Wax, seconded by Secretary Warner, the motion carried unanimously, the Commission approved Acknowledgement of Substantial Completion (COSB/LaSalle) submitted on Thursday, May 26, 2022.

**5. Memorandum of Assignment First Right of Refusal (COSB/LaSalle)**

Mr. Bauer presented Memorandum of Assignment First Right of Refusal (COSB/LaSalle). As related to document 5A2. Commission approval is requested.

Vice-President Inks asked what is the First Right of Refusal?

Ms. Kennedy noted in this case we are acknowledging the assignment from Real America to the Michael's organization. The Michael's organization could step in and build the parking garage so they can acquire the property and then build the parking garage. That is the option. If there is a third party interested, then we have to offer the Michael's organization the right to come in and build them. Building apartments on top of the parking garage makes it attractive to other developers.

Upon a motion by Secretary Warner, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved Assignment First Right of Refusal (COSB/LaSalle) submitted on Thursday, May 26, 2022.

**6. First Amendment to Real Estate Purchase Agreement (RealAmerica)**

Ms. Kennedy presented First Amendment to Real Estate Purchase Agreement (RealAmerica). In July 2021 we entered into an agreement with Real America to purchase certain property as it was subject to their receipt of certain tax credits. That did not happen. They were very close, so they are applying again, therefore amending this agreement. Commission approval is requested.

Commissioner Wax asked what is their plan if they do not receive the tax credits? Can they move forward with their plans?

Mr. Bauer noted that they would move forward with their plans for 60 market rate units on the site and then they would continue to apply for tax credits for the 60 affordable units.

Commissioner Wax asked if they would be allowed to do this under the current agreement.

Ms. Kennedy noted that is correct.

Upon a motion by Commissioner Wax, seconded by Secretary Warner, the motion carried unanimously, the Commission approved First Amendment to Real Estate Purchase Agreement (RealAmerica) submitted on Thursday, May 26, 2022.

**B. River East Development Area**

**1. Resolution No. 3549 (River East TIF Area Confirming and Hearing)**

Mr. Dressel Presented Resolution No. 3549 (River East TIF Area Confirming and Hearing). Mr. Dressel shared a brief presentation with the commission. This Resolution No. 3549 is for the passage of the River East TIF district. Just a

## South Bend Redevelopment Commission Regular Meeting – May 26, 2022

reminder, there were 2 open public meeting. We have presented at South Bend Planning Commission and Common Council where respective resolutions have been passed. There are approximately 47.3 acres, 88 parcels but we have identified 53 unique property owners. We have made updates to the boundary map in the legal description. This gives us greater flexibility and negotiation process with property owners if needed. We have sent notices to effected property owners and posted notice in the South Bend Tribune on May 5, 2022. We offered virtual options but there were no attendees to the public meetings. A few phone calls were received. Commission Approval is requested.

Commissioner Wax asked while we did not have a lot of interaction from the public, we did receive a few calls. What did they ask about the process?

Mr. Dressel noted that the calls were informational what is it, what does it all mean and what will the results be.

Secretary Warner noted this was his council district and he received about 5 calls with mostly what does this mean, will it increase taxes, is the city trying to acquire all the properties? Once we capture the growth, there's going to be a very large investment in that area that's going to need infrastructure improvements and we will be able to capture that tax growth from the investment. Once we explained that to residents, no one objected as it is an investment tool that allows the city to capture tax dollars and provide growth.

Emma Adlam, Baker Tilly noted that the draft impact statement was given and summarized. The expansion of the River East will be capturing two new developments that we anticipate in the area. There is an owner-occupied residential component that does not get captured by the TIF and that immediately flows through to the overlapping units and also TIF cannot be captured by the cannot capture the school referendum rates which there are two and so all of that TIF assessed value flows through to the school corporation's referendum rates. So, there's a benefit during the period of TIF capture.

This item was opened to the public for the hearing portion.

There was no comment from the public.

The public portion was closed and a motion to approve was given.

Upon a motion by Secretary Warner, seconded by Commissioner Wax, the motion carried unanimously, the Commission approved Resolution No. 3549 (River East TIF Area Confirming and Hearing) submitted on Thursday, May 26, 2022.

**6. Progress Reports**

A. Tax Abatement

B. Common Council

1. Commissioner Wax noted there was a resolution for a tax abatement that was approved. There were a couple of non-compliance waivers.
2. Mr. Bauer noted that was for their 933 form. We also just passed the CF1 submission deadline and so there will be waivers coming to Council that have missed the deadline.
3. Mr. Bauer noted that there was a tax abatement for GLC Spec 5 warehouse at Portage Prairie (7 yr. abatement). There are two waivers of non-compliance for real property and personal property abatements for Imagine Finishing Technologies.

C. Other

**7. Next Commission Meeting:**

Thursday, June 9, 2022

**8. Adjournment**

Thursday, May 26, 2022, x a.m.

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Troy Warner, Secretary

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Marcia Jones, President

**Expenditure approval**RDC Payments-5/31/22 Pymt Run  
GBLN-0037620**Payment method:** CHK-Total  
**Voucher:** RDCP-00007015  
**Payment date:** 5/31/2022

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Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00000874	INVANTI LLC	1163	Invanti Capacity Building	6/9/2022	\$41,667.00	433-10-102-123-439300--	PO-0009409

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**Payment method:** CHK-Total  
**Voucher:** RDCP-00007016  
**Payment date:** 5/27/2022

Vendor #	Name	Invoice #	Line description	Due date	Invoice amount	Financial dimensions	Purchase order
V-00001223	NORTHERN INDIANA PUBLIC SERVICE COMPANY	779951101	NIPSCO gas line installation	5/20/2022	\$93,824.61	324-10-102-121-444000-- PROJ00000348	PO-0016831

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Cross-reference: Instrument Nos. 1510364  

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**MEMORANDUM OF ASSIGNMENT OF LEASEHOLD INTEREST**

THIS MEMORANDUM OF ASSIGNMENT OF LEASEHOLD INTEREST (this “Memorandum”) is dated as of the \_\_\_\_ day of \_\_\_\_\_, 2022, by and among THE LASALLE APARTMENTS, LLC, an Indiana limited liability company (“Assignor”), LASALLE PARTNERS RA, an Indiana limited liability company (“Assignee”), and SOUTH BEND REDEVELOPMENT COMMISSION, governing body of the Department of Redevelopment of the City of South Bend, Indiana (“Commission”)

**WITNESSETH:**

WHEREAS, Commission and Assignor entered into that certain Parking Lease, dated effective as of April 21, 2015 (the “Lease”), pursuant which Commission leased to Assignor, and Assignor leased from Commission, certain parking rights on real property owned by Commission in the City of South Bend, Indiana as more particularly described in the Lease (the “Parking Area”) for use by Assignor in connection with Assignor’s ownership and operation of that certain adjacent or nearby mixed-use residential and commercial development commonly known as “The LaSalle Apartments” (the “Project”), a memorandum of such Lease being recorded on May 1, 2015 as Instrument Number 1510364 in the Office of the Recorder of St. Joseph County, Indiana;

WHEREAS, Assignor has sold the Project to Assignee and Assignor, Assignee and Commission have executed a certain Assignment and Assumption of Agreements dated as of \_\_\_\_\_, 2022 (the “Assignment Agreement”) whereby Assignor assigned to Assignee and Assignee assumed from Assignor, all of Assignor’s right, title and interest in and to the Lease with the Commission’s acknowledgement and consent; and

NOW THEREFORE, the parties hereto desire to enter into and record this Memorandum with respect to the Assignment Agreement:

Section 1.      Assignment of Lease. Pursuant to the Assignment Agreement and effective as of \_\_\_\_\_, 2022, Assignor assigned all of its right, title, and interest in and to the Lease to Assignee, and Assignee assumed all of Assignor's right, title, and interest in and to the Lease, and all of the covenants, conditions, and agreements of Assignor under the Lease.

Section 2.      Miscellaneous.

(a)      This Memorandum may be executed in multiple counterparts, each of which taken together shall constitute one and the same instrument.

(c)      In the event of any conflict between the terms and provisions hereof and the terms and provisions of the Lease or the Assignment Agreement, the terms and provisions of the Lease and the Assignment Agreement shall be controlling.

(d)      Assignor and Assignee have entered into this Memorandum in order that third parties may have notice of the Assignment Agreement and the Lease. This Memorandum is not a complete summary of the Assignment Agreement or the Lease.

[Signature Pages Follow.]

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the respective dates in acknowledged below to be effective as of the day and year first above written.

**ASSIGNEE:**

LASALLE PARTNERS RA, LLC, an Indiana limited liability company

By: TMO IN Special Member LLC, its Managing Member

By: TMO IN JV-Michaels LLC, its Managing Member

By: \_\_\_\_\_  
Kunal Chothani, Vice President

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

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Kunal Cholthani, as Vice President of TMO IN JV Michaels LLC, as Managing Member of TMO IN Special Member LLC, as Managing Member of LaSalle Partners RA, LLC, an Indiana limited liability company, who executed the foregoing Memorandum of Assignment of Leasehold Interest for and on behalf of said entity.

WITNESS, my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2022.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Public

My County of Residence:

\_\_\_\_\_

\_\_\_\_\_

Printed

**ASSIGNOR:**

**THE LASALLE APARTMENTS, LLC,**  
an Indiana limited liability company

By: Executive Investments, LLC, an Indiana limited  
liability company, its managing member

By: \_\_\_\_\_  
Ronda Shrewsbury, President

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

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Ronda Shrewsbury, as President of Executive Investments, LLC, an Indiana limited liability company, as the managing member of The LaSalle Apartments, LLC, an Indiana limited liability company, who executed the foregoing Memorandum of Assignment of Leasehold Interest for and on behalf of said limited liability company.

WITNESS, my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 2022.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Public

My County of Residence:

\_\_\_\_\_

\_\_\_\_\_

Printed

This instrument was prepared by: Kenneth B. Chigges, Esq., Kuhl & Grant LLP, 429 N. Pennsylvania Street, Suite 210, Indianapolis, IN 46204.

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. - - Kenneth B. Chigges, Esq.

**AGREED, ACKNOWLEDGED AND CONSENTED TO BY:**

**COMMISSION:**

SOUTH BEND REDEVELOPMENT COMMISSION, governing body of the Department of Redevelopment of the City of South Bend, Indiana

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

Attest: \_\_\_\_\_  
Troy Warner, Secretary

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

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Marcia I. Jones, as the President, and Troy Warner, as the Secretary, of SOUTH BEND REDEVELOPMENT COMMISSION, governing body of the Department of Redevelopment of the City of South Bend, Indiana, who executed the foregoing Memorandum of Assignment of Leasehold Interest for and on behalf of said commission.

WITNESS, my hand and Notarial Seal this 26th day of May 2022.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_

Notary Public

My County of Residence:

\_\_\_\_\_

\_\_\_\_\_

Printed

This instrument was prepared by: Kenneth B. Chigges, Esq., Kuhl & Grant LLP, 429 N. Pennsylvania Street, Suite 210, Indianapolis, IN 46204.

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. - - Kenneth B. Chigges, Esq.



# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: 6/7/22  
FROM: Joseph Molnar  
SUBJECT: Transfer of RDC Property

\_\_\_\_\_ Pres/V-Pres

ATTEST: \_\_\_\_\_ Secretary

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

APPROVED       Not Approved

*SOUTH BEND REDEVELOPMENT COMMISSION*

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

PURPOSE OF REQUEST: To transfer the Oliver Plow Memorial from the RDC to BPW.

Specifics: RDC is the current owner of the Oliver Plow Memorial lot in the Oliver Plow Industrial Park. The lot is small and consists of only the memorial and remnant smokestack. There is a desire to eventually transfer the property to a non-profit for long term maintenance of the memorial. BPW is a more appropriate board to transfer the lot than the RDC, therefore staff requests this transfer to BPW.

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

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT

**RESOLUTION NO. 3553**

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION  
AUTHORIZING THE TRANSFER OF REAL PROPERTY TO  
THE SOUTH BEND BOARD OF PUBLIC WORKS**

WHEREAS, the South Bend Redevelopment Commission (the "Commission") is the governing body of the City of South Bend, Indiana (the "City"), Department of Redevelopment and exists, operates, and holds property pursuant to Indiana Code Section 36-7-14 (the "Act") and is authorized to transfer such property to another governmental entity pursuant to Indiana Code Section 36-1-11-8; and

WHEREAS, the South Bend Board of Public Works (the "Board") exists and operates pursuant to Indiana Code Section 36-4-9-5, and holds real property owned by the City pursuant to Indiana Code Section 36-9-6-3; and

WHEREAS, the Commission owns one parcel of real property in the River West Development Area of the City, commonly known as 910 Oliver Plow Ct., South Bend, Indiana, and more particularly described in Exhibit A (the "Property"); and

WHEREAS, the Board desires to obtain title to the Property pursuant to Ind. Code 36-1-11-8 for the purpose of donating the Property to an Indiana non-profit and tax exempt entity under Section 501(c)(3) of the Internal Revenue Code, for the purpose of preservation of the Oliver Memorial; and

WHEREAS, it is anticipated that the Board will adopt a resolution accepting the Commission's conveyance of the Property to the Board and appointing a representative to accept and record the deed received from the Commission.

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

1. The Commission hereby authorizes and approves the conveyance of the Property to the Board pursuant to I.C. 36-1-11-8 in the form of a quit claim deed.

2. The President and Secretary of the Board are authorized and instructed to execute and attest, respectively, the quit claim deed in substantially the form attached hereto as Exhibit B, conveying all of the Commission's right, title, and interest in the Property to the Board.

3. Upon acceptance of the conveyance by the Board, the Commission authorizes Joseph Molnar or Andrew Netter of the City's Department of Community Investment to act on behalf of the Commission in presenting the deed for recordation in the Office of the Recorder of St. Joseph County, Indiana and executing any other document necessary to affect the Commission's conveyance of the Property.

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

ADOPTED at a meeting of the South Bend Redevelopment Commission held on June 9,  
2022.

SOUTH BEND REDEVELOPMENT  
COMMISSION

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Marcia I. Jones, President

ATTEST:

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Troy Warner, Secretary



**EXHIBIT A**

**Description of Property**

**Tax ID No.** 018-3061-235104

**Parcel Key No.** 71-08-11-451-002.000-026

**Legal Description:** Lot B Oliver Plow Works 1st Major Sec 1 First Replat & CONT 0.34282 AC+/-  
NP# 771 02-02-12

**Commonly known as:** 910 Oliver Plow Ct., South Bend IN 46601

**EXHIBIT B**

**Form of Quit Claim Deed  
1 Parcel containing 910 Oliver Ct.**

HOLD FOR:  
City of South Bend  
227 W Jefferson Blvd., Ste 1400S  
South Bend, IN 46601

AUDITOR'S RECORD: \_\_\_\_\_  
TRANSFER NO. \_\_\_\_\_  
TAXING UNIT: \_\_\_\_\_  
PARCEL NO. 018-3061-235104

**QUIT CLAIM DEED**

THIS INDENTURE WITNESSETH THAT the Department of Redevelopment of the City of South Bend, for the use and benefit of its Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission (the "Grantor") CONVEYS AND QUIT CLAIMS TO the Civil City of South Bend, Indiana, acting by and through its Board of Public Works (the "Grantee"), for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the real estate located in St. Joseph County, Indiana:

**Tax ID No.** 018-3061-235104

**Parcel Key No.** 71-08-11-451-002.000-026

**Legal Description:** Lot B Oliver Plow Works 1st Major Sec 1 First Replat & CONT 0.34282 AC+/- NP# 771 02-02-12

**Commonly known as:** 910 Oliver Plow Ct., South Bend IN 46601

Grantor hereby conveys the Property subject to all covenants, restrictions, easements, and other matters of record.

The undersigned persons executing this Quit Claim Deed on behalf of the Grantor represent and certify that each has been fully empowered and authorized to execute this Quit Claim Deed and that all action necessary to complete this conveyance on Grantor's behalf has been duly taken.

[Signature page follows.]

Dated this 9 day of June, 2022  
GRANTOR:

South Bend Redevelopment Commission

SOUTH BEND REDEVELOPMENT  
COMMISSION

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

ATTEST:

\_\_\_\_\_  
Troy Warner, Secretary

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

Before me, the undersigned, a Notary Public for and in said County and State this 9 day of June 2022, personally appeared Marcia I. Jones and Troy Warner, known to me to be, respectively, as the President and Secretary of the South Bend Redevelopment Commission, the Grantor named herein, and acknowledged the execution of the foregoing Quit Claim Deed, being authorized by Resolution 3553 of the South Bend Redevelopment Commission so to do.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal.

Resident of St Joseph County, Indiana  
\_\_\_\_\_  
Mary Brazinsky, Notary Public  
Commission expires: 12-12-2024

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

Prepared by Danielle Campbell Weiss, Assistant City Attorney, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, Indiana 46601



# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: June 6, 2022  
FROM: Zach Hurst, PE  
SUBJECT: First Amendment to DA – The Bakery Group

\_\_\_\_\_ Pres/V-Pres

ATTEST: \_\_\_\_\_ Secretary

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

APPROVED       Not Approved

*SOUTH BEND REDEVELOPMENT COMMISSION*

Funding Source\* (circle one) River West; River East; South Side; Douglas Road; West Washington; RDC General

\*Funds are subject to the City Controller's determination of availability; if funds are unavailable, as solely determined by the City Controller, then the authorization of the expenditure of such funds shall be void and of no effect.

#### Purpose of Request:

This first amendment to the Development Agreement with The Bakery Group LLC (Ward Baking Co. Building) would allow the City's contractor to perform additional work under the City's existing contract, funded by the original Development Agreement dated August 12, 2021.

The Bakery Group LLC will pay the City \$15,393 as part of this amendment, allowing the City to execute a change order with C&S Masonry to continue work along the Portage Avenue façade.

INTERNAL USE ONLY: Project ID: PROJ 293 \_\_\_\_\_;

Total Amount – New Project Budget Appropriation \$ \_\_\_\_\_;

Total Amount – Existing Project Budget Change (increase or decrease) \$ \_\_\_\_\_;

Funding Limits: Engineering: \$ \_\_\_\_\_; Other Prof Serv Amt \$ \_\_\_\_\_;

Acquisition of Land/Bldg (circle one) Amt: \$ \_\_\_\_\_; Street Const Amt \$ \_\_\_\_\_;

Building Imp Amt \$ \_\_\_\_\_; Sewers Amt \$ \_\_\_\_\_; Other (specify) Amt \$ \_\_\_\_\_

## FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this "First Amendment") is made on June 9, 2022, by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (the "Commission"), and The Bakery Group LLC (the "Developer") (each a "Party," and collectively the "Parties").

### RECITALS

A. The Commission and the Developer entered into a Development Agreement dated effective August 12, 2021 (the "Development Agreement"), pertaining to certain local public improvements ("LPI") to renovate, rehabilitate, and activate the Developer Property, which is located in the River West Development Area (the "Project").

B. As set forth in the Development Agreement, the Commission agreed to expend no more than Three Hundred Thousand Dollars (\$300,000.00) of tax increment finance revenues to complete the LPI in support of Developer's Project (the "Funding Amount").

C. In accordance with Section 5.2(c) of the Development Agreement, bids were received for the LPI by the City of South Bend, Indiana Board of Public Works (the "Board"), as the Commission's agent, and the winning bidders were awarded contracts for various portions of the LPI, including the winning bidder for masonry work (the "Masonry Contractor").

D. In the course of performing the masonry work, additional concerns were noted related to a bay on the north side of the Developer Property, and the Developer's architect requested a quote from the Masonry Contractor for the additional brick and terra cotta repair work.

E. The change order to complete the additional repair work (the "Change Order") exceeds the remaining Funding Amount by Fifteen Thousand Three Hundred Ninety-Three Dollars (\$15,393.00) (the "Overage Amount").

F. To approve the Change Order, the Board requires an increase of the Funding Amount by the Overage Amount (the "Funding Amount Increase").

G. In consideration of the Commission's willingness to approve the Funding Amount Increase, and thereby permit the Board's approval of the Change Order, the Developer agrees to pay the Funding Amount Increase in the manner set forth in this First Amendment.

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

1. Section 1.3 shall be deleted in its entirety and replaced with the following:

**1.3 Funding Amount.** "Funding Amount" means an amount not to exceed Three Hundred Fifteen Thousand Three Hundred Ninety-Three Dollars (\$315,393.00) of tax

increment finance revenues to be used for paying the costs associated with the construction, equipping, inspection, and delivery of the Local Public Improvements.

2. The Developer hereby expressly reaffirms its obligation under Section 5.2(d) of the Development Agreement to pay all costs of completing the LPI, including any necessary change orders to the LPI Contract, in excess of the Funding Amount, as such amount is hereby amended. The Developer hereby acknowledges that the Developer or the Developer's designee may inspect the LPI upon completion and hereby expressly reaffirms its obligation under Section 5.2(d) of the Development Agreement to pay all costs of inspecting the LPI.

3. Notwithstanding any provision to the contrary, the Commission's obligations to complete the LPI will be satisfied in full upon the completion of the LPI Contract, irrespective of the final amount of the LPI Contract.

4. As an inducement for the Commission's increase of the Funding Amount under this First Amendment and as a further assurance to the Commission pursuant to Section 9.13 of the Development Agreement, prior to the Board's approval of the Change Order, the Developer shall submit funds to the Commission through staff of the Department of Community Investment in the amount of Fifteen Thousand Three Hundred Ninety-Three Dollars (\$15,393.00), which funds will be applied at an appropriate time to the LPI Contract in accordance with the Board's ordinary payment practices and applicable laws.

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

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

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

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

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

*Signature Page Follows*

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

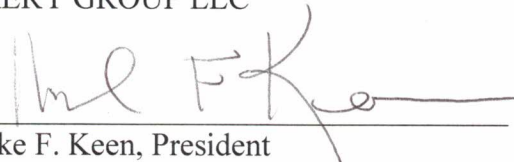
SOUTH BEND REDEVELOPMENT  
COMMISSION

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

ATTEST:

By: \_\_\_\_\_  
Troy D. Warner, Secretary

THE BAKERY GROUP LLC

By:  \_\_\_\_\_  
Mike F. Keen, President



## FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (this "First Amendment") is made on June 9, 2022, by and between the South Bend Redevelopment Commission, the governing body of the City of South Bend Department of Redevelopment (the "Commission"), and The Bakery Group LLC (the "Developer") (each a "Party," and collectively the "Parties").

### RECITALS

A. The Commission and the Developer entered into a Development Agreement dated effective August 12, 2021 (the "Development Agreement"), pertaining to certain local public improvements ("LPI") to renovate, rehabilitate, and activate the Developer Property, which is located in the River West Development Area (the "Project").

B. As set forth in the Development Agreement, the Commission agreed to expend no more than Three Hundred Thousand Dollars (\$300,000.00) of tax increment finance revenues to complete the LPI in support of Developer's Project (the "Funding Amount").

C. In accordance with Section 5.2(c) of the Development Agreement, bids were received for the LPI by the City of South Bend, Indiana Board of Public Works (the "Board"), as the Commission's agent, and the winning bidders were awarded contracts for various portions of the LPI, including the winning bidder for masonry work (the "Masonry Contractor").

D. In the course of performing the masonry work, additional concerns were noted related to a bay on the north side of the Developer Property, and the Developer's architect requested a quote from the Masonry Contractor for the additional brick and terra cotta repair work.

E. The change order to complete the additional repair work (the "Change Order") exceeds the remaining Funding Amount by Fifteen Thousand Three Hundred Ninety-Three Dollars (\$15,393.00) (the "Overage Amount").

F. To approve the Change Order, the Board requires an increase of the Funding Amount by the Overage Amount (the "Funding Amount Increase").

G. In consideration of the Commission's willingness to approve the Funding Amount Increase, and thereby permit the Board's approval of the Change Order, the Developer agrees to pay the Funding Amount Increase in the manner set forth in this First Amendment.

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

1. Section 1.3 shall be deleted in its entirety and replaced with the following:

**1.3 Funding Amount.** "Funding Amount" means an amount not to exceed Three Hundred Fifteen Thousand Three Hundred Ninety-Three Dollars (\$315,393.00) of tax

increment finance revenues to be used for paying the costs associated with the construction, equipping, inspection, and delivery of the Local Public Improvements.

2. The Developer hereby expressly reaffirms its obligation under Section 5.2(d) of the Development Agreement to pay all costs of completing the LPI, including any necessary change orders to the LPI Contract, in excess of the Funding Amount, as such amount is hereby amended. The Developer hereby acknowledges that the Developer or the Developer's designee may inspect the LPI upon completion and hereby expressly reaffirms its obligation under Section 5.2(d) of the Development Agreement to pay all costs of inspecting the LPI.

3. Notwithstanding any provision to the contrary, the Commission's obligations to complete the LPI will be satisfied in full upon the completion of the LPI Contract, irrespective of the final amount of the LPI Contract.

4. As an inducement for the Commission's increase of the Funding Amount under this First Amendment and as a further assurance to the Commission pursuant to Section 9.13 of the Development Agreement, prior to the Board's approval of the Change Order, the Developer shall submit funds to the Commission through staff of the Department of Community Investment in the amount of Fifteen Thousand Three Hundred Ninety-Three Dollars (\$15,393.00), which funds will be applied at an appropriate time to the LPI Contract in accordance with the Board's ordinary payment practices and applicable laws.

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

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

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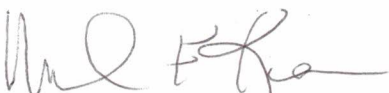
SOUTH BEND REDEVELOPMENT  
COMMISSION

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

ATTEST:

By: \_\_\_\_\_  
Troy D. Warner, Secretary

THE BAKERY GROUP LLC

By:  \_\_\_\_\_  
Mike F. Keen, President



# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: 6/7/22  
FROM: Joseph Molnar  
SUBJECT: Sale of former Firehouse #9

\_\_\_\_\_ Pres/V-Pres

ATTEST: \_\_\_\_\_ Secretary

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

APPROVED       Not Approved

*SOUTH BEND REDEVELOPMENT COMMISSION*

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

PURPOSE OF REQUEST: Sale of former Firehouse #9 for the purpose of restoration and redevelopment.

Specifics: In 2019, the new Firehouse #9 was opened on Mishawawka Ave. Since then, the former Firehouse #9 at 2520 Mishawaka Ave has sat vacant. In the fall of 2020, the property went through the disposition process and the Commission rejected all bids submitted.

Staff was approached by James Lyden who was interested in rehabbing the former fire station and returning it to an active use in the community. The submitted Real Estate Purchase Agreement commits Mr. Lyden to the following:

- Sale price of \$40,000.
- Complete construction within 24 months.
- Invest a minimum of \$250,000 into the property.
- Stabilize and renovate the Property to accommodate commercial/office tenant spaces.
- In the event the property improvements are not completed, the Commission shall have

the right to reenter and take possession of the property.

INTERNAL USE ONLY: Project Code: \_\_\_\_\_;

Total Amount new/change (inc/dec) in budget: \_\_\_\_\_; Break down:

Costs: Engineering Amt: \_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;

Acquisition of Land/Bldg (circle one) Amt: \_\_\_\_\_; Street Const Amt \_\_\_\_\_;

Building Imp Amt \_\_\_\_\_; Sewers Amt \_\_\_\_\_; Other (specify) Amt: \_\_\_\_\_

\_\_\_\_\_. Going to BPW for Contracting? Y/N

Is this item ready to encumber now? \_\_\_\_ Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

## **REAL ESTATE PURCHASE AGREEMENT**

This Real Estate Purchase Agreement (this “Agreement”) is made on June 9, 2022 (the “Contract Date”), by and between the City of South Bend, Indiana, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (“Seller”) and Connemara Holdings, Inc., a Indiana corporation with its registered office at 424 S Michigan Street, Unit 913, South Bend, IN 46624 (“Buyer”) (each a “Party” and together the “Parties”).

### RECITALS

A. Seller exists and operates pursuant to the Redevelopment of Cities and Towns Act of 1953, as amended, being Ind. Code 36-7-14 (the “Act”).

B. In furtherance of its purposes under the Act, Seller owns certain real property located in South Bend, Indiana (the “City”), and more particularly described in attached **Exhibit A** (the “Property”).

C. Pursuant to the Act, Seller adopted its Resolution No. 3525 on October 8, 2020, whereby Seller established an offering price of Sixty-Seven Thousand Five Hundred Dollars (\$67,500.00) for the Property.

D. Pursuant to the Act, on October 8, 2020 Seller authorized the publication, on October 16, 2020, and October 23, 2020, respectively, of a notice of its intent to sell the Property and its desire to receive bids for said Property on or before November 12, 2020, at 9:00A.M.

E. As of November 12, 2020, at 9:00A.M., Seller had received one bid for the Property. On May 27, 2021, Seller adopted its Resolution No. 3534 rejecting the bid, and, therefore, having satisfied the conditions stated in Section 22 of the Act, Seller now desires to sell the Property to Buyer on the terms stated in this Agreement.

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

#### **1. RECITALS**

The recitals above are hereby incorporated into this Agreement by reference.

#### **2. OFFER AND ACCEPTANCE**

A copy of this Agreement, signed by Buyer, constitutes Buyer’s offer to purchase the Property on the terms stated in this Agreement and shall be delivered to Seller, in care of the following representative (“Seller’s Representative”):

TO SELLER: Caleb Bauer  
Acting Executive Director  
Department of Community Investment  
City of South Bend  
1400 S. County-City Building  
227 W. Jefferson Blvd.  
South Bend, Indiana 46601

WITH COPY TO: South Bend Legal Department  
Attn: Corporation Counsel  
City of South Bend  
1200 S. County-City Building  
227 W. Jefferson Blvd.  
South Bend, Indiana 46601

This offer shall expire thirty (30) days after delivery unless accepted by Seller. To accept Buyer's offer, Seller shall return a copy of this Agreement, counter-signed by Seller in accordance with applicable laws, to the following ("Buyer's Representative"):

TO BUYER: Connemara Holdings, Inc.  
Attn. James Lyden, President/Owner  
424 S. Michigan Street, Unit 913  
South Bend, Indiana 46624

WITH COPY TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**3. PURCHASE PRICE AND EARNEST MONEY DEPOSIT**

A. Purchase Price. The purchase price for the Property shall be Forty Thousand Dollars (\$40,000.00) (the "Purchase Price"), payable by Buyer to Seller in cash at the closing described in Section 11 below (the "Closing," the date of which is the "Closing Date").

B. Earnest Money Deposit. Within five (5) business days after the Contract Date, Buyer will deliver to Seller the sum of Two Thousand Dollars (\$2,000.00), which Seller will hold as an earnest money deposit (the "Earnest Money Deposit"). Seller will be responsible for disposing of the Earnest Money Deposit in accordance with the terms of this Agreement. The Earnest Money Deposit shall be credited against the Purchase Price at the Closing or, if no Closing occurs, refunded or forfeited as provided below. If the Earnest Money Deposit is not received within five (5) days of the Contract Date, this Agreement shall automatically terminate.

C. Termination During Due Diligence Period. If Buyer exercises its right to terminate this Agreement by written notice to Seller in accordance with Section 4 below, the Earnest Money

Deposit shall be refunded to Buyer. If Buyer fails to exercise its right to terminate this Agreement by written notice to Seller within the Due Diligence Period, then the Earnest Money Deposit shall become non-refundable.

D. Liquidated Damages. If Seller complies with its obligations hereunder and Buyer, not having terminated this Agreement during the Due Diligence Period in accordance with Section 4 below, fails to purchase the Property on or before the Closing Date, the Earnest Money Deposit shall be forfeited by Buyer and retained by Seller as liquidated damages in lieu of any other damages.

#### **4. BUYER'S DUE DILIGENCE**

A. Investigation. Buyer and Seller have made and entered into this Agreement based on their mutual understanding that Buyer intends to stabilize and renovate the Property to accommodate commercial/office tenant spaces as well as interior and exterior spaces for the community (the "Buyer's Use"). Seller acknowledges that Buyer's determination whether Buyer's Use is feasible requires investigation into various matters (Buyer's "Due Diligence"). Therefore, Buyer's obligation to complete the purchase of the Property is conditioned upon the satisfactory completion, in Buyer's discretion, of Buyer's Due Diligence, including, without limitation, Buyer's examination, at Buyer's sole expense, of zoning and land use matters, environmental matters, real property title matters, and the like, as applicable.

B. Due Diligence Period. Buyer shall have a period of sixty (60) days following the Contract Date to complete its examination of the Property in accordance with this Section 4 (the "Due Diligence Period").

C. Authorizations During Due Diligence Period. During the Due Diligence Period, Seller authorizes Buyer, upon Buyer providing Seller with evidence that Buyer has general liability insurance reasonably acceptable to Seller, in the amount of at least One Million Dollars (\$1,000,000), naming Seller as an additional insured and covering the activities, acts, and omissions of Buyer and its representatives at the Property, to

(i) enter upon the Property or to cause agents to enter upon the Property for purposes of examination; provided, that Buyer may not take any action upon the Property which reduces the value thereof and Buyer may not conduct any invasive testing at the Property without Seller's express prior written consent; further provided, that if the transaction contemplated herein is not consummated, Buyer shall promptly restore the Property to its condition prior to entry, and agrees to defend, indemnify and hold Seller harmless, before and after the Closing Date whether or not a closing occurs and regardless of any cancellations or termination of this Agreement, from any liability to any third party, loss or expense incurred by Seller, including without limitation, reasonable attorney fees and costs arising from acts or omissions of Buyer or Buyer's agents or representatives; and

(ii) file any application with any federal, state, county, municipal or regional agency relating to the Property for the purpose of obtaining any approval necessary for Buyer's anticipated use of the Property. If Seller's written consent to or signature upon any such application is required by any such agency for consideration or acceptance of any

such application Buyer may request from Seller such consent or signature, which Seller shall not unreasonably withhold. Notwithstanding the foregoing, any zoning commitments or other commitments that would further restrict the future use or development of the Property, beyond the restrictions in place as a result of the current zoning of the Property, shall be subject to Seller's prior review and written approval.

D. Environmental Site Assessment. Buyer may, at Buyer's sole expense, obtain a Phase I environmental site assessment of the Property pursuant to and limited by the authorizations stated in this Section 4.

E. Termination of Agreement. If at any time within the Due Diligence Period Buyer determines, in its sole discretion, not to proceed with the purchase of the Property, Buyer may terminate this Agreement by written notice to Seller's Representative, and Buyer shall be entitled to a full refund of the Earnest Money Deposit.

## **5. SELLER'S DOCUMENTS**

Upon Buyer's request, Seller will provide Buyer a copy of all known environmental inspection, engineering, title, and survey reports and documents in Seller's possession relating to the Property. In the event the Closing does not occur, Buyer will immediately return all such reports and documents to Seller's Representative with or without a written request by Seller.

## **6. PRESERVATION OF TITLE**

After the Contract Date, Seller shall not take any action or allow any action to be taken by others to cause the Property to become subject to any interests, liens, restrictions, easements, covenants, reservations, or other matters affecting Seller's title (such matters are referred to as "Encumbrances"). Seller acknowledges that Buyer intends to obtain, at Buyer's sole expense, and to rely upon a commitment for title insurance on the Property (the "Title Commitment") and a survey of the Property (the "Survey") identifying all Encumbrances as of the Contract Date. The Property shall be conveyed to Buyer free of any Encumbrances other than Permitted Encumbrances (as defined in Section 9 below).

## **7. HISTORIC LANDMARK STATUS**

Buyer acknowledges that the Property was designated an historic landmark per Ordinance No. 9304-02 passed by the South Bend Common Council on February 11, 2002. As such, the Property is subject to the Historic Preservation Ordinance as codified in the Municipal Code of the City of South Bend, Indiana and the related standards and guidelines for stand-alone historic landmarks.

## **8. TITLE COMMITMENT AND POLICY REQUIREMENTS**

Buyer shall obtain the Title Commitment for an owner's policy of title insurance issued by a title company selected by Buyer and reasonably acceptable to Seller (the "Title Company") within twenty (20) days after the Contract Date. The Title Commitment shall (i) agree to insure good, marketable, and indefeasible fee simple title to the Property (including public road access) in the



name of the Buyer for the full amount of the Purchase Price upon delivery and recordation of a special warranty deed (the “Deed”) from the Seller to the Buyer, and (ii) provide for issuance of a final ALTA owner’s title insurance policy, with any endorsements requested by Buyer, subject to the Permitted Encumbrances. Regardless of whether this transaction closes, Buyer shall be responsible for all of the Title Company’s title search charges and all costs of the Title Commitment and owner’s policy.

## 9. REVIEW OF TITLE COMMITMENT AND SURVEY

Within twenty (20) days after Buyer’s receipt of the Title Commitment, Buyer shall give Seller written notice of any objections to the Title Commitment. Within twenty (20) days after Buyer’s receipt of the Survey, Buyer shall give Seller written notice of any objections to the Survey. Any exceptions identified in the Title Commitment or Survey to which written notice of objection is not given within such period shall be a “Permitted Encumbrance.” If the Seller is unable or unwilling to correct the Buyer’s title and survey objections within the Due Diligence Period, Buyer may terminate this Agreement by written notice to Seller prior to expiration of the Due Diligence Period, in which case the Earnest Money Deposit shall be refunded to Buyer. If Buyer fails to so terminate this Agreement, then such objections shall constitute “Permitted Encumbrances” as of the expiration of the Due Diligence Period, and Buyer shall acquire the Property without any effect being given to such title and survey objections.

## 10. NOTICES

All notices required or allowed by this Agreement, before or after Closing, shall be delivered in person or by certified mail, return receipt requested, postage prepaid, addressed to Seller in care of Seller’s Representative (with a copy to South Bend Legal Department, 1200 S. County-City Building, 227 W. Jefferson Blvd., South Bend, IN 46601, Attn: Corporation Counsel), or to Buyer in care of Buyer’s Representative at their respective addresses stated in Section 2 above. Either Party may, by written notice, modify its address or representative for future notices.

## 11. CLOSING

A. Timing of Closing. Unless this Agreement is earlier terminated, the Closing shall be held at the office of the Title Company, and the Closing Date shall be a mutually agreeable date not later than thirty (30) days after the end of the Due Diligence Period.

B. Closing Procedure.

(i) At Closing, Buyer shall deliver the Purchase Price to Seller, conditioned on Seller’s delivery of the Deed, in the form attached hereto as **Exhibit B**, conveying the Property to Buyer, free and clear of all liens, encumbrances, title defects, and exceptions other than Permitted Encumbrances, and the Title Company’s delivery of the marked-up copy of the Title Commitment (or pro forma policy) to Buyer in accordance with Section 8 above.

(ii) Possession of the Property shall be delivered to the Buyer at Closing, in the same condition as it existed on the Contract Date, ordinary wear and tear and casualty excepted.

C. Closing Costs. Buyer shall pay all of the Title Company's closing and/or document preparation fees and all recordation costs associated with the transaction contemplated in this Agreement.

## 12. BUYER'S POST-CLOSING DEVELOPMENT OBLIGATIONS

A. Property Improvements; Proof of Investment. Within Twenty-Four (24) months after the Closing Date, the Buyer will expend an amount not less than Two Hundred and Fifty Thousand Dollars (\$250,000.00) on improvements to the site, as well as the cost of equipment, needed to redevelop the Property for the uses set forth herein ("Property Improvements"). Promptly upon completing the Property Improvements, Buyer will submit to Seller satisfactory records, as determined in Seller's sole discretion, proving the above required expenditures and will permit Seller (or its designee) to inspect the Property to ensure that Buyer's Property Improvements were completed satisfactorily.

B. Post-Closing Buyer Commitments. The Buyer shall:

(i) Commence construction of the project within 12 months of the Closing Date;

(ii) Complete construction of the project within 24 months of the Closing Date;

(iii) Stabilize and renovate the Property to accommodate commercial/office tenant spaces as well as interior and exterior spaces for the community.

(iv) Employ a minimum total of 5 full-time employees at the Property;

(v) In its development of the Property, Buyer shall comply with all applicable federal, state, and local laws, including, but not limited to, the applicable requirements of the City of South Bend Zoning Ordinance, including variances as necessary. Buyer shall further complete all exterior improvements in accordance with any and all necessary approvals and procedures required by the Historic Preservation Commission under Chapter 21, Article 5 of the South Bend Municipal Code.

(vi) Provide the design, plans, and specifications for Property Improvements consistent with City standards for the review and comment by the City's Planning Director or his designee, who, in his sole discretion, may request revisions or amendments to be made to the same. Acceptance of the design and plans by the Planning Director or his designee prior to construction shall be a prerequisite for the issuance of a Certificate of Completion.

C. Certificate of Completion. Promptly after Buyer completes the Property Improvements and satisfactorily proves the same in accordance with the terms of Section 12.A. above, as well as compliance with Section 12.B. above, Seller will issue to Buyer a certificate

acknowledging such completion and releasing Seller's reversionary interest in the Property (the "Certificate of Completion"). The Parties agree to record the Certificate of Completion immediately upon issuance, and Buyer will pay the costs of recordation.

D. Remedies Upon Default. In the event Buyer fails to complete the Property Improvements or to comply with Section 12.B., above, or satisfactorily to prove such performance, in accordance with Section 12.A above, then, in addition to pursuing any other remedies available at law or in equity, Seller shall have the right to:

(i) re-enter and take possession of the Property and to terminate and revest in Seller the estate conveyed to Buyer at Closing and all of Buyer's rights and interests in the Property without offset or compensation for the value of any improvements made by Buyer; or, alternatively,

(ii) recover from Buyer a cash payment in an amount equal to the current appraised value of the Property, as determined by two (2) independent appraisers, and the cost of such appraisers' fees, due and payable from Buyer to Seller immediately upon Seller's written demand.

The Parties agree that Seller's conveyance of the Property to Buyer at Closing will be made on the condition subsequent set forth in the foregoing sentence and the terms of this Section 12 will be referenced in the deed. Further, the Parties agree that Seller's reversionary interest in the Property will be subordinate to the first-priority mortgage encumbering the Property, if any, arising out of Buyer's contemporaneous financing of the redevelopment of the Property, provided that Buyer notifies Seller in advance of the execution or recording of such first-priority mortgage.

### **13. SELLER'S POST-CLOSING OBLIGATIONS**

On and after the Closing Date, the Seller commits to working with the Buyer to finalize plans, designs, and specifications for Property Improvements to the satisfaction of the City departments, consistent with City standards.

### **14. ACCEPTANCE OF PROPERTY AS-IS**

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

### **15. TAXES**

Buyer, and Buyer's successors and assigns, shall be liable for any and all real property taxes assessed and levied against the Property with respect to the year in which the Closing takes place and for all subsequent years. Seller shall have no liability for any real property taxes associated with the Property, and nothing in this Agreement shall be construed to require the proration or other apportionment of real property taxes resulting in Seller's liability therefor.

**16. REMEDIES**

Upon any default in or breach of this Agreement by either Party, the defaulting Party will proceed immediately to cure or remedy such default within thirty (30) days after receipt of written notice of such default or breach from the non-defaulting Party, or, if the nature of the default or breach is such that it cannot be cured within thirty (30) days, the defaulting Party will diligently pursue and prosecute to completion an appropriate cure within a reasonable time. In the event of a default or breach that remains uncured for longer than the period stated in the foregoing sentence, the non-defaulting Party may terminate this Agreement, commence legal proceedings, including an action for specific performance, or pursue any other remedy available at law or in equity. All the Parties' respective rights and remedies concerning this Agreement and the Property are cumulative.

**17. COMMISSIONS**

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

**18. INDEMNITY**

The Parties agree to indemnify, save harmless, and defend each other from and against any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense and settlement), which either party may subsequently incur, become responsible for, or pay out as a result of a breach by the other party.

**19. INTERPRETATION; APPLICABLE LAW**

As both Parties have participated fully and equally in the negotiation and preparation of this Agreement, this Agreement shall not be more strictly construed, nor shall any ambiguities in this Agreement be presumptively resolved, against either Party. This Agreement shall be interpreted and enforced according to the laws of the State of Indiana.

**20. DISPUTE RESOLUTION; WAIVER OF JURY TRIAL**

Any action to enforce the terms or conditions of this Agreement or otherwise concerning a dispute under this Agreement will be commenced in the courts of St. Joseph County, Indiana, unless the Parties mutually agree to an alternative method of dispute resolution. The Parties acknowledge that disputes arising under this Agreement are likely to be complex and they desire to streamline and minimize the cost of resolving such disputes. In any legal proceeding, each Party irrevocably waives the right to trial by jury in any action, counterclaim, dispute, or proceeding based upon, or related to, the subject matter of this Agreement. This waiver applies to all claims against all parties to such actions and proceedings. This waiver is knowingly, intentionally, and voluntarily made by both Parties.

**21. WAIVER**

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

**22. SEVERABILITY**

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

**23. FURTHER ASSURANCES**

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

**24. ENTIRE AGREEMENT**

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

**25. ASSIGNMENT**

Buyer and Seller agree that this Agreement or any of Buyer's rights hereunder may not be assigned by Buyer, in whole or in part, without the prior written consent of Seller. In the event Buyer wishes to obtain Seller's consent regarding a proposed assignment of this Agreement, Buyer shall provide any and all information reasonably demanded by Seller in connection with the proposed assignment and/or the proposed assignee.

**26. BINDING EFFECT; COUNTERPARTS; SIGNATURES**

All the terms and conditions of this Agreement will be effective and binding upon the Parties and their successors and assigns at the time the Agreement is fully signed and delivered by Buyer and Seller. This Agreement may be separately executed in counterparts by Buyer and Seller, and the same, when taken together, will be regarded as one original Agreement. Electronically transmitted signatures will be regarded as original signatures.

**27. AUTHORITY TO EXECUTE; EXISTENCE**

The undersigned persons executing and delivering this Agreement on behalf of the respective Parties represent and certify that they are the duly authorized representatives of each and have been

fully empowered to execute and deliver this Agreement and that all necessary corporate action has been taken and done. Further, the undersigned representative of Buyer represents and warrants that Buyer is duly organized, validly existing, and in good standing under the laws of the State of Indiana.

**28.     TIME**

Time is of the essence of this Agreement.

**[Signature page follows.]**

IN WITNESS WHEREOF, the Parties hereby execute this Real Estate Purchase Agreement to be effective as of the Contract Date stated above.

BUYER:


Connemara Holdings, Inc.  
an Indiana corporation

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

Printed: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

  
James P. Lyden  
President  
6/6/2022

SELLER:

South Bend Redevelopment Commission

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

ATTEST:

\_\_\_\_\_  
Troy Warner, Secretary

**EXHIBIT A**

**Description of Property**

**Tax ID No.** 018-6034-1071

**Parcel Key No.** 71-09-17-104-005.000-026

**Legal Description:** Lot 120 & 121 W 79' Op River Pk Known As Station # 9

**Commonly known as:** 2520 Mishawaka Ave, South Bend, IN 46615

**Tax ID No.** 018-6034-1074

**Parcel Key No.** 71-09-17-104-017.000-026

**Legal Description:** 12 Ft N & S X 79 Ft E & W Sw Cor Lot 121 Op River Park

**Commonly known as:** 2520 Mishawaka Ave, South Bend, IN 46615



**EXHIBIT B**

**Form of Special Warranty Deed**

**AUDITOR'S RECORD**

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

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

DATE \_\_\_\_\_

KEY NO. 018-6034-1071

018-6034-1074

**SPECIAL WARRANTY DEED**

THIS INDENTURE WITNESSETH, that the City of South Bend, Department of Redevelopment, by and through its governing body, the South Bend Redevelopment Commission, 1400 S. County-City Building, 227 W. Jefferson Boulevard, South Bend, Indiana (the "Grantor")

CONVEYS AND SPECIALLY WARRANTS to Connemara Holdings, Inc., Inc. an Indiana corporation with its registered office at 424 S Michigan Street, Unit 913, South Bend, IN 46624 (the "Grantee"), for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following real estate located in St. Joseph County, Indiana (the "Property"):

**Tax ID No. 018-6034-1071**

**Parcel Key No. 71-09-17-104-005.000-026**

**Legal Description: Lot 120 & 121 W 79' Op River Pk Known As Station # 9**

**Commonly known as: 2520 Mishawaka Ave, South Bend, IN 46615**

**Tax ID No. 018-6034-1074**

**Parcel Key No. 71-09-17-104-017.000-026**

**Legal Description: 12 Ft N & S X 79 Ft E & W Sw Cor Lot 121 Op River Park**

**Commonly known as: 2520 Mishawaka Ave, South Bend, IN 46615**

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

The Grantor hereby conveys the Property to the Grantee free and clear of all leases or licenses; subject to real property taxes and assessments; subject to all easements, covenants, conditions, restrictions, and other matters of record; subject to rights of way for roads and such matters as would be disclosed by an accurate survey and inspection of the Property; subject to all applicable building codes and zoning ordinances; and subject to all provisions and objectives contained in the Commission's 2019 River East Development Area Plan, as thereafter amended from time to time, and any design review guidelines associated therewith.

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

Pursuant to Section 12 of the Purchase Agreement, the Grantor conveys the Property to the Grantee by this deed subject to certain conditions subsequent. In the event the Grantee fails to perform the Property Improvements, or satisfactorily to prove such performance, in accordance with Section 12 of the Purchase Agreement, then the Grantor shall have the right to re-enter and take possession of the Property and to terminate and revest in the Grantor the estate conveyed to the Grantee by this deed and all of the Grantee's rights and interests in the Property without offset or compensation for the value of any improvements to the Property made by the Grantee. The recordation of a Certificate of Completion in accordance with Section 12 of the Purchase Agreement will forever release and discharge the Grantor's reversionary interest stated in this paragraph.

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

**[SIGNATURE PAGE FOLLOWS]**

GRANTOR:

SOUTH BEND  
REDEVELOPMENT COMMISSION

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

ATTEST:

\_\_\_\_\_  
Troy Warner, Secretary

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

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Marcia I. Jones and Troy Warner, known to me to be the President and Secretary, respectively, of the South Bend Redevelopment Commission and acknowledged the execution of the foregoing Special Warranty Deed being authorized so to do.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the \_\_\_\_ day of \_\_\_\_\_, 2022.

My Commission Expires:

\_\_\_\_\_

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

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

This instrument was prepared by Danielle Campbell Weiss, Assistant City Attorney, City of South Bend, Indiana, Department of Law, 227 W. Jefferson Boulevard, Suite 1200S, South Bend, IN 46601. .



# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: June 3, 2022  
FROM: Zach Hurst, PE  
SUBJECT: Budget Request – Fire Station 8 Schematic Design

\_\_\_\_\_ Pres/V-Pres

ATTEST: \_\_\_\_\_ Secretary

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

APPROVED  Not Approved

*SOUTH BEND REDEVELOPMENT COMMISSION*

Funding Source\* (circle one) River West; River East; South Side; Douglas Road; West Washington; RDC General

\*Funds are subject to the City Controller's determination of availability; if funds are unavailable, as solely determined by the City Controller, then the authorization of the expenditure of such funds shall be void and of no effect.

#### Purpose of Request:

This budget request is for \$62,341 to cover programming and schematic design for the replacement of Fire Station 8. The existing station is located at the intersection of Twyckenham Drive, York Road and Altgeld Street. The station was built in the 1950s, for male firefighters only, with limited space.

The programming phase (\$15,806) will cover meetings with Fire Department personnel to help determine space requirements for the new station, and the schematic design phase (\$46,535) will produce a site plan, floor plan, and estimated construction cost estimate.

Future budget requests will be made to address final design and construction of the new fire station.

INTERNAL USE ONLY: Project ID: PROJ \_\_\_\_\_;

Total Amount – New Project Budget Appropriation \$ \_\_\_\_\_;

Total Amount – Existing Project Budget Change (increase or decrease) \$ \_\_\_\_\_;

Funding Limits: Engineering: \$ \_\_\_\_\_; Other Prof Serv Amt \$ \_\_\_\_\_;

Acquisition of Land/Bldg (circle one) Amt: \$ \_\_\_\_\_; Street Const Amt \$ \_\_\_\_\_;

Building Imp Amt \$ \_\_\_\_\_; Sewers Amt \$ \_\_\_\_\_; Other (specify) Amt \$ \_\_\_\_\_

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT

## ***PROFESSIONAL SERVICES AGREEMENT***

**ATTN:** Chief Carl Buchanon  
South Bend Fire Department  
**CLIENT:** City of South Bend, IN  
1222 South Michigan  
South Bend, IN 46601

**PROJECT:** South Bend Fire Station #8  
**PROJECT LOCATION:** South Bend, IN  
**DATE OF AGREEMENT:** May 11, 2022

### **PROJECT DESCRIPTION**

It is our pleasure to present to you a proposal for initial design services for a new South Bend Fire Station #8 located at the corner of Twyckenham Dr and Altgeld St. This proposal includes programming, schematic building & site design, and cost estimation.

### **SCOPE OF SERVICES**

#### **Design Services**

Design services shall consist of two periods: Programming and Schematic Design. Each period will end with select deliverables in addition to a follow-up meeting.

#### *Programming*

- Review current planning documents with the City/Department
- Conduct interviews with the Fire Department and station staff to identify current and future needs of the station
  - Working with you to develop and deliver an efficient and safe environment for your first responders is our highest goal. We will work with the fire department representatives to develop a comprehensive building and site program that defines your current and future needs. We expect to meet several times to develop this program with representatives from the South Bend Fire Department, the City of South Bend, and any other necessary stakeholders. Utilizing a programming matrix developed on past fire station projects, we can efficiently determine existing and future needs and use this in later cost estimating exercises.
- **Deliverable:** Written Program of Requirements for the new station, including interior and exterior space requirements, and site requirements, incorporating current NFPA standards

#### *Schematic Building & Site Design*

- Prepare a schematic design package
  - The schematic design package will be the result of collaboration between the City, Fire Department, and the Shive-Hattery team, and will include a conceptual site plan, floor plans, and elevations built upon programming and site selection criteria established in the programming phase. We will develop detailed floor plans, MEP system narratives,



- and initial site layouts. We will review these plans with relevant stakeholders and revise the design as necessary in preparation for moving into future phases of the project.
- We will develop a site model in computer aided design (CAD) software that displays site criteria from comprehensive site research (i.e., wetlands, parcel boundaries, contours, floodplain, environmental conditions/plumes, and easements). By performing this exercise the overall building and site program can be situated properly on the site.
- We will conclude this phase with a presentation of the approved schematic design, construction costs, and anticipated project schedule to relevant stakeholders.
- Prepare room data sheets for each space identified in the Space Program.
  - These data sheets will give a detailed description of the finishes, fixtures and fittings, and mechanical and electrical requirements that will be required for each room. These will help the design team engage with users of the spaces to ensure that they fully understand each room's specific requirements and to ensure the design intent aligns with the needs of the City and Department.
- Provide estimated total construction project cost estimate
  - Once a clear and concise schematic design package has been completed and approved, we will work with our consultants to develop a preliminary cost estimate to help you determine an overall project budget for moving the project forward
- **Deliverables:** Schematic design site plan, floor plan, and elevations; Room data sheets; estimated total construction cost estimate.

### **CLIENT RESPONSIBILITIES**

Shive-Hattery is not a municipal advisor as defined by the Dodd-Frank Act and as such does not offer municipal advisory services including advice regarding any municipal financial products or securities. Any advice or recommendations provided to the client is intended as architectural/engineering services and should not be interpreted as advice regarding municipal financial products or services. The client understands they are responsible to retain the services of a registered municipal advisor for any advice it seeks regarding municipal financial products and securities.

It will be your responsibility to provide the following:

1. Identify a Project Representative with full authority to act on behalf of the Client with respect to this project. The Client Project Representative shall render decisions in a timely manner in order to avoid delays of Shive-Hattery's services.
2. Legal, accounting, and insurance counseling services or other consultants, including geotechnical, or vendors that may be necessary. The Client shall coordinate these services with those services provided by Shive-Hattery.
3. Provide to Shive-Hattery any available drawings, survey plats, testing data and reports related to the project, either hard copy or electronic media. Electronic media is preferred.
4. Unless specifically included in the Scope of Services to be provided by Shive-Hattery, the Client shall furnish tests, inspections, permits and reports required by law, regulation or code including but not limited to hazardous materials, structural, mechanical, chemical, air pollution and water pollution tests.
5. Provide Shive-Hattery personnel unlimited access to the site as required.

### **SCHEDULE**

Working with the initial programming information gathered, we are prepared to begin immediately.

- We will meet with you to develop a mutually agreed-upon schedule for the Scope of Services.

**COMPENSATION**

The fees below represent the time and effort required to complete the scope of work outlined in this proposal.

Description	Fee Type	Fee	Estimated Expenses	Total
Programming	Fixed Fee	\$15,806	Included	\$15,806
Schematic Design Package	Fixed Fee	\$46,535	Included	\$46,535
<b>TOTAL</b>		<b>\$62,341</b>	<b>Included</b>	<b>\$62,341</b>

Fee Types:

- Fixed Fee - We will provide the Scope of Services for the fee amounts listed above.

Expenses:

- Included - For Fixed Fee Type, expenses have been included in the Fee amount. For Hourly Fee Types, expenses will be reimbursed in accordance with our Reimbursable Expense Fee Schedule in effect at the time that the expense is incurred.

The terms of this proposal are valid for 30 days from the date of this proposal.

**ADDITIONAL SERVICES**

Unless specifically stated in the Scope of Services, any resilient design related services including areas of resistance, reliability and redundancy (i.e. flood protection, storm/tornado shelter, emergency generators, utility backup, etc.) are not included in this proposal.

The following are additional services you may require for your project. We can provide these services, but they are not part of this proposal at this time.

- LEED Certification
- Photo-realistic renderings

**OTHER TERMS**

**STANDARD TERMS AND CONDITIONS**

Copyright © Shive-Hattery April 2022

**PARTIES**

"S-H" or "Shive-Hattery" shall mean Shive-Hattery, Inc. or Shive-Hattery A/E Services, P.C. or Studio951 a Division of Shive-Hattery or EPOCH a Division of Shive-Hattery or Shive-Hattery New Jersey, Inc. or WSM, a Division of Shive-Hattery, Inc. and "CLIENT" shall mean the person or entity executing this Agreement with "S-H."

**LIMITATION OF LIABILITY AND WAIVER OF CERTAIN DAMAGES**

The CLIENT agrees, to the fullest extent of the law, to limit the liability of S-H, its officers, directors, shareholders, employees, agents, subconsultants, affiliated companies, and any of them, to the CLIENT and any person or entity claiming by or through the CLIENT, for any and all claims, damages, liabilities, losses, costs, and expenses including reasonable attorneys' fees, experts' fees, or any other legal costs, in any way related to the Project or Agreement from any cause(s) to an amount that shall not exceed the compensation received by S-H under the agreement or fifty thousand dollars (\$50,000), whichever is greater. The parties intend that this limitation of liability apply to any and all liability or cause of action, claim, theory of recovery, or remedy however alleged or arising, including but not limited to negligence, errors or omissions, strict liability, breach of contract or warranty, express, implied or equitable indemnity and all other claims, which except for the limitation of liability above, the CLIENT waives.



**CLIENT hereby releases S-H, its officers, directors, shareholders, employees, agents, subconsultants, affiliated companies, and any of them, and none shall be liable to the CLIENT for consequential, special, exemplary, punitive, indirect or incidental losses or damages, including but not limited to loss of use, loss of product, cost of capital, loss of goodwill, lost revenues or loss of profit, interruption of business, down time costs, loss of data, cost of cover, or governmental penalties or fines.**

#### **INDEMNIFICATION**

**Subject to the limitation of liability in this Agreement, S-H agrees to the fullest extent permitted by law, to indemnify and hold harmless the CLIENT, its officers, directors, shareholders, employees, contractors, subcontractors and consultants against all claims, damages, liabilities, losses or costs, including reasonable attorneys' fees, experts' fees, or other legal costs to the extent caused by S-H's negligent performance of service under this Agreement and that of its officers, directors, shareholders, and employees.**

**The CLIENT agrees to the fullest extent permitted by law, to indemnify and hold harmless S-H, its officers, directors, shareholders, employees, agents,, subconsultants, and affiliated companies against all damages, liabilities, losses, costs, and expenses including, reasonable attorneys' fees, expert's fees, and any other legal costs to the extent caused by the acts or omissions of the CLIENT, its employees, agents, contractors, subcontractors, consultants or anyone for whom the CLIENT is legally liable.**

#### **HAZARDOUS MATERIALS - INDEMNIFICATION**

**To the fullest extent permitted by law, CLIENT agrees to defend, indemnify, and hold S-H, its officers, directors, shareholders, employees, agents, consultants and affiliated companies, and any of them harmless from and against any and all claims, liabilities, losses, costs, or expenses including reasonable attorney's fees, experts' fees and any other legal costs (including without limitation damages to property, injuries or death to persons, fines, or penalties), arising out of, or resulting from the discharge, escape, release, or saturation of smoke, vapors, soot, fumes, acids, alkalies, toxic chemicals, liquids, gases, polychlorinated biphenyl, petroleum contaminants spores, biological toxins, or any other materials, irritants, contaminants, or pollutants in or into the atmosphere, or on, onto, upon, in, or into the surface or subsurface of soil, water, or watercourses, objects, or any tangible or intangible matter, whether sudden or not.**

#### **STANDARD OF CARE**

Services provided by S-H under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances on projects of similar size, complexity, and geographic location as that of the Project. Nothing in this Agreement is intended to create, nor shall it be construed to create, a fiduciary duty owed by either party to the other party.

#### **BETTERMENT**

The CLIENT recognizes and expects that certain change orders may be required to be issued as the result in whole or part of imprecision, incompleteness, omissions, ambiguities, or inconsistencies in S-H's drawings, specifications, and other design, bidding or construction documentation furnished by S-H or in other professional services performed or furnished by S-H under this Agreement (herein after in this Betterment section referred to as S-H Documentation). If a required item or component of the Project is omitted from S-H's Documentation, the CLIENT is responsible for paying all costs required to add such item or component to the extent that such item or component would have been required and included in the original S-H Documentation. In no event will S-H be responsible for costs or expense that provides betterment or upgrades or enhances the value of the Project.

#### **RIGHT OF ENTRY**

The CLIENT shall provide for entry for the employees, agents and subcontractors of S-H and for all necessary equipment. While S-H shall take reasonable precautions to minimize any damage to property, it is understood by the CLIENT that in the normal course of the project some damages may occur, the cost of correction of which is not a part of this Agreement.

#### **PAYMENT**

Unless otherwise provided herein, invoices will be prepared in accordance with S-H's standard invoicing practices then in effect and will be submitted to CLIENT each month and at the completion of the work on the project. Invoices are due and payable upon receipt by the CLIENT. If the CLIENT does not make payment within thirty (30) days after the date the invoice was mailed to the CLIENT, then the amount(s) due S-H shall bear interest due from the date of mailing at the lesser interest rate of 1.5% per month compounded or the maximum interest rate allowed by law. In the event that S-H files or takes any action, or incurs any costs, for the collection of amounts due it from the client, S-H shall be entitled to recover its entire cost for attorney fees and other collection expenses related to the collection of amounts due it under this Agreement. Any failure to comply with this term shall be grounds for a default termination.

#### **TERMINATION**

Either party may terminate this Agreement for convenience or for default by providing written notice to the other party. If the termination is for default, the non-terminating party may cure the default before the effective date of the termination and the

termination for default will not be effective. The termination for convenience and for default, if the default is not cured, shall be effective seven (7) days after receipt of written notice by the non-terminating party. In the event that this Agreement is terminated for the convenience of either party or terminated by S-H for the default of the CLIENT, then S-H shall be paid for services performed to the termination effective date, including reimbursable expenses due, and termination expenses attributable to the termination. In the event the CLIENT terminates the Agreement for the default of S-H and S-H does not cure the default, then S-H shall be paid for services performed to the termination notice date, including reimbursable expenses due, but shall not be paid for services performed after the termination notice date and shall not be paid termination expenses. Termination expenses shall include expenses reasonably incurred by S-H in connection with the termination of the Agreement or services, including, but not limited to, closing out Project records, termination of subconsultants and other persons or entities whose services were retained for the Project, and all other expenses directly resulting from the termination.

#### **INFORMATION PROVIDED BY OTHERS**

S-H shall indicate to the CLIENT the information needed for rendering of services hereunder. The CLIENT shall provide to S-H such information, including electronic media, as is available to the CLIENT and the CLIENT's consultants and contractors, and S-H shall be entitled to rely upon the accuracy and completeness thereof. The CLIENT recognizes that it is difficult for S-H to assure the accuracy, completeness and sufficiency of such client-furnished information, either because it is provided by others or because of errors or omissions which may have occurred in assembling the information the CLIENT is providing. Accordingly, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless S-H, its officers, directors, shareholders, employees, agents, subconsultants and affiliated companies, and any of them, from and against any and all claims, liabilities, losses, costs, expenses (including reasonable attorneys' fees, experts' fees, and any other legal costs) for injury or loss arising or allegedly arising from errors, omissions or inaccuracies in documents or other information provided by the CLIENT.

#### **UNDERGROUND UTILITIES**

Information for location of underground utilities may come from the CLIENT, third parties, and/or research performed by S-H or its subcontractors. S-H will use the standard of care defined in this Agreement in providing this service. The information that S-H must rely on from various utilities and other records may be inaccurate or incomplete. Therefore, the CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold harmless S-H, its officers, directors, shareholders, employees, agents, subconsultants, affiliated companies, and any of them for all claims, losses, costs and damages arising out of the location of underground utilities provided or any information related to underground utilities by S-H under this Agreement.

#### **CONTRACTOR MATTERS**

CLIENT agrees that S-H shall not be responsible for the acts or omissions of the CLIENT's contractor, or subcontractors, their employees, agents, consultants, suppliers or arising from contractor's or subcontractors' work, their employees, agents, consultants, suppliers or other entities that are responsible for performing work that is not in conformance with the construction Contract Documents, if any, prepared by S-H under this Agreement. S-H shall not have responsibility for means, methods, techniques, sequences, and progress of construction of the contractor, subcontractors, agents, employees, agents, consultants, or other entities. In addition, CLIENT agrees that S-H is not responsible for safety at the project site and that safety during construction is for the CLIENT to address in the contract between the CLIENT and contractor.

#### **SHOP DRAWING REVIEW**

If, as part of this Agreement S-H reviews and approves Contractor submittals, such as shop drawings, product data, samples and other data, as required by S-H, these reviews and approvals shall be only for the limited purpose of checking for conformance with the design concept and the information expressed in the contract documents. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Contractor. S-H's review shall be conducted with reasonable promptness while allowing sufficient time in S-H's judgment to permit adequate review. Review of a specific item shall not indicate that S-H has reviewed the entire assembly of which the item is a component. S-H shall not be responsible for any deviations from the contract documents not brought to the attention of S-H in writing by the Contractor. S-H shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

#### **OPINIONS OF PROBABLE COST**

If, as part of this Agreement S-H is providing opinions of probable construction cost, the CLIENT understands that S-H has no control over costs or the price of labor, equipment or materials, or over the Contractor's method of pricing, and that S-H's opinions of probable construction costs are to be made on the basis of S-H's qualifications and experience. S-H makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

#### **CONSTRUCTION OBSERVATION**

If, as part of this Agreement S-H is providing construction observation services, S-H shall visit the project at appropriate intervals during construction to become generally familiar with the progress and quality of the contractors' work and to determine if the work is proceeding in general accordance with the Contract Documents. Unless otherwise specified in the Agreement, the CLIENT has not retained S-H to make detailed inspections or to provide exhaustive or continuous project review and observation services. S-H does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any contractor, its subcontractors, employees, agents, consultants, suppliers or any other entities furnishing materials or performing any work on the

project.

S-H shall advise the CLIENT if S-H observes that the contractor is not performing in general conformance of Contract Documents. CLIENT shall determine if work of contractor should be stopped to resolve any problems.

#### **OTHER SERVICES**

The CLIENT may direct S-H to provide other services including, but not limited to, any additional services identified in S-H's proposal. If S-H agrees to provide these services, then the schedule shall be reasonably adjusted to allow S-H to provide these services. Compensation for such services shall be at S-H's Standard Hourly Fee Schedule in effect at the time the work is performed unless there is a written Amendment to Agreement that contains an alternative compensation provision.

#### **OWNERSHIP & REUSE OF INSTRUMENTS OF SERVICE**

All reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by S-H as instruments of service shall remain the property of S-H. The CLIENT shall not reuse or make any modifications to the plans and specifications without the prior written authorization of S-H. The CLIENT agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless S-H its officers, directors, shareholders, employees, agents, subconsultants and affiliated companies, and any of them from any and all claims, losses, costs or damages of any nature whatsoever arising out of, resulting from or in any way related to any unauthorized reuse or modifications of the construction documents by the CLIENT or any person or entity that acquires or obtains the plans and specifications from or through the CLIENT without the written authorization of S-H.

#### **DISPUTE RESOLUTION**

If a dispute arises between S-H and CLIENT, the executives of the parties having authority to resolve the dispute shall meet within thirty (30) days of the notification of the dispute to resolve the dispute. If the dispute is not resolved within such thirty (30) day time period, CLIENT and S-H agree to submit to non-binding mediation prior to commencement of any litigation and that non-binding mediation is a precondition to any litigation. Any costs incurred directly for a mediator, shall be shared equally between the parties involved in the mediation.

#### **EXCUSABLE EVENTS**

S-H shall not be responsible or liable to CLIENT or CLIENT's contractors, consultants, or other agents for any of the following events or circumstances, or the resulting delay in S-H's services, additional costs and expenses in S-H's performance of its services, or other effects in S-H's services, stemming in whole or part from such events and circumstances (collectively, "Excusable Events" or, singularly, an "Excusable Event"): a change in law, building code or applicable standards; actions or inactions by a governmental authority; the presence or encounter of hazardous or toxic materials on the Project; war (declared or undeclared) or other armed conflict; terrorism; sabotage; vandalism; riot or other civil disturbance; blockade or embargos; explosion; abnormal weather; unanticipated or unknown site conditions; epidemic or pandemic (including but not limited to COVID-19), delays or other effects arising from government-mandated or government-recommended quarantines, closure of business, access, or travel; strike or labor dispute, lockout, work slowdown or stoppage; accident; act of God; failure of any governmental or other regulatory authority to act in a timely manner; acts or omissions by CLIENT or by any CLIENT's contractors, consultants or agents of any level on the project (including, without limitation, failure of the CLIENT to furnish timely information or approve or disapprove of S-H's services or work product promptly, delays in the work caused by CLIENT, CLIENT's suspension, breach or default of this Agreement, or delays caused by faulty performance by the CLIENT or by CLIENT's contractors, consultants, or agents of any level); or any delays or events outside the reasonable control of S-H. When an Excusable Event occurs, the CLIENT agrees S-H is not responsible for any actual or claimed damages incurred by CLIENT or CLIENT's contractors, consultants, or agents, S-H shall not be deemed to be in default of this Agreement, and S-H shall be entitled to a change order to equitably increase and extend S-H's time for performance of its services, as well as equitably increase the contract sum to compensate S-H for its increased labor, expenses, and other costs to perform its services, due to the Excusable Event.

#### **ASSIGNMENT**

Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party.

#### **SEVERABILITY, SURVIVAL AND WAIVER**

Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the CLIENT and S-H shall survive the completion of the services hereunder and the termination of this Agreement. The failure of a party to insist upon strict compliance of any term hereof shall not constitute a waiver by that party of its rights to insist upon strict compliance at a subsequent date.

#### **GOVERNING LAW**

This Agreement shall be governed pursuant to the laws in the state of the locale of the S-H office address written in this Agreement.

#### **EQUAL EMPLOYMENT OPPORTUNITY**

It is the policy of S-H to provide equal employment opportunities for all. S-H enforces the following acts and amendments as

presented by Federal government or State governments: Title VII of the Civil Rights Act of 1965, Age Discrimination in Employment ACT (ADEA), Americans With Disabilities Act (ADA), Iowa Civil Rights Act of 1965, and Illinois Human Rights Act [ 775ILCS 5]. S-H will not discriminate against any employee or applicant because of race, creed, color, religion, sex, national origin, gender identity, sexual orientation, marital status, ancestry, veteran status, or physical or mental handicap, unless related to performance of the job with or without accommodation.

**COMPLETE AGREEMENT**

This Agreement constitutes the entire and integrated agreement between the CLIENT and S-H and supersedes all prior negotiations, representations and agreements, whether oral or written. In the event the CLIENT issues a Purchase Order of which this Agreement becomes a part, or the CLIENT and S-H otherwise execute or enter into a contract into which this Agreement is incorporated, the parties expressly agree that, to the extent the terms of this Agreement conflict with or are otherwise inconsistent with such Purchase Order, or any other contract, this Agreement shall supersede and override the terms of the aforementioned documents, and this Agreement shall solely govern in those regards.

**ACCEPTANCE**

Wet signatures, digital signatures, electronic signatures or acceptance communicated by mail or e-mail from one party to another, are deemed acceptable for binding the parties to the Agreement. The CLIENT representative accepting this Agreement warrants that he or she is authorized to enter into this Agreement on behalf of the CLIENT.

**AGREEMENT**

This proposal shall become the Agreement for Services when accepted by both parties. Wet signatures, digital signatures, electronic signatures or acceptance communicated by mail or e-mail from one party to another, are deemed acceptable for binding the parties to the Agreement. The Client representative signing this Agreement warrants that he or she is authorized to enter into this Agreement on behalf of the Client.

To return a hardcopy of this proposal to us, please return a signed copy to us in the enclosed envelope.

Thank you for considering this proposal. We look forward to working with you. If you have any questions concerning this proposal, please contact us.

Sincerely,  
SHIVE-HATTERY, INC.

Brian Kane, Project Manager  
bkane@shive-hattery.com

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***AGREEMENT ACCEPTED AND SERVICES AUTHORIZED TO PROCEED***

**CLIENT:** City of South Bend, IN

**BY:** \_\_\_\_\_ **TITLE:** \_\_\_\_\_  
(signature)

**PRINTED NAME:** \_\_\_\_\_ **DATE ACCEPTED:** \_\_\_\_\_