



## Memorandum

**TO:** Members of the City of Bloomington Board of Public Works

**FROM:** Beth Cate, Corporation Counsel

**RE:** Professional Services Agreement with Griffin Realty to Assist with the Public Bidding Process for the Sale of the Police Building

**DATE:** October 9, 2023

In conjunction with the renovation of Showers West to house new public safety administration facilities, the Administration is selling the current Police Building located at 220 E. 3rd Street, Bloomington, IN 47401. Per state law, the process for selling this property includes publication of a Notice of Offering of the property, a public bidding period, and consideration of bids received by the Board of Public Works ("BPW").

The BPW may reject all bids received, but if it identifies a bid it wishes the Administration to pursue, then the City would negotiate with the bidder and come back to the BPW as well as City Council for approval of the sale. (Relevant state law requires fiscal body approval – Bloomington's fiscal body is City Council – for sales of real property with an appraised value of at least \$50,000).

At its September 26, 2023 meeting, the BPW approved a Notice of Offering for this building to be published in the Herald Times, which provided a bid period of October 13-December 12, 2023. Per state law, a second Notice will be published at least one week after the first Notice and at least one week before the end of the bid period.<sup>1</sup>

To maximize the potential for the bid process to produce multiple high-quality bids for the BPW's consideration, the Administration proposes to contract with Griffin Realty to have it widely market the availability of the property, handle questions from potential bidders, and assist the BPW and Administration in evaluating bids based on their commercial real estate expertise. State law permits the City to hire Griffin to assist in this way with the sale of the property and to pay them a "reasonable compensation out of the gross proceeds of the sale." Griffin proposes compensation of 4% of the gross proceeds from the sale, which is a reasonable (indeed, low) rate among commercial realtors.

If the bid process fails to produce any bids or the BPW rejects all bids received, state law allows the City to hire a broker to sell the property directly i.e. without further bidding process. Section 2 of the proposed contract reflects this and allows for an amendment in such a case, with no change in compensation.

The Administration selected Griffin Realty as the lowest responsive and responsible firm supplying a quote in response to an Invitation to Quote that the Administration sent to seven firms (in addition to Griffin Realty, ReMax; FC Tucker; Cushman Wakefield; Marcus Millichap; JLL; and Colliers/CBRE)

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<sup>1</sup> Because publication of the first Notice was delayed and will now occur on Wednesday, October 11, a new notice is being submitted to the HT reflecting changed bid period dates (no other changes).

directly as well as asking outside counsel working on property matters to distribute through their networks.

The Invitation to Quote produced two bids, one from Griffin Realty and one from another firm which quoted a compensation rate that was 25-50% higher. Discussions with several other recipients of the Invitation to Quote indicated that they declined to participate because while this sale would involve an extended departure date for BPD to allow time for the Showers West renovations and the move to that facility, it did not include a long-term leaseback of the property and corresponding stream of lease payments that was of most interest to those firms' clients.

Because Mr. Griffin served as Deputy Mayor in 2021-22, the Legal Department including the City Ethics Officer analyzed whether awarding the proposed contract to Griffin Realty would pose ethics/conflict of interest concerns, including concerns about any appearance of impropriety. We concluded that it does not for several reasons including the following:

- The Administration conducted an open Invitation to Quote in which multiple firms were encouraged to bid on providing these services.
- Griffin Realty was selected because it was the lowest responsive and responsible bidder.
- Deputy Mayor Allen recused himself from the selection process in view of his work on Mr. Griffin's recent mayoral campaign.
- Mr. Griffin had no involvement in developing or issuing the Invitation to Quote or the proposed Services contract (other than providing the firm's compensation rate).
- Griffin Realty's 4% commission for all possible realtor expenses is the same rate it uses for all clients and properties, as is publicized on its website: <https://www.leanong.com/sellers/deciding-to-sell/>
- While Mr. Griffin was involved in activities surrounding the acquisition of Showers West and otherwise interacted in various ways with the BPD during his time as Deputy Mayor, he would not have had any unfair advantage or knowledge in bidding to provide consulting services for the Police Building Sale. Key data points needed to market the building – size, location, zoning designation, and need for extended departure date – were available to all those receiving the Invitation to Quote, and all recipients had equal opportunity to ask questions about appraised value etc. (in this regard, Mr. Griffin left the City before appraisals were obtained for this property).