

Second Memorandum of Understanding

Between

CITY OF BLOOMINGTON

And

MONROE COUNTY GOVERNMENT

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into by and between the City of Bloomington (“City”), and Monroe County Government, by its Board of Commissioners (“County”).

WHEREAS, the Monroe Convention Center (“Center”) building was built in 1923 for the Graham Motor Sales company and converted to a Convention Center in 1991; and

WHEREAS, the Center, which is owned by the County and operated mainly with proceeds from the Inn Keepers Tax, is the second most sought after destination for groups seeking to hold events of significant size in Indiana, surpassed only by the Indianapolis Convention Center; and

WHEREAS, people attending events at the Center also patronize restaurants and shops in the City, and the resulting combined impact on the local economy over the past twenty-five (25) years is estimated at approximately \$256 million; and

WHEREAS, the Center was upgraded and remodeled, but not enlarged, in 2012, and its current size has limited its ability to accommodate many groups desiring to hold events in Bloomington, including approximately forty (40) groups in 2016 alone that could not be accommodated; and

WHEREAS, the County and the City agree that an expanded Center would provide civic benefits such as more meeting space and a greater variety of events, as well as significantly enhance the local economy through additional visitors to the area and increased employment opportunities; and

WHEREAS, the County and City agree that a project to expand the Center (“Expansion Project”) requires their collaboration and cannot be achieved without ~~true and equal~~ a partnership; and

WHEREAS, the County and City agree that the Expansion Project will be primarily funded by certain tax revenues provided for under Indiana Code § 6-9-41-0.3, *et seq.* (“Food and Beverage Tax”); and

WHEREAS, the Food & Beverage Tax has been collected since February 1, 2018; and

WHEREAS, the County and City entered into a Memorandum of Agreement dated October 12, 2018 regarding creating a steering committee in connection with selection of an architect to oversee the Project, the committee has made its recommendation and therefore the purpose of that Memorandum of Agreement is substantially achieved; and

WHEREAS, the County and City agree that this second MOU is necessary to delineate the respective responsibilities and authority of the parties with regard to the next phase or phases of the Expansion Project;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Section 1. Expansion Project

The City and County agree to continue their collaboration on the Expansion Project to expand the Center, ~~owned by the County~~, and have already embarked on Phase I of the Expansion Project. Phase I includes engaging an architect to design the Project, which has been done by the City. A copy of the City's agreement with the Schmidt Associates Inc. & Convergence Design is attached hereto and incorporated herein, as "Exhibit A" ("Schmidt & Convergence Agreement"). The Schmidt & Convergence Agreement, provides for related Project design and planning services for the benefit of the County, the City, their collective residents and the surrounding region. Phase I also includes selecting a hotelier for the Expansion Project, and recommending the best location(s) and size for a full-service hotel to serve the expanded Convention Center, and the recommended size of that hotel. ~~The City previously requested and the County acquiesced to separating the Expansion Project from the Hotel Project in order for the Expansion Project to move forward in the most expeditious manner; therefore, this MOU is not contingent upon nor does it contemplate identifying a hotel developer for the Hotel Project. With that in mind, both the City and County agree to work together towards the completion of the Expansion Project, understanding that the Hotel Project is separate from the Expansion Project.~~

The City and County recognize their ~~true and equal~~ partnership and their inability to complete the Expansion Project without full cooperation. While the Schmidt Agreement names the City as the "owner", the City and County recognize that that term merely represents that the City executed the Agreement with Schmidt. The fact remains that the County is the owner of the existing Convention Center, which is the center of the Expansion Project. The County owns the majority Both parties own parcels of the land surrounding the Convention Center ~~and~~ which may be used for the Expansion Project. ~~The County receives and controls the Inn Keepers Tax.~~ The City has dedicated 100% of its Food and Beverage Tax revenues for the Expansion Project. These facts make clear and are stated to reflect the City and the County's recognition that ~~complete~~ cooperation and ~~true~~ partnership is required if the Expansion Project is to be completed.

Pursuant to County Ordinance 2017-51 Section 5, Allocation of Food and Beverage Tax Between Monroe County and the City of Bloomington, the parties agree that the tax revenue shall be distributed 90% to the City of Bloomington and 10% to the County until such time as the Monroe County Auditor is able to ascertain the location of the collection within the State distribution. Once the Auditor is able to distribute the money based upon collection locations, the County and the City of Bloomington, will correct the 90%-10% distributions as appropriate.

Section 2. City Use of Food and Beverage Tax Revenue

The County adopted an ordinance approving a Food and Beverage Tax, with City Council support via Resolution 17-38, in order to facilitate the Expansion Project and

supplement the Inn Keepers Tax revenue. The City hereby pledges that, subject to Section 5 below and I.C. § 6-9-41-16, the monthly tax revenue distributed under I.C. § 6-9-41-13 (“Tax Allocation”) to the City shall be used in accordance with I.C. § 6-9-41-15 for the following purposes:

- Construction of an addition and/or renovation of the existing Center, contingent upon approval of final design by both the City and County.
- Financing or refinancing of the existing and/or expanded Center
- Operation of the existing and/or expanded Center
- Maintenance of the existing and/or expanded Center

Section 3. County Use of Food and Beverage Tax Revenue

The County adopted an ordinance approving a Food and Beverage Tax, and the County hereby pledges that, subject to I.C. § 6-9-41-16, the County may use one hundred percent (100%) of the Tax Allocation to the County in accordance with I.C. § 6-9-41-14 for related tourism or economic development projects. Those projects include, but are not limited to capital projects, technology projects, and any other project deemed necessary by the County to attract visitors to Monroe County.

Bonds sold for construction of the Expanded Project facility may require contingent pledging of annual revenue from the full F&B revenues for appropriate debt-service coverage, and the City and County agree to work together to accomplish their shared goals.

Section 4. Other Uses of Food and Beverage Tax Revenue

The County and City agree that the City may use up to 7.5% of its Tax Allocation for related tourism or economic development projects that support the Expansion Project, as permitted under I.C. § 6-9-41-15. The balance of the City allocation will be used solely to support items stated in Section 2, above. At such time as the construction aspect of the Expansion Project is completed and all costs of the construction aspect of the Expansion Project have been paid, the first priority of the funding will be to supplement the Inn Keepers tax for the necessary expenses, as determined by the Advisory Commission, for operation and maintenance of the Expansion Project. Any Tax Allocation in excess of that may be used for related tourism or economic development projects as allowed under I.C. § 6-9-41-12 and appropriately authorized under I.C. § 6-9-41-16.

Section 5. Food and Beverage Advisory Commission

As required under I.C. § 6-9-41-16, the parties have set up an Advisory Commission composed of the members specified in the statute to “*assist efforts of the county and city fiscal bodies regarding the utilization of food and beverage tax receipts.*” The City executive selected ~~two (2)~~ one of the three members identified in I.C. § 6-9-41-16(a)(1), and the County executive selected one (1) of the three members and the City and County mutually selected the final member as identified in I.C. § 6-9-41-16(a)(1).

Any replacement members, as needed, shall be appointed by the party who originally appointed the departing member.

Section 6 Convention and Civic Center Steering Committee for Accountability (“Steering Committee”)

The City and County established a Convention Center Steering Committee for Accountability (Steering Committee) in order to ~~lead~~ advise and provide recommendations to the City and County on the Expansion Project ~~and provide recommendations to the City and County~~. The Steering Committee shall have the following composition and authority:

A. Membership: The Steering Committee includes nine (9) members appointed by both entities. The City and County have each made their own appointments to the Commission as follows:

- 1) Commissioner
- 2) County council member
- 3) Mayor
- 4) City council member
- 5) County Commissioners’ resident appointment
- 6) County Commissioners’ resident appointment
- 7) Mayor’s resident appointment
- 8) Mayor’s resident appointment
- 9) Resident appointment jointly agreed upon by the County Commissioners and Mayor.

Each Elected Commission and Council member appointment (1,2, and 4 above) shall be appointed by their respective bodies, and shall be subject to the guidelines, if any, imposed by the appointing body, including, but not limited to, the ability to appoint a proxy.

The resident appointments serve at the pleasure of, and shall be replaced by, as needed, the appointing body.

B. Duties: The Steering Committee shall have the following duties. The City and County agree that the Steering Committee co-chairs chosen jointly by the City and County, shall lead the Steering Committee ~~and the Expansion Project~~, but shall delegate to and communicate with the Deputy Mayor and the Commissioners’ Administrator as the co-chairs deem necessary and as described in paragraph C below. The Deputy Mayor and the Commissioners’ Administrator may delegate and include their support staff, including attorneys and administrative professionals, as they deem necessary, in order to accomplish these duties:

1. Provides ~~oversight of~~ feedback and recommendations on the design component of the Expansion Project;

2. Evaluate candidates and recommend the selection of a hotelier for the Project.

The County and City shall jointly issue an RFP for a hotelier, and the Steering Committee shall assist the County and City in evaluating the respondents and recommending a hotelier for the Expansion Project. In order to assure accountability to their constituents, the final recommendation of the hotelier for the Civic Center must be approved by a majority vote of the four elected officials on the Steering Committee before the recommendation is considered by either entity.

3. Serves as the primary contact for media relations; however, the City and County recognize that each may have independent media contacts from time-to-time and may update the media as needed, provided no new information not already shared jointly with the City and County shall be provided to the media.
4. ~~Serves as the primary contact for the Schmidt & Convergence Agreement, working with all vendors to carry out the requirements in Exhibit A;~~
5. Serve as the primary contact for the public; however, the City and County recognize that each may have independent contacts with the public from time-to-time and may update the public as needed, provided no new information not already shared jointly with the City and County shall be provided to the public.
6. Periodically review and provide feedback on the ~~work product of all providers necessary for the~~ design of the Expansion Project, ~~including Schmidt Associates & Convergence, and other design and related professionals for the Center.~~

C. Construction: The parties acknowledge that a project of this magnitude is very complex and requires a single project manager who has the authority to provide the day to day management of the project from selection of the construction bids throughout completion of construction. The parties agree that since the project is located within the City limits, is funded through City-appropriated funds, and is subject to City regulations and processes applicable to construction of buildings, the Deputy Mayor shall be the project manager, and he shall operate in accordance with all other requirements of this MOU, including but not limited to, provisions requiring mirrored communication with the County and the Steering Committee. The Deputy Mayor and the Commissioners' Administrator will work closely together to ensure that the construction phase is carried out to the satisfaction of both the City and the County.

D. Communication:

The City and County recognize that transparency and mirrored communication is essential to the success of the Expansion Project. By mirrored communication, the City and County mean that they want both the City and County to have the same information regarding the Expansion Project at the same or as close to the same time as possible. The

Deputy Mayor of the City and the Commissioners' Administrator shall jointly be responsible for communication and coordination with the Steering Committee. The Deputy Mayor and the Commissioners' Administrator shall be included on all communication to and from the Steering Committee, to ensure complete and mirrored communication between the City and County and the Steering Committee. The co-chairs of the Steering Committee shall facilitate mirrored communication. The City and County may, of course, continue to have internal communication within their respective organizations and nothing in this MOU is intended to impede or interfere with internal communication. The parties agree to not use internal communication, however, to subvert the transparent and mirrored communication expected in this MOU.

Under the guidance of the co-chairs of the Steering Committee, the Deputy Mayor and the Commissioners' Administrator shall jointly be responsible for ~~the day-to-day~~ coordination of the Expansion Project. As contractors will need a single point of contact, the Deputy Mayor shall be the initial point of contact with including coordination of the work of City-contracted entities, and the Commissioners' Administrator shall be the initial point of contact with County-contracted entities. The Deputy Mayor and the Commissioners' Administrator shall meet weekly in person or telephonically and may include staff as they deem necessary. In order to successfully work together to this end, the Deputy Mayor and the Commissioners' Administrator shall copy each other on all written communication regarding the Expansion Project. They shall include each other on telephone and text communications, in a manner they deem appropriate. Frequent written updates will be posted on a communication platform set up and managed at least through Phase I by Schmidt Associates, to coordinate and share information with and among the County, the City, and the Steering Committee. A public communication platform will also be established and agreed upon by the Steering Committee.

In the event a substantial change to plans or designs recommended by the Steering Committee may be required, in the normal course of business, the input of the Steering Committee will be sought. If a substantial change is required urgently, mutual agreement to the change between the Deputy Mayor and the County Administrator may substitute for additional input from the Steering Committee.

The City and County shall communicate and collaborate together on issues that involve resources, land, fiscal or other assets, controlled by the other party.

D. Meetings: The Steering Committee shall meet ~~every other week~~monthly until to the completion of the Expansion Project, unless the co-chairs of the Steering Committee, the Deputy Mayor and the Commissioners' Administrator agree otherwise. The Steering Committee shall meet, at a minimum, once ~~aevery two~~ months.

All meetings shall be publicly-held and the City and County strive to host as many meetings at the existing Center as possible. The County shall be responsible for posting notice of all Steering Committee meetings.

E. Contracts: The Steering Committee shall have the authority from each entity executive to review and make recommendations regarding the work product of vendors,

and other contract activities that are necessary and directly related to the design of the Expansion Project. They shall make recommendations to the City and County, for approval by the necessary parties as required by law. ~~The City and County agree to execute all related contracts jointly.~~ Discussions regarding contractors' performance and personnel may be conducted in executive session.

This Section notwithstanding, nothing in this MOU shall override or circumvent the authority of statutory entities required to review and approve contracts, financing, petitions, applications, permits, or any other mandatory processes.

Section 7. Definitive Agreement

The parties have executed this MOU to signify their true and equal partnership and their joint commitment to pursuing and funding the Expansion Project in full collaboration on behalf of the entire community and region.

Section 8. Notices

Legal notice given by either party to the other under this MOU shall be in writing and delivered at the addresses provided below:

CITY

City of Bloomington Legal Department
401 North Morton, Suite 220
Bloomington, Indiana 47404
(812) 349-3426 (phone)
(812) 349-3441 (fax)

COUNTY

Monroe County Attorney's Office
Courthouse, Room 220
Bloomington, Indiana 47404
(812) 349-2525 (phone)
(812) 349-2982 (fax)

Section 9. Authority of Parties

Each party warrants that it is authorized to enter in this MOU, that the person signing on its behalf is duly authorized to execute the MOU, and that no other signatures are necessary.

Section 10. Counterparts

The parties may execute this MOU in counterparts, each of which is deemed an original and all of which constitute only one original.

Section 11. Other Considerations

City and County mutually agree that all news/press releases and other forms of communication about the Expansion Project will be jointly prepared and released.

The City and County agree to execute any appropriate and agreed-upon use of their property in conjunction with this Expansion Project including temporary or permanent easement or right of entry, following all required laws and receiving all required approvals

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed for and on their behalf the day and year first hereinafter written.

CITY

COUNTY

John Hamilton, Mayor

Julie Thomas, President
Board of Commissioners

Attest:

Amanda Barge, Vice President

Nicole Bolden, Clerk

Date: _____

Lee Jones, Commissioner

Attest:

Catherine Smith, Auditor

Date: _____