



MEMORANDUM

**TO:** Mayor John Hamilton  
**FROM:** Lauren Travis, ESD  
**DATE:** December 19, 2019  
**RE:** Agreement for Climate Vulnerability Assessment with Pale Blue Dot LLC

Funding Source: ESD – 101-04-040000-53170 (Consultants)

Total Dollar Amount of Contract: \$98,139.00

Department Head Initials of Approval: AC

Expiration Date of Contract: December 31, 2020

Due Date For Signature: ASAP

Record Destruction Date (Legal Dept): January 1, 2030

Legal Department Tracking #: 19-730

**PREVIOUSLY REVIEWED BY & RETURN SIGNED CONTRACT TO THIS ATTORNEY:**

Larry Allen

**ATTORNEY IS TO RETURN SIGNED CONTRACT TO THIS DEPARTMENTAL EMPLOYEE:**

Lauren Travis

**Summary of Contract:** The Agreement is for a climate vulnerability assessment and action plan for the City of Bloomington.

**AGREEMENT  
BETWEEN  
CITY OF BLOOMINGTON  
ECONOMIC AND SUSTAINABLE DEVELOPMENT  
DEPARTMENT  
AND  
PALE BLUE DOT LLC  
FOR  
CLIMATE VULNERABILITY ASSESSMENT AND ACTION PLAN**

This Agreement, entered into on this 30<sup>th</sup> day of December, 2019, by and between the City of Bloomington Economic & Sustainable Development Department (the "Department"), and Pale Blue Dot LLC ("Consultant"),

**WITNESSETH:**

WHEREAS, the Department wishes to complete a Climate Vulnerability Assessment and Hazards Report, Climate Action Plan, and City-wide Renewables Study; and

WHEREAS, the Department requires the services of a professional consultant in order to perform the services (the "Services" as further defined below); and

WHEREAS, it is in the public interest that such Services be undertaken and performed; and

WHEREAS, Consultant is willing and able to provide such Services to the Department.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**Article 1. Scope of Services**

Consultant shall provide the Services as specified in **Exhibit A**, "Scope of Work", attached hereto and incorporated into this Agreement.

Consultant shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2.

Consultant shall complete the Services required under this Agreement on or before December 31, 2020, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services.

In the performance of Consultant's work, Consultant agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Lauren Travis, Assistant Director for Sustainability, as the Department's Project Manager. Consultant agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Consultant for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department.

**Article 2. Standard of Care**

Consultant shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The Department shall be the sole judge of the adequacy of Consultant's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Consultant's performance. Upon notice to Consultant and by mutual agreement between the parties, Consultant will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department**

The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as expeditiously as is necessary for the orderly progress of the work, and Consultant shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

**Article 4. Compensation**

The Department shall pay Consultant for all fees and expenses in a total amount not to exceed Ninety-Eight Thousand One Hundred Thirty-Nine Dollars (\$98,139.00). Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Consultant within forty-five (45) days of receipt of invoice. Consultant may submit monthly invoices of equal installments to the Department. Final payment will be paid upon the completion of the Services described in Article 1. The invoice shall be sent to:

Lauren Travis  
City of Bloomington  
401 N. Morton, Suite 150  
Bloomington, Indiana 47404

Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

**Article 5. Appropriation of Funds**

Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the Department are at any time not forthcoming or are insufficient, through failure of any entity, including the Department itself, to appropriate funds or otherwise, then the Department shall have the right to terminate this Agreement without penalty.

**Article 6. Schedule**

Consultant shall complete the Services required under this Agreement on or before **December 31, 2020**. The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

**Article 7. Termination**

In the event of a party's substantial failure to perform in accordance with the terms of this Agreement, the other party shall have the right to terminate the Agreement upon written notice. The nonperforming party shall have fourteen (14) calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

The Department may terminate or suspend performance of this Agreement at the Department's prerogative at any time upon written notice to Consultant. Consultant shall terminate or suspend performance of the Services on a schedule acceptable to the Department and the Department shall pay the Consultant for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to Consultant's compensation and the schedule of services. Upon termination or suspension of this Agreement, all finished or unfinished reports, drawings, collections of data and other documents generated by Consultant in connection with this Agreement shall become the property of the Department, as set forth in Article 10 herein.

**Article 8. Identity of the Consultant**

Consultant acknowledges that one of the primary reasons for its selection by the Department to perform the Services is the qualifications and experience of Consultant. Consultant thus agrees that the Services to be performed pursuant to this Agreement shall be performed by Pale Blue Dot. Consultant shall not subcontract any part of the Services without the prior written permission of the Department. The Department reserves the right to reject any of the Consultant's personnel or proposed outside professional sub-consultants, and the Department reserves the right to request that acceptable replacement personnel be assigned to the project.

**Article 9. Ownership of Documents and Intellectual Property**

All documents, drawings and specifications, including digital format files, prepared by Consultant and furnished to the Department as part of the Services shall become the property of the Department. Consultant shall retain its ownership rights in its design, drawing details, specifications, databases, computer software and other proprietary property. Intellectual property developed, utilized or modified in the performance of the Services shall remain the property of Consultant.

**Article 10. Independent Contractor Status**

During the entire term of this Agreement, Consultant shall be an independent contractor, and in no event shall any of its personnel, agents or subcontractors be construed to be, or represent themselves to be, employees of the Department. Consultant shall be solely responsible for the payment and reporting of all employee and employer taxes, including social security, unemployment, and any other federal, state, or local taxes required to be withheld from employees or payable on behalf of employees.

**Article 11. Indemnification**

Consultant shall defend, indemnify, and hold harmless the City of Bloomington, the Department, and the officers, agents and employees of the City and the Department from any and all claims, demands, damages, costs, expenses or other liability arising out of the Agreement or occasioned by the reckless or negligent performance of any provision thereof, including, but not limited to, any reckless or negligent act or failure to act or any misconduct on the part of the Consultant or its agents or employees, or any independent contractors directly responsible to it (collectively "Claims").

**Article 12. Insurance**

During the performance of any and all Services under this Agreement, Consultant shall maintain the following insurance in full force and effect:

- a. General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.
- b. Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- c. Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$1,000,000 annual aggregate.
- d. Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code.

All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the Department, and the officers, employees and agents of each shall be named as insureds under the General Liability, Automobile, and Worker's Compensation policies, and such policies shall stipulate that the insurance will operate as primary insurance and that no other insurance of the Department's will be called upon to contribute to a loss hereunder.

Consultant shall provide evidence of each insurance policy to the Department prior to the commencement of work under this Agreement. Approval of the insurance by the Department shall not relieve or decrease the extent to which Consultant may be held responsible for payment of damages resulting from Consultant's provision of the Services or its operations under this Agreement. If Consultant fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the Department's required proof that the insurance has been procured and is in force and paid for, the Department shall have the right at its election to terminate the Agreement.

**Article 13. Conflict of Interest**

Consultant declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of Services under this Agreement. Consultant agrees that no person having any such interest shall be employed in the performance of this Agreement.

**Article 14. Waiver**

No failure of either party to enforce a term of this Agreement against the other shall be construed as a waiver of that term, nor shall it in any way affect the party's right to enforce that term. No waiver by any party of any term of this Agreement shall be considered to be a waiver of any other term or breach thereof.

**Article 15. Severability**

The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and

enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

**Article 16. Assignment**

Neither the Department nor the Consultant shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

**Article 17. Third Party Rights**

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Department and Consultant.

**Article 18. Governing Law and Venue**

This Agreement shall be governed by the laws of the State of Indiana. Venue of any disputes arising under this Agreement shall be in the Monroe Circuit Court, Monroe County, Indiana.

**Article 19. Non-Discrimination**

Consultant shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment.

Consultant understands that the City of Bloomington prohibits its employees from engaging in harassment or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Consultant believes that a City employee engaged in such conduct towards Consultant and/or any of its employees, Consultant or its employees may file a complaint with the City department head in charge of the grant and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

**Article 20. Compliance with Laws**

In performing the Services under this Agreement, Consultant shall comply with any and all applicable federal, state and local statutes, ordinances, plans and regulations, including any and all regulations for protection of the environment. Where such statutes, ordinances, plans or regulations of any public authority having any jurisdiction over the project are in conflict, Consultant shall proceed using its best judgment only after attempting to resolve any such conflict between such governmental agencies, and shall notify the Department in a timely manner of the conflict, attempts of resolution, and planned course of action.

**Article 21. E-Verify**

Consultant is required to enroll in and verify the work eligibility status of all newly-hired employees through the E-Verify program. (This is not required if the E-Verify program no longer exists). Consultant shall sign an affidavit, attached as Exhibit B, affirming that Consultant does not knowingly

employ an unauthorized alien. "Unauthorized alien" is defined at 8 U.S. Code 1324a(h)(3) as a person who is not a U.S. citizen or U.S. national and is not lawfully admitted for permanent residence or authorized to work in the U.S. under 8 U.S. Code chapter 12 or by the U.S. Attorney General.

Consultant and any subcontractors may not knowingly employ or contract with an unauthorized alien, or retain an employee or contract with a person that the Consultant or subcontractor subsequently learns is an unauthorized alien. If the Department obtains information that the Consultant or subcontractor employs or retains an employee who is an unauthorized alien, the Department shall notify the Consultant or subcontractor of the contract violation and require that the violation be remedied within 30 days of the date of notice. If the Consultant or subcontractor verified the work eligibility status of the employee in question through the E-Verify program, there is a rebuttable presumption that the Consultant or subcontractor did not knowingly employ an unauthorized alien. If the Consultant or subcontractor fails to remedy the violation within the 30 day period, the Department shall terminate the contract, unless the Department Commission or Department that entered into the contract determines that terminating the contract would be detrimental to the public interest or public property, in which case the Department may allow the contract to remain in effect until the Department procures a new Consultant. If the Department terminates the contract, the Consultant or subcontractor is liable to the Department for actual damages.

Consultant shall require any subcontractors performing work under this contract to certify to the Consultant that, at the time of certification, the subcontractor does not knowingly employ or contract with an unauthorized alien and the subcontractor has enrolled in and is participating in the E-Verify program. Consultant shall maintain on file all subcontractors' certifications throughout the term of the contract with the Department.

#### **Article 22. Notices**

Any notice required by this Agreement shall be made in writing to the individuals/addresses specified below:

##### **Department:**

City of Bloomington  
Attn: Lauren Travis  
401 N. Morton, Suite 150  
Bloomington, Indiana 47402

##### **Consultant:**

Pale Blue Dot LLC  
Attn: Ted Redmond  
2515 White Bear Avenue, A8  
Suite 177  
Maplewood, MN 55109

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and Consultant.

#### **Article 23. Intent to be Bound**

The Department and Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

**Article 24. Integration and Modification**

This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Consultant. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

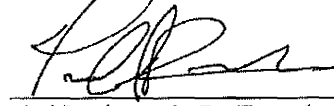
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first written above.

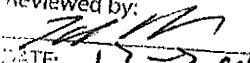
**CITY OF BLOOMINGTON**

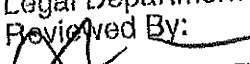
  
\_\_\_\_\_  
Philippa M. Guthrie, Corporation Counsel

  
\_\_\_\_\_  
Alex Crowley, Director

**PALE BLUE DOT, LLC**

  
\_\_\_\_\_  
Ted Redmond, Co-Founder

CITY OF BLOOMINGTON  
Controller  
Reviewed by:   
DATE: 12/20/19  
FUND/ACCT: 101-04-00-02170  
2020 / 48,139  
2019 / 50A

CITY OF BLOOMINGTON  
Legal Department  
Reviewed By:   
DATE: 12/19/19



## EXHIBIT A

### “Scope of Work”

The Services shall include the following:

- Understanding Climate Risks- Conduct a community-wide climate change risk and vulnerability assessment, complete with a city-specific climate hazards report in accordance with Global Covenant of Mayors (GCoM) requirements
- Setting a Mitigation Goal- Define a city-specific emissions mitigation target based on Bloomington Greenhouse Gas Emission Inventories
- Adapting and Mitigating Climate Effects- Recommend city-specific climate adaptation and mitigation actions that the city and community can undertake with an analysis of barriers and opportunities
- Communicating Progress- Produce a community messaging strategy and educational materials about local climate change impacts and progress on adaptation and mitigation activities
- City-wide Renewables Study

EXHIBIT B

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

E-VERIFY AFFIDAVIT

The undersigned, being duly sworn, hereby affirms and says that:

1. The undersigned is the Vice President of paleBLUEdot LLC  
(job title) (company name)
2. The company named herein that employs the undersigned:
  - i. has contracted with or seeking to contract with the City of Bloomington to provide services, OR
  - ii. is a subcontractor on a contract to provide services to the City of Bloomington.
3. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein does not knowingly employ an "unauthorized alien," as defined at 8 United States Code 1324a(h)(3).
4. The undersigned hereby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.



Signature  
Ted Redmond  
Printed Name

STATE OF Minnesota )  
 )SS:  
COUNTY OF Ramsey )

Before me, a Notary Public in and for said County and State, personally appeared Ted Edward Redmond and acknowledged the execution of the foregoing this 27<sup>th</sup> day of December, 2019.

William Lloyd Thomas Roper  
Notary Public's Signature  
William Lloyd Thomas Roper  
Printed Name of Notary Public

My Commission Expires: 01/31/2024

County of Residence: Ramsey

Commission Number: 1065704600033

