

Professional Services Agreement

This Professional Services Agreement is by and between the City of Bloomington, Indiana, on behalf of its Board of Public Works ("BPW") (referred to herein collectively as the "City"), and Griffin Realty ("Contractor"), effective this 10th day of October, 2023. The City retains the Contractor on the terms and conditions set forth below:

RECITALS

WHEREAS, the City desires to retain Contractor and Contractor desires to be retained to provide professional property consulting services to the City related to the sale of the current Bloomington Police Department building located at 220 E. Third Street, Bloomington, Indiana 47401, Parcel Number 53-05-33-300-021.00-005, whose Legal Description is 013-68250-02 DON OWENS PT. LOT 2 ("Police Building"); and

WHEREAS, the parties enter this Agreement to set forth the terms and conditions of Contractor's services to the City, and to address certain, specific matters related to such services.

Now, therefore, in exchange for mutual and beneficial consideration, which the parties agree is sufficient, the parties agree to the following terms of this Agreement:

1. **Term of Service.** The term of this Agreement shall begin on the ____ day of October, 2023, and shall continue through December 31, 2023, unless renewed by the parties on mutually agreeable terms.
2. **Duties and Position.** City retains the Contractor to perform consulting services relating to the public offer and bidding process for the sale of the Police Building, as described in Exhibit "A" attached hereto and by reference incorporated herein ("Services"). Contractor shall perform all Services under this Agreement in a manner sufficient to meet the professional standards consistent with that of the industry. The City shall be the sole judge of the adequacy of Contractor's work in meeting such standards; however, the City shall not unreasonably withhold its approval as to the adequacy of such performance.

It is agreed and understood by the parties that the scope of the Services may be modified as needed to accomplish the goals of the City with respect to disposition of the Police Building and as consistent with applicable law. In accordance with state law, in the event that the property has been up for bid for at least sixty (60) days and either no bids have been received or the Board of Public Works has rejected all bids, the City may amend this Agreement to authorize Contractor to sell the property directly, at a compensation not to exceed the amount provided for in this Agreement.

3. **Compensation.** For and upon performance of the Services, City will pay the Contractor four percent (4%) of the gross proceeds from the sale of the Police Building ("Compensation"). In addition, Contractor shall receive reimbursement for pre-approved actual out-of-pocket expenses incurred by Contractor not including routine, day-to-day office expenses incurred in the normal course. Contractor

shall invoice for Services on a monthly basis, detailing the Services provided, and such invoice shall be paid by the City within forty-five (45) days of the date of such invoice. Unpaid invoices shall accrue interest at the rate of 1.5% monthly until paid in full.

4. Insurance. During the performance of any and all Services under this Agreement, Contractor 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 (maintained by _____ for purposes of this Agreement).

c. Professional Liability Insurance (“Errors and Omissions Insurance”) with a minimum limit of \$2,000,000 annual aggregate.

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 BPW, and the officers, employees and agents of each shall be named as insureds under the General Liability, Automobile, and Professional Liability policies, and such policies shall stipulate that the insurance will operate as primary insurance and that no other insurance of the City’s will be called upon to contribute to a loss hereunder.

Contractor shall provide evidence of each insurance policy to the City prior to the commencement of work under this Agreement. Approval of the insurance by the City shall not relieve or decrease the extent to which Contractor may be held responsible for payment of damages resulting from Contractor’s provision of the Services or its operations under this Agreement. If Contractor fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the City’s required proof that the insurance has been procured and is in force and paid for, the City shall have the right at its election to terminate the Agreement. In the event Contractor has employees or subcontractors working under this Professional Services Agreement, then in such event, Contractor shall ensure that each person working hereunder is included as insured under any policy held by Contractor.

5. Liability and Indemnification. City and Contractor acknowledge and agree that the Services to be performed by Contractor under this Agreement are to be performed at Contractor’s risk and Contractor assumes all responsibility for any damages or injuries that may result from the performance of Services under this Agreement and for any worker retained by Contractor, whether as an employee or subcontractor. Contractor agrees to indemnify and hold harmless City from any and all liability for any injuries (including death), damages, loss or claims based upon, arising out of, or in any manner connected with Contractor’s Services provided under this Agreement, which includes but is not limited to claims for indemnification and attorney fees. Contractor shall bear any and all costs of obtaining and maintaining for the term of this Agreement expenses for work performed, required licensing, permits, liability insurance. Notwithstanding the above, in the event of City negligence, by act and/or omission,

Contractor shall not be liable for any damages arising therefrom and the City shall indemnify and hold Contractor harmless, including all damages and reasonable attorney fees incurred by Contractor.

6. Tax Liability. Contractor shall exonerate, indemnify, and hold harmless City from and against, and shall assume full responsibility for, payment of taxes, all federal, state and local taxes, or contributions imposed or required under unemployment insurance, social security, and income tax laws or other assessment, liens or charges with respect to all of Contractor's Services under this Agreement, which indemnification shall include damages, costs, and attorney fees.

7. Termination of Services. The parties agree and understand that the Services are "at-will" and may be terminated by Contractor or the City, with or without cause, by providing a written notice of not less than thirty (30) days prior to the date of termination. At the time of termination, all sums due Contractor and executory contract obligations of the parties shall be enforceable according to its terms, which obligations shall survive termination of this Agreement.

8. Breach. In the event of a breach of this Agreement, the non-breaching party shall be entitled to exercise all rights and remedies available at law and/or equity and shall further be entitled to damages, reimbursement of expenses, including reasonable legal fees.

9. Jurisdiction. Any claim arising out of or relating to this Agreement shall be determined by a court sitting in Monroe County, Indiana.

10. Effect of Prior Agreements. This Agreement supersedes any prior agreement with City, except that this Agreement shall not affect or operate to reduce any benefit or compensation inuring to the Contractor of any kind elsewhere provided and not expressly provided in this Agreement.

11. Limited Effect of Waiver by City. A waiver of any breach of any provision of this Agreement shall not operate or be construed as a waiver of later breaches.

12. Severability. In the event any term, covenant, or condition hereof is declared, by a Court of competent jurisdiction, to be invalid or otherwise unenforceable, the validity and/or enforceability of the remaining terms, covenants, and conditions shall in no way be affected or impaired. In any such event, this Agreement shall be enforced as if such invalid or unenforceable term, covenant, or condition were not included.

13. Modifications. Upon execution, this instrument represents the entire Agreement of City and the Contractor. It may be altered only by a written agreement signed by the parties and the parties agree that each Addendum and/or Listing Agreement executed by and between the parties shall constitute and form a part of this Agreement and subject to the terms hereof.

14. Choice of Law. This Agreement is entered into in the State of Indiana and the laws of this state shall apply to any dispute concerning the Agreement.

15. Non-discrimination. Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all

other federal, state and local laws and regulations governing non-discrimination in employment

16. E-Verify. Contractor is required to enroll in and verify the work eligibility status of all newly-hired employees through the E-Verify program. Contractor shall sign an affidavit, attached as Exhibit C, affirming that Contractor 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. Contractor and any subcontractors may not knowingly employ or contract with an unauthorized alien, or retain an employee or contract with a person that the Contractor or subcontractor subsequently learns is an unauthorized alien. If the City obtains information that the Contractor or subcontractor employs or retains an employee who is an unauthorized alien, the City shall notify the Contractor or subcontractor of the contract violation and require that the violation be remedied within 30 days of the date of notice. If the Contractor or subcontractor verified the work eligibility status of the employee in question through the E-Verify program, there is a rebuttable presumption that the Contractor or subcontractor did not knowingly employ an unauthorized alien. If the Contractor or subcontractor fails to remedy the violation within the 30 day period, the City shall terminate the contract, unless the City determines that terminating the contract would be detrimental to the public interest or public property, in which case the City may allow the contract to remain in effect until the City procures a new Contractor. If the City terminates the contract, the Contractor or subcontractor is liable to the City for actual damages. Contractor shall require any subcontractors performing work under this contract to certify to the Contractor 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. Contractor shall maintain on file all subcontractors' certifications throughout the term of the contract with the City.

17. Non-Collusion. Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any collusion by agreement or otherwise with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Contractor shall swear under oath, via signed affidavit, attached as Exhibit "D" and by this reference incorporated herein, that Contractor has not engaged in any collusive conduct.

18. Notices. Any notice to be given under this Agreement shall be deemed given in person or, in writing, if sent by certified mail to the address of the party below except if a party has provided an alternative address for notice purposes:

Contractor: Griffin Realty
735 S. College Avenue
Bloomington, IN 47403
Attn: Donald Griffin

City: City of Bloomington Legal Department
P.O. Box 100
401 N. Morton Street, Suite 220

Bloomington, IN 47404

Copy to: Board of Public Works
401 N. Morton Street, Suite 120
Bloomington, IN 47404

19. Intent to be Bound. The City and the Contractor each bind 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.

20. Integration and Modification. This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the City and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

CONTRACTOR

CITY OF BLOOMINGTON, INDIANA

By: Donald Griffin Jr., Broker/Owner

By: Beth Cate, Corporation Counsel

BOARD OF PUBLIC WORKS

By: Kyla Cox Deckard, President

EXHIBIT A: SERVICES

Contractor shall assist the City with the public bidding process for sale of the Police Building located at 220 E 3rd Street, Bloomington, IN 47401 as follows:

In accordance with all required City processes and State and Federal law, Contractor will market the availability of the property and generate bids for the public bidding process, as directed by the City. This shall include the following activities:

1. Listing the property in the following listing services, all of which shall feed into additional national real estate marketing outlets:

Costar/Loopnet

Indiana Commercial Real Estate Exchange (ICREX)

Indiana Regional MLS (IRMLS)

Any other services as may be requested by the City or Bloomington Board of Public Works

2. Communicating the availability of the property to Commercial Brokers and Brokers throughout the state and nation through at least the following entities and networks:

Indiana Commercial Board of Realtors

IREM -Institute of Real Estate Management

CCIM -Certified Commercial Investment Member

SIOR – Society of Industrial and Office Realtors

BOMA –Building Owners and Managers Association

NAIOP – National Association of Industrial and Office Properties

IEDC – Indiana Economic Development Association

Indiana Chamber of Commerce

Chambers Commerce Associations throughout the state and nation

3. Actively prospecting through database(s) of active clients seeking properties, using phone calls, texts, emails, Mailchimp, etc.
4. Marketing the property through social media including at least:

Facebook

Instagram

Linkedin

Twitter

5. During the bidding period and in coordination with the City, Contractor shall handle all inquiries and showings from potential bidders, and provide realtor signage appropriate for the listing, if needed or desired by the City.
6. Contractor shall review and advise the City on bids received.

EXHIBIT B

STATE OF INDIANA)
)SS:
COUNTY OF _____)

E-VERIFY AFFIDAVIT

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

1. The undersigned is the _____ of _____.
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

Title

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this ____ day of _____, 2018.

Notary Public’s Signature

Printed Name of Notary Public

My Commission Expires: _____
County of Residence: _____
Commission Number: _____

EXHIBIT C

STATE OF INDIANA)
) SS:
COUNTY OF _____)

NON-COLLUSION AFFIDAVIT

The undersigned offeror or agent, being duly sworn on oath, says that he has not, nor has any other member, representative, or agent of the firm, company, corporation or partnership represented by him, entered into any combination, collusion or agreement with any person relative to the price to be offered by any person nor to prevent any person from making an offer nor to induce anyone to refrain from making an offer and that this offer is made without reference to any other offer.

OATH AND AFFIRMATION

I affirm under the penalties of perjury that the foregoing facts and information are true and correct to the best of my knowledge and belief.

Dated this _____ day of _____, 2018.

By: _____

Title: _____

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this ____ day of _____, 2018.

Notary Public's Signature

Printed Name of Notary Public

My Commission Expires: _____
County of Residence: _____
Commission Number: _____