


16059


**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CONSOLIDATED CITY OF INDIANAPOLIS AND MARION COUNTY
AND
BROWNING INVESTMENTS, LLC
FOR
THE CITY OF INDIANAPOLIS CITY HALL AND DOWNTOWN ASSETS**

This Professional Services Agreement (hereinafter referred to as "Agreement") is effective as of May 1, 2017, entered into by and between the **Consolidated City of Indianapolis and Marion County** (hereinafter referred to as "City") and **Browning Investments, LLC** (hereinafter referred to as "Consultant"), and executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

SECTION I. INTERPRETATION AND INTENT

- 1.01. The "Agreement", as referred to herein, shall mean this Agreement executed by City and Consultant, and shall include the Attachments described in Sections II, IV and V and attached hereto, and any written supplemental agreement or modification entered into between City and Consultant, in writing, after the date of this Agreement.
- 1.02. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written or verbal, between City and Consultant. No statements, promises or agreements whatsoever, in writing or verbal, in conflict with the terms of the Agreement have been made by City or Consultant which in any way modify, vary, alter, enlarge or invalidate any of the provisions and obligations herein stated. This Agreement may be amended and modified only in writing signed by both City and Consultant.
- 1.03. In resolving conflicts, errors, discrepancies and disputes concerning the scope of the work or services to be performed by Consultant or other rights or obligations of City or Consultant the document or provision thereof expressing the greater quantity, quality or scope of service or imposing the greater obligation upon Consultant and affording the greater right or remedy to City, shall govern.
- 1.04. Any interpretation applied to this Agreement, by the parties hereto, by an arbitrator, court of law, or by any other third party, shall not be made against either party to this Agreement solely by virtue of such party or such party's representatives having drafted all or any portion of this Agreement.
- 1.05. This Agreement shall include, and incorporate by reference, any provision, covenant or condition required or provided by law or by regulation of any state or federal regulatory or funding agency to the extent applicable to the performance of the Services (as herein defined).

SECTION II. DUTIES OF CONSULTANT

- 2.01. Subject to the provisions of Paragraph 1 of Attachment B, Consultant shall provide the services specified in Attachment A-1, City Hall Initial Feasibility Assessment and the services specified in Attachment A-2, Strategic Real Estate Plan: Downtown Space and Assets, each attached hereto and incorporated into this Agreement (collectively, the "Services"), during the Term (as herein defined).

SECTION III. TERM

- 3.01. The term ("Term") of this Agreement shall begin on May 1, 2017 and shall terminate on September 1, 2023, unless terminated earlier in accordance with this Agreement.
- 3.02. This Agreement may be renewed by agreement of parties. The term of the renewal may be less but shall not be longer than the term of the original Agreement. A renewal shall be only by written instrument signed by both City and Consultant and attached hereto as an amendment. Except as may be expressly provided in any amendment to this Agreement, all other terms and conditions of the Agreement shall remain the same as set forth herein.

SECTION IV. COMPENSATION

- 4.01. Consultant shall perform the Services in accordance with the conditions of this Agreement, and City shall pay the amounts set forth in Attachment B, attached hereto and incorporated herein, to Consultant for the performance of the Services.
- 4.02. City shall pay all Monthly Fees (as defined in Attachment B) to Consultant in advance on or before the fifth (5th) day of each calendar month during the Term, without relief from valuation and appraisal laws.
- 4.03. Consultant shall submit a properly itemized invoice for all Services performed each month, including an itemized accounting of Reimbursable Expenses (as defined in Attachment B) which have been approved by City under this Agreement. Consultant shall reasonably cooperate and provide any other information reasonably requested by City with respect thereto. City will pay Consultant within thirty (30) days after receipt of such properly itemized invoice.
- 4.04. City shall pay any Contingent Fees (as defined in Attachment B) due to Consultant in accordance with and as provided in Attachment B within thirty (30) days after receipt of a contingent fee payment by the City from a developer or owner and only after such contingent fee payment has been actually received by the City.

SECTION V. GENERAL PROVISIONS

- 5.01. Independent Consultant. The parties agree that Consultant is an independent contractor as that term is commonly used and is not an employee of the

Consolidated City of Indianapolis and/or Marion County. As such, Consultant is solely responsible for all taxes and none shall be withheld from the sums paid to Consultant. Consultant acknowledges that it is not insured in any manner by City for any loss of any kind whatsoever. Consultant has no authority, express or implied, to bind or obligate City in any way.

5.02. Subcontracting.

5.02.1. Approval Required - The parties agree that Consultant shall not subcontract, assign or delegate any portion of this Agreement or the Services to be performed hereunder without prior written approval of City. In the event that City approves of any such subcontracting, assignment or delegation, Consultant shall remain solely responsible for managing, directing and paying the person or persons to whom such responsibilities or obligations are sublet, assigned or delegated. City shall have no obligation whatsoever toward such persons. Consultant shall take sole responsibility for the quality and quantity of any Services rendered by such persons. Any consent given in accordance with this provision shall not be construed to relieve Consultant of any responsibility for performing under this Agreement.

5.02.2. Minority, Women, Veterans, and Disability-Owned Business Enterprise Participation - To the extent Consultant uses subcontractors in the performance of services under this Agreement, Consultant shall either:

- (a) Use, at a minimum, fifteen percent (15%) Minority Business Enterprises, eight percent (8%) Women's Business Enterprises, three percent (3%) Veteran's Business Enterprises, and one percent (1%) Disability-Owned Business Enterprises in the performance of services under this Agreement; or
- (b) Demonstrate a good faith effort to achieve such percentages, in compliance with the policies and to the satisfaction of the City of Indianapolis Department of Minority & Women Business Development.

Failure of Consultant to comply with either (a) or (b), above, shall constitute a breach of this Agreement.

5.03. Necessary Documentation. Consultant certifies that it will furnish City, if requested, any and all documentation, certification, authorization, license, permit, or registration required by the laws or rules and regulations of the City of Indianapolis, the County of Marion, other units of local government, the State of Indiana, and the United States to perform the Services. Consultant further certifies that it is now and will remain in good standing with such governmental agencies and that it is now and will maintain any required license, permit, registration, authorization, or certification to perform the Services in force during

the term of this Agreement. Failure of Consultant to comply with this paragraph shall constitute a material breach of this Agreement.

5.04. Confidentiality.

5.04.1. The obligations of this Subsection shall survive the termination of this Agreement and shall be applicable to the full extent permissible under applicable law, including, without limitation, statutes governing access to public records. Consultant understands that the information provided to it or obtained from City during the performance of the Services may be confidential. Any such confidential information may not, without prior written consent of City, be disclosed to a person not in City's employ except to employees, agents, attorneys, subcontractors and lenders of Consultant who have a need to know in order to provide the Services. Further, any work product generated from confidential information during the performance of this Agreement is confidential to City. Confidential information shall consist of information clearly identified in advance by City and conspicuously marked as confidential prior to delivery to Consultant and shall not include information, that: (a) was known by Consultant at the time it was received; (b) is, as of the time of its disclosure or thereafter becomes, part of the public domain through a source other than Consultant; (c) is made known to Consultant by a third person who does not impose any obligation of confidence on Consultant with respect to such information; (d) is required to be disclosed pursuant to governmental authority, law, regulation, duly authorized subpoena or court order whereupon Consultant shall provide notice to City prior to such disclosure; or (e) information that is independently developed by Consultant without references to the otherwise confidential information. Notwithstanding anything contained in this Agreement to the contrary, Consultant shall retain and have the right to use confidential information and disclose the same to its employees, agents, attorneys, subcontractors and lenders who have agreed to be bound by the provisions of this Section 5.04.1 in connection with any Reuse Development (as defined in Attachment B).

5.04.2. Consultant shall not, under any circumstances, release information provided to it by, or on behalf of, City that is required to be kept confidential by City pursuant to Indiana law except as contemplated by Section 5.04.1(d), above. The failure to comply with this Section 5.04 in all material respects shall be considered an Event of Default (as defined herein).

5.04.3. Consultant acknowledges that City will not treat this Agreement as confidential information and will post the Agreement on the City of Indianapolis website as required by Section 141-105 of the Revised Code of the Consolidated City of Indianapolis and Marion County. Use by the

public of any document or the information contained therein shall not be considered an act of City.

5.05. Records; Audit. Consultant shall maintain books, records, documents and other evidence directly pertinent to performance of the Services under this Agreement. Consultant shall make such materials available at its offices at all reasonable times during the Term and for three (3) years from the date of final payment under this Agreement for inspection by City or any other authorized representative of the City of Indianapolis, Marion County, Indiana. Copies thereof, if requested, shall be furnished at no cost to City.

5.06. Ownership.

5.06.1. "Works" means works of authorship fixed in any tangible medium of expression by Consultant or its officers, employees, agents or subcontractors in the course of performing the Services under this Agreement, including, but not limited to, computer programs, electronic art, computer generated art, specifications, drawings, flow charts, memoranda, correspondence, records, reports and charts, regardless of the medium in which they are fixed, and all copies thereof.

5.06.2. All Works made or created by Consultant, either solely or jointly with City, in the course of Consultant's performance of the Services under this Agreement and for which payment has been received by Consultant shall be deemed to be works for hire and are and shall be the exclusive property of City. At City's request and upon the payment of all payments required under this Agreement to Consultant, Consultant will execute all documents reasonably required to confirm or perfect ownership of such Works and any corresponding copyright rights in and to such Works in City. Without the prior written consent of City and except as permitted in this Agreement, Consultant shall not use derivative works of the Works, or any parts of them, other than as related to the performance of this Agreement. During the performance of this Agreement, Consultant shall be responsible for loss or damage to the Works while they are in Consultant's possession or control. Any loss or damage shall be restored at Consultant's expense. City shall have free and unlimited access to the Works at all times and, upon demand and upon the payment of all payments required under this Agreement to Consultant, shall have the right to claim and take possession of the Works and all copies. Notwithstanding the foregoing, Consultant shall be entitled to retain a set of its work papers for archival purposes only, in accordance with applicable professional standards. Notwithstanding anything in this Agreement to the contrary, Consultant shall retain and have the right to use the Works in connection with any Reuse Development (as defined in Attachment B). Notwithstanding anything to the contrary in this Section 5.06, in the event of a dispute or disagreement concerning the payment of any amount due Consultant under this Agreement, Consultant shall

continue to comply with the obligations and duties required to be performed by Consultant pursuant to this Section 5.06.2 without delay or additional compensation.

5.06.3. Consultant shall retain all rights in and to its know-how, methods, techniques, discoveries, concepts, and ideas, whether patentable or not, and whether possessed by Consultant prior to or acquired by Consultant during the performance of this Agreement. Consultant also shall retain all rights in and to all works of authorship fixed in a tangible medium of expression which were made, created or acquired by Consultant prior to the effective date of this Agreement ("Pre-Existing Works").

5.07. Insurance. Pursuant to agreement from all parties, in light of the nature of this Agreement, i.e. personal and professional services, no insurance shall be required.

5.08. Termination.

5.08.1. It shall be an "Event of Default" by the applicable party if:

- (a) any representation or warranty made by City or Consultant in this Agreement is untrue or incorrect in any material respect;
- (b) there is an assignment of this Agreement, or an interest herein, in violation of the terms and conditions of Section 5.02;
- (c) Consultant becomes insolvent; or
- (d) either party otherwise fails to perform or observe any term or condition of this Agreement to be performed or observed by it: (i) with respect to the obligation to pay money, if such failure is not cured within ten (10) days after such payment is due; provided that, in the case of the first failure in any given 12 month period, such failure shall not be an Event of Default unless it is not cured within ten (10) days after receipt of written notice; and (ii) with respect to any other obligation, if such failure is not cured within a period of thirty (30) days after the party failing to perform or observe any term or condition of this Agreement to be performed or observed by it receives notice specifying the nature of the failure; provided that, if the failure is of such a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the 30-day period shall be extended as reasonably may be necessary for the defaulting party to remedy the failure, so long as the defaulting party: (x) commences to remedy the failure within the 30-day period; and (y) diligently pursues such remedy to completion.

5.08.2. Whenever an Event of Default occurs, the non-defaulting party may (a) take whatever actions are available at law or in equity to: (i) collect any payments due under this Agreement; (ii) protect the rights granted to the non-defaulting party under this Agreement; or (iii) enforce the

performance or observance by the defaulting party of any term or condition of this Agreement (including, without limitation, the right to specifically enforce any such term or condition); or (b) terminate this Agreement by written notice thereof to the defaulting party.

5.08.3. This Agreement may be terminated in whole, but not in part, in writing by City for City's convenience; provided that Consultant is given (a) not less than thirty (30) days' prior written notice that City is electing to terminate this Agreement as of the date specified in such termination notice, and (b) an opportunity for consultation with City prior to the date of termination specified in City's termination notice.

5.08.4. Upon receipt of notice of termination for City's convenience or as the result of an Event of Default by Consultant or City, Consultant shall (1) promptly discontinue all Services affected, unless the termination notice directs otherwise, and (2) deliver or otherwise make available to City all Works and such other information, materials or documents as may have been accumulated by Consultant in performing this Agreement, whether completed or in process.

5.08.5. If there is a termination of this Agreement for City's convenience or as the result of an Event of Default by City, then: (A) City shall pay all Monthly Fees and Reimbursable Expenses payable through the date of termination to Consultant; (B) Consultant shall be entitled to receive the Contingent Fees it otherwise would be entitled for the remainder of the original Term (as if no termination of this Agreement had occurred); and (C) the foregoing shall be the sole remedies available to Consultant in connection with any such termination; provided that Consultant shall be entitled to the remedy of specific performance to enforce the terms and conditions of this Subsection. The provisions of this Subsection shall survive the expiration of the Term or earlier termination of this Agreement.

5.08.6. If there is a termination of this Agreement as the result of an Event of Default by Consultant, then: (A) City shall pay all Monthly Fees and Reimbursable Expenses payable through the date of termination to Consultant; (B) Consultant shall be entitled to receive the Contingent Fees it otherwise would be entitled for the remainder of the original Term (as if no termination of this Agreement had occurred); and (C) the foregoing shall be the sole remedies available to City in connection with any such termination; provided that City shall be entitled to the remedy of specific performance to enforce the terms and conditions of this Subsection. The provisions of this Subsection shall survive the expiration of the Term or earlier termination of this Agreement.

5.09. Termination for Failure of Funding. Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by City are at any time insufficient or not forthcoming through failure of any entity to

appropriate funds or otherwise, then City shall have the right to terminate this Agreement without penalty by giving written notice documenting the lack of funding, in which instance this Agreement shall terminate on the last day of the fiscal period for which appropriations were received. City agrees that it will make its best efforts to obtain sufficient funds, including but not limited to, requesting in its budget for each fiscal period during the term hereof sufficient funds to meet its obligations hereunder in full. In the event of termination of this Agreement pursuant to this Section 5.09: (A) Consultant shall be entitled to receive all Monthly Fees and Reimbursable Expenses payable through the date of termination, as such date is determined pursuant to this Section 5.09, (B) Consultant shall be entitled to receive the Contingent Fees it otherwise would be entitled for the remainder of the original Term (as if no termination of this Agreement had occurred); and (C) the foregoing shall be the sole remedies available to Consultant in connection with any such termination; provided that Consultant shall be entitled to the remedy of specific performance to enforce the terms and conditions of this Subsection. This provision shall survive any termination of this Agreement.

- 5.10. Indemnification. Consultant agrees to indemnify, defend, and hold harmless the City of Indianapolis, Marion County and their respective officers, agents, and employees for any and all third party claims, actions, causes of action, judgments and liens to the extent they arise out of any negligent or wrongful act or omission or breach of any provision of this Agreement by Consultant or any of its officers, agents employees, or contractors.

Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein. City shall not provide such indemnification to Consultant, provided, however, that Consultant shall be relieved of its indemnification obligation to the extent any injury, damage, death or loss is attributable to the acts or omissions of City.

- 5.11. Notice. Any notice required to be sent under this Agreement shall be sent by internationally recognized overnight courier, certified mail, facsimile or other delivery method which provides confirmation of receipt and shall be directed to the persons and addresses specified below (or such other persons and/or addresses as any party may indicate by giving notice to the other party):

To Consultant:

Browning Investments, LLC
Attn: David S. Gabovitch
6100 West 96th Street, Suite 150
Indianapolis, Indiana 46278

To City:

City of Indianapolis
Attn: Corporation Counsel
200 E. Washington St.,
Suite 1600
Indianapolis, Indiana 46204

With a Copy to:

Blake J. Schulz, Esq.
Ice Miller LLP
One American Square, Suite 2900
Indianapolis, Indiana 46282

Tenley L. Drescher-Rhoades
Faegre Baker Daniels LLP
600 E. 96th Street, Suite 600
Indianapolis, IN 46204

- 5.12. Disputes. Consultant shall carry on all work required under this Agreement during all disputes or disagreements with City other than a dispute or disagreement concerning the payment or non-payment of any amount due to Consultant. No work shall be delayed or postponed pending resolution of any disputes or disagreements other than a dispute or disagreement concerning the payment or non-payment of any amount due to Consultant and except as Consultant and City may otherwise agree in writing. Should Consultant fail to continue to perform its responsibilities as regards all non-disputed work except in the event of a dispute or disagreement concerning the payment or non-payment of any amount due Consultant, any additional costs incurred by City or Consultant as a result of such failure to proceed shall be borne by Consultant, and Consultant shall make no claim against the City for such costs.
- 5.13. Non-discrimination. Consultant and its officers, agents, employees, and subcontractors shall not discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to her or his hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of her or his race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States military service veteran status. Breach of this section shall be regarded as a material breach of this Agreement.
- 5.14. Conflict of Interest.
- 5.14.1. Consultant certifies and warrants to City that neither it nor any of its officers, agents, employees or contractors who will participate in the performance of any Services required by this Agreement has or will have any conflict of interest, direct or indirect, with City.
- 5.14.2. For purposes of compliance with IC 36-1-21, Consultant certifies and warrants to City that Consultant, or a person who wholly or partially owns Consultant, is not a *relative*, as that term is defined by IC 36-1-21-3, of either the Mayor of Indianapolis, Indiana, or a member of the City-County Council of Indianapolis and Marion County, Indiana.
- 5.15. Non-contingent Fees. Consultant warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty City shall have the right to annul this Agreement without liability or in its discretion to

deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

- 5.16. Force Majeure. In the event that either party is unable to perform any of its obligations under this Agreement (other than the payment of any monetary amount with respect to services already performed) – or to enjoy any of its benefits – because of fire, explosion, power blackout, natural disaster, strike, embargo, labor disputes, war, terrorism, acts of God, acts or decrees of governmental bodies or other causes beyond such party's reasonable control (hereinafter referred to as "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other and shall take commercially reasonable actions to resume performance. Upon receipt of such notice, all obligations under this Agreement shall immediately be suspended for the period of such Force Majeure Event except for payment obligations with respect to Services already provided.
- 5.17. Applicable Laws; Forum.
- 5.17.1. Consultant agrees to comply in all material respects with all applicable federal, state and local laws, rules, regulations or ordinances applicable to the performance of the Services, and all provisions required thereby to be included in this Agreement are hereby incorporated by reference. This includes, but is not limited to, the Federal Civil Rights Act of 1964 and, if applicable, the Drug-Free Workplace Act of 1988. The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by City and Consultant to determine whether the provisions of the Agreement require formal modification.
- 5.17.2. This Agreement shall be construed in accordance with the laws of the State of Indiana, and by all applicable Municipal Ordinance or Codes of the Consolidated City of Indianapolis, County of Marion. Suit, if any, shall be brought in the State of Indiana, County of Marion.
- 5.18. Waiver. Either party's delay or inaction in pursuing its remedies set forth in this Agreement, or available by law, shall not operate as a waiver of such party's rights or remedies.
- 5.19. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the provision shall be stricken, and all other provisions of this Agreement which can operate independently of such stricken provisions shall continue in full force and effect.
- 5.20. Attorneys' Fees. Consultant shall be liable to City for reasonable attorneys' fees incurred by City in connection with the collection or attempt to collect, any damages arising from the negligent or wrongful act or omission of Consultant, or

from Consultant's failure to fulfill any provisions or responsibility provided herein.

5.21. Successors and Assigns. City and Consultant each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; except as otherwise provided herein, Consultant shall not assign, sublet or transfer its interest in this Agreement without the written consent of City. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of City.

5.22. Authority to Bind Consultant. Notwithstanding anything in this Agreement to the contrary, the signatory for Consultant represents that he/she has been duly authorized to execute agreements on behalf of Consultant and has obtained all necessary or applicable approval from the home office of Consultant to make this Agreement fully binding upon Consultant when his/her signature is affixed and accepted by City.

5.23. Representation and Warranties.

5.23.1. City. City represents and warrants to Consultant that: (i) City shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (ii) City has the power and authority to enter into this Agreement and to perform its obligations hereunder; (iii) City has been authorized by proper action to execute and deliver this Agreement, and to perform its obligations hereunder; and (v) this Agreement is the legal, valid, and binding obligation of City.

5.23.2. Consultant. Consultant represents and warrants to City that: (i) Consultant shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement; (ii) Consultant is a limited liability company organized and existing under the laws of the State of Indiana; (iii) Consultant has the power and authority to enter into this Agreement and to perform its obligations hereunder; (iv) Consultant has been authorized by proper action to execute and deliver this Agreement, and to perform its obligations hereunder; and (v) this Agreement is the legal, valid, and binding obligation of Consultant.

5.24. Debarment and Suspension.

5.24.1. Consultant certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from or ineligible for participation in any Federal assistance program by any Federal department or agency, or by any department, agency or political subdivision of the

State of Indiana. The term "principal" for purposes of this Agreement means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Consultant.

5.24.2. Consultant certifies, by entering into this Agreement, that it does not engage in investment activities in Iran as more particularly described in IC 5-22-16.5.

5.24.3. Consultant shall provide immediate written notice to City if, at any time after entering into this Agreement, Consultant learns that its certifications were erroneous when submitted, or Consultant is debarred, suspended, proposed for debarment, declared ineligible, has been included on a list or received notice of intent to include on a list created pursuant to IC 5-22-16.5, voluntarily excluded from or becomes ineligible for participation in any Federal assistance program. Any such event shall be cause for termination of this Agreement as provided herein.

5.24.4. Consultant shall not knowingly subcontract with any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in any Federal assistance programs by any Federal department or agency, or by any department, agency or political subdivision of the State of Indiana.

5.25. Compliance with E-Verify Program. Pursuant to IC 22-5-1.7, Consultant shall enroll in and verify the work eligibility status of all newly hired employees of Consultant through the E-Verify Program ("Program"). Consultant is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.

5.25.1. Consultant and its subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that Consultant or its subcontractor subsequently learns is an unauthorized alien. If Consultant violates this Section 5.25, City shall require Consultant to remedy the violation not later than thirty (30) days after City notifies Consultant. It shall constitute an Event of Default if Consultant fails to remedy the violation within the thirty (30) day period, and City may terminate this Agreement for an Event of Default in accordance with Section 5.08.6.

If City terminates this Agreement pursuant to this Section 5.25.1, Consultant shall, in addition to any other contractual remedies, be liable to City for actual damages. There is a rebuttable presumption that Consultant did not knowingly employ an unauthorized alien if Consultant verified the work eligibility status of the employee through the Program.

- 5.25.2. If Consultant employs or contracts with an unauthorized alien but City determines that terminating this Agreement would be detrimental to the public interest or public property, City may allow the contract to remain in effect until City procures a new contractor.
- 5.25.3. Consultant shall, prior to performing any work, require each subcontractor to certify to Consultant that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. Consultant shall maintain on file a certification from each subcontractor throughout the duration of the Project. If Consultant determines that a subcontractor is in violation of this Section 5.24, Consultant may terminate its contract with the subcontractor for such violation.
- 5.25.4. Pursuant to IC 22-5-1.7 a fully executed affidavit affirming that the business entity does not knowingly employ an unauthorized alien and confirming Consultant's enrollment in the Program, unless the Program no longer exists, shall be filed with City prior to the execution of this Agreement. This Agreement shall not be deemed fully executed until such affidavit is filed with City.
- 5.26. Electronic Signature. Consultant and City agree to be bound by signatures both in counterparts and by facsimile.
- 5.27. Post-Employment Restrictions. Consultant, providing supplies, real property, or services under this Agreement, certifies to City that no employee, contract employee, or subcontractor of Consultant:
- 5.27.1. Participated in any way in the solicitation, negotiation, or awarding of this Agreement while previously employed by an agency of the City of Indianapolis or Marion County for a period of one (1) year prior to the execution of this Agreement;
- 5.27.2. For a period of one (1) year after such employee ceased supervising the administration or performance of this Agreement on behalf of an agency of the City of Indianapolis or Marion County, shall perform any functions on behalf of Consultant under this Agreement with respect to City, unless the employee's former agency has consented to the employee's performance for Consultant in writing;
- 5.27.3. Has violated any provision of Chapter 293 of the Revised Code of the Consolidated City of Indianapolis and Marion County, regarding the solicitation, negotiation, awarding, or performance of this Agreement;
- 5.27.4. Is currently an official or deputy mayor of, or has appointing authority to, any agency of the City of Indianapolis or Marion County; and
- 5.27.5. Was previously employed by the City of Indianapolis or Marion County within one (1) year of this Agreement and currently has the performance

of lobbying activity (as that term is defined in Section 909-101 of the Revised Code of the Consolidated City of Indianapolis and Marion County) related to an agency or an official as a responsibility of his or her employment or contractual relationship with Consultant.

Violation of this certification shall constitute a material breach of this Agreement and an Event of Default. In addition, upon a violation of this certification, City shall report such violation to the Office of Corporation Counsel who may, at its discretion, debar Consultant from eligibility for future city and/or county purchasing, bids, contracts, and/or projects.

5.28. Method of Payment. Consultant shall accept invoice payments via City/County check, City/County Purchasing Card (Master Card) or Automated Clearing House (ACH) at City's sole option and discretion. City will not be responsible for any card fees or other bank charges incurred by Consultant.


5.29 Additional Information upon Request. The Contractor shall, upon request of the City, make available its policies, practices and standards for the hiring of applicants, except as prohibited under Indiana Code section 22-2-17-3, to the extent such information is related to the provision of services under this Agreement.

5.30 Wage Theft/Payroll Fraud. Consultant shall report, and shall require its subcontractors to report, all written complaints or adverse determinations of Wage Theft or Payroll Fraud against Consultant or its subcontractors to City's Office of Finance and Management within thirty (30) days of notification of the complaint or adverse determination. A final adverse decision rendered against the Consultant with respect to the Services provided to City shall constitute an Event of Default by Consultant. Consultant shall provide a sworn statement on whether Consultant had any adverse determinations rendered against Consultant within the preceding three (3) years.

[Remainder of page intentionally left blank, signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

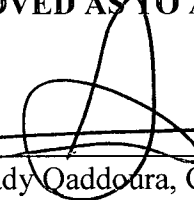
BROWNING INVESTMENTS, LLC ("Consultant")

By: 
Printed: John F. Hirschman
Title: President and CEO

CONSOLIDATED CITY OF INDIANAPOLIS AND MARION COUNTY FOR EXECUTION AND AS TO LEGAL FORM ("City")

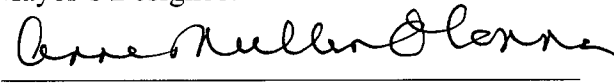
By: 
Andrew J. Mallon, Corporation Counsel

APPROVED AS TO AVAILABILITY OF FUNDING:

By: 
Fady Oaddoura, Controller

APPROVED FOR EXECUTION:

Joseph H. Hogsett, Mayor
By Mayor's Designee:

By: 
Anne Mullin O'Connor, Deputy Corporation Counsel

Date: 2-20-2018

City Hall Initial Feasibility Assessment

Scope of Work

Purpose: A preliminary study to analyze redevelopment of the City Hall building and to make a recommendation on whether to move City offices into the building or to proceed with a Formal Request for Proposal process to sell the property to a third-party developer.

1. Project Initiation

- a. Identify and engage key City/County/Consultant participants to be team members during the City Hall Initial Feasibility Assessment process.
- b. Identify applicable City assets to be studied as part of this assessment (initial facilities assumed to be the old City Hall and the City-County building)
- c. Prioritize the identified key end goals and objectives.

2. Create and maintain a detailed action plan

- a. Develop a preliminary project schedule and action plan with detailed work assignments.
- b. Prepare a list of required information and documentation and needed to complete the process.
- c. Determine a shared document solution.
- d. Update the action plan, schedule and assignments, as needed.

3. On-Site Visits and Preliminary Data Gathering

- a. Identify potential tenants who might become occupants of City Hall
- b. Conduct limited on-site visits of the physical buildings for general observation.
- c. Conduct limited interviews with key representatives of space users to understand current and projected space utilization, unique space requirements, working configurations, key adjacencies with internal departments, collaborations with other tenant users, willingness to consider shared services, etc.

4. Data Analysis / Due Diligence

- a. Project the need for structural repairs to the building and surrounding site, infrastructure and off-site improvements, if applicable, based on reviews of the available studies and visual inspections.
- b. Compile profiles of each property noting current HVAC systems, square footages, available parking, floor plan configurations, etc.
- c. Study floor plan configurations of existing assets for potential redevelopment options including repurposing all or portions of each building for alternate uses.
- d. Prepare initial programming models for each user's needs based on industry standard space per person, conversations with key users and conversations with City staff members.

5. Develop First Draft of the Deliverables for Review

- a. Develop a square footage requirements spreadsheet.
- b. Document potential user collaborations, if applicable, into a relationship diagram.
- c. Develop preliminary floor plan layouts for each building reflecting applicable user group.
- d. Prepare preliminary construction cost estimates based on industry standards for remodeling the building.
- e. Prepare financial proformas based on preliminary cost estimates for the building's core and shell, tenant improvement costs based on industry standards per square foot, projected timing for the lease up of the space and public financing, based on a long-term hold of the assets.
- f. Project potential economic inputs for each user including rents, tenant improvement requirements, length of lease and commissions based on comparable market information.
- g. Prepare financial analyses to provide projected market based values for the applicable assets based on potential disposition of the assets overall findings of the preliminary study.

6. Assist the City Staff members in a presentation to the Mayor.

- a. Develop a summary level PowerPoint presentation slide deck, in coordination with the City team members, designed to present our analysis and recommendations, regarding the City Hall building.
- b. Participate in the team presentation to the Mayor, as requested.

**ATTACHMENT A-2: STRATEGIC REAL ESTATE PLANNING:
DOWNTOWN SPACE AND ASSETS**

Strategic Real Estate Planning: Downtown Space and Assets

Scope of Work

Purpose: A comprehensive study to analyze redevelopment or disposition opportunities for real estate owned by the City of Indianapolis and located in downtown Indianapolis. The study would include, but may not be limited to, assets such as the City County Building and Jail #1.

1. Team Formation

- a. Confirm the key City/County/Consultant stakeholders and participants to be team members throughout the Strategic Real Estate Planning process.
- b. Identify and engage necessary additional third-party consultants to work as sub-consultants to Browning and provide additional technical assistance to the team, as needed.

2. Set Goals and Priorities

- a. Confirm which real estate assets are under consideration
- b. Define and articulate the over-arching vision, guiding principles and goals to direct the team's decision making through all facets of the project.
- c. Prioritize the identified key end goals and objectives.
- d. Identify the expected deliverables from the strategic real estate planning process.

3. Create and maintain a detailed action plan

- a. Define the initial steps necessary to complete the defined goals and objectives in a detailed action plan.
- b. Develop a preliminary project schedule.
- c. Agree upon a basic scope of due diligence and assessment steps to be undertaken on each physical asset.
- d. Assign detailed work assignments to individual team members based on their expertise.
- e. Determine a system for regular meetings and a shared document solution.
- f. Update the action plan, schedule and assignments, as needed.

4. On-Site Visits and Preliminary Data Gathering

- a. Identify each building space user and/or occupant of space impacted by the strategic planning efforts.
- b. Conduct on-site visits of the physical buildings for general observation.
- c. Conduct interviews with applicable representatives of space users to understand current and projected space utilization, unique space requirements, working configurations, key adjacencies with internal departments, collaborations with other tenant users, willingness to consider shared services, etc.
- d. Identify and prioritize aesthetic and design space aspirations for space user groups.
- e. Obtain team consensus on current staffing levels and projected medium- and long-term staffing levels to be used in the plan.

5. Data Analysis / Due Diligence

- a. Conduct the due diligence and assessments determined in the action plan.
- b. Quantify the current and projected need for structural repairs to the buildings and surrounding site, infrastructure and off-site improvements, if applicable.
- c. Compile profiles of each property noting current HVAC systems, square footages, available parking, floor plan configurations, etc.
- d. Compile an analysis of the current and projected operating costs for each building.
- e. Study floor plan configurations of existing assets for potential redevelopment options including repurposing all or portions of each building for alternate uses.
- f. Analyze options for expansion and/or contraction of the building footprints in order to maximize the value of the assets.
- g. Analyze current and anticipated parking needs and solutions for applicable real estate assets.
- h. Review changes in technology, workforce demographics, regulations, transportation and other trend reports to determine external forces that may significantly affect the users space needs.
- i. Prepare programming models for each user's needs based on industry standard space per person and the in-person conversations with the users.

- j. Evaluate multiple space utilization options and potential economic impacts focused on applicable City assets, including various lease structures, sale structures and sale lease-back options.

6. Develop First Draft of the Deliverables for Review

- a. Develop a square footage requirements spreadsheet.
- b. Document potential user collaborations, if applicable, into a relationship diagram.
- c. Develop preliminary floor plan layouts for each building reflecting applicable user groups.
- d. Prepare preliminary construction cost estimates based on the final recommendations for remodeling, new construction and/or demolition of the buildings core and shell.
- e. Prepare financial proformas based on cost estimates for the building's core and shell, tenant improvement costs based on industry standards per square foot, projected timing for the lease up of the space and public financing, based on a long-term hold of the assets.
- f. Develop a process for gaining user support of the overall plan and marketing available space.
- g. Project potential economic inputs for each user including rents, tenant improvement requirements, length of lease and commissions; vet these terms with key decision makers.
- h. Prepare financial analyses to provide projected market based values for the applicable assets based on potential disposition of the assets.
- i. Review potential ways to secure the financial funding and other approvals needed to execute the action plan.
- j. Prepare a formal recommendation presentation based on the overall findings of the study.
- k. Finalize a written implementation plan detailing the formal recommendations from the team.

7. Present findings within the Strategic Planning Team for final comments.

8. Revise the Plan based on feedback from the internal presentation.

9. Make a final presentation to as directed by the City team members.

ATTACHMENT B: PRICING

City shall pay the following amounts to Consultant for the performance of the Services:

1. Monthly Fee. A monthly professional services fee equal to Thirty-Five Thousand Dollars (\$35,000) for each calendar month of the Term (each a "Monthly Fee", and collectively, "Monthly Fees").

The scope of the Services and the Monthly Fee for the Services may be reduced by City if City elects to sell or lease in its entirety one or more of the Downtown Assets (as herein defined). If City elects to sell or lease in its entirety one or more of the Downtown Assets, then: (A) City shall promptly provide Consultant with written notice of such election; (B) Consultant will not have any obligation to provide any of the services with respect to the Downtown Asset(s) subject to such election (and the scope of the Services shall be revised accordingly) from and after the closing of the sale or lease thereof; (C) the Monthly Fee shall be reduced by Four Thousand One Hundred Sixty Seven Dollars (\$4,167) for each Downtown Asset which is the subject of City's election under this Paragraph 1 from and after the closing of the sale or lease thereof; and (D) City's election to sell or lease any or all of the Downtown Assets shall not reduce, eliminate terminate, limit or otherwise affect Consultant's right to receive Contingent Fees.

The scope of the Services and Monthly Fee for the Services may be reduced by Consultant if Consultant elects to bid on or pursue the development or redevelopment of any or all of the Downtown Assets. If Consultant elects to bid on or pursue the development or redevelopment of any of the Downtown Assets, then: (A) Consultant shall promptly provide City with written notice of such election; (B) Consultant will not have any obligation to provide any of the services with respect to the Downtown Asset(s) subject to such election (and the scope of the Services shall be revised accordingly) from and after the date of Consultant's bid or submission to develop or redevelop such Downtown Asset(s); (C) the Monthly Fee shall be reduced by Five Thousand Eight Hundred Thirty-Three Dollars (\$5,833) for each Downtown Asset which is the subject of Consultant's election under this Paragraph 1 from and after the date of Consultant's bid or submission to develop or redevelop such Downtown Asset(s); and (D) Consultant's election to develop or redevelop all or any of the Downtown Assets shall not reduce, eliminate, terminate, limit or otherwise affect Consultant's right to receive Contingent Fees on other Downtown Assets for which Consultant has not made such an election.

For purpose of this Agreement the "Downtown Assets" shall mean and refer to the following properties located in Indianapolis, Indiana: (i) City County Building located at 200 East Washington Street, Indianapolis, Indiana 46204 (Local Parcel No. 1094754); (ii) Jail 1 located at 40 South Alabama Street, Indianapolis, Indiana 46204 (Local Parcel No. 1024545); (iii) Jail 2 located at 730 East Washington Street, Indianapolis, Indiana 46202 (Local Parcel Nos. 1027151 and 1027152); (iv) Juvenile Detention Center located at 2451 N. Keystone Avenue, Indianapolis, Indiana 46218 (Local Parcel No. 1098695) and 2605 East 25th Street, Indianapolis, Indiana 46218 (Local Parcel Nos. 1098652 and 1066925); (v) Arrestee Processing Center located at 752 East Market Street, Indianapolis, Indiana 46202 (Local Parcel No. 1027149); and (vi) the Old City Hall located at 202 N.

Alabama Street, Indianapolis, Indiana 46204 (Local Parcel No. 1097670) and 222 N. Alabama Street, Indianapolis, Indiana 46204 (Local Parcel No. 1029552), which Downtown Assets are depicted on Schedule 1, which is attached hereto and incorporated herein by reference.

2. Reimbursable Expenses. Reimbursement of actual, out-of-pocket costs and expenses paid or incurred by Consultant in connection with performing the Services which are (A) paid to entities that are not affiliated with Consultant, (B) not marked-up, and (C) authorized by the City prior to being paid or incurred by Consultant (the "**Reimbursable Expenses**"). Consultant shall not be required to pay or incur any Reimbursable Expenses.
3. Contingent Fees. For each development, redevelopment, sale, lease or other disposition of any of the Downtown Assets ("**Reuse Development**") for which the Consultant or its affiliate is not the private developer or transferee, City shall require each private developer or owner thereof to pay a Contingent Fee equal to two and one-half percent (2.5%) of the Project Costs for each such Reuse Development (the "**Contingent Fee**") in accordance with Paragraph 4 of this Attachment C.

"**Project Costs**" shall mean, with respect to each such Reuse Development, the actual costs and expenses incurred by the private developer or owner thereof in connection with the entitlement, acquisition, leasing, design, development, and construction of such Reuse Development in accordance with the terms and conditions of this Agreement and the applicable project agreement, regardless of whether such costs qualify, or customarily are categorized or characterized, as "hard costs" or "soft costs".

4. Payment of Contingent Fee. For each Reuse Development for which Consultant or its affiliate is not the private developer or transferee, City shall require the developer or owner thereof to enter into a project agreement requiring such developer or owner (A) to provide City and Consultant with a written notice setting forth: (i) the estimated Project Costs, and including the pro-forma on which the estimated Project Costs are based; and (ii) the estimated amount of the Contingent Fee, determined and based on the estimated Project Costs, (B) to pay the estimated amount of the Contingent Fee to City in equal monthly installments during the construction period contemplated in the applicable construction schedule; (C) to keep accurate books and records of all Project Costs; (D) to permit City (or its designee) and Consultant to review such books and records; (E) to provide to City and Consultant during construction period monthly reports of the total Project Costs incurred to date; and (F) within forty-five (45) days after substantial completion, to deliver to City and Consultant a certified statement setting forth: (i) the total, actual Project Costs, and including reasonable and customary supporting information; and (ii) the actual amount of the Contingent Fee based on the total, actual Project Costs; provided that, if the amount paid to City during the construction period is less than the actual amount of the Contingent Fee, then, contemporaneously with such statement, such developer or owner shall pay the amount of the shortfall to City; provided further that if the amount paid to City during the construction period is more than the actual amount of the Contingent Fee, City shall refund such excess amount to such developer or owner within thirty (30) days.

Within 30 days after receipt of each Contingent Fee payment, City shall disburse to Consultant the amount thereof to Consultant. For purposes of clarity, City is never obligated to make a Contingent Fee payment to Consultant until City has received the Contingent Fee payment from the applicable developer or owner; provided that City shall exercise commercially reasonable, good faith efforts to enforce the obligation of each such developer or owner to make its estimated payments in a timely manner; provided further that: (i) City and Consultant mutually agree to an assignment of the rights to enforce such obligation to Consultant; and (ii) Consultant, in the exercise of commercially reasonable, good faith judgment, determines that City is not taking sufficient actions to enforce such obligation, then Consultant may require that City assign to Consultant the right to enforce such obligation.

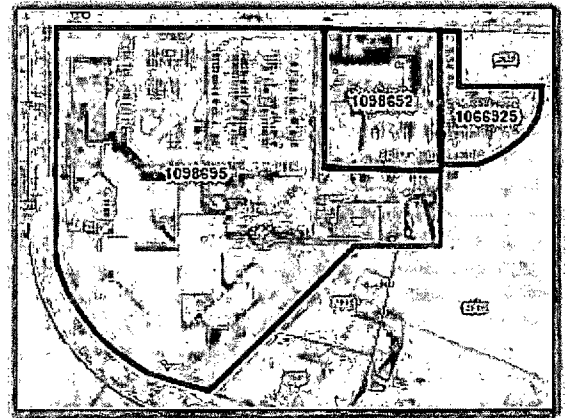
5. Credit for Monthly Fee. If Consultant is actually paid a Contingent Fee in its entirety in connection with the development, redevelopment, sale or lease of a Downtown Asset, then within thirty (30) days after receipt of the entire Contingent Fee for such development, redevelopment, sale or lease, Consultant shall pay to City an amount equal to the lesser of (a) such Contingent Fee, or (b) that portion of the Monthly Fee actually paid to Consultant for Services provided by Consultant with respect to such Downtown Asset (which amount shall be calculated by multiplying Five Thousand Eight Hundred Thirty-Three Dollars (\$5,833) times the number of calendar months of the Term prior to the date that the right to develop, redevelop, purchase or lease the Downtown Asset is awarded or granted by City or a unit thereof).
6. Contingent Fee Period. Consultant's right to receive a Contingent Fee shall be applicable to any and all Reuse Developments for which Consultant or its affiliate is not the private developer or transferee with respect to which (a) there are binding contractual commitments between City (or a unit or representative thereof) and any potential developer, person or entity at any time during the original Term, regardless of whether this Agreement has been earlier terminated as provided herein, or (b) discussions between the City (or a unit or representative thereof) and any potential developer, person or entity occurred at any time during the original Term, regardless of whether this Agreement has been earlier terminated as provided herein, and with whom binding contractual commitments for a Reuse Development are entered into at any time within eighteen (18) months after the expiration of the original Term regardless of whether this Agreement has been earlier terminated as provided herein. Upon the request of either party, the other party shall provide a certified list of all developers, persons and entities for which binding contractual commitments exist or discussions have occurred during the original Term with respect to a Reuse Development.

The City's obligations to make payments to Consultant under this Attachment C and the Agreement shall survive the expiration of the Term or earlier termination of the Agreement. For purposes of clarification, Consultant shall be entitled to a Contingent Fee for each Reuse Development for which Consultant or its affiliate is not the private developer or transferee in accordance with the terms of the Agreement notwithstanding the expiration of the Term or earlier termination of the Agreement.

**SCHEDULE 1 TO ATTACHMENT B
DOWNTOWN ASSETS**



<u>Asset</u>	<u>Address</u>	<u>Parcel</u>
City County Building	200 E. Washington Street	1094754
Jail 1	40 S. Alabama	1024545
Jail 2	730 E. Washington Street	1027152, 1027151
Arrestee Processing Center	752 E. Market Street	1027149
Old City Hall	202 N. Alabama Street 222 N. Alabama Street	1097670 1029552
Juvenile Detention Center	2451 N. Keystone Avenue 2605 E. 25th Street	1098695 1098652, 1066925



AFFIDAVIT

A. E-Verify. Pursuant to Indiana Code 22-5-1.7-11, the Contractor entering into a contract with the City is required to enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program. The Contractor is not required to verify the work eligibility status of all its newly hired employees through the E-Verify program if the E-Verify program no longer exists.

The undersigned, on behalf of the Contractor, being first duly sworn, deposes and states that the Contractor does not knowingly employ an unauthorized alien. The undersigned further affirms that, prior to entering into its contract with the City, the undersigned Contractor will enroll in and agrees to verify the work eligibility status of all its newly hired employees through the E-Verify program.

B. Wage Enforcement. Pursuant to the Wage Enforcement provisions found in Chapter 272 of the Revised Code of the Consolidated City of Indianapolis and Marion County, the undersigned, on behalf of the Contractor, being first duly sworn, deposes and states the following: (please check one of the following)

- 1. That there has not been any adverse determination against the Contractor within the proceeding 3-year period for wage theft or payroll fraud; or
- 2. That there has been an adverse determination against the Contractor within the preceding 3-year period for wage theft or payroll fraud.

(Contractor): BROWNING INVESTMENTS, LLC

By (Written Signature): [Signature]

(Printed Name): JOHN F. HIRSCHMAN

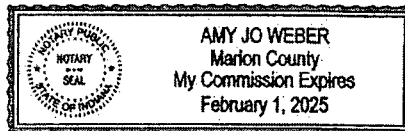
(Title): PRESIDENT & CEO

Important - Notary Signature and Seal Required in the Space Below

STATE OF Indiana

SS:

COUNTY OF Boone



Subscribed and sworn to before me this 8th day of March, 2018

My commission expires: 02/01/2025 (Signed) [Signature]

Residing in Marion County, State of Indiana