CITY OF BLOOMINGTON
parks and recreation

**AGENDA**

City of Bloomington Board of Park Commissioners — Council Chambers
Regular Meeting: Thursday, July 13, 2017 4:00pm – 5:30pm — 401 North Morton

**CALL TO ORDER - ROLL CALL**

**A. CONSENT CALENDAR**

A-1. Approval of Minutes of May 23, 2017
A-2. Approval of Claims Submitted May 23, 2017 – July 12, 2017
A-3. Approval of Non-Reverting Budget Amendments
A-4. Review of Business Report
A-5. Approval of Surplus

**B. PUBLIC HEARINGS/APPEARANCES**

| | | | | |
|---|---|---|---|---|
| B-1. | Public Comment Period | - | | |
| B-2. | Bravo Award | - | | |
| B-3. | Parks Partner Award | - | | |
| B-4. | Staff Introductions | - | Program/Facility Coordinator | (Erik Pearson) |

**C. OTHER BUSINESS**

| | | |
|---|---|---|
| C-1. | Review/Approval of partnership agreement with Bloomington Parks Foundation | (John Turnbull) |
| C-2. | Review/Approval of contract Playworld Midstates for Cascades Park playground net replacement | (Barb Dunbar) |
| C-3. | Review/Approval of Duke Energy Easement in Switchyard Park | (Dave Williams) |
| C-4. | Review/Approval of survey contract for Waldron Hill Buskirk Park | (Dave Williams) |
| C-5. | Review/Approval of consultant contract for Design Services on Park Bond funded projects at RCA Park, Sherwood Oaks Park, and Griffy Lake | (Dave Williams) |
| C-6. | Review/Approval of service agreement with Mark Stephen Enterprises, LLC | (Joanna Sparks) |
| C-7. | Review/Approval of contract with Vermont Systems for RecTrac Software Update | (Kim Clapp) |
| C-8. | Review/Approval of contract with Vermont Systems for RecTrac on-site training | (Kim Clapp) |
| C-9. | Review/Approval service agreement with HFI for AJB and Banneker repairs | (Leslie Brinson) |
| C-10. | Review/Approval of partnership agreement with Monroe County Public Library | (Leslie Brinson) |
| C-11. | Review/Approval of partnership agreement with Mad 4 My Dog | (Bill Ream) |
| C-12. | Review/Approval of Alcohol Permit Request for 2017 Garlic Fest and Community Art Fair | (Crystal Ritter) |
| C-13. | Review/Approval of change in the 2017 Price Schedule for Community Garden Program | (Robin Kitowski) |
| C-14. | Review/Approval of contract with Bloomington Seal Coating & Paving for Winslow Sports Park | (Dee Tuttle) |

*Board packets/reports are available to the public by contacting the Department at 349-3700.*

**D. REPORTS**

D-1. Recreation Division -
D-2. Operations Division -
D-3. Sports Division -
D-4. Administration Division -

**ADJOURNMENT**

*Board packets/reports are available to the public by contacting the Department at 349-3700.*

CITY OF BLOOMINGTON
parks and recreation

**A-1**
**07-13-2017**

Board of Park Commissioners
Regular Meeting
Minutes

Tuesday, May 23, 2017
4:00 – 5:30 p.m.

Council Chambers
401 N. Morton

**CALL TO ORDER**
The meeting was called to order by Mr. Les Coyne at 4:00 p.m.

**Board Present**: Mr. Les Coyne, Ms. Kathleen Mills, Ms. Darcie Fawcett

**Staff Present**: Paula McDevitt, Becky Higgins, Dave Williams, John Turnbull, Kim Clapp, Julie Ramey, Nikki McEachern, Leslie Brinson, Elizabeth Tompkins, Bill Ream, Marcia Veldman, Joanna Sparks, Barb Dunbar, Lee Huss, Dee Tuttle, Alison Miller, Steve Cotter, Erik Pearson, Robin Kitowski, and Crystal Ritter

**A. CONSENT CALENDAR**
A-1. Approval of Minutes of March 28, 2017 Meeting
A-2. Approval of Claims Submitted April 25, 2017 through May 22, 2017
A-3. Approval of Non-Reverting Budget Amendments
A-4. Review of Business Report
A-5. Approval of Surplus

Ms. Darcie Fawcett made a motion to approve the Consent Calendar. Ms. Kathleen Mills seconded the motion. Motion unanimously carried.

**B. PUBLIC HEARINGS/APPEARANCES**

**B-1. Public Comment Period –**
David Slaybaum approached the podium. Mr. Slaybaum stated, at last month's Board of Park Commissioners meeting, he petitioned the Board to place a no tobacco use ordinance in the parks. He is here today to reinforce this request.

Board thanked Mr. Slaybaum for his time. Ms. Paula McDevitt, Administrator stated this is currently under consideration by the Department.

**B–2. Bravo Award – Janice Lilly**
Marcia Veldman, Farmers' Market Coordinator, the Department would like to recognize Janice Lilly for her services as a volunteer for the Bloomington Community Farmers' Market Advisory Council. Janice is an active community member and has volunteered with many organizations over the years. We thoroughly appreciate her commitment and involvement with the Bloomington Community Farmers' Market Advisory council. Ms. Veldman presented Ms. Lilly with the May Bravo Award.

Ms. Lilly approached the podium. Ms. Lilly stated it has been a pleasure to work for the Market.

The Board thanked Ms. Lilly for her hard work and dedication to the Market.

**B-3. Parks Partner Award – None**

**B-4. Staff Introduction**

Ms. Madison Taylor approached the podium. Ms. Taylor is beginning her internship with Alison Miller, Health and Wellness Coordinator. Ms. Taylor recently graduated from Indiana University with a B.S. in Community Health and a minor in Human Development and Family Studies. Ms. Taylor has lived in Bloomington for the last fourteen years, and has volunteered with a wide variety of organizations. She would like to continue working in the health and wellness field, planning and implementing programs that provide individual the resources to improve lives. Ms. Taylor is excited for this internship opportunity and the experience she will gain.

Ms. Mary Beth Bourne approached the podium. Ms. Bourn is earning a dual degree in Public Affairs and Environmental Science with concentration in Environmental Management. This summer Ms. Bourn will intern with the Farmer's Market as well as the Natural Resources. She hopes to gain real world experience in community outreach and education, learn about local sustainability practices, and gain practical skill in the management of parks in urban areas. She is excited to give back to the community, and believes this experience will be invaluable to her education and future career.

Mr. Aaron Henderson approached the podium. Mr. Henderson is scheduled to graduate for Indiana University in December 2017, with a major in Sports Marketing and Management and a Business minor. Mr. Henderson comes to us from South Bend, Indiana where he attended South Bend John Adams High School. This summer Mr. Henderson will intern with the Sports Division.

Ms. Crystal Ritter approached the podium. Ms. Ritter has recently accepted the position of Community Events Coordinator for the Arts. For the last seven years, Ms. Ritter has been working part time for BPRD. Ms. Ritter comes to us from the Girl Scouts of Central Indiana, where she served a six county area as the Community Engagement Manager, training and supervising Troop Leaders and overseeing all local events in those areas. In her past positions, she has planned, organized and supervised a variety of program and events. Ms. Ritter is excited to work full time for BPRD, and feels the department adds great value to the community with the vast amount of community events and programs offered.

Ms. Nikki McEachern, Community Relations Coordinator approached the podium. Ms. McEachern stated the Department would like to introduce and welcome the 2017/2018 class of Park Ambassadors, who will serve as community stewards in BPRD most visited parks. The seven individuals selected from the recruiting and interview process are as follows;

Broadview Park – Dani Graf
Bryan Park – Stephen Bailey
Building and Trades Park – Daniel Muller
Butler Park – Rachel Aine
Lower Cascades Park – Patrick Martin
Olcott Park – Mary Jean Cappiello
REA Park – Mindy Bartlett

**C. OTHER BUSINESS**

**C-1. Review/Approval of Park Board Member Alternate**

Mr. Les Coyne made an acclamation to appoint Ms. Darcie Fawcett as an alternate for department representation on the Plan Commission.

**C-2 Review/Approval of Resolution 17-04**

Ms. Paula McDevitt, Administrator, approximately 65 acres of property were acquired to develop the Switchyard Park. The Department is requesting the approval of Resolution 17-04 to dispose of a small parcel, 1901 South Rogers Street, because it is not necessary for the development of the Switchyard Park, and to see 1901 South Rogers Street developed as affordable housing. Staff is asking to forward Ordinance 17-01 onto the Bloomington Common Counsel, and to represent the Board at any necessary meeting regarding the Ordinance.

In order to ultimately dispose of 1901 South Rogers, it is necessary to subdivide Parcel Number 53-08-08-100-014.000.009 and will require assistance from a surveyor to prepare the necessary documentation. Staff is seeking the Boards approval to award a contract to Bledsoe Riggert Cooper James for platting services related to 1901 S. Rogers.

Ms. Fawcett made a motion to approve of Resolution 17-04. Ms. Mills seconded the motion. Motion unanimously carried.

**C-3. Review/Approval of Partnership Agreement with Centerstone**

Ms. McDevitt, Administrator the BPRD would like to enter into a partnership agreement with Centerstone (CS). The goal of BPRD is to provide well maintained parks for the community to enjoy. This partnership will provide an opportunity for CS clients to work for CS in BPRD parks, by combining available resourced from each party. The department has designated Seminary Park, Peoples Park, Butler Park and Building Trades Park as sites for the park maintenance pilot program. BPRD will provide training, equipment and supplies. CS will provide staff, supervision and transportation to crews. This partnership opportunity came by, staff participating and networking in the Downtown Outreach Group. Ms. McDevitt invited Mr. Greg May, Administrator Director Centerstone.

Mr. Greg May, Administrator Director stated Cornerstone is excited for the partnership with BPRD. They look forward to being part of a team that helps maintain the parks so they are safe and nice for all members of the community to enjoy. Centerstone has a long history of providing employment related services. The participants in the employment program that is funded by the City of Bloomington Downtown Outreach program, are either experiencing homelessness or unstable housing. We are confident this partnership will be beneficial to BPRD and the community. The intention is to provide employment opportunity to those experiencing homelessness or unstable housing though rehabilitative services, such as case management, life skills training, support unemployment, or on the job training. This is to not only assure success for BPRD, but also for those individuals employed in this maintenance pilot program.

The Board requested future updates on this new program.

Ms. McDevitt stated, this partnership is modeled after a similar program used in Bolder Colorado.

Ms. Fawcett made a motion to approve the Partnership Agreement with Centerstone. Ms. Mills seconded the motion. Motion unanimously carried.

**C-4. Review/Approval of Partnership Agreement with B-Line Trail Zabriskie Memorial**

Mr. Dave Williams, Operation and Development Director, this agreement outlines a partnership which will allow the Christian Zabriskie Memorial (CZMC) committee to fund and oversee the construction of the Christian Zabriskie Memorial. This memorial will be a small shelter, to be located on the B-Line Trail north of the Dodds Street crossing. Ongoing maintenance of the memorial is to be provided by BPRD staff; the costs of which will partially be funded by a maintenance endowment fund, provided by the CZMC. This was presented at the April Board meeting, but at that time the partnership was not vetted or approved by the legal department. This partnership has now received their consent and is ready for the Boards final approval.

Ms. Fawcett made a motion to approve the Partnership Agreement with B-Line Trail Zabriskie Memorial. Ms. Mills seconded the motion. Motion unanimously carried.

**C-5. Review/Approval of Request for Property Donation Monroe County Fullerton Pike Project**

Mr. Williams, Operations Director the staff recommends the Board approve a request from Monroe County to donate permanent and temporary Right-of-Way for their Fullerton Pike Project. This multi-phased construction project of Monroe County, is to upgrade and widen Fullerton Pike from I69 east to Sara Road. The Bloomington Rail Trail crosses this corridor at Gordon Pike requiring acquisition of additional fee simple right-of-was (.210 acre), permanent flood /drainage easement (.458 acre) and temporary right of way (.168 acre). The deed to the Bloomington Rail Trail is held by the Board of Park Commissioners.

The assessed value of the property, easement, and temporary right-of-way is $7,560. The Fullerton Pike project will include construction of a refuge island crossing for trail users. We have worked cooperatively with the county on projects such as this in the past. The County has also committed to complete the abandoned rail corridor property transfer to the City and the department has secured funding for trail construction on this corridor from the 2017 Park Bond. Undertaking a road improvement project, which purpose is to reconstruct Fullerton Pike. The project's central focus is to provide an improved roadway corridor. A portion of BPRD property is affected by this project and Monroe County requires as permanent right-of-way, perpetual flood easement and temporary right-of-way for construction and grading of the trail.

With the approval of the property donation for the County project, the Board must resolve that on the date of the meeting a vote was held to approve the donation of the needed property for Fullerton Pike Phase 2, located on Gordon Pike, and must also authorize Board president Coyne to be the signatory on all documents.

Ms. Fawcett made a motion for a resolution to approve the property donation to Monroe County for the Fullerton Pike Project. Ms. Mills seconded the motion. Motion was unanimously carried.

**C-6 Review/Approval of Consultant Contract Agreement for Facility Roofing Projects**

Mr. Dave Williams, Operations and Development Director, the Department wishes to make roofing repairs to the Banneker Community Center, Twin Lakes Recreation Center, and make limestone wall rehabilitation and roof repairs to the Rosehill Cemetery Mausoleum. The Department requires the services of a professional consultant in order to survey existing conditions, prepares specification and construction document for bidding, and administer and inspect contracted work for the projects at all three locations. These are TIF projects. STR Building Consultant fees are $61,500 for the three projects.

Ms. Fawcett made a motion to approve the Consultant Contract with STR Building Resources LLC for facility roofing projects. Ms. Mills seconded the motion. Motion unanimously carried.

**C-7 Review Approval of Chef for Hire Contract**

Leslie Brinson, Community Events Manager, the Department wishes to vend summer meals for summer food services program: and requires the services for a professional consultant in order to perform the development of meals to follow State guidelines. In 2016, 4401 meals were served at Banneker Community Center. It is anticipated that number will increase in 2017. Chef for Hire has been a great partner to work with and are experts in providing meals that comply with all State regulations and are familiar with the Summer Food Service Program thought the IDOE.

Ms. Fawcett made a motion to approve the Chef for Hire Contract. Ms. Mills seconded the motion. Motion unanimously carried.

**C-8 Review/Approval of the Partnership Agreement with the Ryder Film Series**

Ms. Leslie Brinson, Community Events Manager, this Agreement is to outline a program partnership which provides for increased entertainment opportunities for the Bloomington community by combining available resources from each partner to the Agreement. Six films will be shown at 4 park locations. The only significant change to this year's agreement is fees. In 2017, BPRD will pay Ryder the cost of the movie rights plus $450.00. Ryder had previously charged, movie rights plus $25.00 per movie. The increase, is to compensate Ryder for consulting and design hours associated with the partnership.

Ms. Fawcett made a motion to approve the Partnership with the Ryder Film Series. Ms. Mills seconded the motion. Motion unanimously carried.

**C-9 Review/Approval of Service Agreement with Kick's Unlimited Dance LLC**

Mr. Erik Pearson, Program Specialist-Banneker Community Center, the goal of this agreement is to provide the participants with expert instruction into the field of modern dancing and aim to instill confidence in the participants as well as increasing their overall health and wellness. Participants will travel to the KICK's Unlimited Dance Facility, once per week for the duration of the eight week camp.

Ms. Fawcett made a motion to approve the Service Agreement with Kick's Unlimited Dance LLC. Ms. Mills seconded the motion. Motion unanimously carried.

**C-10 Review/Approval the Contract for Services with Bruce Wilds Security for the Fourth of July Parade**

Mr. Bill Ream, Community Events Coordinator, this contract is for Bruce Wilds and his security staff to provide security at the Fourth of July Parade. Security will be located at various sites at the parade staging area and along the parade route. Bruce Wilds Security has provided services in the past, and is in good standings with the Department.

Ms. Fawcett made a motion to approve the Contract for Services with Bruce Wilds Security for the Fourth of July Parade. Ms. Mills seconded the motion. Motion unanimously carried.

The Board inquired if it is standard to have security at the Fourth of July Parade.

Mr. Ream stated, security is required any time a road is closed.

**C-11 Review/Approval of Contract for Services with the New Life Pentecostal Church**
Mr. Bill Ream, Community Events Coordinator, this agreement is for New Life Pentecostal Church to provide services at the Fourth of July Parade and the Bloomington Pumpkin Launch. Services for the Fourth of July Parade include, pick up, distribute, and return of wooden barricades from IU Campus Division and/or the Monroe County Fairgrounds as well as clean-up of the parade route, total cost is $650. New Life Pentecostal Church will assist with parking at the Bloomington Pumpkin Launch, the fee is $200. New Life United Pentecostal Church has previous provided these services, and is in good standings with the department.

Ms. Fawcett made a motion to approve the Contract with New Life Pentecostal Church for assistance with the Fourth of July Parade and Bloomington Pumpkin Launch. Ms. Kathleen Mills seconded the motion. Motion unanimously carried.

**C-12 Review/Approval of Downtown Bloomington, Inc. (DBI) Partnership Agreement**
Mr. Bill Ream, Community Events Coordinator, the goals of BPRD are to partner with another community agency and provide a Fourth of July parade for the Bloomington community. The event, to be held in downtown Bloomington, on Tuesday, July 4, 2017, from 9:00 a.m. to noon, is designed to create a social and safe environment for the community to celebrate the Fourth of July. This partnership includes, a performance by the Bloomington Community Band prior to the parade. The event will be open to the general public.

Ms. Fawcett made a motion to approve the Downtown Bloomington, Inc. Partnership Agreement for the Fourth of July Parade. Ms. Mills seconded the motion. Motion unanimously carried.

**C-13 Review/Approval of Contract with Big Bounce Fun House Rentals**
Mr. Bill Ream, Community Events Coordinator, this agreement is for Big Bounce Fun House Rental to provide the rental of entertainment equipment for various events coordinated by BPRD. Rentals will include set up and tear down of equipment, and staffing to coordinate the use of equipment at the events. The vendor has provided rental equipment in past years and is in good standings with the department.

Ms. Fawcett made a motion to approve the Service Contract with Big Bounce Fun House Rental for the rental of entertainment equipment for various 2017 events. Ms. Mills seconded the motion. Motion unanimously carried.

**C-14 Review/Approval Service Contract with Southside Rental**
Mr. Bill Ream, Community Events Coordinator, the Department requires the services of a professional consultant in order to provide, delivery, set up, take down, and removal of rental equipment, such as tables, chairs, stage risers, and tents at the Fourth of July Parade and the Holiday Market. The vendor has previously provided service and is in good standings with the Department

Ms. Fawcett made a motion to approve the Service Contract with Southside Rental for equipment at the Fourth of July Parade and the Holiday Market. Ms. Mills seconded the motion. Motion unanimously carried.

**C-15 Review of Summer Star Foundation Partnership Agreement for Banneker Nature Days**
Ms. Elizabeth Tompkins, Natural Resources Coordinator, this Agreement is to provide wholesome and constructive educational and recreational activities for children in Bloomington, that will effectively contribute to the mental, physical, social and educational enrichment of children. The purpose of this Agreement is to set forth terms under which the Summer Star Foundation will provide funding for environmental educational programming at the Banneker Community Center for children in grades K-6. This partnership has worked well for the last six years.

Ms. Fawcett made a motion to approve the Partnership Agreement with Summer Star Foundation for Banneker Nature Days. Ms. Mills seconded the motion. Motion unanimously carried.

**C-16 Review/Approval of Winslow Sports Complex South Concessions Agreement**
Ms. Dee Tuttle, Sports Facility /Programs Manager, the Monroe County Senior League Baseball Association

(MCSLBA) wishes to operate the Winslow South concessions building owned by BPRD. MCSLBA uses profits generated from sales to offset program costs and other related expenditures.

Ms. Fawcett made a motion to approve the Winslow Sports Complex Concessions Agreement with MCSLBA. Ms. Mills seconded the motion. Motion unanimously carried.

**C-17 Review/Approval of Seven (7) Service Agreements**

Ms. Barb Dunbar, Operations Coordinator, staff recommends the approval of seven service agreements for the Operations and Sports Division. The service agreements are for the following consultants;
Harrell Fish, Inc. – general repairs/adjustments to HVAC systems
Professional Contracting, LLC (Steve's Roofing) – general repairs to roof, gutter, soffit or metal siding work
Woods Electric – general repairs/adjustments to lighting and electrical components
Izzy's Rental – rental and cleaning/ pumping services, at three locations
Izzy's Rental – cleaning and pumping services *only*, at 4 locations
Monroe Tuff-Jon – rental and cleaning/pumping services at three locations
Monroe Tuff-Jon – cleaning/pumping services only, at two locations

Ms. Fawcett made a motion to approve the Seven (7) Service Agreements with Harrell Fish, Professional Contracting, Woods Electrical, Izzy's Rental and Monroe Tuff-Jon. Ms. Mills seconded the motion. Motion unanimously carried.

**C-18 Review/Approval of Temporary Easement at Winslow Sports Park**

Dee Tuttle, Sports Facility /Program Manager, Vectren Energy has an existing easement at Winslow Sports Park for a supply natural gas line. They are requesting additional space near, but outside of the easement for a temporary basis to stage equipment and for work space. Vectren has agreed to pay $5,280 as compensation for using this added area and are to return the site to its original state. This agreement is agreeable to staff as it is out of our active playing area. The valuation of the temporary easement is done per legally defined guidelines that Vectren is required to follow. The temporary easement could last up to 270 days, but is unlikely to take that long.

Mr. Darcie Fawcett made a motion to approve the Temporary Easement at Winslow Sports Park with Vectren Energy. Ms. Mills seconded the motion. Motion unanimously carried.

**C-19 Review/Approval of Contract with Aquatic Control, Inc.**

Steve Cotter, Natural Resources Manager, staff recommends the approval of this agreement to update the Griffy Lake Aquatic Vegetation Management Plan and to Conduct Invasive Plan Treatment. Funding is provided from the Indiana Department of Natural Resources Lake and River Enhancement Program and the plan will provide information on the health of the vegetation community in the lake. The Eurasian watermilfoil treatment will prevent excessive weed growth, which would have a negative effects on boating and fishing at the lake.

Ms. Fawcett made a motion to approve the Contract with Aquatic Control, Inc. to update the Griffy Lake Aquatic Vegetation Management Plan and to Conduct Invasive Plant Treatment. Ms. Mills seconded the motion. Motion unanimously carried.

**C-20 Review/Approval of Revised Agreement with Partners for Fish and Wildlife Program**

Steve Cotter, Natural Resources Manager, staff recommends approval of the revised agreement. At the Board of Park Commissioners April 25, 2017 meeting, the Board approved an Agreement to establish a five acre prairie at the Goat Farm. The Agreement contained an incorrect employment verification affidavit. The correct document has been added to the otherwise unchanged agreement.

Ms. Fawcett made a motion to approve the Revised Agreement with Partners for Fish and Wildlife Program to plant a five acre prairie at the Goat Farm. Ms. Mills seconded the motion. Motion unanimously carried.

**C-21 Review/Approval of Contract with Bartlett Tree Experts**

Mr. Lee Huss, Urban Forester, the Department requires the services of a professional consultant in order to perform arboricultural insecticidal treatment s for Emerald Ash Borer to seventy one City trees. It is in the public interest that such services be undertaken and performed. PBRD would like to contact with Bartlett Tree Experts to provide these services.

Mr. Dave Williams, Operations Director addressed the Board. At this time, Bartlett Tree Experts have not provided their required Affirmative Action Plan Documents. Legal is continuing to work with Bartlett Tree Experts to resolve this issue. BPRD is requesting the Board approve this contract on contingency the Affirmative Action Plan is received.

Ms. Fawcett made a motion to approve the Contract with Bartlett Tree Experts, contingent on their compliance with the Affirmative Action Plan. Ms. Mills seconded the motion. Motion unanimously carried.

**D. Reports**

D-1. Operations Division – No Report

D-2. Recreation Division – No Report

D-3. Sports Division – No Report

D-4 Administrative Division – No Report

Ms. Paula McDevitt, Administrator addressed the Board.

The June 20th Board of Park Commissioners meeting has been rescheduled to Thursday, July 13, 2017.

BPRD's summer officially starts this Friday as the following events are scheduled for May 23rd;
Bryan Park Pool and Mills Pool open at 11:00 a.m.
The Summer Sampler will be held at Bryan Park, where we will celebrate our status as Play City USA for the 10th year in a row.
The movie Finding Dori, will be shown at Bryan Park Pool at 8:30p.m.

The Department looks forward to a very active and fun summer.

**ADJOURNMENT**
Meeting adjourned at 5:08 p.m.
Respectfully Submitted,

Kim Clapp,
Secretary Board of Park Commissioners

| REVENUES AND EXPENSES: COMPARISON REPORT | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| **Expenses** | **2016** | **2016** | **2016** | **2016** | **2017** | **2017** | **2017** | |
| **May 2017** | **Total** | **Actual** | **Expenses** | **% of Expenses** | **Total** | **Expenses** | **% of Expenses** | |
| | **Expense** | **Expenses** | **as of** | **Spent** | **Expense** | **as of** | **Spent** | **%** |
| | **Budget** | **for Year** | **May** | **to date** | **Budget** | **May** | **to date** | **change** |
| **General Fund** | | | | | | | | |
| Administration | 648,362 | 798,040 | 401,351 | 50.29% | 750,594 | 433,432 | 53.47% | **7.99%** |
| Health & Wellness | 102,982 | 70,857 | 32,024 | 0.00% | 105,197 | 43,869 | 30.44% | **36.99%** |
| Community Relations | 398,972 | 360,703 | 171,045 | 47.42% | 423,303 | 190,435 | 40.41% | **11.34%** |
| Aquatics | 336,870 | 297,289 | 61,449 | 20.67% | 330,688 | 69,261 | 20.94% | **12.71%** |
| Frank Southern Center | 346,391 | 304,193 | 149,517 | 49.15% | 341,117 | 185,573 | 54.40% | **24.11%** |
| Golf Services | 936,904 | 865,839 | 466,171 | 53.84% | 885,638 | 461,477 | 52.11% | **-1.01%** |
| Natural Resources | 354,730 | 317,745 | 121,143 | 38.13% | 370,961 | 131,208 | 35.37% | **8.31%** |
| Youth Programs | 38,520 | 36,060 | 21,953 | 60.88% | 59,844 | 23,147 | 38.68% | **5.44%** |
| TLRC | 336,170 | 284,409 | 126,028 | 44.31% | 282,216 | 122,700 | 43.48% | **-2.64%** |
| Community Events | 355,578 | 319,994 | 137,274 | 42.90% | 384,284 | 138,532 | 36.05% | **0.92%** |
| Adult Sports | 297,187 | 264,499 | 98,756 | 37.34% | 288,431 | 93,971 | 32.58% | **-4.84%** |
| Youth Sports | 282,128 | 235,235 | 92,851 | 39.47% | 267,398 | 89,410 | 33.44% | **-3.71%** |
| BBCC | 277,467 | 261,400 | 105,773 | 40.46% | 304,977 | 112,180 | 36.78% | **6.06%** |
| Inclusive Recreation | 94,372 | 69,226 | 19,731 | 28.50% | 72,632 | 26,280 | 36.18% | **33.19%** |
| Operations | 1,397,965 | 1,367,298 | 556,276 | 40.68% | 1,546,438 | 545,005 | 35.24% | **-2.03%** |
| Landscaping | 279,879 | 229,642 | 74,616 | 32.49% | 283,362 | 78,644 | 27.75% | **5.40%** |
| Cemeteries | 181,065 | 156,776 | 57,054 | 36.39% | 173,285 | 68,759 | 39.68% | **20.52%** |
| Urban Forestry | 359,388 | 325,950 | 130,151 | 39.93% | 400,381 | 155,791 | 38.91% | **19.70%** |
| ***General Fund total:*** | ***7,024,932*** | ***6,565,155*** | ***2,823,161*** | 43.00% | ***7,270,746*** | ***2,969,675*** | 40.84% | **5.19%** |
| **Non-Reverting Fund** | | | | | | | | |
| Administration | 24,500 | 7,223 | 3,649 | 50.52% | 27,640 | 1,689 | 6.11% | **-53.71%** |
| Health & Wellness | 2,596 | 768 | 405 | 52.77% | 1,914 | 96 | 5.00% | **-76.41%** |
| Community Relations | 0 | 137 | 52 | 37.86% | 4,650 | 0 | 0.00% | **0.00%** |
| Aquatics | 74,491 | 61,780 | 3,928 | 6.36% | 64,433 | 2,602 | 4.04% | **-33.74%** |
| Frank Southern Center | 63,230 | 84,289 | 31,656 | 37.56% | 94,423 | 30,428 | 32.22% | **-3.88%** |
| Golf Services | 125,465 | 106,010 | 54,672 | 51.57% | 126,105 | 45,708 | 36.25% | **-16.40%** |
| Natural Resources | 15,992 | 20,643 | 3,238 | 15.68% | 50,992 | 7,456 | 14.62% | **0.00%** |
| Youth Programs | 151,153 | 172,903 | 32,620 | 18.87% | 178,521 | 35,640 | 19.96% | **9.26%** |
| *TLRC - day to day | 419,054 | 426,234 | 203,539 | 47.75% | 970,663 | 202,172 | 20.83% | **-0.67%** |
| Community Events | 180,489 | 165,857 | 50,375 | 30.37% | 190,881 | 65,056 | 34.08% | **29.14%** |
| Adult Sports | 282,621 | 244,073 | 33,334 | 13.66% | 230,225 | 70,607 | 30.67% | **111.82%** |
| Youth Sports | 18,356 | 13,697 | 5,097 | 37.21% | 26,845 | 5,661 | 21.09% | **11.06%** |
| BBCC | 21,963 | 61,163 | 11,195 | 18.30% | 25,403 | 11,560 | 45.51% | **3.26%** |
| Inclusive Recreation | 0 | 0 | 0 | 0.00% | 0 | 0 | 0.00% | **0.00%** |
| Operations | 28,000 | 17,250 | 532 | 3.09% | 19,195 | 42,494 | 221.38% | **100.00%** |
| Dog Park | 0 | 0 | 0 | 0.00% | 0 | 0 | 0.00% | **0.00%** |
| Switchyard | 14,800 | 7,540 | 2,572 | 34.11% | 14,800 | 14,631 | 98.86% | **0.00%** |
| Landscaping (CCC Prop.) | 0 | 0 | 0 | 0.00% | 0 | 0 | 0.00% | **0.00%** |
| Cemeteries | 0 | 0 | 0 | 0.00% | 0 | 0 | 0.00% | **0.00%** |
| Urban Forestry | 2,800 | 9,816 | 2,650 | 26.99% | 4,450 | 1,045 | 23.48% | **0.00%** |
| ***N-R Fund subtotal:*** | ***1,425,511*** | ***1,399,385*** | ***439,515*** | 31.41% | ***2,031,140*** | ***536,844*** | 26.43% | **22.14%** |
| TLRC - bond | 539,104 | 539,104 | 424,530 | 78.75% | 429,574 | 429,574 | 100.00% | **0.00%** |
| ***N-R Fund total:*** | ***1,964,615*** | ***1,938,489*** | ***864,045*** | 44.57% | ***2,460,714*** | ***966,418*** | 39.27% | **11.85%** |
| **Other Misc Funds** | | | | | | | | |
| MCCSC 21st Com Learn Cnt G | 29,950 | 38,880 | 20,211 | | 29,950 | 20,767 | | |
| G14004 Tree Planting | | | | | | | | |
| G14006 Out-of School Prg. | | 4 | 62 | | | | | |
| G15008 Summer Food Prg. | 11,115 | 13,734 | | | 11,115 | | | |
| G15009 Nature Days S/Star | | | | | | | | |
| Griffy Lake Nature Day | 0 | 4,673 | 2,130 | 45.58% | | 2,054 | 0.00% | **0.00%** |
| Wapehani I-69 Mitigation | 0 | 42,655 | 4,786 | 11.22% | | | 0.00% | **0.00%** |
| Leonard Springs Nature | 0 | 5,822 | 2,326 | 39.95% | | 1,861 | 0.00% | **0.00%** |
| Banneker Nature Day | | 3,934 | | | | | | |
| DNR Grant | 0 | | | 0.00% | | | 0.00% | **0.00%** |
| Kaboom Play | | 49 | | | | | | |
| ***Other Misc Funds total:*** | ***41,065*** | ***109,703*** | ***29,515*** | 26.90% | ***41,065*** | ***24,683*** | 60.11% | **0.00%** |
| **TOTAL ALL FUNDS** | **9,030,612** | **8,613,347** | **3,716,721** | **43.15%** | **9,772,524** | **3,960,775** | 40.53% | **6.57%** |
| *NR BACC/Project School has been combined with TLRC | | | | | | | | |

| REVENUES AND EXPENSES: COMPARISON REPORT | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| **Revenues May 2017** | | | | | | | | |
| | 2016 | 2016 | 2016 | 2016 | 2017 | 2017 | 2017 | |
| | Projected | Actual | Revenue | % of Revenue | Projected | Revenue | % of Revenue | |
| | Revenue | Revenue | as of | Collected | Revenue | as of | Collected | % |
| | Budget | for year | May | to date | for year | May | to date | **change** |
| **General Fund** | | | | | | | | |
| Taxes/Misc Revenue | 5,690,177 | 5,820,314 | 5,820,314 | 100.00% | 6,030,050 | 6,030,050 | 100.00% | **3.60%** |
| Administration | 1,000 | 1,095 | 491 | 44.87% | 500 | 261 | 52.20% | **-46.90%** |
| Community Relations | 0 | 0 | 0 | 0.00% | 0 | 0 | 0.00% | **0.00%** |
| Aquatics | 142,000 | 172,401 | 6,091 | 3.53% | 153,500 | 24,198 | 15.76% | **297.25%** |
| Frank Southern | 188,000 | 205,655 | 118,559 | 57.65% | 219,900 | 112,608 | 51.21% | **-5.02%** |
| Golf Services | 561,000 | 513,807 | 187,314 | 36.46% | 568,500 | 200,513 | 35.27% | **7.05%** |
| Natural Resources | 0 | -11 | 0 | 0.00% | 0 | 0 | 0.00% | **0.00%** |
| Youth Services | 0 | -237 | 0 | 0.00% | 0 | 0 | 0.00% | **0.00%** |
| Community Events | 10,125 | 11,545 | 10,235 | 88.65% | 10,700 | 10,410 | 97.29% | **1.71%** |
| Adult Sports | 79,000 | 72,075 | 36,140 | 50.14% | 78,000 | 34,540 | 44.28% | **-4.43%** |
| Youth Sports | 40,000 | 29,565 | -156 | -0.53% | 33,900 | -12 | -0.03% | **0.00%** |
| BBCC | 10,000 | 13,389 | 6,443 | 48.12% | 12,000 | 3,631 | 30.26% | **-43.65%** |
| Operations | 0 | 1,622 | 926 | 57.11% | 0 | 25 | 0.00% | **0.00%** |
| Landscaping | 0 | 0 | 0 | 0.00% | 0 | 0 | 0.00% | **0.00%** |
| Cemeteries | 27,300 | 34,225 | 0 | 0.00% | 39,700 | 14,075 | 35.45% | **#DIV/0!** |
| Urban Forestry | 0 | 0 | 15,900 | 0.00% | | 0 | 0.00% | **0.00%** |
| ***Subtotal Program Rev*** | ***1,058,425*** | ***1,055,131*** | ***381,944*** | ***36.20%*** | ***1,116,700*** | ***400,249*** | ***35.84%*** | ***4.79%*** |
| ***General Fund Total*** | ***6,748,602*** | ***6,875,445*** | ***6,202,258*** | ***90.21%*** | ***7,146,750*** | ***6,430,299*** | ***89.98%*** | ***3.68%*** |
| **Non-Reverting Fund** | | | | | | | | |
| Administration | 41,550 | 40,249 | 18,922 | 47.01% | 40,650 | 17,658 | 43.44% | **-6.68%** |
| Health & Wellness | 3,550 | 1,367 | 638 | 46.69% | 3,550 | 783 | 22.06% | **22.72%** |
| Community Relations | 2,000 | 2,113 | 1,000 | 47.34% | 4,650 | 2,000 | 43.01% | **0.00%** |
| Aquatics | 117,000 | 120,678 | 23,160 | 19.19% | 126,373 | 30,543 | 24.17% | **31.87%** |
| Frank Southern | 129,000 | 138,537 | 36,598 | 26.42% | 153,400 | 31,744 | 20.69% | **-13.26%** |
| Golf Services | 153,000 | 151,474 | 45,754 | 30.21% | 151,300 | 48,148 | 31.82% | **5.23%** |
| Natural Resources | 59,200 | 78,233 | 26,380 | 33.72% | 58,525 | 21,188 | 36.20% | **-19.68%** |
| Youth Programs | 158,400 | 208,903 | 101,352 | 48.52% | 189,866 | 101,557 | 53.49% | **0.20%** |
| *TLRC -Operational | 770,229 | 750,635 | 362,408 | 48.28% | 782,329 | 354,405 | 45.30% | **-2.21%** |
| Community Events | 171,656 | 192,373 | 98,937 | 51.43% | 191,760 | 107,927 | 56.28% | **9.09%** |
| Adult Sports | 281,000 | 251,616 | 84,939 | 33.76% | 216,500 | 68,601 | 31.69% | **-19.23%** |
| Youth Sports | 26,800 | 23,610 | 13,301 | 56.34% | 25,000 | 9,184 | 36.74% | **-30.95%** |
| BBCC | 27,620 | 65,764 | 15,937 | 24.23% | 29,420 | 15,261 | 51.87% | **-4.24%** |
| Operations | 30,700 | 132,036 | 98,442 | 74.56% | 51,640 | 30,069 | 58.23% | **-69.46%** |
| Dog Park | 400 | 0 | 0 | 0.00% | 400 | 0 | 0.00% | **-100.00%** |
| Switchyard (CCC Propt) | 82,800 | 71,236 | 33,336 | 46.80% | 82,800 | 36,728 | 44.36% | **10.18%** |
| Landscaping | 0 | 0 | 0 | 0.00% | 0 | 0 | 0.00% | **0.00%** |
| Cemeteries | 0 | 0 | 0 | 0.00% | 0 | 700 | 0.00% | **0.00%** |
| Urban Forestery | 8,900 | 10,439 | 4,171 | 39.96% | 9,300 | 0 | 0.00% | **-100.00%** |
| ***N-R Fund subtotal:*** | ***2,063,805*** | ***2,239,261*** | ***965,276*** | ***43.11%*** | ***2,117,463*** | ***876,496*** | ***41.39%*** | ***-9.20%*** |
| **Other Misc Funds** | | | | | | | | |
| G14006 Out-of-School Prg | | | | | | | | |
| G14007 MCCSC 21st Com | | | 15,873 | | 60,000 | 15,899 | | |
| G14009 Summer Food Grant | | | | | 13,744 | 0 | | |
| G14004 Tree Planting | | | | | | | | |
| Kaboom Play Everywhere | | | | | | | | |
| Urban Forestry EAB | | | | | | | | |
| Wapehani Mitigation I69 | | | | | | 32,468 | | |
| Griffy LAE Veg. Mgt | | | | | | 3,120 | | |
| G15008 Leonard Spring | | | | | | -50 | | |
| G15009 Nature Days | | | | | | | | |
| (902) Rose Hill Trust | | | 74 | | | 132 | | |
| Banneker Nature Days | | | | | | | | |
| ***Other Misc Funds total:*** | ***0*** | ***0*** | ***15,947*** | | ***73,744*** | ***51,570*** | | |
| **TOTAL ALL FUNDS** | **8,812,407** | **9,114,706** | **7,183,481** | **78.81%** | **9,337,957** | **7,358,365** | **78.80%** | **2.43%** |
| *BACC/Project School has been combined with TLRC | | | | | | | | |

| | Non-Reverting Cash Balances | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |
| | | Beginning | Revenue | Other | Expenses | Expenses | Current Year ONLY | Accumulated |
| | | Balance | as of | Misc. | as of | from | Revenue | Balance |
| | | 1/1/2017 | 6/30/2017 | revenue | 6/30/2017 | RESERVE * | Expense | |
| | | | | | | | Over/Under | |
| | | | | | | see explanation below* | (does not include expenses taken from RESERVE) | THIS IS THE TOTAL ACCUMULATED AMOUNT |
| 181000 | Administration | 167,806.40 | 19,882.87 | | 2,274.01 | | **17,608.86** | 185,415.26 |
| 181001 | Health & Wellness | 5,427.77 | 986.60 | | 280.68 | | **705.92** | 6,133.69 |
| 181100 | Community Relations | 33,354.04 | 2,000.00 | | 465.00 | | **1,535.00** | 34,889.04 |
| 182001 | Aquatics | 314,716.56 | 64,462.23 | | 22,003.90 | | **42,458.33** | 357,174.89 |
| 182500 | Frank Southern Center | 125,817.03 | 32,052.75 | | 32,292.59 | | **(239.84)** | 125,577.19 |
| 183500 | Golf Course | 142,842.77 | 67,530.15 | | 62,154.31 | | **5,375.84** | 148,218.61 |
| 184000 | Natural Resources | 201,976.15 | 33,988.26 | | 11,679.95 | | **22,308.31** | 224,284.46 |
| 184500 | Allison Jukebox | 150,115.61 | 137,508.98 | | 65,736.23 | | **71,772.75** | 221,888.36 |
| *185000 | TLRC | (276,450.63) | 356,028.70 | | 772,779.71 | | **(416,751.01)** | (693,201.64) |
| **185009 | TLRC Reserve | 481,174.15 | 36,718.75 | | 0.00 | | **36,718.75** | 517,892.90 |
| 186500 | Community Events | 422,999.89 | 116,111.08 | | 80,180.59 | | **35,930.49** | 458,930.38 |
| 187001 | Adult Sports | 90,353.49 | 74,069.02 | | 91,768.08 | | **(17,699.06)** | 72,654.43 |
| 187202 | Youth Sports | 97,846.16 | 15,811.38 | | 6,938.33 | | **8,873.05** | 106,719.21 |
| 187209 | Skate Park | 543.88 | 0.00 | | 0.00 | | **0.00** | 543.88 |
| 187500 | Benjamin Banneker Comm Cente | 41,422.47 | 20,928.59 | | 16,410.91 | | **4,517.68** | 45,940.15 |
| 189000 | Operations | 136,191.07 | 33,840.85 | | 55,494.38 | | **(21,653.53)** | 114,537.54 |
| 189005 | Dog Park | 5,993.79 | 0.00 | | 0.00 | | **0.00** | 5,993.79 |
| 189006 | Switchyard Property | 189,641.25 | 45,474.00 | | 24,762.89 | | **20,711.11** | 210,352.36 |
| 189500 | Landscaping | 12,704.36 | 0.00 | | 0.00 | | **0.00** | 12,704.36 |
| 189501 | Cemeteries | 1,497.00 | 0.00 | | 0.00 | | **0.00** | 1,497.00 |
| 189503 | Urban Forestry | 6,304.27 | 1,329.40 | | 1,147.60 | | **181.80** | 6,486.07 |
| 10002.01 | Change Fund | 0.00 | 0.00 | | 0.00 | | **0.00** | 0.00 |
| 201-24105 | Deposits | 0.00 | 0.00 | | 0.00 | | **0.00** | 0.00 |
| | **TOTALS** | **2,352,277.48** | **1,058,723.61** | **0.00** | **1,246,369.16** | **0.00** | **(187,645.55)** | **2,164,631.93** |
| | | | | | | | | **(187,645.55)** |
| | | | | | | | | **INCREASE/DECREASE FOR THE CURRENT** |

*combined TLRC Fitness 5002 with all other TLRC programs

**Project School Revenue moved to TLRC Reserve

**$9,600 for BBC wall design fees - 2016 expense

# Bloomington Parks and Recreation Surplus Declaration Form

| Date | Area/Staff | Quantity/Item | Means of Disposal |
|---|---|---|---|
| 5-Jun | Cascades Golf Coure Club House | Lockers from 1950's | Donate to St. Charles Elementary School |
| 5-Jun | Twin Lakes Recreation Center | Lockers to be replaces in renovation | Donate to St. Charles Elementary School |
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| Date Disposed |
| --- |
| Est. Demolition 10/17 |
| Est. Demolition 8/17 |
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CITY OF BLOOMINGTON
parks and recreation

**STAFF REPORT**

Agenda Item: B-4
Date:7/5/2017

Administrator
Review\Approval
PM

**TO**: Board of Park Commissioners
**FROM:** Erik Pearson
**DATE:** July 5th, 2017
**SUBJECT:** **Staff Introduction-Erik Pearson-Banneker Program/Facility Coordinator**

**Background**

My name is Erik Pearson and I am excited to be joining the City of Bloomington Parks & Recreation department and the recreation division team as the Program/Facility Coordinator at the Banneker Community Center.

I am a lifelong Bloomington resident who attended Indiana University and completed a 12-week internship with the department during the summer of 2015. At the conclusion of that experience, I joined the team at Banneker as a staff assistant until November of 2015 when I became a program specialist. In the time that I held that position, I was tasked with programming preschool sports, monthly family events, break days and summer camp, as well as volunteer management within the after school program at Fairview Elementary School.

I am looking forward to continuing the successes of the Banneker Community Center and our programs and using that foundation to expand our reach and impact into the future. The opportunity we have to make a positive impact on participant's lives is incalculable and I am excited to lead the talented staff already in place in fulfilling our mission.

It is a sincere honor and privilege to have this opportunity and I look forward to working with everyone within the department to continue the tradition of the Banneker Community Center moving forward.

**RESPECTFULLY SUBMITTED,**
*Erik Pearson*
Erik Pearson

CITY OF BLOOMINGTON
parks and recreation

# STAFF REPORT

| |
|---|
| Agenda Item: C1<br>Date: 7/6/2017 |

| |
|---|
| Administrator<br>Review\Approval<br>PM |

**TO**: **Board of Park Commissioners**
**FROM:** **John Turnbull, Sports Division Director**
**DATE:** **7/6/2017**
**SUBJECT:** **Partnership Agreement with Bloomington Parks Foundation**

**Recommendation**

Staff recommends the approval of the partnership agreement with the Bloomington Parks Foundation for the use of the Bo Cantwell Fund for golf programming scholarships.

**Background**

The Bloomington Parks Foundation provides scholarships from the Bo Cantwell Fund (a fund they manage) to provide scholarships for participants in Cascades Golf Course youth golf programs. The department oversees the scholarship applications and award while the foundation manages the fund. The partnership agreement outlines the terms for department to award scholarships and the foundation to reimburse the department for the awarded scholarships.

**RESPECTFULLY SUBMITTED,**

John Turnbull, Sports Division Director

CITY OF BLOOMINGTON
parks and recreation

# PARTNERSHIP AGREEMENT

**Partner(s):**
This Agreement is made and entered into this _____ day of _____, 2017 by and between the Bloomington Parks and Recreation Department ("BPRD"), and Bloomington Parks Foundation ("BPF").

**WHEREAS**, there has been a fund established (Bo Cantwell Fund for Youth Golf Fund) which is administered by the Bloomington Parks Foundation; and

**WHEREAS**, John Cantwell Family (Donor) has established such Fund in memory of Bo Cantwell; and

**WHEREAS**, the intent of the fund is to provide youth scholarships for golf camps, golf lessons, or golf annual passes or other directed youth golf activities, as directed by the Board of Directors (the "Board") of the Bloomington Parks Foundation; and

**WHEREAS,** BPF will oversee the funds and the distribution of funds in accordance with the Parks Foundations Policies and the intent of the Donor; and

**WHEREAS,** BPRD has youth golf activities for which scholarships can be offered to allow youth to participate in sponsored activities; and

**WHEREAS**, BPRD is authorized to plan and develop partnerships and contractual arrangements with community organizations to ensure delivery of services; and

**WHEREAS**, services provided by each partner will reflect on the other in the Agreement requiring clear communication and an outline of expectations.

**NOW THEREFORE**, the partners do mutually agree as follows:

**1. Purpose of Agreement:**
The purpose of this Agreement is to establish a partnership which will provide for collaborative efforts to provide youth golf scholarship funding in accordance with the Bo Cantwell Youth Scholarship Fund as established by the John Cantwell Family and Memorials and held by the Bloomington Parks Foundation.

**2. Duration of Agreement:**

This Agreement commences on July 13, 2017 and continues until:

a) The assets in the fund are zero; or

b) The BPRD no long provides youth golf activities; or

c) Is terminated earlier as provide under Article 7.

**3. Bloomington Parks & Recreation:**

The goal of BPRD is to partner with BPF for the Youth Golf Scholarship Activities. BPRD agrees to:

a. Identify youth that qualify for golf scholarships.

b. Prior to August 1, annually, provide a request for funding up to $800.00 or the income generated from the account in the prior year, whichever is less, to the BPF for approval.

c. Provide invoicing for such scholarships in accordance with agreed practices to BPF.

d. Monitor and report to BPF use and participation of scholarships recipients.

**4. Bloomington Parks Foundation:**

The goal of BPF is to partner with BPRD for the Youth Golf Scholarship Activities.
BPF agrees to:

a. Provide funding reimbursement to BPRD for individually Youth Golf Scholarships in an amount not to exceed $800.00 annually or the income generated from the account in the prior year, whichever is less.

**5. Terms Mutually Agreed to By All Partners:**

a. The staff and personnel involved in this Agreement will at all times represent all partners to this Agreement in a professional manner, and reflect the commitment of all partners to quality services and customer satisfaction.

b. The commitment of personnel, facilities, supplies/materials and payments will be honored according to the timetable agreed upon by all partners.

**6. Notice and Agreement Representatives:**

a. Notice regarding any significant concerns and/or breaches of this Agreement shall be given to those contacts as follows:

**Bloomington Parks and Recreation**
Paula McDevitt
Director
401 N. Morton, Suite 250
Bloomington, IN 47401
(812) 349-3711

**Bloomington Parks Foundation**
Deborah Ann Lemon
President
2421 E. Rock Creek Drive
Bloomington, IN 47401
(812) 361-7811

b. Agreement representatives for the day-to-day operations and implementation of this Agreement shall be:

| **Bloomington Parks and Recreation** | **Bloomington Parks Foundation** |
|---|---|
| John Turnbull | Deborah Ann Lemon |
| Sports Division Director | President |
| 401 N. Morton, Suite 250 | 2421 E. Rock Creek Drive |
| Bloomington, IN 47401 | Bloomington, IN 47401 |
| (812) 349-3712 | (812) 361-7811 |

**7. Termination:**

This Agreement may only be terminated in writing and by the mutual agreement of all partners.

IN WITNESS WHEREOF, the partners have signed this Agreement on the date first set forth.

**Bloomington Parks Foundation**

_____

Deborah Ann Lemon, President

**City of Bloomington**

_____

Paula McDevitt, Director

_____

Leslie J. Coyne, Board of Parks Commissioners

_____

Philippa M. Guthrie, Corporation Counsel

CITY OF BLOOMINGTON
parks and recreation

**STAFF REPORT**

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|---|
| Agenda Item: C-2<br>Date: 7/6/2017 |

| |
|---|
| Administrator<br>Review\Approval<br>PM |

**TO**: Board of Park Commissioners
**FROM:** Barb Dunbar, Operations Coordinator
**DATE:** July 13, 2017
**SUBJECT:** Review/Approval of Mid-Service Contract with Playworld Midstates

**Recommendation**
Staff recommends the review/approval of a Mid-Service Contract with Playworld Midstates. The contractor will remove the existing Dynamo Genesis 102 Climbing Net at Lower Cascades Playground and install a replacement of the same. Work will not begin until after August 9, 2017 and be completed on or before November 29, 2017.

**Background**
The existing climbing net was installed in 2005 as part of the new project construction; now twelve years later the net is showing signs of wear and is needing replaced.

**RESPECTFULLY SUBMITTED,**

Barbara J. Dunbar

**AGREEMENT**
**BETWEEN**
**CITY OF BLOOMINGTON**
**PARKS AND RECREATION DEPARTMENT**
**AND**
**PLAYWORLD MIDSTATES**
**FOR**
**Installation of Replacement Climbing Net at Lower Cascades Park**

This Agreement, entered into on this _____day of _____, 2017, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Playworld Midstates ("Contractor").

**WITNESSETH:**

WHEREAS, the Department wishes to install a new replacement playground climbing net at Lower Cascades Park; and

WHEREAS, the Department requires the services of a qualified contractor in order to perform the labor, equipment, and materials to install the new replacement playground climbing net (the "Services" as further defined below); and

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

WHEREAS, Contractor 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. <u>Scope of Services</u>**
Contractor shall provide the Services as specified in Exhibit A, "Scope of Work", attached hereto and incorporated into this Agreement.

Contractor 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.

Contractor shall complete the Services required under this Agreement on or before November 29, 2017, 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 Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Barbara Dunbar, Operations Coordinator as the Department's Project Manager. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor 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**
Contractor 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 Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor 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 Contractor 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 Contractor for all fees and expenses in an amount not to exceed Thirty Thousand Eight Hundred Nine Dollars ($30,809.00). Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1.
The invoice shall be sent to:

BARB DUNBAR
City of Bloomington
401 N. Morton, Suite 250
Bloomington, Indiana 47404

Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice.

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**
Contractor shall perform the Services according to the schedule set forth in Exhibit B, Project Schedule, attached hereto and incorporated herein by reference. 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 Contractor. Contractor shall terminate or suspend performance of the Services on a schedule acceptable to the Department and the Department shall pay the Contractor 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 Contractor'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 Contractor in connection with this Agreement shall become the property of the Department, as set forth in Article 10 herein.

**Article 8. Identity of the Contractor**

Contractor acknowledges that one of the primary reasons for its selection by the Department to perform the Services is the qualifications and experience of Contractor. Contractor thus agrees that the Services to be performed pursuant to this Agreement shall be performed by Contractor. Contractor 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 Contractor's personnel or proposed outside professional sub-contractors, and the Department reserves the right to request that acceptable replacement personnel be assigned to the project.

**Article 9. Opinions of Probable Cost**

All opinions of probable construction cost to be provided by Contractor shall represent the best judgment of Contractor based upon the information currently available and upon Contractor's background and experience with respect to projects of this nature. It is recognized, however, that neither Contractor nor the Department has control over the cost of labor, materials or equipment, over contractors' method of determining costs for services, or over competitive bidding, market or negotiating conditions. Accordingly, Department cannot and does not warrant or represent that the proposals or construction bids received will not vary from the cost estimates provided pursuant to this Agreement.

**Article 10. Reuse of Instruments of Service**

All documents, including but not limited to, drawings, specifications and computer software prepared by Contractor pursuant to this Agreement are instruments of service in respect to this project. They are not intended or represented to be suitable for reuse by the Department or others on modifications or extensions of this project or on any other project. The Department may elect to reuse such documents; however any reuse or modification without prior written authorization of Contractor will be at the Department's sole risk and without liability or legal exposure to Contractor. The Department shall indemnify, defend, and hold harmless the Contractor against all judgments, losses, claims, damages, injuries and expenses arising out of or resulting from such unauthorized reuse or modification.

**Article 11. Ownership of Documents and Intellectual Property**

All documents, drawings and specifications, including digital format files, prepared by Contractor and furnished to the Department as part of the Services shall become the property of the Department. Contractor 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 Contractor.

**Article 12. Independent Contractor Status**

During the entire term of this Agreement, Contractor shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees of the Department. Contractor 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 13. Indemnification**

Contractor 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 Contractor or its agents or employees, or any independent contractors directly responsible to it (collectively "Claims").

**Article 14. 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.

c. 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 City's will be called upon to contribute to a loss hereunder.

Contractor 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 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 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 15. Conflict of Interest**
Contractor 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. Contractor agrees that no person having any such interest shall be employed in the performance of this Agreement.

**Article 16. 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 17. 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 18. Assignment**
Neither the Department nor the Contractor 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 19. Third Party Rights**
Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Department and Contractor.

**Article 20. 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 21. 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 all regards, including, but not limited to, employment.

**Article 22. Compliance with Laws**
In performing the Services under this Agreement, Contractor 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, Contractor 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 23. <u>E-Verify</u>**

Contractor 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). 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 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 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.

**Article 24. <u>Notices</u>**

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

**Department:** **Contractor:**

| **City of Bloomington** | | **Playworld Midstates** |
|---|---|---|
| Attn: BARB DUNBAR | | Attn: JOHN HOBSON |
| 401 N. Morton, Suite 250 | | 5828 Zarley St Suite B |
| Bloomington, Indiana 47402 | | New Albany, OH 43054 |

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

**Article 25. <u>Intent to be Bound</u>**

The Department and Contractor 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 26. Integration and Modification**

This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department 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. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 27. Non-Collusion**

Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor entered into any combination, collusion, or agreement 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 sign an affidavit, attached hereto as Exhibit D, affirming that Contractor has not engaged in any collusive conduct. Exhibit D is attached hereto and incorporated by reference as though fully set forth.

**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

**PLAYWORLD MIDSTATES**

_____

John B. Hobson, President

**CITY OF BLOOMINGTON PARKS AND RECREATION**

_____

Paula McDevitt, Director

_____

Leslie J. Coyne, President, Board of Park Commissioners

**EXHIBIT A**

**"Scope of Work"**

The Services shall include the following**:**

**REPLACEMENT**
Dynamo Part #DX-102 - Genesis 102 – Playground Climbing Net

LOCATION: Lower Cascades Park Playground, 2851 N. Old State Rd. 37, Bloomington, IN.

Playworld Midstates will demolish and remove the existing piece of equipment as specified above and provide and install a replacement of the same.

Demolition shall include complete removal of existing concrete footers. Installation shall include the placement of new concrete footers.

The Department will dispose old equipment.

The Department will provide 30-yd dumpster for trash created by demolition and installation.

Contractor will have access to water on site.

The Department will replenish playground surfacing to meet safety standards.

**EXHIBIT B**

**“Project Schedule”**

Work shall not begin before August 9, 2017 and shall be completed by November 29, 2017.

**EXHIBIT C**
E-VERIFY AFFIDAVIT

STATE OF INDIANA )
)SS:
COUNTY OF _____ )

AFFIDAVIT

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

1. The undersigned is the President of Playworld Midstates.

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 herby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

_____
Signature

_____
Printed Name

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 _____, 2017.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

**EXHIBIT D**

STATE OF _____ )
) 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 _____, 2017.

Playworld Midstates

By: _____

_____

STATE OF _____ )
) 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 _____, 2017.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

CITY OF BLOOMINGTON
parks and recreation

# STAFF REPORT

| |
|---|
| Agenda Item: C-3<br>Date: 7/6/2017 |

| |
|---|
| Administrator<br>Review\Approval<br>PM |

**TO**: Board of Park Commissioners
**FROM:** Dave Williams, Operations Director
**DATE:** July 13, 2017
**SUBJECT:** **REVIEW/APPROVAL OF EASEMENT FOR DUKE ENERGY SWITCHYARD PARK**

**Recommendation**

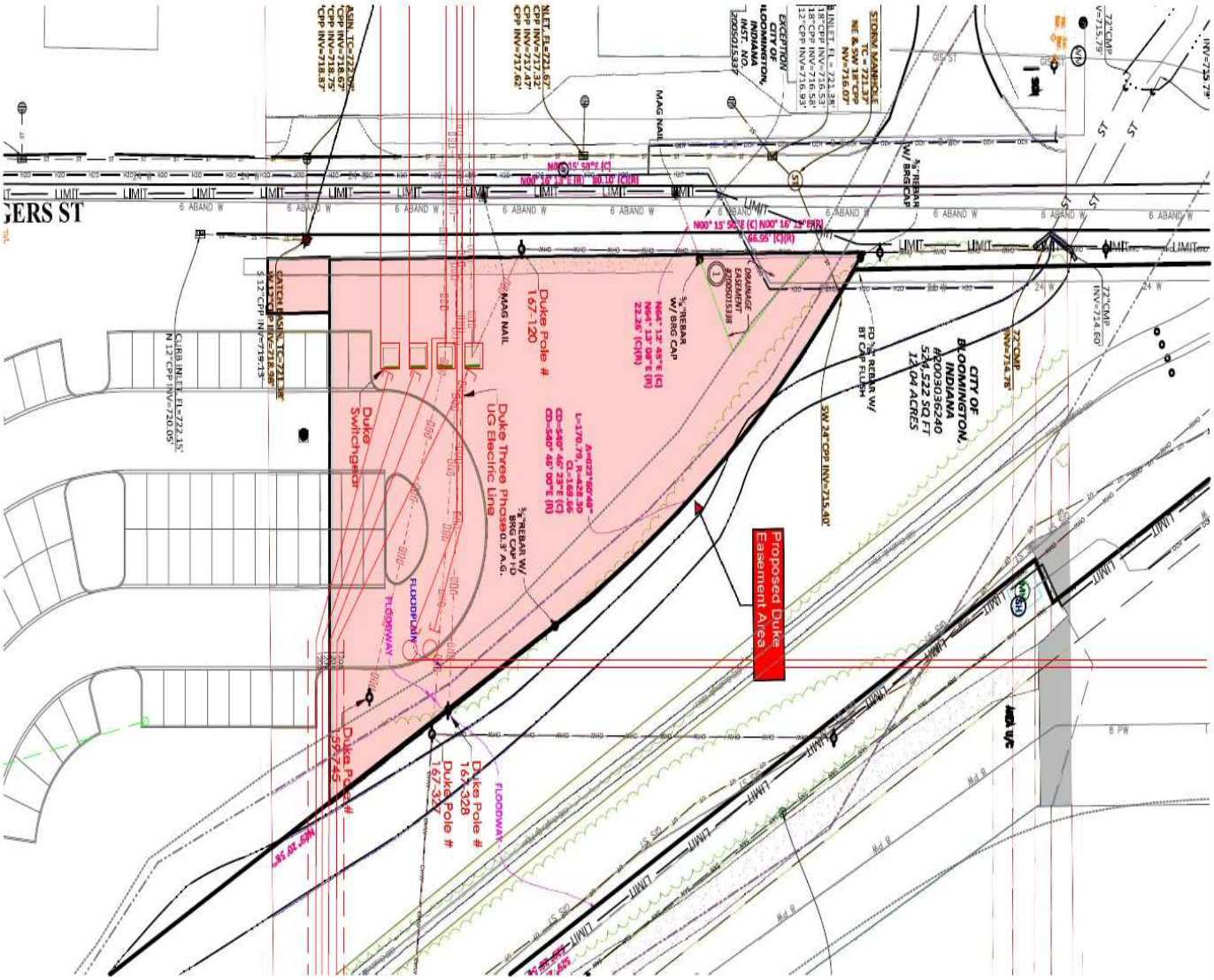
It is recommended the Board grant an easement to Duke Energy to reserve space for electric distribution equipment to serve Switchyard Park.

**Background**

Switchyard Park will require an electrical distribution system that efficiently serves the new Pavilion, Stage, Splash Pad and other facilities and amenities in the park. In addition, the project includes the burial of existing overhead lines running across the middle of the park property. The park's electrical service layout is being coordinated with Duke's upgrade of their power substation located on Rogers St. across from the Switchyard Park entrance. The easement location and size requested by Duke for installation of their equipment has been reviewed and approved by our consultant and staff.

**RESPECTFULLY SUBMITTED,**

Dave Williams, Operations Director




SWITCHYARD PARK - DUKE UTILITY EXHIBIT

JUNE 6, 2017

NORTH

0' 15' 30' 60'

SCALE: 1" = 30'

# GRANT OF EASEMENT

Pt. Parcel # 53-08-08-100-014.000-009

In consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, **BLOOMINGTON, INDIANA, BOARD OF PARK COMMISSIONERS,** an Indiana municipal corporation (hereinafter referred to as "Grantor"), hereby grant(s) unto **DUKE ENERGY INDIANA, LLC**, an Indiana limited liability company, with a mailing address of 1000 E. Main Street, Plainfield, IN 46168 and its successors and assigns (hereinafter referred to as "Grantee"), a perpetual, non-exclusive easement to construct, reconstruct, operate, patrol, maintain, repair, replace, relocate, add to, modify and remove, electric, and/or telecommunication line or lines including but not limited to, all necessary and convenient supporting structures (such as towers and poles), underground ducts, conduits, wires, cables, manholes, pullboxes, guy wires with anchors, grounding systems, counterpoises, surface equipment (including, but not limited to, transformers and switchgears), and all other appurtenances, fixtures and equipment (hereinafter referred to as the "Facilities"), for the transmission and distribution of electrical energy, and for technological purposes (including but not limited to telecommunications), both overhead and underground, in, upon, over, along, under, through and across the following described real estate:

Situate in Section 8, Township 8 North, Range 1 West, Perry Township, Monroe County, State of Indiana; being a part of a tract as recorded in **Instrument Number 2014002708** in the Office of the Recorder of Monroe County, Indiana (hereinafter referred to as "Grantor's Property"), and being more particularly described as follows:

Said easement being that area indicated, relative to landmarks and property lines, shown on a drawing marked Exhibit "A", attached hereto and becoming a part hereof (hereinafter referred to as the "Easement Area").

This easement grant shall include, but not be limited to, the following respective rights and duties of Grantor and Grantee:

1. Grantee shall have the right of ingress and egress over the Easement Area, and over the adjoining land of Grantor's Property (using lanes, driveways, and adjoining public roads where practical as determined by Grantee).

*For Grantee's Internal Use:*
*Line Name/No: Monroe – Perry – IN*
*Tract No: 1 of 1*
*Job Control # 20726233*
*LU#_____*
*Prep/Chk: MES/ALB Exec/Rec:_____*
*Dwg/Fac Ref.: Exhibit "A"*
*Prepared Date: April 28, 2017*

2. Grantee shall have the right to cut down, clear, trim, remove, and otherwise control any trees, shrubs, overhanging branches, and/or other vegetation upon or over the Easement Area. Grantee shall also have the right to cut down, clear, trim, remove, and otherwise control any trees, shrubs, overhanging branches, and/or other vegetation which are adjacent to the Easement Area but only to the extent such vegetation may endanger, as reasonably determined by Grantee, the safe or reliable operation of the Facilities, or where such vegetation is trimmed consistent with generally accepted arboricultural practices.

3. Grantee shall have the right to allow third parties to trench with Grantee's Facilities, and any such equipment shall include but not be limited to, wires, cables, and other fixtures; provided, that Grantor shall pursue any claim with the third party and not Grantee, if any such claim arises out of any third party's facility location.

4. To the best of Grantor's knowledge, the Easement Area and the adjoining land of Grantor's Property, have never been used to release, discharge, generate or store any toxic, hazardous, corrosive, radioactive or otherwise harmful substance or material.

5. Grantor shall not place, or permit the placement of, any obstructions, which may interfere with the exercise of the rights granted herein to Grantee. Grantee shall have the right to remove any such obstruction.

6. Grantee shall have the right to pile dirt and other material and to operate equipment upon the surface of the Easement Area and the adjoining land of Grantor's Property, *but only* during those times when Grantee is constructing, reconstructing, maintaining, repairing, replacing, relocating, adding to, modifying, or removing the Facilities.

7. Excluding the removal of vegetation and obstructions as provided herein, any physical damage to the surface area of the Easement Area and the adjoining land of Grantor's Property resulting from the exercise of the rights granted herein to Grantee, shall be promptly paid by Grantee, or repaired or restored by Grantee to a condition which is reasonably close to the condition it was in prior to the damage, all to the extent such damage is caused by Grantee or its contractors or employees. In the event that Grantee does not, in the opinion of Grantor, satisfactorily repair any damage, Grantor must, within ninety (90) days after such damage occurs, file a claim for such damage with Grantee at (a) 1000 E. Main St., Plainfield, IN 46168, Attn: Right of Way Services, or (b) by contacting an authorized Right of Way Services representative of Grantee.

8. Grantor shall have the right to use the Easement Area and the adjoining land of Grantor's Property in any manner which is consistent with the rights granted herein to Grantee, and shall comply with all applicable codes when making use of the land near the Facilities.

9. Notwithstanding anything to the contrary contained herein, Grantor shall not without the prior written consent of Grantee (a) construct or install, or permit the construction or installation of any building, house, or other above-ground structure, or portion thereof, upon the Easement Area; or (b) excavate or place, or permit the excavation or placement of any dirt or other material upon or below the Easement Area; or (c) cause, by excavation or placement of material, either on or off the Easement Area, a pond, lake, or similar containment vehicle that would result in the retention of water in any manner within the Easement Area.

10. Grantor warrants that it has the necessary authority and title to Grantor's Property to grant this easement to Grantee, and shall defend and hold Grantee harmless from the claim of any third party that Grantor does not have such authority or title.

11. The respective rights and duties herein of Grantor and Grantee shall inure to the benefit of, and shall be binding upon the respective successors, assigns, heirs, personal representatives, lessees, licensees, and/or tenants of Grantor and Grantee. Easement, Grantor and Grantee, as used herein, shall be deemed to be plural, when required to be so. The exercise of any or all of the rights and privileges of Grantee set forth herein, shall be at the sole discretion of Grantee.

Signature page(s) follow.

**IN WITNESS WHEREOF**, Grantor has caused this **Grant of Easement** to be signed by its duly authorized representative(s), effective the _____ day of _____, 2017.

**BLOOMINGTON, INDIANA, BOARD OF PARK COMMISSIONERS,**
an Indiana municipal corporation,
Grantor

By: _____ By: _____

Printed Name: _____ Printed Name: _____

Printed Title: _____ Printed Title: _____

STATE OF _____ )
) SS:
COUNTY OF _____ )

Personally appeared before me this day _____,_____, (a) duly authorized representative(s) of Grantor and acknowledged the signing of this **Grant of Easement** by _____ to be a voluntary act and deed for and on behalf of Grantor, and having been duly sworn/affirmed, state(s) that any representations contained therein are true to the best of _____ personal knowledge.

**WITNESS** my hand and notarial seal, this _____ day of _____, 2017.

My Commission Expires: _____ Signed Name: _____

My County of Residence: _____ Printed Name: _____

This Instrument Prepared by John B. Scheidler, Attorney-at-Law, 1000 E. Main St., Plainfield, IN 46168.

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Michelle E. Sechman

Bledsoe Riggert Cooper James
BRCJ
LAND SURVEYING • CIVIL ENGINEERING • GIS

# CITY OF BLOOMINGTON SWITCHYARD EASEMENT EXHIBIT

## A PART OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 8 NORTH, RANGE 1 WEST, PERRY TOWNSHIP, MONROE COUNTY, INDIANA

A part of the Northeast quarter of Section 8, Township 8 North, Range 1 West, Monroe County, Indiana, intended to be a part of the lands described and recorded as Instrument Number 2014002708 in the office of the Recorder of Monroe County, Indiana more particularly described as follows based on the ALTA/NSPS Land Title Survey performed by Ben E. Bledsoe of Bledsoe Riggert Cooper James, Inc. dated November 21, 2013 and recorded as Instrument Number 2017008330 in the office of the Recorder of Monroe County, Indiana:

Commencing at the Southeast corner of said Northeast quarter; thence NORTH 00 degrees 29 minutes 49 seconds WEST along the east line of said quarter a distance of 1224.54 feet; thence leaving said east line SOUTH 89 degrees 30 minutes 11 seconds WEST 197.64 feet to the northeast corner of the tract conveyed to Robert V. and Nancy L. Shaw by deed recorded in Deed Book 425, page 359 in the office of the Recorder of Monroe County, Indiana; thence SOUTH 88 degrees 16 minutes 15 seconds WEST along the north line of said Robert V. and Nancy L. Shaw a distance of 563.99 feet to the centerline of South Rogers Street; thence NORTH 00 degrees 32 minutes 56 seconds EAST along said centerline a distance of 697.62 feet to the **POINT OF BEGINNING**; thence NORTH 00 degrees 32 minutes 56 seconds EAST along said centerline a distance of 88.27 feet; thence continuing along said centerline NORTH 00 degrees 16 minutes 13 seconds EAST a distance of 80.10 feet to the southwest corner of the tract conveyed to the City of Bloomington by deed recorded as Instrument Number 2005015337 in the office of the Recorder of Monroe County, Indiana; thence NORTH 64 degrees 13 minutes 08 seconds EAST along the south line of said City of Bloomington a distance of 22.26 feet to the southeast corner of said tract; thence NORTH 00 degrees 16 minutes 13 seconds EAST along the east line of said City of Bloomington a distance of 66.95 feet to the extension of the south line of the 12.04 acre tract conveyed to the City of Bloomington by deed recorded as Instrument Number 2003036240 in the office of the Recorder of Monroe County, Indiana and the beginning of a non-tangent curve concave to the southwest having a radius of 428.30 feet and a chord which bears SOUTH 40 degrees 46 minutes 00 seconds EAST 169.66 feet; thence southeasterly along the south and west lines of said City of Bloomington tract the next two (2) courses:

1) SOUTHERLY along said curve an arc distance of 170.79 feet; thence
2) SOUTH 29 degrees 20 minutes 35 seconds EAST 103.82 feet; thence

NORTH 90 degrees 00 minutes 00 seconds WEST a distance of 145.00 feet; thence SOUTH 00 degrees 32 minutes 56 seconds WEST a distance of 26.00 feet; thence NORTH 90 degrees 00 minutes 00 seconds WEST a distance of 38.00 feet to the POINT OF BEGINNING, containing 0.56 acres, more or less and subject to all legal rights of way and easements.

This survey was executed according to survey requirements contained in Sections 1 through 19 of 865 IAC 1-12.

This certification does not take into consideration additional facts that an accurate and correct title search and/or examination might disclose.

Evidence of easements have not been located in the field and are not shown on this survey drawing.

Subject to the above reservation, I hereby certify that the survey work performed on the project shown hereon was performed either by me or under my direct supervision and control and that all information shown is true and correct to the best of my knowledge and belief.

Certified this 29th day of June 2017.

Matthew M. Knoy
Professional Surveyor No. LS20800146
State of Indiana

MATTHEW M. KNOY
REGISTERED
No.
LS20800146
STATE OF
INDIANA
LAND SURVEYOR

| | |
|---|---|
| **Prepared For:** | Duke Energy Indiana, LLC |
| **BRCJ No.:** | 9520 |
| **BRCJ Project:** | DUKE SWITCHYARD EASEMENT |
| **Prepared By:** | Bledsoe, Riggert, Cooper, James<br>1351 W Tapp Road, Bloomington, IN 47403<br>812.336.8277 |



Bloomington • Bedford • Paoli
1351 West Tapp Road • Bloomington, Indiana 47403 • p: 812.336.8277 BRCJcivil.com

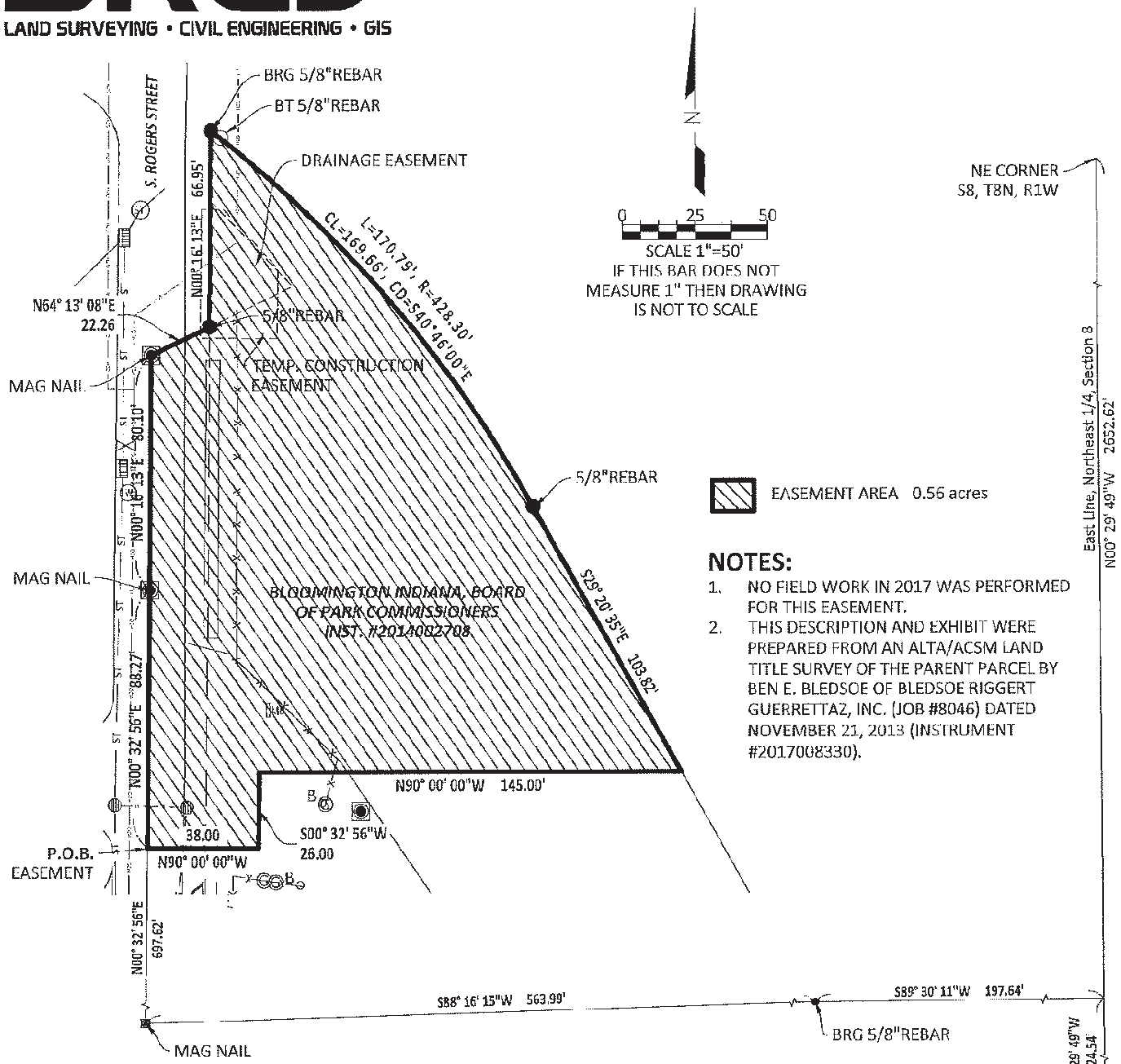
Bledsoe Riggert Cooper James

BRCJ

LAND SURVEYING • CIVIL ENGINEERING • GIS

# CITY OF BLOOMINGTON SWITCHYARD EASEMENT EXHIBIT

## A PART OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 8 NORTH, RANGE 1 WEST, PERRY TOWNSHIP, MONROE COUNTY, INDIANA




EASEMENT AREA 0.56 acres

## NOTES:

1. NO FIELD WORK IN 2017 WAS PERFORMED FOR THIS EASEMENT.
2. THIS DESCRIPTION AND EXHIBIT WERE PREPARED FROM AN ALTA/ACSM LAND TITLE SURVEY OF THE PARENT PARCEL BY BEN E. BLEDSOE OF BLEDSOE RIGGERT GUERRETTAZ, INC. (JOB #8046) DATED NOVEMBER 21, 2013 (INSTRUMENT #2017008330).

| | |
|---|---|
| **Prepared For:** | Duke Energy Indiana, LLC |
| **BRCJ No.:** | 9520 |
| **BRCJ Project:** | DUKE SWITCHYARD EASEMENT |
| **Prepared By:** | Bledsoe, Riggert, Cooper, James<br>1351 W Tapp Road, Bloomington, IN 47403<br>812.336.8277 |

EXHIBIT "A" SHEET 2 OF 2

CITY OF BLOOMINGTON
parks and recreation

# STAFF REPORT

| |
|---|
| Agenda Item: C-4<br>Date: 7/6/2017 |

| |
|---|
| Administrator<br>Review\Approval<br>PM |

**TO**: Board of Park Commissioners
**FROM:** Dave Williams, Operations Director
**DATE:** June 13, 2017
**SUBJECT:** **REVIEW/APPROVAL OF CONSULTANT CONTRACT AGREEMENT SURVEY SERVICES AT WALDRON HILL BUSKIRK PARK**

## Recommendation

It is recommended the Board approve a consultant contract agreement with Bledsoe Riggert Cooper and James for survey services at Waldron Hill Buskirk Park.

## Background

The Park Bond will provide funding for improvements to Waldron Hill Buskirk Park that include rehabilitation of existing stairs, improved lighting, and turf repair to the lawn area in front on the performance stage. A topographic survey is required to determine elevations and grade for the rerouting of existing pathways and improving drainage in the lawn area.

Bledsoe Riggert Cooper and James has performed survey services at numerous department facilities, parks, and trails. All survey data will be provided to the department no later than August 30, 2017.

**RESPECTFULLY SUBMITTED,**

_____

Dave Williams, Operations Director

# AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT AND CONSULTANT

This Agreement, entered into on this _____ day of July, 2017 by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Bledsoe Riggert Cooper James ("Consultant").

**Article 1. Scope of Services** Consultant shall provide the Topographic survey services for approximately 3.0 acres of Waldron Hill Buskirk Park ("Services"). 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 August 30, 2017 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 Dave Williams 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 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 an amount not to exceed Four Thousand Eight Hundred Dollars and zero cents ($4,800.00). Consultant shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: Dave Williams, City of Bloomington, 401 N. Morton, Suite 250, Bloomington, Indiana 47404. 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. 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 perform the Services according to the following schedule:
Notice to Proceed – July 14, 2017
Project Completion Date: No later than August 30, 2017
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. Additionally, 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 9 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 Consultant. 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 sub-contractors 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) Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code; and d) 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 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 City'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.

**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 parties.

**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.

**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 A, affirming that Consultant does not knowingly employ an unauthorized alien. 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 City.

**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: Dave Williams, 401 N. Morton, Bloomington, IN 47402. Consultant:** Bledsoe Riggert Cooper James**.** Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and Consultant.

**Article 23. 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.

**Article 24. Non-Collusion** Consultant is required to certify that it has not, nor has any other member, representative, or agent of Consultant, entered into any combination, collusion, or agreement 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. Consultant shall sign an affidavit, attached hereto as Exhibit B, affirming that Consultant has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

**CITY OF BLOOMINGTON**

_____

Philippa M. Guthrie, Corporation Counsel

**BLEDSOE RIGGERT COOPER JAMES**

_____

Marty James, Professional Surveyor

**CITY OF BLOOMINGTON PARKS AND RECREATION**

_____

Paula McDevitt, Director

_____

Leslie J. Coyne, President, Board of Park Commissioners

**EXHIBIT A**
E-VERIFY AFFIDAVIT

STATE OF INDIANA )
)SS:
COUNTY OF _____)

AFFIDAVIT

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

1. The undersigned is the _____of _____.
(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 herby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

_____
Signature

_____
Printed Name

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 _____, 2017.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

**EXHIBIT B**

STATE OF _____)
) 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 _____, 2017.

Bledsoe Riggert Cooper James

By: _____

_____

STATE OF _____ )
) 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 _____, 2017.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

CITY OF BLOOMINGTON
parks and recreation

# STAFF REPORT

Agenda Item: C-5
Date: 7/6/2017

Administrator
Review\Approval
PM

**TO**: Board of Park Commissioners
**FROM:** Dave Williams, Operations Director
**DATE:** June 14, 2017
**SUBJECT:** **REVIEW/APPROVAL OF CONSULTANT CONTRACT AGREEMENT RCA PARK, GRIFFY LAKE, SHERWOOD OAKS PARK**

## Recommendation

It is recommended the Board approve a consultant contract agreement with Mader Design for improvements to RCA Park, Griffy Lake, and Sherwood Oaks Park.

## Background

The Park Bond has identified funding for improvements to the following parks that will require consultant design:

RCA Park

The south loop trail, constructed in 1994, is in very poor condition and needs to be reconstructed with stormwater conveyances to accommodate drainage flow from upstream developments. In addition, rehabilitation of a short section of the north loop trail is required. Mader Design will complete a topographic survey, design a new accessible trail route, prepare bidding documents, assist with bidding, and provide assistance to staff with onsite construction inspection. See Aerial Photo.

Griffy Lake Fishing Pier

Mader Design will conduct an initial study to explore location and construction options, required local and State regulatory approvals, and propose the best plan for implementation of an accessible public fishing structure. See Aerial Photo.

Griffy Lake Parking Lot Improvements

The return of a healthy fishery at the lake combined with strong interest in recreational boating at the lake has increased visitation. The existing parking lot lacks defined spaces, designated accessible parking, and larger spaces for vehicles with trailers. Mader Design will complete design and bidding plans for a reconfigured parking area. See Aerial Photo.

Sherwood Oaks Park Master Plan

This property is located in a floodplain and certain park facilities (playground, shelter) need to be relocated to higher ground in the future. In addition, provisions need to be made for expanded parking at this park to facilitate expansion of the Jackson Creek Trail to the south. Mader Design will complete a Master Plan identifying proposed locations and elevations for relocated park facilities. See Aerial Photo.

**RESPECTFULLY SUBMITTED,**

_____

Dave Williams, Operations Director

RCA PARK
Bloomington
W.RCA Park DR

N Headley RD
GRIFFY LAKE

SHERWOOD OAKS PARK
Jackson Creek Trail
Jackson Creek Trail
Jackson Creek Trail

**AGREEMENT**
**BETWEEN**
**CITY OF BLOOMINGTON**
**PARKS AND RECREATION DEPARTMENT**
**AND**
**Mader Design**
**FOR**
**Landscape Design Services – Park Bond Projects**

This Agreement, entered into on this _____day of _____, 2017, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Mader Design ("Consultant"),

**WITNESSETH:**

WHEREAS, the Department wishes to design for rehabilitation of the loop walking trail at RCA Park, conduct a preliminary design investigation for an accessible fishing facility at Griffy Lake, redesign the parking lot at Griffy Lake, develop a Master Plan for the potential relocation of facilities in flood prone areas of Sherwood Oaks Park; and

WHEREAS, the Department requires the services of a professional consultant in order to perform these design 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. <u>Scope of Services</u>**
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 September 30, 2018, 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 Dave

Williams, Operations Director, 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. <u>Standard of Care</u>**
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"). 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. <u>Responsibilities of the Department</u>**
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. <u>Compensation</u>**
The Department shall pay Consultant for all fees and expenses in an amount not to exceed Sixty Three Thousand, Seven Hundred Dollars and zero cents ($63,700).

Consultant shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to:

Dave Williams
City of Bloomington
401 N. Morton, Suite 250
Bloomington, Indiana 47404

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.

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. <u>Appropriation of Funds</u>**
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 perform the Services according to the schedule set forth in Exhibit B, Project Schedule, attached hereto and incorporated herein by reference. 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 Consultant. 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. Opinions of Probable Cost**

All opinions of probable construction cost to be provided by Consultant shall represent the best judgment of Consultant based upon the information currently available and upon Consultant's background and experience with respect to projects of this nature. It is recognized, however, that neither Consultant nor the Department has control over the cost of labor, materials or equipment, over contractors' method of determining costs for services, or over competitive bidding, market or negotiating conditions. Accordingly, Department cannot and does not warrant or represent that the proposals or construction bids received will not vary from the cost estimates provided pursuant to this Agreement.

**Article 10. Reuse of Instruments of Service**

All documents, including but not limited to, drawings, specifications and computer software prepared by Consultant pursuant to this Agreement are instruments of service in respect to this project. They are not intended or represented to be suitable for reuse by the Department or others on modifications or extensions of this project or on any other project. The Department may elect to reuse such documents; however any reuse or modification without prior written

authorization of Consultant will be at the Department's sole risk and without liability or legal exposure to Consultant. The Department shall indemnify, defend, and hold harmless the Consultant against all judgments, losses, claims, damages, injuries and expenses arising out of or resulting from such unauthorized reuse or modification.

**Article 11. <u>Ownership of Documents and Intellectual Property</u>**
The final construction documents prepared under this Agreement shall become the property of the Client upon completion of the services and payment in full of all monies due to the Consultant. 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 12. <u>Independent Contractor Status</u>**
During the entire term of this Agreement, Consultant shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors 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 13. <u>Indemnification</u>**
Consultant shall indemnify, and hold harmless the City of Bloomington, the Department, and the officers, 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 14. <u>Insurance</u>**
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 $2,000,000 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 City'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 15. 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 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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.

**Article 22. 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 23. 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 C, 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 City obtains information that the Consultant or subcontractor employs or retains an employee who is an unauthorized alien, the City 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 City shall terminate the contract, unless the City 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 City may allow the contract to remain in effect until the City procures a new Consultant. If the City terminates the contract, the Consultant or subcontractor is liable to the City 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 City.

**Article 24. Notices**

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

**Department:** **Consultant:**

| **City of Bloomington** | | **Mader Design** |
|---|---|---|
| Attn: Dave Williams | | Jeff Mader |
| 401 N. Morton, Suite 250 | | 7506 S. Madison Ave. |
| Bloomington, Indiana 47402 | | Indianapolis, IN 46227 |

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

**Article 25. 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 26. 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.

**Article 27. Non-Collusion**

Consultant is required to certify that it has not, nor has any other member, representative, or agent of Consultant, entered into any combination, collusion, or agreement 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. Consultant shall sign an affidavit, attached hereto as Exhibit D, affirming that Consultant has not engaged in any collusive conduct. Exhibit D is attached hereto and incorporated by reference as though fully set forth.

**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

**MADER DESIGN**

_____
Jeff Mader, Principal/Owner

**CITY OF BLOOMINGTON PARKS AND RECREATION**

_____
Paula McDevitt, Director

_____
Leslie J. Coyne, President, Board of Park Commissioners

**EXHIBIT A**
**"Scope of Work"**

The Services shall include the following**:**

mader design
integrating people and nature®
7506 s. madison ave., indianapolis, in 46227
p: 317.889.1775 f: 317.862.5521
www.maderdesignllc.com

June 6, 2017

Dave Williams
City of Bloomington Parks and Recreation Department
401 N. Morton St. Suite 250
PO Box 848
Bloomington, IN 47402

RE: **Proposal Letter & Project Scope of Work**
**Landscape Design Services – Multiple Projects**

Dear Dave,

Thank you for the opportunity to submit this Letter of Agreement for the landscape assessment and design for the proposed bond related park design projects in Bloomington, Indiana between Bloomington Parks & Recreation (Client) and Mader Design LLC (Landscape Architect). The following projects are anticipated and included in this proposal:

A. **RCA Park**
B. **Griffy Lake Fishing Access**
C. **Griffy Lake Parking Improvements**
D. **Sherwood Oaks Park**

**Assumptions**

1. Scope is based on phone discussions and emails with Client, and site visits on February 22, 2017 and subsequent phone conversations and emails.
2. Information provided by Client is complete and accurate and assumed to be true for the purposes of the Project. Client shall be available to answer questions and provide design input throughout the Project process.
3. Drawing shall be submitted to Client as digital PDF formats. Large format printing shall be by Client or others, or shall be a reimbursable expense.
4. Base drawings in CAD format shall be provided by Client for our use. Some projects will require a site/topographic Survey which shall be provided by Client. We can assist in soliciting quotes for survey work. Some projects will not require a full survey, and where a survey is not available for the site projects, we can work with GIS information provided by Client. Utilizing GIS information will require some field coordination on behalf of the selected contractor to confirm elevations and dimensions fit with existing conditions.
5. Landscape Architect shall not be responsible for determining if any areas on site are environmentally sensitive (i.e. underground tanks, asbestos materials, etc.) or may require special environmental permitting.
6. Detailed Construction Cost Estimating is not anticipated but broad scope budgeting can be provided if requested.
7. Regulatory submissions and approvals are not anticipated in this scope of work, unless otherwise indicated. If required for local, county, state, IDEM, IDNR, or other agency, they shall be coordinated by Client's project manager or as Additional Services which may require additional subconsultants.
8. Construction Phase Services are not anticipated in this scope of work, but can discussed and negotiated for as each project moves forward as Additional Services or as an addendum to this Agreement. Construction Phase Services may include, review of payment applications, review of product/materials/construction submittals, and general interaction and answering questions with Contractor. Site Visits and on-site construction meetings shall be invoiced as additional services, estimated at $500/trip for a 1-2 hour meeting in Bloomington, each additional hour in Bloomington shall be billed at $125 (if long meetings are required or multiple projects are met on the same day). So, for example, a 4 hour meeting would incur fees of $750. These fees include meeting preparation and development of meeting notes, site observation reports, or other documentation and coordination with Client and Contractor before and/or after the meeting.
9. The following services are not included in the Scope of Work and Fee for Basic Services, but can be provided as Additional Services:
    - Unless indicated otherwise, Civil Engineering, detailed grading, drainage, or utilities, including coordination with and submissions to regulatory agencies, including site reviews, erosion control/SWPPP, etc.
    - Land Surveying services (some indicated as reimbursable expenses through this contract), geotechnical

services, or detailed field investigations.

- Obtaining Improvement Location and/or Building Permits.
- Zoning approvals, variances, or rezoning efforts.
- Detailed utility, electrical, or irrigation design/engineering. Projects including those items are anticipated to include design/build approach by bidders/contractors for those efforts.
- Design of off-site improvements and preparation of easements.
- Preparation of legal descriptions for right-of-way dedication, parcel consolidation, and platting services.

**Project Scope**

Mader Design shall provide professional landscape architectural services to provide:

**A. RCA Park**

Project scope is anticipated to include a replacement of the trails around the perimeter of the site, including asphalt walkways, boardwalks replacement/improvements, consideration for new/additional culverts to help better manage storm drainage's impact to the trail system and ongoing maintenance. Project budget is anticipated to be approximately $224,000.

1. Assist with solicitation of Survey (to be included as reimbursable expense to this contract), enlist Bledsoe Riggert Cooper James, Inc. as surveyor, review and comment on completed survey to be used for site base plan. Anticipate survey shall include approximately 25-40' wide along existing trail alignment, and approximately 50' each side of a swale crossing. Anticipate conducting site visit to coordinate with surveyor the route and locations needed for inclusion in the survey.
2. Site visit to review existing conditions with survey, and prepare informal site assessment, and meet with Client to kickoff the project and begin design discussions.
3. Develop preliminary route/trail layout, primarily following existing route. Develop options for swale/drainage crossings considering boardwalk or raised pathway, culverts, and other methods of effective and budget conscious alternatives.
    i. We anticipate being able to achieve crossings with minimal impact to drainage ways and without the need for impacting Waters of the US or requiring any special reviews or permitting.
    ii. Civil engineer will be engaged in this project to provide review/input into grading/drainage, and basic coordination with City Engineer related to project parameters and requirements. City/regulatory agency reviews are not anticipated for this project, but may be provided as Additional Services if they become necessary.
4. Develop Construction Documents detailing trails and boardwalks/swale crossings. Facilitate 2 meetings with Client during Construction Document Phase to review design/documentation progress, review design/material options, and make decisions for the project. Bid documents shall include:
    i. Existing Conditions and Demolition Plan.
    ii. Site Layout Plan with dimensions and materials labeled, primarily indicating the route of the trail.
    iii. Site Grading Plan indicating basic existing and proposed contours and spot elevations, basic drainage, and erosion control measures. Grading plan will primarily be developed with guidelines for longitudinal and cross slope limits. We do not anticipate developing regular cross sections or longitudinal sections of the trail.
    iv. Planting Plan (may be included in Site Layout Plan), indicating trees, plants, lawn improvements, etc.
    v. Site and Landscape Details indicating hardscape materials and assemblies as well as planting details.
    vi. Written Specifications, primarily for boardwalks or other swale crossing materials. Other written specifications may be included on drawings or within technical specification booklet as appropriate. It is anticipated that Client will provide front end bidding and contract documents per City/Department standards for us to make minor edits.
5. Provide drawings and specifications to Client's preferred vendor for reproduction/plan room to facilitate Bidder's procurement of Construction Documents.
6. Review Bids received by Client, review, inquire with Bidders if questions arise, and assist in making recommendations to Client.
7. During Construction Phase, provide services such as answer contractor questions, review submittals, and Client updates.
8. Approximately 6-8 Construction/Site meetings shall be provided, to include a preliminary and final Site Observation Report (punch list).

**B. Griffy Lake Fishing Access**

This project's purpose is to provide a fishing area on the opposite side of the road from the Griffy Lake parking and boat launch area. There are several methods of construction that could result in a good fishing pier/dock/causeway, including infilling the reservoir and creating a new pedestrian causeway, a floating dock, or a more traditional boardwalk/pier construction. Each has very different design considerations and potentially very different regulatory agency involvement, review, and permitting processes. The project may also consider a road crossing which would involve the County Highway department. With so many potential variables, we propose conducting an initial study, likely equivalent to a Preliminary Design phase of a project to explore the most appropriate options, coordinate with the appropriate local, county, and state regulatory agencies, and assist you with deciding on the best direction for implementation. Upon the conclusion of this study phase, we would be able to better determine the full scope, regulatory processes, and required fees to complete Construction Documents, Bidding, and Construction Phase Services. Fees for Construction Documents, Permitting, and Construction Phase shall be determined at completion of study, anticipated total fees could be $30,000-$45,000 or more depending on level of design and regulatory approvals required. We understand the project budget to be approximately $294,000. We propose the study phase to include:

1. Engage Civil Engineer and meet with client on site for a Kickoff meeting at the site to review existing conditions and discuss project goals and potential options.
2. Research options, related costs, and related regulatory requirements.
3. Develop plan options for discussion and review with Client. Discuss direction for further research by narrowing down desired and/or feasible options.
4. Coordinate with regulatory agencies to discuss project options and requirements.
5. Assist with solicitation of Survey (to be included as reimbursable expense to this contract), enlist surveyor, review and comment on completed survey to be used for site base plan. Anticipate survey shall include about 1.5 acres on the west side of the county road to include the area designated through preliminary planning.
6. Refine design options as appropriate.
7. Meet with Client to review input and finalize project direction, and finalize a preliminary design plan for the project.
8. Develop proposal and negotiate fee for remainder of project.

**C. Griffy Lake Parking Improvements**

This project's purpose is to improve the parking flow and organization for the parking lot and boat ramp area at Griffy Lake. The design process will include planning through Preliminary Design and Construction Documents for Owner to put out for Bidding. We understand that construction for this project has not been budgeted or funded yet. The design project shall include:

1. Assist with solicitation of Survey (to be included as reimbursable expense to this contract), enlist surveyor, review and comment on completed survey to be used for site base plan. Anticipate survey shall include parking lot area, entry drive, and area around existing buildings.
2. Proposed pervious paver for the parking lot to replace the existing gravel lot.
3. Striping and pavement markings to delineate traffic flow and parking spaces for cars and vehicles with trailers to accommodate boaters, trail users, and the future fishing access area.
4. It is not anticipated that much, if any, additional pavement area will be added to the existing parking lot.
5. We anticipate grading the lot to infiltrate through pervious pavers with overflow to sheet drain to the Lake. We anticipate designing a Landscaped Filter strip between parking and typical water elevation, and will coordinate with City Engineer to determine the level of water quality measures are required. Our Civil Engineer will be engaged to assist with that coordination and provide Design Development Level recommendations to meet the city's requirements.
6. Design Development level Drawings are anticipated to include:
    i. Survey/Existing Conditions Plan
    ii. Demolition Plan
    iii. Hardscape/Site Layout Plan
    iv. Grading & Drainage/Underdrain Plan
    v. Landscape Plan
    vi. Details and specification information for Owner to package in Bid Documents for construction bidding.

vii. Bidding shall include answering contractor questions and providing an Addendum as necessary. We will review the bids received by Owner and provide related feedback.

7. Construction Administration are not included in this proposal, but can be added as Additional Services or as an addendum to this contract at the request of the Owner.

**D. Sherwood Oaks Park**

The intent for this project is to develop an overall park Master Plan to relocate/replace features within the park to minimize maintenance and potential flood damage. The master plan will look at the overall layout of the park and location of features such as the Playground, Shelter, other site amenities, and trailhead parking expansion. Of specific concern, will be the grading/elevation of the amenities as well as considerations for swale/depression and fill for relocated facilities. We anticipate exploring basic contouring of the site and setting approximate elevations for the amenities in order to coordinate with DNR to receive their input and feedback as to the design approach to the park. It is not anticipated we will receive any official approval of the plan, but should receive sufficient guidance to understand what is feasible within the park. Detailed Design and Engineering, including regulatory approvals, would be completed as a future project for implementation of the design.

1. A survey will eventually be needed for implementation of this project, however for this initial study, we believe GIS data can provide a reasonable base plan to develop a master plan and discuss with DNR and appropriate agencies.
   i. We can assist with soliciting a survey as in projects above.
   ii. Or we can assemble GIS information and aerial photography as provided by Client for base plan.
2. Meet with client on site for a kickoff meeting at the site to review existing conditions and discuss project goals and potential options.
3. Research options, related costs, and related regulatory requirements.
4. Develop plan options for discussion and review with Client. Discuss direction for further research by narrowing down desired and/or feasible options.
5. Engage Civil Engineer and for project input related to grading and drainage and to assist in coordinating with regulatory agencies to discuss project options and requirements.
6. Refine design options as appropriate.
7. Meet with Client to review input and finalize project direction.
8. Develop final master plan graphic for use in future project development.

**Schedule**

We understand these projects are part of a broader bond package spaced over the next 3 to 4 years. We anticipate project design will begin in late June and proceed through 2017, ending in late 2017 or early 2018. We will work with you to develop a mutually agreeable project schedule as projects are available to proceed.

**Professional Fees**

Landscape Architecture Services shall be the following lump sums. As this is a proposal with several complex projects included, we are happy to work with you to adjust our scope and fees as appropriate to best meet your needs. If projects design processes or construction phases can be further combined, where additional efficiencies in travel, meetings and other activities can be found, we will work with you to reduce fees accordingly.

| | |
|---|---|
| **A. RCA Park** | **$19,500** |
| **B. Griffy Lake Fishing Access** | **$ 7,000** |
| **C. Griffy Lake Parking Improvements** | **$16,500** |
| **D. Sherwood Oaks Park** | **$ 6,500** |
| **Professional Fees Total** | **$49,500** |

Reimbursable Expense Budget shall include:

| | |
|---|---|
| RCA Park Survey | $ 6,000 |
| Griffy Lake Areas Survey | $ 5,200 |
| Mileage, Printing, Markup, Expenses, etc. | $ 3,000 |
| **Total Reimbursable Budget** | **$14,200** |

Mileage, printing and reproduction, postage, regulatory agency fees, and other costs incurred for the benefit of the project shall be considered a Reimbursable Expense and included on monthly invoices. Direct expenses, such as surveys, or other direct costs shall be billed at 1.10 the actual cost incurred by the Landscape Architect for administration of such items.

Invoices shall be provided monthly based on percent complete.

Additional Services: In the event the scope of work as described in this Agreement changes to a degree that will alter the fee, the Client shall be notified in writing and a revised fee will be documented and a completion time and compensation amount will be submitted for approval. For services not included in this Agreement, Additional Compensation shall be a negotiated lump sum or computed using the hourly rates indicated in the attached Terms & Conditions.

Please keep one copy of this Letter of Agreement for your records, and return one signed copy to our office. We will begin work on the project upon receipt of this executed Agreement or written Notice to Proceed.

Mader Design LLC appreciates the opportunity to be of service for these exciting projects. Please let me know if you have any further questions.

Sincerely,
Mader Design LLC

Jeffrey R. Mader, ASLA, LEED AP
Principal/Owner

Accepted by:

_____

Print: Date
*Bloomington Parks & Recreation*

**Mader Design LLC - Terms & Conditions of Professional Services**

**STANDARD TERMS AND CONDITIONS** form an integral part of the Agreement for Design and Construction Documents for the Project as provided by Mader Design.

**1. ACCESS TO THE SITE:** Unless otherwise stated, Mader Design LLC (Landscape Architect) will have access to the site for activities necessary for the performance of the services. The Landscape Architect will take precautions to minimize damage from these activities, but has not included in the project fee the cost of restoration of any resulting damage. The Landscape Architect has not been retained or compensated to provide design and construction observation services related to the Contractor's safety precautions or means, methods, techniques, sequences or procedures for the Contractor to perform his work. The Client understands that the Landscape Architect is not responsible, in any way, for the means, methods, techniques, sequences, procedures or scheduling of construction, for job site safety, and will not be responsible for any losses or injuries that occur at the project site.

**2. INSURANCE:** The Landscape Architect shall secure and endeavor to maintain such insurance as will protect the Client from claims of negligence, bodily injury, death, or property damage that may arise out of the performance of the Landscape Architects' services in the Construction Document portion of the Work.

**3. RISK ALLOCATION:** In recognition of the relative risks, rewards and benefits of the Project to both the Client and the Landscape Architect, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, the Landscape Architect's total liability to the Client for any and all injuries, claims, losses, expenses, damages, or claim expenses, including attorney's fees, arising out of this Agreement, from any cause or causes, shall not exceed the total amount of the Landscape Architect's fee for any claim arising out of the Landscape Architect's negligence in preparing Construction Documents.

**4. TERMINATION OF SERVICES:** This Agreement may be terminated by the Client or by the Landscape Architect upon not less than seven days written notice should the other party fail to substantially perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. If this Agreement is terminated by the Client, the Landscape Architect shall be paid for services performed to the termination notice date, including reimbursable expenses due plus termination expenses. Termination expenses are defined as reimbursable expenses directly attributable to termination, plus 15% of the total compensation earned to the time of termination to account for the Landscape Architect's rescheduling adjustments, reassignment of personnel and related costs incurred due to termination.

**5. REIMBURSABLE EXPENSES:** Reimbursable expenses shall be limited to the following: (a) expenses of printing, reproduction, postage and handling of drawings and specifications. (b) mileage expenses at the current U.S. IRS allowance. (c) costs incurred by submitting for regulatory approvals from applicable jurisdictions. (d) long-distance phone expenses. (e) overnight and express mail and courier fees. All reimbursable expenses shall be billed at 1.10 the actual cost incurred by the Landscape Architect for administration of such items.

**6. DISPUTE RESOLUTION:** All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement, or breach thereof, shall be presented to non-binding mediation, subject to the parties agreeing on a mediator.

**7. OWNERSHIP OF DOCUMENTS:** It is understood by and between the parties to this Agreement that all Drawings, Specifications and other work or products of the Landscape Architect for this Project shall remain the property of the Landscape Architect and are instruments of service for this Project only and shall apply to this particular Project only. Any reuse of the instruments of service of the Landscape Architect by the Client for any extensions of the Project or for any other project without the written permission of the Landscape Architect shall be at the Client's sole risk, and the Client agrees to defend, indemnify and hold harmless the Landscape Architect from any claims, damages or expenses, including attorneys fees, arising out of unauthorized reuse of the Landscape Architect's instruments of service by the Client or by others acting through or on behalf of the Client. Any reuse or adaptation of the Landscape Architect's instruments of service on other projects shall entitle the Landscape Architect to additional compensation in an amount to be agreed upon by the Client and the Landscape Architect.

**8. APPLICABLE LAW:** Unless otherwise specified within this Agreement, this Agreement shall be governed by the law of the State of Indiana. In the event any provisions of this Agreement shall be held to be invalid or unenforceable, the remaining provisions shall be valid and binding on both parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breech of the same by the other party.

**9. PAYMENT TO THE LANDSCAPE ARCHITECT:** Fees for services shall be as provided in this Agreement. Progress payments shall be made in proportion to services rendered and as indicated within this Agreement and shall be due and owing within thirty days. Past due amounts include a charge of 1-1/2% per month for interest from the thirtieth day. Client shall reimburse all of Landscape Architect's cost and expense (including reasonable attorneys' fees) incurred in connection with collecting any past due amount owed under this agreement. If the Client fails to make monthly payments due the Landscape Architect, the Landscape Architect may, after giving seven days written notice to the Client, suspend services under this Agreement and retain all work products deliverable to the Client until full payment. The project completion date shall be automatically extended by the number of days services are suspended. No deductions shall be made from the Landscape Architect's compensation on account of penalty, liquidated damages or other sums withheld from payment(s) to Contractors or based on Contractors performance.

**10. EXTENT OF AGREEMENT:** This Agreement with attached Terms represents the entire understanding between the Client and the Landscape Architect and supersedes all prior negotiations, representations, or agreements, whether written or oral. This Agreement may be amended only in writing signed by both the Client and the Landscape Architect.

**11. OPINION OF CONSTRUCTION COSTS:** Any opinion of construction cost prepared by the Landscape Architect represents his judgment as a design professional and is supplied for the general guidance of the Client. Since the Landscape Architect has no control over the cost of labor and material, or over competitive bidding or market conditions, the Landscape Architect does not guarantee the accuracy of such opinions as compared to Contractor bids or actual cost to the Client.

**12. CHANGES IN SCOPE OF SERVICES:** In the event the scope of work as described in this Agreement changes to a degree that will alter the fee, the Client shall be notified in writing and a revised fee will be documented and a completion time and compensation amount will be submitted for approval. For services not included in this Agreement, Additional Compensation shall be computed using the following hourly rates of $150 for Principal, $110 for Landscape Architect, $90 for Graduate Landscape Architect, and $70 for Administrator or Intern. Rates indicated are in effect through December 31, 2017, after which time they will increase in relationship to salary increases.

**13. EXISTING OR HIDDEN CONDITIONS:** A condition is hidden if it is concealed by existing finishes or features or if it cannot be investigated by reasonable visual observation. If the Landscape Architect has reason to believe that such a condition may exist, the Landscape Architect will notify the Client, who shall then authorize and pay for all costs associated with the investigation of such condition and, if necessary, all costs necessary to correct said condition.

**14. CONSTRUCTION PHASE SERVICES:** Should the Client authorize construction installation based on the plans provided under this Agreement without project observation or review of Contractor's performance or any construction phase services by the Landscape Architect, the Client assumes all responsibility for interpretation of these documents and for construction observation and/or supervision and waives any claims against the Landscape Architect that may be in any way connected thereto.

**EXHIBIT B**

**"Project Schedule"**

| | |
|---|---|
| **Contract Approval (assumed)** | July 13, 2017 |
| **Notice to Proceed** | July 24, 2017 |
| **RCA Park** | |
| Preliminary Route Layout | October 31, 2017 |
| Construction Documents | February 28, 2018 |
| Construction | TBD |
| **Griffy Lake** | |
| Fishing Access Preliminary Design | December 31, 2017 |
| Parking Lot Design Development | February 28, 2018 |
| **Sherwood Oaks Park** | |
| Master Plan for facility relocations | December 31, 2017 |

**EXHIBIT C**
E-VERIFY AFFIDAVIT

STATE OF INDIANA )
)SS:
COUNTY OF _____ )

AFFIDAVIT

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

1. The undersigned is the _____of _____.
(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 herby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

_____
Signature

_____
Printed Name

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 _____, 2017.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

**EXHIBIT D**

STATE OF _____ )
) 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 _____, 2017.

Mader Design

By: _____

_____

STATE OF _____ )
) 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 _____, 2017.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

CITY OF BLOOMINGTON
parks and recreation

# STAFF REPORT

| |
|---|
| Agenda Item: C-6<br>Date: 7/6/2017 |

| |
|---|
| Administrator<br>Review\Approval<br>PM |

**TO**: Board of Park Commissioners
**FROM:** Joanna Sparks
**DATE:** May 11, 2017
**SUBJECT:** **Service Agreement with Mark Stephen Enterprises, LLC**

**Recommendation**

Staff recommends the approval of this Service Agreement with Mark Stephen Enterprises, LLC to provide the following services: Mowing, trimming, and snow removal at City owned properties located at 1607, 1609, 1611, and 1901 South Rogers Street, Bloomington, Indiana.

**Background**

The City of Bloomington Financial Policies Manual requires all public work projects to be approved in contract form by the Board of Park Commissioners. "Public Work" means any service done on city property that is paid for out of a public fund. The manual outlines that if the public work is estimated to cost less than $150,000 and involves routine operation, routine repair, or routine maintenance of existing structures, buildings or real property, the Board may award a contract for the public work in the manner provided in IC 5-22 for Public Purchasing.

These service contracts are in place to manage emergency or standard repairs and/or service as the need arises.

**RESPECTFULLY SUBMITTED,**

Joanna Sparks

Joanna Sparks, City Landscaper

# AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT AND STEPHEN ENTERPRISES, LLC

This Agreement, entered into on this 13th day of July, 2017, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Stephen Enterprises, LLC ("Contractor").

**Article 1. Scope of Services** Contractor shall provide Mowing, trimming, and snow removal at City owned properties located at 1607, 1609, 1611, and 1901 South Rogers Street, Bloomington, Indiana ("Services").
Contractor 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. Contractor shall complete the Services required under this Agreement as set forth in Article 6 of this agreement on or before December 31, 2017. Completion shall mean completion of all work related to the Services. In the performance of Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with the Superintendent of Operations as the Department's Project Manager. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor 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** Contractor 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 Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor 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 necessary for the orderly progress of the work, and Contractor 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 Contractor for all fees and expenses in an amount not to exceed Five Thousand Dollars ($ 5,000.00). Contractor shall submit monthly invoices to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: Superintendent of Operations, City of Bloomington Parks and Recreation, P.O. Box 848, Bloomington, Indiana 47402. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. 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** Contractor shall perform the Services according to the following schedule:
**Mowing –** Shall be done 25 to 33 times a year depending on need and weather. The Department can request that mowing cycles be skipped or added. The cost per mowing and trimming cycle will be Ninety Dollars ($90.00).
**Snow Removal –** Snow plowing of paved vehicular surfaces will be done when snow depth reaches 2 inches. Sidewalk snow removal will be done when snow depth reaches 1 inch. Snow removal from sidewalks shall be performed by the contractor within 24 hours after snow stops falling. Ice melt shall only be applied when necessary and will be of a type approved by the EPA as being environmentally friendly. The cost for plowing snow shall be Two Hundred Fifty Dollars ($250.00) per cycle. The cost for sidewalk snow removal shall be Seventy Five Dollars ($75.00) per cycle. Application of ice melt shall cost Forty Dollars ($40.00) per cycle, if needed.
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. Additionally, the Department may terminate or suspend performance of this Agreement at the Department's prerogative at any time upon written notice to Contractor. Contractor shall terminate or suspend performance of the Services on a schedule acceptable to the Department and the Department shall pay the Contractor 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 Contractor'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 Contractor in connection with this Agreement shall become the property of the Department, as set forth in Article 9 herein.
**Article 8. Identity of the Contractor** Contractor acknowledges that one of the primary reasons for its selection by the Department to perform the Services is the qualifications and experience of Contractor. Contractor thus agrees that the Services to be performed pursuant to this Agreement shall be performed by Contractor. Contractor 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 Contractor's personnel or proposed outside professional sub-Contractors, 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 Contractor and furnished to the Department as part of the Services shall become the property of the Department. Contractor 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 Contractor.
**Article 10. Independent Contractor Status** During the entire term of this Agreement, Contractor shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees of the Department. Contractor 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** Contractor 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 Contractor 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, 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; c) Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code; and d) 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 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 City's will be called upon to contribute to a loss hereunder. Contractor shall provide evidence of each insurance policy to the Department prior to the commencement of work under this Agreement.

**Article 13. Conflict of Interest** Contractor 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. Contractor 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 Contractor 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 parties.

**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** 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 all regards, including, but not limited to, employment.

**Article 20. Compliance with Laws** In performing the Services under this Agreement, Contractor 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, Contractor 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** Contractor 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). Contractor shall sign an affidavit, attached as Exhibit A, affirming that Contractor does not knowingly employ an unauthorized alien. 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.

**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: Superintendent of Operations, Bloomington Parks and Recreation, P.O. Box 848, Bloomington, IN 47402. Contractor: Mark Stephen, Stephen Enterprises, LLC, P.O. Box 8273, Bloomington, IN, 47407.** Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and Contractor.

**Article 23. Integration and Modification** This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department 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. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 24. Non-Collusion** Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion, or agreement 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 sign an affidavit, attached hereto as Exhibit B, affirming that Contractor has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

**CITY OF BLOOMINGTON**

_____

Philippa M. Guthrie, Corporation Counsel

**STEPHEN ENTERPRISES, LLC**

_____

Mark Stephen, Owner

**CITY OF BLOOMINGTON PARKS AND RECREATION**

_____

Paula McDevitt, Director

_____

Leslie J. Coyne, President, Board of Park Commissioners

**EXHIBIT A**
E-VERIFY AFFIDAVIT

STATE OF INDIANA )
)SS:
COUNTY OF _____)

AFFIDAVIT

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

1. The undersigned is the _____of _____.
(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 herby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

_____
Signature

_____
Printed Name

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 _____, 2017.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

**EXHIBIT B**

STATE OF _____)
) 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 _____, 2017.

Stephen Enterprises, LLC

By: _____

_____

STATE OF _____ )
) 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 _____, 2017.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

CITY OF BLOOMINGTON
parks and recreation

# STAFF REPORT

Agenda Item: C-7
Date: 7/6/2017

Administrator
Review\Approval
PM

**TO**: Board of Park Commissioners
**FROM:** Kim Clapp, Office Manager
**DATE:** **July 13, 2017**
**SUBJECT:** **Rec-Trac Upgrade 3.1 Version**

**Recommendation –** The staff recommends the approval of the contract with Vermont Systems to upgrade the BPRD registration database, RecTrac 10.3 software to the 3.1 version.

**Background** – Bloomington Parks and Recreation registration data base (RecTrac) was installed in 1992, and has received only minor upgrades. As the system is becoming antiquated, and the company will eventually phase out future support, it has become essential to upgrade or replace the software. The IT Department and Parks staff, researched various options and determined the best course of action is to upgrade from RecTrac 10.3 to the RecTrac 3.1 version. Due to the substantial changes in user interface, terminology, procedures and processes, Vermont System states the upgrade will be like having a totally new software system.

The IT Department and Park staff are in the process of preparing for the conversion. The migration to the RecTrac 3.1 version is scheduled to begin on September 18, 2017 and will be a four day process. Vermont Systems submitted a quote of $7,305.00.

**RESPECTFULLY SUBMITTED,**

Kim Clapp

Kim Clapp, Office Manager

**AGREEMENT**
**BETWEEN**
**CITY OF BLOOMINGTON**
**PARKS AND RECREATION DEPARTMENT**
**AND**
**VERMONT SYSTEM**
**FOR**
**REC-TRAC 3.1 UPGRADE**

This Agreement, entered into on this _____day of _____, 2017, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Vermont Systems ("Consultant").

**WITNESSETH:**

WHEREAS, the Department wishes to upgrade data base from RecTrac 10.3 to RecTrac 3.1; and

WHEREAS, the Department requires the services of a professional consultant in order to perform upgrade of data base from RecTrac 10.3 to RecTrac 3.1 (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. <u>Scope of Services</u>**
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 September 22, 2017, 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 Kim Clapp and/or Bob White 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.[1]

**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 an amount not to exceed Seven Thousand Three Hundred Five Dollars ($7,305.00). Consultant shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to:

Kim Clapp
City of Bloomington
401 N. Morton, Suite 250
Bloomington, Indiana 47404

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.

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 perform the Services according to the schedule set forth in Exhibit B, Project Schedule, attached hereto and incorporated herein by reference. 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 Consultant. 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. Opinions of Probable Cost**

All opinions of probable construction cost to be provided by Consultant shall represent the best judgment of Consultant based upon the information currently available and upon Consultant's background and experience with respect to projects of this nature. It is recognized, however, that neither Consultant nor the Department has control over the cost of labor, materials or equipment, over contractors' method of determining costs for services, or over competitive bidding, market or negotiating conditions. Accordingly, Department cannot and does not warrant or represent that the proposals or construction bids received will not vary from the cost estimates provided pursuant to this Agreement.

**Article 10. Reuse of Instruments of Service**

All documents, including but not limited to, drawings, specifications and computer software prepared by Consultant pursuant to this Agreement are instruments of service in respect to this project. They are not intended or represented to be suitable for reuse by the Department or others on modifications or extensions of this project or on any other project. The Department may elect to reuse such documents; however any reuse or modification without prior written authorization of Consultant will be at the Department's sole risk and without liability or legal exposure to Consultant. The Department shall indemnify, defend, and hold harmless the Consultant against all judgments, losses, claims, damages, injuries and expenses arising out of or resulting from such unauthorized reuse or modification.

**Article 11. 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 12. 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 sub-contractors 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 13. 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 14. 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 $2,000,000 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 City'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 15. 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 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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.

**Article 22. 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 23. 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 C, 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 City obtains information that the Consultant or subcontractor employs or retains an employee who is an unauthorized alien, the City 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 City shall terminate the contract, unless the City 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 City may allow the contract to remain in effect until the City procures a new Consultant. If the City terminates the contract, the Consultant or subcontractor is liable to the City 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 City.

**Article 24. Notices**

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

| **Department:** | | **Consultant:** |
|---|---|---|
| City of Bloomington | | Vermont Systems |
| Attn: Kim Clapp | | Attn: Michelle Berthiaume |
| 401 N. Morton, Suite 250 | | 12 Market Place |
| Bloomington, Indiana 47402 | | Essex Junction, VT 05452 |

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

**Article 25. 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 26. 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.

**Article 27. Non-Collusion**
Consultant is required to certify that it has not, nor has any other member, representative, or agent of Consultant, entered into any combination, collusion, or agreement 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. Consultant shall sign an affidavit, attached hereto as Exhibit D, affirming that Consultant has not engaged in any collusive conduct. Exhibit D is attached hereto and incorporated by reference as though fully set forth.

**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

**CITY OF BLOOMINGTON**
**PARKS AND RECREATION**

_____
Paula McDevitt, Director

_____
Leslie J. Coyne, President,
Board of Park Commissioners

**VERMONT SYSTEMS**

_____
Name, Title

_____
Signature

**EXHIBIT A**

**"Scope of Work"**

The Services shall include the following**:**

Prior to Installation
- 3.1 Database/Transaction Server Install
- Test Upgrade
- Basic Operations/Management Training with Primary User
- VIC Installation Training

3.1 Database Migration
- Shut Down 10.3
- Migration of 3.1
- Perform Post Migration Steps
- Address Possible Migration Anomalies
- Test Hardware/Vermont's Integration Client
- Reschedule Scheduled Events
- Go Live Support
  - Begin Daily Processing in 3.1
  - Address Possible Migration Anomalies

WebTrac Upgrades
- WebTrac Parameters Profice Review
- Menue Design System Code and Profile
- WebTrace Menue Management
- WebTrac Screen Management
- Splash Page Update
- WebTrac Go Live
- Admin User Training (Continued if Needed)

Basic Operations/Management Training with Primary User
- Maintenance/Management Changes – Data Grids
- Rules – Transaction Types, Groups, Advance Criteria
- Fees – Formerly Billcodes, Advanced Settings and Criteria
- Menu Design Overview
- Screen Design Overview
- Report Output Overview

On-Site or Classroom Training – Estimated 2 hours
- Global Sales Training
  - Data Grids
  - Super Grids
  - Purchase History Training
- Household Management
- Reporting Basics – Criteria vs Output
- Review Site's End of Reporting Needs or Unique Processes

On-Site or Remote Support
- Address Hardware or Processing Anomalies
- Assist End Users with Daily Processing and other Questions

Address Outstanding Issues

**EXHIBIT B**

**"Project Schedule"**

Prior to September 18, 2017 VSI will complete the following:

3.1 Database/Transaction Server Install
Test Upgrade
Basic Operations/Management Training with Primary User
VIC Installation Training

September 18, 2017 through September 21, 2017 database migration and training.

**EXHIBIT C**
E-VERIFY AFFIDAVIT

STATE OF INDIANA )
)SS:
COUNTY OF _____ )

AFFIDAVIT

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

1. The undersigned is the _____of _____.
(job title) (Vermont Systems)
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 herby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

_____
Signature

_____
Printed Name

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 _____, 2017.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

**EXHIBIT D**

STATE OF _____ )
) 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 _____, 2017.

Vermont Systems]

By: _____

_____

STATE OF _____ )
) 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 _____, 2017.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

CITY OF BLOOMINGTON
parks and recreation

# STAFF REPORT

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|---|
| Agenda Item: C-8<br>Date: 7/6/2017 |

| |
|---|
| Administrator<br>Review\Approval<br>PM |

**TO**: Board of Park Commissioners
**FROM:** Kim Clapp, Office Manager
**DATE:** **July 13, 2017**
**SUBJECT:** **Rec-Trac On-Site Training**

**Recommendation –** The staff recommends the approval of the contract with Vermont Systems to provide BPRD staff with four days of on-site RecTrac 3.1 software training.

**Background** – Due to age and possible lack of future support, an upgrade to BPRD registration data base is scheduled in September 2017. Due to the major changes included in this upgrade, Vermont Systems recommends looking at the 3.1 version as a complete new system.

The department not only wants to invest in the software but to also invest in the staff. The system can only be used to its full potential, if the staff is sufficiently trained and understands its capabilities. On-site training can be provided for eight staff and one IT representative, at the same cost of sending three staff to an off-site symposium. The on-site training can also be customized to better meet the department's needs. The four day training is scheduled the week of August 14th. Vermont Systems submitted a quote of $6,115.

**RESPECTFULLY SUBMITTED,**

Kim Clapp

_____
Kim Clapp, Office Manager

**AGREEMENT**
**BETWEEN**
**CITY OF BLOOMINGTON**
**PARKS AND RECREATION DEPARTMENT**
**AND**
**VERMONT SYSTEM**
**FOR**
**REC-TRAC 3.1 TRAINING**

This Agreement, entered into on this _____day of _____, 2017, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Vermont Systems ("Consultant").

**WITNESSETH:**

WHEREAS, the Department wishes to receive staff training on computer software upgrade; and

WHEREAS, the Department requires the services of a professional consultant in order to perform four days of in-house staff training on new computer software, RecTrac 3.1 version (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. <u>Scope of Services</u>**
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 August 19, 2017, 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 Kim Clapp and/or Bob White 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 an amount not to exceed Six Thousand One Hundred Fifteen Dollars ($6,115.00). Consultant shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to:

Kim Clapp
City of Bloomington
401 N. Morton, Suite 250
Bloomington, Indiana 47404

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.

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 perform the Services according to the schedule set forth in Exhibit B, Project Schedule, attached hereto and incorporated herein by reference. 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 Consultant. 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. Opinions of Probable Cost**

All opinions of probable construction cost to be provided by Consultant shall represent the best judgment of Consultant based upon the information currently available and upon Consultant's background and experience with respect to projects of this nature. It is recognized, however, that neither Consultant nor the Department has control over the cost of labor, materials or equipment, over contractors' method of determining costs for services, or over competitive bidding, market or negotiating conditions. Accordingly, Department cannot and does not warrant or represent that the proposals or construction bids received will not vary from the cost estimates provided pursuant to this Agreement.

**Article 10. Reuse of Instruments of Service**

All documents, including but not limited to, drawings, specifications and computer software prepared by Consultant pursuant to this Agreement are instruments of service in respect to this project. They are not intended or represented to be suitable for reuse by the Department or others on modifications or extensions of this project or on any other project. The Department may elect to reuse such documents; however any reuse or modification without prior written authorization of Consultant will be at the Department's sole risk and without liability or legal exposure to Consultant. The Department shall indemnify, defend, and hold harmless the Consultant against all judgments, losses, claims, damages, injuries and expenses arising out of or resulting from such unauthorized reuse or modification.

**Article 11. 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 12. 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 sub-contractors 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 13. 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 14. 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 $2,000,000 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 City'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 15. 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 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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.

**Article 22. 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 23. 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 C, 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 City obtains information that the Consultant or subcontractor employs or retains an employee who is an unauthorized alien, the City 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 City shall terminate the contract, unless the City 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 City may allow the contract to remain in effect until the City procures a new Consultant. If the City terminates the contract, the Consultant or subcontractor is liable to the City 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 City.

**Article 24. Notices**

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

| **Department:** | | **Consultant:** |
|---|---|---|
| City of Bloomington | | Vermont Systems |
| Attn: Kim Clapp | | Attn: Michelle Berthiaume |
| 401 N. Morton, Suite 250 | | 12 Market Place |
| Bloomington, Indiana 47402 | | Essex Junction, VT 05452 |

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

**Article 25. 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 26. 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.

**Article 27. Non-Collusion**
Consultant is required to certify that it has not, nor has any other member, representative, or agent of Consultant, entered into any combination, collusion, or agreement 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. Consultant shall sign an affidavit, attached hereto as Exhibit D, affirming that Consultant has not engaged in any collusive conduct. Exhibit D is attached hereto and incorporated by reference as though fully set forth.

**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

**VERMONT SYSTEMS**

_____
Name of Signatory, Title

_____
Signature

**CITY OF BLOOMINGTON**
**PARKS AND RECREATION**

_____
Paula McDevitt, Director

_____
Leslie J. Coyne, President,
Board of Park Commissioners

**EXHIBIT A**

**"Scope of Work"**

The Services shall include the following**:**

To provide four days of on-site staff training of the RecTrac 3.1 software to include but not limited to the following topics:

Reports
Criteria for Rules and Fees
Dashboards
WebTrac
DataGrids
System Architecture
Touch Screen Maintenance
Global Sales
SuperGrid
File Maintenance and setup
Migration Preparation
Daily Processing
Period End Processes
Methods to take advantage of new 3.1 features
Q&A

## EXHIBIT B

## "Project Schedule"

Consultant shall complete the Services required under this Agreement on or before August 19, 2017, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services.

**EXHIBIT C**
E-VERIFY AFFIDAVIT

STATE OF INDIANA )
)SS:
COUNTY OF _____ )

AFFIDAVIT

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

1. The undersigned is the _____of _____.
(job title) (Vermont Systems)
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 herby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

_____
Signature
_____
Printed Name

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 _____, 2017.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

**EXHIBIT D**

STATE OF _____ )
) 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 _____, 2017.

Vermont Systems

By: _____

_____

STATE OF _____ )
) 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 _____, 2017.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

CITY OF BLOOMINGTON
parks and recreation

# STAFF REPORT

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| Agenda Item: C-9<br>Date: 7/6/2017 |

| |
|---|
| Administrator<br>Review\Approval<br>PM |

**TO**: Board of Park Commissioners
**FROM:** Leslie Brinson- Community Events Manager
**DATE:** **July 13, 2017**
**SUBJECT:** **HFI Service Agreement**

## Recommendation

The City of Bloomington Parks and Recreation recommends the approval of a service agreement for Harrell-Fish, Inc to provide service at the Banneker Community Center and the Alison Jukebox Community Center. Service would include heating and cooling maintenance, repair and supplies.

## Background

Both the Alison Jukebox Community Center and the Banneker Community Center have been using HFI as a service vendor for their HVAC needs. Both parties are pleased with the service, prices and quality of work provided by HFI.

**RESPECTFULLY SUBMITTED,**

Leslie Brinson

_____
Leslie Brinson, Community Events Manager

# AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT AND HARRELL FISH, INC. (H.F.I.)

This Agreement, entered into on this _____ day of July, 2017, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Harrell Fish, Inc. ("Consultant").

**Article 1. Scope of Services** Consultant shall provide the Services:
Provision of services at an hourly rate of Seventy Two Dollars ($72), plus materials. Consultant will repair, adjust, and/or replace heating, ventilation and cooling components at City park properties and facilities for a set price per hour Monday-Friday from 7:00am to 6:00pm and all other times for an afterhours hourly rate of Ninety Three Dollars ($93), plus any additional cost for parts and materials.
Parks Department would give contractors at least two (2) working days' notice on repair. Repairs requiring more immediate action, (emergencies), may be billed at an emergency hourly rate of Ninety Three Dollars ($93). Holiday Call-out/Double Time hourly rate will be One Hundred Fourteen Dollars ($114). Types of HVAX components are: blower motors, thermostats, gas valves, filters and control boards.
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 Sunday December 31, 2017, 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 Erik Pearson – Banneker Community Center or Amy Shrake – Allison Jukebox Building 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. Upon agreement by both parties, this agreement can be extended for one additional year.
**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 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 an amount not to exceed Four Thousand Nine Hundred Ninety Nine Dollars ($4,999). Consultant shall submit an invoice to the Department upon the completion of Services described in Article 1. The invoice shall be sent to: Erik Pearson- Banneker Community Center or Amy Shrake – Allison Jukebox Building, City of Bloomington, 401 N. Morton, Suite 250, Bloomington, Indiana 47404. 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. 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 perform the Services as needed.
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. Additionally, 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 9 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 Consultant. 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 sub-contractors 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) Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code; and d) 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 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 City'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.

**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 parties.

**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.

**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 A, affirming that Consultant does not knowingly employ an unauthorized alien. 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 City.

**Article 22. Notices** Any notice required by this Agreement shall be made in writing to the individuals/addresses specified below:
**Department:** City of Bloomington Parks and Recreation, **Attn: Erik Pearson – Banneker Community Center or Amy Shrake– Allison Jukebox Building, 401 N. Morton Suite 250, Bloomington, IN 47402. Consultant: Harrell Fish, Inc., PO Box 1998, Bloomington, Indiana 47402.** Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and Consultant.

**Article 23. 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.

**Article 24. Non-Collusion** Consultant is required to certify that it has not, nor has any other member, representative, or agent of Consultant, entered into any combination, collusion, or agreement 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. Consultant shall sign an affidavit, attached hereto as Exhibit B, affirming that Consultant has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

**CITY OF BLOOMINGTON**

_____
Philippa M. Guthrie, Corporation Counsel

**Harrell Fish, Inc. (H.F.I.)**

_____
Mike Hupp, Vice President

**CITY OF BLOOMINGTON PARKS AND RECREATION**

_____
Paula McDevitt, Director

_____
Leslie J. Coyne, President, Board of Park Commissioners

**EXHIBIT A**
E-VERIFY AFFIDAVIT

STATE OF INDIANA )
)SS:
COUNTY OF _____ )

AFFIDAVIT

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

1. The undersigned is the _____of _____.
(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 herby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

_____
Signature

_____
Printed Name

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 _____, 2017.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

**EXHIBIT B**

STATE OF _____ )
) 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 _____, 2017.

Harrell Fish, Inc. (H.F.I.)

By: _____

_____

STATE OF _____ )
) 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 _____, 2017.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

CITY OF BLOOMINGTON
parks and recreation

# STAFF REPORT

Agenda Item: C-10
Date: 7/6/2017

Administrator
Review\Approval
PM

**TO**: Board of Park Commissioners
**FROM:** **Leslie Brinson- Community Events Manager**
**DATE:** **July 13, 2017**
**SUBJECT:** **Monroe County Public Library Partnership Agreement**

**Recommendation**

The City of Bloomington Parks and Recreation Department recommends the approval of a partnership agreement with the Monroe County Public Library to place a Story Walk at Reverend Butler Park. The MCPL will install 12-16 Story Walk displays along the walking path at Reverend Butler Park with guidance from the Parks Operations staff. The MCPL hopes to continue to inspire parents, teachers, and caregivers to take young children outside for physical activity and learning at the same time. The Parks Department is in support of programs and partnerships that encourage people to come in to the parks and increase physical activity.

**Background**

The MCPL has received funding from the Friends of the Library to create up to four Story Walks in the Bloomington community. The MCPL contacted to Parks and Recreation Department to see about adding these Story Walks to local parks and walking trails. Both parties agreed upon Rev. Butler Park as a good kick off location for the project. Both parties hope to add additional Story Walks to walking paths in the future. The MCPL will be responsible for the placement of displays as well as the upkeep and maintenance of all displays. The Parks Department will provide support and assistance in determining the exact location of the displays and also with promotion of the Story Walk.

**RESPECTFULLY SUBMITTED,**

Leslie Brinson

Leslie Brinson, Community Events Manager

CITY OF BLOOMINGTON
parks and recreation

**Program Partnership Agreement**
**Monroe County Public Library Story Walk**

This Agreement is made and entered into this_____day of _____, 2017, by and between the City of Bloomington Parks & Recreation Department, ("BPRD") and the Monroe County Public Library ("MCPL").

**WHEREAS**, BPRD and the MCPL desire to cooperate in the provision of a free self-guided outdoor story walk at Reverend Butler Park; and

**WHEREAS**, the MCPL is qualified to perform such services with BPRD; and

**WHEREAS**, BPRD is authorized to plan and develop partnerships and contractual arrangements with non-city organizations to ensure delivery of services;

**NOW, THEREFORE**, in consideration of the terms and conditions set forth herein, the Partners to this Agreement agree as follows:

**1.0 Purpose of Agreement:**
The purpose of this Agreement is to outline a program partnership which establishes a self-guided Story Walk in a city park location. The self-guided Story Walks are placed along trails to inspire parents, teachers, and caregivers to take young children outside for physical activity and learning at the same time.

**2.0 Duration of Agreement:**
This Agreement shall be in full force and effect from August 1 2017, to July 31, 2018, unless early termination occurs as described in Article 7 of this Agreement.

**3.0 Bloomington Parks & Recreation:**
The goal of BPRD is to build a positive relationship with the MCPL in order to provide programs necessary for the positive development and well-being of the community.

**3.1.** Provide approval to place story box signs along the Rev. Ernest D. Butler Park Trail.

**3.2.** Provide guidance and support to the MCPL on the installation specifics of the story boxes and exact placement of story boxes on the trail.

**3.3.** Provide communication between Parks and Recreation staff and MCPL staff on any vandalism or structural damage to story boxes.

**3.4.** Provide marketing in the Parks and Recreation Program Guide.

**3.5.** Allow MCPL to place Story Walk directional signage on existing signage poles at the park.

**4.0 Monroe County Public Library:**
The goal of the MCPL is to provide opportunities for families and community members to practice literacy skills and continue to develop literacy skills.

**4.1.** Purchase high-quality, permanent lockable story boxes.

**4.2.** Provide installation of story boxes based on guidance from the BPRD.

**4.3.** Select story books with a new feature story twice a year.

**4.4.** Create, along with the Friends of the Library, promotional materials.

**4.5.** Continual monitoring of story boxes to assure they are in good working order. Repair and or replace as needed.

**4.6.** Evaluate through a variety of methods the success of the self-guided Story Walk in meeting desired outcomes.

**5.0 Terms Mutually Agreed To By All Partners To This Agreement:**
The intent of this Agreement is to document a mutually beneficial partnership between BPRD and the MCPL.

**5.1.** The staff and personnel involved will at all times represent all partners to this Agreement in a professional manner and reflect the commitment of both partners to quality services and customer satisfaction.

**5.2.** The commitment of personnel, promotions, equipment and funding sources will be honored according to the timetable agreed upon by all partners.

**5.3.** Bloomington Municipal Code sections 6.12.030 and 14.36.090, respectively, prohibit smoking in public places and the consumption of alcoholic beverages on City of Bloomington property.

**5.4.** The possession of drugs and other illegal controlled substances, fireworks, air rifles, paintball guns, bow and arrows, cross bows, swords, and pellet guns is strictly prohibited in any park or park facility. In addition, pursuant to Bloomington Municipal Code 14.20.020, the discharge of a firearm is strictly prohibited within the City's jurisdiction.

**5.5.** This Agreement and the services provided will be evaluated in January 2018 and if mutually agreed upon additional story walk locations may be added to the partnership.

**6.0 Notice and Agreement Representatives:**

**6.1.** Notice regarding any significant concerns or issues of non-compliance shall be given to those contacts as follows:

| **Bloomington Parks & Recreation** | **Monroe County Public Library** |
|---|---|
| Becky Barrick-Higgins | Marilyn Wood |
| Box 848 | 303 E. Kirkwood Ave. |
| Bloomington, IN 47402 | Bloomington, IN 47408 |
| barrickb@bloomington.in.gov | mwood@monroe.in.lib.us |
| 812-349-3713 | 812-349-3058 |

**6.2.** Agreement representatives for the day-to-day operations and implementation of this Agreement shall be:

| **Bloomington Parks & Recreation** | **Monroe County Public Library** |
|---|---|
| Leslie Brinson | Marilyn Wood |
| Box 848 | 303 E. Kirkwood Ave |
| Bloomington, IN 47402 | Bloomington, IN 47408 |
| brinsonl@bloomington.in.gov | mwood@monroe.in.lib.us |
| 812-349-3715 | 812-349-3058 |

**7.0 Termination:**

**7.1.** Termination by mutual agreement: The partners may terminate this Agreement prior to July 31, 2018, by mutual written agreement only.

**7.2.** Unilateral termination: In the event that one of the partners to this Agreement breaches any of its terms and conditions, the non-breaching party shall serve written notice of the breach to the other party by certified mail. The breaching party shall then have ten (10) days from the date of mailing in which to cure the breach. If the breaching party fails to cure the breach within ten (10) days, the non-breaching party may, at its option and in writing, unilaterally terminate the Agreement.

**8.0 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 anyway affect the other 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.

**9.0 Release and Hold Harmless Agreement:**

The Ryder, including its representatives, agents, and assigns, does hereby agree to release, hold harmless, and indemnify the City of Bloomington, its Parks and Recreation Department, and any and all employees, agents, and assigns from any and all claims, causes

of action, suits, proceedings, or demands, including but not limited to claims involving personal injury or death, which may arise from this Agreement, even if caused by the negligence of releasees.

IN WITNESS WHEREOF, the partners have signed this Agreement on the date first set forth.

**CITY OF BLOOMINGTON**

_____
Leslie J. Coyne, President Board of Park Commissioners

_____
Paula McDevitt, BPRD Director

_____
Philippa M. Guthrie, Corporation Counsel

**MONROE COUNTY PUBLIC LIBRARY**

_____
Marilyn Wood

CITY OF BLOOMINGTON
parks and recreation

# STAFF REPORT

Agenda Item: C-11
Date: 7/7/2017

Administrator
Review\Approval
PM

**TO**: Director
**FROM:** Bill Ream, Community Events Coordinator
**DATE:** July 13, 2017
**SUBJECT:** **Partnership Agreement with Mad 4 My Dog for Drool in the Pool**

**Background**
Staff recommends the approval of the 2017 Partnership Agreement for Drool in the Pool between Bloomington Parks and Recreation and Mad 4 My Dog.

**Recommendation**
Drool in the Pool is in its 13th year. This is the second year for this partnership but Mad 4 My Dog has been part of the event since it started. We are excited to have them as our event partner again this year. Last year Drool in the Pool was a successful two day event, held at Mills Pool, with 170 dogs and over 320 humans participating from the Bloomington community and surrounding areas over the two days.

**Highlights include:**

- The event will be two days and will be held on Wednesday and Thursday, August 16th and 17th from 5-8p.m. at Mills Pool. The first day will be for swimming and a dog jumping/splash contest. The second day of the event will include swimming, and more contests. Dog vendors will also be present to hand out samples, interact with the public and promote their dog specialty. A quick-draw caricature artist will be at the event both nights.
- Dogs will be allowed to swim in the pool's zero entry area and splash pad, and in the main pool up to five feet. Dog guards will be on duty to oversee all pool activity.

**RESPECTFULLY SUBMITTED,**

Bill Ream

Bill Ream, Community Events Coordinator

CITY OF BLOOMINGTON
parks and recreation

**COOPERATION SERVICE AGREEMENT**
**PROGRAM PARTNERSHIP**

**Partner(s):**
This Agreement is made and entered into this _____ day of _____, 2017, by and between the Bloomington Parks and Recreation Department (BPRD), and Mad 4 My Dog.

**WHEREAS**, there is a need for a summer dog event in Bloomington: and,

**WHEREAS**, the BPRD and Mad 4 My Dog desire to cooperate in the provision of a community event called Drool in the Pool for dogs and owners; and,

**WHEREAS**, Mad 4 My Dog is qualified to perform such services; and,

**WHEREAS**, the BPRD is authorized to plan and develop partnerships and contractual arrangements with other community organizations to ensure delivery of services; and

**WHEREAS**, services provided by each partner will reflect on the other in the Partnership Agreement requiring clear communication and outline of expectations.

**NOW THEREFORE**, the partners do mutually agree as follows:

1. **Purpose of Agreement:**
   The goal of this project is to outline a program partnership which will provide a fun summer event for dogs and their owners of the Bloomington community by combining available resources from each partner to the Agreement.

2. **Duration of Agreement:**
   This Agreement commences on July 13, 2017 and expires on August 31, 2017 unless terminated earlier as provided under Article 7.

3. **Bloomington Parks & Recreation**
   The goals of BPRD are to partner with another community agency(s) and provide an opportunity for the Bloomington community, specifically dogs and their owners, to participate in an affordable and fun summer event called Drool in the Pool. The event, to be held at Mills Pool, on Wednesday and Thursday, August 16 and 17, from 5:00-8:00 pm is designed to create social, safe, and fun opportunities for dogs.

BPRD agrees to:

3.1. Create and assist with the distribution of promotional materials to include flyers, registration information, posters, and newsletters.

3.2. Communicate to the public and participants regarding concerns or questions about cooperative programs and activities.

3.3. Mail out sponsorship/vendor information to past participants by June 15th.

3.4. Promote Drool in the Pool at other major family-friendly BPRD events prior to the event.

3.5. Share all marketing/promotional material with Mad 4 My Dog prior to advertising.

3.6. Provide program publicity by publishing information provided by Mad 4 My Dog in the Department's seasonal program brochure.

3.7. Provide paid staff for joint program efforts at the event.

3.8. Provide the Community Events Coordinator and additional full-time/part-time staff necessary for the event.

3.9. Assist with providing volunteers.

3.10. Contact and schedule Animal Control officers to be onsite during event to check dog vaccination records.

3.11. Provide maintenance staff who shall be assigned to maintain and prepare the facility on the day of the event. Additional maintenance support staff needed to perform other repairs, tasks and services shall also be provided.

3.12. Facilitate the pool area during the event.

3.13. Provide certified lifeguards and other qualified dog professionals to serve as "dog guards" for the event.

3.14. Provide the services of the Community Events Coordinator as a liaison, consultant and contact person between Mad 4 My Dog and BPRD.

3.15. Be responsible for on-site registration and check-in.

3.16. Take any citizen concerns, reports or problems regarding the facility, improvements to the facility, services provided by staff or other issues by referral to BPRD on the designated form within 24 hours of observation.

3.17. Provide Mills Pool as the facility to house the community event.

3.18. Work with the Aquatics Coordinator to open and close the facility and assist with facility-related matters.

3.19. Provide tables and chairs necessary for all activities for the event.

3.20. Provide temporary fencing for the event.

3.21. Provide sufficient access and set-up time the day before the event.

3.22. Provide regular checking, stocking and maintenance of locker rooms.

3.23. Develop all sponsorship materials for distribution.

3.24. Design and order the t-shirts.

3.25. Provide a sound system and a 10x10 pop-up tent.

3.26. Provide an emcee for the event.

**4. Mad 4 My Dog**

The goals of Mad 4 My Dog are to partner with another community agency and provide an opportunity for the Bloomington community, specifically dogs and their owners, to participate in an affordable and fun summer event called Drool in the Pool. The event, to be held at Mills Pool, on Wednesday and Thursday, August 16 and 17, from 5:00-8:00 pm is designed to create social, safe, and fun opportunities for dogs.

Mad 4 My Dog agrees to:

4.1. Maintain close contact with Bill Ream, Community Events Coordinator, and address any related issues to his attention.

4.2. Assist with the distribution of promotional materials to include flyers, registration information, posters, and newsletters.

4.3. Facilitate contests and organize judges during the event.

4.4. Provide a grand prize to be given away at the event.

4.5. Secure all prizes for contests.

4.6. Assist in providing volunteers necessary for the event. Train volunteers to staff stations.

4.7. Refer any citizen concerns, reports or problems to BPRD within 24 hours of observation.

4.8. Assist with set-up and tear-down of event.

5. **Terms Mutually Agreed to By All Partners:**
The intent of this Agreement is to document a mutually beneficial partnership between Mad 4 My Dog and BPRD for Drool in the Pool.

BPRD and Mad 4 My Dog agree to:

5.1. Share all marketing/promotional material between both partners involved **prior to** any advertising.

5.2. Coordinate safety management and regulate visitor flow of Drool in the Pool.

5.3. Coordinate acknowledgement and thank yous for sponsors.

5.4. Ensure that staff and personnel involved in this Agreement will at all times represent all partners to this Agreement in a professional manner, and reflect the commitment of all partners to quality services and customer satisfaction.

5.5. Honor the commitment of personnel, facilities, supplies/materials and payments according to the timetable agreed upon by all partners.

5.6. The possession of alcoholic beverages, drugs and other illegal controlled substances is strictly prohibited in any park or park facility. In addition, pursuant to Bloomington Municipal Code 14.20.020, the discharge of a firearm is strictly prohibited within the City's jurisdiction.

6. **Notice and Agreement Representatives:**

6.1. Notice regarding any significant concerns and/or breaches of the Agreement shall be given to those contacts as follows:

**Bloomington Parks and Recreation**
Paula McDevitt, Director
P.O. Box 848,
Bloomington, IN 47402
(812) 349-3713

**Mad 4 My Dog**
Madalyn Moorman, Owner
702 E. Temperance St.
Ellettsville, IN 47429
(812) 876-8134

6.2. Agreement representatives for the day to day operations and implementation of this Agreement shall be:

**Bloomington Parks and Recreation**
Bill Ream, Community Events Coordinator
(812) 349-3748

**Mad 4 My Dog**
Madalyn Moorman, Owner
(812) 876-8134

7. **Termination**:
This Agreement may only be terminated by mutual written agreement of all partners.

IN WITNESS WHEREOF, the parties have signed this agreement on the date first set forth.

**City of Bloomington**

_____
Philippa M. Guthrie, Corporation Counsel

**Mad 4 My Dog**

_____
Madalyn Moorman, Owner

**City of Bloomington Parks and Recreation**

_____
Paula McDevitt, Director

_____
Leslie J Coyne, President, Board of Park Commissioners

CITY OF BLOOMINGTON
parks and recreation

# STAFF REPORT

Agenda Item: C-12
Date: 07/13/16

Administrator
Review\Approval
PM

**TO**: Board of Parks Commissioners
**FROM:** Crystal Ritter
**DATE:** June 22, 2017
**SUBJECT:** **REVIEW/APPROVAL OF ALCOHOL PERMIT REQUEST FOR 2017 GARLIC FEST AND COMMUNITY ART FAIR**

**Recommendation**

Staff recommends approval of the permit application to sell beer/wine at the 2017 GarlicFest and Community Art Fair event to be held on September 2nd and 3rd at the Waldron, Hill, and Buskirk Park.

**Background**

The GarlicFest and Community Art Fair have been approved for an event permit for the festival held over the Labor Day weekend in Waldron, Hill, and Buskirk Park. This is the sixth year for the event. In 2013, this event included the sale of beer/wine for the first time. David Cox (event coordinator) remains in good standing with the Parks and Recreation Department. We feel this event is appropriate to include the sale of beer/wine.

Event organizers are prepared to adhere to all local and state laws along with any rules and regulations from Bloomington Parks and Recreation. Hinds Investigations & Security LLC will provide the appropriate security for the event and the sale of alcohol. Once approved, organizers will apply for the temporary beer/wine permit from the State of Indiana, Alcohol & Tobacco Commission. Organizers will provide us a copy of the state permit prior to their event. In addition, they will be accessed an alcohol permit fee of $200 or ten percent of gross, whichever is greater.

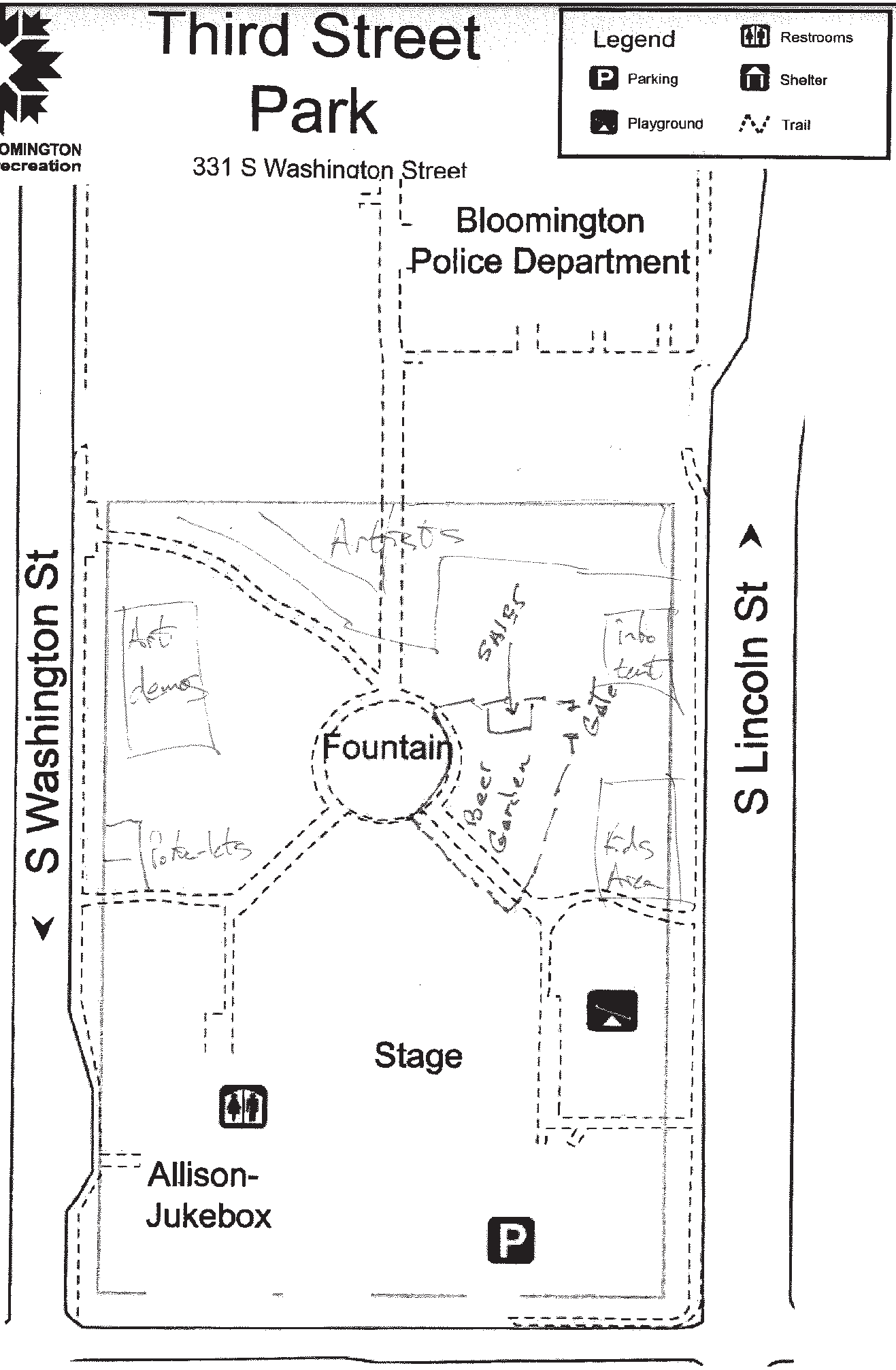
**RESPECTFULLY SUBMITTED,**

Crystal Ritter, Community Events Coordinator

CITY OF BLOOMINGTON
parks and recreation

# Third Street Park

331 S Washington Street

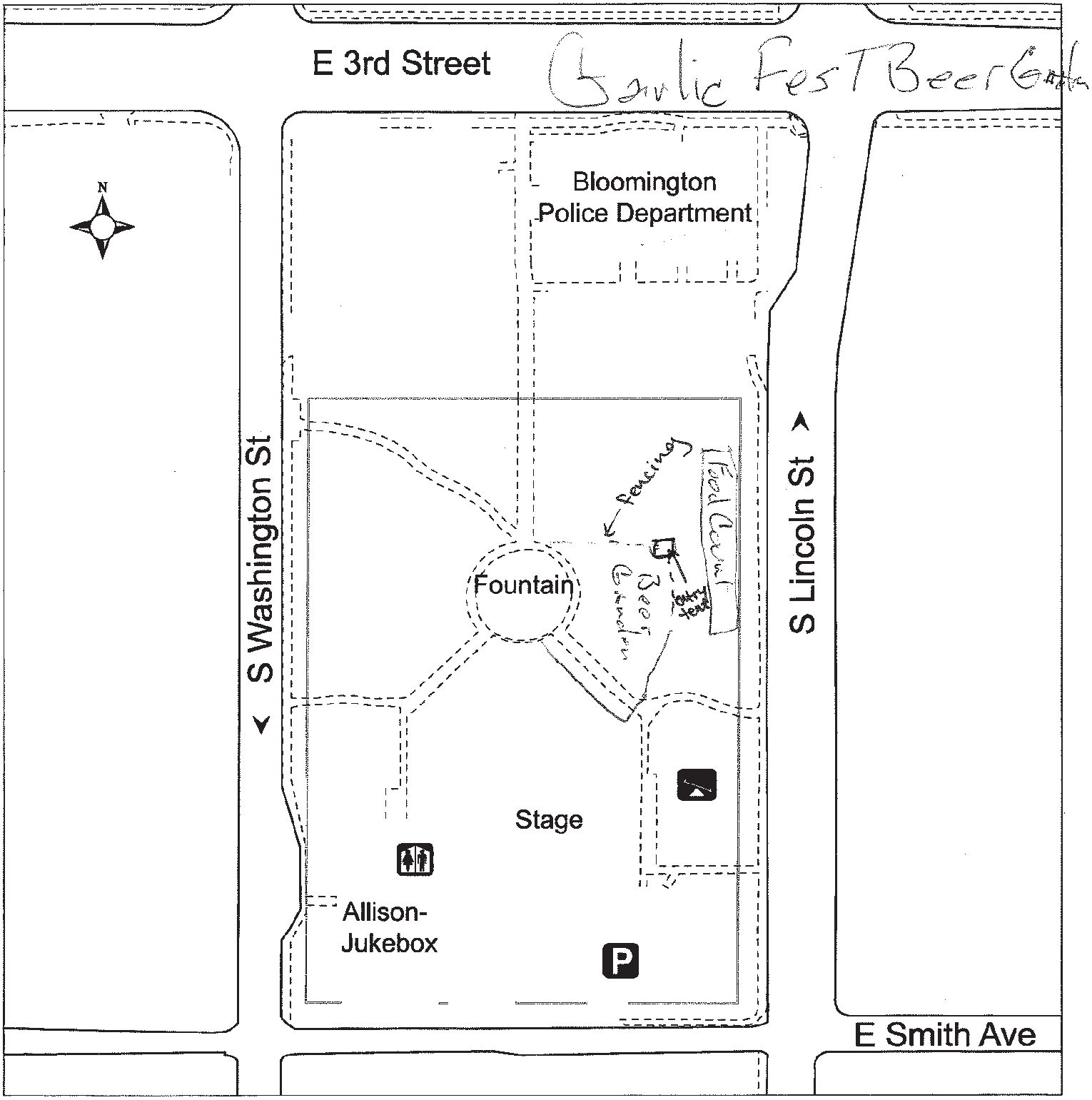


CITY OF BLOOMINGTON
parks and recreation

# Third Street Park

331 S Washington Street

Legend
- Parking
- Playground
- Restrooms
- Shelter
- Trail




http://www.bloomington.in.gov/parks

812.349.3700 Monday - Friday 8 AM - 5 PM

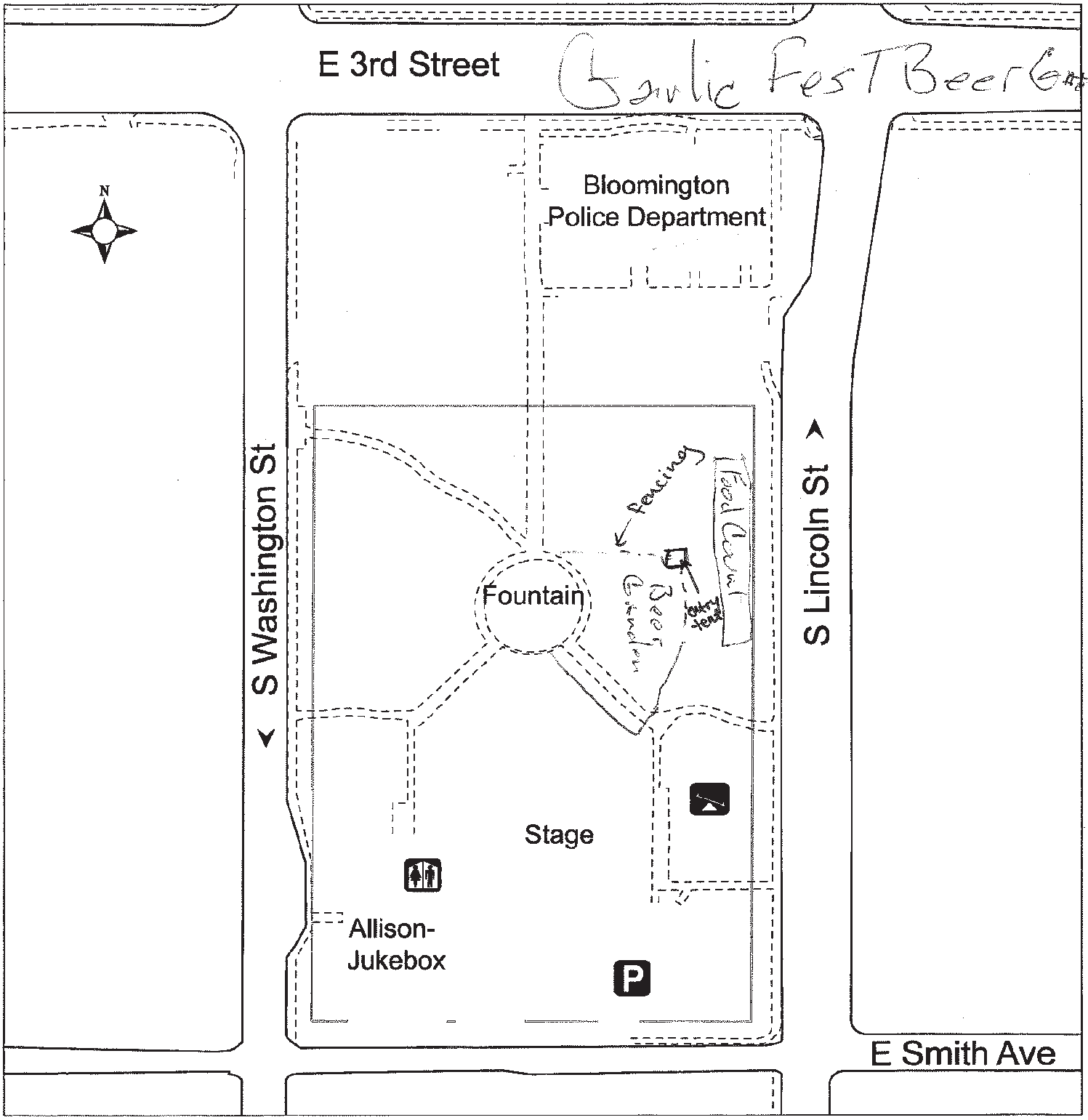
0616-08

CITY OF BLOOMINGTON
parks and recreation

# Third Street Park

331 S Washington Street

Legend
- Restrooms
- Parking
- Shelter
- Playground
- Trail




http://www.bloomington.in.gov/parks 812.349.3700 Monday - Friday 8 AM - 5 PM 0616-08

CITY OF BLOOMINGTON
parks and recreation

# STAFF REPORT

Agenda Item: C-13
Date: 7/6/2017

Administrator
Review\Approval
PM

**TO**: Board of Park Commissioners
**FROM:** Robin Kitowski, Community Gardening Program Coordinator
**DATE:** July 5, 2017
**SUBJECT:** Change in the Price Schedule of the Community Gardening Program participant fees.

**Recommendation**

Staff recommends a change to the 2017 Price Schedule for the Community Gardening Program (CGP) that would reflect a 50% discount for current gardeners in good standing who wish to rent a subsequent plot at either Willie Streeter Community Gardens (WSCG) or Butler Park Community Gardens (BPCG). Original prices range from $33-$85 across both locations, depending upon site and in-city/non-city status and would be discounted to $16.50-$42.50. These prices would remain effective through the end of the 2017 season.

**Background**

The CGP has not achieved the number of participants needed to fill all rental gardening plots this season, especially at Willie Streeter which has 170 plots and, to an extent, at Butler Park which has 41 rental plots. This is due, in part, to the increase in community gardening opportunities in our community outside the CGP. It takes many hours to maintain unrented plots so staff would like to be able to offer a 50% discount on plot rental prices to incentivize rental among those gardeners who currently hold a plot at either garden in good standing. Ideally, this would decrease staff time devoted to unrented plot upkeep and increase gardener participations in the CGP, and ultimately more gardening activity being enjoyed in Bloomington.

**RESPECTFULLY SUBMITTED,**

_____

CITY OF BLOOMINGTON
parks and recreation

# STAFF REPORT

| |
|---|
| Agenda Item: C-14<br>Date: 7/7/2017 |

| |
|---|
| Administrator<br>Review\Approval<br>PM |

**TO**: Board of Park Commissioners
**FROM:** John Turnbull
**DATE:** **July 7, 2017**
**SUBJECT:** **Winslow Asphalt Repair Project**

**Recommendation**
Staff recommends approval of the contract with Bloomington Seal Coating & Paving for $7,400.

**Background**
In fall 2016 the sewer on the senior side of Winslow Sports Park collapse and had to be dug up and repaired. This is the part of the project to repair the ground to original state with asphalt. We originally got three quotes to concrete the area flush with the surrounding ground, but those quotes were far too expensive.

Three quotes to remove existing damaged asphalt, compact stone, mill butt joints, apply a layer of asphalt tack coat and lay a new asphalt surface were received. Taylor Paving quoted $8,600, Lentz Paving quoted $8,450 and Bloomington Seal Coating & Paving quoted $7,400. We have selected Bloomington Seal Coating & Paving because they have experience with small asphalt jobs and submitted the lowest quote.

**RESPECTFULLY SUBMITTED,**

John Turnbull, Division Director Sports

**AGREEMENT**
**BETWEEN**
**CITY OF BLOOMINGTON**
**PARKS AND RECREATION DEPARTMENT**
**AND**
**BLOOMINGTOON SEAL COATING & PAVING**
**FOR**
**WINSLOW SPORTS PARK ASPHALT REPAIR**

This Agreement, entered into on this _____day of _____, 2017, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Bloomington Seal Coating & Paving ("Contractor").

**WITNESSETH:**

WHEREAS, the Department wishes to repair asphalt area behind field 6 at the Winslow Sports Park; and

WHEREAS, the Department requires the services of a professional contractor in order to perform the repair of damaged asphalt area (the "Services" as further defined below); and

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

WHEREAS, Contractor 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. <u>Scope of Services</u>**
Contractor shall provide the Services as specified in Exhibit A, "Scope of Work", attached hereto and incorporated into this Agreement.

Contractor 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.

Contractor shall complete the Services required under this Agreement on or before September 1, 2017, 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 Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Sports Facility/Programs Manager as the Department's Project Manager. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant To Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department.[1]
**Article 2. <u>Standard of Care</u>**

Contractor 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 Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor 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 Contractor 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 Contractor for all fees and expenses in an amount not to exceed Seven Thousand Four Hundred and 00/100 ($7,400.00).

Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to:

Dee Tuttle
City of Bloomington
401 N. Morton, Suite 250
Bloomington, Indiana 47404

Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice.

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**

Contractor shall perform the Services according to the schedule set forth in Exhibit B, Project Schedule, attached hereto and incorporated herein by reference. 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 Contractor. Contractor shall terminate or suspend performance of the Services on a schedule acceptable to the Department and the Department shall pay the Contractor 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 Contractor'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 Contractor in connection with this Agreement shall become the property of the Department, as set forth in Article 10 herein.

**Article 8. Identity of the Contractor**

Contractor acknowledges that one of the primary reasons for its selection by the Department to perform the Services is the qualifications and experience of Contractor. Contractor thus agrees that the Services to be performed pursuant to this Agreement shall be performed by Contractor. Contractor 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 Contractor's personnel or proposed outside professional sub-contractors, and the Department reserves the right to request that acceptable replacement personnel be assigned to the project.

**Article 9. Opinions of Probable Cost**

All opinions of probable construction cost to be provided by Contractor shall represent the best judgment of Contractor based upon the information currently available and upon Contractor's background and experience with respect to projects of this nature. It is recognized, however, that neither Contractor nor the Department has control over the cost of labor, materials or equipment, over contractors' method of determining costs for services, or over competitive bidding, market or negotiating conditions. Accordingly, Department cannot and does not warrant or represent that the proposals or construction bids received will not vary from the cost estimates provided pursuant to this Agreement.

**Article 10. Reuse of Instruments of Service**

All documents, including but not limited to, drawings, specifications and computer software prepared by Contractor pursuant to this Agreement are instruments of service in respect to this project. They are not intended or represented to be suitable for reuse by the Department or others on modifications or extensions of this project or on any other project. The Department may elect to reuse such documents; however any reuse or modification without prior written authorization of Contractor will be at the Department's sole risk and without liability or legal exposure to Contractor. The Department shall indemnify, defend, and hold harmless the Contractor against all judgments, losses, claims, damages, injuries and expenses arising out of or resulting from such unauthorized reuse or modification.

**Article 11. Ownership of Documents and Intellectual Property**

All documents, drawings and specifications, including digital format files, prepared by Contractor and furnished to the Department as part of the Services shall become the property of the Department. Contractor 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 Contractor.

**Article 12. Independent Contractor Status**

During the entire term of this Agreement, Contractor shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees of the Department. Contractor 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 13. Indemnification**

Contractor 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 Contractor or its agents or employees, or any independent contractors directly responsible to it (collectively "Claims").

**Article 14. 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.

c. Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of $2,000,000 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 City's will be called upon to contribute to a loss hereunder.

Contractor 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 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 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 15. Conflict of Interest**
Contractor 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. Contractor agrees that no person having any such interest shall be employed in the performance of this Agreement.

**Article 16. 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 17. 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 18. Assignment**
Neither the Department nor the Contractor 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 19. Third Party Rights**
Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Department and Contractor.

**Article 20. 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 21. 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 all regards, including, but not limited to, employment.

**Article 22. Compliance with Laws**
In performing the Services under this Agreement, Contractor 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, Contractor 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 23. E-Verify**
Contractor 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). 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 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 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.

**Article 24. Notices**
Any notice required by this Agreement shall be made in writing to the individuals/addresses specified below:

| **Department:** | | **Contractor:** |
|---|---|---|
| **City of Bloomington** | | **Bloomington Seal Coating & Paving** |
| Attn: Dee Tuttle | | 1235 W. Old Capital Pike |
| 401 N. Morton, Suite 250 | | Bloomington, IN 47403 |
| Bloomington, Indiana 47402 | | Attn: David Deckard |

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

**Article 25. Intent to be Bound**
The Department and Contractor 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 26. Integration and Modification**
This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department 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. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 27. Non-Collusion**
Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion, or agreement 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 sign an affidavit, attached hereto as Exhibit D, affirming that Contractor has not engaged in any collusive conduct. Exhibit D is attached hereto and incorporated by reference as though fully set forth.

**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

**CITY OF BLOOMINGTON PARKS AND RECREATION**

_____
Paula McDevitt, Director

_____
Leslie J. Coyne, President,
Board of Park Commissioners

**BLOOMINGTON SEAL COATING & PAVING**

_____
David Deckard

_____
Title

**EXHIBIT A**

**"Scope of Work"**

The Services shall include the following**:**

**Dig out all area as needed. Clean all debris off all pre-existing asphalt that is being paved. Compact all stone. Mill all butt joints as needed. Apply a heavy layer of asphalt tack coat. Lay 1 ½-3 inches on #11 asphalt surface.**

**EXHIBIT B**

**"Project Schedule"**

**The project will be completed by September 1, 2017**

**EXHIBIT C**
E-VERIFY AFFIDAVIT

STATE OF INDIANA )
)SS:
COUNTY OF _____ )

AFFIDAVIT

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

1. The undersigned is the _____of Bloomington Seal Coating & Paving.
(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 herby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

_____
Signature

_____
Printed Name

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 _____, 2017.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

**EXHIBIT D**

STATE OF _____ )
) 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 _____, 2017.

**Bloomington Seal Coating & Paving**

By: _____

_____

STATE OF _____ )
) 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 _____, 2017.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public