CITY OF BLOOMINGTON
parks and recreation

AGENDA

City of Bloomington Board of Park Commissioners — Council Chambers
Regular Meeting: Tuesday, August 22, 2017 4:00pm – 5:30pm — 401 North Morton

CALL TO ORDER - ROLL CALL

A. CONSENT CALENDAR

A-1. Approval of Minutes of July 25, 2017
A-2. Approval of Claims Submitted July 22, 2017 – August 18, 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 -

C. OTHER BUSINESS

C-1. Review/Approval of Wildlife Services Management Contract for Reduction of Deer at Griffy Lake (Steve Cotter)
C-2. Review/Approval of IU Health Bloomington Stream Mitigation proposal (Steve Cotter)
C-3. Review/Approval of Resolution 17-05 Refunding of 2009 Park District Bonds (Paula McDevitt)
C-4. Review/Approval of Energy System Group solar project proposal for Parks properties (Jacqui Bauer, ESD)
C-5. Review/Approval of contract with Steve's Roofing for Park Ridge East Shelter House (Barb Dunbar)
C-6. Review/Approval of partnership agreement with Summer Star Foundation for Nature, Arts & Humanity (Elizabeth Tompkins)
C-7. Review/Approval of contract with Eco Logic, LLC for removal of Invasive Plant Species (Joanna Sparks)
C-8. Review/Approval of service agreement with Ronnie G. Purcell for monument repairs (Joanna Sparks)
C-9. Review/Approval of contract with Interpretive Ideas for Peoples Park signage (Dave Williams)
C-10. Review and Approval of contract with REA for Peoples Park improvements (Dave Williams)
C-11. Review/Approval of Holiday Market artist fee in 2017 Price Schedule (Crystal Ritter)
C-12. Review/Approval of contract with Fox Construction Company, Inc. for Frank Southern Center restroom renovation and TLRC locker room renovations (John Turnbull)
C-13. Review/Approval of contract amendment with Chef for Hire (Erik Pearson)
C-14. Review/Approval of contract with Umphress Masonry, Inc. (Barb Dunbar)
C-15. Review/Approval of contract addendum with Baker Stone Work (John Turnbull)
C-16. Review/Approval of contract with Kentucky Fairways Zoysia Sod Farm (John Turnbull)

D. REPORTS

D-1. Recreation Division -
D-2. Operations Division -

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

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
08-22-2017

Board of Park Commissioners
Regular Meeting
Minutes

Tuesday, July 25, 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 4:02 p.m.

Board Present: Mr. Les Coyne, Mr. Joe Hoffmann, Ms. Kathleen Mills and Ms. Darcie Fawcett

Staff Present: Paula McDevitt, Julie Ramey, Kim Clapp, Daren Eads, Leslie Brinson, Dee Tuttle, Steve Cotter, Erik Pearson, Hsuing Marler, and Joanna Sparks

A. CONSENT CALENDAR
A-1. Approval of Minutes of July 13, 2017 Meeting
A-2. Approval of Claims Submitted July 13, 2017 through July 24, 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. Mr. Joe Hoffmann seconded the motion. Motion unanimously carried.

B. PUBLIC HEARINGS/APPEARANCES

B-1. Public Comment Period –
Mr. David Slaybaum approached the podium. Mr. Slaybaum thanked the Parks Board for the dramatic improvements in Peoples Parks and Seminary Square. Mr. Slaybaum thanked the Bloomington Police Department for them stepping up and enforcing the rules that all of us have to live by, which is not easy. They seem to be doing it and being fair to everybody. Mr. Slaybaum thanked the Mayor for recognizing the fact we got a criminal issue in the parks, and by doing what we are doing, we seem to have a lot more control on what is going on in the parks. I really appreciate that. I've spent a lot of time talking to people, and a lot of the people can't believe how nice the park is and how many people are in the park.
Mr. Slaybaum asked that tobacco use be banned in City parks and ask that you do it formally, by putting it into an agenda that you have, or if you as a Board can do it in house amongst yourself. We would like to make all City parks smoke free to go along with the non-alcohol and no drug policy.

The Board thanked Mr. Slaybaum for his time and efforts. The Board informed Mr. Slaybaum a City Ordinance would be required to ban smoking in parks, staff continues to work on this issue.

B–2. Bravo Award – Oliver Fyffe
Mr. Daren Eads, Twin Lakes Recreation Center Facility Coordinator, on behalf of the Bloomington Parks and Recreation Department, I would like to recognize Mr. Oliver Fyffe as our July BRAVO award recipient. Mr. Fyffe is very involved in Special Olympics and sports, which prompted his interest in volunteering at the TLRC. Mr. Fyffe volunteered through the Work Study Program at Bloomington High School South, and has given a total of 48 volunteer hours from December 2016 through May 2017 to TLRC. Mr. Fyffe is an enthusiastic, hardworking, reliable volunteer and we appreciate his commitment and involvement with TLRC.

B-3. Parks Partner Award – None

B-4. Staff Introduction-None

C. OTHER BUSINESS

C-1. Review/Approval of Contract with Monroe/Owen Appraisal
Ms. Paula McDevitt, Administrator, the Department wishes to appraise the real estate properties (Dagom Garden Tensung-Ling Tibetan Buddhist Monastery) located at 100-112 W. Club House Drive in order to evaluate whether it wishes to make an offer to purchase said property. BPRD requires the services of a real estate appraisal consulting firm to conduct this Appraisal. Indiana code 36-10-4-25 requires BPRD to appoint three (3) qualified appraisers to appraise the land and submit an appraisal in writing. Monroe/Owen Appraisal Inc. is qualified, experienced, and capable of being lead appraiser. Monroe/Owen Appraisal Inc. will contract with two (2) appraisers and provide the Department with one joint appraisal report. Staff recommends the approval of this contract with Monroe/Owen Appraisal Inc. Cost of the appraisal will be $8,500.

Ms. Darcie Fawcett, I move approval to appoint the Monroe/Owen Appraisal Inc., Figg Appraisal Group and Vencel Appraisal Services, LLC as the three required appraisers pursuant to the terms of the contract presented. Mr. Joe Hoffmann seconded the motion. It's been moved and seconded that the Board approves the Monroe/Owen Appraisal contract. Motion unanimously carried.

C-2 Review/Approval of Partnership Agreement with Jump Start Sports
Mr. Erik Pearson, Program/Facility Coordinator – Banneker Community Center, the purpose of this agreement is to introduce preschool sports programs that focus on introducing sports to preschool children in an instruction based, fun environment. This partnership will allow these programs to take place at BPRD facilities, and will result in increasing the quality of preschool sports programs and allowing more Bloomington families to participate. The goal of BPRD is to build a positive relationship with Jump Start Sports in order to provide programs necessary for the positive development and well-being of the community.

Ms. Darcie Fawcett made a motion to approve the Partnership Agreement with Jump Start Sports. Mr. Joe Hoffmann seconded the motion. Motion unanimously carried.

C-3. Review/Approval of Contract with Tommy D's Windows and Doors
Ms. Dee Tuttle, Sports Facility/Program Manager due to age, inefficiency, and wear the Department wishes to replace four exterior doors located at Frank Southern Ice Arena and one door located at Winslow Sports Complex. The Department requires the services of a professional contractor in order to perform the door replacements. Quotes were solicited from several vendors. Staff recommends the approval of the contract with Tommy D's Windows and Doors for $5,495.80 for Winslow, and $7,310.10 for Frank Southern Ice Arena. Winslow project will be funded from a 2016 purchase order, while 2016 Reversion Funds will be used for Frank Southern Ice Arena.

Ms. Darcie Fawcett made a motion to approve the Contract with Tommy D's Windows and Doors. Mr. Joe Hoffmann seconded the motion. Motion unanimously carried.

C-4. Review/Approval of Contract with Stellar Refrigeration Services
Mr. Hsiung Marler, Sports Facility/Program Manager, due to age and being past life expectancy, the Department wishes to recondition the main compressor at Frank Southern Ice Arena. The Department requires the services of a professional contractor in order to perform the compressor reconditioning. Staff recommends the approval of the contract with Stellar Refrigeration Services for $15,095. Three quotes were received, with Stellar's being the lowest. 2016 Reversion Funds will be used for this project.

Ms. Darcie Fawcett made a motion to approve the Contract with Stellar Refrigeration Services. Mr. Joe Hoffmann seconded the motion. Motion unanimously carried.

C-5. Review/Approval of Service Agreements with Janiece Jaffe and Laura Hunsucker
Ms. Dee Tuttle, Sports Facility/Program Coordinator, the Department wishes to have the national Anthem sung at the opening ceremonies for the National Softball event. The Department requires the services of two professional performers, one for the opening game at Twin Lakes Sports Park and the second for the opening game at Winslow Sports Park. Staff recommends the approval of the Agreements with Janiece Jaffe and Laura Hunsucker, in the amount of $100/each. Funding was budgeted out of the Non-Reverting Funds.

Ms. Darcie Fawcett made a motion to approve the Service Agreements with Janiece Jaffe and Laura Hunsucker. Mr. Joe Hoffmann seconded the motion. Motion unanimously carried.

D. Reports
D-1. Operations Division – Griffy Lake Aquatic Vegetation Management Plan Report

Mr. Steve Cotter, Natural Resources Manager introduced Mr. Nathan Long, Executive Vice President of Aquatic Control Inc, and invited him to the podium.

Mr. Long approached the podium and presented the Griffy Lake Aquatic Vegetation Management Plan Update.

LARE Review

- State Funds received from fee on boat registrations
- Administered by IDNR/Division Fish & Wildlife/Lake & River Enhancement Program (LARE)
    - Watershed/shoreline improvements
    - Dredging
    - Log Jam removal
    - Invasive plant control
- Must be a public waterbody
- Must have a sponsor and typically a % match involved with grants
- $17,200 Grant for 2017

Aquatic Plant Ecology Review

- Most aquatic plants occur naturally in lakes
    - Seed or fragment introduction
    - Sunlight
    - Proper Substrate
    - Nutrients
- Most aquatic plants are beneficial to your lake
    - Reduce erosion
    - Cover for fish and invertebrates
    - Improve water Quality/clarity
    - Food for waterfowl
- Type of plants in a lake often determined by water quality/clarity
- Some species can lead to nuisance conditions or create ecological problems
- Eurasian watermilfoil (EWM) *Myriophyllum spicatum*
    - Invasive non-native submersed plant
    - Competes with native plant species for space and light
    - Spreads through fragmentation that can be carried from lake to lake by boat
    - Can be detrimental to lake ecosystem
- Brazilian elodea *Egeria densa*
    - Invasive non-native submersed plant
    - Forms dense monocultures which can impede boating, fishing, and limit native growth
    - Only reproduction in US through vegetative fragments that can be carried from lake to lake by boat
    - Eradicated from Griffy in 2010

Griffy Lake Plant Management History

- Milfoil weevils stocked in early 2000's has not been very successful
- Brazilian elodea eradication treatments 2006 & 2007
    - Signage posted at ramp
    - Education effort
- Curlyleaf pondweed treatments in 2008
- Eurasian watermilfoil treatments in 2009
- Dredging and lake lowing 2010

Griffy Lake Vegetation Management in 2016

- LARE
    - Awarded IDNR LARE grant of $3,120 for surveying and plan update
    - Two Tier 2 and invasive plant surveys
    - Updated plan finalized by March 1, 2107
    - Will allow for eligibility for plant management grant in 2017, if needed.
- Spring survey (May 24)
    - 22.6 acres of Eurasian watermilfoil mapped
    - Only 2.6 acres of curlyleaf pondweed mapped
    - EWM collected 18% of Tier 2 survey sites
    - Curlyleaf pondweed collected at only 2% of survey sites

        - Good clarity and plant diversity for a southern IN reservoir
    - Summer 2016 Survey
        - Completed August 18th
        - EWM covering 30.8 acres and present at 22% of Tier 2 survey sites
        - Coontail most frequently collected species
        - Still had good water clarity with Secchi of 8 ft.
        - No curly pondweed collected or observed

Recommended Future Actions

- Continue with surveys
    - Invasive survey spring & summer (potentially LARE funded)
    - Tier 2 late summer (potentially LARE funded)
- Spring invasive EWM treatment with selective/system EPA approved aquatic herbicide
    - Earlier treatment in 2018
    - Cost can vary from $200-$500/acre depending on herbicide selected
- Continue with public meetings and plan updates (potentially LARE funded)
- Continue to work to improve shoreline stabilization and watershed improvements (potentially LARE funded)
- Monitor boats entering and leaving lake

Remaining LARE Program Steps

- Summer survey
- Permit meeting with biologist?
- Draft Aquatic Vegetation Management Plan due Nov. 15
- Submit grant application by January 15th
- Submit permit application by February 1st
- LARE awards grants in late February/early March
- Send out bid requests in March
- Decide on contractor

D-2. Recreation Division – No Report

D-3. Sports Division – No Report

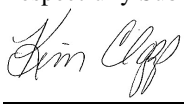
D-4 Administrative Division – No Report

Ms. Paula McDevitt, Administrator announced, the Bloomington Parks and Recreation Department will host a Griffy Lake Reserve Deer Management Panel Tuesday, August 1, 2017 from 7:00pm to 8:30pm in the Council Chambers. The Public is encouraged to attend.

ADJOURNMENT

Meeting adjourned at 4:42 p.m.

Respectfully Submitted,



Kim Clapp,
Secretary Board of Park Commissioners

Journal Edit Listing

Sort By Entry

Department	Number	Journal Type	Sub Ledger	G/L Date	Description	Source	Reference	Reclassification Journal Type
Parks - Parks & Recreation	2017-00011822	BA	GL	08/10/2017	Budget Amend-Funds for OPS Ctr Improvements			

G/L Date	*G/L Account Number*	*Account Description*	*Description*	*Source*	*Increase Amount*	*Decrease Amount*
08/10/2017	201-18-189001-53650	Other Repairs	Budget Amend-Funds for OPS Ctr Improvements		48,000.00	.00
				Number of Entries: 1	$48,000.00	$.00

Journal Edit Listing

Sort By Entry

Department	Number	Journal Type	Sub Ledger	G/L Date	Description	Source	Reference	Reclassification Journal Type
Parks - Parks & Recreation	2017-00011160	BA	GL	07/31/2017	Budget Amendment-Natural Resources			

G/L Date	*G/L Account Number*	*Account Description*	*Description*	*Source*	*Increase Amount*	*Decrease Amount*
07/31/2017	201-18-184000-53160	Instruction	Budget Amendment-Natural Resources		535.00	.00
07/31/2017	201-18-184000-53230	Travel	Budget Amendment-Natural Resources		1,040.00	.00
				Number of Entries: 2	$1,575.00	$.00

REVENUES AND EXPENSES: COMPARISON REPORT								
Expenses	**2016**	**2016**	**2016**	**2016**	**2017**	**2017**	**2017**	
July 2017	**Total**	**Actual**	**Expenses**	**% of Expenses**	**Total**	**Expenses**	**% of Expenses**	
	Expense	**Expenses**	**as of**	**Spent**	**Expense**	**as of**	**Spent**	**%**
	Budget	**for Year**	**July**	**to date**	**Budget**	**July**	**to date**	**change**
General Fund								
Administration	648,362	798,040	527,446	66.09%	750,594	563,627	70.27%	**6.86%**
Health & Wellness	102,982	70,857	44,594	0.00%	105,197	61,718	42.39%	**38.40%**
Community Relations	398,972	360,703	208,874	57.91%	423,303	233,877	49.34%	**11.97%**
Aquatics	336,870	297,289	193,973	65.25%	330,688	194,521	58.82%	**0.28%**
Frank Southern Center	346,391	304,193	168,701	55.46%	341,117	209,458	61.40%	**24.16%**
Golf Services	936,904	865,839	585,303	67.60%	885,638	585,671	66.13%	**0.06%**
Natural Resources	354,730	317,745	180,760	56.89%	370,961	194,828	52.52%	**7.78%**
Youth Programs	38,520	36,060	30,433	84.40%	59,844	32,695	54.63%	**7.43%**
TLRC	336,170	284,409	176,312	61.99%	282,216	171,684	60.83%	**-2.63%**
Community Events	355,578	319,994	200,214	62.57%	384,284	209,990	54.64%	**4.88%**
Adult Sports	297,187	264,499	153,507	58.04%	288,431	154,474	53.56%	**0.63%**
Youth Sports	282,128	235,235	143,515	61.01%	267,398	151,716	56.74%	**5.71%**
BBCC	277,467	261,400	179,820	68.79%	304,977	185,496	60.82%	**3.16%**
Inclusive Recreation	94,372	69,226	42,092	60.80%	72,632	46,306	63.75%	**10.01%**
Operations	1,397,965	1,367,298	817,156	59.76%	1,546,438	818,052	52.90%	**0.11%**
Landscaping	279,879	229,642	138,625	60.37%	283,362	137,335	48.47%	**-0.93%**
Cemeteries	181,065	156,776	95,596	60.98%	173,285	98,001	56.55%	**2.51%**
Urban Forestry	359,388	325,950	196,215	60.20%	400,381	238,388	59.54%	**21.49%**
General Fund total:	***7,024,932***	***6,565,155***	***4,083,136***	62.19%	***7,270,746***	***4,287,835***	58.97%	**5.01%**
Non-Reverting Fund								
Administration	24,500	7,223	7,084	98.08%	27,640	2,165	7.83%	**-69.44%**
Health & Wellness	2,596	768	694	90.39%	1,914	588	30.73%	**-15.30%**
Community Relations	0	137	52	37.86%	4,650	465	10.00%	**0.00%**
Aquatics	74,491	61,780	46,116	74.65%	64,433	32,404	50.29%	**-29.73%**
Frank Southern Center	63,230	84,289	35,235	41.80%	94,423	35,567	37.67%	**0.94%**
Golf Services	125,465	106,010	89,795	84.70%	126,105	68,872	54.61%	**-23.30%**
Natural Resources	15,992	20,643	18,371	88.99%	50,992	16,401	32.16%	**0.00%**
Youth Programs	151,153	172,903	96,268	55.68%	178,521	103,489	57.97%	**7.50%**
*TLRC - day to day	419,054	426,234	377,048	88.46%	970,663	372,110	38.34%	**-1.31%**
Community Events	180,489	165,857	92,963	56.05%	190,881	98,344	51.52%	**5.79%**
Adult Sports	282,621	244,073	104,930	42.99%	230,225	110,583	48.03%	**5.39%**
Youth Sports	18,356	13,697	10,536	76.92%	26,845	10,189	37.96%	**-3.29%**
BBCC	21,963	61,163	29,949	48.97%	25,403	27,265	107.33%	**-8.96%**
Inclusive Recreation	0	0	0	0.00%	0	0	0.00%	**0.00%**
Operations	28,000	17,250	884	5.12%	19,195	55,751	290.45%	**100.00%**
Dog Park	0	0	0	0.00%	0	0	0.00%	**0.00%**
Switchyard	14,800	7,540	5,905	78.31%	14,800	24,963	168.67%	**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	6,400	65.20%	4,450	1,246	27.99%	**0.00%**
N-R Fund subtotal:	***1,425,511***	***1,399,385***	***922,230***	65.90%	***2,031,140***	***960,401***	47.28%	**4.14%**
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***	***1,346,760***	69.47%	***2,460,714***	***1,389,975***	56.49%	**3.21%**
Other Misc Funds								
MCCSC 21st Com Learn Cnt G	29,950	38,880	21,497		29,950	23,198		
G14004 Tree Planting			0					
G14006 Out-of School Prg.		4	62					
G15008 Summer Food Prg.	11,115	13,734	6,725		11,115	9,471		
G15009 Nature Days S/Star						2,718		
Griffy Lake Nature Day	0	4,673	2,876	61.53%		3,236	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	4,514	77.54%		3,538	0.00%	**0.00%**
Banneker Nature Day		3,934	2,145					
DNR Grant	0			0.00%		17,286	0.00%	**0.00%**
Kaboom Play		49						
Goat Farm						1,777		
Other Misc Funds total:	***41,065***	***109,703***	***42,605***	38.84%	***41,065***	***61,225***	149.09%	**0.00%**
TOTAL ALL FUNDS	**9,030,612**	**8,613,347**	**5,472,501**	**63.54%**	**9,772,524**	**5,739,034**	58.73%	**4.87%**
*NR BACC/Project School has been combined with TLRC								

REVENUES AND EXPENSES: COMPARISON REPORT								
Revenues July 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	July	to date	for year	July	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	831	75.92%	500	596	119.20%	**-28.32%**
Community Relations	0	0	0	0.00%	0	0	0.00%	**0.00%**
Aquatics	142,000	172,401	145,031	84.12%	153,500	173,136	112.79%	**19.38%**
Frank Southern	188,000	205,655	122,400	59.52%	219,900	112,090	50.97%	**-8.42%**
Golf Services	561,000	513,807	340,957	66.36%	568,500	345,956	60.85%	**1.47%**
Natural Resources	0	-11	0	0.00%	0	0	0.00%	**0.00%**
Youth Services	0	-237	-237	100.00%	0	0	0.00%	**0.00%**
Community Events	10,125	11,545	10,830	93.81%	10,700	11,310	105.70%	**4.43%**
Adult Sports	79,000	72,075	70,054	97.20%	78,000	63,163	80.98%	**-9.84%**
Youth Sports	40,000	29,565	13,501	45.66%	33,900	13,151	38.79%	**0.00%**
BBCC	10,000	13,389	8,049	60.12%	12,000	5,399	44.99%	**-32.92%**
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	16,508	41.58%	**#DIV/0!**
Urban Forestry	0	0	22,525	0.00%		0	0.00%	**0.00%**
Subtotal Program Rev	***1,058,425***	***1,055,131***	***734,867***	***69.65%***	***1,116,700***	***741,332***	***66.39%***	***0.88%***
General Fund Total	***6,748,602***	***6,875,445***	***6,555,181***	***95.34%***	***7,146,750***	***6,771,382***	***94.75%***	***3.30%***
Non-Reverting Fund								
Administration	41,550	40,249	25,633	63.69%	40,650	22,854	56.22%	**-10.84%**
Health & Wellness	3,550	1,367	1,038	75.96%	3,550	1,351	38.04%	**30.09%**
Community Relations	2,000	2,113	1,000	47.34%	4,650	2,000	43.01%	**0.00%**
Aquatics	117,000	120,678	105,016	87.02%	126,373	103,787	82.13%	**-1.17%**
Frank Southern	129,000	138,537	37,828	27.31%	153,400	31,965	20.84%	**-15.50%**
Golf Services	153,000	151,474	90,250	59.58%	151,300	94,049	62.16%	**4.21%**
Natural Resources	59,200	78,233	57,761	73.83%	58,525	50,606	86.47%	**-12.39%**
Youth Programs	158,400	208,903	190,049	90.97%	189,866	175,136	92.24%	**-7.85%**
*TLRC -Operational	770,229	750,635	457,699	60.97%	782,329	446,098	57.02%	**-2.53%**
Community Events	171,656	192,373	133,538	69.42%	191,760	143,761	74.97%	**7.66%**
Adult Sports	281,000	251,616	181,636	72.19%	216,500	111,958	51.71%	**-38.36%**
Youth Sports	26,800	23,610	18,945	80.24%	25,000	21,481	85.92%	**13.39%**
BBCC	27,620	65,764	28,233	42.93%	29,420	23,321	79.27%	**-17.40%**
Operations	30,700	132,036	109,919	83.25%	51,640	39,212	75.93%	**-64.33%**
Dog Park	400	0	0	0.00%	400	0	0.00%	**-100.00%**
Switchyard (CCC Propt)	82,800	71,236	42,686	59.92%	82,800	50,774	61.32%	**18.95%**
Landscaping	0	0	0	0.00%	0	0	0.00%	**0.00%**
Cemeteries	0	0	0	0.00%	0	0	0.00%	**0.00%**
Urban Forestery	8,900	10,439	5,771	55.28%	9,300	1,389	14.94%	**-75.92%**
N-R Fund subtotal:	***2,063,805***	***2,239,261***	***1,487,004***	***66.41%***	***2,117,463***	***1,319,743***	***62.33%***	***-11.25%***
Other Misc Funds								
G14006 Out-of-School Prg						20		
G14007 MCCSC 21st Com			15,873		60,000	21,410		
G14009 Summer Food Grant			9,701		13,744	12,192		
G14004 Tree Planting								
Kaboom Play Everywhere			500					
Urban Forestry EAB								
Wapehani Mitigation I69						0		
Griffy LAE Veg. Mgt						14,453		
G15008 Leonard Spring						-50		
G15009 Griffy Nature Days						4,988		
(902) Rose Hill Trust			0			215		
Banneker Nature Days			4,340			32,468		
Nature Days Star			103			4,340		
Other Misc Funds total:	***0***	***0***	***30,517***		***73,744***	***90,036***		
TOTAL ALL FUNDS	**8,812,407**	**9,114,706**	**8,072,702**	**88.57%**	**9,337,957**	**8,181,161**	**87.61%**	**1.34%**
*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	7/15/2017	revenue	7/15/2017	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	23,125.12		2,165.13		**20,959.99**	188,766.39
181001	Health & Wellness	5,427.77	1,392.50		680.78		**711.72**	6,139.49
181100	Community Relations	33,354.04	2,000.00		465.00		**1,535.00**	34,889.04
182001	Aquatics	314,716.56	108,987.38		35,737.29		**73,250.09**	387,966.65
182500	Frank Southern Center	125,817.03	33,035.53		36,452.46		**(3,416.93)**	122,400.10
183500	Golf Course	142,842.77	98,762.17		78,146.37		**20,615.80**	163,458.57
184000	Natural Resources	201,976.15	54,215.47		17,986.47		**36,229.00**	238,205.15
184500	Allison Jukebox	150,115.61	177,142.48		122,199.84		**54,942.64**	205,058.25
*185000	TLRC	(276,450.63)	419,656.78		816,094.25		**(396,437.47)**	(672,888.10)
**185009	TLRC Reserve	481,174.15	51,406.25		0.00		**51,406.25**	532,580.40
186500	Community Events	422,999.89	149,114.46		104,995.37		**44,119.09**	467,118.98
187001	Adult Sports	90,353.49	127,405.45		119,066.85		**8,338.60**	98,692.09
187202	Youth Sports	97,846.16	21,750.74		10,773.77		**10,976.97**	108,823.13
187209	Skate Park	543.88	0.00		0.00		**0.00**	543.88
187500	Benjamin Banneker Comm Cente	41,422.47	23,372.09		33,500.52		**(10,128.43)**	31,294.04
189000	Operations	136,191.07	42,272.81		52,607.99		**(10,335.18)**	125,855.89
189005	Dog Park	5,993.79	0.00		0.00		**0.00**	5,993.79
189006	Switchyard Property	189,641.25	52,824.00		25,322.83		**27,501.17**	217,142.42
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	1,389.40		1,245.60		**143.80**	6,448.07
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**	**1,387,852.63**	**0.00**	**1,457,440.52**	**0.00**	**(69,587.89)**	**2,282,689.59**
								(69,587.89)
								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	Date Disposed
		Closed do not add any items		

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: C-1
Date: 8/16/2017

Administrator
Review\Approval
PM

TO: Board of Park Commissioners
FROM: Steve Cotter, Natural Resources Manager
DATE: August 22, 2017
SUBJECT: **REVIEW/APPROVAL OF DEER HERD REDUCTION AGREEMENT WITH WHITE BUFFALO, INC.**

Recommendation

Staff recommends approval of the Deer Herd Reduction Agreement with White Buffalo, Inc. to manage the deer population at the Griffy Lake Nature Preserve.

Background

Griffy Lake Nature Preserve is Bloomington's largest City park. The 1200 acre property is home to at least 565 plant species, 19 mammal species, 160 bird species, and 30 reptile and amphibian species.

Comparative vegetation surveys completed between April 28, 2017 and May 12, 2017 show 6 native plant species, considered good indicators of deer browse pressure, are shorter in Griffy Lake Nature Preserve than in two similar nearby forests. Plant size is positively correlated to reproductive success for these species. These native species are good indicators of deer browse because deer find them palatable and prefer to eat them over other plants. Invasive plants are not as palatable to deer so the invasives gain a competitive advantage over native plants, which increases the rate of invasive plant infestation. Some non-palatable native species, such as paw paw and spice bush, also benefit from reduced competition from plants that deer prefer. False Solomon's seal, Jack-in-the pulpit, recurved trillium, Solomon's seal, sweet Cicely, and white baneberry were measured in research plots at Griffy Lake Nature Preserve, Morgan-Monroe State Forest (MMSF) and Brown County State Park (BCSP).

Deer hunting is allowed on the MMSF and periodic deer hunts are conducted at BCSP to maintain the deer herd at a sustainable size. Before deer hunts were implemented at BCSP, native vegetation in the Park had decreased dramatically due to the large size of the herd. Emaciated deer were regularly seen standing on their hind legs to eat leaves and twigs from trees. The understory vegetation in the park disappeared in many areas up to the browse line

as high as the deer could reach. Closely regulated hunts have allowed the vegetation community, and associated wildlife, in the park to rebound to healthy levels.

The first attempt to reduce the size of the deer herd at Griffy Lake Nature Preserve in 2014 was unsuccessful due to a large acorn crop that winter. The abundance of acorns interfered with the timing of the appearance of deer at the bait stations.

Griffy Lake Nature Preserve covers a total of 1,200 acres, including the 109-acre Griffy Lake, and was formed from more than 45 different property acquisitions between 1922 and 2007. It is located on the north side of the City of Bloomington, Indiana, at 3300 N. Headley Road (Appendix 1, Griffy Property Deed Records). The property is owned by the City of Bloomington and is managed by the Bloomington Parks and Recreation Department under separate agreements between the Board of Park Commissioners and the Utilities Services Board and the Indiana Department of Natural Resources Division of Nature Preserves. Flat-topped narrow divides, steep slopes, and deep V-shaped valleys characterize the Griffy Lake Nature Preserve area.

Browse damage by deer in the Griffy Lake Nature Preserve was noted in the Griffy Lake Master Plan Update 2008;
"The large deer population is stripping vegetation in the forest understory. This has destroyed plant and animal diversity in the most heavily browsed areas. These heavily browsed areas also provide opportunities for invasive species to become established. Experiments with exclosures visually show the effects of deer browse."

The Joint City of Bloomington-Monroe County Deer Task Force, an 11-member citizen group, was created by local government in September 2010 in response to concerns expressed by ecologists and residents about deer damage in Griffy Lake Nature Preserve. The task force summarized two years of meetings and research on the topic in their final report.

The executive summary of Common Ground: Toward Balance and Stewardship, the recommendations of the task force, stated:
"When it comes to deer at Griffy Woods, clear evidence points to ecosystem damage by deer-native tree seedlings are not regenerating; herbaceous plant species are severely compromised and possibly going locally extinct; invasive species are taking over some areas; the forest understory is unnaturally open; and understory-reliant birds and other animals are losing habitat."

Deer exclosure studies in Griffy Lake Nature Preserve over a period of several years clearly indicated that there is a significant difference in all types of vegetation between the areas that were protected from deer browsing, and those that were not. Research by Dr. A. L. Shelton et. al. from the Indiana University Department of Biology, "Effects of abundant white-tailed deer on vegetation, animals, mycorrhizal fungi, and soils", (Forest Ecology and Management, February 19, 2014) indicated:
"We found strong effects of deer exclusion on all aspects of understory vegetation measured. The complete lack of native tree recruitment in control plots is particularly dramatic given that deer had been excluded from the plots for only two or three years in 13 of 15 plots. The only woody plant recruitment in the control plots was by invasive shrubs and unpalatable native shrubs."

The same study also reported:
"*In pellet count surveys conducted in March 2011, we found an average of 200 ± 50 SE pellet*

piles/ha compared to 18 ± 5 and 17 ± 8 at two other nearby unhunted preserves, suggesting this site has 11–12 times more deer activity than these other comparable preserves."

Authority

Licensing of City Properties Agreement - A management agreement between the Bloomington Board of Public works and the Bloomington Board of Parks and Recreation initially signed in 1971 gives the Bloomington Parks and Recreation license to enter upon, develop, operate, and maintain for recreational purposes the Griffy Lake reservoir properties.

The Master Plan for the Griffy Woods Nature Preserve, approved by the City of Bloomington Parks and Recreation Department and the State of Indiana Natural Resources Commission, specifically states:
"… the Nature Preserve shall be managed to maintain and/or restore it to natural ecological conditions … in the case of this Nature Preserve, the main purpose of the dedication is to preserve and restore natural forest communities and the associated rare native plants".

Goal

The goal of the sharpshooting effort is to remove enough deer from the nature preserve to reduce the browse pressure on understory plant species and seedling trees to the point these species are able to recover, and to grow once again at Griffy Lake. The re-establishment and median heights of different indicator plant species (including violets, trilliums, baneberry, Jack-in-the-pulpit, sweet cicely), as well as the abundance and height of native hardwood tree seedlings, will be used to determine success of the deer herd reduction effort.

Alternatives to Sharpshooting

Other alternatives below have been discussed and determined to be impractical at this time:

a) No Action
   Due to ample food, water, cover and the absence of predators; deer have high survival rates and a robust reproductive capacity. Non-intervention means the deer herd will continue to grow and the ecological problems associated with deer overbrowsing in the forest understory will not be addressed.

b) Fencing
   Griffy Lake is nearly two square miles in size. Fencing the property to prevent the movement of deer onto the property is cost prohibitive and impractical. Fencing would interfere with the movement of many other species into and out of the nature preserve.

c) Trap and relocate
   Not approved by the Indiana Department of Natural Resources in free-ranging deer; cost prohibitive; low availability of release sites. This option is also very traumatic for the deer.

d) Contraception
   Not approved by the Indiana Department of Natural Resources in free-ranging deer; cost prohibitive; contraception does not reduce overabundant deer populations. Treated deer would continue browsing for the remainder of their lives.

e) Sterilization
Not approved by the Indiana Department of Natural Resources in free-ranging deer; cost prohibitive; ineffective in non-isolated areas.

f) Predator reintroduction
Not approved by the Indiana Department of Natural Resources; predator numbers would have to be relatively high to impact deer population.

g) Trap and kill
Less humane method than sharpshooting because of capture stress.

h) Hunting
Safety concerns with permitting hunting deer with firearms in the Griffy Lake Nature Preserve area, which is a public park and popular recreation area, with numerous human habitation locations at the property's perimeter. Archery hunting is considerably less efficient and effective than sharpshooting, resulting in a delay in the reduction of the deer herd to the numbers needed to allow the vegetation to recover.

Logistics

A. Number of deer to be culled
The contract allows for the removal of up to 100 deer. Although removing adult and juvenile females will take priority, males of reproductive age will also be taken.

B. Timing
The proposed time frame for the sharpshooting activity is from November 15, 2017 through February 28, 2018. The exact timing of the sharpshooting activities will depend on weather conditions, wind direction, and the availability of the deer's food sources. Sharpshooting will take place from the late afternoon until late evening on the days when weather, the successful establishment of baited sites, and other factors are most suitable for a successful effort.

C. Personnel
Sharpshooting will be conducted by White Buffalo, Inc., a leading expert in population control of white-tailed deer in urban areas. Two staff members from this organization, with extensive sharpshooting training, will assist with the planning, organization, and implementation of the sharpshooting program. This firm was selected based on their familiarity with Midwestern forest ecosystems, their research knowledge and complete understanding of the ecology of white-tailed deer, and their flawless safety record.

D. Methods
Sharpshooters will utilize suppressed Remington 700 bolt-action rifles and .223 cartridges. Sharpshooters will set up in elevated stands, in both tree stands and in stationary vehicles, and will shoot over baited stations using advanced tactical lighting and night vision devices to maximize success rates.

E. Safety Issues
Safety is the first priority of the deer herd reduction effort, and takes precedence over all other considerations. Sharpshooting will take place from elevated stands so the trajectory of bullets will be down and into the ground. Where possible, baited stations will be

located away from human habitation and beside earthen backstops. Bullets to be used are lead, which are frangible and will fragment upon entering the deer, minimizing the possibility of ricochet.

A private security firm will be hired by the city to patrol the area surrounding Griffy Lake Nature Preserve, and to advise members of the public of the temporary closure of the property during the sharpshooting activities. Security personnel will be in contact with White Buffalo at all times to inform them of potential conflicts with property users. Signs placed conspicuously at parking areas and trail heads will inform the public of the closure of the property during sharpshooting activities.

F. Utilization Plan
All deer taken during sharpshooting efforts will be processed by K.W. Custom Deer Processing in Bloomington, Indiana and the venison donated to the Hoosier Hills Food Bank. Carcasses will be transported to the processor immediately following each day's sharpshooting efforts.

Long-Term Deer Management Plan

Maintaining the deer herd in numbers that will not negatively impact the understory forest vegetation is the long-term goal. Bloomington Parks and Recreation staff will monitor the presence and height of forest understory plants, including tree seedlings, in established control plots during the time period immediately following the deer removal efforts. Data collected in future growing seasons will help determine whether or not additional deer need to be removed the following winter in order for the plant population to recover. Staff are looking into a new program created by the Indiana Department of Natural Resources that may help reduce the cost of deer management in future years. The Community Hunting Access Program is designed to increase hunting opportunities for white-tailed deer in urban environments and help alleviate human/deer conflicts. The program provides partners with financial and technical assistance to administer hunting programs in their communities.

Public Information Plan

Studies of the deer population in Bloomington officially began with the establishment of the Joint City of Bloomington-Monroe County Deer Task Force, a citizen group created by local government in response to concerns from residents, and from ecologists and residents about deer damage in Griffy Woods. The task force conducted community outreach meetings to gather input and collect information from local residents on June 28, July 11, July 14, July 21 and July 23, 2011. In addition, the task force collected 742 electronic opinion surveys about the deer issue from local residents during 2011. The Deer Task Force submitted their official report of findings in 2012, and the report was formally accepted as an advisory document by the Common Council on December 12, 2012.

The Griffy Lake Nature Preserve may be periodically closed for short periods of time. Conspicuous signs at the three main parking areas (at the Griffy Lake boathouse, at the former water treatment plant on Dunn Street, and at the former dog park below the dam on Dunn Street) will inform park users of the possibility of temporary closure of the property. These closures will take place intermittently during the allotted sharpshooting activity window (November-February) when property use is fairly low, so park users will be minimally inconvenienced.

Bloomington Parks and Recreation will also communicate with staff from the IU Research and Teaching Preserve to coordinate notification about property closures. While sharpshooting activities will not take place on IURTP-owned property, some hiking trails do cross property boundaries.

RESPECTFULLY SUBMITTED,

____ _____

Steve Cotter, Natural Resources Manager

AGREEMENT
BETWEEN
CITY OF BLOOMINGTON
PARKS AND RECREATION DEPARTMENT
AND
WHITE BUFFALO INC.
FOR
DEER HERD REDUCTION AT
GRIFFY LAKE NATURE PRESERVE

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

WITNESSETH:

WHEREAS, the Department wishes to protect native vegetation within the Griffy Lake Nature Preserve by reducing the size of the deer herd; and

WHEREAS, the Department requires the services of a professional consultant in order to perform the removal of up to 100 deer (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 February 28, 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 Steve Cotter, natural resources manager, 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 and Cost of Delay
The Department shall pay Consultant for all fees and expenses in an amount not to exceed Thirty five Thousand Dollars ($35,000). Consultant shall submit an invoice to the Department upon the completion of the Services described in Article 1. 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.

The invoice shall be sent to:

Steve Cotter
City of Bloomington
401 N. Morton, Suite 250
Bloomington, Indiana 47404

In the event that Consultant's ability to euthanize deer after arriving in Bloomington is disrupted continuously for more than twenty-four (24) hours as a result of any action taken by any person who is opposed to the Designated Services contemplated herein, it is hereby agreed that the City will pay the Consultant $1,000.00/day for each day the Consultant is unable to shoot due to such disruption, up to a maximum of $5,000.00, to help defray the cost associated with such delays.

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

The Consultant shall have the right, without prejudice to any other right or remedy it may have to terminate any or all of its Designated Services if:

1. the provision of the Designated Services as set forth in Exhibit A is disrupted to the extent it makes it impossible or impractical to perform such services;
2. the Consultant believes that the Designated Services cannot be performed safely; or
3. the City fails to provide the assistance to the Consultant as defined in Exhibit A. Upon such termination by the Consultant, the Consultant shall be entitled to the termination fee as set forth in Exhibit A.

The City shall have the right, without prejudice to any other right or remedies it may have, to terminate this Agreement with respect to all or any Designated Services at any time; provided that the Consultant shall be paid for all unpaid Designated Services performed as of such termination date, and provided further that the City shall be entitled to a refund of any fees paid in advance which are unearned as of such termination date.

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. <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>
a. The Consultant agrees to indemnify, defend, and save the City and its officers, employees, and agents forever harmless from and against, and to promptly make payment for any and all losses, damages, expenses (including, without limitation, court costs, amounts paid in settlement, judgments, reasonable attorneys' fees or other expenses for investigating and defending, including, without limitation, those arising out of the enforcement of this Agreement), suits, actions, claims, deficiencies, liabilities or obligations sustained or incurred by the City as a result of the Consultant's performance of the Designated Services described herein, except for those sustained or incurred based on allegations that the Designated Services provided herein are unauthorized or illegal.

b. The City agrees to indemnify, defend, and save the Consultant and its directors, officers, employees, owners, agents and affiliates and their successors and assigns or heirs and personal representatives forever harmless from and against, and to promptly make payment for any and all losses, damages, expenses (including, without limitation, court costs, amounts paid in settlement, judgments, reasonable attorneys' fees or other expenses for investigating and defending, including, without limitation, those arising out of the enforcement of this Agreement), suits, actions, claims, deficiencies, liabilities or obligations sustained or incurred by Consultant relating to, caused by or resulting from:

1. allegations that the Designated Services provided herein are unauthorized, illegal, and/or allegations that are otherwise unrelated to the Consultant's performance of the Designated Services and are directed at the Project itself; and/or
2. any breach by the City of the terms of this Agreement, including, but not limited to, any failure to pay any fees or expenses owed, unless such funds are not forthcoming or insufficient from the appropriating body, as set forth in Section 3 above.

Any amounts due and owing from the City for any losses pursuant to this indemnification provision shall be offset on a dollar for dollar basis by any amount recovered in respect of such losses pursuant to the Policy called for in Section 6 of this Agreement. The obligations of each party under the forgoing indemnification provisions shall survive the termination of the Agreement.

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		White Buffalo Inc.
Attn: Steve Cotter		Dr. Anthony DeNicola
401 N. Morton, Suite 250		26 Davison Road
Bloomington, Indiana 47402		Moodus, Connecticut 06469

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

WHITE BUFFALO INC.

_____
Dr. Anthony DeNicola, 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**:**

A. **Project.** Pursuant to the terms and conditions of the Wildlife Management Service Agreement by and between the City and the Consultant, the Consultant agrees to perform the following services for the City:

1. The goal of the sharpshooting effort is to remove enough deer, up to 100 in the initial cull, from the nature preserve to reduce the browse pressure on understory plant species and seedling trees to the point these species are able to recover, and to grow once again at Griffy Lake. The re-establishment and median heights of indicator plant species (including violets, trilliums, baneberry, Jack-in-the-pulpit, sweet cicely) will be used to determine success of the deer herd reduction effort.

The agreement is subject to the following terms and conditions:

2. All Consultant personnel, including but not limited to field technicians~~,~~ and sharpshooters, must carry with them at all times when involved with any aspect of the project the following upon issuance by IDNR:

(a) a copy of the special purpose deer control permit from IDNR;

(b) a copy of the *Authorization to Possess Deer* from IDNR. The *Authorization to Possess Deer* form must be transferred to the entity transporting or processing the deer upon relinquishment of the animal.

3. Unless otherwise agreed upon between City and IDNR the City will submit to IDNR a written status report of sharpshooting activities within thirty (30) days of the expiration of the special purpose deer control permit issued to the City.

4. Both the City and the Consultant must maintain regular contact with IDNR staff throughout implementation of all aspects of the project. Josh Griffin, South Regional Private Land Supervisor or Joe Caudell, State Deer Biologist, are designated as the local IDNR contacts, available at 812 334-1137. IDNR Personnel will provide technical direction and assistance – both initially and periodically – during sharpshooting activities.

5. The Consultant must notify the City as well as IDNR on each day that sharpshooting activities will occur. IDNR will be notified by calling Josh Griffin or Joe Caudell and the conservation officer 24 hour hotline phone number.

6. Four (4) hours prior to sharpshooting activities, the Consultant must notify any consenting property owner or tenants that Consultant may be utilizing the owners' or tenants' property for access to and from the sharpshooting site.

7. Properties where sharpshooting activities are to occur must be open to inspection by appropriate IDNR personnel at any reasonable time.

8. The age and sex of each deer killed must be recorded by the Consultant. Evaluation may be made either on-site or at the processor. All antlers must be surrendered to IDNR or disposed of in coordination with IDNR.

9. A final report detailing the results of the sharpshooting effort must be provided to the City and IDNR within 30 days of the expiration of the IDNR permit, and must include: the number of deer killed, the age and sex of all deer killed, the number of hours of sharpshooting activities and the total man-hours of effort.~~,~~

10. Deer that are to be killed by means of sharpshooting are to be killed only by those means approved by the State of Indiana Department of Natural Resources as part of the Urban Deer Management Plan for Bloomington between November 15, 2018 and February 28, 2018.

11. Sites selected for shooting will be based on safety concerns and deer activity. The Consultant shall inform IDNR of when and where euthanization activities are scheduled.

12. Shooting may be done with the aid of bait. The Consultant and the City will share responsibility for selecting and preparing bait sites. Pre-baiting for three weeks in advance of the start of culling operations will be the responsibility of the City with direction from The Provider. Bait (i.e., whole-kernal corn) will be provided by the City.

13. Shooting may occur during daylight or at night, and the Consultant may use artificial light and night-vision equipment. It shall be up to the Consultant to provide any lighting or other equipment it wishes to use.

14. Shooting shall occur from an elevated stand, which shall include one of the following:

a. a tree stand positioned approximately ten (10) feet above ground or an elevated platform that provides a downward shooting angle.

b. with the aid of a vehicle if said vehicle is stationary, shots are discharged toward earthen backdrops, or an elevated stand attached to said vehicle is positioned seven (7) feet above ground to provide a downward shooting angle.

15. The Consultant shall provide or obtain the personnel and vehicles necessary for the transport of the carcasses, limited to a 30 mile radius from the city of Bloomington, to a commercial meat processor, and all venison must be donated to the *Hoosier Hills Food Bank* program. The City will be responsible for the cost of meat processing.

16. The Consultant shall keep and make available to the City such data and records regarding the performance of the Designated Services as requested by the City, including but not limited to the number of deer killed, the age and sex of all of deer killed, the number of hours of sharpshooting activities and the total man-hours of effort.

17. The City hereby covenants that it will obtain all necessary approval from the Indiana Department of Natural Resources for the performance of the Designated Services set forth in this Agreement prior to the commencement of management activities

EXHIBIT B

"Project Schedule"

All work described in this contract shall be performed between the dates of November 15, 2017 and February 28, 2018.

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.

White Buffalo Inc.

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

Bloomington, Indiana
Griffy Lake Nature Preserve

PROPOSAL

FOR

DEER SHARPSHOOTING SERVICES

14 August 2017

Proposal By:

Ryan Rodts
White Buffalo, Inc.

Introduction

Bloomington city officials have voiced concerns over habitat degradation and the potential loss of biodiversity and impacts to native vegetation because of a locally abundant deer population in Griffy Lake Nature Preserve. The potential for the furtherance of these conflicts has prompted park board members to consider implementing management strategies to address the abundance of deer.

The purpose of this proposal is to assist the city in identifying a management program/team that will reduce the deer population and then maintain this density long-term through the use of sharpshooting methodologies.

Site Description

Griffy Lake Nature Preserve encompasses 1200 acres in the north central portion of the city of Bloomington, Indiana. The preserve surrounds 106 acre Griffy Lake and contains an extensive hiking trail system and boating opportunities which create a moderate to high seasonal user base. The area is dominated by mature hardwood forest and Karst type topography. Moderate density housing surrounds the southwest section of the park with low density housing, agricultural fields, a golf course and additional wooded areas comprising the rest of the perimeter.

Who We Are

We are a 501 (c)(3) nonprofit wildlife management and research organization dedicated to conserving native species and ecosystems through damage and population control. Our approach is unique, in that we generate funding for conservation research by providing management alternatives in non-traditional settings.

Our Approach

White Buffalo Inc.'s (WBI) strategic approach to urban deer management is specifically designed to address and avoid the most common cause of failure; creating an "educated" population that is skilled in avoiding deer management activities. Well before the first deer is dispatched, we focus on how to remove the last. The defining strategic characteristic of every population control effort is the management team's singular focus on preventing the remaining deer from being educated to avoid humans even as the population is rapidly reduced. An urban deer management team must remove a high percentage of a population and repeat this process for years into the future, so maintaining the naïveté of the select population is strategically paramount, and is the most important means of reducing risk of failure and minimizing long-term costs. For this standard to be met, the team must possess superior technical ability (e.g., to shoot with precision in suboptimal conditions), field intuition (e.g., to determine whether animals encountered should be engaged), and discipline (e.g., to refrain from engaging if conditions are not conducive). In summary, the behavioral characteristics of the deer at low density, and the ability to subsequently harvest them, will be shaped by events unfolding from the first day of the management activities.

WBI's methods are humane and address concerns for animal welfare by following the American Veterinary Medical Association's stringent guidelines for humane euthanasia of animals (AVMA 2001). We have spent the last 10 years committed to improving both technology and techniques to maximize safety and efficiency for the management of white-tailed deer (i.e., ballistics testing, bullet development, baiting techniques, adaptation of other technologies for use in deer management, including night vision scopes and suppressors). We have the best available equipment with numerous hours of hands-on use to ensure precise shot placement. This results in safe use of equipment and humane treatment of target animals. We have thoroughly tested and selected bullets, in addition to having developed specialized bullets. As a result of our extensive testing, we have found that no bullet fragments with significant size or inertia exit the target animal, therefore ensuring public safety. We have extensive experience in both lethally removing (>10,000 deer) and capturing deer (>1000 deer) in a variety of human occupied environments without incident. We have used our discretion in the selection of shooting sites with complete satisfaction of both local/state officials and property owners. In conclusion, although safety is the primary issue to be considered when implementing a program to reduce deer numbers, with the above precautionary measures and the expertise of White Buffalo, Inc., it need not be a concern.

In summary, the management of deer on Griffy Lake Park property will require a comprehensive effort by a very skilled and experienced group of wildlife control professionals. A strategic use of methods will be necessary to ensure that the deer are removed in a timely, safe, and humane manner. This initiative also will require full support from the Indiana Department of Natural Resources (IDNR) and city administration through the authorization of diverse field methods and flexible timing of deer removal activities. Moreover, the plan will have to be adaptive to allow for methodological adjustments as deemed necessary during the project tenure.

Methods

Pre-baiting and Site Selection

Because of high human activity throughout much of the Park and surrounding areas, deer will be drawn to select areas using bait for sharpshooting for both discretionary and safety purposes. Bait will placed out 3 weeks in advance of anticipated removal efforts. All baiting will be done daily from the same vehicle at a consistent time in the late afternoon/evening. This acts as positive conditioning for the deer; they recognize the vehicle and person baiting and associate it with the appearance of food.

Sharpshooting

We will use suppressed .223 caliber rifles for sharpshooting applications. All rifles are match-grade and specially designed for sharpshooting deer. We will shoot from elevated stands to ensure a steep angle of trajectory. When shooting from a vehicle we will use topographic relief to ensure an earthen backdrop. All deer will be shot in the center of the brain (~95%) or the cervical spine (~5%). Cervical spine shots are taken only when there is an obstruction between the shooter and the deer's brain.

We have all the necessary equipment with years of hands-on use including several ATF registered, suppressed, match-grade firearms (with highly frangible projectiles), all necessary vehicles (including ATVs), and accessories (e.g., night-vision, spotlights, rangefinders, tree stands to create safe, elevated shooting positions, etc.).

Sharpshooting protocol

Subsequent to a decision by the City and the issuance of a permit by the IDNR to implement a controlled deer reduction using White Buffalo, Inc. the following procedures are used:

1) Prior to initiating any field activities the target area/s and surrounding properties are thoroughly surveyed using topographic maps and aerial photographs followed by field confirmation. By knowing the location of every occupied structure and areas of human use we are better able to work safely, discretely, and efficiently;

2) Bait sites are selected with the involvement of the landowner/s and the cooperating state agency. Each site is selected based on safety concerns and deer activity;

3) We conduct field operations during hours of lowest human activity. In addition, during the removal operation we search intensively for people and non-target animals to avoid mishaps;

4) Deer of all ages and sexes are harvested, however, adult does are prioritized. Deer are shot over bait from a tree stand or stationary vehicle with a rifle during the day or at night. Night-vision equipment and suppressed firearms (only in states where they are legal to possess) are used to expedite field procedures and to ensure discrete operations;

5) During suburban deer reductions there will be continuous open communication between client, law enforcement/security, and White Buffalo, Inc. to keep people well informed regarding field activities to avoid conflicts;

6) All deer carcasses are transported with the highest degree of discretion;

7) When desired, we are willing to be responsible for the disposal of all by-products and transport of deer carcasses to a USDA inspected facility for processing and subsequent donation to the needy.

8) We collect all pertinent data related to herd health, advancements in management techniques, and other aspects of each removal program which will be included in scientific journals, professional conferences, or written reports submitted to the landowner and cooperating state agency.

Conclusion

Of primary importance and recognition is that field methods are only as good as the personnel implementing them. This is not an expression of arrogance, but a point of clarity and great significance. It is critical for success to have extensive experience to make day to day decisions and adjustments beyond the established general guidelines and protocols. White Buffalo, Inc. has been actively involved in wildlife population control programs for 19 years. With our experience, we are confident that our proposed methods/strategy will provide the greatest likelihood of a successful management program. Our approach will be the safest, most efficient, and humane solution to this management challenge.

Budget Proposal for Year 1: 2017

WHITE BUFFALO, INC. EXPENSES (Exclusive of carcass processing costs and daily baiting. Carcass processing cost is typically an additional $75/deer)

PERSONNEL

Wildlife Biologists

Site Visit/Staff orientation	$1,200
Travel	
Project Manager X 2 days X $110/hr X 12 hr/day	$2,640
Biologist X 2 days X $95/hr X 12 hr/day	$2,280
Sharpshooting removal	
Project Manager X 10 days X $110/hr X 10 hr/day	$11,000
Biologist X 10 days X $95/hr X 10 hr/day	$9,500
Carcass Transportation (Limited to 30 miles radius from Bloomington, IN)	
1 person X 10 day X $95 X 2 hr/day	$1,900

DIRECT COSTS

Supplies (miscellaneous)	$500
Travel	
Mileage (2300 miles @ $0.58/mile) (1 truck CT to IN, and local travel)	$1,334
Hotel (12 hotel-nights X $208/night)	$2,496
Per diem (24 person-days @ $69/day)	$1,656
TOTAL	**$34,506**

Pre-baiting for three weeks in advance of the start of culling operations will be the responsibility of the City with direction from The Provider. Bait (i.e., whole-kernal corn) will be provided by the City.

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: C-2
Date: 8/16/2017

Administrator
Review\Approval
PM

TO: Board of Park Commissioners
FROM: Steve Cotter, Natural Resources Manager
DATE: August 22, 2017
SUBJECT: **REVIEW/APPROVAL OF INDIANA UNIVERSITY HEALTH BLOOMINGTON HOSPITAL STREAM MITIGATION PROPOSAL FOR FERGUSON DOG PARK**

Recommendation

Staff recommends approval of the IU Health Stream Mitigation Proposal for Ferguson Dog Park.

Background

To fulfill the stream mitigation requirements made necessary by impacts to streams on the proposed IU Health Bloomington Hospital Regional Academic Health Center Site, IU Health proposes to enhance the existing swale located on the southern perimeter of the Ferguson Dog Park. This project would create and enhance 1.5 acres of riparian corridor north of the swale and .75 acres of forested riparian corridor south of the swale.

Over 400 trees and 150 shrubs would be planted. Tree species would include red maple, hackberry, bitternut hickory, sweetgum, Shumard oak, and bur oak. Shrub species would include roughleaf dogwood and blackhaw.

IU Health will be responsible for successful establishment and operation of the Mitigation Site. This includes the upfront cost for construction, installation, materials, labor, maintenance, and regulatory monitoring. IU Health shall assume all financial responsibility for the successful installation and maintenance of the Mitigation Site for a period of five consecutive years or until regulatory signoff is granted from US Army Corps of Engineers and the Indiana Dept. of Environmental Management with a monitoring release letter.

RESPECTFULLY SUBMITTED,

Steve Cotter, Natural Resources Manager

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: C-3 Date: 8/18/2017

Administrator Review\Approval PM

TO: Board of Park Commissioners
FROM: Paula McDevitt, Administrator
DATE: **August 18, 2017**
SUBJECT: **Approval of Resolution 17-05 for Refunding of 2009 Park Bonds**

Recommendation

Staff recommends the approval of Resolution 17-05 for the refunding of 2009 Park Bonds used to purchase the Twin Lakes Recreation Center (formerly the SportsPlex) at 1700 West Bloomfield Road.

Background

Bonds are refinanced through a process called "refunding." When a bond is refunded, the entity that issued the bonds (in this case the Park Commissioners) issues new bonds, and uses the proceeds from those new bonds (which will have a lower interest rate than the outstanding bonds) to pay off the old bonds.

The Park Commissioners have an opportunity to refund the 2009 Bonds, which is expected to have a gross savings to the Park Commissioners of $350,000. The net present value of those savings is $290,000.

The Park Commissioners are expected to approve this refunding at their meeting on August 22, 2017. Pursuant to state law, the Council must also approve the refunding before the Park Commissioners can move forward. If approved, Staff expects the refunding process to be completed in early to mid-October.

RESPECTFULLY SUBMITTED,

Paula McDevitt

Paula McDevitt, Administrator

RESOLUTION NO. 17-05

RESOLUTION OF THE BOARD OF PARK COMMISSIONERS OF THE CITY OF BLOOMINGTON AUTHORIZING ISSUANCE OF BONDS FOR THE PURPOSE OF PROVIDING FUNDS TO BE APPLIED TO PAY FOR THE REFUNDING OF CERTAIN BONDS OF THE PARK DISTRICT OF THE CITY OF BLOOMINGTON AND INCIDENTAL EXPENSES IN CONNECTION THEREWITH AND ON ACCOUNT OF THE ISSUANCE OF THE BONDS

WHEREAS, the Park District of the City of Bloomington, Indiana (the "District") is a special taxing district and political subdivision of the State of Indiana (the "State'), established pursuant to Ind. Code 36-10-4 (the "Act"); and

WHEREAS, pursuant to Resolution No. 09-04 adopted by the Board of Park Commissioners (the "Board") of the City of Bloomington, Indiana (the "Unit") on March 23, 2009 (the "2009 Resolution"), the District issued its City of Bloomington, Indiana Park District Bonds of 2009 (the "2009 Bonds") in the original principal amount of Six Million Four Hundred Fifty Thousand Dollars ($6,450,000) for the purpose of providing for the payment of the costs associated with the acquisition and improvement of property to be owned and used for park purposes, and to pay the expenses incurred in connection therewith or on account of the issuance of the 2009 Bonds; and

WHEREAS, Four Million Nine Hundred Seventy-Five Thousand Dollars ($4,975,000) aggregate principal amount of the 2009 Bonds remains outstanding; and

WHEREAS, the 2009 Resolution provides that if irrevocable instructions to call the 2009 Bonds for redemption shall have been given, and (i) sufficient moneys, or (ii) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America, the principal of and the interest on which when due without reinvestment will provide sufficient money, or (iii) any combination of the foregoing, which when due will provide sufficient money, to pay the whole amount of the principal of and interest on and the premium, if any, due and payable upon all of the 2009 Bonds then outstanding, shall be held irrevocably in trust for such purpose, and provision shall also be made for paying all fees and expenses for the payment, then and in that case the 2009 Bonds shall no longer be deemed outstanding or entitled to the pledge of sources of repayment described in the 2009 Resolution; and

WHEREAS, the 2009 Bonds maturing on or after January 15, 2020, are redeemable at the option of the District, in whole or in part, on July 15, 2019, or any date thereafter, in any order of maturities selected by the District, and by lot within any such maturity, at a redemption price of one hundred percent (100%) of the principal amount of each 2009 Bond to be redeemed, plus accrued interest to the redemption date and without any premium; and

WHEREAS, Ind. Code 5-1-5 provides that the District may by resolution provide for the issuance of bonds to refund outstanding bonds issued at any time by the District, and to pay redemption premiums and costs of refunding, to effect a savings to the District; and

WHEREAS, the Board finds that it is beneficial to refund all of the outstanding 2009 Bonds (the "Refunded Bonds"), pursuant to the provisions of IC 5-1-5, to obtain a reduction in interest payments and effect a savings to the District and the Unit; that the refunding of the Refunded Bonds, together with accrued interest thereon and including all costs related to the refunding cannot be provided for out of funds of the District now on hand and the refunding should be accomplished by the issuance of refunding bonds of the District, and

WHEREAS, the Board desires to authorize the issuance of the "City of Bloomington, Indiana Park District Refunding Bonds, Series 2017" (the "Bonds"), in the aggregate principal amount not to exceed Six Million Dollars ($6,000,000) (the "Authorized Amount"), for the purposes of refunding all of the outstanding 2009 Bonds (the "Refunded Bonds"), including the costs of such refunding, the payment of accrued interest on the 2009 Bonds, and the payment of costs of issuance of the Bonds and any other fees and charges associated with the issuance of the Bonds, including the payment of any fees and charges associated with obtaining credit enhancement for the Bonds (collectively, the "Refunding"); and

WHEREAS, the amount of proceeds of the Bonds allocated to pay costs of the Refunding, together with estimated investment earnings thereon, does not exceed the cost of the Refunding as estimated by the Board; and

WHEREAS, the Board did not include the proceeds of the Bonds in the regular budget for the year 2017; and

WHEREAS, there are insufficient funds available or provided for in the existing budget and tax levy which may be applied to the cost of the Refunding, and the issuance of the Bonds has been authorized to procure the necessary funds and a need exists for the making of the additional appropriation set out herein; and

WHEREAS, notice of a hearing on said appropriation has been published as required by law; and

WHEREAS, such public hearing was held on August 22, 2017, at 4:00 p.m. (local time) in the Council Chambers at Bloomington City Hall, 401 North Morton Street, Bloomington, Indiana, on said appropriation at which all taxpayers and interested persons had an opportunity to appear and express their views regarding such additional appropriation; and

WHEREAS, the Board now finds that all conditions precedent to the adoption of a resolution authorizing the issuance of the Bonds have been complied with in accordance with the provisions of the Act, IC 5-1-5, as amended, and other applicable provisions of the Indiana Code; and

WHEREAS, the Board has obtained or will obtain prior to the sale of the Bonds authorized herein all necessary approvals required by law for the issuance of the Bonds, including the approval of the Common Council of the Unit.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PARK COMMISSIONERS OF THE CITY OF BLOOMINGTON, INDIANA, AS FOLLOWS:

SECTION 1. Authorization for Bonds. In order to provide financing for the Refunding as described above and the costs of selling and issuing the Bonds, the District shall borrow money, and the Unit, acting for and on behalf of the District, shall issue the Bonds as herein authorized.

SECTION 2. Appropriation of Bond Proceeds. The Board hereby appropriates a sum not to exceed Six Million Dollars ($6,000,000), out of the proceeds of the Bonds, together with all investment earnings thereon, for the use of the Board in paying the costs of the Refunding. Such appropriation shall be in addition to all appropriations provided for in the existing budget and levy, and shall continue in effect until the completion of the Refunding. Any surplus of such proceeds shall be credited to the proper fund as provided by law. All actions previously taken in connection with such appropriation, including publication of the notice of the public hearing, be, and hereby are, ratified and approved. A certified copy of this resolution, together with such other proceedings and actions as may be necessary, shall be filed by the Controller, along with a report of the appropriation, with the Indiana Department of Local Government Finance.

SECTION 3. General Terms of Bonds.

(a) Issuance of Bonds. In order to procure said loan for such purposes, the Board hereby authorizes the issuance of the Bonds as described herein. The Controller, as the fiscal officer of the Unit (the "*Fiscal Officer*"), is hereby authorized and directed to have prepared and to issue and sell the Bonds as negotiable, fully registered bonds of the District in an amount not to exceed the Authorized Amount.

The Bonds shall be signed in the name of the Unit, acting for and on behalf of the District, by the manual or facsimile signature of the Mayor as executive of the Unit (the "*Executive*") and attested by the manual or facsimile signature of the Fiscal Officer, who shall affix the seal of the Unit to each of the Bonds manually or shall have the seal imprinted or impressed thereon by facsimile or other means. In case any officer whose signature or facsimile signature appears on the Bonds shall cease to be such officer before the delivery of Bonds, such signature shall nevertheless be valid and sufficient for all purposes as if such officer had remained in office until delivery thereof. The Bonds also shall be, and will not be valid or become obligatory for any purpose or entitled to any benefit under this resolution unless and until, authenticated by the manual signature of the Registrar (as defined in Section 5 hereof).

The Bonds shall be numbered consecutively from R-1 upward, shall be issued in denominations of Five Thousand Dollars ($5,000) or any integral multiple thereof, shall be originally dated as of the first day of the month in which the Bonds are sold or dated the date of delivery, as determined by the Fiscal Officer, and shall bear interest payable semi-annually on January 15 and July 15 or February 15 and August 15, as determined by the Fiscal Officer, beginning on a date determined by the Fiscal Officer at the time of the sale of the Bonds, at a rate or rates not exceeding five percent (5.00%) per annum (the exact rate or rates to be determined by negotiation), calculated on the basis of a 360-day year

comprised of twelve 30-day months. The Bonds shall mature on January 15 and/or July 15 of each year or February 15 and/or August 15 of each year, as determined by the Fiscal Officer, in the years and in the amounts determined by the Fiscal Officer at the time of the sale of the Bonds, provided that the final maturity shall be no later than February 15, 2029.

All or a portion of the Bonds may be aggregated into and issued as one or more term bonds. The term bonds will be subject to mandatory sinking fund redemption with sinking fund payments and final maturities corresponding to the serial maturities described above. Sinking fund payments shall be applied to retire a portion of the term bonds as though it were a redemption of serial bonds, and, if more than one term bond of any maturity is outstanding, redemption of such maturity shall be made by lot. Sinking fund redemption payments shall be made in a principal amount equal to such serial maturities, plus accrued interest to the redemption date, but without premium or penalty. For all purposes of this resolution, such mandatory sinking fund redemption payments shall be deemed to be required payments of principal which mature on the date of such sinking fund payments. Appropriate changes shall be made in the definitive form of Bonds, relative to the form of Bonds contained in this resolution, to reflect any mandatory sinking fund redemption terms.

(b) Source of Payment. The Bonds are, as to all the principal thereof and interest due thereon, payable from general revenues available to the Park District, including revenues available in the Parks General Fund and Parks Non-Reverting Fund and any other legally available funds (the "Revenues"), and to the extent the Revenues are not sufficient, from a special ad valorem property tax levied on all taxable property within the District pursuant to Ind. Code § 36-10-4-38 (the "*Special Tax*").

(c) Payments. All payments of interest on the Bonds shall be paid by check mailed one business day prior to the interest payment date to the registered owners thereof as of the first (1st) day of the month in which interest is payable (the "*Record Date*") at the addresses as they appear on the registration and transfer books of the Board kept for that purpose by the Registrar (the "*Registration Record*") or at such other address as is provided to the Paying Agent (as defined in Section 5 hereof) in writing by such registered owner. Each registered owner of $1,000,000 or more in principal amount of Bonds shall be entitled to receive interest payments by wire transfer by providing written wire instructions to the Paying Agent before the Record Date for any payment. All principal payments and premium payments, if any, on the Bonds shall be made upon surrender thereof at the principal office of the Paying Agent, in any U.S. coin or currency which on the date of such payment shall be legal tender for the payment of public and private debts, or in the case of a registered owner of $1,000,000 or more in principal amount of Bonds, by wire transfer on the due date upon written direction of such owner provided at least fifteen (15) days prior to the maturity date or redemption date.

Interest on the Bonds shall be payable from the interest payment date to which interest has been paid next preceding the authentication date thereof unless such Bonds are authenticated after the Record Date for an interest payment and on or before such interest payment date in which case they shall bear interest from such interest payment date, or unless authenticated on or before the Record Date for the first interest payment date, in which case they shall bear interest from the original date, until the principal shall be fully paid.

(d) Transfer and Exchange. Each Bond shall be transferable or exchangeable only upon the Registration Record, by the registered owner thereof in writing, or by the registered owner's attorney duly authorized in writing, upon surrender of such Bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the registered owner or such attorney, and thereupon a new fully registered Bond or Bonds in the same aggregate principal amount, and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or the registered owner, as the case may be, in exchange therefor. The costs of such transfer or exchange shall be borne by the Board, except for any tax or governmental charges required to be paid in connection therewith, which shall be payable by the person requesting such transfer or exchange. The Unit, Board, Registrar and Paying Agent may treat and consider the persons in whose names such Bonds are registered as the absolute owners thereof for all purposes including for the purpose of receiving payment of, or on account of, the principal thereof and interest and premium, if any, due thereon.

(e) Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond is mutilated, lost, stolen or destroyed, the Unit may execute and the Registrar may authenticate a new bond of like date, maturity and denomination as that mutilated, lost, stolen or destroyed, which new bond shall be marked in a manner to distinguish it from the bond for which it was issued, provided that, in the case of any mutilated bond, such mutilated bond shall first be surrendered to the Registrar, and in the case of any lost, stolen or destroyed bond there shall be first furnished to the Registrar evidence of such loss, theft or destruction satisfactory to the Fiscal Officer and the Registrar, together with indemnity satisfactory to them. In the event any such bond shall have matured, instead of issuing a duplicate bond, the Unit and the Registrar may, upon receiving indemnity satisfactory to them, pay the same without surrender thereof. The Unit and the Registrar may charge the owner of such Bond with their reasonable fees and expenses in this connection. Any Bond issued pursuant to this paragraph shall be deemed an original, substitute contractual obligation of the Unit, acting for and on behalf of the District, whether or not the lost, stolen or destroyed Bond shall be found at any time, and shall be entitled to all the benefits of this resolution, equally and proportionately with any and all other Bonds issued hereunder.

SECTION 4. Terms of Redemption. The Bonds may be made redeemable at the option of the Board on thirty (30) days' notice, in whole or in part, in any order of maturities selected by

the Fiscal Officer and by lot within a maturity, on dates and with premiums, if any, and other terms as determined by the Fiscal Officer with the advice of the Board's municipal advisor.

Notice of redemption shall be mailed by first-class mail to the address of each registered owner of a Bond to be redeemed as shown on the Registration Record not more than sixty (60) days and not less than thirty (30) days prior to the date fixed for redemption except to the extent such redemption notice is waived by owners of Bonds redeemed, provided, however, that failure to give such notice by mailing, or any defect therein, with respect to any Bond shall not affect the validity of any proceedings for the redemption of any other Bonds. The notice shall specify the date and place of redemption, the redemption price and the CUSIP numbers (if any) of the Bonds called for redemption. The place of redemption may be determined by the Board. Interest on the Bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named, and thereafter, such Bonds shall no longer be protected by this resolution and shall not be deemed to be outstanding hereunder, and the holders thereof shall have the right only to receive the redemption price.

All Bonds which have been redeemed shall be canceled and shall not be reissued; provided, however, that one or more new registered bonds shall be issued for the unredeemed portion of any Bond without charge to the holder thereof.

No later than the date fixed for redemption, funds shall be deposited with the Paying Agent or another paying agent to pay, and such agent is hereby authorized and directed to apply such funds to the payment of, the Bonds or portions thereof called for redemption, including accrued interest thereon to the redemption date. No payment shall be made upon any Bond or portion thereof called for redemption until such bond shall have been delivered for payment or cancellation or the Registrar shall have received the items required by this resolution with respect to any mutilated, lost, stolen or destroyed bond.

SECTION 5. Appointment of Registrar and Paying Agent. The Fiscal Officer or a financial institution designated by the Fiscal Officer is hereby appointed to serve as registrar and paying agent for the Bonds (together with any successor, the "*Registrar*" or "*Paying Agent*"). The Registrar is hereby charged with the responsibility of authenticating the Bonds, and shall keep and maintain the Registration Record at its office. The Executive is hereby authorized to enter into such agreements or understandings with any such institution as will enable the institution to perform the services required of the Registrar and Paying Agent. The Fiscal Officer is authorized to pay such fees as any such institution may charge for the services it provides as Registrar and Paying Agent.

The Registrar and Paying Agent may at any time resign as Registrar and Paying Agent by giving thirty (30) days written notice to the Board and to each registered owner of the Bonds then outstanding, and such resignation will take effect at the end of such thirty (30) days or upon the earlier appointment of a successor Registrar and Paying Agent by the Board. Such notice to the Board may be served personally or be sent by first-class or registered mail. The Registrar and Paying Agent may be removed at any time as Registrar and Paying Agent by the Board, in which event the Board may appoint a successor Registrar and Paying Agent. The Board shall notify each registered owner of the Bonds then outstanding of the removal of the Registrar and

Paying Agent. Notices to registered owners of the Bonds shall be deemed to be given when mailed by first-class mail to the addresses of such registered owners as they appear on the Registration Record. Any predecessor Registrar and Paying Agent shall deliver all the Bonds, cash and investments related thereto in its possession and the Registration Record to the successor Registrar and Paying Agent. At all times, the same entity shall serve as Registrar and as Paying Agent.

SECTION 6. Form of Bonds; Authorization for Book-Entry System. (a) The form and tenor of the Bonds shall be substantially as follows, all blanks to be filled in properly and all necessary additions and deletions to be made prior to delivery thereof:

R-_____

UNITED STATES OF AMERICA

STATE OF INDIANA COUNTY OF MONROE

CITY OF BLOOMINGTON, INDIANA
PARK DISTRICT REFUNDING BOND, SERIES 2017

Interest Rate	Maturity Date	Original Date	Authentication Date	[CUSIP]

REGISTERED OWNER:

PRINCIPAL SUM: Dollars ($_____)

The City of Bloomington, Indiana (the "Unit"), acting for and on behalf of the City of Bloomington Park District, for value received, hereby promises to pay to the Registered Owner set forth above, the Principal Sum set forth above on the Maturity Date set forth above (unless this bond is subject to and is called for redemption prior to maturity as hereafter provided), and to pay interest thereon until the Principal Sum shall be fully paid at the Interest Rate per annum specified above from the interest payment date to which interest has been paid next preceding the Authentication Date of this bond unless this bond is authenticated after the first day of the month of the interest payment date (the "Record Date") and on or before such interest payment date in which case it shall bear interest from such interest payment date, or unless this bond is authenticated on or before _____ 1, 201_ in which case it shall bear interest from the Original Date, which interest is payable semi-annually on _____ 15 and _____ 15 of each year, beginning on _____ 15, 201_. Interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months.

The principal of and premium, if any, on this bond are payable at the principal office of _____ (the "Registrar" or "Paying Agent"), in _____, Indiana. All payments of interest on this bond shall be paid by check

mailed one business day prior to the interest payment date to the Registered Owner as of the Record Date at the address as it appears on the registration books kept by the Registrar or at such other address as is provided to the Paying Agent in writing by the Registered Owner. Each Registered Owner of $1,000,000 or more in principal amount of bonds shall be entitled to receive interest payments by wire transfer by providing written wire instructions to the Paying Agent before the Record Date for any payment. All payments of principal of and premium, if any, on this bond shall be made upon surrender thereof at the principal office of the Paying Agent in any U.S. coin or currency which on the date of such payment shall be legal tender for the payment of public and private debts, or in the case of a Registered Owner of $1,000,000 or more in principal amount of Bonds, by wire transfer on the due date upon written direction of such owner provided at least fifteen (15) days prior to the maturity date or redemption date.

This bond is one of an authorized issue of bonds of the District of like original date, tenor and effect, except as to denomination, numbering, interest rates, redemption terms and dates of maturity, in the total amount of _____ Dollars ($_____), numbered consecutively from R-1 upward, issued for the purpose of providing funds for certain park improvement projects, and for the purpose of paying incidental expenses to be incurred in connection therewith and on account of the sale and issuance of bonds therefor, as authorized by Resolution No. _____ adopted by the Board of Park Commissioners of the District (the "Board") on the 22nd day of August, 2017, entitled "Resolution of the Board of Park Commissioners of the City of Bloomington Authorizing Issuance of Bonds for the Purpose of Providing Funds to be Applied to Pay the Refunding of Certain Bonds and Incidental Expenses in Connection Therewith and on Account of the Issuance of the Bonds" (the "Resolution"), and in accordance with the provisions of Indiana law, including without limitation Ind. Code 36-10-4 and Ind. Code 5-1-5, and other applicable laws, as amended (collectively, the "Act"), all as more particularly described in the Resolution. The owner of this bond, by the acceptance hereof, agrees to all the terms and provisions contained in the Resolution and the Act.

Pursuant to the provisions of the Act and the Resolution, the principal of and interest on this bond and all other bonds of said issue are payable from general revenues available to the City of Bloomington Park District, including revenues available in the Parks General Fund, the Parks Non-Reverting Fund and any other legally available funds of the City of Bloomington Parks District, and to the extent such revenues are not sufficient, by the City of Bloomington Park District as special taxing district obligations of the City of Bloomington Park District, as a special taxing district, from a special ad valorem property tax to be levied on all taxable property within the District. THIS BOND DOES NOT CONSTITUTE A CORPORATE OBLIGATION OR INDEBTEDNESS OF THE CITY OF BLOOMINGTON, INDIANA, BUT IS AN INDEBTEDNESS OF THE CITY OF BLOOMINGTON PARK DISTRICT AS A SPECIAL TAXING DISTRICT. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING

POWER OF CITY OF BLOOMINGTON, INDIANA IS PLEDGED TO PAY THE INTEREST OR PREMIUM ON OR THE PRINCIPAL OF THIS BOND.

The bonds of this issue maturing on or after _____15, ____are redeemable at the option of the Board on _____15, ___or any date thereafter, on thirty (30) days' notice, in whole or in part, in any order of maturities selected by the Board and by lot within a maturity, at 100% of face value plus accrued interest to the date fixed for redemption. Each minimum authorized denomination in principal amount shall be considered a separate bond for purposes of partial redemption.

[Insert mandatory sinking fund redemption terms, if any.]

Notice of such redemption shall be mailed by first-class mail not more than sixty (60) days and not less than thirty (30) days prior to the date fixed for redemption to the address of the registered owner of each bond to be redeemed as shown on the registration record of the Board except to the extent such redemption notice is waived by owners of the bond or bonds redeemed, provided, however, that failure to give such notice by mailing, or any defect therein, with respect to any bond shall not affect the validity of any proceedings for the redemption of any other bonds. The notice shall specify the date and place of redemption, the redemption price and the CUSIP numbers of the bonds called for redemption. The place of redemption may be determined by the Board. Interest on the bonds so called for redemption shall cease on the redemption date fixed in such notice if sufficient funds are available at the place of redemption to pay the redemption price on the date so named, and thereafter, such bonds shall no longer be protected by the Resolution and shall not be deemed to be outstanding thereunder.

This bond is subject to defeasance prior to payment or redemption as provided in the Resolution.

If this bond shall not be presented for payment or redemption on the date fixed therefor, the Board may deposit in trust with the Paying Agent or another paying agent, an amount sufficient to pay such bond or the redemption price, as the case may be, and thereafter the Registered Owner shall look only to the funds so deposited in trust for payment and the Unit shall have no further obligation or liability in respect thereto.

This bond is transferable or exchangeable only upon the registration record kept for that purpose at the office of the Registrar by the Registered Owner in person, or by the Registered Owner's attorney duly authorized in writing, upon surrender of this bond together with a written instrument of transfer or exchange satisfactory to the Registrar duly executed by the Registered Owner or such attorney, and thereupon a new fully registered bond or bonds in the same aggregate principal amount, and of the same maturity, shall be executed and delivered in the name of the transferee or transferees or the Registered Owner, as

the case may be, in exchange therefor. The Unit, the Board, any registrar and any paying agent for this bond may treat and consider the person in whose name this bond is registered as the absolute owner hereof for all purposes including for the purpose of receiving payment of, or on account of, the principal hereof and interest and premium, if any, due hereon.

The bonds maturing on any maturity date are issuable only in the denomination of $5,000 or any integral multiple thereof.

[A Continuing Disclosure Contract from the Board to each registered owner or holder of any bond, dated as of the date of initial issuance of the bonds (the "Contract"), has been executed by the Board, a copy of which is available from the Board and the terms of which are incorporated herein by this reference. The Contract contains certain promises of the Board to each registered owner or holder of any bond, including a promise to provide certain continuing disclosure. By its payment for and acceptance of this bond, the registered owner or holder of this bond assents to the Contract and to the exchange of such payment and acceptance for such promises.]

It is hereby certified and recited that all acts, conditions and things required to be done precedent to and in the execution, issuance and delivery of this bond have been done and performed in regular and due form as provided by law.

This bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been executed by an authorized representative of the Registrar.

IN WITNESS WHEREOF, the Board of Park Commissioners of the City of Bloomington, State of Indiana, has caused this bond to be executed in the name of such Unit, for and on behalf of the Park District of said Unit, by the manual or facsimile signature of the Mayor of said Unit, and attested by manual or facsimile signature by the Controller of said Unit, and the seal of said Unit or a facsimile thereof to be affixed, engraved, imprinted or otherwise reproduced hereon.

CITY OF BLOOMINGTON, INDIANA

By: _____
Mayor

(SEAL)

ATTEST:

_____
Controller

It is hereby certified that this bond is one of the bonds described in the within-mentioned Resolution duly authenticated by the Registrar.

_____, as Registrar

By _____
Authorized Representative

The following abbreviations, when used in the inscription on the face of this bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN. COM.	as tenants in common
TEN. ENT.	as tenants by the entireties
JT. TEN.	as joint tenants with right of survivorship and not as tenants in common
UNIF. TRANS. MIN. ACT	_____ Custodian _____ (Cust.) (Minor) under Uniform Transfers to Minors Act of _____ (State)

Additional abbreviations may also be used although not in the above list.

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

_____
(please print or typewrite name and address of transferee)

_____
(please insert social security or
other identifying number of assignee)

$_____ in principal amount (must be a multiple of $5,000) of the within bond and all rights thereunder, and hereby irrevocably constitutes and

appoints _____, attorney, to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution participating in a Securities Transfer Association recognized signature guarantee program.	NOTICE: The signature of this assignment must correspond with the name as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

(End of Form of Bond)

(b) The Bonds may, in compliance with all applicable laws, initially be issued and held in book-entry form on the books of the central depository system, The Depository Trust Company, its successors, or any successor central depository system appointed by the Board from time to time (the "*Clearing Agency*"), without physical distribution of bonds to the purchasers. The following provisions of this Section apply in such event.

One definitive Bond of each maturity shall be delivered to the Clearing Agency (or its agent) and held in its custody. The Unit and the Registrar and Paying Agent may, in connection therewith, do or perform or cause to be done or performed any acts or things not adverse to the rights of the holders of the Bonds as are necessary or appropriate to accomplish or recognize such book-entry form Bonds.

During any time that the Bonds remain and are held in book-entry form on the books of a Clearing Agency, (1) any such Bond may be registered upon the Registration Record in the name of such Clearing Agency, or any nominee thereof, including Cede & Co.; (2) the Clearing Agency in whose name such Bond is so registered shall be, and the Unit, the Board and the Registrar and Paying Agent may deem and treat such Clearing Agency as, the absolute owner and holder of such Bond for all purposes of this resolution, including, without limitation, the receiving of payment of the principal of and interest and premium, if any, on such Bond, the receiving of notice and the giving of consent; (3) neither the Unit or the Board nor the Registrar or Paying Agent shall have any responsibility or obligation hereunder to any direct or indirect participant, within the meaning of Section 17(a) of the Securities Exchange Act of 1933, as amended, of such Clearing Agency, or any person on behalf of which, or otherwise in respect of which, any such participant holds any interest in any Bond, including, without limitation, any responsibility or obligation hereunder to maintain accurate records of any interest in any Bond or any responsibility or obligation hereunder with respect to the receiving of payment of principal of or interest or premium, if any, on any Bond, the receiving of notice or the giving of consent; and (4) the Clearing Agency is not required to present any Bond called for partial redemption, if

any, prior to receiving payment so long as the Registrar and Paying Agent and the Clearing Agency have agreed to the method for noting such partial redemption.

If either the Board receives notice from the Clearing Agency which is currently the registered owner of the Bonds to the effect that such Clearing Agency is unable or unwilling to discharge its responsibility as a Clearing Agency for the Bonds, or the Board elects to discontinue its use of such Clearing Agency as a Clearing Agency for the Bonds, then the Unit, the Board and the Registrar and Paying Agent each shall do or perform or cause to be done or performed all acts or things, not adverse to the rights of the holders of the Bonds, as are necessary or appropriate to discontinue use of such Clearing Agency as a Clearing Agency for the Bonds and to transfer the ownership of each of the Bonds to such person or persons, including any other Clearing Agency, as the holders of the Bonds may direct in accordance with this resolution. Any expenses of such discontinuance and transfer, including expenses of printing new certificates to evidence the Bonds, shall be paid by the Board.

During any time that the Bonds are held in book-entry form on the books of a Clearing Agency, the Registrar shall be entitled to request and rely upon a certificate or other written representation from the Clearing Agency or any participant or indirect participant with respect to the identity of any beneficial owner of Bonds as of a record date selected by the Registrar. For purposes of determining whether the consent, advice, direction or demand of a registered owner of a Bond has been obtained, the Registrar shall be entitled to treat the beneficial owners of the Bonds as the bondholders and any consent, request, direction, approval, objection or other instrument of such beneficial owner may be obtained in the fashion described in this resolution.

During any time that the Bonds are held in book-entry form on the books of the Clearing Agency, the provisions of its standard form of Letter of Representations, if executed in connection with the issuance of the Bonds, as amended and supplemented, or any Blanket Issuer Letter of Representations filed by the Unit, or any successor agreement shall control on the matters set forth therein. The Executive is authorized to execute and deliver such a Letter of Representations. The Registrar, by accepting the duties of Registrar under this resolution, agrees that it will (i) undertake the duties of agent required thereby and that those duties to be undertaken by either the agent or the issuer shall be the responsibility of the Registrar, and (ii) comply with all requirements of the Clearing Agency, including without limitation same day funds settlement payment procedures. Further, during any time that the Bonds are held in book-entry form, the provisions of this Section shall control over conflicting provisions in any other section of this resolution.

SECTION 7. Sale of Bonds. The Executive or Fiscal Officer is authorized to select one or more purchasers or underwriters of the Bonds (collectively, the "Purchaser") upon the advice of the District's municipal advisor, and to enter into a bond purchase agreement, term sheet or other evidence of sale in customary form with the Purchaser.

After the Bonds have been properly sold and executed, the Fiscal Officer shall receive from the Purchaser payment for the Bonds and shall provide for delivery of the Bonds to the Purchaser.

In connection with the sale of the Bonds, the Executive and the Fiscal Officer and the officers of the Board are each authorized to take such actions and to execute and deliver such agreements, and instruments as they deem advisable to obtain a rating and/or to obtain bond insurance for the Bonds, and the taking of such actions and the execution and delivery of such agreements and instruments are hereby approved. The costs of obtaining any such rating or bond insurance shall be considered as a part of the costs of issuance of the Bonds and shall be paid out of the proceeds of the sale of the Bonds.

The Fiscal Officer is hereby authorized and directed to obtain a legal opinion as to the validity of the Bonds from Barnes & Thornburg LLP ("Bond Counsel"), and to furnish such opinion to the purchasers of the Bonds or to cause a copy of said legal opinion to be printed on each Bond. The cost of such opinion shall be paid out of the proceeds of the Bonds.

The Executive or the Fiscal Officer is hereby authorized to deem final an official statement with respect to the Bonds, as of its date, in accordance with the provisions of Rule 15c2-12 of the United States Securities and Exchange Commission, as amended (the "SEC Rule"), if required by the SEC Rule, subject to completion as permitted by the SEC Rule, and the District further authorizes the distribution of the deemed final official statement or other disclosure document, and the execution, delivery and distribution of such document as further modified and amended with the approval of the Executive or the Fiscal Officer in the form of a final official statement, private placement memorandum or other final offering document.

In order to assist any underwriter (if any) of the Bonds in complying with paragraph (b)(5) of the SEC Rule by undertaking to make available appropriate disclosure about the Unit, the District and the Bonds to participants in the municipal securities market, the District hereby covenants, agrees and undertakes, in accordance with the SEC Rule, unless excluded from the applicability of the SEC Rule or otherwise exempted from the provisions of paragraph (b)(5) of the SEC Rule, that it will comply with and carry out all of the provisions of the continuing disclosure agreement. "Continuing disclosure agreement" shall mean that certain continuing disclosure contract executed by the Unit on behalf of the District and dated the date of issuance of the Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof. The execution and delivery by the Unit of the continuing disclosure agreement, and the performance by the Unit and the District of their obligations thereunder by or through any employee or agent of the Unit or the District, are hereby approved, and the Unit and the District shall comply with and carry out the terms thereof.

Notwithstanding the foregoing and if acceptable to the purchasers, the Fiscal Officer and the Executive, with the advice of the District's municipal advisor and Bond Counsel, may set the minimum authorized denomination of the Bonds at $100,000

SECTION 8. Funds and Accounts.

(a) Use of Bond Proceeds; Refunding Fund. Any accrued interest received at the time of delivery of the Bonds will be deposited to the Revenues Account of the Bond Fund as defined below and applied to payments on the Bonds on the first interest payment date. The remaining proceeds received from the sale of the Bonds shall be deposited in the fund hereby created and designated

as the "City of Bloomington Park District Refunding Fund" (the "*Refunding Fund*"). The proceeds deposited in the Refunding Fund, together with all investment earnings thereon, shall be expended by the Board only for the purpose of paying all remaining principal and interest due on all of the outstanding 2009 Bonds and costs of issuance of the Bonds. The Executive or the Fiscal Officer is hereby authorized to appoint a financial institution to serve as escrow agent (the "Escrow Agent") for the Refunded Bonds in accordance with the terms of an Escrow Agreement between the District and the Escrow Agent (the "Escrow Agreement"). The President of the Board or the Executive and the Fiscal Officer are hereby authorized and directed to complete, execute and attest the same on behalf of the District so long as its provisions are consistent with this Resolution and the purchase agreement. The execution, either by the President of the Board, the Executive or the Fiscal Officer, or the Purchaser, of a subscription for investments of proceeds of the Bonds to be held under the Escrow Agreement in a manner consistent with this Resolution is hereby approved. Any balance remaining in the Refunding Fund after the retirement of all outstanding 2009 Bonds which is not required to meet unpaid obligations incurred in connection therewith and on account of the sale and issuance of the Bonds may be used to pay debt service on the Bonds or otherwise used as permitted by law.

(b) Bond Fund. There is hereby created a separate fund, designated as the "City of Bloomington Park District Bond Fund" (the "*Bond Fund*"), which shall be applied to the payment of the principal of and interest on the Bonds, and all other bonds payable from the Special Tax and/or other revenues of the Board as contemplated hereby, and to no other purpose not allowed under Ind. Code § 36-10-4-38. As the Special Tax is collected, it shall be accumulated in an account of the Bond Fund hereby created and designated as the "Special Tax Account". The Bond Fund shall also have a separate account designated the Revenues Account as described in Section 9 hereof.

SECTION 9. Reduction of Special Tax Levy and Pledge of Certain Other Revenues. The amount of the levy under Ind. Code § 36-10-4-38 each year of the Special Tax applicable to making payments on the Bonds may be reduced by available revenues of the Board to the extent such revenues have been set aside and designated by the Board for such purpose in the account of the Bond Fund hereby created and designated as the "Revenues Account." The Board hereby covenants to levy the Special Tax each year payments are due with respect to the Bonds to the extent the revenues of the Board described herein are not sufficient to timely pay the principal of and interest on the Bonds.

The amounts available and so designated in the Revenues Account of the Bond Fund shall be determined at the time the budget and tax levy for a given year is finally fixed, and such amounts shall be used for no purpose except as contemplated above and are hereby pledged by the Board to the payment of the Bonds, such pledge being effective as set forth in Ind. Code § 5-1-14-4 without the necessity of filing or recording this resolution or any other instrument except in the records of the Board.

SECTION 10. Defeasance. If, when the Bonds or any portion thereof shall have become due and payable in accordance with their terms or shall have been duly called for redemption or irrevocable instructions to call the Bonds or any portion thereof for redemption have been given, and the whole amount of the principal, premium, if any, and the interest so due and payable upon such bonds or any portion thereof then outstanding shall be paid, or (i) cash, or (ii) direct non-callable obligations of or unconditionally guaranteed by (including obligations issued or held in book entry form on the books of) the U.S. Department of the Treasury, and to the extent permitted by Indiana law and by each rating agency maintaining a rating on the Bonds, Refcorp interest strips, CATS, TIGRS, STRPS, defeased municipal bonds or other investments rated in the highest category for such obligations by Standard & Poor's Corporation or Moody's Investors Service (or any combination thereof), the principal of and the interest on which when due without reinvestment will provide sufficient money, or (iii) any combination of the foregoing, shall be held irrevocably in trust for such purpose, and provision shall also be made for paying all fees and expenses for the payment, then and in that case the Bonds or such designated portion thereof shall no longer be deemed outstanding or secured by this resolution.

SECTION 11. Tax Matters. In order to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes and as an inducement to purchasers of the Bonds, the Board represents, covenants and agrees that:

(a) No person or entity, other than the District or another state or local governmental unit, will use proceeds of the Bonds or property financed or refinanced by the Bond proceeds other than as a member of the general public. No person or entity other than the District or another state or local governmental unit will own property financed by Bond proceeds or will have actual or beneficial use of such property pursuant to a lease, a management or incentive payment contract, an arrangement such as take-or-pay or output contract, or any other type of arrangement that differentiates that person's or entity's use of such property from the use by the public at large.

(b) No Bond proceeds will be loaned to any entity or person other than a state or local governmental unit. No Bond proceeds will be transferred, directly or indirectly, or deemed transferred to a non-governmental person in any manner that would in substance constitute a loan of the Bond proceeds.

(c) The Board and the Unit will not take any action or fail to take any action with respect to the Bonds that would result in the loss of the exclusion from gross income for federal income tax purposes of interest on the Bonds pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "*Code*"), and the regulations thereunder as applicable to the Bonds, including, without limitation, the taking of such action as is necessary to rebate or cause to be rebated arbitrage profits on Bond proceeds or other monies treated as Bond proceeds to the federal government as provided in Section 148 of the Code, and will set aside such monies, which may be paid from investment income on funds and accounts notwithstanding anything else to the contrary herein, in trust for such purposes.

(d) The Unit will file an information report on Form 8038-G with the Internal Revenue Service as required by Section 149 of the Code.

(e) The Board and the Unit will not make any investment or do any other act or thing during the period that any Bond is outstanding hereunder which would cause any Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code and the regulations thereunder as applicable to the Bonds.

Notwithstanding any other provisions of this resolution, the foregoing covenants and authorizations (the "*Tax Sections*") which are designed to preserve the exclusion of interest on the Bonds from gross income under federal income tax law (the "*Tax Exemption*") need not be complied with to the extent the Unit receives an opinion of nationally recognized bond counsel that compliance with such Tax Section is unnecessary to preserve the Tax Exemption.

SECTION 12. Amendments. Subject to the terms and provisions contained in this section, and not otherwise, the owners of not less than sixty-six and two-thirds percent (66-2/3%) in aggregate principal amount of the Bonds then outstanding shall have the right, from time to time, to consent to and approve the adoption by the Board of such resolution or resolutions supplemental hereto as shall be deemed necessary or desirable by the Board for the purpose of amending in any particular any of the terms or provisions contained in this resolution, or in any supplemental resolution; provided, however, that nothing herein contained shall permit or be construed as permitting:

(a) An extension of the maturity of the principal of or interest or premium, if any, on any Bond or an advancement of the earliest redemption date on any Bond, without the consent of the holder of each Bond so affected; or

(b) A reduction in the principal amount of any Bond or the redemption premium or rate of interest thereon, or a change in the monetary medium in which such amounts are payable, without the consent of the holder of each Bond so affected; or

(c) A preference or priority of any Bond over any other Bond, without the consent of the holders of all Bonds then outstanding; or

(d) A reduction in the aggregate principal amount of the Bonds required for consent to such supplemental resolution, without the consent of the holders of all Bonds then outstanding.

If the Board shall desire to obtain any such consent, it shall cause the Registrar to mail a notice, postage prepaid, to the addresses appearing on the Registration Record. Such notice shall briefly set forth the nature of the proposed supplemental resolution and shall state that a copy thereof is on file at the office of the Registrar for inspection by all owners of the Bonds. The Registrar shall not, however, be subject to any liability to any owners of the Bonds by reason of its failure to mail such notice, and any such failure shall not affect the validity of such supplemental resolution when consented to and approved as herein provided.

Whenever at any time within one year after the date of the mailing of such notice, the Board shall receive any instrument or instruments purporting to be executed by the owners of the Bonds of not less than sixty-six and two-thirds per cent (66-2/3%) in aggregate principal amount of the Bonds then outstanding, which instrument or instruments shall refer to the proposed supplemental resolution described in such notice, and shall specifically consent to and approve the adoption thereof in substantially the form of the copy thereof referred to in such notice as on file with the Registrar, thereupon, but not otherwise, the Board may adopt such supplemental resolution in substantially such form, without liability or responsibility to any owners of the Bonds, whether or not such owners shall have consented thereto.

No owner of any Bond shall have any right to object to the adoption of such supplemental resolution or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the adoption thereof, or to enjoin or restrain the Board or its officers from adopting the same, or from taking any action pursuant to the provisions thereof. Upon the adoption of any supplemental resolution pursuant to the provisions of this section, this resolution shall be, and shall be deemed, modified and amended in accordance therewith, and the respective rights, duties and obligations under this resolution of the Board and the Unit and all owners of Bonds then outstanding shall thereafter be determined, exercised and enforced in accordance with this resolution, subject in all respects to such modifications and amendments.

Notwithstanding anything contained in the foregoing provisions of this resolution, the rights, duties and obligations of the Board and the Unit and of the owners of the Bonds, and the terms and provisions of the Bonds and this resolution, or any supplemental resolution, may be modified or amended in any respect with the consent of the Board and the consent of the owners of all the Bonds then outstanding.

Without notice to or consent of the owners of the Bonds, the Board may, from time to time and at any time, adopt such resolutions supplemental hereto as shall not be inconsistent with the terms and provisions hereof (which supplemental resolutions shall thereafter form a part hereof),

(a) To cure any ambiguity or formal defect or omission in this resolution or in any supplemental resolution; or

(b) To grant to or confer upon the owners of the Bonds any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the owners of the Bonds; or

(c) To procure a rating on the Bonds from a nationally recognized securities rating agency designated in such supplemental resolution, if such supplemental resolution will not adversely affect the owners of the Bonds; or

(d) To obtain or maintain bond insurance with respect to the Bonds; or

(e) To provide for the refunding or advance refunding of the Bonds; or

(f) To make any other change which, in the determination of the Board in its sole discretion, is not to the prejudice of the owners of the Bonds.

SECTION 13. No Conflict. All resolutions and orders or parts thereof in conflict with the provisions of this resolution are to the extent of such conflict hereby repealed. After the issuance of the Bonds and so long as any of the Bonds or interest or premium, if any, thereon remains unpaid, except as expressly provided herein, this resolution shall not be repealed or amended in any respect which will adversely affect the rights of the holders of the Bonds, nor shall the Board adopt any law or resolution which in any way adversely affects the rights of such holders.

SECTION 14. Severability. If any section, paragraph or provision of this resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this resolution.

SECTION 15. Non-Business Days. If the date of making any payment or the last date for performance of any act or the exercising of any right, as provided in this resolution, shall be a legal holiday or a day on which banking institutions in the Unit or the jurisdiction in which the Registrar or Paying Agent is located are typically closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are typically closed, with the same force and effect as if done on the nominal date provided in this resolution, and no interest shall accrue for the period after such nominal date.

SECTION 16. Interpretation. Unless the context or laws clearly require otherwise, references herein to statutes or other laws include the same as modified, supplemented or superseded from time to time.

SECTION 17. Other Action. Each officer of the Board, the Executive and the Fiscal Officer, are hereby directed, for and on behalf of the Board, to take such other actions or deliver such other certificates and documents needed for the Refunding or the issuance of the Bonds as they deem necessary or desirable in connection therewith, and any such action heretofore taken is hereby ratified and approved. Specifically, and not by way of limitation, such officers are authorized to secure bond ratings, bond insurance, letters of credit, surety bonds or other forms of credit enhancement for the Bonds upon the recommendation of the Board's financial advisor.

SECTION 18. Effectiveness. This resolution shall be in full force and effect from and after its passage.

Passed and adopted by the Board of Park Commissioners of the City of Bloomington, Indiana, this 22nd day of August, 2017.

BOARD OF PARK COMMISSIONERS OF
THE CITY OF BLOOMINGTON, INDIANA

_____
Les Coyne

_____
Darcie Fawcett

_____
Joe Hoffmann

_____
Kathleen Mills

DMS AWILLIAMS 10706188v3

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: C-4 Date: 8/22/2017

Administrator Review\Approval PM

TO: Board of Park Commissioners
FROM: Jacqui Bauer, ESD
DATE: August 15, 2017
SUBJECT: Seeking board ratification of solar installations on 13 Parks facilities

Recommendation
Staff recommends that the board ratify the decision by City Council to install solar arrays at 13 Parks facilities as part of a Guaranteed Savings Contract through the Energy Systems Group. See attachment for Parks facilities.

Background
Last year, in accordance with the appropriate statutory process, the City Council opened broad proposals for Guaranteed Savings Projects from two contractors (Energy Systems Group (ESG) and Johnson Controls). Since then, Staff has worked to develop that into a fully fleshed out proposal ready for Council and Board approval.

At this time, we are requesting the Board's approval for solar installations at 13 city parks facilities as Phase 1 of the Guaranteed Savings Project with ESG. Collectively, these installations will have an installed capacity of approximately 1.28 MW, and will produce approximately 1.6 million kWh each year. As is typical for a Guaranteed Savings Contract, the costs for the proposed solar installations will be incurred up-front by ESG, with the City making payments out of energy and operational savings.

Proceeding with these installations at this time will enable the City to benefit from existing net metering rules that are in effect until December 31, 2017. These upcoming rule changes will reduce and eventually eliminate the current retail rate for net metering such that installations completed before the end of 2017 will receive retail rates until 2047, installations completed from 2018 through 20221 will receive retail rates until 2032, and installations completed after 2022 will receive only wholesale rates for electricity fed back to the power grid. ESG is confident that the installations can be completed before the deadline.

RESPECTFULLY SUBMITTED,

Jacqui Bauer, Sustainability Coordinator

1 or until Duke receives 1.5% of its summer peak load from net metering, whichever comes first.

City of Bloomington - ESG Solar PV Project-at-a-Glance

	Property Name	Property Address	Net Metered Solar Production (kW-DC)	Energy Star Portfolio Manager: Existing Facility Annual Energy Consumption (kWh)	Estimated 1st Year Solar Array Output (kWh)	Facility Solar Power Percentage (%)	Description:
1	PW- Police Dispatch	301 S. Walnut St	163.2	381,160	187,918	49%	Not Applicable
2	PW- Police Firing Range	3230 S Walnut St.	53.2	80,400	56,454	70%	Not Applicable
3	PW - Fire 1	300 E. 4th St.	48.8	108,560	55,540	51%	Roof Replacement
4	PW - Fire 2-- Fairfield	209 S. Fairfield Dr.	52.9	67,387	59,294	88%	Roof Repair
5	PW - Fire 3	800 N Woodlawn Ave	13.2	54,150	15,374	28%	Roof Replacement
6	PW - Fire 4	2201 E 3rd St.	10.7	76,189	13,151	17%	Roof Replacement
7	PW- Morton St. Garage	220 N Morton St.	173.3	276,400	217,140	79%	Not Applicable
8	PW - Walnut Street Parking Garage	302 N. Walnut St.	98.3	166,240	123,264	74%	Not Applicable
9	PW--Showers Fountain/Lights	401 N Morton St	59.9	88,200	66,020	75%	Not Applicable
10	PW - Fleet Maintenance Facility	800 E. Miller Dr.	52.9	81,400	65,084	80%	Roof Replacement
11	PW - Street Department	1981 S. Henderson St	21.7	31,055	25,374	82%	Roof Repair
12	PW- Sanitation Building	3406 S Old State Highway 37	25.8	40,200	31,452	78%	Roof Repair
	SUB TOTAL - Public Works		***773.9***	***1,451,341***	***916,065***	***63%***	
13	Parks - Maintenance Bldg 545	545 S. Adams St.	21.4	32,326	27,382	85%	Roof Repair
14	Parks - Maintenance Bldg 345	345 S. Adams St.	5.7	7,090	6,050	85%	Roof Repair
15	Parks - Twin Lakes Rec Center	1700 W. Bloomfield Rd.	641.0	970,950	827,407	85%	Roof Replacement
16	Parks - Twin Lakes Ballfields	2350 Bloomfield Rd.	85.1	171,800	115,036	67%	Not Applicable
17	Parks - Frank Southern Center	1965 S. Henderson St.	266.5	679,080	310,292	46%	Roof Replacement - For "Saw-tooth" roofing only
18	Parks - Winslow Sr/Baseball Field	2120 S Highland Ave	28.4	47,200	37,816	80%	Not Applicable
19	Parks-- Winslow Jr/Softball Field	2120 S Highland Ave	28.4	36,400	33,362	92%	Not Applicable
20	Parks-- Winslow Tennis Courts	2120 S Highland Ave	22.7	24,770	25,490	103%	Not Applicable
21	Parks - Mills Pool	W. 14th St Bloomington	43.5	57,360	56,940	99%	Not Applicable
22	Parks - Bryan Park Pool	1001 S Henderson St.	79.1	128,806	103,220	80%	Not Applicable
23	Parks - RCA Thompson Park	1400 W. RCA Park Drive	10.7	16,044	13,151	82%	Not Applicable
24	Parks - Olcott Park	1300 E. Canada Dr.	22.7	26,160	23,801	91%	Not Applicable
25	Parks- Banneker	930 W 7th St.	24.6	73,320	31,290	43%	Roof Replacement
	SUB TOTAL - Parks & Rec		***1,280***	***2,271,306***	***1,611,237***	***71%***	
26	Utilities- Utility Dept. HQ	600 E Miller Dr	264.6	397,200	324,739	82%	Not Applicable
27	Utilities - Dillman WWTP Complex	100 W Dillman Rd	1,400.0	9,944,369	1,723,900	17%	1.0 MW-AC Output. Capped by Duke and current net
28	Utilities - Blucher WWTP Complex	5555 N Bottom Rd	464.9	2,660,000	634,000	24%	Not Applicable
29	Utilities - Monroe- Field East Front Entrance	7470 S Shields Ridge Rd	493.3	5,007,883	548,329	11%	Not Applicable
30	Utilities - SE Booster Station & Tank	4101 S Harrell Rd	66.2	2,000,000	82,619	4%	Not Applicable
	SUB TOTAL - Utilities		***2,689***	***20,009,452***	***3,313,587***	***17%***	
	Grand Totals		***4,743***	***23,732,099***	***5,840,889***	***25%***	

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: C-5 Date : 8/16/2017

Administrator Review\Approval PM

TO: Board of Park Commissioners
FROM: Barb Dunbar, Operations Coordinator
DATE: August 22, 2017
SUBJECT: **Review/Approval of Mid-Service Contract with Steve's Roofing & Sheet Metal**

Recommendation

Staff recommends the review/approval of a Mid-Service Contract with Steve's Roofing & Sheet Metal. The contractor will remove the existing roof and install treated plywood decking and underlayment, and 26 gauge new metal roof over the entire roof area. Work will not begin until after August 23, 2017 and be completed by October 27, 2017.

Background

The Park Ridge East shelter house roof has been patched several times since its relocation in the park and is now in need of complete replacement. Staff has determined that metal roof replacements, rather than wood shake or asphalt shingle have many advantages. Metal roofs are nearly maintenance free and can withstand higher winds and are much less likely to collapse due to heavy water or snow loads. Consequently, over the lifetime of a roof significant cost savings can be incurred. In the case of parks, metal roofs are less vulnerable to vandalism.

RESPECTFULLY SUBMITTED,

Barbara J. Dunbar

_____

AGREEMENT
BETWEEN
CITY OF BLOOMINGTON
PARKS AND RECREATION DEPARTMENT
AND
STEVE'S ROOFING & SHEET METAL
FOR
ROOF REPLACEMENT AT PARK RIDGE EAST SHELTER HOUSE

This Agreement, entered into on this _____ day of August, 2017, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Steve's Roofing & Sheet Metal ("Consultant").

WITNESSETH:

WHEREAS, the Department wishes to replace the existing roof and install new metal roof over entire roof area; and

WHEREAS, the Department requires the services of a professional consultant in order to perform the roof replacement services of removing of the existing, installing treated plywood decking and underlayment, and 26 ga metal roof over entire roof area; 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 October 27, 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 Barb Dunbar, Operations Coordinator 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 Five Thousand and two hundred dollars ($5,200.00). Consultant shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to:

BARB DUNBAR, Operations Coordinator
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		Steve's Roofing & Sheet Metal
Attn: BARB DUNBAR, Ops Coord.		Attn: Gary Schermer, Office Manager
401 N. Morton, Suite 250		5108 S Commercial St.
Bloomington, Indiana 47402		Bloomington, IN 47403

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

STEVE'S ROOFING & SHEET METAL

_____
Gary Schermer, Office Manager

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**:**

- Tear-off existing 1-layer roof and existing 7/16" OSB down to the existing wood purloins.
- Install new ½" Treated plywood decking over the existing wood purloins and replace fascia along the eaves with new 1"x8" Treated wood.
- Install new UDL-25 underlayment over entire roof area.
- Install new **26ga Central States "Panel-Loc-Plus metal roof** over entire roof area. ***Color shall be selected by owner***.
- All metal shall be fastened to deck with (1) screw per square foot.
- Fabricate and Install **26ga eave and rake trims** to seal the edges and prevent water entry.
- Fabricate and Install **26ga custom ridge trims** at peaks of roof with foam closure strip.
- Fabricate and Install **26ga metal fascia wrap** at the eaves.
- Seal all openings throughout entire roof area to waterproof.
- Remove all roofing debris from jobsite. Use a magnet to collect stray nails from park grounds.
- 3-Year Workmanship Warranty & 40-Year Manufacturers Material Warranty.

EXHIBIT B

"Project Schedule"

Work will not begin before August 23, 2017 and will be completed by October 27, 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.

Steve's Roofing & Sheet Metal

By:

_____

Gary Schermer, Office Mangaer

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 Date: 8/16/2017

Administrator Review\Approval PM

TO: Board of Park Commissioners
FROM: Elizabeth Tompkins, Natural Resources Coordinator
DATE: August 22, 2017
SUBJECT: **REVIEW/APPROVAL OF SUMMER STAR MEMORANDUM OF AGREEMENT – GRIFFY LAKE NATURE DAY**

Recommendation
Staff recommends the Board of Park Commissioners approve the agreement with the Summer Star Foundation to fund the Griffy Lake Nature Day program for the 2017-2018 school year.

Background
Griffy Lake Nature Day, currently in its tenth year, is an experiential environmental education program for fourth grade students. Over the course of nine program days throughout the school year, all Monroe County Community School Corporation fourth grade students have the opportunity to attend this program. The program has been funded by the Summer Star Foundation since its beginning. The grant covers the cost of supply purchases for activities, bus transportation for students, and a portion of Bloomington Parks and Recreation staff costs.

We look forward to continuing our relationship with the Summer Star Foundation and providing this outdoor experience to our local youth for years to come.

RESPECTFULLY SUBMITTED,

Elizabeth Tompkins, Natural Resources Coordinator

City of Bloomington Park and Recreation Department
P.O. Box 848, Bloomington, Indiana 47402 (812) 349-3700 FAX (812) 349-3705

MEMORANDUM OF AGREEMENT

This Agreement is made and entered into as of this ____ day of _____, 2017, by and between the City of Bloomington Parks and Recreation Department (hereinafter, "BPRD"), and Summer Star Foundation for Nature, Art and Humanity Inc. (hereinafter, "Summer Star Foundation").

1. Purpose of Agreement:

Both parties recognize that the need exists to provide wholesome and constructive educational and recreational activities for children in Bloomington, Indiana that will effectively contribute to the mental, physical, social and educational enrichment of children. This Agreement is for the purpose of providing school year environmental educational programming to fourth graders in the Monroe County Public Schools (the "Nature Day Project").

2. Duration of Agreement:

This Agreement commences on September 1, 2017 and expires on September 30, 2018, unless terminated earlier as provided under Article 10 or renewed as provided under Article 11.

3. Bloomington Parks & Recreation Department:

BPRD is a municipal organization dedicated to providing essential services, facilities and programs necessary for the positive development and well-being of the community through the provision of parks, greenways, trails and recreational facilities while working in cooperation with other service providers in the community in order to maximize all available resources. One goal of BPRD is to provide outdoor education experiences that connect children to nature in ways that increase their knowledge, interest, and respect for the environment and natural spaces. This Agreement pertains to Environmental Education Nature Days at Leonard Springs and Griffy Lake parks.

4. Summer Star Foundation:

Summer Star Foundation is a non-profit based in Greater Boston that helps in establishing educational programs to enrich children's lives through arts and nature programs and in assisting such programs that are already in existence.

5. Fourth Grade Environmental Education Nature Day Project

Summer Star Foundation agrees to contribute up to a maximum of $5,000 to BPRD's costs relating to the Fourth Grade Environmental Education Nature Day Project (the "Nature Day Project") for the 2017/2018 school year. The Nature Day Project was modeled on the sixth grade Monroe County Community School Corporation Leonard Springs Nature Day Project, which provides all sixth grade students with a day spent in hands-on environmental

education at Leonard Springs Park. The Summer Star Foundation contribution shall be used to permit fourth grade students in the Monroe County Community School Corporation to participate in this project during the 2017/2018 school year, with preference to be given to students in schools within the City of Bloomington.

The Summer Star Foundation contribution shall be used for the following expenses relating to the Nature Day Project: personnel, curriculum development, logistical coordination, transportation, supplies, and program materials.

In connection with the administration of the Nature Day Project, the BPRD agrees as follows:

a. BPRD shall oversee the design and implementation of the Nature Day Project. The exact location and station topics will be determined during the planning phase. Teacher contacts will begin as soon as possible to ensure adequate preparation for teachers and student participants.

a. Nature Day activities will include environmental education based stations that incorporate local natural resources into the 4th grade curricula.

b. BPRD shall perform student assessments, teacher and facilitator evaluations, and take photographs during program component.

c. BPRD shall provide Summer Star Foundation with a planning report within fourteen (14) days from the beginning of the 2017/2018 school year. Such planning report shall identify any changes to the Nature Day Project curriculum from prior years, schools that will participate in the Nature Day Project and a budget of expenses.

d. At the conclusion of the 2017/2018 school year, but no later than June 30, 2018, BPRD shall submit a written evaluation report to Summer Star Foundation, including a summary of the 2017/2018 school year's total expenditures and receipts for the Nature Day Project, an evaluation of the Nature Day Project effectiveness, and a summary of the assessments and evaluations. Summer Star Foundation shall then submit its contribution, as provided above, by July 20, 2018.

e. Should BPRD and the Monroe County Community School Corporation decide to continue and/or expand the Nature Day Project for fourth grade students following the 2017/2018 school year, BPRD shall offer to Summer Star Foundation the opportunity to provide funding before other outside private sources of funding are sought or accepted. This provision shall not be interpreted to impose any obligation on Summer Star Foundation to continue or expand its support of the Nature Day Project beyond its stated contribution under this Agreement for the 2017/2018 school year.

6. BPRD General Administration Responsibilities.

BPRD agrees that with respect to the Nature Day Project, it shall:

a. Recognize Summer Star Foundation in promotional materials using the Summer Star Foundation logo in a manner to be approved by Summer Star Foundation, including, without limitation, on all materials relating to the Nature Day Project.

b. Use the funds received from Summer Star Foundation only for the purposes set forth in this Agreement.

c. Maintain financial, attendance, enrollment and other necessary administrative records with respect to the Nature Day Project funded under this Agreement sufficient to provide the reports to Summer Star Foundation required under this Agreement.

d. Communicate to the public and participants regarding Summer Star support of the programs.

e. Provide all other information as requested by Summer Star Foundation.

7. Summer Star Foundation Responsibilities.

a. Summer Star Foundation shall provide the funding for the Nature Day Project as set forth in this Agreement and shall also provide any relevant information to BPRD to be included in promotional materials.

8. Terms Mutually Agreed to By All Parties:

a. The intent of this Agreement is to document a mutually beneficial relationship between Summer Star Foundation and BPRD.

b. Summer Star Foundation is making the grant hereunder to BPRD in reliance on BPRD's agreement to administer the funds in accordance with the terms of this Agreement. Such monitoring shall include, without limitation, monitoring the Nature Day Project supported by this Agreement to insure compliance with the provisions of the Agreement relating to the operation of the program.

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

d. The parties agree that Summer Star Foundation shall have no responsibility with respect to the operation of the programs described in this Agreement and shall have no liability to any party relating to the operation of or any other aspect of such programs

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

f. Municipal Code sections 6.12.020 and 14.36.090 respectively prohibit smoking inside City of Bloomington facilities and the consumption of alcoholic beverages on City of Bloomington property.

g. Summer Star Foundation's obligation to make any future payments under this Agreement is conditioned on BPRD's fulfillment of its reporting obligations under this Agreement and its use of prior payments in accordance with the terms of this Agreement.

h. The parties acknowledge and agree that this Agreement may be enforced by Summer Star Foundation.

i. Each of the parties represents and warrants that it has full power and authority to enter into this Agreement and the individuals signing on behalf of such party are duly authorized to do so.

9. Notice and Agreement Representatives:

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

City of Bloomington Parks and Recreation Department
Dave Williams
Operations Division Director
Phone: 812-349-3706
Fax: 812-349-3705

Summer Star Foundation
Shalin Liu
P.O. Box 138
Belmont, MA 02478

AND

Barbara Freedman Wand, Esq.
Day Pitney LLP
One International Place
Boston, MA 02110
Phone: 617-345-4628
Fax: 413-241-8019

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

Bloomington Parks and Recreation Department
Elizabeth Tompkins
Natural Resources Coordinator
Phone: 812-349-3759
Fax: 812-349-3705

Summer Star Foundation
Shalin Liu
P.O. Box 138
Belmont, MA 02478

AND

Barbara Freedman Wand, Esq.
Day Pitney LLP
One International Place
Boston, MA 02110
Phone: 617-345-4628
Fax: 413-241-8019

10. Termination:

This Agreement may only be terminated prior to its stated expiration in writing by the mutual agreement of all parties. Upon such termination, all funds not used for the purposes set forth in this Agreement shall be returned to Summer Star Foundation.

11. Option for Renewal:

The parties have the option to renew this Agreement for any subsequent years by the mutual agreement of the parties and upon the same terms as provided herein or such other terms as agreed to between the parties. Such renewal must be in writing, signed by the parties and delivered to the Notice and Agreement Representatives listed in Article 9. This provision shall not be interpreted to impose any obligation on the parties to renew this Agreement.

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

Summer Star Foundation for Nature, Art, and Humanity, Inc.

By:

_____
Shalin Liu, President

City of Bloomington Parks and Recreation Department

By:

_____
Paula McDevitt, Acting Director

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

_____
Philippa M. Guthrie, Corporation Counsel

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: C-7
Date: 8/16/2017

Administrator
Review\Approval
PM

TO: Board of Parks Commissioners
FROM: Joanna Sparks, City Landscaper
DATE: August 9, 2017
SUBJECT: **REVIEW/APPROVAL OF Contract with Eco Logic, LLC.**

Background

Eco Logic, LLC is a local business that specializes ecological restoration and is especially skilled in invasive plant species removal. They have recently provided these services for the City of Bloomington Parks and Recreation Department at Miller Showers Park and the Goat Farm. Their 'Urban Restoration' staff are trained and licensed OISC Pesticide Applicators with many years of experience. They will be using species-specific herbicides to control six invasive plant species in sixteen different locations throughout the City. All applications will be made in accordance with the CoB Parks and Recreation Integrated Pest Management Plan (IPM) approved in December 2016. All work will be complete by December 31, 2017. The removal of these invasive species will open space to create critical pollinator habitat with native plant species throughout the City.

Recommendation

Staff recommends the approval of the contract with Eco Logic, LLC. For removal of invasive plant species on CoB properties.

RESPECTFULLY SUBMITTED,

Joanna Sparks

Joanna Sparks
City Landscaper

AGREEMENT
BETWEEN
CITY OF BLOOMINGTON
PARKS AND RECREATION DEPARTMENT
AND
ECO LOGIC, LLC
FOR
INVASIVE PLANT SPECIES REMOVAL

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

WITNESSETH:

WHEREAS, the Department wishes to remove invasive plant species throughout the City of Bloomington ("Services"); and

WHEREAS, the Department requires the services of a professional consultant in order to perform said Services as further defined in the Scope of Services 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 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 Joanna Sparks, 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 Four Thousand Nine Hundred Ninety Nine Dollars ($4999.99). Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Consultant within forty-five (45) days of receipt of invoice.

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

Joanna Sparks, City Landscaper
City of Bloomington
401 N. Morton, Suite 250
Bloomington, Indiana 47404

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

Article 5. Appropriation of Funds

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

Article 6. Schedule

Consultant shall 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		Eco Logic, LLC
Attn: Joanna Sparks, City Landscaper		ATTN: Spencer Goehl, Executive Director
401 N. Morton, Suite 250		8685 W. Vernal Pike
Bloomington, Indiana 47402		Bloomington, IN 47404

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

ECO LOGIC, LLC

_____
Spencer Goehl, Executive Director

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**:**

The eradication of invasive plant species using species-specific herbicides in multiple locations. All applications will be made in accordance with the City of Bloomington Parks and Recreation Integrated Pest Management Plan (IPM) approved in December 2016. All work will be complete by December 31, 2017.

Invasive Plant Species for Removal and Locations

Japanese Knotweed:
- B-Line Trail (near Howe Street)

Canada Thistle:
- B-Line Trail (near Rogers Street, Realtor's Plaza, & Howe Street)
- South Walnut Street (raised beds on east side of street)
- Highland Village Park (near entrance in landscaping beds)
- Adams Street Operations Center (in landscaping near employee parking lot)

Oriental Bittersweet:
- Bryan Park Pool (in Spruce trees along parking lot on west and north sides)

Purple Wintercreeper:
- Convention Center (in multiple landscaping beds in south parking lot)
- Building and Trades Park (on eastern side of park along boardwalk and 2nd Street)

Lirope:
- Seminary Square (along 2nd Street in landscaping beds)
- Miller Showers (in northern-most landscaping beds)
- B-Line Trail (in landscaping beds between Rogers Street and 8th Street, also 6th and Morton)

Miscanthus/ Non-native Grasses:
- Highland Village Park (near entrance in landscaping beds)
- Mills Pool (in landscaping beds on south side of the property
- Skate Park (in all parking lot islands and in a large planting on the east side of the property)

EXHIBIT B

"Project Schedule"

Consultant shall complete the Services required under this Agreement on or before December 31, 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 Executive Director of Eco Logic, LLC.
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.

Eco Logic, LLC

By: _____
Spencer Goehl, Executive Director

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

AGREEMENT TO PROVIDE RESTORATION SERVICES

Project: City of Bloomington Invasive Plant Control

This agreement, made this 11 day of August, 2017, by and between:

Eco Logic LLC
8685 W. Vernal Pike
Bloomington, IN 47404

AND

Client Name: City of Bloomington / Joanna Sparks
Billing Address: 401 N Morton
City, State, Zip Code: Bloomington, IN 47404
Phone: 812-349-3400
Email: sparkj@bloomington.in.gov

Each party agrees to be legally bound as follows:

Eco Logic LLC agrees to furnish all equipment, materials, and labor in fulfillment of the proposal.

See following pages for Proposal and Standard Terms & Conditions

Terms:

☐ Payment is due upon receipt of invoice
☐ Payment is due within 30 days of invoice
☒ Payment terms other:_____

IN WITNESS WHEREOF, this Agreement is executed as of the date set forth above.

Eco Logic, LLC

Signed: _____

Printed Name: _____

Client

Signed: _____

Printed Name: _____

PROPOSAL FOR RESTORATION SERVICES

Project: City of Bloomington Invasive Plant Control

Eco Logic LLC will provide 2 OISC (Office of the Indiana State Chemist) licensed applicators, to control invasive plants at various locations throughout Bloomington, IN. Applications will follow all guidelines set in Bloomington Parks & Recreation integrated pest management plan.

Targeted invasive plants & herbicide used for control:

Japanese Knotweed / Triclopyr 3
Canada Thistle / Clopyralid
Oriental Bittersweet / Triclopry 3 & 4
Purple Wintercreeper / Triclopyr 3
Liriope / Clethodim
Miscanthus / Glyphosate & Clethodim
Bush Honeysuckle / Glyphosate

Proposal Price of $ 4,999.99 includes treating invasive plants at sites listed below:

Invasive Plant Species for Removal and Locations

Japanese Knotweed:

- B-Line Trail (near Howe Street)

Canada Thistle:

- B-Line Trail (near Rogers Street, Realtor's Plaza, & Howe Street)
- South Walnut Street (three raised beds on east side of street)
- Highland Village Park (near entrance in landscaping beds)
- Adams Street Operations Center (in landscaping near employee parking lot)

Oriental Bittersweet:

- Bryan Park Pool (in Spruce trees along parking lot on west and north sides)

Purple Wintercreeper:

- Convention Center (in multiple landscaping beds in south parking lot)
- Building and Trades Park (on eastern side of park along boardwalk and 2nd Street)

Lirope:

- Seminary Square (along 2nd Street in landscaping beds)
- Miller Showers (in northern-most landscaping beds)
- B-Line Trail (in landscaping beds between Rogers Street and 8th Street, also 6th and Morton)

Miscanthus/ Non-native Grasses:

- Highland Village Park (near entrance in landscaping beds)
- Mills Poll (in landscaping beds on south side of the property
- Skate Park (in all parking lot islands and in a large planting on the east side of the property)

Eco Logic

8685 West Vernal Pike • Bloomington, IN 47404
p (812) 876-7711 • f (812) 876- 4409 • www.ecologicindiana.com

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: C-8
Date: 8/16/2017

Administrator
Review\Approval
PM

TO: Board of Parks Commissioners
FROM: Joanna Sparks, City Landscaper
DATE: July 24, 2017
SUBJECT: **REVIEW/APPROVAL OF Small Services Agreement with Ronnie G. Pursell**

Background

Many of the monuments in the oldest sections of Rose Hill and White Oak Cemeteries are in need of attention. Over time the earth settles around them and they tip over. Some of them being well over 100 years old, there are no longer any family members in the area to maintain them. In order to prevent these monuments from disappearing into the earth or incurring damage from lawn equipment we attempt to repair as many as time and budget allow each year.

Ronnie G. Pursell has been performing quality repairs for us for several years. He has decades of experience repairing really old monuments and does it with a great amount of skill.

This Agreement would provide a second round of monument repairs in the Cemeteries for 2017. The first round, 21 stones/monuments and 1 family pen, was completed in May of this year.

Recommendation

Staff recommends the approval of the Small Services Agreement with Ronnie G. Pursell to repair monuments at Rose Hill and White Oak Cemeteries.

RESPECTFULLY SUBMITTED,

Joanna Sparks

Joanna Sparks
City Landscaper

AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT AND RONNIE G. PURSELL

This Agreement, entered into on this _____day of August, 2017, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Ronnie G. Pursell ("Consultant").

Article 1. Scope of Services Consultant shall provide the monument repairs in Rose Hill and White Oak Cemeteries ("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 October 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 Joanna Sparks 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 Two thousand four hundred and ninety nine dollars ($2499.00). Consultant shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: Joanna Sparks, 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 no later than October 31, 2017 ("Schedule").
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: Joanna Sparks, 401 N. Morton Suite 250, Bloomington, IN 47402.**

Consultant: Ronnie Gene Pursell, 2103 South Kirby Road, Bloomington, IN 47403**.** 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

RONNIE G. PURSELL

_____

Ronnie G. Pursell, 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.

Ronnie G. Pursell

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-9 Date: 8/16/2017

Administrator Review\Approval PM

TO: Board of Park Commissioners
FROM: Dave Williams, Operations Director
DATE: August 11, 2017
SUBJECT: **REVIEW/APPROVAL OF CONSULTANT CONTRACT INTERPRETIVE IDEAS**

Recommendation

It is recommended the Board approve a Park Bond funded consultant contract with Interpretive Ideas for a Peoples Park interpretive sign at a cost of $1,847.62.

Background

The Park Bond has identified funding for improvements to Peoples Park and the department would like to include an interpretive sign to help "tell the story" of the park. Consultant services will include sign content research, text writing, image generation, editing, fabrication, and coordinating the sign placement with Rundell Ernstberger's conceptual park design.

We have worked with Interpretive Ideas on several interpretive signage projects; most recently for Switchyard Park. The total design fee includes sign fabrication.

RESPECTFULLY SUBMITTED,

Dave Williams, Operations Director

AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT AND INTERPRETIVE IDEAS

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

Article 1. Scope of Services Consultant shall perform sign content research, text writing, image generation, editing, fabrication, and establishing placement in conceptual layout for one high-pressure laminate interpretive sign with two in-ground posts at People's Park in Bloomington, Indiana ("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 October 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 One Thousand Eight Hundred Forty Seven Dollars and Sixty Two Cents ($1847.62). 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.

Consultant shall complete the Services by October 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: Interpretive Ideas, Attn: Lise Schools, P.O. Box 355, Okemos, MI 48805.** 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

INTERPRETIVE IDEAS

_____

Lise Schools, 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.

Lise Schools

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: 8/16/2017

Administrator Review\Approval PM

TO: Board of Park Commissioners
FROM: Dave Williams, Operations Director
DATE: August 11, 2017
SUBJECT: **REVIEW/APPROVAL OF CONSULTANT CONTRACT AGREEMENT RUNDELL ERNSTBERGER ASSOCIATES**

Recommendation
It is recommended the Board approve a consultant contract agreement with Rundell Ernstberger Associates for design services at Peoples Park at a cost of $14,900.

Background
The Park Bond has identified funding for improvements to Peoples Park. The overall goal of the project is to implement a series of improvements that will upgrade site furnishings, enhance the safety and appearance of park lighting, address failing turf areas, and assess circulation and performance space needs to facilitate continued activation of the park as a vibrant and friendly urban space. Services will include preparation of conceptual alternatives with preliminary plans and sketches for review, preparation of a final concept plan, illustrations for the department's use in communicating the project vision; and preparation of a construction cost opinion for use in determining project funding needs. Consultant work on this project will be completed by the end of the year. No firm date has been established for construction work at the park.

RESPECTFULLY SUBMITTED,

Dave Williams, Operations Director

AGREEMENT
BETWEEN
CITY OF BLOOMINGTON
PARKS AND RECREATION DEPARTMENT
AND
RUNDELL ERNSTBERGER ASSOCIATES
FOR
PEOPLE'S PARK LANDSCAPE DESIGN SERVICES

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

WITNESSETH:

WHEREAS, the Department wishes to acquire a conceptual design to identify and determine potential design improvements to People's 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 December 15, 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, 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. 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"). 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 Fourteen Thousand, Nine Hundred Dollars and Zero Cents ($14,900.00). Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Consultant within forty-five (45) days of receipt of invoice.

Consultant 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

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

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. 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 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. 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		Rundell Ernstberger Associates
Attn: Dave Williams		Kevin Osburn
401 N. Morton, Suite 250		618 East Market Street
Bloomington, Indiana 47402		Indianapolis, IN 46202

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

RUNDELL ERNSTBERGER ASSOCIATES

_____
Kevin Osburn, Principal

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:

origin | INDIANAPOLIS

RUNDELL ERNSTBERGER ASSOCIATES

email | reaindy@reasite.com internet | www.reasite.com

28 July 2017
Mr. Dave Williams
Director of Operations
Bloomington Parks and Recreation
Showers Building
401 North Morton, Suite 250
Bloomington, IN 47404
re: PEOPLE'S PARK RENOVATION | Conceptual Design Services

Dear Dave:
Rundell Ernstberger Associates (REA) is pleased to submit the following proposal for conceptual site design services related to the above project.

PROJECT UNDERSTANDING:
1. Bloomington Parks & Recreation (BPR) is seeking a conceptual design to identity and determine potential design improvements to People's Park at the intersection of Kirkwood Avenue and Dunn Street in downtown Bloomington.
2. The overall goal of the project is to implement a series of strategic improvements that would facilitate the programming and activation of the park as a vibrant and friendly urban space. Consideration should be given to modifications to existing lawn and pavement areas, lighting upgrades, screening of adjacent properties, upgrades to site furnishings, and improvements to facilitate small performances and events within the park.
3. Services will include preparation of conceptual alternatives, including preliminary plans and sketches, for review with BPR; preparation of a final concept plan and illustrations for BPR's use in communicating project vision; and preparation of a construction cost opinion for use in determining project funding.
4. BPR seeks to compete design services this year and have the park improvements completed by late spring 2018.
5. The budget for the park improvements has been tentatively identified at $250,000 depending upon the results of the conceptual design.

SCOPE OF WORK:
Based on the above understanding, we propose the following scope of work for the conceptual design services:
1. Project Initiation / Information Gathering: Utilizing available plans, mapping, photography, and surveys, REA will prepare a base plan for the project area to be used for conceptual design purposes. REA will participate in an initial meeting or conference call with BPR to review the project goals, schedule, and desired outcomes.
2. Preliminary Concepts: REA will prepare preliminary concepts that address the project goals and present the preliminary concepts to BPR for review and comment. The outcome of this review will provide initial direction for further refinements. The work products at this stage will be conceptual plans and sketches with annotations of primary design features.

3. Conceptual Plan Development: Based on the comments and suggestions received from BPR, REA will prepare Conceptual Plan documents to include updated plans, sections, and a 3D SketchUp model to illustrate and delineate the key design elements.

4. Conceptual Plan Review: REA will review the conceptual plans and sketches with BPR to receive input and direction to be utilized to make final refinements on the final conceptual design and deliverables.

5. Final Deliverables and Approval: REA will prepare the final deliverables to include a rendered site plan, conceptual details and sketches, design concept narrative, 3D SketchUp model, two (2) illustrations, and a preliminary construction cost opinion. Deliverables will be provided in digital format. If requested, REA will present the final project vision to BPR Board and other review committees as needed.

SCHEDULE:
We would anticipate completion of the above scope of work in a 6 to 8 week timeframe, dependent upon client review time. Upon approval of the final conceptual design study, and at the request of BPR, REA will prepare a proposal for Schematic Design, Design Development, Construction Documentation, and Construction Administration services.

COMPENSATION:
We propose a fee of $14,900.00 for the scope of work outlined above in accordance with the following.
• Services will be billed monthly on a lump sum, percentage complete basis, plus reimbursable expenses. Fees will not be exceeded without prior written approval from the City.

• Reimbursable expenses will be billed in accordance with the attached schedule.

• Any services beyond those listed herein will be considered additional services and will be provided if authorized by the City through an approved amendment of this agreement. Additional services will be billed at our standard hourly rates (see attached schedule) or on a negotiated fee basis.

Dave, if the terms of this proposal are agreeable to you, your signature below will constitute a satisfactory form of agreement between Rundell Ernstberger Associates, Inc. and Bloomington Parks & Recreation. Please return one (1) signed original to this office. Should you elect to execute a different form of agreement, please attach a copy of this letter as an exhibit.
I have tried to outline the steps I believe are necessary for a successful completion of this project. Thank you for the opportunity to continue our work with the City of Bloomington! If you have any questions or concerns regarding this proposal, please contact me.

Sincerely,
Kevin Osburn, PLA, ASLA
Principal

EXHIBIT B

"Project Schedule"

Notice to Proceed: 8/29/2017

Preliminary Concepts: 8/29/2017 – 9/19/2017

Conceptual Plan Development: 9/19/2017 – 10/10/2017

Conceptual Plan Review: 9/19/2017 – 10/10/2017

Final Deliverables and Approval: 10/10/17 – 12/15/2017

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.

RUNDELL ERNSTBERGER ASSOCIATES

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-11
Date: 8/16/2017

Administrator
Review\Approval
PM

TO: Board of Park Commissioners
FROM: Crystal Ritter, Community Events Coordinator
DATE: July 20, 2017
SUBJECT: **Change in Price Schedule of the Holiday Market Arts Fair Booth Spaces**

Recommendation

Staff recommends the a change to the 2017 Price Schedule for the Holiday Market arts fair booth spaces that would increase booth spaces by $5.00. Original prices range from $50.00-$60.00 for indoor 6x8' and 4x6' and 10x10'outdoor booth spaces. These prices would remain in effect through the end of 2017.

Background

The Holiday Market booth space increase was inadvertently excluded from the 2017 price schedule. Booth spaces continue to sell out and we continue to have an increasing number of artists for this event and feel that the $5.00 additional increase is appropriate.

RESPECTFULLY SUBMITTED,

Crystal Ritter, Community Events Coordinator

Holiday Market 2017
EXHIBITOR AGREEMENT

In consideration for the right to participate in the 2017 Holiday Market ("Market"), the City of Bloomington ("City"), and the undersigned exhibitor(s) ("Exhibitor"), agree to the following, and to the accompanying Market Information (Exhibit A), which are incorporated herein by reference and are a part of this Agreement.

1. ADMINISTRATION

The Market is administered by the Parks and Recreation Department of the City in accordance with this Agreement. The City sets fees and determines Market policies. The Market On-Site Supervisor oversees the Market and has authority to assign exhibiting space, settle disputes, and disqualify exhibitors for violations of regulations or this Agreement.

2. ELIGIBILITY OF EXHIBITORS

An "Exhibitor" is a person whose works of art or crafts have been accepted by the Market Jury for exhibition and sale at the Market pursuant to this Agreement, or the immediate family of such person, as defined in this Agreement, and who has signed this Agreement.

"Immediate family" is defined in this Agreement to be a parent, child, spouse, or domestic partner of a person whose works of art or crafts have been accepted by the Market Jury for exhibition and sale at the Market pursuant to this Agreement.

<u>Only individuals who are named as Exhibitors in this Agreement may exhibit and sell at the Market. An Exhibitor may exhibit and sell only works which (s)he or her/his immediate family has produced in accordance with the guidelines set forth in this Agreement.</u>

The Exhibitor agrees to comply with all applicable federal, state, and local laws, regulations and ordinances, and agrees that the violation of such a law, regulation or ordinance by the Exhibitor may be deemed by the City to be a material breach of this Agreement.

3. WORKS PERMITTED FOR EXHIBITION AND SALE

All works must be approved by the Market Jury prior to exhibition and sale. All works must be original and made by the Exhibitor. Significant alteration of commercial components not made by the Exhibitor but used in any work is required. Works must be safe, be a durable good, and exhibit quality of craftsmanship. In works made from or including dried flowers, the flowers must be grown by the Exhibitor.

<u>Unacceptable work includes: work made from kits, work made from molds not made by the Exhibitor, work made by someone other than the Exhibitor (including commercially made products, imports, and products bought for resale).</u>

The City reserves the right to verify that works exhibited meet the above criteria. The Exhibitor must display legible price markers for works offered for sale.

4. REGISTRATION TO EXHIBIT AND SELL

The Exhibitor must have signed this Agreement or be named in this Agreement and have authorized another person to sign on his/her behalf, or have been authorized by the maker of the works to exhibit and sell the works at the Market, and have paid all applicable fees before exhibiting or selling any works. Contracts must be signed and returned to the Parks and Recreation office at 401 North Morton Street, Suite 250 (mailing address: P.O. Box 848, Bloomington, Indiana 47402) by the deadlines set forth in the Market Information.

5. CANCELLATION AND NO SHOWS

Any Exhibitor who cancels must notify the Market Administrator **in writing**. Cancellations received **in writing** at least thirty (30) days prior to the 2017 Holiday Market will receive a full refund less a Fifteen Dollar ($15.00) administrative fee. Cancellations received less than thirty (30) days prior to the 2017 Holiday Market will not receive a refund. If an Exhibitor is absent without prior notification, this absence will be taken into consideration for acceptance of that Exhibitor's work at future Markets.

6. EQUIPMENT AND SUPPLIES

Each Exhibitor must supply her/his own tables and other display equipment. Tent coverage will be provided by the City to those Exhibitors selling outside.

7. PROPERTY MAINTENANCE AND UTILIZATION

Market hours are from 10:00 am until 3:00 pm**. The Exhibitor must have set up her/his display and be ready to sell by 9:45 am. For security purposes, all Exhibitors must be present at their booth starting at 9:15 am through the completion of the Market. The Exhibitor may not begin to tear-down display until 3:00 pm.** The Exhibitor must vacate the premises by 4:00 pm and remove all personal items and equipment. Exhibitors must clean litter and debris before leaving or they will be subject to a garbage removal fee of One Hundred Dollars ($100.00).

8. CITY'S REMEDIES FOR BREACH

Violation of any material provision of this Agreement is a material breach and constitutes a default by the Exhibitor. When the City notifies the Exhibitor of the occurrence of a breach or default during Market hours, and if the Exhibitor fails to correct the breach or default within a reasonable time, the Exhibitor agrees to remove personal equipment, clean the area, and vacate the Market premises immediately. Failure to vacate as described above may require the City to take legal action. Upon occurrence of a material breach of this Agreement, the City may terminate this Agreement, by so stating in a written notice to the Exhibitor, and to retain, as liquidated damages and not as a penalty, any fees prepaid by the Exhibitor. The City may also,

in its sole discretion, determine that it will not contract with some or all of the individuals listed as Exhibitors in this Agreement, to sell at the Market in future seasons.

9. COVENANT NOT TO SUE

The Exhibitor will not institute any action or suit at law or in equity against the City or the City's agents or employees as a result of operations under this Agreement. The Exhibitor will not aid in the institution or prosecution of any claim for damages, costs, loss of services, expenses, or compensation for or on account of any damages, loss or injury to person or property as a result of operation under this Agreement.

10. INDEMNIFICATION

The Exhibitor hereby agrees to indemnify, hold harmless, release, waive, and forever discharge the City of Bloomington, Indiana, its employees, agents, and officers, and the members of the Market Steering Committee and Market Jury, for all bodily and personal injuries, including injuries resulting in death, and property damage, claims actions, damages, liabilities, and expenses, including reasonable attorney fees and court costs, which may occur as a result of the Exhibitor's participation in the Market, whether or not in tort or contract, and whether or not caused by a negligent act or omission of the City of Bloomington, its employees, agents, or officers, or the Market Steering Committee or the Market Jury.

EXHIBITOR COPY

PLEASE SAVE THIS COPY FOR YOUR RECORDS

SIGNATURES

Exhibitor Information

_____

Print full name of each Exhibitor (Primary Exhibitor)

_____

(Additional Exhibitors)

Print mailing address(es)

_____

_____

_____

Exhibitors' phone number(s) _____

This Agreement is effective when both the Exhibitor and the Administrator of the Bloomington Parks & Recreation Department have signed and dated it.

_____	_____
Primary Exhibitor's Signature Date Market Registrant	Additional Exhibitor's Signature Date Market Registrant
_____	_____
Additional Exhibitor's Signature Date	Additional Exhibitor's Signature Date

_____

Paula McDevitt, Director, Parks & Recreation Department Date

_____

Philippa M. Guthrie, Corporation Counsel Date

The above-signed Primary Exhibitor gives the City permission to release my name, address and phone number to customers interested in contacting you for information and/or special orders?
Yes _____ No _____

Initial one: Exhibitor chooses to participate in the Gift Certificate Program _____
Exhibitor chooses NOT to participate in the Gift Certificate Program _____

CITY COPY

(SEND THIS PAGE OF THE AGREEMENT BACK TO CRYSTAL RITTER ALONG WITH PAYMENT. BOOTH SPACE WILL NOT BE SECURED UNTIL THE SIGNED CONTRACT AND FULL PAYMENT HAVE BEEN RECEIVED.)

SIGNATURES

Exhibitor Information

_____

Print full name of each Exhibitor (Primary Exhibitor)

_____

Additional Exhibitor(s)

Print mailing address(es)

_____

_____

_____

Exhibitors' phone number(s)_____

This Agreement is effective when both the Exhibitor and the Administrator of the Bloomington Parks & Recreation Department have signed and dated it.

_____	_____
Primary Exhibitor's Signature Date Market Registrant	Additional Exhibitor's Signature Date Market Registrant
_____	_____
Additional Exhibitor's Signature Date	Additional Exhibitor's Signature Date

_____

Paula McDevitt, Director, Parks & Recreation Department Date

_____

Philippa M. Guthrie, Corporation Counsel Date

The above-signed Primary Exhibitor gives the City permission to release my name, address and phone number to customers interested in contacting you for information and/or special orders?
Yes _____ No _____

Initial one: Exhibitor chooses to participate in the Gift Certificate Program _____
Exhibitor chooses NOT to participate in the Gift Certificate Program _____

HOLIDAY MARKET 2017
INDOOR EXHIBITOR INFORMATION
Exhibit A

MARKET DATE AND HOURS

Holiday Market 2017 takes place on Saturday, November 25th 2017 from 10 am until 3 pm.

MARKET SITE

Holiday Market 2017 takes place both inside the Showers Building Atrium (both upstairs and downstairs) and outside at Showers Common at 401 North Morton Street, (between Eighth and Ninth Streets), Bloomington, Indiana.

CONTRACT

All Exhibitors selling/exhibiting at the Holiday Market are required to sign the Holiday Market 2017 Exhibitor Agreement in advance of selling/exhibiting at the Market. Spaces will not be secured until payment and agreement have been received. Please note that the information on the Agreement is public record.

UNLOADING, LOADING, PARKING AND SETUP

Setup will be from **4:00pm-7:00pm** on Friday, November 24th 2017 or on Saturday morning between **7:00am-9:30am**. Exhibitors may pull up their vehicles along the south side of the Showers Building (parking lot where Farmers' Market is held) beginning at 4:00 pm on Friday to unload. **Vehicles must be removed from the parking lot by 7:30 pm on Friday and before 9:30am on Saturday**.

To allow everyone time to unload near the building, please, unload your vehicle and move it to an approved parking space prior to setting up your booth. A landscaping cart will be available for use during loading and unloading.

You are welcome to leave your display up overnight. The building will be locked throughout the night. Exhibitors must vacate the premises by 7:30pm.

For security purposes, all Exhibitors must be present at their booth starting at 9:15 am through the completion of the Market. The Exhibitor may not begin to tear-down display until 3:00 pm. At the end of the Market, Exhibitors may once again pull up their vehicles in the same way beginning at 3pm. Exhibitors must vacate the premises by 4 pm.

ASSIGNMENTS AND LIMITS OF SPACE

Each Exhibitor is limited to one reserved Booth Space unless otherwise assigned. Each Booth Space is approximately 6' X 8' in size. Additionally, 6 smaller spaces have been added to allow more Exhibitors to sell/exhibit their wares. These smaller spaces measure 4' x 6' in size. A Bloomington Parks and Recreation staff member will be there Friday between 4:00pm-7:00pm and Saturday morning to show Exhibitors to their assigned space. **Exhibitors must provide their own tables and chairs.**

FEES
Cancellations must be received in writing at least thirty (30) days prior to the event to receive a full refund less a Fifteen Dollar ($15.00) administrative fee. Cancellations received less than thirty (30) days prior to the event will not receive any refund. An Exhibitor's absence without prior notification will be taken into consideration for art and craft applications for future markets. **Booth Spaces do not automatically include electricity. If an Exhibitor's booth setup requires electricity, there is an additional Ten Dollar ($10) fee that must be paid when the Agreement is submitted.** This will be the only opportunity to request electricity. Due to the planning that this requires, last minute requests will not be granted.

RECEIPTS AND COMMISSIONS
Exhibitors should issue receipts when customers request them. The City does not collect commissions on sales.

TAXES
Exhibitors are responsible for collecting required taxes and for keeping appropriate records. They can call (317) 233-4015 for Indiana Department of Revenue Registered Retail Merchants Certificate applications.

DEMONSTRATIONS
Exhibitors are encouraged to provide demonstrations of their art or craft with prior City approval. An area will be made available for such demonstrations if necessary.

PETS
No pets will be permitted at the Holiday Market 2017.

HAWKING
Vociferous hawking and selling outside of booth space is not allowed.

ELECTRONIC MUSIC
Audible music from any electronic device is strictly prohibited.

MARKET STAFF
There will be an On-Site Supervisor from the City. Questions or comments will be welcomed by Holiday Market Administrator, Crystal Ritter, during office hours, in the Parks and Recreation Department, Suite 250 of the Showers Building, 401 North Morton Street; telephone (812) 349-3725; email ritterc@bloomington.in.gov.

Gift Basket Door Prize

In order to encourage participants to fill out event evaluations we will again be doing a gift basket door prize. If you have anything to add to the basket we would really appreciate it! Please just let the On-Site Supervisor know during setup.

HOLIDAY MARKET 2017
OUTDOOR EXHIBITOR INFORMATION
Exhibit A

MARKET DATE AND HOURS

Holiday Market 2017 takes place on Saturday, November 25th 2017 from 10 am until 3 pm.

MARKET SITE

Holiday Market 2017 takes place both inside the Showers Building Atrium (both upstairs and downstairs) and outside at Showers Common at 401 North Morton Street, (between Eighth and Ninth Streets), Bloomington, Indiana.

CONTRACT

All Exhibitors selling/exhibiting at the Holiday Market are required to sign the Holiday Market 2017 Exhibitor Agreement in advance of selling/exhibiting at the Market. Spaces will not be secured until payment and agreement have been received. Note that the information on the Agreement is public record.

UNLOADING, LOADING, AND PARKING ON SATURDAY

Exhibitors may pull their vehicles up to their assigned spots beginning at 7:00 am to unload. V**ehicles must be removed from the parking lot by 9:30 am**. **For security purposes, all Exhibitors must be present at their Booth Space starting at 9:15 am through the end of the Holiday Market.** Exhibitors may once again pull their vehicles up in the same way beginning at 3pm. ***All exhibits must be set-up by 9:45am and Exhibitors may not begin to tear displays down until 3pm.*** Exhibitors must vacate the premises by 4 pm.

ASSIGNMENTS AND LIMITS OF SPACE

Each Exhibitor is limited to one reserved space unless otherwise assigned. Each space is approximately 10' X 10' in size. A Bloomington Parks and Recreation staff member will be there Saturday morning to show Exhibitors to their assigned space. Tent coverage will be provided for all outside artists. **Exhibitors must provide their own tables and chairs.**

FEES

Cancellations must be received in writing at least thirty (30) days prior to the event to receive a full refund less a Fifteen Dollar ($15.00) administrative fee. Cancellations received less than thirty (30) days prior to the event will not receive any refund. An Exhibitor's absence without prior notification will be taken into consideration for art and craft applications for future markets. **Booth Spaces do not automatically include electricity. If an Exhibitor's booth setup requires electricity, there is an additional Ten Dollar ($10) fee that must be paid when the Agreement is submitted.** This will be the only opportunity to request electricity. Due to the planning that this requires, last minute requests will not be granted.

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There will be an On-Site Supervisor from the City. Questions or comments will be welcomed by Holiday Market Administrator, Crystal Ritter, during office hours, in the Parks and Recreation Department, Suite 250 of the Showers Building, 401 North Morton Street; telephone (812) 349-3725; email ritterc@bloomington.in.gov.

Gift Basket Door Prize

In order to encourage participants to fill out event evaluations we will again be doing a gift basket door prize. If you have anything to add to the basket we would really appreciate it! Please just let the on-site supervisor know during setup.

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: C-12
Date: 8/16/2017

Administrator
Review\Approval
PM

TO: Board of Park Commissioners
FROM: John Turnbull, Division Director Sports
DATE: **August 16, 2017**
SUBJECT: **Agreement with Fox Construction Company, Inc.**

Recommendation
Staff recommends approval of this agreement for the Restrooms/Lockers Renovation at Frank Southern and Twin Lakes Recreation Center. The source of funds for these projects is the Parks Bond:
977-18-180000-54510 FSC $26,800
977-18-180000-54510 TLRC $152,000

Background
Sealed bids were solicited and received on July 17, 2017 for this project specified and designed by Cripe Architects.

The scope of the project at Frank Southern is to rehab the two back bathrooms that are between the locker rooms. All new fixtures, new walls, new partitions and other cosmetic updates.

The scope of the project at Twin Lakes Recreation Center is a rehab of the locker rooms located on the top floor. New flooring, new wall material, new showers, new lockers, new fixtures, new partitions, a reduction in the number of toilets, urinals, sinks, and showers and other cosmetic changes.

Four construction companies bid and Fox was considerably lower than the rest. Weddle Brothers($228,100), Neidigh Construction($227,000), and Orange County Plumbing(did not meet bid requirements) were the other bidders.

RESPECTFULLY SUBMITTED,

John Turnbull, Division Director Sports

CONTRACT
BETWEEN
CITY OF BLOOMINGTON
PARKS AND RECREATION DEPARTMENT
AND
FOX CONSTRUCTION COMPANY, INC.
FOR
RESTROOMS/LOCKERS RENOVATIONS
FRANK SOUTHERN ICE ARENA/TWIN LAKES RECREATION CENTER

THIS CONTRACT is executed by and between the City of Bloomington, Indiana, Parks and Recreation Department through the Board of Park Commissioners (hereinafter City), and Fox Construction Company, Inc., (hereinafter Contractor).

WITNESSETH THAT:

WHEREAS, the City desires to retain Contractor's services for the **Scope of Work** (more particularly described in Attachment A, "Scope of Work") ("Services"); and

WHEREAS, Contractor is capable of performing the Services as per its Bid, as set forth on the Bid Summary sheet submitted on July 17, 2017; and

WHEREAS, in accordance with Indiana Code 5-16-13 *et seq*., incorporated herein by reference, Contractor is a Tier 1 or General Contractor for this project; and

WHEREAS, Contractor was determined to be the lowest responsible and responsive Bidder for said project.

NOW, THEREFORE, in consideration of the mutual promises hereinafter enumerated, the parties agree as follows:

ARTICLE 1. TERM

1.01 This Contract shall be effective upon execution of this Contract by all parties. In accordance with Indiana Code 5-16-13 *et seq*., incorporated herein by reference, Contractor is a Tier 1 contractor or general contractor for this project.

ARTICLE 2. SERVICES

2.01 Contractor shall complete all work required under this Contract no later than January 31, 2018, unless the parties mutually agree to a later completion date. "Substantial Completion" shall mean completion of all work.

2.02 Contractor agrees that no charges or claims for damages shall be made by it for any delays or hindrances, from any cause whatsoever, during the progress of any portion of the services

specified in the Contract. Such delays or hindrances, if any, may be compensated for by an extension of time for a reasonable period as may be mutually agreed upon between the parties, it being understood, however, that permitting Contractor to proceed to complete any service, or any part of the services / project, after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the City of any of its rights herein.

ARTICLE 3. COMPENSATION

3.01 Contractor shall provide services as specified in Attachment A, "Scope of Work" ("Services"), attached hereto and incorporated into this Contract.

3.02 Contractor shall submit an invoice to the City upon the completion of the Services described in Article 3.01. Upon the submittal of an invoice, the City shall compensate Contractor in a lump sum not to exceed One Hundred Seventy Eight Thousand Nine Hundred dollars ($178,900) within forty-five (45) days of receipt of invoice. Invoices may be sent via first class mail postage prepaid or via email.

The invoice shall be sent to:

John Turnbull
City of Bloomington
401 N. Morton, Suite 250
Bloomington, Indiana 47404

The City may withhold payment, in whole or in part, to the extent necessary to protect itself from a loss on account of any of the following:

- Defective work.
- Evidence indicating the probable filing of claims by other parties against Contractor which may adversely affect the City.
- Failure of Contractor to make payments due to subcontractors, material suppliers or employees.
- Damage to the City or a third party.

Additional services not set forth in Attachment A, or changes in 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.

3.03 The submission of any request for payment shall be deemed a waiver and release by Contractor of all liens and claims with respect to the work and period to which such payment request pertains except as specifically reserved and noted on such request.

3.04 Contractor shall maintain proper account records for the scope of all Services under this Contract and provide an accounting for all charges and expenditures as may be necessary for audit

purposes. All such records shall be subject to inspection and examination by the City's representatives during reasonable business hours.

3.05 Division Director of Sports

The Division Director of Sports or his/her designee shall act as the City's representative and assume all duties and responsibilities and have all the rights and authority assigned to the Division Director in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 4. GENERAL PROVISIONS

4.01 Contractor agrees to indemnify and hold harmless the City and its officers, agents, officials and employees for any and all claims, actions, causes of action, judgments and liens arising out of any negligent act or omission by Contractor or any of its officers, agents, officials, employees, or subcontractors or any defect in materials or workmanship of any supply, materials, mechanism or other product or service which it or any of its officers, agents, officials, employees, or subcontractors has supplied to the City or has used in connection with this Contract and regardless of whether or not it is caused in part by a party indemnified herein. Such indemnity shall include attorney's fees and all costs and other expenses arising therefrom or incurred in connection therewith and shall not be limited by reason of the enumeration of any insurance coverage required herein.

Contractor shall indemnify and hold harmless the City and its officers, agents, officials and employees for any and all damages, actions, costs (including, but not limited to, attorney's fees, court costs and costs of investigation), judgments, and claims by anyone for damage to property, injury or death to persons resulting from the collapse or failure of any trenches, ditches or other excavations constructed under or associated with this contract.

4.02 Abandonment, Default and Termination

4.02.01 The City shall have the right to abandon the work contracted for in this Contract without penalty. If the City abandons the work described herein, Contractor shall deliver to the City all surveys, notes, drawings, specifications and estimates completed or partially completed and these shall become the property of the City. The earned value of the work performed shall be based upon an estimate of the difference between the portion of the work performed by Contractor under this Contract and the work which Contractor was obligated to perform under this Contract. This difference shall be mutually agreed upon by the City and Contractor. The payment made to Contractor shall be paid as a final payment in full settlement of its services hereunder.

4.02.02 If Contractor defaults or fails to fulfill in a timely and proper manner its obligations pursuant to this Contract, the City may, after seven (7) days' written notice has been delivered to Contractor, and without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due to Contractor. In the alternative, the City may, at its option, terminate this Contract and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by Contractor, and may finish the project by whatever method it may deem expedient, and if such

action exceeds the unpaid balance of the sum amount, Contractor or its surety, shall pay the difference to the City.

4.02.03 **Default**: If Contractor breaches this Contract or fails to perform the work in an acceptable manner, it shall be considered in default. Any one or more of the following will be considered a default:

- Failure to begin the work under this Contract within the time specified.
- Failure to perform the work with sufficient supervision, workers, equipment and materials to insure prompt completion of said work within the time limits allowed.
- Unsuitable performance of the work as determined by Director or his/her representative.
- Neglecting or refusing to remove defective materials or failure to perform anew such work as shall have been rejected.
- Discontinuing the prosecution of the work or any part of it.
- Inability to finance the work adequately.
- If, for any other reason, Contractor breaches this Contract or fails to carry on the work in an acceptable manner.

4.02.04 The City shall send Contractor a written notice of default. If Contractor, or its Surety, within a period of ten (10) days after such notice, fails to remedy the default, then the City shall have full power and authority, without violation of the Contract, to take the prosecution of the work out of the hands of Contractor, to appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable, and may, at its option, turn the work over to the Surety, or enter into an Contract with another Contractor for the completion of the Contract according to the terms and provisions thereof, or the City may use such other methods as, in its opinion, shall be required for the completion of this Contract in an acceptable manner.

4.02.05 All cost of completing the work under this Contract shall be deducted from the monies due or which may become due to said Contractor. In case the expenses so incurred by the City shall be less than the sum which would have been payable under the Contract if it had been completed by said Contractor, Contractor shall be entitled to receive the difference. However, in case such expense shall exceed the sum which would have been payable under the Contract, Contractor and his Surety will be liable and shall pay to the City the amount of said excess. By taking over the prosecution of the work, the City does not forfeit the right to recover damages from Contractor or its Surety for failure to complete the work in the time specified.

4.02.06 Notwithstanding any other provision of this Contract, if funds for the continued fulfillment of the Contract by the City are at any time not forthcoming or are insufficient, through failure of any entity to appropriate the funds or otherwise, then the City shall have the right to terminate this Contract without penalty by giving prior written notice documenting the lack of funding in which instance, unless otherwise agreed to by the parties, this Contract shall terminate and become null and void.

4.02.07 The City agrees that it will make its best effort to obtain sufficient funds, including but not limited to, incorporating in its budget for each fiscal period during the term hereof a request for sufficient funds to meet its obligations hereunder in full.

4.03 Successors and Assigns

4.03.01 Both parties agree that for the purposes of this Contract, Contractor shall be an Independent Contractor and not an employee of the City.

4.03.02 No portion of this Contract shall be sublet, assigned, transferred or otherwise disposed of by Contractor except with the written consent of the City. Consent to sublet, assign, transfer, or otherwise dispose of any portion of this Contract shall not be construed to relieve Contractor of any responsibility of the fulfillment of this Contract.

4.04 Extent of Contract: Integration

4.04.01 This Contract consists of the following parts, each of which is as fully a part of this Contract as if set out herein:

1. This Contract and its Attachments.
2. All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents which may be delivered or issued after the Effective Date of the Contract and are not attached hereto.
3. All Addenda to the Bid Documents.
4. The Invitation to Bidders.
5. The Instructions to Bidders.
6. The Special Conditions.
7. All plans as provided for the work that is to be completed.
8. The General Conditions.
9. The Specifications.
10. Contractor's submittals.
11. The Performance and Payment Bonds.
12. The Escrow Contract.
13. Request for Taxpayer Identification number and certification: Substitute W-9.

4.04.02 In resolving conflicts, errors, discrepancies and disputes concerning the Scope of Work to be performed by Contractor, and other rights and obligations of the City and Contractor, the document expressing the greater quantity, quality or other scope of work in question, or imposing the greater obligation upon Contractor and affording the greater right or remedy to the City shall govern; otherwise the documents shall be given precedence in the order as enumerated above.

4.05 Insurance

4.05.01 Contractor shall, as a prerequisite to this Contract, purchase and thereafter maintain such insurance as will protect it from the claims set forth below which may arise out of or result from

Contractor's operations under this Contract, whether such operations be by Contractor or by any Subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

	Coverage	**Limits**
A.	Worker's Compensation & Disability	Statutory Requirements
B.	Employer's Liability Bodily Injury by Accident	$100,000 each accident
	Bodily Injury by Disease	$500,000 policy limit
	Bodily Injury by Disease	$100,000 each employee
C.	Commercial General Liability (Occurrence Basis) Bodily Injury, personal injury, property damage, contractual liability, products-completed operations, General Aggregate Limit (other than Products/Completed Operations)	$1,000,000 per occurrence and $2,000,000 in the aggregate
	Products/Completed Operation	$1,000,000
	Personal & Advertising Injury Limit	$1,000,000
	Each Occurrence Limit	$1,000,000
	Fire Damage (any one fire)	$50,000
D.	Comprehensive Auto Liability (single limit, owned, hired and non-owned)	$1,000,000 each accident
	Bodily injury and property damage	
E.	Umbrella Excess Liability	$5,000,000 each occurrence and aggregate
	The Deductible on the Umbrella Liability shall not be more than	$10,000

4.05.02 Contractor's comprehensive general liability insurance shall also provide coverage for the following:

- Premises and operations;
- Contractual liability insurance as applicable to any hold-harmless Contracts;
- Completed operations and products; which also must be maintained for a minimum period of two (2) years after final payment and Contractor shall continue to provide evidence of such coverage to the City on an annual basis during the aforementioned period;
- Broad form property damage - including completed operations;
- Fellow employee claims under Personal Injury; and
- Independent Contractors.

4.05.03 With the prior written approval of the City, Contractor may substitute different types or amounts of coverage for those specified as long as the total amount of required protection is not reduced.

4.05.04 Certificates of Insurance showing such coverage then in force (but not less than the amount shown above) shall be on file with the City prior to commencement of work. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled

or non-renewed until at least sixty (60) days' prior written notice has been received by the City. The City shall be named as an additional insured on the Commercial General Liability, Automobile Liability, and Umbrella Excess Liability policies. Contractor shall agree to a waiver of subrogation on its Worker's Compensation policy.

4.06 Necessary Documentation

Contractor certifies that it will furnish the City any and all documentation, certification, authorization, license, permit or registration required by the laws or rules and regulations of the City of Bloomington, the State of Indiana and the United States. Contractor further certifies that it is now and will maintain in good standing with such governmental agencies and that it will keep its license, permit registration, authorization or certification in force during the term of this Contract.

4.07 Applicable Law

Contractor agrees to comply with all federal, state, and local laws, rules and regulations applicable to Contractor in performing work pursuant to this Contract, including, but not limited to, discrimination in employment, prevailing wage laws, conflicts of interest, public notice, accounting records and requirements. This Contract shall be governed by the laws of the United States, and the State of Indiana, and by all Municipal Ordinances and Codes of the City of Bloomington. Venue of any disputes arising under this Contract shall be in the Monroe Circuit Court, Monroe County, Indiana.

4.08 Non-Discrimination

4.08.01 Contractor and subcontractors shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Contract, with respect to hire, tenure, terms, training, conditions or privileges of employment, because of race, sex, color, religion, national origin, ancestry, disability, sexual orientation, gender identity, veteran status or housing status. Breach of this covenant may be regarded as a material breach of the Contract.

4.08.02 Contractor certifies for itself and all its subcontractors compliance with existing laws of the State of Indiana and the United States regarding:

Prohibition of discrimination in employment practices on the basis of race, sex, color, religion, national origin, ancestry, disability, sexual orientation, gender identity, veteran status, housing status, or any other legally protected classification;

The utilization of Minority and Women Business Enterprises. Contractor further certifies that it:

a. Has formulated its own Affirmation Action plan for the recruitment, training and employment of minorities and women, including goals and timetable; which has been approved by the City's Contract Compliance Officer.

b. Encourages the use of small business, minority-owned business and women-owned business in its operations.

4.08.03 FURTHER, PURSUANT TO INDIANA CODE § 5-16-6-1, CONTRACTOR AGREES:

A) That in the hiring of employees for the performance of work under this Contract or any sub Contract hereunder, no contractor, or subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall by reason of race, sex, color, religion, national origin, ancestry, or any other legally protected classification, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates.

B) That no contractor, subcontractor, or any person on their behalf, shall, in any manner, discriminate against or intimidate any employee hired for performance of work under this Contract on account of race, religion, color, sex, national origin, ancestry, or any other legally protected classification.

C) That there may be deducted from the amount payable to Contractor, by the City, under this Contract, penalty of Five Dollars ($5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Contract. Any such person discriminated against retains the right to file a discrimination complaint with the appropriate civil rights agency or court.

D) That this Contract may be canceled or terminated by the City and all money due or to become hereunder may be forfeited, for a second or any subsequent violations of the terms or conditions under this section of the Contract.

4.09 Workmanship and Quality of Materials

4.09.01 Contractor shall guarantee the work for a period of one (1) year from the date of Substantial Completion. Failure of any portion of the work within one (1) year due to improper construction, materials of construction, or design may result in a refund to the City of the purchase price of that portion which failed or may result in the forfeiture of Contractor's Performance Bond.

4.09.02 OR EQUAL: Wherever in any of the Contract Documents an article, material or equipment is defined by describing a proprietary product, or by using the name of a manufacturer or vendor, the term "Or Equal" or the term "The Equivalent" if not inserted, shall be implied, and it is done for the express purpose of establishing a basis of durability and efficiency and not for the purpose of limiting completion. Whenever material or equipment is submitted for approval as being equal to that specified, the submittal shall include sufficient information and data to demonstrate that the material or equipment conforms to the Contract requirements. The decision as to whether or not such material or equipment is equal to that specified shall be made by the Director. The approval by the Director of alternate material or equipment as being equivalent to that specified, shall not in any way relieve Contractor of responsibility for failure of the material or equipment due to faulty design, material, or workmanship, to perform the function required by the Contract Documents. Specifications as determined by other entities within the City of Bloomington such as City Utilities shall only be substituted or changed upon prior written approval of the Director.

4.09.03 The City shall be the sole judge of the sufficiency of workmanship and quality of materials. Disputes shall be resolved by the Director and are not subject to arbitration.

4.10 Safety

Contractor shall be responsible for the safety of employees at all times and shall provide all equipment necessary to insure their safety. Contractor shall ensure the enforcement of all applicable safety rules, regulations, ordinances and laws, whether federal, state or local. Contractor's Superintendent of Safety shall make daily inspections upon the arrival and leaving of the site at the close of each workday.

4.11 Amendments/Changes

4.11.01 Except as provided in Paragraph 4.11.02, this Contract may be amended only by written instrument signed by both the City and Contractor.

4.11.02 Without invalidating the Contract and without notice to any surety, the City may, at any time or from time to time, order, in writing, additions, deletions, or revisions in the work. Upon receipt of any such document, Contractor shall promptly proceed with the work involved, which will be performed under the applicable conditions of the Contract Documents.

4.11.03 If Contractor believes that any direction of the City under paragraph 4.11.02, or any other event or condition, will result in an increase in the Contract time or price, he shall file written notice with the City no later than twenty (20) calendar days after the occurrence of the event giving rise to the claim and stating the general nature of the claim with supporting data. No claim for any adjustment of the Contract time or price will be valid if not submitted in accordance with this Paragraph.

4.11.04 Contractor shall carry on the work and adhere to the progress schedule during all disputes or disagreement with the City. No work shall be delayed or postponed pending resolution of any dispute or disagreement except as Contractor and the City may otherwise agree in writing.

4.12 Performance Bond and Payment Bond

4.12.01 For contracts in excess of $100,000, Contractor shall provide the City with a Performance Bond and a Payment Bond in the amount of one hundred percent (100%) of the contract amount.

4.12.02 Failure by Contractor to perform the work in a timely or satisfactory fashion may result in forfeiture of Contractor's Performance Bond.

4.12.03 If the Surety on any bond furnished by Contractor becomes a party to supervision, liquidation, or rehabilitation action pursuant Indiana Code 27-9 et seq. or its right to do business in the State of Indiana is terminated, Contractor shall, within thirty (30) calendar days thereafter, substitute another bond and surety, both of which must be acceptable to the City.

4.13 Payment of Subcontractors

Contractor shall pay all subcontractors, laborers, material suppliers and those performing services to Contractor on the project under this Contract. The City may, as a condition precedent to any payment hereunder, require Contractor to submit satisfactory evidence of payments of any and all claims of subcontractors, laborers, material suppliers, and those furnishing services to Contractor. Upon receipt of a lawful claim, the City shall withhold money due to Contractor in a sufficient amount to pay the subcontractors, laborers, material suppliers, and those furnishing services to Contractor.

4.14 Written Notice

Written notice shall be considered as served when delivered in person or sent by mail to the individual, firm, or corporation, or to the last business address of such known to Contractor who serves the Notice. Notice shall be sent as follows:

To City		**To Contractor**
City of Bloomington		Fox Construction Company
Attn: John Turnbull		Tony Fox, President
401 N. Morton, Suite 250		6931 South Old State Road 37
Bloomington, Indiana 47402		Bloomington, IN 47403

4.15 Severability and Waiver

In the event that any clause or provision of this Contract is held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision shall not affect any other provision of this Contract. Failure of either party to insist on strict compliance with any provision of this Contract shall not constitute waiver of that party's right to demand later compliance with the same or other provisions of this Contract.

4.16 Notice to Proceed

Contractor shall not begin the work pursuant to the "Scope of Work" of this Contract until it receives an official written Notice to Proceed from the City. Contractor shall start active and continuous work on the Contract within fifteen (15) calendar days after the date of the Notice to Proceed. In no case shall work begin prior to the date of the Notice to Proceed. If a delayed starting date is indicated in the proposal, the fifteen (15) calendar day limitation will be waived. Work day charges will then begin on a date mutually agreed upon, but not later than the delayed starting date specified. In the event that any Contract is canceled after an award has been made but prior to the issuing of the Notice to Proceed, no reimbursement will be made for any expenses accrued relative to this contract during that period.

4.17 Steel or Foundry Products

4.17.01 To comply with Indiana Code 5-16-8, affecting all contracts for the construction, reconstruction, alteration, repair, improvement or maintenance of public works, the following provision shall be added: If steel or foundry products are to be utilized or supplied in the performance of any contract or subcontract, only domestic steel or foundry products shall be used. Should the City feel that the cost of domestic steel or foundry products is unreasonable, the City will notify Contractor in writing of this fact.

4.17.02 Domestic Steel products are defined as follows:

> "Products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two (2) or more of such operations, from steel made in the United States by open hearth, basic oxygen, electric furnace, Bessemer or other steel making process."

4.17.03 Domestic Foundry products are defined as follows:

> "Products cast from ferrous and nonferrous metals by foundries in the United States."

4.17.04 The United States is defined to include all territory subject to the jurisdiction of the United States.

4.17.05 The City may not authorize or make any payment to Contractor unless the City is satisfied that Contractor has fully complied with this provision.

4.18 Verification of Employees' Immigration Status

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 Attachment B, 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 of its subcontractors may not knowingly employ or contract with an unauthorized alien, or retain an employee or contract with a person that the Contractor or any of its subcontractors learns is an unauthorized alien. If the City obtains information that the Contractor or any of its subcontractors employs or retains an employee who is an unauthorized alien, the City shall notify the Contractor or its subcontractors of the Contract violation and require that the violation be remedied within thirty (30) calendar days of the date of notice. If the Contractor or any of its subcontractors verify the work eligibility status of the employee in question through the E-Verify program, there is a rebuttable presumption that the Contractor or its subcontractor did not knowingly employ an unauthorized alien. If the Contractor or its subcontractor fails to remedy the violation within the thirty (30) calendar day period, the City shall terminate the Contract, unless the City determines that terminating the Contract would be detrimental to the public interest or public property, in which case the City may allow the Contract to remain in effect until the City procures a new contractor. If the City terminates the Contract, the Contractor or its 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 this Contract with the City.

4.19 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 Contract 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 Attachment C, affirming that Consultant has not engaged in any collusive conduct. Attachment C is attached hereto and incorporated by reference as though fully set forth.

4.20 Drug Testing Plan
In accordance with Indiana Code 4-13-18 as amended, the Contractor was required to submit with his/her bid a written drug testing policy for a public works project that is estimated to cost $150,000 or more. Among other things, the law sets forth specific requirements that must be in the plan for a program to test the employees of the Contractor and Subcontractors for drugs. The successful Contractor must comply with all provisions of the statute. This contract is subject to cancellation if Contractor fails to implement its testing program during the term of this contract, fails to provide information regarding this testing at the request of the City; or provides false information to the City regarding Contractor's employee drug testing program. Contractor shall sign an affidavit, attached as Attachment D, affirming that Contractor has and shall implement Contractor's employee drug testing program throughout the term of this project.

ARTICLE 5. RETAINAGE
For contracts in excess of $100,000, the City requires that retainage be held set out below.

5.01 Escrow Agent
The retainage amount withheld shall be placed in an escrow account. First Financial Bank, Bloomington, Indiana, shall serve as the escrow agent.

5.02 Retainage Amount
The escrow agent, the City, and Contractor shall enter into a written escrow Contract. Under that Contract, the City shall withhold five percent (5%) of the dollar value of all work satisfactorily completed until the Contract work is complete. The escrow agent shall invest all escrowed principal in obligations selected by the escrow agent. The escrow agent shall be compensated for the agent's services by a reasonable fee, agreed upon by the parties, that is comparable with fees charged for the handling of escrow accounts of similar size and duration. The fee shall be paid from the escrow income. The escrow agent's fee may be determined by specifying an amount of interest the escrow agent will pay on the escrowed amount, with any additional earned interest serving as the escrow agent's fee. The escrow Contract may include other terms and conditions as deemed necessary by the parties.

5.03 Payment of Escrow Amount
The escrow agent shall hold the escrowed principal and income until receipt of the notice from the City and Contractor that the Contract work has been substantially completed to the reasonable satisfaction of the City, at which time the City shall pay to the Contractor the balance to be paid under this Contract and execute such documents as are necessary to authorize the

escrow agent to pay to the Contractor the funds in the escrow account, including both specifying the part of the escrowed principal to be released from the escrow and the person to whom that portion is to be released. After receipt of the notice, the escrow agent shall remit the designated part of the escrowed principal and the escrowed income, minus the escrow agent's fees, to the person specified in the notice. However, nothing in this section shall prohibit the City from requiring the escrow agent to withhold amounts necessary to complete minor items of the Contract, following substantial completion of the Contract in accordance with the provisions of paragraph 5.04.

5.04 Withholding Funds for Completion of Contract

If, upon substantial completion of the Contract, there still remains minor Contract work that needs to be completed, or minor Contract work that needs to be performed to the satisfaction of the City, the City may direct the escrow agent to retain in the escrow account, and withhold from payment to the Contractor, an amount equal to two hundred percent (200%) of the value of said work. The value of said work shall be determined by the architect/Director. The escrow agent shall release the funds withheld under this section after receipt of notice from the City that all work on the Contract has been satisfactorily completed. In the event that said work is not completed by the Contractor, but by the City or another party under contract with the City, said funds shall be released to the City.

IN WITNESS WHEREOF, the parties of this Contract have hereunto set their hands.

DATE: _____

City of Bloomington	**Contractor**
Board of Park Commissioners	Fox Construction Company, Inc.
BY:	BY:
_____	_____
Les Coyne, President	Contractor Representative
_____	_____
Paula McDevitt, Director	Printed Name
_____	_____
Philippa M. Guthrie, Corporation Counsel	Title of Contractor Representative

ATTACHMENT A
"SCOPE OF WORK"

RESTROOMS/LOCKERS RENOVATIONS
FRANK SOUTHERN ICE ARENA/TWIN LAKES RECREATION CENTER

This project shall include, but is not limited to the following:

Selective demolition, electrical, plumbing, fixtures, finishes and related improvements at Frank Southern Ice Arena back of the facility restrooms. All is specified in construction documents provided by Cripe Architects and Engineers dated and stamped on June 16, 2017.

Selective demolition, electrical, plumbing, fixtures and finishes, floor covering replacement and related improvements at Twin Lakes Recreation Center locker rooms. All is specified in construction documents provided by Cripe Architects and Engineers dated and stamped on June 16, 2017.

ATTACHMENT B
"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

ATTACHMENT C
"NON-COLLUSION AFFIDAVIT"

STATE OF _____)
) SS:
COUNTY OF _____)

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.

Fox Construction Company, Inc.

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

ATTACHMENT D
"COMPLIANCE AFFIDAVIT
REGARDING INDIANA CODE CHAPTER 4-13-18
DRUG TESTING OF EMPLOYEES OF PUBLIC WORKS CONTRACTORS"

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 undersigned is duly authorized and has full authority to execute this Affidavit.
3. 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.
4. The undersigned certifies that Contractor's submitted written plan for a drug testing program to test employees of the Contractor and Subcontractor for public works projects with an estimated cost of $150,000 is in accordance with Indiana Code 4-13-18 as amended.
5. The undersigned acknowledges that this Contract shall be subject to cancellation should Contractor fail to comply all provisions of the statute.

_____
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

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: C-13 Date: 8/16/2017

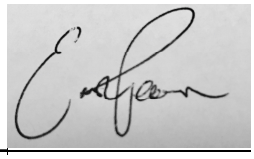
Administrator Review\Approval PM

TO: Board of Park Commissioners
FROM: Erik Pearson- Program/Facility Coordinator-Banneker Community Center
DATE: August 22, 2017
SUBJECT: **REVIEW/APPROVAL of Addendum to Agreement between Bloomington Parks and Recreation and Chef for Hire for Banneker Food Service Program**

Recommendation
Staff recommends the approval of the addendum of the agreement between Bloomington Parks and Recreation and Chef for Hire as it concerns the 2017 Banneker Food Service Program.

Background
Prior to beginning the 2017 Banneker Camp summer program, BPRD entered into an agreement with Chef for Hire to provide meals for the food service portion of the program. That agreement, based on previous year's projections, was for $14,000. Due to a substantial increase in attendance numbers, more meals were ordered, which resulted in Banneker going past the $14,000 previously agreed upon. This addendum wishes to change that $14,000 to not to exceed $20,000 in order to accommodate for the added meal costs due to the increased attendance during the 2017 program.

RESPECTFULLY SUBMITTED,



Erik Pearson
Program/Facility Coordinator-Banneker Community Center

ADDENDUM
TO
AGREEMENT BETWEEN
CITY OF BLOOMINGTON
PARKS AND RECREATION DEPARTMENT
AND
CHEF FOR HIRE
FOR
BANNEKER SUMMER FOOD SERVICE PROGRAM

(Entered in this _____ day of _____, 2017)

WHEREAS, on **April 25, 2017**, the City of Bloomington Department of Parks and Recreation (the "Department") and Chef for Hire ("Contractor") entered into an Agreement for Banneker Summer Food Service Program ("Agreement"); and

WHEREAS, the Department served more children during the summer of 2017 which resulted in serving additional meals for summer food service program; and

WHEREAS, serving additional meals increased the compensation agreed upon in the Agreement; and

WHEREAS, the City wishes to make changes to the Agreement regarding the compensation; and

WHEREAS, pursuant to Article 25 of said Agreement, Agreement may be modified only by a written amendment signed by both parties.

NOW, THEREFORE, the parties hereto mutually agree as follows:

Article 1. Compensation: To amend the Agreement to reflect changes in the compensation from not to exceed Fourteen Thousand Dollars ($14,000) to not to exceed Twenty Thousand Dollars ($20,000).

Article 2. Modification: All other terms of the original Agreement (entered in on April 25, 2017) are still intact. Any other modification to said Agreement shall be in writing per Article 25 of said Agreement.

IN WITNESS WHEREOF, the parties execute this Amendment to the Agreement on the date first set forth.

CITY OF BLOOMINGTON

_____
Paula McDevitt, Director
Parks and Recreation Department

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

_____
Phillippa M. Guthrie, Corporation Counsel

CHEF FOR HIRE

_____
Monty Degenhardt, Owner

AGREEMENT
BETWEEN
CITY OF BLOOMINGTON
PARKS AND RECREATION DEPARTMENT
AND
CHEF FOR HIRE
FOR
BANNEKER SUMMER FOOD SERVICE PROGRAM

This Agreement, entered into on this First day of June, 2017, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Chef for Hire ("Consultant"),

WITNESSETH:

WHEREAS, the Department wishes to vend summer meals for summer food service program; and

WHEREAS, the Department requires the services of a professional consultant in order to perform the development of meals to follow State guidelines (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 <u>June 5, 2017</u> – <u>July 28, 2017</u> 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
<u>Erik Pearson</u> 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. <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"). 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 Fourteen Thousand Dollars ($14,000). Consultant shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to:

Erik Pearson
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. 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 7. 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 8. 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 9. 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 10. 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 11. 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 12. 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 13. 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 14. 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 15. 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 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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 22. 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 23. Notices

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

Department:		**Consultant:**
City of Bloomington		Chef for Hire
Attn: Erik Pearson		Monty Degenhardt
401 N. Morton, Suite 250		P.O. Box 441596
Bloomington, Indiana 47402		Indianapolis, IN 46244

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

Article 24. 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 25. 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 26. 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

CHEF FOR HIRE

_____
Monty Degenhardt, 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**:**

Delivery and use of three refrigerators for the length of the contract

Delivery of meals two times per week during length of contract

Compliance with all Summer Food Service regulations regarding menu planning and nutritional components

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.

Chef For Hire

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-14 Date: 8/17/2017

Administrator Review\Approval PM

TO: Board of Park Commissioners
FROM: Barb Dunbar, Operations Coordinator
DATE: August 22, 2017
SUBJECT: Review/Approval of Mid-Service Contract with Umphress Masonry, Inc

Recommendation

Staff recommends the review/approval of a Mid-Service Contract with Umphress Masonry, Inc. The contractor will make tuckpoint repairs to the South wall of Rose Hill Cemetery and perform cleanup of loose debris caused by repair work. Work will not begin until after August 23, 2017 and be completed by September 30, 2017.

Background

This 1,525' stretch of wall is part of the original structure constructed by the WPA in 1936, about 44 years after the establishment of the Cemetery in 1892. Over the years, repairs have been made to the wall to maintain the structure's original integrity. It is our intention to continue making these necessary annual contractual tuckpoint repairs as well as stone masonry and stone cap repairs to the wall as budgeted funds will allow.

These ongoing repairs will be crucial for the preservation of the wall and its future existence, allowing it to remain as a viable piece of history in the Bloomington Community.

RESPECTFULLY SUBMITTED,

Barbara J. Dunbar

AGREEMENT
BETWEEN
CITY OF BLOOMINGTON
PARKS AND RECREATION DEPARTMENT
AND
UMPHRESS MASONARY, INC.
FOR
ROSE HILL CEMETERY WALL REPAIRS

This Agreement, entered into on this ____ day of August, 2017, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Umphress Masonry, Inc. ("Consultant").

WITNESSETH:

WHEREAS, the Department wishes to make repairs to the South wall of Rose Hill Cemetery; and

WHEREAS, the Department requires the services of a professional consultant in order to perform tuck-point work and repairs; 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, 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 Barb Dunbar, Operations Coordinator 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 Five Thousand Dollars, ($5,000.00). Consultant shall submit an invoice to the Department upon the completion of the Services described in Article 1. 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.

The invoice shall be sent to:

Barb Dunbar, Operations Coordinator
City of Bloomington
401 N. Morton, Suite 250
Bloomington, Indiana 47404

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

Article 5. Appropriation of Funds

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

Article 6. Schedule

Consultant shall 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.

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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.

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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.

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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.

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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").

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

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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.

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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.

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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.

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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		Umphress Masonry, Inc.
Attn: BARB DUNBAR, Ops Coord		Attn: Dave Umphress
401 N. Morton, Suite 250		8383 W. Hinds Road
Bloomington, Indiana 47402		Bloomington, IN 47403

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.

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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.

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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 **UMPHRESS MASONRY**

_____ _____
Philippa M. Guthrie, Corporation Counsel Dave Umphress, 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**:**

Tuckpoint repairs to the South wall, (along 3rd St), of Rose Hill Cemetery.
Clean-up of all loose debris resulting from repair work.

EXHIBIT B

"Project Schedule"

Work will not begin before August 23, 2017 and will be completed by September 30, 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.

Umphress Masonry, Inc.

By: _____
Dave Umphress, Owner

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-15
Date: 08/18/2017

Administrator
Review\Approval
PM

TO: Board of Park Commissioners
FROM: John Turnbull, Division Director Sports
DATE: **August 16, 2017**
SUBJECT: **Addendum to Agreement with Baker Stone Work from May 2017**

Recommendation
Staff recommends approval of this addendum. The source of funds for these projects is the Parks Bond: 977-18-180000-54510 $1,600

Background
This addendum is part of the service contract with Baker Stone Work approved earlier in 2017 that totaled $20,400. During repairs by the contractor, it was found that an additional emergency exit door located on court 5 needs to be replaced. The specifications are to remove the old door frame and door and replace with new door frame and door. The installation by the contractor will include new crash bar and latch. The total of this addendum is $1,600. Emergency Exit sign will be furnished and installed by Parks and Recreation Operations staff if needed.

RESPECTFULLY SUBMITTED,

John Turnbull, Division Director Sports

ADDENDUM
TO
AGREEMENT BETWEEN
CITY OF BLOOMINGTON
PARKS AND RECREATION DEPARTMENT
AND
BAKER STONE WORK
FOR
TWIN LAKES RECREATION CENTER

(Entered in this _____ day of _____, 2017)

WHEREAS, on **April 25, 2017**, the City of Bloomington Department of Parks and Recreation (the "Department") and Baker Stone Work ("Contractor") entered into an Agreement to repair wall systems to watertight envelope at Twin Lakes Recreation Center ("Agreement"); and

WHEREAS, the Contractor recommended replacing of emergency exit door/frame located on court 5 by roll-up door; and

WHEREAS, replacing said door will result in additional cost of One Thousand Six Hundred and Zero Cents ($1600.00); and

WHEREAS, the Department wishes to replace said door; and

WHEREAS, pursuant to Article 4 of said Agreement, additional Services or changes in the Services not agreed upon in the Agreement must be authorized in writing by the Department prior to such work being performed or expenses incurred.

NOW, THEREFORE, the parties hereto mutually agree as follows:

Article 1. Compensation: To amend the Agreement to reflect the additional charge of not to exceed One Thousand Six Hundred and Zero Cents ($1600.00).

Article 2. Modification: All other terms of the original Agreement (entered in on April 25, 2017) are still intact. Any other modification to said Agreement shall be in writing per Article 26 of said Agreement.

IN WITNESS WHEREOF, the parties execute this Amendment to the Agreement on the date first set forth.

CITY OF BLOOMINGTON

_____
Paula McDevitt, Director
Parks and Recreation Department

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

_____
Phillippa M. Guthrie, Corporation Counsel

Baker Stone Work

_____
Charley Nelson

_____
Title

August 6, 2017

Dear Mr. Coyne, Ms. Fawcett, Prof. Hoffman, and Ms. Mills,

We are a group of Bloomington residents who are concerned about the plan to re-authorize the sharpshooting of deer in Griffy Park for the winter of 2017-18 **given the current lack of knowledge of deer densities possessed by the City of Bloomington.** As you no doubt recall, a similar plan to hire the White Buffalo company to sharpshoot up to 100 deer in the GLNP failed in the winter of 2014-15. ERAC and Parks Officials blame this failure on a high acorn mast, but we think the failure could also have been due to **few deer in the GLNP** (more on this below). Given our epistemic situation, it would be wise public policy to get an accurate, aerial count of the number of deer in Griffy Park before proceeding with another deer kill authorization.

Many of us in the community, including people like Michael Enyeart who lives near and hikes in Griffy daily, had another, simpler answer for the previous deer kill's failure: There just aren't very many deer in Griffy Park. Observational evidence from seasoned hunters and hikers like Enyeart attests to an historically small deer population in Griffy. Based on his experience of tracking deer with the aid of his dog, Enyeart estimates that there are only about 28 deer living in Griffy Park.

The Shelton study published in 2014, which formed the basis of the previous deer kill plan, *assumes* deer overpopulation in Griffy Park, rather than proving it. Pellet counts were the sole means used in this study to measure deer abundance in Griffy, but Dr. Shelton herself admits they are controversial: "it is difficult to accurately estimate actual deer densities from pellet counts due to variations in defecation rates depending on food quality and decomposition rates depending on temperature and moisture" (p. 40).

Further, in an email from Dr. Shelton to Parks staffer Steve Cotter and City Council Member Dave Rollo (sent April 17, 2013, and uncovered via a Public Records Request), Dr. Shelton raised her own concerns about relying on the pellet counts that she had done in the IURTP as a metric of deer population in Griffy: "A more accurate estimate for the Griffy

Woods area would need to cover the entire property … I think this is definitely worth considering for next year to get a more accurate assessment of the deer herd size in the Griffy Woods area. I'd be willing to lead the project if the City was willing to fund it."

Unfortunately, **this wider pellet count was never done**, and so we still do not have an accurate estimate of deer population in Griffy Park. Nonetheless, ERAC is pressing for another deer kill attempt, without any additional information on deer densities in the GLNP.

We urge the Parks Board and Commissioners to mandate a count of the deer in Griffy before proceeding with a second, possibly ill-fated deer kill attempt in Griffy Park. Since the Parks Department did not spend all of the $31,000 allotted for the White Buffalo contract, some of the money already set aside could be spent to hire this same company to do an accurate aerial count this winter of the Griffy deer. The count would cost approximately $5K.

The count might show low-to-moderate deer densities, which, are actually beneficial for plant diversity in forests. According to a recent peer-reviewed study by Dr. Cook-Patton (2014) titled "Positive interactions between herbivores and plant diversity shape forest regeneration," low-to-moderate deer densities (3-8/km^2; or 10-15/mile^2) is actually good for forest biodiversity. For a brief account of this study see:

http://www.wired.com/2014/04/deer-biodiversity/

In the Cook-Patton study aerial counts were used to gain an accurate measure of deer densities. There are also deer management programs—like that at Iowa City, Iowa, that use aerial counts to determine, each year, whether a sharpshoot is needed to achieve their specific goal of 25 deer/mile^2.

A major objection to our recommendation of a count would be that it doesn't matter how many deer live in Griffy, for the effects they are having on native plants is all that matters, and those effects are clearly negative.

In response, we would say that it obviously matters that there be at least one deer living in Griffy in order to attribute plant degradation to deer. More seriously, however, if we don't have an accurate estimate of how many deer live in Griffy it is difficult to attribute differences, say, between the number and height of wildflowers in Brown County State Park or Morgan-Monroe State Park and Griffy to deer browsing, rather than to weather conditions, soil differences, differential human use, rabbit browsing, etc.

Dr. Shelton and others would likely claim that the *exclosures* used in the 2014 study show decisive evidence of specifically *deer* browsing as the cause of plant degradation. However, with respect to effects of deer on plant species diversity, the Shelton study itself is not decisive. It reports: "We recorded a total of 123-144 plant species each spring between 2009-2012. In each year exclosure plots averaged 2-3 more species than control plots, but differences in species richness were statistically significant only in 2009 and 2011." (p. 43). That is, differences in the biodiversity of plant species were only statistically significant in 2 out of 4 years studied. However, the article continues, "The total cover of spring vegetation did not differ between exclosures and controls in any year" (p. 44). In short, the evidence that deer are causing a diminishment in species richness in Griffy—according to the Shelton study itself--is far from decisive.

Further, the latest letter to the Parks Board from ERAC--which also assumes rather than shows deer overpopulation in Griffy--cites the fact that tree seedling recruitment was up in 2015 from 2014. This might be taken as a sign of no deer overpopulation, but it is univocally interpreted by ERAC as only a sign of increased acorn mast. For ERAC, it seems that the axiom of deer overabundance in Griffy constitutes an unfalsifiable claim. A count would either confirm or disconfirm this claim. In either case, Bloomington would finally have some hard evidence of whether or not there is deer overpopulation in the GLNP. ERAC's historic resistance to a count shows that perhaps they are afraid that their claim of deer overabundance may be disconfirmed. We say, let's get the facts before proceeding with another perhaps futile kill attempt.

In sum, we urge the Bloomington Parks Board and Commissioners to put Bloomington on a solid evidence-based footing for deer management in Griffy park, and to (a) decide on the desired deer density for forest health, and (b) get an aerial count before proceeding with any deer management plan to see where we really stand with respect to the Griffy deer population.

Thank you for your careful consideration of our views.

Sincerely,

Julie Gray
Maria Heslin
Sandra Shapshay
Anne Sterling
Steven Wagschal