CITY OF BLOOMINGTON
parks and recreation

AGENDA

City of Bloomington Board of Park Commissioners
Regular Meeting: Tuesday, December 12, 2017 4:00 – 5:30 p.m.

Council Chambers
401 N. Morton St.

CALL TO ORDER - ROLL CALL

A. CONSENT CALENDAR

A-1. Approval of Minutes of November 28, 2017
A-2. Approval of Claims Submitted November 29, 2017 – December 11, 2017
A-3. Approval of Non-Reverting Budget Amendments
A-4. Review of Business Report
A-5. Declaration 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 ground lease with South Central Indiana Housing Opportunities	(Paula McDevitt)
C-2	Review/Approval of BCTM Partnership Agreement	(Paula McDevitt)
C-3.	Review/Approval of Resolution 17-06 for the purchase of property owned by Dagom Gaden Tensung Ling Monastery.	(Paula McDevitt)
C-4.	Review/Approval of purchase of electric power trail utility vehicle	(Mark Marotz)
C-5.	Review/Approval of partnership Agreement with Mother Hubbards Cupboard	(Robin Kitowski)
C-6.	Review/Approval of partnership Agreement with Hilltop Gardens	(Robin Kitowski)
C-7.	Review/Approval of partership Agreement for Plant A Row for the Hungry	(Robin Kitowski)
C-8.	Review/Approval of lease agreement with Center for Sustainable Living	(Steve Cotter)
C-9.	Review/Approval of contract with Interpretive Ideas	(Steve Cotter)
C-10.	Review/Approval of 2018 service agreements for Recreation Division (3)	(Becky Higgins)
C-11.	Review/Approval of contract with Izzy's Rentals	(Bill Ream)
C-12.	Review/Approval of contract template for concession vendors	(Bill Ream)
C-13.	Review/Approval of contract template for Farmers' Market vendors	(Marcia Velman)
C-14.	Review/Approval of services agreements (2) for Recreation Division	(Erik Pearson)
C-15.	Review/Approval of partnership agreement with Bloomington Junior League Baseball Association	(Dee Tuttle)
C-16.	Review/Approval of Consultant Contract Amendment #2 and LEED Consultant Contract for Switchyard Park	(Dave Williams)

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

D. REPORTS

D-1.	Operations Division	-	No Report	
D-2.	Recreation Division	-	No Report	
D-3.	Sports Division	-	Aquatics Annual Rport	(Chelsea Price)
D-4.	Administration Division	-	No Report	

ADJOURNMENT

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

CITY OF BLOOMINGTON
parks and recreation

A-1
12-12-2017

Board of Park Commissioners
Regular Meeting
Minutes

Tuesday, November 28, 2017
4:00 p.m. – 5:30 p.m.

Council Chambers
401 N. Morton

CALL TO ORDER
The meeting was called to order by Ms. Kathleen Mills at 4:02 p.m.

Board Present: Mr. Joe Hoffman, Ms. Kathleen Mills and Ms. Darcie Fawcett

Staff Present: Paula McDevitt, Dave Williams, John Turnbull, Becky Higgins, Julie Ramey, Kim Clapp, Mark Marotz, Sarah Owen, Leslie Brinson, Hannah Brock, Lee Huss, Elizabeth Tompkins, Crystal Ritter, and Barb Dunbar

A. PUBLIC HEARINGS/APPEARANCES

A. CONSENT CALENDAR
A-1. Approval of Minutes of October 24, 2017 Meeting
A-2. Approval of Claims Submitted October 21, 2017 through November 17, 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 Hoffman seconded the motion. Motion unanimously carried.

B. PUBLIC HEARINGS/APPEARANCES

B-1. Public Comment Period – None

B–2. Bravo Award – Bloomington Rotary Club
Ms. Sarah Owen, Community Relations Coordinator, Bloomington Parks and Recreation Department (BPRD) would like to recognize the Bloomington Rotary Club for both their financial and hands-on assistance with a tree planting project in Crestmont Park. The Rotary Club purchased and generously donated, 25 of the 34 trees planted during this project. The Club's volunteer crew was hardworking and efficient. With their assistance, the tree planting was completed ahead of schedule.

BPRD has a longstanding relationship with the Bloomington Rotary Club, and would like to present them with the November BRAVO Award. BPRD appreciates the Club's efforts in improving the quality of life in the community, and congratulates the Club on their 2018 centennial celebration. Ms. Owen invited the Rotary Club's representatives to the podium, Mr. Loren Snyder, Ms. Ann Connors and Ms. Kim Gray.

Mr. Loren Snyder approached the podium and thank the department for the recognition. The Club has more trees to plant. Approximately 120 throughout the year, representing the 120 members of the club. Ultimately the Rotary Club wants to plant 1.2 million trees throughout the world, as part of Ian Riseley, Rotary International President's goal. Hopeful Mr. Riseley will be in Bloomington to plant the 120th tree to recognize our club's centennial.
The Board thanked the Rotary Club for their support of BPRD.

B-3. Parks Partner Award – None
Ms. Sarah Owen, Community Relations Coordinator, Bloomington Parks and Recreation would like to recognize CFC, INC. as the recipient of the Fall-Winter 2017 Park Partner Award. The Park Partner Award is a component of the Department's sponsorship program, and recognizes our most outstanding collaborators.

CFC has a long history of supporting the BPRD in a multitude of ways. The company has sponsored children's events, local artists' events, tree planting projects and the Farmers' Market. CFC has been a vital part of the Bloomington Parks Foundation, supporting scholarships for youth and generously hosting BPF events.

BPR is profoundly grateful for all of CFC's support, and truly appreciate the long term partnership with them. We are delighted to present CFC, Inc. with the Park Partner Award. Ms. Owen invited CFC representative Mr. Jim Murphy to the podium.

Mr. Jim Murphy approached the podium and thanked the Board for this honor. CFC loves the BPRD, we've been partners for many years, from planting trees to sponsoring scholarships, and the Farmers Market. Many years ago we co-sponsored a landscape area at Twin Lakes Recreation Center with PSI Energy. The Board of Park Commissioners, Ms. McDevitt and her staff do a wonderful job. On behalf of the CFC employees we appreciate this award.

The Board thanked Mr. Murphy for his and CFC's support and contributions to the Department.

B-4. Staff Introduction - None

C. OTHER BUSINESS

C-1. Review/Approval of the 2018 Proposed Non-Reverting Fund Budget Request
Ms. Paula McDevitt, Administrator, the Non-Reverting Fund was established as an "enterprise fund" and is developed with a zero-based budget model. The fund allows flexibility to meet customer interest and reduces reliance on the General Fund tax base. The fund incorporates input from staff specialist, supervisors, coordinators, managers and division directors.

Ms. McDevitt presented 2018 Non-Reverting Budget.
Category 1 – Personnel increase of $44,652 (9%)
Increase in full time ($2,759) and seasonal ($40,062) wages
Category 2 – Supplies – decreased $8,202 (2%)
Decrease in agricultural supplies (golf $3,000), other repairs/maintenance (Farmers' Market $1,000) and other supplies (Twin Lakes Recreation Center and 50+ Expo $3,400)
Category 3 – Other Services – increase of $112,414 (10%)
Instruction (Community Events $1,607) Printing (Kid City, TLRC, and Community Gardens $7,305) Principle (TLRC Revenue Bond $240,000) Interest (TLRC Revenue Bond $106,689)

The Park Commissioners approved Resolution 17-05 to refund the 2009 Bonds, which is expected to have a gross savings of $350,000. The net present value of those savings is $290,000. Total Non-reverting fund request is $2,153,490 which is an increase of $148,864. Projected revenue is $2,011,610 resulting in a deficit of $141,880. Non-verting balance as of 1/1/17 was 2,352,227, balance as of 11/14/17 is $2,066,133. All Twin Lakes Recreation Center bond payments have been made.

The Board commented it seems we are doing okay, but we are facing some slippage in meeting cost that comes out of the Non-reverting fund. The situation will not create any problems in the next couple years, but could create issues farther down the road. We know the membership dollars are not going back to the 2010 numbers, plus there is the loss of fitness revenue.

Ms. McDevitt responded, optimistically we would like to see the membership number increase. It is a tough

market. Staff is currently researching memberships and looking at target markets. Where do the current members come from and where did the members previously come from, and create a strategy around that information. Looking at how to be more creative with the spaces in the facilities. How to possibly bring in other activities to generate additional revenue. Zeroing in on the membership and see where we can grow the market.

The Board commented, these are all good ideas. We just need to be cautious, as it is the Non-reverting fund that allows us to deal with unexpected expenses and low revenue years. Obviously if the balance dropped another $300,000 next year, it doesn't take long for the 2 million to become problematic. Especially since we have a bond issue and payments that need to be made. We have to make sure we protect the General Fund. If we have another year like the past year, and the balance goes down another few hundred thousand. It would be prudent on our part, to look at ways to grow revenue or cut cost, and probably cutting cost would be the way we would have to go.

Ms. McDevitt responded we spend a significant amount of time studying the data, revenue and expenses. Staff at Twin Lakes Recreation Center does a really good job of containing their cost.

The Board commented, if we do not see the revenue side going back up, there may come a time we have to look at cutting cost department wide. The decreases are not huge, but is something we need to monitor, and why these reports are so important. Will the Non-reverting fund be used to cover the expense of the solar panels, and is this cost reflected in the 2018 budget?

Ms. McDevitt invited Mr. Jeffrey Underwood, City Controller to the podium.

Mr. Underwood responded we are currently engaged in an energy saving contract audit. The first phase is the solar project. Under Indiana statue, those projects must have a positive cash flow over a 20 year period. Typically what happens, is the saving ramps up over time. You will have some net deficient in the earlier years. We are closing with Bank of America on all of our solar projects. Approximately fourteen million dollars total, and the BPRD is a big part of the project. The first payment has been delayed until November 2018. The payments were pushed out as far as possible, since the budgets were completed well before the cost was known. We are trying to minimize the Parks portion, from the facilities that are within TIF districts. It is anticipated, facilities that fall within the TIF areas, the payments will be made from those funds. In addition, we have been working on the capital side to reduce long term operational cost. Obviously with TLRC, there is a huge foot print and high energy usage. TLRC's roof has been replaced and solar panels installed. We are looking at other cost saving projects, not only at TLRC, but at other Parks facilities. Focusing on projects that make since from a payback stand point. Reducing the footprint, because utilities are one of the biggest cost.

The Board inquired, what the payment will be in 2018, so we can anticipate how low the Non-reverting fund will reduced.

Mr. Underwood responded, I do not have that number at this time. The numbers are being finalizing. We will be able to present the amortization schedule for the full 20 years at the next Board meeting. As well as a cash roll-up, that looks at the accumulative pay back.

The Board commented, we are in favor of the energy saving, knowing it will be revenue positive in the long run. The Non-reverting fund is our rainy-day fund. It is what allows us to be confident in going forward with programs like the purchase of Twin Lakes Recreation Center. Having the NR fund, means we know the tax payers will not be responsible for paying those bills back. We are just trying to get a handle on how much the fund will be depleted, before it starts to grow back as the energy savings goes on line.

Mr. Underwood responded to give you a comparison of the rest of the City. The cash balance BPRD has, is a one-to-one coverage. The City's General fund, the largest operating account, has a coverage of four months. BPRD Non-reverting fund, is the best fund the City has for coverage. The Government with Finance Officer Association recommends a 2 months coverage. We are very pleased with the BPRD fund, and would like to see it remain at the current balance. The City's General Fund does not have that kind of reserve, and it is very important to protect the general fund. We will do everything we can to help maintain the BPRD Non-reverting balance.

The Board commented, at the moment, where we are is fine. Even if there is a slight decrease next year, due to the solar project and trying to turn the numbers around at TLRC. In a year from now, if the balance is down another 1.6 or more, we will have to take a hard look at what to do. That is a trend we do not want to see continue.

The Board inquired, if TLRC has explored partnership arrangements? Some individuals have memberships through their health insurance.

Ms. McDevitt responded, staff will be identifying all of the target markets and fold that in with the process.

Ms. Darcie Fawcett motioned to approve the 2018 Non-Reverting Fund Budget. Mr. Joe Hoffman seconded the motion. The motion was unanimously carried.

C 2. Review/Approval of Mobile Stage, Special Events and Alcohol Permits

Ms. Crystal Ritter, Community Events Coordinator, staff recommends the approval of the 2018 applications for special event permits, B-Line special event permit, mobile stage rental and alcohol guidelines. Updates to the applications and permits include: the Legal Department requested removing the requirement for liability insurance on the B-line and special event permit applications. Updates were made to names of staff and contact information. Updates were made to the contracts for parade permits and approval, as the Economic and Sustainable Development Department now handles these and not Public Works. Updates to prices as approved in the 2018 Price Schedule.

Ms. Darcie Fawcett motioned to approve the 2018 Mobil Stage, Special Events and Alcohol Permits. Mr. Joe Hoffman seconded the motion. The motion was unanimously carried.

C-3 Review/Approval of Mid-Service Contract with Snider Recreation, Inc.

Ms. Barb Dunbar, Operations Coordinator, due to age, the Department wishes to replace a fitness station located at Bryan Park. The Department requires the services of a qualified vendor to order equipment, install concrete footers, install and surface mount the equipment to the footers, add 2" of crusted stone and provide dumpsters and dispose of packing materials. Staff recommends the approval of this contract with Snider Recreation, Inc. in the amount of $31,760.00. This project will be funded by the Bloomington Parks Foundation, which received a generous donation in the memory of Dr. Donald Martin.

Ms. Darcie Fawcett motioned to approve the contract with Snider Recreation, Inc. Mr. Joe Hoffman seconded the motion. The motion was unanimously carried.

C-4 Review/Approval of Eleven Service Agreements.

Ms. Barb Dunbar, Operations Coordinator, the Department wishes to manage emergency and/or standard repairs, services and maintenance, while meeting all public work project requirements. The Department requires the services of qualified vendors to provide routine/emergency repair, routine/emergency maintenance of existing structures, buildings or real property. Staff recommends the approval of service agreements with Big Dipper, Bruce's Welding, Cassady Electrical, Harrell Fish, J&S Locksmith, Professional Contracting, Woods Electric, Izzy's Rental (2), and Monroe Tuff-Jon (2).

Board inquired why there were two agreements with Monroe Tuff-Jon and Izzy's.

Ms. Dunbar responded, one agreement is for the rental of port-a-lets and the second agreement if for the cleaning and pumping of permanent fixtures and/or Park owned port-a-lets. We are slowly purchasing the port-a-lets. Parks will eventually own all the port-o-lets, which will create a financial saving.

Ms. Darcie Fawcett motioned to approve the eleven service agreements for Operations Division for 2018. Mr. Joe Hoffman seconded the motion. The motion was unanimously carried.

C-5 Review/Approval of Contract for Winter Hazardous Tree Removals

Mr. Lee Huss, Urban Forester, the Department wishes to remove thirteen hazardous trees in public areas around the City. Due to the location of nearby electric services and private infrastructure, the Department requires the services of a professional consultant in order to remove seven Ash trees, 3 Silver Maples, 3 Sugar Maples and prune one Red Maple tree. Staff recommends the approval of the contract with Bluestone Tree Services, LLC in the amount of $18,000.

Ms. Darcie Fawcett motioned to approve the contract with Bluestone Tree Service, LLC. Mr. Joe Hoffman seconded the motion. The motion was unanimously carried.

C-6 Review/Approval of Contract with City Glass of Bloomington

Mr. John Turnbull, Division Director Sports, due to age and condition, the Department wishes to replace a handicap restroom door at Winslow Sports Complex. The Department requires the services of a professional consultant to demolish existing door and frame, install fiberglass reinforced polyester face door, and install hardware. This project was previously award to Neidigh and then to Tommy D's, neither company signed their contract. Staff recommends the approval of the contract with City Glass of Bloomington in the amount of $4,025.00. This is a General Fund project.

Ms. Darcie Fawcett motioned to approve the contract with City Glass of Bloomington. Mr. Joe Hoffman seconded the motion. The motion was unanimously carried.

C-7 Review/Approval of Contract with C&H Lawn & Landscaping Addendum

Mr. John Turnbull, Division Director Sports, it was discovered during the installation of the Winslow irrigation project, additional irrigation is required to adequately water the infield at Winslow Sports Park. Staff recommends approval of this addendum of $8,249 to the original contract for $89,986.60 with C&H Lawn & Landscaping.

The Board inquired if this had been included in the original drawings, would the cost have been about the same.

Mr. Turnbull responded, there is no way of knowing. Normally, it is more cost effective to have everything included in the original bid. This company was the low bidder by 25%. They are half way through the project and we are very satisfied with the work they are doing.

Ms. Darcie Fawcett motioned to approve the addendum with C&H Lawn Landscaping. Mr. Joe Hoffman seconded the motion. The motion was unanimously carried.

C-8 Review/Approval of Contract for Services with Clark Excavating

Mr. John Turnbull, Division Director Sports, for the new irrigation system at Winslow Sports Park to work optimally, a greater water flow is required. The Department requires the services of a professional consultant to perform increasing the irrigation main water feed from a 2" to a 3" feed. Quotes were solicited, all contractors with the exception of Clark Excavating stated they were overcommitted. Staff recommends approval of this contract with Clark Excavating in the amount of $7,000. This project is funded from the Parks Bond 977-18-180000-54510 series B.

The Board commented, due to the booming construction occurring in the City, it is becoming more difficult to find contractors. It may be beneficial to take every opportunity, and try get on contractors list well in advance of projects.

Ms. Darcie Fawcett motioned to approve the contract with Clark Excavating. Mr. Joe Hoffman seconded the motion. The motion was unanimously carried.

C-9 Review/Approval of Agreement with Bruce Wilds Security for Griffy Lake Nature Preserve Deer Cull

Mr. Steve Cotter, Natural Resources Manager the Department wishes to secure designated areas of Griffy Lake Nature Preserve during the deer cull. The Department requires the services of a professional consultant to provide security during the project, including patrolling the perimeter of the park and informing the public of the park closure. Staff recommends approval of this contract with Bruce Wilds Security in the amount of $4,650.00.

The Board inquired is this the same company previously used?

Mr. Cotter responded, yes. It is the same company, and one the Department has used on numerous occasions.

The Board commented this is at the same time as the State Parks deer cull. Brown County State Park was not on this year's list. So they must have felt, they have achieved the equilibrium they were seeking.

Mr. Cotter responded, they were not on the list. Brown County State Park has a system, where they determine yearly if another cull is necessary. Apparently it was not needed this year.

The Board commented, this is where we are heading. This will become something we monitor, and decide on an annual basis whether we will try it again.

Mr. Cotter responded, yes, that is correct.

The Board inquired, will this take place in January?

Mr. Cotter responded, it will be earlier then January.

Ms. Darcie Fawcett motioned to approve the contract with Bruce Wilds Security. Mr. Joe Hoffman seconded the motion. The motion was unanimously carried.

C-10 Review/Approval of 2018 Price Schedule

Ms. Paula McDevitt, Administrator staff is seeking final approval of the 2018 Price Schedule. This document was presented to the Board for review at the October meeting. Staff is available to answer any questions regarding price changes.

Ms. Darcie Fawcett motioned to approve the 2018 Price Schedule. Mr. Joe Hoffman seconded the motion. The motion was unanimously carried.

D REPORTS

D-1. Operations Division – No Report

D-2. Recreation Division – No Report

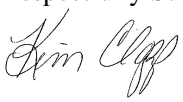
D-3. Sports Division – No Report

D-4 Administrative Division – No Report

ADJOURNMENT

Meeting adjourned at 4:51 p.m.

Respectfully Submitted,



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Kim Clapp, Secretary Board of Park Commissioners

CITY OF BLOOMINGTON

Journal Fund Summary Report

Department	Number	Journal Type	Sub Ledger	G/L Date	Description	Source	Reference	Reclassification Journal Type
Parks - Parks & Recreation	2017-00018100	BA	GL	12/06/2017	budget adjustment			

G/L Date		Description	Increase Amount	Decrease Amount	Balance Sheet	Revenues	Expenses
12/06/2017	201	Parks and Rec Non Reverting	480.00	480.00	0.00	0.00	0.00
		Journal 2017-00018100 Totals:	$480.00	$480.00	$0.00	$0.00	$0.00

Journal Edit Listing

Sort By Entry

Department	Number	Journal Type	Sub Ledger	G/L Date	Description	Source	Reference	Reclassification Journal Type
Parks - Parks & Recreation	2017-00018094	BA	GL	12/06/2017	budget amendment			

G/L Date	*G/L Account Number*	*Account Description*	*Description*	*Source*	*Increase Amount*	*Decrease Amount*
12/06/2017	201-18-184500-53830	Bank Charges	budget amendment		100.00	.00
12/06/2017	201-18-184501-53990	Other Services and Charges	budget amendment		100.00	.00
12/06/2017	201-18-186502-52420	Other Supplies	budget amendment		925.00	.00
12/06/2017	201-18-187500-51210	FICA	budget amendment		16.00	.00
				Number of Entries: 4	$1,141.00	$.00

REVENUES AND EXPENSES: COMPARISON REPORT								
Expenses	**2016**	**2016**	**2016**	**2016**	**2017**	**2017**	**2017**	
November 2017	**Total**	**Actual**	**Expenses**	**% of Expenses**	**Total**	**Expenses**	**% of Expenses**	
	Expense	**Expenses**	**as of**	**Spent**	**Expense**	**as of**	**Spent**	**%**
	Budget	**for Year**	**November**	**to date**	**Budget**	**November**	**to date**	**change**
General Fund								
Administration	648,362	798,040	747,595	93.68%	750,594	707,858	99.60%	**-5.32%**
Health & Wellness	102,982	70,857	66,775	0.00%	105,197	91,080	63.48%	**36.40%**
Community Relations	398,972	360,703	311,294	86.30%	423,303	349,011	73.54%	**12.12%**
Aquatics	336,870	297,289	288,014	96.88%	330,688	284,571	86.05%	**-1.20%**
Frank Southern Center	346,391	304,193	247,384	81.32%	341,117	297,307	87.16%	**20.18%**
Golf Services	936,904	865,839	807,889	93.31%	885,638	822,141	92.83%	**1.76%**
Natural Resources	354,730	317,745	298,875	94.06%	370,961	304,661	82.13%	**1.94%**
Youth Programs	38,520	36,060	35,352	98.04%	59,844	51,203	85.56%	**44.84%**
TLRC	336,170	284,409	267,660	94.11%	282,216	262,886	93.15%	**-1.78%**
Community Events	355,578	319,994	300,297	93.84%	384,284	320,771	83.47%	**6.82%**
Adult Sports	297,187	264,499	247,316	93.50%	288,431	249,206	86.40%	**0.76%**
Youth Sports	282,128	235,235	222,729	94.68%	267,398	256,393	95.88%	**15.11%**
BBCC	277,467	261,400	247,759	94.78%	304,977	263,780	86.49%	**6.47%**
Inclusive Recreation	94,372	69,226	66,123	95.52%	72,632	69,794	96.09%	**5.55%**
Operations	1,397,965	1,367,298	1,257,113	91.94%	1,546,438	1,305,471	84.42%	**3.85%**
Landscaping	279,879	229,642	212,112	92.37%	283,362	213,939	75.50%	**0.86%**
Cemeteries	181,065	156,776	148,072	94.45%	173,285	153,485	88.57%	**3.66%**
Urban Forestry	359,388	325,950	292,593	89.77%	400,381	356,865	89.13%	**21.97%**
General Fund total:	***7,024,932***	***6,565,155***	***6,064,951***	92.38%	***7,270,746***	***6,360,421***	87.48%	**4.87%**
Non-Reverting Fund								
Administration	24,500	7,223	7,210	99.83%	27,640	3,247	11.75%	**-54.97%**
Health & Wellness	2,596	768	718	93.50%	1,914	1,124	58.72%	**56.46%**
Community Relations	0	137	82	59.70%	4,650	465	10.00%	**0.00%**
Aquatics	74,491	61,780	60,656	98.18%	64,433	38,708	60.08%	**-36.18%**
Frank Southern Center	63,230	84,289	60,738	72.06%	94,423	68,135	72.16%	**12.18%**
Golf Services	125,465	106,010	105,038	99.08%	126,105	95,505	75.73%	**-9.08%**
Natural Resources	15,992	20,643	20,564	99.62%	50,992	22,821	44.75%	**0.00%**
Youth Programs	151,153	172,903	169,084	97.79%	178,521	187,935	105.27%	**11.15%**
*TLRC - day to day	419,054	426,234	478,266	112.21%	541,089	792,732	146.51%	**65.75%**
Community Events	180,489	165,857	146,733	88.47%	190,881	153,526	80.43%	**4.63%**
Adult Sports	282,621	244,073	243,412	99.73%	230,225	181,418	78.80%	**-25.47%**
Youth Sports	18,356	13,697	13,215	96.48%	26,845	40,205	149.77%	**204.24%**
BBCC	21,963	61,163	55,734	91.12%	25,403	0	0.00%	**-100.00%**
Inclusive Recreation	0	0	0	0.00%	0	0	0.00%	**0.00%**
Operations	28,000	17,250	3,075	17.82%	19,195	56,086	292.19%	**100.00%**
Dog Park	0	0	0	0.00%	0	0	0.00%	**0.00%**
Switchyard	14,800	7,540	7,255	96.22%	14,800	28,974	195.77%	**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	9,816	100.00%	4,450	1,320	29.66%	**0.00%**
N-R Fund subtotal:	***1,425,511***	***1,399,385***	***1,381,596***	98.73%	***1,601,566***	***1,672,200***	104.41%	**21.03%**
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***	***1,806,126***	93.17%	***2,031,140***	***2,101,774***	103.48%	**16.37%**
Other Misc Funds								
MCCSC 21st Com Learn Cnt G	29,950	38,880	35,569		29,950	37,472		
G14004 Tree Planting			0					
G14006 Out-of School Prg.		4	62					
G15008 Summer Food Prg.	11,115	13,734	13,734		11,115	17,606		
G15009 Nature Days S/Star			0			4,318		
Griffy Lake Nature Day	0	4,673	4,435	94.90%		5,137	0.00%	**0.00%**
Wapehani I-69 Mitigation	0	42,655	25,090	58.82%		201,075	0.00%	**0.00%**
Leonard Springs Nature	0	5,822	4,748	81.56%		3,841	0.00%	**0.00%**
Banneker Nature Day		3,934	3,934			0		
DNR Grant	0			0.00%		0	0.00%	**0.00%**
Kaboom Play		49	49					
Goat Farm						1,777		
Giffy LARE						17,286		
Other Misc Funds total:	***41,065***	***109,703***	***87,622***	79.87%	***41,065***	***288,510***	702.57%	**0.00%**
TOTAL ALL FUNDS	**9,030,612**	**8,613,347**	**7,958,699**	**92.40%**	**9,342,950**	**8,750,706**	93.66%	**9.95%**
*NR BACC/Project School has been combined with TLRC			* $298,280.63 of TLRC 2017 Exp is for Bloomington Park District Refunding Bonds					

REVENUES AND EXPENSES: COMPARISON REPORT								
Revenues November 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	November	to date	for year	November	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	1,095	100.00%	500	1,526	305.14%	**39.30%**
Community Relations	0	0	0	0.00%	0	0	0.00%	**0.00%**
Aquatics	142,000	172,401	172,401	100.00%	153,500	194,506	126.71%	**12.82%**
Frank Southern	188,000	205,655	152,838	74.32%	219,900	141,551	64.37%	**-7.38%**
Golf Services	561,000	513,807	525,078	102.19%	568,500	548,749	96.53%	**4.51%**
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	11,545	100.00%	10,700	12,340	115.33%	**6.89%**
Adult Sports	79,000	72,075	72,075	100.00%	78,000	63,772	81.76%	**-11.52%**
Youth Sports	40,000	29,565	29,396	99.43%	33,900	28,690	84.63%	**0.00%**
BBCC	10,000	13,389	11,886	88.78%	12,000	10,755	89.62%	**-9.52%**
Operations	0	1,622	1,622	100.00%	0	25	0.00%	**0.00%**
Landscaping	0	0	0	0.00%	0	0	0.00%	**0.00%**
Cemeteries	27,300	34,225	32,625	95.33%	39,700	25,683	64.69%	**-21.28%**
Urban Forestry	0	0	0	0.00%		0	0.00%	**0.00%**
G17011 Urban Forestry						12,000	0.00%	
Subtotal Program Rev	***1,058,425***	***1,055,131***	***1,010,325***	***95.75%***	***1,116,700***	***1,039,596***	***93.10%***	***2.90%***
General Fund Total	***6,748,602***	***6,875,445***	***6,830,639***	***99.35%***	***7,146,750***	***7,069,646***	***98.92%***	***3.50%***
Non-Reverting Fund								
Administration	41,550	40,249	32,866	81.66%	40,650	29,697	73.06%	**-9.64%**
Health & Wellness	3,550	1,367	1,243	90.93%	3,550	2,979	83.90%	**139.70%**
Community Relations	2,000	2,113	2,000	94.67%	4,650	3,000	64.52%	**0.00%**
Aquatics	117,000	120,678	120,423	99.79%	126,373	113,623	89.91%	**-5.65%**
Frank Southern	129,000	138,537	115,324	83.24%	153,400	100,290	65.38%	**-13.04%**
Golf Services	153,000	151,474	132,107	87.21%	151,300	142,337	94.08%	**7.74%**
Natural Resources	59,200	78,233	77,751	99.38%	58,525	70,047	119.69%	**-9.91%**
Youth Programs	158,400	208,903	200,775	96.11%	189,866	212,236	111.78%	**5.71%**
*TLRC -Operational	770,229	750,635	669,448	89.18%	782,329	666,326	85.17%	**-0.47%**
Community Events	171,656	192,373	188,553	98.01%	191,760	207,044	107.97%	**9.81%**
Adult Sports	281,000	251,616	251,407	99.92%	216,500	143,239	66.16%	**-43.03%**
Youth Sports	26,800	23,610	23,578	99.87%	25,000	24,896	99.58%	**5.59%**
BBCC	27,620	65,764	45,532	69.24%	29,420	30,278	102.92%	**-33.50%**
Operations	30,700	132,036	131,888	99.89%	51,640	54,371	105.29%	**-58.77%**
Dog Park	400	0	0	0.00%	400	0	0.00%	**-100.00%**
Switchyard (CCC Propt)	82,800	71,236	65,886	92.49%	82,800	70,450	85.08%	**6.93%**
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	10,439	100.00%	9,300	2,109	22.68%	**-79.79%**
N-R Fund subtotal:	***2,063,805***	***2,239,261***	***2,069,220***	***92.41%***	***2,117,463***	***1,872,920***	***88.45%***	***-9.49%***
Other Misc Funds								
G14006 Out-of-School Prg			15,873			20		
G14007 MCCSC 21st Com			0		60,000	21,410		
G14009 Summer Food Grant			16,145		13,744	19,059		
Kaboom Play Everywhere			500					
Wapehani Mitigation I69			10,187			233,543		
Griffy LAE Veg. Mgt						14,453		
G15008 Leonard Spring						0		
G15009 Griffy Nature Days			4,484			4,988		
(902) Rose Hill Trust			164			355		
G17007 - Goat Farm						2,000		
Banneker Nature Days			3,934			0		
Nature Days Star			0			4,340		
Other Misc Funds total:	***0***	***0***	***51,287***		***73,744***	***300,168***		
TOTAL ALL FUNDS	**8,812,407**	**9,114,706**	**8,951,146**	**98.21%**	**9,337,957**	**9,242,735**	**98.98%**	**3.26%**
*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	12/7/2017	revenue	12/7/2017	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	29,722.41		3,246.59		**26,475.82**	194,282.22
181001	Health & Wellness	5,427.77	2,978.50		1,123.85		**1,854.65**	7,282.42
181100	Community Relations	33,354.04	3,000.00		465.00		**2,535.00**	35,889.04
182001	Aquatics	314,716.56	113,622.75		38,708.05		**74,914.70**	389,631.26
182500	Frank Southern Center	125,817.03	100,320.48		68,954.77		**31,365.71**	157,182.74
183500	Golf Course	142,842.77	142,443.17		97,020.35		**45,422.82**	188,265.59
184000	Natural Resources	201,976.15	70,796.75		22,820.88		**47,975.87**	249,952.02
184500	Allison Jukebox	150,115.61	212,823.69		188,135.21		**24,688.48**	174,804.09
*185000	TLRC	(276,450.63)	600,025.81		1,233,309.55		**(633,283.74)**	(909,734.37)
**185009	TLRC Reserve	481,174.15	73,437.50		0.00		**73,437.50**	554,611.65
186500	Community Events	422,999.89	203,861.03		148,767.29		**55,093.74**	478,093.63
187001	Adult Sports	90,353.49	143,238.52		163,305.00		**(20,066.48)**	70,287.01
187202	Youth Sports	97,846.16	24,895.88		21,350.88		**3,545.00**	101,391.16
187209	Skate Park	543.88	0.00		0.00		**0.00**	543.88
187500	Benjamin Banneker Comm Cente	41,422.47	30,277.77		40,502.86		**(10,225.09)**	31,197.38
189000	Operations	136,191.07	54,370.99		56,085.90		**(1,714.91)**	134,476.16
189005	Dog Park	5,993.79	0.00		0.00		**0.00**	5,993.79
189006	Switchyard Property	189,641.25	70,449.50		29,028.77		**41,420.73**	231,061.98
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	2,109.40		2,120.04		**(10.64)**	6,293.63
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**	**1,878,374.15**	**0.00**	**2,114,944.99**	**0.00**	**(236,570.84)**	**2,115,706.64**
								(236,570.84)
								INCREASE/DECREASE FOR THE CURRENT

*combined TLRC Fitness 5002 with all other TLRC programs

**Project School Revenue moved to TLRC Reserve

* $298,280.63 of TLRC Expense is for Bloomington Park District Refunding Bonds

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

Bloomington Parks and Recreation Surplus Declaration Form

Dec-17

Date	Area/Staff	Quantity/Item	Means of Disposal	Date Disposed
1-Dec	Community Events - Bill Ream	Table top laminator - broken beyond repair	trash	
4-Dec	Triple C	1 overhead door	donate	
4-Dec	Triple C	1 service/man door	donate	
4-Dec	Triple C	1 exit light	donate	
4-Dec	Triple C	1 restroom sink	donate	
4-Dec	Triple C	1 restroom toilet	donate	
	Form is closed/Please do not add any additional items for December			

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: C-1 Date: 12/7/2017

Administrator Review\Approval PM

TO: Board of Park Commissioners
FROM: Paula McDevitt, Director
DATE: **December 12, 2017**
SUBJECT: **Agreement for Lease of Real Estate**

Recommendation
Staff is requesting two approvals for the Lease of Real Estate:

Staff recommends the approval of an agreement for lease of real estate to the SCHIO-Switchyard Apartments, LLC (SCIHO-SYA, LLC), a subsidiary of South Central Indiana Housing Opportunities Corporation.

Staff recommends the approval for the Parks Director to administer and manage the Lease of Real Estate with (SCIHO-SYA, LLC)

Background
The Board of Park Commissioners accepted SCIHO's proposal for an affordable housing development on the property located next to Switchyard Park at the October 2017 meeting. The property is located next to the proposed Switchyard Park (scheduled to open in late 2019), better known as 1901 South Rogers Street. A 40' right-of-way from Rogers St. has been dedicated to the City of Bloomington. The real estate is zoned as Residential High-Density Multifamily ("RH") district. See Exhibit A for a map of the Property.

The terms of the agreement will be for Ninety Nine (99) years, commencing on January 1, 2018 and expiring on December 21, 2117. The annual lease payment will be in the amount of One Dollar ($1.00) per year for the duration of the agreement.

Article IV describes how the property is to be used, mortgaging the property, compliance with law and regulations he lease of real estate for this property SCIHO-SYA, LLC agrees to only use and occupy the property for the exclusive purpose of the construction and management of affordable housing units. SCHIO-SYA, LLC will cover all costs including the cost of demolition of the building currently on the site; 100% of the development costs including securing all permits and approvals; property management including parking and trash removal. SCIHO-SYA, LLC will also be responsible for utilities and service, taxes, and carry liability insurance. The lease outlines indemnification, defaults and remedies, notices, covenants and representations.

SCHIO –SYA, LCC plans to build two multifamily apartment buildings in two phases for a total of 16 units, all with long term affordability for low-income families, including three units specifically designed

for individuals with disabilities.

In the event that the SCHIO cannot obtain plan approval from the Plan Commission, or the City of Bloomington Council, the lease of real estate will be terminated.

RESPECTFULLY SUBMITTED,

Paula McDevitt

Director

AGREEMENT FOR LEASE OF REAL ESTATE

THIS Agreement for Lease of Real Estate ("Agreement"), made and entered into this _____ day of December, 2017, by and between the Bloomington Parks and Recreation Department ("BPRD") by and through the City of Bloomington Board of Park Commissioners ("Board") and SCIHO-Switchyard Apartments, LLC (SCIHO-SYA, LLC), a subsidiary of South Central Indiana Housing Opportunities Corporation.

WITNESSETH THAT:

WHEREAS, the BPRD owns property located at 1901 South Rogers Street, Bloomington, Indiana; and

WHEREAS, the Board has declared the property surplus; and

WHEREAS, the property is zoned Residential High-Density Multifamily ("RH") district; and

WHEREAS, the Board supports the development of affordable housing adjacent to the Switchyard Park; and

WHEREAS, SCIHO-SYA, LLC is willing and able to develop and maintain an affordable housing project.

Now, therefore, in consideration of the mutual promises hereinafter set forth and other good and valuable consideration, Board and SCIHO-SYA, LLC agree as follows:

ARTICLE I
DESCRIPTION AND LEASE OF THE PROPERTY

Section 1. Description. Board represents and warrants that it holds the authority to enter into this Agreement for the lease of certain real property in Monroe County commonly known as 1901 South Rogers Street, Bloomington, Indiana ("Property") consisting of the parcel depicted in the drawing, attached hereto as Exhibit A and incorporated herein by reference, and legally described as follows:

> "A part of the Northeast quarter of Section 8, Township 8 North, Range 1 West, Monroe County, Indiana, more particularly described as follows:
>
> Commencing at the Southeast corner of said Northeast quarter; thence NORTH 00 degrees 29 minutes 49 seconds WEST along the east line of said quarter a distance of 1224.54 feet; thence leaving said east line SOUTH 89 degrees 30 minutes 11 seconds WEST 197.64 feet to the northeast corner of the tract conveyed to Robert V. and Nancy L. Shaw by deed recorded in Deed Book 425, page 359 in the office of the Recorder of Monroe County, Indiana and the POINT OF BEGINNING; thence SOUTH 88 degrees 16 minutes 15 seconds WEST along the north line of said Robert V. and Nancy L. Shaw a distance of 523.96 feet; thence leaving said north line NORTH 00 degrees 32 minutes 56 seconds EAST a distance of 784.40 feet; thence NORTH 00 degrees 16 minutes 13 seconds EAST a distance of 140.57 feet to a point

on the southern line of the 12.04 acre tract conveyed to the City of Bloomington by deed recorded as instrument number 2003036240 in the office of the Recorder of Monroe County, Indiana and the beginning of a non-tangent curve concave to the southwest having a radius of 428.30 feet and a chord which bears SOUTH 39 degrees 02 minutes 19 seconds EAST 144.26 feet; thence southeasterly along the south and west lines of said City of Bloomington tract the next three (3) courses:

1. SOUTHERLY along said curve an arc distance of 144.95 feet; thence
2. SOUTH 29 degrees 20 minutes 35 seconds EAST 565.07 feet to the beginning of a curve concave to the west having a radius of 2808.41 feet and a chord which bears SOUTH 25 degrees 53 minutes 19 seconds EAST 338.47 feet; thence
3. SOUTHERLY along said curve an arc distance of 338.67 feet to the POINT OF BEGINNING and containing 6.01 acres, more or less."

Section 2. Lease of the Property. Board hereby demises and leases unto SCIHO-SYA, LLC, and SCIHO-SYA, LLC hereby leases from the Board, the Property, for and in consideration of the rents, covenants and agreements, and upon the terms and conditions set forth herein, subject to any and all encumbrances, conditions, covenants, easements, restrictions, rights-of-way, and all other matters of any nature affecting the Premises during the Term (in each case whether or not of record), such matters as may be disclosed by an inspection or survey, and all zoning, land use, subdivision, and all other laws, rules, regulations and judicial or administrative orders now or hereafter applicable to the Premises or any part thereof or any use or occupancy thereof (herein collectively called "Restrictions").

ARTICLE II
TERM OF AGREEMENT

The Initial Term ("Term") of this Agreement shall be for Ninety Nine (99) years, commencing on January 1, 2018 ("Commencement Date") and expiring at midnight on December 31, 2117.

In the event that the SCIHO-SYA, LLC fails to receive approval from either the Plan Commission or the City Council by September 30, 2018, either party shall have the ability to terminate this Agreement.

ARTICLE III
PAYMENTS

Section 1. Payments for Use. SCIHO-SYA, LLC agrees to make an annual payment to the BPRD for use of the parcel in the amount of One Dollar ($1.00), payable on or before the 1st day of February each year. Payments are to be made to:

City of Bloomington Department of Parks and Recreation
P.O. Box 848
Bloomington, IN 47402

ARTICLE IV
USE OF THE PROPERTY

Section 1. Business Use. SCIHO-SYA, LLC shall only use and occupy the Property for the sole and exclusive purpose of the construction and management of affordable housing units on the Property as an ongoing business concern. Housing will be considered affordable if it is affordable to households earning below 80% of the Area Median Income. SCIHO-SYA, LLC will maintain documentation of its compliance with this provision will provide such documentation to the City of Bloomington Housing and Neighborhood Development on an annual basis.

Section 2. Mortgaging the Property. SCIHO-SYA, LLC shall not allow, permit or otherwise cause any mortgage, lien, or other encumbrance to be placed upon the Property, except with prior, written consent of Board in Board's sole discretion. The Parks Administrator shall have the ability to provide the necessary consent on behalf of the Board. BPRD acknowledges and consents to SCIHO-SYA, LLC seeking a construction loan, which will be converted to a twenty-five (25) year permanent loan upon issuance of occupancy permits, the payment of which will be secured by a leasehold mortgage, conditional assignment of this Agreement, assignment of rents, a security interest in fixtures and tangible personal property, and such other financing documents as reasonably is required by the Lender, defined below.

BPRD will notify BloomBank ("Lender") in writing if SCIHO-SYA, LLC defaults on its obligations under the Agreement or any renewals, extensions, amendments, modifications, substitutions or replacements thereof. Board shall not exercise the remedies for default set forth in this Agreement unless and until Board has delivered to SCIHO-SYA, LLC and to the Lender a notice describing such breach and the same is not cured within 30 days after delivery of the notice, provided that if the breach reasonably cannot be cured within such 30 day period, Board will not exercise its remedies under the Agreement if the Lender or SCIHO-SYA, LLC commences curative action within the 30 day period and diligently pursues the same to completion. Further, if such default is of a nature that cannot be cured reasonably by the Lender (e.g., bankruptcy) or reasonably cannot be cured by the Agreement until it obtains possession of the Property demised under the Agreement, then upon the Lender's acquisition of the leasehold interest of SCIHO-SYA, LLC (by the exercise of its remedies under the financing instruments), Board will enter into a direct Agreement with the Lender on the same terms and conditions as the Agreement, upon the Lender's request, provided that the Lender cures all then existing defaults under the Agreement. The Lender shall provide Board with a plan to cure all defaults within 30 day of the default. Said plan is subject to acceptance by Board in its sole discretion. The rights of the Lender hereunder shall apply to such lender's successors and assigns.

All notices to be given to the Lender shall be in writing and shall be deemed to have been given: (a) when delivered personally to the recipient; (b) when sent to the recipient by electronic mail (with receipt confirmed by a reply email) if during normal business hours of the recipient, otherwise on the next Business Day; or (c) one Business Day after the date when sent to the recipient by reputable express courier service (charges prepaid). Such notices, demands, and other communications shall be sent to the Lender at Dave Landis, BloomBank, 2111 S. Liberty Drive, Bloomington, IN 47403 Or via electronic mail to DLandis@bloombank.com, the Lender may change the address to which notice is to be given; provided, however, that such change shall not become effective until 10 days after actual receipt of such change by the person giving notice. For

purposes of this Section, the term "Business Day" means any day except Saturday, Sunday, or any other day that is a federal or State of Indiana holiday.

Section 3. Compliance with Law and Regulations. SCIHO-SYA, LLC shall comply with all applicable laws, rules, regulations, orders, ordinances, directions and requirements of any governmental authority or agency, now in force or which may hereafter be in force (including, but not limited to, all safety rules and regulations). SCIHO-SYA, LLCSCIHO-SYA, LLC shall use the premise for no unlawful purpose or act and shall commit or permit no waste or damage to the parcel.

Section 4. Construction and Restoration.

A. As soon as reasonably possible, but in no event later than September 30 , 2018, SCIHO-SYA, LLC shall commence and thereafter diligently prosecute to completion the construction on the Premises, at SCIHO-SYA, LLC's sole cost and expense, of improvements. Construction of improvements shall include, but not be limited to, demolition of existing structures and improvements, removal of all demolition debris and construction of new affordable housing units. Failure to commence or thereafter diligently prosecute to completion such construction of improvements shall constitute a default under this Agreement. After obtaining a Right of Entry from the Parks Administrator, SCIHO-SYA, LLC may utilize the immediate area surrounding the property during the construction period.
B. If at any time the Property, or any part thereof, is damaged or suffers loss (other than ordinary wear and tear) by reason of any matter or thing whatsoever, foreseen or unforeseen, insured or uninsured, including, but without limitation on the generality of the foregoing, any fire, earthquake or other calamity, SCIHO-SYA, LLC, at its own cost and expense, and whether or not insurance proceeds, if any, shall be sufficient for the purpose, shall proceed with all reasonable diligence and speed (considering the availability of labor and materials) to obtain all necessary governmental permits for such repair or restoration and thereafter to repair, replace and restore the Property as nearly as possible to the same value, condition and character as existed immediately prior to such damage or loss. However, if such loss occurs in the last ten years of the Agreement or if the cost to restore the Property would be equal to or exceed 50% of the full replacement cost of the improvements, SCIHO-SYA, LLC may, at its option, terminate this Agreement by notice given to BPRD no later than 30 days after such event. If SCIHO-SYA, LLC chooses to terminate the Agreement, or otherwise not repair, replace and restore the Property to the same value, condition and character as prior to the loss, SCIHO-SYA, LLC shall be responsible for the cost of demolishing and/or removing all facilities and improvements and returning the Property to the same condition it was in prior to the execution of this Agreement within sixty (60) days of terminating the Agreement.
C. Neither the Board nor BPRD shall have no obligation to make any repairs, replacements, restorations, alterations, additions or improvements whatsoever in or about the Property or any part thereof, or to restore the same or any part of the same in the event of its loss, destruction or damage unless such loss, destruction or damage is solely due to the fault of the BPRD, and SCIHO-SYA, LLC hereby waives any right it may have to make repairs at the expense of the Board or BPRD.

D. In the event that SCIHO-SYA, LLC finds it necessary to obtain plan, use, or zoning approval or permits with respect to the Property (”Zoning Approvals”), BPRD agrees, from time to time upon request by SCIHO-SYA, LLC, to provide a letter of support for SCIHO-SYA, LLC obtaining such Zoning Approvals provided that BPRD, at its sole discretion, believes the Zoning Approvals being sought are appropriate.

Section 5. Standard of Work. All construction, restoration, maintenance and repairs, demolition, removal, replacement and alteration of the Property or any part thereof required or permitted to be made by SCIHO-SYA, LLC under this Agreement (collectively hereinafter called "SCIHO-SYA, LLC's Work") shall be performed in accordance with the following:

A. SCIHO-SYA, LLC shall comply with all applicable laws, ordinances, rules and regulations (including, but not limited to, all safety rules and regulations) relating to or governing SCIHO-SYA, LLC's Work and, without limitation on the generality of the foregoing, shall procure and maintain all permits and authorizations required to be obtained from any governmental authority in connection therewith.

B. All SCIHO-SYA, LLC's Work shall be performed diligently and in a good and workmanlike manner, free from defects of any kind and nature, and free from liens or claims of any kind and nature.

C. Prior to commencement of any of SCIHO-SYA, LLC's Work, SCIHO-SYA, LLC shall demonstrate to the reasonable satisfaction of BPRD that SCIHO-SYA, LLC has the funds necessary to fully pay for the cost of all SCIHO-SYA, LLC's Work, and the cost of all SCIHO-SYA, LLC's Work shall be paid promptly by SCIHO-SYA, LLC.

D. SCIHO-SYA, LLC shall maintain a complete set of "as built" structural, mechanical and similar plans and specifications with respect to all improvements and any other of SCIHO-SYA, LLC's Work and an "as built" survey showing the location of all improvements on the Premises and shall, upon written request of BPRD, deliver a copy thereof to City, at no cost to the Board or BPRD. SCIHO-SYA, LLC shall also deliver to BPRD, upon written request of BPRD and at no cost to the Board or BPRD, a copy of any and all other reports which SCIHO-SYA, LLC may have related to the Property, including, but not limited to, environmental surveys and assessments.

E. All SCIHO-SYA, LLC's Work shall be commenced promptly after SCIHO-SYA, LLC has obtained all necessary permits and approvals. SCIHO-SYA, LLC shall perform all work in accordance with the approved specifications and working drawings and prosecute the work diligently to completion. SCIHO-SYA, LLC shall secure all sign-offs and final certificates from appropriate authorities.

F. SCIHO-SYA, LLC's Work shall be subject to BPRD's inspection during construction and after completion.

Section 6. Maintenance. SCIHO-SYA, LLC, at its own cost and expense, shall keep and maintain the Property and all landscaping, sidewalks, parking lots, alleys and passages surrounding the same and each and every part thereof in a good, orderly, clean, safe and sanitary state of decor, repair and condition and as otherwise required by this Agreement including, but not limited to, trash removal, mowing, snow and ice removal from all walkways, parking lots, driveways and the like, and noise and parking control both during any periods of construction and during all times that the property is open for occupancy by SCIHO-SYA, LLCs. SCIHO-SYA, LLC shall perform all repairs and replacements necessary to accomplish the foregoing obligations, whether foreseen or unforeseen, structural or nonstructural, ordinary or extraordinary.

Section 7. Hazardous Materials. SCIHO-SYA, LLC shall not in any manner use, maintain or allow the use or maintenance of the Property in violation of any law, ordinance, statute, regulation, rule or order (collectively "Laws") of any governmental authority, including but not limited to Laws governing zoning, health, safety (including fire safety), occupational hazards, and pollution and environmental control. Except when done in a commercially reasonable manner consistent with SCIHO-SYA, LLC's business, SCIHO-SYA, LLC shall not use, maintain or allow the use or maintenance of the Property or any part thereof to treat, store, dispose of, transfer, release, convey or recover hazardous, toxic or infectious waste, except for materials used in the ordinary course of SCIHO-SYA, LLC's business on or about the Property. Hazardous, toxic or infectious waste shall mean any solid, liquid or gaseous waste, substance or emission or any combination thereof which may (i) cause or significantly contribute to an increase in mortality or in serious illness, or (ii) pose the risk of a substantial present or potential hazard to human health, to the environment or otherwise to animal or plant life, and shall include without limitation hazardous substances and materials described in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; the Resource Conservation and Recovery Act, as amended; and any other applicable federal, state or local Laws.

Section 8. Ownership of Improvements. It is expressly understood and agreed that any and all Improvements, including the fixtures, machinery, and equipment of whatsoever nature at any time constructed, placed, or maintained upon any part of the Property by SCIHO-SYA, LLC, shall be and remain property of SCIHO-SYA, LLC so long as this Agreement is in effect. SCIHO-SYA, LLC shall have the right at any time during SCIHO-SYA, LLC's lawful occupancy of the Property, to remove any and all Improvements owned or placed by SCIHO-SYA, LLC, in, under, or upon the Property, or acquired by SCIHO-SYA, LLC, whether before or during the Term or any renewals thereof, but SCIHO-SYA, LLC shall not be obliged to do so. In the event this Agreement is terminated for any reason, whether by expiration, operation of law or otherwise, all such Improvements shall become the property of the Board, subject to all covenants, conditions, restrictions, easements, and leases previously consented to by SCIHO-SYA, LLC.

ARTICLE V
UTILITIES AND SERVICES

SCIHO-SYA, LLC shall be responsible for the costs of any and all associated building permits, site plan petitions, sign permits, Right-of-way excavation permits and bonding, grading permits and erosion control bonding, utility connection fees, and inspection fees.

SCIHO-SYA, LLC shall pay for providing utilities onsite and any and all cost of extension of the sewer or water main line and services based upon or in connection with its affordable housing development, including trash removal, custodial services, electrical, water, wastewater, stormwater, heat and air conditioning for normal office use.

SCIHO-SYA, LLC shall be responsible for the cost of any communications and data services and installation required for SCIHO-SYA, LLC's needs.

SCIHO-SYA, LLC is responsible for compliance with Bloomington Municipal Code Title 16: Residential Rental Unit and Lodging Establishment Inspection Program and shall promptly and timely pay to the City of Bloomington Housing and Neighborhood Development Department all costs associated therewith including all registration and inspection fees.

ARTICLE VI
TAXES

During the Term, SCIHO-SYA, LLC shall promptly and timely pay any and all applicable Indiana State, County and Municipal personal property taxes in the event such taxes may now or hereafter be assessed against the building furniture, fixtures, equipment and supplies installed or maintained by SCIHO-SYA, LLC upon the Property and all Federal, State and Local taxes levied against SCIHO-SYA, LLC on account of the business conducted by it upon the Property. SCIHO-SYA, LLC shall promptly and timely payment of all real property taxes that may now or hereafter be assessed against the Property.

ARTICLE VII
LIABILITY INSURANCE; INDEMNIFICATION

SCIHO-SYA, LLC, at SCIHO-SYA, LLC's sole expense, shall cause to be issued and shall maintain from the date of delivery thereof to BPRD and during the term of this Agreement and any renewal thereof, a policy of Commercial General Liability insurance insuring SCIHO-SYA, LLC against any and all claims, actions, damages, liabilities and expenses in connection with loss of life, personal injury, bodily injury or damage to personal and/or real property occasioned by accident occurring upon, in or about the Property at any time such policy is in effect, with such policy of insurance to provide coverage with an aggregate and per-occurrence limit not less than One Million Dollars ($1,000,000.00) . SCIHO-SYA, LLC shall also insure itself for Fire Legal Liability at a minimum limit of One Hundred Thousand Dollars ($100,000.00). BPRD shall be named as an additional insured on all policies required by the terms of this agreement.

A certificate of insurance of these policies shall be delivered to BPRD prior to the commencement date of this Agreement. All policies shall contain a provision that the policy will not be cancelled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to BPRD.

SCIHO-SYA, LLC shall maintain during the term of this Agreement and any renewal thereof such Worker's Compensation Insurance as may from time to time be required by law. Evidence of such insurance shall be delivered to BPRD prior to the commencement of the term of this Agreement and, thereafter, at such times as BPRD may require.

SCIHO-SYA, LLC will indemnify and hold harmless the Board, BPRD, its officers, directors, agents, employees, successors and assigns from and against any and all claims, actions, damages, liabilities and expenses in connection with loss of life, personal injury, bodily injury or damage to real and/or personal property arising from, or out of any occurrence in, upon or at the Premises or Building, from or out of the occupancy or use by SCIHO-SYA, LLC of the Premises or Building or any part thereof, or occasioned wholly or in part by any act or omission of SCIHO-SYA, LLC, its agents, contractors, employees, lessees, or invitees.

ARTICLE VIII
DEFAULT AND REMEDIES

Section 1. Default. If SCIHO-SYA, LLC makes any default in respect of its covenants under this Agreement and such default is not cured by or on behalf of SCIHO-SYA, LLC within thirty (30) days after written Notice of the existence of such default has been given to SCIHO-SYA, LLC and the Lender (as set forth in Section 2 of Article IV) by BPRD, the BPRD may exercise any remedy available at law or in equity.

ARTICLE IX
NOTICES, COVENANTS AND REPRESENTATIONS, MISCELLANEOUS

Section 1. Notices. All notices to be given hereunder shall be in writing and shall be deemed to be properly given if sent by certified mail, postage prepaid and, in the case of notices by BPRD to the SCIHO-SYA, LLC, they are addressed to SCIHO-SYA, LLC:

SCIHO_Switchyard Apartments, LLC
Attn: Deborah Myerson
Executive Director South Central Indiana Housing Opportunities
1007 N. Summit St.
Bloomington, IN 47404
812-339-3491 x117

or to such other address as SCIHO-SYA, LLC may from time to time furnish to BPRD in writing for such purpose and in the case of notices by SCIHO-SYA, LLC to BPRD, if they are addressed to BPRD:

Administrator, Parks and Recreation Department
City of Bloomington
P.O. Box 848
Bloomington, IN 47402

With a copy to:

Corporation Counsel
City of Bloomington
P.O. Box 100
Bloomington, IN 47402

or to such other address as BPRD may from time to time furnish to SCIHO-SYA, LLC in writing for such purpose. The Parks Administrator is authorized by the Board to manage this Agreement and any and all day to day activities related to it.

Section 2. Covenants and Representations. The covenants and representations contained in this Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns. This Agreement contains the entire agreement between the Board and SCIHO-SYA, LLC and shall not be modified in any manner except by an instrument in writing executed by the Board and SCIHO-SYA, LLC.

Section 3. Governing Law. This Agreement shall be governed according to the laws of the State of Indiana. Any dispute arising from this Agreement shall be venued in Monroe County, Indiana.

Section 4. Titles. Titles inserted herein for articles and sections are for convenience and do not constitute a part of the text.

Section 5. Waiver. The waiver by any party hereto of any term, covenant, or condition contained in this Agreement shall be in writing, and any waiver in one instance shall not be deemed to be a waiver of such term, covenant, or condition in the future, or any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement.

Section 6. Assignment and Subletting. Except for the leasing of rental units pursuant to SCIHO-SYA, LLC's RFP Response, SCIHO-SYA, LLC may not encumber, assign or sublet the Premises, or any part thereof without the written consent of Board, which shall be supplied in Board's sole discretion. The Parks Administrator shall have the ability to provide the necessary consent on behalf of the Board. BPRD acknowledges and consents to SCIHO-SYA, LLC seeking a construction loan, which will be converted to a twenty-five (25) year permanent loan upon issuance of occupancy permits, the payment of which will be secured by a leasehold mortgage, conditional assignment of this Agreement, assignment of rents, a security interest in fixtures and tangible personal property, and such other financing documents as reasonably is required by the Lender. In the event that SCIHO-SYA, LLC is no longer able to maintain the affordable housing project on the Property and has to transfer the maintenance to another entity, SCHIO shall notify BPRD in writing at the minimum thirty (30) days prior to any final decision is made. Board shall have the final approval of the proposed entity.

Section 7. Quiet Enjoyment. BPRD agrees that if SCIHO-SYA, LLC observes and performs all of its covenants hereunder, then, at all times during the Term, SCIHO-SYA, LLC shall have the exclusive, peaceable and quiet enjoyment and possession of, the Premises, without any manner of hindrance from BPRD or parties claiming under, by or through BPRD, subject to the terms and conditions of this Agreement.

Section 8. Right of Entry. BPRD shall have the right to enter the Property (without causing or constituting a termination of this Agreement or an interference with SCIHO-SYA, LLC's possession) at all reasonable times for the purposes of examining its condition or use.

SO EXECUTED the day and year first above written by duly authorized officers of the parties hereto.

SOUTH CENTRAL INDIANA HOUSING OPPORTUNITIES

By: _____

_____
Printed name and title

CITY OF BLOOMINGTON

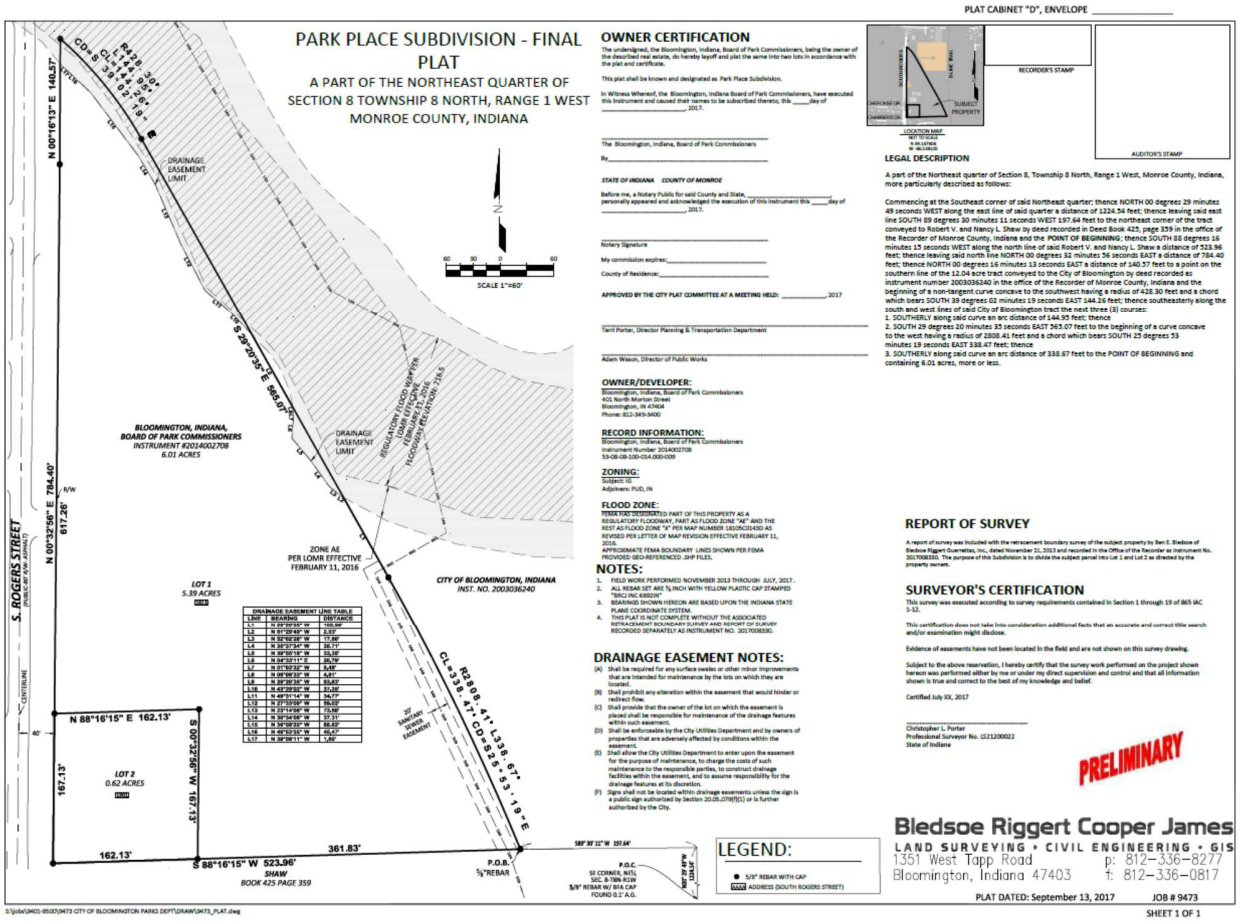
By: _____
Philippa M. Guthrie

By: _____
Paula McDevitt, Parks Administrator

BOARD OF PARK COMMISSIONERS

By: _____
Leslie J. Coyne, President

Exhibit A



Parcels Available for Lease:

A: 1901 S. Rogers St

Address:	1901 S. Rogers St.
Type:	House
Size:	0.62 acres
Description:	Limestone house
Zoning:	High-Density Multifamily Residential
Leasing Price:	$1/per year for 99 years

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: C-2 Date: 12/12/2017

Administrator Review\Approval PM

TO: Board of Park Commissioners
FROM: Paula McDevitt, Administrator
DATE: December 7, 2017
SUBJECT: **REVIEW/APPROVAL OF 2018 MANAGEMENT/PARTNERSHIP AGREEMENT WITH BCT MANAGEMENT, INC.**

Recommendation
It is recommended that the Board approve the 2018 Management Agreement with BCTM, Inc. to manage the Buskirk-Chumley Theater for the benefit of the community.

Background
Since its renovation in 1999, the Buskirk-Chumley Theater ("Theater"), a performing arts venue at 114 E. Kirkwood, has become a key contributor to the economic and cultural vitality of downtown Bloomington and one of the many attractions to draw people to the downtown business district.

The attached agreement reflects discussions between City staff and BCT Management, Inc. staff and Board members.

Funding
Funding will be provided in the 2018 City Council budget to assist BCTM, Inc. with duties related to their operation of the Theater as stated below:

"The City shall, for the term of this Agreement, provide Fifty Thousand Dollars ($50,000.00) to support the operations at the BCT ("Operations Funding"). The Operations Funding shall be paid in four (4) quarterly payments of Twelve Thousand Five Hundred Dollars ($12,500.00)."

In addition, continuation of $74,000 in funding for building related improvements, from the City's Consolidated TIF fund, will continue in 2017. Staff will receive final approval from the Redevelopment Commission on December 18, 2017 for funding of building related expenses listed in the agreement for the period of January 1, 2018 -December 31, 2018.

The total support for the Buskirk-Chumley Theater in 2018 will be $124,000.

RESPECTFULLY SUBMITTED,

Paula McDevitt

Paula McDevitt, Administrator

CITY OF BLOOMINGTON
parks and recreation

PARTNERSHIP AGREEMENT

This Agreement, made and entered into this ____ day of December, 2017 by and between the **City of Bloomington, Indiana ("City") by its Mayor, Board of Park Commissioners ("Parks Board"), and Redevelopment Commission ("Commission")** and **BCT Management, Inc.,** an Indiana non-profit corporation ("BCTM"),

WITNESSETH:

WHEREAS, the Buskirk-Chumley Theater ("BCT") is a performing arts facility in downtown Bloomington, Monroe County, Indiana, that is owned by the Parks Board; and,

WHEREAS, BCTM has managed the BCT since 2001 pursuant to an agreement with the City, and the City wishes to enter into this Partnership Agreement ("Agreement") with BCTM to manage and operate the BCT; and,

WHEREAS, BCTM is an Indiana non-profit corporation which has the capacity and commitment to manage the BCT as an accessible and affordable community resource; and,

WHEREAS, the previous Management Agreement between the City and BCTM is set to expire on December 31, 2017; and,

WHEREAS, the City has determined that it is in the public interest to enter into a new Agreement with BCTM for the management of the BCT for the period of January 1, 2018 through December 31, 2018, with the intent to continue the parties' successful relationship into the future; and

WHEREAS, the City may from time to time develop partnerships with non-City organizations in order to promote such entertainment services; and,

WHEREAS, it is in the public interest that such partnership continue;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions in this Agreement, the City and BCTM agree as follows:

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to outline a program partnership, which will provide entertainment to the public at the BCT.

2. DURATION OF AGREEMENT

This Agreement shall be in full force and effect from January 1, 2018 to December 31, 2018, unless early termination occurs as described in paragraph 6(j), below.

3. FUNDING

The City shall, for the term of this Agreement, provide Fifty Thousand Dollars ($50,000.00) to support the operations at the BCT ("Operations Funding"). The Operations Funding shall be paid in four (4) quarterly payments of Twelve Thousand Five Hundred Dollars ($12,500.00).

The Redevelopment Commission shall, for the term of this Agreement, provide up to Seventy-Four Thousand Dollars ($74,000.00) from the Consolidated TIF ("Tax Increment Funding"). The Tax Increment Funding may be used only for purposes permitted by Indiana Code § 36-7-14-39. The Tax Increment Funding will only be provided after: (1) BCTM has followed the City's procurement process, as set forth in its Financial Policies Manual, to obtain bids or quotes for a desired purchase, (2) the BCTM has made a request for Tax Increment Funding, (3) the City—through the Director of Parks and Recreation or her designee—has approved the request for Tax Increment Funding, and (4) the Redevelopment Commission has approved the request for Tax Increment Funding via resolution. No Project Review and Approval Form shall be necessary for the expenditure of Tax Increment Funding under this Agreement. The City and BCTM shall cooperate on selecting priorities for the Tax Increment Funding.

4. BCTM

The goal of BCTM is to provide a world-class entertainment schedule at the BCT for the Bloomington area community, including residents of Monroe County and surrounding counties and visitors. Except as provided in this Agreement, BCTM shall have the exclusive authority to operate and manage the BCT under this Agreement. BCTM agrees to:

a. Programming:

i. BCTM shall manage the BCT in a professional manner and utilize its best efforts to preserve and expand the BCT's role as a high quality, accessible community resource, and to schedule and promote a diverse program of local, regional, and national artists and events, so as to serve a broad segment of the community and a wide variety of interests and audiences. BCTM shall maintain and administer booking procedures and rental rates

that give performers, renters, and other users a fair and reasonable opportunity to use the facility.

ii. BCTM shall use the BCT premises only for operation of the BCT as a venue for presenting arts and entertainment events, private events, educational programs, community events and other programs and events benefiting the public. The BCT premises may be used and occupied only for the uses described in this Agreement. BCTM shall not permit any nuisance to be maintained or permitted on the premises, nor any disturbance, noise, or other annoyance that interferes with the reasonable comfort and quiet enjoyment of persons occupying adjacent properties. If BCTM fails to remedy the nuisance, then the City shall have the right to enter on the premises to remedy the nuisance. However, the City's failure to assert its right to remedy a nuisance shall not impose an affirmative duty on the City so that it assumes liability for the nuisance. Regardless of any entry or non-entry onto the premises by the City for the purpose of remedying a nuisance, BCTM shall remain solely liable for any and all liability resulting to any persons from any nuisance maintained or permitted on the premises.

b. Management Obligation: BCTM shall manage the BCT as follows:

i. BCTM agrees to maintain its principal and only corporate office with regular office hours on the BCT premises.

ii. As an independent contractor, and at its sole cost and expense, BCTM shall employ an Executive Director, Technical Director, and such other personnel as necessary in its sole opinion to the operation of the BCT in conformance with the terms of this Agreement. BCTM and its personnel, agents, volunteers, contractors or sub-contractors shall in no event be construed to be, or represent themselves to be employees of the City.

iii. BCTM shall use the BCT premises only for operation of the BCT as a venue for presenting arts and entertainment events, private events, educational programs, community events and other programs and events benefiting the public. The BCT premises may be used and occupied only for the uses described in this Agreement.

iv. BCTM shall be solely liable and responsible for any and all operating expenses incurred and contracts and agreements entered into in the course of its operation and management of the BCT, provided, however, that BCTM does not assume, and shall not be liable for, any financial obligations of the City regarding the BCT. However, expenses such as property taxes charged directly to the City that stem from BCTM's operation, contracts and agreements with third parties must be reimbursed by BCTM to the City. The BCT shall also take responsibility for all

expenses related to the Alcoholic Beverages permit the City obtained for BCTM.

v. BCTM shall operate the BCT as a venue for presentation of BCT programming, and BCTM may, at its sole discretion, produce and promote its own events at the BCT. BCTM shall have the authority to make all scheduling decisions for the BCT, and at its sole discretion, set rental rates for the BCT. BCTM shall keep the City informed regarding its rental rates for the BCT, and shall advise the City of any proposed change to the rates at least ten (10) business days prior to the effective date of the change.

vi. The City's logo and/or such other acknowledgement of the City's support that the City deems appropriate, in its sole discretion, shall be displayed in the BCT and on the BCTM website. An announcement of the City's support of the BCT shall be made prior to all performances.

vii. BCTM shall be solely responsible for obtaining and maintaining any licenses or permits required by any governmental entity in connection with the operation of the BCT. BCTM shall not enter into any contracts or agreements that authorize or allow for violation of any City ordinance.

c. Sale of Alcoholic Beverages:

i. The City, as owner of the BCT, has obtained on BCTM's behalf an Alcoholic Beverages permit for the premises and shall retain rights to this permit because it has applied for an alcoholic beverage permit (liquor, beer and wine retailer for a Civic Center, license type 219) on behalf of the BCTM pursuant to Indiana Code § 7.1-3-1-25. This permit, granted in 2011 and renewable on an annual basis, is not part of the regular Alcoholic Beverage permits that are granted following a quota system, and can only be obtained when the City applies for it. If granted, such a permit is particular to the circumstances of the location in that the building must be owned by the City, and that it must be open for specific purposes.

ii. BCTM agrees to be in compliance with all laws, federal, state and local, that apply to this alcoholic beverages permit, which is only to be used at the current BCT Premises. It agrees that its obligations to indemnify the City under this Agreement extend to its actions under the laws applicable to this permit, including, without limitation, any penalties for violations of the permit or its requirements.

iii. BCTM shall, at its own expense during the duration of this Agreement, maintain liquor liability insurance in compliance with Section 6(h) of this Agreement, and carry the financial cost for application and renewals, or any other expense related to the permit.

iv. BCTM agrees that, in the event of termination of this Agreement for any reason, or if BCTM determines it cannot or will not start or continue to perform its rights and obligations under the alcoholic beverages permit, BCTM will, at the option of the City exercised in writing, either surrender BCTM's Alcoholic Beverages permit for the BCT's location, or take all necessary or desirable lawful steps requested by the City to transfer the alcoholic beverages permit for the BCT to another prospective permittee to be designated by the City, and approved of by the Indiana Alcohol and Tobacco Commission. Such steps may include, but are not limited to, having BCTM officers and/or directors execute lawful documents at the request of the City. In the event of such surrender or transfer upon termination of this Agreement BCTM will not be entitled to any monetary payment or other compensation for complying with this Agreement.

d. BCTM's Responsibility for Maintenance, Repair and Utilities

i. BCTM shall keep the BCT premises, including the auditorium, entrances, eastern portion of the storefront retail space, offices, rest rooms, and adjacent sidewalks in a clean, safe, and operable condition and in compliance with all applicable statutes and ordinances.

ii. In the event that BCTM enters into a lease of the western portion of the storefront retail space as described in paragraph 6.a.iii., below, the lease shall require the tenant to maintain the premises in a clean and safe condition and in compliance with all applicable statutes and ordinances. In the event that BCTM does not enter into a lease of the western portion of the storefront retail space, BCTM shall maintain the western portion of the storefront retail space, as required by paragraph 4.d.i., above.

iii. BCTM shall be responsible and liable for any injury or damage done to the BCT premises by BCTM or BCTM's employees, invitees, or any other occupant or other person whom BCTM permits to be in or about the BCT premises.

iv. BCTM shall be responsible for minor maintenance and repair of the interior of the building, as detailed in *Exhibit A*, Section 1.

v. BCTM shall be responsible for the minor repair and maintenance of BCT equipment and furnishings listed in *Exhibit B*, Sections 1 & 2.

vi. BCTM shall maintain all premises, equipment and furnishings in such condition, order, and repair as the same were in at the commencement of this Agreement or may be installed during the term of this Agreement, reasonable wear and tear excepted. In the event BCTM fails to undertake any repair or maintenance under their responsibility after thirty (30) days notice in writing from the City, the City may undertake the repair or

maintenance, and BCTM shall be obligated to pay within thirty (30) days after invoice the full amount of any such expense paid by the City. The City agrees to reimburse BCTM for unexpected emergency repairs; however, BCTM will make all reasonable efforts to contact City and obtain City approval before commencing the repairs.

vii. BCTM requests to use Tax Increment Funding shall be compliant, with applicable state law, including Indiana Code 5-22-8 *et seq.* With respect to requests to use Tax Increment Funding, BCTM shall make diligent efforts to follow the City's procurement methods, as set by the City Controller, including—where applicable—obtaining three (3) quotes. Requests for Tax Increment Funding shall include: (1) the names of the persons or companies that provided quotes, (2) the amounts of the quotes, (3) BCTM's preference of quote, and (4) an explanation for BCTM's preference of quote.

viii. BCTM shall not cause or permit any alterations, additions, or changes of or upon any part of the BCT premises without first obtaining written consent of the City. If any alterations, additions, or changes to the BCT premises are made by BCTM and met with the City's consent under this sub-paragraph, they shall be made at BCTM's expense and in a good and workmanlike manner, in accordance with all applicable laws, and shall become the property of the City as owner of the BCT.

ix. The City shall provide BCTM with a list of acceptable vendors with which BCTM might contact for emergency and/or after-hours repair. BCTM shall immediately communicate with the Director of Parks and Recreation on the day following the occurrence of emergency repair describing the nature of, and the manner in which BCTM handled, the repair.

x. BCTM shall pay all bills and charges for water, sanitary and storm sewer, electricity, gas, and other utilities that may be assessed or charged against any occupant of the BCT Premises during the term of this Agreement.

xi. BCTM shall not permit any lawful mechanic's or other liens to accrue against the BCT Premises by reason of labor, services or materials claimed to have been performed or furnished to or for BCTM. BCTM shall cause any lien filed against the BCT Premises as a result of the action or inaction of BCTM to be discharged and released within ninety (90) days of the date of filing. In the event the lien is not discharged and released within that time period and BCTM continues to desire to contest the lien, BCTM shall post a surety bond or letter of credit in an amount reasonably anticipated to be necessary to satisfy the lien.

e. **Organizational Information:** BCTM shall share financial information with City.

i. Once per calendar year, BCTM shall provide financial reports which have been reviewed or audited by a Certified Professional Accountant, as defined by the Financial Standards Accounting Board (FASB). The financial reports shall include progress reports on fundraising, including the amount of funds received through fundraising, the number of donors of funds, and the steps taken to generate funds. Said reports shall be delivered to the City not later than April 15, 2019.

ii. BCTM shall provide an annual written report of BCT operations to the City, which shall be delivered to the City no later than April 15, 2019. The annual report shall be comprehensive and shall address all relevant topics, including, but not limited to, a listing of all programs and events held in the BCT during 2018, income and expenses related to the BCT property for 2018, and updates on the preventative maintenance BCTM undertook in 2018.

iii. BCTM shall provide a copy of its timely filed IRS Form 990, Return of Organization Exempt from Income Tax Form. The Form 990 shall be provided to the City within thirty (30) days of when it is filed with the Internal Revenue Service.

iv. BCTM will remain compliant with all returns and payments associated with all applicable taxes—including payroll taxes. BCTM will provide the City with a copy of all returns filed with and payments made to all taxing entities within thirty (30) days of filing and payment.

v. BCTM shall provide a copy of all filings with the Indiana Secretary of State's Office. These filings shall be provided to the City within thirty (30) days of when they are filed with the Indiana Secretary of State's Office.

vi. The City shall set a meeting after April 15, 2019 and prior to May 30, 2019 for BCTM to present the annual report to the Administrator of the City's Parks and Recreation Department and to respond to questions. BCTM shall designate a voting member of its Board and send him/her to the City's meeting.

vii. During the year and in addition to the annual report, BCTM representatives shall provide to the City such information as may be requested by the City concerning BCT operations and events.

viii. The City may, upon one (1) week's notice, inspect the BCT's books and records maintained by BCTM.

ix. The City shall have one (1) non-voting representative on the BCTM Board of Directors. The Mayor shall designate this representative, who shall be subject to removal by the Mayor at anytime for any reason.

x. BCTM shall provide BCT participation data to the City on a quarterly basis to the City no more than fifteen days after the end of each quarter. This data will be used in the Bloomington Parks and Recreation annual report.

xi. The 2019 BCTM goals will be submitted to the City by July 1, 2018 following the City's format for annual goals.

f. Inventory List and Disposal of Surplus Property:

i. BCTM shall provide an updated inventory of all equipment and furnishings to the City on or before December 31, 2018. The inventory shall include the funding source or sources for all equipment and furnishings purchased. At the end of this Agreement, prior to renewal, the City shall have the responsibility to conduct an inventory of City owned assets to ensure their presence on-site. BCTM shall be held accountable for any missing City owned assets.

ii. BCTM shall inform the City when it desires to dispose of Surplus property in writing, and the City shall, at its earliest convenience, comply with disposal of Surplus property policies as provided by statute and the City's Financial Policies Manual (including the Controller and Corporation Counsel's review of the request, and the submission of the request to the appropriate board). Revenue generated by the sale of Surplus property will be credited to the department from which such personal property is sold, pursuant to Bloomington Municipal Code 2.52.020.

5. CITY OF BLOOMINGTON

The goal of City is to provide entertainment and cultural opportunities to Bloomington area community, including residents of Monroe County and surrounding counties and visitors. City agrees to provide:

a. Programming and Premises:

i. The City's one (1) non-voting representative will serve on the BCTM Board of Directors.

ii. The City, as owner of the BCT, shall retain decision-making authority regarding signage to be affixed to the BCT premises. The City shall also

retain the right to display and distribute promotional materials regarding City programs in the lobby of the BCT in such a way that does not interfere with BCTM's use of the BCT and ability to manage and promote events at the BCT.

iii. Any matters related to the BCT Premises that are not specifically addressed in this Agreement shall be decided by the City pursuant to its authority as owner of the BCT.

iv. Ownership of the equipment and furnishings inside the building necessary to its functionality as a Theater is as detailed in *Exhibit B*, Sections 1 & 2.

v. The City will consult with BCTM during the term of this Agreement regarding replacements, upgrades and major repairs to equipment and furnishings; however, all decisions regarding the same shall be made in the City's discretion.

vi. The City shall be responsible for maintenance and repair of the building and the marquee as detailed in *Exhibit B*, Section 2 of this Agreement.

vii. The City shall be responsible for addressing BCTM requests to the City for Tax Increment Funding, as detailed in paragraph 5.b.ii of this Agreement, in a timely manner.

viii. The City reserves the right to make any structural, roof and major mechanical repairs it deems necessary, and agrees to make all reasonable efforts to work with BCTM in planning and scheduling such repairs as to minimize or avoid interruption of use of the BCT.

ix. The City or its agent shall have the right to enter upon the BCT Premises to inspect the same during the BCT's business hours, or at any other reasonable time as the parties shall agree.

x. The City shall have the right to use the BCT, with no rental fee, for up to five (5) days each calendar year, which dates will be coordinated with BCTM in advance. Specific dates for three (3) uses include: Martin Luther King Celebration on January 15, 2018, State of the City on February 15, 2018 and Be More Awards on March 27, 2018. Two (2) additional dates for other City events will be mutually agreed upon by the City and BCTM. A day of use is defined as the time between 8:00 a.m. and 12:00 a.m. (midnight) on the day of the rental. Additional hours may be added to a day of use with BCTM approval.

b. Payments:

i. The City shall provide Fifty Thousand Dollars ($50,000.00) as Operations Funding for the BCTM.

ii. The Redevelopment Commission shall provide up to Seventy Four Thousand Dollars ($74,000.00) from the Consolidated TIF ("Tax Increment Funding"). The Tax Increment Funding may be used only for purposes permitted by Indiana Code § 36-7-14-39. The Tax Increment Funding will only be provided after: (1) BCTM has followed the City's procurement process, as set forth in its Financial Policies Manual, to obtain bids or quotes for a desired purchase, (2) the BCTM has made a request for Tax Increment Funding, (3) the City—through the Director of Parks and Recreation or her designee—has approved the request for Tax Increment Funding, and (4) the Redevelopment Commission has approved the request for Tax Increment Funding via resolution. No Project Review and Approval Form shall be necessary for the expenditure of Tax Increment Funding under this Agreement.

6. TERMS MUTUALLY AGREED TO BY ALL PARTNERS TO THIS AGREEMENT

a. ASSIGNMENT AND LEASING:

i. BCTM may not assign this Agreement or its obligations under this Agreement.

ii. Upon the termination of this Agreement, whether such termination shall occur by expiration of the term or in any other manner whatsoever, BCTM agrees to surrender immediate possession of the BCT Premises in the same condition of cleanliness, repair, and sightliness as of the first day of possession under its first Management Agreement, and agrees to clean the BCT Premises thoroughly or, if BCTM should fail to clean the premises thoroughly, to pay the City for the cleaning necessary to restore the premises to such condition, loss by fire or by the elements and reasonable wear and tear excepted. If BCTM shall remain in possession of all or any part of the BCT Premises after expiration of the term of this Agreement, with the consent of the City, then this Agreement shall continue in effect from month-to-month until terminated in writing by either party.

iii. BCTM shall have the right to lease or subcontract for management of the western portion of the storefront retail space on Kirkwood Avenue, as provided in this Agreement. Such lease or subcontract shall be subject to the prior consent of the City, but such consent shall not be unreasonably withheld. BCTM acknowledges that a lease of the western portions of the storefront retail space is subject to statutory requirements regarding leasing of municipally-owned property, and includes a duty to get

reimbursed for any property taxes associated with such a lease or subcontract, and the terms of and method of procuring any such lease or subcontract must be approved by the Mayor or his designee. Any and all revenues received by BCTM from the management or rental of the western portion of the storefront retail space shall be applied to offset associated costs of management and maintenance of the BCT.

If BCTM and the City's contractual relationship is terminated for any reason during the term of the storefront retail lease or subcontract, the City will honor the remaining term of the storefront retail lease or subcontract. A copy of the storefront retail lease or subcontract shall be provided to the City.

iv. The City expressly retains the right to lease or contract separately for management of the eastern portion of the retail space along Kirkwood Avenue, but does not anticipate that will happen as long as the existing partnership with Downtown Business Inc., the Monroe County Convention and Visitor's Bureau and BCTM continues.

b. INDEMNIFICATION AND RELEASE

i. BCTM shall indemnify, defend, and hold the City harmless from any contractual claim, demand, action, liability, or responsibility arising directly or indirectly from its management, operation, occupancy, use, or possession of the BCT under this Agreement. BCTM shall indemnify, defend and hold the City harmless from and against any claim, demand, liability, proceeding, damages, loss, and costs, including attorney's fees, arising from personal injury, death, or property damage connected, directly or indirectly, with this Agreement or BCTM's occupancy, control, or use of the BCT Premises and personal property, including without limitation, any liability that the City might have to any person, including BCTM and any lessee, and/or its employees and invitees, in or about the BCT Premises with the consent, license, or invitation, express or implied, of BCTM or any lessee. BCTM agrees that its obligations to indemnify the City under this Agreement extend to its actions under the laws applicable to its Alcoholic Beverages permit, including, without limitation, any penalties for violations of the permit or its requirements.

ii. If the City shall, without fault, become a party to litigation commenced by or against BCTM, then BCTM shall indemnify and hold the City harmless from such litigation. The indemnification provided in this paragraph shall include the City's attorney's fees and costs in connection with any such claim, action, or proceedings. BCTM does hereby release the City from all liability for any accident, damage, or injury caused to person or property on or about the BCT Premises. The City shall remain liable for its own gross negligence and the gross negligence of its agents and

employees, and in such case, the indemnification, hold harmless, and release provisions provided herein shall not apply.

c. **Risk of Loss:** In the event that the BCT Premises sustains damage of any nature, any and all property insurance proceeds arising from the loss shall be applied to restore the BCT Premises. In the event that the BCT Premises are destroyed and cannot be restored within one hundred eighty (180) days, then this Agreement may be terminated by either party without further obligation. All property of BCTM, its agents and employees, kept, stored or maintained within the BCT Premises shall be at BCTM's exclusive risk.

d. **E-VERIFY:** Pursuant to Indiana Code § 22-5-1.7-11(a) BCTM shall enroll in and verify the work eligibility status of all newly hired employees through the E-Verify program. BCTM is not required to continue this verification if the E-Verify program no longer exists. BCTM shall sign an affidavit affirming that they participate in the E-Verify program and that they do not currently knowingly employ an unauthorized alien. The affidavit is attached to and incorporated into this Agreement as *Exhibit C.*

e. **Nuisance:** BCTM shall not permit any nuisance to be maintained or permitted on the premises, nor any disturbance, noise, or other annoyance that interferes with the reasonable comfort and quiet enjoyment of persons occupying adjacent properties. If BCTM fails to remedy the nuisance, then the City shall have the right to enter on the premises to remedy the nuisance. However, the City's failure to assert its right to remedy a nuisance shall not impose an affirmative duty on the City so that it assumes liability for the nuisance. Regardless of any entry or non-entry onto the premises by the City for the purpose of remedying a nuisance, BCTM shall remain solely liable for any and all liability resulting to any persons from any nuisance maintained or permitted on the premises.

f. **Firearms Policy:** Pursuant to Indiana Code §§ 35-47-11.1-2 and -3, the City is prohibited from enforcing its former policy on firearms in public parks and city facilities as of July 1, 2011. However, pursuant to Indiana Code § 35-47-11.1-4(10), BCTM may develop and implement, at its own discretion, rules of conduct or admission regarding the carrying and storage of firearms, upon which attendance at and participation in its activities is conditioned. BCTM has developed such a policy for its activities, which is incorporated into this Agreement as *Exhibit D.*

g. **Non-Waiver:** Failure on the part of either the City or BCTM to exercise any right or remedy under this Agreement shall not constitute a waiver thereof as to any default or future default or breach by the other party. No waiver of any default shall be effective unless in writing.

h. **Insurance:** BCTM shall, at its own expense during the term of this Agreement, maintain in full force and effect for the mutual benefit and protection of both BCTM and the City, as additional insured, General Liability Insurance, in an amount and with an insurance company approved by City, against claims of bodily injury, death, or damage to the property of third parties occurring in or about the BCT premises. The minimum limits of

liability of such General Liability Insurance shall be One Million Dollars ($1,000,000.00) per occurrence, Two Million Dollars ($2,000,000) in the aggregate, and One Hundred Thousand Dollars ($100,000.00) with respect to property damage/fire legal liability. BCTM shall, at its own expense during the term of this Agreement, maintain and keep in full force and effect for the mutual benefit and protection of both BCTM and the City, as additional insured, Fire and Extended Casualty Insurance coverage upon those contents, furnishings, and personal property owned or maintained by BCTM, as indicated in this Agreement or otherwise. BCTM shall provide the City with an All Risk/Special Form regarding such contents, furnishings and personal property. BCTM shall maintain Workers Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code. BCTM shall provide to the City certificates of insurance evidencing the insurance required pursuant to this paragraph. All policies of insurance on which the City is named as additional insured shall require that the City be provided a minimum of thirty (30) days notice in writing of any intended cancellation.

In addition, BCTM shall, at its own expense during the duration of this Agreement, maintain liquor liability insurance with an insurance agency approved by the City. BCTM's liquor liability insurance shall name the City as an additional insured. BCTM shall maintain liquor liability insurance with limits no less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) in the aggregate. Additionally, BCTM's liquor liability insurance policy shall require that the City be provided at least thirty (30) days notice in writing of any intended cancellation. BCTM shall provide the City with insurance certificates evidencing the required liquor liability coverage.

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

City of Bloomington Legal Department
P.O. Box 100
401 N. Morton Street, Suite 220
Bloomington, IN 47404

Any notice given to BCTM under this Agreement shall be addressed to:
BCT Management, Inc.
Buskirk-Chumley Theater
114 E Kirkwood Ave
Bloomington, Indiana 47408

All notices under this Agreement shall be in writing and shall be delivered personally or sent by Certified Mail, Return Receipt Requested to the above-described addresses, provided that each party by like notice may designate any further or different address to which subsequent notices may be sent.

j. Termination: Either party may terminate this Agreement upon giving written notice of the intention to do so six (6) months prior to the intended date of termination.

If BCTM and the City's contractual relationship is terminated for any reason during the term of a rental agreement that BCTM has with a third-party for use of the Theater, the City will honor the remaining term of the rental agreement. A copy of any third-party rental agreement shall be provided to the City.

k. Default:

i. **By City:** If the City should fail to perform any of the covenants, agreements, or conditions of this Agreement, on its part to be kept and performed, and such default is not cured within thirty (30) days after written notice is given to the City by BCTM by Certified Mail Return Receipt Requested setting forth the nature of such default, this Agreement may be terminated by BCTM before expiration of its term. The parties agree to meet within five (5) days after a written notice of default has been given by BCTM and to endeavor to resolve any dispute concerning the alleged default by direct negotiations.

ii. **By BCTM:** If BCTM should fail to perform any of the covenants, agreements or conditions of this Agreement, on its part to be kept and performed, and such default is not cured within thirty (30) days after written notice is given to BCTM by the City by Certified Mail, Return Receipt Requested setting forth the nature of such default; or if BCTM shall make an assignment for the benefit of creditors; or if the interest of BCTM hereunder shall be sold under execution or other legal process; or if BCTM shall be placed in the hands of a receiver; then, in any of such events, it shall be lawful for the City, without notice or process of law, to enter upon and take possession of the BCT Premises, and thereupon this Agreement and everything herein contained on the part of the City to be done and performed shall cease, terminate, and be utterly void, all at the option of the City; without prejudice, however, to the right of the City to recover from BCTM, and without such action being deemed a surrender of this Agreement or a termination of BCTM's liabilities, undertakings, and responsibilities under this Agreement.

l. Successors: The provisions, covenants and conditions of this Agreement shall bind and inure to the benefit of the legal representatives, successors and permitted assigns of the parties.

m. Choice of Law and Venue: This Agreement shall be governed and construed in accordance with the laws of the State of Indiana. The venue for any legal proceeding instituted under this Agreement shall be Monroe County, Indiana.

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

City of Bloomington, Indiana

By: _____
Paula McDevitt, Director

By: _____
Philippa M. Guthrie, Corporation Counsel

BCT Management, Inc.

By:_____
Kevin Robling, President

Redevelopment Commission

By: _____
Donald Griffin, President

Board of Park Commissioners

By:_____
Les Coyne, President

Board of Public Works

By:_____
Kyla Cox Deckard, President

Exhibit A

1. BCT Management, Inc. (BCTM) shall be responsible for:

- Minor repair and maintenance building interior – walls, floors, floor coverings, ceilings, toilets, sinks, toilet paper dispensers, paper towel dispenses, soap dispensers, water fountains, lighting fixtures, railings, interior doors, interior door glass
- Minor repair and maintenance of all stage equipment and soft goods
- Minor repair and maintenance of theater seats, free-standing chairs, tables, desks, counters, and other furniture
- Minor repair and maintenance of the Theater's mechanical systems– electrical, plumbing, and HVAC (including annual service contract for HVAC system)
- Minor repair and maintenance of the Theater's fire alarm and sprinkler system, (including annual service contract for the alarm system) and fire extinguishers
- Repair, maintenance, replacement and purchase of BCTM – owned office equipment and furniture necessary for BCTM business operation, not directly related to BCT's operation as a Theater, and not intended for City ownership
- Repair and maintenance of the western portion of the storefront retail space, including the mechanical systems (electrical, plumbing, and HVAC) associated with that space.
- An annual report on such repair and maintenance as well as preventative maintenance

2. The City of Bloomington shall be responsible for:

- Repairs and maintenance of the Theater's exterior structure, including doors, door locks, windows and window locks (where applicable)
- Repairs and maintenance of the Marquee
- Replacement of mechanical systems (electrical, plumbing, and HVAC) other than those referenced in *Exhibit A*, Section 1.
- Replacement of existing City property within BCT – floors, floor covering, fixed seats, free-standing seats, sound system, lighting system, microphones, box office equipment, soft goods, rigging, stage extension, piano, and any other items listed on the property and equipment inventory

Exhibit B

Buskirk-Chumley Theater Equipment Furnishings Inventory as of October 1, 2016

See attached Excel spreadsheets – Exhibit B BCT Equipment & Facility Item List 2016

- Section 1 - BCT Facility Items
- Section 2 - BCT Stage Equipment Items
- Section 3 - Surplus Equipment Tracking

Exhibit C

STATE OF INDIANA)
)
COUNTY OF MONROE)

AFFIDAVIT

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

1. The undersigned is the _____ of _____.
(job title) (company name)

2. BCT Management, Inc., employer of the undersigned, has contracted with the City of Bloomington to provide services;

3. BCT Management, Inc., employer of the undersigned, is enrolled in and participates in the State of Indiana E-Verify program.

4. The undersigned is authorized by his/her employer, BCT Management, Inc., to sign affidavits on its behalf.

5. The undersigned states that, to the best of his/her knowledge and belief, BCT Management, Inc. does not knowingly employ an "unauthorized alien," as defined at 8 U.S.C. § 1324a. (h)(3), and, BCT Management, Inc. is enrolled and participating in E-verify to check the eligibility status of all its newly hired employees, and requires the same from its sub-contractors who work under this Agreement.

_____ _____
Signature Date

_____
Printed name

STATE OF INDIANA)
)
COUNTY OF MONROE)

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: _____ _____
Signature of Notary Public

County of Residence: _____ _____
Printed Name of Notary Public

Exhibit D

BCTM Firearms Policy

BCTM does not standardly restrict firearms and other weapons from the Buskirk-Chumley Theater. However, any presenter partner and/or a performing artist may request that firearms and other weapons be prohibited from the venue, provided the presenter partner and/or performing artist is willing to compensate BCTM for the cost of hiring security to enforce the prohibition.

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: C-3
Date: 12/8/2017

Administrator
Review\Approval
PM

TO: Board of Park Commissioners
FROM: Paula McDevitt, Administrator
DATE: **December 12, 2017**
SUBJECT: **Resolution 17-06 for the purchase of property**

Recommendation

Staff recommends the approval of Resolution 17-06 for the purchase of property owned by Dagom Gaden Tensung Ling Monastery.

Background

The Parks and Recreation Department has an accepted offer to acquire the property located at 100-112 W. Club House Drive, Bloomington, IN. These property totals 2.89 acres and sit adjacent to Lower Cascades Park. The current owners, Dagom Gaden Tensung Ling Monastery have been ideal neighbors to the park for many years. They expressed interest in selling the property to the department several years ago when they built and have since moved to a new monastery. The acquisition of the property would complete the missing gap in currently owned park property in Lower Cascades. This opportunity would allow the department to return a large portion of the property to green space.

The accepted offer is for $400,000 and is based on a restricted appraisal from three qualified appraisers. The funds for the purchase will come from the Park Bond Fund.

RESPECTFULLY SUBMITTED,

Paula McDevitt

Paula McDevitt, Administrator

RESOLUTION 17-06
OF THE
BOARD OF PARK COMMISSIONERS
CITY OF BLOOMINGTON, INDIANA
TO APPROVE OFFER TO PURCHASE 100-112 W. CLUB HOUSE DRIVE

WHEREAS, the City of Bloomington, Indiana, Board of Park Commissioners ("Board"), by and through the Parks and Recreation Department ("Parks"), pursuant to Indiana Code § 36-10-4, operates recreational programs and facilities serving the residents of Bloomington and Monroe County, Indiana, which facilities serve an important public purpose; and

WHEREAS, Parks is interested in acquiring two properties located at 100-112 W. Club House Drive, Bloomington, Indiana 47401 ("Properties") adjoining Lower Cascades Park to add to the Park current acreage; and

WHEREAS, the properties are owned by Dagom Gaden Tensung Ling Monastery ("Property Owner"), are operated as rental apartment units and the monastery property for weekly classes and a map of the Properties is attached to this Resolution as Exhibit A; and

WHEREAS, the acquisition of the Properties described above for additional greenspace in Lower Cascades Park serves a public purpose and furthers the public welfare by enhancing recreational opportunities in the Bloomington area; and

WHEREAS, the Property Owner wishes to sell the Property to Parks; and

WHEREAS, Indiana Code § 36-10-4-25 outlines the statutory process that the Board must follow in order to acquire real property, which includes the requirement that the Board shall appoint three (3) qualified appraisers to appraise the land and shall report the appraisal in writing; and

WHEREAS, the Board may not take an option on the land or enter into a contract to purchase it at a higher price than the value named in the report; and

WHEREAS, pursuant to Indiana Code § 36-10-4-25(h) on July 25, 2017, the Board appointed three (3) qualified appraisers to appraise the properties; and

WHEREAS, on said date the Board approved a contract with Monroe/Owen Appraisal, Inc. to lead the appraisals for the Property; and

WHEREAS, the Monroe/Owen Appraisal, Inc. filed a report with Parks, in which the appraised value is Four Hundred Thousand Dollars ($400,000.00); and

WHEREAS, Parks has tendered to the Property Owner a purchase offer to purchase the

Properties for Four Hundred Thousand Dollars ($400,000.00), which is contingent upon, among other things, the approval of the purchase by the Board, and the result of an Environmental Assessment Report; and

WHEREAS, the Property Owner accepted said purchase offer and a copy of the contract to purchase the Properties is attached to this Resolution as Exhibit B; and

WHEREAS, Parks will use bond number GL 977-18-18016d (977-2017q) to purchase the Property.

NOW THEREFORE, BE IT RESOLVED THAT:

1. The acquisition of the Properties serve a public purpose and furthers the public welfare by increasing recreational opportunities and enhancing the appearance and by adding Park current acreage.

2. The Bloomington Parks and Recreation Department is hereby authorized to acquire the Properties, subject to applicable Indiana law, and the satisfaction of contingencies in the offer to purchase.

APPROVED THIS _____ day of _____, 2017.

CITY OF BLOOMINGTON, INDIANA
BOARD OF PARKS COMMISSIONERS

BY: _____
Leslie J. Coyne, President

BY: _____
Paula McDevitt, Director

ATTEST:_____
Kim Clapp, Secretary

CONTRACT FOR PURCHASE OF REAL ESTATE

This Contract for Purchase of Real Estate (the "Contract") is entered into this 8th day of December, 2017 (the "Effective Date") by and between the City of Bloomington Board of Park Commissioners, acting by and through the Administrator of the Bloomington Parks and Recreation Department ("Purchaser") and Dagom Garden Tensing Ling, Inc. ("Seller"), with respect to certain real property commonly known as 100-112 W. Club House Dr., Bloomington, Monroe County, Indiana, more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Real Estate").

AGREEMENT

1. **Purchase Price and Payment**. Purchaser agrees to purchase and Seller agrees to sell the Real Estate for the amount of Four Hundred Thousand Dollars ($400,000.00) (the "Purchase Price"). The entire Purchase Price shall be payable at closing, less credits, reductions and proration's for which this Contract provides, by wire transfer or other form of readily available funds.

2. **Due Diligence**. Purchaser's obligations under this Contract are subject to the timely and complete satisfaction of each of the following conditions, unless waived in writing by Purchaser. For purposes of this Contract, the term "Due Diligence Period" shall mean the date that is thirty (30) days following Purchaser's receipt of the Title Commitment (defined below) and all documents referenced therein from the Title Company (defined below):

   a. **Title Evidence and Insurance.** Buyer shall order, at Seller's sole cost and expense, a commitment for an owner's title insurance policy from TITLE PLUS (the "Title Company"), satisfactory to Purchaser in its sole discretion, insuring for the full amount of the Purchase Price, including all associated documents, merchantable and marketable fee simple title to the Real Estate, free of all exceptions (including, without limitation, the standard exceptions), except only the lien of no delinquent real estate taxes and assessments and any other matters that Purchaser may accept in writing ; and (b) issue such endorsements as Purchaser may reasonably request (the "Title Commitment"). If Purchaser objects to any matter disclosed in the Title Commitment, Seller shall use commercially reasonable efforts to remedy the Purchaser's Objection(s) prior to the Closing Date.

   b. **Survey.** Purchaser may, at its option, obtain a survey of the Real Estate conforming to the Minimum Standard Detail Requirements for an ALTA/NSPS survey (the "Survey"). If Purchaser objects to any matter disclosed in the Survey, Seller shall use commercially reasonable efforts to remedy the Purchaser's objection(s) prior to the Closing Date in a manner satisfactory to Purchaser in its sole discretion. The Survey shall establish the precise legal description of the Real Estate and certify the gross acreage of the Real Estate to within a tenth of an acre.

c. **Environmental Report.** Purchaser may, at its option and sole cost and expense, obtain a phase I environmental assessment of the Real Estate.

d. **Access.** Purchaser shall have the right to enter upon the Real Estate at any time and conduct its Due Diligence. Purchaser shall provide Seller or Seller's designated representative reasonable notice of its intent to enter upon the Real Estate. Purchaser, at Purchaser's sole expense, shall restore or repair any damage to the Real Estate, including but not limited to soil borings or other holes in the ground, caused by Purchaser's investigation no later than seven (7) days prior to the Closing Date or fourteen (14) days following termination of this Contract.

e. **Delivery of Documents.** No later than five (5) days after the Effective Date, Seller shall provide all documentation in its possession or control regarding the Real Estate, including, but not limited to, any existing title commitment, survey, leases, tax statements, service contracts, notices or communications from any governmental or quasi-governmental entity. Seller acknowledges that Purchaser, as a public entity, is limited in its ability to keep documents confidential by state law. Nevertheless, Purchaser shall keep all information provided by Seller confidential to the extent permitted by law, in Purchaser's sole and absolute discretion. In the event that Purchaser receives a public records request with respect to this Contract, Seller will reasonably cooperate with Purchaser to identify all information that Purchaser may classify as confidential hereunder (including, but not limited to, trade secrets), within the time period for Purchaser to respond to such record request. This section shall not prevent Purchaser from providing information provided by Seller to staff and other professionals advising the Purchaser with respect to this Contract.

3. **Termination of Contract.** At any time prior to the end of the Due Diligence Period, Purchaser may, at its sole discretion, for any reason or no reason at all, terminate the Contract, in which case Purchaser shall have no liability or obligation to Seller.

4. **Representations and Warranties.** Seller represents and warrants to the Purchaser, and shall be deemed to represent and warrant to the Purchaser on the Closing Date, that, as of the Closing Date:

a. Seller has not created, permitted or suffered any lien or other encumbrance to attach to or affect the Real Estate and improvements thereon, except for the lien of non-delinquent real estate taxes;

b. There are no claims, actions, suits, proceedings or investigations pending or threatened with respect to or in any manner affecting the Real Estate or Seller's ownership thereof;

c. No work has been performed or is in progress at, and no materials have been furnished to, the Real Estate or any portion thereof which is presently the subject

of or which might give rise to mechanics', materialmen's or other liens affecting the Real Estate or any portion thereof;

d. Prior to the closing, Seller has not sold, assigned, transferred, leased, sublet, encumbered, or conveyed any right, title or interest whatsoever in or to the Real Estate or any portion thereof without the Purchaser's prior written consent, nor has Seller amended, modified, terminated or altered any currently existing agreement or document relating to the Real Estate without the Purchaser's prior written consent;

e. Seller knows of no facts nor has Seller misrepresented or failed to disclose any fact which would materially adversely affect the value of the Real Estate;

f. All improvements on the Real Estate, including the building and all parking associated with the building, are located entirely within the bounds of the Real Estate and there will be no encroachments thereon and no existing violations of zoning ordinances or other restrictions applicable to the Real Estate;

g. Seller shall deliver possession of the Real Estate to the Purchaser on the closing date, free and clear of all rights and claims of any other party to the possession, use, ownership or control of the Real Estate except as agreed to by Purchaser in writing.

5. **Real Estate Taxes.** Seller shall pay all real estate taxes and assessments coming due and payable prior to the Closing Date. Taxes and assessments for the year of closing, which shall be a lien against the Real Estate, but not yet due and payable, shall be prorated according to the number of days in such year each party owns the Real Estate, and at closing Purchaser shall receive, as a credit against the Purchase Price, that portion of such taxes and assessments attributable to Seller's period of ownership of the Real Estate.

6. **Governmental Approvals.** Notwithstanding any provision herein to the contrary, Purchaser's obligation to purchase the Real Estate, whether or not the Due Diligence Period has expired, is subject to and contingent upon Purchaser's receipt of all necessary governmental or quasi-governmental approvals required to effectuate this transaction. In the event Purchaser does not receive such necessary approvals within ninety (90) days of the Effective Date, this Agreement shall be terminated and neither party shall have remedy against the other.

7. **Broker's Fees.** Purchaser and Seller shall each be responsible for the payment of their own advisors and professionals they have used relating to the execution of this transaction. Purchaser and Seller represent and warrant to each other that no fee, commission or similar compensation shall be payable by Seller or Purchaser to any broker or any other person as a result of any agreement or action by Seller or Purchaser.

8. **Default.** Seller agrees that money damages are not an adequate remedy for breach of this Contract by Seller, and, in the event of a breach by Seller, and Seller's failure to cure such

default within ten (10) days after written notice of such default, Purchaser shall be entitled to seek the remedy of specific performance in addition to any other remedy available at law or in equity. If Purchaser refuses or fails to perform as required by this Contract, then Seller's only remedy is to terminate this Contract.

9. **Closing and Possession.** Closing shall take place at time, date and location agreed upon by the Parties or by escrow within seven (7) days after the later of the expiration of the Due Diligence Period or the date Purchaser obtains all necessary governmental approvals required to purchase the Property (the "Closing Date"). At Closing, Seller shall deliver to Purchaser (a) an executed Warranty Deed in recordable form conveying marketable title to the Real Estate free and clear of all liens, encumbrances, easements, restrictions, covenants and other title defects, except the Permitted Encumbrances, (b) a fully executed vendor's affidavit in form and substance that will permit the standard exceptions included in the Title Commitment to be deleted from the owner's policy of title insurance, (c) a non-foreign person affidavit in form and substance satisfactory to Seller, Purchaser, and Title Company, (d) any and all other documents contemplated by this Contract or appropriate or required to consummate the sale of the Real Estate, subject only to exceptions permitted by this Contract, together with an executed Vendor's Affidavit in a form acceptable to Purchaser. Possession of the Real Estate shall be delivered to the Purchaser on the date of Closing.

10. **Closing Costs**. Purchaser and Seller shall equally share the escrow fees charged by Title Company. Seller shall pay the cost of the title policy and all search and examination fees, the cost of remedying any objections to the Title Commitment or Survey, including any required endorsements to the title policy, all real property taxes and assessments as set forth herein, and the cost of drafting the deed and any other closing documents. Purchaser shall pay for any expenses related to the Survey, the cost of any title endorsements requested by Purchaser, the cost of recording the deed, and all real property taxes and assessments as set forth herein. Both parties shall pay the cost of their attorneys' fees.

11. **Survival of Representation and Warranties.** All representations and warranties made herein shall survive the Closing Date.

12. **Further Marketing by Seller.** Nothing herein shall prohibit or prevent Seller from continuing to market, solicit, or seek a "backup offer(s)", or from entering into a contingent sale of the Real Estate to a third party. Any such agreement shall be, and shall state that it is, subordinate to this Contract and the rights of Purchaser hereunder, including any rights of Purchaser in the event of a default of Seller hereunder.

13. **Seller's Authority.** The Seller represents and warrants to Purchaser that all necessary legal action to authorize, empower, or otherwise enter into this transaction has occurred, that marketable fee simple title to the Real Estate is presently vested in Seller, that Seller's execution of this Contract and agreement to the terms hereof do not and will not violate the terms of any mortgage, lease, or other agreement, and that the individual executing this Contract has all necessary authority to do the same.

14. **Leases.** Seller represents and warrants that the Real Estate is not presently leased or occupied by any third party or, alternatively, that any such lease or occupancy shall be terminated as of the Closing Date.

15. **Counterparts; Facsimile Signature.** This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, and all counterparts, when taken together, will constitute one and the same agreement. The parties agree that signatures on this Contract, as well as any other documents to be executed under this Contract may be delivered by facsimile, in lieu of original signatures, and the parties agree to treat facsimile signatures as original signatures and agree to be bound by this provision.

PURCHASER:

THE CITY OF BLOOMINGTON
BOARD OF PARK COMMISSIONERS

By: Paula McDevitt
Paula McDevitt, City of Bloomington

SELLER:

DAGOM GADEN TENSUNG LING, INC.

By: Suzy Fulkerson
Printed: SUZY FULKERSON

I\12570289.2

EXHIBIT A

(Legal Description)

:

Parcel No.	Legal Description	Acreage
53-05-21-300-009.000-005	PT NW SW 21-9-1 W 2.89A	2.89

(Final legal description subject to confirmation by Survey or Title Commitment)

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: C-4
Date: 12/8/2017

Administrator
Review\Approval
PM

TO: Board of Park Commissioners
FROM: **Mark Marotz, Operations Superintendent**
DATE: **November 30, 2017**
SUBJECT: **Purchase of Electric Maintenance Vehicle for B-Line Trail**

Recommendation

Staff recommends the purchase of a two passenger electric maintenance vehicle to maintain the B-Line Trail.

Background

The new Gator Moto Electro Utility Buddy Standard is a two passenger enclosed utility vehicle with all the required standard features necessary to certify the unit as street legal. This vehicle is approved to drive on roads marked 35 MPH or less with the capability to travel an industry leading 50 miles per charge. The built in board chargers keep batteries ready to go and contains a microprocessor so it will never overcharge. It also has the ability to charge at any time because the charger is located on the vehicle. This vehicle is environmentally friendly, will save on fuel costs and will be much quieter for the trail users.

RESPECTFULLY SUBMITTED,

Mark Marotz, Operations Superintendent

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: C-5 Date: 12/8/2017

Administrator Review\Approval PM

TO: Board of Park Commissioners
FROM: Robin Kitowski
DATE: December 12, 2017
SUBJECT: **REVIEW APPROVAL OF MOTHER HUBBARD'S CUPBOARD COOPERATION SERVICES & RENTAL AGREEMENT PROGRAM PARTNERSHIP**

Recommendation
Staff recommends approval of a Cooperation Services and Rental Program Partnership between the Department and Mother Hubbard's Cupboard (MHC) for the purpose of continuing to manage educational community gardening programs at Rev. Ernest D. Butler Park Community Garden (BPCG).

Background
The Community Gardening Program and Mother Hubbard's Cupboard intend to continue collaboration to address local food security in Bloomington through action at BPCG where MHC's gardening outreach and education activities take place. These efforts support involvement in community gardening opportunities for low-income Bloomington residents, production of food to be distributed to area residents via the MHC food resource center, and allow for participating gardeners to acquire fresh, locally produced, nutrient dense food. Alongside the rental garden plots, a positive presence at Butler Park is cultivated through Mother Hubbard's Cupboard work with partner agencies, Youth Services Bureau, the Crestmont Boys and Girls Club, and the Banneker youth program.

In 2017, Mother Hubbard's Cupboard hosted 35 volunteers and 12 interns for a combined 745 volunteer hours to grow over a thousand pounds of produce at the Butler Park gardens. Connecting community members with empowering knowledge around building food literacy and cultivation skills are central goals in MHC's garden program, and the Butler Park Garden provides an ideal space in which to carry out these aims.

RESPECTFULLY SUBMITTED,

Robin Kitowski, Community Gardens Specialist

CITY OF BLOOMINGTON
parks and recreation

COOPERATION SERVICES & RENTAL AGREEMENT
PROGRAM PARTNERSHIP

Partner(s):

This Agreement is made and entered into this_____day of December, 2017, by and between the Bloomington Parks and Recreation Department by its Board of Parks Commissioners ("BPRD") and Mother Hubbard's Cupboard by its Board of Directors ("MHC"); and

WHEREAS, BPRD is committed to offering and promoting educational, community gardening opportunities and fresh, local produce to low-income Bloomington residents; and

WHEREAS, BPRD may from time to time develop partnerships with non-City organizations in order to promote such services addressing local food security; and

WHEREAS, MHC operates a food pantry and community gardening program providing outreach educational, community gardening programs and fresh, local produce to low-income Bloomington residents; and

WHEREAS, BPRD has partnered with MHC in past years in order to assist MHC in carrying out its mission, and the parties desire to continue their partnership; and

WHEREAS, it is in the public interest that such partnership continue.

NOW THEREFORE, in consideration of the terms and conditions set forth in this Agreement, the parties agree as follows:

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to outline a program partnership to develop and manage educational, community gardening programs by renting out space at Rev. Ernest D. Butler Park ("Butler Park") to MHC which will allow community gardening opportunities for low-income Bloomington residents, produce food to be distributed to low-income Bloomington residents in need, and provide venues for gardening education geared towards youth and low-income Bloomington residents.

2. DURATION OF AGREEMENT

This Agreement shall begin on January 1, 2018 and run through December 31, 2018, unless early termination occurs as described in paragraph 8, below.

3. BLOOMINGTON PARKS AND RECREATION

The goal of BPRD is to provide space for safe, educational, community gardening and food production environments for low-income Bloomington residents. BPRD agrees to:

i. Staff/Communication:

a. Provide one staff person to attend periodic meetings on an as needed basis (on a date and at a location which is mutually determined) to discuss the responsibilities of both parties per this Agreement.

b. Meet MHC garden interns throughout the season on an as needed basis.

c. Promote the Butler Park gardens in its Program Guide on its Web site, in its community gardening program brochure and newsletter, and field questions from interested gardeners.

d. Rent out space to MHC for its gardening programming.

ii. Butler Park Community Garden ("BPCG"):

a. Provide for rent approximately 5,000 sq. ft. (per site design) of BPCG for MHC to implement its community gardening program.

b. Develop and coordinate all aspects of the forty one BPCG rental plots (per site design).

c. Maintain the deer fencing, garden sign, two storage sheds, composting areas, soil amendment bins, entry steps and ramp, perennial fruit and nut tree plantings, waterline and spigots.

d. Utilize (and require participating rental plot gardeners to utilize) organic growing practices, including organic pest and disease management.

e. Provide wood chips for MHC to utilize in maintaining its rented area within BPCG.

f. Provide a 16' x 20' storage shed as part of this rental agreement solely for MHC to utilize in the implementation of its community gardening program at BPCG.

g. Manage the composting system, turf around the deer fence perimeter and all grass paths within BPCG.

h. Provide MHC with area for composting organic matter wastes from their gardening activities to the north side of the perimeter fence.

4. MOTHER HUBBARD'S CUPBOARD

The goal of MHC is to provide safe, educational, community gardening and food production environments for low-income Bloomington residents through this service and rental agreement.

MHC agrees to:

i. Staff/Communication:

a. Provide one staff person to attend periodic meetings on an as needed basis (on a date and at a location which is mutually determined) to discuss the responsibilities of both parties per this Agreement.

b. Communicate with MHC garden interns (and ensure adherence to) all responsibilities of both parties per this Agreement.

c. Coordinate meetings on an as needed basis throughout the season for MHC garden interns to meet BPRD staff.

d. Promote the Butler Park gardens in its food pantry, on its Web site and in its newsletter, and field questions from interested gardeners.

e. Communicate with gardeners participating in its community gardening program via email, phone and newsletters.

f. All staff to staff communications between partners regarding operations, best practices, or other advice shall take place in private whether in-person, by email or phone.

g. Place any organic matter wastes resulting from MHC gardening activities in a dedicated area for the composting of that material to the north of the perimeter fence.

h. MHC will return this Agreement with all required signatures, along with notarized Exhibit A, and proof of current insurance to BPRD no later than February 15, 2018.

ii. Butler Park Community Garden ("BPCG"):

a. Rent and utilize approximately 5,000 sq. ft. (per site design) of BPCG to implement its community gardening program.

b. Coordinate the following on-going aspects of the on-site management of the MHC community gardening program at BPCG, including: planting, tending and harvesting of all crops, maintaining general orderliness and removal of trash, weeding and mulching greenhouse area and youth education garden plots, ensuring all plantings are within the designated spaces, and maintain any garden amendments/materials stockpiled outside the fenced perimeter in an organized manner and according to best practices.

c. Utilize organic growing practices, including organic pest and disease management, in BPCG.

d. Coordinate, with assistance from BPRD staff, cover cropping and additional soil amending for the MHC rented garden area in BPCG.

e. Maintain the 8' x 10' wooden arbor in the area immediately north of the greenhouse for the purpose of creating shade and supporting vining growth.

f. Oversee and maintain the 16' x 30' greenhouse which will be utilized solely by MHC as part of this rental agreement to start plants for its community gardening program and for hosting MHC gardening classes.

g. Collaborate with BPRD in designing, installing, funding and maintaining perennial plantings throughout BPCG.

h. Be responsible for removal of the greenhouse in case of termination of this Agreement as described in paragraph 8, below within one month of termination date or BPRD will assume control of the greenhouse.

i. MHC will apprise CGP staff, in writing, of the seasonal timetable of MHC program activities at BPCG and notify the staff of any changes within two weeks.

6. TERMS MUTUALLY AGREED TO BY BOTH PARTNERS IN THIS AGREEMENT

The intent of this rental and service Agreement is to document a mutually beneficial partnership between Mother Hubbard's Cupboard and the Bloomington Parks and Recreation Department.

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

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

Pursuant to Ind. Code 22-5-1.7-11(a), which was adopted on July 1, 2011, BPRD and Mother Hubbard's Cupboard shall enroll in and verify the work eligibility status of all newly hired employees through the E-Verify program. Mother Hubbard's Cupboard is not required to continue this verification if the E-Verify program no longer exists. Mother Hubbard's Cupboard shall sign an affidavit affirming that it does not currently knowingly employ an unauthorized alien. The affidavit is attached to and incorporated into this Agreement as *Exhibit A*.

The possession of alcoholic beverages, drugs and other illegal controlled substances, fireworks, air rifles, paintball guns, bow and arrows, cross bows, swords, and pellet guns is strictly prohibited in any park or park facility. Moreover, pursuant to Bloomington Municipal Code 14.20.020, the discharge of a firearm is strictly prohibited within the City's jurisdiction. Amplified music, or the promotion or sale of any article is expressly prohibited without a Special Use Permit.

Pursuant to Indiana Code 35-47-11.1-2 and 3, the City is prohibited from enforcing its former policy on firearms in public parks and city facilities as of July 1, 2011. However, per Indiana Code 35-47-11.1-4(10), a person or organization who rents space in a Parks facility may develop and implement, at its own discretion, rules of conduct or admission regarding the possession, carrying, and storage of firearms, upon which attendance at and participation in its activities is conditioned. If a person or organization who rents space in a Parks facility develops such a policy for its activities, it will be

responsible for implementation and enforcement of such a policy, and it shall provide a copy of the policy to the City which shall be attached to this Agreement as *Exhibit B*.

7. INSURANCE AND INDEMNITY

MHC shall maintain comprehensive general liability insurance, which shall include premises, operations and product liability. Coverage shall be in the amount of one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in the aggregate. The policy shall name the City of Bloomington and MHC as insured parties, and MHC shall provide BPRD with a certificate of insurance prior to the commencement of operations under this Partnership Agreement. MHC and its insurer shall notify BPRD within ten (10) days of any insurance cancellation.

MHC agrees to release, hold harmless, indemnify and defend the City of Bloomington, its Parks and Recreation Department, and its employees, officers and agents from any and all claims or causes of action that may arise from its reckless, negligent or intentional acts or failure to act in performance of this Agreement. This includes claims for personal injury, property damage, and/or any other type of claim which may arise from these activities, whether such claims may be brought by the parties or any third-party, even if arising from the negligence of releasees.

8. NOTICE AND AGREEMENT REPRESENTATIVES & TERMINATION

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

Bloomington Parks & Recreation	Mother Hubbard's Cupboard
Rebecca Barrick	Amanda Nickey
401 N. Morton St., Ste. 250	1100 W. Allen St.
Bloomington, IN 47404	Bloomington, IN 47403
812-349-3713	812-355-6843

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

Bloomington Parks & Recreation	Mother Hubbard's Cupboard
Robin Kitowski	Kendra Brewer
401 N. Morton St., Ste. 250	1100 W. Allen St.
Bloomington, IN 47404	Bloomington, IN 47403
812-349-3704	812-355-6843

Either BPRD or MHC may terminate this Agreement upon giving written notice of the intention to do so one (1) month prior to the intended date of termination.

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

CITY OF BLOOMINGTON

_____
Leslie J. Coyne, President
Board of Park Commissioners

Attest:_____
Paula McDevitt, Administrator

_____
Philippa M. Guthrie, Corporation Counsel

MOTHER HUBBARD'S CUPBOARD
BOARD OF DIRECTOR

_____
Tom Tarzian, Chairman

Attest:_____
Amanda Nickey, President and CEO

EXHIBIT A

STATE OF INDIANA)
)
COUNTY OF MONROE)

AFFIDAVIT

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

1. The undersigned is the _____ of Mother Hubbard's Cupboard

2. Mother Hubbard's Cupboard has contracted with the City of Bloomington to provide services;

3. Mother Hubbard's Cupboard is enrolled in and participates in the E-Verify program.

4. The undersigned is authorized by Mother Hubbard's Cupboard, to sign affidavits on its behalf.

5. The undersigned states that, to the best of his/her knowledge and belief, Mother Hubbard's Cupboard, does not knowingly employ an "unauthorized alien," as defined at 8 U.S.C. §1324a. (h)(3), and participates in E-verify to check the eligibility status of all its newly hired employees, and requires the same from its sub-contractors who work under this Agreement.

_____ _____
Signature Date

_____
Printed name & Title with Mother Hubbard's Cupboard

STATE OF INDIANA)
)
COUNTY OF MONROE)

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.

_____
Notary Public

_____
Printed name

Residing in _____ County

My Commission Expires:_____

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: C-6 Date: 12/7/2017

Administrator Review\Approval PM

TO: Board of Park Commissioners
FROM: Robin Kitowski
DATE: December 12, 2017
SUBJECT: **REVIEW/APPROVAL OF PARTNERSHIP AGREEMENT WITH THE TRUSTEES OF INDIANA UNIVERSITY (HILLTOP GARDENS AT INDIANA UNIVERSITY)**

Recommendation
Staff recommends the approval of the partnership between the Trustees of Indiana University and BPRD for the purpose of providing collaborative programming and sharing of resources to better serve the community with educational opportunities presented around a variety of gardening topics.

Background
BPRD offers a varied roster of popular class offerings to area adults at Hilltop Gardens at Indiana University, including topics such as landscaping with native plants, how to conduct and interpret a soil test, composting best practices, and garden planning. In addition, classes on cultivating specific orchard management skills offered through BPRD in cooperation with partner organization, the Bloomington Community Orchard, continue to draw numerous participants to the Hilltop venue in each of the three Program Guide seasons in the year.

Hilltop's role in helping to cross-promote these highly-valued events increases the reach of our programming. Through this partnership the Community Gardening Program is able to utilize the Hilltop classroom venue as a site for our classes. Staff appreciate and enjoy working with Hilltop personnel and feel fortunate to be able to bring the gardening and orchard classes to area citizens in partnership with this long-serving, dedicated, horticultural facility.

RESPECTFULLY SUBMITTED,

Robin Kitowski, Community Gardening Program Specialist

COOPERATION SERVICES AGREEMENT
PROGRAM/ FACILITY PARTNERSHIP

Partner(s):

This Agreement is made and entered into this___day of December, 2017 by and between the City of Bloomington Parks & Recreation Department ("BPRD"), and The Trustees of Indiana University, which operates Hilltop Gardens at Indiana University ("Hilltop").

WHEREAS, the BPRD and Hilltop desire to cooperate in providing gardening classes; and

WHEREAS, Hilltop is dedicated to reaching out into the community to promote garden programs and classes for the general public; and

WHEREAS, the BPRD would like to expand gardening class offerings to incorporate more hands-on experience; and

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

NOW THEREFORE, the partners do mutually agree as follows:

Purpose of Agreement:

The purpose of this Agreement is to establish a partnership which will provide for collaborative programming and a sharing of resources to better serve the community.

1.0 Duration of Agreement:

The term of this Agreement shall begin January 1, 2018 and run through December 31, 2018. The partners may agree to renew or extend the term of this Agreement in writing only.

2.0 Bloomington Parks & Recreation Department Agrees to:

a. Maintain close communication with Hilltop staff, and bring any related facility issues to their attention.

b. Assist with the distribution of promotional materials produced by BPRD, including flyers and registration information.

c. Register all program participants, collect class charges and fees through the BPRD, maintain a database of registrant information, and distribute class information to participants.

d. Provide program publicity by publishing information in the BPRD's seasonal program brochure and on its website.

e. Provide and pay instructors to teach gardening classes for the Community Garden Program (CGP) offered at Hilltop Gardens.

f. Provide a site supervisor for all CGP programs.

3.0 Hilltop Gardens at Indiana University Agree to:

a. Maintain close contact with BPRD staff, and address with them any related facility issues.

b. Assist with identifying potential instructors and coordinating class schedules for CGP.

c. Assist with the distribution of promotional materials, including flyers and registration information.

d. Provide program publicity on CGP programs on the Hilltop Gardens website.

e. Provide the facility where the classes will be taught, and the appropriate garden area for seed starting, planting, maintenance and other class and event activities.

f. Coordinate with BPRD the provision of any gardening tools necessary for class use, which include, but are not limited to, wheelbarrows, shovels, and rakes.

g. Provide a safe, clean, and accessible facility that includes trash removal and restroom cleaning.

h. Provide the BPRD staff with means to access and lock the facility. In the event this Agreement is terminated by either party, the method of access will be released back to Hilltop within 30 days of termination.

4.0 Agreement Terms Mutually Agreed to By Both Partners:

a. All marketing/promotional materials and public relations information will be shared between both partners involved **prior to** any advertising.

b. BPRD and Hilltop staff will coordinate class schedules for the CGP.

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

d. Both partners agree that the following policies will apply to all activities undertaken at Hilltop pursuant to this Agreement:

1. Indiana University Bloomington campus firearm policy, which prohibits

introducing, possessing, using, buying, or selling unauthorized weapons in university facilities and at university activities regardless of whether the owner has a valid state permit to carry the firearm.

2. Indiana University Bloomington campus prohibitions of smoking and the consumption of alcoholic beverages shall apply to all participants in and visitors to gardening classes.

3. Indiana University Bloomington campus tobacco policy, which prohibits the use or sale of tobacco on university-owned, -operated, and -leased property as well as in university-owned, -operated, and –leased vehicles.

4. Indiana University Bloomington campus substance-free policy, which prohibits the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance or alcohol on university property or while conducting university business off university property.

5. Pursuant to Ind. Code 22-5-1.7-11(a), BPRD and Hilltop shall enroll in and verify the work eligibility status of all newly hired employees through the E-Verify program. None of the Partners to this Agreement are required to continue this verification if the E-Verify program no longer exists.

g. The Parties acknowledge and agree that, as of the execution date of this MOU, BRPD is planning only programming for adult participants at Hilltop. BPRD acknowledges that the University has adopted a policy entitled Programs Involving Children, a copy of which is attached ("PIC Policy"). Additional resources and information concerning the Policy, may be found at: http://policies.iu.edu/policies/categories/administration-operations/public-safety-institutional-assurance/PS-01.shtml BPRD agrees that if it adds programming that is directed at youth participation, including one-off events, it will comply with the PIC policy.

5.0 Insurance

The Trustees of Indiana University and City of Bloomington Parks & Recreation Department shall furnish each other with a certificate of insurance upon execution of this partnership Agreement. Each party will maintain comprehensive general liability insurance.

6.0 Termination

a. Termination by mutual agreement: The partners may terminate this Agreement prior to December 31, 2018 by mutual written agreement only.

b. In the event that one of the partners to this Agreement breaches any of its terms and conditions, the other party shall serve written notice of the breach to the other party by certified mail. The offending party shall then have ten (10) days from the date of mailing in which to cure the breach. If the breach is not cured within ten days, the non-breaching party may, at its option and in writing, unilaterally terminate this

Agreement.

7.0 Notice

a. Notice regarding any significant concerns or issues of non-compliance shall be given to:

Bloomington Parks & Recreation
Rebecca Higgins
401 N. Morton, Suite 250
Bloomington, IN 47404
barrickb@bloomington.in.gov
812-349-3713

Hilltop Gardens at Indiana University
Mia Williams
Indiana University
Service Building, 1800 N. Range Road
Bloomington, IN 47405
812-855-1266

b. Representatives for the day-to-day operational implementation of this Agreement are:

Bloomington Parks & Recreation
Robin Kitowski
812-349-3704
kitowskir@bloomington.in.gov

Hilltop Gardens at Indiana University
Lea Woodard
812-855-8808
lemawood@indiana.edu

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

CITY OF BLOOMINGTON

_____
Leslie Coyne, President
Board of Park Commissioners

_____
Paula McDevitt, Director
Bloomington Parks and Recreation

_____
Philippa M. Guthrie, Corporation Counsel

THE TRUSTEES OF INDIANA UNIVERSITY

_____
Donald S. Lukes, Treasurer

_____
Mia Williams,
University Landscape Architect

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: C-7 Date: 12/8/2017

Administrator Review\Approval PM

TO: Board of Park Commissioners
FROM: Robin Kitowski
DATE: December 12, 2017
SUBJECT: **REVIEW/APPROVAL OF PLANT-A-ROW FOR THE HUNGRY PARTNERSHIP AGREEMENT**

Recommendation

Staff recommends the approval of a Partnership Agreement for Plant a Row for the Hungry between the Department and Bloomingfoods Market and Deli, Hilltop Garden and Nature Center, Mother Hubbard's Cupboard and the Hoosier Hills Food Bank.

Background

Since the Plant a Row for the Hungry Bloomington debut in 2002, over 400,000 lbs. of fresh produce have been donated to the Hoosier Hills Food Bank through this program. 27,500 lbs. were collected through the Farmers' Market this past season. Representatives from the Food Bank report that the produce is highly valued by clients and is distributed within a day or two of being donated.

RESPECTFULLY SUBMITTED,

Robin Kitowski, Market Master and Community Gardening Specialist

CITY OF BLOOMINGTON
parks and recreation

MEMORANDUM OF UNDERSTANDING BETWEEN PARTNERS IN SUPPORT OF PLANT A ROW FOR THE HUNGRY, A COMMUNITY PROGRAM

Partner(s):

This Agreement is made and entered into this____day of December, 2017, by and between the Bloomington Parks & Recreation Department by its Board of Park Commissioners ("BPRD"), Hilltop Gardens at Indiana University ("Hilltop"), Bloomingfoods Market and Deli ("Bloomingfoods"), Mother Hubbard's Cupboard ("MHC") and Hoosier Hills Food Bank ("HHFB").

WHEREAS, the BPRD, Hilltop, Bloomingfoods, MHC and HHFB desire to cooperate in the implementation of a community support program, Plant a Row for the Hungry ("PAR"), in order to provide people in need with fresh, locally produced food; and

WHEREAS, BPRD may from time to time develop partnerships with non-City organizations in order to promote such support addressing local food security; and

WHEREAS, BPRD has partnered with Hilltop, Bloomingfoods, MHC and HHFB in past years in order to support this joint community service, and the parties desire to continue their partnership; and

WHEREAS, it is in the public interest that such partnership continue.

NOW THEREFORE, in consideration of the terms and conditions set forth herein, the parties agree as follows:

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to outline a program partnership which will encourage members of the Bloomington community and vendors at the Bloomington Community Farmers' Market to grow food with the intention of donating it to those in need, by means of HHFB's existing distribution system available to people in need.

2. DURATION OF AGREEMENT

This Agreement shall begin on January 1, 2018 and run through December 31, 2018, unless early termination occurs as described in paragraph 11, below.

3. BLOOMINGTON PARKS AND RECREATION

The goal of BPRD is to assist with the implementation of PAR in order to provide people in need with fresh, locally produced food. BPRD agrees to:

a. Promote PAR in its Program Guide and in newsletters to Community Gardening Program participants and Farmers' Market vendors, listing all partners to the Agreement as co-sponsors in all publicity.

b. Have the Bloomington Community Farmers' Market serve as a drop-off site for produce grown by PAR participants.

c. Maintain an e-mail list of PAR organizers.

d. Provide one (1) staff person to participate in meetings and assist with events associated with PAR.

4. HILLTOP GARDENS AT INDIANA UNIVERSITY

The goal of Hilltop is to assist with the implementation of PAR in order to provide people in need with fresh, locally produced food. Hilltop agrees to:

a. Promote PAR to visitors at the center and participants in its community garden program.

b. Provide participants in the Family Gardening Program with information about PAR.

c. Provide one (1) staff person to participate in meetings and assist with events associated with PAR.

6. BLOOMINGFOODS MARKET AND DELI

The goal of Bloomingfoods is to assist with the implementation of PAR in order to provide people in need with fresh, locally produced food. Bloomingfoods agrees to:

a. Promote PAR in its monthly newsletter and e-newsletter (including an article in the Bloomingfoods newsletter), listing all partners to the Agreement as co-sponsors.

b. Provide one (1) staff person to participate in meetings and assist with events associated with PAR.

7. MOTHER HUBBARD'S CUPBOARD

The goal of MHC is to assist with the implementation of PAR in order to increase its access to fresh fruits and vegetables through the HHFB, enabling MHC to provide high quality food to people in need. MHC agrees to:

a. Promote PAR to clients and visitors at the pantry and at various events in the community.

b. Serve as a drop-off site for produce grown by PAR participants.

c. Provide one (1) staff person to participate in meetings and assist with events associated with PAR.

8. HOOSIER HILLS FOOD BANK

The goal of HHFB is to assist with the implementation of PAR in order to provide people in need with fresh, locally produced food. HHFB agrees to:

a. Coordinate the collection of produce donations at the drop-off sites and track the number of pounds donated.

b. Serve as a drop-off site for produce grown by PAR participants.

c. Provide one (1) staff person to participate in meetings and assist with events associated with PAR.

9. TERMS MUTUALLY AGREED TO BY ALL PARTNERS IN THIS AGREEMENT

The intent of this Agreement is to document a mutually beneficial partnership between BPRD, Hilltop, Bloomingfoods, MHC and HHFB.

The 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.

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

Any activities covered by this Agreement and taking place in any park or park facility are subject to the following policies: The possession of alcoholic beverages, drugs and other illegal controlled substances, fireworks, air rifles, paintball guns, bow and arrows, cross bows, swords, and pellet guns is strictly prohibited in any park or park facility. In addition, pursuant to Bloomington Municipal Code 14.20.020, the discharge of a firearm is strictly prohibited within the City's jurisdiction. Amplified music, or the promotion or sale of any article is expressly prohibited without a Special Use Permit.

10. INSURANCE

Each partner shall furnish to BPRD, and BPRD shall furnish to each partner, a certificate of insurance upon execution of the partnership Agreement. Each partner will maintain comprehensive general liability insurance. Any Partner whose participation is limited to promotion of the program is exempted from this requirement.

11. NOTICE AND AGREEMENT REPRESENTATIVES

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

Bloomington Parks & Recreation
Rebecca Barrick
401 N. Morton St., Ste. 250
Bloomington, IN 47404
812-349-3713

Hoosier Hills Food Bank
Dan Taylor
2333 W. Industrial Park Dr.
Bloomington, IN 47401
812-334-8374

Hilltop Garden at Indiana University
Mia Williams
1800 N. Range Rd.
Bloomington, IN 47408
812-855-1266

Bloomingfoods Market and Deli
Tony Alongi
316 W. 6th St.
Bloomington, IN 47404
812-333-7312

Mother Hubbard's Cupboard
Amanda Nickey
1100 W. Allen St. Suite A
Bloomington, IN 47404
812-355-6843

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

Bloomington Parks & Recreation
Robin Kitowski
401 N. Morton St., Ste. 250
Bloomington, IN 47404
812-349-3704

Hoosier Hills Food Bank
Dan Taylor
2333 W. Industrial Park Dr.
Bloomington, IN 47401
812-334-8374

Hilltop Gardens at Indiana University
Lea Woodard
2367 E. 10th St.
Bloomington, IN 47405
812-855-8808

Bloomingfoods Market and Deli
James Stewart
316 W. 6th St.
Bloomington, IN 47404
812-333-7312

Mother Hubbard's Cupboard
Stephanie Solomon
1100 W. Allen St. Ste. A
Bloomington, IN 47404
812-355-6843

Any partner may terminate this Agreement upon giving written notice of the intention to do so one (1) month prior to the intended date of termination.

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

CITY OF BLOOMINGTON

_____
Leslie J. Coyne, President
Board of Park Commissioners

_____
Paula McDevitt, Parks Administrator

_____
Philippa M. Guthrie, Corporation Counsel

HOOSIER HILLS FOOD BANK

_____
Dan Taylor, Assistant Director

MOTHER HUBBARD'S CUPBOARD

_____
Amanda Nickey, President and CEO

HILLTOP GARDEN
AND NATURE CENTER

_____
Mia Williams, Director, Landscape
Architecture at Indiana University

BLOOMINGFOODS MARKET AND DELI

_____
Tony Alongi, General Manager

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

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

Administrator
Review\Approval
PM

TO: Board of Park Commissioners
FROM: Steve Cotter, Natural Resources Manager
DATE: December 12, 2017
SUBJECT: **REVIEW/APPROVAL OF AGREEMENT TO EXTEND THE CENTER FOR SUSTAINABLE LIVING'S RENTAL AGREEMENT FOR THE FORMER CSX RAILROAD OFFICE**

Recommendation

Staff recommends approval of this contract to continue renting the former CSX Railroad building at 245 W. Grimes Ln. through March 2018.

Background

The Center for Sustainable Living would like to continue renting the building for the first three months of 2018. The rental payment will be $250 per month.

RESPECTFULLY SUBMITTED,

_____
Steve Cotter, Natural Resources Manager

CITY OF BLOOMINGTON
parks and recreation

COOPERATION SERVICE AGREEMENT
PROGRAM PARTNERSHIP

This Agreement, made and entered into this _____ day of December, 2017 by and between the City of Bloomington Parks and Recreation Department by its Board of Parks Commissioners ("BPRD") and The Center for Sustainable Living ("CSL").

WITNESSETH:

WHEREAS, BPRD may from time to time develop partnerships with non-City organizations who organize and promote public services; and

WHEREAS, The CSL is a not-for-profit organization that provides information, services, projects and networking opportunities to those interested in exploring ecologically sustainable ways of thinking, living and interacting in our community; and

WHEREAS, The City of Bloomington would like to continue renting space to CSL; and

WHEREAS, the formation of such an agreement between BPRD and the CSL is in the public interest.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the parties agree as follows:

1. **PURPOSE OF AGREEMENT**
   The purpose of this Agreement is to continue a program partnership.

2. **DURATION OF AGREEMENT**
   This Agreement shall be in full force and effect from January 1, 2018 to March 31, 2018, unless early termination occurs as described in paragraph 8.

3. **FUNDING**
   BPRD agrees to pay for water, sewer and electric services. CSL agrees to pay Two Hundred Fifty Dollars ($250.00) per month for use of the CSX Yard Office located at 245 West Grimes Lane, Bloomington, Indiana ("Building").

4. **PAYMENTS**
The CSL shall pay BPRD Two Hundred Dollars ($250.00) on or before the 15th day of each month. A late fee of Twenty-Five Dollars ($25.00) will be charged if the rent is more than fourteen (14) days late.

5. **CENTER FOR SUSTAINABILITY LIVING**
The CSL is a community organization which focuses on providing information, services and networking opportunities to promote ecological sustainability to the community.

I. **Programming:** The CSL agrees to:
   a. The CSL will provide volunteer staff only to work at the site.
   b. The CSL will provide use of tools through their tool share program to assist participants.
   c. The CSL will host sustainability programs such as Discardia, BloomingVege, ShareBloomington and Trillium Horticultural Park Project.
   d. The CSL will maintain a meeting space and provide relevant workshops on permaculture and other sustainability-related topics.
   e. The CSL will enforce a standard of behavior at the shop that includes no smoking, no controlled substance or drug use, no consumption of alcoholic beverages, and adherence to community standards of generally respectful behavior.
   f. Pursuant to Indiana Code 35-47-11.1-2 and 3, the City is prohibited from enforcing its former policy on firearms in public parks and city facilities as of July 1, 2011. However, per Indiana Code 35-47-11.1-4(10), The CSL may develop and implement, at its own discretion, rules of conduct or admission regarding the carrying and storage of firearms, upon which attendance at and participation in its activities is conditioned. If The CSL develops such a policy for its activities, the City may implement and enforce it. If The CSL wishes to develop such a policy, it shall provide a copy of the policy to the City and be attached to this Agreement as *Exhibit A*.

II. **Facilities Management:** The CSL shall maintain the Building in a clean and orderly fashion, and agrees to:
   a. Clean the space regularly.
   b. Clean the restroom at least once a week.
   c. Allow BPRD staff to inspect the facility from time to time. BPRD reserves the right to require additional cleaning as necessary to maintain clean and healthy standards.

d. The CSL will seek approval from Bloomington Parks and Recreation before making any changes to the building or posting signage on or near the building.

6. BLOOMINGTON PARKS AND RECREATION

The goal of BPRD is to facilitate ecological sustainability in the community. BPRD agrees to:

a. Maintain water, sewer and electrical service to the Building.

b. Provide a toilet and sink in the restroom.

c. Provide a hand washing sink in the work area.

d. Provide a drinking fountain.

e. Provide trash removal when requested.

f. Provide assistance with facility repairs as BPRD resources and manpower allow.

7. TERMS MUTUALLY AGREED TO BY ALL PARTNERS TO THIS AGREEMENT

a. The 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.

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

8. INSURANCE

The CSL shall furnish Parks with a certificate of insurance upon execution of this partnership Agreement. The CSL shall maintain comprehensive general liability insurance, which shall include premises, operations and product liability. Coverage shall be in the amount of one million dollars ($1,000,000) for bodily injury per person in any one occurrence and two million dollars ($2,000,000) in the aggregate. The policy shall name the City of Bloomington Parks and Recreation Department and The CSL as insured parties, and The CSL shall provide the City of Bloomington Parks and Recreation Department with a certificate of insurance prior to the commencement of operations under this Partnership Agreement. The CSL and its insurer shall notify Parks within ten (10) days of any insurance cancellation.

9. TERMINATION

BPRD or The CSL may terminate this Agreement upon giving written notice only of the intention to do so one (1) month prior to the intended date of termination, at any time before the expiration date of this Agreement.

10. NON-DISCRIMINATION

The CSL and its partners participating in the activities described in this Agreement, shall

comply with the City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in employment and in the activities described covered by this Partnership Agreement.

11. NOTICES AND AGREEMENT REPRESENTATIVES

a. Notice regarding any significant concerns and/or breaches of this Agreement shall be given to contacts as stated below, and any change in contact information will be noticed to the other party in writing within three (3) business days of the change being final.

Center for Sustainable Living	**Bloomington Parks and Recreation**
Andrea Avena Koenigsberger, Board President	Dave Williams, Operations Director
PO Box 1655	P.O. Box 848
Bloomington, IN 47402	Bloomington, IN 47402
(812) 369-9530	(812) 349-3706

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

Center for Sustainable Living	**Bloomington Parks and Recreation**
Andrea Avena Koenigsberger, Board President	Steve Cotter, Nat. Resources Manager
PO Box 1665	P.O. Box 848
Bloomington, IN 47402	Bloomington, IN 47402

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

CITY OF BLOOMINGTON

BY:

_____

Leslie J. Coyne, President
Board of Park Commissioners

_____

Paula McDevitt, Parks Administrator

_____

Philippa M. Guthrie, Corporation Counsel

CENTER FOR SUSTAINABLE LIVING

BY:

_____

Andrea Avena Koenigsberger,

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: C-9
Date: 12/7/2017

Administrator
Review\Approval
PM

TO: Board of Park Commissioners
FROM: Steve Cotter, Natural Resources Manager
DATE: December 12, 2017
SUBJECT: **REVIEW/APPROVAL OF INTERPRETIVE IDEAS CONTRACT TO REPAIR AND REPLACE INTERPRETIVE PARK SIGNS**

Recommendation

Staff recommends approval of this contract with Interpretive Ideas.

Background

Interpretive signs provide site-specific information about parks to park visitors. Interpretive signage in local parks are durable and attractive however they are subject to vandalism and theft. Through this contract, Interpretive Ideas will and provide replacements for six missing or damaged interpretive signs at Latimer Woods, Leonard Springs, Miller-Showers and RCA Parks.

RESPECTFULLY SUBMITTED,

___Steve Cotty _____
Steve Cotter, Natural Resources Manager

AGREEMENT
BETWEEN
CITY OF BLOOMINGTON
PARKS AND RECREATION DEPARTMENT
AND
INTERPRETIVE IDEAS
FOR
REPLACEMENT OF INTERPRETIVE SIGNS

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

WITNESSETH:

WHEREAS, the Department wishes to replace missing and damaged interpretive signs at, Latimer Woods, Leonard Springs, Miller-Showers and RCA Parks; and

WHEREAS, the Department requires the services of a professional consultant in order to perform sign content research, develop sign design, editing, and coordinating fabrication of the signs; 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, 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 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 Seven Thousand. ($7,000). Consultant shall submit an invoice to the Department upon the completion of 50% of the Services described in Article 1 for Three Thousand Five Hundred Dollars ($3500). Consultant shall submit an invoice to the Department upon the completion of 100% of the Services described in Article 1 for Three Thousand Five Hundred Dollars ($3500). 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 invoices shall be sent to:

Steve Cotter
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		Interpretive Ideas
Attn: Steve Cotter		Attn: Lise Schools
401 N. Morton, Suite 250		P.O. Box 355
Bloomington, Indiana 47402		Okemos, MI 48805-1504

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

INTERPRETIVE IDEAS

_____
Lise Schools, 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**:**

Fabrication and delivery of 6 replacement interpretive signs for Latimer Woods, Leonard Springs, Miller-Showers and RCA Parks. Minor edits to sign content if necessary.

EXHIBIT B

"Project Schedule"

30% - Sign text in conceptual layout for review – **May 2018**
50% - Sign layouts in templates for review – **July 2018**
90% - Approved design files prepped for production, specifications, and bid documents completed. – **September 2018**
100%-Signs delivered – **December 2018**

Consultant shall complete the Services required under this Agreement on or before December 31, 2018 unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services.

EXHIBIT C
E-VERIFY AFFIDAVIT

STATE OF INDIANA)
)SS:
COUNTY OF _____)

AFFIDAVIT

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

1. The undersigned is the _____of _____.
   (job title) (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.

Interpretive Ideas

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: 12/7/2017

Administrator Review\Approval PM

TO: **Board of Park Commissioners**
FROM: Amy Shrake
DATE: November 27, 2017
SUBJECT: REVIEW/APPROVAL OF SERVICE AGREEMENTS

Recommendation

Staff recommends the review/approval of two service agreements for the Recreation and Sports Division. The service agreements are with the following consultants.

1. I Shine – Cleaning of Frank Southern Center and Banneker Community Center
2. Plymate – Mat cleaning for Allison-Jukebox Center, Frank Southern Ice Arena, and Banneker Community Center
3. Green Sweep – Cleaning of the Allison-Jukebox Center

Background

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

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

RESPECTFULLY SUBMITTED,

Amy Shrake, CTRS

_____

AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT AND I SHINE

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

Article 1. Scope of Services Consultant shall provide the Cleaning Banneker and Frank Southern Center "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 Monday, December 31, 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 Erik Pearson/Dee Tuttle 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 Five Thousand Eight Hundred and Seventy Dollars ($5,870.00). Consultant shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: Erik Pearson/Dee Tuttle, City of Bloomington, 401 N. Morton, Suite 250, Bloomington, Indiana 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to 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 depending on the Department needs. 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: Erik Pearson/Dee Tuttle, 401 N. Morton, Bloomington, IN 47402. Consultant: I Shine, Attn: Destiny Easton 3413 S Glasgow Circle, Bloomngton, 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

I SHINE

_____

Destiny Easton

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.

I Shine

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

AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT AND PLYMATE

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

Article 1. Scope of Services Consultant shall provide the cleaning of floor mats at Frank Southern Ice Arena, Banneker Community Center and Allison-Jukebox Center ("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 Monday, December 31, 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 Erik Pearson/Dee Tuttle/Amy Shrake 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 Five Hundred Eighty Five dollars ($2585.00). Consultant shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: Erik Pearson/Dee Tuttle/Amy Shrake, 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 depending on the Department needs. 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: Erik Pearson/Dee Tuttle/Amy Shrake, 401 N. Morton, Bloomington, IN 47402. Consultant:** Plymate, Attn: Michelle Rickets, 819 Elston Drive, Shelbyville, IN 46176. 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

PLYMATE

_____
Michelle Rickets, Account Exec

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.

Plymate

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

AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT AND GREEN SWEEP

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

Article 1. Scope of Services Consultant shall provide the cleaning of the Allison-Jukebox Center ("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 Monday, December 31, 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 Amy Shrake 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 Five Thousand Two Hundred Dollars ($5,200). Consultant shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: NAME OF THE PERSON, 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: January-May full building clean once per week. June-August 3 bathrooms cleaned 3 times per week. August 8-December full building clean once per week. Other times as needed.
The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

Article 7. Termination In the event of a party's substantial failure to perform in accordance with the terms of this Agreement, the other party shall have the right to terminate the Agreement upon written notice. The nonperforming party shall have fourteen (14) calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party. Additionally, the Department may terminate or suspend performance of this Agreement at the Department's prerogative at any time upon written notice to Consultant. Consultant shall terminate or suspend performance of the Services on a schedule acceptable to the Department and the Department shall pay the Consultant for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to Consultant's compensation and the schedule of services. Upon termination or suspension of this Agreement, all finished or unfinished reports, drawings, collections of data and other documents generated by Consultant in connection with this Agreement shall become the property of the Department, as set forth in Article 9 herein.

Article 8. Identity of the Consultant Consultant acknowledges that one of the primary reasons for its selection by the Department to perform the Services is the qualifications and experience of Consultant. Consultant thus agrees that the Services to be performed pursuant to this Agreement shall be performed by Consultant. Consultant shall not subcontract any part of the Services without the prior written permission of the Department. The Department reserves the right to reject any of the Consultant's personnel or proposed outside professional sub-consultants, and the Department reserves the right to request that acceptable replacement personnel be assigned to the project.

Article 9. Ownership of Documents and Intellectual Property All documents, drawings and specifications, including digital format files, prepared by Consultant and furnished to the Department as part of the Services shall become the property of the Department. Consultant shall retain its ownership rights in its design, drawing details, specifications, databases, computer software and other proprietary property. Intellectual property developed, utilized or modified in the performance of the Services shall remain the property of Consultant.

Article 10. Independent Contractor Status During the entire term of this Agreement, Consultant shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees of the Department. Consultant shall be solely responsible for the payment and reporting of all employee and employer taxes, including social security, unemployment, and any other federal, state, or local taxes required to be withheld from employees or payable on behalf of employees.

Article 11. Indemnification Consultant shall defend, indemnify, and hold harmless the City of Bloomington, the Department, and the officers, agents and employees of the City and the Department from any and all claims, demands, damages, costs, expenses or other liability arising out of the Agreement or occasioned by the reckless or negligent performance of any provision thereof, including, but not limited to, any reckless or negligent act or failure to act or any misconduct on the part of the Consultant or its agents or employees, or any independent contractors directly responsible to it (collectively "Claims").

Article 12. Insurance During the performance of any and all Services under this Agreement, Consultant shall maintain the following insurance in full force and effect: a) General Liability Insurance, with a minimum combined single limit of $1,000,000 for each occurrence and $2,000,000 in the aggregate; b) Automobile Liability Insurance, with a minimum combined single limit of $1,000,000 for each person and $1,000,000 for each accident; c) Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code; and d) Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of $2,000,000 annual aggregate. All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the Department, and the officers, employees and agents of each shall be named as insureds under the General Liability, Automobile, and Worker's Compensation policies, and such policies shall stipulate that the insurance will operate as primary insurance and that no other insurance of the City's will be called upon to contribute

to a loss hereunder. Consultant shall provide evidence of each insurance policy to the Department prior to the commencement of work under this Agreement.

Article 13. Conflict of Interest Consultant declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of Services under this Agreement. Consultant agrees that no person having any such interest shall be employed in the performance of this Agreement.

Article 14. Waiver No failure of either party to enforce a term of this Agreement against the other shall be construed as a waiver of that term, nor shall it in any way affect the party's right to enforce that term. No waiver by any party of any term of this Agreement shall be considered to be a waiver of any other term or breach thereof.

Article 15. Severability The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

Article 16. Assignment Neither the Department nor the Consultant shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

Article 17. Third Party Rights Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the parties.

Article 18. Governing Law and Venue This Agreement shall be governed by the laws of the State of Indiana. Venue of any disputes arising under this Agreement shall be in the Monroe Circuit Court, Monroe County, Indiana.

Article 19. Non-Discrimination Consultant shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment.

Article 20. Compliance with Laws In performing the Services under this Agreement, Consultant shall comply with any and all applicable federal, state and local statutes, ordinances, plans and regulations, including any and all regulations for protection of the environment. Where such statutes, ordinances, plans or regulations of any public authority having any jurisdiction over the project are in conflict, Consultant shall proceed using its best judgment only after attempting to resolve any such conflict between such governmental agencies, and shall notify the Department in a timely manner of the conflict, attempts of resolution, and planned course of action.

Article 21. E-Verify Consultant is required to enroll in and verify the work eligibility status of all newly-hired employees through the E-Verify program. (This is not required if the E-Verify program no longer exists). Consultant shall sign an affidavit, attached as Exhibit A, affirming that Consultant does not knowingly employ an unauthorized alien. Consultant shall require any subcontractors performing work under this contract to certify to the Consultant that, at the time of certification, the subcontractor does not knowingly employ or contract with an unauthorized alien and the subcontractor has enrolled in and is participating in the E-Verify program. Consultant shall maintain on file all subcontractors' certifications throughout the term of the contract with the City.

Article 22. Notices Any notice required by this Agreement shall be made in writing to the individuals/addresses specified below:

Department: City of Bloomington, **Attn: Amy Shrake, 401 N. Morton, Bloomington, IN 47402. Consultant:** Green Sweep, Attn: Chuck Guzman, 2801 N. Walnut St., 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 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

GREEN SWEEP

_____

Chuck Guzman

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.

Green Sweep

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: 12/7/2017

Administrator
Review\Approval
PM

TO: Board of Park Commissioners
FROM: Bill Ream, Community Events Coordinator
DATE: December 12, 2017
SUBJECT: **Approval of Contract for Services with Izzy's Rental**

Recommendation

Staff recommends the approval of the contract for services with Izzy's Rentals to rent portable toilets at various events. The events include:

- Winter Palooza (February)
- 4th of July Parade (July)
- Junk in the Trunk (August)
- Pumpkin Launch (October)
- 2 Farm Tours (dates TBD)
- 2 New events if needed (dates TBD)

We have rented from Izzy's before and they are always very reliable and their units are well maintained.

RESPECTFULLY SUBMITTED,

Bill Ream

Bill Ream, Community Events Coordinator

AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT AND IZZY'S RENTAL

This Agreement, entered into on this _____day of December, 2017, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Izzy's Rental ("Consultant").

Article 1. Scope of Services Consultant shall provide rental of portable toilets at various locations for Bloomington Parks and Recreation Department coordinated community events "Services". Rental prices for toilets shall be as follows: VIP restroom One Hundred Sixty Dollars ($160), handicapped accessible restroom One Hundred Fifteen Dollars ($115) and regular restroom Ninety Dollars ($90). 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, 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 Bill Ream 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 Ninety Nine ($ 2,499). Consultant shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: Bill Ream, City of Bloomington, 401 N. Morton, Suite 250, Bloomington, Indiana 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Consultant within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

Article 5. Appropriation of Funds Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the Department are at any time not forthcoming or are insufficient, through failure of any entity, including the Department itself, to appropriate funds or otherwise, then the Department shall have the right to terminate this Agreement without penalty.

Article 6. Schedule Consultant shall perform the Services as needed. The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

Article 7. Termination In the event of a party's substantial failure to perform in accordance with the terms of this Agreement, the other party shall have the right to terminate the Agreement upon written notice. The nonperforming party shall have fourteen (14) calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party. Additionally, the Department may terminate or suspend performance of this Agreement at the Department's prerogative at any time upon written notice to Consultant. Consultant shall terminate or suspend performance of the Services on a schedule acceptable to the Department and the Department shall pay the Consultant for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to Consultant's compensation and the schedule of services. Upon termination or suspension of this Agreement, all finished or unfinished reports, drawings, collections of data and other documents generated by Consultant in connection with this Agreement shall become the property of the Department, as set forth in Article 9 herein.

Article 8. Identity of the Consultant Consultant acknowledges that one of the primary reasons for its selection by the Department to perform the Services is the qualifications and experience of Consultant. Consultant thus agrees that the Services to be performed pursuant to this Agreement shall be performed by Consultant. Consultant shall not subcontract any part of the Services without the prior written permission of the Department. The Department reserves the right to reject any of the Consultant's personnel or proposed outside professional sub-consultants, and the Department reserves the right to request that acceptable replacement personnel be assigned to the project.

Article 9. Ownership of Documents and Intellectual Property All documents, drawings and specifications, including digital format files, prepared by Consultant and furnished to the Department as part of the Services shall become the property of the Department. Consultant shall retain its ownership rights in its design, drawing details, specifications, databases, computer software and other proprietary property. Intellectual property developed, utilized or modified in the performance of the Services shall remain the property of Consultant.

Article 10. Independent Contractor Status During the entire term of this Agreement, Consultant shall be an independent contractor, and in no event shall any of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees of the Department. Consultant shall be solely responsible for the payment and reporting of all employee and employer taxes, including social security, unemployment, and any other federal, state, or local taxes required to be withheld from employees or payable on behalf of employees.

Article 11. Indemnification Consultant shall defend, indemnify, and hold harmless the City of Bloomington, the Department, and the officers, agents and employees of the City and the Department from any and all claims, demands, damages, costs, expenses or other liability arising out of the Agreement or occasioned by the reckless or negligent performance of any provision thereof, including, but not limited to, any reckless or negligent act or failure to act or any misconduct on the part of the Consultant or its agents or employees, or any independent contractors directly responsible to it (collectively "Claims").

Article 12. Insurance During the performance of any and all Services under this Agreement, Consultant shall maintain the following insurance in full force and effect: a) General Liability Insurance, with a minimum combined single limit of $1,000,000 for each occurrence and $2,000,000 in the aggregate; b) Automobile Liability Insurance, with a minimum combined single limit of $1,000,000 for each person and $1,000,000 for each accident; c) Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code; and d) Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of $2,000,000 annual aggregate. All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the Department, and the officers, employees and agents of each shall be named as insureds under the General Liability, Automobile, and Worker's Compensation policies, and such policies shall stipulate that the insurance will operate as primary insurance and that no other insurance of the City's will be called upon to contribute

to a loss hereunder. Consultant shall provide evidence of each insurance policy to the Department prior to the commencement of work under this Agreement.

Article 13. Conflict of Interest Consultant declares that it has no present interest, nor shall it acquire any interest, direct or indirect, which would conflict with the performance of Services under this Agreement. Consultant agrees that no person having any such interest shall be employed in the performance of this Agreement.

Article 14. Waiver No failure of either party to enforce a term of this Agreement against the other shall be construed as a waiver of that term, nor shall it in any way affect the party's right to enforce that term. No waiver by any party of any term of this Agreement shall be considered to be a waiver of any other term or breach thereof.

Article 15. Severability The invalidity, illegality or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of the Agreement shall be construed and enforced as if it did not contain the particular provision to be held void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

Article 16. Assignment Neither the Department nor the Consultant shall assign any rights or duties under this Agreement without the prior written consent of the other party. Unless otherwise stated in the written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

Article 17. Third Party Rights Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the parties.

Article 18. Governing Law and Venue This Agreement shall be governed by the laws of the State of Indiana. Venue of any disputes arising under this Agreement shall be in the Monroe Circuit Court, Monroe County, Indiana.

Article 19. Non-Discrimination Consultant shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment.

Article 20. Compliance with Laws In performing the Services under this Agreement, Consultant shall comply with any and all applicable federal, state and local statutes, ordinances, plans and regulations, including any and all regulations for protection of the environment. Where such statutes, ordinances, plans or regulations of any public authority having any jurisdiction over the project are in conflict, Consultant shall proceed using its best judgment only after attempting to resolve any such conflict between such governmental agencies, and shall notify the Department in a timely manner of the conflict, attempts of resolution, and planned course of action.

Article 21. E-Verify Consultant is required to enroll in and verify the work eligibility status of all newly-hired employees through the E-Verify program. (This is not required if the E-Verify program no longer exists). Consultant shall sign an affidavit, attached as Exhibit A, affirming that Consultant does not knowingly employ an unauthorized alien. Consultant shall require any subcontractors performing work under this contract to certify to the Consultant that, at the time of certification, the subcontractor does not knowingly employ or contract with an unauthorized alien and the subcontractor has enrolled in and is participating in the E-Verify program. Consultant shall maintain on file all subcontractors' certifications throughout the term of the contract with the City.

Article 22. Notices Any notice required by this Agreement shall be made in writing to the individuals/addresses specified below:

Department: City of Bloomington, **Attn: Bill Ream, 401 N. Morton, Bloomington, IN 47402. Consultant: Izzy's Rental, Attn: Kevin Kerr 915 South Gore 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

IZZY'S RENTAL

_____

Kevin Kerr, 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.

Izzy's Rentals

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-12
Date: 12/8/2017

Administrator
Review\Approval
PM

TO: Board of Park Commissioners
FROM: Bill Ream, Community Events Coordinator
DATE: December 12, 2017
SUBJECT: **Approval of Concessions Agreement**

Recommendation

Staff recommends the approval of the 2018 Concessions Agreement for us at various events.

Bloomington Parks and Recreation will be inviting food vendors to sell their products onsite at various events and programs throughout 2018. These vendors will be required to pay the department 10% of their gross sales from the day or a $50 flat fee depending on the scope and size of the event.

We believe that having food vendors at events will add to the overall experience of the events.

RESPECTFULLY SUBMITTED,

Bill Ream

Bill Ream, Community Events Coordinator

CITY OF BLOOMINGTON
parks and recreation

RELEASE, HOLD-HARMLESS, AND CONCESSIONS AGREEMENT

WHEREAS, the City of Bloomington, through its Parks and Recreation Department (hereafter "Parks"), is hosting events at various departmental and community locations; and

WHEREAS, the undersigned, _____ (hereinafter "Concessionaire") desires to sell concessions at the _____ event held at _____ on the date of _____, 2018 and at such other times as have been pre-approved by Parks;

NOW, THEREFORE, in consideration for permission from Parks to sell concessions at the _____ event held at _____ on the date of _____, 2018 and at such other times as have been pre-approved by Parks, Concessionaire agrees to the following terms and conditions:

1. Concessionaire shall obtain all necessary permits from the Monroe County Health Department and from any and all other controlling agencies or boards prior to selling concessions.

2. Concessionaire shall abide by federal, state and local laws and ordinances, which pertain to such sales and related activities.

3. This Agreement is for the above date only.

4. Concessionaire agrees to vacate the area by ____ on _____, 2018 and remove all personal items and equipment. Concessionaire must clean litter and debris before leaving, or will be subject to a fine of Fifty Dollars ($50.00) for violation of Bloomington Municipal Code 6.06.070.

5. Concessionaire agrees to release, hold harmless and forever indemnify the City of Bloomington, its Department of Parks and Recreation, and its employees, officers, agents and assigns from any and all claims, causes of action, suits, proceedings or demands which may arise from or in any way connected to Concessionaire's activities under this agreement, which include, but are not limited to, sales of concessions, use of related equipment, and location of the concession stand/trailer. This release, hold-harmless and indemnification includes claims, which may be brought by any third party against the City of Bloomington and its related entities as set forth above. Concessionaire agrees that this release is binding upon him/herself, his/her agents, and his/her heirs, successors and assigns.

6. Concessionaire agrees to pay 10% of their gross sales at the event to Parks for the right to sell on above mentioned date. Fee will be collected at the end of the event before the Concessionaire leaves the site. The Fee is not refundable nor transferable.

7. Concessionaire agrees that this Agreement will be terminated on or before December 31, 2018.

8. In the event that either party must resort to litigation in order to enforce the terms of this Agreement, the party found to be in breach of the Agreement shall bear the expense of such litigation, including, but not limited to court costs and reasonable attorney's fees. This Agreement shall be governed by the laws of the State of Indiana. Venue of any disputes arising under this Agreement shall be in Monroe County, Indiana.

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

Parks:

Bill Ream
Community Events Coordinator
401 N Morton Street, Suite 250
Bloomington IN 47404
(812) 349-3748

Concessionaire:

Name: _____

Address: _____

_____

Phone Number: _____

Email Address: _____

CONCESSIONAIRE:

_____ _____
Concessionaire Signature Date

CITY OF BLOOMINGTON PARKS & RECREATION:

_____ _____
Paula McDevitt, Director, Parks & Recreation Date

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

_____ _____
Philippa M. Guthrie, Corporation Counsel Date

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: C-13
Date: 12/8/2017

Administrator
Review\Approval
PM

TO: Board of Park Commissioners
FROM: Marcia Veldman, Program Coordinator
DATE: **December 12, 2017**
SUBJECT: **FARM VENDOR CONTRACT AND EXHIBITS**

Recommendation
Staff recommends for approval the aforementioned contract and exhibits for the 2018 Farmers' Market season.

Background
In 2017 the City contracted with 135 farm vendors for the Bloomington Community Farmers' Market. Only minor changes were made to the contracts for 2018.

The Contract and Exhibits have been approved by Legal.

RESPECTFULLY SUBMITTED,

Marcia Veldman
Program Coordinator

Attachments: 2018 Food Truck/Push Cart Agreement, 2018 Prepared Food Vendor Agreement, 2018 Farm Vendor Contract and Exhibits

2018 BLOOMINGTON COMMUNITY FARMERS' MARKET
FARM VENDOR CONTRACT

In consideration for the privilege to participate in the 2018 Bloomington Community Farmers' Market ("Market"), the City of Bloomington ("City"), and the undersigned Vendor(s) ("Vendor") agree to the following:

1. ADMINISTRATION

The Market is administered by the Parks and Recreation Department of the City following this contract and the Bloomington Community Farmers' Market Farm Vendor Handbook. The City selects and approves of Vendors, sets fees and determines Market policies and criteria for eligibility. The criteria of eligibility it considers while reviewing applications are: that the Vendor produces goods in compliance with the Farm Vendor Handbook guidelines for the categories of goods the Vendor offers for sale; that the Vendor has had a positive history with the Market without prior contract violations; that the Vendor's products complement the product balance at the Market, that the Vendor is committed to the general mission of the Market; and that it is generally in the best interest of the Market, the public and the City to select the Vendor for the Market. The Market Manager and Master review applications and have the discretion to select Vendors who meet the criteria of eligibility and whose product matches the City's mission for the Farmers' Market closest. Both also oversee the Market and have authority to assign vending space, settle disputes and disqualify or terminate vendors for violations of regulations.

2. ELIGIBILITY OF VENDORS

Following are definitions used, in part, to determine an individual's eligibility to vend at the Market:

"Producer" is a person who is consistently involved with and participates substantially in the production, including aspects like planting, cultivating, harvesting, and raising, of permitted goods sold pursuant to this contract.

"Primary Vendor" is a person who is a producer, is the person who owns, leases, rents or otherwise controls the land on which goods sold pursuant to this contract are raised and is the person who controls points for the Vendors on this contract. The designation of "Primary Vendor" is determined by the vendor name listed first on this contract.

"Vendor" is a person who is a producer or immediate family of the Primary Vendor, as defined in this contract, and has signed this contract.

"Immediate Family" is defined in this contract to be a parent, child, spouse or domestic partner of the Primary Vendor.

"Stand Assistant" is a person who assists the Vendor at Market, but does not fulfill the definition of Vendor set forth in this contract. Stand Assistants must be accompanied by a Vendor under this contract in each and every distinct stand rented by the Vendor at a given Market. Stand Assistants cannot earn points for selling at Market.

Only individuals who are named as Vendors or Stand Assistants in this contract may sell at the Market. A Vendor and Stand Assistant working with that Vendor may sell only goods produced on land controlled by Primary Vendor or on land which the Primary Vendor's immediate family is a producer. A Vendor may be party to only one Market contract and may have only limited financial interest in any other Market contract.

"Innovative Farm Arrangement" is a farm arrangement that does not fit within the above established definitions of producer, primary vendor and/or vendor, but is determined to be within the scope and mission of the Market at the discretion of the Market Manager and Master based, in part, on information provided in the Innovative Farm Arrangement application.

The Vendor agrees to abide by all applicable federal, state and local laws and ordinances, and agrees that the violation by the Vendor of such a law or ordinance may be deemed by the City to be a material breach of this contract.

3. OBLIGATION TO COMPLY WITH MARKET HANDBOOK AND APPLICATION

The 2018 Farm Vendor Handbook is incorporated herein by reference and is a part of this contract as fully as if it had been set forth herein. The 2018 Application completed by the selected and approved Vendor and the Exhibit for Value Added Foods (Exhibit A), Pet Foods (Exhibit B), Home Based Vendor Foods (Exhibit C) and/or Aquaculture Foods (Exhibit D) if applicable, are incorporated herein by reference and are a part of this contract as fully as if they had been set forth herein. The 2018 Innovative Farm Arrangement Application completed by the selected and approved Vendor is incorporated herein by reference and is a part of this contract as fully as if it had been set forth herein.

4. APPLICATION/AGREEMENT TO SELL

The Vendor must have completed in full and signed this contract or be named in this contract and have authorized another person to sign on his/her behalf and have paid all applicable rental fees by the deadline below before Vendor is allowed to sell any goods. Contracts must be signed and returned to the Parks and Recreation office at 401 North Morton Street, Suite 250 along with the Application by **Monday, March 19, 2018** or if the Vendor is reserving a space, at the time of the space reservation meeting on **Monday, February 26, 2018**. Innovative Farm Arrangement applications are due to the same office by **Monday, February 5, 2018**. In the event a Vendor does not have a signed contract on file by date set forth, it is in the discretion of the Market Master and/or Market Manager to determine the Vendor's eligibility to sell. Points will not be awarded until the Vendor has submitted a signed contract and a complete and approved application.

5. GIFT CERTIFICATE PROGRAM/SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM PARTICIPATION

Vendors are encouraged to participate in the Farmers' Market Gift Certificate Program/Supplemental Nutrition Assistance Program (GCP/SNAP) organized by the City. Basic information on the GCP/SNAP is included on pages 15 and 16 of the Farm Vendor Handbook with more detailed information in the GCP/SNAP Farmer/Prepared Food Vendor Training Guide available from Market staff.

The primary vendor must indicate on the last page of this contract whether or not he/she is participating in the (GCP/SNAP).

If the Vendor chooses to participate in the GCP/SNAP and is participating for the first time, Market staff will contact the Vendor to provide him/her with a GCP/SNAP Farmer/Prepared Food Vendor Training Guide and the City Vendor and EFT form to complete. If the Vendor has participated in the GCP/SNAP in previous years and accepted EFT payment, no further paperwork is necessary. If the Vendor chooses to participate in the GCP/SNAP, the Vendor agrees to attend a training or read the GCP/SNAP Farmer/Prepared Food Vendor Training Guide and abide by the rules established in the Training Guide. The Vendor understands he/she is responsible for Gift Certificates/Market Bucks from the time the Vendor receives them as payment until the time they are turned in for redemption.

6. CITY'S REMEDIES FOR BREACH; APPEAL

a) Violation of any material provision of this Contract or the Farm Vendor Handbook is a material breach and considered default by the Vendor. Upon notice by the City to the Vendor of the occurrence of a breach or default during Market hours, and the Vendor's failure to correct the breach within a reasonable time at the Market, the Vendor agrees to remove personal equipment, clean the area, and vacate the Market premises. Failure to vacate may not only subject the Vendor to immediate termination of this Contract, but may also subject the Vendor to civil and criminal remedies, including, but not limited to, remedies for civil and criminal trespass.

b) If the City has reason to believe that a Vendor did not produce the goods he/she is selling at the Market, or that other conditions exist that may constitute a violation of this Contract or adversely impact the health or safety of Market patrons or City employees, the City reserves the right to conduct an investigation which may include an unannounced inspection at the Vendor's property. The undersigned Vendor hereby authorizes the City to conduct such investigation and inspection. The Vendor also agrees to provide the City such opportunities as it deems necessary to view and obtain copies of the Vendor's records related to the goods sold at Market. If the City determines, after investigation, that there is a reasonable likelihood that the Vendor did not produce the goods he/she offered for sale at the Market or has otherwise violated this Contract, the City may, in its sole discretion, declare a material breach.

c) Upon occurrence of a material breach of this Contract, the City reserves the right to declare this Contract terminated, by so stating in a written notice to the Vendor, and to retain, as liquidated damages and not as a penalty, any rental fees prepaid by the Vendor.

d) The City has the right to make regulations regarding the Market and determine whether Vendors are in compliance with its regulations. Vendors who are dissatisfied with a City decision to terminate a contract may appeal it in writing to the Advisory Council within ten days of receipt of notice of the decision, and may appeal the Advisory Council's decision in writing to the Board of Park Commissioners within ten days of receipt of the Advisory Council decision. The decision of the Board of Park Commissioners is final.

7. LAW AND VENUE

This Agreement shall be interpreted and construed according to the laws of the State of Indiana and venue of any dispute shall be Monroe County Circuit Court, Indiana.

8. COVENANT NOT TO SUE

The Vendor will not institute any action or suit at law or in equity against the City or City's agents or employees as a result of operations under this Agreement. The Vendor 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.

9. SEVERABILITY AND WAIVER

In the event that any clause or provision of this Agreement 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 Agreement. Failure of either party to insist on strict compliance with any provision of this Agreement shall not constitute waiver of that party's right to demand later compliance with the same or other provisions of this Agreement.

10. LIABILITY AND INDEMNIFICATION

The Vendor is solely responsible for damages resulting from the sale of unsafe or unsound goods. The Vendor is solely responsible for damages or personal injury resulting from the use of umbrellas and other weather protection devices. The Vendor 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 Farmers' Market Advisory Council, 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 Vendor's participation in the Market, whether or not sounding 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 Farmers' Market Advisory Council.

11. NOTICES

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

Parks: Parks and Recreation Department
ATTN: Marcia Veldman.
City of Bloomington, P.O. Box 100
Bloomington, IN 47402,

Primary Vendor - Initial one:

Vendor chooses to participate in the GCP/SNAP and agrees to abide by the rules set forth in the Training Guide _____

Vendor chooses NOT to participate in the GCP/SNAP _____

This Contract is effective upon signature by Vendors and the Corporation Counsel and is valid only for the 2018 Market Season, terminating at the close of the Market on November 24, 2018.

_____	_____	_____
Primary Vendor's Printed Name	Primary Vendor's Signature Market Registrant	Date
_____	_____	_____
Vendor's Printed Name	Vendor's Signature Market Registrant	Date
_____	_____	_____
Vendor's Printed Name	Vendor's Signature Market Registrant	Date
_____	_____	_____
Vendor's Printed Name	Vendor's Signature Market Registrant	Date
_____	_____	_____
Vendor's Printed Name	Vendor's Signature Market Registrant	Date
_____	_____	_____
Vendor's Printed Name	Vendor's Signature Market Registrant	Date
_____	_____	_____
Vendor's Printed Name	Vendor's Signature Market Registrant	Date
_____	_____	_____
Vendor's Printed Name	Vendor's Signature Market Registrant	Date
_____	_____	_____
Vendor's Printed Name	Vendor's Signature Market Registrant	Date
_____	_____	_____
Vendor's Printed Name	Vendor's Signature Market Registrant	Date
	_____	_____
	Signature of parent or guardian if Vendor is age 18 or younger	Date

_____	_____
Philippa M. Guthrie, Corporation Counsel	Date
_____	_____
Leslie J. Coyne, President Board of Park Commissioners	Date
_____	_____
Paula McDevitt, Parks Administrator	Date

2018 Bloomington Community Farmers' Market Contract
Value Added Foods Exhibit
(Exhibit A)

As additional consideration for the privilege to participate in the **2018** Bloomington Community Farmers' Market ("Market"), by initialing each page, the vendor(s) ("Vendor") agrees to the following Value Added Foods Exhibit ("Exhibit"), which is made part of and incorporated into the **2018** Market Contract ("Contract") between the Vendor and the City of Bloomington ("City").

I. "Value Added Foods" are processed farm products made from raw ingredients in a licensed kitchen by the Vendor or, if required by law, at a processing facility containing a significant portion of Vendor-grown/raised/collected product, the specifics of which are detailed by category below (See Section III. 7.)

II. Products from animals administered growth hormones, including but not limited to rBGH, may not be sold at Market.

III. An initialed Value Added Foods Exhibit attached to a signed Market Farm Vendor Contract allows the Vendor to sell Value Added Foods at the Market as long as the following requirements are met:

1. Product meets the terms outlined in the Contract, and complies with all federal and state laws.

2. The Vendor must obtain a Seasonal Food Vending Permit and/or Temporary Food Vending Permit from the Monroe County Health Department (except for wine (see Section III. 7. E.)), without which the Contract and this Exhibit are not valid.

3. The Vendor must prepare foods from scratch in a licensed facility (except meats (see Section III. 7. D.)).

4. The Vendor must properly label goods for sale according to the regulatory body overseeing the Value Added Food items, including, but not limited to name of product, location of preparation, contents, net weight and date of processing.

5. The Vendor must obtain all other permits required by state and local law, including health permits and any other applicable permits, prior to and for the duration of selling at Market.

6. The Vendor must be in compliance with all applicable federal and state laws.

7. Product meets the following additional requirements by type and category:

A. **Standard Value Added Foods (products like salsas, relishes, ciders, jams, jellies, etc.)**
   a. All product that can be reasonably Vendor-grown/raised/collected must be.
   b. The final product may contain up to 50% product by volume (excluding water) that is not Vendor-grown/raised/collected.

B. **Manufactured Grade Dairy Products**
   a. All animals from which the milk for dairy products sold at the Market is derived must be in the Vendor's immediate custody, care and control.

   b. The Vendor must process his or her own dairy products.

_____
Vendor's Initial

c. The final product may contain up to 20% non-dairy product by volume (excluding water) that is not Vendor-grown/raised/collected.

d. d. All dairy product sold at Market under this Value Added Foods Exhibit must have been maintained continuously at a temperature of 41 degrees Fahrenheit or less from the time it is obtained from the animal through the time it is sold at Market.

e. The Vendor must obtain and provide the City with a current copy of the Indiana State Board of Animal Health Dairy Division permit to operate as a manufactured grade milk and/or milk processor, prior to this Exhibit and the Contract being considered valid and prior to selling at Market.

C. **Grade A Milk and/or Milk Products**

a. Some of the animals from which the milk for dairy products sold at the Market is derived must be in the Vendor's immediate custody, care and control.

b. The Vendor must process his or her own dairy products.

c. Any milk purchased for dairy products sold at Market must be sourced from Indiana dairies.

d. The Vendor must produce at least as much milk from the Vendor's animals to equal the amount of liquid milk in dairy products sold at Market during the period of time the Vendor sells at Market.

e. The Vendor must provide, prior to Vendor's Contract and this Exhibit being considered valid and for approval by the Market Manager, all sample documentation necessary regarding how records will be kept for on-farm milk production, liquid milk volume of dairy products sold at Market and if purchased milk is used for product sold at Market, sources of purchased milk by **March 1, 2018**.

f. The Vendor must maintain records and provide documentation to the Market Manager by **August 15, 2018** and again by **December 14, 2018** regarding on-farm milk production, liquid milk volume of dairy products sold at Market and if purchased milk is used for product sold at Market, sources and volume of purchased milk.

g. The Vendor utilizing milk from animals he/she did not raise must post a legible sign stating, "The milk in this dairy product is sourced from other Indiana dairies in addition to (name of farm's) own milk."

h. The final product may contain up to 20% non-dairy product by volume (excluding water) that is not Vendor-grown/raised/collected.

i. All dairy product sold at Market under this Value Added Foods Exhibit must have been maintained continuously at a temperature of 41 degrees Fahrenheit or less from the time it is obtained from the animal through the time it is sold at Market.

j. The Vendor must obtain and provide the City with a current copy of the Indiana State Board of Animal Health Dairy Division permit to operate as a Grade A milk and/or milk

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Vendor's Initial

products processor, without which the Vendor's Contract and this Exhibit are not valid.

D. **Fresh/Frozen/Preserved Beef, Pork, Rabbit, Goat, Poultry, Lamb or Other Meats**

a. The Vendor must have grown, bred or raised all animals from which meat is sold at the Market.

b. All animals must have been in the Vendor's immediate custody, care and control for at least 50% of the live weight or for twelve months at slaughter.

c. Only product that has been prepared in a licensed, state-inspected facility may be sold at the Market. Preparation includes slaughter, packaging, labeling and preserving. The product must have a "safe food handling" label on the package and be sold in the unaltered package it was placed in at the processing facility. Processing plant receipts may be requested for verification of producership.

d. The final product may contain up to 20% product by volume (excluding water) that is not vendor-grown/raised/collected.

e. The Vendor must maintain the product continuously in frozen/preserved condition or, if product is fresh, maintain continuously at a temperature of 41 degrees Fahrenheit or less, from the time it leaves the processing facility until it is sold at the Market.

f. Poultry and rabbit slaughtered on farm and frozen may be sold under Home Based Vendor Foods Exhibit provided Vendor is in compliance with all terms outlined in said Exhibit.

E. **Wine**

a. The vendor must raise all fruit used in producing the wine.

b. Only closed container sales are permitted, no sampling or sales by the glass.

c. The Vendor must abide by all state and federal alcohol sales rules, including no sales to minors.

d. The Vendor must obtain and provide the City with a current copy of the Indiana Farm Winery license, without which the Vendor's Contract and this Exhibit are not valid.

8. If the Vendor intends to prepare food at Market, the following additional requirements must be met.

A. The Vendor must obtain prior approval from Market staff based on desirability of food item and safety of setup. A limited number of farm vendors will be given permission to prepare foods at Market;

B. Heating meat is not permitted.

C. The Vendor must use procedures and safeguards appropriate to the nature of the preparation (i.e., adequate measures to protect persons from any heat sources).

D. All foods prepared at Market must meet the guidelines specified in this Exhibit except requiring that foods be prepared in a licensed facility.

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Vendor's Initial

IV. The Vendor may be required to submit recipes for the Value Added Foods to the Market Manager for verification that they meet the specified requirements.

V. The Vendor agrees to release, hold harmless and forever indemnify the City of Bloomington, its Parks and Recreation Department and Parks Board and the Farmers' Market Advisory Council, and its employees, officers and agents from any and all claims or causes of action that may arise from the sale of Value Added Foods pursuant to the Vendor's Contract with the City and this Exhibit. This includes claims for personal injury, death, and any other types of claims which may arise from the performance of activities under the Vendor's Contract with the City and this Exhibit, whether such claims may be brought by a party to the Vendor's Contract with the City and this Exhibit or by any third party, whether or not sounding 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 Farmers' Market Advisory Council.

VI. The Vendor will not institute any action or suit at law or in equity against the City or City's agents or employees as a result of operations under this Exhibit. The Vendor 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 Exhibit.

VII. This Exhibit is effective upon signature of the contract by the Vendor and City representatives, and upon vendor initialing each page of the Exhibit. This Exhibit is valid only when accompanied by all the necessary permits, and for the **2018** Market Season, terminating at the close of the Market on **November 24, 2018**.

List all products intended to be sold under this Value Added Foods Exhibit:

_____

_____

_____

_____

_____

If selling Standard Value Added Foods, list name and location of licensed kitchen:

_____

_____

_____

If selling Manufactured Grade or Grade A Milk Products, list name and location of processing facility if different from the primary vendor's address:

_____

_____

_____

If selling Meat, list name and location of processor:

_____

_____

_____
Vendor's Initial

Attach copies of all appropriate paperwork.

□ Manufactured Grade Milk and/or Milk Products Processor Permit.

□ Grade A Milk and/or Milk Products Processor Permit.

□ Seasonal Food Vending Permit and/or Temporary Food Vending Permit from the Monroe County Health Department.

□ Indiana Farm Wineries license from the Indiana Alcohol and Tobacco Commission

□ Additional Attachments - Please Specify_____

_____

Primary Vendor's Printed Name

_____

Vendor's Initial

2018 Bloomington Community Farmers' Market Contract
Pet Foods Exhibit
(Exhibit B)

As additional consideration for the privilege to participate in the **2018** Bloomington Community Farmers' Market ("Market"), by initialing each page, the vendor(s) ("Vendor") agrees to the following Pet Foods Exhibit ("Exhibit"), which is made part of and incorporated into the **2018** Market Contract ("Contract") between the Vendor and the City of Bloomington ("City").

I. "Pet Foods" means products that contain at least 90% vendor-grown/raised/collected product and are processed or prepared by the Vendor from the original condition.

II. The Vendor must have grown/raised all animals from which pet food products are obtained. Products from animals administered growth hormones, including but not limited to rBGH, may not be sold at the Market.

III. A signed Pet Foods Exhibit attached to a signed Market Farm Vendor Contract allows the Vendor to sell pet food at the Market as long as the following requirements are met:

1. Product meets the terms outlined in the Contract.

2. Vendor obtains and retains, during the term of this Contract and Exhibit, an Indiana Commercial Feed License from the State Chemist (http://www.isco.purdue.edu) in compliance with Ind. Code 15-19-7, the Indiana Commercial Feed Law, a copy of which is attached hereto and incorporated herein by reference, and without which the Vendor's Contract with the City and this Exhibit are not valid.

3. Product must be labeled with a label approved by the State Chemist in compliance with Indiana Code 15-19-7-26 and 27, and include but not limited to the following information: species of pet for which the food is intended, net weight, guaranteed analysis, ingredient statement, moisture content and name and address of manufacturer. A sample copy of which is attached to this Exhibit and incorporated herein by reference and without which the Vendor's Contract with the City and this Exhibit are not valid.

4. **If the Vendor intends to sell dairy products as pet foods, the following additional requirements must be met:**
   A. The Vendor must have grown, bred or raised all animals from which dairy products are sold at the Market.
   B. All animals must have been in the Vendor's immediate custody, care and control.
   C. The Vendor must process his or her own dairy products.
   D. The Vendor must prominently include on the label "Not Intended for Human Consumption."

5. **If the Vendor intends to sell frozen or preserved beef, bison, elk, goat, lamb, pork, poultry, rabbit or other meats at the Market as pet foods, the Vendor must comply with the above-stated standards and initial each page of the Value Added Foods Exhibit and meet all the criteria laid out therein.**

IV. The Vendor agrees to release, hold harmless and forever indemnify the City of Bloomington, its Parks and Recreation Department and Parks Board and Farmers' Market Advisory Council, and its employees, officers and agents from any and all claims or causes of action that may arise from the sale of Pet Foods pursuant to the Vendor's Contract with the City and this Exhibit. This includes claims for personal injury, death, and any other types of claims which may arise from the performance of activities under the Vendor's Contract with the City and this Exhibit, whether such claims may be brought by a party to the Vendor's Contract with the City and this Exhibit or by any third party, and whether or not caused by a negligent act or

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Vendor's Initial

omission of the City of Bloomington, its employees, agents or officers, or Farmers' Market Advisory Council.

V. The Vendor will not institute any action or suit at law or in equity against the City or City's agents or employees as a result of operations under this Exhibit. The Vendor 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 Exhibit.

VI. This Exhibit is effective upon signature of the Contract by the Vendor and City Representatives, and upon vendor initialing each page of the Exhibit. This Exhibit is valid only when accompanied by all the necessary permits, and for the **2018** Market Season, terminating at the close of the Market on **November 24, 2018**.

Please attach copies of all appropriate paperwork.

□ Indiana Commercial Feed License.

□ Sample of Labels.

□ Additional Attachments - Please Specify_____

_____

Primary Vendor's Printed Name

_____

Vendor's Initial

2018 Bloomington Community Farmers' Market Contract
Home Based Vendor Foods Exhibit
(Exhibit C)

As additional consideration for the privilege to participate in the **2018** Bloomington Community Farmers' Market ("Market"), by initialing each page, the vendor(s) ("Vendor") agrees to the following Home Based Vendor Foods Exhibit ("Exhibit"), which is made part of and incorporated into the **2018** Market Contract ("Contract") between the Vendor and the City of Bloomington ("City").

I. "Home Based Vendor Foods" means non-potentially hazardous food products and frozen poultry and rabbit slaughtered on the farm that contain 100% vendor-grown/raised/collected product (except in the case of jams and jellies (see Section III. 2.) and fermented food (see Section III. 9.d.)) and are processed or prepared by the Vendor at his/her primary residence, or on property owned or leased by the vendor.

II. Vendor selling Home Based Vendor Foods is responsible for ensuring all products are "non-potentially hazardous food" and may be required to have an analysis completed to determine if a product in question is indeed a "non-potentially hazardous food" and provide a written report of said analysis.

III. The following products are permitted for sale at the Market as Home Based Vendor Foods:

1. Frozen/dehydrated fruits, vegetables and herbs
2. Jams and jellies, canned or frozen, made from acidic fruits (sweeteners and gelling compounds may be added)
3. Maple syrup
4. Honey
5. Sorghum
6. Ground grains
7. Vinegar
8. Spices
9. Fermented Food, as long as the following requirements are met:
    a. Vendor must use an appropriate percentage salt brine for the produce being fermented.
    b. No acid may be added.
    c. Product may not be hermetically sealed.
    d. 95% of product must be vendor raised.
10. Frozen Poultry, as long as the following requirements are met:
    a. Vendor slaughters not more than 1,000 poultry during the calendar year.
    b. Such poultry producer does not engage in buying or selling poultry products other than those produced from poultry raised on his own farm; and
    c. None of such poultry moves in commerce outside Indiana (it all remains in Indiana after slaughter).
11. Frozen Rabbit

IV. A signed Home Based Vendor Foods Exhibit attached to a signed Market Farm Vendor Contract allows the Vendor to sell Home Based Vendor Foods at the Market as long as the following requirements are met:

1. Product meets the terms outlined in the Contract, and all applicable federal and state laws, including but not limited to Indiana Code 16-42.

2. All processing and packaging must be done by the Vendor in compliance with Indiana Code 16-42-5-29(b) and pursuant to Indiana Code 16-42-5-29(b) (5) have proper labeling (or sign visibly displayed on table in the case of frozen or dehydrated produce), including the following:
    A. The name and address of the producer of the food product.
    B. The common or usual name of the food product.
    C. The ingredients of the food product, in descending order by predominance of weight.
    D. The net weight and volume of food product.
    E. The date on which the food product was processed.
    F. The following statement in at least 10 point type: "This product is home produced and processed and the production area has not been inspected by the State

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Vendor's Initial

Department of Health." It is permissible for this statement to be displayed on the table next to any Home Based Vendor Foods.

V. The Vendor agrees to release, hold harmless and forever indemnify the City of Bloomington, its Parks and Recreation Department and Parks Board and Farmers' Market Advisory Council, and its employees, officers and agents from any and all claims or causes of action that may arise from the sale of Home Based Vendor Foods pursuant to the Vendor's Contract with the City and this Exhibit. This includes claims for personal injury, death, and any other types of claims which may arise from the performance of activities under the Vendor's Contract with the City and this Exhibit, whether such claims may be brought by a party to the Vendor's Contract with the City and this Exhibit or by any third party, and whether or not caused by a negligent act or omission of the City of Bloomington, its employees, agents or officers, or Farmers' Market Advisory Council.

VI. The Vendor will not institute any action or suit at law or in equity against the City or City's agents or employees as a result of operations under this Exhibit. The Vendor 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 Exhibit.

VII. This Exhibit is effective upon signature of the Contract by the Vendor and City Representatives, and upon vendor initialing each page of the Exhibit. This Exhibit is valid only when accompanied by all the necessary permits, and for the **2018** Market Season, terminating at the close of the Market on **November 24, 2018**.

List all products intended to be sold under this Home Based Vendor Foods Exhibit:

_____

_____

_____

_____

_____

_____

Primary Vendor's Printed Name

_____
Vendor's Initial

2018 Bloomington Community Farmers' Market Contract
Aquaculture Foods Exhibit
(Exhibit D)

As additional consideration for the privilege to participate in the **2018** Bloomington Community Farmers' Market ("Market"), by initialing each page, the vendor(s) ("Vendor") agrees to the following Aquaculture Foods Exhibit ("Exhibit"), which is made part of and incorporated into the **2018** Market Contract ("Contract") between the Vendor and the City of Bloomington ("City").

I. "Aquaculture Foods" means aquaculture farm products grown/raised by the Vendor for a minimum of eighty (80) days.

II. The following products are permitted for sale at the Market as aquaculture foods: fish and shrimp.

III. An initialed Aquaculture Exhibit attached to a signed Market Farm Vendor Contract allows the Vendor to sell Aquaculture Foods at the Market as long as the following requirements are met:

1. Product meets the terms outlined in the Contract, and is in compliance with all applicable federal and state laws.

2. Only aquaculture foods that are raised in a state approved facility are permitted for sale.

3. Aquaculture foods must be sold unprocessed, fresh and kept at 41 degrees Fahrenheit or below from the time it is harvested until the time they are sold or processed in a licensed kitchen and sold fresh and kept at 41 degrees Fahrenheit or sold frozen.

4. No water and/or ice that comes into contact with aquaculture foods may be deposited or allowed to drain on Market premises.

5. The Vendor must obtain a Seasonal Food Vending Permit and/or Temporary Food Vending Permit from the Monroe County Health Department, which must be attached to this Exhibit, and which are incorporated to this Exhibit by reference, and without which the Exhibit and Contract are not valid.

6. The Vendor must obtain all other permits required by state and local law, including health permits and any other applicable permits, prior to and for the duration of selling his/her product at Market.

7. The Vendor must properly label goods for sale according to the regulatory body overseeing the aquaculture foods, including, but not limited to: name of producer, address of producer, phone number or email of producer, net weight and date of harvest.

IV. The Vendor agrees to release, hold harmless and forever indemnify the City of Bloomington, its Parks and Recreation Department and Parks Board and Farmers' Market Advisory Council, and its employees, officers and agents from any and all claims or causes of action that may arise from the sale of Aquaculture Foods pursuant to the Vendor's Contract with the City and this Exhibit. This includes claims for personal injury, death, and any other types of claims which may arise from the performance of activities under the Vendor's Contract with the City and this Exhibit, whether such claims may be brought by a party to the Vendor's Contract with the City and this Exhibit or by any third party, and whether or not caused by a negligent act or omission of the City of Bloomington, its employees, agents or officers, or Farmers' Market Advisory Council.

_____
Vendor's Initial

V. The Vendor will not institute any action or suit at law or in equity against the City or City's agents or employees as a result of operations under this Exhibit. The Vendor 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 Exhibit.

VI. This Exhibit is effective upon signature of the Contract by the Vendor and City representatives, and upon vendor initialing each page of the Exhibit. This Exhibit is valid only when accompanied by all the necessary permits, and for the **2018** Market Season, terminating at the close of the Market on **November 24, 2018**.

List all products intended to be sold under this Aquaculture Foods Exhibit:

_____

_____

_____

If selling processed fish or shrimp, list name and location of processing facility:

_____

_____

Attach copies of all appropriate paperwork.

□ Seasonal Food Vending Permit and/or Temporary Food Vending Permit from the Monroe County Health Department.

□ Additional Attachments –
Please Specify_____

_____
Primary Vendor's Printed Name

_____
Vendor's Initial

Agreement for Prepared/Processed Food and Beverage Vending
Bloomington Community Farmers' Market

This Agreement, entered into this _____ day of February, 2018, by and between the City of Bloomington Parks and Recreation Department ("Parks") and Prepared/Processed Food and Beverage Vendor ("Food Vendor"),

WITNESSETH:

WHEREAS, Parks manages the Bloomington Community Farmers' Market ("Market") at Showers Common, 401 North Morton Street, Bloomington, Indiana; and

WHEREAS, the Food Vendor wishes to operate a stand in this location.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

A. TERM OF AGREEMENT

The term of this Agreement shall begin on April 7, 2018 and end on November 24, 2018. The terms of this Agreement may be extended one (1) additional year if agreeable to both parties. The extension, however, is not automatic and must be agreed to in writing by both parties.

B. FOOD VENDOR'S RESPONSIBILITIES

1. **Vending Fee:** Food Vendor shall pay Parks a vending fee of three hundred and seventy dollars ($370) plus ten percent (10%) of gross proceeds. The three hundred and seventy dollars ($370) shall be paid in one installment on or before March 23, 2018. The ten percent (10%) of gross proceeds shall be paid monthly on or before the 15th of the month following the month gross proceeds were collected. In addition to the payment of ten percent (10%) gross proceeds, the Food Vendor shall include documentation of gross proceeds earned at each Market.

2. **List and Price:** The Food Vendor shall furnish Parks with a complete list of product to be sold and prices charged per item by March 22, 2018. Such product list and pricing is subject to the approval of the Parks Administrator. The Food Vendor must display legible price markers for goods offered for sale.

3. **Insurance:** The Food Vendor shall maintain comprehensive general liability insurance, which shall include premises, operations and product liability. Coverage shall be in the amount of one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in the aggregate. The policy shall name the City of Bloomington and the Food Vendor as insured parties, and the Food Vendor shall provide Parks with a certificate of insurance prior to the commencement of operations under this Agreement. The Food Vendor and its insurer shall notify Parks within ten (10) days of any insurance cancellation.

4. **Employees:** The Food Vendor shall employ all personnel necessary for the operation of the food stand, and shall pay all necessary wages and payroll tax for such employees. Food stand attendants must be a minimum of sixteen (16) years of age.

5. **Recordkeeping**: The Food Vendor shall keep and maintain accurate records reflecting the revenues of the food stand. These documents shall be open to inspection at all reasonable times by authorized agents of Parks.

   On or before August 15, 2018 Food Vendor shall provide Parks with documentation regarding the sourcing of Indiana grown product for the 2018 season to date, including the types of products purchased year and the names of the farms from which they were purchased.

6. **Rules and Regulations:** The Food Vendor shall also comply with all local, state and federal laws, including health codes regarding preparation of food, operation of open-air stand and employment of all personnel.

   The Food Vendor shall obtain all necessary permits from Monroe County Health Department, Indiana Alcohol and Tobacco Commission, Federal Tax and Trade Bureau, Indiana State Excise Tax Police, and from any and all other controlling agencies or boards, prior to commencement of operations under this Agreement. Copies of pertinent permits shall be submitted along with the signed copy of the contract.

   If the Food Vendor is selling as a Home Based Vendor, Food Vendor is responsible for ensuring all products are "non-potentially hazardous foods" and are required to have an analysis completed to determine if a product in questions is indeed a "non-potentially hazardous food" and provide written report of said analysis.

7. **Days and Hours of Operation:** The Food Vendor agrees to attend and sell at Market each and every Saturday beginning April 7, 2018 through September 29, 2018 from 8:00 am until 1:00 pm, and October 6, 2018 through November 24, 2018 from 9:00 am until 1:00 pm.

8. **Entering and Exiting the Market:** The Food Vendor must occupy the assigned space by 15 minutes prior to Market opening time. The Food Vendor may park along the curb next to B-Line plaza to unload. The vehicle must be removed from the curb by a schedule set in advance of the season.

9. **Assignments and Limits of Space**: The Food Vendor will be assigned by Parks one vending space limited to 10 feet wide by 10 feet deep prior to commencement of this Agreement.

10. **Gift Certificate Program/SNAP:** The Food Vendor agrees to participate in the Farmers' Market Gift Certificate Program/SNAP (GCP/SNAP) organized by the City. A Farmer/Prepared Food Vendor Training Guide will be provided. The Food Vendor agrees to read the Training Guide and abide by the rules established in the Training Guide. Completion of a Substitute W9 form and Electronic Funds Transfer form is necessary for first-time participants in the GCP/SNAP. If the Food Vendor has participated in previous years, no further paperwork is necessary.

11. **Property Maintenance and Utilization:** The Food Vendor must vacate premises by 2:00 pm and remove all personal items and equipment. The Food vendor must remove all recyclable and compostable materials from site. The Food Vendor must protect brick pavers within vending space from soiling due to food and beverage spills. The Food Vendor must ensure that weather protection devices are securely anchored. The Food Vendor must utilize compostable serving materials whenever possible.

12. **Indemnification:** The Food Vendor hereby agrees to release, hold harmless, and forever indemnify the City of Bloomington, its Department of Parks and Recreation, and its employees, officers, agents and assigns from any and all claims, causes of action, suits, proceedings or demands which may arise from or in any way be connected to Food Vendor's activities under this Agreement, even if arising from the negligence of releasee. This release, hold harmless and indemnification includes claims which may be brought by any third party against the City of Bloomington and its related entities as set forth above.

13. **Verification of New Employees' Immigration Status:** The Food Vendor 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). The Food Vendor shall sign an affidavit, attached as Exhibit A, affirming that The Food Vendor 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.

    The Food Vendor and any subcontractors may not knowingly employ or contract with an unauthorized alien, or retain an employee or contract with a person that the Food Vendor or subcontractor subsequently learns is an unauthorized alien. If the City obtains information that the Food Vendor or subcontractor employs or retains an employee who is an unauthorized alien, the City shall notify the Food Vendor or subcontractor of the contract violation and require that the violation be remedied within 30 days of the date of notice. If the Food Vendor or subcontractor verified the work eligibility status of the employee in question through the E-Verify program, there is a rebuttable presumption that the Food Vendor or subcontractor did not knowingly employ an unauthorized alien. If the Food Vendor or subcontractor fails to remedy the violation within the 30 day period, the City shall

terminate the contract, unless the City or City department that entered into the contract determines that terminating the contract would be detrimental to the public interest or public property, in which case the City may allow the contract to remain in effect until the City procures a new contractor. If the City terminates the contract, the Food Vendor or subcontractor is liable to the City for actual damages.

The Food Vendor shall require any subcontractors performing work under this contract to certify to the Food Vendor 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. The Food Vendor shall maintain on file all subcontractors' certifications throughout the term of the contract with the City.

C. RESPONSIBILITY OF PARKS

Parks shall invoice the Food Vendor for payment of three hundred and seventy dollars ($370) vending fee at least twenty (20) days in advance of due date. Parks shall not invoice the Food Vendor for ten percent (10%) of gross sales.

D. ASSIGNMENT OF AGREEMENT

The Food Vendor shall not assign or sub-contract this Agreement or any of its terms, except with prior written approval of the Parks Administrator.

E. BREACH OF AGREEMENT

In the event one of the parties to this Agreement breaches any of its terms and conditions, the non-breaching party shall serve written notice of the breach to the other party by certified mail. The offending party shall then have seven (7) days from the date of mailing in which to cure the breach. If the offending party fails to cure the breach within seven (7) days, the non-breaching party may, at its option and in writing, unilaterally terminate the Agreement.

F. TERMINATION

1. **Termination by mutual agreement**: The parties may terminate this Agreement prior to November 24, 2018 by mutual written agreement.

G. MISCELLANEOUS

1. **Enforcement**: In the event that either party must resort to litigation in order to enforce the terms of this Agreement, the party found to be in breach of the Agreement shall bear expenses of such litigation, including, but not limited to, court costs and reasonable attorney fees.

2. **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.

3. **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 other party's right to enforce that term. No waiver by any party of any term of

this Agreement shall be considered to be a waiver of any other term or breach thereof.

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

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

Parks: Parks and Recreation Department
ATTN: Marcia Veldman.
City of Bloomington, P.O. Box 100
Bloomington, IN 47402

Food Vendor: _____

_____

_____

6. **Intent to be Bound**: Parks and the Food Vendor each bind itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

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

This Agreement may be modified only by a written amendment signed by both parties hereto.

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

_____	_____
Food Vendor	Philippa M. Guthrie, Corporation Counsel
	_____
	Paula McDevitt, Parks Administrator
	_____
	Leslie J. Coyne, President Board of Park Commissioners

EXHIBIT A

STATE OF INDIANA)
)SS:
COUNTY OF _____)

E-VERIFY AFFIDAVIT

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

1. The undersigned is the _____of _____.
(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.

_____
Notary Public's Signature

_____
Printed Name of Notary Public
My Commission Expires: _____
County of Residence: _____

Agreement for Food Truck/Push Cart Vending
Bloomington Community Farmers' Market

This Agreement, entered into this _____ day of February, 2018, by and between the City of Bloomington Parks and Recreation Department ("Parks") and Prepared/Processed Food and Beverage Vendor ("Food Vendor"),

WITNESSETH:

WHEREAS, Parks manages the Bloomington Community Farmers' Market ("Market") at Showers Common, 401 North Morton Street, Bloomington, Indiana; and,

WHEREAS, the Food Vendor wishes to operate a stand in this location.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

A. TERM OF AGREEMENT

The term of this Agreement shall begin on May 5, 2018 and end on November 24, 2018.

B. FOOD VENDOR'S RESPONSIBILITIES

1. **Vending Fee:** Food Vendor shall pay Parks a vending fee of two hundred and twenty dollars ($220) plus ten percent (10%) of gross proceeds. The two hundred and twenty dollars ($220) shall be paid in one installment on or before March 22, 2018. The ten percent (10%) of gross proceeds shall be paid monthly on or before the 15th of the month following the month gross proceeds were collected. In addition to the payment of ten percent (10%) gross proceeds, the Food Vendor shall include documentation of gross proceeds earned at each Market.

2. **List and Price:** The Food Vendor shall furnish Parks with a complete list of product to be sold and prices charged per item by March 22, 2018. Such product list and pricing is subject to the approval of the Parks Administrator. The Food Vendor must display legible price markers for goods offered for sale.

3. **Insurance:** The Food Vendor shall maintain comprehensive general liability insurance, which shall include premises, operations and product liability. Coverage shall be in the amount of one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in the aggregate. The policy shall name the City of Bloomington and the Food Vendor as insured parties, and the Food Vendor shall provide Parks with a certificate of insurance prior to the commencement of operations under this Agreement. The Food Vendor and its insurer shall notify Parks within ten (10) days of any insurance cancellation.

4. **Employees:** The Food Vendor shall employ all personnel necessary for the operation of the food stand, and shall pay all necessary wages and payroll tax for

such employees. Food stand attendants must be a minimum of sixteen (16) years of age.

5. **Recordkeeping**: The Food Vendor shall keep and maintain accurate records reflecting the revenues of the food stand. These documents shall be open to inspection at all reasonable times by authorized agents of Parks.

   On or before August 15, 2018, Food Vendor shall provide Parks with documentation regarding the sourcing of Indiana grown product for the 2018 season to date, including the types of products purchased and the names of the farms from which they were purchased.

6. **Rules and Regulations:** The Food Vendor shall also comply with all local, state and federal laws, including health codes regarding preparation of food, operation of food truck/push cart and employment of all personnel.

   The Food Vendor shall obtain all necessary permits from Monroe County Health Department, Indiana Alcohol and Tobacco Commission, Federal Tax and Trade Bureau, Indiana State Excise Tax Police, and from any and all other controlling agencies or boards, prior to commencement of operations under this Agreement. Copies of pertinent permits shall be submitted along with the signed copy of the contract.

   If the Food Vendor is selling as a Home Based Vendor, Food Vendor is responsible for ensuring all products are "non-potentially hazardous foods" and are required to have an analysis completed to determine if a product in question is indeed a "non-potentially hazardous food" and provide written report of said analysis.

7. **Days and Hours of Operation:** The Food Vendor agrees to attend and sell at Market each and every Saturday beginning May 5, 2018 through September 29, 2018 from 8:00 am until 1:00 pm.

8. **Entering and Exiting the Market:** The Food Vendor must occupy the assigned space by 15 minutes prior to Market opening time.

9. **Gift Certificate Program/SNAP:** The Food Vendor agrees to participate in the Farmers' Market Gift Certificate Program/SNAP (GCP/SNAP) organized by the City. A Farmer/Prepared Food Vendor Training Guide will be provided. The Food Vendor agrees to read the Training Guide and abide by the rules established in the Training Guide. Completion of a Substitute W9 form and Electronic Funds Transfer form is necessary for first-time participants in the GCP/SNAP. If the Food Vendor has participated in previous years, no further paperwork is necessary.

10. **Property Maintenance and Utilization:** The Food Vendor must vacate premises by 2:00 pm and remove all personal items and equipment. The Food vendor must remove all recyclable and compostable materials from site. The Food Vendor must ensure that weather protection devices are securely anchored. The Food Vendor must utilize compostable serving materials whenever possible.

12. **Indemnification:** The Food Vendor hereby agrees to release, hold harmless, and forever indemnify the City of Bloomington, its Department of Parks and Recreation, and its employees, officers, agents and assigns from any and all claims, causes of action, suits, proceedings or demands which may arise from or in any way be connected to Food Vendor's activities under this Agreement, even if arising from the negligence of releasee. This release, hold harmless and indemnification includes claims which may be brought by any third party against the City of Bloomington and its related entities as set forth above.

13. **Verification of New Employees' Immigration Status:** The Food Vendor 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). The Food Vendor shall sign an affidavit, attached as Exhibit A, affirming that The Food Vendor 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.

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

    The Food Vendor shall require any subcontractors performing work under this contract to certify to the Food Vendor 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. The Food Vendor shall maintain on file all subcontractors' certifications throughout the term of the contract with the City.

C. RESPONSIBILITY OF PARKS

Parks shall invoice the Food Vendor for payment of two hundred and twenty dollars ($220) vending fee at least twenty (20) days in advance of due date. Parks shall not invoice the Food Vendor for ten percent (10%) of gross sales.

D. ASSIGNMENT OF AGREEMENT

The Food Vendor shall not assign or sub-contract this Agreement or any of its terms, except with prior written approval of the Parks Administrator.

E. BREACH OF AGREEMENT

In the event one of the parties to this Agreement breaches any of its terms and conditions, the non-breaching party shall serve written notice of the breach to the other party by certified mail. The offending party shall then have seven (7) days from the date of mailing in which to cure the breach. If the offending party fails to cure the breach within seven (7) days, the non-breaching party may, at its option and in writing, unilaterally terminate the Agreement.

F. TERMINATION

1. **Termination by mutual agreement**: The parties may terminate this Agreement prior to November 24, 2018 by mutual written agreement.

G. MISCELLANEOUS

1. **Enforcement**: In the event that either party must resort to litigation in order to enforce the terms of this Agreement, the party found to be in breach of the Agreement shall bear expenses of such litigation, including, but not limited to, court costs and reasonable attorney fees.

2. **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.

3. **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 other party's right to enforce that term. No waiver by any party of any term of this Agreement shall be considered to be a waiver of any other term or breach thereof.

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

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

Parks: Parks and Recreation Department
ATTN: Marcia Veldman.
City of Bloomington, P.O. Box 100
Bloomington, IN 47402,

Food Vendor: _____

_____

_____

6. **Intent to be Bound**: Parks and the Food Vendor each bind itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

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

   This Agreement may be modified only by a written amendment signed by both parties hereto.

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

_____
Food Vendor

_____
Date

_____
Philippa M. Guthrie, Corporation Counsel

_____
Paula McDevitt, Parks Administrator

_____
Leslie J. Coyne, President Board of Park Commissioners

EXHIBIT A

STATE OF INDIANA)
)SS:
COUNTY OF _____)

E-VERIFY AFFIDAVIT

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

1. The undersigned is the _____of _____.
   (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 _____, 2018.

_____
Notary Public's Signature

_____
Printed Name of Notary Public
My Commission Expires: _____
County of Residence: _____

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: C-14 Date: 12/8/2017

Administrator Review\Approval PM

TO: Board of Park Commissioners
FROM: Erik Pearson
DATE: December 12th, 2017
SUBJECT: REVIEW/APPROVAL OF SERVICE AGREEMENTS

Recommendation

Staff recommends the review/approval of two service agreements for the Recreation Division. The service agreements are with the following consultants.

1. HFI-Providing HVAC maintenance and repairs for the Banneker Community Center and Allison-Jukebox Center
2. Koorsen Fire and Security-Providing maintenance related to alarm system, fire extinguishers, and sprinkler system.

Background

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

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

RESPECTFULLY SUBMITTED,

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

This Agreement, entered into on this 12th day of December, 2017 by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Harrell Fish, Inc. ("Consultant"),

Article 1. Scope of Services Consultant shall repair, adjust, and/or replace heating, ventilation and cooling components at City park properties and facilities ("Services") for a set price per hour Monday-Friday 7:00am to 6:00pm and all other times for an afterhours hourly rate of Ninety Three Dollars ($93), plus any additional cost for parts and materials. Provision of services at an hourly rate of Seventy Two Dollars ($72), plus materials. Parks Department would give contractors at least two (2) working days' notice on repair. Repairs requiring more immediate action, (emergencies), may be billed at an emergency hourly rate of Ninety Three Dollars ($93). Holiday Call-out/Double Time hourly rate will be One Hundred Fourteen Dollars ($114). Types of HVAX components are: blower motors, thermostats, gas valves, filters and control boards. Consultant shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Consultant shall complete the Services required under this Agreement on or before Sunday December 31, 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 Erik Pearson – Banneker Community Center or Amy Shrake – Allison Jukebox Building as the Department's Project Manager. Consultant agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Consultant for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department. Upon agreement by both parties, this agreement can be extended for one additional year. Consultant will repair, adjust, and/or replace heating, ventilation and cooling components at the Banneker Community Center and Allison-Jukebox Community Center. 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 31st 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 Erik Pearson-Banneker Community Center or Amy Shrake Allison-Jukebox 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 Three Thousand Thirty Dollars ($3,030). 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-Banneker Community Center or Amy Shrake-Allison Jukebox Building, City of Bloomington, 401 N. Morton, Suite 250, Bloomington, Indiana 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Consultant within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

Article 5. Appropriation of Funds Notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by the Department are at any time not forthcoming or are insufficient, through failure of any entity, including the Department itself, to appropriate funds or otherwise, then the Department shall have the right to terminate this Agreement without penalty.

Article 6. Schedule Consultant shall perform the Services as needed. They are required to do two maintenance checks per year as well as other repairs. 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: Erik Pearson-Banneker Community Center or Amy Shrake-Allison-Jukebox Building, 401 N. Morton, Bloomington, IN 47402. Consultant: Harrell-Fish, Inc PO Box 1998, Bloomington, Indiana 47402..** Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and Consultant.

Article 23. Integration and Modification This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Consultant. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

Article 24. Non-Collusion Consultant is required to certify that it has not, nor has any other member, representative, or agent of Consultant, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Consultant shall sign an affidavit, attached hereto as Exhibit B, affirming that Consultant has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

CITY OF BLOOMINGTON

_____
Philippa M. Guthrie, Corporation Counsel

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

_____
Mike Hupp, Vice President

CITY OF BLOOMINGTON PARKS AND RECREATION

_____
Paula McDevitt, Director

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

EXHIBIT A
E-VERIFY AFFIDAVIT

STATE OF INDIANA)
)SS:
COUNTY OF _____)

AFFIDAVIT

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

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

_____
Signature

_____
Printed Name

STATE OF INDIANA)
)SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this _____ day of _____, 2017.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

EXHIBIT B

STATE OF _____)
) SS:
COUNTY OF _____)

NON-COLLUSION AFFIDAVIT

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

OATH AND AFFIRMATION

I affirm under the penalties of perjury that the foregoing facts and information are true and correct to the best of my knowledge and belief.
Dated this _____ day of _____, 2017.

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

By: _____

_____

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this _____ day of _____, 2017.

_____ My Commission Expires: _____
Notary Public's Signature

_____ County of Residence: _____
Printed Name of Notary Public

AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT AND KOORSEN FIRE AND SECURITY

This Agreement, entered into on this ____ day of December, 2017, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Koorsen Fire and Security ("Consultant"),

Article 1. Scope of Services Consultant shall perform fire extinguisher and fire suppression/sprinkler tests, monitor and provide maintenance of security system, and repair items associated with those services at the Banneker Community Center ("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 December 31st, 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 Erik Pearson 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 Seven Hundred Dollars ($1700). 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. Schedule Consultant shall perform the Services according to the following schedule: Bi-monthly monitoring of alarm systems, Yearly inspections of fire alarms, fire extinguishers, and sprinklers, and general repairs. 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.

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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.

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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.

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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: Erik Pearson, 401 N. Morton, Bloomington, IN 47402. Consultant: Koorsen Fire and Security.** 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

KOORSEN FIRE AND SECURITY

_____
Name of Signatory, Title

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.

KOORSEN FIRE AND SECURITY

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-15 Date: 12/8/2017

Administrator Review\Approval PM

TO: Board of Park Commissioners
FROM: John Turnbull, Division Director Sports
DATE: **December 6, 2017**
SUBJECT: **Partnership Agreement with Bloomington Junior League Baseball Association**

Recommendation
Staff recommends approval of this annual partnership agreement.

Background
This year's agreement is presented early because there are some new issues pertaining to the batting cages that have been agreed upon.

In the early 1990's, the department entered into agreements with two private entities to build and operate batting cages. One was at Twin Lakes Sports Park and the other was at Winslow Sports Park. The department rented the open space and they operated the batting cages as an ancillary service to our visitors. Both operations were not very profitable and the Twin Lakes operation was 75% demolished with the foundation still in place. The Winslow operation was gifted to BJLBA and we signed a rental agreement with BJLBA for 2003-2006 for annual $2,000 rental payments. Once that agreement terminated, a new agreement was never commenced and it has operated on and off with no rental payments directly to BPRD.

The staff has wanted to reclaim the green space for quite some time as the service does not cover a broad base of users. This agreement allows the automated batting cages to be demolished and be replaced with 'hitting tunnels'. Hitting tunnels have greater advantages; for example, less green space used, more modern and popular with teams, builds better skills, costs nothing to operate, and depreciates very slowly. This agreement allows both parties to move forward with terminating the automated batting cages and installing four hitting tunnels.

RESPECTFULLY SUBMITTED,

John Turnbull, Division Director Sports

CITY OF BLOOMINGTON
parks and recreation

COOPERATIVE SERVICE AGREEMENT
PROGRAM PARTNERSHIP

This Agreement, made and entered into this _____ day of December, 2017, by and between the Bloomington Parks and Recreation Department (”Parks”) and Bloomington Junior Baseball League (“BJLBA”), WITNESSETH:

WHEREAS, both Parks and BJLBA wish to provide an opportunity for the Bloomington/Monroe County community to participate in specialized recreation programs that are designed to meet the needs of youth in the community and to promote health and well-being through participation in cooperative and competitive recreation programs, and a partnership between Parks and BJLBA is in the public interest; and

WHEREAS, there is an apparent need for a recreational youth baseball program, and Parks and BJLBA desire to cooperate in the provision of a youth baseball program for the general public; and

WHEREAS, BJLBA is capable to perform such services, and has a history of operating an inclusive program that serves the needs of the Bloomington community, and has a good record of cooperation with Parks; and

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

WHEREAS, services provided by each party will reflect on the other, so clear communication and an outline of expectations is necessary;

NOW THEREFORE, the parties do mutually agree as follows:

1. **Purpose of Agreement.** This agreement outlines a program partnership which will provide an affordable and effective youth baseball program, designed to introduce beginner participants to the program as well as to provide for skill advancement, for the Bloomington community by combining available resources from each party to the agreement.

2. **Duration of Agreement.** This agreement shall be in full force and effect from the date of approval of both parties until October 1, 2018, unless terminated earlier as provided herein.

3. **Duties of Parks.** Parks agrees to:
   a. Allow BJLBA access to Winslow Baseball Fields in priority category #3 based on the order established by the Board of Park Commissioners:

1. Parks programs
2. Monroe County Community Schools Corporation programs
3. **Partnership programs**
4. Independent programs

b. Allow BJLBA access to Winslow Baseball Fields specified on the dates and at the times set forth at the beginning of the season at the partnership rates:

Winslow Sports Complex:	
Practice (excludes field lining)	$16.00 per hour
Practice with lights (excludes field lining)	$20.00 per hour
Weeknight Competition (includes field lining)	$23.00 per hour
Weekend Competition (includes field lining)	$25.00 per hour
With on-site maintenance	$30.00 per hour
All day per field	$165.00

c. Allow BJLBA access to practice ball fields at Bryan Park fields 1 and 2 based on availability and at varying rates depending on published prices of those facilities.

Practice (excludes field maintenance and lining)	$10.00 per hour
Competition (includes minor field maintenance and field lining)	$12.00 per hour

d. Provide facility maintenance including trash pick-up and removal, cleaning, deodorizing, maintaining and stocking restrooms, and upkeep of buildings and common areas.

e. Provide sport field and parking lot lighting including the cost of maintenance and operation of lighting systems for ball fields, parking lots and buildings.

f. Provide turf management including seeding, fertilizing, aerifying, weed control, and mowing. BJLBA is not permitted to provide field maintenance of any type including dragging infields and raking base paths.

g. Provide a weather information Hotline. Parks has the authority to cancel or delay events in progress or prior to their start due to inclement weather or hazardous conditions. These decisions will be communicated on the Youth Sports Hotline (812) 349-3610 option #2.

h. Suspend play in progress when required by Parks. Parks has the sole authority to suspend play in progress due to inclement weather. In the event that BJLBA is not comfortable with resuming play after an all clear is given from a Parks representative, BJLBA may decide to cancel play and that will be communicated on the hotline.

i. Provide four hitting tunnels. Each tunnel will be divided and consist of two pitching/hitting stations. Mats will be provided for the hitting and pitching areas. Parks will be responsible for the demo of the existing batting cages and returning the

area into usable green space.

j. Provide a Facility Supervisor on site to open and close the facility and assist with facility-related matters at the Winslow Sports Complex. No Parks supervisor will be on-site at Bryan Park. BJLBA is encouraged to provide a Standard 1st aid and CPR certified supervisor at this facility which is open to the public.

k.. Provide maintenance staff who shall be assigned to maintain and prepare the facility on a daily basis, as well as additional maintenance support staff as needed to perform other repairs, tasks and services.

l. Provide the services of the Sports Facility/Programs Manager as a liaison, consultant and contact person between the facilitated user group and the Bloomington Parks and Recreation Department.

m. Respond to citizen reports (see Section 4.e. below) within 24 hours of receipt.

4. Goals and Duties of BJLBA. The goals of BJLBA are to offer a recreational youth baseball program for the community at large, introduce and publicize BJLBA to the public, and provide programming for children of BJLBA. BJLBA hereby agrees to:

a. Maintain close contact with the Sports Facility/Programs Manager and appoint this person as Parks liaison to BJLBA's policy making board.

b. Will consider and discuss with BPRD the wear and tear from BJLBA use in regards the depreciation of tunnel netting

c. Agree to have each head coach obtain the Babe Ruth Coaching Education program requirements. This is a lifetime certification. BJLBA also agrees to have all adults involved with the program submit to a local and state criminal history check.

d. Collect fees and pay monthly field usage fees as specified in the above rates. Failure to cancel reserved times and dates, at least three weeks in advance, will result in charge for initial reservation. Failure to pay fees by the date specified on invoices will result in a late charge of $100 for each month late and denial of access to facilities. (The Winslow Sports Park averages $100,000 subsidy yearly. For every dollar spent at Winslow, the Board of Park Commissioners has set a goal of collecting thirty cents of that dollar. Therefore, payment must be made by the due date and in a timely manner.)

e. List the Parks and Recreation Department on all publicity and promotional materials developed by BJLBA as a "partner" or "in partnership with." A copy of any promotional materials should be submitted to the Parks and Recreation Department's Sports Facility/Programs Manager for approval prior to distribution to the public.

f. Refer any citizen concerns, reports or problems regarding the facility, improvements to the facility, services provided by staff or other issues to Parks on the designated

form within 24 hours of observation. Forms are available through the on-site supervisor or Parks.

g. Obtain legally binding liability waivers from all participants which release the City of Bloomington, its Parks and Recreation Department, and its employees, officers and agents from any claims that may arise from participation in activities anticipated by this Agreement. To the extent that BJLBA fails to secure such waivers, it shall hold Parks and the City of Bloomington harmless from any and all such claims.

h. Name the City of Bloomington as additional insured on its general liability policies and shall provide Parks with certificate of insurance prior to April 25, 2018.

i. Refrain from operating vehicles or other equipment on-site while participants are present.

5. **Behavior.** The 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.

6. **Parks Review of BJLBA Program.** BJLBA is recognized as having the ability to conduct the youth baseball program safely and effectively. Parks shall have the right to review risk management, agreement terms, coaching, player behavior and service quality issues.

7. The possession of alcoholic beverages, drugs and other illegal controlled substances is strictly prohibited in any park or park facility. Amplified music, or the promotion or sale of any article is expressly prohibited without a Special Use Permit

8. Pursuant to Bloomington Municipal Code 14.20.020, the discharge of a firearm is strictly prohibited within the City's jurisdiction. Moreover, per Indiana Code 35-47-11.1-4(10), a person or organization who rents space in a Parks facility may develop and implement, at its own discretion, rules of conduct or admission regarding the possession, carrying, and storage of firearms, upon which attendance at and participation in its activities is conditioned. If a person or organization who rents space in a Parks facility develops such a policy for its activities, it will be responsible for implementation and enforcement of such a policy, and it shall provide a copy of the policy to the City which shall be attached to the Agreement as Exhibit A

9. **Notice and Agreement Representatives.**

Notice regarding any significant concerns and/or breaches of agreement shall be given to those contacts as follows:

BJLBA President
Josh Holden
631 N. Walnut St.
Bloomington, IN 47404
(812) 325-7378

Bloomington Parks and Recreation
Dee Tuttle
P.O. Box 848
Bloomington, IN 47402
(812) 349-3762

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

Josh Holden BJLBA President (812) 325-7378	Dee Tuttle Sports Facility/Programs Manager (812) 349-3762

10. **Termination**. The parties may terminate this Agreement prior to its expiration by mutual written agreement. In the event that one of the parties breaches any of its terms and conditions, the breached party may terminate this Agreement by serving written notice of the breach to the other party by certified mail. The breaching party shall then have ten days from the date of the notice in which to cure the breach. If the breaching party fails to correct the breach within ten days, the breached party may, at its option and in writing, unilaterally terminate the Agreement.

11. **Insurance and Indemnity.** BJLBA shall maintain comprehensive general liability insurance, with a minimum combined single limit of $1,000,000 per occurrence and $2,000,000 in the aggregate. The policy shall name the City of Bloomington Parks and Recreation Department as an additional insured, and BJLBA shall provide Parks with a certificate of insurance prior to the commencement of operations under this Agreement. BJLBA and its insurer shall notify Parks within ten (10) days of any insurance cancellation.

Each party agrees to release, hold harmless and forever indemnify the other party and its employees, officers and agents from any and all claims or causes of action that may arise from its reckless, negligent or intentional acts or failure to act in performance of this Agreement. This includes claims for personal injury, property damage, and/or any other type of claim which may arise from these activities, whether such claims may be brought by the parties or any third party.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and date first stated above.

BJLBA

By:_____
Josh Holden, President

BLOOMINGTON PARKS AND RECREATION

By:_____
Paula McDevitt, Acting Director
Bloomington Parks and Recreation

_____
Leslie J. Coyne, President
Board of Park Commissioners

_____
Philippa M. Guthrie, Corporation Counsel
City of Bloomington

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: C-16 Date: 12/12/17

Administrator Review\Approval PM

TO: Board of Park Commissioners
FROM: Dave Williams, Operations Director
DATE: December 7, 2017
SUBJECT: **REVIEW/APPROVAL OF LEED CONSULTANT CONTRACT AND CONTRACT ADDENDUM FOR SWITCHYARD PARK PROJECT**

Recommendation
It is recommended the Board approve a $20,500 contract with CERx Solutions LLC for LEED Commissioning consulting services, and a $24,500 contract addendum with Rundell Ernstberger, both for the Switchyard Park project. Both contracts are funded by the TIF Bond.

Background
Per recommendations from the Switchyard Park lead design team Rundell Ernstberger (REA), the services and expertise of a LEED commissioning consultant are required to ensure we are meeting all LEED certification requirements during design review, construction, material and equipment submittals, and post construction on the park's new Pavilion (LEED Silver certification) and rehabilitated Police Sub Station (LEED Certification). The consultant will work alongside REA to make sure all materials, systems, and construction methods are LEED compliant. The cost of this service is $20,500 and the consultant was selected through an RFP process.

There also some minor changes to the Switchyard Park design that require a $24,500 addendum (#2) to REA's design contract:

- Redesign of the Splash Pad Mechanical /Restroom building HVAC system to extend its operating season.
- Redesign of the IT server room at the BPD police sub-station building.
- Resubmittal of the Remediation Work Plan based on a change in EPA standards for contaminants found in Switchyard Park.

RESPECTFULLY SUBMITTED,

_____
Dave Williams, Operations Director

CITY OF BLOOMINGTON
parks and recreation

STAFF REPORT

Agenda Item: D-3
Date:12/7/2017

Administrator
Review\Approval
PM

TO: Board of Park Commissioners
FROM: Chelsea Price, Aquatics Program Coordinator
DATE: **December 7th, 2017**
SUBJECT: **Aquatic 2017 Annual Report**

Background

Bryan Park Pool and Mills Pool are two outdoor aquatic facilities. Participants from the Bloomington community, county, and surrounding counties enjoy the fun these facilities offer during the summer months. This annual report focuses on 2017 swim lessons and the punch passes. Data from 2013 through 2017 tracks changes in revenue, expenses and participation numbers.

RESPECTFULLY SUBMITTED,

Chelsea Price
Aquatics Program Coordinator