

CITY OF BLOOMINGTON
Parks and Recreation

AGENDA

City of Bloomington Board of Park Commissioners
Special Meeting: Thursday, April 4, 2019 4:00pm – 5pm

Council Chambers
401 North Morton

CALL TO ORDER - ROLL CALL

A. CONSENT CALENDAR - None

B. PUBLIC HEARINGS/APPEARANCES

B-1 Public Comment Period

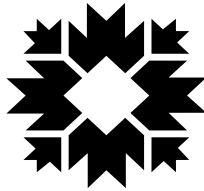
C. OTHER BUSINESS

- C-1. Review/Approval of contract with Scenic Construction Services, Inc.
- C-2. Review/Approval of contract with Eco Logic, LLC.
- C-3. Review/Approval of partnership agreement with Ryder Films
- C-4. Review/Approval of Duke Easements for Switchyard Park
- C-5. Review/Approval of partnership agreement with Centerstone

(Dave Williams)
(Steve Cotter)
(Crystal Ritter)
(Dave Williams)
(Paula McDevitt)

D. REPORTS - None

ADJOURNMENT



CITY OF BLOOMINGTON
Parks and Recreation

STAFF REPORT

Agenda Item: C-1
Date: 4/2/2019

Administrator
Review\Approval
PM

TO: Board of Park Commissioners
FROM: Dave Williams, Operations Director
DATE: April 4, 2019
**SUBJECT: REVIEW/APPROVAL OF CONSTRUCTION CONTRACT AWARD
RCA PARK TRAIL REHABILITATION**

Recommendation

It is recommended the Board approve the contract award to Scenic Construction Services, Inc. for trail rehabilitation at RCA Park at a base bid amount of \$238,700.00. No add alternates will be accepted. This project is TIF funded.

Background

As a reflection of the current project bidding environment and abundance of projects available for interested contractors, Scenic Construction Services was the only bidder on this project. Their base bid amount exceeded the \$180,000 in identified TIF funding. We are evaluating our options as to whether the project merits a rebid, that it may be the best bid we will receive on this specialized project, rising costs for contracted construction, and if other TIF funds can be reallocated to this project. We will also consult with City Legal to see if some "value engineering" (reduction in the scope of work) can be utilized for the project in order to proceed using only available funds.

Final contract and funding approval is also required by the Redevelopment Commission. We respectfully request the Board's indulgence to approve the contract and bid award to Scenic Construction Services with the understanding the decision may be made to void the contract (before it is sent to the contractor for signature) and rebid, or contract amended at a later date.

RESPECTFULLY SUBMITTED,

Dave Williams, Operations Director

**CONTRACT
BETWEEN
CITY OF BLOOMINGTON
PARKS AND RECREATION DEPARTMENT
REDEVELOPMENT COMMISSION
AND
SCENIC CONSTRUCTION SERVICES INC.
FOR
RCA COMMUNITY PARK TRAIL REHABILITATION**

THIS CONTRACT is executed by and between the City of Bloomington, Indiana, Parks and Recreation Department through the Board of Park Commissioners (hereinafter “Board”), the Redevelopment Commission (hereinafter “Commission”)(Collectively as “City”), and Scenic Construction Services Inc., (hereinafter “Contractor”);

WITNESSETH THAT:

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

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

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

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

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

ARTICLE 1. TERM

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

ARTICLE 2. SERVICES

2.01 Contractor shall complete all work required under this Contract no later than December 27, 2019, unless the parties mutually agree to a later completion date. “Substantial Completion” shall mean completion of all work.

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

ARTICLE 3. COMPENSATION

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

3.02 Contractor shall submit an invoice to the City upon the completion of the Services described in Article 3.01. Upon the submittal of an invoice, the City shall compensate Contractor in a lump sum not to exceed Two Hundred Thirty Eight Thousand Seven Hundred Dollars and Zero Cents (\$238,700) within forty-five (45) days of receipt of invoice. Invoices may be sent via first class mail postage prepaid or via email. The invoice shall be sent to:

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

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

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

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

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

3.04 Contractor shall maintain proper account records for the scope of all Services under this Contract and provide an accounting for all charges and expenditures as may be necessary for audit purposes. All such records shall be subject to inspection and examination by the City's representatives during reasonable business hours.

3.05 For projects utilizing federal funding, the Contractor shall submit time sheets (WH-347) for its own and all subcontracted employees, to the Director of the Parks and Recreation Department ("Director") or his/her representative for approval and review, including review for compliance with Davis Bacon requirements.

3.06 Director

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

ARTICLE 4. RETAINAGE

For contracts in excess of \$100,000 and for which Contractor requested Progressive Payments on its Bid Form, the Owner requires that retainage be held set out below.

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

4.02 Retainage Amount The escrow agent, Owner and Contractor shall enter into a written escrow agreement. Under that agreement, the Owner shall withhold five percent (5%) of the dollar value of all work satisfactorily completed until the Contract work is complete. The escrow agent shall invest all escrowed principal in obligations selected by the escrow agent. The escrow agent shall be compensated for the agent's services by a reasonable fee, agreed upon by the parties, that is comparable with fees charged for the handling of escrow accounts of similar size and duration. The fee shall be paid from the escrow income. The escrow agent's fee may be determined by specifying an amount of interest the escrow agent will pay on the escrowed amount, with any additional earned interest serving as the escrow agent's fee. The escrow agreement may include other terms and conditions as deemed necessary by the parties. However, if Contractor intends to receive a Single Lump Sum payment upon acceptance of this project, retainage will not be required and an Escrow Agreement will not be required.

4.03 Payment of Escrow Amount The escrow agent shall hold the escrowed principal and income until receipt of the notice from the Owner and Contractor that the Contract work has been substantially completed to the reasonable satisfaction of the Owner, at which time the Owner shall pay to the Contractor the balance to be paid under this Contract and execute such documents as are necessary to authorize the escrow agent to pay to the Contractor the funds in the escrow account, including both specifying the part of the escrowed principal to be released from the escrow and the person to whom that portion is to be released. After receipt of the notice, the escrow agent shall remit the designated part of the escrowed principal and the escrowed income, minus the escrow agent's fees, to the person specified in the notice. However, nothing in this section shall prohibit Owner from requiring the escrow agent to withhold amounts necessary to complete minor items of the Contract, following substantial completion of the Contract in accordance with the provisions of paragraph 4.04.

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

ARTICLE 5. GENERAL PROVISIONS

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

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

5.02 Abandonment, Default and Termination

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

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

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

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

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

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

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

by giving prior written notice documenting the lack of funding in which instance, unless otherwise agreed to by the parties, this Contract shall terminate and become null and void.

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

5.03 Successors and Assigns

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

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

5.04 Extent of Contract: Integration

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

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

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

5.05 Insurance

5.05.01 Contractor shall, as a prerequisite to this Contract, purchase and thereafter maintain such insurance as will protect it from the claims set forth below which may arise out of or result from Contractor's operations under this Contract, whether such operations be by Contractor or by any Subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

Coverage**Limits**

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

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

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

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

5.05.04 Certificates of Insurance showing such coverage then in force (but not less than the amount shown above) shall be on file with the City prior to commencement of work. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled or non-renewed until at least sixty (60) days' prior written notice has been received by the City. The City shall be named as an additional insured on the Commercial General Liability, Automobile Liability, and Umbrella Excess Liability policies. Contractor shall agree to a waiver of subrogation on its Worker's Compensation policy.

5.06 Necessary Documentation

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

5.07 Applicable Law

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

5.08 Non-Discrimination

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

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

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

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

- a. Has formulated its own Affirmation Action plan for the recruitment, training and employment of minorities and women, including goals and timetable; which has been approved by the City's Contract Compliance Officer.
- b. Encourages the use of small business, minority-owned business and women-owned business in its operations.

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

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

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

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

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

5.09 Workmanship and Quality of Materials

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

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

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

5.10 Safety

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

5.11 Amendments/Changes

5.11.01 Except as provided in Paragraph 5.11.02, this Contract may be amended only by written instrument signed by both the City and Contractor.

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

5.11.03 If Contractor believes that any direction of the City under paragraph 5.11.02, or any other event or condition, will result in an increase in the Contract time or price, he shall file written notice with the City no later than twenty (20) calendar days after the occurrence of the event giving rise to the claim and stating the general nature of the claim with supporting data. No claim for any adjustment of the Contract time or price will be valid if not submitted in accordance with this Paragraph.

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

5.12 Performance Bond and Payment Bond

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

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

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

5.13 Payment of Subcontractors

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

5.14 Written Notice

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

To City	To Contractor
City of Bloomington	Scenic Construction Services Inc.
Attn: Dave Williams, Operations Director	Anthony Biasi
401 N. Morton, Suite 250	1037 Hawthorn Bloom Drive
Bloomington, Indiana 47404	New Whiteland, IN 46184

5.15 Severability and Waiver

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

5.16 Notice to Proceed

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

5.17 Steel or Foundry Products

5.17.01 To comply with Indiana Code 5-16-8, affecting all contracts for the construction, reconstruction, alteration, repair, improvement or maintenance of public works, the following provision shall be added: If steel or foundry products are to be utilized or supplied in the performance of any contract or subcontract, only

domestic steel or foundry products shall be used. Should the City feel that the cost of domestic steel or foundry products is unreasonable, the City will notify Contractor in writing of this fact.

5.17.02 Domestic Steel products are defined as follows:

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

5.17.03 Domestic Foundry products are defined as follows:

“Products cast from ferrous and nonferrous metals by foundries in the United States.”

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

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

5.18 Verification of Employees' Immigration Status

Contractor is required to enroll in and verify the work eligibility status of all newly-hired employees through the E-Verify program. (This is not required if the E-Verify program no longer exists). Contractor shall sign an affidavit, attached as Attachment B, affirming that Contractor does not knowingly employ an unauthorized alien. “Unauthorized alien” is defined at 8 U.S. Code 1324a(h)(3) as a person who is not a U.S. citizen or U.S. national and is not lawfully admitted for permanent residence or authorized to work in the U.S. under 8 U.S. Code Chapter 12 or by the U.S. Attorney General.

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

Contractor shall require any subcontractors performing work under this Contract to certify to the Contractor that, at the time of certification, the subcontractor does not knowingly employ or contract with an unauthorized alien and the subcontractor has enrolled in and is participating in the E-Verify program. Contractor shall maintain on file all subcontractors' certifications throughout the term of this Contract with the City.

5.19 Non-Collusion

Consultant is required to certify that it has not, nor has any other member, representative, or agent of Consultant, entered into any combination, collusion or Contract with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Consultant shall sign an affidavit, attached hereto as Attachment C, affirming that Consultant has not engaged in any collusive conduct. Attachment C is attached hereto and incorporated by reference as though fully set forth.

5.20 Drug Testing Plan

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

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

DATE: _____

City of Bloomington

Scenic Construction Services Inc.

Les Coyne, President
Board of Park Commissioners

Printed Name of Contractor Representative

Paula McDevitt, Director
Parks and Recreation Department

Title of Contractor Representative

Philippa M. Guthrie, Corporation Counsel

Signature

Donald Griffin, President
Redevelopment Commission

ATTACHMENT A
“SCOPE OF WORK”

RCA Community Park Trail Rehabilitation

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

Demolition of the existing trail and boardwalks around the perimeter of the park and tree removal as required to construct the new trail. The project includes construction of park improvements; including trails, boardwalks, drainage swale enhancements and related site improvements. The project location is 1400 W. RCA Park Dr. The work will consist of furnishing labor, equipment and materials as described in the Specifications and Bid Documents.

STATE OF INDIANA)
)SS:
COUNTY OF _____)

ATTACHMENT C
“NON-COLLUSION AFFIDAVIT”

STATE OF _____)
) SS:
COUNTY OF _____)

AFFIDAVIT

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

OATH AND AFFIRMATION

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

Dated this _____ day of _____, 2019.

Scenic Construction Services Inc.

By: _____

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____ and acknowledged the execution of the foregoing this _____ day of _____, 2019.

Notary Public's Signature My Commission Expires: _____

Printed Name of Notary Public County of Residence: _____

STATE OF INDIANA)
) SS:
COUNTY OF _____)

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

(company name)
2. The undersigned is duly authorized and has full authority to execute this Affidavit.
3. The company named herein that employs the undersigned:
 - i. _____ has contracted with or seeking to contract with the City of Bloomington to provide services; **OR**
 - ii. _____ is a subcontractor on a contract to provide services to the City of Bloomington.
4. The undersigned certifies that Contractor's submitted written plan for a drug testing program to test employees of the Contractor and Subcontractor for public works projects with an estimated cost of \$150,000 is in accordance with Indiana Code 4-13-18 as amended.
5. The undersigned acknowledges that this Contract shall be subject to cancellation should Contractor fail to comply all provisions of the statute.

STATE OF INDIANA)
)SS:
COUNTY OF _____)

**ESCROW AGREEMENT
RCA COMMUNITY PARK TRAIL REHABILITATION**

THIS ESCROW AGREEMENT is made and entered into this ____ day of _____, 2019, by and between the City of Bloomington, Indiana, Board of Park Commissioners, (the "Owner"), the Redevelopment Commission ("Commission") (Collectively referred to as the "City" herein) and Scenic Construction Services Inc., (the "Contractor"), and First Financial Bank, an Ohio state chartered bank (the "Escrow Agent"). The Owner and Contractor shall be collectively referred to as the "Parties" herein.

WHEREAS, the Owner and Contractor entered into an Agreement dated the ____ day of _____, 2019, in the amount of \$100,000.00 or more, for the construction of a public works project (the "Construction Agreement"); and

WHEREAS, said Construction Agreement provides that portions of payments by Owner to Contractor shall be retained by Owner (the "Retainage") and shall be placed in the escrow account created hereby.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

To the extent that the Owner retains funds out of payments applied for by the Contractor under the provisions of the Construction Agreement providing for payments based on the value of the work in place and the materials stored, the Owner shall place the funds so retained in an escrow account. Such deposit shall be made within three (3) business days after the date such payments are made to Contractor.

The Escrow Agent shall open a "Money Market" account that invests primarily in short-term, interest bearing bank deposit accounts, and/or investment grade securities and deposit said Retainage promptly into the account; however, the Escrow Agent makes no representation as to the yield of such investment and will not bear liability for any delays in depositing the Retainage or for any failure to achieve the maximum possible yield from such Deposit.

The income from and earnings on and all gains derived from the investment and reinvestment of the funds (escrow income) shall be held in the escrow account. The Escrow Agent shall deposit all funds and hold all investments in a specific escrow fund so that a quarterly accounting can and shall be made to the Contractor of all investments made in such funds and all income, fees, payments, deposits, and other activities related to the escrow funds.

The Deposit, less any and all transaction or account fees or charges and out-of-pocket expenses of Escrow Agent attributable to, or incurred in connection with, the deposit thereof in accordance with the terms of this Agreement which items may be deducted by the Escrow Agent from the Deposit as set forth below (such net sum being the "Net Deposit"), will be delivered by Escrow Agent in accordance with the terms of this Escrow Agreement to the person or persons entitled thereto or, herein, to a substitute impartial party or a court of competent jurisdiction. Escrow Agent agrees to provide the Parties with copies of each monthly statement for the Escrow Account for the period for which the Deposit is held by Escrow Agent. As a condition to the delivery of any funds constituting part of the Deposit, Escrow Agent may require from the recipient a receipt therefor and, upon final payment or disposition, may require its release from any liability arising out of the execution or performance hereof, such release to be in a form reasonably satisfactory to Escrow Agent.

The Escrow Agent shall pay over the net sum held by it hereunder as follows:

The Escrow Agent shall hold all of the escrow funds and shall release the principal, Net Deposit, plus any accrued interest thereon, less any expenses, including but not limited to attorneys' fees, thereof only upon the execution and delivery to it of a Payment Certificate attached here as Exhibit A, executed by the Owner and

by the Contractor specifying the portion or portions of the principal of the escrow funds to be released and the person or persons to whom such portions are to be released. After receipt of said Payment Certificate the Escrow Agent shall remit the designated part of escrowed principal and the same proportion of the escrowed income to the person(s) specified in the Payment Certificate. Such release of escrow funds shall be no more than thirty (30) days from the date of receipt by the Escrow Agent of the release executed by the Owner and Contractor.

Although statutorily entitled to a fee, the Escrow Agent agrees to waive the monthly statement fee and the monthly minimum balance.

All income earned on the escrowed principal shall be paid to the Contractor.

In lieu of the presentation of the Payment Certificate described above, any document purporting to be a certificate will be deemed by the Escrow Agent to be a proper certificate, or will suffice as a joint instruction, if it contains: (i) the name of the payee; (ii) the amount of the payment to be made; (iii) the manner of payment (i.e., by certified or cashier's check, by account-to-account transfer, or by wire transfer, whichever is applicable); and (iv) the signatures of each of the Parties hereto, excluding the Escrow Agent.

Escrow Agent will be entitled to rely upon the authenticity of any signature (and upon any facsimile of a signature as if it were an original signature) and the genuineness and/or validity of any writing received by Escrow Agent from either of the Parties pursuant to or otherwise relating to this Escrow Agreement.

Each signatory to this Escrow Agreement warrants that it has full and complete authority to enter into this Escrow Agreement.

The Escrow Agent may at any time request written instructions from the Parties with respect to the interpretation hereof or of action to be taken or suffered or not taken hereunder and, notwithstanding any other provision hereof, will be entitled to withhold (and will not be under any liability to any person for withholding) action hereunder until it has received written instructions signed by all of the Parties.

In the event of the receipt by the Escrow Agent of any notice, demand, or certificate not provided for or in compliance with this Escrow Agreement or of any inconsistent or conflicting notices or certificates, the Escrow Agent will be protected in taking no action whatsoever with reference to any such notice or demand, unless such inaction constitutes gross negligence or willful misconduct on the part of the Escrow Agent. In case of: (i) receipt of contradictory instructions from the Parties; (ii) any dispute as to any matter arising under this Agreement; or (iii) any uncertainty as to the meaning or applicability of any of the provisions hereof, Escrow Agent may, at its option at any time thereafter, deposit the Deposit and/or documents or assets then being held by it in escrow into a court having appropriate jurisdiction, or take such affirmative steps as it may elect in order to substitute an impartial bank of comparable financial and industrial standing to hold the Deposit and/or documents and will thereby be discharged and relieved of any and all liability hereunder.

The Escrow Agent may resign at any time by giving a minimum of thirty (30) days' prior written notice of resignation to the Parties, such resignation to be effective on the date specified in such notice. The Deposit, and any other assets held by the Escrow Agent under the terms of this Escrow Agreement as of the effective date of the resignation, will be delivered to a successor escrow agent designated in writing jointly by the Parties. If no successor escrow agent has been appointed as of the effective date of the resignation, all obligations of the Escrow Agent hereunder will nevertheless cease and terminate, except that the Escrow Agent's sole responsibility thereafter will be to keep safely the Deposit then held by it and to deliver the same to a person designated by both Parties or in accordance with the direction of a final order or judgment of a court of competent jurisdiction.

The Escrow Agent has no responsibility concerning compliance by the Parties with their duties to each other under this Escrow Agreement or any other agreements. Escrow Agent will have only such duties and

obligations as are specifically imposed upon it by the terms and conditions of this Escrow Agreement and no implied duties or obligations will be read into this Escrow Agreement against Escrow Agent.

The Parties, jointly and severally, agree to indemnify and hold harmless Escrow Agent from and against any and all costs including its attorney's fees, claims or damages howsoever occasioned that may be incurred by Escrow Agent acting under this Escrow Agreement or to which Escrow Agent may be put in connection with Escrow Agent acting under this Escrow Agreement arising from the Parties' willful misconduct or negligence.

In the absence of such a joint written authorization and in the absence of the termination of the Contractor as provided above, the escrowed funds shall be paid in the manner directed by a certified copy of a judgment of a court of record establishing the rights of the parties to said funds.

The account shall be a commercial money market account set up by the Escrow Agent to hold the retainage, and there shall be no fees and no minimum balance required. The account shall earn interest rate based on balances. The Parties agree to reimburse Escrow Agent for all reasonable expenses, disbursements and advances incurred or made by Escrow Agent in the performance of its duties hereunder (including reasonable fees, expenses and disbursements of its counsel). The Escrow Agent will not be required to use its own funds in the performance of any of its obligations or duties or the exercise of any of its rights or powers, and will not be required to take any action which in Escrow Agent's reasonable judgment would cause it to incur expense or liability unless furnished with security and indemnity which it reasonably deems to be satisfactory.

This Agreement and anything done or performed hereunder by either the Contractor or Owner shall not be construed to prejudice or limit the claims which either party may have against the other arising out of the aforementioned Construction Agreement.

This instrument constitutes the entire agreement between the Parties regarding the duties of the Escrow Agent with respect to the investment and payment of escrow funds. The Escrow Agent is not liable to the Owner and Contractor for any loss or damages, other than loss or damage directly caused by Escrow Agent's own gross negligence or willful misconduct.

This Escrow Agreement may be amended, modified, superseded, cancelled, renewed or extended, and the terms or covenants hereof may be waived only by a written instrument executed by all the Parties hereto.

This Escrow Agreement contains the entire agreement between the Parties with respect to the escrow transaction contemplated herein and may not be changed or terminated orally.

This Escrow Agreement shall be governed by the laws of the State of Indiana.

This Escrow Agreement will be binding upon and inure solely to the benefit of the Parties hereto and their respective heirs, administrators, successors and assigns, and will not be enforceable by or inure to the benefit of any third party, except any successor escrow agent. No party may assign any of its rights or obligations under this Escrow Agreement without the written consent of the other parties, except that either of the Parties may assign its rights and obligations hereunder in connection with a permitted assignment of its rights and obligations under the Agreement in which case any signatures required hereunder will be those of such assignee.

This Escrow Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same agreement. Any party so executing this Agreement by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

All notices, waivers, consents, approvals and other communications hereunder shall be in writing and shall be deemed to have been properly given on the date of service if delivered personally or on the date of mailing if

deposited in the United States mail, first class postage prepaid, to the extent required by applicable law, and will comply with the requirements of the Uniform Commercial Code then in effect, addressed appropriately as follows:

If to Owner:

City of Bloomington Board of Park Commissioners
401 N. Morton Street, Suite 250
Bloomington IN 47404
Attn: Dave Williams, Operations Director

If to Commission:

Redevelopment Commission
401 N. Morton Street, Suite 150
Bloomington IN 47404
Attn: Alex Crowley

If to Escrow Agent:

First Financial Bank
536 N. College Ave.
Bloomington, IN 47404
Attn: Cindy Kinnarney

If to Contractor:

Name: Scenic Construction Services Inc
Address: 1037 Hawthorn Bloom Drive
City/State: New Whiteland, IN 46184
Attn: Anthony Biasi

In Witness Whereof, the undersigned have executed this Escrow Agreement as of the day and year first above written.

CITY:

City of Bloomington, Board of Park Commissioners

By: _____
Leslie J. Coyne, President

City of Bloomington, Redevelopment Commission

By: _____
Don Griffin, President

CONTRACTOR:

By: _____

Printed Name: _____

Title: _____

Tax I.D. No.: _____

ESCROW AGENT:
First Financial Bank

By: _____

Printed Name: _____

Title: _____

AUTHORIZATION TO RELEASE ESCROW FUNDS
_____(DATE)

First Financial Bank
536 N. College Avenue
Bloomington, IN 47404

Attn: Cindy Kinnarney,

Ladies and Gentlemen:

Pursuant to that certain Escrow Agreement dated as of _____, 20____, by and among you as Escrow Agent and the undersigned (the "Escrow Agreement"), the undersigned hereby jointly notify and instruct you to issue a check for the balance in the Escrow Account as follows:

Escrow Account for Retainage on Project: _____

Account Holder/Contractor: _____

Primary Account Number: _____

The undersigned, in consideration of the release of funds being held by Escrow Agent, and other good and valuable consideration, receipt of which is hereby acknowledged, hereby release, acquit and forever discharge the Escrow Agent, and it employees, officers, directors, agents, accountants, attorneys and parent companies, and all directors, agents, accounts and attorneys of such parent companies and all employees, officers, and heirs, executors, administrators, successors and assigns of all of the foregoing, jointly and severally (collectively, the "Bank Parties"), of and from all and any manner of action, actions, cause and causes of action, suits, debts, dues, sums of money, accounts, bonds, bills, covenants, contracts, agreements, promises, obligations, defenses, offsets, counterclaims, damages, judgments, claims, demands and liabilities of any kind or character whatsoever, known or unknown, suspected or unsuspected, in contract or in tort, in law or in equity, that any one or more of the undersigned had, have, may have or may in the future have against any one or more of the Bank Parties arising out of, for or by reason of or resulting from or in any way related, directly or indirectly, to the Escrow Agreement. In addition, the undersigned, jointly and severally, agree not to commence, aid, cause, permit, join in, prosecute or participate in any suit or other proceeding in a position which is adverse to any of the Bank Parties, which suit or proceeding arises from or relates to, in whole or in part, directly or indirectly, any of the foregoing matters.

Sincerely,

THE ESCROW PARTIES:

The City of Bloomington

Scenic Construction Services Inc.

Paula McDevitt, Director
Parks and Recreation Department

Printed Name: _____

Dated: _____

Title: _____

Escrow Agent
First Financial Bank

By: _____

Printed Name and Title



STAFF REPORT

Agenda Item: C-2 Date: 4/1/2019

Administrator Review\Approval PM
--

TO: Board of Park Commissioners
FROM: Steve Cotter, Natural Resources Manager
DATE: April 4, 2019
SUBJECT: REVIEW/APPROVAL OF GRIFFY LAKE NATURE PRESERVE
VEGETATION STUDIES CONTRACT WITH ECO LOGIC LLC

Recommendation

Staff recommends approval of this contract.

Background

The work completed under this contract will provide important information that will guide future management of the different plant communities within the Griffy Lake Nature Preserve . It will allow for collection of vegetation monitoring data for deer management. It will also result in an updated plant list for the Preserve.

Project: Griffy Lake Nature Preserve Tier One Evaluation

Mapping plant communities by forest type, susceptibility to damage from foot traffic, and habitat for sensitive organisms. Factors considered in classifying the community type include soils and geology, aspect, hydrology, dominant tree species and richness of the understory layer.

The susceptibility of the communities to foot traffic will be evaluated based on slope, hydrology, and the quality of the ground layer vegetation. The habitat for sensitive organisms will be evaluated based on the quality of the plant community, potential habitat for amphibians and other sensitive fauna, and informal observation of birdsong during the spring field work. Detailed maps will be produced classifying the plant communities and the sensitive areas accompanied by written descriptions.

Cost for Tier 1 Evaluation: \$18,137.80

Project: Deer Browse Monitoring

Vegetation monitoring on 12 transects began by Indiana University to monitor browse on both herbaceous and woody vegetation. The results will be compared to previous years data to determine whether there has been a decline, increase, or no statistical change in the amount of deer browse since the this research was initiated several years ago.

Total for spring herbaceous deer browse monitoring: \$ 5,000.00

Total for late summer woody plant deer browse monitoring: \$ 3,300.00

Cost for Deer Browse Monitoring: \$ 8,300.00

Project: Griffy Lake Nature Preserve Floral Inventory

Documentation of all terrestrial woody and herbaceous vascular plant species present on the property over the course of 12 field days. Three days will occur in April to document spring flora and woody plants, three days in late May or early June to document sedges, rushes, and cool season grasses when they are in fruit, three days in July to document summer flowering species and three days in September to document fall flowering species and late germinating annuals on the periphery of the lake. A Floristic Quality Assessment will be produced for each community including a mean coefficient of conservatism and a floristic quality index calculation.

A table of all of the plants found arranged by family will be assembled including which community they were found in and their relative frequency. An alphabetic list comparing the plants found with previous inventories will also be included. Finally a listing of endangered, threatened and rare species will be included.

A GIS map of the plant communities will be produced including delineation of the communities, soil types, and topographic elevations. Photos of the plant communities and selected species will be included.

Cost for Floral Inventory: \$ 20,962.40

Total Contract Cost: \$47,400.20

RESPECTFULLY SUBMITTED,



Steve Cotter

Natural Resources Manager

**AGREEMENT
BETWEEN
CITY OF BLOOMINGTON
PARKS AND RECREATION DEPARTMENT
AND
ECO LOGIC, LLC
FOR
VEGETATION STUDIES AT GRIFFY LAKE NATURE PRESERVE**

This Agreement, entered into on this ____ day of _____, 2019, by and between the City of Bloomington Department of Parks and Recreation (the “Department”), and Eco Logic, LLC (“Consultant”),

WITNESSETH:

WHEREAS, the Department wishes to determine and document the health of plant communities at the Griffy Lake Nature Preserve; and

WHEREAS, the Department requires the services of a professional consultant in order to perform said Services as further defined in the Scope of Services below; and

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

WHEREAS, Consultant is willing and able to provide such Services to the Department.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Article 1. Scope of Services

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, 2019, 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 Forty Seven Thousand Four Hundred Dollars and Twenty Cents (\$47,400.20). Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Consultant within forty-five (45) days of receipt of invoice. Consultant shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to:

Steve Cotter, Natural Resources Manager
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 \$1,000,000 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 Parks and Recreation	Eco Logic, LLC
Attn: Steve Cotter	ATTN: Spencer Goehl, Executive Director
401 N. Morton, Suite 250	8685 W. Vernal Pike
Bloomington, Indiana 47402	Bloomington, IN 47404

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

Article 25. Intent to be Bound

The Department and Consultant each binds itself and its successors, executors, administrators, permitted assigns, legal representatives and, in the case of a partnership, its partners to the other party to this Agreement, and to the successors, executors, administrators, permitted assigns, legal representatives and partners of such other party in respect to all provisions of this Agreement.

Article 26. Integration and Modification

This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Consultant. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

Article 27. Non-Collusion

Consultant is required to certify that it has not, nor has any other member, representative, or agent of Consultant, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Consultant shall sign an affidavit, attached hereto as Exhibit D, affirming that Consultant has not engaged in any collusive conduct. Exhibit D is attached hereto and incorporated by reference as though fully set forth.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first written above.

CITY OF BLOOMINGTON

ECO LOGIC, LLC

Philippa M. Guthrie, Corporation Counsel

Spencer Goehl, Executive Director

CITY OF BLOOMINGTON PARKS AND RECREATION

Paula McDevitt, Director

Leslie J Coyne, President, Board of Park Commissioners

EXHIBIT A

“Scope of Work”

The Services shall include the following:

Project: Griffy Lake Nature Preserve Tier One Evaluation

Mapping plant communities by forest type, susceptibility to damage from foot traffic, and habitat for sensitive organisms. Factors considered in classifying the community type include soils and geology, aspect, hydrology, dominant tree species and richness of the understory layer.

The susceptibility of the communities to foot traffic will be evaluated based on slope, hydrology, and the quality of the ground layer vegetation. The habitat for sensitive organisms will be evaluated based on the quality of the plant community, potential habitat for amphibians and other sensitive fauna, and informal observation of birdsong during the spring field work. Detailed maps will be produced classifying the plant communities and the sensitive areas accompanied by written descriptions.

Costs of Tier 1 Evaluation

Section Tier 1

Southwest \$3,537.20

Southeast \$3,757.20

Northwest \$3,317.20

North Central \$3,317.20

Northeast \$4,209.00

Tier 1 Total \$18,137.80

Project: Deer Browse Monitoring

Vegetation monitoring on 12 transects began by Indiana University to monitor browse on both herbaceous and woody vegetation. The results will be compared to previous years data to determine whether there has been a decline, increase, or no statistical change in the amount of deer browse since the this research was initiated several years ago.

Total for spring herbaceous deer browse monitoring: \$ 5,000.00

Total for late summer woody plant deer browse monitoring: \$ 3,300.00

Total for deer browse monitoring: \$ 8,300.00

Project: Griffy Lake Nature Preserve Floral Inventory

Documentation of all terrestrial woody and herbaceous vascular plant species present on the property over the course of 12 field days. Three days will occur in April to document spring flora and woody plants, three days in late May or early June to document sedges, rushes, and cool season grasses when they are in fruit, three days in July to document summer flowering species and three days in September to document fall flowering species and late germinating annuals on the periphery of the lake. A Floristic Quality Assessment will be produced for each community including a mean coefficient of conservatism and a floristic quality index calculation.

A table of all of the plants found arranged by family will be assembled including which community they were found in and their relative frequency. An alphabetic list comparing the plants found with previous inventories will also be included. Finally a listing of endangered, threatened and rare species will be included.

A GIS map of the plant communities will be produced including delineation of the communities, soil types, and topographic elevations.

Photos of the plant communities and selected species will be included.

Total for floral inventory: \$ 20,962.40

Total Contract Cost: \$47,400.20

EXHIBIT B

“Project Schedule”

These projects will begin in April, 2019. Consultant shall complete the Services required under this Agreement on or before December 31, 2019, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services.

STATE OF INDIANA)
)SS:
COUNTY OF _____)

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 _____, 2019.

Spencer Goehl, Executive Director

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 _____, 2019.

Notary Public's Signature My Commission Expires: _____

Printed Name of Notary Public County of Residence: _____



STAFF REPORT

Agenda Item: C-3
Date: 4/1/2019

Administrator
Review\Approval
PM

TO: Board of Park Commissioners
FROM: Crystal Ritter, Community Events Coordinator
DATE: April 4, 2019
SUBJECT: REVIEW/APPROVAL OF THE PARTNERSHIP AGREEMENT WITH THE RYDER MAGAZINE AND FILM SERIES

Recommendation

Staff recommends the approval of the partnership agreement with the Ryder Film Series to obtain movie licenses for the 2019 Movies in the Parks series.

Background

The partnership with the Ryder Film Series has brought free public screenings of movies from classics, to action; from sci-fi to romances; from children's animations to documentaries for over 20 years to the Bloomington community. This partnership provides a way to screen these movies each summer, and this year our plan is to offer the community 6 films in 4 locations: Bryan Park Pool, Bryan Park by the North Shelter, Rev. Ernest Butler Park, and Waldron, Hill, and Buskirk Park. Last year we made changes to the partnership to include compensating the Ryder an additional amount equal to half of the remainder of movie sponsorship revenue, in an amount not to exceed One Thousand Eight Hundred Dollars (\$1800.00) in addition to the, One Thousand Five Hundred Dollars (\$1500.00), cost of the movie rights and shipping fees. The Ryder will provide monthly ¼ size advertisements in The Ryder magazine promoting Movies in the Park series. The Ryder will provide access to marketing pieces (logos, pictures, etc) associated with selected movies for the Movies in the Park Series. No changes have been made to this year's agreement.

RESPECTFULLY SUBMITTED,

Crystal Ritter, Community Events Coordinator

PROGRAM PARTNERSHIP AGREEMENT BETWEEN THE CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT AND THE RYDER FILM SERIES

This Agreement is made and entered into this ____ day of _____, 2019, by and between the City of Bloomington Parks & Recreation Department, (“BPRD”) and The Ryder Film Series (“Ryder”).

WHEREAS, BPRD and Ryder desire to cooperate in the provision of free outdoor movies for the benefit of the general public; and

WHEREAS, Ryder is qualified to perform such services; and

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

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the

Partners to this Agreement agree as follows:

1.0 Purpose of Agreement:

The purpose of this Agreement is to outline a program partnership which provides for increased entertainment opportunities for the Bloomington community by combining available resources from each partner to the Agreement.

2.0 Duration of Agreement:

This Agreement shall be in full force and effect from April 2, 2019, to December 31, 2019, unless early termination occurs as described in Article 7 of this Agreement.

3.0 Bloomington Parks & Recreation:

The goal of BPRD is to build a positive relationship with Ryder in order to provide more affordable entertainment opportunities for the Bloomington community. BPRD agrees to:

- 3.1.** Provide a screen, sound equipment, projector, and staffing for the *Movies in the Park* movie series and any other movies shown in BPRD facilities.
- 3.2.** Secure financial sponsorship and schedule movie times for the *Movies in the Park* movie series and any other movies shown in BPRD facilities.
- 3.3.** Promote the *Movies in the Park* in a quarterly Program Guide and through public service announcements and news releases, listing Ryder as a co-sponsor in all publicity.
- 3.4.** Work with Ryder on selecting appropriate films for movies shown in BPRD facilities. The total cost of the movie rights and shipping fees for the *Movies in the Park* Series shall be no more than One Thousand Five Hundred Dollars (\$1500.00). The BPRD also has the option to obtain a movie on its own and not pay shipping fees. Additional costs will be associated with any additional films added at later dates within the year.
- 3.5.** Compensate Ryder for the cost of the movie rights and shipping costs, plus an additional amount equal to half of the remainder of movie sponsorship revenue, in an amount not to exceed One Thousand Eight Hundred Dollars (\$1800.00).

- 3.6. Pay Ryder in two (2) installments, one following the third movie and one following the sixth movie. BPRD will e-mail Ryder after the third and sixth movie to secure an invoice for the amount due, and will pay the invoice within thirty (30) days after receipt. In the event that a movie is rescheduled, BPRD will cover any additional shipping fees. Additional movies scheduled by BPRD staff will be invoiced separately by program areas.

4.0 **Ryder:**

The goal of Ryder is to provide free outdoor movies to the Bloomington community. Ryder agrees to:

- 4.1. Promote *Movies in the Park* in its film series calendar, listing BPRD as a co-sponsor in all publicity.
- 4.2. Provide two (2) full-page advertisements to thank and appreciate the movie sponsors in The Ryder magazine, one in the month before the series begins and one in the month after the series ends.
- 4.3. Provide monthly ¼ size advertisements in The Ryder magazine promoting *Movies in the Park*. BPRD will provide these to Ryder.
- 4.4. Work with BPRD on selecting appropriate films for *Movies in the Park* Series as well as any additional movies shown in BPRD facilities.
- 4.5. Provide invoices for payment by BPRD. Following the third and sixth movies. Ryder will provide an invoice to BPRD for the amount due. Separate invoices will be sent to program areas if additional movies are scheduled.
- 4.6. Secure all movies and the rights to show the movies.
- 4.7. Ryder will consult with BPRD staff on best practices and industry trends.
- 4.8. Ryder will provide access to marketing pieces (logos, pictures, etc.) associated with selected movies for the *Movies in the Park* Series.

5.0 **Terms Mutually Agreed To By All Partners To This Agreement:**

The intent of this Agreement is to document a mutually beneficial partnership between BPRD and Ryder.

- 5.1. The staff and personnel involved will at all times represent all partners to this Agreement in a professional manner and reflect the commitment of both partners to quality services and customer satisfaction.
- 5.2. The commitment of personnel, promotions, equipment and funding sources will be honored according to the timetable agreed upon by all partners.
- 5.3. Bloomington Municipal Code sections 6.12.030 and 14.36.090, respectively, prohibit smoking in public places and the consumption of alcoholic beverages on City of Bloomington property.

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

5.5. This Agreement and the services provided will be evaluated in January 2020.

6.0 Notice and Agreement Representatives:

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

Bloomington Parks & Recreation

Becky Higgins
Box 848
Bloomington, IN 47402
barrickb@bloomington.in.gov
812-349-3713

Ryder

Peter Lopilato
405 West Fourth St.
Bloomington, IN 47404
812-339-2002

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

Bloomington Parks & Recreation

Crystal Ritter
Box 848
Bloomington, IN 47402
ritterc@bloomington.in.gov
812-349-3725

Ryder

Peter Lopilato
405 West Fourth St.
Bloomington, IN 47404
812-339-2002

7.0 Termination:

7.1. Termination by mutual agreement: The partners may terminate this Agreement prior to December 31, 2019, by mutual written agreement only.

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

8.0 Waiver

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

9.0 Release and Hold Harmless Agreement:

Ryder, including its representatives, agents, and assigns, does hereby agree to release, hold harmless, and indemnify the City of Bloomington, its Parks and Recreation Department, and any and all employees, agents, and assigns from any and all claims, causes of action, suits, proceedings, or demands, including but not limited to claims involving personal injury or death, which may arise from this Agreement, even if caused by the negligence of releasees.

10.0 E-Verify:

Ryder 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). Ryder shall sign an affidavit, attached as Exhibit A, affirming that Ryder does not knowingly employ an unauthorized alien. Ryder shall require any subcontractors performing work under this contract to certify to Ryder 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. Ryder shall maintain on file all subcontractors' certifications throughout the term of the contract with the BPRD.

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

CITY OF BLOOMINGTON

THE RYDER FILM SERIES

Philippa M. Guthrie, Corporation Counsel

Peter Lopilato

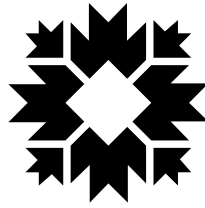
**CITY OF BLOOMINGTON PARKS
AND RECREATION DEPARTMENT**

Paula McDevitt, Director

Les Coyne, President, Board of Park Commissioners

E-VERIFY AFFIDAVIT

AFFIDAVIT



CITY OF BLOOMINGTON
Parks and Recreation

STAFF REPORT

Agenda Item: C-4
Date: 4/1/2019

Administrator
Review\Approval
PM

TO: Board of Park Commissioners
FROM: Dave Williams
DATE: **APRIL 4, 2019**
SUBJECT: **REVIEW/APPROVAL OF DUKE ENERGY EASEMENTS FOR SWITCHYARD PARK**

Recommendation

Staff recommends approval of the requested Duke Energy easements for Switchyard Park.

Background

The Switchyard Park project includes the burial of two existing overhead powerlines that run across the property. Approval of the requested easements is required for Duke Energy to complete the powerline burial project. Landscape planting locations will be altered as needed to accommodate Duke's 15' easement requirement.

RESPECTFULLY SUBMITTED,

Dave Williams, Operations Director

TRACT #1

GRANT OF EASEMENT

Pt. Parcel # 53-08-08-100-070.000-009
53-08-09-207-019.000-009

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

Situate in Section 8 and 9, Township 8 North, Range 1 West, Perry Township, Monroe County, State of Indiana; being a part of a tract as recorded in **Instrument Number 2003036240** and **Instrument Number 2009022206** in the Office of the Recorder of Monroe County, Indiana (hereinafter referred to as "Grantor's Property"), and being more particularly described as follows:

A strip of land fifteen feet (15') in uniform width, lying seven and one half feet (7.5') wide on both sides of a centerline, which centerline shall be established by the center of the Facilities as constructed and as generally shown on Exhibit "A", attached hereto and becoming a part hereof (hereinafter referred to as the "Easement Area").

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

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

For Grantee's Internal Use:

Line Name/No: Monroe - Perry - IN

Tract No: 2 of 2

Job Control # 31207228

LU#

Prep/Chk: MES/DJM Exec/Rec: _____

Dwg/Fac Ref.: Exhibit "A"

Prepared Date: March 6, 2019

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

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

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

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

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

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

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

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

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

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

Signature page(s) follow.

IN WITNESS WHEREOF, Grantor has caused this **Grant of Easement** to be signed by its duly authorized representative(s), effective the ____ day of _____, 2019.

CITY OF BLOOMINGTON, INDIANA
Grantor

By: _____ By: _____

Printed Name: _____ Printed Name: _____

Printed Title: _____ Printed Title: _____

STATE OF _____)
) SS:
COUNTY OF _____)

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

WITNESS my hand and notarial seal, this ____ day of _____, 2019.

My Commission Expires: _____ Signed Name: _____

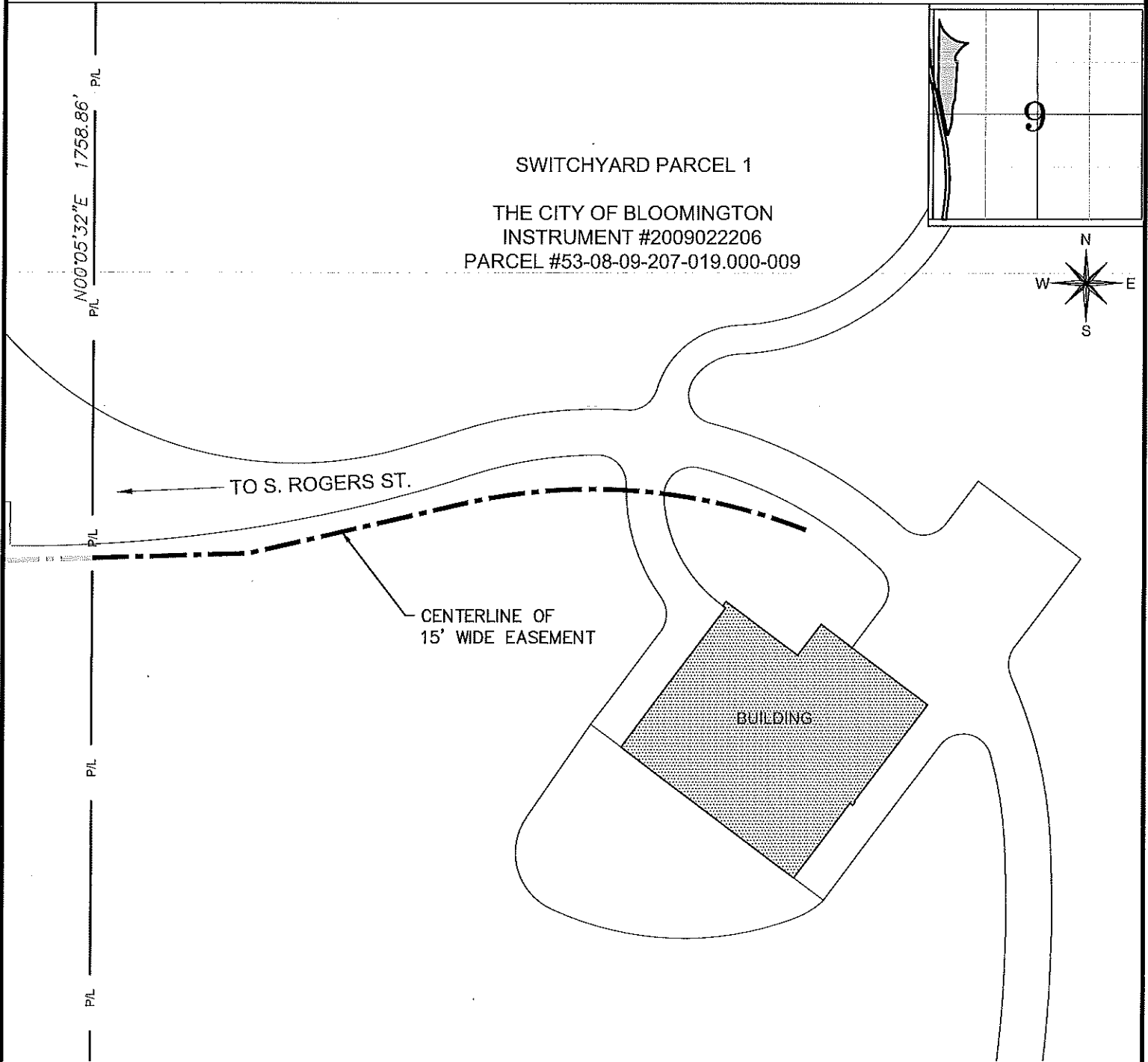
My County of Residence: _____ Printed Name: _____

My Commission Number: _____

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

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

THIS IS NOT A SURVEY. LOCATIONS SHOWN ARE APPROXIMATE. THE ACTUAL CENTERLINE
LOCATION OF THE UTILITY LINE IS THE CENTERLINE OF THE EASEMENT.



NOTE: PROPERTY LINES AS SHOWN WERE PLOTTED FROM
INSTRUMENT #2009022206; 2003036240
AND SITE IMPROVEMENTS FROM GIS DATA

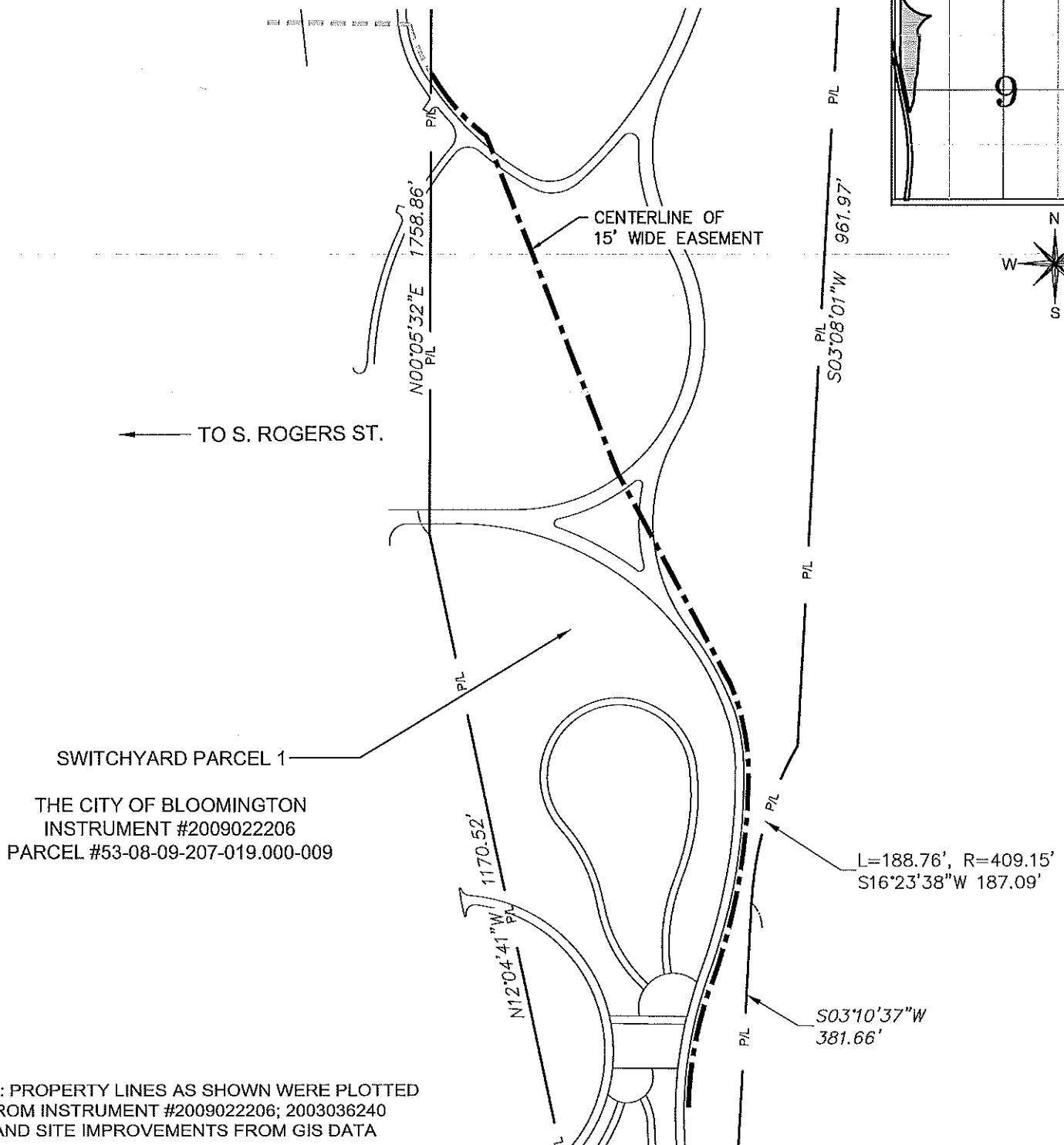
MONROE COUNTY, INDIANA

SITE NAME: PERRY TOWNSHIP SECTION 9 TOWNSHIP 8N RANGE 1W



DR. JO	EXHIBIT MAP OF: EASEMENT	EXHIBIT 'A'
CK. MT	LOCATION 1611 S. ROGERS ST, BLOOMINGTON, IN; W. HILLSIDE DR, BLOOMINGTON, IN	
DATE 02/21/2019	EXHIBIT MAP FOR: THE CITY OF BLOOMINGTON	EMAX #31207228
		SHEET 2 OF 3

THIS IS NOT A SURVEY. LOCATIONS SHOWN ARE APPROXIMATE. THE ACTUAL CENTERLINE LOCATION OF THE UTILITY LINE IS THE CENTERLINE OF THE EASEMENT.



NOTE: PROPERTY LINES AS SHOWN WERE PLOTTED FROM INSTRUMENT #2009022206; 2003036240 AND SITE IMPROVEMENTS FROM GIS DATA

MONROE COUNTY, INDIANA

SITE NAME: PERRY TOWNSHIP SECTION 9 TOWNSHIP 8N RANGE 1W



DR. JO	EXHIBIT MAP OF: EASEMENT	EXHIBIT 'A'
CK. MT	LOCATION 1611 S. ROGERS ST, BLOOMINGTON, IN; W. HILLSIDE DR, BLOOMINGTON, IN	
DATE 02/21/2019	EXHIBIT MAP FOR: THE CITY OF BLOOMINGTON	EMAX #31207228
		SHEET 3 OF 3

TRACT # 2

GRANT OF EASEMENT

Pt. Parcel # 53-08-08-100-014.000-009
53-01-53-226-500.000-009
53-08-09-300-036.000-009
53-08-04-300-095.000-009

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

Situate in Section 4, 8, and 9, Township 8 North, Range 1 West, Perry Township, Monroe County, State of Indiana; being a part of a tract as recorded in **Instrument Number 2012009513** and **Instrument Number 2014002708** in the Office of the Recorder of Monroe County, Indiana (hereinafter referred to as "Grantor's Property"), and being more particularly described as follows:

A strip of land fifteen feet (15') in uniform width, lying seven and one half feet (7.5') wide on both sides of a centerline, which centerline shall be established by the center of the Facilities as constructed and as generally shown on Exhibit "A", attached hereto and becoming a part hereof (hereinafter referred to as the "Easement Area").

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

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

For Grantee's Internal Use:

Line Name/No: Monroe - Perry - IN

Tract No: 1 of 2

Job Control # 31207228

LU#

Prep/Chk: MES/DJM/JBS Exec/Rec: _____

Dwg/Fac Ref.: Exhibit "A"

Prepared Date: March 6, 2019

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

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

4. [Intentionally deleted.]

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

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

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

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

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

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

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

12. NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTIVE COVENANT, DATED NOVEMBER 8, 2010, RECORDED IN THE OFFICE OF THE RECORDER OF MONROE COUNTY, INDIANA, INSTRUMENT NUMBER 2010017221 IN FAVOR OF AND ENFORCEABLE BY THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT.

Signature page(s) follow.

IN WITNESS WHEREOF, Grantor has caused this **Grant of Easement** to be signed by its duly authorized representative(s), effective the ____ day of _____, 2019.

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

By: _____ By: _____

Printed Name: _____ Printed Name: _____

Printed Title: _____ Printed Title: _____

STATE OF _____)
) SS:
COUNTY OF _____)

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

WITNESS my hand and notarial seal, this ____ day of _____, 2019.

My Commission Expires: _____ Signed Name: _____

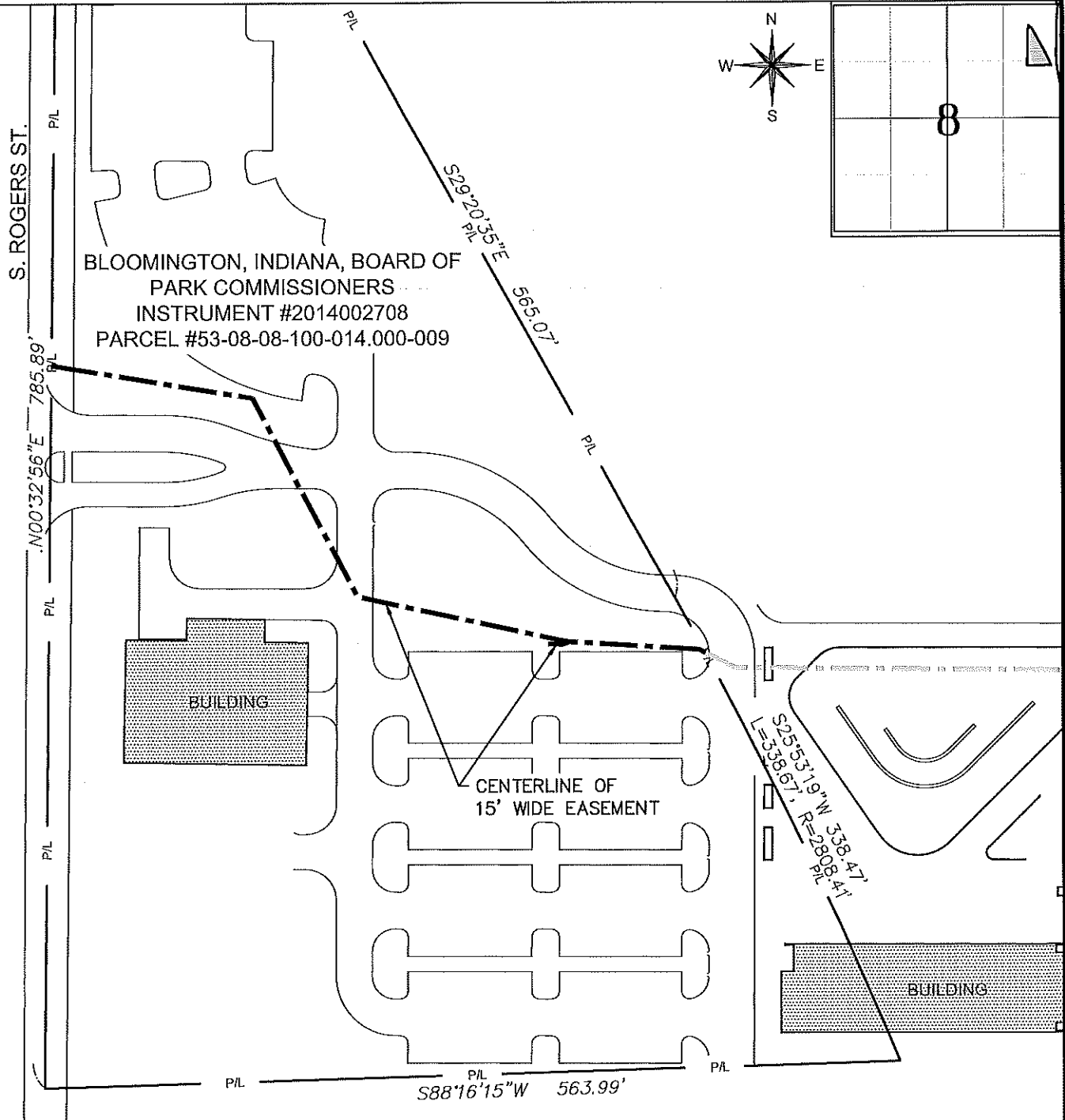
My County of Residence: _____ Printed Name: _____

My Commission Number: _____

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

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

THIS IS NOT A SURVEY. LOCATIONS SHOWN ARE APPROXIMATE. THE ACTUAL CENTERLINE LOCATION OF THE UTILITY LINE IS THE CENTERLINE OF THE EASEMENT.



NOTE: PROPERTY LINES AS SHOWN WERE PLOTTED FROM INSTRUMENT #2014002708; 2012009513 AND SITE IMPROVEMENTS FROM GIS DATA

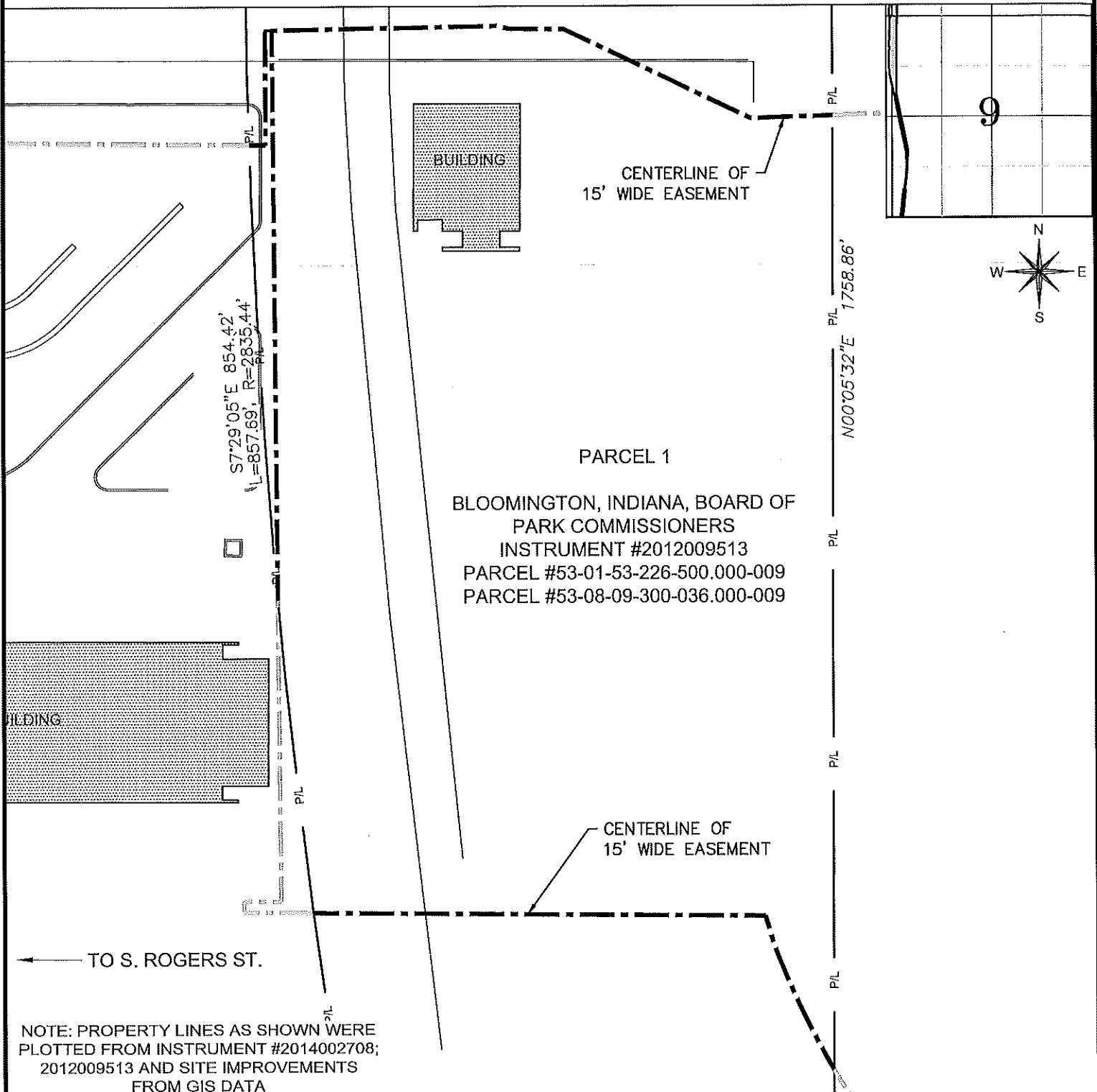
MONROE COUNTY, INDIANA

SITE NAME: PERRY TOWNSHIP SECTION 8 TOWNSHIP 8N RANGE 1W



DR. JO	EXHIBIT MAP OF: EASEMENT	EXHIBIT 'A'
CK. MT	LOCATION S. ROGERS ST, BLOOMINGTON, IN & S. COLLEGE AVE, BLOOMINGTON, IN	
DATE 03/07/2019	EXHIBIT MAP FOR: BLOOMINGTON, INDIANA, BOARD OF PARK COMMISSIONERS	EMAX #31207228
		SHEET 1 OF 4

THIS IS NOT A SURVEY. LOCATIONS SHOWN ARE APPROXIMATE. THE ACTUAL CENTERLINE LOCATION OF THE UTILITY LINE IS THE CENTERLINE OF THE EASEMENT.



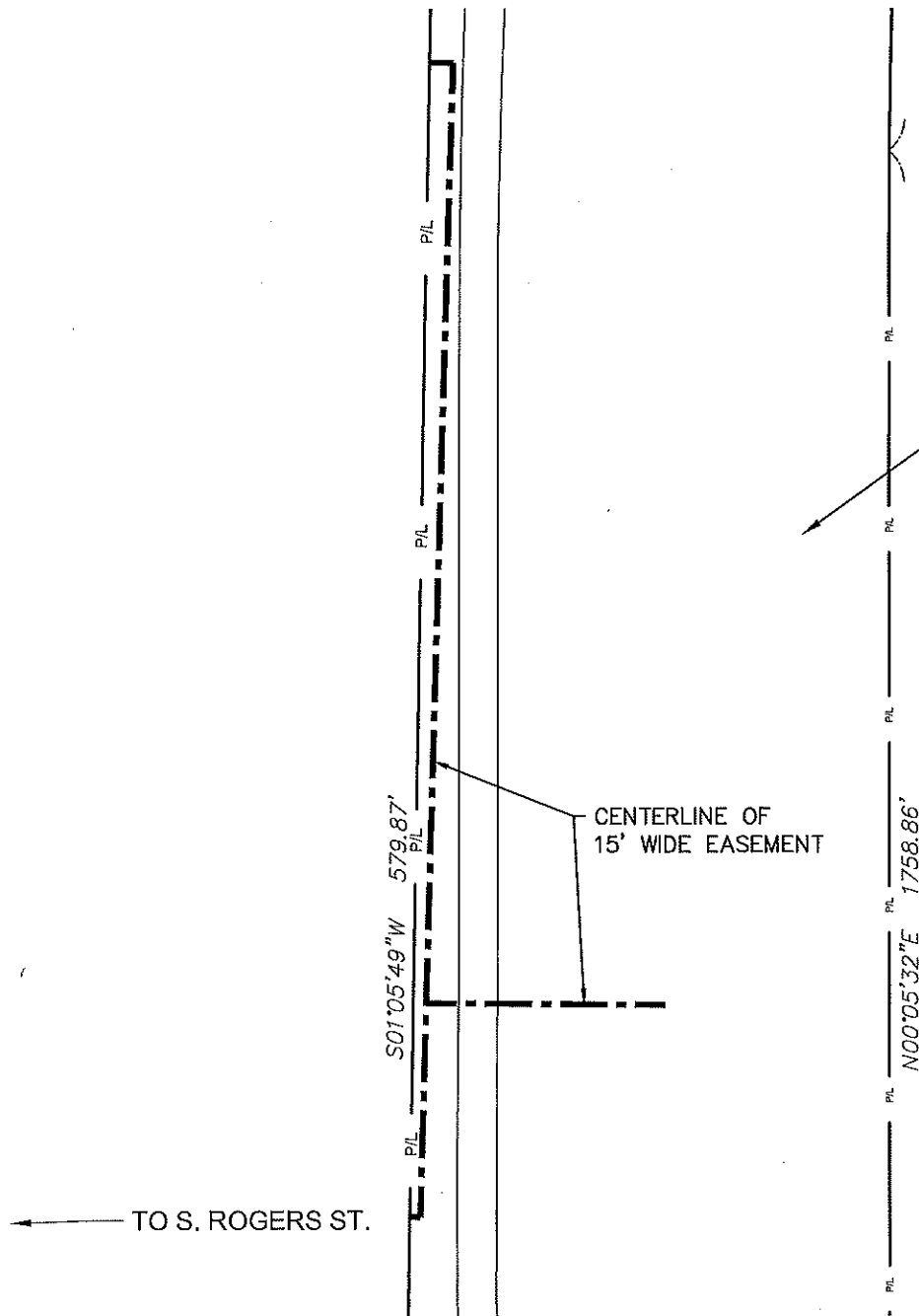
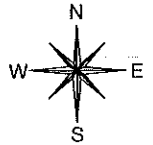
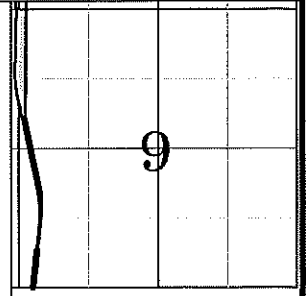
MONROE COUNTY, INDIANA

SITE NAME: PERRY TOWNSHIP SECTION 9 TOWNSHIP 8N RANGE 1W



DR. JO	EXHIBIT MAP OF: EASEMENT	EXHIBIT 'A'
CK. MT	LOCATION S. ROGERS ST, BLOOMINGTON, IN & S. COLLEGE AVE, BLOOMINGTON, IN	
DATE 03/07/2019	EXHIBIT MAP FOR: BLOOMINGTON, INDIANA, BOARD OF PARK COMMISSIONERS	EMAX #31207228
		SHEET 2 OF 4

THIS IS NOT A SURVEY. LOCATIONS SHOWN ARE APPROXIMATE. THE ACTUAL CENTERLINE
LOCATION OF THE UTILITY LINE IS THE CENTERLINE OF THE EASEMENT.



PARCEL 1

BLOOMINGTON, INDIANA,
BOARD OF PARK COMMISSIONERS
INSTRUMENT #2012009513
PARCEL #53-01-53-226-500.000-009
PARCEL #53-08-09-300-036.000-009

CENTERLINE OF
15' WIDE EASEMENT

TO S. ROGERS ST.

NOTE: PROPERTY LINES AS SHOWN WERE
PLOTTED FROM INSTRUMENT #2014002708;
2012009513 AND SITE IMPROVEMENTS
FROM GIS DATA

MONROE COUNTY, INDIANA

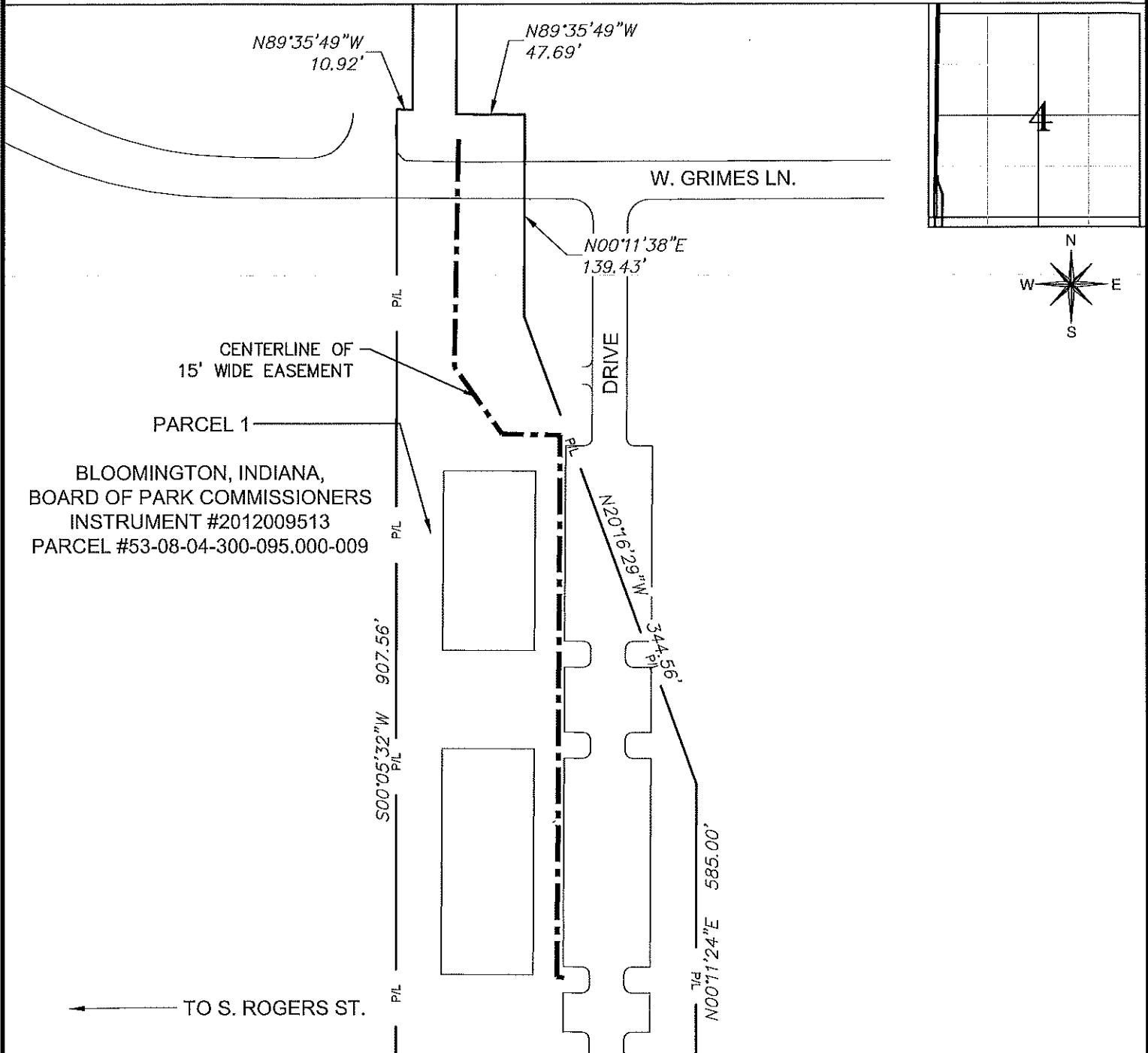
SITE NAME: PERRY TOWNSHIP SECTION 9 TOWNSHIP 8N RANGE 1W



**DUKE
ENERGY.**

DR. JO	EXHIBIT MAP OF: EASEMENT	EXHIBIT 'A'
CK. MT	LOCATION S. ROGERS ST, BLOOMINGTON, IN & S. COLLEGE AVE, BLOOMINGTON, IN	
DATE 03/07/2019	EXHIBIT MAP FOR: BLOOMINGTON, INDIANA, BOARD OF PARK COMMISSIONERS	EMAX #31207228
		SHEET 3 OF 4

THIS IS NOT A SURVEY. LOCATIONS SHOWN ARE APPROXIMATE. THE ACTUAL CENTERLINE LOCATION OF THE UTILITY LINE IS THE CENTERLINE OF THE EASEMENT.



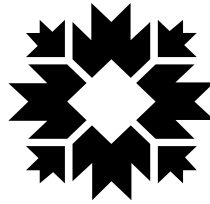
NOTE: PROPERTY LINES AS SHOWN WERE PLOTTED FROM INSTRUMENT #2014002708; 2012009513 AND SITE IMPROVEMENTS FROM GIS DATA

MONROE COUNTY, INDIANA

SITE NAME: PERRY TOWNSHIP SECTION 4 TOWNSHIP 8N RANGE 1W



DR. JO	EXHIBIT MAP OF:	EASEMENT	EXHIBIT 'A'
CK. MT	LOCATION	S. ROGERS ST, BLOOMINGTON, IN & S. COLLEGE AVE, BLOOMINGTON, IN	
DATE 03/07/2019	EXHIBIT MAP FOR:	BLOOMINGTON, INDIANA, BOARD OF PARK COMMISSIONERS	EMAX #31207228
			SHEET 4 OF 4



CITY OF BLOOMINGTON
Parks and Recreation

STAFF REPORT

Agenda Item: C-5
Date: 4/1/2019

Administrator
Review\Approval
PM

TO: Board of Park Commissioners
FROM: Paula McDevitt, Administrator
DATE: April 4, 2019
SUBJECT: Partnership Agreement with Centerstone

Recommendation

Staff recommends approval of the 2019 partnership agreement with Centerstone for contracted services for a park maintenance crew, landscaping crew and Cascades Golf Course maintenance crew. The partnership will be funded through the General Fund: Operations (\$47,950); Landscaping (\$36,394); Golf Services (\$10,080)

Background

The department has been part of the Downtown Outreach group since early 2016. At the time the department shared with this group the difficulty in maintaining the heavily used parks in the downtown area including Seminary Park, Peoples Park, Building Trades Park and Rev. Ernest D. Butler Park, and Waldron, Hill and Buskirk Park. In an effort to maintain these locations the department entered into a pilot partnership agreement with Centerstone. The pilot program successfully operated June 2017 through December 1, 2017 seven days a week.

Due to the success of the pilot program, the 2018 partnership agreement for a park maintenance crew was renewed followed by an addendum to the partnership to include a landscaping crew.

The 2019 partnership agreement outlines the schedule, number of Centerstone employees per crew, and hourly rates. Each crew will work under the on-site supervision of a certified trained Centerstone case worker. Centerstone will invoice the department the hourly rate of employment for clients who work in the program.

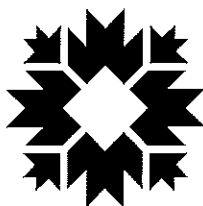
The Operations and Cascades Golf Course staff will provide training, equipment and general oversight of the assigned areas to ensure they are maintained to the high standard under which the department operates. The program will be evaluated following the conclusion of the program. The program will operate April 1, 2019 – November 30, 2019

Changes to the partnership include an increase in the hourly wage to \$11.36/hour for Laborer I positions and \$13/hour for the Golf Course Supervisor. The addition of the golf course maintenance crew is also new after a brief trial period in the fall at the end of the season.

RESPECTFULLY SUBMITTED,

Paula McDevitt

Paula McDevitt



CITY OF BLOOMINGTON
Parks and Recreation

COOPERATION SERVICES AGREEMENT PROGRAM PARTNERSHIP

Partner(s):

This Agreement is made and entered into this _____ day of _____, 2019, by and between the City of Bloomington Parks and Recreation Department ("BPRD") and, Centerstone. ("CS").

WHEREAS, BPRD and CS desire to cooperate in a park maintenance crew, landscaping crew and Cascades Golf Course crew ; and

WHEREAS, CS is qualified to perform such services for BPRD; and

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

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

1.0 Purpose of Agreement:

The purpose of this Agreement is to outline a program partnership, which will provide an opportunity for CS clients to work for CS in BPRD parks by combining available resources from each party to the Agreement.

2.0 Duration of Agreement:

This Agreement is in effect from the date of signing until December 31, 2019 unless terminated earlier as provided under Article 7.0.

3.0 Bloomington Parks & Recreation:

3.1 The goal of BPRD is to provide well maintained parks for the community to enjoy.

3.2 BPRD agrees to:

1. Designate Seminary Park, Peoples Park, Butler Park, Building Trades Park, the Waldron, Hill and Buskirk Park and along Kirkwood Ave. between Indiana and Walnut Streets as sites for the park maintenance crew. (Monday – Sunday 1pm-5pm April 1, 2019 - November 30, 2019).
2. Under the direction of City Landscaper designate landscaping areas and tasks for the landscaping crew (Tuesday, Wednesday, Thursday; 7:30am – 3:30pm; April 1, 2019 - October 31, 2019).
3. Under the directions of the Cascades Golf Course Manager designate ground keeping duties such as landscaping pruning, weed pulling, debris removal, bunker weeding, raking leaves, painting, litter pick-up and other related duties. (Tuesday and Thursday; 8am – 12pm; April 1, 2019 – October 15, 2019).
4. To provide on-site training for the CS park maintenance, landscaping, and Cascades Golf Course crew.

5. Provide maintenance equipment and supplies necessary to maintain the designated parks, landscaped areas and Cascades Golf Course.
6. Provide personal protection equipment for members for the CS park maintenance, landscaping and Cascades Golf Course crew.
7. Pay CS invoiced amounts for labor costs of the Parks seasonal employment program. Amounts not to exceed an hourly rate of \$11.36 per hour, plus FICA for park maintenance and landscaping crew positions; \$13/per hour, plus FICA for Cascades Golf Course crew.

4.0 CENTERSTONE Agrees to:

- 4.1 The goal of Centerstone is to conduct an employment placement program for park maintenance.
- 4.2 CS agrees to:
 - Conduct hiring interviews, hire, pay, and assume liability/risk coverage for maintenance crews.
 - Provide the following number of employees per area:
 - Cascades Golf Course: 3 employees; total of 8 hours per week per employee.
 - Park Maintenance Crew: 4 employees; total of 28 hours per week per employee.
 - Landscaping Crew: 4 employees; total of 24/hours per week per employee.
 - Invoice Parks monthly for reimbursement (\$11.36 per hour plus FICA or \$13/per hour FICA depending on the positions filled and hours worked)
 - Provide transportation to the sites (People's Park, Seminary Park, Building Trades Park, Butler Park, the Waldron, Hill and Buskirk Park and along Kirkwood Ave between Indiana and Walnut St.), Operations Center, and Cascades Golf Course
 - Provide a Supervisor to transport and supervise crew on site
 - Have substitute workers available to fill in or permanently take a spot on the crew
 - Address behavioral issues that come up at sites
 - Complete maintenance log daily per site
 - Communicate with designed park staff on issues, progress, and supply needs

5.0 Terms Mutually Agreed To By All Partners to This Agreement.

- 5.1 The intent of this Agreement is to document a mutually beneficial partnership between CS and BPRD.
- 5.2 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.
- 5.3 CS shall maintain comprehensive general liability insurance, with a minimum combined single limit of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate. The policy shall name the City of Bloomington Parks and Recreation Department as an additional insured, and CS shall provide Parks with a certificate of insurance prior to the commencement of operations under this Agreement. CS and its insurer shall notify Parks within ten (10) days of any insurance cancellation.
- 5.4 The commitment of personnel, facilities, supplies and payments will be honored according to the timetable agreed upon by all partners.
- 5.5 CS is recognized as having the expertise and experience to hire and supervise the park maintenance work crew safely and effectively. BPRD shall have the right to review risk management, agreement terms, and service quality issues.
- 5.6 Municipal Code sections 6.12.020 and 14.36.090, respectively, prohibit smoking inside city facilities and the consumption of alcoholic beverages on city property.
- 5.7 Pursuant to Indiana code 35-47-11.1-2 and 3, the City is prohibited from enforcing a firearms policy in public parks and city facilities as of July 1, 2011. However, per Indiana

Code 35-47-11.1-4(10), CS 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, and the City is hereby authorized to enforce said policy for purposes of this Agreement. If CS implements such a policy, it shall provide a copy of the policy to the City to be attached to this Agreement and incorporated herein by reference.

5.8 The parties will evaluate this Agreement and the services provided during the month of February 2020.

5.9 CS shall release, hold harmless, and indemnify the City of Bloomington, its Parks and Recreation Department, and its officers, employees, agents, and assigns (Releasees) from any and all claims which may arise as a result of CS's activities under this Agreement. This includes claims for personal injury, property damage, or any other type of claim which might be brought against Releasees or CS, or its employees, agents or patrons, by any third party, even if caused by the negligence of Releasees.

6.0 Notice:

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

Centerstone	BPRD
Greg May	Paula McDevitt
645 S. Rogers St.	401 N. Morton, Suite 250
Bloomington, IN 47403	Bloomington, IN 47402
(812)337-2237	(812) 349-3711

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

Centerstone	BPRD
Greg May	Dave Williams
645 S. Rogers St.	401 N. Morton, Suite 250
Bloomington, IN 47403	Bloomington, IN 47402
(812)337-2237	(812) 349-3706

7.0 Termination

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

8.0 E-Verify

CS 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). CS shall sign an affidavit, attached as Exhibit A, affirming that CS 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.

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

unauthorized alien. If the CS 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 CS. If the City terminates the contract, the CS or subcontractor is liable to the City for actual damages.

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

Signed and Agreed to this ____ day of _____, 2019.

CENTERSTONE:

Suzanne Koesel, CEO

Date

CITY OF BLOOMINGTON:

Paula McDevitt, Administrator, BPRD

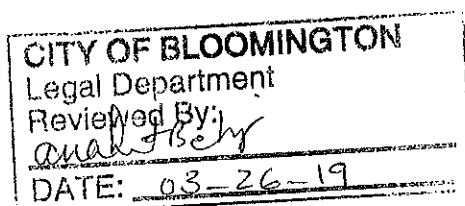
Date

Leslie J., President,
Board of Park Commissioners

Date


Philippa M. Guthrie, Corporate Counsel

3-26-19
Date



CITY OF BLOOMINGTON
Controller

Reviewed by: 

DATE: 3/27/19

FUND/ACCT: VARIOUS

STATE OF INDIANA)
)SS:
COUNTY OF)

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

- 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 _____, 2019.

Notary Public's Signature

My Commission Expires: _____

Printed Name of Notary Public

County of Residence: _____