



Per Executive Order by the Governor this meeting will be conducted electronically. The public may access this meeting at the following link:

<https://bloomington.zoom.us/j/94153830661?pwd=cjdWRUJDUXpmRTdsVHg4THRmZTR3UT09>

## AGENDA

City of Bloomington Board of Park Commissioners  
Special Meeting: Thursday, December 17 4pm – 5:30pm  
**CALL TO ORDER - ROLL CALL**

### **A. CONSENT CALENDAR**

- A-1. Approval of Minutes of (None)
- A-2. Approval of Claims Submitted (None)
- A-3. Approval of Non-Reverting Budget Amendments
- A-4. Review of Business Report (None)
- A-5. Declaration of Surplus (None)

### **B. PUBLIC HEARINGS/APPEARANCES**

- B-1. Public Comment Period

### **C. OTHER BUSINESS**

- C-1. Review/Approval of contract with Mader Designs for the Goat Farm Master Plan (Paula McDevitt)
- C-2. Review/Approval of contract with Shepherd's Construction Company, Inc. for Peoples Park project (Paula McDevitt)
- C-3. Review/Approval of sixteen (16) 2021 Services Agreements in the Sports Division (John Turnbull)
- C-4. Review/Approval of 2021 contract with HFI for Banneker and Allison-Jukebox Building (Erik Pearson)
- C-5. Review/Approval of contract with Bluestone Tree for pruning of city owned trees (Erin Hatch)
- C-6. Review/Approval of Parks Space Use Agreement with Catalent Indiana, LLC (John Turnbull)
- C-7. Review/Approval of property access agreement with CSX for well monitoring (Paula McDevitt)
- C-8. Review/Approval of 2019 Strategic Action Plan accomplished goals document (Paula McDevitt)
- C-9. Review/Approval of 2021 Parks Non-Reverting Budget (Paula McDevitt)

### **D. REPORTS**

- D-1. Administration Division - 2021-2025 Master Plan (Paula McDevitt)  
Jonathon Geels, Troyer Group. Inc.
- D-2. Operations Division - No Report
- D-3. Recreation Division - No Report
- D-4. Sports Division - No Report

## ADJOURNMENT

*Statement on public meetings during public health emergency: As a result of Executive Orders issued by the Governor, the Council and its committees may adjust normal meeting procedures to adhere to guidance provided by state officials. These adjustments may include:*

- *allowing members of the Council or its committees to participate in meetings electronically;*
- *posting notices and agendas for meetings solely by electronic means;*
- *using electronic meeting platforms to allow for remote public attendance and participation (when possible);*

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

- encouraging the public to watch meetings via Community Access Television Services broadcast or FB livestream, and encouraging remote submissions of public comment (via email, to [mcdevitp@bloomington.in.gov](mailto:mcdevitp@bloomington.in.gov) or during FB livestream).



# Journal Edit Listing

Sort By Entry

Department	Number	Journal Type	Sub Ledger	G/L Date	Description	Source	Reference	Reclassification	Journal Type
Parks - Parks & Recreation	2020-00016815	BA	GL	12/09/2020	Budget Amendment-Neg Line in Nat. Res's NR'ing				
G/L Date	G/L Account Number	Account Description			Description	Source	Increase Amount		Decrease Amount
12/09/2020	201-18-184000-53830	Bank Charges			Budget Amendment-Neg Line in Nat. Res's NR'ing		1,381.58		.00
Number of Entries: 1							1,381.58		\$ .00



# Journal Edit Listing

Sort By Entry

Department	Number	Journal Type	Sub Ledger	G/L Date	Description	Source	Reference	Reclassification	Journal Type
Parks - Parks & Recreation	2020-00016824	BA	GL	12/09/2020	Budget Amendment-Neg Lines in Ops Open Shelters NR'ing				
G/L Date	G/L Account Number	Account Description			Description	Source		Increase Amount	Decrease Amount
12/09/2020	201-18-189003-53830	Bank Charges			Budget Amendment-Neg Lines in Ops Open Shelters NR'ing			700.00	.00
Number of Entries: 1								<u>\$700.00</u>	<u>\$ .00</u>





# Journal Edit Listing

Sort By Entry

Department	Number	Journal Type	Sub Ledger	G/L Date	Description	Source	Reference	Reclassification	Journal Type
Parks - Parks & Recreation	2020-00016812	BA	GL	12/09/2020	Budget Amendment-Neg Lines in Ops NR'ing				
G/L Date	G/L Account Number	Account Description		Description		Source	Increase Amount	Decrease Amount	
12/09/2020	201-18-189000-52220	Agricultural Supplies		Budget Amendment-Neg Lines in Ops NR'ing			1,455.75	.00	
12/09/2020	201-18-189000-53830	Bank Charges		Budget Amendment-Neg Lines in Ops NR'ing			13.51	.00	
Number of Entries: 2							\$1,469.26	\$ .00	



# Journal Edit Listing

Sort By Entry

Department	Number	Journal Type	Sub Ledger	G/L Date	Description	Source	Reference	Reclassification	Journal Type
Parks - Parks & Recreation	2020-00016821	BA	GL	12/09/2020	Budget Amendment				
<i>G/L Date</i>	<i>G/L Account Number</i>	<i>Account Description</i>			<i>Description</i>	<i>Source</i>		<i>Increase Amount</i>	<i>Decrease Amount</i>
12/09/2020	201-18-G20010-47250	Grant - Other			Budget Amendment			40,000.00	.00
						Number of Entries: 1		\$40,000.00	\$ .00



# Journal Edit Listing

Sort By Entry

Department	Number	Journal Type	Sub Ledger	G/L Date	Description	Source	Reference	Reclassification	Journal Type
Parks - Parks & Recreation	2020-00017127	BA	GL	12/14/2020	Budget Amendment				
<i>G/L Date</i>	<i>G/L Account Number</i>	<i>Account Description</i>	<i>Description</i>		<i>Source</i>	<i>Increase Amount</i>		<i>Decrease Amount</i>	
12/14/2020	201-18-184500-53530	Water and Sewer	Budget Amendment				200.00		.00
12/14/2020	201-18-186500-53830	Bank Charges	Budget Amendment				150.00		.00
Number of Entries: 2							<u>350.00</u>		<u>.00</u>



## STAFF REPORT

Agenda Item: C-1  
Date: 12/1/2020

Administrator  
Review\Approval  
PM

**TO:** Board of Park Commissioners  
**FROM:** Paula McDevitt, Administrator  
**DATE:** December 17, 2020  
**SUBJECT:** APPROVAL OF CONTRACT WITH MADER DESIGNS

### Recommendation

Staff recommends approval of the contract with Mader Designs for updates to the Goat Farm Master Plan. The contract amount is not to exceed \$3000. Funding for this contract will be from NR Operations Budget 201-18-189000-53170.

### Background

A conceptual Goat Farm master plan was done by Mader Design in 2013 at the request of the former parks director as part of the discussion with the family who donated the property to the Bloomington Parks Foundation in 2007. In 2009, the Bloomington Parks Foundation deeded the property to the Bloomington Parks and Recreation Department.

The donors have re-engaged communication with the Bloomington Parks Foundation and department to pursue the development of the property as a passive recreation area. This will be made possible by a monetary donation from the family to the Bloomington Parks Foundation.

The Goat Farm Park Master Plan update is required to move the project forward.

**RESPECTFULLY SUBMITTED,**

Paula McDevitt, Administrator

**AGREEMENT  
BETWEEN  
CITY OF BLOOMINGTON  
PARKS AND RECREATION DEPARTMENT  
AND  
MADER DESIGN  
FOR  
GOAT FARM PARK MASTER PLAN UPDATE**

This Agreement, entered into on this \_\_\_\_ day of December, 2020, by and between the City of Bloomington Department of Parks and Recreation (the “Department”), and Mader Design (“Contractor”),

**WITNESSETH:**

WHEREAS, the Department wishes to update the Master Plan for the Goat Farm Park; and

WHEREAS, the Department requires the services of a professional Contractor in order to perform these design additions and changes to the Master Plan (the “Services” as further defined below); and

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

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

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

**Article 1. Scope of Services**

Contractor shall provide the Services as specified in Exhibit A, “Scope of Work”, attached hereto and incorporated into this Agreement. Contractor shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Contractor shall complete the Services required under this Agreement on or before December 31, 2020, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services.

In the performance of Contractor’s work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Paula McDevitt as the Department’s Project Manager.

**Article 2. Standard of Care**

Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances (“Standard of Care”). The Department shall be the sole judge of the adequacy of Contractor’s work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor’s performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department**

The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as expeditiously as is necessary for the orderly progress of the work, and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

**Article 4. Compensation**

The Department shall pay Contractor for all fees and expenses in an amount not to exceed Three Thousand Dollars and zero cents (\$3,000). Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to:

Paula McDevitt  
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**

Contractor shall perform the Services according to the schedule set forth in Exhibit B, Project Schedule, attached hereto and incorporated herein by reference. The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

**Article 7. Termination**

In the event of a party's substantial failure to perform in accordance with the terms of this Agreement, the other party shall have the right to terminate the Agreement upon written notice. The nonperforming party shall have fourteen (14) calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

The Department may terminate or suspend performance of this Agreement at the Department's prerogative at any time upon written notice to Contractor. Contractor shall terminate or suspend performance of the Services on a schedule acceptable to the Department and the Department shall pay the Contractor for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to Contractor's compensation and the schedule of services. Upon termination or suspension of this Agreement, all finished or unfinished reports, drawings, collections of data and other documents generated by Contractor in connection with this Agreement shall become the property of the Department, as set forth in Article 10 herein.

**Article 8. Identity of the Contractor**

Contractor acknowledges that one of the primary reasons for its selection by the Department to perform the Services is the qualifications and experience of Contractor. Contractor thus agrees that the Services to be performed pursuant to this Agreement shall be performed by Contractor. Contractor shall not subcontract any part of the Services without the prior written permission of the Department. The Department reserves

the right to reject any of the Contractor's personnel or proposed outside professional sub-Contractors, and the Department reserves the right to request that acceptable replacement personnel be assigned to the project.

**Article 9. Opinions of Probable Cost**

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

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

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

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

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

**Article 12. Independent Contractor Status**

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

**Article 13. Indemnification**

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

**Article 14. Insurance**

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

- a. General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.
- b. Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.

- c. Professional Liability Insurance (“Errors and Omissions Insurance”) with a minimum limit of \$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.

Contractor shall provide evidence of each insurance policy to the Department prior to the commencement of work under this Agreement. Approval of the insurance by the Department shall not relieve or decrease the extent to which Contractor may be held responsible for payment of damages resulting from Contractor’s provision of the Services or its operations under this Agreement. If Contractor fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the Department’s required proof that the insurance has been procured and is in force and paid for, the Department shall have the right at its election to terminate the Agreement.

**Article 15. Conflict of Interest**

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

**Article 16. Waiver**

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

**Article 17. Severability**

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

**Article 18. Assignment**

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

**Article 19. Third Party Rights**

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Department and Contractor.

**Article 20. Governing Law and Venue**

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



**Article 21. Non-Discrimination**

Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment. Contractor understands that the City of Bloomington prohibits its employees from engaging in harassing or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

**Article 22. Compliance with Laws**

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

**Article 23. E-Verify**

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

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

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

**Article 24. Notices**

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

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

City of Bloomington		Mader Design
Attn: Paula McDevitt		Attn: Jeff Mader
401 N. Morton, Suite 250		302 Main Street
Bloomington, Indiana 47402		Beech Grove, IN 46107

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

**Article 25. Intent to be Bound**

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

**Article 26. Integration and Modification**

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

**Article 27. Non-Collusion**

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

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

**CITY OF BLOOMINGTON**

**MADER DESIGN**

\_\_\_\_\_  
Philippa M. Guthrie, Corporation Counsel

\_\_\_\_\_  
Jeff Mader, Owner

\_\_\_\_\_  
Paula McDevitt, Director  
Parks and Recreation Department

\_\_\_\_\_  
Kathleen Mills, President,  
Board of Park Commissioners

## **EXHIBIT A**

### **“Scope of Work”**

The Services shall include the following:

Mader Design shall provide professional landscape architectural services to make updates to the Master Plan for the Goat Farm Park.

Efforts shall include:

1. Coordinate and receive updates from Owner related to previous master plan efforts and new elements/changes per the Parks and Donor needs and requests.
2. Receive updated existing site plan indicating new prairie areas.
3. Update master plan graphics based on new information.
4. Discuss, review, and update project budgeting based on new information from Owner and Donor.
5. Provide updated graphics and budget information to Owner for review and discussion with Donor.
6. Receive feedback and make updates as needed.
7. All work will be completed on an hourly basis.

### **Assumptions**

1. Scope described here is based on email conversations to date will be completed on an hourly basis per the direction of Owner.
2. All information related to the Project provided by Client, Design Team, or others is assumed to be true and accurate.
3. CAD drawing or PDF base files and surveys shall be provided by Client's as available. For this Master Plan Scope of work, aerial photography and available GIS information would be sufficient if detailed drawings are not available.
4. Deliverables shall include CAD and PDF files emailed to the Client. We anticipate Client will perform any printing required for the project.
5. Landscape Architect shall not be responsible for determining if any areas on site are environmentally sensitive (i.e. underground tanks, asbestos materials, etc...) or may require special environmental permitting.
6. The Project shall be Master Plan/Concept level only. Additional Design and Construction Documents may be required for various phases of implementation. Implementation is anticipated to be bid to known subcontractors currently utilized by Client.

### **Professional Fees**

The design fees for Landscape Architecture Services are proposed to be billed based on hours completed at the following rates, with a not to exceed amount of \$3,000. Invoices will be billed monthly based on work completed to date plus Reimbursable Expenses.

Rates shall be \$155 for Principal, \$130 for Landscape Architect, \$100 for Graduate Landscape Architect, and \$75 for Administrator or Intern.

**Reimbursables**

Reimbursable Expenses per the Terms & Conditions below are expenditures for the Project made by the Landscape Architect in the interest of the Project. None are anticipated, but if required would be within the not to exceed amount total above.

**Additional Services**

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

## **EXHIBIT B**

### **“Project Schedule”**

Design work will be completed by no later than December 31, 2020.

STATE OF INDIANA )  
 )SS:  
COUNTY OF \_\_\_\_\_ )

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 \_\_\_\_\_, 20\_\_\_\_.

**Mader Design**

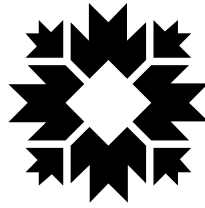
By: \_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and acknowledged the execution of the foregoing this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public's Signature      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public      County of Residence: \_\_\_\_\_



CITY OF BLOOMINGTON  
Parks and Recreation

## STAFF REPORT

Agenda Item: C-2  
Date: 12/1/2020

Administrator  
Review\Approval  
PM

**TO:** Board of Park Commissioners  
**FROM:** Paula McDevitt, Administrator  
**DATE:** December 17, 2020  
**SUBJECT:** APPROVAL OF CONTRACT WITH SHEPHERD'S CONSTRUCTION, INC.

### Recommendation

Staff recommends approval of the contract with Shepherd's Construction, INC. for hard surface Bomanite improvement project at Peoples Park. The project shall not exceed \$12,900. The project is funded through the General Obligation Park Bond Project Code: 977-2017q

### Background

The work on the granite ground surface area at Peoples Park is highly specialized. The Bomanite granite is a custom pattern to the site of which Shepherd Construction is the owner of the pattern. Shepherds Construction has been approved by the Controller's office as the sole source provider due to the custom pattern. The contract includes the installation of new Bomanite granite sets and the cleaning/sealing of existing Bomanite that does not require replacement.

**RESPECTFULLY SUBMITTED,**

Paula McDevitt, Administrator



**AGREEMENT  
BETWEEN  
CITY OF BLOOMINGTON  
PARKS AND RECREATION DEPARTMENT  
AND  
SHEPHERD'S CONSTRUCTION CO. INC.  
FOR  
PEOPLES PARK HARDSCAPE RENOVATION**

This Agreement, entered into on this \_\_\_\_ day of December, 2020, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Shepherd's Construction Co. Inc. ("Contractor"),

**WITNESSETH:**

WHEREAS, the Department wishes to renovate and expand the hardscape that currently exists in Peoples Park; and

WHEREAS, the Department requires the services of a professional Contractor in order to perform the hardscape renovation (the "Services" as further defined below); and

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

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

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

**Article 1. Scope of Services**

Contractor shall provide the Services as specified in Exhibit A, "Scope of Work", attached hereto and incorporated into this Agreement. Contractor shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Contractor shall complete the Services required under this Agreement on or before March 31, 2021, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services.

In the performance of Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Paula McDevitt as the Department's Project Manager.

**Article 2. Standard of Care**

Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The Department shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department**

The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as expeditiously as is necessary for the orderly progress of the work,

and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

#### **Article 4. Compensation**

The Department shall pay Contractor for all fees and expenses in an amount not to exceed Twelve Thousand Nine Hundred Dollars and zero cents (\$12,900). Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to:

Paula McDevitt  
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**

Contractor shall perform the Services according to the schedule set forth in Exhibit B, Project Schedule, attached hereto and incorporated herein by reference. The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

#### **Article 7. Termination**

In the event of a party's substantial failure to perform in accordance with the terms of this Agreement, the other party shall have the right to terminate the Agreement upon written notice. The nonperforming party shall have fourteen (14) calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

The Department may terminate or suspend performance of this Agreement at the Department's prerogative at any time upon written notice to Contractor. Contractor shall terminate or suspend performance of the Services on a schedule acceptable to the Department and the Department shall pay the Contractor for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to Contractor's compensation and the schedule of services. Upon termination or suspension of this Agreement, all finished or unfinished reports, drawings, collections of data and other documents generated by Contractor in connection with this Agreement shall become the property of the Department, as set forth in Article 10 herein.

#### **Article 8. Identity of the Contractor**

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

**Article 9. Opinions of Probable Cost**

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

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

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

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

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

**Article 12. Independent Contractor Status**

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

**Article 13. Indemnification**

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

**Article 14. Insurance**

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

- a. General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.
- b. Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.
- c. Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$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.

Contractor shall provide evidence of each insurance policy to the Department prior to the commencement of work under this Agreement. Approval of the insurance by the Department shall not relieve or decrease the extent to which Contractor may be held responsible for payment of damages resulting from Contractor's provision of the Services or its operations under this Agreement. If Contractor fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the Department's required proof that the insurance has been procured and is in force and paid for, the Department shall have the right at its election to terminate the Agreement.

**Article 15. Conflict of Interest**

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

**Article 16. Waiver**

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

**Article 17. Severability**

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

**Article 18. Assignment**

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

**Article 19. Third Party Rights**

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Department and Contractor.

**Article 20. Governing Law and Venue**

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

**Article 21. Non-Discrimination**

Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment. Contractor understands that the City of Bloomington prohibits its employees from engaging in harassing or discrimination of any kind, including harassing or discriminating against independent contractors doing work

for the City. If Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

**Article 22. Compliance with Laws**

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

**Article 23. E-Verify**

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

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

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

**Article 24. Notices**

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

**Department:**

**Contractor:**

City of Bloomington	Shepherd's Construction
Attn: Paula McDevitt	Attn: Michael C. Shepherd
401 N. Morton, Suite 250	1111 N. Rangeline Road
Bloomington, Indiana 47402	Anderson, IN 46012

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

**Article 25. Intent to be Bound**

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

**Article 26. Integration and Modification**

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

**Article 27. Non-Collusion**

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

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

**CITY OF BLOOMINGTON**

**SHEPHERD'S CONSTRUCTION**

\_\_\_\_\_  
Philippa M. Guthrie, Corporation Counsel

\_\_\_\_\_  
Michael C. Shepherd, President

\_\_\_\_\_  
Paula McDevitt, Director  
Parks and Recreation Department

\_\_\_\_\_  
Kathleen Mills, President,  
Board of Park Commissioners

## **EXHIBIT A**

### **“Scope of Work”**

The Services shall include the following:

- Demolition, removal, preparation, and installation of approximately 800 sq. ft. Bomanite 12”x12” granite sets to match existing color, pattern, and texture. (\$9,600)
- Clean and seal existing Bomanite +/- 1400 sq. ft. and the new installation. (\$3,300)
- Lightly acid wash the new product to give it an aged appearance before sealing to help blend with the existing Bomanite.

## **EXHIBIT B**

### **“Project Schedule”**

All work to be completed by no later than March 31, 2021.



STATE OF INDIANA )  
 )SS:  
COUNTY OF \_\_\_\_\_ )

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 \_\_\_\_\_, 20\_\_\_\_.

**Shepherd's Construction**

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 \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public's Signature      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public      County of Residence: \_\_\_\_\_



## STAFF REPORT

Agenda Item: C-3  
Date: 12/3/2020

Administrator  
Review\Approval  
PM

**TO:** Board of Park Commissioners  
**FROM:** John Turnbull, Sports Division Director  
**DATE:** December 17, 2020  
**SUBJECT:** REVIEW/APPROVAL OF SIXTEEN (16) SERVICE AGREEMENTS FOR 2021

### Recommendation

Staff recommends approval of sixteen (16) service agreements. The services agreements will be funded through general fund budgets of specific areas when and if the service is needed. The sixteen (16) service agreements are as follows:

1. Terminix International-general pest management on a limited and only as needed basis.
2. Styner Sports Training Inc.-paints and diagrams arena ice during installation.
3. Keller Heating & Air Conditioning, Inc. – general HVAC repair or service.
4. DEEM Inc.-very specific cooling and mechanical for ice arena work.
5. Steve's Welding-general welding and metal repair if needed.
6. Young Plumbing & Mechanical-general plumbing.
7. Price Electric-electrical repair and maintenance.
8. City Glass of Bloomington Inc.-Repair or replacement of windows, doors, glass.
9. Commercial Service inc-Repair of HVAC and/or plumbing.
10. Gooldy & Sons-Repairs to food service equipment.
11. Oracle Elevators-Repairs to TLRC elevator service.
12. Koorsen Environmental-Repair and service to food service ventilation and hoods.
13. Koorsen Fire and Security-Repairs to alarm systems and fire suppression equipment.
14. Plymate-Supplies facility entry door mats.
15. Fish Window Cleaning (Photizo, LLC)-Cleans windows and gutters.
16. Sport Aid-Repairs indoor artificial turf.

### Background

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

**RESPECTFULLY SUBMITTED,**

A handwritten signature in black ink, appearing to read 'John Turnbull', written over a horizontal line.

John Turnbull, Division Director Sports

**AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT  
AND  
TERMINIX**

This Agreement, entered into on this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Terminix International ("Contractor").

**Article 1. Scope of Services** Contractor shall provide pest management ("Services"). Contractor shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Contractor shall complete the Services required under this Agreement on or before December 31, 2021, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services. In the performance of Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Dee Tuttle and/or Daren Eads as the Department's Project Manager. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department.

**Article 2. Standard of Care** Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The Department shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department** The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as necessary for the orderly progress of the work, and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

**Article 4. Compensation** The Department shall pay Contractor for all fees and expenses in an amount not to exceed four thousand dollars and zero cents (\$4,000.00). Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: Dee Tuttle and/or Daren Eads, City of Bloomington, 401 N. Morton, Suite 250, Bloomington, Indiana 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

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

**Article 6. Schedule** Contractor shall perform the Services according to the following schedule:  
No later than December 31, 2021.

The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

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

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

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

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

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

**Article 12. Insurance** During the performance of any and all Services under this Agreement, Contractor shall maintain the following insurance in full force and effect: a) General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; b) Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident; c) Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code; and d) Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$1,000,000 annual aggregate. All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the Department, and the officers, employees and agents of each shall be named as insureds under the General Liability, Automobile, and Worker's Compensation policies, and such policies shall stipulate that the insurance will operate as primary insurance and that no other insurance of the City's will be called upon to contribute to a loss hereunder. Contractor shall provide evidence of each insurance policy to the Department prior to the commencement of work under this Agreement. **Article 13.**

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

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

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

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

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

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

**Article 19. Non-Discrimination** Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment. Contractor understands that the City of Bloomington prohibits its employees from engaging in harassing or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

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

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

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

**Department:** City of Bloomington, Attn: Dee Tuttle and/or Daren Eads, 401 N. Morton, Bloomington, IN 47402. **Contractor: Terminix International.** Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and Contractor.

**Article 23. Integration and Modification** This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 24. Non-Collusion** Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Contractor shall sign an affidavit, attached hereto as Exhibit B, affirming that Contractor has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

**CITY OF BLOOMINGTON**

**TERMINIX INTERNATIONAL**

\_\_\_\_\_  
Philippa M. Guthrie, Corporation Counsel

\_\_\_\_\_  
Name of Signatory, Title

**CITY OF BLOOMINGTON PARKS AND RECREATION**

\_\_\_\_\_  
Paula McDevitt, Director  
Parks and Recreation Department

\_\_\_\_\_  
Kathleen Mills, President  
Board of Park Commissioners

**EXHIBIT A**  
**E-VERIFY AFFIDAVIT**

STATE OF INDIANA ) )SS:  
COUNTY OF \_\_\_\_\_)

# AFFIDAVIT

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

1. The undersigned is the \_\_\_\_\_ of \_\_\_\_\_.  
(job title) (company name)
2. The company named herein that employs the undersigned:
  - i. has contracted with or seeking to contract with the City of Bloomington to provide services; **OR** ii.
  - is a subcontractor on a contract to provide services to the City of Bloomington.
3. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein does not knowingly employ an "unauthorized alien," as defined at 8 United States Code 1324a(h)(3).
4. The undersigned hereby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

Signature

Printed Name

STATE OF INDIANA )  
 )SS:  
COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and acknowledged the execution of the foregoing this \_\_\_\_ day of \_\_\_\_\_, 2021.

Public's Signature \_\_\_\_\_ My Commission Expires: \_\_\_\_\_ Notary \_\_\_\_\_

\_\_\_\_\_  
Name of Notary Public

County of Residence: \_\_\_\_\_ Printed

**EXHIBIT B**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**NON-COLLUSION AFFIDAVIT**

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

**OATH AND AFFIRMATION**

I affirm under the penalties of perjury that the foregoing facts and information are true and correct to the best of my knowledge and belief.  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Terminix International**

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 \_\_\_\_\_, 2021.

\_\_\_\_\_ My Commission Expires: \_\_\_\_\_ Notary  
Public's Signature

\_\_\_\_\_ County of Residence: \_\_\_\_\_ Printed  
Name of Notary Public



**AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT  
AND  
STYNER SPORTS TRAINING**

This Agreement, entered into on this \_\_\_\_ day of \_\_\_\_\_, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Styner Sports Training ("Contractor").

**Article 1. Scope of Services** Contractor shall provide ice painting services ("Services"). Contractor shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Contractor shall complete the Services required under this Agreement on or before December 31, 2021, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services. In the performance of Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Hsiung Marler as the Department's Project Manager. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department.

**Article 2. Standard of Care** Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The Department shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department** The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as necessary for the orderly progress of the work, and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

**Article 4. Compensation** The Department shall pay Contractor for all fees and expenses in an amount not to exceed five thousand dollars (\$5,000). Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: City of Bloomington, ATTN: Hsiung Marler, 401 N. Morton, Suite 250, Bloomington, Indiana 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

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

**Article 6. Schedule** Contractor shall perform the Services according to the following schedule:

No later than December 31, 2021. The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

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

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

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

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

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

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

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

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

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

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

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

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

**Article 19. Non-Discrimination** Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment. Contractor understands that the City of Bloomington prohibits its employees from engaging in harassing or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

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

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

**Article 22. Notices** Any notice required by this Agreement shall be made in writing to the individuals/addresses specified below: Department: City of Bloomington, Attn: Hsiung Marler, 401 N. Morton, Suite 250, Bloomington, IN 47402. Contractor: Styner Sports Training, 2626 East 57th Street, Indianapolis, IN 46220.

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

**Article 23. Integration and Modification** This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 24. Non-Collusion** Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Contractor shall sign an affidavit, attached hereto as Exhibit B, affirming that Contractor has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

#### **CITY OF BLOOMINGTON**

\_\_\_\_\_  
Philippa M. Guthrie, Corporation Counsel

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

\_\_\_\_\_  
Paula McDevitt, Director  
Parks and Recreation Department

\_\_\_\_\_  
Kathleen Mills, President  
Board of Park Commissioners

#### **STYNER SPORTS TRAINING**

\_\_\_\_\_  
Name of Signatory, Title

\_\_\_\_\_  
Date

**EXHIBIT A**  
**E-VERIFY AFFIDAVIT**

STATE OF INDIANA )

)SS:

COUNTY OF \_\_\_\_\_)

# AFFIDAVIT

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

1. The undersigned is the \_\_\_\_\_ of \_\_\_\_\_.  
(job title) (company name)
2. The company named herein that employs the undersigned:
  - i. has contracted with or seeking to contract with the City of Bloomington to provide services; **OR**
  - ii. is a subcontractor on a contract to provide services to the City of Bloomington.
3. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein does not knowingly employ an "unauthorized alien," as defined at 8 United States Code 1324a(h)(3).
4. The undersigned hereby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

Signature

Printed Name

STATE OF INDIANA

)

)SS:

COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and acknowledged the execution of the foregoing this \_\_\_\_ day of \_\_\_\_\_, 2020.

Notary Public's Signature \_\_\_\_\_ My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public

\_\_\_\_\_  
County of Residence:

**EXHIBIT B**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**NON-COLLUSION AFFIDAVIT**

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

**OATH AND AFFIRMATION**

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Styner Sports Training**

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 \_\_\_\_\_, 2020.

\_\_\_\_\_ My Commission Expires: \_\_\_\_\_  
Notary Public's Signature

\_\_\_\_\_ County of Residence: \_\_\_\_\_  
Printed Name of Notary Public

**AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT  
AND  
KELLER HEATING & AIR CONDITIONING, INC**

This Agreement, entered into on this \_\_\_\_ day of December, 2020, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Keller Heating & Air Conditioning, Inc. ("Contractor").

**Article 1. Scope of Services** Contractor shall provide heating and air conditioning service and repair ("Services"). Contractor shall diligently provide the Services under this Agreement at an hourly rate of one hundred twenty one dollars (\$121.00) per hour plus materials Monday-Friday 8am-4:30pm and all other times for an after hour rate of one hundred eighty one dollars and fifty cents (181.50) plus materials. Contractor shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Contractor shall complete the Services required under this Agreement on or before December 31, 2021, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services. In the performance of Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Hsiung Marler as the Department's Project Manager. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department.

**Article 2. Standard of Care** Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The Department shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department** The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as necessary for the orderly progress of the work, and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

**Article 4. Compensation** The Department shall pay Contractor for all fees and expenses in an amount not to exceed Four Thousand Dollars and zero cents \$4,000.00. Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: Hsiung Marler, City of Bloomington, 401 N. Morton, Suite 250, Bloomington, Indiana 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

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

**Article 6. Schedule** Contractor shall perform the Services according to the following schedule:  
Prior to December 31, 2021

The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

Contractor understands that the City of Bloomington prohibits its employees from engaging in harassing or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

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

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

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

**Department:** City of Bloomington, Attn: Hsiung Marler, 401 N. Morton, Bloomington, IN 47402. **Contractor:** Keller Heating & Air Conditioning Inc., 318 North Rogers Street, Bloomington, IN 47404. Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and Contractor.

**Article 23. Integration and Modification** This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 24. Non-Collusion** Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Contractor shall sign an affidavit, attached hereto as Exhibit B, affirming that Contractor has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

**CITY OF BLOOMINGTON**

**Keller Heating & Air Conditioning, Inc.**

\_\_\_\_\_  
Philippa M. Guthrie, Corporation Counsel

\_\_\_\_\_  
Name of Signatory, Title

**CITY OF BLOOMINGTON PARKS AND RECREATION**

\_\_\_\_\_  
Paula McDevitt, Director  
Parks and Recreation Department

\_\_\_\_\_  
Kathleen Mills, President  
Board of Park Commissioners

**EXHIBIT A**  
**E-VERIFY AFFIDAVIT**

STATE OF INDIANA            )  
  )SS:  
COUNTY OF \_\_\_\_\_)

**AFFIDAVIT**

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

1. The undersigned is the \_\_\_\_\_ of \_\_\_\_\_.  
(job title) (company name)
2. The company named herein that employs the undersigned:
  - i. has contracted with or seeking to contract with the City of Bloomington to provide services; **OR**
  - ii. is a subcontractor on a contract to provide services to the City of Bloomington.
3. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein does not knowingly employ an "unauthorized alien," as defined at 8 United States Code 1324a(h)(3).
4. The undersigned hereby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

STATE OF INDIANA            )  
  )SS:  
COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and acknowledged the execution of the foregoing this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public's Signature                      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public                      County of Residence: \_\_\_\_\_

**EXHIBIT B**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**NON-COLLUSION AFFIDAVIT**

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

**OATH AND AFFIRMATION**

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Keller Heating & Air Conditioning, 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 \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public's Signature      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public      County of Residence: \_\_\_\_\_



**AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT  
AND  
DEEM, LLC**

This Agreement, entered into on this \_\_\_\_ day of \_\_\_\_, 20 \_\_\_\_, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and DEEM, LLC ("Contractor").

**Article 1. Scope of Services** Contractor shall provide mechanical, electrical and plumbing service and repair ("Services"). Contractor shall diligently provide the Services under this Agreement at an hourly rate of one hundred twenty dollars (\$120.00) per hour Monday-Friday 7am-4pm and all other times for an after hour rate of one hundred eighty dollars (180.00) with a minimum seventy dollar (\$70) truck charge. Contractor shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Contractor shall complete the Services required under this Agreement on or before December 31, 2021, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services. In the performance of Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Hsiung Marler as the Department's Project Manager. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department.

**Article 2. Standard of Care** Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The Department shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department** The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as necessary for the orderly progress of the work, and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

**Article 4. Compensation** The Department shall pay Contractor for all fees and expenses in an amount not to exceed Fifteen Thousand Dollars and zero cents \$15,000.00. Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: Hsiung Marler, City of Bloomington, 401 N. Morton, Suite 250, Bloomington, Indiana 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

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

**Article 6. Schedule** Contractor shall perform the Services according to the following schedule:

Prior to December 31, 2021. The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

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

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

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

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

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

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

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

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

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

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

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

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

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

Contractor understands that the City of Bloomington prohibits its employees from engaging in harassing or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

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

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

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

Department: City of Bloomington, Attn: Hsiung Marler, 401 N. Morton, Suite 250, Bloomington, IN 47402.

Contractor: DEEM, LLC, 6831 East 32nd Street, Ste 200, Indianapolis, IN 46226.

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

**Article 23. Integration and Modification** This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 24. Non-Collusion** Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Contractor shall sign an affidavit, attached hereto as Exhibit B, affirming that Contractor has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

**CITY OF BLOOMINGTON**

\_\_\_\_\_  
Philippa M. Guthrie, Corporation Counsel

**DEEM, LLC**

\_\_\_\_\_  
Name of Signatory, Title

**CITY OF BLOOMINGTON PARKS AND RECREATION**

\_\_\_\_\_  
Paula McDevitt, Director  
Parks and Recreation Department

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kathleen Mills, President  
Board of Park Commissioners

**EXHIBIT A**  
**E-VERIFY AFFIDAVIT**

STATE OF INDIANA )

)SS:

COUNTY OF \_\_\_\_\_)

# AFFIDAVIT

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

1. The undersigned is the \_\_\_\_\_ of \_\_\_\_\_.  
(job title) (company name)
2. The company named herein that employs the undersigned:
  - i. has contracted with or seeking to contract with the City of Bloomington to provide services; **OR**
  - ii. is a subcontractor on a contract to provide services to the City of Bloomington.
3. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein does not knowingly employ an "unauthorized alien," as defined at 8 United States Code 1324a(h)(3).
4. The undersigned hereby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

Signature

Printed Name

STATE OF INDIANA

)

)SS:

COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and acknowledged the execution of the foregoing this \_\_\_\_ day of \_\_\_\_\_, 2020.

Notary Public's Signature \_\_\_\_\_ My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public

\_\_\_\_\_  
County of Residence:

**EXHIBIT B**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**NON-COLLUSION AFFIDAVIT**

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

**OATH AND AFFIRMATION**

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**DEEM LLC**

By: \_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and acknowledged the execution of the foregoing this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_ My Commission Expires: \_\_\_\_\_  
Notary Public's Signature

\_\_\_\_\_ County of Residence: \_\_\_\_\_  
Printed Name of Notary Public

**AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT  
AND  
STEVE'S WELDING**

This Agreement, entered into on this \_\_\_\_ day of \_\_\_\_, 20 \_\_\_\_, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Steve's Welding ("Consultant"),

**Article 1. Scope of Services** Consultant shall provide the Services: Consultant will perform welding repairs at City park properties and facilities ("Services") at an hourly rate of Sixty Five Dollars (\$65.00), with a minimum of one (1) hour charge plus materials. Consultant shall provide the Services for a set price per hour Monday-Friday 7:00am to 6:00pm and all other times for an afterhours rate of Ninety Six Dollars (\$96.00), with a minimum of one (1) hour charge plus materials. Parks Department would give Consultant at least two (2) working days' notice on repair. Consultant shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Consultant shall complete the Services required under this Agreement on or before Monday, December 31, 2021, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related and desirable, including primary coordination with Hsiung Marler for Frank Southern Ice Arena, Switchyard Park, or Twin Lakes Sports Park; Aaron Craig for Lower Cascades Golf Course; Dee Tuttle for Bryan Park Pool, Mills Pool, Winslow Sports Park, or Olcott Park; Daren Eads for Twin Lakes Recreation Center as the Department's Project Manager. Consultant agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Consultant for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department. Upon agreement with both parties this agreement may be extended for one year.

**Article 2. Standard of Care** Consultant shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The Department shall be the sole judge of the adequacy of Consultant's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Consultant's performance. Upon notice to Consultant and by mutual agreement between the parties, Consultant will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department** The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as necessary for the orderly progress of the work, and Consultant shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

**Article 4. Compensation** The Department shall pay Contractor for all fees and expenses in an amount not to exceed Five Thousand Dollars and zero cents \$5,000.00. Consultant shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: City of Bloomington, ATTN: Hsiung Marler for Frank Southern Ice Arena, Switchyard Park, or Twin Lakes Sports Park; Aaron Craig for Lower Cascades Golf Course; Dee Tuttle for Bryan Park Pool, Mills Pool, Winslow Sports Park, or Olcott Park; Daren Eads for Twin Lakes Recreation Center; 401 N. Morton, Bloomington, Suite 250, IN 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Consultant within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

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

**Article 6. Schedule** Consultant shall perform the Services as needed.

The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

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

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

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

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

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

**Article 12. Insurance** During the performance of any and all Services under this Agreement, Consultant shall maintain the following insurance in full force and effect: a) General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; b) Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident; c) Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code; and d) Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$2,000,000 annual aggregate. All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the Department, and the officers, employees

and agents of each shall be named as insureds under the General Liability, Automobile, and Worker's Compensation policies, and such policies shall stipulate that the insurance will operate as primary insurance and that no other insurance of the City's will be called upon to contribute to a loss hereunder. Consultant shall provide evidence of each insurance policy to the Department prior to the commencement of work under this Agreement.

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

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

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

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

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

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

**Article 19. Non-Discrimination** Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment. Contractor understands that the City of Bloomington prohibits its employees from engaging in harassing or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

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

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

**Article 22. Notices** Any notice required by this Agreement shall be made in writing to the individuals/addresses specified below: Department: City of Bloomington, ATTN: Hsiung Marler for Frank Southern Ice Arena, Switchyard Park, or Twin Lakes Sports Park; Aaron Craig for Lower Cascades Golf Course; Dee Tuttle for Bryan Park Pool, Mills Pool, Winslow Sports Park, or Olcott Park; Daren Eadsfor Twin Lakes Recreation Center; 401 N. Morton, Bloomington, Suite 250, IN 47404. Consultant: Steve's Welding 5239, 2507 W 3rd St, Bloomington, IN 47402.

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

**Article 23. Integration and Modification** This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Consultant. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 24. Non-Collusion** Consultant is required to certify that it has not, nor has any other member, representative, or agent of Consultant, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Consultant shall sign an affidavit, attached hereto as Exhibit B, affirming that Consultant has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

**CITY OF BLOOMINGTON**

\_\_\_\_\_  
Philippa M. Guthrie, Corporation Counsel

**STEVE'S WELDING**

\_\_\_\_\_  
Name of Signatory, Title

**CITY OF BLOOMINGTON PARKS AND RECREATION**

\_\_\_\_\_  
Paula McDevitt, Director

\_\_\_\_\_  
Kathleen Mills, President, Board of Park Commissioners

STATE OF INDIANA )  
 )SS:  
COUNTY OF \_\_\_\_\_)

1. The undersigned is the \_\_\_\_\_ of \_\_\_\_\_.  
(job title) (company name)
2. The company named herein that employs the undersigned:
  - i. has contracted with or seeking to contract with the City of Bloomington to provide services; **OR**
  - ii. is a subcontractor on a contract to provide services to the City of Bloomington.
3. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein does not knowingly employ an "unauthorized alien," as defined at 8 United States Code 1324a(h)(3).
4. The undersigned hereby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

\_\_\_\_\_  
Printed Name of Notary Public

County of Residence: \_\_\_\_\_

**EXHIBIT B**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**NON-COLLUSION AFFIDAVIT**

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

**OATH AND AFFIRMATION**

I affirm under the penalties of perjury that the foregoing facts and information are true and correct to the best of my knowledge and belief.  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

[Name of Consultant]

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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public's Signature      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public      County of Residence: \_\_\_\_\_



**AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT  
AND  
YOUNG PLUMBING & MECHANICAL, INC**

This Agreement, entered into on this \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Young Plumbing & Mechanical, Inc. ("Contractor").

**Article 1. Scope of Services** Contractor shall provide heating and air conditioning service and repair ("Services"). Contractor shall diligently provide the Services under this Agreement at an hourly rate of ninety five dollars (\$95.00) per hour for one person or one hundred sixty dollars (\$160.00) for a two-person job plus materials Monday-Friday 8am-4:30pm and all other times for an after hour rate of one hundred forty two dollars and fifty cents (\$142.50) one-person and two hundred forty dollars (\$240.00) for a two-person job plus materials; plus a five dollar (\$5) truck charge. Contractor shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Contractor shall complete the Services required under this Agreement on or before December 31, 2021, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services. In the performance of Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Hsiung Marler as the Department's Project Manager. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department.

**Article 2. Standard of Care** Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The Department shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department** The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as necessary for the orderly progress of the work, and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

**Article 4. Compensation** The Department shall pay Contractor for all fees and expenses in an amount not to exceed Five Thousand Dollars and zero cents \$5,000.00. Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: City of Bloomington, ATTN: Hsiung Marler, 401 N. Morton, Suite 250, Bloomington, Indiana 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

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

**Article 6. Schedule** Contractor shall perform the Services according to the following schedule:

Prior to December 31, 2021

The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

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

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

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

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

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

**Article 12. Insurance** During the performance of any and all Services under this Agreement, Contractor shall maintain the following insurance in full force and effect: a) General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; b) Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident; c) Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code; and d) Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$1,000,000 annual aggregate. All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the Department, and the officers, employees and agents of each shall be named as insureds under the General Liability, Automobile, and Worker's Compensation policies, and such policies shall

stipulate that the insurance will operate as primary insurance and that no other insurance of the City's will be called upon to contribute to a loss hereunder. Contractor shall provide evidence of each insurance policy to the Department prior to the commencement of work under this Agreement.

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

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

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

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

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

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

**Article 19. Non-Discrimination** Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment. Contractor understands that the City of Bloomington prohibits its employees from engaging in harassing or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

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

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

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

Department: City of Bloomington, Attn: Hsiung Marler, 401 N. Morton, Suite 250, Bloomington, IN 47402.

Contractor: Keller Heating & Air Conditioning Inc., 318 North Rogers Street, Bloomington, IN 47404.

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

**Article 23. Integration and Modification** This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 24. Non-Collusion** Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Contractor shall sign an affidavit, attached hereto as Exhibit B, affirming that Contractor has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

#### **CITY OF BLOOMINGTON**

#### **YOUNG PLUMBING & MECHANICAL, INC.**

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Philippa M. Guthrie, Corporation Counsel

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Name of Signatory, Title

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

---

Paula McDevitt, Director  
Parks and Recreation Department

---

Kathleen Mills, President  
Board of Park Commissioners

**EXHIBIT A**  
**E-VERIFY AFFIDAVIT**

STATE OF INDIANA )  
 )SS:  
COUNTY OF \_\_\_\_\_)

# AFFIDAVIT

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

1. The undersigned is the \_\_\_\_\_ of \_\_\_\_\_.  
(job title) (company name)
2. The company named herein that employs the undersigned:
  - i. has contracted with or seeking to contract with the City of Bloomington to provide services; **OR**
  - ii. is a subcontractor on a contract to provide services to the City of Bloomington.
3. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein does not knowingly employ an "unauthorized alien," as defined at 8 United States Code 1324a(h)(3).
4. The undersigned hereby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

Signature

Printed Name

STATE OF INDIANA )  
 )SS:  
COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and acknowledged the execution of the foregoing this \_\_\_\_ day of \_\_\_\_\_, 2020.

Notary Public's Signature \_\_\_\_\_ My Commission Expires: \_\_\_\_\_

Printed Name of Notary Public \_\_\_\_\_ County of Residence: \_\_\_\_\_

**EXHIBIT B**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**NON-COLLUSION AFFIDAVIT**

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

**OATH AND AFFIRMATION**

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Young Plumbing & Mechanical, 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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public's Signature      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public      County of Residence: \_\_\_\_\_

**AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT  
AND  
PRICE ELECTRIC**

This Agreement, entered into on this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Price Electric ("Contractor").

**Article 1. Scope of Services** Contractor shall provide the Services: repair, adjust, and/or replace lighting and electrical components at City park properties and facilities ("Services") at an hourly rate of Sixty Four Dollars (\$64.00), with a minimum of one (1) hour charge plus materials. Contractor shall provide the Services for a set price per hour Monday-Friday 7:00am to 6:00pm and all other times for an after hour's hourly rate of Ninety Six Dollars (\$96.00) with a minimum of one (1) hour charge plus materials. Contractor may charge a Twenty-Five Dollar (\$25.00) trip fee. Repairs requiring more immediate action, (emergencies) may be billed at an emergency hourly rate of Ninety Six Dollars (\$96.00) with a minimum of one (1) hour charge plus materials. Contractor shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent the Standard of Care identified in Article 2. Contractor shall complete the Services required under this Agreement on or before December 31, 2021, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related and desirable, including primary coordination with Hsiung Marler and/or Dee Tuttle and/or Daren Eads and/or Aaron Craig as the Department's Project Manager. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department. Upon agreement with both parties this agreement may be extended for one year.

**Article 2. Standard of Care** Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The Department shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department** The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as necessary for the orderly progress of the work, and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

**Article 4. Compensation** The Department shall pay Contractor for all fees and expenses in an amount not to exceed Ten Thousand Dollars and zero cents (\$10,000.00). Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: Dee Tuttle, City of Bloomington, 401 N. Morton, Suite 250, Bloomington, Indiana 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

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

**Article 6. Schedule** Contractor shall perform the Services according to the following schedule:

As mutually agreed upon prior to December 31, 2021.

The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

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

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

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

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

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

**Article 12. Insurance** During the performance of any and all Services under this Agreement, Contractor shall maintain the following insurance in full force and effect: a) General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; b) Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident; c) Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code; and d) Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$1,000,000 annual aggregate. All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the Department, and the officers, employees and agents of each shall be named as insureds under the General Liability, Automobile, and Worker's Compensation policies, and such policies shall

stipulate that the insurance will operate as primary insurance and that no other insurance of the City's will be called upon to contribute to a loss hereunder. Contractor shall provide evidence of each insurance policy to the Department prior to the commencement of work under this Agreement.

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

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

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

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

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

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

**Article 19. Non-Discrimination** Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment. Contractor understands that the City of Bloomington prohibits its employees from engaging in harassing or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

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

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

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

**Department:** City of Bloomington, Attn: Dee Tuttle, 401 N. Morton, Bloomington, IN 47402. **Contractor:** Price Electric Inc., 724 E. Thorton Drive, Bloomington, IN 47401. Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and Contractor.

**Article 23. Integration and Modification** This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 24. Non-Collusion** Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Contractor shall sign an affidavit, attached hereto as Exhibit B, affirming that Contractor has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

**CITY OF BLOOMINGTON**

\_\_\_\_\_  
Philippa M. Guthrie, Corporation Counsel

**Price Electric Inc.**

\_\_\_\_\_  
Name of Signatory, Title

**CITY OF BLOOMINGTON PARKS AND RECREATION**

\_\_\_\_\_  
Paula McDevitt, Director  
Parks and Recreation Department

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kathleen Mills, President  
Board of Park Commissioners

**EXHIBIT A**  
**E-VERIFY AFFIDAVIT**

STATE OF INDIANA            )  
  )SS:  
COUNTY OF \_\_\_\_\_)

**AFFIDAVIT**

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

1. The undersigned is the \_\_\_\_\_ of \_\_\_\_\_.  
(job title) (company name)
2. The company named herein that employs the undersigned:
  - i. has contracted with or seeking to contract with the City of Bloomington to provide services; **OR**
  - ii. is a subcontractor on a contract to provide services to the City of Bloomington.
3. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein does not knowingly employ an "unauthorized alien," as defined at 8 United States Code 1324a(h)(3).
4. The undersigned hereby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

STATE OF INDIANA            )  
  )SS:  
COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and acknowledged the execution of the foregoing this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public's Signature                      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public                      County of Residence: \_\_\_\_\_

**EXHIBIT B**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**NON-COLLUSION AFFIDAVIT**

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

**OATH AND AFFIRMATION**

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Price Electric**

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 \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public's Signature      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public      County of Residence: \_\_\_\_\_



# AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT AND CITY GLASS OF BLOOMINGTON, INC

This Agreement, entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and City Glass of Bloomington, Inc ("Contractor"),

**Article 1. Scope of Services** Contractor will repair, adjust, and/or replace windows, glass and doors at City park properties and facilities (Services) at an hourly rate of Seventy Five Dollars (\$75.00) for the first (1) hour and Sixty Five Dollars (\$65.00) for each additional hour, with a minimum of one (1) hour charge, plus materials. Contractor shall provide the Services for a set price per hour Monday –Friday 8:30am to 5:00pm and all other times for an afterhours hourly rate of Ninety Seven Dollars and Fifty Cents (\$97.50) with a minimum of one (1) hour charge, plus materials. Parks Department would give Contractor at least two (2) working days' notice on repair. Repairs requiring more immediate action, (emergencies), may be billed at an emergency hourly rate of Ninety Seven Dollars and Fifty Cents (\$97.50) with a minimum of one (1) hour charge, plus materials. Contractor shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Contractor shall complete the Services required under this Agreement on or before December 31, 2021, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services. In the performance of Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Daren Eads for TLRC; Don Foddrill for Pools; Hsiung Marler and/or Chris Lamb for Twin Lakes Sports Park and Frank Southern Center, Aaron Craig for Golf Course as the Department's Project Manager. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department. Upon agreement with both parties this agreement may be extended for one year.

**Article 2. Standard of Care** Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The Department shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department** The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as necessary for the orderly progress of the work, and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

**Article 4. Compensation** The Department shall pay Contractor for all fees and expenses in an amount not to exceed Four Thousand Dollars (\$4,000.00). Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: Daren Eads for TLRC; Scott Pedersen and/or Chris Lamb for Twin Lakes Sports Park; Dee Tuttle Frank Southern Ice Arena, Winslow Sports Complex and Pools; Aaron Craig for Golf Course City of Bloomington, 401 N. Morton, Suite 250, Bloomington, Indiana 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

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

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

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

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

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

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

**Article 11. Indemnification** Contractor shall defend, indemnify, and hold harmless the City of Bloomington, the Department, and the officers, agents and employees of the City and the Department from any and all claims, demands, damages, costs, expenses or other liability arising out of the Agreement or occasioned by the reckless or negligent performance of any provision thereof, including, but not limited to, any reckless or

negligent act or failure to act or any misconduct on the part of the Contractor or its agents or employees, or any independent contractors directly responsible to it (collectively "Claims").

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

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

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

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

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

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

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

**Article 19. Non-Discrimination** Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment. Contractor understands that the City of Bloomington prohibits its employees from engaging in harassing or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

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

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

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

**Department:** City of Bloomington, Attn: Daren Eads for TLRC; Aaron Craig for Cascades Golf Course; Scott Pedersen for Twin Lakes Sports Park; and Dee Tuttle for Winslow Sports, Complex, Frank Southern Ice Arena and Pools, 401 N. Morton, Bloomington, IN 47402. **Consultant:** City Glass, 719 West 17<sup>th</sup> St., Bloomington, IN 47404. Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and Contractor

**Article 23. Integration and Modification** This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 24. Non-Collusion** Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Consultant shall sign an affidavit, attached hereto as Exhibit B, affirming that Contractor has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

**CITY OF BLOOMINGTON**

\_\_\_\_\_  
Philippa M. Guthrie, Corporation Counsel

**CITY GLASS OF BLOOMINGTON, INC**

\_\_\_\_\_  
Name of Signatory, Title

**CITY OF BLOOMINGTON PARKS AND RECREATION**

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Paula McDevitt, Director

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Kathleen Mills, President, Board of Park Commissioners

STATE OF INDIANA )  
 )SS:  
COUNTY OF \_\_\_\_\_)

**EXHIBIT B**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**NON-COLLUSION AFFIDAVIT**

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

**OATH AND AFFIRMATION**

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**CITY GLASS OF BLOOMINGTON, 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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public's Signature      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public      County of Residence: \_\_\_\_\_

# AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT AND COMMERCIAL SERVICE, INC

This Agreement, entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Commercial Service, Inc ("Contractor"),

**Article 1. Scope of Services** Contractor will repair, adjust, and/or replace heating, ventilation, cooling components and plumbing at City park properties and facilities (Services) at an hourly rate of Eighty Eight Dollars (\$88.00), with a minimum of one (1) hour charge, plus materials. Contractor shall provide the Services for a set price per hour Monday –Friday 7:00am to 5:00pm and for an afterhours hourly rate between 5:00pm to 11:59pm of One Hundred Thirty Two (\$132.00) with a minimum of one (1) hour charge, plus materials. Parks Department would give Contractor at least two (2) working days' notice on repair. Repairs requiring more immediate action, emergencies, calls between 12:00am to 6:59am and holidays, may be billed at an emergency hourly rate of One Hundred Seventy Six (\$176.00) with a minimum of one (1) hour charge, plus materials. Contractor shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Contractor shall complete the Services required under this Agreement on or before December 31, 2021, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services. In the performance of Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Daren Eads for TLRC; Dee Tuttle for Pools, Frank Southern Ice Arena and Winslow Sports Complex; Scott Pedersen and/or Chris Lamb for Twin Lakes Sports Park; Hsiung Marler for Switchyard Park; and Aaron Craig for Golf Course as the Department's Project Manager. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department. Upon agreement with both parties this agreement may be extended for one year.

**Article 2. Standard of Care** Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The Department shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department** The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as necessary for the orderly progress of the work, and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

**Article 4. Compensation** The Department shall pay Contractor for all fees and expenses in an amount not to exceed Four Thousand Dollars (\$4,000.00). Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: Daren Eads for TLRC; Scott Pedersen and/or Chris Lamb for Twin Lakes Sports Park; Dee Tuttle Frank Southern Ice Arena, Winslow Sports Complex and Pools; Aaron Craig for Golf Course City of Bloomington, 401 N. Morton, Suite 250, Bloomington, Indiana 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

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

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

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

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

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

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

**Article 11. Indemnification** Contractor shall defend, indemnify, and hold harmless the City of Bloomington, the Department, and the officers, agents and employees of the City and the Department from any and all claims, demands, damages, costs, expenses or other liability arising out of the Agreement or occasioned by the reckless or negligent performance of any provision thereof, including, but not limited to, any reckless or

negligent act or failure to act or any misconduct on the part of the Contractor or its agents or employees, or any independent contractors directly responsible to it (collectively "Claims").

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

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

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

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

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

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

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

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

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

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

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

**Department:** City of Bloomington, Attn: Daren Eads for TLRC; Aaron Craig for Cascades Golf Course; Scott Pedersen for Twin Lakes Sports Park; Hsiung Marler for Switchyard Park; and Dee Tuttle for Winslow Sports, Complex, Frank Southern Ice Arena and Pools, 401 N. Morton, Bloomington, IN 47402. **Consultant:** City Glass, 719 West 17<sup>th</sup> St., Bloomington, IN 47404. Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and Contractor

**Article 23. Integration and Modification** This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 24. Non-Collusion** Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Consultant shall sign an affidavit, attached hereto as Exhibit B, affirming that Contractor has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

#### CITY OF BLOOMINGTON

\_\_\_\_\_  
Philippa M. Guthrie, Corporation Counsel

#### CITY OF BLOOMINGTON PARKS AND RECREATION

\_\_\_\_\_  
Paula McDevitt, Director

\_\_\_\_\_  
Kathleen Mills, President, Board of Park Commissioners

#### COMMERCIAL SERVICE, INC

\_\_\_\_\_  
Name of Signatory, Title

STATE OF INDIANA )  
 )SS:  
COUNTY OF \_\_\_\_\_)



**EXHIBIT B**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**NON-COLLUSION AFFIDAVIT**

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

**OATH AND AFFIRMATION**

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**COMMERCIAL SERVICE, 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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public's Signature      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public      County of Residence: \_\_\_\_\_

# AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT AND CITY OF BLOOMINGTON, INC

This Agreement, entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Gooldy & Sons, INC, ("Contractor"),

**Article 1. Scope of Services** Contractor will repair, adjust, and/or replace windows, glass and doors at City park properties and facilities (Services) at an hourly rate of Eighty Dollars (\$80.00), plus materials. Contractor shall provide the Services for a set price per hour Monday –Friday 7:00am to 6:00pm and all other times for an afterhours hourly rate of One Hundred Twenty Dollars (\$120.00), plus materials. Parks Department would give Contractor at least two (2) working days' notice on repair. Repairs requiring more immediate action, (emergencies), may be billed at an emergency hourly rate of One Hundred Twenty Dollars (\$120.00), plus materials.

Contractor shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Contractor shall complete the Services required under this Agreement on or before December 31, 2021, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services. In the performance of Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Daren Eads for TLRC; Scott Pedersen and/or Chris Lamb for Twin Lakes Sports Park; Dee Tuttle for Winslow Sports Complex, Frank Southern Ice Arena and Pools; and Aaron Craig for Golf Course as the Department's Project Manager. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department. Upon agreement with both parties this agreement may be extended for one year.

**Article 2. Standard of Care** Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The Department shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department** The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as necessary for the orderly progress of the work, and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

**Article 4. Compensation** The Department shall pay Contractor for all fees and expenses in an amount not to exceed Four Thousand Dollars (\$4,000.00). Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: Daren Eads for TLRC; Scott Pedersen and/or Chris Lamb for Twin Lakes Sports Park; Dee Tuttle Frank Southern Ice Arena, Winslow Sports Complex and Pools; Aaron Craig for Golf Course City of Bloomington, 401 N. Morton, Suite 250, Bloomington, Indiana 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

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

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

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

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

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

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

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

**Article 12. Insurance** During the performance of any and all Services under this Agreement, Contractor shall maintain the following insurance in full force and effect: a) General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; b) Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident; c) Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code; and d) Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$2,000,000 annual aggregate. All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the Department, and the officers,

employees and agents of each shall be named as insureds under the General Liability, Automobile, and Worker's Compensation policies, and such policies shall stipulate that the insurance will operate as primary insurance and that no other insurance of the City's will be called upon to contribute to a loss hereunder. Contractor shall provide evidence of each insurance policy to the Department prior to the commencement of work under this Agreement.

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

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

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

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

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

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

**Article 19. Non-Discrimination** Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment. Contractor understands that the City of Bloomington prohibits its employees from engaging in harassing or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

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

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

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

**Department:** City of Bloomington, **Attn: Daren Eads for TLRC; Aaron Craig for Cascades Golf Course; Scott Pedersen for Twin Lakes Sports Park; and Dee Tuttle for Winslow Sports, Complex, Frank Southern Ice Arena and Pools, 401 N. Morton, Bloomington, IN 47402.** **Consultant: City Glass, 719 West 17<sup>th</sup> St., Bloomington, IN 47404.** Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and Contractor

**Article 23. Integration and Modification** This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 24. Non-Collusion** Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Consultant shall sign an affidavit, attached hereto as Exhibit B, affirming that Contractor has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

**CITY OF BLOOMINGTON**

**GOOLDY & SONS, INC**

\_\_\_\_\_  
Philippa M. Guthrie, Corporation Counsel

\_\_\_\_\_  
Name of Signatory, Title

**CITY OF BLOOMINGTON PARKS AND RECREATION**

\_\_\_\_\_  
Paula McDevitt, Director

\_\_\_\_\_  
Kathleen Mills, President, Board of Park Commissioners

[illegible]

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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public's Signature

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public

County of Residence: \_\_\_\_\_

**EXHIBIT B**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**NON-COLLUSION AFFIDAVIT**

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

**OATH AND AFFIRMATION**

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**GOOLDY & SONS, 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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public's Signature      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public      County of Residence: \_\_\_\_\_

# AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT AND ORACLE ELEVATOR

This Agreement, entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Oracle Elevator ("Contractor"),

**Article 1. Scope of Services** Contractor will service and adjust elevators at City park facilities (Services) four (4) times per year at Eight Hundred Twenty Four Dollars and Thirty One Cents (\$824.31) annually at the Twin Lakes Recreation Center and One Thousand One Hundred and Sixty Six Dollars and Twelve Cents (\$1,166.12) Banneker Community Center; and for repairs at an hourly rate of Two Hundred and Ninety-Five Dollars (\$295.00) plus materials for One (1) Tech; hourly rate of Four Hundred and Twenty-Five Dollars (\$425.00) for a Team. Consultant shall provide the Services for a set price per hour Monday –Friday 7:30am to 4:00pm and all other times for an afterhours hourly rate of Four Hundred and Forty-Two Dollars (\$442.00) for One (1) Tech; afterhours hourly rate of Six Hundred and Thirty-Seven and Fifty Cents (\$637.50) for Team, plus supplies and mileage.

Parks Department would give Contractor at least two (2) working days' notice on repair. Mileage is billed at Sixty-Five Cents (\$.65) per mile. Contractor shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Contractor shall complete the Services required under this Agreement on or before December 31, 2021, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services. In the performance of Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with the following individuals as the Department's Project Manager:

Daren Eads for TLRC and Erik Pearson for Banneker Community Center.

Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department. Upon agreement with both parties this agreement may be extended for one year.

**Article 2. Standard of Care** Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The Department shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department** The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as necessary for the orderly progress of the work, and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

**Article 4. Compensation** The Department shall pay Consultant for all fees and expenses in an amount not to exceed Four Thousand Dollars (\$4,000). Consultant shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: Daren Eads for TLRC; Erik Pearson for Banneker Community Center, City of Bloomington, 401 N. Morton, Suite 250, Bloomington, Indiana 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Consultant within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

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

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

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

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

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

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

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

**Article 12. Insurance** During the performance of any and all Services under this Agreement, Contractor shall maintain the following insurance in full force and effect: a) General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; b) Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident; c) Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code; and d) Professional

Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$2,000,000 annual aggregate. All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the Department, and the officers, employees and agents of each shall be named as insureds under the General Liability, Automobile, and Worker's Compensation policies, and such policies shall stipulate that the insurance will operate as primary insurance and that no other insurance of the City's will be called upon to contribute to a loss hereunder. Contractor shall provide evidence of each insurance policy to the Department prior to the commencement of work under this Agreement.

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

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

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

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

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

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

**Article 19. Non-Discrimination** Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment. Contractor understands that the City of Bloomington prohibits its employees from engaging in harassing or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

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

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

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

**Department:** City of Bloomington, Attn: Daren Eads – TLRC, Erik Pearson – Banneker Community Center, 401 N. Morton, Bloomington, IN 47402. **Contractor:** Oracle Elevator, 5534 West Raymond Street, Indianapolis, IN 46421 Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and Contractor.

**Article 23. Integration and Modification** This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 24. Non-Collusion** Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Consultant shall sign an affidavit, attached hereto as Exhibit B, affirming that Contractor has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

#### **CITY OF BLOOMINGTON**

\_\_\_\_\_  
Philippa M. Guthrie, Corporation Counsel

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

\_\_\_\_\_  
Paula McDevitt, Director

\_\_\_\_\_  
Kathleen Mills, President, Board of Park Commissioners

#### **ORACLE ELEVATOR**

\_\_\_\_\_  
Name of Signatory, Title

STATE OF INDIANA )  
 )SS:  
COUNTY OF \_\_\_\_\_)



**EXHIBIT B**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**NON-COLLUSION AFFIDAVIT**

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

**OATH AND AFFIRMATION**

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**ORACLE ELEVATOR**

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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public's Signature      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public      County of Residence: \_\_\_\_\_

**AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT  
AND  
KOORSEN ENVIRONMENTAL SERVICES**

This Agreement, entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Koorsen Environmental Services ("Contractor").

**Article 1. Scope of Services** Contractor shall provide inspection and clean exhaust hood components at City park properties ("Services"). Contractor shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Contractor shall complete the Services required under this Agreement on or before December 31, 2021, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services. In the performance of Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Daren Eads as the Department's Project Manager. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department.

**Article 2. Standard of Care** Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The Department shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department** The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as necessary for the orderly progress of the work, and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

**Article 4. Compensation** The Department shall pay Contractor for all fees and expenses in an amount not to exceed Four Thousand Dollars (\$4,000.00). Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: Attn: Daren Eads - TLRC, City of Bloomington, 401 N. Morton, Suite 250, Bloomington, Indiana 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

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

**Article 6. Schedule** Contractor shall perform the Services according to the following schedule:

Consultant shall perform the Services on a mutually agreed upon scheduled date and time. The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

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

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

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

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

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

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

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

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

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

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

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

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

**Article 19. Non-Discrimination** Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment. Contractor understands that the City of Bloomington prohibits its employees from engaging in harassing or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

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

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

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

**Department:** City of Bloomington, Attn: Daren Eads, 401 N. Morton, Bloomington, IN 47402. **Contractor:** Koorsen Environmental Services, 2719 N. Arlington Ave., Indianapolis, Indiana 46218. Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and Contractor.

**Article 23. Integration and Modification** This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 24. Non-Collusion** Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Contractor shall sign an affidavit, attached hereto as Exhibit B, affirming that Contractor has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

#### **CITY OF BLOOMINGTON**

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Philippa M. Guthrie, Corporation Counsel

#### **KOORSEN ENVIRONMENTAL SERVICES**

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Scott Deckard, Sales Representative

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

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Paula McDevitt, Director  
Parks and Recreation Department

---

Kathleen Mills, President  
Board of Park Commissioners

**EXHIBIT A**  
**E-VERIFY AFFIDAVIT**

STATE OF INDIANA            )  
  )SS:  
COUNTY OF \_\_\_\_\_)

**AFFIDAVIT**

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

1. The undersigned is the \_\_\_\_\_ of \_\_\_\_\_.  
(job title) (company name)
2. The company named herein that employs the undersigned:
  - i. has contracted with or seeking to contract with the City of Bloomington to provide services; **OR**
  - ii. is a subcontractor on a contract to provide services to the City of Bloomington.
3. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein does not knowingly employ an "unauthorized alien," as defined at 8 United States Code 1324a(h)(3).
4. The undersigned hereby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

STATE OF INDIANA            )  
  )SS:  
COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and acknowledged the execution of the foregoing this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public's Signature                      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public                      County of Residence: \_\_\_\_\_

**EXHIBIT B**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**NON-COLLUSION AFFIDAVIT**

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

**OATH AND AFFIRMATION**

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Koorsen Environmental Services**

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 \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public's Signature      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public      County of Residence: \_\_\_\_\_

# AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT AND KOORSEN FIRE AND PROTECTION

This Agreement, entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Koorsen Fire and Protection ("Contractor"),

**Article 1. Scope of Services** Contractor will install, repair, service and monitor fire and security alarms, and fire suppression services and components at City park properties and facilities (Services) at an hourly rate of Eighty Five Dollars (\$85.00) plus materials. Contractor shall provide the Services for a set price per hour Monday –Friday 7:00am to 6:00pm and all other times for an afterhours hourly rate of One Hundred and Fifty Six Dollars (\$156.00) plus supplies.

Parks Department would give Consultant at least two (2) working days' notice on repair. Repairs requiring more immediate action (emergencies), may be billed at an emergency hourly rate of One Hundred and Fifty Six Dollars (\$156) plus supplies.

Contractor shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Contractor shall complete the Services required under this Agreement on or before December 31, 2021, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services. In the performance of Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with the following individuals as the Department's Project Manager:

Daren Eads for TLRC. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department. Upon agreement with both parties this agreement may be extended for one year.

**Article 2. Standard of Care** Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The Department shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department** The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as necessary for the orderly progress of the work, and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

**Article 4. Compensation** The Department shall pay Contractor for all fees and expenses in an amount not to exceed Four Thousand Dollars (\$4,000.00). Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: Daren Eads for TLRC City of Bloomington Parks and Recreation 401 N. Morton, Suite 250, Bloomington, Indiana 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

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

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

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

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

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

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

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

**Article 12. Insurance** During the performance of any and all Services under this Agreement, Contractor shall maintain the following insurance in full force and effect: a) General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; b) Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident; c) Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code; and d) Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$2,000,000 annual aggregate. All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the Department, and the officers, employees and agents of each shall be named as insureds under the General Liability, Automobile, and Worker's Compensation policies, and such

policies shall stipulate that the insurance will operate as primary insurance and that no other insurance of the City's will be called upon to contribute to a loss hereunder. Contractor shall provide evidence of each insurance policy to the Department prior to the commencement of work under this Agreement.

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

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

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

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

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

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

**Article 19. Non-Discrimination** Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment. Contractor understands that the City of Bloomington prohibits its employees from engaging in harassing or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

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

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

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

**Department:** City of Bloomington, Attn: Daren Eads for TLRC; Aaron Craig for Cascades Golf Course; Scott Pedersen for Twin Lakes Sports Park; and Dee Tuttle for Winslow Sports, Complex, Frank Southern Ice Arena and Pools, 401 N. Morton, Bloomington, IN 47402. **Consultant:** City Glass, 719 West 17<sup>th</sup> St., Bloomington, IN 47404. Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and Contractor

**Article 23. Integration and Modification** This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 24. Non-Collusion** Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Consultant shall sign an affidavit, attached hereto as Exhibit B, affirming that Contractor has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

#### **CITY OF BLOOMINGTON**

\_\_\_\_\_  
Philippa M. Guthrie, Corporation Counsel

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

\_\_\_\_\_  
Paula McDevitt, Director

\_\_\_\_\_  
Kathleen Mills, President, Board of Park Commissioners

#### **KOORSEN FIRE AND PROTECTION**

\_\_\_\_\_  
Name of Signatory, Title

STATE OF INDIANA )  
 )SS:  
COUNTY OF \_\_\_\_\_)

Printed Name of Notary Public \_\_\_\_\_ County of Residence: \_\_\_\_\_



**EXHIBIT B**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**NON-COLLUSION AFFIDAVIT**

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

**OATH AND AFFIRMATION**

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**KOORSEN FIRE AND PROTECTION**

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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public's Signature      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public      County of Residence: \_\_\_\_\_

# AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT AND PLYMATE INC.

This Agreement, entered into on this \_\_\_\_\_ day of December, 2020, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Plymate Inc. ("Contractor").

**Article 1. Scope of Services** Contractor shall provide the cleaning of floor mats at Frank Southern Ice Arena (FSC), Switchyard Park (SYP) and Twin Lakes Recreation Center (TLRC) ("Services"). Contractor shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Contractor shall complete the Services required under this Agreement on or before December 31, 2021 unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services. In the performance of Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Daren Eads, Dee Tuttle and Hsuing Marler as the Department's Project Managers. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department.

**Article 2. Standard of Care** Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The Department shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department** The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as necessary for the orderly progress of the work, and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

**Article 4. Compensation** The Department shall pay Contractor for all fees and expenses in an amount not to exceed Four Thousand One Hundred Dollars (\$4,100). Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: Daren Eads for TLRC and Dee Tuttle for FSC, City of Bloomington, 401 N. Morton, Suite 250, Bloomington, Indiana 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

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

**Article 6. Schedule** Contractor shall perform the Services per the Department needs. The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties. The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

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

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

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

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

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

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

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

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

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

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

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

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

**Article 19. Non-Discrimination** Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment. Contractor understands that the City of Bloomington prohibits its employees from engaging in harassing or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

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

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

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

**Department:** City of Bloomington, Attn: Daren Eads – TLRC; Attn: Dee Tuttle - FSC, Attn: Hsuing Marler - SYP 401 N. Morton, Bloomington, IN 47402. **Contractor:** Plymate Inc. 819 Elston Drive Shelbyville, Indiana 46176. Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and Contractor.

**Article 23. Integration and Modification** This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 24. Non-Collusion** Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Contractor shall sign an affidavit, attached hereto as Exhibit B, affirming that Contractor has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

**CITY OF BLOOMINGTON**

**Plymate Inc.**

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Philippa M. Guthrie, Corporation Counsel

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Michelle Ricketts, Account Executive

**CITY OF BLOOMINGTON PARKS AND RECREATION**

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Paula McDevitt, Director

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Kathleen Mills, President,  
Board of Park Commissioners

**EXHIBIT A**  
**E-VERIFY AFFIDAVIT**

STATE OF INDIANA            )  
  )SS:  
COUNTY OF \_\_\_\_\_)

**AFFIDAVIT**

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

1. The undersigned is the \_\_\_\_\_ of \_\_\_\_\_.  
(job title) (company name)
2. The company named herein that employs the undersigned:
  - i. has contracted with or seeking to contract with the City of Bloomington to provide services; **OR**
  - ii. is a subcontractor on a contract to provide services to the City of Bloomington.
3. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein does not knowingly employ an "unauthorized alien," as defined at 8 United States Code 1324a(h)(3).
4. The undersigned hereby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

STATE OF INDIANA            )  
  )SS:  
COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and acknowledged the execution of the foregoing this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public's Signature                      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public                      County of Residence: \_\_\_\_\_

**EXHIBIT B**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**NON-COLLUSION AFFIDAVIT**

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

**OATH AND AFFIRMATION**

I affirm under the penalties of perjury that the foregoing facts and information are true and correct to the best of my knowledge and belief.  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**Plymate 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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public's Signature      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public      County of Residence: \_\_\_\_\_

# AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT AND PHOTIZO, LLC (dba FISH WINDOW CLEANING)

This Agreement, entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Photizo, LLC, dba Fish Window Cleaning. ("Contractor").

**Article 1. Scope of Services** Contractor shall perform repair and maintenance services at City park properties and facilities at an hourly rate of Forty Five Dollars (\$45.00), plus materials, regardless of day or time. Contractor shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Contractor shall complete the Services required under this Agreement on or before December 31, 2021, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services. In the performance of Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Daren Eads for TLRC; Scott Pedersen for Twin Lakes Sports Park; Aaron Craig for Cascades Golf Course; and Dee Tuttle for Frank Southern Center, Pools and Winslow Sports Complex as the Department's Project Manager. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department. Upon agreement with both parties this agreement may be extended for one year.

**Article 2. Standard of Care** Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The Department shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department** The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as necessary for the orderly progress of the work, and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

**Article 4. Compensation** The Department shall pay Contractor for all fees and expenses in an amount not to exceed Four Thousand Dollars (\$4,000). Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: Daren Eads for TLRC; Scott Pedersen for Twin Lakes Sports Park; Aaron Craig for Cascades Golf Course; and Dee Tuttle for Frank Southern Center, Pools and Winslow Sports Complex City of Bloomington, 401 N. Morton, Suite 250, Bloomington, Indiana 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

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

**Article 6. Schedule** Contractor shall perform the Services as needed.

The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

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

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

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

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

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

**Article 12. Insurance** During the performance of any and all Services under this Agreement, Contractor shall maintain the following insurance in full force and effect: a) General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; b) Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each

accident; c) Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code; and d) Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$2,000,000 annual aggregate. All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the Department, and the officers, employees and agents of each shall be named as insureds under the General Liability, Automobile, and Worker's Compensation policies, and such policies shall stipulate that the insurance will operate as primary insurance and that no other insurance of the City's will be called upon to contribute to a loss hereunder. Contractor shall provide evidence of each insurance policy to the Department prior to the commencement of work under this Agreement.

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

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

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

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

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

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

**Article 19. Non-Discrimination** Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment. Contractor understands that the City of Bloomington prohibits its employees from engaging in harassing or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

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

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

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

**Department:** City of Bloomington, Attn: Daren Eads for TLRC; Scott Pedersen for Twin Lakes Sports Park; Aaron Craig for Cascades Golf Course; and Dee Tuttle for Frank Southern Center, Pools and Winslow Sports Complex, 401 N. Morton, Bloomington, IN 47402.  
**Contractor:** Fish Window Cleaning, PO Box 7885., Bloomington, IN 47407. Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and Contractor.

**Article 23. Integration and Modification** This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 24. Non-Collusion** Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Contractor shall sign an affidavit, attached hereto as Exhibit B, affirming that Contractor has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

**CITY OF BLOOMINGTON**

**Photizo, LLC**

\_\_\_\_\_  
Philippa M. Guthrie, Corporation Counsel

\_\_\_\_\_  
Signature

**CITY OF BLOOMINGTON PARKS AND RECREATION**

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Paula McDevitt, Director

\_\_\_\_\_  
Kathleen Mills, President, Board of Park Commissioners

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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public's Signature

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public

County of Residence: \_\_\_\_\_



**EXHIBIT B**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**NON-COLLUSION AFFIDAVIT**

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

**OATH AND AFFIRMATION**

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**Photizo, LLC**

By: \_\_\_\_\_

\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and acknowledged the execution of the foregoing this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public's Signature      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public      County of Residence: \_\_\_\_\_

# AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT AND SPORT AIDE

This Agreement, entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Sport Aide ("Contractor"),

**Article 1. Scope of Services** Consultant will repair, service, test, and/or disinfect, the indoor turf at City park properties and facilities. Consultant shall provide the Services for a set price of \$1,500 for turf maintenance, \$400 for Disinfectant application, \$400 for GMAX testing and \$25 per lineal foot for repairs.. Parks Department will work Consultant to schedule repairs and/or maintenance around turf schedule and Consultant availability.

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, 2021, 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 the following individual as the Department's Project Manager: Daren Eads for TLRC..

Consultant agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Consultant for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department. Upon agreement with both parties this agreement may be extended for one year.

**Article 2. Standard of Care** Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The Department shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department** The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as necessary for the orderly progress of the work, and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

**Article 4. Compensation** The Department shall pay Consultant for all fees and expenses in an amount not to exceed Four Thousand Dollars (\$4,000). Consultant shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: Daren Eads for TLRC, City of Bloomington, 401 N. Morton, Suite 250, Bloomington, Indiana 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Consultant within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses

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

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

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

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

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

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

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

**Article 12. Insurance** During the performance of any and all Services under this Agreement, Contractor shall maintain the following insurance in full force and effect: a) General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; b) Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident; c) Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code; and d) Professional

Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$2,000,000 annual aggregate. All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the Department, and the officers, employees and agents of each shall be named as insureds under the General Liability, Automobile, and Worker's Compensation policies, and such policies shall stipulate that the insurance will operate as primary insurance and that no other insurance of the City's will be called upon to contribute to a loss hereunder. Contractor shall provide evidence of each insurance policy to the Department prior to the commencement of work under this Agreement.

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

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

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

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

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

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

**Article 19. Non-Discrimination** Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment. Contractor understands that the City of Bloomington prohibits its employees from engaging in harassing or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

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

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

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

**Department:** City of Bloomington, Attn: Daren Eads – TLRC, 401 N. Morton, Bloomington, IN 47402. **Consultant: SPORT AIDE, 14385 Colby Court, Carmel, IN 46032.** Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and Consultant.

**Article 23. Integration and Modification** This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 24. Non-Collusion** Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Consultant shall sign an affidavit, attached hereto as Exhibit B, affirming that Contractor has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

#### **CITY OF BLOOMINGTON**

\_\_\_\_\_  
Philippa M. Guthrie, Corporation Counsel

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

\_\_\_\_\_  
Paula McDevitt, Director

\_\_\_\_\_  
Kathleen Mills, President, Board of Park Commissioners

#### **SPORT AIDE**

\_\_\_\_\_  
Name of Signatory, Title

**14385 Colby Court  
Carmel, Indiana 46032**

STATE OF INDIANA )  
 )SS:  
COUNTY OF \_\_\_\_\_)

**EXHIBIT B**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**NON-COLLUSION AFFIDAVIT**

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

**OATH AND AFFIRMATION**

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**SPORT AIDE**

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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public's Signature      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public      County of Residence: \_\_\_\_\_



## STAFF REPORT

Agenda Item: C-4  
Date: 12/3/2020

Administrator  
Review\Approval  
PM

**TO:** Board of Park Commissioners  
**FROM:** Erik Pearson-Program/Facility Coordinator  
**DATE:** December 17, 2020  
**SUBJECT:** SERVICE AGREEMENT-HARREL FISH, INC.

### Recommendation

Staff recommends approval of a service agreement with Harrel Fish, Inc. to provide HVAC maintenance and repairs at the Banneker Community Center and Alison-Jukebox Building.

Total Dollar Amount of Contract: \$5,000  
200-18-184500-5361-Planned Maintenance-\$975  
200-18-184500-5399-Repairs-\$1,000  
200-18-187500-5361-Planned Maintenance-\$975  
200-18-187500-5231-Supplies-\$1,025  
200-18-187500-5363-Repairs-\$1,025

### Background

Banneker and AJB along with other Department facilities have contracted with Harrel Fish, Inc. for many years which have included significant HVAC repairs at both Banneker and AJB the last two years. This agreement has increased from 2020 to provide extra support should further repairs be needed. This agreement has a renewal clause should both parties agree to extend on a yearly basis for up to three years.

**RESPECTFULLY SUBMITTED,**

Erik Pearson, Program/Facility Coordinator

**AGREEMENT BETWEEN CITY OF BLOOMINGTON PARKS AND RECREATION DEPARTMENT  
AND  
HARRELL-FISH INC.**

This Agreement, entered into on this \_\_\_\_\_ day of December, 2020, by and between the City of Bloomington Department of Parks and Recreation (the "Department"), and Harrell-Fish Inc. ("Contractor").

**Article 1. Scope of Services** Contractor shall repair, adjust and/or replace heating ventilation and cooling components at the Banneker Community Center and Alison-Jukebox Building ("Services") for a set price of Eighty Dollars (\$80) per hour Monday-Friday 7:00 am-6:00 pm and all other times for an afterhours hourly rate of Ninety Five Dollars (\$95) plus an additional cost for parts and materials. Banneker and Alison-Jukebox staff will give contractors at least (2) two working days' notice on repair. Repairs requiring more immediate action (emergencies) may be billed at an emergency hourly rate of Ninety Five Dollars (\$95). Holiday call-out/double-time hourly rate will be One Hundred and Sixteen Dollars (\$116). Types of HVAC components are: blower motors, thermostats, gas valves, filters, and control boards. Consultant shall provide seasonal inspections of equipment and filter changes. Contractor shall complete the Services required under this Agreement on or before December 31<sup>st</sup>, 2021 unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services. In the performance of Contractor's work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Erik Pearson-Banneker Community Center and Amy Shrake-Alison-Jukebox Community Center as the Department's Project Managers. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department.

**Article 2. Standard of Care** Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances ("Standard of Care"). The Department shall be the sole judge of the adequacy of Contractor's work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor's performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department** The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as necessary for the orderly progress of the work, and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

**Article 4. Compensation** The Department shall pay Contractor for all fees and expenses in an amount not to exceed Five Thousand Dollars (\$5,000). Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to: Erik Pearson-Banneker Community Center or Amy Shrake-Alison-Jukebox Community Center, City of Bloomington, 401 N. Morton, Suite 250, Bloomington, Indiana 47404. Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Additional services not set forth in Article 1, or changes in the Services must be authorized in writing by the Department or its designated project coordinator prior to such work being performed, or expenses incurred. The Department shall not make payment for any unauthorized work or expenses.

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

**Article 6. Schedule** Contractor shall perform the Services according to the following schedule:  
Consultant shall perform the services as needed. HFI is required to perform two maintenance checks per year as well as other repairs as needed. The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

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

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

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

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

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

**Article 12. Insurance** During the performance of any and all Services under this Agreement, Contractor shall maintain the following insurance in full force and effect: a) General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; b) Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident; c) Workers' Compensation Insurance in accordance with the statutory requirements of Title 22 of the Indiana Code; and d) Professional Liability Insurance ("Errors and Omissions Insurance") with a minimum limit of \$1,000,000 annual aggregate. All insurance policies shall be issued by an insurance company authorized to issue such insurance in the State of Indiana. The City of Bloomington, the Department, and the officers, employees and agents of each shall be named as insureds under the General Liability, Automobile, and Worker's Compensation policies, and such policies shall

stipulate that the insurance will operate as primary insurance and that no other insurance of the City's will be called upon to contribute to a loss hereunder. Contractor shall provide evidence of each insurance policy to the Department prior to the commencement of work under this Agreement.

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

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

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

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

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

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

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

Contractor understands that the City of Bloomington prohibits its employees from engaging in harassing or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

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

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

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

**Department:** City of Bloomington, Attn: Erik Pearson or Amy Shrake 401 N. Morton, Bloomington, IN 47402. **Contractor: Harrell-Fish Inc..** Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and Contractor.

**Article 23. Integration and Modification** This Agreement, including all Exhibits incorporated by reference, represents the entire and integrated agreement between the Department and the Contractor. It supersedes all prior and contemporaneous communications, representations and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified only by a written amendment signed by both parties hereto.

**Article 24. Non-Collusion** Contractor is required to certify that it has not, nor has any other member, representative, or agent of Contractor, entered into any combination, collusion, or agreement with any person relative to the price to be offered by any person nor prevented any person from making an offer nor induced anyone to refrain from making an offer and that this offer is made without reference to any other offer. Contractor shall sign an affidavit, attached hereto as Exhibit B, affirming that Contractor has not engaged in any collusive conduct. Exhibit B is attached hereto and incorporated by reference as though fully set forth.

#### **CITY OF BLOOMINGTON**

#### **Harrell-Fish Inc.**

\_\_\_\_\_  
Philippa M. Guthrie, Corporation Counsel

\_\_\_\_\_  
Mike Hupp, Vice President

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Paula McDevitt, Director  
Parks and Recreation Department

\_\_\_\_\_  
Kathleen Mills, President  
Board of Park Commissioners



**EXHIBIT A**  
**E-VERIFY AFFIDAVIT**

STATE OF INDIANA            )  
  )SS:  
COUNTY OF \_\_\_\_\_)

**AFFIDAVIT**

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

1. The undersigned is the \_\_\_\_\_ of \_\_\_\_\_.  
(job title) (company name)
2. The company named herein that employs the undersigned:
  - i. has contracted with or seeking to contract with the City of Bloomington to provide services; **OR**
  - ii. is a subcontractor on a contract to provide services to the City of Bloomington.
3. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein does not knowingly employ an "unauthorized alien," as defined at 8 United States Code 1324a(h)(3).
4. The undersigned hereby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

STATE OF INDIANA            )  
  )SS:  
COUNTY OF \_\_\_\_\_)

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and acknowledged the execution of the foregoing this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public's Signature                      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public                      County of Residence: \_\_\_\_\_

**EXHIBIT B**

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**NON-COLLUSION AFFIDAVIT**

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

**OATH AND AFFIRMATION**

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**Harell-Fish Inc.**

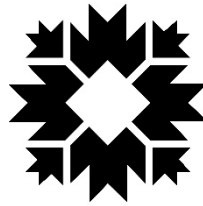
By: \_\_\_\_\_  
\_\_\_\_\_

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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public's Signature      My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Notary Public      County of Residence: \_\_\_\_\_



CITY OF BLOOMINGTON  
Parks and Recreation

## STAFF REPORT

Agenda Item: C-5  
Date: 12/3/2020

Administrator  
Review\Approval  
PM

**TO:** Board of Park Commissioners  
**FROM:** Erin Hatch  
**DATE:** December 17, 2020  
**SUBJECT:** AGREEMENT WITH BLUESTONE TREE LLC. FOR OLCOTT MATURE PIN OAK PRUNING

### Recommendation

Staff recommends approval of the agreement with Bluestone Tree LLC. for pruning of 7 mature Pin Oak trees Street Trees.

Total Project: \$4,485.20

Funding Source: 200-18-189503-53990

### Background

Agreement with Bluestone Tree, LLC. for pruning of 7 mature Pin Oak trees Street Trees along properties in the 2700 block of Olcott Blvd. Pruning will allow for increase pedestrian and vehicular passage, along with improved tree structure. Contract pruning will allow for more comprehensive pruning than can be done in-house and reduce frequency of future pruning.

**RESPECTFULLY SUBMITTED,**

---

Erin Hatch, Urban Forester

**AGREEMENT  
BETWEEN  
CITY OF BLOOMINGTON  
PARKS AND RECREATION DEPARTMENT  
AND  
BLUESTONE TREE, LLC.  
FOR  
OLCOTT MATURE PIN OAK PRUNING**

This Agreement, entered into on this \_\_\_\_ day of December 2020, by and between the City of Bloomington Department of Parks and Recreation (the “Department”), and Bluestone Tree, LLC. (“Contractor”),

**WITNESSETH:**

WHEREAS, the Department wishes to prune various City street trees; and

WHEREAS, the Department requires the services of a professional Contractor in order to perform the tree removals (the “Services” as further defined below); and

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

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

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

**Article 1. Scope of Services**

Contractor shall provide the Services as specified in Exhibit A, “Scope of Work”, attached hereto and incorporated into this Agreement. Contractor shall diligently provide the Services under this Agreement and shall complete the Services described in this Agreement in a timely manner consistent with the Standard of Care identified in Article 2. Contractor shall complete the Services required under this Agreement on or before May 1, 2021, unless the parties mutually agree to a later completion date. Completion shall mean completion of all work related to the Services.

In the performance of Contractor’s work, Contractor agrees to maintain such coordination with the Department as may be requested and desirable, including primary coordination with Erin Hatch, Urban Forester as the Department’s Project Manager. Contractor agrees that any information or documents, including digital GIS information, supplied by the Department pursuant to Article 3, below, shall be used by Contractor for this project only, and shall not be reused or reassigned for any other purpose without the written permission of the Department.

**Article 2. Standard of Care**

Contractor shall be responsible for completion of the Services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances (“Standard of Care”). The Department shall be the sole judge of the adequacy of Contractor’s work in meeting the Standard of Care; however, the Department shall not unreasonably withhold its approval as to the adequacy of Contractor’s performance. Upon notice to Contractor and by mutual agreement between the parties, Contractor will, without additional compensation, correct or replace any and all Services not meeting the Standard of Care.

**Article 3. Responsibilities of the Department**

The Department shall provide all necessary information regarding requirements for the Services. The Department shall furnish such information as expeditiously as is necessary for the orderly progress of the work, and Contractor shall be entitled to rely upon the accuracy and completeness of such information. The Department's Project Manager shall act on its behalf with respect to this Agreement.

#### **Article 4. Compensation**

The Department shall pay Contractor for all fees and expenses in an amount not to exceed Four Thousand Four Hundred Eighty-five Dollars and twenty cents (\$4,485.20). Invoices may be sent via first class mail postage prepaid or via email. Payment will be remitted to Contractor within forty-five (45) days of receipt of invoice. Contractor shall submit an invoice to the Department upon the completion of the Services described in Article 1. The invoice shall be sent to:

Erin Hatch  
City of Bloomington  
401 N. Morton, Suite 250  
Bloomington, Indiana 47404  
erin.hatch@bloomington.in.gov

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

#### **Article 5. Appropriation of Funds**

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

#### **Article 6. Schedule**

Contractor shall perform the Services according to the schedule set forth in Exhibit B, Project Schedule, attached hereto and incorporated herein by reference. The time limits established by this schedule shall not be exceeded, except for reasonable cause as mutually agreed by the parties.

#### **Article 7. Termination**

In the event of a party's substantial failure to perform in accordance with the terms of this Agreement, the other party shall have the right to terminate the Agreement upon written notice. The nonperforming party shall have fourteen (14) calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

The Department may terminate or suspend performance of this Agreement at the Department's prerogative at any time upon written notice to Contractor. Contractor shall terminate or suspend performance of the Services on a schedule acceptable to the Department and the Department shall pay the Contractor for all the Services performed up to the date that written notice is received, plus reasonable termination or suspension expenses. Upon restart, an equitable adjustment shall be made to Contractor's compensation and the schedule of services. Upon termination or suspension of this Agreement, all finished or unfinished reports, drawings, collections of data and other documents generated by Contractor in connection with this Agreement shall become the property of the Department, as set forth in Article 10 herein.

#### **Article 8. Identity of the Contractor**

Contractor acknowledges that one of the primary reasons for its selection by the Department to perform the Services is the qualifications and experience of Contractor. Contractor thus agrees that the Services to be performed pursuant to this Agreement shall be performed by Contractor. Contractor shall not subcontract any part of the Services without the prior written permission of the Department. The Department reserves

the right to reject any of the Contractor's personnel or proposed outside professional sub-Contractors, and the Department reserves the right to request that acceptable replacement personnel be assigned to the project.

**Article 9. Opinions of Probable Cost**

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

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

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

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

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

**Article 12. Independent Contractor Status**

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

**Article 13. Indemnification**

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

**Article 14. Insurance**

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

- a. General Liability Insurance, with a minimum combined single limit of \$1,000,000 for each occurrence and \$2,000,000 in the aggregate.
- b. Automobile Liability Insurance, with a minimum combined single limit of \$1,000,000 for each person and \$1,000,000 for each accident.

- c. Professional Liability Insurance (“Errors and Omissions Insurance”) with a minimum limit of \$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.

Contractor shall provide evidence of each insurance policy to the Department prior to the commencement of work under this Agreement. Approval of the insurance by the Department shall not relieve or decrease the extent to which Contractor may be held responsible for payment of damages resulting from Contractor’s provision of the Services or its operations under this Agreement. If Contractor fails or refuses to procure or maintain the insurance required by these provisions, or fails or refuses to furnish the Department’s required proof that the insurance has been procured and is in force and paid for, the Department shall have the right at its election to terminate the Agreement.

**Article 15. Conflict of Interest**

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

**Article 16. Waiver**

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

**Article 17. Severability**

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

**Article 18. Assignment**

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

**Article 19. Third Party Rights**

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Department and Contractor.

**Article 20. Governing Law and Venue**

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

**Article 21. Non-Discrimination**

Contractor shall comply with City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in all regards, including, but not limited to, employment. Contractor understands that the City of Bloomington prohibits its employees from engaging in harassing or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Contractor believes that a City employee engaged in such conduct towards Contractor and/or any of its employees, Contractor or its employees may file a complaint with the City department head in charge of the Contractor's work, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

**Article 22. Compliance with Laws**

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

**Article 23. E-Verify**

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

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

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

**Article 24. Notices**

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

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

City of Bloomington		Bluestone Tree, LLC
Attn: Erin Hatch, Urban Forester		Attn: Jerad Oren
401 N. Morton, Suite 250		P.O. Box 345



Bloomington, Indiana 47402	Clear Creek, Indiana 47426
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Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the Department and Contractor.

**Article 25. Intent to be Bound**

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

**Article 26. Integration and Modification**

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

**Article 27. Non-Collusion**

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

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

**CITY OF BLOOMINGTON**

**BLUESTONE TREE, LLC.**

\_\_\_\_\_  
 Philippa M. Guthrie, Corporation Counsel

\_\_\_\_\_  
 Jerad Oren, President/Owner

\_\_\_\_\_  
 Paula McDevitt, Director  
 Parks and Recreation Department

\_\_\_\_\_  
 Kathleen Mills, President,  
 Board of Park Commissioners

## **EXHIBIT A**

### **“Scope of Work”**

#### **The Services shall include the following:**

1. 7 Trees for pruning to raise canopies for street and sidewalk clearance, reduce amount of dead limbs (2” diameter and greater), and reduce crossing, crowding, and rubbing limbs. Haul away all limbs.  
Clean up final work site.
  - 2700 S. Olcott Blvd. – 3 Pin Oaks
  - 2701 S. Olcott Blvd. – 3 Pin Oaks
  - 2703 S. Olcott Blvd. – 1 Pin Oak

## **EXHIBIT B**

### **“Project Schedule”**

Work is to be completed by May 1, 2021.

**EXHIBIT C**  
**E-VERIFY AFFIDAVIT**

STATE OF \_\_\_\_\_ )  
 )SS:  
COUNTY OF \_\_\_\_\_ )

**AFFIDAVIT**

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

1. The undersigned is the \_\_\_\_\_ of \_\_\_\_\_.  
(job title) (company name)
2. The company named herein that employs the undersigned:
  - i. has contracted with or seeking to contract with the City of Bloomington to provide services; **OR**
  - ii. is a subcontractor on a contract to provide services to the City of Bloomington.
3. The undersigned hereby states that, to the best of his/her knowledge and belief, the company named herein does not knowingly employ an "unauthorized alien," as defined at 8 United States Code 1324a(h)(3).
4. The undersigned hereby states that, to the best of his/her belief, the company named herein is enrolled in and participates in the E-verify program.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

STATE OF \_\_\_\_\_ )  
 )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 \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public's Signature

My Commission Expires: \_\_\_\_\_  
Commission #: 685308

\_\_\_\_\_  
Printed Name of Notary Public

County of Residence: \_\_\_\_\_

**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 \_\_\_\_\_, 2020.

**Bluestone Tree, LLC.**

By: \_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ and acknowledged the execution of the foregoing this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public's Signature      My Commission Expires: \_\_\_\_\_  
Commission #: 685308

\_\_\_\_\_  
Printed Name of Notary Public      County of Residence: \_\_\_\_\_



## STAFF REPORT

Agenda Item: C-6 Date: 12-4-2020
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Administrator Review\Approval PM
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**TO:** Board of Park Commissioners  
**FROM:** John Turnbull, Division Director Sports  
**DATE:** December 17, 2020  
**SUBJECT:** CATALENT INDIANA, LLC USE OF TWIN LAKES SOFTBALL PARKING LOT

### **Recommendation**

Staff recommends approval of this agreement. No funds are transacted with this agreement.

### **Background**

Catalent Indiana, LLC expects to hire many more employees in the near future. They need parking and will shuttle the employees back and forth from this locating. The agreement specifies they are responsible in every way for any damages or any alterations to the parking lot. It also releases us from any liability.

During the time period of this agreement, there is no department activity at this site.

**RESPECTFULLY SUBMITTED,**

A handwritten signature in black ink, appearing to read "John Turnbull", is written over a horizontal line.

John Turnbull, Division Director Sports

**PARKING SPACE USE AGREEMENT  
BETWEEN  
CITY OF BLOOMINGTON  
PARKS AND RECREATION DEPARTMENT  
AND  
CATALENT INDIANA, LLC**

This Parking Space Use Agreement (“Agreement”), entered into on this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Bloomington Department of Parks and Recreation (the “City”), and Catalent Indiana, LLC (“Catalent”),

**WITNESSETH:**

**WHEREAS**, Catalent wishes to use parking spaces located in the City’s Twin Lakes Sports Park for the purpose of shuttling employees to its location; and

**WHEREAS**, the City agrees to permit Catalent to use parking spaces in Twin Lakes Sports Park subject to certain terms and conditions;

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

**Article 1. Terms and Conditions**

- 1.1 Term of Agreement** This Agreement is effective upon the date of execution first indicated above and shall last through March 15, 2021. The Agreement may be renewed for not more than an additional 12 month term upon execution of a written agreement by the parties to this Agreement.
- 1.2 Use of Spaces** Catalent hereby is permitted the use of an unspecified number of parking spaces upon the Twin Lakes Sports Park parking lot located at 2350 West Bloomfield Road, Bloomington, Indiana (the “Spaces”), for use by Catalent’s employees. The City shall not charge rent to Catalent during the original Term of the Agreement. The City reserves the right to require payment of reasonable rent in the event of renewal of this Agreement. The Spaces are not designated or reserved. The City makes no guarantee or representation that Spaces will always be available to Catalent’s employees, especially during events or at times of peak usage of Twin Lakes Sports Park or Twin Lakes Recreation Center.
- 1.3 Administration of Parking** Catalent shall have the sole responsibility to manage and oversee use of the Spaces by its employees in accordance with the terms of this Agreement.
- 1.4 No Reserved Spaces** Catalent’s employee vehicles shall not have a reserved parking space in the Park. Catalent’s employees may park their vehicle at a parking

space at any spot at Twin Lakes Sports Park. However, there may be times of peak usage in the Park where a parking space is not available. When Spaces are unavailable, Catalent shall be responsible for locating alternative parking for employee vehicles until Spaces become available.

**1.5 Catalent Responsibilities as to employee use of Spaces** Catalent has a non-delegable duty to ensure that its employees' vehicles utilizing the Spaces abide by the following rules and regulations:

- a. Catalent employee vehicles may occupy Spaces Monday through Friday.
- b. Commercial vehicles, trailers, and motor homes, with the exception of vehicles used to transport Catalent employees, shall not park in any of the Spaces.
- c. Catalent's employees shall abide by all applicable laws in regard to the ownership and operation of motor vehicles, including without limitation Indiana registration, licensing, insurance, and operability laws.
- d. Vehicles must not leak any fluids while parked in the Spaces. If a vehicle does leak fluids, Catalent shall be responsible for the immediate cleanup of the fluids and any cost incurred therefore, including pavement repair. If the City is required to make any repairs or remediation as a result of leaked fluids from Catalent employee vehicles, Catalent agrees to indemnify and make the City whole for costs incurred for such repairs or remediation. Any inoperable vehicles shall be removed by Catalent or its employee within 5 days. Inoperable vehicles remaining in Spaces after 5 days may be removed or towed by the City at Catalent's expense after the fifth day without notice.
- e. Catalent agrees to indemnify and make the City whole for any damage or loss to City property caused in whole or in part by Catalent or its employees' use of the Spaces.
- f. Only emergency repairs may be conducted upon Twin Lakes Sports Park property, such as changing a flat tire or battery replacement.
- g. Washing and cleaning vehicles, including motorcycles, is not allowed on Twin Lakes Sports Park property.
- h. Unauthorized and/or improperly parked vehicles are subject to removal by towing at the owner's expense.
- i. Any vehicle may be removed by the City without prior notice to the Catalent or the vehicle owner in emergency situations, including but not limited to situations requiring access or egress by police, fire, and other emergency vehicles or leaking a fluid that presents a hazard or threat to persons or property.
- j. A vehicle displaying expired license plates may be removed by the City after the owner or operator of the vehicle is given at least 10



days written notice that the vehicle will be towed from the premises. Towing shall be at the vehicle owner's expense.

- k. Catalent shall be responsible for snow and ice removal at their discretion in order to make the Spaces accessible to their employees.

#### **1.6 Enforcement**

The City and Catalent shall have the right to enforce the terms of this Agreement against Catalent's employees, including without limitation towing, at the vehicle owner's expense, vehicles in Twin Lakes Sports Park which are improperly parked, abandoned, or otherwise in violation of this Agreement or any other law, ordinance, or regulation. All towing initiated by Catalent shall be with the knowledge and approval of the City. Catalent shall have a non-delegable duty to ensure its employees' compliance with the terms of this Agreement. Catalent understands that a violation of the terms of this Agreement by its employees shall be imputed to Catalent and constitute a breach of this Agreement by Catalent.

#### **Article 2. Cooperation**

The City and Catalent agree to cooperate to the best of their abilities to mutually effectuate the terms of the Agreement without disruption to the other party. The parties agree to meet on occasion to resolve any issues that may arise regarding the Agreement.

#### **Article 3. Termination**

In the event of a substantial failure to perform in accordance with the terms of this Agreement by the City or Catalent, 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. Either party may terminate this agreement without cause, and without further liability by giving not less than 60 days prior written notice.

#### **Article 4. Insurance, Liability Waiver, Indemnification and Hold Harmless**

The City shall not have any obligation to insure Catalent's or its employees' vehicles utilizing the Spaces, or any personal property of maintained within those vehicles, against loss, damage, theft, or destruction of any kind. Catalent agrees to indemnify release, waive, discharge, and covenant not to sue the City, its directors, officers, employees, and agents from any and all liability to Catalent, Catalent's employees, and their respective personal representatives, agents, heirs, or assigns for any loss, theft, damage, claim or demands on account of damage, injury or loss to Catalent or its employees' property as a result of use of the Spaces, regardless of whether caused by the negligence of the City, its directors, officers, employees, or agents. Catalent further agrees to indemnify and hold harmless the City against any and all claims of liability for loss or damages to its employees' property including but not limited to theft, collision, fire, acts of god, weather, and construction arising out Catalent's and its employees' use of the Spaces under this Agreement.

#### **Article 5. 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 6. 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 7. Assignment**

Catalent shall not assign any rights or duties under this Agreement without the prior written consent of the City. 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 8. Third Party Rights**

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City, Catalent, and Catalent's employees who use the Spaces.

**Article 9. 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 10. Non-Discrimination**

Catalent 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, assignment of Spaces. Catalent understands that the City of Bloomington prohibits its employees from engaging in harassing or discrimination of any kind, including harassing or discriminating against independent contractors doing work for the City. If Catalent believes that a City employee engaged in such conduct towards Catalent and/or any of its employees, Catalent may file a complaint with the City department party to this Agreement, and/or with the City human resources department or the Bloomington Human Rights Commission. The City takes all complaints of harassment and discrimination seriously and will take appropriate disciplinary action if it finds that any City employee engaged in such prohibited conduct.

**Article 11. Notices**

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

**City:****Catalent:**

City of Bloomington		Catalent Indiana, LLC
Attn:		Attn:
401 N. Morton, Suite 250		
Bloomington, Indiana 47402		

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between the parties to the Agreement.

**Article 12. Intent to be Bound**

City and Catalent 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 13. Integration and Modification**

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

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

**CITY OF BLOOMINGTON****CATALENT INDIANA, LLC**

\_\_\_\_\_  
Philippa M. Guthrie, Corporation Counsel

**CITY OF BLOOMINGTON PARKS AND RECREATION**

\_\_\_\_\_  
Paula McDevitt, Director

\_\_\_\_\_  
Kathleen Mills, President, Board of Park Commissioners



## STAFF REPORT

Agenda Item: C-7  
Date: 12/14/2020

Administrator  
Review\Approval  
PM

**TO:** Board of Park Commissioners  
**FROM:** Paula McDevitt, Administrator  
**DATE:** December 17, 2020  
**SUBJECT:** APPROVAL OF ACCESS AGREEMENT WITH CSX

### Recommendation

Staff recommends approval of access agreement with CSX

### Background

This agreement involves CSX's work with the State to manage and to some degree cleanup the creosote contaminated soils north and south of country club. CSX is not required to excavate and remove the creosote but they are required to monitor the area to see if this material is moving/migrating. The monitor wells, of which there are several on our property (rail trail-yellow pipes) have been in place for over 10 years. This is a renewal agreement for monitoring to continue in order access to existing monitoring wells, and eventual well abandonment.

**RESPECTFULLY SUBMITTED,**

A handwritten signature in black ink, reading "Paula McDevitt", is written over a horizontal line.

Paula McDevitt, Administrator

**PROPERTY ACCESS AGREEMENT**  
**FOR GROUNDWATER WELL MONITORING**

This property Access Agreement for Groundwater Well Monitoring (“Agreement”) is made between the City of Bloomington, Indiana, and the Bloomington Community Park and Recreation Foundation, Inc. (“Property Owners”) on the one hand, and, CSX Transportation, Inc, its employees, agents and contractors (“CSXT”), on the other hand. This Agreement is effective on the date all parties to the Agreement have signed it. By this Agreement, the Property Owners grant to CSXT, and its contractor, environmental firm, Arcadis U.S., Inc., the right and permission to enter upon their property for the purpose of installing, removing, and monitoring environmental groundwater quality monitoring wells at sixteen (16) locations on the property (“Work”).

The Property (“Property”) is legally described and depicted in *Exhibit A*, which is attached hereto and incorporated herein. The sixteen (16) locations for the monitoring wells are shown in *Exhibit B* (Figure A), which is attached hereto and incorporated herein.

**1. Objective**

The overall objective at the former Indiana Creosoting Company located at 240 Country Club Drive, Bloomington, Indiana is to achieve environmental closure of the property through the Indiana Department of Environmental Management (IDEM) Voluntary Remediation Program (VRP). As part of closure, nature and extent (N&E) of the impacts to groundwater must be determined to the extent possible. This Agreement is to install and monitor up to six additional groundwater monitoring wells to delineate groundwater impacts observed in monitoring wells located at the southern and western boundary’s of the former Indiana Creosoting Company’s property.

**2. Property Interest**

The Property Owners represent that the Property was conveyed to them by the Indiana Rail Road Company by means of a Corporate Limited Warranty Deed and a Corporate Quitclaim Deed. Should the Property Owners sell or otherwise convey their interest in the Property to another before termination of this Agreement, a copy of this Agreement shall be provided to the subsequent owner of the Property.

**3. Term**

This Agreement starts on the date all parties to it have signed it, and it shall terminate on December 31, 2023. This Agreement may be extended or modified only in a separate writing executed by the Property Owners and CSXT.

Upon completion of the Work activities alluded to herein, CSXT shall restore the Property to the condition in which it existed at the inception of this Agreement, to the extent practicable.

#### **4. Scope of work and Performance Standards**

The monitoring wells shall be accessed by CSXT and/or its designee on a regular basis to collect water level measurements and water quality data. *Exhibit C* shows a picture of the wells above ground, which is attached hereto and incorporated herein.

The Work shall be performed at the sole cost and expense of CSXT; in a good and workmanlike manner consistent with a high standard of care and practice of environmental professionals; in compliance with all federal, state and local laws, ordinances, rules and regulations, and administrative or judicial decisions and orders; and in a manner so as to avoid harm to persons or property. Any damages to the areas where the wells are installed will be restored by CSXT or its agents, employees, or contractors to the satisfaction of the City Parks Department. The Property Owners agree to take reasonable care during any activities performed near the monitoring wells so as to avoid damage to any of the wells. If any well is damaged as a result of activities performed by the Property Owners, CSXT or its designee shall be notified as soon as possible in order to assess the wells' integrity.

When and where it is appropriate to protect the Property and CSXT activities thereon from improper intrusions, CSXT agrees to provide with prior approval of the Property Owners, the installation and maintenance of temporary fences, barricades or other appropriate security devices reasonably necessary to protect the Work which is the subject of this Agreement.

#### **5. Insurance**

Prior to commencement of occupation or use of the Property for the Work, CSXT shall procure (or shall cause its agent or contractor in charge of the Work to procure), and shall also maintain, or cause to be maintained, during continuance of this Agreement, at CSXT's sole cost and expense, Commercial General Liability insurance, naming Property Owners as additional insureds covering CSXT's liability under this Agreement, with coverage of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury and property damage. Said Certificate of Insurance naming Property Owners as additional insureds shall be submitted to the City prior to the commencement of occupation or use of the Property for the Work. *Exhibit D* is Arcadis' Certificate of Liability Insurance form, which is attached hereto and incorporated herein.

#### **6. Attorney Fee**

If any action is brought to enforce this Agreement, the prevailing party shall be entitled to recover reasonable costs of enforcement, including court costs and attorney fees.

#### **7. Records**

Each party shall retain all records related to this agreement for a period of at least three (3) years from the termination of this Agreement. Each party shall permit the other access to all records relating to this Agreement at all reasonable times for review and audit purposes.

## **8. Severability**

If any part of this Agreement is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such term shall be deemed reformed or deleted, but only to the extent necessary to comply with such statute, regulation, ordinance, order or rule and the remaining provisions of this Agreement shall remain in full force and effect.

## **9. Non-Discrimination**

CSXT and its partners participating in the activities described in this Agreement and the Application, shall comply with the City of Bloomington Ordinance 2.21.020 and all other federal, state and local laws and regulations governing non-discrimination in employment and in the activities described in Exhibit A.

## **10. Supervision and Independent Contractor Status**

The status of the CSXT employees, agents and contractors providing services pursuant to this Agreement as employees, agents or contractors shall not be affected in any way by this Agreement. Said employees, agents and contractors shall be subject solely to supervision by their CSXT supervisors. During the entire term of this Agreement, CSXT shall have none of its personnel, agents or sub-contractors be construed to be, or represent themselves to be, employees, volunteers, agents or representatives of the City.

## **11. Notice**

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

Property Owner(s):

City of Bloomington  
Department of Parks and Recreation  
Director of Operations  
401 N. Morton St., Suite 250  
Bloomington, IN 47404

CSXT:

Daniel S. Dyer, Manager-Environmental  
Remediation  
CSX Transportation, Inc.  
PO Box 72  
Ossineke, MI 49766

Said notice requirement shall not be construed to restrict the transmission of routine communications between representatives of the Property Owners and CSXT.

Should the Property Owners plan development or construction activities for an area including the locations of the monitoring wells, written notice of said development or construction activity shall be provided as indicated below at least forty-five (45) days prior to the commencement of said development or construction activity. Within said forty-five (45) days, CSXT shall be allowed to modify the monitoring wells protective covers to allow for continued access to the monitoring wells by CSXT and/or its designee during and following completion of said development or construction activity. During any development or construction activity, the Property Owners shall attempt to work around the monitoring wells; however, should said development or construction activity require the relocation of any monitoring wells, CSXT shall be solely responsible for any and all cost and expense in relocating any monitoring well(s).

## 12. Indemnification

CSXT agrees to defend, indemnify and hold the Property Owners harmless with regard to any and all claims, demands, damages, costs or causes of action for personal injury or property damage arising out of CSXT's work on the Property as provided in this Agreement, including but not limited to, any reckless or negligent act or omission to act or any willful misconduct of CSXT or its agents, servants, employees or contractors. This indemnification provision shall apply even if there is concurrent or joint negligence of CSXT and the Property Owners, and even if there is active or passive negligence by either or both parties.

CSXT acknowledges and agrees that the Property Owners do not assume any risk, liability, responsibility, or duty of care as to any of CSXT's employees, agents, consultants, or contractors while on the Property to conduct and/or oversee the Work.

This Agreement and its attached and incorporated Exhibits contains the entire agreement between the Property Owners and CSXT with respect to the subject matter hereof.

The parties, or their duly authorized representatives, acknowledge their agreement to the above terms of this Agreement by signing in the spaces below.

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

**CITY OF BLOOMINGTON**

By: \_\_\_\_\_  
Philippa Guthrie  
Corporate Counsel

Date: \_\_\_\_\_

**CSX TRANSPORTATION, INC.**

By: Daniel S. Dyer  
Daniel S. Dyer, Manager -  
Environmental Remediation

Date: \_\_\_\_\_  
November 19, 2020

**THE CITY OF BLOOMINGTON,  
INDIANA BOARD OF PARK  
COMMISSIONERS**

By: \_\_\_\_\_ Printed Name: \_\_\_\_\_  
Kathleen Mills, President

Date: \_\_\_\_\_ Date: \_\_\_\_\_

Attest: \_\_\_\_\_





# Exhibit A



organized and existing under the laws of the State of Indiana, acting as the Grantor, SELLERS AND CONVEYS to the City of Bloomington, Indiana, acting as the Grantee, the Redevelopment Commission ("Grantee") of Monroe County, Indiana, for the sum of (\$10.00) and other valuable consideration, the receipt of which is hereby acknowledged, the following described real estate in Monroe County, Indiana, to-wit:

See Exhibit A, attached hereto and incorporated herein by reference.

Subject to (i) all easements, highways, rights-of-way, covenants, conditions and other matters of record; (ii) all matters that would be disclosed by a physical inspection of said real estate.

Grantor, for itself and its successors and assigns, covenants and warrants that the premises hereby conveyed are free from all liens, claims or suffered by it except as aforesaid, and that it will, and that its successors and assigns, warrant and defend the same to the said Grantee and its successors and assigns against all claims and demands of all persons claiming by, through or under it, but except as aforesaid.

Grantor hereby represents that this real estate is not "property subject to the provisions of 13-25-3-1 et. seq. (Indiana Responsible Property Transfer law), and does not contain any storage tanks or toxic or hazardous waste or materials as defined therein, nor has it ever been used as a landfill or dump, and that no disclosure statement under 13-25-3-1 et. seq. is required for this transaction.

Grantor reserves for itself a temporary right of entry to enter upon the premises by this deed to remove the railroad track and ties. Grantor shall remove the track and ties within 180 days of the date of execution of this deed. Said right of entry shall terminate upon the execution of this deed. Grantor shall indemnify and hold harmless the Grantee, its officers and agents from any and all claims, demands, damages, costs and expenses arising out of Grantor's work in removing the track and ties.

The undersigned person executing this deed on behalf of Grantor represents that he is a duly elected officer of Grantor and has been fully empowered by the Board of Directors of Grantor, to execute and deliver this deed on behalf of Grantor. Grantor has full corporate capacity to convey the real estate described herein, and all necessary corporate action for the making of such conveyance has been taken.

IN WITNESS WHEREOF, the Grantor has executed this deed on this December, 2003.

THE INDIANA RAIL ROAD COMPANY

By: 

Steven L. Meyer  
Vice-President and CFO

015-030

FILED FOR TAXATION

DEC 30 2003

Barbara M. Clark  
Monroe County, Indiana

COUNTY OF Marion  
Before me, a Notary Public in and for said county and state, I  
L. Meyer, the Vice-President and CFO of The Indiana Rail Road Company,  
foregoing deed this 27<sup>th</sup> day of December, 2003.

My Commission Expires:

8-10-2009

Resident of Marion County

Patricia  
Notary Public  
Patricia  
Printed name

This instrument prepared by Susan Failey, Attorney at Law, P.O. Box  
47402.

49 seconds EAST along the South line of said Section 9 a distance of 12.04 acres; (2) thence along the East Right of Way of the Indiana Railroad and the Point of Beginning; Way the following (6) courses (1) NORTH 9 degrees 33 minutes 16 seconds WEST 2123.48 feet (2) thence Northerly along a curve to the left having a radius of 5691.86 feet and a chord bearing NORTH 11 degrees 56 minutes 19 seconds WEST 127.12 feet (3) thence Northwesterly along said curve 857.69 feet having a radius of 2808.41 feet and a chord bearing NORTH 20 degrees 20 minutes 35 seconds WEST 565.07 feet to a curve to the left and a chord bearing NORTH 40 degrees 28 minutes 45 seconds Northwest along said curve 166.49 feet to a point on the East line of said Section 9; (4) thence along said East Right of Way NORTH 00 degrees 07 minutes 06 seconds EAST 500.00 feet; (5) thence along the Easterly Right of Way of the Indiana Railroad SOUTH 29 degrees 28 minutes 54 seconds EAST 209.20 feet; (6) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (7) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (8) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (9) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (10) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (11) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (12) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (13) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (14) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (15) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (16) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (17) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (18) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (19) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (20) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (21) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (22) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (23) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (24) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (25) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (26) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (27) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (28) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (29) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (30) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (31) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (32) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (33) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (34) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (35) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (36) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; 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(67) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (68) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (69) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (70) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (71) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (72) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (73) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (74) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (75) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (76) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (77) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (78) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (79) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (80) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (81) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (82) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (83) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (84) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (85) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (86) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (87) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (88) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (89) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (90) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (91) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (92) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (93) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (94) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (95) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (96) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (97) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (98) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (99) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet; (100) thence SOUTH 29 degrees 06 minutes 06 seconds WEST 15.00 feet to the Point of Beginning containing 12.04 acres.

#### ALTA/ACSM CERTIFICATION

To (name of client), The Indiana Railroad Company and the City of

This is to certify that this map or plat and the survey on which it is based were made in accordance with "Minimum Standard Detail Requirements for ALTA, ACSM and NSPS in 1999" jointly established and adopted by ALTA, ACSM and NSPS in 1999, and in effect on the date of this certification, and that the survey was made in accordance with proper field procedures, instrumentation, and adequate survey personnel to achieve results comparable to those outlined in the "Minimum Standard Detail Requirements for Survey Measurements Which Control Land Boundaries in Title Surveys"

Certified this 19<sup>th</sup> day of November, 2003

Ben E. Bledsoe  
Ben E. Bledsoe  
Registered Land Surveyor No. S0559  
State of Indiana

S:\Dplus\data\00004225\admin\Legal size Indiana Railroad Parcel.wpd

SHEET 1 OF 1  
EXHIBIT A, Page 3 of 7

1351 W. Tapp Road • Bloomington, IN 47403 • 812-336-8277

CONVEYS to the BLOOMINGTON COMMUNITY PARKS AND RECREATION CORPORATION, ("Grantee"), of Monroe County, Indiana, for the other valuable consideration, the receipt of which is hereby acknowledged, the full and complete consideration of the Grantor, in the State of Indiana:

See Attachment A, attached hereto and incorporated herein by reference.

The purpose of this deed is to convey any and all interest the Grantor may have in the real estate hereby assigns to Grantee any and all rights Grantor may have to assert a claim to the real estate.

Grantor hereby represents that this real estate is not "property" for purposes of the Indiana Hazardous Waste Site Remediation Act, is not, and has not been used as a landfill or dump, and contains no underground storage tanks, and that no disclosure statement under Indiana Code (36-31-1-1) (Indiana Responsible Property Transfer law), is required for this transaction.

The undersigned person executing this Corporate Quitclaim Deed on behalf of the Grantor certifies that he is the President and Chief Executive Officer of Grantor and is authorized to execute and deliver this deed on behalf of Grantor, and that all necessary action for the execution of this deed has been taken and done. There is no Indiana gross income tax due upon the conveyance of this real estate.

IN WITNESS WHEREOF, Grantor has caused this deed to be executed on this 9th day of September, 1999.

INDIANA RAIL ROAD COMPANY

By:

Attest:

Thomas G. Hoback

Thomas J. Quigley

Thomas G. Hoback, President and Chief Executive Officer

Thomas J. Quigley, Secretary

STATE OF INDIANA )  
COUNTY OF MONROE ) SS:

Before me, a Notary Public in and for said County and State, personally appeared Thomas J. Quigley, of the Indiana Rail Road Company, Inc., who acknowledged to me that he is the Secretary of said corporation, and that he executed the foregoing Deed on behalf of said corporation.

WITNESS my hand and notarial seal this 9 day of Sept

My Commission Expires:

GLORIA M. JACKSON  
Notary Public, State of Indiana  
County of Hendricks  
My Commission Expires 06/23/2006

6-23-08

Residing in Hendricks County

Gloria M. Jackson  
Printed Name



This instrument was prepared by Vickie Renfrow, Attorney at Law, City of Bloomington Legal Department, P. O. Box 100, Bloomington, Indiana 47401.

DULY ENTERED  
FOR TAXATION

SEP 16 1999

EXHIBIT A, Page 4 of 7

Barbara M. Clark  
Auditor Monroe County, Indiana

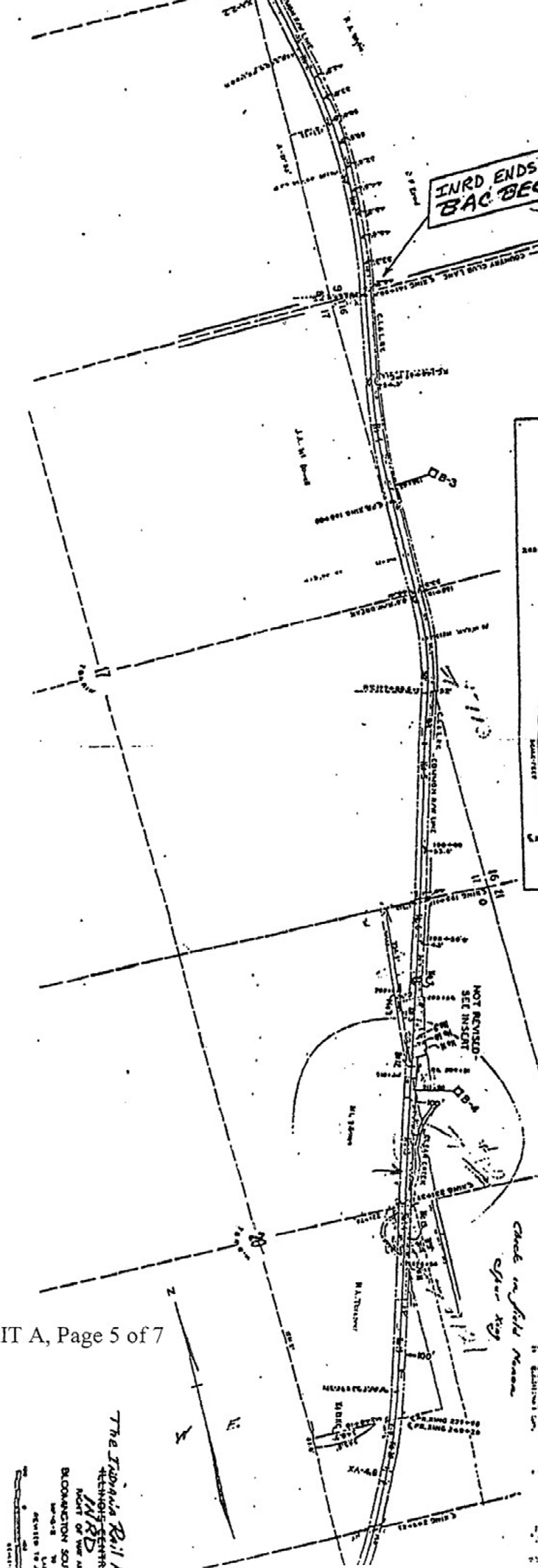


EXHIBIT A, Page 5 of 7

ES	ATTORNEY	DATE
100	W. H. H. H.	8-10-41
100	W. H. H. H.	8-10-41
100	W. H. H. H.	8-10-41

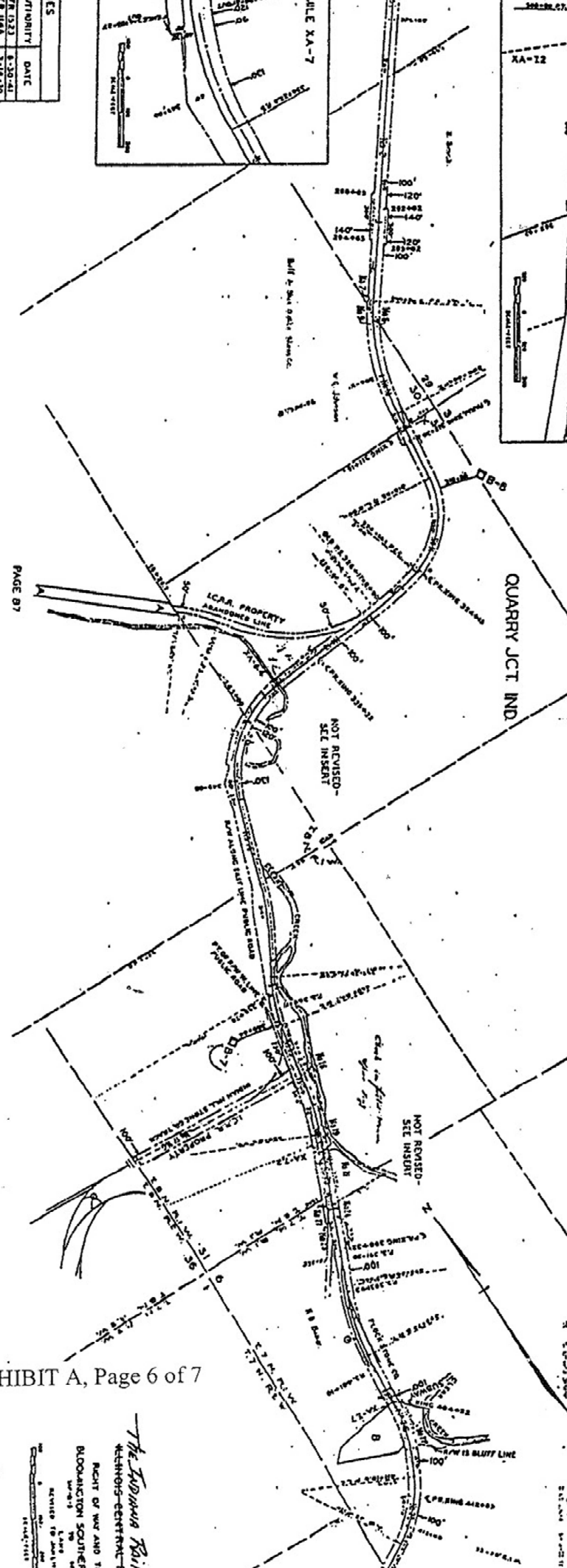


EXHIBIT A, Page 6 of 7



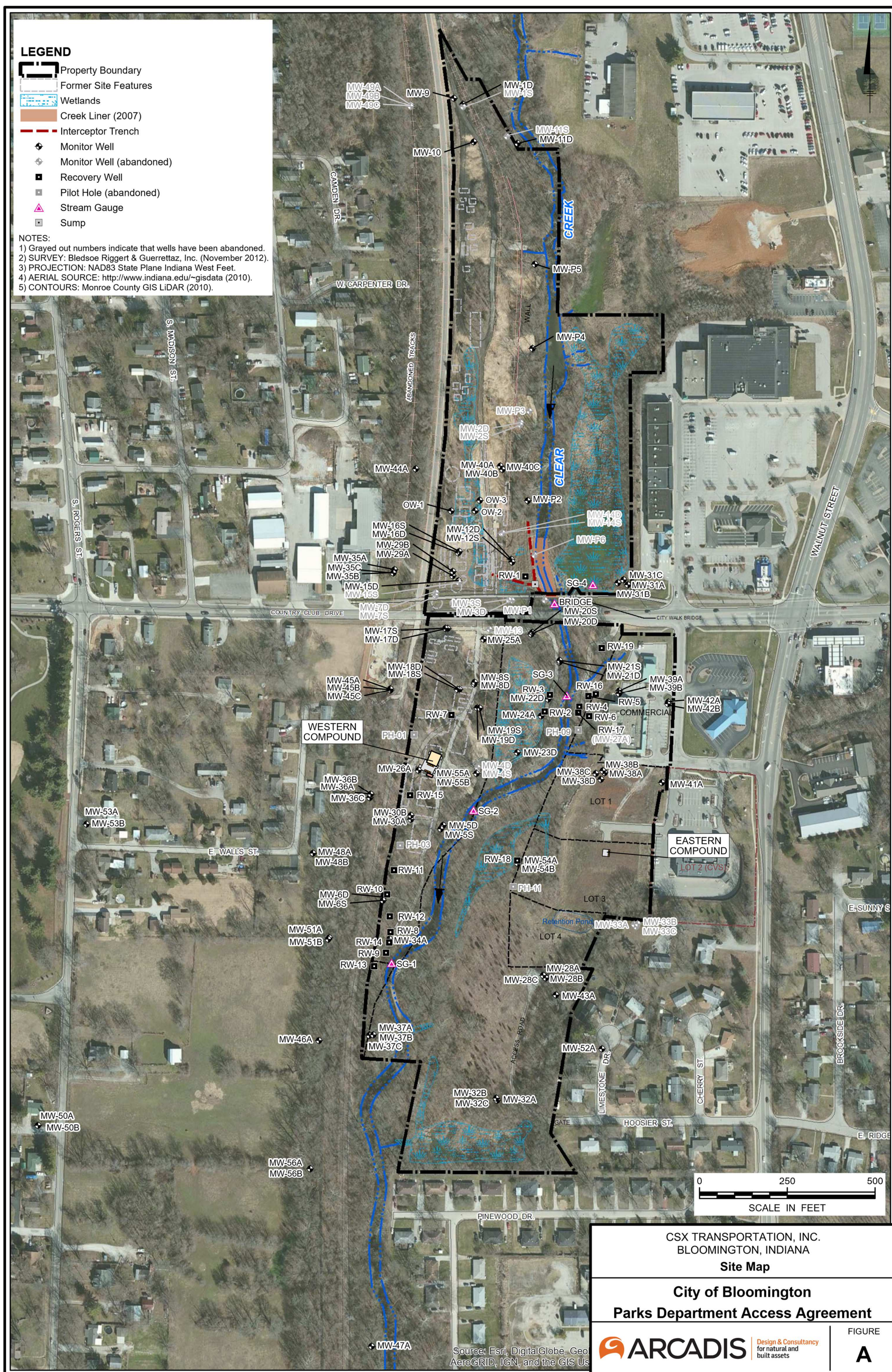


Exhibit B













# Exhibit C











# Exhibit D



## CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)  
10/01/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Aon Risk Services South, Inc. Franklin TN Office 501 Corporate Centre Drive Suite 300 Franklin TN 37067 USA	<b>CONTACT NAME:</b>	
	<b>PHONE</b> (866) 283-7122	<b>FAX</b> 800-363-0105
	<b>(A/C. No. Ext):</b>	<b>(A/C. No.):</b>
	<b>E-MAIL ADDRESS:</b>	
	<b>INSURER(S) AFFORDING COVERAGE</b>	<b>NAIC #</b>
<b>INSURED</b> Arcadis U.S., Inc.	<b>INSURER A:</b> Hartford Fire Insurance Co.	19682
	<b>INSURER B:</b> Hartford Accident & Indemnity Company	22357

630 Plaza Drive  
Suite 200  
Highlands Ranch CO 80129 USA

INSURER C:	Twin City Fire Insurance Company	29459
INSURER D:		
INSURER E:		
INSURER F:		

## COVERAGES

**CERTIFICATE NUMBER:570084311111**

REVISION NUMBER:

Holder Identifier : F

**Certificate No :** 570084311111

7777777707070362037663417477144337237256611456206713  
777777770707036711214510362337771653207323265312244

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. **Limits shown are as requested**

INSR LTR	TYPE OF INSURANCE		ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X	COMMERCIAL GENERAL LIABILITY			20ECSOL5318 SIR applies per policy terms & conditions	10/01/2020	10/01/2021	EACH OCCURRENCE	\$1,000,000
		CLAIMS- <input checked="" type="checkbox"/> MADE OCCUR Contractual Liability						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$1,000,000
	X							MED EXP (Any one person)	\$10,000
								PERSONAL & ADV INJURY	\$1,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$2,000,000
		<input checked="" type="checkbox"/> PRO- <input checked="" type="checkbox"/> POLICY LOC JECT OTHER:						PRODUCTS - COMP/OP AGG	\$2,000,000
		AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	
		ANY AUTO						BODILY INJURY ( Per person)	
		OWNED AUTOS ONLY HIRED AUTOS ONLY						BODILY INJURY (Per accident)	
		SCHEDULED AUTOS NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	
		UMBRELLA LIAB EXCESS LIAB						EACH OCCURRENCE	
								AGGREGATE	
		DED RETENTION							
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y / N		20WNOL5323 AOS 20WPROL5321 WI	10/01/2020	10/01/2021	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
C		ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N	N / A				E.L. EACH ACCIDENT	\$1,000,000
								E.L. DISEASE-EA EMPLOYEE	\$1,000,000
								E.L. DISEASE-POLICY LIMIT	\$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: Project No. IN000072.0074.00010.  
City of Bloomington and Property Owners are included as Additional Insured in accordance with the policy provisions of the General Liability policy.

CERTIFICATE HOLDER	CANCELLATION
<p>City of Bloomington - Parks &amp; Recreation Attn: Mr. David Williams 401 North Morton Street, Suite 250 Bloomington IN 47404 USA</p>	<p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p> <p>AUTHORIZED REPRESENTATIVE</p> <p><i>Am Risk Services South Inc.</i></p>

# ABCDEFGHIJ

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **NOTICE OF CANCELLATION TO CERTIFICATE HOLDER(S)**

This policy is subject to the following additional Conditions:

- A.** If this policy is cancelled by the Company, other than for nonpayment of premium, notice of such cancellation will be provided at least thirty (30) days in advance of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.
- B.** If this policy is cancelled by the Company for nonpayment of premium, or by the insured, notice of such cancellation will be provided within (10) days of the cancellation effective date to the certificate holder(s) with mailing addresses on file with the agent of record or the Company.

If notice is mailed, proof of mailing to the last known mailing address of the certificate holder(s) on file with the agent of record or the Company will be sufficient proof of notice.

Any notification rights provided by this endorsement apply only to active certificate holder(s) who were issued a certificate of insurance applicable to this policy's term.

Failure to provide such notice to the certificate holder(s) will not amend or extend the date the cancellation becomes effective, nor will it negate cancellation of the policy. Failure to send notice shall impose no liability of any kind upon the Company or its agents or representatives.

# ABCDEFGHIJ

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## NOTICE OF CANCELLATION TO CERTIFICATE HOLDER(S)

**Policy Number:** 20 WN OL5323

**Endorsement Number:**

**Effective Date:** Effective hour is the same as stated on the Information Page of the policy. **Named Insured and Address:** ARCADIS U.S., INC.

630 PLAZA DR STE 200

LITTLETON

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This policy is subject to the following additional Conditions:

If notice is mailed, proof of mailing to the last known mailing address of the certificate holder(s) on file

with the agent of record or the Company will be sufficient proof of

A. If this policy is cancelled by the Company, other notice. than for non-payment of premium, notice of such

cancellation will be provided at least thirty (30) Any notification rights provided by this endorsement days in advance of the cancellation effective apply only to active certificate holder(s) who were date to the certificate holder(s) with mailing issued a certificate of insurance applicable to this addresses on file with the agent of record or the policy's term.

Company.

Failure to provide such notice to the certificate

B. If this policy is cancelled by the Company for holder(s) will not amend or extend the date the non-payment of premium, or by the insured, cancellation becomes effective, nor will it negate notice of such cancellation will be provided cancellation of the policy. Failure to send notice within ten (10) days of the cancellation effective shall impose no liability of any kind upon the date to the certificate holder(s) with mailing Company or its agents or representatives.

addresses on file with the agent of record or the

Company.

**Form WC 99 03 94** Printed in U.S.A.  
**Process Date: Policy Expiration Date:**

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## STAFF REPORT

Agenda Item: C-8  
Date: 12/4/2020

Administrator  
Review\Approval  
PM

**TO:** Board of Park Commissioners  
**FROM:** Paula McDevitt, Administrator  
**DATE:** December 17, 2020  
**SUBJECT:** 2019 END OF YEAR STRATEGIC ACTION PLAN ACCOMPLISHED GOALS

### Recommendation

Staff recommends approval of 2019 end of year Strategic Action Plan accomplished goals

### Background

The Bloomington Parks and Recreation Department annually submits budget goals which are also used as strategic action plan (SAP) goals. The SAP are updated midyear and end of year. The SAP is a critical tool to record the status of each goal as either "Accomplished", "Substantially Accomplished" or "Not Met".

In 2019, 110 goals were submitted with 70 (63.63%) goals accomplished, 13% (11.81%) substantially accomplished and 27 (24.54%) not met.

**RESPECTFULLY SUBMITTED,**

A handwritten signature in black ink, reading "Paula McDevitt". The signature is fluid and cursive, with a long horizontal stroke at the end.

Paula McDevitt, Administrator

## 2019 PARKS End-of-Year Budget Goal Updates

Program/Activity	Goal	Update	Due Date	Status
Administration	Distribute 30 customer service surveys quarterly, with a completion rate of at least 18%.	30 customer service surveys were distributed quarterly, with 23% completed and returned.	12/31/2019	Accomplished
Administration	Receive at least 80% of all returned surveys with rate of satisfaction with customer service as very positive or somewhat positive in 2019.	96% of all returned customer service surveys, received a satisfaction rating of very positive or somewhat positive.	12/31/2019	Accomplished
Administration	Attend Vermont Systems RecTrac Training 3.1 in 2019 to learn the use of reporting, data collection and marketing tools.	Four staff members, attended Vermont Systems RecTrac User Group held in October 2019. Reporting, data collection and marketing tools were covered during workshop.	12/31/2019	Accomplished
Administration	Provide 60 hours of customer-service staff training in 2019.	Over the course of 2019, staff completed 84.25 hours of customer-service training.	12/31/2019	Accomplished
Administration	Complete 2019 Commission for Accreditation of Park and Recreation Agencies (CAPRA) Accreditation documentation by December 30 in preparation for 2021 reaccreditation using PowerDMS software.	Staff submitted required 2019 accreditation documentation in preparation for 2021 re-accreditation.	12/30/2019	Accomplished
Health and Wellness	Increase average weekly Bloomington Walking Club attendance from 8 to 15 participants in 2019 through increased marketing and community partnerships.	Average weekly attendance over 2019 was 10 participants. Will mark as in progress as to continue this goal in 2020.	12/31/2019	Substantially Accomplished
Health and Wellness	Increase annual Kids Triathlon participants from 18 to 35 participants in 2019 by targeting marketing efforts through RecTrac and community partners such as IU Health and MCCSC.	We had 38 participants on July 20.	12/31/2019	Accomplished



## 2019 PARKS End-of-Year Budget Goal Updates

Health and Wellness	Increase 2019 Veteran's Day 5K run/walk/ruck participants from 30 to 100 participants in November.	While was not able to increase attendance to 100, did increase participation by 75% from 36 last year to 63 in 2019. Will continue to improve and promote event in 2020.	11/30/2019	Substantially Accomplished
Health and Wellness	Showcase at least 5 local community resources for veterans at the 2019 Veteran's Day 5K run/walk/ruck.	Five veterans services were present or provided info to be shared at event in 11/9/2019.	11/30/2019	Accomplished
Health and Wellness	Develop 3 nutrition programs (1 each for youth, teens and adults) in 2019 to increase wellness activities.	Through partnership, provided 1 nutrition education program for youth at Banneker summer camp. Was unable to organize nutrition program for teen and/or adults, will continue this goal in 2020.	12/31/2019	Not Met
Health and Wellness	Create a financial wellness program for adults in 2019 by partnering with the City's Human Resources Department and a financial advisor in the community.	Two financial advisors present at city/county employee health fair in September 2019. Continuing to research additional options for employee educational sessions in 2020.	12/31/2019	Accomplished
Health and Wellness	Coordinate 5 blood drives in 2019 in collaboration with the American Red Cross during the Farmers' Market utilizing the blood mobile with the goal of collecting a total of 100 pints of blood.	Blood drives schedule at City Hall for May 4, June 8, July 6, August 24, Sept. 21st. All scheduled blood drives were held.		Accomplished
Community Relations	Increase Facebook followers by 25% (6,472 to 8,000 followers) in 2019.	City of Bloomington, IN - Parks and Recreation Facebook page showed 9,004 Followers as of December 31, 2019.	12/31/2019	Accomplished

## 2019 PARKS End-of-Year Budget Goal Updates

Community Relations	Create an online program guide mailing add/removal form by January 31.	In 2019, 38 households used the online form to request to be added to the Parks and Recreation program guide mailing list; 30 households used the online form to request their addresses be removed from the program guide mailing list.	1/31/2019	Accomplished
Community Relations	Add 5 program guide distribution sites by June 1.	Five new program guide distribution sites were added in 2019: Big Brothers Big Sisters, Endwright East Active Living Community Center, Steven Fortune Edward Jones Financial Advisor office, Sound Management office, and My Sister's Closet.	6/1/2019	Accomplished
Community Relations	Generate at least \$1,000 in ad sale revenue per program guide season (\$3,000 total) in 2019.	Generated a total of \$3,500 in program guide ad sales revenue for Winter/Spring, Summer, and Fall/Winter issues of the program guide from advertisers IU Credit Union and the Lake Monroe Sailing Association.	12/31/2019	Accomplished
Community Relations	Conduct facility user and non-user surveys via website and social media in June and December.	Conducted Cascades Park Trail Study Survey via website and Facebook (provided links) in 2019; received 212 responses. Conducted Bicentennial Gateway Conceptual Design Feedback survey via website, Facebook and email in 2019; received 34 responses.	12/31/2019	Accomplished

## 2019 PARKS End-of-Year Budget Goal Updates

Community Relations	Generate a total of \$5,000 in annual advertising revenue in 2019 for the Twin Lakes Recreation Center (TLRC), both pools and Frank Southern Ice Arena.	In 2019, advertising revenue totaled \$8,000 for the Frank Southern Ice Arena; \$3,150 at the Twin Lakes Recreation Center; and \$2,500 for Bryan Park Pool and Mills Pool for total advertising revenue of \$13,650.	12/31/2019	Accomplished
Community Relations	Generate 20% new rental, membership and program registration business at revenue-generating facilities through usable, functional, and effective websites in 2019.	Goal moved to 2020; contracting with digital marketing firm to develop comprehensive website for Twin Lakes Recreation Center in first quarter of 2020.	12/31/2019	Not Met
Community Relations	Gain at least 94 new members, across all registration categories, at the Twin Lakes Recreation Center in 2019.	The Twin Lakes Recreation Center had a daily average of 894 active regular members, and a daily average of 213 active SilverSneakers members, through 2019.	12/31/2019	Substantially Accomplished
Community Relations	Receive a very good or excellent experience with the golf course website and online registration response on at least 60% of customer service survey responses in 2019.	Survey instrument under development for use in 2020.	12/31/2019	Not Met
Community Relations	Increase participation in midday (noon-2:30 p.m.) general admission ice skating sessions by 10% (by four participants per session) in 2019.	Overall participation in The Skating School ice skating lessons at Frank Southern Ice Arena decreased by 34% from 2018 to 2019 (7,227 participants in 2018, and 4,717 participants in 2019).	12/31/2019	Not Met

## 2019 PARKS End-of-Year Budget Goal Updates

Community Relations	Recognize volunteers who make significant contributions on a monthly basis with the Bravo Award.	An outstanding volunteer was recognized at the regularly scheduled Board of Park Commissioners meeting in 9 of 12 months in 2019.	12/31/2019	Substantially Accomplished
Aquatics	Increase attendance at Mills Pool by 1% (7,144 to 7,200 participants) by the end of season in August.	This goal was greatly exceeded because we were fortunate to recruit a few new camps to Mills Pool vs going to Bryan Pool. We had 12,363 turnstiles in 2019.	8/31/2019	Accomplished
Aquatics	Increase attendance at Bryan Park Pool by 2% (42,095 to 43,000 participants) by the end of season in August.	We did not achieve this by a slim margin and we believe it is greatly due to the very cool and wet start of the pool season.	8/31/2019	Not Met
Aquatics	Increase private pool rentals by 7% (30 to 32) by the end of season in August.	Private pool rentals decreased by 6.7% (30 to 28) by the end of season in August 2019.	8/31/2019	Not Met
Aquatics	Increase Learn to Swim lessons by 3% (312 to 321) by the end of season in August.	Learn to Swim lessons decreased by .6% (312 to 310) by the end of season in August 2019.	8/31/2019	Not Met
Frank Southern Center	Increase ice time rentals to outside groups by 1% (536 to 540 hours) in 2019.	Increased ice time rentals to outside groups by 4.5% (536 to 560 hours) in 2019.	12/31/2019	Accomplished
Frank Southern Center	Increase participants in public skating sessions from 10,637 to 10,650 (0.1% increase) in 2019.	Increased participants in public skating sessions by 51.5% (10,637 to 16,111) in 2019.	12/31/2019	Accomplished
Frank Southern Center	Increase participants in Skating School by 4% (559 to 580) in 2019.	Participants in Skating School decreased by .5% (559 to 556) in 2019.	12/31/2019	Not Met
Golf Services	Increase the amount of 18-hole rounds of golf sold by 4% (22,033 to 23,000) in 2019.	The amount of 18-hole rounds of golf sold decreased by 2.5% (22,033 to 21,494) in 2019.	12/31/2019	Not Met

## 2019 PARKS End-of-Year Budget Goal Updates

Golf Services	Increase the amount of season passes sold by 7% (280 to 300) in 2019.	This was an ambitious goal considering the trend away from people buying season passes and staying at one course. We did increase greens fees that somewhat off sets this general decline in customer activity.	12/31/2019	Not Met
Golf Services	Secure lease agreement for 75 new golf carts by April 1.	Lease was signed on May 25, 2019.	4/1/2019	Accomplished
Golf Services	Increase golf cart rentals by 1.5% (14,000 to 14,200) in 2019.	Increased golf cart rentals by 24% (14,000 to 17,389) in 2019.	12/31/2019	Accomplished
Golf Services	Purchase a fairway mower for new Zoysia turf maintenance by June 1.	Mower was purchased on March 25, 2019.	6/1/2019	Accomplished
Natural Resources	Facilitate environmental education programming for all MCCSC 4th and 6th grade students (1600 total) by November 15 and 500 local children during the summer months by August 1.	2,934 students were served in 2019.	11/30/2019	Accomplished
Natural Resources	Rent to 5,000 boaters at Griffy Lake from April through October.	There were 5,880 boat rental at Griffy Lake in 2019. 149 Annual Passes were sold.	10/31/2019	Accomplished
Natural Resources	Update the Griffy Lake Master Plan by X.	Delayed until 2020.		Not Met
Allison Jukebox Community Center / Youth Services	Replacing flooring in 4 rooms of the Allison Jukebox Community Center (tile room, carpet room, offices, and first aid closet) by December to enhance rental appeal.	Wylie flooring is currently working on 3 areas. Budget considerations required a reduction in the number of areas. The contract requires the project be completed by Dec. 27.	12/1/2019	Accomplished
Allison Jukebox Community Center / Youth Services	Increase building rental of the Allison Jukebox Community Center by 33% (15 to 20) paid hours per month in 2019.	Average rentals as of December 2019 is 20.33 per month	12/31/2019	Accomplished

## 2019 PARKS End-of-Year Budget Goal Updates

Allison Jukebox Community Center / Youth Services	Increase participation averages for camp by 19% (67 to 80 kids) and for break days by 15% (39 to 45 kids) in 2019 by working with ITS and Office Manager to utilize online registration.	As of December 11, Break Day average is 34 and Summer Camp is 87.	12/31/2019	Substantially Accomplished
Inclusive Recreation	Increase the number of individuals with disabilities served by 12.5% (18 )in 2019, with at least 100 participations.	18 Individuals were served with 338 participations.	12/31/2019	Accomplished
Inclusive Recreation	Contact at least 3 community agencies, community members or other local groups relating to disability interests by May to promote Inclusion Services.	Completed. Contacts with About Special Kids, Indiana Center for Autism, and Monroe County Community School Corporation Special Education.	5/31/2019	Accomplished
Twin Lakes Recreation Center	Increase active memberships at the Twin Lakes Recreation Center by 5% (1,140 to 1200 active members) in 2019.	Active memberships at the Twin Lakes Recreation Center decreased by 2.9% (1,140 to 1,107 active members) in 2019.	12/31/2019	Not Met
Twin Lakes Recreation Center	Increase rental of artificial turf by 2% (945 to 960 hours) in 2019.	Increased rental of artificial turf by 37.5% (945 to 1,299 hours) in 2019.	12/31/2019	Accomplished
Twin Lakes Recreation Center	Increase Twin Lakes facility rentals/events (basketball tournaments, gymnastics meets, etc.) by 18% (17 to 20) in 2019.	Increased Twin Lakes facility rentals/events (basketball tournaments, gymnastics meets, etc) by 12% (17 to 19) in 2019.	12/31/2019	Not Met
Community Events	Recover 100% of the cost of the Farmers' Market and all associated activities in 2019.	Recovered 63% of the cost of the Farmers' Market and all associated activities due to increased expenses in 2019.	12/31/2019	Substantially Accomplished
Community Events	Register a minimum of 60 organizations/individuals in 2019 to participate in the Farmers' Market's Info Alley.	Registered 71 organizations/individuals in 2019 for participation in the Farmers' Market's Info Alley.	12/31/2019	Accomplished

## 2019 PARKS End-of-Year Budget Goal Updates

Community Events	Reserve 8 spaces in Info Alley for the Farmers' Market season providing consistent revenue for the Market.	Reserved 7 spaces in Info Alley for the Farmers' Market in 2019.	5/3/2019	Substantially Accomplished
Community Events	Attract at least 3 new garden plot renters at the Willie Streeter Garden open house in May.	Garden plot renters were not attracted at the Willie Streeter Garden open house in May due to inclement weather, and will attempt again in 2020.	5/31/2019	Not Met
Community Events	Hold 4 mini-classes during open hours at the Willie Streeter Garden in 2019.	Mini-classes were not held during open hours at the Willie Streeter Garden in 2019 due to seasonal staffing challenges and demand at Farmers' Market. Proceeding with goal in 2020.	10/12/2019	Not Met
Community Events	Increase Performing Arts Series sponsorships by 12.5% (\$1,500) by March 1 to cover costs of upgrading the sound system.	Increased Performing Arts Series sponsorships by 15% (\$2,600) in 2019.	3/1/2019	Accomplished
Community Events	Create, develop and implement at least 1 new community event by October 31.	Created, developed and implemented a new community event (Bloomington Trail Outdoor Escape Adventure) by October 31, 2019.	10/31/2019	Accomplished
Community Events	Increase pop up programs by 50% (2 additional programs) in 2019 and use them to complement other park service areas and/or market upcoming events.	Increased pop up programs by adding 2 additional programs, hosting 4 events total in 2019.	12/31/2019	Accomplished



## 2019 PARKS End-of-Year Budget Goal Updates

Community Events	Recruit at least 1 new external community partner and 1 new internal partner by December 31st to coordinate and support an existing event or a new event in 2019	The CE area partnered with Code and Key Escape Rooms for the Bloomington Trail Outdoor Escape Adventure. This was the first time we partnered with this community partner. We also partnered with the Aquatics staff to offer free swim time during the Summer Kick Off Event. This was the first time we partnered with this internal partner for this event.	12/31/2019	Accomplished
Community Events	Develop tracking system for sponsorships by April 1 to include the invoicing and depositing of funds in a coordinated effort.	The Community Events Manager met with the Community Relations staff in January to develop a plan and tracking system for sponsorship. One CE Coordinator has access to the sponsorship database and the CR Coordinator has created a google document for tracking purposes.	4/1/2019	Accomplished
Community Events	Develop, approve and make available permitting systems and pricing for the pavilion and stage at Switchyard Park by August 1.	Developed, approved and made available permitting systems and pricing for the pavilion and stage at Switchyard Park in 2019.	8/1/2019	Accomplished
Community Events	Assemble a 3-5 person review committee in 2019 to evaluate and update the current guidelines and jury system for 3 arts events (Performing Arts Series, A Fair of the Arts, and the Holiday Market).	Conducted an internal review in 2019 to evaluate and update the current guidelines and jury system, but we are proceeding with this goal in 2020 to continually update and improve the system.	12/31/2019	Substantially Accomplished



## 2019 PARKS End-of-Year Budget Goal Updates

Adult Sports Services	Host 250 teams for invitational or special event competition in 2019, maintaining the same average number of teams per year since 2017.	Hosted 285 teams for invitational or special event competition in 2019, surpassing the average number of teams per year since 2017.	12/31/2019	Accomplished
Adult Sports Services	Maintain team league participation at 150 in 2019.	Team league participation decreased slightly (150 to 138) in 2019.	12/31/2019	Not Met
Adult Sports Services	Host four pick-up types of play at the Twin Lake Sports Park in 2019.	Hosted four pick-up types (Sandlot) of play at the Twin Lake Sports Park in 2019.	12/31/2019	Accomplished
Adult Sports Services	Repair X pillars on Twin Lakes Sports Complex observation deck by September 30, 2019.	Repair of pillars on Twin Lakes Sports Complex observation deck unable to be completed at this time due to high expense quotes.		Not Met
Youth Sports Services	Increase ballfield rentals at the Winslow Sports Complex by 4% (1200 to 1250 hours) in 2019.	Increased ballfield rentals at the Winslow Sports Complex by 37% in 2019.	12/31/2019	Accomplished
Youth Sports Services	Recruit 1 new user group (soccer, kickball, or other multi-use group) that is a non-traditional ballfield user by August 30.	Recruited 1 new soccer group that is a non-traditional ballfield user by August 30.	8/30/2019	Accomplished
Youth Sports Services	Host 4 outside rental tournaments at the Winslow Sports Complex with 25 teams or more by August 30 (an increase from 0 in 2017).	Outside rental tournaments did not increase at the Winslow Sports Complex with 25 teams or more due to two rainouts. We are proceeding with this goal, with four tournaments scheduled in 2020.	8/30/2019	Not Met

## 2019 PARKS End-of-Year Budget Goal Updates

Benjamin Banneker Community Center	Increase participation in Jump Start Sports by 74% (135 to 235 participants) by November.	Participation in Jump Start Sports ceased, replaced by Let's Go Sports, which had an attendance decrease of 23% (135 to 104 participants).	11/1/2019	Not Met
Benjamin Banneker Community Center	Increase participation in family events by 56% (80 to 125 participants) in 2019 by increasing the age range of participants from 2-7 to 2-10.	Increased participation in family events by 86% (80 to 149 participants) in 2019.	11/1/2019	Accomplished
Benjamin Banneker Community Center	Maintain at least 70 participants per day in the Banneker Camp between June - August.	Maintained 80 participants per day in the Banneker Camp between June - August 2019.	8/31/2019	Accomplished
Benjamin Banneker Community Center	Maintain at least 12 participants per day in the Teen Summer Camp between June - August.	We averaged 12 participants per day in June/July 2019.	8/31/2019	Accomplished
Benjamin Banneker Community Center	Increase transportation radius from 1.5 to 3.5 miles from Banneker in 2019 by picking up participants at area middle/high schools for the after school program.	Transportation radius from 1.5 to 3.5 miles from Banneker (for after school program pick-up) will increase in April 2020 with a new grant funded minibus and coordination with MCCSC for all middle/high School participants.	12/31/2019	Accomplished
Benjamin Banneker Community Center	Increase participation in the Teen Leadership Program by 67% (15 to 25 teens) by December.	Average participation in the Teen Leadership Program decreased by 13% (15 to 13 teens) but experienced more consistent attendance.	12/1/2019	Not Met
Benjamin Banneker Community Center	Increase support of non-revenue generating programs by December through grants, sponsorships and community partners by offering new marketing opportunities (i.e. closed circuit TVs) to meet the cost recovery goal of 20%.	In 2019, Banneker received \$258,600 in grant funding and had our first banner sponsor in the gymnasium at \$500.	12/1/2019	Accomplished

## 2019 PARKS End-of-Year Budget Goal Updates

Operations	Complete 3 inventory audits in 2019 on high dollar items to maintain inventory accuracy and cut back on unnecessary spending.	Completed 3 inventory audits on January 18, April 26, and November 27 2019.	12/31/2019	Accomplished
Operations	Replace 200 feet of split rail fencing sections throughout the park system by December 1.	180 feet of split rail fencing was replaced at Woodlawn shelter (Bryan), Bryan Pool, Sherwood Oaks and RCA, and Building & Trades.	12/1/2019	Substantially Accomplished
Operations	Replace 100 feet of fencing at the Operations Center by November 16.	130 feet of fencing was replaced at operations center in April 2019.	11/16/2019	Accomplished
Operations	Install new security systems on Switchyard Park maintenance building by December 2020.	New security systems on Switchyard Park maintenance building will be designed and installed by ITS by May 2020.	12/31/2019	Substantially Accomplished
Operations	Replace 3 drinking fountains at Jackson Creek, Rail Trail and Ferguson Dog Park by November 16.	Replaced Rail Trail and Ferguson Dog Park drinking fountains. Jackson Creek unit was in good condition, so was left in place.	11/16/2019	Accomplished
Operations	Conduct twice yearly park inspections at all parks (20 total) in 2019 to maintain park standards.	Ten parks have been inspected twice in 2019.	12/31/2019	Not Met
Operations	Remove Crestmont Park bridge by June 1.	This bridge was removed in 2018.	6/1/2019	Accomplished
Operations	Perform quarterly inspections of 3 Parks grounds equipment in 2019 to ensure a regular preventive maintenance plan is carried out	Grounds equipment from Winslow Sports, Twin Lakes Sports and Operations has all had preventative maintenance and service in July and August.	12/31/2019	Accomplished
Operations	Install new carpet at the Buskirk Chumley Theater by February 1.	Accomplished in January.	2/1/2019	Accomplished

## 2019 PARKS End-of-Year Budget Goal Updates

Landscaping	Remove invasive plant species and replace with natives at several locations throughout the City (West 3rd Street Medians, BRT, Park Ridge East) by December 31.	Removed invasive plant species and replaced with natives at several locations throughout the City by July 2019.	12/31/2019	Accomplished
Landscaping	Minimize the use of annuals by 25% (-225 annuals) in 2019 in order to focus on planting more perennials and shrubs.	Decreased annual use by 52% (-455) in 2019.	12/31/2019	Accomplished
Landscaping	Maintain certification of at least 2 Regular Full Time staff members as Certified Chemical Applicators (Categories 3A, 5 and 6) by January 1, 2019.	Maintained certification of 2 Regular Full Time staff members as Certified Chemical Applicators (Joanna Sparks and Jon Behrman).	1/1/2019	Accomplished
Landscaping	Remove 3 acres of Asian Bush Honeysuckle at Upper Cascades Park by September 1.	Removed 4 acres of Asian Bush Honeysuckle at Upper Cascades Park by June 2019.	11/1/2019	Accomplished
Landscaping	Provide volunteer opportunities for at least 300 community members to maintain natural spaces by December 31.	As of December 31 there were 400 community volunteers in the following programs: Adopt-an-Acre, Global Youth Service Day, Sherwood Oaks Tree Planting, First Saturdays Weed Wrangles, IMU day of Service, UIFI group invasive cleanups and miscellaneous invasive cleanups.	12/31/2019	Accomplished
Cemeteries	Rehab at least 50 headstones in 2019.	In 2019, 72 headstones were repaired in Rose Hill Cemetery and 2 headstones were repaired in White Oak.	9/1/2019	Accomplished
Cemeteries	Complete initial invasive plant removal within Rose Hill and White Oak Cemeteries and the Rose Hill Office property in 2019	Completed initial invasive plant removal within Rose Hill and White Oak Cemeteries and the Rose Hill Office property in 2019.	12/31/2019	Accomplished

## 2019 PARKS End-of-Year Budget Goal Updates

Cemeteries	Install 100 native roses (Rosa setigera) at Rose Hill Cemetery by May 31.	Installed 100 native roses (Rosa setigera) at Rose Hill Cemetery in 2019.	5/31/2019	Accomplished
Cemeteries	Maintain certification of 1 Regular Full Time staff member as Certified Chemical Registered Technician by January 1.	Maintained certification of 1 Regular Full Time staff member as Certified Chemical Registered Technician (Curtis Gilstrap) in 2019.	1/1/2019	Accomplished
Urban Forestry	Receive Tree City USA status for the 35th year by December 31.	Received Tree City USA status for the 35th year (submitted December 21).	12/31/2019	Accomplished
Urban Forestry	Implement contractual services for public tree inventory.	Implemented contractual services for public tree inventory from February to August. Tree inventory presentation was conducted on September 17, 2019.	10/1/2019	Accomplished
Urban Forestry	Contract at least 1,000 public street trees for pruning by September 1.	Contracted 247 public street trees for pruning and 247 were pruned by City crew. Decrease was due to funding diversion to ash tree removal and being down one bucket truck.	9/1/2019	Not Met
Urban Forestry	Update the Tree Ordinance to reflect 2 additional members of the Bloomington Tree Commission by October 4.	Not met by previous Urban Forester. New UF will make this a 2020 goal	1/31/2020	Not Met
Urban Forestry	Update the 5-year Urban Forestry Master Plan by December 1.	Updated the 5-year Urban Forestry Master Plan, with revised plan submitted to the Tree Commission in December 2019.	12/1/2019	Accomplished

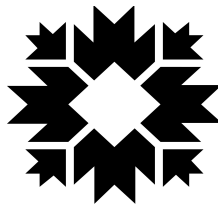
## 2019 PARKS End-of-Year Budget Goal Updates

Park Bond Projects 2018 – 2020	Complete the construction of the new Cascades Golf Course Clubhouse by August	Completed the construction of the new Cascades Golf Course Clubhouse with ribbon cutting held on October 3, 2019.	8/1/2019	Accomplished
Park Bond Projects 2018 – 2020	Convert the Zoysia fairway on Quarry golf course in 2019.	Zoysia install on the Quarry Course was completed by end of June 2019.	12/31/2019	Accomplished
Park Bond Projects 2018 – 2020	Rehab the Griffy Lake Nature Preserve restroom by May 3.	Rehab is 90% complete on June 12.	5/3/2019	Substantially Accomplished
Park Bond Projects 2018 – 2020	Improve the lighting and seating at Peoples Park by December 31.	Project to improve the lighting and seating at Peoples Park is in works with designs and planning projected 2020.	12/31/2019	Substantially Accomplished
Park Bond Projects 2018 – 2020	Improve the mechanical rooms and bathhouses at Bryan Park Pool and Mills Pool by May.	Improved the mechanical rooms and bathhouses at Bryan Park Pool and Mills Pool for a total of \$359,000 in renovations.	5/31/2019	Accomplished
Bicentennial Bond Projects (Griffy Lake Loop Trail)	Select Project Consultant(s) for engineered structures (bridges, boardwalks) and route by July 30.	The construction contractor will be selected for both the pier and the trail in October 2020.	7/30/2019	Not Met
Bicentennial Bond Projects (Griffy Lake Loop Trail)	Solicit public comment for trail route and volunteers assigned for basic trail construction (delineated pathways) by October 30.	Solicited public comment for trail route and volunteers assigned for basic trail construction on April 11, 2018 at Bryan Park.	10/30/2019	Accomplished
Bicentennial Bond Projects (Griffy Lake Loop Trail)	Complete Design by December 30.	Design was completed by contracted group Mader Design and approved on November 19, 2019.	12/30/2019	Accomplished
Bicentennial Bond Projects (Cascades Trail)	Complete route options study by July 20.	Completed route options study in Fall 2019 and presented to City Administration to explore and test one of the options.	7/20/2019	Substantially Accomplished

## 2019 PARKS End-of-Year Budget Goal Updates

Bicentennial Bond Projects (Cascades Trail)	Contract for consultant services for design of preferred option by September 30.	Contract for consultant services postponed to test initial design option (posting signs and setting barricades) which can be completed by City crew.	9/30/2019	Not Met
Bicentennial Bond Projects (Duke Energy Overhead Powerline Trail)	Select design consultant by May 30.	A design consultant has not been selected. This should be moved to Fall 2020.	5/30/2019	Not Met
Bicentennial Bond Projects (City Entryway Beautification)	Evaluate and select entryway locations by April 30.	Four locations have been identified for REA consultants to begin evaluation on each site.	4/30/2019	Accomplished
Bicentennial Bond Projects (City Entryway Beautification)	Select design consultant for selected locations by October 30.	Consult contract was approved by Parks Board on July 23, 2019. First design meeting held August 8, 2019.	10/30/2019	Accomplished
Bicentennial Bond Projects (Contracted Street Tree Planting)	Receive completed tree inventory data and vacant planting locations from Davey Trees by September 30.	Davies' Tree Service has completed the survey and presented their report to the Parks Board on September 17, 2019.	9/30/2019	Accomplished
Bicentennial Bond Projects (Contracted Street Tree Planting)	Place Phase I tree planting order by September 30.	263 trees ordered in the spring of 2019, but these orders were placed prior to the tree inventory, and are not part of that specific project.	9/30/2019	Not Met

Goal Count	Goal Progress?	
	Accomplished	70 (63.63%)
	Substantially Accomplished	13 (11.81%)
	Not Met	27 (24.54%)
Total Goals	110	



CITY OF BLOOMINGTON  
Parks and Recreation

## STAFF REPORT

Agenda Item: C-9  
Date: 12/1/2020

Administrator  
Review/Approval  
PM

**TO:** Board of Park Commissioners  
**FROM:** Paula McDevitt, Administrator  
**DATE:** December 17, 2020  
**SUBJECT: REVIEW/APPROVAL OF 2021 NON-REVERTING FUND BUDGET REQUEST**

### **RECOMMENDATION:**

It is recommended the Board approve the proposed 2021 City of Bloomington Parks and Recreation Non-Reverting Fund Budget Request and Program Units as attached.

### **BACKGROUND:**

The Department non-reverting fund was created to serve as an enterprise fund, allowing maximum flexibility for the Department to offer services in response to trends and customer demand while minimizing reliance on the general fund tax base.

The 2021 Parks and Recreation Non-Reverting fund budget request and revised program unit structure reflects ongoing changes in service provision and true cost allocations by activity and program unit. A bottom-up process has incorporated input from staff specialists, supervisors, managers and division directors.

A power point presentation will be presented at the meeting highlighting the details of the budget.

Respectfully Submitted,

Paula McDevitt, Administrator





# Budget Worksheet Report

Budget Year 2021

Account	Account Description	2018 Actual Amount	2019 Actual Amount	2020 Adopted Budget	2021 Mayor's Office Review	Calculated Column 1	Calculated Column 2
Fund 201	Parks and Rec Non Reverting						
	REVENUE						
	Department 18 - Parks & Recreation						
	Licenses						
41020	Permits	4,280.00	2,875.00	2,500.00	2,500.00	.00	
	<i>Licenses Totals</i>	<i>\$4,280.00</i>	<i>\$2,875.00</i>	<i>\$2,500.00</i>	<i>\$2,500.00</i>	<i>\$0.00</i>	<i>0%</i>
	<i>Intergovernmental</i>						
42110	Grants - State	10,964.80	2,800.00	.00	.00	.00	
42120	Grants - Federal	53,674.27	54,850.61	103,954.00	128,954.00	25,000.00	24
	<i>Intergovernmental Totals</i>	<i>\$64,639.07</i>	<i>\$57,650.61</i>	<i>\$103,954.00</i>	<i>\$128,954.00</i>	<i>\$25,000.00</i>	<i>24%</i>
	<i>Charges for Services</i>						
43110	Rental Fees	109,545.00	102,311.97	108,525.00	108,525.00	.00	
43125	NSF Fees on Returns Checks	.00	40.00	.00	.00	.00	
43220	Facility Rentals	221,662.74	236,226.52	224,300.00	256,800.00	32,500.00	14
43230	General Admissions	769.00	1,046.00	1.00	1.00	.00	
43240	Season Passes/Memberships	293,877.45	291,744.58	301,000.00	293,401.00	(7,599.00)	(3)
43250	Player Fees	38,443.50	28,720.75	44,000.00	30,000.00	(14,000.00)	(32)
43260	Equipment Rentals	55,626.66	58,034.58	52,100.00	52,100.00	.00	
43270	Registration Fees	682,776.76	663,078.58	1,037,785.00	704,871.00	(332,914.00)	(32)
43280	Transaction Fees	34,157.62	33,881.90	35,000.00	35,000.00	.00	
43290	Concessions	160,973.93	138,556.36	220,000.00	204,000.00	(16,000.00)	(7)
43295	Concessions FB Tax	83,067.87	75,351.63	15,000.00	15,000.00	.00	
43300	Vending	7,445.87	5,913.83	17,000.00	5,601.00	(11,399.00)	(67)
43310	Application Fee	575.00	350.00	500.00	500.00	.00	
43330	Program Rental	1,797.50	2,807.50	2,001.00	2,501.00	500.00	25
43340	Pro Shop Sales	72,939.14	55,361.92	71,800.00	71,300.00	(500.00)	(1)
43370	Other Sales	5,262.24	4,111.46	9,500.00	3,801.00	(5,699.00)	(60)
43380	Other Services	26,434.92	17,134.50	12,000.00	15,500.00	3,500.00	29
43390	Health and Wellness	10.00	10.00	.00	.00	.00	
43410	Advertising	73,164.53	71,216.69	60,850.00	54,100.00	(6,750.00)	(11)
	<i>Charges for Services Totals</i>	<i>\$1,868,529.73</i>	<i>\$1,785,898.77</i>	<i>\$2,211,362.00</i>	<i>\$1,853,001.00</i>	<i>(\$358,361.00)</i>	<i>(16%)</i>
	<i>Miscellaneous</i>						
47050	Donations	31,738.19	37,411.19	17,901.00	22,001.00	4,100.00	23
47060	Refunds	428.41	.00	.00	.00	.00	
47070	Insurance Reimbursements	4,294.37	3,620.00	3,000.00	3,000.00	.00	



# Budget Worksheet Report

Budget Year 2021

Account	Account Description	2018 Actual Amount	2019 Actual Amount	2020 Adopted Budget	2021 Mayor's Office Review	Calculated Column 1	Calculated Column 2
Fund 201	Parks and Rec Non Reverting						
	REVENUE						
	Department 18 - Parks & Recreation						
	Miscellaneous						
47080	Other Reimbursements	62,948.19	8,216.30	.00	.00	.00	
47220	Non Rev Economic Development	4,469.00	4,560.00	4,500.00	4,400.00	(100.00)	(2)
47230	Gift Certificate	(245.00)	(1,615.00)	200.00	200.00	.00	
47240	EBT Market Bucks	(6,721.50)	3,931.50	.00	.00	.00	
47250	Grant - Other	69,827.40	9,490.06	45,000.00	45,000.00	.00	
47260	Sale of Scrap	474.03	1,364.01	2,000.00	2,000.00	.00	
	Miscellaneous Totals	\$167,213.09	\$66,978.06	\$72,601.00	\$76,601.00	\$4,000.00	6%
	Other						
49990	Prior Year Voided Checks	152.19	251.43	1,000.00	1,000.00	.00	
	Other Totals	\$152.19	\$251.43	\$1,000.00	\$1,000.00	\$0.00	0%
	Department 18 - Parks & Recreation Totals	\$2,104,814.08	\$1,913,653.87	\$2,391,417.00	\$2,062,056.00	(\$329,361.00)	(14%)
	REVENUE TOTALS	\$2,104,814.08	\$1,913,653.87	\$2,391,417.00	\$2,062,056.00	(\$329,361.00)	(14%)
	EXPENSE						
	Department 18 - Parks & Recreation						
	Personnel Services						
51110	Salaries and Wages - Regular	80,863.72	87,486.73	95,942.86	100,268.74	4,325.88	5
51120	Salaries and Wages - Temporary	414,641.56	265,045.16	455,845.76	448,298.32	(7,547.44)	(2)
51130	Salaries and Wages- Overtime	436.90	390.40	.00	.00	.00	
51210	FICA	37,619.90	33,368.82	42,212.25	41,968.04	(244.21)	(1)
51220	PERF	11,507.08	12,478.37	13,625.56	14,242.80	617.24	5
51230	Health and Life Insurance	27,125.28	27,125.28	27,627.60	27,183.52	(444.08)	(2)
	Personnel Services Totals	\$572,194.44	\$425,894.76	\$635,254.03	\$631,961.42	(\$3,292.61)	(1%)
	Supplies						
52110	Office Supplies	270.55	71.95	1,500.00	1,850.00	350.00	23
52210	Institutional Supplies	14,535.85	16,389.58	15,550.00	17,150.00	1,600.00	10
52220	Agricultural Supplies	16,982.03	44,543.93	68,519.00	1,000.00	(67,519.00)	(99)
52230	Garage and Motor Supplies	.00	400.00	.00	.00	.00	
52240	Fuel and Oil	522.48	644.43	201.00	201.00	.00	
52310	Building Materials and Supplies	4,870.72	5,291.10	20,450.00	46,310.00	25,860.00	126
52320	Motor Vehicle Repair	.00	.00	1.00	1.00	.00	
52330	Street , Alley, and Sewer Material	174,785.93	160,630.50	192,000.00	179,000.00	(13,000.00)	(7)
52340	Other Repairs and Maintenance	3,786.98	3,939.69	7,100.00	5,900.00	(1,200.00)	(17)



# Budget Worksheet Report

Budget Year 2021

Account	Account Description	2018 Actual Amount	2019 Actual Amount	2020 Adopted Budget	2021 Mayor's Office Review	Calculated Column 1	Calculated Column 2
Fund 201	Parks and Rec Non Reverting						
	EXPENSE						
	Department 18 - Parks & Recreation						
	Supplies						
52420	Other Supplies	125,693.36	101,658.30	109,329.00	107,722.00	(1,607.00)	(1)
52430	Uniforms and Tools	24,619.14	22,106.59	28,371.00	28,602.00	231.00	1
	<i>Supplies Totals</i>	\$366,067.04	\$355,676.07	\$443,021.00	\$387,736.00	(\$55,285.00)	(12%)
	<i>Other Services and Charges</i>						
53140	Exterminator Services	442.32	442.32	668.00	668.00	.00	
53150	Communications Contract	512.08	411.28	800.00	800.00	.00	
53160	Instruction	10,930.95	5,701.74	8,460.00	7,145.00	(1,315.00)	(16)
53170	Mgt. Fee, Consultants, and Workshops	6,000.00	.00	2,100.00	2,100.00	.00	
53210	Telephone	1,674.81	933.18	1,700.00	1,610.00	(90.00)	(5)
53230	Travel	8,584.64	7,059.47	15,525.00	17,352.00	1,827.00	12
53310	Printing	14,855.58	13,538.05	13,665.00	8,165.00	(5,500.00)	(40)
53320	Advertising	9,286.95	973.54	11,800.00	10,300.00	(1,500.00)	(13)
53410	Liability / Casualty Premiums	14,388.00	16,019.06	18,422.00	17,422.00	(1,000.00)	(5)
53510	Electrical Services	57,179.71	46,958.32	53,100.00	46,000.00	(7,100.00)	(13)
53530	Water and Sewer	9,560.02	7,949.77	10,500.00	8,700.00	(1,800.00)	(17)
53540	Natural Gas	12,676.02	8,340.84	12,500.00	7,000.00	(5,500.00)	(44)
53610	Building Repairs	20,219.10	17,385.80	12,099.00	13,299.00	1,200.00	10
53630	Machinery and Equipment Repairs	2,567.42	.00	8,400.00	6,900.00	(1,500.00)	(18)
53650	Other Repairs	3,326.50	5,103.37	8,200.00	8,900.00	700.00	9
53720	Building Rental	3,196.30	3,653.50	3,700.00	3,000.00	(700.00)	(19)
53730	Machinery and Equipment Rental	4,443.86	13,440.56	9,275.00	9,100.00	(175.00)	(2)
53750	Rentals - Other	1,392.30	.00	500.00	500.00	.00	
53810	Principal	555,000.00	350,000.00	365,000.00	365,000.00	.00	
53820	Interest	116,945.00	125,962.52	117,000.00	109,100.00	(7,900.00)	(7)
53830	Bank Charges	24,243.58	29,615.90	27,250.00	29,210.00	1,960.00	7
53840	Lease Payments	.00	275,575.93	132,819.00	132,819.00	.00	
53910	Dues and Subscriptions	19,664.14	19,986.06	20,720.00	24,200.00	3,480.00	17
53920	Laundry and Other Sanitation Services	.00	.00	1,250.00	1,250.00	.00	
53940	Temporary Contractual Employee	121,975.11	114,775.52	123,020.00	117,320.00	(5,700.00)	(5)
53950	Landfill	1,779.34	3,498.48	1,800.00	3,500.00	1,700.00	94
53990	Other Services and Charges	264,792.99	227,733.99	164,935.00	174,135.00	9,200.00	6



# Budget Worksheet Report

Budget Year 2021

Account	Account Description	2018 Actual Amount	2019 Actual Amount	2020 Adopted Budget	2021 Mayor's Office Review	Calculated Column 1	Calculated Column 2
Fund	<b>201 - Parks and Rec Non Reverting</b>						
	<b>EXPENSE</b>						
Department	<b>18 - Parks &amp; Recreation</b>						
	<i>Other Services and Charges Totals</i>	\$1,285,636.72	\$1,295,059.20	\$1,145,208.00	\$1,125,495.00	(\$19,713.00)	(2%)
	<i>Capital Outlays</i>						
54440	Motor Equipment	45,142.26	.00	.00	.00	.00	
54510	Other Capital Outlays	.00	110,000.00	.00	.00	.00	
	<i>Capital Outlays Totals</i>	\$45,142.26	\$110,000.00	\$0.00	\$0.00	\$0.00	+++
Department	<b>18 - Parks &amp; Recreation Totals</b>	\$2,269,040.46	\$2,186,630.03	\$2,223,483.03	\$2,145,192.42	(\$78,290.61)	(4%)
	<b>EXPENSE TOTALS</b>	\$2,269,040.46	\$2,186,630.03	\$2,223,483.03	\$2,145,192.42	(\$78,290.61)	(4%)
Fund	<b>201 - Parks and Rec Non Reverting Totals</b>						
	<b>REVENUE TOTALS</b>	\$2,104,814.08	\$1,913,653.87	\$2,391,417.00	\$2,062,056.00	(\$329,361.00)	(14%)
	<b>EXPENSE TOTALS</b>	\$2,269,040.46	\$2,186,630.03	\$2,223,483.03	\$2,145,192.42	(\$78,290.61)	(4%)
Fund	<b>201 - Parks and Rec Non Reverting Totals</b>	(\$164,226.38)	(\$272,976.16)	\$167,933.97	(\$83,136.42)	(\$251,070.39)	(150%)
	Net Grand Totals						
	<b>REVENUE GRAND TOTALS</b>	\$2,104,814.08	\$1,913,653.87	\$2,391,417.00	\$2,062,056.00	(\$329,361.00)	(14%)
	<b>EXPENSE GRAND TOTALS</b>	\$2,269,040.46	\$2,186,630.03	\$2,223,483.03	\$2,145,192.42	(\$78,290.61)	(4%)
	Net Grand Totals	(\$164,226.38)	(\$272,976.16)	\$167,933.97	(\$83,136.42)	(\$251,070.39)	(150%)



## STAFF REPORT

Agenda Item: D-4  
Date: 12/4/2020

Administrator  
Review\Approval  
PM

**TO:** Board of Park Commissioners  
**FROM:** Paula McDevitt, Administrator  
**DATE:** December 17, 2020  
**SUBJECT:** 2021-2025 DRAFT MASTER PLAN PRESENTATION

### For Information Purposes

It has long been the practice of the Department to use the Master Planning process, in five-year increments, to shape the goals and priorities of the Department to match community interests. The last Master Plan update was for the 2016-2020 timeframe.

In June 2020, the Board of Park Commissioners approved a contract with Troyer Group, Inc. from Mishawaka, Indiana for consulting services to complete the master plan. The following list reflects the scope of services Troyer Group, Inc. has worked on beginning in June to date.

- Review of past plans, facilities, and programs
- Community Needs Assessment
- Analysis of maintenance, recreation, and administrative delivery system
- Public participation
- Indiana Department of Natural Resources and NRPA CAPRA Requirements
- Strategic Action Plan
- Strategies and action plans for park facilities and capital equipment

Johnathon Geels, Principal Landscape Architect will present the 2021-2025 Draft Master Plan

**RESPECTFULLY SUBMITTED,**

Paula McDevitt, Administrator