

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SOUTH BEND
DEPARTMENT OF VENUES PARKS & ARTS AND BEACON HEALTH & FITNESS**

THIS AGREEMENT is made and executed between the City of South Bend, Indiana, a municipal corporation existing under the laws of the State of Indiana (“City”) Department of Venues Parks and Arts (“VPA”), acting by and through its Board of Park Commissioners (“Board”), and the Beacon Health & Fitness, a non-profit organization (“Beacon Health & Fitness”), organized under the laws of the State of Indiana and having its offices located at 300 Beacon Parkway, Granger, IN 46530.

WHEREAS, the City wishes to support programing for the health & wellness of the community; and

WHEREAS, Beacon Health & Fitness exists for the purpose of providing opportunities for the health & wellness of the community; and

WHEREAS, the City is the owner of the property located at 219 S. St. Louise Blvd., South Bend, IN 46617, Howard Park Event Center, Inovateus Solar Event Lawn (“The Facility”).

WHEREAS, Beacon Health & Fitness desires to use space at Howard Park Event Center, Inovateus Solar Lawn to conduct a series of Destination Fitness Classes;

NOW, THEREFORE, VPA and Beacon Health & Fitness do hereby mutually agree as follows:

I. TERM OF AGREEMENT

This Agreement shall commence on September 12, 2020 and continue until October 31, 2020 (October 10 not available) at which point this Agreement shall terminate.

II. CONSIDERATION AND CONTRIBUTIONS BY THE PARTIES

- (a) Consideration: During the term of this Agreement, VPA will allow Beacon Health & Fitness to use the Facility, free of charge, for its Destination Fitness Classes. In consideration of VPA’s Facility use contribution, Beacon Health & Fitness agrees to offer a series of free clinics as follows:

Every Saturday starting September 12 through October 31 (except October 10) (weather permitting)
Howard Park Inovateus Solar Event Lawn 10am-11am

- (b) Additional Contribution from VPA:

1. VPA will provide webpage advertising of the Destination Fitness Classes
2. VPA will promote the Destination Fitness Classes through flyers and social media channels.

(c) Additional Contributions from Beacon Health & Fitness:

1. Beacon Health & Fitness will provide VPA with basic data on total number of program participants it has for the clinics, separated by site.
2. Beacon Health & Fitness will provide the instructors for the classes.
3. Beacon Health & Fitness agrees to be responsible for participant registration.
4. Beacon Health & Fitness agrees to provide marketing and all supplies needed for the clinics.
5. Beacon Health & Fitness agrees to mention VPA as a sponsor in part on any marketing materials that go out.
6. Beacon Health & Fitness will provide VPA with proof of insurance.
7. Beacon Health & Fitness will provide COVID safety protocols.

III. RESPONSIBILITIES OF VPA

- (a) VPA shall work together with Beacon Health & Fitness to develop a schedule of dates and times for use of the Facility for the Destination Fitness Classes.
- (b) VPA shall be responsible for the removal of trash and debris located in the trash receptacles and dumpster located at the Facility as customary and necessary.
- (c) VPA shall be responsible for the cost of electricity usage at the Facility, including lighting of the Facility parking lot during use of the Facility for the Destination Fitness Classes.
- (d) VPA shall be responsible for the maintenance, upkeep and repairs of the Facility, not caused by Beacon Health & Fitness's use of the Facility, in the sole discretion of VPA.

IV. RESPONSIBILITIES OF BEACON HEALTH & FITNESS

- (a) Beacon Health & Fitness agrees to work together with VPA to develop a schedule of dates and times for use of the Facility for the purpose of the program.
- (b) shall provide staffing and supervision for the program.
- (c) shall handle registration of participants for the program.
- (d) shall provide all marketing and supply needs for the program.
- (e) understands and agrees that the Facility is to be used only for the purpose of conducting the program and for no other purpose without the prior written consent of VPA.
- (f) shall be responsible for any special preparation of the Facility prior to scheduled uses of the Facility and shall restore and repair any damaged caused by Beacon Health & Fitness, to the Facility following each use, normal wear and tear excepted.
- (g) agrees to obey all rules and regulations of the Facility as well as all applicable local, state and federal laws and regulations.

(V) ASSIGNMENT

Beacon Health & Fitness may not assign the rights granted in this Agreement without first obtaining prior written consent from VPA.

(VI) INDEMNIFICATION

Beacon Health & Fitness hereby agrees to defend, indemnify, and hold harmless the City, VPA, its officials, employees, and agents from any and all claims of any nature which arise from the performance by the Beacon Health & Fitness under this Agreement and from all costs and

attorney fees in connection therewith, excepting for claims arising solely out of the negligence of the City, VPA, its officials, directors, employees, and agents.

(VII) INSURANCE

Beacon Health & Fitness shall at its sole cost and expense, obtain, maintain and submit to VPA, Certificates of Insurance in the following amounts, naming the City as an additional named insured:

Workers' Compensation Insurance that satisfies the minimum statutory limits; and

Commercial General Liability in an amount not less than: (1) \$1,000,000 per occurrence; (2) \$100,000 for damage to rented premises; (3) \$5,000.00 for medical expense; (4) \$500,000 for personal and advertising injury; (5) \$1,000,000 products/completed operations; (6) \$1,000,000 auto liability; (7) \$2,000,000 general aggregate limit; and (8) \$5,000,000 excess/umbrella liability.

Beacon Health & Fitness shall ensure that the Certificates of Insurance contain provisions that the policies and coverages afforded thereunder will not be canceled until at least 30 days after written notice is provided to the City.

(VIII) ILLEGALITY

If any provision of this Agreement is found by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement will not be affected thereby, and in lieu of any provision that is found to be illegal, invalid, or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

(IX) NON DISCRIMINATION

The City and VPA are committed to ensuring equality of opportunity and does not exclude, deny the benefit of, or otherwise subject any person to discrimination in any City program, service or activity on the basis of race, color, sexual orientation, national origin, sex, age or disability. Creative agrees to comply with and to act consistently with this policy in the performance of Creative's duties under this Agreement.

(X) ENTIRE AGREEMENT

This document contains all of the agreements between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement shall not be amended or modified except by written instrument signed by both parties.

(XI) LAW GOVERNING AGREEMENT

This Agreement shall be governed by the laws of the State of Indiana and venue shall be in St. Joseph County, Indiana.


(XII) COUNTERPARTS

This Agreement may be executed in counterparts which when taken together shall constitute one fully executed original.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Parties hereto, through their duly authorized representatives, have caused this Agreement to be executed as of the day and year first written above. The parties have read and understand the foregoing terms of this Agreement and do, by their respective signatures hereby agree to its terms.

BEACON HEALTH & FITNESS



Signature

ALAN LOYD, EXECUTIVE DIRECTOR

Printed Name and Title

3221 Beacon Parkway

Street Address

P.O. Box

Greener, IN 46530

City, State Zip

**CITY OF SOUTH BEND, INDIANA
BOARD OF PARKS COMMISSIONERS**

Mark Neal, President

Aimee Buccellato, Member

Consuella Hopkins, Member

Dan Farrell, Member

ATTEST:

Eva Ennis, Clerk