



South Bend

Redevelopment Commission

227 West Jefferson Boulevard, Room 1308, South Bend, Indiana

Redevelopment Commission Agenda Item

DATE: October 24, 2024

FROM: Joseph Molnar, Assistant Director of Growth & Opportunity

SUBJECT: Second Amendment – Tree Nursery Agreement

Pres/V-Pres

ATTEST: Vivian B. Bellis Secretary

Date: 10-24-2024

☒ APPROVED ☐ Not Approved

SOUTH BEND REDEVELOPMENT COMMISSION

Funding Source* (circle) River West; River East; South Side; Douglas Road; West Washington; RDC General; Riv. East Res.

* Funds are subject to the City Controller's determination of availability; if funds are unavailable, as solely determined by the City Controller, then the authorization of the expenditure of such funds shall be void and of no effect.

PURPOSE OF REQUEST: Amend and Restate the Tree Nursery Agreement approved by RDC on April 11, 2017

On April 11, 2017, the RDC approved a Tree Nursery Agreement with the City of South Bend, Indiana Venues, Parks and Arts Department through their Board of Park Commissioners to establish and disperse an urban tree nursery program on scattered lots throughout the City. Now VPA and DCI Staff wish to discontinue the use of the prior approved lots as urban tree nurseries and instead focus on one lot for such use located in Ignition Park, referred to as the "RDC Lot" in this agreement.

The existing urban tree nurseries on the scattered lots will be decommissioned as the trees age to maturity to be transplanted and will not be replaced, allowing for these lots to be redeveloped in the future. VPA agrees to plant and provide ongoing maintenance and care to the new urban tree nursery located at the "RDC Lot" and assume all expenses and fees related to the maintenance of the nursery.

SECOND AMENDED AND RESTATED TREE NURSERY AGREEMENT

THIS SECOND AMENDED AND RESTATED TREE NURSERY AGREEMENT ("Agreement") is made effective this 24th. day of October, 2024 (the "Effective Date") by and between the City of South Bend, Indiana Venues, Parks, and Arts Department ("VPA"), acting through its Board of Park Commissioners ("Parks Board") and the City of South Bend Department of Community Investment, by and through its Redevelopment Commission ("RDC") and the City of South Bend, Indiana, acting by and through its Board of Public Works ("BPW") (each, a "Party," and collectively, the "Parties").

RECITALS

WHEREAS, the Parties originally established and dispersed an urban tree nursery program in April 11, 2017, as amended and restated in October 11, 2022, as positive adaptive repurposing of specifically listed vacant lots owned by BPW and RDC on behalf of the City of South Bend (the "City"); and

WHEREAS, the Parties now desire to discontinue use of the prior RDC and BPW lots as tree nurseries and instead begin utilizing a newly identified lot owned by RDC (the "RDC Lot") as more particularly described in Exhibit A as a single urban tree nursery location; and

WHEREAS, upon execution of this Agreement, the Parties desire that BPW shall have no further obligations as it relates to the urban tree nursery program; and

WHEREAS, VPA will provide ongoing volunteer services to the RDC Lot to help create and maintain the planned distributed urban tree nursery on the RDC Lot; and

WHEREAS, the Parties desire to memorialize these amended and restated terms of their agreement herein.

NOW THEREFORE, for and in consideration of the mutual covenants and promises contained herein, the Parties hereby agree as follows:

Section 1. RDC Duties. RDC agrees to grant VPA access to the RDC Lot for the planting of a distributed urban tree nursery.

Section 2. VPA Duties. VPA agrees to plant and provide ongoing maintenance and care to the distributed urban tree nursery described herein. VPA shall assume all expenses related to such ongoing maintenance, including any fees as set forth in the Municipal Code of the City of South Bend, Indiana Section 17-79 et al. related to water fees. VPA owns all the trees planted in the urban tree nursery and has the right, in its sole discretion, to transplant any mature trees to other City locations.

Section 3. Term. Unless this Agreement is earlier terminated, the RDC Lot shall be subject to the terms of this Agreement from the Effective Date until December 31, 2029 (the

"Term"). At the conclusion of the Term, this Agreement shall automatically renew for one (1) year periods unless RDC or VPA deliver written notice of its intention not to renew to the other Party. Notwithstanding the foregoing, either VPA or RDC may terminate this Agreement in whole or in part, for any reason, at any time, if it determines that such termination is in its best interests, and provides the other Party at least sixty (60) days' advance written notice.

Section 4. Assignment; Subcontractors. VPA and RDC shall not assign or subcontract the whole or any part of this Agreement without the prior written consent of the other Party.

Section 5. Changes in Scope of Use. RDC and VPA understand and agree that the intended use of the RDC Lot delineated in this Agreement is limited to the establishment and maintenance of an urban tree nursery. Any changes thereto must be authorized in writing by both VPA and RDC.

Section 6. Governing Law; Compliance with Laws. This Agreement shall be construed and interpreted according to the laws of the State of Indiana. The Parties hereto agree to comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby are hereby incorporated herein by reference.

Section 7. Waiver. One or more waivers of any condition herein shall not be construed as a waiver of a subsequent breach of the same condition.


Section 8. Authority. Each undersigned person signing on behalf of their respective party certifies that they are duly authorized to bind his/her respective Party to the terms of this Agreement.


Section 9. Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understanding of any and every nature between them.


****SIGNATURE PAGE FOLLOWS****

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.

**BOARD OF PARK
COMMISSIONERS:**


Mark Neal, President


Consuela Hopkins, Vice President


Sam Smith-Davis, Member

Member

ATTEST:


Annette Smith-Davis, Clerk

January 21, 2025
Date Approved

**REDEVELOPMENT COMMISSION OF
SOUTH BEND**

Troy Warner, President


Vivian G. Sallie, Secretary

10-24-2024

Date Approved

EXHIBIT A.

Description of Property

Address	Parcel No.	Legal Desc.
18 14-37-2E Allied Pro 12AC	018-8021- 084901	Lot 1 Ignitions Park Major Sub Sec 2

