



# CITY OF SOUTH BEND

## REDEVELOPMENT COMMISSION

### Redevelopment Commission Agenda Item

DATE: January 27, 2022  
FROM: Andrew Netter, Senior Planner  
SUBJECT: Temporary Use of Redevelopment Commission for Native Urban Tree Nurseries

Which TIF? (circle one) River West; River East; South Side; Douglas Road; West Washington

PURPOSE OF REQUEST:

Attached is the temporary use agreement for Redevelopment Commission property for the installation of native tree urban nurseries. 610 and 622 Euclid Ave. will be used in conjunction with Civil City property for establishment of a nursery.

The temporary use agreement outlines the terms of use of the property. The first term is five years with options for renewal up to three times (each for five-year increments).

Staff requests approval of the temporary use agreement for the Redevelopment Commission property.

INTERNAL USE ONLY: Project Code: \_\_\_\_\_;  
Total Amount new/change (inc/dec) in budget: \_\_\_\_-0-\_\_\_\_\_; Breakdown:  
Costs: Engineering Amt: \_\_\_\_\_; Other Prof Serv Amt \_\_\_\_\_;  
Acquisition of Land/Bldg (circle one) Amt: \_\_\_\_\_; Street Const Amt \_\_\_\_\_;  
Building Imp Amt \_\_\_\_\_; Sewers Amt \_\_\_\_\_; Other (specify) Amt: \_\_\_\_\_  
\_\_\_\_\_. Going to BPW for Contracting? Y/N  
Is this item ready to encumber now? \_\_N/A\_\_ Existing PO# \_\_\_\_\_ Inc/Dec \$ \_\_\_\_\_

EXCELLENCE | ACCOUNTABILITY | INNOVATION | INCLUSION | EMPOWERMENT

# COMMUNITY TREE NURSERY COLLABORATION AMENDED AND RESTATED AGREEMENT

---

**THIS COMMUNITY TREE NURSERY COLLABORATION AMENDED AND RESTATED AGREEMENT** ("Agreement") is made effective this \_\_\_ day of \_\_\_\_\_ 2021 (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"); the Center for Civic Innovation, associated with the University of Notre Dame du Lac ("CCI"); South Bend Redevelopment Commission ("Redevelopment Commission"); and the City of South Bend, Indiana, acting by and through its Board of Public Works ("Public Works").

## RECITALS

**WHEREAS**, The parties originally established a dispersed urban native tree nursery program in April of 2017 as positive repurposing of specifically listed vacant lots owned by the City. The parties now desire to amend and restate the Agreement to the add additional lots to the program, incorporate additional City partners, and affirm ownership of the trees. For ease of administration, a schedule of the program properties (the "Properties") is hereby incorporated by reference and attachment to the Agreement (Exhibit A); and

**WHEREAS**, Public Works and Redevelopment Commission, on behalf of the City of South Bend ("City"), each own some of the Properties; and

**WHEREAS**, Public Works and Redevelopment Commission each desire to let VPA utilize their respective Properties as prototypes of positive adaptive repurposing of vacant lots as urban neighborhood innovation as distributed urban native tree nurseries; and

**WHEREAS**, CCI desires to provide ongoing volunteer services to the Properties to help create and maintain the planned pilot distributed urban native tree nurseries on the Properties; and

**WHEREAS**, the parties desire to memorialize the 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. Public Works Duties.** Public Works agree to grant VPA and CCI access to its Properties for the planting of distributed urban native tree nurseries.

**Section 2. Redevelopment Commission Duties.** Redevelopment Commission agrees to grant VPA and CCI access to its Properties for the planting of distributed urban native tree nurseries.

**Section 3. VPA Duties.** VPA agrees to plant and provide ongoing maintenance and care to the distributed urban native tree nurseries 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 native tree nurseries and has the right to transplant any mature trees to other City locations, in its sole discretion.

**Section 4. CCI Duties.** CCI shall provide ongoing volunteer services to VPA to assist with the establishment of the distributed urban native tree nurseries on the Properties.

**Section 5. Term.** The Properties shall be subject to the terms of this Agreement until the expiry dates set forth in their respective schedules as set forth on Exhibit A. The parties may agree to extend the applicability of this Agreement to the Properties contained in any schedule by a signed written amendment to this Agreement for up to three (3) additional five (5)-year periods from the date of termination for that schedule. This Agreement shall terminate on a date that is five (5) years from the Effective Date or upon the expiration date of the last renewal, whichever is later.

- a. Access to Properties listed under Schedule I of **Exhibit A** will terminate on April 11, 2027.
- b. Access to Properties listed under Schedule II of **Exhibit A** will terminate on July 24, 2023.
- c. Access to Properties listed under Schedule III of **Exhibit A** will terminate on August 19, 2024.
- d. Access to Properties listed under Schedule IV of **Exhibit A** will terminate on December 14, 2026.

**Section 6. Assignment; Subcontractors.** The parties shall not assign or subcontract the whole or any part of this Agreement without the prior written consent of the other parties.

**Section 7. Changes in Scope of Services.** The parties understand and agree that the scope of services delineated in this Agreement are limited to the Properties and the establishment of a tree nursery. Any changes thereto must be authorized in writing by all parties hereto.

**Section 8. 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 9. Relationship/Independent Contractor.** All parties, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employee(s) or agent(s) of one party shall not be deemed or construed to be the employee(s) or agent(s) of any other party for any purpose whatsoever.

**Section 10. Indemnification.** CCI agrees to defend, indemnify and hold the City, including VPA, Public Works, and Redevelopment Commission, and their respective officers, agents, directors, and employees harmless from any and all claims arising from or related to the volunteer work performed or managed by CCI and performed on the Properties. In addition, CCI will maintain commercial general liability insurance coverage in the minimum amount of at least \$1,000,000 per occurrence and will designate the City, including VPA, Public Works, and Redevelopment Commission, as additional insureds under any such policy of insurance. This provision shall survive the termination of this Agreement.

**Section 11. 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 12. Authority.** Each undersigned person signing on behalf of his/her respective party certifies that he/she is duly authorized to bind his/her respective party to the terms of this Agreement.

**Section 13. 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 Community Tree Nursery Collaboration Amended and Restated 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.

**CENTER FOR CIVIC INNOVATION:**

\_\_\_\_\_  
*Signature*

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

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

**BOARD OF PARK COMMISSIONERS:**

\_\_\_\_\_  
*Mark Neal, President*

\_\_\_\_\_  
*Consuela Hopkins, Vice President*

\_\_\_\_\_  
*Aimee Bucellato, Member*

\_\_\_\_\_  
*Dan Farrell, Member*

ATTEST:

\_\_\_\_\_  
*Amy Roush, Clerk*

\_\_\_\_\_  
*Date Approved*

**BOARD OF PUBLIC WORKS:**

\_\_\_\_\_  
*Elizabeth Maradik, President*

\_\_\_\_\_  
*Jordan Gathers, Member*

\_\_\_\_\_  
*Gary Gilot, Member*

\_\_\_\_\_  
*Murray Miller, Member*

\_\_\_\_\_  
*Joseph Molnar, Member*

**ATTEST:**

\_\_\_\_\_  
*Laura Hensley, Clerk*

\_\_\_\_\_  
*Date Approved*

**REDEVELOPMENT COMMISSION OF SOUTH BEND:**

\_\_\_\_\_  
*Marcia Jones, President*

\_\_\_\_\_  
*Troy Warner, Secretary*

\_\_\_\_\_  
*Date Approved*

**EXHIBIT A.  
SCHEDULE OF PARCELS**

**Schedule I**

(Coverage under this Agreement Terminates on April 11, 2027)

<b>Address</b>	<b>Parcel No.</b>	<b>Legal Desc.</b>
625 East Dayton St.	018-7029-1141	LOT 93 HENRY STUDEBAKERS 2ND
1414 High St.	018-7010-0415	LOT 101 WENGER & KRIEGHBAUM 2ND ADD
Vacant lot east of 1414 High St.	018-7012-0473	LOT 100 WENGER & KRIEGHBAUM 2ND ADD

**Schedule II**

(Coverage under this Agreement Terminates on July 24, 2023)

<b>Address</b>	<b>Parcel No.</b>	<b>Legal Desc.</b>
529 N. Allen St.	018-1035-1524	LOT 25 J N LEDERERS ADD
525 N. Allen St.	018-1035-1523	LOT 24 J N LEDERERS ADD
521 N. Allen St.	018-1035-1522	LOT 23 LEDERERS SUB OF OUTLOT A

**Schedule III**

(Coverage under this Agreement Terminates on August 19, 2024)

<b>Address</b>	<b>Parcel No.</b>	<b>Legal Desc.</b>
435 N. Allen St.	018-1032-1400	LOTS 29 & 30 34.8 FT N END BIRNER PLACE ADD
431 N. Allen St.	018-1032-1401	LOTS 29 & 30 34.8 FT MID PT BIRNER PLACE ADD
429 N. Allen St.	018-1032-1402	LOTS 29 & 30 34.8 FT SLY END BIRNER PLACE ADD
442 S. Brookfield St.	018-4013-0449	LOT 123 SUMMIT PL 2ND ADD
516 N. Allen St.	018-1035-1534	LOT 16 J N LEDERERS ADD
520 N. Allen St.	018-1035-1533	LOT 15 J N LEDERERS ADD
606 N. Blaine Ave.	018-1035-1513	LOT 29 W 1/2 J N LEDERERS ADDITION
608 N. Blaine Ave.	018-1035-1514	LOT 29 E 1/2 J N LEDERER
1110 W. Harvey St.	018-1032-1399	LOT 28 BIRNER PL ADD
1117 W. Harvey St.	018-1032-1387	LOT 15 BIRNER PLACE
1121 W. Harvey St.	018-1032-1386	LOT 16 BIRNER PL ADD

**Schedule III**

(Coverage under this Agreement Terminates on December 14, 2026)

<b>Address</b>	<b>Parcel No.</b>	<b>Legal Desc.</b>
401 Allen St.	018-1033-1441	Lot 51 Birner Place Add
610 Euclid Ave.	018-1037-1621	Lot 12 Orchard Hts 1st
614 Euclid Ave.	018-1037-1620	Lot 11 Orchard Heights 1st
618 Euclid Ave.	018-1037-1619	Lot 10 Orchard Hts 1st Add
622 Euclid Ave.	018-1037-1618	Lot 9 Orchard Hts 1st
1102 Birner St.	018-1033-1440	Lot 50 Birner Place Add.
1231 W. Colfax Ave.	018-1044-1882	Lot 82 Comm Sub Of Bol 79
1235 W. Colfax Ave.	018-1044-1881	Lot 83 Commissioner's Sub Of Bol 79
1237 W. Colfax Ave.	018-1044-1880	Lot 84 Comm Sub Of Bol 79