



CITY OF SOUTH BEND

REDEVELOPMENT COMMISSION

Redevelopment Commission Agenda Item

DATE: 10/7/2022
FROM: Joseph Molnar
SUBJECT: Update Tree Nursery Agreement

_____ Pres/V-Pres

ATTEST: _____ Secretary

Date: _____

APPROVED Not Approved

SOUTH BEND REDEVELOPMENT COMMISSION

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

PURPOSE OF REQUEST: Update of the Tree Nursery Agreement with BPW and Park Board

Specifics: The parties originally established a dispersed urban native tree nursery program in April of 2017 as a way to temporarily re-purpose City owned vacant lots. This updated agreement adds additional lots, incorporates additional City partners, and affirms ownership of the trees. Included in the updated agreement is a schedule of the program properties.

Staff recommends approval of the updated agreement.

INTERNAL USE ONLY: Project Code: _____;

Total Amount new/change (inc/dec) in budget: _____; Break down:

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? ____ Existing PO# _____ Inc/Dec \$ _____

**COMMUNITY TREE NURSERY COLLABORATION
AMENDED AND RESTATED AGREEMENT**

THIS COMMUNITY TREE NURSERY COLLABORATION AMENDED AND RESTATED AGREEMENT ("Agreement") is made effective this 13 day of October, 2022 (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"); 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, VPA will 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 agrees to grant VPA access to its Properties for the planting of distributed urban native tree nurseries.

Section 2. Redevelopment Commission Duties. Redevelopment Commission agrees to grant VPA 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 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 December 31, 2027.
- b. Access to Properties listed under Schedule II of Exhibit A will terminate on December 31, 2028.
- c. Access to Properties listed under Schedule III of Exhibit A will terminate on December 31, 2024.
- d. Access to Properties listed under Schedule IV of Exhibit A will terminate on December 31, 2027.

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. 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 11. 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 12. 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.

**BOARD OF PARK
COMMISSIONERS:**

Mark Neal, President

Consuela Hopkins, Vice President

_____, *Member*

Member

ATTEST:

Jessica Williams, Clerk

Date Approved

**CITY OF SOUTH BEND, INDIANA
BOARD OF PUBLIC WORKS:**

Elizabeth A Maradik, President

Gary A. Gilot, Member

Jordan V. Gathers, Member

Joseph R. Molnar, Member

Murray L. Miller, Member

ATTEST:

Clerk

Date: _____

**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 December 31, 2027)

Address	Parcel No.	Legal Desc.
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 December 31, 2023)

Address	Parcel No.	Legal Desc.
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 December 31, 2024)

Address	Parcel No.	Legal Desc.
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 IV

(Coverage under this Agreement Terminates on December 31, 2027)

Address	Parcel No.	Legal Desc.
404 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

Section IV Continued

Address	Parcel No.	Legal Desc.
318 Walnut St.	018-1050-2173	Lot 75 Swygarts 1st Add
322 Walnut St.	018-1050-2172	Lot 74 Swygarts 1st
326 Walnut St.	018-1050-2171	Lot 73 Swygarts 1st
418 Walnut St.	018-1050-2164	Lot 66 Swygarts 1st Add
420 Walnut St.	018-1050-2163	Lot 65 Swygarts 1st
502 Walnut St.	018-1051-2223	Lot 96 Swygarts 2nd Add
506 Walnut St.	018-1051-2222	Lot 97 Swygarts 2nd
510 Walnut St.	018-1051-2221	Lot 98 Swygarts 2nd