



# Board of Park Commissioners Approval Form

## PROJECT NAME: Botanical Conservatory Catering Fees – Event Center LLC

### Project Narrative:

A vendor agreement was entered on behalf of the Board of Park Commissioners with Event Center LLC dba Empyrean Events & Catering on April 25, 2019. Event Center LLC dba Empyrean Events & Catering served as a client vendor for an event that took place at the Botanical Conservatory on August 28, 2021, for which they owed \$350 in catering fees per the agreement.

The Fort Wayne Parks & Recreation Department's Botanical Conservatory has made every possible effort to collect on the balance past due by Events Center LLC dba Empyrean Events & Catering. The company has ceased operations and has been unresponsive in our effort to collect. On December 16, 2021 Snow & Sauerteig, LLP, the collections agency utilized by the City of Fort Wayne, declined to pursue the balance because Event Center LLC dba Empyrean Events & Catering has ceased operations. Their catering agreement has been terminated for cause.

### Board Approval:

At this time, I would like to request approval for a balance write-off with Event Center LLC dba Empyrean Events & Catering at a total balance of \$350.00, impacted revenue fund 121P270.

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The Fort Wayne Parks and Recreation and the Board of Park Commissioners, met to host their regularly scheduled monthly Board meeting on February 17, **2022**, to approve a write-off for the above referenced agreement, in the amount of **\$350.00**

***We, the Board of Park Commissioners, on the date stated do ATTEST,*** and sign to the above referenced and attached documents, and approve as presented.

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William Zielke, Commissioner

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Justin Shurley, Commissioner

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Cory Miller, Commissioner

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Rick Briley, Commissioner

**FOELLINGER – FREIMANN BOTANICAL CONSERVATORY  
CATERING AGREEMENT**

This Catering Agreement ("Agreement") is entered into on 4/25, 2019 between The City of Fort Wayne Department of Parks and Recreation Foellinger-Freimann Botanical Conservatory ("BC") and Event Center, LLC ("Caterer") for the purpose of allowing Caterer to provide catered food and beverage service at BC's facility ( the "Conservatory"), (collectively, the "Parties").

**1. CATERER INFORMATION:**

- a. Name: Event Center, LLC dba Empyrean Events and Catering
- b. Street Address: 110 W. Berry St. Ste 2500
- c. E-mail Address: jeremy@empyreaneventsfw.com
- d. Facsimile: 260-444-4388
- e. Website: www.empyreaneventsfw.com
- f. Tax Identification Number: 0146494598-001
- g. Principal Contact: Jeremy Miner
- h. Cell Phone Number: 260-444-9495

**2. INCLUSION ON LIST OF APPROVED CATERERS:** Upon execution and delivery of the Agreement and subject to Caterer's continued compliance with the terms and conditions of this Agreement and the policies and the regulations BC may issue from time to time, Caterer will be included on BC's List of Approved Caterers (the "AC List") authorized to provide catering services at the Conservatory during the Term. Compliance, in all respects, with the terms and provisions of this Agreement is a requirement for Caterer's continued inclusion on the AC List. BC may in its sole discretion, with or without cause, remove Caterer from the AC List at any time during the Term, upon written notice to Caterer. Any such removal shall cause a corresponding termination of this Agreement as provided in Section 3 below. Removal from the AC List shall prohibit Caterer from providing future catering services at the Conservatory, including catering services for events scheduled prior to the date of removal.

**3. TERM AND TERMINATION:** The term of this Agreement is from April 30, 2019 through April 30, 2020 ("Term"). All approved catering applications shall terminate concurrently with the expiration or earlier termination of the Term regardless of the date of the application. Upon written agreement of the Parties, this Agreement may be renewed for an additional year, up to four (4) years. Thereafter, upon written agreement of the Parties, the Agreement may be renewed for an additional thirty (30) days. Either party may terminate this Agreement without cause, upon thirty (30) days written notice of termination to the other party; provided that, if Caterer terminates this Agreement, Caterer shall nonetheless provide catering services for events scheduled by Caterer prior to the date of notice of termination. BC may terminate this Agreement for cause (as determined solely by BC) upon five (5) days written notice to Caterer. BC may terminate this Agreement forthwith if any governmental health department or agency

issues a citation with regard to products or services provided by the Caterer at the Conservatory.

4. **PAYMENT AND INVOICE TERMS:** Caterer shall pay BC a fixed fee ("Fee") according to the Fee Schedule set forth in Exhibit B (attached hereto and made a part hereof). Payment must be received thirty (30) days following each scheduled event. Payments can be made by credit card (Visa, Mastercard, Discover), cash (do not mail cash), or by check to be mailed using U.S., prepaid certified mail, return receipt requested, to:

Director of Sales  
Foellinger-Freimann Botanical Conservatory  
1100 South Calhoun Street  
Fort Wayne, In 46802

Caterer shall be liable for all reasonable attorney fees and legal costs incurred by BC in the collection of any outstanding account balance.

5. **TAXES:** Caterer shall pay all applicable federal, state, and local taxes, including income, use and sales taxes, together with all assessments, and fines which are incurred in connection with the operation of its business at the Conservatory and all related subsidiary operations.

6. **COMPLIANCE WITH REGULATIONS:**

a. In providing the services hereunder, Caterer shall follow all applicable federal, state, and local statutory codes, ordinances, and regulations regarding the preparation, handling, holding, serving, and transporting of food and beverages.

b. Cater shall be solely responsible for complying with all requirements of federal and state social security, unemployment compensation and income tax withholding laws (and payment of the same), and all applicable federal, state, and local laws, and regulations pertaining to (i) wages and hours of employment of its employees, and (ii) equal employment opportunities and fair employment practices, Caterer agrees not to discriminate in its employment practices on the basis of age, sex, race, color, creed, national origin, or sexual orientation. The Caterer further agrees to indemnify and hold BC, the City of Fort Wayne, the Fort Wayne Parks and Recreation Department, and their respective officers, directors, members, commissioners, employees, representatives, and departments harmless (collectively, the "Indemnitees") for any and all claims asserted against the Indemnitees, or any of them, which arises directly or indirectly out of Caterer's failure to comply with the covenants and agreements contained in this Section 6.

7. **USE OF FACILITIES:** Caterers operating at BC shall abide by the rules and procedures set forth in Exhibit A attached hereto and made a part hereof, as hereafter amended from time to time.

8. **SUBCONTRACTING, ASSIGNMENT, AND TRANSFER PROHIBITED:**

a. Caterer shall not assign, or transfer any interest in this Agreement, or subcontract the performance of any services hereunder, without the prior written approval of BC.

b. Caterer expressly acknowledges and agrees that BC shall have no liability in connection with any claims or disputes of any nature, whether monetary or otherwise, which may arise between the Caterer and Caterer's customers and Caterer hereby forever releases BC and agrees to hold harmless and indemnify BC from and against all such claims and disputes.

**9. INSURANCE:**

a. During the Term of this Agreement, Caterer, at its sole cost and expense, shall purchase and maintain the following policies:

- i. General liability insurance with combined single limits coverage for bodily injury and property damage of not less than \$1,000,000 dollars per occurrence, \$2,000,000 dollars aggregate, and,
- ii. Worker's compensation insurance, where required by Indiana law;
- iii. Host liquor liability insurance with combined single limits coverage of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and
- iv. Such insurance as required from city, county, state, or federal laws, codes, or regulations.

b. All insurance required in this paragraph shall be issued in the name of the Caterer with the City of Fort Wayne named as additional insureds or loss payees, using ISO Form 2026, or equivalent. Caterer shall provide each policy or certificate of the policy issued on Acord Form 25, or equivalent, together with evidence of payment of premiums to the City of Fort Wayne prior to the commencement of this Agreement, and upon renewal of the policy, not less than thirty (30) days before expiration of the term of the policy. Additionally, each policy shall have an endorsement that the policy shall not be cancelled or materially changed without at least thirty (30) days prior written notice to the City of Fort Wayne and an endorsement to the fact that no act or omission of the Caterer shall invalidate the interest of the City of Fort Wayne.

c. All insurance policies required to be purchased under this Agreement shall be issued by insurance companies with an A.M. Best rating of "A" or better, and shall be issued by companies qualified to do business in the State of Indiana.

d. On a yearly basis the Caterer shall provide a current copy of:

- i. Annual Health Department Permit;
- ii. Annual retailer permit for alcohol;
- iii. W9 Form; and
- v. Temporary Food Service Permit (per event, if vendor is preparing food on the premises of the BC).

10. **RELEASE AND INDEMNITY:** Caterer hereby forever waives and releases each of BC, the City of Fort Wayne, the Fort Wayne Parks Department, and their respective officers, members, directors, commissioners, employees, representatives, agents, departments and divisions (each a "Releasee" and together the "Releasees") from any and all claims and liabilities whether now existing or hereafter arising, both known and unknown, which arise in connection with Caterer's performance or failure to perform under this Agreement and Caterer agrees to hold harmless and indemnify Releasees and each of them from any and all claims, demands, obligations, liabilities, costs, and expenses (including attorney's fees and legal costs) which may be asserted against Releasees or any of them in connection with Caterer's performance or failure to perform under this Agreement. Caterer's covenants and obligations under this Section 10 shall survive the expiration or termination of this Agreement for any reason.

11. **INDEPENDENT CONTRACTOR:** Caterer shall at all times during the Term operate as an independent contractor hereunder. Caterer shall be wholly responsible for the work to be performed by and for the supervision of its employees in connection with the catering services provided hereunder. Nothing herein is intended or shall be construed to establish any agency, partnership, or joint venture between Caterer and BC. Caterer represents that it has, or will, secure at its own expense, all personnel required in performing the catering services under this Agreement. Such employees shall be employees of or have an individual contractual relationship with Caterer.

12. **NOTICE:** All notices shall be hand delivered or mail sent certified and first class return receipt requested and addressed to the party to receive such notice at the address given below, or such other address as may hereafter be designated by notice in writing:

BC: Nathaniel T. Cardelli  
Foellinger-Freimann Botanical Conservatory  
1100 South Calhoun Street  
Fort Wayne, In 46802

Caterer: Name: Event Center, LLC dba Empyrean Events and Catering  
Address: 110 W. Berry St Ste 2500  
City, State, Zip Code: Fr Wayne, IN 46802

13. **FORCE MAJURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented or delayed from performing such obligations by an act of war, hostile foreign action, nuclear explosion, earthquake, hurricane, tornado, pending litigation, adverse weather conditions, labor actions, strikes or similar acts, moratoriums or regulations or actions by governmental authorities, or other catastrophic natural event or act of a God.

14. **ENTIRE AGREEMENT:** This Agreement contains the entire agreement of the Parties with respect to the matters contained herein or contemplated hereby, and there are no representations, inducements, or other provisions other than those expressed herein. All changes, additions, or deletions to this Agreement shall be in writing and executed by the authorized representatives of both Parties.

15. **GOVERNING LAW:** This Agreement and the rights and obligations of the Parties hereto shall be interpreted, construed, and enforced in accordance with the laws of the State of Indiana, and the exclusive venue for any legal proceedings arising from or incident to this Agreement shall be the state court(s) sitting in Allen County, Indiana.

16. **SEVERABILITY:** Should any provision of this Agreement be declared illegal, void, or unenforceable under Indiana law, or shall be considered severable, the Agreement shall remain in force and be binding upon the Parties hereto as though the said provision had never been included.

17. **EXHIBITS:** All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

Executed on the dates indicated below but deemed to be effective as of the 25<sup>th</sup> day of April, 2019 ("Effective Date")

**Foellinger-Freimann  
Botanical Conservatory**

Signature: [Handwritten Signature]

Printed Name: Serena W. Miller

Title: Director of Operations

Date: 4/25/2019

Signature: [Handwritten Signature] **Director**

Printed Name: Nathaniel T. Cardelli

Title: Director of Sales

Date: 04/25/2019

## Exhibit A

### Conservatory Policies

Caterers operating at BC shall abide by the following rules and procedures, each of which shall apply, without exception, unless expressly waived by the BC facility manager:

#### 1. Clean Up

- a. Clean and sanitize all areas of the break room used by the Caterer in the preparation and service of food and beverages.
- b. Clean all table and work areas after each use, and at the close of business.
- c. Remove and dispose of all trash, waste, litter in and from the area(s) assigned or used by the Caterer. During an event, Caterer shall continually clean and keep assigned areas free of trash and debris. All garbage shall be removed from the BC premises and placed in BC dumpsters.
- d. Remove all Caterer's equipment, supplies, serving equipment, food/drink items, and other equipment and items furnished by Caterer at the conclusion of the event.
- e. Ensure that no grease is poured into the sinks, drains, toilets, or storm drains in or around the BC.
- f. Ensure that no ice is left or placed, thrown, or disposed of on BC property. Disposal may be accomplished in the kitchen sink.
- g. Maintain on a continuing basis those areas where food and beverages are delivered and return all pallets, storage containers, linens, boxes, and other equipment to the Caterer's suppliers.
- h. Caterer will be in charge of clean-up after the event, and the clean-up may not be allocated to anyone else. The Caterer may not leave before food service has concluded and clean-up performed to the satisfaction of the BC staff. Clean-up must take place on or before midnight of the date of the event.

#### 2. Supplies and Equipment

- a. The BC does not provide any banquet items for rent. All items necessary to serve the meal/function must be supplied by the Caterer or other contractor.
- b. Caterers shall not remove or move any of the BC equipment, furnishings, or property without the prior written consent of the BC facility manager. At the conclusion of the event, anything that is moved must be put back into its original position.

### 3. Operations

- a. Catering personnel must be on premises throughout the catered event to ensure quality control, food safety, and clean up after the event.
- b. No open flames are allowed, except for sternos.
- c. Caterer is responsible for providing bar staff and service. No alcohol is permitted on a self-serve basis, and bottles may not be left on tables for guests to serve themselves. The bar staff, and catering staff must take precautions not to over serve, and alcohol service to visibly intoxicated guests is not permitted. It is the Caterer's responsibility to enforce these rules and applicable federal, state, and local laws or ordinances.
- d. There shall be no alcohol service after 10:30 p.m.
- e. All beverages served at the bar shall be served in plastic cups, plastic containers, or aluminum cans. Glass and crystal stemware may be used for beverages served at the table.
- f. Caterers shall only park in BC parking lot as assigned by BC staff.
- g. The BC reserves the right, for reasonable cause, to deny entry to, and to require the removal of, any person employed by or under the direction of the Caterer.
- h. Caterers shall keep and maintain accurate records of the names and addresses of its employees and contractors working at BC, including the date of employment and the date of termination.
- i. BC does not provide staff to reset an event.
- j. BC can provide a hand washing station, ice, and minimal staging space; however, the refrigerator, freezer, or stove, located on BC premises, are not available for Caterer use.
- k. If Caterer is using the Magnolia Room or Outdoor Terrace Garden, set-up may begin at noon on the day of the event.
- l. BC business hours vary. If Caterer is using the Indoor Gardens, set up shall commence no earlier than the close of business on the day of the event.
- m. BC does not provide staff or personnel to set up tables, chairs, or decorations in the Indoor Gardens.
- n. Caterer's sole method of ingress or egress for set-up and break-down of an event shall be through Door 13. Caterer shall receive one (1) key card which will allow Caterer access to Door 13.
- i. If the key card is lost, stolen, or needs to be replaced because of an act or omission on the part of Caterer, the Caterer shall pay BC a \$10.00 replacement fee.

ASSET#

44673 11101421969-1



## Exhibit B

### Catering Fees

#### Rental and Catering Fees -- Foellinger-Freimann Botanical Conservatory

<u>During Business Hours/Tues., Wed., Thurs. 8:00 a.m. -- 3:00 p.m.</u>	Rental Rates	Catering Rates
Saguaro Room (setup @ 8 am)	\$ 180.00	\$ 45.00
Orchid Room (setup @ 8 am)	\$ 225.00	\$ 45.00
Patio Combo (setup @ 8 am)	\$ 375.00	\$ 45.00
Saguaro Room + Patio (setup @ 8 am)*	\$ 250.00	\$ 45.00
Orchid Room + Patio (setup @ 8 am)*	\$ 250.00	\$ 45.00
 <u>After Hours/Tues., Wed., Thurs. 5:00 p.m. -- 11:00 p.m.</u>		
Saguaro Room (setup @ 4 pm)	\$ 180.00	\$ 45.00
Orchid Room (setup @ 4 pm)	\$ 225.00	\$ 45.00
Patio Combo (setup @ 4 pm)	\$ 375.00	\$ 45.00
Full Facility (all rooms & gardens) (May - October)	\$ 995.00	\$ 350.00
Full Facility-- Inside Only, Winter (October -- May); all indoor gardens	\$ 450.00	\$ 150.00
 <u>During Business Hours/Friday, Saturday, or Sunday 8:00 a.m. -- 3:00 p.m..</u>		
Saguaro Room (setup @ 8 am)	\$ 180.00	\$ 45.00
Orchid Room (setup @ 8 am)	\$ 225.00	\$ 45.00
 <u>After Hours/Friday, Saturday 5:00 p.m. - 11:00 p.m. or Sunday 4:00 p.m. -- 10:00 p.m.</u>		
<u>(Magnolia and Terrace available for setup at noon)</u>		
Full Facility (all rooms & gardens) (May - October)	\$ 1,395.00	\$ 350.00
Full Facility-- Inside Only, Winter (October -- May); all indoor gardens	\$ 1,075.00	\$ 350.00
Full Facility (Sunday) (all rooms & gardens) (May - October)	\$ 1,195.00	\$ 350.00
Full Facility-- Inside Only, Winter (Sunday) (October -- May); all indoor gardens	\$ 875.00	\$ 350.00
Patio Combo (setup @ 4 pm)**	\$ 375.00	\$ 45.00

Note: 10% of all rental fees collected are deposited into a non-reverting fund that focuses on the upkeep of rental amenities.

\*When Orchid or Saguaro are in use for another program or rental that don't have the patio space reserved

\*\*If there is no Full-Facility rental reserved within 90-days of inquired event date

**Please Note: The venue does not inform clients of catering fees when booking as catering fees are the responsibility of the caterer for their privilege of being an approved caterer of an event in our attraction setting, as their service reflects directly upon our venue.**



**BOTANICAL**  
CONSERVATORY

**Foellinger-Freimann Botanical  
Conservatory**

1100 S. Calhoun Street  
Fort Wayne, IN 46802  
260/427-6440 fax 260/427-6450

Invoice No. 1031202101

**INVOICE**

**Customer**

Name Empyrean Events & Catering  
Address 110 West Berry Street, Suite 2500 & 2600  
City Fort Wayne IN ZIP 46802  
Phone (260) 444-4688

Date 10/31/2021  
Order No. \_\_\_\_\_  
Rep \_\_\_\_\_  
FOB \_\_\_\_\_

Qty	Description	Unit Price	TOTAL
1	Evening Rental Catering Fees 08.28.2021 - Maryam Noureldin	\$350.00	\$350.00

**Payment Details**

- Cash
- Check
- Credit Card

Name \_\_\_\_\_  
CC # \_\_\_\_\_  
Expires \_\_\_\_\_

SubTotal	\$350.00
Shipping & Handling	\$0.00
Taxes	
<b>TOTAL</b>	<b>\$350.00</b>

Office Use Only

## Nathaniel Cardelli

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**From:** Kim Vachon <kim@snowsauerteig.com>  
**Sent:** Thursday, December 16, 2021 4:06 PM  
**To:** Nathaniel Cardelli  
**Subject:** RE: Empyrean Events - Unpaid Account - City of Fort Wayne

Hi!

I had Mr. Sauerteig review your email and unfortunately he has elected to decline an attempt to pursue this outstanding invoice since the company has ceased operations.

Thank you so much for your email and if there is anything we can help you with in the future please do not hesitate to reach out to us.

Have a blessed holiday,

Kim Vachon  
Collection Supervisor

❖ SNOW & SAUERTEIG LLP

203 E Berry Street 1100  
Fort Wayne, IN 46802  
(260) 969-3255 ext. 123 tel  
(260) 969-1279 fax

[www.snowsauerteig.com](http://www.snowsauerteig.com)

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IRS Circular 230 Disclosure: Pursuant to Internal Revenue Service Circular 230, we are required to advise you that if there is any tax advice contained herein, it is not intended to be used, and cannot be used, by the addressee or any taxpayer, for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code

Email Opt-Out Notice: You may opt out of receiving further email communications from Snow & Sauerteig LLP to this email address by replying with an email message that states "STOP."

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**From:** Nathaniel Cardelli <Nathaniel.Cardelli@cityoffortwayne.org>  
**Sent:** Thursday, December 16, 2021 11:37 AM  
**To:** Kim Vachon <kim@snowsauerteig.com>  
**Subject:** Empyrean Events - Unpaid Account - City of Fort Wayne

Kim, hi!

I'm writing from the Fort Wayne Parks & Recreation Department's Botanical Conservatory in an effort to collect on a balance past due by Events Center LLC dba Empyrean Events & Catering. I've attached their catering contract, past due invoice, and correspondence wherein the invoice was sent below. We do know that they have ceased operations and they have been unresponsive to us in our effort to collect. Their contract has been voided. We would like to send them to collections now, please let me know if this is doable – thanks!

Their most recent contact information is below

Cell:  
260.494.9495 - Jeremy  
260.494.8764 - Renee

Business Phone:  
260.444.4688

Emails:  
[jeremy@empyreaneventsfw.com](mailto:jeremy@empyreaneventsfw.com)  
[info@empyreaneventsfw.com](mailto:info@empyreaneventsfw.com)  
[alex@empyreaneventsfw.com](mailto:alex@empyreaneventsfw.com)  
[renee@empyreaneventsfw.com](mailto:renee@empyreaneventsfw.com)  
[renee@reneeminer.com](mailto:renee@reneeminer.com)  
[misty@empyreaneventsfw.com](mailto:misty@empyreaneventsfw.com)

Address  
400 W Main St, Fort Wayne, IN 46802

Warmly,

**Nathaniel T. Cardelli**  
SALES OPERATIONS SUPERVISOR  
Fort Wayne Parks and Recreation

(260) 427-6444 (*Office*) | (260) 427-6440 (*Main*)  
**Foellinger-Freimann Botanical Conservatory**  
1100 South Calhoun Street | Fort Wayne, Indiana 46802



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**From:** Nathaniel Cardelli  
**Sent:** Sunday, October 31, 2021 11:54 AM  
**To:** [info@empyreaneventsfw.com](mailto:info@empyreaneventsfw.com); Alex <[alexandra@empyreaneventsfw.com](mailto:alexandra@empyreaneventsfw.com)>  
**Subject:** 08.28.2021 - Catering Fee Invoice

See attached!

Warmly,

**Nathaniel T. Cardelli**  
SALES OPERATIONS SUPERVISOR  
Fort Wayne Parks and Recreation

(260) 427-6444 (*Office*) | (260) 427-6440 (*Main*)  
**Foellinger-Freimann Botanical Conservatory**  
1100 South Calhoun Street | Fort Wayne, Indiana 46802