

FORSYTH COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: August 16, 2018

AGENDA ITEM NUMBER: 5

SUBJECT: RESOLUTION AUTHORIZING THE EXPENDITURE OF COUNTY GENERAL FUNDS FOR A SPECIAL EVENT AT TANGLEWOOD PARK

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS:-

SUMMARY OF INFORMATION:

The purpose of this agenda item is to approve a multi-year contract with Catbird Art & Events, LLC for use of the Tanglewood Concert Shell Area to stage North Carolina's Big Pour on September 14, 2019 (FY20), with an optional second date at the County's discretion for August 29, 2020 (FY21). Catbird will pay the County a fee of \$900 in two installments for use of the facility - \$450 on October 1, 2018 (FY19) and \$450 on July 19, 2019 (FY20). A \$1 entrance fee will be collected by Catbird and paid to the county within 10 business days after the event (FY20). The County will reimburse Catbird in an amount not-to-exceed \$49,100 for law enforcement/EMS support, event insurance, and dumpster/portable toilets and light tower fees.

Approval of this contract will have an FY19 impact of \$450 in revenue; and an FY20 impact of \$49,100 in reimbursement expenditures and \$450 in revenue plus the entrance fee revenue. If a second event is held on August 29, 2020, there will be an FY21 budgetary impact. \$50,000 has been budgeted in Parks FY19 operating budget for the incentivizing of events at Tanglewood and Triad Parks.

ATTACHMENTS: yes no

SIGNATURE: _____ DATE: _____
COUNTY MANAGER

**RESOLUTION AUTHORIZING THE EXPENDITURE OF
COUNTY GENERAL FUNDS FOR A SPECIAL EVENT AT TANGLEWOOD PARK**

WHEREAS, Forsyth County is interested in promoting the use of Parks' facilities for special events throughout the year; and

WHEREAS, Forsyth County appropriated \$50,000 in the Fiscal Year 2018-2019 Adopted Budget for the incentivizing of events at Tanglewood and Triad Parks; and

WHEREAS, the Parks and Recreation Department has negotiated a multi-year contract with Catbird Art & Events, LLC, to hold North Carolina's Big Pour, a festival focused on coffee and beer, on September 14, 2019, with an optional second date for August 29, 2020; and

WHEREAS, Forsyth County will receive a fee from Catbird Art & Events, LLC, for use of the Tanglewood Concert Shell Area, along with a separate entrance fee for all attendees; and

WHEREAS, Forsyth County will reimburse Catbird Art & Events, LLC, an amount not-to exceed \$49,100 for law enforcement and Emergency Medical Services support, event insurance, portable sanitation, and light tower fees;

NOW, THEREFORE, BE IT RESOLVED that the Forsyth County Board of Commissioners hereby approves and authorizes Forsyth County's expenditure of County general funds to support North Carolina's Big Pour event at the Tanglewood Concert Shell Area on September 14, 2019.

Adopted this 16th day of August 2018.

AGREEMENT

THIS AGREEMENT, made and entered into this 2nd day of August 2018, by and between Forsyth County, North Carolina (the "County") and Catbird Art & Events, LLC ("Catbird Art & Events");

For the purpose and subject to the terms and conditions hereinafter set forth, Catbird Art & Events hereby agrees to pay the County for the use of the Tanglewood Concert Shell Area ("Leased Area") to stage North Carolina's Big Pour ("Event") on September 14, 2019 ("Event Date") as provided herein below.

I.

Catbird Art & Events is hereby authorized to use the Leased Area beginning the Thursday prior to the Event to prepare for the Event and the following Monday to remove all equipment and items (including but not limited to tents, dumpsters, and portable toilets) from the Leased Area. If the Organizer desires to hold the Event again in 2020, the County in its sole discretion may allow the event to be held on August 29, 2020.

II.

Catbird Art & Events shall pay the County a Fee of \$900.

Fifty percent (50%) of the Fee is due on October 1, 2018, and the remaining fifty percent (50%) is due on July 19, 2019. An entrance fee of \$1 per person shall also be paid by Catbird Art & Events. The entrance fee is due to the County within ten (10) business days after the Event.

If Catbird Art & Events desires to have a banner hung or needs the services of an electrician, it shall pay the County an additional fee for banner hanging of \$50 per banner/week and pay additional electrician fees of \$25 per hour. Catbird Art & Events shall provide prior written notice of at least 2 days for banner hanging or need for electrician, and the County shall provide such services only if the County has sufficient workers available to provide such services during regular working hours.

III.

The County shall reimburse Catbird Art & Events for the following costs: fifty percent (50%) of law enforcement and EMS support; twenty-five percent (25%) of event insurance; and twenty-five percent (25%) of dumpster, portable toilets and light tower rental fees, in a not-to-exceed amount of \$49,100.

The County will provide payment on a reimbursable basis after receipt of proof of payment and after the Event has occurred. Catbird Art & Events shall submit paid invoices to:

Jessica Sanders
Marketing and Events Manager
Tanglewood Park
Marketing and Events Office
4061 Clemmons Road
Clemmons, North Carolina 27012

IV.

Catbird Art & Events shall contract with Show Pros Entertainment Services to provide parking. At least one golf cart shall be provided by Catbird Art & Events for Show Pros Entertainment Services.

Catbird Art & Events shall contract with the Forsyth County Sheriff's Office to provide traffic control.

Catbird Art & Events shall obtain an ABC permit and provide a copy of such permit to the County before Event move-in. Catbird Art & Events shall conduct identification checks and banding at the Event.

Catbird Art & Events shall provide a minimum of one portable toilet for every 100 persons anticipated to attend.

Catbird Art & Events shall participate in the State of North Carolina's recycling program and organizers are required to establish plans for reclaiming recyclable items during the Event.

Catbird Art & Events shall rent and pick-up waste dumpsters. There is a minimum of one 30-yard open-top dumpster for every 1,000 persons. All dumpsters must be picked up on Monday following the Event. Any dumpsters not removed by the Monday following the Event shall incur a fee of \$500 per day.

Motorcycles are prohibited at Tanglewood Park. This includes, but is not limited to official public safety motorcycles, dirt bikes, and other motorcycles.

RVs and camping are not allowed in the Event area. RVs are only permitted at the RV Campground.

Catbird Art & Events shall have a representative that is present at the Event to take and pass the training provided by the North Carolina Fire Marshall via the web address below. Certificates must be available upon Forsyth County's request.

[http://www.ncdoi.com/OSFM/Fire_Safety_Programs/Default.aspx?field1=Crowd_Manager_Training&user=Crowd%20Manager%20Training](http://www.ncdoi.com/OSFM/Fire_Safety_Programs/Default.aspx?field1= Crowd_Manager_Training&user=Crowd%20Manager%20Training)

The County does not allow the use of ATVs in Tanglewood Park. The County will not provide golf carts for the Event. Catbird Art & Events shall rent golf carts from an outside agency and provide insurance for rented golf carts. Prior approval for use of golf carts is

necessary. Any golf carts not removed by Monday after the Event shall incur a fee of \$500 per day.

Catbird Art & Events shall not place arches, balloons, or other materials across the roadways. All roadways shall remain clear for large trucks, emergency vehicles, and other park traffic.

Catbird Art & Events may request in writing that the County make available an electrician for move-in, the Event and move-out. Catbird Art & Events shall be solely responsible for paying the electrician's fee which shall not be less than \$25.00 per hour.

Catbird Art & Events shall notify the County at least 90 days prior to the Event if they plan to have a themed character on site.

Catbird Art & Events shall leave all grounds, roadways, facilities and water and electrical services in the same condition as found. All items (including grease) must be disposed of appropriately. If any items are inappropriately disposed of on County property or any areas are damaged, Catbird Art & Events shall be charged an additional \$500 minimum fee.

There is no roadway paint, chalk, or tape allowed in Tanglewood Park. Catbird Art & Events shall utilize directional signage (approved by the Marketing and Events Manager) as opposed to roadway paint or chalk. The clean-up fee for the use of paint/chalk/tape is \$500 per occurrence.

All items must be removed from the Event area by the Monday after the Event. Any items not removed shall incur a fee of \$500 per day.

Applications for Tanglewood Park passes for volunteers associated with the Event must be submitted 30 days prior to the event. Any volunteers without passes shall be charged a \$2 per vehicle entrance fee.

The County is not liable for any items used or left by Catbird Art & Events on park property; this includes damage, vandalism, or theft.

If using tents, feet protection must be provided and used for all poles. If any staking is done, this must be approved as well, and all utility lines must be marked in advance at the cost of Catbird Art & Events to ensure no interference from stakes. Tent permits shall be required from the Forsyth County Fire Department.

Catbird Art & Events shall contract with Forsyth County Emergency Services. Forsyth County Emergency Services shall determine the number of Emergency Medical Technicians needed for the Event in consultation with Catbird Art & Events.

Catbird Art & Events shall contact the Forsyth County Health Department and shall schedule the appropriate inspections. The Health Department is also required to inspect any

events involving animals. Catbird Art & Events shall make arrangements for such services and pay the cost of such services upon receipt of contract and or invoice.

V.

Neither Party shall be liable for any delay or failure to perform under this Agreement if such delay or failure is: (i) directly caused by acts of God, war, acts of terrorism, explosion, fire, flood, earthquakes, epidemics, acts of civil or military authorities or civil disturbance, and; (ii) could not have been prevented or circumvented by the non-performing Party's reasonable precautions or commercially accepted processes (including through the use of substitute services, alternate sources, work-around plans, the implementation of appropriate security measures or disaster recovery measures) (a "Force Majeure Event"). The Party experiencing any delay or failure as a result of any such Force Majeure Event shall: (i) provide prompt written notice of the actual or anticipated delay or failure to the other Party, and; (ii) use reasonable commercial efforts to either remedy the delay or failure, or implement a plan (including a business continuity and disaster recovery plan) to remedy the delay or failure in a manner which minimizes the disruption to the other Party. The non-performing Party shall not be excused in this Section for any non-performance of its obligations under this Agreement having a greater scope or longer period than is justified by the Force Majeure Event, or the performance of obligations that should have been performed prior to the Force Majeure Event.

The County shall not be responsible for any damages or other costs due to weather. Catbird Art & Events agrees that any weather that may prohibit any part of the Event does not put fault on the County. Catbird Art & Events understands that last minute changes may be necessary and that the County shall determine if and when an Event may need to be cancelled due to weather conditions. All payments are non-refundable and non-transferable.

VI.

Catbird Art & Events shall procure and maintain for the duration of the contract the following insurance. Should Catbird Art & Events have any questions regarding insurance coverage, please contact Forsyth County Risk Management at 336.703.2057.

Catbird Art & Events shall procure and maintain the following insurance for the duration of the contract against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Catbird Art & Events, agents, representatives or sub-organizers.

- A. Catbird Art & Events shall maintain occurrence version commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two times the occurrence limit. Such insurance shall:
1. Include the County, its officials, officers, and employees as insureds with respect to performance of the Services. The coverage shall contain no special limitations on the scope of protection afforded to the above

listed insureds. * List Certificate Holder and Additional Insured as follows:

Forsyth County
Its Officials, Officers, and Employees
201 N. Chestnut Street
Winston-Salem, NC 27101
Attn: Teresa Everhart

2. Be primary with respect to any insurance or self-insured retention programs covering the County, its officials, officers, and employees.

B. Catbird Art & Events shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired, and non-owned automobiles.

C. Catbird Art & Events shall maintain workers' compensation insurance with North Carolina statutory limits and employers' liability insurance with limits of not less than \$500,000 each accident. All employees, owners, officers of the company shall not be excluded from Workers Compensation if they are going to be on Government Property during the contractual term.

D. Catbird Art & Events shall maintain occurrence version liquor liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two times the occurrence limit. Such insurance shall:

1. Include the County, its officials, officers and employees as insureds with respect to performance of this Agreement. The coverage shall contain no special limitations upon the scope of protection afforded to the above listed insureds.
2. Be primary with respect to any insurance or self-insured retention programs covering the County, its officials, officers and employees.

E. Catbird Art & Events understands and acknowledges that these insurance coverage requirements are minimums and that they do not restrict or limit the hold harmless provisions of this agreement.

F. Any vendor, contractor, or caterer brought in for the event by Catbird Art & Events must be approved by park staff in advance, and they are required to provide valid proof of insurance.

VII.

Catbird Art & Events may cancel the Event by providing notice in writing, at least 30 days in advance of the Event to Forsyth County Parks & Marketing and Events at the address herein. All deposits are non-refundable. If Catbird Art & Events cancels the Event, Catbird Art

& Events shall be responsible for paying the County for all expenses incurred by the County in preparation for the Event, in addition to the deposit made by Catbird Art & Events. All payments and notices shall be sent to:

Jessica Sanders
Tanglewood Park
Marketing and Events Office
4061 Clemmons Road
Clemmons, NC 27012

VIII.

Catbird Art & Events shall operate as an independent contractor, and the County shall not be responsible for any of Catbird Art & Events or their agents acts or omissions. Catbird Art & Events agrees to hold the County harmless from and against any and all claims, expenses (including attorney fees), costs or liability for acts or omissions of Catbird Art & Events or their agents.

Catbird Art & Events shall not be treated as an employee with respect to the services performed hereunder for federal tax, state tax, unemployment insurance and workers' compensation purposes. Catbird Art & Events understands that neither federal, state, nor payroll tax of any kind shall be withheld or paid by the County on behalf of Catbird Art & Events or the employees of Catbird Art & Events. Catbird Art & Events further understands and agrees that Catbird Art & Events is fully responsible for the payment of any and all taxes arising from the payment of monies under this Agreement.

Catbird Art & Events shall not be treated as an employee with respect to the services performed hereunder for purposes of eligibility for, or participation in, any employee pension, health, or other fringe benefit plan of the County.

The County shall not be liable to Catbird Art & Events for any expenses paid or incurred by Catbird Art & Events unless otherwise agreed in writing.

Catbird Art & Events shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide contracted services unless otherwise agreed in writing.

Catbird Art & Events shall maintain, at its sole expense, insurance coverage as required by the Forsyth County Risk Manager.

Catbird Art & Events has no authority to enter into contracts or agreements on behalf of the County.

Catbird Art & Events declares that it has complied with all federal, state and local laws regarding business permits, certificates, and licenses that may be required to carry out the services to be performed under this Agreement.

Catbird Art & Events and its subcontractors shall comply with Article 2 of Chapter 64 of the North Carolina General Statutes relating to the required use of the federal E-Verify program to verify the work authorization of newly hired employees. Failure of Catbird Art & Events to comply with this provision or failure of its subcontractors to comply could render this contract void under North Carolina law. It is the expectation of Forsyth County that Catbird Art & Events shall comply, and Catbird Art & Events agrees to comply, with all applicable federal immigration laws in its hiring and contracting practices relating to the services covered by this contract involving County funds, as outlined in the Resolution adopted by the Forsyth County Board of Commissioners at its regular meeting on October 23, 2006.

Catbird Art & Events hereby certifies that it is not on the North Carolina State Treasurer's list of persons engaging in business activities in Iran, prepared pursuant to NCGS § 147-86.58, nor shall Provider utilize on this agreement any subcontractor on such list.

This Agreement shall be governed by North Carolina law, except that provisions regarding conflicts of laws shall not apply.

IN WITNESS WHEREOF, the County and the Catbird Art & Events have set their hands and seals as of the day and year first above written.

FORSYTH COUNTY, NORTH CAROLINA

By: _____

ATTEST:

Clerk to the Board

(SEAL)

Catbird Art & Events

By: _____

Social Security Number or
Tax Id. No.