

RESTATED AND REVISED
INTERGOVERNMENTAL AGREEMENT
BY AND BETWEEN THE
BYRON COMMUNITY UNIT SCHOOL DISTRICT 226
AND THE BYRON PARK DISTRICT MUNICIPAL CORPORATION

SECTION I: AUTHORITY

This Restated and Revised Intergovernmental Cooperation Agreement (hereinafter the "Agreement") is set forth on this 28th day of September, 2023 ("Effective Date") by and between the Byron Community Unit School District 226 Board of Education, Ogle County, Illinois (hereinafter the "School District") and the Byron Park District Municipal Corporation Board of Commissioners, Ogle County, Illinois (hereinafter the "Park District"). The School District and Park District shall herein be referred to jointly as the "Parties".

The School District is a duly organized and existing school district and body politic of the State of Illinois and a duly created, organized, existing, and now operating under and pursuant to the provisions of the Illinois School Code, as amended, 105 ILCS 5/1.1 *et seq.* (the "Illinois School Code"), is a "unit of local government" as defined in Article 7, Section 1 of the Constitution of the State of Illinois, and is a "public agency" as defined in Section 2 of the Intergovernmental Cooperation Act, as amended, 5 ILCS 20/1 *et seq.* (the "Intergovernmental Cooperation Act").

The Park District is a duly organized body politic created under the provisions of the laws of the State of Illinois, and is now operating under and pursuant to the provisions of the Illinois Park District Code, as amended (1205 ILCS 5/1-1 *et seq.*; the "Park District Code"), is a "unit of local government" as defined in Article 7, Section 1 of the Constitution of the State of Illinois, and is a "public agency" as defined in Section 2 of the Intergovernmental Cooperation Act.

Article 7, Section 10(a) of the Constitution of the State of Illinois authorizes units of local government and school districts to contract or otherwise associate among themselves to obtain or share services and to exercise, combine or transfer any power or function, in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other sources to pay costs and to service debt related to intergovernmental activities.

Section 3 of the Intergovernmental Cooperation Act provides that "[a]ny power or powers, privileges, functions or authority exercised or which may be exercised by a public agency of this State may be exercised, combined, transferred and enjoyed jointly with any other public agency of this State . . ."

Section 5 of the Intergovernmental Cooperation Act provides that "[a]ny one or more public agencies may contract with any one or more other public agencies to perform any governmental services, activity or undertaking or to combine, transfer, or exercise any powers, functions, privileges, or authority which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be approved by the governing bodies of each party to the contract and except where specifically and expressly prohibited by law. Such contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties."

SECTION II: HISTORY

This Agreement and its predecessor agreements, dating back to the 1980, between the School District and the Park District is and was a deliberate effort on behalf of both governmental bodies and the citizens of our districts, to solve the recreational needs of School District students and staff; while concurrently making Facilities available to the entire Byron community. This arrangement would serve the needs of the Byron community, save substantial taxes for citizens by pooling physical and human resources and avoid duplication of services.

In addition to the above agreements, in January of 2022, the Byron Park District and the Byron Civic Theater, Inc. (BCT) entered into a Memorandum of Understanding in order to best meet the needs of the performing arts community. The BCT was initially formed in 1995 and entered into an agreement with the Byron School District to utilize the District's facilities. BCT originally produced 4 shows per year in Byron High School's Sunderman Theater until 2009, when they moved to Byron Middle School theater. The initial agreements between the School District and BCT sought to provide opportunities for theatrical experiences for the Byron Community. In making future decisions concerning the above Agreements, the Parties hereto should try to adhere to the original purpose of these Agreements.

SECTION III: PURPOSE

The intended purpose of this Agreement is to permit the School District and the Park District to provide for the availability of "public recreational programs" to the Byron community, including students and faculty, and for the improvement and expansion of existing recreational programs offered by both Districts in the most cost-efficient manner possible to the Byron community. The public recreational programs covered by this Agreement are located in "Facilities" owned by the School District as enumerated in Exhibit A. The Park District in 2020 issued bonds to construct a 14,000 square foot addition to the Byron Physical Education Center. Facilities now includes the 2020 addition. As the completed improvements funded by the Park District are located on School District owned land, the parties desire to further ensure that this Agreement continues to remain a long-term commitment of the Parties hereto.

This Agreement permits the Park District to provide its programming in the Facilities listed and the times allocated on Exhibit A at no cost to the Park District except as set forth in Section V, Paragraph 1. The School District shall have the right to relocate and/or change the Facilities provided that the School District shall provide comparable space to the Park District for its use. Exhibit A applies as well to the future Improvements. Park District shall set its own fees for use of the Facilities by its members and users for its programing.

SECTION IV: RESPONSIBILITIES OF THE SCHOOL DISTRICT

The School District shall:

1. Maintain the buildings, grounds and parking areas of the Facilities, including necessary snow removal. Subject to limited reimbursement as set forth in Section V, paragraph 1, pay for the heating and electrical costs of those Facilities.
2. Pay for the custodial services for the Facilities subject to limited reimbursement as set forth in Section V, Paragraph 1.

3. Jointly implement a uniform Facility fee for use of the Facilities by third parties in accordance with School District Policy.

4. Set hours of use of its Facilities, jointly with the Park District prior to January 1 of each year during the Term, or as periodically revised jointly. Current Facilities and hours are set forth on Exhibit A. The School District shall have the right to revise the hours of use of the Facilities in its sole discretion by providing the Park District with forty-eight (48) hour notice. In such event, the School District shall use reasonable efforts to provide alternate space to accommodate the Park District's use.

SECTION V: RESPONSIBILITY OF THE PARK DISTRICT

The Park District shall:

1. Pay for a portion of the costs for use of the Facilities on an annual basis in an initial amount of \$27,000 due on or before January 30 in each year during the Term of this Agreement. This amount shall be adjusted annually based on the previous year's actual costs. Costs determined as follows:

a. Initial Utilities at a cost of \$12,000 (approximately 10% of annual PE Center utility cost).

b. Initial Staffing at a cost of \$15,000 (custodial services).

c. BCT performance staffing at a cost of \$2,500 (custodial services).

2. Employ, manage, and supervise all necessary personnel in the public recreational programs offered at the Facilities, whether full or part time. Maintain records for all Park District personnel located at the Facilities including an organizational chart, job titles and descriptions, schedules, payroll records, criminal background check records, and records of facility key and scan card assignments.

3. Be responsible for development and management of all Park District operational procedures at the Facilities for public recreational programs provided by the Park District.

4. The School District has safety protocols and a behavioral policy for the use of the Facilities and consequences and penalties for failure to adhere to them.. Park District shall adhere to the safety protocols and the behavioral policy and for violations of the School District's behavioral policies occurring at the Facilities during public recreational programs offered by the Park District, Park District shall enforce the penalties and consequences against its users. Such enforcement by the Park District is subject to any limitations imposed by Illinois law or School District policies.

5. Appoint one Park District Commissioner or one Park District Administrative Staff Member to attend the School District's Committee of the Whole Committee in order to maintain open lines of communication concerning Facilities management, usage, purchases, repairs, and overall planning.

6. Jointly implement a uniform Facility fee for use of the Facilities by third parties in accordance with School District Policy. Park District does not issue permits for use by third parties of the Byron Middle School.

7. Set fees or memberships for use of Facilities for its recreational programming in its sole discretion. The Park District shall offer membership fees for use of the Facilities to all School District employees in the amount of \$25.00 per employee, and \$120.00 per additional dependent membership, capped at \$300.00 per family. This amount shall be reviewed annually and may be adjusted by mutual agreement of the Parties.

8. Provide materials and goods necessary to operate the public recreational programs at the Facilities and to share certain materials and goods with the School District where commonality exists, i.e. shared basketball equipment.

SECTION VI: BYRON CIVIC THEATER (BCT) PROGRAM

The Byron School District and BCT have a well-established history of shared use of theater facilities. Now that BCT programming has been incorporated into the Byron Park District, the following section serves as a bridge to the components unique to BCT's use of the theater, which are not reflected in prior Park District agreements.

1. Byron Park District will have access to the theater for five (5) productions. One production will be exclusive to Byron Middle School students.
2. Byron Park District will work with Byron school administration to reserve appropriate blocks of time for their productions, no later than May 1. In general, BCT's production cycles will not overlap the school district's production cycles.
3. Should BCT/Byron Park District require access of the theater during school hours, they will enter the Byron Middle School through the front entrance and sign in.
4. In selecting theatrical productions, BCT/Park District shall be mindful of the fact that the theater is in a public school and all productions should be appropriate for the community.
5. Byron CUSD and Byron Park District will work collaboratively to identify and train specific individuals to operate the three major technological areas of the theater: Lights, Projection, & Sound. Operating of all technologies will then be limited to those persons who have been properly trained and listed as operators.
6. The School District will be responsible for ordinary wear and tear of the theater and all associated amenities. Byron Park District will bear the cost of repairing any damage to any portion of the theater or its amenities or equipment during BCT/BPD usage of the theater. All damage and required maintenance must be reported to the School District's Director of Buildings and Grounds for approval prior to any work being done.
7. All theater spaces used by BCT/BPD (i.e. stage, workshop, green room, prop storage, etc...) shall be kept neat and orderly as not to obstruct any pathway or affect any school-related activity. All food or beverages, with the exception of plain water, are prohibited from being brought into the auditorium by staff, participants or patrons.

SECTION VII: ADMINISTRATION

There will be an annual joint meeting of the School District and the Park District each year during the Term of this agreement on a date mutually agreed upon by these parties. All of the members of each of the Districts' boards shall be invited and encouraged to attend. A quorum is not necessary to conduct the business of the annual meeting. The purpose of this joint meeting will be for the Parties to discuss the status of the Agreement and to determine if any revisions are needed to the Agreement and to further make those proposals in written form. Any revisions to this Agreement proposed by either party, must be approved by both Boards prior to implementation. If both parties agree, a subcommittee of representatives from each Board and their administrative staff may meet in lieu of the annual joint meeting.

SECTION VIII: FISCAL PROCEDURES

The Parties shall keep individual records of the use of the Facilities and their operational costs associated with the use of the Facilities. The Park District shall have jurisdiction over the establishment of its memberships, programs, and activity fees and shall prepare and maintain accurate accounting records for the funds received from memberships, programs and activity fees.. Such audit shall be performed by the Park District auditor and tendered to School District no later than 150 days after the end of a calendar year during the Term.

SECTION IX: INSURANCE

The School District after construction of the Improvements by the Park District shall carry broad form casualty insurance for replacement cost to those Improvements together with its other school buildings and property. The School District and the Park District shall each provide their own liability insurance coverage at their individual expense. The School District and the Park District will each name the other as an additional insured on its liability insurance policy. Copies of the insurance declaration page or a certificate of coverage from PDRMA evidencing the coverage limits below (in the case of the Park District insured by PDRMA) shall be provided to each party by January 30th in each year. Each Board will carry \$5,000,000 umbrella coverage. Insurance shall be in the following limits:

Each District shall carry liability insurance to cover the use of the Facilities as follows:

- i. Coverage and Limits.
 - a) The general liability limits.

Personal Injury/each occurrence	\$5,000,000
General aggregate	\$5,000,000

b) Automobile Liability (including owned, non-owned and hired vehicles):

Coverage: Combined single limit \$1,000,000

c) Umbrella Excess Liability providing increased limits of liability if the aggregate is exhausted for commercial general liability insurance and automobile liability insurance. This policy shall include coverages for the same hazards as are covered on the primary policies.

Coverage: Each occurrence/aggregate \$5,000,000

d) Workman's Compensation in statutory coverage limits.

ii. General Terms. The insurance shall be written for not less than limits of liability specified herein or required by law, whichever coverage is greater.

SECTION X: INDEMNIFICATION

The Park District agrees to indemnify and hold the School District harmless against any and all liabilities, claim, causes of action, damages, costs, expenses and fees, including attorney fees (collectively the "losses"), that the School District incurs arising out of or occurring in connection with the Park District's use of the Facilities in connection with this Agreement, except to the extent that any such losses are caused or contributed to, in whole or in part, by the School District.

The School District agrees to indemnify and hold the Park District harmless against any and all liabilities, claim, causes of action, damages, costs, expenses and fees, including attorney fees (collectively the "losses"), that the Park District incurs arising out of or occurring in connection with the School District's negligent, reckless or intentional misconduct in connection with this Agreement, except to the extent that any such losses are caused or contributed to, in whole or in part, by the Park District.

SECTION XI: AMENDMENTS

The Agreement may be amended at the annual meeting of the Parties as provided in Section VI or at any time prior or subsequent thereto at a joint meeting specifically called to consider amendments to the Agreement; provided that all amendments must be further approved by each Districts' board.

SECTION XII: AGREEMENT DURATION, TERMINATION AND DEFAULT

The term of this Agreement shall commence on the Effective Date and continue for an "Initial Term" of one five (5) year period. The Agreement shall automatically renew for two (2) successive five (5) year terms ("Renewal Terms"); provided, however, that the Agreement may be terminated by the Park District upon six (6) months advance written notice provided to the School District prior to the expiration of the Initial Term or a subsequent Renewal Term. The Initial Term and any Renewal Term are herein referred to as the "Term".

Upon the event of an uncured default by the School District, written notice must be sent to the School District by the Park District alleging the default with a ninety (90) day opportunity to cure. If the School District has implemented the cure during the 90 days and requires additional time to cure, such time will be granted provided it continues the cure in good faith. If the default is not timely cured, the Park District may at its election: **1)** terminate this Agreement and pursue any remedy for damages at law or in equity or **2)** without termination pursue any remedy for damages at law or in equity.

Upon the event of an uncured default by the Park District, written notice must be sent to the Park District by the School District alleging the default with a ninety (90) day opportunity to cure. If the Park District has implemented the cure during the 90 days and requires additional time to cure, such time will be granted provided it continues the cure in good faith. If the default is not timely cured the School District may without termination of this Agreement pursue any remedy for damages at law or in equity. The parties acknowledge that due to the substantial investment in the Improvements by the Park District and based further on the funding sources for those Improvements the Park District must have use of the Improvements pursuant to the terms herein for the full fifteen-year term, unless terminated voluntarily by the Park District.

Venue for any proceeding shall be Ogle County.

Notwithstanding the foregoing, a default of an urgent nature, such as a failure to procure insurance, shall be cured as expediently as possible after notice of the default from the non-defaulting party.

Upon expiration of each Term of this Agreement, both Parties shall provide an inventory to each other of all materials and equipment involved in providing the public recreational programs and School District programming and shall implement an equitable sharing of such materials and inventory.

SECTION XIII: NOTICES

All notices and communications in connection with this Agreement shall be in writing, and any notice, communication, or payment hereunder shall be deemed delivered to the addresses thereof two (2) days after deposit in any main branch United States Post Office, certified or

EXHIBIT A

SCHOOL DISTRICT FACILITIES SUBJECT TO THIS AGREEMENT TOGETHER
WITH TIMES OF APPLICABLE USE BY THE PARK DISTRICT

Facilities and Times of Use Available for Park District Use During the School Day. "School Day" is a day when school is in session. The School District shall have the right to revise the hours of use of the Facilities in the School District's sole discretion by providing the Park District with forty-eight (48) hour notice.

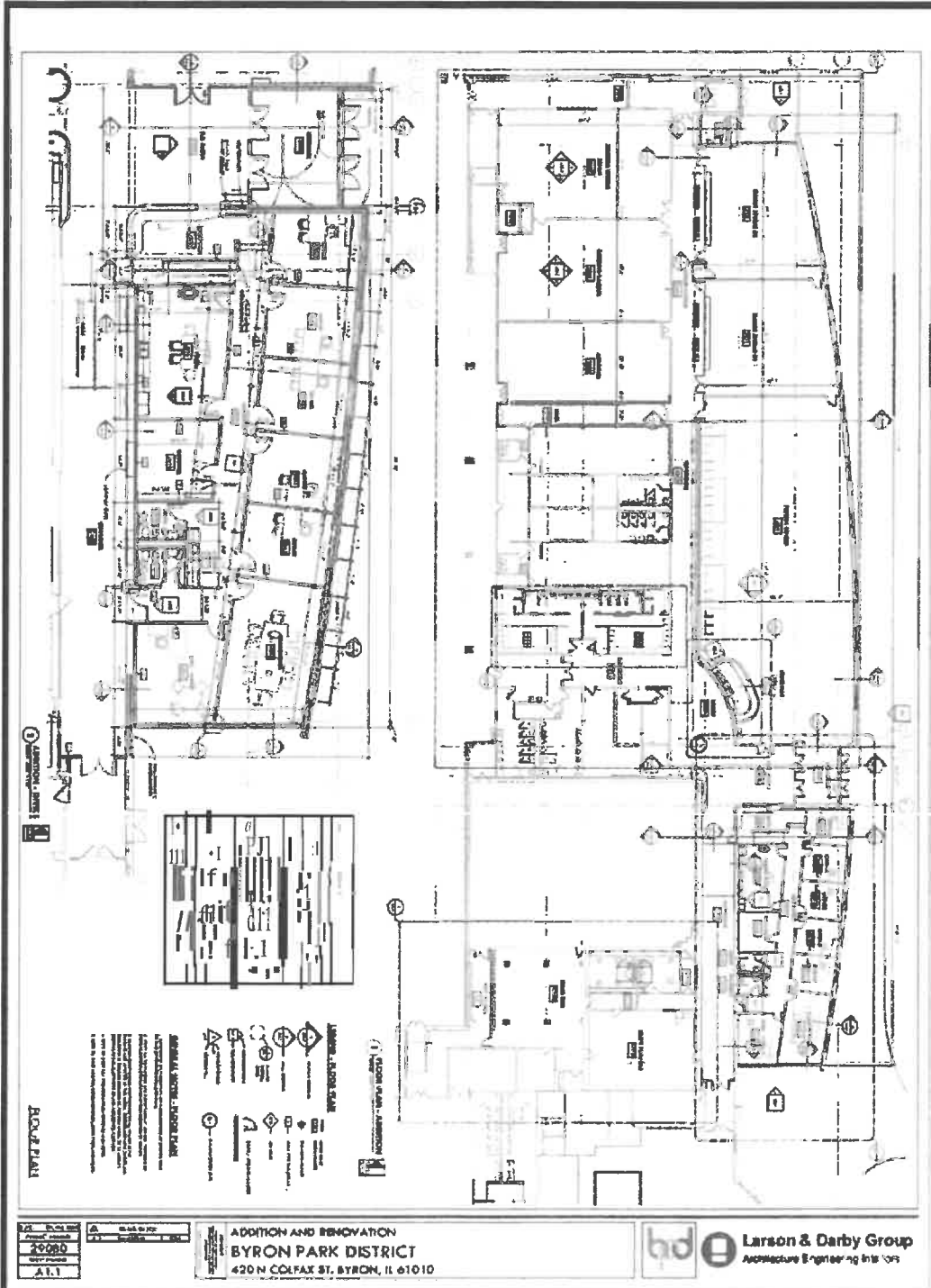
Dance Studios #1 and #2	5am-9pm
Fitness Center	5am-9pm
Park District Office Area	24 hour access for Park District staff
Storage Areas	24 hour access for Park District staff
Tiger Den/MP Room/Esports	5am-9pm

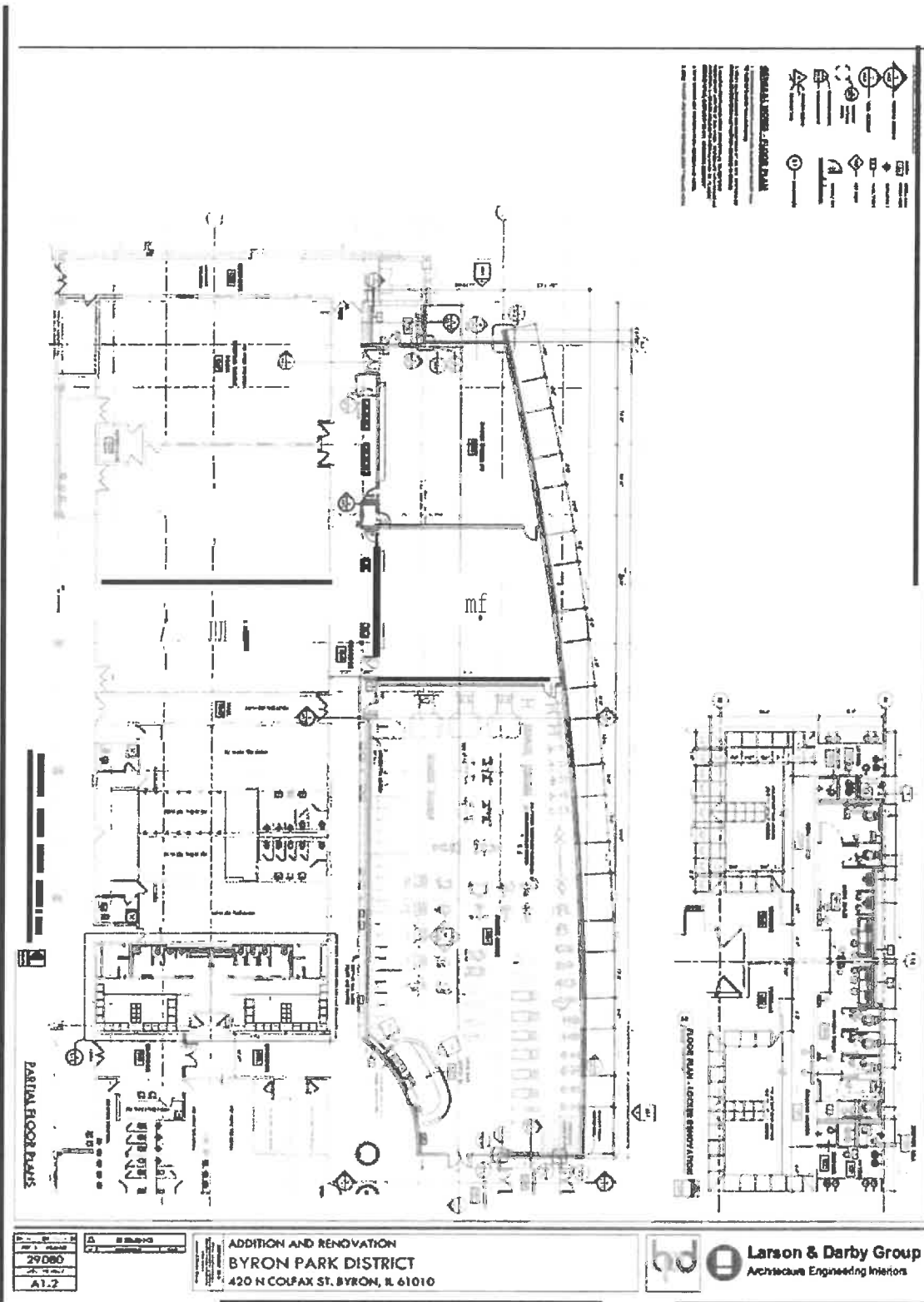
Facilities and Times of Use Available for Park District Use During Non-School Days.

Dance Studios #1 & #2	5am-9pm
Fitness Center	5am-9pm
Park District Office Area	24 hour access for Park District staff
Tiger Den/MP Room/Esports	5am-9pm

*Other facilities and times of use by the Park District are subject to prior approval from the appropriate Byron School District Administrator. Schedules may be adjusted by mutual agreement of the Parties.

EXHIBIT B APPROVED PLANS





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 A1.2

ADDITION AND RENOVATION
BYRON PARK DISTRICT
 420 N COLFAX ST. BYRON, IL 61010

Larson & Darby Group
 Architecture Engineering Interiors

registered mail, postage prepaid, or (1) day after deposit thereof with any nationally known and reputable overnight courier service, delivery charges prepaid, or on the date of delivery if personally delivered. Either party may change its address by giving Notice.

Any notice to the Park District Board of Commissioners shall be addressed to the: Byron Park District, P.O. Box 423, Byron, Illinois 61010, Attention: Board President.

Notice to the School District Board of Education shall be addressed to the Byron Community Unit School District 226, 696 North Colfax Street, Byron, Illinois 61010, Attention: School Board President.

SECTION XIV: SEVERABILITY, ENTIRE AGREEMENT AND GENERAL CLAUSES

If any provisions, covenants, agreements or portions of this Agreement or its application to any person, entity or property is held invalid, such invalidity shall not invalidate any other portion of this Agreement. The Parties intend to be bound to this agreement even in the event that a portion of the agreement is declared invalid, in accordance with law. This Agreement does not create a joint venture, employee/employer relationship or any type of partnership relationship among the parties hereto. All covenants and provisions herein shall inure to the benefit of the parties hereto and nothing in this Agreement is intended to provide any right or benefit to any person or entity that is not a party to his Agreement or establish or impose a legal duty to any third party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date indicated.

BYRON PARK DISTRICT



Board President

BYRON CUSD 226



Board President

ATTEST:



Board Secretary

DATE: 9/19/23

ATTEST:



Board Secretary

DATE: 9/28/23