

## **TEMPORARY LICENSE AGREEMENT FOR SITE EXAMINATION**

This Temporary License Agreement For Site Examination (this “Agreement”) is made on November 10, 2016 (the “Effective Date”), by and among the City of South Bend Board of Public Works (the “Board”), the South Bend Redevelopment Commission, governing body of the City of South Bend Department of Redevelopment (the “Commission,” together with the Board referred to herein as the “City”), and University of Notre Dame du Lac, an Indiana non-profit corporation with a registered office address of 203 Main Building, Notre Dame, Indiana 46556 (the “University”) (each a “Party,” and collectively, the “Parties”).

### RECITALS

A. The Board and the Commission, respectively, own certain real property and improvements located within the River East Development Area of the City of South Bend, Indiana, as more particularly described in attached **Exhibit A** (the “Board Tract” and the “Commission Tract,” which are collectively referred to as the “Property”).

B. The University desires temporary access to and use of the Property to conduct (a) nine (9) soil borings in the locations labeled B-1 through B-9 in the depiction of the Property attached as **Exhibit B**, and (b) land survey-related field work (together, the “Examination”) for purposes of pre-construction planning for the project described in the Memorandum of Understanding entered into between the University and the City of South Bend on or about June 30, 2016 (the “Project”).

C. The Board and the Commission are willing to permit the University to gain access to and temporarily use the Property for the Examination, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The Board grants to the University and its agents and contractors a temporary, non-exclusive license to enter and use the Board Tract for the purpose of conducting the Examination, provided that the University’s use of the Board Tract is reasonable at all times and comports with the terms of this Agreement and all applicable laws. The Commission grants to the University and its agents and contractors a temporary, non-exclusive license to enter and use the Commission Tract for the purpose of conducting the Examination, provided that the University’s use of the Commission Tract is reasonable at all times and comports with the terms of this Agreement and all applicable laws. Together, the University’s license to access and use the Board Tract and the University’s license to access and use the Commission Tract are referred to in this Agreement as the “License” to access and use the Property.

2. The University’s License to conduct the Examination on the Property will be effective from the Effective Date of this Agreement until the earlier of (a) the date upon which the University’s agents and/or contractors have completed both elements of the Examination, and (b)

December 31, 2016, provided, however, that the Board or Commission may revoke and terminate the License at any time for any reason, as determined in its sole discretion.

3. The University agrees to exercise its best efforts to minimize any disruption of or interference with the permitted use of the Commission Tract by FREG Stephenson Mill Associates, LLC (“FREG”), FREG’s property manager, and FREG’s tenants (collectively, the “FREG Parties”) under the Easement Agreement dated September 13, 2011, and recorded on September 14, 2011, as Document No. 1123732 in the Office of the Recorder of St. Joseph County, Indiana (the “Parking Easement”). The University agrees to communicate with and cooperate in good faith with FREG in advance of the Examination in order to coordinate the University’s access to and use of the Commission Tract with the least possible disruption of or interference with the FREG Parties’ use thereof under the terms of the Parking Easement.

4. The University understands and agrees that neither the City nor the FREG Parties will be liable for any loss, damage, destruction, or theft of the property of the University or its agents and/or contractors or any bodily harm or injury that may result from the University’s use of the Property. The University understands and agrees that it will at all times be solely responsible for the safety and security of all persons on the Property and any property the University or its agents or contractors uses on the Property in connection with the Examination.

5. The University agrees that its agents and/or contractors will not store any supplies, materials, goods, or personal property of any kind on the Property or otherwise use the Property for any purposes except during the time of the License stated in the foregoing sentence. The University will not, without the prior written consent of the City and FREG, cause or permit, knowingly or unknowingly, any hazardous material to be brought or remain upon, kept, used, discharged, leaked, or emitted at the Property.

6. The University understands and agrees that it will secure in its own name and at its own expense all necessary permits and authorizations, if any, needed to conduct the Examination. The University understands and agrees that it will, at its own expense, observe and comply with all applicable statutes, laws, ordinances, requirements, orders, rules, and regulations of all governmental authorities in relation to the Examination conducted on the Property.

7. To the extent that any portion of the Property is disturbed or damaged in connection with the University’s use of the Property, including the displacement of soil or pavement in connection with the University’s extraction and collection of soil borings, the University, at the University’s sole expense, will restore the Property to the condition that existed immediately prior to such disturbance or damage. As to any disturbance of or damage to the Commission Tract, the University’s restoration must be to the reasonable satisfaction of both the Commission and FREG. As to any disturbance of or damage to the Board Tract, the University’s restoration must be to the reasonable satisfaction of the Board.

8. The University agrees and undertakes to indemnify and hold the Board, the Commission and the FREG Parties, and their respective agents, employees, successors, and assigns, harmless from any liability, loss, costs, damages or expenses, including attorneys’ fees, which the Board, the Commission or the FREG Parties may suffer or incur as a result of any

claims or actions which may be brought by any person or entity arising out of the approval granted herein or the University's use of the Property. If any action is brought against the Board, the Commission or the FREG Parties, or their respective agents, employees, successors, or assigns, in connection with Examination, the University agrees to defend such action or proceedings at its own expense and to pay any judgment rendered therein.

9. The Board, the Commission and the University acknowledge that the FREG Parties are third-party beneficiaries for purposes of enforcing the provisions of this Agreement.

10. 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.

IN WITNESS WHEREOF, the Parties have each executed this Temporary License Agreement For Site Examination to be effective as of the Effective Date stated above.

**CITY OF SOUTH BEND  
BOARD OF PUBLIC WORKS**

**SOUTH BEND REDEVELOPMENT  
COMMISSION**

\_\_\_\_\_  
Gary Gilot, President

\_\_\_\_\_  
Marcia I. Jones, President

\_\_\_\_\_  
Therese Dorau, Member

ATTEST:

\_\_\_\_\_  
Suzanna Fritzbeg, Member

\_\_\_\_\_  
Donald E. Inks, Secretary

\_\_\_\_\_  
Elizabeth Maradik, Member

\_\_\_\_\_  
James Mueller, Member

ATTEST:

\_\_\_\_\_  
Linda Martin, Clerk

**UNIVERSITY OF NOTRE DAME DU LAC,  
an Indiana non-profit corporation**

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

**CONSENT OF FREG STEPHENSON MILL ASSOCIATES, LLC**

FREG Stephenson Mill Associates, LLC (“FREG”) hereby consents to the foregoing Temporary License Agreement For Site Examination between the City of South Bend Board of Public Works, the South Bend Redevelopment Commission, and University of Notre Dame du Lac (the “Temporary License”), on the following conditions:

- A. Nothing in this Consent shall be deemed an approval of the Project by FREG.
- B. The FREG Parties are a third-party beneficiary for purposes of enforcing the provisions of the Temporary License.

**FREG STEPHENSON MILL ASSOCIATES, LLC,  
a Colorado limited liability company**

By: Forum Management, Inc., its Manager

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

1300.0000011 55071510.005

## EXHIBIT A

### Description of Property

#### Board Tract

A tract of land along the East bank of the St. Joseph River, from the East Race to approximately 4.5 feet North of the South line of Lot Number 8 in the recorded Plat of Miller and Green's First Addition to the Town of Lowell, now City of South Bend, Indiana, said tract more particularly described as follows, viz: Beginning at a point 273.00 feet South of the South line of Colfax Avenue, measured at right angles to said South line, and 220.42 feet West of the West line of Gintz Avenue (Race Street) as measured parallel with the South line of Colfax Avenue, said South line of Colfax Avenue having a bearing of due East and West; thence North  $90^{\circ}00'00''$  East, a distance of 16.37 feet; thence South  $24^{\circ}35'05''$  East, 225.00 feet; thence South  $17^{\circ}48'04''$  East, 66.26 feet; thence South  $41^{\circ}00'29''$  East, 31.37 feet; thence South  $46^{\circ}05'35''$  East, 131.29 feet; thence North  $54^{\circ}14'36''$  East, a distance of 32.03 feet to the approximate West line of the East Race, now abandoned; thence South  $03^{\circ}32'26''$  East along the approximate West line of the East Race, a distance of 1.20 feet; thence continuing along the approximate West line of the East Race, South  $03^{\circ}15'10''$  West 8.90 feet to the beginning of a meander line approximately and lying inside of a concrete retaining wall along the St. Joseph River; thence South  $53^{\circ}0'15''$  West along said meander line, a distance of 32.89 feet; thence North  $46^{\circ}28'39''$  West, 138.62 feet; thence North  $40^{\circ}07'21''$  West, 34.03 feet; thence North  $26^{\circ}17'33''$  West, 194.85 feet; thence North  $20^{\circ}16'19''$  West, 103.82 feet to the point of beginning.

#### EXCEPT THE FOLLOWING:

Tract I: That part of Lots 3 through 8 as shown on the recorded plat of Miller and Green's 1st Addition to the Town of Lowell, as recorded in the records of St. Joseph County, Indiana, which is described as beginning at a point which is South  $26^{\circ}17'33''$  East, 109.20 feet, and South  $20^{\circ}15'43''$  East, 103.83 feet ( $20^{\circ}16'19''$  East, record) and South 273.00 feet from a point on the South line of Colfax Street which is West, 220.42 feet from the West line of Gintz Avenue; thence  $57^{\circ}43'06''$  East, 19.64 feet; thence South  $24^{\circ}36'05''$  East, 21.77 feet; thence South  $17^{\circ}48'04''$  East, 66.26 feet; thence South  $41^{\circ}00'29''$  East, 31.37 feet; thence South  $46^{\circ}05'35''$  East, 42.47 feet; thence South  $44^{\circ}13'06''$  West, 9.17 feet; thence North  $46^{\circ}28'30''$  West, 42.54 feet; thence North  $40^{\circ}07'21''$  West, 34.03 feet; thence North  $26^{\circ}17'33''$  West, 85.65 feet to the point of beginning.

Tract II: That part of Lots 3 through 8 as shown on the recorded plat of Miller and Green's 1st Addition to the Town of Lowell, as recorded in the records of St. Joseph County, Indiana, which is described as: Beginning at a point which is North  $57^{\circ}43'06''$  East, 19.64 feet and South  $26^{\circ}17'35''$  East, 109.20 feet and South  $20^{\circ}15'43''$  East, 103.83 feet (South  $20^{\circ}16'19''$  East, record) and South, 273.00 feet from a point on the South line of Colfax Street which is West, 220.42 feet from the West line of Gintz Avenue; thence North  $57^{\circ}43'06''$  East, 25.54 feet; thence South  $32^{\circ}16'54''$  East, 149.75 feet; thence South  $84^{\circ}46'04''$  West, 41.28 feet (South  $83^{\circ}47'55''$  West, record); thence North  $46^{\circ}05'35''$  West, 14.66 feet; thence North  $41^{\circ}00'29''$  West, 31.37 feet; thence North  $17^{\circ}48'04''$  West, 66.26 feet; thence North  $24^{\circ}35'05''$  West, 21.77 feet to the Point of Beginning.

Tract III: A parcel of land described as commencing at the intersection of the South right-of-way line of Colfax Avenue with the West right-of-way line of Niles Avenue; thence North 89°54'00" West, along said South right-of-way line, a distance of 232.26 feet to the Easterly right-of-way line of Gintz Avenue; thence South 5°53'22" East, along said Easterly right-of-way line, a distance of 274.46 feet; thence South 5°27'44" East along said Easterly right-of-way line, a distance of 137.81 feet; thence South 3°34'50" East, a distance of 84.04 feet to the place of beginning for this description; thence South 3°34'50" East, a distance of 144.46 feet; thence South 3°12'46" West, a distance of 8.90 feet; thence South 52°57'51" West, a distance of 32.89 feet to the Easterly meander line of the St. Joseph River; thence North 46°31'03" West along said Easterly meander line, a distance of 132.0 feet; thence North 83°47'35" East, a distance of 104.54 feet; thence North 3°34'50" West, a distance of 70.00 feet; thence North 86°25'10" East, a distance of 13.99 feet to the place of beginning.

Parcel Key No. 018-5001-000501

### **Commission Tract**

THAT PART OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 2 EAST, PORTAGE TOWNSHIP, CITY OF SOUTH BEND, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: LOT NUMBERED TWO (2) AS SHOWN ON THE RECORDED PLAT OF "OPELIKA MINOR SUBDIVISION" RECORDED AS DOCUMENT #9341067 IN THE OFFICE OF THE RECORDER OF ST. JOSEPH COUNTY, INDIANA AND BEING MORE PARTICULARLY DESCRIBED AS: BEGINNING AT THE NORTHEAST CORNER OF LOT #2; SAID POINT BEING THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF COLFAX AVENUE (U.S. #20) AND THE EAST LINE OF SAID LOT #2; THENCE SOUTH 05° 33' 48" EAST, 127.85 FT.; THENCE SOUTH 84° 26' 12" WEST, 20.62 FT.; THENCE SOUTH 05° 33' 48" EAST, 31.45 FT.; THENCE NORTH 84° 26' 12" EAST, 20.60 FT.; THENCE SOUTH 05° 33' 48" EAST, 50.00 FT.; THENCE NORTH 84° 26' 12" EAST, 7.30 FT.; THENCE NORTH 03° 59' 47" WEST, 2.89 FT.; THENCE NORTH 86° 00' 13" EAST, 78.11 FT. TO THE WEST LINE OF GINTZ AVENUE; THENCE SOUTH 05° 53' 22" EAST ALONG SAID WEST LINE, 74.18 FT.; THENCE NORTH 89° 58' 48" WEST, 167.91 FT.; THENCE NORTH 15° 07' 45" WEST, 87.70 FT.; THENCE NORTH 87° 52' 06" EAST, 47.34 FT.; THENCE NORTH 00° 56' 55" WEST, 186.67 FT. TO THE SOUTH RIGHT-OF-WAY LINE OF COLFAX AVENUE (U.S. #20); THENCE ALONG SAID SOUTH RIGHT-OF-WAY LINE SOUTH 89° 54' 00" EAST, 33.72 FT. TO THE POINT OF BEGINNING.

TOGETHER WITH THAT PART OF THE NORTHWEST QUARTER OF SECTION 12, TOWNSHIP 37 NORTH, RANGE 2 EAST, PORTAGE TOWNSHIP, CITY OF SOUTH BEND, ST. JOSEPH COUNTY, INDIANA WHICH IS DESCRIBED AS: BEGINNING AT A POINT ON THE WEST RIGHT-OF-WAY LINE OF GINTZ AVENUE WHICH POINT IS 273.00 FT. SOUTH OF THE SOUTH RIGHT-OF-WAY LINE OF COLFAX AVENUE, MEASURED AT RIGHT ANGLES TO SAID SOUTH RIGHT-OF-WAY LINE; THENCE SOUTH 05° 53' 22" EAST ALONG SAID GINTZ AVENUE RIGHT-OF-WAY LINE AND ITS EXTENSION, (RECORD, SOUTH 05° 27' 44" EAST), 152.28 FT.; THENCE NORTH 89° 58' 48" WEST, 149.14 FT.; THENCE NORTH 24° 37' 29" WEST, 166.65 FT.; THENCE SOUTH 89° 58' 48" EAST, 202.95 FT. TO THE POINT OF BEGINNING.

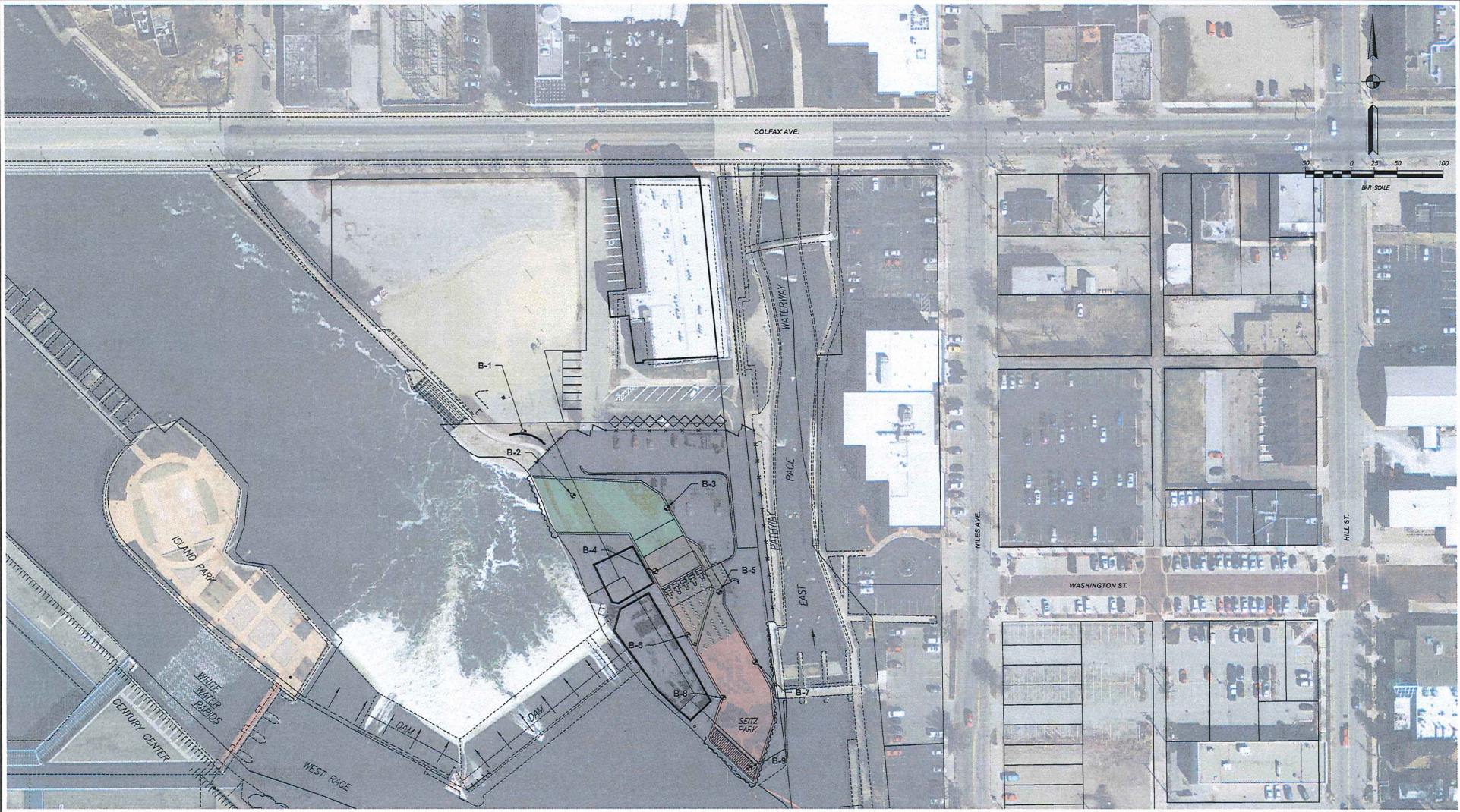
Parcel Key No. 018-5001-0005

**EXHIBIT B**

**Depiction of Soil Boring Locations**

[See attached.]

BJT - 10/27/2016 4:24 PM - U:\2015\201510\_00 KFI UND Hydro\Coord\Plan Set\Civil\Plans\151000HY\_P109\_Prelim\_SBD.DWG



**LFA**  
**LAWSON-FISHER ASSOCIATES P.C.**  
 525 W. WASHINGTON AVENUE  
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 Fax. (651) 771-2878  
 E-mail kfi@kfi-eng.com

**NOTRE DAME HYDRO PROJECT**  
 UNIVERSITY OF NOTRE DAME  
 PRELIMINARY SOIL BORING LAYOUT  
 SOUTH BEND, INDIANA

Checked By: SKM  
 Drawn By: BJT  
 Dwg. Scale: 1" = 100'

Project No.: 15-062  
 Date: 9-21-16  
 Sheet Size: 11x17

Sheet No.: 1 of 1  
**C-101**