

**CITY OF SOUTH BEND AND ZION CHURCH
PARKING LOT IMPROVEMENTS AND
SHARED USE AGREEMENT**

This Parking Lot Improvements and Shared Use Agreement (“Agreement”) is made by and between Zion United Church of Christ (“Zion Church”) and the City of South Bend Indiana, acting by and through its Board of Park Commissioners (the “City”) (Each a “Party” and together the “Parties”), for the shared use and improvements of the parking lot area of Zion Church (hereinafter, the “Parking Premises”), located at 220 St. Louis South St. Peter Street, South Bend, Indiana 46617.

1. **TERM.** The term of this Agreement shall commence on the 16th day of June, 2018 and continue through May 15, 2023. At the end of the initial term, the Lease will automatically renew for successive five (5) year terms. Either Party may terminate this Agreement, at any time for any reason, by giving the other Party thirty (30) days advance written notice. If the City terminates this Agreement, the City forfeits the cost of any Improvements to the Parking Premises made by the City. If Zion Church terminates this Agreement, Zion Church shall pay to the City the unamortized cost of any improvements made to the Parking Premises by the City. The cost of improvements will be valued with a straight line 10 year amortization schedule.
2. **OWNERSHIP AND FIRST RIGHT OF REFUSAL.** Zion Church owns the following Premises more particularly described as:

Lot 1:

Parcel ID No. 018-6002-00180134. Tax ID No. 71-018-12-257-013.000-026. Legal Description: 34Ft N Side Lot 249 W1/2 Vac alley E & Adj Cottrells 1st Add To Lowell 14/15 Vac Ord #10227-13 7/15/2013 91-92 Land Split To #18-6002-0017

Lot 2:

Parcel ID No. 018-6002-0018. Tax ID No. 71-08-12-257-014.000-026. Legal Description: 32 Ft S Side Lot 249 W1/2 Vac alley E & Adj Cottrells 1st Add 14/15 Vac Ord #10227-13 07-15-13

Lot 3:

Parcel No. 018-6002-0019. Tax ID. No. 71-018-12-257-015.000-026. Legal Description: Lot 250 W1/2 Vac alley E & Adj Cottrells 1st Add 14/15 Vac Ord #10227-13 07-15-2013

Lot 4:

Parcel No. 018-6002-0020. Tax ID. No. 71-08-12-257-016.000-026 Legal Description: Lot 251 W1/2 Vac alley E & Adj Cottrells 1st Add 14/15 Vac Ord #10227-13 07-15-2013

In the event Zion Church elects or is forced to sell said Premises, during the term of this Agreement, Zion Church grants the City the exclusive and irrevocable right of first refusal or

first option to purchase said Premises. The City agrees to offer the fair market value of the Premises less improvements amortized over the term of the Agreement.

3. PERMITTED USES. The Parking Premises shall be used for:

City

- a. Daily/weekly/monthly permit parking City staff, including Venues, Parks & Arts (“VPA”) employees.
- b. Special event parking, including but not limited to, parking by special event attendees, organizers and volunteers and restricted access parking for Howard Park renters.
- c. Public parking by persons accessing Howard Park.

The City shall develop and install signage acceptable to Zion Church to explain permitted uses and restrictions.

Zion Church

- a. Parking for Zion Church attendees on Sundays.
- b. Parking for attendees of meetings, functions and events at Zion Church

4. IMPROVEMENTS. The City, upon agreement from Zion Church, which consent shall not be unreasonably withheld, may facilitate changes, enhancements and/or improvements to the Parking Premises. The City shall incur the capital expense of any such changes, enhancements and/or improvements (See Exhibit A, incorporated by reference herein). The cost of improvements will be valued with a straight line 10 year amortization schedule.

5. WARRANTY. The City warrants that any changes, enhancements and/or improvements to the Parking Premises furnished by the City under this Agreement shall be performed in good and workmanlike manner. The City further warrants that any improvements furnished by the City, or a contractor engaged by the City, shall be free of any defect in equipment, material, or design, or workmanship. Upon receipt of notice from Zion Church, and following a reasonable investigation as to causation, the City agrees to remedy any failure to conform, or any defect caused by the negligence of the City or a contractor engaged by the City.

6. SHARED USE AND SCHEDULING. The City shall designate, with and mark 12 parking spots for the exclusive use of Zion Church at all times. Zion Church shall approve the location of the 12 parking spots. Zion Church shall have exclusive use of the Parking Premises each Sunday from 1 a.m. to noon. The Parties will coordinate scheduling of parking for all other Permitted Uses, including, but not limited to identifying primary and secondary scheduling contacts and the implementation of a shared use calendar.

7. FEES. City may charge, collect and retain all revenues from regular, daily or special event parking for City use of Parking Premises. Zion Church may charge and retain all revenues for any special events that are organized by Zion Church.

8. SUPERVISION & ENFORCEMENT. With the exception of scheduled and permitted Zion Church events, the City shall be responsible for supervision and enforcement of parking on the Parking Premises.
9. SECURITY. With the exception of scheduled and permitted Zion Church events, the City shall be responsible for security of the Parking Premises consistent with the level of security provided at other City venues, operations and events.
10. MAINTENANCE. City shall be responsible for the on-going and annual maintenance of the Parking Premises and for the ongoing maintenance of lighting and associated utility costs. With the exception of permitted and scheduled Zion Church events, the City shall be responsible for trash removal from the Parking Premises.
11. SNOW REMOVAL. City shall be responsible for snow removal from the Parking Premises, alleys and public sidewalks immediately surrounding the Parking Premises by 8:30 AM every morning. Snow removal procedures shall include installation of reflective markers to surrounding Parking Premises landscaping and infrastructure. Zion Church shall be responsible for snow removal from other areas of church property.
12. RESTITUTION AND REPAIR. Zion Church shall be responsible for any Parking Premises damage caused at or during permitted and scheduled church events. The City shall be responsible for any Parking Premises damage caused at or during all other times.
13. INSURANCE. The City maintains blanket insurance coverage over real and personal property, and is covered by a non-reverting insurance premium and liability reserve fund created by the City, pursuant to Indiana Code 34-13-3-4, as amended from time to time. The City shall maintain insurance coverage throughout the term of this Agreement.

Zion Church maintains a commercial general liability insurance policy with limits in the following amounts:

Each Occurrence Limit: \$2,000,000
General Aggregate Limit: \$4,000,000

Zion Church shall maintain commercial general liability coverage throughout the term of this Agreement, and upon request, agrees to provide the City with a Certificate of Insurance.

14. INDEMNIFICATION. Each Party agrees to defend, indemnify and save harmless the other Party from and against any and all claims, losses, actions, damages, liability and expenses (including reasonable fees and expenses of legal counsel) arising out its breach of this Agreement, and/or negligence or willful misconduct.
15. GOVERNING LAW. This Agreement is governed by and construed according to the laws of the State of Indiana. Any action to enforce the terms of this Agreement or to construe the terms of this Agreement must be filed in the State Courts of St. Joseph County, Indiana.

Due to the complexity, high cost and time involved in commercial litigation before a jury, the parties knowingly, voluntarily, and irrevocably waive any and all rights to trial by jury of any dispute to enforce the terms of or to construe the terms of this Agreement.

16. NOTICES. Any notice required or permitted to be given under the terms of this Agreement shall be deemed given when reduced to writing and placed in the United States Mail, with first-class and certified mail, return receipt requested, postage fully prepaid, and addresses to the other Party at the address shown, as follows:

A. Zion United Church of Christ
Attn: President of the Elders
211 South St. Peter Street
South Bend, Indiana 46617

B. City of South Bend Venues Parks and Arts Department
Attn: Executive Director
301 S. St. Louis Blvd.
South Bend, Indiana 46617

17. AUTHORITY. The Parties warrant that each has approved the terms of this Agreement and the person signing on behalf of each Party is duly authorized to execute this Agreement.

18. ENTIRE AGREEMENT. This Agreement sets forth all the covenants, provisions, agreements, conditions and understandings between the Parties concerning the matters contained herein and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth.

19. INTERPRETATION and SURVIVAL. All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement, and shall not affect in any way the meaning or interpretation of this Agreement. It is agreed that, without limiting any other provision, all obligations of the Parties to indemnify, hold harmless, and/or defend the other shall survive the termination or cancellation of this Agreement.

20. SEVERABILITY. The invalidity of any provision, clause, or phrase will not serve to render the balance of this Agreement ineffective or void.

21. COUNTERPARTS AND EXECUTION. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All Parties to this Agreement acknowledge that they are relying upon the advice of counsel and enter into this Agreement pursuant to their own free will.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

Dated this ____ day of _____, 2018

**ZION UNITED CHURCH OF
CHRIST**

Printed Name

Signature:

Title

**CITY OF SOUTH BEND, INDIANA
BOARD OF PARK COMMISSIONERS**

Mark Neal, President

Consuella Hopkins, Vice President

Aimee Buccellato, Member

Dan Farrell, Member

ATTEST:

Eva Ennis, Clerk

DATE: _____

By: _____
Aaron Perri, Executive Director,
Venues Parks and Arts

