

**SOUTH BEND RIVER LIGHTS PROJECT AGREEMENT
BETWEEN THE CITY OF SOUTH BEND, INDIANA AND
ST. JOSEPH COUNTY, INDIANA**

THIS PROJECT AGREEMENT (the “Agreement”) is made and entered into as of June 15, 2020, by and between the **CITY OF SOUTH BEND, INDIANA**, a municipal corporation organized and operating under the laws of the State of Indiana, acting by and through the Board of Park Commissioners (collectively, the “City” or the “Commission”) and **ST. JOSEPH COUNTY, INDIANA** (the “County”), a governmental entity operating and existing under the laws of the State of Indiana, acting by and through its Board of Commissioners (each a “Party” and collectively the “Parties”).

WHEREAS, the County owns the historically significant Jefferson Boulevard Bridge (the “Bridge”), a 51.8’ concrete closed spandrel deck arch bridge built in 1905 and rehabilitated in 2004; and,

WHEREAS, in 2015, Downtown South Bend, Inc., (“DTSB”) worked with internationally renowned lighting designer, Rob Shakespeare, County and City officials, and local supporters and contractors to install an interactive, architectural lighting display called the South Bend River Lights (“River Lights”) on the Bridge; and,

WHEREAS, upon completion of the River Lights, DTSB transferred ownership of the entire installation to the City; and,

WHEREAS, the City owns, operates and maintains the River Lights; and,

WHEREAS, the River Lights have quickly become a point of local civic pride and has garnered significant regional, national, and international accolades; and

WHEREAS, the City desires to install additional lighting fixtures on the south face of the County Bridge, identical to the existing River Lights installation on the north face of the Bridge.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein, the City and the County hereby agree as follows:

City Obligations

1. Keep the River Lights in good working order and condition.
2. Temporarily remove the River Lights at the County’s request for Bridge maintenance and repair.
3. Make all reasonable efforts to ensure the River Lights do not harm the structural integrity of the Bridge.
4. Use only licensed and insured contractors for River Lights installations, maintenance and repairs.
5. Maintain insurance on the River Lights installation.
6. Notify the County of any planned maintenance activity on the River Lights that will impact the County.

County Obligations

1. Permit the City Lights to remain on the Bridge as long as they are in good working order and not harm the structural integrity of the Bridge.
2. Permit the City and the City's contractors reasonable access to the Bridge for maintenance and repair of the River Lights.
3. Permit the future addition of lighting fixtures, identical to the existing River Lights on the north face of the Bridge, to be installed on the south face of the Bridge.
4. Notify the City immediately of any issues with the River Lights.

Term and Termination

This Agreement shall be effective when it has been approved by the legislative bodies of the Parties and the duration of this Agreement shall be ten (10) years, with automatic renewal for four (4) successive five (5) year terms. This Agreement may be terminated by either Party by providing the other Party with 90 days written notice.

Administration

This Agreement shall be administered by the Board of Park Commissioners for the City of South Bend.

Indemnification

The City agrees to indemnify and hold harmless the County, its officials, directors, employees, and agents from and against any claim, action, demand, loss, expense, liability, penalty or other damage, including without limitation, legal costs and expenses and other costs and expenses incurred as a result of, the City's, its officials, directors, employees and agents negligent maintenance of the River Lights.

Non-Discrimination

Pursuant to Indiana Code Section 22-9-1-10, neither the County nor the City nor any of their contractors or subcontractors shall discriminate against any employee or applicant for employment with respect to hire, tenure, or conditions or privileges of employment, any matter directly or indirectly related to employment because of race, color, religion, sex, disability, national origin, or ancestry.

Relationship of Parties

This Agreement is strictly for the benefit of the Parties and not for any third-party or person. This Agreement was negotiated by the Parties at arm's length and each of the parties thereto has reviewed the Agreement after the opportunity to consult with independent counsel. Neither Party shall maintain that the language in the Agreement shall be construed against any signatory hereto.

Assignment

Neither Party shall assign in whole or in part this Agreement or its obligations hereunder without the prior written consent of the other Party.

Indiana Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.

Notices

Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to the City or the County, as the case may be, at the address set forth below.

If to the County: St. Joseph County Board of Commissioners
 227 W. Jefferson Boulevard
 South Bend, IN 46601
 Attn: Andrew T. Kostielney, President

If to the City: Venues Parks & Arts Department
 City of South Bend
 301 S. St. Louis Blvd.
 South Bend, IN 46617
 Attn: Aaron Perri, Executive Director

Additional Representations

The undersigned Parties executing and delivering this Agreement represent and certify that they have been fully empowered to execute and deliver this agreement and that all necessary actions have been taken and done.

Multiple Counterparts

This Agreement may be executed in multiple counterparts by the Parties hereto with the multiple counterparts constituting but one and the same single, complete and entire Agreement.

Binding Effect

This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, understandings, and agreements among them relative to the subject matter of this Agreement; and cannot be altered, amended, or terminated without the written agreement of all such parties.

[Signatures on following page]

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

ST. JOSEPH COUNTY BOARD OF COMMISSIONERS

Andrew T. Kostielney, President

Deborah A. Fleming, DMD, Vice President

Dave Thomas, Member

CITY OF SOUTH BEND BOARD OF PARK COMMISSIONERS

Mark Neal, President

Consuella Hopkins, Vice President

Aimee Buccellato, Member

Dan Farrell, Member

ATTEST:

Eva Ennis, Clerk