

CITY OF SOUTH BEND, INDIANA
AUTHORIZATION FOR ENTRY UPON AND THE TEMPORARY USE OF
PUBLIC PROPERTY LOCATED AT 1100 WILBUR STREET

THIS AGREEMENT is made effective the 21st day of November, 2022, by the City of South Bend, by and through its Board of Park Commissioners ("BPC") and the City of South Bend, by and through its Board of Public Works ("BPW").

RECITALS

WHEREAS, in accordance with IC 36-10-4 the exclusive control of all property within the City used for park purposes is vested in the City of South Bend Board of Park Commissioners ("Board"); and

WHEREAS, BPC is the owner of certain property at 1100 Wilbur Street within the City of South Bend, Indiana, which property is more specifically described at *Exhibit "A"* attached hereto and incorporated herein ("Property"); and

WHEREAS, BPW desires temporary access to the Property for the purpose of construction work to replace a fence along the border of the Property and 1408 Elwood Avenue ("Activity"); and

WHEREAS, BPC is willing to permit BPW and its designated contractor(s), specifically including Ritschard Bros., Inc. ("Contractor") access to and temporary use of the Property subject to certain 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. BPC grants to BPW, Contractor, its agents, contractors and employees, a temporary non-exclusive right on, in and across the Property for the purpose of conducting the Activity described herein. This non-exclusive right to enter upon and use the Property for said Activity shall be at all reasonable times.

2. In consideration for authorization and approval by BPC for BPW, Contractor, and

its designated contractor(s) to enter upon and use the Property in conducting the Activity, BPW hereby agrees that its contract with any such contractor shall require the contractor to hold the City of South Bend, Indiana, BPC, the agents, contractors, employees, successors and assigns of each, free and harmless from any liability, loss, costs, damages or expenses, including attorney's fees, which the City of South Bend or BPC 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 by BPC. If any action is brought against the City of South Bend or BPC, the agents, contractors, employees, successors and assigns of each, because of the aforementioned Activity, the undersigned agrees to require its contractor to defend such action or proceedings at its own expense and to pay any judgment rendered therein.

3. The rights granted under this Agreement shall terminate without further action by BPC upon the earlier of (i) December 16, 2022, by which the Activity will have ceased on the Property or (ii) delivery of written notice from BPC to BPW.

4. To the extent that any portion of the Property is disturbed in connection with the exercises of the privileges granted under this Agreement, BPW shall require its contractor to restore the Property to the same, or better, condition in which it was immediately prior to such disturbance to the satisfaction of BPC at BPW's contractor's sole expense. BPW shall require its contractors to coordinate with the City's Department of Venues Parks & Arts to ensure maintenance of appropriate tree protection zones and soil compactions, including but not limited to the Tree Protection Zone Restrictions below.

Tree protection zone (TPZ) shall be 1.5 feet for every 1-inch in diameter of the trunk (DBH) of the tree.

No ground disturbance, grading, trenching, construction activities, or structural development shall occur within the TPZ except as specifically authorized by this Agreement, any permits issued, and the approved TPP.

No equipment, soil, or construction materials shall be placed within the TPZ. No oil, gasoline, chemicals, paints, solvents, or other damaging materials may be deposited within the TPZ or in drainage channels, swales, or areas that may lead to the TPZ.

Where trenching or digging within the TPZ is specifically permitted, the work shall be conducted in a manner that minimizes root damage, as directed by an urban forester.

Grade changes outside of the TPZ shall not significantly alter drainage to protected trees. Grading within the TPZ shall use methods that minimize root damage and ensure that roots are not cut off from the air, where erosion may be a factor to return and protect the original grade or otherwise stabilize the soil.

Protection Zone fencing shall be installed along the edges of protection zones in a manner that will prevent people from easily entering protected areas

Signage shall be posted on the tree protection fence.

Example:

10" diameter tree (DBH) x 3 feet = 30-foot diameter **OR** 15-foot radius from trunk.

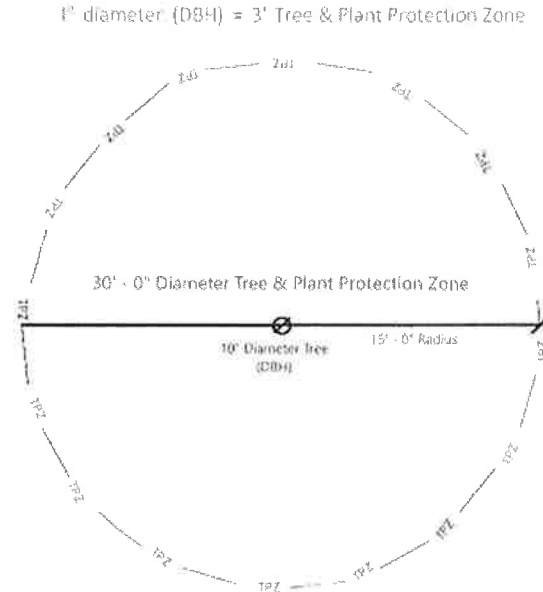


Figure 1: Example Tree & Plant Protection Zone for a 10" DBH tree

5. BPW understands and agrees that all necessary permits and authorizations needed in order to conduct the Activity will be secured in its own name and at its own expense, or that of Contractor. BPW shall not, without the prior written consent of BPC, cause or permit, knowingly or unknowingly, any hazardous material to be brought or remain upon, kept, used, discharged, leaked or emitted in or about, or treated at the Property by it or its contractors.

6. BPW agrees to require its designated contractor(s) performing the Activity, at the contractor(s) expense, to maintain during the term of this Agreement, commercial general liability insurance as set forth in the agreement between BPW and its contractor, identifying BPC as an "additional insured."

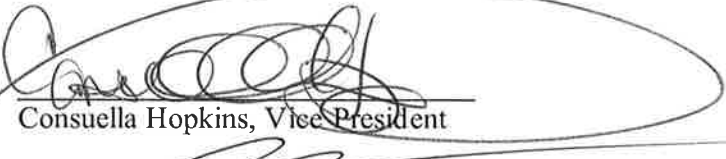
7. The undersigned person(s) signing on behalf of his/her respective Parties certify that he/she is duly authorized to bind his/her respective Party to the terms hereof.

(Signature Page to Follow)

IN WITNESS WHEREOF, the Parties have each executed this Agreement as of the date first written above.

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

Mark Neal, President



Consuella Hopkins, Vice President



Sam Centellas, Member

ATTEST:



Amy Roush, Acting Clerk

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

Elizabeth A. Maradik, President

Joseph R. Molnar, Vice President

Gary A. Gilot, Member

Jordan V. Gathers, Member

Murray L. Miller, Member

ATTEST:

Theresa Heffner, Clerk

EXHIBIT A

CITY OF SOUTH BEND, INDIANA AUTHORIZATION FOR ENTRY UPON AND THE TEMPORARY USE OF PUBLIC PROPERTY LOCATED AT 1100 WILBUR STREET

MUESSEL GROVE PARK ACCESS

