

## **COST SHARING AGREEMENT**

The University of Notre Dame du Lac (“University”) and the City of South Bend, Indiana (the “City”), a municipal corporation, acting by and through its Redevelopment Commission, governing body of the Department of Redevelopment (the “RDC”) enter into this Cost Sharing Agreement (“Agreement”), effective as of the last date executed by one of the parties.

WHEREAS, the City owns a certain waterway infrastructure located in the City of South Bend, Indiana, about and across the St. Joseph River (“Dam Facility”) located at Seitz Park (the “Park”) and adjacent to the manmade canal commonly known as the East Race Waterway (the “East Race,” and collectively with the Dam Facility and the Park, the “City Property”); and

WHEREAS, title to the Park is held by the RDC; and

WHEREAS, the City and University have worked collaboratively on the development of a hydroelectric power generation facility located underneath Seitz Park near the Dam Facility and East Race (the “Facility Project”), including entering into a Ground Lease (the “Lease”); and

WHEREAS, as a part of the Lease terms, the University agreed to assist the City with regard to the upkeep and maintenance of the Dam Facility; and

WHEREAS, the City has determined the need to repair the retaining wall on the eastern edge of Seitz Park which abuts the East Race of the St Joseph River and is associated with the Dam Facility (the “Repair Project”); and

WHEREAS, the University and City wish to establish the terms and conditions, rights and responsibilities as between themselves regarding the Project.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. To facilitate completion of the Repair Project in the most time efficient and cost effective manner, a contractor performing work for the University on the Facility Project (the “Contractor”) will perform the work for the Repair Project through a change order in the agreement between the University and Contractor.
2. The City will reimburse the University for fifty percent (50%) of all costs incurred by and paid for by the University relating to the Repair Project. The current estimate of the overall costs of the Repair Project are Three Hundred and Seven Thousand Dollars (\$307,000).
3. Contemporaneously with this Agreement, the parties will execute an Occupancy and Use License Agreement allowing Contractor access to Seitz Park for the purpose of completing

the Repair Project.

4. After Contractor completes the Repair Project, the City will inspect and accept the work performed pursuant to the Repair Project.
5. After Contractor completes the Repair Project, the City will assume all liability relating to the Repair Project.
6. The parties agree to indemnify, defend and hold harmless each other, their respective agents, servants, employees, contractors, affiliates and representatives from any and all liability, loss, expense, damage, judgment or settlement which they or any of them may suffer, sustain or incur as a result of any claims, demands, costs, actions, causes of actions, damages or judgments including, without limitation, reasonable attorneys' fees, asserted against or incurred by or on behalf of the other and arising out of or resulting from the breach of their obligations under this Agreement. Notwithstanding the foregoing or anything in this Agreement to the contrary, the City does not waive any governmental immunity or liability limitations available to it under Indiana law. The obligations of this section shall survive any termination of this Agreement.
7. All written notifications required or necessitated by this Agreement must be sent via certified mail or overnight carrier to the addresses designated below:

The University:

Associate Vice President, State and Local Public Affairs  
University of Notre Dame  
405 Main Building  
Notre Dame, Indiana 46556

With a copy to:

Office of General Counsel  
University of Notre Dame  
204 Main Building  
Notre Dame, Indiana 46556

The City:

City of South Bend Redevelopment Commission  
1400 County-City Building  
227 West Jefferson Boulevard  
South Bend, Indiana 46601

and

Corporation Counsel  
1200 County-City Building  
227 West Jefferson Boulevard  
South Bend, Indiana 46601

8. This Agreement may be modified only by the written mutual consent of the authorized representative of the parties. This Agreement shall be construed and governed according to the laws of the State of Indiana, and any disputes arising hereunder that cannot be resolved amicably as set forth herein shall be resolved exclusively in the State or Federal Courts seated in St. Joseph County, Indiana. The parties desire to streamline and minimize the cost of resolving such disputes. In any legal proceeding, each party irrevocably waives the right to trial by jury in any action, counterclaim, dispute, or proceeding based upon, or related to, the subject matter of this Agreement. This waiver applies to all claims against all parties to such actions and proceedings. This waiver is knowingly, intentionally, and voluntarily made by all parties. The obligations of this section shall survive any termination of this Agreement. Each party represents and certifies that the undersigned person executing and delivering this Agreement on its behalf is the duly authorized officer or representative of such party, that he or she has been fully empowered to execute and deliver this Agreement on behalf of such party, and that all necessary action to execute and deliver this Agreement has been taken by such party. This Agreement embodies the entire agreement and understanding between the parties with respect to its subject matter and supersedes all prior agreements and understandings, written and oral, between the parties related to that subject matter. Time is of the essence in the performance of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized representative as of the day and year first above written.

**CITY OF SOUTH BEND, INDIANA  
REDEVELOPMENT COMMISSION**

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

ATTEST:

\_\_\_\_\_  
Troy Warner, Secretary

**UNIVERSITY OF NOTRE DAME DU LAC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_