

LIMITED AND TEMPORARY LICENSE AGREEMENT

This Limited and Temporary License Agreement (the "Agreement") is entered into on this ___ day of _____, 2019 (the "Effective Date"), by and between THE TRUSTEES OF INDIANA UNIVERSITY, a statutory body politic existing and pursuant to the laws of the State of Indiana ("IU") and THE CITY OF SOUTH BEND, INDIANA, ACTING BY AND THROUGH ITS BOARD OF PARKS AND RECREATION ("City"), for the use by the City of certain real estate owned by IU.

RECITALS

WHEREAS, IU is the owner of certain real estate located in St. Joseph County, Indiana, as part of its Indiana University South Bend campus; and

WHEREAS, the City desires to temporarily access a part of IU's property to help facilitate the planting of trees on City property adjacent thereto; and

WHEREAS, IU has agreed to allow the City temporary access to IU's property in the location outlined in bold red on Exhibit "A", attached hereto and made a part hereof by this reference (the "Premises") for the purposes and pursuant to the terms herein contained.

AGREEMENT

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

1. Premises and Use. IU hereby grants to the City, and to no other person or entity, a limited and temporary license to use the Premises throughout the Term, as such term is defined below, for equipment and personnel access and for equipment staging.
 - a. The City's use of the Premises shall be exercised in a manner that does not interfere with IU's other use or occupation of the Premises or IU's other property or premises.
 - b. The City has inspected and accepts the Premises "as-is," and agrees that IU shall have no responsibility for the condition of the Premises to the City or to any of the City's employees, contractors, invitees, or guests. The City acknowledges that it is licensing the Premises without any warranty or representation by IU as to the condition of the Premises or its fitness for the City's use.
 - c. The City agrees that it shall be obligated to maintain the Premises for the safe exercise of its use at the City's sole cost and expense in accordance with the provisions of this Agreement. The City shall, upon expiration or termination of this Agreement, whichever comes first, deliver the Premises to IU in substantially the same or better condition as existed immediately prior to the City's use. The City shall restore the Premises, including any areas of grass, earth, asphalt, concrete, and other pavement that is damaged by the

City, to the condition in which it existed immediately prior to the beginning of the Term of this Agreement. Upon the expiration or termination of this Agreement, IU shall conduct a walkthrough inspection to determine if any damage has occurred to the Premises or any part thereof. The City agrees that if its use of the Premises causes damage to the Premises or any part thereof, excepting reasonable wear and tear, at IU's option the City shall promptly repair and restore any such damage to IU's satisfaction, or IU may proceed to have the work done and collect the cost thereof from the City.

- d. The City shall obtain, at its sole cost and expense, any additional permits and licenses that are necessary or required for the City's use of the Premises. The City shall not install any improvements or make any alterations to the Premises without the prior written approval of IU.
 - e. The City shall not use or allow the Premises or any part thereof to be used or occupied for any purposes other than those described below, nor for any unlawful purpose, and the City shall not allow any act to be done or condition to exist in the Premises or any part thereof or any article to be brought thereon which may be dangerous, unless safeguarded as required by law, or which may make void or voidable any insurance then in force or required under this Agreement.
 - f. When using the Premises, the City agrees to comply with all applicable state, federal or city laws and regulations, and with the applicable policies and regulations of IU pertaining to the use and occupancy of the Premises.
 - g. The City agrees not to use the Premises for any type of activity other than the above approved use(s) without the prior written approval of IU.
 - h. The City shall not place any equipment, machinery, or other heavy object underneath the drip line of any tree on the Premises.
 - i. The City shall follow all IU standards for erosion control.
2. Term and Termination. The term of this Agreement will begin on March 1, 2019 and expire on March 1, 2020. Notwithstanding the above, IU may terminate this Agreement at any time, for or without cause, by delivering not less than thirty (30) days advance written notice to the City. In the event that an emergency necessitates IU's use of the Premises, IU may compel the City to vacate the Premises.
 3. Fee. The City shall not pay a licensing fee to IU as part of this Agreement.
 4. Insurance. The City shall comply with the following insurance requirements:
 - a. At its sole cost and expense, The City shall obtain and maintain in effect insurance policies and coverages acceptable to IU for the Premises, and the City's and its agents', guests', invitees' and employees' use of the Premises. At a minimum, the City shall obtain and maintain in effect the following coverages: Workers' Compensation and

Employer's Liability coverages which equal or exceed the requirements of the State of Indiana (if such coverage is applicable), Comprehensive General Liability coverage in an amount not less than \$1,000,000 per occurrence, auto liability in an amount not less than \$1,000,000 CSL (if such coverage is applicable), and any additional insurance required by IU's Director of Insurance, Loss Control and Claims.

- b. Concurrently with the execution of this Agreement, the City shall file with IU certificates of insurance satisfactorily evidencing the insurance required pursuant to this paragraph. IU must be named as an additional insured on all policies except Workers' Compensation and Employers' Liability (if such coverage is applicable). Such insurance may not be canceled, amended or permitted to lapse except upon a minimum of thirty (30) days' prior written notice to IU.
 - c. The City shall be solely responsible for payment of any deductible required by such insurance, in the event of a paid claim.
 - d. The minimum insurance coverage limits to be maintained by the City hereunder shall not limit the City's liability under this Agreement. The City shall have the right to self-insure the insurance requirements herein.
5. Liability/Indemnification. Notwithstanding any contrary provision in this Agreement, The City shall indemnify, defend, and save and hold harmless IU and its trustees, officers, agents, and employees (collectively, "Indemnitees"), from and against any and all losses, expenses (including, without limitation, litigation costs and reasonable attorney fees), claims and liabilities at law or in equity, which may be imposed upon, incurred by, or asserted against IU based upon or arising out of, in whole or in part, any act or omission of the City (including its officers, members, agents, guests, invitees and employees) in connection with this Agreement or the City's use of the Premises, or of the City's failure to keep, observe or perform any of its responsibilities under this Agreement, or of any of the following that occurs during the times permitted for use of the Premises by the City:
- a. any activity in or about the Premises, or any part thereof, by the City or any of its officers, members, agents, guests, invitees or employees;
 - b. any use, possession, occupation, condition, operation, maintenance or management of the Premises, or any part thereof, by the City or any of its officers, members, agents, guests, invitees or employees; and/or
 - c. any accident, injury or damage to any person or property occurring in or about the Premises or other IU property in going to or from the Premises in connection with performance of their responsibilities for the City.

If any action or proceeding is brought against Indemnitees relating to any matter for which the City has indemnified Indemnitees, the City shall, upon written notice from IU, at the City's sole cost and expense (including, without limitation, reasonable attorneys' fees and costs), resist or defend such action or proceeding by counsel approved by IU in writing, but IU's

approval of counsel shall not be required when the claim is resisted or defended by counsel of an insurance carrier obligated to resist or defend such claim. If any claims are brought against Indemnitees by any employee of the City or anyone else for whose acts the City may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the City or other party under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

6. Compliance with Laws, Regulations, and IU Policies. The City shall comply with all applicable laws of the United States and of the State of Indiana, all applicable ordinances of St. Joseph County, Indiana, and all applicable rules, regulations and policies as set out by IU. The City shall conduct all activities on the Premises in accordance with applicable Occupational Safety and Health Administration ("OSHA") standards to ensure safe working conditions at all times. The City shall be responsible for payment of all applicable licenses, permits, fees, registrations, taxes, assessments, and charges of every kind and character levied or required by any applicable federal, state, or local law, ordinance, or regulation in connection with or because of any act or activity engaged in by the City or the City's agents, servants, employees or invitees on the Premises, and agrees to protect, indemnify, save, and hold harmless IU from any and all liability for same.
7. Control of Premises; Right to Enter. In permitting the use of the Premises, IU does not relinquish custody and control thereof, and does hereby specifically retain the right to enforce any and all laws, rules, and regulations applicable to said Premises. The City shall permit IU to enter the Premises at all times.
8. Assignment; Subletting. The City shall not assign this Agreement or allow any other person or entity to use or occupy any of the Premises without the prior written consent of IU, which consent may be granted or withheld at IU's sole discretion.
9. Surrender; Equipment. The City shall surrender the Premises to IU and to completely remove all equipment and other personal property from the Premises upon the expiration of the Term or as it may be earlier terminated. Except as provided above, any equipment or other personal property of the City remaining at or upon Premises after the end of the Term will be deemed to have been abandoned, and at IU's sole discretion, such property may be:
 - a. retained by IU as its property;
 - b. disposed of by IU in any manner IU may determine, without accountability to any person or entity; or
 - c. removed and stored at the City's expense.

Furthermore, IU will not be responsible for any loss or damage occurring to any such abandoned property.

10. Entire Agreement; Binding Agreement. This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. There are no promises, conditions and understandings, either oral or written, between IU and the City regarding the matters addressed herein other than those set forth in this Agreement. No subsequent modification or agreement with respect to the terms of this Agreement shall be effective, unless such subsequent modification or agreement is in writing executed by both the City and IU. This Agreement shall be binding upon the parties hereto, their successors and assigns.
11. Severability. If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, and the application of such provision to parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each remaining provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
12. Relationship. The City shall notify each of its employees and contractors, in any manner that the City deems appropriate that: (a) he/she shall not be deemed to be an employee of IU for purposes of compensation, fringe benefits, workers' compensation, unemployment compensation, minimum wage laws, income tax withholding, social security or any program because of participation in this educational experience; and (b) the City's employees shall not, at any time, replace or substitute for any employee of IU.
13. No Joint Venture. This Agreement shall in no way be construed to be or to create a joint venture between the parties. None of the provisions of this Agreement is intended to create or shall be deemed or construed to create any relationship between the parties hereto other than that of independent parties contracting with each other hereunder solely for the purpose of effecting the provisions of this License. Neither party hereto, nor any of their respective employees, shall be construed to be the agent, employee or representative of the other.
14. Jointly Drafted. This Agreement shall be deemed to be jointly drafted by both parties and, in the event of a dispute, shall not be construed against or in favor of either party on account of its participation in the drafting hereof.
15. Notices. Any notice, demand, or communication required, permitted, or desired to be given hereunder shall be made in writing and shall be deemed effectively given when hand delivered with receipt obtained or sent by nationally recognized overnight delivery service or by United States certified or registered mail, postage prepaid with receipt obtained, and addressed to the other party at the address provided below or at such other address as the party to receive the notification may subsequently designate by written notice to the other.

If to IU:

The Trustees of Indiana University
1800 North Range Road
Bloomington, IN 47408
Attn: University Director of Real Estate

If to The City:

The City of South Bend
Board of Parks and Recreation
321 W. Walter St.
South Bend, IN 46614

16. Authority. Each of the persons signing below represents and warrants that he/she has the authority to legally bind the party on whose behalf he/she signs.

IN WITNESS WHEREOF and intending to be legally bound hereby, the parties have executed this Agreement as of the date first above written.

IU:

The Trustees of Indiana University

By: Donald S. Lukes
Donald S. Lukes
University Treasurer

DN

SPB

The City:

The City of South Bend, Indiana, acting by and through its Board of Parks and Recreation

By: _____

Printed name and title

EXHIBIT "A"

