

AMENDED AND EXTENDED LICENSE AGREEMENT

This Amended and Extended License Agreement (the "Amended Agreement ") is entered as of the **10th day of NOVEMBER, 2022** (the "Effective Date ") by and between the CITY OF FORT WAYNE, INDIANA, by and through its Board of Park Commissioners ("BPC ") and **FORT WAYNE OUTFITTERS AND BIKE DEPOT, LLC**, an Indiana limited liability company ("FWO ").

RECITALS:

WHEREAS, BPC is the owner of certain boating dock, ramps, and supporting facilities located on the north side of the St. Marys River in Promenade Park located at 1101 North Harrison Street, Fort Wayne, Indiana (the "Promenade Park ") and;

WHEREAS, following the submission of a formal proposal to the City of Fort Wayne, Indiana ("City") in response to RFP #4203, FWO was selected to serve as the exclusive vendor for the rental of non-motorized personal watercraft in Promenade Park to customers for recreational use in the St. Marys River (the "FWO Business") and in connection therewith was granted a license by BPC to use the Facilities for the storage and rental of such watercraft owned by FWO in connection with the FWO Business, all pursuant to that certain License Agreement entered into by BPC and FWO as of May 16, 2018, a copy of which is attached hereto and incorporated herein by reference ("the Agreement"); and

Whereas, the License for the Facilities will expire on December 8, 2022, and FWO desires to extend the License for an additional twenty-four (24) months as provided herein.

NOW, THEREFORE, BPC and FWO agree the License for the Facilities shall be extended for an additional twenty-four (24) months in accordance with and subject to the following terms, provisions, covenants, and conditions:

DEFINITIONS

"Contract Documents" shall mean the following documents which are incorporated hereto collectively as **Exhibit B** and incorporated herein by reference to this Agreement:

- (1) City's Request for Proposal issued as Request For Proposal No. 4203;
 - (2) FWO's Certificate of Insurance required by the Request for Proposal;
- and

(3) FWO's Vendor Submission to Request for Proposal No. 4203 dated July 10, 2017.

"License" shall mean the exclusive rights granted by BPC to FWO hereunder to use the Facilities for the storage and rental of non-motorized, personal watercraft in connection with the FWO Business during the Extended Term, except that the exclusive rights granted hereunder shall not (i) apply to special events authorized by BPC; (ii) prohibit the general public from using Promenade Park and its related properties and facilities; or (iii) prohibit the public from accessing third parties to provide goods or services permitted by and in accordance with applicable state, municipal and BPC laws, rules and regulations.

"Facilities" shall mean the boating dock, ramps, walkways, and underlying parcel of land on the north side of the St. Marys River in Promenade Park as more particularly described on **Exhibit A** attached hereto and made a part hereof.

EXTENDED TERM

The Term of the Extended License shall be a period of twenty-four (24) consecutive months commencing on December 8, 2022, and expiring on December 8, 2024 (the "Extended Term").

GRANT OF LICENSE

Subject to the terms and conditions hereof, BPC extends the License to FWO to possess, manage, operate, and use the Facilities in connection with the operation of the FWO Business for the Extended Term. FWO understands and agrees that BPC has made no warranties regarding the quality or condition of the Facilities, that employees, contractors, and customers of FWO and other individuals who enter on or about the Facilities do so at their own risk, and that FWO accepts the Facilities in "as is – where is" condition. BPC shall at all times during the Extended Term have full and complete access to the Facilities to inspect, maintain and repair the same and to use the Facilities for storage and related purposes, provided such use of the Facilities by BPC does not unreasonably interrupt FWO's use of the Facilities as permitted by the License. FWO's use of the Facilities for storage and rental of non-motorized personal watercraft is limited specifically to watercraft owned by FWO and not by third parties. FWO shall be solely responsible for the storage of its non-motorized personal watercraft at the Facilities and shall bear all expenses arising from damage to, loss of, or theft of any such watercraft and any equipment or property located on or about the Facilities by FWO.

FWO expressly acknowledges and agrees that the extension of the License hereunder shall not prevent third parties from renting non-motorized personal watercraft to the public from locations other than the Facilities for use in the St. Marys River.

BPC shall have access to the Facilities at all times during the Extended Term to inspect, maintain and repair the Facilities, when and as determined by BPC.

Third-party events and outings held at the Facilities or which utilize the Facilities shall be permitted subject to the prior consent of both BPC and FWO, which is not to be unreasonably withheld. In the event of a disagreement between FWO and BPC regarding the holding or scheduling of any such third-party event or outing at the Facilities, the decision of BPC shall control. Such events shall be subject to all applicable BPC fees and permits.

BPC shall have the right to use the Facilities during the Extended Term for events which are sponsored or conducted by BPC, provided BPC notifies FWO in writing not less than thirty (30) days prior to such event of (a) the date and time of such event; (b) the nature of such event; and (c) the time during such event that FWO may be required to limit or cease business operations at the Facilities. FWO agrees to comply with any directives issued by BPC with respect to such BPC events.

This Amended Agreement is made on the express condition that the Facilities shall be used by FWO in conformance with all applicable laws, ordinances rules, and regulations. This Agreement and the rights granted to FWO hereunder may be terminated by BPC upon written notice to FWO in the event of FWO's failure to comply with any such laws, ordinances, rules, or regulations, as determined solely by BPC.

NO CREATION OF OWNERSHIP

FWO knowingly and agrees that the License granted hereunder creates no legal or equitable estate or ownership interest in FWO in the Facilities.

NON-TRANSFERABILITY OF LICENSE

Neither the License granted to FWO hereunder nor any other rights granted to FWO under this Agreement may be assigned, transferred, or sublicensed by FWO without the prior written consent of BPC, which consent may be withheld in BPC's sole discretion.

PERMITTED USE

The Facilities shall be used by FWO exclusively for the storage and rental of non-motorized personal watercraft in connection with the FWO Business. FWO shall not use or permit the use of the Facilities for any other purpose or activity in, on, or about the Facilities without the prior written consent of BPC. FWO shall not commit or permit any act of waste, nuisance, indecorum, or any other act which may damage or disturb the Facilities or the use and enjoyment of the St. Marys River, the riverbanks, or the other public or private facilities located adjacent thereto. FWO shall keep the Facilities in good condition and free from hazards and shall properly secure all property and equipment located on the Facilities at the close of each business day of operation during the Extended Term. FWO shall bear the cost of replacing damaged turf, mulch, landscaping, and similar items which are damaged or destroyed during the Extended Term as a result of FWO's activities under this Amended Agreement and shall pay for the cost to repair or replace any portion of the floating dock which is damaged or destroyed due to the negligent conduct of FWO, its employees or customers. BPC shall be responsible for any maintenance of or repair to the Facilities caused by the flooding of the St. Marys River.

LICENSE FEE

As compensation for the grant of the License hereunder, FWO shall pay to BPC a monthly payment during the Extended Term the cumulative payment of One Dollar (\$1.00) times the number of paddlers per month or pro-rated portion thereof. Each monthly payment shall be due fifteen (15) days following the end of the preceding month of the Extended Term and shall be supported by documentation acceptable to BPC and certified as to accuracy by FWO which establishes the number of paddlers for the previous month.

UTILITIES

BPC shall pay the normal and customary water and electrical usage required to operate the Facilities. FWO shall pay the additional water and electrical charges which for the Facilities which are generated in BPC's sole opinion by non-customary or unique activities or events which are conducted or held in connection with the FWO Business.

ADVERTISING AND SIGNAGE

FWO shall not utilize any signs or advertising in Promenade Park or in marketing the FWO Business at Promenade Park without the prior written approval of BPC which consent shall not be unreasonably withheld.

MAINTENANCE AND REPAIR

BPC shall be responsible for the normal and customary long-term repair of the Facilities during the Extended Term. FWO shall be responsible for the normal daily supervision, cleaning, and maintenance of the Facilities, and the repair, restoration, and replacement of any portion of the Facilities, the St. Marys River or its riverfront which is damaged by FWO, its employees, representatives, vendors, contractors, agents, invitees or customers during the Extended Term. FWO shall (a) "broom clean" and wash the Facilities daily, and (b) shall remove and properly dispose of all debris and trash from the Facilities on a daily basis.

INSURANCE REQUIREMENTS

At a minimum, FWO shall procure, pay for and maintain insurance during the Extended Term as outlined in the Contract Documents, more specifically in RFP #4203. Prior to the commencement of the Extended Term and annually during the Extended Term (unless more frequently as requested by BPC), FWO shall provide a Certificate of Insurance to BPC showing BPC and the City of Fort Wayne, Indiana ("City") as an additional insured on such insurance. Such insurance shall provide that BPC shall be given thirty (30) days written notice by the insurer prior to expiration, cancellation, non-renewal, or any material change in coverage or limits.

RELEASE AND INDEMNITY

FWO hereby forever releases, waives, and acquits BPC, the City and their respective officers, directors, members, employees, representatives, agents, departments and divisions (each a "Releasee" and collectively the "Releasees") and agrees to hold harmless and indemnify the Releasees, and each Releasee from all claims, demands, causes of action, liabilities, losses, costs and expenses which occurs or arise during the Extended Term, whether now existing or hereafter arising, both known and unknown, including but not limited to claims arising from damage to personal property, bodily injury or death (individually a "Loss"), in connection with: (a) FWO's possession, control, management, operation, occupancy and use of the Facilities, the St. Marys River and its riverfront and any other premises owned, occupied, controlled, managed, operated or used by Releasees or any Releasee; (b) FWO's performance or failure to perform any covenant or obligation assumed by or attributable to FWO under this Agreement hereunder or otherwise contained in or contemplated by this Agreement and (c) FWO's ownership, management or operation of the FWO Business on or about the Facilities or at any other location.

The covenants of release and indemnify made by FWO hereunto shall survive the expiration or termination of the Agreement for any reason

AMENDMENT

This Amended Agreement may be amended only by mutual written consent of the parties.

TERMINATION AND/OR CANCELLATION

Failure of FWO to comply with any of the provisions of this Amended Agreement shall be considered a material breach of contract and shall be cause for immediate termination of the Amended Agreement at the sole discretion of BPC. In addition to all other legal remedies available to BPC, in the event BPC elects to terminate this Amended Agreement as provided herein, BPC may obtain from another source any services that in BPC's sole judgment have not been provided or will not be able to be provided by FWO hereunder. The License granted to FWO hereunder and all rights associated therewith shall terminate contemporaneously with the expiration or termination of this Agreement for any reason.

PERMITS/LICENSES

FWO shall secure and maintain all permits and licenses required to provide services hereunder and shall comply with all laws, regulations, and ordinances concerning FWO operation during the Term.

GOVERNING LAW

The laws of the State of Indiana shall govern this Agreement and the court of applicable jurisdiction in Allen County Indiana shall be the agreed venue for any legal proceeding which may be initiated in connection with this Agreement.

SEVERABILITY

The terms and conditions of this Amended Agreement are deemed to be severable. If any clause, term, or condition hereof shall be held to illegal and/or void, such determination shall not affect the validity or legality of the remainder of the Amended Agreement and it shall continue on in full force and effect unless the particular clause, term or condition held to be illegal and/or void renders the balance of the Amended Agreement impossible to perform.

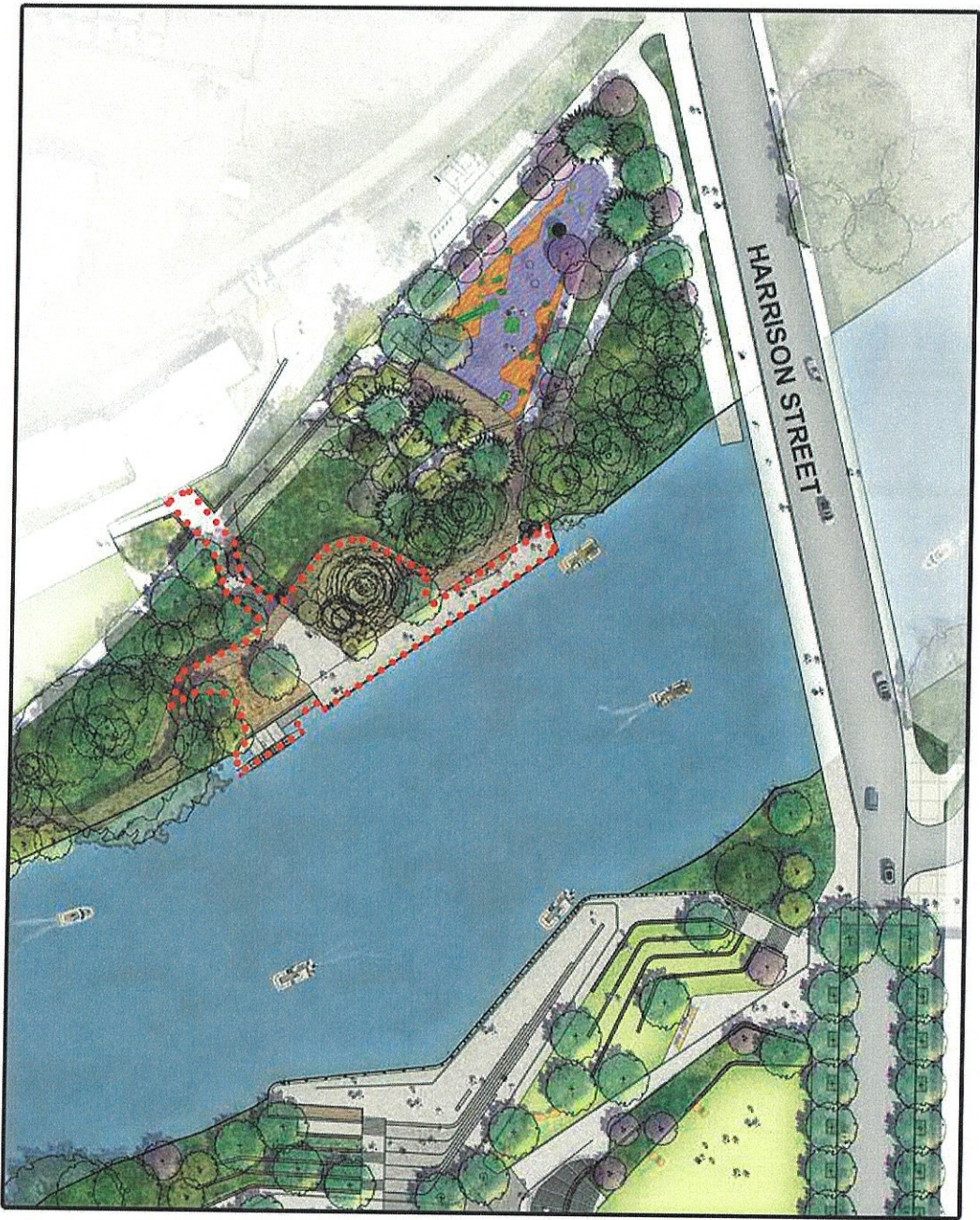


EXHIBIT A

FACILITIES AREA = 