RESOLUTION

AUTHORIZING THE CITY TO ENTER INTO A LICENSE AGREEMENT FOR A PUBLIC BOAT LAUNCH ON THE NASHUA RIVER

CITY OF NASHUA

In the Year Two Thousand and Sixteen

WHEREAS, there is a boat launch in the city on the Nashua River on land owned by the Indianhead Realty Trust,

WHEREAS, Indianhead Realty Trust desires to license the boat launch to the city to operate and administer as a public boat launch, and

WHEREAS, Indianhead Realty Trust requires that the city enter into a written license agreement to administer and operate the boat launch for the public.

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the City of Nashua that the city is authorized to enter into the license agreement regarding the boat launch with Indianhead Realty Trust substantially in the attached form, and to operate and administer the boat launch as a public boat launch. The Mayor is authorized to prepare and/or execute all necessary documents.
RESOLUTION: R-16-056

PURPOSE: Authorizing the City to enter into a license agreement for a public boat launch on the Nashua River

SPONSOR(S): Mayor Jim Donchess

COMMITTEE ASSIGNMENT:

FISCAL NOTE: A kiosk was purchased with FY 2016 Community Development funds which can be located at the site. No additional funding is required or anticipated at this time.

ANALYSIS

This resolution authorizes the city to enter into a license agreement for a public boat launch on the Nashua River on land owned by the Indianhead Realty Trust.

Approved as to form: Office of Corporation Counsel
By: 
Date: August 3, 2014
LICENSE AGREEMENT

Agreement made, effective as of ______________, by and between Arthur Spilios, Trustee of Indianhead Realty Trust, dated May 18, 1992, with a place of business at 10 Technology Way, City of Nashua, County of Hillsborough, State of New Hampshire, hereinafter referred to as licensor, and City of Nashua, a New Hampshire Municipal Corporation, having a mailing address of 229 Main Street, City of Nashua, County of Hillsborough, State of New Hampshire, Attn: Legal Department, hereinafter referred to as licensee.

The parties agree as follows:

SECTION ONE
GRANT OF PERMISSION

In consideration of licensee’s promises contained in this agreement, licensor hereby gives permission, revocable and terminable as provided below, to licensee to enter on the real property of licensor described below for the purpose of using it for the limited and express use of a boat launch site on the Nashua River and parking appurtenant therefore (and specifically excluding the right to host or conduct public events or allow private use thereof), all on the terms and conditions set forth in this agreement, all of which licensee promises to comply and abide with. Licensor expressly disclaims any representation or warranty respecting the fitness of the Licensor’s property for the specific uses and purposes set forth in this Agreement and the parties hereto do hereby acknowledge and agree that the license is solely on an AS IS, WHERE IS basis.

SECTION TWO
DESCRIPTION OF PROPERTY

The real property of licensor that licensee is permitted to enter under and pursuant to this agreement is hereafter identified as the premises and is described as follows: a portion of licensor’s property shown on Exhibit A attached hereto, together with right of access over licensor’s driveway known as Technology Way and its parking lot drive aisles.

SECTION THREE
NO MONETARY CONSIDERATION

The permission granted to licensee under this agreement is given to licensee as an accommodation to licensee and it shall be without charge to licensee. Licensee hereby acknowledges the title of licensor to the above described property and agrees never to assail, resist, or deny such title.

SECTION FOUR
PERMISSION NOT EXCLUSIVE

The permission granted to licensee under this agreement is not exclusive to licensee and licensee shall have the privilege under this agreement only of occupying such portion of the above-described premises as the representative of licensor in charge of such premises shall
designate from time to time, and shall share such occupancy with licensor, its tenants at the property and licensor's guests and invitees.

SECTION FIVE
NO BUILDINGS OR STRUCTURES

Licensee shall not erect any permanent buildings or other structures on the above-described premises, or erect, or have erected or installed, permit to remain on the above-described premises any temporary structures, fixtures, shelters, attachments or other things attached to or being on such premises and placed thereon by licensee or the guests, invitees, or licensees of licensee, without the express written consent of licensor, at its sole discretion, and shall remove any unapproved structures, fixtures, shelters, attachments or other things upon written notice of licensor. The licensor agrees that licensee may install approved signage and an informational kiosk.

SECTION SIX
PROTECTION OF TIMBER

Licensee shall not cut, mutilate, or injure, or permit any of licensee's guests, invitees, or licensees to cut, mutilate, or injury any growing trees or shrubbery on the above-described property of licensor, including the premises.

SECTION SEVEN
NO COMMERCIAL USE OR NUISANCE

A. Licensee shall not use the above-described property including the premises, for commercial purposes, but may allow the general public to use the premises for a boat launch and access to the Nashua River, subject to the limitations set forth herein and on Exhibit A attached hereto together with such additional rules and regulations as it deems reasonable; provided, however, licensee shall not perform or permit any of licensee's guests, invitees, or licensees to perform any disorderly conduct or commit any nuisance on the premises or to use the premises in any way so as to interfere with the exercise by other licensees or permittees of privileges of other licensees that licensor may give them in the premises or licensor's property or may be reserved to licensor. Licensee shall not be permitted to possess or consume alcohol on the premises or allow its guests, invitees or permittees to possess or consume alcohol on the premises. Licensee shall not camp on or use the premises for overnight accommodations in any fashion, including overnight parking, nor permit its guests, invitees or permittees to do the same.

B. Licensee shall not allow any member of the public as a guest, invitee, or licensee any person objectionable to licensor's representative in charge of the licensor's property due to its conduct constituting a nuisance or a health or safety threat or being in violation of the terms of this license, in licensor's sole discretion, and upon objection by licensor, licensee shall revoke any permit or license granted to such person.
SECTION EIGHT
FIRE PROTECTION; SANITATION; MAINTENANCE

Licensee shall comply with all rules and regulations, whether federal, state, county, or municipal, relating to the occupancy and use of the above-described premises including, but not limited to, compliance with the Americans with Disabilities Act, New Hampshire Shoreline Protection Act, federal laws regarding navigable rivers, New Hampshire Department of Environmental Sciences Rules & Regulations, and shall take all reasonable precautions to prevent or suppress fires on such property, and, so far as may be required, shall install and maintain at licensee’s sole expense suitable and adequate sanitary facilities, as may be requested or required by licensor acceptable to licensor. Licensor agrees to not unreasonably withhold assistance, or approvals, which may from time to time be required for licensee to comply with applicable rules and regulations.

Licensor will maintain the premises. If requested by licensor, licensee agrees to assist in such maintenance, including regular and periodic removal of litter, replacement of gravel, repair of damage to asphalt at the premises or, if caused by Licensee or its guests, invitees or permittees, on any of the driveways and roadways of licensor for access to the premises, resurfacing of paved surfaces, mowing of lawn area and maintenance of shrubs, as reasonable and necessary to allow use of the premises as intended hereunder and to maintain the premises in substantially the same condition as exists at the time of entering into this agreement.

SECTION NINE
WAIVER, RELEASE, INDEMNIFICATION, AND INSURANCE

Licensee for itself and its employees and guests or invitees, their heirs, executors, administrators, assigns or personal representatives, knowingly and voluntarily waive and release licensor from any liability, rights of claim or causes of action of any kind whatsoever arising out of the use of the premises under this license agreement and hereby release and forever discharge licensor, its trustees, beneficiaries, successors, assigns, representatives or agents for any harm, injuries, losses, damages, claims, suits, physical or psychological injury including, but not limited to, illness, paralysis, death, damages, economical or emotional loss, that licensee or its employees, guests or invitees may suffer as a direct result of use of the premises under the license, including traveling to and from the boat launch site. Licensee agrees that it shall require all permittees under this license to agree to the terms of this agreement and Waiver, Release and Indemnification attached hereto as Exhibit B.

Licensee shall exercise its privileges under and pursuant to this agreement at its own risk, and licensee shall indemnify and hold licensor harmless from and against any and all liability for damages, costs, losses, and expenses and defend any claim made by any person or party against licensor resulting from or arising out of, the occupation or use of the above-described premises by licensee, or the licensees, invitees, or guests of licensee, or the failure on the part of licensee to perform fully all and singular licensee’s promises contained in this agreement. Licensor shall not
be liable to licensee if for any reason whatever licensee’s occupation or use of the premises under and pursuant to this agreement shall be hindered or disturbed.

Licensee shall procure and agrees to maintain insurance, or self-insure, to provide coverage for commercial general liability coverage (including contractual liability coverage under this agreement and specifically its indemnification hereunder), for property loss or damage and personal injury or death of any person, with a combined single limit of $2,000,000.00 per occurrence. Such insurance shall include automobile liability insurance for all vehicles used by licensee and its employees on the premises in connection with the license, including owned, non-owned and hired vehicles in the amount of at least $2,000,000.00. Licensor shall be included as an additional named insured under all such policies or by the terms of this agreement for self-insurance programs. Licensee’s insurance shall be primary without right of contribution from any insurance or self-insurance that is maintained by Licensor. All policies of licensee hereunder may not be cancelled without written notice to licensor thirty days in advance. Licensee shall provide evidence of such insurance hereunder to Licensor by certification.

SECTION TEN
TAXES; LIENS

A. Licensee shall pay all City of Nashua taxes and assessments that may be imposed or levied on the above-described premises as a result of this license agreement and use by licensee or anyone claiming under licensee on such premises and shall keep the premises and licensor’s property free and clear of any and all liens for labor performed or materials furnished at the instance or request of licensee or anyone claiming under licensee.

B. Licensee shall pay for all utility and other services furnished to or for licensee on the above-described premises.

SECTION ELEVEN
PRIVILEGE NOT ASSIGNABLE

Licensee’s privileges under this agreement shall not be assignable by licensee in whole or in part; provided, however, licensee may establish a permit system to allow use by the public under this license, including permit by application online or remote electronic application.

SECTION TWELVE
TERMINATION

Licensor reserves the right to terminate the permission granted by this agreement at any time by giving licensee at least ninety (90) days’ written notice of such termination, except that licensor may, at its election, terminate the permission at any time after giving written notice and a reasonable time to cure to licensee, if licensee shall fail to comply with or abide by each and all of the provisions of this agreement or to keep all and singular licensee’s promises contained in this agreement. Notwithstanding the foregoing, licensor agrees not to terminate this agreement without cause for one year from the effective date of this agreement. Licensor may immediately withdraw notice, may suspend or terminate this license, if for any reason, in licensor’s opinion,
the premises shall become unusable or unsafe, in whole or, in part, for the purposes of this Agreement, including without limitation, in the event of adverse weather conditions or conditions of the Nashua River, or upon request or demand by any governmental agency or official, in which event, licensee shall have no claim against licensor.

SECTION THIRTEEN
NOTICE

Any notice provided for or concerning this agreement shall be in writing and be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this agreement.

SECTION FOURTEEN
REMOVAL OF PROPERTY

On revocation, surrender, or other termination of the permission granted by this agreement, licensee shall quietly and peaceably surrender the premises in as good condition as such premises was at the time of licensee’s entry on such premises under this agreement and shall remove all fixtures, equipment, and other things placed by licensee on such premises, and if licensee shall fail to do so, licensor shall have the right to make such removal at licensee’s expense, the amount of which expense licensee shall pay to licensor on demand, and, if licensor shall so elect, it shall have the right to take possession of and appropriate to itself without payment therefore any property of licensee, or anyone claiming under licensee, then remaining on the above-described premises.

SECTION FIFTEEN
TIME IS OF THE ESSENCE

It is specifically declared and agreed that time is of the essence of this agreement.

SECTION SIXTEEN
GOVERNING LAW

It is agreed that this agreement shall be governed by, construed, and enforced in accordance with the laws of the State of New Hampshire.

SECTION SEVENTEEN
NO WAIVER

The failure or either party to this agreement to insist upon the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
SECTION EIGHTEEN

Purposefully omitted.

SECTION NINETEEN
EFFECT OF PARTIAL INVALIDITY

The invalidity of any portion of this agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

SECTION TWENTY
ENTIRE AGREEMENT

This agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated in this agreement.

SECTION TWENTY-ONE
MODIFICATION OF AGREEMENT

Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at __________ on the date indicated below.

CITY OF NASHUA

By:
Its:

INDIANHEAD REALTY TRUST

By: Arthur Spilios
Its: Trustee
EXHIBIT B
Waiver, Release and Indemnification

In consideration of the right to use the boat launch site at Millyard Technology Park on the Nashua River, I hereby, for myself, my heirs, executors, administrators, assigns or personal representatives, recognizing the risks inherent with a river including currents, rocks, unknown subsurface conditions, unknown water conditions, the downstream dam and recognizing the condition of the boat launch site as inherently dangerous, knowingly and voluntarily agree to waive any rights of claim for liabilities or damages and release the Indianhead Realty Trust, as owner of the property, its Trustees, beneficiaries, agents, managers and representatives, and the City of Nashua, New Hampshire, from any and all liabilities or damages which I may suffer as a result of my use of the boat launch site, including access thereto over the other property of Indianhead Realty Trust. Further I agree to hold Indianhead Realty Trust, its Trustees, beneficiaries, managers and agents and the City of Nashua, New Hampshire free from any claims, suits or actions of any kind which I may have for liability or damages arising out of my use of the boat launch site or the access ways thereto.