

DRAFT v.4**MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (hereinafter “MOU”) is made this ____ day of _____ 2009 by and between and The Mayor and Council of Rockville, Maryland, a municipal corporation in the State of Maryland (the “City”) and the Board of Community College Trustees for Montgomery County, Maryland, a State instrumentality and body corporate established under the Laws of Maryland (the “College”).

RECITALS

WHEREAS, the City is a home-rule municipal corporation organized under the provisions of Title XI-E of the Maryland Constitution; and

WHEREAS, the College is an instrumentality of the State of Maryland established under the authority granted by the General Assembly pursuant to Maryland Education Article Section 16-101, *et seq.*; and

WHEREAS, the College owns and/or leases property located within the boundaries of the City on which it operates a public institution of higher education, generally referred to as the Rockville Campus of Montgomery College, pursuant to the authority granted by the General Assembly pursuant to Maryland Education Article, Title 16 (the “Rockville Campus”); and

WHEREAS, the City owns certain parkland, known as Anderson Park immediately adjacent to the western boundary of the Rockville Campus; and

WHEREAS, in August 2008, the College instituted a tobacco-free policy for implementation on all three of its campuses, including the Rockville Campus; and

WHEREAS, the tobacco-free policy as applied to the Rockville Campus has exacerbated an existing problem of students and College employees and guests parking and smoking in and around the adjacent Princeton Place cul-de-sac and the Park. Other inappropriate activities have been reported, which were also exacerbated by the campus-wide tobacco ban; and

WHEREAS, these activities by College students, employees, and guests have had a negative impact on the quality of life in the surrounding community; and

WHEREAS, as a **temporary** measure, the College closed an opening in the existing fence along its northern border to prevent smokers from entering upon Princeton Place; and

WHEREAS, whereas the opening thereby closed had existed for _____ years providing pedestrian and bicycle access and connection between the Rockville Campus and the surrounding communities; and

WHEREAS, State law requires that each public institution of higher education provided for reasonable bicycle access (Transportation Article §21-1008.)

WHEREAS, the City wishes to prevent smokers from the College's Rockville Campus from exiting the campus onto Princeton Place and surrounding property to smoke while maintaining pedestrian and bicycle connectivity between the College and the surrounding communities; and

WHEREAS, the College wishes to assist the City in preventing College students, employees, and visitors from smoking in the nearby Princeton Place community, but is not willing to rescind or modify its tobacco free policy at its Rockville Campus; and

WHEREAS, the City is willing to make a portion of its Park available for smokers from the campus subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual acknowledgements and agreements set forth herein, the parties agree as follows:

Section 1. Incorporation of Recitals. The Recitals to this MOU are incorporated herein by reference and shall constitute a part of this MOU.

Section 2. Grant of Revocable License. The City hereby grants to the College, and the College accepts from the City, a revocable license to use a portion of the City's Anderson Park as depicted on Exhibit A attached hereto and incorporated herein ("License Area") for use as a smoking and gathering area for College students, employees, and visitors, upon the terms and conditions set forth herein.

Section 3. Effective Date; Term of License. This Agreement and the grant of license contained herein shall become effective as of the date first written above. The grant of license shall be for an indefinite period of time, subject to revocation by the City in its sole discretion, upon giving notice as provided herein.

Section 4. Maintenance of License Area. The College shall install a fence separating the License Area from the remainder of the Park, and shall be responsible for maintaining the fence in a good and safe condition. The College may install benches, picnic tables, trashcans, cigarette ash cans and similar non-permanent equipment within the License Area, such equipment to be maintained by the College in good and safe condition. No permanent structure may be installed within the License Area without the prior written approval of the City Manager. The College shall insure that no trees or other existing vegetation within the License Area shall be removed and/or disturbed without the prior written approval of the City Manager. The College shall be

responsible for maintaining all landscaping within the License Area, including but not limited to mowing the grass. The College shall obtain all necessary permits and approvals required for the installation of the fence and/or other improvements. The College is responsible for maintaining the License Area free from litter and debris and in an orderly and neat appearance, and shall comply with all laws, statutes, rules and regulations pertaining to the use and/or maintenance of the License Area.

Section 5. Insurance and Indemnification. Subject to the limitations of the Local Government Tort Claims Act, the College agrees to defend, hold harmless and indemnify the City and its agents and employees from any claims relating to the License Area and its use pursuant to the license granted under this MOU. This obligation as to claims related to the License Area and its use pursuant to the license from the City shall survive the termination or revocation of the license by the City.

Section 6. Signage. The College shall install and maintain signage identifying the smoking/gathering areas and instructing students, employees, and visitors not to park and/or gather in and around Princeton Place and/or the portion of the Park outside of the License Area.

Section 7. Parking Restrictions. The City will explore approving permit parking and/or imposing other parking restrictions on Princeton Place and/or the street that front the Park.

Section 8. Relocation of Sidewalk. The City will relocate the existing sidewalk from Princeton Place to the Rockville Campus along the western edge of the campus next to the Park.

Section 9. New Access Path. The College shall provide an opening in the fence to access the Rockville Campus at the rear of parking lot 9 as shown on Exhibit B to provide pedestrian and bicycle access to and through the campus. The College shall install and maintain a fence along both sides of the new path to keep students, employees, and visitors inside the campus and to maintain a barrier between the wooded park and the walking path.

Section 10. Hours of Access. The new access path shall be kept open at all times unless the parties agree in writing to hours that the access path may be closed. Notwithstanding the foregoing, open access must be maintained at a minimum between the hours of 5:00 am to 10:00 am and 3:00 pm to 11:00 pm Monday through Friday and from 5:00 am to 11:00 pm on weekends. The College shall post clearly marked signage on both ends of the access path containing the access hours.

Section 11. Simultaneous Access to License Area and New Access Path. Upon the effective date of this agreement the College may begin preparation of the License Area and the new access path. However, unless otherwise expressly agreed to in writing by the parties, the License Area shall not be open for use until the new access path is open and available for pedestrian and bicycle usage.

Section 12. Information and Implementation. The College shall

a. Inform students, employees, and visitors of the new gathering area and the prohibition against gathering and/or parking at Princeton Place, and of the consequences of inappropriate behavior in such areas.

b. Establish disciplinary remedies for students and employees who are found to have misused the License Area, Princeton Place and/or the Park. Such misuse shall include, but not be limited to, smoking or parking at Princeton Place or the Park, outside of the License Area.

Section 13. Assessment. The City and the College shall semi-annually assess the effectiveness of this MOU in eliminating smoking and parking of College students, employees, and visitors in the Princeton Place and/or the Park, and in providing reasonable pedestrian and bicycle access to and through the College's Rockville Campus.

Section 14. Termination of License; Surrender of License Area. Upon 24 hours written notice the College shall cease using the License Area as a smoking/gathering area for students, employees, and/or visitors and shall seal off access to the License Area. Within _____ days of such notice the College shall remove the fencing around the License Area, except for any fence located on College property, remove all trash cans, benches, signage and other improvements, and restore the License Area to its general condition as it existed before this license for use, to the extent practicable .

Section 15. Notices. All notices provided hereunder shall be effective when received by hand delivery or sent by a nationally recognized overnight courier service or by prepaid certified mail, return receipt requested, to the parties at the following addresses:

If to the College:

If to the City:

THE MAYOR AND CITY COUNCIL OF ROCKVILLE, with a courtesy copy to the
City Manager and the City Attorney
111 Maryland Avenue
Rockville, MD 20850

Section 16. No Lease Intended. This MOU is intended by the parties to grant a revocable license only, and is not intended to create a landlord/tenant relationship or any other relationship other than licensor/licensee. The College shall not have any rights in the real estate comprising the Licensed Area.

IN WITNESS WHEREOF, the Parties have caused this MOU to be signed, sealed and delivered by their duly authorized representatives the day and year first written above.

THE MAYOR AND COUNCIL OF ROCKVILLE

By: _____
Scott Ullery
City Manager

Approved as to legal form and sufficiency:

By: _____

BOARD OF COMMUNITY COLLEGE
TRUSTEES FOR MONTGOMERY
COUNTY, MARYLAND, a State
Instrumentality and body corporate

By: _____
Marshall Moore
[Title]

EXHIBIT A

LICENSED AREA

EXHIBIT B

NEW ACCESS PATH LOCATION