

**LICENSE AGREEMENT FOR
INSTALLATION AND OPERATION OF CROSSING GUARD SHELTERS
WITHIN THE CITY RIGHT-OF-WAY**

This License Agreement (the "Agreement") is entered into between WEST AURORA SCHOOL DISTRICT 129, an Illinois School District, 1877 W Downer Place, Aurora, Illinois 60506 (the "LICENSEE"), and the CITY OF AURORA an Illinois municipal corporation, 44 East Downer Place, Aurora, Illinois 60505 (the "CITY") on the ____ day of December, 2023.

WITNESSETH:

WHEREAS, the CITY is the owner of certain property within its municipal boundaries located at the intersection of Laurel Drive and Heather Drive and the intersection of North Highland Avenue and West New York Street; and

WHEREAS, LICENSEE desires to utilize a portion of the City property within the City's Right-of-Way, as legally described and shown on the survey attached as **Exhibit "A"**, and made a part hereof (the "ROW"), for the limited purpose of installation, operation, and maintenance of Crossing Guard Shelters (the "Shelters"), subject to the provisions of this License Agreement; and

WHEREAS, the CITY and LICENSEE (collectively, the "Parties") have the authority to enter into this Agreement pursuant to the powers granted by Article VII, Section 10(a) of the Illinois Constitution of 1970 and the Illinois Intergovernmental Cooperation Act (5 ILCS 220/*et. seq.*), and are authorized and empowered to perform the covenants and promises made and undertaken herein; and

WHEREAS, the CITY has the authority to enter into this Agreement pursuant to Article X (Construction of Facilities in the Public Rights-of-Way) of Chapter 42 (Streets and Sidewalks) in the Code of Ordinances, City of Aurora, Illinois (the "City Code"), and finds that entering this Agreement will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the City Rights-of-Way and the City as a whole.

NOW THEREFORE, in consideration of the mutual covenants agreed to herein, the CITY and LICENSEE agree as follows:

Section 1. LICENSE.

A. License Created. For and in consideration of the mutual covenants herein, and subject to the terms and conditions set forth, the City grants a revocable license (the "License") to Licensee for use of the ROW, to install, maintain, and operate the Shelters, as described in Section 3. The License granted by this Agreement shall not convey any title, right, or interest in the ROW, but shall be a revocable License only to use and occupy the ROW for the purposes stated herein.

B. Title and Boundaries. The Licensee understands and agrees the City makes no representation with respect to the condition of the title or boundaries of the ROW and shall not hold the City liable for any damages or liabilities arising from any actions, legal or otherwise, that result from any adverse claims concerning the title or boundaries of the ROW.

C. Term and Renewal. The term of this Agreement shall be for a period of one (1) year from the effective date (the "Term"), unless otherwise terminated or revoked under the conditions herein. The Effective Date shall be the date the last party signs this Agreement. The Agreement shall automatically renew for successive one-year Terms, unless a party provides three (3) months' written notice of intent to terminate renewal.

Section 2. FEES AND EXPENSES.

A. License Fee. Pursuant to Section 52-303(g) of the City Code, the City hereby waives the Application Fee for Licensee's installation and occupancy of the ROW during the Term of this License Agreement.

B. Expenses. Licensee shall assume responsibility for any and all expenses incurred for the installation, operation, and maintenance of the Shelters.

C. Taxes. Nothing contained in this Agreement shall be construed to exempt Licensee from any fee, tax, property tax levy, or assessment which is or may hereinafter be lawfully imposed relative to its use of the ROW or the Shelters.

Section 3. USE OF RIGHT-OF-WAY LICENSE.

A. Scope. Licensee shall use the ROW to install Shelters for the purpose of protecting Licensee's Crossing Guards from natural elements and to ensure sufficient traffic control safety measures for School District students. Except for emergency maintenance, all plans related to the installation, operation, and maintenance of the Shelters shall be subject to the prior written approval of the City's Engineering Division. Any unauthorized or impermissible use of the ROW shall be deemed a material breach of this Agreement.

B. Location. Licensee is permitted to install one (1) Shelter at each location identified in **Exhibit A** and approved by the City under this Agreement. As shown in **Exhibit A**, one location will be the intersection of Laurel Drive and Heather Drive and the second location will be the intersection of North Highland Avenue and West New York Street. Additional locations may be identified by Licensee and, pursuant to Section 6(J) of this Agreement, the Parties may amend this Agreement to create additional ROW locations for Shelters. If any ROW locations are added by amendment, Licensee will comply with the provisions of this Agreement in regard to the installation, operation, maintenance, and other terms set forth herein.

C. Installation. Licensee shall provide the City with a map indicating the location of the Shelters within the ROW prior to any installation steps. Licensee will perform no work nor make alterations to the ROW without first obtaining the necessary permits from the City, as required by the City Code. Licensee shall provide plans, including but not limited to design plans, to the City's Engineering Division for approval. Licensee shall provide the City with an updated map each time any location changes are made to the Shelters.

D. Operation and Maintenance. Licensee may not operate or maintain the Shelters in a manner that unreasonably interferes with the use of the ROW by the City, by the general public, or by other authorized persons upon the public ways. The City reserves the right to require Licensee, upon written notice of at least 30 calendar days, to relocate or modify the Shelter or any of its components within the ROW, temporarily or permanently, if deemed necessary in the sole judgment of the City. Upon such notice, the Licensee agrees to relocate or modify the Shelters in a commercially reasonable time. Licensee is solely responsible for maintenance of the Shelters

within the ROW. Routine maintenance of the Shelters will not require prior approval of the City; however, to the extent any intended maintenance materially alters the Shelters, Licensee shall submit plans and obtain the necessary City approval. The Shelters shall be maintained in a good, safe, and clean condition and in a manner that complies with applicable federal, state, and local laws and regulations.

- i. **Emergency Maintenance.** Licensee may undertake unexpected repair or emergency measures (“Emergency Maintenance”) that may be necessary to protect public health and safety. Licensee shall provide written notification of such work to the City as soon as practicable, either before such work or as soon thereafter as is reasonable.

E. Environmental. Licensee shall not trim, cut, or materially alter any trees, shrubs, or other environmental elements within the ROW without prior written approval of the City. Licensee shall remediate, remove, clean, or abate any debris, rubbish, or other materials within the ROW resulting from acts by Licensee, its agents, or its invitees.

F. Restoration and Repairs of ROW. Licensee, nor any of its agents, shall undertake an act or permit an act that impairs or damages the ROW or any other City property.

- i. **Restoration During the Term.** Licensee assumes responsibility for restoration costs incurred from acts or damage by Licensee, its agents, or its invitees during the Term, except to the extent any damage or impairment is caused by the negligence of the City. Restoration and repairs of the ROW shall be performed to the reasonable satisfaction of the City.
- ii. **Temporary Restoration.** If permanent repair is not presently possible due to external conditions, including weather, Licensee may undertake temporary restorative steps. Permanent restoration shall occur as soon as practicable.
- iii. **Restoration Upon Termination.** Upon termination of this Agreement, Licensee shall redeliver possession of the ROW to the City in as good of order, condition, and repair as on the Effective Date, with normal wear and tear accepted. If Licensee fails to complete restoration or repairs pursuant to this Agreement, the City may make such restoration or repairs and subsequently: (a) tender a written demand of payment from Licensee of costs incurred by the City, with supporting documentation; and/or (b) terminate this Agreement with all licensed rights or claims against the City related to termination waived by Licensee.

Section 4. RESERVATION OF CITY AUTHORITY.

A. Authority. The City retains the authority to remove, modify, or intervene with Licensee’s use of the Shelters within the ROW, as the City may deem necessary in response to any public health or safety emergency that presents a substantial risk of imminent harm to persons or property. The City shall give written notice to Licensee as promptly as possible, either before such action is taken or in a reasonable time thereafter, if advance notice is not practicable.

B. Conditions. The City makes no assurances or guarantees regarding the condition of the ROW,

including underground conditions. Licensee assumes all risk arising from installation, maintenance, and operation of the Shelters within the ROW. Licensee accepts the ROW in "As Is, Where Is" condition, including and environmental factors, with no representation or warranty of prior use or condition of the ROW or its suitability for Licensee's intended purpose.

C. Inspections. The City reserves the right to conduct inspections of the ROW and the Shelters located thereon for compliance with any applicable federal, state, and local regulations. City agrees to provide notice to Licensee of any inspection and Licensee may have a representative present during the inspection. Upon request by Licensee, the City may share the results of any inspection with the Licensee.

D. Non-Exclusive. This Agreement is nonexclusive and does not confer any exclusive right, license, or privilege to occupy the ROW or any other public rights-of-way in the City not described in **Exhibit A**. The City reserves the right to ingress, egress, and usage of the ROW and the right to grant licenses, leases, permits, or rights-of-way in and to the ROW, so long as they do not unreasonably interfere with Licensee's authorized use.

Section 5. INSURANCE, INDEMNIFICATION, AND LIABILITY.

A. Insurance. Licensee warrants that it will maintain the minimum levels of insurance coverage required under Section 42-307 (Insurance) of the City Code throughout the Term of this Agreement and that such coverage will encompass the Shelters. Licensee shall always keep a current certificate of insurance on file with the City. The insurance coverage of Licensee shall name *the City of Aurora, its officers, appointed and elected officials, Mayor, City Council, employees, agents, assigns, successors, transferees, licensees, invitees, volunteers or other persons or property standing in the interest of the City*, as an additional insured.

B. INDEMNIFICATION. Pursuant to Section 42-308 (Indemnification) of the City Code, Licensee agrees to defend, indemnify, and hold harmless the City, its officers, appointed or elected officials, employees, agents, and representatives from and against any and all injuries, claims, demands, judgments, damages, losses, and expenses, including reasonable attorney's fees and costs of litigation, arising, resulting, or brought by a third party alleging negligent, careless, or wrongful acts or omissions by Licensee or any of its officers, employees, agents, contractors, or subcontractors in the installation, operation, maintenance, repair, or removal of the Shelters. Such indemnity obligations shall not apply to injuries, claims, demands, judgments, damages, losses, and expenses arising out of or resulting from the negligence or willful misconduct of the City.

The City agrees to defend, indemnify, and hold harmless the Licensee, its officers, appointed or elected officials, employees, agents, and representatives from and against any and all injuries, claims, demands, judgments, damages, losses, and expenses, including reasonable attorney's fees and costs of litigation, arising, resulting, or brought by a third party alleging negligent, careless, or wrongful acts or omissions by the City or any of its officers, employees, agents, contractors, or subcontractors in the installation, operation, maintenance, repair, or removal of the Shelters. Such indemnity obligations shall not apply to injuries, claims, demands, judgments, damages, losses, and expenses arising out of or resulting from the negligence or willful misconduct of the Licensee.

C. WAIVER AND ASSUMPTION OF LIABILITY. THE LICENSEE WAIVES ANY CLAIMS AND CAUSES OF ACTION AGAINST THE CITY, ITS EMPLOYEES, ITS BOARD OF TRUSTEES, ITS APPOINTED OR ELECTED OFFICIALS, AND ITS REPRESENTATIVES FOR ANY DAMAGES AND LOSSES OF ANY KIND ARISING OUT OF ANY PERSONAL INJURIES OR ILLNESS OF ANY KIND, OR DEATH THAT MIGHT OCCUR WHILE ACTING UNDER THIS AGREEMENT, EXCLUDING

ANY CLAIMS AND CAUSES OF ACTION ARISING OUT OF ANY INTENTIONAL OR WILLFUL ACTIONS OF THE CITY, ITS EMPLOYEES, ITS BOARD OF TRUSTEES, ITS APPOINTED OR ELECTED OFFICIALS, AND ITS REPRESENTATIVES. THE LICENSEE ASSUMES ALL LIABILITY FOR PERSONAL INJURIES OR ILLNESS OF ANY KIND, OR DEATH, THAT MIGHT OCCUR WHILE ACTING UNDER THIS AGREEMENT. THE CONTRACT ASSUMES ALL LIABILITY AND RESPONSIBILITY FOR THE SHELTERS.

D. Damage to Licensee's Shelters. Unless directly and proximately caused by the negligent or willful, intentional, or malicious acts of the City, the City shall not be liable for any damage to or loss of Licensee's Shelters within the ROW as a result of or in connection with any public works, public improvements, construction, or other work of any kind in the ROW by or on behalf of the City or its designee.

Section 6. ADDITIONAL PROVISIONS.

A. Governmental Regulations. Licensee shall comply with all applicable laws, ordinances, regulations, and requirements of federal, state, county, and local regulatory authorities, including the applicable provisions of the City Code. Licensee certifies as follows:

- i. Any work performed on the ROW shall be completed in a good and workmanlike manner and in compliance with applicable governmental regulations, including but not limited to Article X (Construction of Facilities in the Public Rights-of-Way) of Chapter 42 (Streets and Sidewalks), insofar as certain exemptions have been granted pursuant to City authority.
- ii. Acts and construction performed pursuant to this Agreement shall comply with the Americans with Disabilities Act and Article 2 of the Illinois Human Rights Act (775 ILCS 5/2-101).
- iii. Licensee is in compliance with the Equal Opportunity Clause of the Illinois Human Rights Act (775 ILCS 5/1-101 *et. seq.*) and the Rules and Regulations of the Illinois Department of Human Rights.
- iv. Any contracts entered into by Licensee related to ROW use shall require any contractors or subcontractors to comply with the Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et. seq.*).

B. Creation of Interests. Licensee shall not place or allow the creation of any additional interests to attach or to be filed against title to the ROW, including but not limited to liens, mortgages, pledges, security interests, equitable interests, or other encumbrances.

C. Cancellation, Default, and Termination. This Agreement shall be revocable for violation of the conditions herein, including violations of applicable federal, state, and local rules and regulations. If, during the Term or a subsequently renewed Term, the City determined the ROW is required for public purposes or a public emergency incompatible with this Agreement and such finding may require Licensee to remove, relocate, or rearrange Licensee's Shelters, then the City shall provide written notice to Licensee and Licensee shall, within a mutually agreed time frame, take necessary actions to alter the position or location of the Shelters, at Licensee's expense. The notice from the City will provide, with reasonable detail, the public purpose or public emergency requiring Licensee's removal, relocation, or rearrangement and shall identify a suitable alternative location, if available. The Parties shall cooperate in good faith to identify and coordinate necessary steps to minimize impact on Licensee's

use of this License. If a suitable alternative location cannot be agreed upon within the mutually agreed time frame, then the City may terminate this Agreement.

D. Notice of Cancellation, Default, and Termination. Where the City or its designee finds ground for the revocation of this Agreement, the City shall provide written notice of the apparent violation or noncompliance, with a short and concise statement of the general facts and nature of the allegations. Licensee shall have a reasonable time period not less than thirty (30) calendar days to furnish evidence:

- i. Demonstrating corrective action has been or is actively being pursued to remedy the violation or noncompliance;
- ii. Rebutting the alleged violation or noncompliance; or
- iii. Supporting a penalty or sanction less than revocation based on the public interest.

If Licensee fails to provide reasonably satisfactory evidence to the City or its designee as provided above, the City will provide Licensee with notice and a reasonable opportunity to be heard on the matter. A hearing will be held the hearing authorities shall determined whether to revoke this License or establish a lesser sanction and cure, following the provisions set forth in this Agreement and Article X, Chapter 42 of the City Code

E. No Transfer or Assignment. Licensee shall not transfer or assign this Agreement or any interest herein without prior written consent of the City, which may be granted or denied by the City in its sole and absolute discretion. This Agreement shall be binding upon and shall inure to the benefit of the Parties and to their successor corporations, officers, officials, trustees, successors in office or interest, heirs, representatives, and assigns.

F. Compliance with City Code. Licensee agrees to comply with all applicable terms, conditions, and requirements of Article X, Chapter 42 in the City Code, unless specifically exempted herein. If a conflict between this Agreement and the applicable provisions of the City Code arises, this Agreement shall control.

G. City Code Exemptions. Licensee is exempt from:

- i. The Annual Registration fee set forth in Section 42-302(c) of the City Code;
- ii. The Application Fee set forth in Section 42-303(g) of the City Code; and
- iii. The Security Fund requirement set forth in Section 42-309 of the City Code.

H. Mutual Exchange of Information. The Parties recognize that, as public bodies, both are subject to Section 7(2) of the Illinois Freedom of Information Act ("FOIA") (5 ILCS 120/7(2)), which requires certain qualifying "public records" that are prepared by and in possession of a party contracting with a public body to be released upon an appropriate FOIA request. The Parties have a short period of time from receipt of a FOIA request to comply and require sufficient time to collect, review, and determine if any FOIA exemptions apply. The Parties acknowledge the FOIA requirements and agree to mutually cooperate with requests made to the Licensee or City for public records in the other party's possession. The Licensee or City shall provide requested public records within two (2) business days of the request made by the other party and agree to mutually indemnify and hold harmless the other party from any claims, costs, penalties, losses, or injuries arising out or relating to its failure to provide the public records under this Agreement. The Parties further agree to provide any requested information reasonably related to this Agreement, the License, and activities related to the ROW when requested by the Licensee or City, or their designee, and will share such records within ten (10) calendar days of a written request.

I. **No Waiver.** Failure by either party to give timely notice insisting upon strict and prompt performance of this Agreement shall not constitute a waiver or relinquishment of that party's right to enforce this Agreement.

J. **Amendments.** This Agreement constitutes the entire agreement between the Parties and supersedes any previous agreements or negotiations, whether written or oral, relating to the subject matter of this Agreement. No change, modification, or amendment shall be valid and binding unless set forth in writing and signed by all parties.

K. **Controlling Law.** This Agreement, including interpretation, construction, enforcement, and any controversies arising hereunder, shall be governed by the applicable statutory and common law of the State of Illinois. For the purposes of any litigation relative to this Agreement and its enforcement, the venue shall be in the Circuit Court of Kane County, and the parties agree to the *in personam* jurisdiction of said Court.

L. **Severability.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

M. **No Waiver of Tort Immunity.** Nothing in this Agreement shall be construed as limiting or modifying the immunities provided to the Parties under State law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

LICENSOR:

CITY OF AURORA

By: _____

Its: _____

Date: _____, 2023.

ATTEST:

By: _____

Jennifer Stallings
City Clerk

Date: _____, 2023.

LICENSEE:

WEST AURORA SCHOOL DISTRICT 129

By: _____

Its: _____

Date: _____, 2023.

ATTEST:

By: _____

Its: _____

Date: _____, 2023.

EXHIBIT "A"

To

**LICENSE AGREEMENT BETWEEN THE CITY OF AURORA AND
WEST AURORA SCHOOL DISTRICT 129**

**SURVEY LEGALLY DESCRIBING AND
DEPICTING THE RIGHT-OF-WAY**