

**INTERGOVERNMENTAL LICENSE AGREEMENT BETWEEN
FOREST PRESERVE DISTRICT OF KANE COUNTY,
AND
THE CITY OF AURORA**

THIS LICENSE AGREEMENT is entered into this ____ day of _____, 2016, by and between the **FOREST PRESERVE DISTRICT OF KANE COUNTY**, an Illinois forest preserve district (hereinafter referred to as the "District"), and the **CITY OF AURORA, an Illinois municipal corporation** (hereinafter referred to as "City").

WITNESSETH:

WHEREAS, the District and the City are both bodies corporate and politic organized and existing under the laws of the State of Illinois; and

WHEREAS, the District and the City are authorized pursuant to Illinois Compiled Statutes, Chapter 50, Section 605/0.01 *et seq.*, to enter into intergovernmental agreements; and

WHEREAS, the City desires to utilize certain District property by consent of the District for a bike and walking path and trail to be located generally as depicted on Exhibit A attached hereto as an aerial photograph along the Kautz Road right of way and Oakhurst Forest Preserve eastern boundary;

WHEREAS, the District property governed by this Agreement are described in Exhibit "B" attached hereto ("Licensed Property"); and

WHEREAS, the District has determined that the use of the District's Licensed Property by the City is proper and consistent with the mission and purpose of the District; and

WHEREAS, Illinois compiled Statutes, Chapter 5, Section 220/1 *et seq.*, and Article VII, Section 10 of the Constitution of the State of Illinois, 1970, authorize units of local government, including cities and special districts such as forest preserve districts, to enter into agreements for cooperative ventures regarding use of their lands and facilities;

NOW, THEREFORE, in consideration of the terms and conditions contained in this Agreement, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The District hereby grants a license to the City to enter onto its property to install, construct, use and maintain a bike and walkway path and trail on the District Property as set forth in Exhibit A. The path and trail shall be generally open to the

public and available for non-exclusive use by both the City and the District and their respective invitees, guests and visitors.

2. This License Agreement shall commence upon execution hereof the last signatory hereto and shall continue for twenty (20) years after such date of commencement, unless sooner terminated by either party. The parties may extend this agreement for such further and additional terms as the parties may hereafter agree. Notwithstanding anything express or implied herein to the contrary, either party may terminate this License Agreement based upon a default by a party hereto, which is not cured after reasonable notice and opportunity to cure, by the delivery of written notice thereof to the other party one (1) year prior to the effective date of the termination. Upon termination by either party or expiration of the term hereof, the City shall, at the request and at the sole discretion of the District, remove all improvements and path and trail surfaces installed by it pursuant to this Agreement, restoring the site to its original condition.
3. This License Agreement is not alienable or assignable.
4. The City agrees to the following requirements as to the bike and walkway path and trail area to be used and maintained by it:
 - a. The bike and walkway path and trail covered by this License Agreement shall be used solely for the purposes described in paragraph 1 above. No other improvements may be made within the Licensed Property without the express written consent by the District.
 - b. The bike and walkway path and trail shall at all times during the term of this License Agreement be maintained for such purposes and any further permitted ancillary uses by the City at its sole cost and expense.
 - c. The City shall keep the bike and walkway path and trail open for use to the general public and not the exclusive use of a private organization or organizations.
 - d. In its maintenance of the bike and walkway path and trail, the City shall comply with any federal, state or local laws regarding the condition of the improvements located thereon.
5. The City agrees to purchase and maintain during the term of this license or any extension thereof, at their own sole cost, a policy or policies of insurance issued by good and responsible insurance companies and in a form satisfactory to the District as follows:
 - A. **Commercial General and Umbrella Liability Insurance**

The City shall maintain commercial general liability insurance coverage (CGL) and, if necessary, commercial umbrella insurance with a combined limit of not less than \$3,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The District shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 26 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to The District. Any insurance or self-insurance maintained by the District shall be excess of the District's insurance and shall not contribute with it.

B. Business Auto and Umbrella Liability Insurance

The City shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

C. Workers Compensation Insurance

The City shall maintain workers compensation and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If the District has not been included as an insured under the applicable CGL using ISO additional insured endorsement CG 20 11 under the Commercial General and Umbrella Liability Insurance required in this Contract, the City waives all rights against the District and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to its use of the Licensed Property.

D. General Insurance Provisions

1. Evidence of Insurance

Prior to taking occupancy and annually thereafter, the City shall each furnish the District with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to the District prior to the cancellation or material change of any insurance referred to therein. Written notice to the District shall be by certified mail, return receipt requested.

Failure of the District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of the District to identify a deficiency from evidence that is provided shall not be construed as a waiver of the City's obligation to maintain such insurance.

The District shall have the right, but not the obligation, of prohibiting the City from occupying the Licensed Property until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by the District.

Failure to maintain the required insurance may result in termination of this license at the District's option.

At any time during the term of this License Agreement, the City shall provide certified copies of all insurance policies required above within 10 days of the District's written request for said copies.

2. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the the District has the right to reject insurance written by an insurer it deems unacceptable.

3. Cross-Liability Coverage

If the City's liability policies do not contain the standard ISO separation of insured's provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

D. Indemnification

The City shall indemnify and hold harmless the District and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to reasonable attorney's fees, arising from or in any way connected with (i) the conduct or management of the Licensed Property or of any business or activity therein, or any work or thing whatsoever done, or condition created in or about the premises during the term of this lease; (ii) any act, omission wrongful act or negligence of the City or any of its sublicensees or other possessory right holders (if applicable), or the directors, officers, agents, employees, invitees or contractors of the City's sublicensees; (iii) any accident, injury or damage whatsoever occurring in or at the Licensed Property regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. The City shall similarly protect, indemnify and hold and save harmless the District, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of a breach of any of their respective obligations under, or their respective default of, any provision of this Agreement. Notwithstanding this provision, the City's indemnification obligations shall not apply to claims, damages, losses and/or expenses arising from, or related to, the acts, whether negligent or intentional, of the District, its officers, employees, volunteers and/or agents.

E. Increase in insurance coverage levels. As this Agreement is intended to be in existence for a very long time by its term, the parties acknowledge and agree that after each ten (10) year period, the insurance coverage levels required and provided hereunder are subject to review and approval by the District. Increases in insurance coverage amounts may be required by the District to maintain levels that are reasonable under the circumstances. In the event the City objects to the increased amount required at any such instance, the coverage shall be increased by an amount not to exceed the increase in the published Consumer Price Index for the period between the last prior increase and the year end prior to proposed increase effective date.

6. Representatives of the staffs of the District and the City shall meet at least once each year during the term of this License Agreement to discuss maintenance, use and management of the Licensed Property and approved improvements.
7. No waiver by either party of any breach or a series of breaches of this License Agreement shall constitute a waiver of any subsequent breach or waiver of the terms of the License Agreement.

8. Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, addressed to the respective parties as follows: the City at the Office of the Mayor 44 East Downer Place, Aurora, IL 60507, with a copy to City of Aurora Legal Department 44 East Downer Place, Aurora, IL 60507 and to District at 1996 South Kirk Road, Suite 320, Geneva, Illinois 60134, Attention: President, with a copy to attorney Gerald K. Hodge, Kinnally, Flaherty, Krentz, Loran, Hodge & Masur, P.C. 2114 Deerpath Road Aurora, Illinois 60506. Any party, by a similar written notice, may change the address to which notices shall be sent.
9. All references in this License Agreement to the singular shall include the plural where applicable, and all references to the masculine shall include the feminine and vice versa. If either reference shall be declared invalid, such decision shall not affect the validity of any remaining portion which shall remain in full force and effect.
10. Neither party shall have any authority, express or implied, to act as agent of the other party hereto for any purpose. The City shall remain an independent contractor responsible for all obligations and liabilities of, and for all loss or damage to, the Licensed Property improvements, including any personal equipment or fixtures connected therewith and for all claims or demands based on damage or destruction of property or based on injury, illness, or death of any person or persons, directly or indirectly, resulting from the use of the Licensed Property.
11. This License Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the parties has caused this License Agreement to be executed by its duly authorized representative as of the day and year first above written.

DISTRICT:

CITY:

**FOREST PRESERVE DISTRICT
OF KANE COUNTY**

CITY OF AURORA

By: _____
Its President

By: _____
Its Mayor

ATTEST:

ATTEST:

Secretary

CITY CLERK

EXHIBIT A – DEPICTION OF LICENSED PROPERTY

EXHIBIT B - LEGAL DESCRIPTION