

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF AURORA AND THE FOX VALLEY MUSIC FOUNDATION

THIS MEMORANDUM OF UNDERSTANDING (this "**MOU**"), dated July 28, 2020, is between the **City of Aurora**, hereinafter "City", an Illinois Municipal Corporation located at 44 E. Downer Place, Aurora, Illinois, 60505 and the **Fox Valley Music Foundation**, hereinafter "Foundation" a not-for-profit organization located at 19-21 South Broadway, Aurora, Illinois, 60505. The Parties seek to enter into this Agreement regarding the Foundation's use of Mundy Park for special events for the mutual benefit of the Parties and the public.

I. PURPOSE AND SCOPE OF AGREEMENT

The purpose of this Agreement is to identify the roles and responsibilities of both Parties in their collaboration and planning of special events and the use of the City's Mundy Park, which is located adjacent to the home of the Fox Valley Music Foundation, at 19-21 South Broadway, also known as "The Venue."

II. ROLES AND RESPONSIBILITIES UNDER THIS AGREEMENT

A. The City will:

1. Allow the Foundation to submit a single special events permit application fee for the calendar year.
2. Work with the Foundation to coordinate the use of Mundy Park for the Foundations' 2020 outdoor events.
3. Allow the Foundation to use the City's temporary barricades for the duration of this agreement without charge.

B. The Fox Valley Music Foundation will:

1. Submit one single special events permit application fee for the 2020 calendar year.
2. Submit individual events for approval in the Eproval portal for the City to review.
3. Comply with all the terms of Chapter 41.5, the City's Special Event's Ordinance.
4. Obtain any other required City permits or approvals for their events.
5. Obtain the necessary liquor permits, pursuant to Chapter 6 of the City's Liquor Ordinance.
6. Utilize temporary barricades to enclose the perimeter of the park, allowing for only one entrance and one exit for events.
7. Limit events to four hours in length.

C. The City and the Fox Valley Music Foundation will:

1. Work together to coordinate the Foundation's use of Mundy Park for their events.

2. Meet after the conclusion of the 2020 special events season to discuss an agreement for 2021.

III. OTHER TERMS UNDER THIS AGREEMENT

- A. The City may suspend, revoke or withhold the Venue's special events permit if the Foundation is found to be in violation of their special events permit.
- B. The Foundation does not have exclusive use of Mundy Park.
- C. Other groups or special events may have use the adjoining parks while the Foundation has use of Mundy Park.
- D. All special events are subject to cancellation in the event of any of the following:
 1. Any changes to the Illinois State health guidelines that would make special events prohibited;
 2. The State of Illinois returns to a prior Phase (1, 2 or 3) of the Governor's Restore Illinois Plan; or
 3. If the City Mayor declares a State of Emergency related to COVID-19.

IV. INSURANCE AND INDEMNITY

The Foundation agrees to, at all times, at its sole cost be covered by a policy of general liability insurance with per person and per occurrence limits of no less than \$2,000,000 with the City named as an additional insured thereon and to indemnify and defend the City against all claims related to the Foundation's use or occupancy of Mundy Park and/or any City property or right of way.

V. COVID-19 GUIDELINES AND ASSUMPTION OF RISK

The novel Corona Virus or COVID-19 has been declared a worldwide pandemic by the World Health Organization. COVID-19 is extremely contagious and is believed to spread mainly from person-to-person contact. As a result, Federal and State governments recommend physical and social distancing. Special events with appropriate preventative restrictions related to COVID-19 will only be permitted as long as the City of Aurora remains in Phase 4 of the Governor's Restore Illinois Plan. The Foundation agrees to comply with all of the Governor's guidelines outlined in Phase 4 of the Restore Illinois Plan as well as follow the recommendations of state and county health department guidelines. The Foundation agrees to assume all risk and liability associated with hosting group events during the COVID-19 pandemic.

VI. AMENDMENTS

This agreement may only be amended in writing as signed by both parties.

VII. TERM OF AGREEMENT

This Agreement shall be effective upon the date of execution by the last signatory below. This agreement shall be valid for the calendar year of 2020.

All parties shall have the right to terminate this Agreement 30 days after they tender written notice of a material breach. The other party shall have the opportunity to cure the breach within 30 days of receiving written notice.

VIII. VENUE AND GOVERNING LAW

This Agreement concerns property located within, and actions and activities to be performed within, the State of Illinois. Accordingly, this Agreement, and all questions of interpretation, construction and enforcement hereof, and all controversies hereunder, shall be governed by the applicable statutory and common law of the State of Illinois. The Parties agree that for the purpose of any litigation relative to this Agreement and its enforcement, venue shall be in the Circuit Court of Kane County, Illinois and the Parties consent to the in personam jurisdiction of said Court for any such action or proceeding.

IX. SEVERABILITY

If any terms or provisions of the Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provision shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular terms or provision held invalid.

X. AMENDMENTS/MODIFICATIONS

Any modifications or amendments to this Agreement may only be made through the written mutual consent of both Parties.

XI. NOTICE

All notices required hereunder shall be made in writing and shall be served personally, by registered mail, certified mail, traceable private courier service, electronic mail or facsimile transmission unless otherwise provided for in this Agreement.

All NOTICE to the parties under this agreement shall be made to:

The City of Aurora
Corporation Counsel
The City of Aurora Law Department
44 E. Downer Place
Aurora, Illinois 60507-2067

The Foundation
Melissa Mercado
Executive Director
21 S. Broadway
Aurora, IL 60505

Executed By:

THE CITY OF AURORA:

By: _____
Mayor Richard C. Irvin

Attest: _____
City Clerk

THE FOX VALLEY MUSIC FOUNDATION:

By: _____
Chairman of the Board

Attest: _____
Title