

THIRD INTERGOVERNMENTAL AGREEMENT FOR RIVEREDGE PARK MUSIC GARDEN MANAGEMENT

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) commencing the 1st day of February, 2022, by and between the **Aurora Metropolitan Exposition, Auditorium and Office Building Authority, d/b/a AURORA CIVIC CENTER AUTHORITY**, an Illinois Civic Center Authority (hereinafter referred to as “ACCA”) and the **CITY OF AURORA**, an Illinois municipality (hereinafter referred to as the “CITY”).

WITNESSETH:

WHEREAS, Article Seven, Section Ten of the constitution of the State of Illinois, 1970, authorizes units of local government, including Civic Center Authorities and municipalities, to enter into contracts to exercise, combine or transfer power or functions not prohibited to them by law ordinance; and

WHEREAS, the Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*) authorizes units of local government in Illinois to exercise jointly with any other public agency within the state, including other units of local government, any power, privilege, or authority which may be exercised by a unit of local government individually and to enter into contracts for the performance of governmental services, activities and undertakings; and

WHEREAS, ACCA is expressly authorized under the Civic Center Code (70 ILCS 200/10-15 a-c) to enter into contracts, plan or sponsor shows and events whether conducted by the ACCA or some other person or governmental agency; and

WHEREAS, the RiverEdge Park Music Garden is a redeveloped parcel located in Aurora, Kane County, Illinois (“MUSIC GARDEN”) and consists of those parcels for which the CITY currently or in the future holds title to (less the CSO exception area) within the boundary portrayed on Exhibit A herein; and

WHEREAS, the MUSIC GARDEN was redeveloped by the CITY through a combination of grants, donations and financing from The State of Illinois Department of Commerce and Economic Opportunity (“DCEO”); the Fox Valley Park District; the John C. Dunham Foundation and bonds from Tax Increment Financing District No. 6; and

WHEREAS, the CITY and ACCA wish to express their mutual desire for intergovernmental cooperation for the benefit of the citizens of the community in the management of the MUSIC GARDEN and to continue the tradition of providing quality family entertainment in the downtown; and

WHEREAS, the MUSIC GARDEN includes the John C. Dunham Pavilion, guest services building, mix tower, sidewalks, pedestrian/bicycle paths, open space and other ancillary amenities and facilities for which the CITY is seeking management services as set forth on Exhibit B (“SERVICES”); and

WHEREAS, the CITY and ACCA have previously entered into an Intergovernmental Agreement providing for said SERVICES to be provide by ACCA, which was approved by the City of Aurora by R12-222 on August

28, 2012 and which has subsequently been amended by R13-069 on March 12, 2013; R13-234 on August 13, 2013; R14-232 on September 9, 2014; and R15-181 on July 14, 2015; and

WHEREAS, the CITY and ACCA entered into a Second Intergovernmental Agreement for RiverEdge Park Music Garden Management by R16-348 on November 8, 2016.

WHEREAS, the CITY and ACCA hereby agree that said SERVICES shall continue to be provided by ACCA and that the CITY shall provide financial payment and in-kind services to ACCA for the purpose of achieving said SERVICES in conformance with the following vision for the MUSIC GARDEN:

“The MUSIC GARDEN is a park that is to act as a catalyst for economic growth by celebrating the Fox River and being a dynamic public gathering place. The park shall be an attraction for the region and a neighborhood park for those historically more compact neighborhoods close to the downtown. The park shall be a model of cutting edge and innovative sustainable environmental practices including products, programs and technology and shall project a sophisticated, energetic image for the community. The park shall be open to the public on a daily basis all year round and available for outside reservations and programming when not otherwise in use.

Programming and events must focus on a balance of community, recreation, economic development, and cultural and ethnic diversity. The park shall accommodate everything from large concerts and small performances, to family gatherings and picnics. Events shall enhance the success of the park as an economic stimulus concept, bringing private sector investment, tourism and potential new residents to the Downtown. It is important to encourage programming and partnerships with many local entities, neighborhood groups and organizations including the Fox Valley Park District, school districts, among others; and to produce a set amount of events that will have a broad appeal, minimum risk, project a positive vision and leave customers with desire to want to come back.”

NOW, THEREFORE, for the consideration of the mutual promises and undertakings set forth herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **INCORPORATION OF RECITALS.** The forgoing recitals to this Agreement are substantive and are hereby incorporated into the Agreement as though fully set forth herein.
2. **TO BE PROVIDED BY ACCA.** ACCA hereby agrees to furnish the CITY with the SERVICES set forth in Exhibit B and in accordance with the vision statement set forth above and with directions provided by the CITY herein. In connection with the performance of the SERVICES, ACCA shall, at a minimum and upon the CITY request:
 - a. Cooperate with other agencies or third-parties selected by CITY to ensure that all scheduled SERVICES are completed as authorized;
 - b. Verify and pay all charges incurred in the performance of this Agreement;

- c. The scope of work for any third party services or capital improvements shall be produced in coordination with the CITY. ACCA will have the right to make non-structural improvements to the MUSIC GARDEN, subject to the approval of the CITY, which shall not be unreasonably withheld;
 - d. ACCA shall solicit recommendations for consideration when making booking decisions for the MUSIC GARDEN;
 - e. Throughout the Term, ACCA shall comply with all laws, ordinances, orders, rules and regulations of governmental authorities having jurisdiction over the MUSIC GARDEN and the provisions of this Agreement. For all activities associated with the MUSIC GARDEN, ACCA shall abide by all restrictions and requirements of the funding sources utilized by the CITY in the construction of the MUSIC GARDEN. Said Agreements are referenced in Exhibit C attached hereto;
3. **PROGRAM CALENDAR.** ACCA hereby agrees to produce a minimum of 15 events to be held in the key season (being June to September), these shall include but not be limited to: Festival Events such as Blues on the Fox, Downtown Alive!, and Fourth of July Fireworks; Concert Events, such as a traditional headliner and an opening performer(s); and Community Rental Events such as a neighborhood block party, festival, market or foot race. ACCA and the City shall also pursue and encourage additional events during the shoulder season (being October to May).

The above shall collectively be referred to as (“EVENTS”). If, in the sole judgment of the City, it becomes necessary to cancel an Event or any part thereof to protect health, life or welfare of the public, the City’s property or the property of others, or facilities become unavailable or inaccessible for reason(s) of inclement weather, fire, other acts of God, public disturbance, or similar occurrences beyond the control of the City, then the City may do so without liability to the ACCA or any other person or entity.

4. **TO BE PROVIDED BY CITY.** CITY hereby agrees to provide, funding to ACCA for the SERVICES set forth on Exhibit B. The amount of said funding shall be based the following:
- a. The City shall provide or pay for only those items or services specifically indicated in this Agreement. No additional costs for items or services will be borne by the City without its prior consent, specifically written herein or attached hereto as an Exhibit. The City hereby agrees to make payment on an annual basis (“ANNUAL PROGRAM MANAGEMENT PAYMENT”) during the term of this agreement to ACCA to cover the cost of SERVICES as set forth on Exhibit B. Said payment shall be due and payable to ACCA on January 31st of each year. Said payment was set in the 2012 Agreement at two hundred and fifty thousand dollars (\$250,000) with payments being adjusted annually. Based on said annual adjustments the 2021 payment was set at two hundred and ninety-four thousand one hundred and ninety-three dollars and eighteen cents (\$294,193.18), said payment shall be adjusted for 2022 and thereafter annually as follows:
 - i. Said not to exceed value shall be adjusted thereafter annually by the Consumer Price Index for all Urban Customers (CPI-U) Chicago, Naperville, Elgin (CPI) or three percent (3%), whichever is lower, for the term of this agreement.

- ii. Said payment may be reduced by an amount equal to the prior years' PROCEEDS as defined below; or the CITY may request that said PROCEEDS be made payable to the CITY at the end of each calendar year.
 - iii. In event the actual annual expenditures exceeds the actual annual revenue, as reported pursuant to Section 6.c. herein, ACCA may invoice the CITY for up to an additional two hundred and fifty thousand dollars (\$250,000) for the reimbursement of all or a portion of said amount ("END OF SEASON PROGRAM RECONCILIATION").
 - b. The City hereby agrees to provide mutually agreeable in-kind services where the City deems appropriate to assist ACCA in providing the SERVICES at the MUSIC GARDEN.
 - c. The City with the above stated Financial Contribution and In-Kind Services shall be considered a Seasonal Sponsor for all EVENTS and shall be entitled to the marketing and sponsorship privileges provided to a Seasonal Sponsor.
 - d. The City agrees to reimburse ACCA for the general maintenance of the MUSIC GARDEN ("ANNUAL MAINTENANCE REIMBURSEMENT"). The City will also reimburse ACCA for the maintenance of Wilder Park, the pedestrian/bicycle bridge, and 512 North Broadway, to the extent those areas are used and thereafter maintained by ACCA for events. ACCA shall invoice the CITY on a quarterly basis for said SERVICES and MAINTENANCE. The budget for said ANNUAL MAINTENANCE REIMBURSEMENT shall be set annually through the City's budget process.
 - e. The City hereby agrees that the annual profits (revenues minus expenses) attributable to the MUSIC GARDEN ("PROFITS") will initially be shared at an 80/20% rate (80% CITY and 20% ACCA) to provide for the reimbursement of the annual CITY FINANCIAL CONTRIBUTION. Upon complete reimbursement of the annual CITY FINANCIAL CONTRIBUTION, the PROFITS shall be shared at a 60/40% rate (60% CITY and 40% ACCA) to provide for the reimbursement of the ANNUAL MAINTENANCE REIMBURSEMENT. Upon complete reimbursement of the ANNUAL MAINTENANCE REIMBURSEMENT, all remaining PROFITS shall go to ACCA.
5. **TRADEMARK RIGHTS AND BRANDING.** ACCA hereby agrees that the CITY will preserve the rights to all existing and future trademarks, Logos and URLs (collectively "Intellectual Property") associated with the MUSIC GARDEN and EVENTS. However, ACCA will have the use and the ability to manage content over the websites, and signage during the term of this Agreement. ACCA shall develop, or cause to be developed, new Intellectual Property and branding for the MUSIC GARDEN in coordination with the CITY. In addition, with respect to any current or future Intellectual Property:
- a. Whenever the Intellectual Property is used as provided in this Agreement, the Intellectual Property shall be accompanied by appropriate notice of statutory rights ("®") or common law rights ("™"), as directed by the City, or such other words and/or symbols as may be required by the City from time to time.

- b. ACCA shall not use the Intellectual Property in combination with any other mark, word, symbol, letter or design which would create a combination mark or cause confusion regarding the City's ownership of the Intellectual Property. ACCA may use the Intellectual Property with other marks or names which are sufficiently separated to avoid such confusion.
- c. Upon City's request, and before its use, ACCA agrees to provide City with a representative sample of ACCA usage of the Intellectual Property for City's review and inspection.
- d. The Intellectual Property may not be included in any non-City trade name, business name, product or service name, logo, trade dress, design, slogan, domain name, or other trademark.
- e. ACCA must use the Intellectual Property only as provided by this Agreement. Except for size (subject to the approval of the City), the Intellectual Property may not be altered in any manner, including proportions, colors, elements, etc., or animated, morphed, or otherwise distorted in perspective or appearance. ACCA will not revise, alter or modify the Intellectual Property or use a similar Intellectual Property either during the terms of the Agreement or after the Agreement is terminated.
- f. ACCA shall not use the Intellectual Property in any manner likely to confuse, mislead, or deceive the public, or be adverse to the best interests of the City.
- g. ACCA shall not use the Intellectual Property in any offensive manner or which may diminish the goodwill associated with the Intellectual Property (e.g., in materials that are unlawful, encourage unlawful activities or are in poor taste).
- h. ACCA acknowledges that ACCA has no interest in the Intellectual Property except the limited use granted under this Agreement, and that City is the sole and exclusive owner of all right, title and interest in the Intellectual Property. ACCA agrees that ACCA's use of the Intellectual Property will inure solely to the benefit of City and that ACCA's use of the Intellectual Property will not create any right, title or interest for ACCA in the Intellectual Property except for the limited use under this Agreement. ACCA agrees that ACCA will not contest, oppose or challenge City's ownership of the Intellectual Property, and ACCA will do nothing to impair City's ownership or rights in the Intellectual Property. ACCA will not do anything inconsistent with City's ownership of the Intellectual Property, such as filing any trademark application for an identical or similar mark anywhere else in the world, now or in the future or challenging City's rights in the Intellectual Property. ACCA will not attempt to register the Intellectual Property in any jurisdiction or adopt any mark or name or URL which is confusingly similar to the Intellectual Property. ACCA shall not grant permission to any other person to use the Intellectual Property. City shall have the sole right to, and in its sole discretion, may control any action concerning the Intellectual Property.
- i. Aside from what is stated in this Agreement, City grants ACCA no other rights in the Intellectual Property, and any use other than that contemplated by this Agreement is a violation of law.

- j. The parties understand and agree that money damages may not be a sufficient remedy for the breach of these provisions of this Agreement, and that each party shall be entitled to emergency injunctive relief as a remedy for any such breach by the other party. Such remedy shall not be deemed to be the exclusive remedy for the breach of this Agreement but shall be in addition to all other remedies available at law or in equity to the non-breaching party.

6. RECORDS AND REPORTING. ACCA hereby agrees to abide by the following provisions with regards to record keeping and reporting and upon request shall provide said information to the CITY in a reasonable timeframe but no later than thirty (30) calendar days from said request:

- a. ACCA shall maintain books and records for each Event, the entries to which shall be supported by proper documentation. ACCA will maintain appropriate records to demonstrate attendance and tickets issued and sold for EVENTS. A settlement report for an event should include the number of tickets issued and sold, total attendance, gross box office sales, gross food and beverage revenues, gross merchandise sales and any other information as reasonably requested by CITY. ACCA shall retain all books and records in connection with EVENTS for two (2) years after the end of the Term.
- b. ACCA shall maintain adequate financial and accounting books, records and reports and shall use accounting and record systems in accordance with GAAP in the maintenance of such records.
- c. ACCA will provide reports to CITY related to general organizational matters, financial performance, programming, contract issues and any other critical concerns affecting operations at MUSIC GARDEN.

7. RIGHT TO AUDIT. ACCA shall establish and maintain a reasonable accounting system that enables CITY to readily identify ACCA's assets, expenses, costs of goods, and use of funds. CITY and its authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of ACCA including, but not limited to those kept by ACCA, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

ACCA shall, at all times during the term of this Agreement and for a period of (2) two years after the completion of this Agreement, maintain such records, together with such supporting or underlying documents and materials. ACCA shall at any time requested by CITY whether during or after completion of this Agreement, and at ACCA's own expense make such records available for inspection and audit (including copies and extracts of records as required) by CITY. Such records shall be made available to CITY during normal business hours at ACCA's office or place of business and subject to a three day written

notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for CITY.

ACCA shall ensure CITY has these rights with ACCA's employees, agents, assigns, successors, and subcontractors and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between ACCA and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of ACCA's obligations to CITY.

Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by CITY unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by ACCA to CITY in excess of one-half of one percent (.5%) of the total contract billings, ACCA shall reimburse CITY for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, CITY may recoup the costs of the audit work from ACCA. Any adjustments and/or payments that must be made as a result of any such audit or inspection of ACCA's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of CITY's findings to ACCA.

8. INSURANCE. During the term or duration of this Agreement, ACCA shall maintain, at its cost, comprehensive general liability insurance providing coverage for bodily injury, including death, and property damage in an amount not less than one million dollars (\$1,000,000.00) per occurrence and three million (\$3,000,000.00) aggregate with an insurance company acceptable to the City. ACCA shall also provide and maintain, at its cost, excess or umbrella insurance providing coverage for bodily injury, including death, and property damage in an amount not less than eight million dollars (\$8,000,000.00) with an insurance company acceptable to the City. ACCA shall name the City and its trustees, collectively and individually, officers, members, employees and/or agents as additional insureds on the foregoing policies of insurance. Such insurance coverage(s) shall specifically protect both ACCA, and the City from bodily injury, including death, and property damage claims which may arise out of this agreement. The foregoing policies of insurance shall provide that coverage will neither be cancelled nor reduced without thirty (30) days prior written notice to the City. ACCA shall provide the City with certificates of insurance for the foregoing policies of insurance as well as the additional insured endorsements naming the City and its trustees, collectively and individually, officers, members, employees and/or agents as additional insured's within thirty (30) days of the execution of this Agreement and/or upon annual renewal or replacement of said insurance. In the event that ACCA fails to obtain the foregoing insurance coverage(s), fails to name the City and its trustees, officers, members, employees and/or agents as additional insured's or fails to provide the City with the foregoing certificate of insurance and foregoing additional insured endorsements within thirty (30) days of the execution of this Agreement, and/or upon annual renewal or replacement of said insurance, this Agreement may be immediately cancelled or otherwise terminated by the City in writing without advance notice.

9. INDEMNIFICATION. During and after this Agreement, ACCA agrees to the extent allowable under applicable law, to indemnify, defend and hold CITY, and its and their respective officers, agents, attorneys, employees, successors and assigns, harmless from and against any and all expenses, damages, claims,

whether valid or invalid, suits, losses, actions, judgments, liabilities, and costs whatsoever (including reasonable attorneys' fees) arising out of, connected with, or resulting from: (i) any breach of this Agreement by ACCA including, but not limited to, breach of its representations, warranties and covenants contained herein, or failure to perform the obligations set forth herein; or (ii) the Materials or any information contained therein and the use thereof (excluding any written materials received by ACCA from CITY which have not been altered in any way by ACCA and which have been used as instructed by CITY); or (iii) misconduct or negligence of any ACCA employee in rendering SERVICES hereunder; or (iv) any claim or action for personal injury, death, property damage or salary owed to any ACCA employee, agent or contractor as a result of any of the activities and SERVICES described herein or (v) any worker's compensation or unemployment compensation claims by any ACCA employee.

10. TERM; This agreement shall commence on the date of the termination of the previous agreement, being February 1, 2022, with an initial five (5) year term ending on February 1, 2027. Thereafter this Agreement may be extended by mutual consent of both parties.

11. TERMINATION. CITY shall have the right to terminate this Agreement either:

a. Immediately and without notice upon a material default by the ACCA of its obligations hereunder. For the purposes of the foregoing, a material default shall include, without limitation, a breach of representation that it possesses the expertise and experience necessary to provide the SERVICES and successfully complete the SERVICES as described in Exhibit B in a timely manner.

b. In the event the CITY approves an offer to have the MUSIC GARDEN managed, leased or purchased by an established entertainment company. Termination effective six (6) months after the City has provided ACCA with written notice of such an offer.

Within thirty (30) days of termination all PROCEEDS shall be turned over to the CITY in full. CITY will also require final billing from ACCA within thirty (30) days of termination for reimbursables pursuant to this agreement.

12. NOTICE. All notices under this Agreement shall be made by first class mail or by electronic mail and shall be made to:

ACCA:

President & CEO, Paramount Theatre
8 E. Galena Blvd. | Suite 230 | Aurora, IL 60506
Attn: Tim Rater

CITY:

City of Aurora
44 East Downer Place
Aurora, Illinois 60507
Attn: Corporation Counsel

- 13. EFFECT OF AGREEMENT.** This Agreement shall ensure to the benefit of, and shall be binding upon the heirs, administrators, executors, and/or successors in interest of any kind whatsoever, of the parties hereto.
- 14. COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same Agreement.
- 15. RELATIONSHIP OF PARTIES.** Nothing in this Agreement shall be deemed to create any joint venture or partnership between the parties. Neither the City nor the ACCA shall have the power to bind or obligate the other, except as and to the extent expressly set forth in this Agreement.
- 16. MECHANICS' LIENS.** ACCA shall not suffer or permit any mechanic's lien to be filed against the Music Garden site, or any part thereof, by reason of work, labor, services or materials performed or supplied or claimed to have been performed or supplied. If such mechanic's lien shall be filed against the Music Garden site, or any part thereof, ACCA shall cause the lien to be discharged of record within ninety (90) days after the date of filing; provided, however, ACCA shall not be required to discharge the lien so long as ACCA shall in good faith and with due diligence contest the same by appropriate legal proceedings which shall have the effect of preventing the sale or forfeiture of the Music Garden site, or any part thereof or interest therein to satisfy the same; and, if ACCA shall fail to discharge the lien within such period, then in addition to any other right or remedy of City, City may, but shall not be obligated to, discharge the same by paying the amount claimed to be due after inquiry into its validity. Any amount paid by City in procuring the discharge of such lien and all necessary disbursements in connection therewith, with interest thereon at the rate of ten percent (10%) per annum from the date of payment, shall be repaid by ACCA on demand and if unpaid, may be deducted from any amounts due from City to ACCA.
- 17. NO THIRD PARTY BENEFICIARIES.** This Agreement is for the sole and exclusive benefit of the parties hereto and their respective successors and assigns, and no third party are intended to or shall have any rights hereunder.
- 18. SUCCESSORS AND ASSIGNS.** The rights and interest that this Agreement accords to ACCA may not be sold, transferred, assigned, pledged, encumbered or hypothecated by it, without the City's approval, which may be withheld in its discretion. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors or permitted assigns.
- 19. FORMALITIES.** Any change to or modification of this Agreement must be in writing signed by both parties hereto. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Captions for each section of this Agreement are intended for convenience only and shall not be deemed to construe or limit in any manner whatsoever this Agreement.
- 20. ENTIRE AGREEMENT.** This Agreement contains the entire agreement and understanding between the parties in respect of the subject matter hereof and supersedes any prior written or oral understandings and agreements between the parties regarding the subject matter of this Agreement.

- 21. NO WAIVER OR RELINQUISHMENT OF RIGHT TO ENFORCE AGREEMENT.** Failure of any party to this Agreement to insist upon the strict and prompt performance of the terms covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.
- 22. CITY APPROVAL OR DIRECTION.** Where City approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the City unless otherwise expressly provided or required by law or this Agreement, and any such approval may be required to be given only after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this Agreement.
- 23. SINGULAR AND PLURAL.** Wherever appropriate in this Agreement, the singular shall include the plural, and the plural shall include the singular.
- 24. AUTHORIZATION TO EXECUTE.** The officers of ACCA executing this Agreement warrant that they have been lawfully authorized to execute this Agreement on behalf of said ACCA and are lawfully authorized to execute this Agreement on their own behalf. The ACCA and the City shall, upon request, deliver to each other at the respective time such entities cause their authorized agents to affix their signatures hereto copies of all bylaws, resolutions, letters of direction, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective entities.
- 25. COUNTERPARTS.** This Agreement may be executed in two or more counterparts, each of which taken together, shall constitute one and the same instrument.
- 26. CURING DEFAULT.** The parties to this Agreement reserve a right to cure any default hereunder within thirty (30) days from written notice of such default, subject to extension if the cure cannot be reasonably effected within thirty (30) days and the party at fault proceeds diligently to effect such cure at the earliest practicable time, and subject to delay, for Acts of God, inclement weather, casualty loss, industrial or civil strife, war or other events of force majeure.
- 27. SEVERABILITY.** If any provision of this Agreement is held invalid by a court of competent jurisdiction or in the event such a court shall determine that the ACCA does not have the power to perform any such provision, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein, and such judgment or decree shall relieve ACCA from performance under such invalid provision of this Agreement.
- 28. FACILITIES, EQUIPMENT AND FURNISHINGS.** ACCA shall have access and use of the MUSIC GARDEN and John C. Dunham facilities to provide all SERVICES. Said facilities shall include but not limited to: back of house loading areas, Pavilion building, Guest Services building, and the mix tower. ACCA shall be responsible to maintain all facilities, furnishings and equipment in good condition and to return same to the City in the same condition as received, ordinary wear and tear excepted.

ACCA shall have exclusive access and use of all equipment and furnishings purchased by the City to be stored and to be used on site. Said equipment shall include but not be limited to temporary fencing, tents, tables and a base Point of Sale (“POS”) system. Prior to ACCA having full access to the facilities a complete inventory of the equipment and furnishings shall be undertaken and verified by the Parties. Said inventoried equipment and furnishings shall remain the property of the City.

ACCA may furnish and install facility enhancements, additional equipment or furnishings as it reasonably believes will enhance the operation, with prior written consent of the City. Said facility enhancements, additional equipment or furnishings shall be eligible for reimbursement under the ANNUAL MAINTENANCE REIMBURSEMENT provisions and become the property of the City. Any equipment or furnishings ACCA is not reimbursed for will remain the property of ACCA and at the termination or expiration of this Agreement, ACCA may sell its inventory of equipment or furnishings then on the premises to its successor or they shall be removed by ACCA at its sole expense.

In that a portion of the Projected Programing Revenue to be collected by ACCA will be in the form of ticket charges, alcoholic beverage sales and food/marketplace commission of sales, ACCA shall utilize a Point of Sale system (“POS”) for all such revenue from the main food vendor. The selection of said POS system provider shall be made by ACCA to ensure compatibility with ACCA’S existing POS system. This provision does not apply to food truck vendors.

In the event that ACCA utilizes the City’s communication network, ACCA agrees to abide by the City’s Computer Policies or any other policies the City deems necessary.

29. CITY CONTRIBUTION FOR FACILITY ENHANCEMENTS. Facility enhancements shall be approved by the City Council prior to purchase and reimbursement. The City agrees to reimburse ACCA for all approved facility enhancements to the MUSIC GARDEN referenced in Section 27 herein, the budget for which shall be set annually through the City’s budget process.

30. FOX RIVER TRAIL DETOURS. The use of the MUSIC GARDEN often includes portions of the Eastbank and Westbank Fox River Trails, as well as the pedestrian bridge. ACCA with prior consent of the CITY and/or the Park District, may detour said portions of the trails and/or the bridge for events at RiverEdge Park, emergency work, or repair and maintenance during which alternative open routes for the Fox River Trail for bicycle and pedestrian use shall be made available, provided that the detours shall be short term and limited in duration to the least amount of time necessary under the circumstances. It shall be the responsibility of ACCA to seek either the City’s and/or the Park District’s consent prior to detouring the bridge or trails.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first written above and the signatories hereto represent that they are duly authorized to execute the Agreement on behalf of their respective bodies.

(SIGNATURE PAGES TO FOLLOW)

AURORA CIVIC CENTER AUTHORITY

By: _____
Chairman of the Board

Attest:

President and CEO

CITY OF AURORA

By: _____
Mayor

Attest:

City Clerk

Exhibits to Agreement

Exhibit A – Location Map

Exhibit B – Services to be provided by ACCA

Exhibit C – Funding Agreements

Exhibit D – Previously Approved Intergovernmental Agreements

Exhibit E – Groot Rates

EXHIBIT A: ACCA COA 3rd IGA

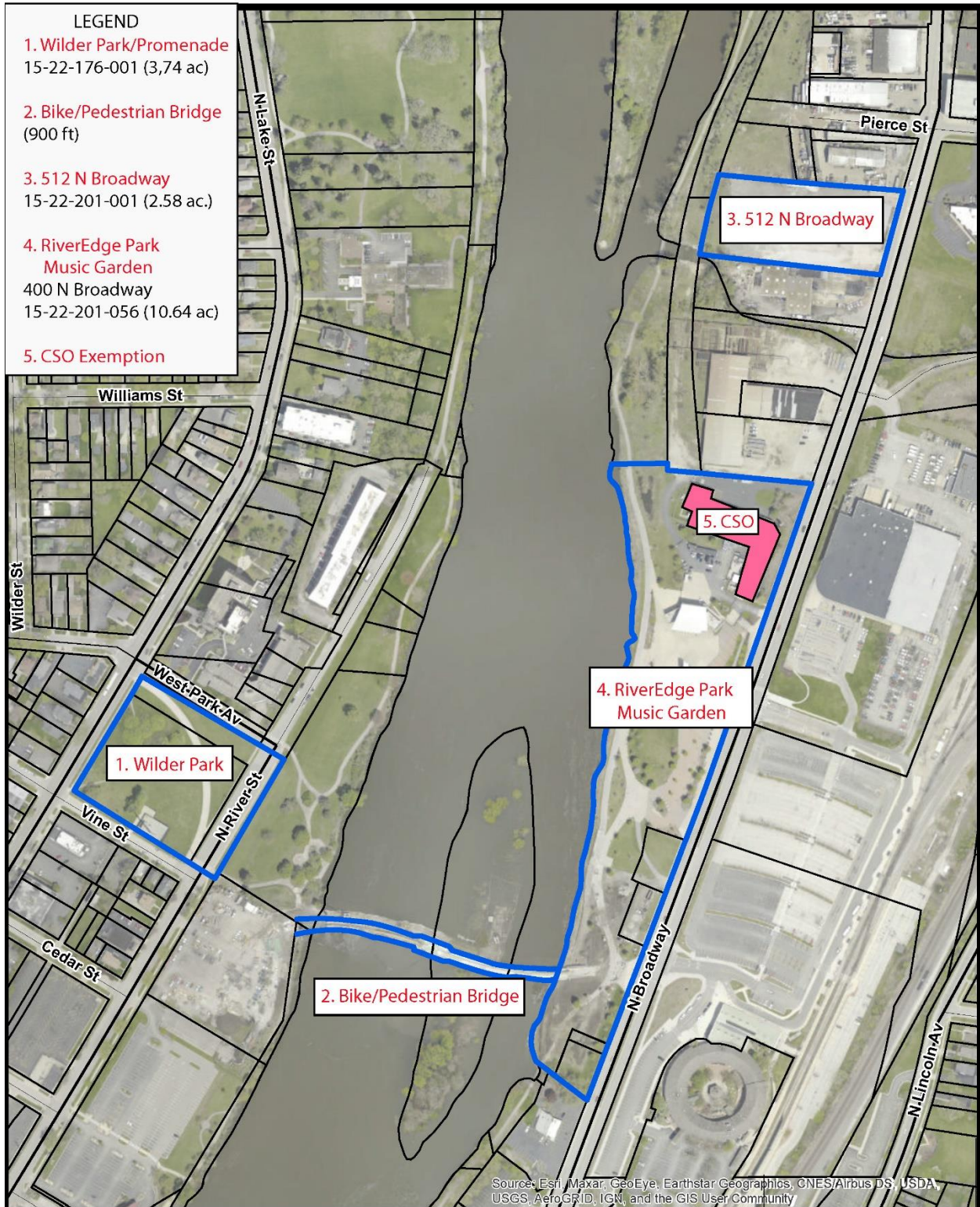


Exhibit B – Services to be provided

ACCA shall be responsible for the daily operations of the MUSIC GARDEN as well as the production, presentation and coordination of the program calendar as set for in this Agreement. ACCA agrees to operate the MUSIC GARDEN in accordance with the provisions of this Agreement and in a first-class manner consistent with the manner in which other similar venues of similar size are operated. If ACCA is not maintaining and operating the MUSIC GARDEN in accordance with the terms of this Agreement, the City shall have the right to impose such reasonable obligations as may be necessary for the MUSIC GARDEN and its operations to meet such standards. The following is a list of services that shall be provided by ACCA to the CITY for the term of this agreement to accomplish this.

1. **Services.** Services provided for in this agreement shall relate to ACCA events or City/community events. Any and all events co-sponsored by both ACCA and the City which are held at the MUSIC GARDEN shall be subject to separate terms and conditions as agreed upon by the parties.
2. **Staffing.** ACCA shall provide staff for the management, planning, sponsorship, budgeting, contracting, advertising and general duties and any necessary contracted services associated with the management of the MUSIC GARDEN. Said staffing shall include but not be limited to:
 - a. Permanent Staff – including full time and part time positions to be responsible for duties including but not limited to park management, sponsorship and development, marketing, public relations, graphic design, site coordination, facility management, production management, box office, controller, volunteer coordination and administrative support.
 - b. Event Staff – including part time positions to be responsible for duties required for EVENTS including but not limited to stage hands, set up and cleaning, private event security, beverage service, hospitality, general errands, Aurora Police Department services, and Aurora Fire Department EMT services.
 - c. Professional Services – including contracted professional services such as legal, accounting and private site security services.
 - d. In no event shall any of the employees be considered to be employees of the CITY.
3. **General Overhead and Maintenance.** ACCA shall be responsible for overseeing, coordinating and contracting for any services associated with the daily operations and maintenance of the MUSIC GARDEN. Said operations and maintenance shall include but not be limited to:

- a. Repairs and Maintenance - responsible for contracting services including janitorial services, grounds crew, landscape maintenance, and general, electrical and plumbing maintenance.
 - b. Annual Service Items - responsible for contracting services including paver brick sealant, wood siding treatment and stage deck repair.
 - c. Utilities - responsible for contracting services including gas, electric, water, sewer, communications, grease trap cleaning and fire alarm and security systems.
 - d. ACCA agrees to use Groot for waste hauling. The City will reimburse ACCA for general waste hauling; ACCA shall be responsible for the cost of event dumpsters and toters. See attached Exhibit E for Groot rates.
 - e. Off Site Office Space and Office Expenses - responsible for contracting services including office space, furniture, equipment, postage, shipping, general office supplies and bank service charges.
 - f. Seasonal Rentals - responsible for contracting services including but on-site office trailer, golf/utility carts, house sound system and video screens.
 - g. Insurance - responsible for contracting for insurance including liability insurance/general, deductible, directors and officers (D&O) insurance (if necessary) and Liquor liability/dram shop.
 - h. ACCA shall communicate with the CITY through the Central Services Superintendent for items 2a and 2b herein.
4. **Pedestrian Bridge Security** – ACCA shall be responsible for providing overnight (dusk until dawn) security for the pedestrian bridge. The City shall provide a golf cart for this purpose and will reimburse gas expenses as part of the ANNUAL MAINTENANCE REIMBURSEMENT.
 5. **Public Relations, Marketing, Website and Advertising** - ACCA shall be responsible for all marketing duties for the MUSIC GARDEN and EVENTS including but not limited to internet marketing, media buys, marketing materials, signage, promotional merchandise, and promotional parties and meetings.
 6. **Sponsorships, Rentals and Vendors** - ACCA shall be responsible for all sponsorship programs including but not limited to sponsor acquisition and activation, site rentals and vendor licensing for the MUSIC GARDEN and EVENTS.
 7. **Supplemental Equipment Rental** - ACCA shall be responsible for supplemental equipment rental for the MUSIC GARDEN and EVENTS including but not limited to site furnishings, fencing and other miscellaneous items.

8. **Event Entertainment** - ACCA shall be responsible for all talent, production and staffing for EVENTS (with the exception of COMMUNITY RENTAL EVENTS) including but not limited to artist fees and production costs.
9. **Intellectual Property** - ACCA agrees and represents that in performing services under the terms of this Agreement, it will not infringe on the property right, copyright, patent right, trademark or service mark right, protected image or likeness right, or any other right of any other person or entity; and if any suit is brought or a claim made by anyone that anything in conjunction with the services provided by ACCA ownership or the presentation of said Performance or appearance is an infringement on the property right, copyright, patent right, trademark or service mark right, protected image or likeness right, or any other right of any other person or entity; and if any suit is brought or a claim made by anyone that anything in conjunction with the services provided by ACCA is an infringement on the property right, copyright, patent right, trademark or service mark right, protected image or likeness right or other rights, ACCA will indemnify the City against any and all losses, damages of any kind, claims, lawsuits, liabilities judgments, costs and expenses, including payment of defense attorney's fees and any award of plaintiff attorney's fees, which may be brought or are brought against the City relating to or arising out of such infringement.
10. **Facilities** – ACCA shall have access and use of the MUSIC GARDEN and John C. Dunham facilities and equipment to achieve the above stated Scope of Work. Said facilities shall include but not limited to: back of house loading areas, pavilion building, guest services building, mix tower and all fixtures and equipment stored and to be used on site.

Additionally, ACCA shall also have access to the following areas for purposes of supporting events at the MUSIC GARDEN:

- a. The bicycle/pedestrian bridge for patron access;
- b. 512 N. Broadway for parking;
- c. Wilder Park for additional space for events.

11. **Operational Report** – The City may require, not more than four (4) times per year, ACCA's designated representatives to provide presentations to the City on the operations of the MUSIC GARDEN and John C. Dunham facilities, including without limitation such issues as the number of events occurring, categories of participants in said events, future plans, customer survey results, anticipated improvements and other items relating to the management and operations of the MUSIC GARDEN and John C. Dunham facilities.
12. **Designee** – ACCA shall act as the CITY'S designee with regard to City codes and ordinances, which govern the services described herein and with regard to the provisions stated in any Agreement for Main Food Vendor Services.

Exhibit C – Funding Agreements

Resolution R09-202: approved on March 12, 2009 – Resolution Authorizing an Intergovernmental Agreement Between the City of Aurora and the Fox Valley Park District Regarding Land Conveyance and Contribution for the RiverEdge Park.

Resolution R11-049: approved on March 8, 2011 – Resolution Authorizing the Mayor and City Clerk to Enter into a Grant Agreement with the Illinois Department of Commerce and Economic Opportunity for a River Edge Redevelopment Zone Grant.

Resolution R11-102: approved on April 26, 2011 – Resolution Approving an Agreement with the Dunham Fund with Regard to RiversEdge Park.

NOTE: COPIES OF THESE RESOLUTIONS ARE ON FILE IN THE CITY CLERKS OFFICE LOCATED ON THE SECOND FLOOR, OF CITY HALL BEING 44 E DOWNER PLACE, AURORA, ILLINOIS, 60505.

Exhibit D – Previously Approved Intergovernmental Agreements

The CITY and ACCA have previously entered into Intergovernmental Agreements including:

- R12-222 IGA approved by the City of Aurora by on August 28, 2012
- R13-069 IGA approved by the City of Aurora on March 12, 2013
- R13-234 IGA approved by the City of Aurora on August 13, 2013
- R14-232 IGA approved by the City of Aurora on September 9, 2014
- R15-181 IGA approved by the City of Aurora on July 14, 2015; and
- R16-348 an Intergovernmental Agreement for RiverEdge Park Music Garden Management on November 8, 2016.

Exhibit E – Groot Rates