



LAKE COUNTY FOREST PRESERVES
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Preservation, Restoration, Education and Recreation

DATE: April 4, 2016

MEMO TO: Bonnie Thomson Carter, Chair
Planning and Restoration Committee

Agenda Item# 9.8

S. Michael Rummel, Chair
Finance and Administrative Committee

FROM: Randall L. Seebach
Director of Planning and Land Acquisition

RECOMMENDATION: Recommend adoption of an Ordinance approving Amendment #3 to an Intergovernmental Agreement with County of Lake, providing for a Wetland Mitigation License Agreement at Buffalo Creek Forest Preserve.

STRATEGIC DIRECTIONS SUPPORTED: Public Access and Connections, Conservation

FINANCIAL DATA: There is no financial impact to this agreement.

BACKGROUND: The County of Lake and the District entered into an intergovernmental agreement on April 28, 2000, pursuant to which the District may grant a license allowing the County to establish a wetland bank at Buffalo Creek Forest Preserve, subject to approval of regulatory authorities. If the wetland bank is approved, the wetland credits could be used for the purpose of wetland mitigation required for the County and District due to wetland impacts from roadway and other construction projects.

The agreement required the County to have full or partial approval for the wetland bank from regulatory authorities, or to have entered into a license agreement with the District, by the 12th anniversary of the agreement's execution. Failure to comply with either requirement would then terminate the agreement.

On April 10, 2012, the District approved an ordinance to amend the original agreement, allowing an extension of two years to April 28, 2014. On April 8, 2014, the Board approved an ordinance to amend the agreement for an additional two years to April 28, 2016.

Due to necessary plan revisions, the County is requesting a third amendment to the agreement, allowing an additional two years to obtain full or partial approval of the wetland bank from the permitting agencies. The County is in the process of preparing the final plans and permitting for the project, and has asked for an extension of the termination date to April 28, 2018.

REASON FOR RECOMMENDATION: Committee recommendation and Board approval are required in accordance with District policy.

REVIEW BY OTHERS: Executive Director, Chief Operations Officer, Director of Finance, Corporate Counsel

PRESENTER: Randall L. Seebach

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

**BOARD OF COMMISSIONERS
LAKE COUNTY FOREST PRESERVE DISTRICT
REGULAR APRIL MEETING
APRIL 12, 2016**

MADAM PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:

Your **PLANNING AND RESTORATION COMMITTEE** and **FINANCE AND ADMINISTRATIVE COMMITTEE** present herewith "An Ordinance Approving Amendment #3 to an Intergovernmental Agreement with the County of Lake for a Wetland Mitigation License Agreement at Buffalo Creek Forest Preserve," and request its adoption.

PLANNING AND RESTORATION COMMITTEE:

Date: 4/4/16 Roll Call Vote: Ayes: _____ Nays: _____
 Voice Vote Majority Ayes; Nays 0

FINANCE AND ADMINISTRATIVE COMMITTEE:

Date: 4/7/16 Roll Call Vote: Ayes: _____ Nays: _____
 Voice Vote Majority Ayes; Nays 0

**LAKE COUNTY FOREST PRESERVE DISTRICT
LAKE COUNTY, ILLINOIS**

**AN ORDINANCE APPROVING AMENDMENT #3 TO AN INTERGOVERNMENTAL
AGREEMENT WITH THE COUNTY OF LAKE FOR A WETLAND MITIGATION
LICENSE AGREEMENT AT BUFFALO CREEK FOREST PRESERVE**

WHEREAS, the Lake County Forest Preserve District (the “District”) and the County of Lake (the “County”) entered into an intergovernmental agreement dated April 28, 2000 (the “Agreement”); and

WHEREAS, the Agreement provides for the exchange of land and for a future license agreement that would allow the County to use District land for the purpose of creating a wetland bank, consisting of new or enhanced wetlands, at Buffalo Creek Forest Preserve (the “Mitigation Bank”) and to use wetland credits from the Mitigation Bank to offset the effects of new public roadway construction improvements (the “Wetland Mitigation”); and

WHEREAS, the Mitigation Bank must be approved by the appropriate regulatory authorities before it may be used for Wetland Mitigation; and

WHEREAS, Section 5.D.5 of the Agreement originally stated that the Agreement shall be terminated on April 28, 2012 (the “Termination Date”) if, by that date, the County has not received full or partial approval for the Mitigation Bank, or if the County has not elected to enter into a license agreement; and

WHEREAS, on April 10, 2012 and again on April 8, 2014, the District approved amendments to the Agreement (respectively, “Amendment #1” and “Amendment #2”), extending the Termination Date to April 28, 2016, and leaving all other terms and conditions of the Agreement intact; and

WHEREAS, it is in the best interest of the District to approve a third amendment to the Agreement in substantially the form attached hereto (“Amendment #3”), extending the Termination Date to April 28, 2018, and leaving all other terms and conditions of the Agreement intact; and

WHEREAS, Section 7b of the Downstate Forest Preserve District Act, 70 ILCS 805/7b, authorizes the District to grant licenses for any activity reasonably connected with the purposes for which the District was created, such as accommodating the Wetland Mitigation; and

WHEREAS, pursuant to Section 10 of Article VII of the Illinois Constitution of 1970, units of local government, such as the District and the County may contract or otherwise associate among themselves in any manner not prohibited by law or ordinance; and

WHEREAS, pursuant to the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., any power, privilege, function, or authority exercised by a public agency, including the District and

the County, may be exercised, combined, transferred, and enjoyed jointly with any other public agency to the extent not prohibited by law;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Lake County Forest Preserve District, Lake County, Illinois THAT:

Section 1. Recitals. The recitals set forth above are incorporated as a part of this Ordinance by this reference.

Section 2. Approval of the Amendment. Amendment #3 is hereby approved in substantially the form attached hereto. The President and Secretary of the District are authorized to execute and attest to Amendment #3.

Section 3. Effective Date. This Ordinance shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this ____ day of _____, 2016

AYES:

NAYS:

APPROVED this ____ day of _____, 2016

Ann B. Maine, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Secretary
Lake County Forest Preserve District

Exhibit # _____

**AMENDMENT #3 TO INTERGOVERNMENTAL AGREEMENT
BY AND BETWEEN LAKE COUNTY FOREST PRESERVE DISTRICT
AND COUNTY OF LAKE
TERMINATING A PRIOR AGREEMENT, PROVIDING FOR
THE EXCHANGE OF LAND,
AND PROVIDING FOR A LICENSE AGREEMENT**

THIS AMENDMENT #3 is entered into this _____ day of _____, A.D. 20____, by and between the COUNTY OF LAKE, Illinois, an Illinois body politic and corporate, acting by and through its Chair and County Board, hereinafter referred to as the COUNTY, and the LAKE COUNTY FOREST PRESERVE DISTRICT, an Illinois body politic and corporate, acting by and through its President and Board of Commissioners, hereinafter referred to as the DISTRICT. The COUNTY and the DISTRICT are hereinafter referred to collectively as "parties" to THIS AGREEMENT, and either one is referred to individually as a "party" to THIS AGREEMENT.

WITNESSETH

WHEREAS, the COUNTY and the DISTRICT have entered into an agreement dated April 28, 2000 hereinafter referred to as the AGREEMENT, regarding the exchange of land for purposes of "wetland banking," that is, allowing the COUNTY to acquire a license for the purpose of creating new or enhanced wetlands ("Wetland Credits"). Wetland Credits would be used for purposes of wetland mitigation, the need for which typically arises due to a new public roadway improvements construction project(s) which effects the drainage profile of a given section of roadway; and,

WHEREAS, under the AGREEMENT, the DISTRICT would issue a license to the COUNTY, allowing the COUNTY to create a wetland mitigation "bank," in order to bank wetland mitigation credits in anticipation of its current and future wetland mitigation needs; and,

WHEREAS, the AGREEMENT outlined an arrangement under which the DISTRICT would convey to the COUNTY a parcel called the "14th Street Parcel" and the COUNTY would convey to the DISTRICT a parcel called the "Des Plaines River Property" (this has already taken place and the conveyances have been recorded); and,

WHEREAS, the Effective Date of the AGREEMENT was April 28, 2000; and,

WHEREAS, Section 5.D.5 of the AGREEMENT states that "If, on the 12th anniversary of the Effective Date, (i) the County has received neither a Full Approval nor a Partial Approval; or (ii) the County has received a Full Approval or a Partial Approval, but has not elected to enter into a license agreement, then this Agreement shall be deemed to be terminated;" and,

WHEREAS, as a result of certain timing and project coordination issues, the COUNTY and the DISTRICT executed AMENDMENT #1 to the AGREEMENT dated April 10, 2012 which extended the termination date of the AGREEMENT to April 28, 2014; and,

WHEREAS, as a result of certain timing and project coordination issues, the COUNTY and the DISTRICT executed AMENDMENT #2 to the AGREEMENT dated April 15, 2014 which extended the termination date of the AGREEMENT to April 28, 2016; and,

WHEREAS, as a result of continued timing and project coordination issues, the COUNTY and the DISTRICT recognize that it is no longer reasonably possible for either of the criteria above [labeled as (i) and (ii) above] to be satisfied on or before April 28, 2016; and,

WHEREAS, THIS AMENDMENT #3 shall effectuate an omnibus revision to the AGREEMENT, AMENDMENT #1 and AMENDMENT #2 such that the termination date ("Termination Date") of the AGREEMENT shall be extended by two (2) additional years, to April 28, 2018, with all other terms and conditions of the AGREEMENT remaining intact; and,

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, made pursuant to all applicable statutes, local ordinances and authority, the COUNTY and the DISTRICT do hereby enter into the following:

1. It is mutually agreed by and between the parties hereto that the Termination Date of the AGREEMENT shall be extended by two (2) additional years, to April 28, 2018, with all other terms and conditions of the AGREEMENT remaining intact and that THIS AMENDMENT #3 supersedes all oral agreements and negotiations between the parties hereto relating to the subject matter hereof.

**LAKE COUNTY
FOREST PRESERVE DISTRICT**

ATTEST:

Secretary
Lake County Forest Preserve District

By: _____
President

Date: _____

RECOMMENDED FOR EXECUTION

Lake County
County Engineer/
Director of Transportation

COUNTY OF LAKE

ATTEST:

Clerk
Lake County

By: _____
Chairman
Lake County of Board

Date: _____