



LAKE COUNTY FOREST PRESERVES
www.LCFPD.org

Preservation, Restoration, Education and Recreation

DATE: October 31, 2016

MEMO TO: Carol Calabresa, Chair
Land Preservation and Acquisition Committee

S. Michael Rummel, Chair
Finance and Administrative Committee

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

RECOMMENDATION: Recommend approval of a Resolution approving a long-term license agreement with the Village of Lake Villa permitting the use of designated trails at Sun Lake Forest Preserve to access an existing public utility easement.

STRATEGIC DIRECTION SUPPORTED: Conservation

FINANCIAL DATA: There is no financial impact.

BACKGROUND: Sun Lake Forest Preserve was acquired by the Lake County Forest Preserve District (the "District") in 1991. At the time of purchase the property was encumbered by a permanent underground public utility easement to the Village of Lake Villa (the "Village") recorded as document #3459064 (the "Easement").

Beginning in 2004, the District planted nearly 2000 native trees and shrubs and prairie throughout the site's former agriculture fields. Wetland restoration activity has included removal of agricultural drain tiles in order to restore the site's natural hydrology and planting of native species.

The Easement is located within the dedicated Illinois Nature Preserve section of the site.

In the spring of 2016, the Village exercised its right to use the permanent Easement as a part of an effort to bring Lake Michigan water to local residents. The Village worked closely with the Illinois Nature Preserve Commission ("INPC") and the District in cooperation to achieve the desired goals while having minimal impacts to the site. Utilizing District trails to access the easement, instead of the restored and sensitive areas within the nature preserve, whenever possible during construction, was one way this was achieved.

In an effort to reduce ecological impacts as much as possible, the District and INPC have requested that the Village enter into a license agreement with the District, pursuant to which the Village would agree to use District trails within Sun Lake Forest Preserve, instead of the restored and sensitive areas within the nature preserve, where practical, to access the easement as necessary in order to maintain, replace and inspect sewer and water lines going forward.

The attached resolution approves a long-term license agreement between the District and the Village for such purposes. It must receive the approval from the District and INPC for final execution.

REVIEWED BY OTHERS: Executive Director, Chief Operations Officer, Corporate Counsel

PRESENTER: Randall L. Seebach

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

**A RESOLUTION APPROVING A LONG-TERM LICENSE AGREEMENT
WITH THE VILLAGE OF LAKE VILLA PERMITTING THE USE OF
DESIGNATED TRAILS AT SUN LAKE FOREST PRESERVE TO ACCESS
AN EXISTING PUBLIC UTILITY EASEMENT**

WHEREAS, the Lake County Forest Preserve District (the "District") owns a certain parcel of land within Sun Lake Forest Preserve (the "Property"); and

WHEREAS, at the time the District acquired the Property, it was subject to a perpetual easement to the Village of Lake Villa (the "Village"), recorded as document #3459064 (the "Existing Easement"); and

WHEREAS, portions of the Property are located within a dedicated Illinois Nature Preserve; and

WHEREAS, to protect the restored and sensitive areas within the Property and within the Illinois Nature Preserve, the District has requested that the Village enter into a license agreement, in substantially the form attached hereto, pursuant to which the Village would, to the extent practical, use certain District trails within the Property, rather than the Existing Easement, to access the Village's sanitary sewer improvements (the "License Agreement"); and

WHEREAS, it is in the best interests of the District to approve the License Agreement in substantially the form attached hereto;

NOW, THEREFORE, BE IT RESOLVED 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 part of this Resolution by this reference.

Section 2. Approval of License Agreement. The License Agreement is hereby approved. The President, Secretary and Executive Director of the District are hereby authorized and directed to execute and attest to, on behalf of the District, the License Agreement in substantially the form attached hereto.

Section 3. Effective Date. This Resolution 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 No. _____

LICENSE FORM--A
STANDARD FORM--ACCESS TO
EASEMENT
LICENSE NO
PROJ. NO.
NOT TO BE RECORDED

**A LICENSE AGREEMENT BETWEEN THE LAKE COUNTY FOREST PRESERVE DISTRICT
AND THE VILLAGE OF LAKE VILLA PROVIDING FOR ACCESS ACROSS A PORTION OF
SUN LAKE FOREST PRESERVE**

THIS LICENSE AGREEMENT is made and entered into by and between the Lake County Forest Preserve District, a body politic and corporate (hereinafter the "District"), and the Village of Lake Villa, a body politic and corporate (hereinafter "Licensee" or "the Village").

WITNESSETH:

WHEREAS, the District owns certain property commonly known as the Sun Lake Forest Preserve, portions of which are generally depicted within the "Forest Preserve Boundary" on Exhibit A attached hereto; and

WHEREAS, pursuant to that certain "Grant of Easement and Assignment of Reserved Easement" recorded as Document Number 3549064 with the Lake County Recorder of Deeds (the "Easement Agreement"), Licensee owns certain easement rights within a portion of Sun Lake Forest Preserve legally described in Exhibit A to the Easement Agreement (the "Easement Premises"), including without limitation the rights to construct, repair, maintain, replace, and inspect or test sanitary sewer and water lines and appurtenances within the Easement Premises (collectively, the "Easement"); and

WHEREAS, Licensee desires to access the Easement Premises to perform periodic inspections and

regularly scheduled maintenance on an existing sanitary sewer line within the Easement Premises (the "Work"); and

WHEREAS, the Licensee acknowledges that Sun Lake Forest Preserve is a designated State of Illinois Nature Preserve and contains environmentally sensitive areas; and

WHEREAS, the Licensee acknowledges that it will exercise the implementation and use of the license granted in this Agreement in a manner best calculated to minimize impacts on environmentally sensitive areas; and

WHEREAS, to promote the protection of Sun Lake Forest Preserve, the District and Licensee desire that Licensee utilize a portion of the Sun Lake Forest Preserve, consisting of existing District trails and a service road, to gain vehicular access to the Easement Premises, rather than obtaining such access by using only the Easement Premises; and

WHEREAS, the parties have determined that it is reasonable, necessary and desirable for the District to grant to Licensee a long term license to utilize certain existing District trails and service road within Sun Lake Forest Preserve, strictly subject to the terms and conditions set forth herein; and

WHEREAS, the District is authorized to issue licenses pursuant to the authority conferred by the Downstate Forest Preserve District Act and the District's License and Easement Ordinance;

NOW, THEREFORE, in consideration of the promises, terms and conditions set forth herein, the parties agree as follows:

1. The recitals set forth above are incorporated herein and made substantive covenants of this Agreement.

2. The District hereby grants Licensee a long term license to utilize the portions of the District's trail system and the portions of the District's service road within Sun Lake Forest Preserve that are depicted as the "Licensed Trails" in Exhibit A, attached hereto and made a part hereof, (said portion hereinafter referred to as the "License Area") for the purpose of accessing the Easement Premises (the "License"). To the extent it is

practical, Licensee shall use the License Area, and adjacent property owned by Licensee, to obtain access to the Easement Premises to perform the Work, and shall not use the Easement Premises to perform any portion of the Work if it is practical to utilize the License herein granted and the License Area to perform such portion of the Work, but the District does acknowledge that some repairs will unavoidably require the use of the Licensee's Easement Agreement or the Easement Premises because to do otherwise would be unsafe and/or prohibitively expensive. The Licensee shall require any Contractor or subcontractor employed by the Licensee to strictly abide by the terms of this Agreement. The Licensees shall legally dispose of all debris on the License Area or Easement Premises resulting from the Work. To enable Licensee to use the License Area, the District shall keep the License Area open or, if it uses a gate to close or regulate access to the License Area, provide to Licensee a key to unlock such gate.

3. The District reserves the right in its discretion to maintain, re-route, or designate alternative paths of access based on past, present and future restoration efforts in conjunction with upholding their mission of the District, and any deviation from the route must be approved by the District, provided, however, that if the Licensee determines that any proposed re-route or alternative paths of access are not feasible, or not reasonably practical, the Licensee may terminate this License Agreement upon sixty (60) days written notice to the District without any cost or penalty, and the Village may rely on the access and other rights provided to the Village by the aforesaid Easement Agreement which remains in full force and effect.

4. The District shall waive all District fees otherwise payable by Licensee that are related to this license, in consideration of (i) the Village's existing right to access the Easement Premises and Licensee's agreement, notwithstanding such right, to use the License in performing the Work, and (ii) the District's determination that it is in the best interest of the District to allow the use of the trail system to minimize ecological impacts at Sun Lake Forest Preserve.

5. The License granted herein will be effective on January 1, 2017 (the "Effective Date"), will have a term of five years, and will automatically renew for an additional five-year term, unless a party to this

Agreement sends the other party a notice of termination not less than 60 days before the end of the initial term or renewal term, as the case may be.

6. Except in cases where the Licensee determines to be an emergency, the Licensee shall notify the District's designated project representative no less than 48 hours prior to commencing Work in the License Area or Easement Premises, but the Licensee shall endeavor to give the District such notice as practical, given the emergency nature of the repair. Except in cases where the Licensee determines to be an emergency as aforesaid, before commencing Work, Licensee shall coordinate with and meet at Sun Lake Forest Preserve with District staff, as necessary to ensure that the routes of access of equipment within the Sun Lake Forest Preserve are appropriate and that high quality natural areas, locations of rare, threatened or endangered species are avoided. An "emergency" is a sudden and unexpected occurrence which presents a threat of physical harm to persons or property as reasonably determined by the Village and may include, but shall not be limited to, an interruption in water or sewer service due to a main break.

7. Licensee shall not use equipment within the License Area that is heavier than an all-terrain vehicle such as a Gator or similar sized equipment, unless (i) the use of heavier equipment has been approved by the District's Project Representative or (ii) the Village has reasonably determined that it necessary to use heavy equipment for safety reasons or because it would be prohibitively expensive to do otherwise. The Licensee shall stage all equipment outside the boundaries of Sun Lake Forest Preserve and prior to any equipment entering the site it shall be power washed and free of invasive plant propagules. Confirmation of the power washing shall be provided to the District's project representative prior to the commencement of the work. The District's project representative may inspect any and all equipment at any time.

8. Licensee shall not, and shall not allow its contractors to, use or perform any Work within the Licensed Premises or the Easement Premises between April 15 to July 1, unless the Village determines that emergency access is required. Emergency access shall not require the District's prior approval, but the Licensee shall endeavor to give the District such notice as possible, given the emergency nature of the work.

Non-emergency work occurring outside of the April 15 to July 1 window shall be dependent upon current conditions and shall be minimized if it is believed that Work could result in damage to Sun Lake or compromise the breeding of endangered or threatened species.

9. Licensee shall promptly restore and repair any damage to the License Area and any other District property, including without limitation any damaged trees, shrubs, or other vegetation or landscaping, and any improvements therein such as the trails or service roads, resulting, directly or indirectly, from the use of the License or the License Area. All restoration and repair work shall be performed in accordance with the specifications established by the District and shall be subject to the approval of the District's Executive Director. When restoration or repair work requires seeding, as determined by the District, Licensee shall (i) use a seed mix approved by the District, with seeds collected from a source within 100 miles of Lake County, (ii) provide written notice received by the District's Project Representative 48 hours before seeding, so the District's Project Representative may be on site to collect seed labels prior to any seed being sowed, and (iii) where an erosion control blanket is deemed necessary by the District's Project Representative it shall meet the specifications of North American Green S75BN (Twine netting, no plastic netting shall be accepted) or an approved equal. In the event Licensee fails to properly restore or repair the License Area or other District property within thirty (30) days after receipt of written notice from the District demanding the restoration or repair, the District shall have the right to take such action as it deems necessary to perform the restoration or repair work, which shall include the authority to engage the services of an independent contractor. Licensee shall reimburse the District for the costs and expense of such restoration and repair work, including (i) out of pocket costs incurred by the District and (ii) if the District uses its own employees, equipment, and capital to complete any restoration or repair work, the internal costs to the District of such use, as determined by the District, within thirty (30) days of its receipt of the District's written demand for such payment.

10. The Licensee shall obtain all necessary permits or other approvals required for the Work. The Licensee shall also comply with all applicable federal, state, and local laws, rules and regulations (including,

but not limited to, those relating to safety and District ordinances) whenever it performs any Work on the License Area or exercises any rights conferred under this Agreement, except that Licensee will not be required to pay any additional fees or costs otherwise imposed by District ordinances that would otherwise be applicable to the License.

11. If the Village performs any Work it shall provide insurance for that Work in accord with the Certificate of Insurance attached hereto and made part hereof as Exhibit B.

Except as otherwise required by the District's Executive Director, any contractor or subcontractor performing Work shall be required by the Licensee to purchase and maintain insurance coverage which will satisfactorily insure Licensee and the District as additional insureds, against claims and liabilities which may arise out of such Work. Such insurance shall be issued by companies licensed to do business in the State of Illinois and approved by the District, provided, however, the Licensee may provide substantially the equivalent coverage through the intergovernmental self-insurance pool in which Licensee is a member. The insurance or self-insured substantially equivalent coverage shall include the following:

(A) Workers' compensation insurance with limits as required by the applicable workers' compensation statutes. The employer's liability coverage under the workers' compensation policy shall have limits of not less than \$1,000,000 each accident/injury; \$500,000 each employee/disease; \$500,000 policy limit.

(B) Commercial general liability insurance protecting Licensee and the District against any and all public liability claims which may arise in the course of using the License Area. The limits of liability shall be not less than \$2,000,000 each occurrence bodily injury/property damage combined single limit and \$2,000,000 aggregate bodily injury/property damage combined single limit. The policy of commercial general liability insurance shall include contractual liability coverage and an endorsement naming the District as an additional insured.

(C) Commercial automobile liability insurance covering Contractor or subcontractors owned, non-

owned and leased vehicles which protects Licensee and the District against automobile liability claims whether on or off the District's premises with coverage limits of not less than \$1,000,000 each accident bodily injury/property damage combined single limit.

(D) Umbrella or Excess liability insurance with limits of not less than \$1,000,000 each occurrence bodily injury/property damage combined single limit and \$1,000,000 aggregate bodily injury/property damage combined single limit which protects the District and the Licensee. The Umbrella or Excess coverage shall apply in excess of the limits stated in subparagraphs (B) and (C) above, and shall either include an endorsement naming the Licensee and District as an additional insureds or provide "following form" coverage.

12. Licensee shall furnish the District with certificates of insurance or self-insurance and, upon the District's request, copies of all insurance policies and endorsements thereto evidencing the coverages required under paragraph 10. The insurance certificates and policies shall provide that no cancellation or modification of the policy or policies shall occur without at least 30 days' prior written notice to the District. Licensee shall not enter upon the License Area until evidence of the required insurance has been received and approved by the District. The self-insurance of the Licensee is hereby preapproved by the District so long as it is maintained in amounts no lower than those established in Exhibit B. All deductible and self-insured retentions shall be stated. Licensee's insurance shall be primary and not require contribution by the District's insurance.

13. Licensee shall defend, hold harmless, and indemnify the District and all of its officers, agents, employees and elected officials from any loss, damage, demand, liability, cause of action, fine, judgment or settlement, together with all costs and expenses related thereto (including reasonable expert witness and attorney fees), that may be incurred by the District as a result of bodily injury, death or property damage or as a result of any other claim or suit of any nature whatsoever arising from or in any manner connected with, directly or indirectly, the negligent or intentional acts or omissions of Licensee pertaining to the Work or the use of the License Area or the negligent or intentional acts or omissions of any independent contractor or

subcontractor that is engaged by Licensee to perform any Work or that is permitted to utilize the License Area. Licensee shall require all such independent contractors or subcontractors to agree to defend, hold harmless and indemnify the District to the same extent required of Licensee under this paragraph. There are no third party beneficiaries of this Agreement. Neither the Licensee nor the District, waive, release or compromise their common law and or statutory privileges and immunities, all such being fully reserved.

Prior to the Work commencing the Licensee shall require its contractor to execute an identical hold harmless and indemnification for the benefit of the District excluding reference to privileges and immunities. .

14. If the Licensee or any of its contractors' or subcontractors' work or activities in the License Area violates this Agreement, the District's project representative may (i) require Licensee to immediately stop Work in the License Area until the issues associated with the Work or activities are fully resolved and (ii) the District may immediately terminate this Agreement by serving written notice as provided for in paragraph 15. A waiver by one party of any breach of one or more of the terms of this Agreement shall not constitute a waiver of any subsequent or other breach of the same or other term, nor shall the failure on the part of a party to require exact, full and complete compliance with any of the terms contained herein be construed as changing the terms of this Agreement or estopping the party from enforcing full compliance with the provisions herein. No delay, failure or omission of a party to exercise any right, power, privilege or option arising from any breach shall impair any right, privilege or option, or be construed as a waiver or acquiescence in such breach or as a relinquishment of any right. No option, right, power, remedy or privilege of a party to this Agreement shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, powers, privileges and remedies given each party under this Agreement and by law shall be cumulative.

15. In any legal proceeding or action, whether at law or in equity, instituted for the purpose of enforcing any provision of this Agreement, the prevailing party shall also be entitled to recover attorneys' fees.

16. All notices required to be provided under this Agreement shall be in writing and served either (a) personally during regular business hours; (b) by facsimile transmission during regular business hours; or (c)

by registered or certified mail, return receipt requested, properly addressed with postage prepaid and deposited in the United States mail. Notices served upon the District shall be directed to the Executive Director, Lake County Forest Preserve District, 1899 West Winchester Road, Libertyville, Illinois 60048. Notice to the Licensee shall be served on the Village of Lake Villa, Attn: Village Administrator, 65 Cedar Avenue, Lake Villa, IL 60046. Notices served personally or by facsimile transmission shall be effective upon receipt and notices served by mail shall be effective upon receipt as verified by the United States Postal Service.

17. Prior to commencing work the Licensee shall designate and provide to the District's project representative the name and telephone number of the Licensee's project representative who shall be available to the District's project representative Mondays through Fridays 8:30 a.m. to 5 p.m., unless such notice to the District is not practical because of the emergency nature of a repair as determined by the Licensee.

18. Licensee shall not record this Agreement, or any memorandum or other document referring hereto, without the written consent of the District's Executive Director.

19. This Agreement shall be construed in accordance with the laws of the State of Illinois. This Agreement grants a license only and the rights granted herein shall not be construed as an easement, a lease, or other interest in real property. The parties agree that any construction or determination of the rights under this Agreement as an easement, lease, or other interest in real property will result in its immediate termination, although Licensee's restoration obligations will survive such termination.

20. The provisions set forth herein represent the entire agreement between the parties and may not be modified or changed in any respect unless such modification or change is in writing and signed by both parties. Except for Licensee's agreement to use the License, instead of the Easement Premises, for access to the Easement Premises (as provided in Section 2), this Agreement is not intended to limit, delete, or restrict Licensee's rights under the Easement Agreement.

21. In the event of any termination of this License Agreement by the District or by the Licensee, the Village of Lake Villa shall still retain and be entitled to exercise all rights, duties, privileges, and

obligations as provided in the Easement Agreement aforesaid, and notwithstanding anything contained in this License Agreement to the contrary, the Village's rights under the Easement Agreement shall continue undiminished, unimpaired, and shall remain in full force and effect during the term and after the expiration of this License Agreement.

Signatures pages follow

IN WITNESS WHEREOF, the parties have entered into this License Agreement as of the _____ of

_____, 2016.

LAKE COUNTY FOREST
PRESERVE DISTRICT
1899 West Winchester Road
Libertyville, IL 60048

Village of Lake Villa
65 Cedar Ave
Lake Villa, IL 60046

BY: _____
Executive Director

BY: _____

Title: _____

ATTEST: _____
Executive Administrative Assistant






ATTEST: _____

Title: _____

EXHIBIT A

Exhibit A

Legend

-  Forest Preserve Boundary
-  Easement #7025543
-  Sun Lake Trails
-  Parking Lot
-  Licensed Trails

Lake County Forest Preserve District
1899 W Winchester Rd
Libertyville, Illinois 60048
847-968-3351
www.lcfd.org

Courtesy Copy Only.
Property boundaries indicated are provided
for general location purposes. Wetland
and flood limits shown are approximate and
should not be used to determine setbacks for
structure or as a basis for purchasing property.

Prepared using information from:
Lake County Department of Information
& Technology: GIS/Mapping Division
18 North County Street
Waukegan, Illinois 60085-4357
847-377-2373



2014 Aerial Photo

Map Prepared 2 August 2016

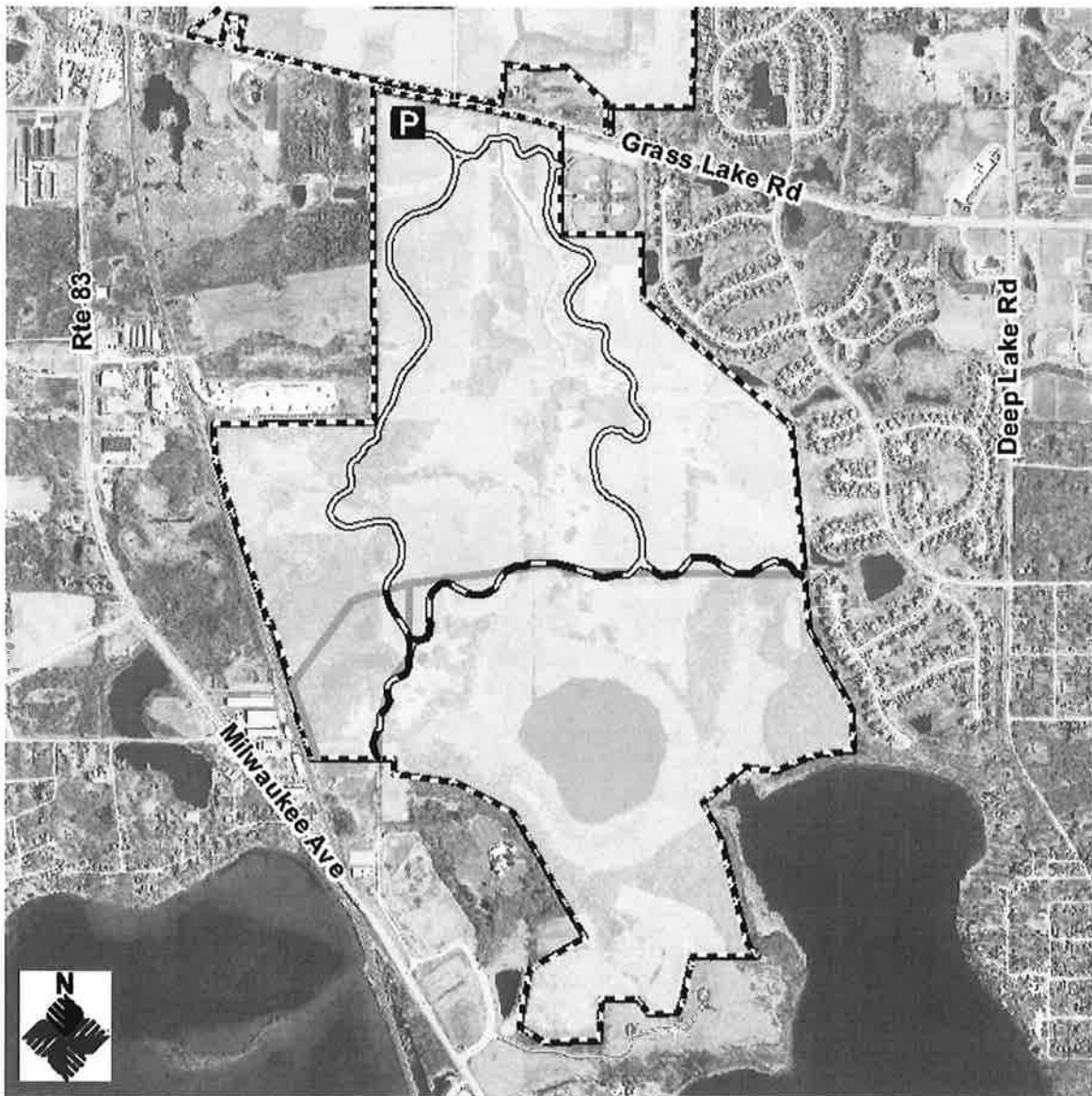


EXHIBIT B
INSURANCE REQUIREMENTS