



DATE: August 30, 2021

Agenda Item# 10.8

MEMO TO: Terry Wilke, Chair
Planning Committee

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

RECOMMENDATION: Recommend approval of a Resolution approving a License Agreement with Avon Township allowing the use of District property for a school bus turnaround at Rollins Savanna Forest Preserve. (At its August 2, 2021, meeting, the Planning Committee directed staff to negotiate the license agreement with Avon Township.)

STRATEGIC DIRECTION SUPPORTED: None

FINANCIAL DATA: Avon Township (the "Township") will pay the District a license fee in the amount of \$750.00, as well as reimburse the District for legal costs, to a maximum amount of \$5,000.00. The Township will pay a minimum of 10% of the total legal costs annually, beginning no later than the first anniversary of the license's Effective Date and then annually thereafter not later than each subsequent anniversary of the license's Effective Date, until paid in full.

BACKGROUND: In October 2001, the District granted the Township a 20-year license allowing the Township to use an area approximately 160 feet by 100 feet for a school bus turn around adjacent to Linden Avenue at Rollins Savanna. The Township requested use of this area, which is about one half mile north of Washington Street, just south of where Linden Avenue makes its first turn, due to a lack of any other safe area in which to turn school buses around. The local roads at the north end of Linden Avenue, in the small subdivision west of Third Lake, are narrow and do not have adequate room for buses to turn around, which would require potentially dangerous backing up for extended distances. The road system has not been revised since 2001, so the same conditions remain.

The existing license agreement will expire on October 7, 2021 and a new license has been negotiated by District staff and signed by the Township. The term of the new license is five years, with three five-year renewals, unless the District provides notice of termination six months prior to the expiration of the then-effective term.

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

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

**BOARD OF COMMISSIONERS
LAKE COUNTY FOREST PRESERVE DISTRICT
REGULAR SEPTEMBER MEETING
SEPTEMBER 14, 2021**

MISTER PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:

Your **PLANNING COMMITTEE** presents herewith “A Resolution approving a License Agreement with Avon Township for a School Bus Turnaround at Rollins Savanna Forest Preserve,” and requests its approval.

PLANNING COMMITTEE:

Date: 8-30-2021 Roll Call Vote: Ayes: 8 Nays: 0
 Voice Vote Majority Ayes; Nays: _____

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

**A RESOLUTION APPROVING A LICENSE AGREEMENT
WITH AVON TOWNSHIP FOR A SCHOOL BUS TURNAROUND
AT ROLLINS SAVANNA FOREST PRESERVE**

WHEREAS, the Lake County Forest Preserve District (the “District”) owns property commonly known as Rollins Savanna Forest Preserve (the “Property”); and

WHEREAS, Avon Township (the “Township”) has had an existing License Agreement for a School Bus Turnaround within the Property since 2001; and

WHEREAS, the local roads at the north end of Linden Avenue are narrow and do not have adequate room for buses to turn around, which would require potentially dangerous backing up for extended distances; and

WHEREAS, the District's Department of Planning and Land Preservation has negotiated a new license agreement with the Township, pursuant to which the Township would retain the right to use the licensed property for a period of up to 20 additional years, and the Township has executed the License Agreement; and

WHEREAS, Section 6 of the Downstate Forest Preserve District Act, 70 ILCS 805/6, authorizes the District to grant licenses under or across District property for the construction, operation, and maintenance of public services; and

WHEREAS, the District has adopted an Ordinance Regarding Licenses and Easements (the “License and Easement Ordinance”) which sets forth the general requirements for granting licenses;

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 a 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 the event that any provision of the License Agreement conflicts with the License and Easement Ordinance, the conflicting provision of the License and Easement Ordinance is hereby waived.

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 _____, 2021

AYES:

NAYS:

APPROVED this ____ day of _____, 2021

Angelo D. Kyle, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Secretary
Lake County Forest Preserve District

Exhibit No. _____

**LICENSE AGREEMENT
BY AND BETWEEN
LAKE COUNTY FOREST PRESERVE DISTRICT AND AVON TOWNSHIP**

This License Agreement (this "Agreement") is made as of the 8th day of October, 2021 (the "Effective Date") and is by and between the **LAKE COUNTY FOREST PRESERVE DISTRICT**, an Illinois unit of local government and a political subdivision, organized and existing under the Downstate Forest Preserve District Act, 70 ILCS 805/0.001 *et seq.*, with its principal office located at 1899 West Winchester Road, Libertyville, Illinois 60048 (the "District"), and **AVON TOWNSHIP**, an Illinois unit of local government with its principal office located at 433 E. Washington Street, Round Lake Park, Illinois 60073 (the "Licensee").

NOW, THEREFORE, in consideration of the recitals and the mutual covenants and agreements set forth below, the parties do hereby agree as follows:

SECTION 1. RECITALS.

A. The District holds fee simple title to that certain parcel of land commonly known as Rollins Savanna Forest Preserve as shown and depicted on Exhibit A (the "Subject Property").

B. Licensee has jurisdiction over that certain public right of way located adjacent to the Subject Property commonly known as Linden Avenue, which is generally depicted on Exhibit A.

C. The District and Licensee are parties to that certain "License Agreement by and between Lake County Forest Preserve District and Avon Township", dated October 8, 2001 (the "Original License Agreement").

D. Pursuant to the Original License Agreement, Licensee installed and currently operates, within that portion of the Subject Property located on the west side of Linden Avenue and generally depicted on Exhibit A as the "Licensed Premises", a 14-foot wide gravel turnaround suitable for use by a school bus (the "Project"). The term of the Original License Agreement ends on October 7, 2021.

E. Licensee desires to continue using Licensed Premises for the Project.

F. The District desires to allow Licensee to continue using the Licensed Premises for the Project, in accordance with this Agreement.

SECTION 2. TERMINATION OF ORIGINAL LICENSE AGREEMENT. The District and Licensee hereby acknowledge and agree that as of October 7, 2021 the Original License Agreement shall automatically terminate and be of no further force and effect.

SECTION 3. LICENSE GRANTED; TERM; LIMITATION OF INTEREST. The District hereby grants to Licensee, and Licensee hereby accepts from the District, a license to allow Licensee to improve, maintain, and use the Licensed Premises for the Project (the "License") for a term of five (5) years, beginning October 8, 2021 and ending on October 7, 2026 (the "Initial Term"), and for any "Extension Period" defined in, and exercised by Licensee pursuant to, Section 10 (the Initial Term and any Extension Period are, collectively, the "Term"). The License shall terminate immediately upon the District Executive Director's receipt of written notice from the Avon Township Highway Commissioner that Linden Avenue or local subdivision roads have been improved to provide for safe and adequate bus traffic. The License is a contractual right only, is not an interest in real property, and does not touch and concern, or run with, the land, and Licensee does not and will not have any legal, beneficial, or equitable interest in the Subject Property itself. Without limiting the preceding sentence, the License is subordinate to any easement within the Easement Premises.

SECTION 4. LICENSE FEE AND REIMBURSEMENT. The Licensee shall pay the District a monetary fee of \$750.00 for the License ("License Fee"). Licensee shall pay the License Fee upon the full execution of this Agreement. Licensee shall send the License Fee to the District address identified in Section 21. Licensee shall also reimburse the District, within

30 days after receiving any invoice, for all costs and expenses incurred by the District related to the Project or this Agreement, including without limitation legal fees, costs related to expenses, inspection expenses, and the value of time spent by staff related to the Project (the "District-Incurred Costs"); however, with respect to District-Incurred Costs incurred prior to the Effective Date (the "Initial District-Incurred Costs"), Licensee may make installment payments as provided below. Licensee acknowledges that District-Incurred Costs may be incurred by the District throughout the term of the License. Licensee's obligation to reimburse the District for District-Incurred Costs is capped at \$5,000.00 during the Term. Licensee may reimburse the District for the Initial District-Incurred Costs in annual installments, each of which will be not less than 10% of the Initial District-Incurred Costs. Licensee shall pay the first installment not later than the later of (i) the 30th day after Licensee's receipt of an invoice for the Initial District-Incurred Costs and (ii) the first anniversary of the Effective Date. Licensee shall pay each subsequent installment not later than each subsequent anniversary of the Effective Date. Licensee may pre-pay any installment. If this Agreement is terminated pursuant to Section 12, then the entire unpaid amounts of the Initial District-Incurred Costs and any other District-Incurred Costs will then be due and payable.

SECTION 5. USE OF THE LICENSED PREMISES.

A. Conduct of the Project; Plans. The Project shall be conducted in a good and workmanlike manner by Licensee at its sole cost and expense, and any work conducted within the Licensed Premises shall comply with plans prepared by or on behalf of Licensee and approved in writing by the District's Executive Director ("Plans"), and with all applicable federal, state and local laws, statutes, ordinances, rules and regulations ("Applicable Laws"). The Licensee shall not store vehicles, equipment, materials or supplies on or under the Licensed Premises other than those reasonably necessary for the near-term performance of the Project. During the Term and to protect District property, Licensee shall utilize silt fencing and such other erosion control measures that the District, in its reasonable discretion, deems necessary or desirable to protect the Licensed Premises or other property, which measure may, in the District's discretion be different, and more restrictive, than those measures, if any, provided in the Plans.

B. As-Built Drawings. Within thirty (30) days after Licensee completes any installation, removal, replacement, or alteration that is part of the Project or that is on or under the Licensed Property, Licensee shall provide the District with two complete sets of "as-built" drawings depicting such work.

C. Bond. Prior to performing any part of the Project during the term of this Agreement, the Licensee shall, or shall require its contractor or agent (a "Licensee Contractor") to, deposit with the District a certified or cashier's check made payable to the District in the amount of \$500.00 as a guarantee that the Licensee shall comply with all conditions of this Agreement, including without limitation, restoration of the Licensed Premises. Refund of such funds shall be in the manner prescribed by the "Ordinance Regarding Licenses and Easements of the Lake County Forest Preserve District," approved December 10, 2019, as amended from time to time (the "License and Easement Ordinance").

D. District's Retained Rights. The District shall have and retain all rights to cultivate, use, and occupy the Licensed Premises in any manner that does not materially interfere with the Project or Licensee's rights under this Agreement, and the Project shall not unreasonably interfere with the District's use and occupancy of the Licensed Premises.

E. Prohibited Uses. Licensee shall not permit the Licensed Premises to be used for any unlawful purpose or in any manner that will unreasonably disturb visitors to the Licensed Premises or the Subject Property or other members of the public.

SECTION 6. RESTORATION AND DELIVERY UPON EXPIRATION.

A. Restoration. In the event that the Project damages or causes any adverse impact to the Licensed Premises, or any property owned by the District, the Licensee shall restore such property to a condition, at least as good as the condition existing before such damage or adverse impact, no later than thirty (30) days after its receipt of notice of such damage or adverse impact. Such restoration shall include, without limitation: (a) replacement and grading of any and all topsoil removed; (b) restoration of any and all fences, roads, trails, paths, pavement, plantings, landscaping, or improvements that are damaged or removed; and (c) replacement of any and all sod removed with sod of like quality.

B. Delivery of Licensed Premises upon Expiration. At the expiration of the Term, or the earlier termination of this Agreement, Licensee shall deliver the Licensed Premises to the District in a condition that is as good as the condition of the Licensed Premises as of the Effective Date, ordinary wear and tear excepted.

SECTION 7. HAZARDOUS MATERIALS. Licensee (i) with respect to the Project and its use of the License and the Licensed Premises, shall comply with all Applicable Laws that prohibit, restrict, or regulate any material defined therein as a hazardous, radioactive, toxic or carcinogenic material, substance, pollutant, or contaminant (collectively, "Hazardous Materials"); and (ii) shall not, and shall not permit any person to, handle, bury, store, retain, refine, produce, spill, allow to seep, leak, escape or leach, pump, pour, emit, empty, discharge, inject, dump, transfer or otherwise dispose of or deal with Hazardous Materials in, on, under, or about the Licensed Premises or any other District property.

SECTION 8. LIMITATION OF LIABILITY. The District shall not be liable or responsible for any damage arising from or related to Licensee's failure to properly perform any work associated with the Project.

SECTION 9. INSURANCE. Licensee shall maintain, at all times during the Term, the insurance coverages and minimum limits set forth in this Section 9. All insurance policies shall be issued from insurance companies holding at least an "A5" or better rating as rated by A.M. Best Company. All policies shall name the District as an additional insured.

A. **Worker's Compensation and Employer's Liability.** Licensee shall maintain workers' compensation and employer's liability insurance with limits of not less than:

- (1) Worker's Compensation: Statutory
- (2) Employer's Liability:
 - a. \$1,000,000 - injury per occurrence
 - b. \$ 500,000 - disease per employee
 - c. \$ 500,000 - disease policy limit

Such insurance shall evidence that coverage applies in the State of Illinois.

B. **Comprehensive General Liability:** Licensee shall maintain comprehensive general liability ("CGL") insurance with limits of not less than:

- (1) General Aggregate: \$2,000,000
- (2) Bodily Injury:
 - a. \$ 2,000,000 - per person
 - b. \$ 2,000,000 - per occurrence
- (3) Property Damage:
 - a. \$ 2,000,000 - per occurrence
 - b. \$ 2,000,000 - aggregate
- (4) Other Coverages:
 - Premises/Operations
 - Independent Contractors
 - Personal Injury (with Employment Exclusion deleted)
 - Broad Form Property Damage Endorsement
 - Blanket Contractual Liability (must expressly cover all indemnity provisions of the contract)
 - Bodily Injury and Property Damage "X", "C", and "U" exclusions shall be deleted

All employees shall be included as insureds. If such CGL insurance contains a general aggregate limit, it shall apply separately to this Agreement, with coverage written on an "occurrence" basis.

C. **Comprehensive Motor Vehicle Liability:** Licensee shall maintain comprehensive motor vehicle liability with limits for vehicles owned, non-owned or rented, not less than:

- (1) Bodily Injury:
 - a. \$ 500,000 - per person
 - b. \$1,000,000 - per occurrence
- (2) Property Damage:
 - a. \$ 500,000 - per occurrence

b. \$ 1,000,000 - aggregate

All employees shall be included as insured's.

- D. **Umbrella Policy.** The required coverages may be in any combination of primary, excess and umbrella policies. Any excess or umbrella policy must provide excess coverage of underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.
- E. **Evidence of Insurance.** Licensee shall, within ten (10) days after execution and delivery of this Agreement by Licensee and, thereafter, within ten (10) days after receipt of a request from the District, furnish the District with certificates of insurance acceptable to the District and, if requested by the District, applicable policy endorsements executed by a duly-authorized representative of each insurer, evidencing compliance with the insurance requirements of this Section 9.

SECTION 10. EXTENSIONS OF TERM. The Term will be extended for three (3) additional periods (each, an "Extension Period") of five (5) years each, unless the District provides written notice to the Licensee, not less than six (6) months before the expiration of the Term, that the Term will not be extended, in which case the License will terminate and will not be extended at the end of the Term.

SECTION 11. COMPLIANCE WITH LAWS. The Licensee shall use the Licensed Premises only in compliance with all Applicable Laws, including, without limitation, the License and Easement Ordinance, and shall obtain any permits, licenses, easements, grants or any other permission that may be required for the Project. If there is a conflict between this Agreement and the License and Easement Ordinance, this Agreement will control.

SECTION 12. TERMINATION.

A. **District's Right to Terminate for Default.** If, at any time during the Term (i) Licensee fails to comply with or fulfill any of the terms or conditions of this Agreement, including without limitation failure to complete any of its obligations or failure at any time to timely pay any License Fee or other amounts due to the District under this Agreement (each, a "Default"); and (ii) Licensee fails to remedy such Default within 30 days after receiving written notice thereof, then the District shall have the right, but not the obligation, to terminate this Agreement.

B. **Licensee's Right to Terminate for Convenience.** In addition to its right to terminate in Section 3, at any time during the Term, Licensee may terminate this Agreement by providing the District with 30 days advance written notice of such termination.

C. **Reversion of Rights.** If this Agreement is terminated pursuant to Section 3 or this Section 12, all rights granted to Licensee hereunder shall immediately revert to the District, and the District shall immediately upon such termination have the full right to use the Licensed Premises in any manner whatsoever.

SECTION 13. INDEMNIFICATION. Except to the extent attributable to the negligence or intentional acts or omissions of the District or its commissioners, officers, agents, or employees, Licensee shall hold harmless, indemnify and defend the District, its commissioners, officers, agents, attorneys and employees against any and all losses, expenses, claims, costs, causes and damages, including without limitation litigation costs and attorneys' fees, on account of (i) any failure on the part of Licensee to perform or comply with any terms or conditions of this Agreement, or (ii) any personal injuries or death or damages to property arising from, occurring, growing out of, incident to, or resulting directly or indirectly from the License granted herein or the use of the Licensed Premises by Licensee (collectively, "Claims"). The obligations of Licensee pursuant to this Section 13 shall not be limited by the amounts of any insurance provided by Licensee, including the insurance provided pursuant to Section 13 of this Agreement.

SECTION 14. ENTRY. The District, including its commissioners, officers, agents, attorneys and employees, may at any reasonable time enter the Licensed Premises to inspect and to ensure compliance with this Agreement.

SECTION 15. TIME OF ESSENCE. Time is of the essence in the performance of all of the obligations of this Agreement.

SECTION 16. ASSIGNMENT; USE BY OTHERS. Licensee shall not, without the prior express written approval of the District, which approval may be withheld in the sole discretion of the District, (i) re-license the Licensed Premises or any part thereof or (ii) assign this Agreement or any of Licensee's rights or obligations under this Agreement.

SECTION 17. APPLICABLE LAW. This Agreement shall be interpreted under and governed by the Applicable Laws of the State of Illinois, without regard to conflict of law principles. Venue for all lawsuits filed to enforce, or with claims relating to, this Agreement will be the Illinois Circuit Court for the Nineteenth Judicial Circuit, Lake County, Illinois.

SECTION 18. ENFORCEMENT COSTS; SURVIVAL OF CAUSE OF ACTION. In the event either party hereto institutes legal action or proceedings to enforce the obligations of the other party under this Agreement, the non-prevailing party shall reimburse the prevailing party for all reasonable attorney fees and costs incurred in connection therewith. If a party's cause of action for a default under this Agreement accrues prior to expiration of the Term or earlier termination of this Agreement, then cause of action shall survive such expiration or termination.

SECTION 19. ENTIRETY. This Agreement merges and supersedes all prior negotiations, representations and agreements between Licensee and the District and constitutes the entire agreement between the parties as to their respective rights relative to the Licensed Premises. No prior agreement or understanding pertaining to any such matter or activity shall be effective for any purpose.

SECTION 20. SEVERABILITY; WAIVER. If any provision of this Agreement shall be held invalid, the validity of any other provision contained herein that can be given effect without such invalid provision shall not be affected thereby. If a party waives the breach of any term, condition, covenant or obligation of this Agreement, that waiver shall not be considered to be a waiver of any subsequent breach of that same term, condition, covenant, or obligation or of any other term, condition, covenant or obligation or of.

SECTION 21. NOTICES. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed received by the addressees thereof when delivered in person on a business day at the address set forth below or on the third business day after being deposited in any main or branch United States post office, for delivery at the address set forth below, by properly addressed, postage prepaid, certified or registered mail, return receipt requested.

Notices and communications to the District shall be addressed to, and delivered at, the following address:

Lake County Forest Preserve District
1899 West Winchester Road
Libertyville, IL 60048
ATTN: Executive Director

Notices and communications to the Licensee shall be addressed to, and delivered at, the following address:

Avon Township
433 East Washington Street
Round Lake, Illinois 60073
ATTN: Highway Commissioner

By notice complying with the requirements of this Section, each party may change the address or addressee or both for all future notices to it, but no notice of a change of address or addressee shall be effective until actually received. This provision will not invalidate any notice that is actually received.

SECTION 22. AMENDMENTS AND MODIFICATIONS. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by all parties to this Agreement in accordance with all requirements of law.

SECTION 23. NO THIRD PARTY BENEFICIARIES. No claim as a third party beneficiary under this Agreement by any person shall be made, or be valid, against the Licensee or the District.

SECTION 24. COUNTERPARTS. This Agreement may be executed in counterpart, each of which shall constitute an original document, which together shall constitute one and the same instrument.

SECTION 25. AUTHORITY TO EXECUTE. Each person executing this Agreement hereby warrants and represents that he or she is properly authorized to do so and to bind the party on whose behalf he or she is executing.

[SIGNATURE PAGE TO FOLLOW]

The parties have caused this Agreement to be executed on the dates set forth below, but effective as of the Effective Date.

AVON TOWNSHIP

By: Michele Bauman
Name: Michele Bauman
Title: Supervisor

Date: 8/11/2021

WITNESS:

By: Kristal Larson
Name: Kristal Larson
Title: Clerk

Date: 8/11/2021



LAKE COUNTY FOREST PRESERVE DISTRICT

By: _____
Angelo Kyle
President

Date: _____

ATTEST:


By: _____
Julie Gragnani
Board Secretary

Date: _____

EXHIBIT A

Exhibit A

Legend

 Subject Property  Licensed Premises



Lake County Forest Preserve District
1899 W Winchester Rd
Libertyville, Illinois 60048
847-958-3351
www.LCFPD.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 Dept. of Information
& Technology: GIS/Mapping Division
18 North County Street
Waukegan, Illinois 60085-4357
847-377-2373



Map Prepared 5 May 2021

