



Lake County Forest Preserves

General Offices
1899 West Winchester Road
Libertyville, Illinois 60048
847-367-6640 • Fax: 847-367-6649
www.LCFPD.org

DATE: June 6, 2022

MEMO TO: Terry Wilke, Chair
Planning Committee

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

Agenda Item# 10.5

RECOMMENDATION: Recommend approval of a Resolution approving a License Agreement with the Libertyville Fire Protection District for an outdoor emergency warning siren and utility pole on District property near the entrance of Old School Forest Preserve.

STRATEGIC DIRECTION SUPPORTED: None.

FINANCIAL DATA: Libertyville Fire Protection District ("Libertyville FPD") will pay the District a license fee in the amount of \$750.00 and reimburse the District for all costs and expenses incurred by the District related to the Project or the Agreement, up to \$5,000.00.

BACKGROUND: In February 2002, the District granted the Libertyville FPD a 20-year license allowing it to install a radio-activated siren on a utility pole near the entrance to Old School Forest Preserve for severe weather warnings. It is an outdoor warning siren which is intended to be inaudible to people within buildings. Because it is solar powered, no utility connection is needed.

The original license agreement expired on February 14, 2022. Since then, two short-term licenses have been signed, the most recent of which is set to expire on June 14. A new license agreement has been negotiated by District staff for approval by both parties. The term of the new license is five years, with three five-year renewals, each of which may be exercised by the Libertyville FPD (unless it is in default) 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 JUNE MEETING
JUNE 14, 2022**

MISTER PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:

Your **PLANNING COMMITTEE** presents herewith “A Resolution approving a License Agreement with the Libertyville Fire Protection District for an Outdoor Emergency Warning Siren at Old School Forest Preserve,” and requests its approval.

PLANNING COMMITTEE:

Date: 6-6-2022 Roll Call Vote: Ayes: _____ Nays: _____
 Voice Vote Majority Ayes; Nays: 0

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

**A RESOLUTION APPROVING A LICENSE AGREEMENT WITH
THE LIBERTYVILLE FIRE PROTECTION DISTRICT FOR AN OUTDOOR
EMERGENCY WARNING SIREN AT OLD SCHOOL FOREST PRESERVE**

WHEREAS, the Lake County Forest Preserve District (the "District") owns property commonly known as Old School Forest Preserve (the "Property"); and

WHEREAS, in 2002, the District and the Libertyville Fire Protection District ("Libertyville FPD") entered into a 20-year license agreement allowing Libertyville FPD to operate an outdoor emergency warning siren and utility pole (collectively, the "Warning Siren") within the Property; and

WHEREAS, the District's Department of Planning and Land Preservation has negotiated a new license agreement with the Libertyville FPD in the form attached hereto (the "License Agreement"), pursuant to which the Libertyville FPD would have the right to continue using licensed premises within the Property to operate, maintain, and replace the Warning Siren for a period of five years, with up to three five-year renewal periods; and

WHEREAS, it is in the best interest of the District to approve the License Agreement in substantially the form attached hereto; 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 easements and 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 in substantially the form attached hereto. 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. 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 _____, 2022

AYES:

NAYS:

APPROVED this ____ day of _____, 2022

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
LIBERTYVILLE FIRE PROTECTION DISTRICT**

This License Agreement (this "Agreement") is made as of the 14th day of June, 2022 (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 the **LIBERTYVILLE FIRE PROTECTION DISTRICT**, a Fire Protection District and unit of local government duly organized under the Constitution and laws of the State of Illinois, including but not limited to the Illinois Fire Protection District Act, 70 ILCS 705/0.01 *et seq.*, with its principal office located at 1551 North Milwaukee Avenue, Libertyville, Illinois 60048 (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 Old School Forest Preserve, a portion of which is generally depicted on Exhibit A (the "Subject Property").

B. The District and Licensee were parties to that certain "License Agreement for Emergency Warning Siren," dated February 14, 2012 (the "Original License Agreement").

C. Pursuant to the Original License Agreement, Licensee installed and operated an emergency warning siren, pole, and ancillary equipment (collectively, the "Siren") on a portion of the Subject Property. The term of the Original License Agreement expired on February 14, 2022.

D. On February 14, 2022, the District and the Licensee entered into a short-term license agreement to allow Licensee to continue using the Siren on a portion of the Subject Property (the "First Short-Term License Agreement") and further entered into another short-term license agreement on April 15, 2022 (the "Second Short-Term License Agreement", the First Short-Term License Agreement and the Second Short-Term License Agreement are collectively referred to as the "Short-Term License Agreements").

E. Licensee desires to continue operating the Siren in the same location and within that portion of the Subject Property located at the northeast intersection of St. Mary's Road and the current main exit from the Subject Property on to St. Mary's road, which portion is generally depicted on Exhibit A as the "Licensed Premises," and to maintain, repair, and replace the Siren as necessary and convenient for the benefit of the public. Licensee's use, maintenance, repair, and replacement of the Siren, within the Licensed Premises and in generally the location of the Siren depicted on Exhibit A, as provided in this Agreement, is 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 THE SHORT-TERM LICENSE AGREEMENTS. The Short-Term License Agreements shall terminate on the Effective Date and are 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 use the Licensed Premises for the Project (the "License") for a term of five (5) years, beginning on the Effective Date and ending on the fifth (5th) anniversary of the Effective Date (the "Initial Term"), and for any "Renewal Period" defined in, and exercised by Licensee pursuant to, Section 10 (the Initial Term and any Renewal Period are, collectively, the "Term"); however, any maintenance, repair, or replacement of the Siren, and any work performed within the Licensed Premises, may be performed only by a contractor engaged by Licensee that has satisfied the insurance requirements of Section 9 and the other requirements of Section 16 (a "Contractor"), and shall not be performed by Licensee. 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.

SECTION 4. LICENSE FEE AND REIMBURSEMENT. The Licensee shall pay the District a one-time monetary fee of \$750 for the License ("License Fee"). Licensee shall pay the License Fee upon District approval of this Agreement and shall send the License Fee to the District address identified in Section 21. Licensee shall also reimburse the District, promptly upon written notice thereof, for all costs and expenses incurred by the District related to the Project or this Agreement, including without limitation costs related to legal fees, expenses, inspection expenses, and the value of time spent by staff related to the Project ("District-Incurred Costs"). Licensee acknowledges that such costs and expenses 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.

SECTION 5. USE OF THE LICENSED PREMISES.

A. Repair or Replacement of Siren; Plans. If the Siren needs to be maintained, repaired, or replaced, the Project shall be conducted in a good and workmanlike manner by Licensee's Contractor, at Licensee's sole cost and expense, and any major repair or replacement 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, and shall cause its Contractor not to, store vehicles, equipment, materials or supplies on or under the Licensed Premises other than those immediately necessary for the Project. Licensee shall, and shall cause its Contractor to, utilize silt fencing and such other erosion control measures during the Project that the District 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. If the Siren, or any of its structural components, are replaced or substantially altered (a "Replacement Project"), then, within thirty (30) days after completion of any Replacement Project, Licensee shall provide the District with two complete sets of "as-built" drawings depicting such work.

C. Bond. Prior to performing any Replacement Project during the term of this Agreement, the Licensee shall, or shall require its Contractor to, deposit with the District a certified or cashier's check made payable to the District in an amount determined by the District to be necessary for such purposes, as a guarantee that the Licensee and its Contractor 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, and the Project shall not unreasonably interfere with the District's use and occupancy of the Licensed Premises.

E. Prohibited Uses. Licensee shall not use, and shall not allow to be used, the Licensed Premises (i) for any purpose other than the Project, (ii) for any unlawful purpose, (iii) 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 cause its Contractor to restore such property to a condition, at least as good as or better than its condition 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 or better than the condition of the Licensed Premises as of the Effective Date of the Original License Agreement, 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, and shall cause its Contractor to, 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 cause its Contractor not 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, at all times during the Term, cause any Contractor to maintain, at any time that the Contractor is using the License or is present on the Licensed Premises, 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. Contractor 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: Contractor 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: Contractor 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 insureds.

- 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. RENEWAL. If Licensee (i) has substantially complied with its obligations under this Agreement during the Term; and (ii) is not in Default of this Agreement under Section 12 below, Licensee may renew the Term, upon the terms and conditions contained herein, for three (3) additional periods (each, a “Renewal Period”) of five (5) years each by providing the District with written notice of such intent not less than six (6) months before the expiration of the Term. If Licensee fails to timely provide the District with such written notice, then Licensee will have no renewal rights, the parties acknowledging that time is of the essence with respect to Licensee’s delivery of such notice.

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.

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 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. **Reversion of Rights.** If this Agreement is terminated pursuant to 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 sole negligence, or to the 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 or exclusions 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. However, Licensee may allow its Contractors to use the License granted by this Agreement, but only if, prior to such Contractor's entry upon the Licensed Premises, such Contractor has agreed in writing to comply with all of Licensee's obligations under this Agreement, in a form approved by the District's Executive Director, in his or her sole discretion and has provided proof that the Contractor has satisfied the insurance requirements of Section 9.

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.

SECTION 18. ENFORCEMENT COSTS. 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.

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 of this Agreement.

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:

Libertyville Fire Protection District
Fire Station 1
1551 North Milwaukee Avenue
Libertyville, IL 60048
ATTN: _____

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.

[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.

LIBERTYVILLE FIRE PROTECTION DISTRICT

By: Lee Haak
Name: Lee Haak
Title: Trustee / President

Date: May 9, 2022

WITNESS:

By: [Signature]
Name: James Moran
Title: Trustee / Secretary

Date: May 9, 2022

LAKE COUNTY FOREST PRESERVE DISTRICT

By: _____
Angelo Kyle
President

Date: _____

ATTEST:

By: _____
Julie Gagnani
Board Secretary

Date: _____

EXHIBIT A

Exhibit A

Legend

-  Old School Forest Preserve
-  Licensed Premises
-  Siren

Lake County Forest Preserves
1899 W Winchester Rd
Libertyville, IL 60048
847-928-3351
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 Co. Dept. of Information
& Technology: GIS/Mapping Division
18 North County Street
Waukegan, Illinois 60085-4357
847-377-2373



2021 Aerial Photo

Map Prepared 13 January 2012

