



LAKE COUNTY FOREST PRESERVES
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Preservation, Restoration, Education and Recreation

DATE: August 26, 2019
MEMO TO: John Wasik, Chair
Planning Committee
FROM: Randall L. Seebach
Director of Planning and Land Preservation

Agenda Item# 9.8

RECOMMENDATION: Recommend approval of a Resolution approving a temporary license agreement with Nagel's Oasis, LLC for the limited purposes of authorizing the District to cross Nagel's property to access Middlefork Savanna Forest Preserve for restoration purposes.

STRATEGIC DIRECTION SUPPORTED: Conservation

FINANCIAL DATA: There is no financial impact at this time.

BACKGROUND: Nagel's Oasis, LLC owns a parcel of property located off of Boulton Boulevard, east of I-94 and south of Rockland Road. This parcel is adjacent to, and west of, Middlefork Savanna Forest Preserve. The District has previously obtained licenses from Nagel's Oasis, LLC to access the western portion of Middlefork Savanna for restoration activities and the most recent license is due to expire in October 2019. The District has several on-going restoration projects in that area and it is desirable for the District to obtain a new temporary license allowing the District and its contractors to cross Nagel's Oasis, LLC's property.

Entering into a new license agreement with Nagel's Oasis, LLC will permit the District to continue to enter and cross the property owned by Nagel's Oasis, LLC to access Middlefork Savanna for restoration work. The proposed license agreement would have a term of three years, and will automatically renew thereafter for up to 3, one-year renewal terms, unless either party provides advance notice of non-renewal. In addition, Nagel's Oasis, LLC reserves an ongoing termination right within the Agreement.

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 10, 2019**

MISTER PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:

Your **PLANNING COMMITTEE** presents herewith "a Resolution approving a Temporary License Agreement with Nagel's Oasis, LLC for access to Middlefork Savanna Forest Preserve for Restoration Purposes" and requests its approval.

PLANNING COMMITTEE:

Date: Aug. 26, 2019 Roll Call Vote: Ayes: _____ Nays: _____

Voice Vote Majority Ayes; Nays: 0

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

**A RESOLUTION APPROVING A TEMPORARY LICENSE AGREEMENT WITH
NAGEL'S OASIS, LLC FOR ACCESS TO MIDDLEFORK SAVANNA FOREST
PRESERVE FOR RESTORATION PURPOSES**

WHEREAS, the Lake County Forest Preserve District (the "District") owns the property commonly known as the Middlefork Savanna Forest Preserve; and

WHEREAS, Nagel's Oasis, LLC (the "Owner") owns a parcel of property located east of I-94, south of Rockland Road and adjacent to, and west of, a portion of the Middlefork Savanna Forest Preserve (the "Nagel Property"); and

WHEREAS, the District has several on-going restoration projects within Middlefork Savanna Forest Preserve and desires a license to cross the Nagel Property for the purposes of accessing Middlefork Savanna Forest Preserve to perform this restoration work (the "License"); and

WHEREAS, the District's Department of Planning and Land Preservation has negotiated an agreement with the Owner pursuant to which the District would obtain the License from the Owner for a term of three years with an automatic renewal thereafter for up to three, one-year renewal terms, unless either party provides advance notice of non-renewal, all subject to the Owner's termination rights (the "License Agreement"); and

WHEREAS, it is in the best interest 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 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 and all other documents that are necessary to complete such transaction provided that the documents have first been approved by the District's Corporate Counsel.

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 _____, 2019

AYES:

NAYS:

APPROVED this _____ day of _____, 2019

Angelo D. Kyle, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Secretary
Lake County Forest Preserve District

Exhibit No. _____

TEMPORARY LICENSE AGREEMENT

THIS TEMPORARY LICENSE AGREEMENT (this "Agreement") is dated as of the ___ day of _____ 2019 (the "Effective Date"), and is by and between, NAGEL'S OASIS LLC, an Illinois limited liability company ("Licensor") and the LAKE COUNTY FOREST PRESERVE DISTRICT, a body politic and corporate, organized and existing under the Illinois Downstate Forest Preserve District Act, 70 ILCS 805/.001 et seq. (the "District").

WHEREAS, Licensor holds fee simple title to property with a tax parcel identification number of 15-25-102-041, which parcel is located adjacent to 13528 Boulton Blvd., Lake Forest, Illinois (the "Land"), and more particularly depicted on Exhibit A attached hereto and made a part hereof;

WHEREAS, the District maintains the Middlefork Savanna Forest Preserve (the "District Property") which is located just east of the Land and desires to gain access to the District Property by traversing that portion of the Land depicted on Exhibit A as the "Proposed Access Route Through PIN #11-25-102-041" (the "Licensed Premises"); and

WHEREAS, the District desires to enter on the Licensed Premises for the limited purposes of accessing the District Property to carry out a restoration project, and Licensor is willing to temporarily allow the District to enter onto the Licensed Premises under the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the recitals, mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Licensor and the District covenant and agree as follows:

1. GRANT OF LICENSE. Licensor hereby grants and conveys to the District, its officers, agents, employees, contractors or designees, a non-exclusive temporary license (the "License") to enter upon and across the Licensed Premises for the sole and limited purpose of pedestrian and vehicular ingress and egress to and from the District Property, staging, and such other purposes incidental to the performance of a restoration project on the District Property, pursuant to the terms and conditions set forth herein. The use of the Licensed Premises for the purposes identified in this Paragraph 1 shall be referred to in this Agreement as the "Work".

2. USE OF THE LICENSED PREMISES. The District's activities in carrying out the Work shall be confined entirely within the Licensed Premises. The District will provide reasonable advance notice to Licensor before entering the Licensed Premises to perform any Work. In the event that any equipment for the Work needs to be stored, the District shall store all such equipment on the District Property.

3. RESTORATION AND REPAIR. After the completion of Work by the District on the Licensed Premises, the Licensed Premises shall be restored to its condition existing prior to commencing the Work and any vegetation or flora shall be reseeded in accordance with the District's standard restoration procedures.

4. TERM OF LICENSE. The term of the License (the "Term") granted herein shall terminate at 11:59 p.m. on the date that is the three-year anniversary of the Effective Date of this Agreement. The License shall automatically renew for up to three, one-year renewal terms (each, a "Renewal Term") upon the expiration of the Term or the then-current Renewal Term, whichever applies, unless Licensor or the District provides written notice of non-renewal to the other party at least 30 days before the expiration of that Term or Renewal Term. Licensor may terminate this Agreement upon twenty (20) days written notice to the District.

5. RETAINED RIGHTS. Licensor shall have and retain all rights to cultivate, use and occupy the Licensed Premises and the activities of the District shall not unreasonably interfere with Licensor's use and occupancy of the Licensed Premises.

6. NO PROPERTY RIGHTS. The parties acknowledge that the Licensed Premises is the property of Licensor and that this Agreement creates contractual rights only and does not create an easement, a leasehold, or any other real property rights. The District warrants that it will not record this Agreement or a memorandum or notice of this Agreement, nor will it allow this Agreement or a memorandum or notice of this Agreement to be recorded. The District acknowledges and agrees that, upon the expiration of the License, the District shall have no further right to enter upon or across, or otherwise use, the Licensed Premises, and upon such expiration, the District shall immediately vacate and discontinue all use of the Licensed Premises.

7. INDEMNITY. The District, for itself and for those claiming by or through the District agrees to indemnify, hold harmless, defend and release Licensor, its officers, directors, board members, partners, employees, and agents (collectively, the "Licensor Indemnitees") from and against any and all liability, loss, claims, demands, liens, damages, penalties, fines, interest, costs and expenses (including, without limitation, reasonable attorneys' fees and litigation costs incurred by the Licensor Indemnitees or any of them in connection therewith) resulting or alleged to result from damage, destruction or damage of property, loss of life, or injury to persons that may arise from or is directly or indirectly due to the District's negligent acts or omissions related to use of the Licensed Premises by the District or its officers, directors, trustees, board members, partners, employees, agents and contractors (and their respective officers, directors, partners, employees, agents, contractors, guests and invitees, subsidiaries, affiliates, successors, grantees and assigns), or any of them, including the Work, except to the extent arising from the negligence or willful misconduct of the Licensor Indemnitees, or any of them, up to and subject to the additional insured coverage provided pursuant to Section 9.

8. BOND. The District shall not be required to post any bond or pay any fee in connection with this Agreement.

9. INSURANCE. The District, and in the event that the District hires any contractors to perform the Work, all contractors, shall procure, maintain and keep, in full force and effect for the entire time that the Work is ongoing hereunder, at no cost or expense to Licensor, insurance in the following coverages and minimum amounts naming Licensor as an additional insured:

COVERAGE

LIMITS

Workers' Compensation

Statutory Limits

Comprehensive Motor Vehicle Liability, including vehicles owned, non-owned or rented

\$500,000
Combined Single Limit

Commercial General Liability, with coverage written on an "occurrence" basis

\$1,000,000/per occurrence

10. COMPLIANCE WITH LAWS. This Agreement does not abrogate or supersede any laws requiring the District to obtain permits, licenses, inspections or approvals related to use of the Licensed Premises, or to any removal, repair, maintenance or operation within the Licensed Premises. Upon request, the District shall deliver to Licensor copies of any such required permits, licenses, inspections or approvals.

11. REIMBURSEMENT AND FEE. The District shall not be required to pay any fee to Licensor for the License granted herein. The District and Licensor shall each be responsible for their own costs and expenses incurred in connection with the preparation of this Agreement.

12. NOTICES. Unless otherwise expressly provided herein, any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally, by overnight courier or sent by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to Licensor:

Metro Storage LLC
13528 Boulton Boulevard
Lake Forest, Illinois 60045
Attn.: Martin J. Gallagher
Fax: 847-235-8902

If to the District:

Lake County Forest Preserve Licensor
Department of Land Preservation and Special Projects
1899 W. Winchester Road
Libertyville, Illinois 60048
Attn.: Rebecca Hegner

with a copy to:

Burke, Warren, MacKay & Serritella, P.C.
330 N. Wabash Avenue
21st Floor
Chicago, IL 60611
Attn.: Matthew E. Norton

or such other address or person as either party from time to time shall designate by written notice to the other. Personal delivery shall include delivery by commercial messenger service or overnight courier. Service by mail shall be deemed effective on the earlier of (i) actual receipt or (ii) three (3) business days after posting.

13. MISCELLANEOUS.

(a) This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and any and all prior or contemporaneous agreements, understandings, representations and statements, whether oral or written, between Licensor and the District with respect to the subject matter hereof are merged herein. This Agreement may be modified only by written instrument executed by the party sought to be bound thereby.

(b) If any term, restriction or covenant to this Agreement shall be deemed illegal or unenforceable, all of the terms, restrictions and covenants and the application thereof to all persons and circumstances subject hereto shall remain in effect to the extent permitted by law; and if any application of such term, restriction or covenant to other persons or circumstances shall remain in effect to the extent permitted by law.

(c) This Agreement may be executed in one or more counterparts, each of which taken together shall constitute one and the same original instrument.

(d) Licensor or the District shall pay all reasonable attorneys' fees and costs incurred by the prevailing party in enforcing the terms and provisions of this Agreement and in defending any proceeding to which Licensor or the District is made a party as a result of the acts or omissions of the other party.

(e) This Agreement is entered into, and shall be governed by and construed in accordance with, the laws of the State of Illinois, without regard to its conflict of laws rules.

14. EXCULPATORY PROVISION. It is expressly understood and agreed by and between Licensor and the District that, notwithstanding anything herein to the contrary, no individual member of the District's Board of Commissioners or any officer, official, representative or employee of the District or the District's Board of Commissioners shall be personally liable for any of the District's obligations hereunder, or any undertaking or covenant of the District contained herein.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Licensor and District have set their hands hereto on the day and date first above written.

LICENSOR:

NAGEL'S OASIS LLC, an Illinois limited liability company

By: _____

Name: _____

Its: _____

DISTRICT:

LAKE COUNTY FOREST PRESERVE DISTRICT, a body politic and corporate organized under the Illinois Downstate Forest Preserve District Act, 70 ILCS 805/0.001 et seq.

By: _____

Name: _____

Its: _____

EXHIBIT A

Depiction of the Land and the Licensed Premises



Legend



Lake County Forest Preserve District
 Land Preservation and Special Projects
 1899 W Winchester Rd
 Libertyville, Illinois 60048
 847-968-3351



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

Map Prepared 15 September 2014

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.

2012 Aerial Photo