

THIS DOCUMENT
PREPARED BY AND AFTER
RECORDING RETURN TO:

City of Highland Park
Department of Public Works
1150 Half Day Road
Highland Park, IL 60035

NON-EXCLUSIVE LICENSE AGREEMENT
(Installations in City-Owned Rights-of-Way)

LICENSEE NAME: _____

PROPERTY ADDRESS: _____, Highland Park, Illinois 60035

THIS NON-EXCLUSIVE LICENSE AGREEMENT ("Agreement"), dated as of this _____ day of _____, 20__ ("*Effective Date*"), by and between the **CITY OF HIGHLAND PARK**, an Illinois home rule municipal corporation ("*City*"), and _____ ("*Licensee*").

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 are hereby acknowledged, the parties do hereby mutually agree as follows:

SECTION 1. RECITALS.

A. The Licensee is the owner of the property commonly known as _____, Highland Park, Illinois, and legally described in **Exhibit A** to this Agreement ("*Property*").

B. The City is the owner of that portion of the _____ public right-of-way that abuts the Property ("*Licensed Premises*"), which Licensed Premises is depicted in **Exhibit B** to this Agreement.

C. The Licensee desires to install the following improvements within the Licensed Premises (collectively, the "*Improvements*"), which Improvements are described and depicted in greater detail in **Exhibit C** to this Agreement.

- Boulders and stones, pursuant to Section 93.063(B)(1) of "The Highland Park Code of 1968," as amended ("*City Code*")
- Carriage walks, pursuant to Section 93.063(B)(2) of the City Code

- Sprinklers and sprinkler systems, pursuant to Section 93.063(B)(3) of the City Code
- Trees and landscape materials, pursuant to Section 93.063(B)(5) of the City Code
- Materials used for the construction or reconstruction of driveways and driveway approaches, pursuant to Sections 93.063(B)(6), Section 93.115, and Sections 93.200 through 93.270 of the City Code
 - The Improvements include heating elements within a driveway approach

D. Pursuant to Sections 93.063(B) and 93.063(C), the City has approved the installation of the Improvements within the Licensed Premises, subject to the terms and conditions of this Agreement.

E. The City and the Licensee desire to enter this Agreement to set forth their respective rights and responsibilities regarding the installation and maintenance of the Improvements within the Licensed Premises.

SECTION 2. GRANT AND TERM OF LICENSE.

A. **Grant of License.** Subject to the terms and conditions set forth in this Agreement, the City hereby grants to the Licensee, and the Licensee hereby accepts, a non-exclusive revocable license, for the benefit of the Property, for the installation of the Improvements on the Licensed Premises pursuant to and in strict accordance with the terms and provisions of this Agreement (“*License*”). The Licensee acknowledges and agrees that nothing in this Agreement shall be interpreted to provide a license to the licensee to alter the Licensed Premises in any way other than for the installation of the Improvements as depicted in Exhibit C to this Agreement.

B. **Limitation of Interest.** Except for the License granted pursuant to this Agreement, the Licensee shall have no legal, beneficial, or equitable interest, whether by adverse possession or prescription or otherwise, in the Licensed Premises.

SECTION 3. INSTALLATION AND MAINTENANCE OF IMPROVEMENTS AND THE LICENSED PREMISES.

A. **Installation.** The Licensee shall install the Improvements in a good and workmanlike manner, all at the sole expense of the Licensee and subject to inspection and approval by the City, and in accordance with the following:

1. During the period of installation, the Licensee shall maintain the Licensed Premises and all streets, sidewalks, and other public property in and adjacent to the Licensed Premises in a safe, good and clean condition without hazard to public use at all times.

2. The Licensee shall promptly clean all mud, dirt, or debris deposited on any street, sidewalk, or other public property by the Licensee or any agent of or contractor hired by, or

on behalf of, the Licensee, and shall repair any damage that may be caused by the activities of the Licensee or any agent of or contractor hired by, or on behalf of, the Licensee in connection with the installation of the Improvements. If the Licensee fails to clean, or undertake with due diligence to clean, any street, sidewalk, or other public property within one hour after the City gives the Licensee notice to clean all mud, dirt, snow, ice or debris deposited on such property by the Licensee or any agent of or contractor hired by, or on behalf of, the Licensee, then the City shall have the right, but not the obligation, to cause the affected public property to be cleaned and to recover from the Licensee all costs incurred by the City in the performance of such work.

3. Any landscaping installed as part of the Improvements shall be installed in accordance with a landscaping plan to be approved in advance by the City ("*Landscaping Plan*").

B. Maintenance.

1. Acknowledgment of Licensee Obligations. The Licensee acknowledges and agrees that the Licensee, and not the City, shall be solely responsible for the maintenance, repair and replacement of the Improvements.

2. Maintenance in Proper and Working Condition. At all times during the License Term, the Licensee shall keep the Improvements in the proper condition for their intended use, in a condition of good repair, and in a safe, clean, and sightly condition clean and reasonably free of snow, ice, dirt, and other natural conditions so as to avoid and prevent any and all hazards to the public. If the Improvements include heating elements within a driveway approach, Licensee shall keep the Improvement from causing any adverse conditions on the public way, including, without limitation, the undue pooling of melted water on the adjacent roadway.

3. Alteration of Design Prohibited. Any maintenance or repair of the Improvements shall not alter the design of the Improvements as depicted in Exhibit C to this Agreement except upon the prior written consent of the City.

4. Special Landscaping Requirements.

a. All landscaping installed as part of the Improvements shall be maintained in accordance and compliance with the Landscaping Plan.

b. The Licensee shall promptly replace any of the Improvements that are not healthy and growing after one year from the date of installation.

5. Compliance with Laws. The Licensee shall keep the Improvements in compliance at all times with all applicable federal, state and City laws, statutes, codes, ordinances, resolutions, rules, and regulations, as the same have been or may be amended from time to time. Specifically, and without limit of the foregoing, all driveways and driveway approaches installed as part of the Improvements shall be constructed and maintained in strict compliance with Sections 93.200 through 93.270 of the City Code.

6. Abatement of Dangerous Condition. In the event the Improvements threaten the public health and safety, the Licensee agrees that: (a) the City shall have the right, but not the obligation, to take all necessary action to abate the dangerous condition; and (b) the

Licensee shall reimburse the City for all costs incurred by the City in the performance of such abatement.

SECTION 4. RESERVATION OF RIGHTS.

The City hereby reserves the right to use the Licensed Premises in any manner that will not prevent, impede, or interfere in any way with the exercise by Licensee of the rights granted pursuant to this Agreement. The City shall have the right to grant other non-exclusive licenses or easements, including, without limitation, licenses or easements for utility purposes, over, along, upon, or across the Licensed Premises. The City further reserves its right of full and normal access to the Licensed Premises for the maintenance of any existing or future utility located thereon.

SECTION 5. LIENS.

The Licensee hereby represents and warrants that it shall take all necessary action to keep all portions of the Licensed Premises free and clear of all liens, claims, and demands, including without limitation mechanic's liens, in connection with any work performed by the Licensee or its agents on the Licensed Premises.

SECTION 6. REIMBURSEMENT OF CITY COSTS.

In addition to any other costs, payments, fees, charges, contributions, or dedications required under applicable City codes, ordinances, resolutions, rules, or regulations, the Licensee shall pay to the City, promptly upon presentation of a written demand or demands therefor: (a) all costs incurred by the City in connection with any inspection of the Improvements; and (b) all legal fees, costs, and expenses incurred or accrued in connection with the review, negotiation, preparation, consideration, and review of this Agreement. Payment of all such fees, costs, and expenses for which demand has been made shall be made by a certified or cashier's check. Further, the Licensee shall be liable for and shall pay upon demand all costs incurred by the City for publications and recordings required in connection with the aforesaid matters.

SECTION 7. LIABILITY AND INDEMNITY OF CITY.

A. Maintenance of Licensed Premises by City. The Licensee acknowledges and agrees that the City shall not be liable for any damage that may occur to the Improvements as a result of the City's necessary maintenance responsibilities with regard to the Licensed Premises. Any maintenance, repair or replacement of the Improvements necessary as a result of such City maintenance or other work shall be at the sole cost and expense of the Licensee.

B. City Review. The Licensee acknowledges and agrees that the City is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the City's review and approval of any plans for the Improvements, or the issuance of any approvals, permits, certificates, or acceptances for the installation, or maintenance of the Improvements, and that the City's review and approval of any such plans and the Improvements and issuance of any such approvals, permits, certificates, or acceptances does not, and shall not, in any way, be deemed to insure the Licensee or any of its successors, assigns, tenants and licensees, or any third party, against damage or injury of any kind at any time.

C. **Indemnity.** The Licensee agrees to, and does hereby, hold harmless and indemnify the City and all City elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims that may be asserted at any time against any of those parties in connection with: (i) the installation, maintenance, repair or replacement of any portion of the Improvements; or (ii) the Licensee's performance of, or failure to perform, its obligations under this Agreement (collectively, "***Indemnified Claims***"), whether or not any such Indemnified Claim is due or claimed to be due in whole or in part to the active, passive, or concurrent negligence or willful misconduct or fault of the Licensee; provided, however, that this indemnity shall not apply to willful misconduct or gross negligence on the part of the City.

D. **Defense Expense.** The Licensee, only as to its own acts or omissions, shall, and does hereby agree to, pay all expenses, including legal fees and administrative expenses, incurred by the City in defending itself with regard to any and all of the Indemnified Claims.

SECTION 8. COVENANTS RUNNING WITH THE LAND.

The License and other rights granted in this Agreement, the restrictions imposed by this Agreement, and the agreements and covenants contained in this Agreement shall be rights, restrictions, agreements, and covenants running with the land, shall be recorded against the Property and shall be binding upon and inure to the benefit of the Licensee and the City and their respective heirs, executors, administrators, grantees, successors, assigns, agents, licensees, invitees, and representatives, including, without limitation, all subsequent owners of the Property, or any portion thereof, and all persons claiming under them. If any of the rights, restrictions, agreements, or covenants created by this Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such rights, restrictions, agreements, or covenants shall continue only until 21 years after the death of the last survivor of the now living lawful descendants of the current President of the United States.

SECTION 9. TERM, TERMINATION AND RESTORATION.

A. **Term.** This License shall be for a term commencing on the Effective Date of this Agreement and ending on the occurrence of a terminating event as described in Subsection 9.B.1 of this Agreement ("***License Term***").

B. Termination of License; Restoration of Licensed Premises.

1. **Termination Event.** Notwithstanding anything to the contrary in this Agreement, and without prejudice to any other rights and remedies available pursuant to Section 10 of this Agreement, either party may terminate this Agreement at any time and for any reason, with or without cause, by providing the other party with 30 days prior written notice.

2. Restoration of Licensed Premises.

a. **Licensee Obligation.** Upon termination of this Agreement, the Licensee, at its sole cost and expense, shall restore the Licensed Premises and all City-owned property as nearly as practicable to its condition as of the Effective Date, including, without

limitation: (1) replacement and grading of all topsoil removed by the Licensee; (2) restoration of all fences, roads, plantings, landscaping, and improvements as nearly as practicable to the condition immediately preceding the installation of the Improvements, if disturbed, damaged, or removed by the Licensee; (3) replacement of any and all sod removed by the Licensee with sod of like quality; and (4) replacement of any and all natural grass removed by the Licensee by seeding with a good quality seed.

b. Failure to Restore. In the event that the Licensee fails or refuses to repair, replace and/or restore the Licensed Premises or any City-owned Property that is disturbed, damaged, or removed by the Licensee, in accordance with Section 9.B.2.a of this Agreement, the City shall have the right, but not the obligation, to perform and complete the repair, restoration, and/or replacement, and to charge the Licensee for all costs and expenses, including legal and administrative costs incurred by the City, for such work. If the Licensee does not fully reimburse the City for such costs, then the City shall have the right to place a lien on the Property for all such costs and expenses in the manner provided by law. The rights and remedies provided in this Section 9.B.2.b shall be in addition to, and not in limitation of, any other rights and remedies otherwise available to the City.

C. Survival of Obligations. All obligations of the Licensee pursuant to this Agreement that have not been fully performed as of the termination of this Agreement shall survive such termination, including, without limitation, the liability and indemnity obligations set forth in Section 7 of this Agreement, and the restoration obligations set forth in Section 9.B of this Agreement.

SECTION 10. ENFORCEMENT.

A. Enforcement. The City and the Licensee may, in law or in equity, by suit, action, mandamus or any other proceeding, including, without limitation, specific performance, enforce or compel the performance of this Agreement; provided, however, that the Licensee agrees that it will not seek, and does not have the right to seek, recovery of a judgment for monetary damages against the City or any City elected or appointed officials, agents, representatives, attorneys or employees on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement.

B. Prevailing Party. In the event of a judicial proceeding brought by one party against the other party, the prevailing party in the judicial proceeding shall be entitled to reimbursement from the unsuccessful party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with the judicial proceeding.

SECTION 11. GENERAL PROVISIONS.

A. Notices. All notices required or permitted to be given under this Agreement shall be given by the parties by: (i) personal delivery; (ii) deposit in the United States mail, enclosed in a sealed envelope with first class postage thereon; or (iii) deposit with a nationally recognized overnight delivery service, addressed as stated in this Section 11.A. The address of any party may be changed by written notice to the other parties. Any mailed notice shall be deemed to have been given and received within three days after the same has been mailed and any notice given by

overnight courier shall be deemed to have been given and received within 24 hours after deposit. Notices and communications to the parties shall be addressed to, and delivered at, the following addresses:

If to the City: City of Highland Park
 1707 St. Johns Avenue
 Highland Park, IL 60035
 Attention: City Manager

with a copy to: Holland & Knight LLP
 131 S. Dearborn Street, 30th Floor
 Chicago, IL 60603
 Attention: Steven M. Elrod, Corporation Counsel

If to the Licensee: _____

 Attention: _____

B. Time of the Essence. Time is of the essence in the performance of all of the terms and conditions of this Agreement.

C. Amendments. 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 applicable statutory procedures.

D. Authority to Execute. The City hereby warrants and represents to the Licensee that the persons executing this Agreement on its behalf have been properly authorized to do so by the City. The Licensee hereby warrants and represents to the City that the Licensee has the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement.

E. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies, and benefits allowed by law.

F. Non-Waiver. The City shall be under no obligation to exercise any of the rights granted to it in this Agreement. The failure of the City to exercise at any time any right granted to the City shall not be deemed or construed to be a waiver of that right, nor shall the failure void or affect the City's right to enforce that right or any other right.

G. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

H. Severability. If any provision of this Agreement is construed or held to be void, invalid, illegal, or unenforceable in any respect, the remaining part of that provision and the remaining provisions of this Agreement shall not be affected, impaired, or invalidated thereby, but

shall remain in full force and effect. The unenforceability of any provision of this Agreement shall not affect the enforceability of that provision in any other situation.

I. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and negotiations between the parties, whether written or oral, relating to the License granted pursuant to this Agreement.

J. Interpretation. This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

K. Exhibits. Exhibits A through C attached hereto are, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.

L. 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 City or the Licensee.

M. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to constitute a duly authorized original.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF the parties hereto have caused this Licensee to be executed, effective as of execution.

LICENSEE

THE CITY OF HIGHLAND PARK

By: _____

By: _____

- Its: Director of Public Works
(for boulders and stones; or construction materials used for driveways and driveway approaches)
- City Engineer
(for carriage walks; or sprinklers and sprinkler systems)
- City Forester
(for trees and landscape materials)

ACKNOWLEDGMENT

ACKNOWLEDGEMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

STATE OF ILLINOIS)
) SS.
COUNTY OF LAKE)

This instrument was acknowledged before me on _____, 201_, by _____, the owner of record of the property located at _____, Highland Park, Illinois.

This instrument was acknowledged before me on _____, 201_, by _____, the _____ of the **CITY OF HIGHLAND PARK**, an Illinois municipal corporation.

Given under my hand and official seal this ____ day of _____, 201_.

Given under my hand and official seal this ____ day of _____, 201_.

Notary Public

Notary Public

My Commission expires: _____

My Commission expires: _____

SEAL

SEAL

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

DEPICTION OF THE LICENSED PREMISES

EXHIBIT C

DESCRIPTION AND DEPICTION OF THE IMPROVEMENTS