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Date March 7, 2022

APPROVAL OF NON-EXCLUSIVE, LIMITED INTELLECTUAL PROPERTY LICENSE FOR TRAIL LOGOS TO DES MOINES PARK AND RECREATION FOUNDATION AND AUTHORIZING PARKS AND RECREATION DIRECTOR TO EXECUTE RENEWAL AND ADDENDUMS TO LICENSE

WHEREAS, on October 5, 2020, by Roll Call Number 20-1576, the City Council approved an agreement between the Des Moines Park & Recreation Foundation d/b/a Friends of Des Moines Parks (“Friends”), Project 7 Design, Inc., and the City by which the Friends donated to the City the funds for the costs of design services by Project 7 Design for Trail Graphic Identities for emergency call signs and trail signs specific to the Neal Smith, Bill Riley, Meredith, Gay Lea Wilson, Martin Luther King, Jr., Trestle to Trestle, John Pat Dorrian, Carl Voss, and Walnut Creek Multi-Use Recreational Trails, and the City agreed to grant Friends a license to use certain of the Trail Graphic Designs upon completion of such designs for purposes of selling clothing and collectible items for fundraising to benefit the City trails and Parks and Recreation Department programs; and

WHEREAS, such Trail Graphic Identities for the above named trails have been completed; and

WHEREAS, Parks and Recreation Department staff and Friends have negotiated a 10-year Non-Exclusive, Limited Intellectual Property License, with an option for one 10-year renewal, for such trail logos for use on merchandise and collectable items such as clothing, flags, face masks, water bottles, buttons, magnets, hats, stocking caps, blankets, tote bags, posters, individual tokens, socks, scarves, stickers, towels, can coolies, bike jerseys, a copy of which is on file with the City Clerk’s Office; and

WHEREAS, such License further provides that the Director of Parks and Recreation may execute an addendum to the License to add additional licensed products and to authorize the use of different colors for the logos.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa that the Non-Exclusive, Limited Intellectual Property License for Trail Logos to Des Moines Park & Recreation Foundation as described above, a copy of which is on file in the City Clerk’s Office, is hereby approved and the Mayor is authorized and directed to sign the License on behalf of the City.

BE IT FURTHER RESOLVED that the Parks and Recreation Director is authorized to negotiate and execute addendums to such License to add licensed products bearing such trail logos and to authorize the use of different colors for the logos, subject to his determination of the best interests of the City, and subject to approval as to form by the Legal Department.

Date March 7, 2022

BE IT FURTHER RESOLVED, that the Director of Parks and Recreation is authorized to negotiate and execute a renewal addendum to such License to renew the License term for up to an additional 10 year period until December 31, 2022, subject to his determination of the best interests of the City, and subject to approval as to form by the Legal Department

(Council Communication No. 22- *095*)

Moved by _____ to adopt.

Second by _____.

APPROVED AS TO FORM:



 Ann DiDonato
 Assistant City Attorney

| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|------|----------|------|--------|
| COWNIE | | | | |
| BOESEN | | | | |
| GATTO | | | | |
| SHEUMAKER | | | | |
| MANDELBAUM | | | | |
| VOSS | | | | |
| WESTERGAARD | | | | |
| TOTAL | | | | |
| MOTION CARRIED | | APPROVED | | |
| _____ Mayor | | | | |

CERTIFICATE

I, P. Kay Cmelik, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

_____ City Clerk

NON-EXCLUSIVE, LIMITED INTELLECTUAL PROPERTY LICENSE
FOR TRAIL LOGOS

This Non-Exclusive, Limited Intellectual Property License Agreement is made and entered into as of this ___ day of _____, 2022, by and between the City of Des Moines, Iowa, a municipal corporation located at 400 Robert D. Ray Drive, Des Moines, Iowa 50309 (“LICENSOR”); and Des Moines Park & Recreation Foundation, d/b/a Friends of Des Moines Parks, an Iowa non-profit corporation (“LICENSEE”). LICENSOR and LICENSEE may also be individually identified as a “Party” and collectively as the “Parties”.

WHEREAS, LICENSOR is the owner of the various intellectual property consisting of City of Des Moines Multi-Use Recreational Trail logos shown on the attached **Exhibit B**, collectively referred to herein as the “**Intellectual Property**” or “**Logos**”; and,

WHEREAS, LICENSEE desires to obtain a license for the Intellectual Property in order to sell merchandise as described herein to raise funds to support City of Des Moines Parks and Recreation Department trails and programs and LICENSOR is willing to grant such a license pursuant to the terms of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. Grant of Non-Exclusive License.

In consideration of the obligations described in Section 2 below, LICENSOR hereby grants LICENSEE a non-transferable, non-exclusive license within the United States, subject to all the terms and conditions of this Agreement, to use the Intellectual Property in connection with the design, manufacture, advertising, promotion, distribution, and sale of Licensed Products described in **Exhibit A** in the Territory for the Term (“**License**”).

- a) This License excludes the LICENSEE from licensing third parties to use the Intellectual Property other than to create the Licensed Products.
- b) This License excludes the right to use the City of Des Moines name or logo on Licensed Products or in connection with the manufacture, advertising, promotion, distribution, and sale of Licensed Products.
- c) This License does not include the right to assert or imply an endorsement of LICENSEE or the Licensed Products or to imply or represent an endorsement or connection with the City of Des Moines in connection with the manufacture, advertising, promotion, distribution, and sale of Licensed Products.
- d) All goodwill associated with use of the Intellectual Property will inure to the benefit of LICENSOR.
- e) All Licensed Products and marketing or offers for sale of the Licensed Products must be of high quality and are to be approved by the City of Des Moines through the Parks and

Recreation Director or his/her designee. No changes to the colors or any other changes may be made to the Logos, although such may be used in all black or white if not used with a four-color format. Different colors or color combinations of the Logos may be approved by written addendum to this License signed by the Director of Parks and Recreation and LICENSEE, subject to the sole discretion of the City. No items or materials bearing the Logos other than the Licensed Products may be publicly distributed, broadcast, produced, marketed or sold without the written prior approval of the City of Des Moines.

f) All uses of the Logos must be reproduced as shown in Exhibit B, unless otherwise.

2. License Terms.

a) Licensed Products: Those high-quality clothing and other products listed in Exhibit A or by addendum to Exhibit A. Additional Licensed Products or modifications to the Intellectual Property licensed under this Agreement may be added by addendum to this License signed by the Director of Parks and Recreation and LICENSEE, subject to the sole discretion of the City.

b) Territory: United States.

c) Use of Proceeds from Net Sales: The Parties agree that the proceeds received from Net Sales of the Licensed Products will be used by the LICENSEE to promote and enable the mission of preserving, protecting, improving and promoting the use of Des Moines Parks and Recreation Department programs, parks and trails for the benefit of all neighborhoods, residents, and visitors. Net Sales are defined as the gross sales of Licensed Products shipped by Licensee minus: (1) reasonable logo and merchandise design costs; (2) shipping costs; (3) sales taxes; (4) returns actually received and processed; and (5) any usual or customary trade discounts actually granted by LICENSEE to a customer. Upon expiration of this Agreement, LICENSEE shall pay to City all resulting remaining Net Sales revenues after the Sell-Off period. LICENSEE will provide a written report of Net Sales annually beginning on February 1, 2023. The LICENSEE agrees to provide funds from the Net Sales to support projects and programs which align with actual and projected revenues from Licensed Products sales.

d) Term: January 31, 2022 through December 31, 2031, with one 10-year renewal from January 2032 through December 31, 2041 upon written addendum of renewal executed by both Parties. The City may terminate this License at any time upon 90 days' written notice in the event of purposeful violation of the approved Intellectual Property use and the terms of this License.

e) Sell Off Period: 120 days after the expiration or termination of the Agreement on a non-exclusive basis.

f) LICENSEE shall conduct its operations under this Agreement, including without limitation, its marketing and sales efforts, in a manner to uphold the integrity of the good will and

reputation of the City of Des Moines parks and in a manner which will not harm such reputation.

3) **Quality and Approval of Licensed Products.** LICENSEE shall submit proposed Licensed Products to LICENSOR for prior written approval. Within 10 business days of such submission to LICENSOR, LICENSOR shall either approve or disapprove such proposed Licensed Product. If disapproved, LICENSOR shall inform LICENSEE of the reason or reasons for such disapproval with a view towards enabling LICENSEE, if feasible, to submit a subsequent submission or submissions capable of being approved. Any proposed Licensed Product that is not either approved or disapproved within 10 business days shall automatically be deemed approved.

4) **Ownership of Designs of Licensed Products.** LICENSEE shall own all designs (excluding the LICENSOR's Intellectual Property created by LICENSEE for use in connection with this Agreement including, concepts, materials, sketches, colorations, fabrications, patterns, canvases, samples, prints, packages, labels, tags or the like which are not derivative of prior intellectual property and are unique (collectively, the "Materials") shall become the property of LICENSEE. Notwithstanding the foregoing, LICENSEE acknowledges and agrees that LICENSEE does not have exclusive rights, and is not granted exclusive rights under this Agreement, to use of images, designs, photos, etc. related to or found in City of Des Moines parks, including the images and designs depicted on the Licensed Products. Nothing herein shall limit or prohibit LICENSOR's, or any third party's, right to create and use in any manner images, designs, photos, etc, related to or found in City of Des Moines parks which are not directly derivative of LICENSEE'S unique artwork. LICENSOR retains and shall have the right to create, and license others to create and use images, photographs, designs, and derivative works of images related to or connected with the City of Des Moines, Iowa and any and all City trails and parks. At LICENSEE's sole cost, LICENSEE shall have the right to seek design patent, copyright and/or trademark protection on those aspects of the Materials that do not comprise the Intellectual Property licensed herein.

5) **Books and Records; Audits.** LICENSEE shall prepare and maintain, in accordance with generally accepted accounting principles consistently applied, appropriate books of account in which complete accurate entries shall be made concerning all transactions within the scope of this Agreement and appropriate records relating to and supporting such entries. LICENSOR and any accountant or other authorized representative of its choice shall have the right on reasonable advance notice to LICENSEE and during regular business hours, to examine and copy all or part of such books of account and records and all other records, documents and materials in the possession or under the control of LICENSEE with respect to the subject matter of this Agreement and LICENSOR shall have free and full access thereto. LICENSEE will have all records available within 10 business days of notification. All such books of account, records, and documents shall be kept available by Licensee for at least three (3) years after the termination of this Agreement.

6) **Representations and Warranties.**

a) Each Party represents and warrants to the other that it is under no legal impediment that would prevent it from entering into this Agreement or consummating the transactions

contemplated herein, and each has the full power and authority to execute and perform this Agreement.

b) LICENSOR represents and warrants that it is the sole and exclusive owner of the Intellectual Property in the Territory free and clear of any and all liens, claims or encumbrances and possesses all right, power and authority to enter into this Agreement and to grant to LICENSEE the rights conferred hereunder to use and exploit the Intellectual Property as provided herein.

7) **Relationship of Parties.**

a) Nothing contained in this Agreement shall be construed to place the parties in the relationship of legal representatives, partners, joint ventures, or agents, and LICENSEE shall have no power or authority to obligate or bind LICENSOR in any manner whatsoever or to assume or create any obligation or responsibility whatsoever, express or implied, on behalf of LICENSOR in any manner, or to make any representation, warranty, covenant, agreement or commitment for or on behalf of Licensor. LICENSEE s an independent contractor.

b) The Parties acknowledge and agree that this Agreement is an intellectual property rights license agreement and does not constitute, and shall not be construed as, a franchise agreement.

8) **Miscellaneous.**

a) Governing Law: Entire Agreement: Amendment: Termination: This Agreement shall be construed and interpreted in accordance with the laws of the State of Iowa contains the entire understanding and agreement between the Parties hereto with respect to the subject matter hereof, supersedes all prior oral and written understandings and agreements relating thereto and may not be amended, modified, discharged or terminated orally except by a writing signed by the Party against whom the modification, discharge or termination is sought to be enforced.

b) Waivers: No waiver by either Party, whether express or implied, of any provision of this Agreement, or of any breach or default thereof, shall constitute a continuing waiver of such provision or of any other provision of the Agreement. Acceptance of payments by LICENSOR shall not be deemed a waiver by LICENSOR of any violation of or default under any of the provisions of this Agreement by LICENSEE.

c) Severability: If any provision or any portion of any provision of this Agreement shall be held to be void or unenforceable, the remaining provisions of this Agreement and the remaining portion of any provision held void or unenforceable in part shall continue in full force and effect.

d) Counterparts. This Agreement may be executed by facsimile signatures and in counterparts, each of which shall be deemed an original binding contract, but both of which together shall constitute one and the same instrument.

e) Further Actions. At any time and from time-to-time, each Party agrees, without further consideration, to take such actions and to execute and deliver such documents as may be reasonably necessary to effectuate the intent and purposes of this Agreement.

f) Notices. Any notice, report, request for approval or other communication under this Agreement shall be in writing and shall be hand delivered or sent by any recognized overnight courier service. Notice shall be considered duly given at the time of delivery to the Parties' addresses below (which may be changed by providing notice in accordance with these provisions):

If to LICENSEE: Friends of Des Moines Parks
1551 East MLK Jr. Parkway
Des Moines, IA 50317
Attn: Executive Director

If to LICENSOR: Parks and Recreation Department
1551 E. MLK Jr. Parkway
Des Moines, Iowa 50317
Attn: Director

g) Compliance With Law and No Discrimination. LICENSEE, at its sole expense, shall comply with all applicable ordinances of the City of Des Moines, the laws of the State of Iowa and all other State and federal laws at its sole expense, and obtain all licenses or permits which may be required for the conduct of its business within the terms of this Agreement.

LICENSEE agrees to comply with all applicable federal, state, and local civil rights laws, specifically free from discrimination on the basis of age, race, religion, creed, color, sex, national origin, ancestry, sexual orientation, disability, gender identity, or familial status. LICENSEE further agrees to comply with § 62-71,62-72 and § 62-166 of the Des Moines Municipal Code in the operation and management of its business.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

CITY OF DES MOINES, IOWA

**DES MOINES PARK & RECREATION
FOUNDATION**

By: _____
T. M. Franklin Cownie, Mayor

By:  _____
Sarah Lohmeier, Executive Director

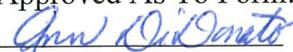
Approved As To Form:

Ann DiDonato
Assistant City Attorney

EXHIBIT A

APPROVED LICENSED PRODUCTS

LICENSEE is authorized to use the Intellectual Property on merchandise and collectable items such as clothing, flags, face masks, water bottles, buttons, magnets, hats, stocking caps, blankets, tote bags, posters, individual tokens, socks, scarves, stickers, towels, can coolies, bike jerseys.

EXHIBIT B

**INTELLECTUAL PROPERTY
TRAIL LOGOS**









































































