

**INTERGOVERNMENTAL AGREEMENT BETWEEN CITY OF ELMHURST AND
ELMHURST PARK DISTRICT FOR THE CONSTRUCTION, OPERATION AND
MAINTENANCE OF STORMWATER IMPROVEMENTS IN
GOLDEN MEADOWS PARK, ELMHURST, DUPAGE COUNTY, ILLINOIS**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2016, by and between City of Elmhurst, an Illinois municipal corporation (“City”), and Elmhurst Park District, an Illinois park district and unit of local government (“Park District”). City and Park District are hereinafter sometimes referred to individually as a “Party,” and collectively as the “Parties.”

RECITALS

WHEREAS, the City owns, operates, and maintains a storm sewer collection system, including certain ancillary facilities and improvements, throughout its corporate boundaries; and

WHEREAS, the City and its residents have experienced, and continue to experience, severe flooding during heavy rain events; and

WHEREAS, in or about April 2012, the City caused to be created the “City of Elmhurst Comprehensive Flooding Plan Stormwater Sewer System Analysis Elmhurst Illinois” prepared by Christopher B. Burke Engineering, Ltd. (“Comprehensive Flooding Plan”); and

WHEREAS, the Comprehensive Flooding Plan recommended, in part, the use of certain parks owned and operated by the Park District as possible stormwater detention sites, including the park generally located at the end of Caroline Avenue, south of East Court, in Elmhurst, Illinois and commonly referred to as “Golden Meadows Park”; and

WHEREAS, the City is committed to accomplishing the goals set forth in the Comprehensive Flooding Plan; and

WHEREAS, following the creation of the Comprehensive Flooding Plan, the Park District retained V3 Companies to perform a peer review of the Comprehensive Flooding Plan and to otherwise assist and advise the Park District with respect to the potential implementation of stormwater improvements in certain parks owned and operated by the Park District, including Golden Meadows Park; and

WHEREAS, based on reviews performed by the Parties and their respective engineers, and consultation among the Parties and their respective engineers, the Parties reasonably believe that the construction, operation and maintenance of certain stormwater improvements in portions of Golden Meadows Park is expected to reduce the frequency and severity of flooding within the Parties’ respective corporate boundaries; and

WHEREAS, the City has conducted certain environmental due diligence with respect to Golden Meadows Park and has determined that the condition of Golden Meadows Park is

suitable for the City's construction, operation, and maintenance of the stormwater improvements contemplated by this Agreement; and

WHEREAS, based on the foregoing, and in exchange for, among other things, the City's agreement to provide funding toward the Park District's acquisition of suitable replacement park property, the Park District has determined that it is in the public's interest to convey to the City fee simple title to a portion of Golden Meadows Park in order to facilitate the construction, operation, and maintenance of certain stormwater improvements in the western portion of Golden Meadows Park ("Western Park Site"), and to grant certain easement rights to the City in order to facilitate the construction, operation, and maintenance of certain stormwater improvements in the eastern portion of Golden Meadows Park retained by the Park District ("Eastern Park Site") (collectively, "Stormwater Sites"); and

WHEREAS, the City, by virtue of its power as a home rule unit of government as provided in Article VII, Section 6 of the 1970 Constitution of the State of Illinois, and Park District, by virtue of its powers set forth in Sections 8-1 and 8-11 of the Park District Code (70 ILCS 1205/8-1 and 8-11), are authorized to enter into this Agreement; and

WHEREAS, a cooperative intergovernmental agreement is appropriate and such an agreement is authorized and encouraged by Article 7, Section 10 of the Illinois Constitution and the Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*); and

WHEREAS, the Parties wish to define and establish their respective rights, responsibilities and obligations with respect to the construction, operation, and maintenance of the stormwater improvements installed in the Stormwater Detention Sites.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the Parties, the Parties agree as follows:

1. Recitals Incorporated. The foregoing recitals are incorporated herein by reference and made a part hereof as though fully set forth herein, the same constituting the factual basis for this Agreement.

2. Appraisal of the Western Park Site. In order to facilitate the conversion of Golden Meadows Park to allow the City to construct, operate, and maintain the Stormwater Improvements (as defined in Section 7 below) in the Stormwater Sites, and to facilitate the Park District's acquisition of suitable replacement park property ("Replacement Park Property"), the Parties shall, within ten (10) days of the execution of this Agreement, initiate steps to obtain an appraisal of the Western Park Site to be performed by appraisers mutually agreed upon by the Parties based on the selection protocol set forth below that conforms to the most recent versions of the Illinois Department of Natural Resource's ("IDNR") Appraisal Requirements and Instructions for Lands Acquired with IDNR Grant Assistance, IDNR's Specifications for Analytical Narrative Report, and IDNR's Appraisal Checklist, copies of which are attached hereto as Exhibit B and incorporated herein by reference (collectively, IDNR Appraisal Requirements"). The IDNR Appraisal Requirements include, among other things, IDNR's

certification of the market value of the Western Park Site. To effectuate the purposes of this Section 3, the Parties shall select three (3) MAI designated real estate appraisers licensed and in good standing in the State of Illinois. The Park District shall choose one such appraiser; the City shall choose one such appraiser; and the two chosen appraisers shall choose the third appraiser. The three chosen appraisers shall thereafter each perform an appraisal of the Western Park Site in accordance with the IDNR Appraisal Requirements. Upon completion of the three appraisals, the Parties shall reject the highest and the lowest appraisals, and shall submit the remaining appraisal to IDNR for review and its determination of the market value of the Western Park Site. The Parties acknowledge and agree that IDNR's certification of market value pursuant to this Section 2 shall constitute the fair market value of the Western Park Site ("Fair Market Value"). All appraisals obtained pursuant to this Section 2 shall be obtained at the City's sole cost and expense.

3. Funds in Escrow. Unless the City elects to terminate this Agreement pursuant to Section 16A.i. below, the Parties shall establish a strict joint order escrow account, and the City shall deposit into said account an amount of money equal to the Fair Market Value of the Western Park Site within thirty (30) days of IDNR's certification of same pursuant to Section 2 above, or such other length of time as may be mutually agreed upon by the Parties. The Parties agree that such escrowed monies are held for the benefit of the Park District to use in connection with the Park District's acquisition of Replacement Park Property following the IDNR conversion process related to Golden Meadows Park and the Stormwater Sites.

4. IDNR Approval. The conversion of Park District property for the construction of the Stormwater Improvements (as defined in Section 7 below) in Golden Meadows Park will require approval from IDNR. Unless the City elects to terminate this Agreement pursuant to Section 16A.i. below, within seven (7) days following IDNR's certification of the Fair Market value of the Western Park Site, the Parties, through their respective Executive Director and City Manager, shall jointly initiate the conversion process with IDNR staff, and shall thereafter work collaboratively to diligently pursue and secure IDNR approval for the conversion of the necessary portions of Golden Meadows Park to facilitate construction, operation, and maintenance of Stormwater Improvements (as defined in Section 7 below) in the Stormwater Sites, and shall otherwise cooperate fully with each other and take all additional actions which may be necessary or appropriate in order to consummate and make fully effective the objectives of this Agreement.

5. Conveyance of the Western Park Site. Unless this Agreement is terminated by the City pursuant to Section 16A.i. or 16A.ii. below, or unless this Agreement automatically terminates pursuant to Section 16.D. below, and assuming the City shall have otherwise fully complied with its obligations under this Agreement, specifically including but not limited to its obligations under Section 3 above, which obligations constitute a portion of the consideration for the conveyance contemplated by this Section 5, the Park District shall, within thirty (30) days following the IDNR approval of the conversion of the necessary portions of Golden Meadows Park to facilitate the construction, operation, and maintenance of Stormwater Improvements (as defined in Section 7 below) in the Stormwater Sites, deliver to the City a warranty deed conveying fee simple title to the Western Park Site free and clear of any encumbrances of record that would interfere with City's use of the Western Park Site for the purposes contemplated by

this Agreement, and shall also deliver to the City temporary and permanent easements for the Eastern Park Site as more specifically provided in Section 8 below. The timing of the conveyance of the Western Park Site contemplated by this Section 5 shall occur on a date that is mutually agreed upon by the Parties.

6. Acquisition of Replacement Park Property. The Parties agree that if IDNR approves the conversion of Golden Meadows Park and the Stormwater Sites, and the Park District subsequently enters into a bona fide real estate purchase agreement for the acquisition of Replacement Park Property in excess of the Fair Market Value of the Western Park Site, the City shall deposit an additional sum of money into the strict joint order escrow account in an amount equal to the difference between the Fair Market Value of the Western Park Site and the actual price of acquisition of the Replacement Park Property. In no event, however, shall the money required to be deposited by the City under this Section 6 exceed one and one-half (1 ½) times the Fair Market Value of the Western Park Site. Notwithstanding the foregoing, the Park District shall remain solely responsible for any acquisition costs associated with the Replacement Park Property that exceed one and one-half times the Fair Market Value of the Western Park Site. In the event that the acquisition of Replacement Park Property to satisfy the IDNR conversion requires the exercise of eminent domain, and in the event the Park District elects, in its sole discretion, to acquire Replacement Park Property through the exercise of eminent domain, the Park District shall have sole responsibility for the implementation and prosecution of the eminent domain proceedings. The Park District shall initiate good faith efforts to acquire Replacement Park Property within six (6) months following IDNR's approval of the conversion of the necessary portions of Golden Meadows Park as contemplated by Section 4 above.

7. Stormwater Improvements. The City shall, at its sole cost and expense, design and construct certain stormwater improvements in the Western Park Site ("Western Park Site Improvements") and in the Eastern Park Site ("Eastern Park Site Improvements") (collectively, "Stormwater Improvements"). The Stormwater Improvements shall be based upon, and shall in all respects fully comply with, the Plans and Specifications, a copy of which is attached hereto and incorporated herein by reference as Exhibit A. The Parties specifically acknowledge that the plans and specifications attached hereto as Exhibit A at the time of execution of this Agreement may be preliminary in nature. Accordingly, the Parties agree that the Plans and Specifications, once completed, shall be attached to this Agreement as Exhibit A and shall replace any preliminary plans and specifications attached hereto at the time of execution. The Parties, through their respective Executive Director and City Manager, shall execute an appropriate document confirming the attachment of the Plans and Specifications to this Agreement as being the final Plans and Specifications for purposes of this Agreement.

8. Easements. To facilitate the construction, operation and maintenance of the Stormwater Improvements, the Park District shall grant to the City certain temporary construction easement rights and certain perpetual access and maintenance easement rights in and to the Eastern Park Site to be used for stormwater management purposes. The temporary construction easement and perpetual access and maintenance agreement shall be in substantially the form attached hereto as Exhibit C and incorporated herein by reference, subject to such additional modifications as mutually agreed to by the Parties in writing.

9. Review of City's Plans and Specifications.

A. The City shall submit to the Park District for review and comment the proposed plans and specifications for the Stormwater Improvements to be constructed by the City in the Stormwater Sites pursuant to this Agreement. The City shall submit the plans and specifications, including but not limited any construction documents, at the following intervals: (i) sixty-five percent (65%) complete, including preliminary design; (ii) 95% complete; and (iii) final plans and specifications. The proposed plans and specifications shall be prepared in accordance with all applicable City ordinances, County of DuPage Ordinances, and State and Federal statutes, rules, and regulations. The City shall conduct at least one public informational meeting regarding the proposed plans and specifications, and shall attend and participate in such other public meetings reasonably requested by the Park District.

B. The Park District shall review the plans and specifications prepared by the City, and such other items or documents reasonably required by the Park District to complete its review. Provided the plans and specifications are complete, and the City has provided any other items or documents reasonably requested by the Park District to complete its review, the Park District shall review and notify the City of any errors in, objections to, or other comments regarding the plans and specifications within ten (10) business days of the Park District's receipt of the complete set of proposed plans and specifications and any other items or documents reasonably requested.

C. The City and the Park District shall work cooperatively to address any errors, objections or other comments raised by the Park District with respect to the Eastern Park Site Improvements, and the City shall incorporate any changes or modifications reasonably requested by the Park District. The City shall have ten (10) business days following its receipt of any errors in, objections to, or other comments raised by the Park District with respect to the Eastern Park Site Improvements to notify the Park District regarding any requested changes or modifications the City deems unreasonable. The City and the Park District must agree on a final set of plans and specifications for the Eastern Park Site Improvements, and such agreement and approval shall not be unreasonably withheld, conditioned or delayed by either Party. Once agreed upon by the Parties, the final plans and specifications shall be known as the "Approved Plans and Specifications." Notwithstanding the foregoing, Park District's review and agreement as to any plans and specifications, including but not limited to the Approved Plans and Specifications, shall not constitute, nor be construed as, a certification or warranty as to the accuracy, appropriateness, or effectiveness of any plans and specifications or the Approved Plans and Specifications.

D. Park District shall have no liability for any errors, omissions, or other defects in any plans or specifications, including the Approved Plans and Specifications, and its approval shall not constitute a limitation on or waiver by Park District of its rights under this Agreement or a defense by the City to the exercise by Park District of its remedies for City's breach of its obligations under this Agreement or as a basis for the City to avoid its indemnification obligations under this Agreement.

10. Schedule of Construction. The Parties shall reasonably cooperate in coordination of the construction, operation and maintenance contemplated by this Agreement or any exhibits hereto, so as to minimize any adverse impact on Park District operations, including but not limited to Park District's use of the Eastern Park Site. Prior to bidding any work to be done pursuant to this Agreement, the City shall submit a sample schedule to the Park District for such work for preliminary approval. The City shall notify the Park District at least thirty (30) days prior to commencement of construction, staging or site preparation for any construction, operation and maintenance contemplated by this Agreement or any exhibits attached hereto. The City shall also provide the Park District with a copy of the construction schedule for any construction, operation and maintenance contemplated by this Agreement or any exhibits attached hereto, as the same may be revised from time to time and otherwise give the Park District reasonable advance notice of any planned activities on or in the Eastern Park Site that may affect the Park District's conduct of its normal activities or operations. Any construction schedule provided by the City under this section shall be based upon prior consultation with the Park District, and shall be designed, to the greatest extent practicable, to minimize any adverse impact on Park District operations, including but not limited to Park District's use of the Eastern Park Site.

11. Demolition of Facilities or Improvements. If it is necessary for the City to demolish any Park District facilities or improvements in order to fully implement the Plans and Specifications, the City shall be responsible for the full cost of such demolition. The City shall give the Park District as much advance notice of such demolition or site preparation as practicable, but in no event less than seven (7) business days advance notice, to allow the Park District sufficient time to salvage or remove any facilities or improvements. Prior to the City's commencement of any work to be done pursuant to this Agreement, the City shall videotape the condition of the site and perform a walkthrough of the site to establish the condition of the site before such work and/or demolition is performed.

12. Restoration of the Eastern Park Site.

A. Following the City's completion of any of the Eastern Park Site Improvements contemplated by this Agreement and any exhibits attached hereto, the City shall, at its sole cost and expense: (i) restore all affected portions of the Eastern Park Site and any other affected portions of Park District owned property to the same or better condition as existed immediately prior to the commencement of any activity thereon by the City and as established by the preconstruction videotape walkthrough; (ii) repair all damage to the Eastern Park Site, any improvements located thereon, and any other affected portions of Park District owned property; and (iii) replace all lost or destroyed items upon notice to the City and a reasonable time thereafter to perform such replacement.

B. In the event that the City's construction, operation, or maintenance of the Stormwater Improvements requires the removal of any existing trees in the Eastern Park Site, or in the event that any existing trees in the Eastern Park Site die within a two year

period after performance under this Agreement as a result of the construction, operation, or maintenance of the Stormwater Improvements, the City shall be obligated, except as otherwise provided herein, at its sole cost and expense, to replace the affected “quality” tree or trees according to the following terms:

- i. Trees are to be evaluated based upon diameter at breast height (“DBH”). The DBH of multiple trees shall not be added together except in the case of multi-stem trees. Multi-stem trees shall have their trunks measured individually, and then an average of DBH of the trunks shall be used to get a single DBH size for evaluation purposes.
- ii. No volunteer or scrub trees shall be evaluated for reimbursement unless agreed upon by the City and the Park District.
- iii. The cost of removal shall not be deducted from the replacement values.
- iv. Trees that are diseased, infested, or would otherwise be removed, shall not be evaluated for reimbursement (e.g., all Ash trees due to Emerald Ash Borers; American Elm currently diagnosed with Dutch Elm Disease; trees in a dead, dying, declining and/or severely damaged condition).
- v. Replacement values for trees (number of trees and/or monetary values) shall be calculated using the measured DBH modified by the species rating located at the Illinois Arborist Association website (www.illinoisarborist.org) for Northern Illinois Tree Ratings. Base tree replacements shall be made on a “1 for 1” DBH replacement (once adjustments are made).
- vi. Replacement values are calculated at \$133/inch in DBH. Replacement trees must be at least two and one half (2.5) inches in diameter and six (6) feet above the ground.
- vii. All replacement trees shall be of a variety selected by the Park District and shall be installed in a location determined by the Park District.
- viii. The Park District may also elect, in its sole discretion, to forego tree replacement and instead receive cash replacement value for some or all of the replacement trees contemplated by this paragraph 12.B. Any cash replacement value received by the Park District shall be used for tree replacement in public park locations.
- ix. Prior to the commencement of work pursuant to this Agreement or any addenda attached hereto, the Parties shall identify all dead, dying or

invasive trees located in the Eastern Park Site that should be removed, but, not subject to replacement under the terms provided herein.

- x. The City shall warrant the condition of the replacement trees for a period of one year.

D. All restoration, repair and replacement shall be completed to the reasonable satisfaction of Park District within thirty (30) days after the completion of the Stormwater Improvements or, if due to weather conditions or other circumstances which in the Park District's opinion would make any such restoration, repair and replacement inadvisable, then within such later time period as the Park District reasonably shall request.

13. Maintenance and Repair of the Stormwater Improvements. The City shall maintain the Eastern Park Site Improvements in such a manner so as to ensure that said stormwater improvements remain in good working order and repair at all times, and will further ensure that the stormwater improvements comply at all times with applicable federal, state and local law, including the ordinances and regulations of the County of DuPage and the City of Elmhurst. In the event that the Park District determines that the City is not in compliance with the terms of this paragraph in relation to the Eastern Park Site, the Park District shall provide the City written notice of said noncompliance. Upon receipt of said notice, the City shall have thirty (30) days to commence the necessary measures to cure said noncompliance. Notwithstanding the above thirty (30) day cure period, the City shall take immediate action to cure said noncompliance in the case of an emergency likely to cause immediate harm, damage or danger to surrounding property or to the public or private health, safety or welfare.

14. Indemnification and Hold Harmless. To the fullest extent permitted by law, the City agrees to indemnify, defend, save and hold harmless the Park District, and its elected and appointed officials, officers, employees, agents, and volunteers (individually and collectively, the "Park District's Indemnitees") from and against any and all liabilities, claims, losses, and/or demands for personal injury and/or property damage, including reasonable attorneys' fees, arising out of or caused by any act or omission of the City, any of its contractors or subcontractors, anyone directly or indirectly employed or engaged by any of them, or anyone for whose acts any of them may be liable, arising out of or in connection with any work or activity performed pursuant to this Agreement, the grants of easement contemplated by this Agreement, any work or activity performed on or in the Eastern Park Site which relates to or involves the Stormwater Improvements constructed and installed by the City, and/or any work or activity performed in connection with the City's construction, operation, or maintenance of the Stormwater Improvements. (The items in the preceding sentence for which indemnification is required are hereinafter referred to as "Claims"). Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph. The City shall similarly protect, indemnify and hold and save harmless Park District's Indemnitees from and against any and all claims, costs, causes, actions and expenses including but not limited to court and administrative costs, reasonable attorneys and paralegal fees (collectively, "Legal Fees") incurred by reason of the City's failure to fully perform any of its obligations under, and/or

City's breach or default of or under, any provision of this Agreement. It is expressly acknowledged and agreed by the City that it is City's intention that the obligations of the City contained in this paragraph with respect to Claims shall be broadly construed and applied in favor of Park District's Indemnitees, excluding indemnification of Park District's Indemnitees for their negligent, willful and/or intentional misconduct. It is further agreed by the City that failure of the City to indemnify, defend and hold harmless Park District's Indemnitees as provided in this paragraph shall constitute a breach of a material term of this Agreement.

15. Insurance. At all times while this Agreement remains in effect, each party shall procure adequate insurance and/or self-insurance to protect itself, its officers, employees and agents from any liability for bodily injury, death and/or property damage in connection with the Stormwater Improvements constructed pursuant to this Agreement or any exhibits attached hereto.

16. Termination.

A. The City may, in its sole discretion, declare this Agreement, including any exhibits attached hereto, null and void by sending the Park District the appropriate notice pursuant to Section 22 below based on and in accordance with the following:

- i. Within thirty (30) days of IDNR's certification of the Fair Market Value of the Western Park Site pursuant to Section 2 above.
- ii. At any time prior to the construction of any of the Stormwater Improvements contemplated by this Agreement or any exhibits attached hereto.

B. In the event of termination by the City pursuant to Section 16.A.ii. above, all monies deposited by City into the joint escrow account shall be returned to City as soon as practicable following proper notice of termination to the Park District pursuant to Section 22 below, but only if such notification occurs prior to: (i) the Park District's execution of a bona fide purchase and sale agreement for Replacement Park Property; and (ii) the Park District's conveyance of the Western Park Site to the City as contemplated by Section 5 above.

C. The Park District may, in its sole discretion, declare this Agreement, including any exhibits attached hereto, null and void by sending the City the appropriate notice pursuant to Section 22 below in the event the City does not enter into an agreement for the construction of the Eastern Park Site Improvements contemplated by this Agreement or by any exhibits attached hereto within two (2) years from the execution date of this Agreement. In the event of termination pursuant to this Section 16.C. all monies deposited by the City into the joint escrow account shall be returned to the City as soon as practicable following proper notice of termination to Park District, but only if such notification occurs prior to: (i) the Park District's execution of a bona fide purchase and sale agreement for Replacement Park Property; and (ii) the Park District's conveyance of the Western Park Site to the City as contemplated by Section 5 above.

D. This Agreement shall terminate immediately and without further action of the Parties, and shall be null and void and of no further force or effect, upon receipt of IDNR's final written decision denying the Park District's request for conversion of Golden Meadows Park and/or conveyance to the City of the Western Park Site. In the event of termination pursuant to this Section 16.D. all monies deposited by the City into the joint escrow account shall be returned to the City as soon as practicable following Park District's receipt of IDNR's final written decision denying the Park District's request for conversion of Golden Meadows Park and/or conveyance to the City of the Western Park Site.

17. No Waiver. No waiver of any rights which Park District has in the event of any default or breach by City under this Agreement shall be implied from the failure by Park District to take any action on account of such breach or default, and no express waiver shall affect any breach or default other than the breach or default specified in the express waiver and then only for the time and to the extent therein stated.

18. Entire Agreement. This instrument contains the entire agreement between the Parties relating to the rights granted herein and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect, and any modifications to this Agreement must be in writing and must be signed by all Parties to this Agreement.

19. Severability. Invalidation by judgment or court order of any one or more of the covenants or restrictions contained herein shall in no way affect any other provisions which shall remain in full force and effect.

20. Law Governing. The laws of the State of Illinois shall govern the terms of this Agreement both as to interpretation and performance.

21. Captions and Paragraph Headings. Captions and paragraph headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.

22. Notices. All notices provided for herein shall be served upon the Parties by personal delivery, email, fax or Certified United States mail, return receipt requested, at the following locations, or at such other location or locations as the Parties may from time to time designate in writing:

Notice to Park District:
Executive Director
Elmhurst Park District
375 W. 1st Street
Elmhurst, IL 60126

Notice to City:
City Manager
City of Elmhurst
209 N. York St.
Elmhurst, IL 60126

Notices shall be deemed given when received by the Party to whom it was sent.

23. No Waiver of Tort Immunity. Nothing contained in this Agreement is intended to constitute nor shall constitute a waiver of the rights, defenses, and immunities provided or available to either Party under the Illinois Local Governmental and Governmental Employees Tort Immunity Act with respect to claims by third parties.

24. No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement, or to acknowledge, establish, or impose any legal duty to any third party.

25. Compliance with Laws. The Parties shall comply with all applicable federal, state, county, and local statutes, ordinances, rules, regulations, and codes.

26. Counterparts. This Agreement may be executed in counterparts that, taken together, will be effective as if they were a single document. Signatures transmitted by a .pdf file or facsimile shall be treated as originals.

27. Prevailing Party. The prevailing party in any suit or action to enforce the provisions of this Agreement shall be entitled to recover his or her costs in enforcing this Agreement, including reasonable attorneys' fees.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

ELMHURST PARK DISTRICT

CITY OF ELMHURST

President, Board of Park Commissioners

Mayor

ATTEST:

ATTEST:

Secretary, Board of Park Commissioners

City Clerk

EXHIBIT A

Plans and Specifications

EXHIBIT B

IDNR Appraisal Requirements

EXHIBIT C

Form Temporary Construction Easement and Perpetual Access
and Maintenance Easement Agreement