

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF
ELMHURST AND THE ELMHURST PARK DISTRICT FOR THE
CONSTRUCTION OF STORMWATER IMPROVEMENTS**

THIS INTERGOVERNMENTAL AGREEMENT entered into this ____ day of _____, 2014 by and between the CITY OF ELMHURST, ILLINOIS, an Illinois municipal corporation, with offices at 209 N. York Street, Elmhurst, DuPage County, Illinois (hereinafter referred to as "CITY"), and the ELMHURST PARK DISTRICT with office at 375 W. 1st Street, Elmhurst, DuPage County, Illinois (hereinafter referred to as "DISTRICT"), concerning the construction of certain stormwater and recreational improvements, more fully described herein, at **INSERT** (hereinafter referred to as the "PARK"), all located within the CITY.

WITNESSETH

WHEREAS, Article VII, Section 10 of the 1970 Constitution of the State of Illinois and the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) provide that units of local government may contract with one another to perform any activity authorized by law; and

WHEREAS, the DISTRICT owns, maintains and operates the PARK located at the common address **INSERT**, Elmhurst, DuPage County, Illinois and legally described as follows

INSERT IN DUPAGE COUNTY, ILLINOIS

WHEREAS, the CITY desires to construct certain stormwater improvements which are more fully described herein, in the PARK; and

WHEREAS, the DISTRICT desires to have constructed within the PARK certain recreational improvements, as more fully described herein; and

WHEREAS, the CITY agrees to fund, and the DISTRICT agrees to allow the CITY to construct said stormwater improvements and recreational improvements in

accordance with this Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and agreements herein set forth, the parties hereto agree as follows:

1. Incorporation. The provisions set forth in the preamble are incorporated into and made a part of this Agreement.

2. Public Improvements to be Constructed by the CITY. The CITY shall fund, design and construct the following Stormwater Improvements and Recreational Improvements (collectively referred to herein as the "Public Improvements") with a total estimated cost for the Recreational Improvements of **INSERT** at the PARK as depicted on The **INSERT** Draft Master Plan attached hereto and herein incorporated as Exhibit A:

a. Stormwater Improvements:

INSERT

b. Recreational Improvements:

- All Recreational Improvements as depicted on Exhibit A and included on the cost estimate attached hereto as Exhibit A (1).

3. Easements to be Granted to the CITY. The DISTRICT hereby grants the CITY easement rights to the PARK in the form attached hereto as Exhibit B. The DISTRICT will forward the signed documents to the CITY, and the CITY will record the documents at its expense.

4. Review of CITY Plans and Specifications. The CITY agrees that it shall provide the DISTRICT with the ability to review and approve the plans and specifications for the construction of the Public Improvements provided for in Section 2 of this Agreement and the CITY shall conduct at least one public informational meeting regarding such plans. The DISTRICT agrees it will review such plans and specifications

within 30 days of its receipt of same. If the DISTRICT fails to review such plans and specifications within this 30 day time frame and advise the CITY regarding its acceptance or rejection of such plans and specifications, including shop drawings, such plans and specifications shall be deemed approved by the DISTRICT. Approval of such plans and specifications shall not be unreasonably withheld. Once approved, the final plans and specifications shall be substituted for (and shall be identified as "Final Exhibit A") and shall replace as part of this Agreement the concept plan attached hereto and herein incorporated as Exhibit A.

5. CITY Schedule of Construction. Notwithstanding any unforeseen circumstances, the CITY shall adhere to the best of its ability to the construction schedule attached hereto and herein incorporated as Exhibit C. If deviation or revision of this schedule is necessary, the CITY shall advise the DISTRICT of the same and the CITY and the DISTRICT shall jointly accommodate any issues that may arise as a result of the deviation or revision in the schedule. Construction of the Public Improvements shall not commence until the DISTRICT is satisfied that the CITY has provided sufficient assurance and security to reasonably guarantee the design, construction and completion of all public improvements according to the construction schedule. For illustration purposes only, sufficient security may include performance bonds posted by contractors, irrevocable letters of credit which can be drawn upon by both the Village and, if necessary, the DISTRICT, or any other legally permissible assurance or security agreed to by the Parties. Further, all contractors performing work on the Public Improvements shall warrant their work and such warranties shall extend to both the CITY and the DISTRICT. The DISTRICT shall designate a representative for the public improvements project. The DISTRICT representative shall be

invited and permitted to attend and participate in all design, pre-construction and construction progress meetings and shall be permitted to observe the construction work in progress during normal business hours. The DISTRICT shall be copied on all project-related correspondence.

6. Demolition of Facilities Necessitated by the Approved Plans. If it is necessary to demolish any DISTRICT facilities in order to fully implement the approved plans, the CITY shall be responsible for the cost of such demolition/site preparation. It is agreed that the DISTRICT will be given reasonable notice which shall not be less than five (5) business days in advance of such action by the CITY in the event the DISTRICT desires to salvage any fixtures from the site.

7. Environmental Remediation of DISTRICT Property. It is agreed by both parties that if during the construction of the Public Improvements, or at any time prior to such construction, the CITY discovers environmental contamination or hazardous materials on the PARK, the CITY and DISTRICT shall handle and dispose of such materials pursuant to State law and at an agreed upon shared expense. The DISTRICT, as owner of the PARK, shall fully cooperate with the CITY with regard to any environmental remediation. This includes, but is not limited to, execution of any documents regarding environmental remediation at the PARK.

8. Access to PARK. The CITY shall be permitted reasonable access to the PARK for the purpose of designing, constructing and maintaining the Public Improvements set forth in Section 2. Upon providing reasonable written notice, not less than five (5) business days, and receiving written permission from the DISTRICT, the CITY shall also be permitted, upon the same notice and provision terms, to access the PARK for the purpose of performing soil borings

and other due diligence testing as may reasonably be required by the CITY. It shall be the responsibility of the CITY to repair any damage to the PARK resulting from such activity. Any such damage shall be repaired within 30 days or within a longer time frame as mutually agreed to by both the CITY and the DISTRICT and shall be performed to the unilateral satisfaction and approval of the DISTRICT, such approval not being unreasonably withheld.

9. CITY to Maintain/Repair Stormwater Improvements. The CITY shall maintain the stormwater improvements constructed pursuant to Section 2. Maintenance shall be as set forth in the Dry Detention Pond Performance Standards attached hereto and herein incorporated as Exhibit D. Except for emergency situations, the CITY shall provide no less than thirty (30) days advance written notice to the DISTRICT before beginning any work or maintenance on the basins. In the event of an emergency, if prior notice is not possible, the CITY shall provide notice at the earliest reasonable opportunity. It is agreed that maintenance shall not include routine landscaping and lawn mowing. Any damage to the stormwater facilities shall be reported to the CITY by the DISTRICT within a reasonable period of time after it is discovered by the DISTRICT after which the CITY shall be provided a reasonable period of time to repair such.

10. DISTRICT to Maintain/Repair Recreational Improvements. The CITY shall notify the DISTRICT in writing upon completion of the Recreational Improvements constructed pursuant to Section 2. Completion shall include providing the DISTRICT with all "as built" drawings, specifications, project manuals, shop drawings and operation manuals. The

DISTRICT shall inspect the Recreational Improvements within thirty (30) days after the date of notification of completion by the CITY and shall notify the CITY in writing of any defects or deficiencies. If the Recreational Improvements are determined to be acceptable at that time, the DISTRICT shall immediately accept all Recreational Improvements through the execution of a letter of acceptance, in a form acceptable to both Parties. If defects or deficiencies are discovered, the CITY shall, within sixty (60) days of being notified of any such defect or deficiency, address or remedy such defects or deficiencies to the satisfaction of the DISTRICT and as detailed in the final plans and specifications attached hereto as Final Exhibit A. Once such defects or deficiencies are remedied or addressed and approved by the DISTRICT, the CITY shall send a final notification of completion to the DISTRICT and the DISTRICT shall immediately accept all Recreational Improvements through the execution of a letter of acceptance, in a form acceptable to both Parties. The CITY agrees to transfer, in writing, all warranties offered on all equipment and personal property installed as part of the Public Improvements and transferred to the DISTRICT herein. Once such letter of acceptance has been executed by the DISTRICT, the DISTRICT shall own the Recreational Improvements and it shall be the responsibility of the DISTRICT to maintain and repair such Improvements.

11. Indemnity and Hold Harmless. The DISTRICT agrees that the CITY shall not be liable for any injury or loss occurring by the public's use (or misuse) of the Public Improvements constructed by the CITY and the DISTRICT agrees to indemnify and hold

harmless the CITY against any loss, damage, claim, demand, or lawsuit incurred as a result of any injury or loss occurring by the use of the Public Improvements constructed pursuant to this Agreement, except to the extent such loss, damage, claim, demand or lawsuit arises out of the direct or indirect conduct, act or omission of the CITY. The CITY agrees that the DISTRICT shall not be liable for any injury or loss occurring by the Public's use (or misuse) of the Public Improvements constructed by the CITY and the CITY agrees to indemnify and hold harmless the DISTRICT against any loss, damage, claim, demand, or lawsuit incurred as a result of any injury or loss occurring by the use of Public Improvements constructed pursuant to this Agreement, except to the extent such loss, damage, claim, demand or lawsuit arises out of the direct or indirect conduct, act or omission of the DISTRICT.

12. Subsequent Modifications to Area. If at any time after construction of any of the Public Improvements the DISTRICT desires to make modifications to existing facilities or install 7 additional facilities on DISTRICT property for which the CITY has been granted an easement under this Agreement, the DISTRICT shall provide the CITY prior notice of such modification prior to any work being conducted. Similarly, if at any time after construction of any of the Public Improvements, the CITY desires to make modifications to existing facilities or install additional facilities in the same area of the easement, notice shall be provided to the DISTRICT prior to any work being conducted. It is agreed by both Parties that neither the CITY or the DISTRICT will construct or modify any improvements in a

manner that will interfere with the operation or maintenance of the Public Improvements.

13. 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 property damage in connection with the improvements covered by this Agreement.

14. Notices. Any statement or writing to be presented to a party hereunder shall be so presented by personal delivery or by deposit in the United States mail, with postage properly prepaid, and properly addressed to the offices of the other party, as listed above, and shall be deemed presented on date of mailing.

15. Invalidity. If any section, paragraph, clause or provision of this Agreement shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Agreement.

16. Termination. The CITY may in its sole discretion and prior to the construction of any Public Improvements declare this Agreement null and void by sending the appropriate notice hereunder. The DISTRICT may in its sole discretion, and prior to the CITY incurring the costs for design of the Recreational Improvements, declare this Agreement null and void by sending the appropriate notice hereunder. The CITY shall provide the DISTRICT written notification ten (10) days prior to the commencement of any design work on the Recreational Improvements.

17. Entire Agreement. This Agreement represents the entire agreement between the parties. This Agreement shall inure to the benefit of all successors and assigns of the parties hereto. Any amendments hereto shall be made in writing and be signed by both parties hereto.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on their behalf by their duly authorized officers as of the day and year first above written.

ELMHURST PARK DISTRICT

President

ATTEST:

Clerk

CITY OF ELMHURST

Mayor

ATTEST:

City Clerk

428958.1

