

**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 \_\_\_\_\_, 2015, 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 offices at 375 W. 1<sup>st</sup> Street, Elmhurst, DuPage County, Illinois (hereinafter referred to as “DISTRICT”), (hereinafter the “Agreement”) concerning the construction of certain stormwater and/or recreational improvements, more fully described in the “Addendum” attached to the Agreement and incorporated herein by reference (hereinafter referred to as “PARK”).

**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, in or about April 2012, the CITY caused to be created the “City of Elmhurst Comprehensive Flooding Plan Stormwater Sewer System Analysis Elmhurst Illinois” (hereinafter referred to as “Comprehensive Flooding Plan”) prepared by Christopher B. Burke Engineering, Ltd., that recommended, in part, the use of certain park property owned or controlled by the DISTRICT as possible stormwater detention sites, including the following five (5) park sites: York Commons, Golden Meadows, East End, Crestview, and Pioneer/Wild Meadows Trace (hereinafter referred to as “Park Stormwater Detention Sites”); and

WHEREAS, the CITY is committed to accomplishing the goals of the Comprehensive Flooding Plan; and

WHEREAS, the CITY and the DISTRICT intend that this Agreement serve as a master document guiding the CITY and the DISTRICT for implementation of various stormwater projects undertaken pursuant to the Comprehensive Flooding Plan at the Park Stormwater Detention Sites, and intend for these various stormwater projects to be considered and agreed to by the parties as “Addendum” to this Agreement from time to time; and

WHEREAS, the CITY and the DISTRICT agree to implement the stormwater projects at all five (5) Park Stormwater Detention Sites; and

WHEREAS, the DISTRICT owns, maintains and operates the PARK that is more fully described in the attached “Addendum” that is located in the CITY; and

WHEREAS, the CITY desires to construct certain stormwater improvements which are more fully described in the attached “Addendum” in the PARK; and

WHEREAS, the DISTRICT desires to have constructed within the PARK certain recreational improvements which are more fully described in the attached “Addendum” in the PARK; and

WHEREAS, the CITY agrees to fund, and the DISTRICT agrees to allow the CITY to construct ~~said~~ stormwater improvements and recreational improvements at the Park Stormwater Detention Sites in accordance with this Agreement and ~~each~~ attached “Addendum”; and

WHEREAS, certain Park Stormwater Detention Sites will require Illinois Department of Natural Resources (hereinafter referred to as “IDNR”) approval to construct stormwater improvements and recreational improvements at the following four (4) park sites: Golden Meadows, East End, Crestview, and Pioneer/Wild Meadows Trace (hereinafter referred to as “IDNR Park Stormwater Detention Sites”); and

WHEREAS, the CITY and the DISTRICT agree to work collaboratively to secure IDNR approval for the construction of stormwater improvements and recreational improvements at the IDNR Park Stormwater Detention Sites; and

WHEREAS, the CITY and the DISTRICT previously entered into a Lease Agreement (hereinafter referred to as “1979 Lease”) that allowed, in part, the DISTRICT to share the use of the CITY’s maintenance facility for a term ending on April 30, 2029; and

WHEREAS, the CITY and the DISTRICT agree as part of the consideration of this Agreement to grant the DISTRICT an extension of the term for sharing the CITY’s Maintenance Facility located at 985 South Riverside Drive; 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. CITY and DISTRICT Collaboration for Securing IDNR Approval. The CITY and the DISTRICT intend to construct stormwater improvements and recreational improvements at the five (5) Park Stormwater Detention Sites. Further, the CITY and the DISTRICT agree to work collaboratively to secure IDNR approval for the construction of stormwater improvements and recreational improvements at the IDNR Park Stormwater Detention Sites.

2.3.CITY Extension of Term for DISTRICT Shared Use of Maintenance Facility. As consideration for this Agreement, the CITY agrees to extend the term for the DISTRICT’s shared use of the CITY’s Maintenance Facility located at 985 South Riverside Drive, Elmhurst, Illinois, for a fifty (50) year term to February 28, 2065, and

further grants the DISTRICT an automatic extension of the term to occur in the year 2064 for an additional forty-three (43) years to February 28, 2108, unless the DISTRICT provides notice to the CITY that it no longer desires to share the use of such Maintenance Facility.

3.4. Public Improvements to be Constructed by the CITY. The CITY shall fund, design and construct certain “Stormwater Improvements” and “Recreational Improvements” (collectively referred to as “Public Improvements”) as depicted in the “Addendum” that is attached to this Agreement and incorporated herein.

4.5. Easements to be Granted to the CITY. The DISTRICT hereby grants the CITY easement rights in the PARK in the form attached to the “Addendum” as **Exhibit - x**. The DISTRICT will forward the signed easement documents to the CITY, and the CITY will record the easement documents at its expense.

5.6. Review of CITY Plans and Specifications. The CITY agrees that it shall provide the DISTRICT with the ability to review and comment on the plans and specifications for the construction of the Public Improvements provided for in this Agreement and the attached “Addendum”. The DISTRICT’s review as to the plans and specifications for the Public Improvements, construction coordination plan and other items required under this Agreement and attached “Addendum” is for the purpose of confirming compliance with the terms and specifications of this Agreement and attached “Addendum” and for confirming that such plans accomplish the function and utility intended for the Public Improvements under this Agreement and attached “Addendum”. The CITY shall conduct at least one public informational meeting regarding such plans and shall attend and participate in such other public meetings

reasonably requested by the DISTRICT. The proposed plans and specifications shall be prepared in accordance with all applicable CITY ordinances, County of DuPage Ordinances and State of Illinois statutes and regulations. The DISTRICT will promptly review the proposed plans and specifications, construction coordination plan or any other items required prior to construction and shall provide the CITY with comments. Provided such plans and specifications, construction coordination plan or other submittals are complete and the CITY has provided any other items reasonably required for the DISTRICT to complete its review, such as shop drawings, the DISTRICT shall notify the CITY of any objections as to such submittals. Such notice shall be given within sixty (60) days of the DISTRICT's receipt of the last of the foregoing items. The CITY and the DISTRICT shall work cooperatively in addressing the DISTRICT's comments and/or objections to the CITY's plans and specifications, construction coordination plan or other submittals for the purpose of confirming compliance with the terms and specifications of this Agreement and attached "Addendum" and for confirming that such plans accomplish the function and utility intended for the Public Improvements under this Agreement and attached "Addendum". The CITY and the DISTRICT must agree upon a final set of such plans and specifications, such agreement shall not be unreasonably withheld. Once agreed upon by the CITY and the DISTRICT, the final plans and specifications shall be known as the "Approved Plans and Specifications."

6.7. CITY Schedule of Construction. Notwithstanding any unforeseen circumstances, the CITY shall adhere to the best of its ability to the construction schedule provided in attachment to the "Addendum" as **Exhibit – x**. 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. All contractors performing work on 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.

7.8. 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.

8.9. Environmental Remediation of DISTRICT Property. It is agreed by both parties that within thirty (30) days after the execution of this Agreement and/or the approval of any Addendum to this Agreement, the CITY may enter the PARK upon prior written notice as provided below, to perform environmental testing at the CITY’s expense. In the

event that the CITY's environmental testing discloses environmental contamination or hazardous materials on the PARK, the CITY may, in its sole discretion, declare within thirty (30) days after the completion of such environmental testing, that it will not proceed with the construction of Public Improvements, and thereby void the rights and obligations expressed in this Agreement and/or any approved Addendum to this Agreement. In the event that the CITY decides to proceed with the construction of the Public Improvements after discovering environmental contamination or hazardous materials on the PARK, the CITY shall notify the DISTRICT and at the CITY's sole expense, prepare an Environmental Remediation Plan ("ERP") for the DISTRICT's review and comment to the CITY to handle and dispose of such materials and otherwise remediate the environmental contamination or hazardous materials pursuant to State law. The purpose of the DISTRICT's review and comment of the ERP is to confirm compliance with State law and confirm compliance with the terms of this Agreement. Upon its review and comment of the ERP, the CITY and the DISTRICT shall work cooperatively to address the DISTRICT's comments of the ERP to confirm compliance with State law and confirm compliance with the terms of this Agreement. The CITY and the DISTRICT must agree to the ERP, such agreement is not to be unreasonably withheld. Upon agreement of the ERP, the DISTRICT, as owner of the Park, shall fully cooperate with the CITY's implementation of the approved ERP with regard to any such remediation. This includes, but is not limited to, execution of any documents regarding environmental remediation at the Park. The CITY agrees that it shall undertake the performance of the ERP at its sole cost and expense.

9.10. Access to PARK. The CITY shall be permitted reasonable access to the PARK for the purpose of designing, constructing and maintaining the Public Improvements provided in the Addendum to this Agreement. 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 be reasonably required by the CITY. It shall be responsibility of the CITY to repair any damage to the PARK resulting from such activity. Any such damage shall be repaired within thirty (30) days or within a longer time frame as mutually agreed to by both the CITY and the DISTRICT.

10.11. CITY to Maintain/Repair Stormwater Improvements. The CITY shall maintain the Stormwater Improvements constructed pursuant to this Agreement and the attached “Addendum”. Maintenance shall be as set forth in the “Dry Detention Pond Performance Standards” attached to the “Addendum” as **Exhibit – x**. Except for emergency situations or unless otherwise agreed upon by the parties, the CITY shall provide no less than thirty (30) days advance written notice before beginning any work or maintenance on the Stormwater Improvements. In the event of an emergency, if prior notice is not possible, the CITY shall provide notice to the DISTRICT at the earliest reasonable opportunity. It is agreed that maintenance shall not include routine landscaping and lawn mowing. Any damage to the Stormwater Improvements shall be reported to the CITY by the DISTRICT within a reasonable period of time after it is discovered by the DISTRICT. The CITY shall repair any damage to the Stormwater Improvements within a reasonable period of time after receiving notice of such damage.



11.12. DISTRICT to Maintain/Repair Recreational Improvements. The CITY shall notify the DISTRICT in writing upon completion of the Recreational Improvements constructed by the CITY pursuant to this Agreement and the attached “Addendum”. Upon completion of the Recreational Improvements, the CITY shall provide the DISTRICT with all “as built” drawings, specifications, project manuals, shop drawings and operation manuals, as applicable. The DISTRICT shall inspect the Recreational Improvements within thirty (30) days after the CITY’s notification of completion and the DISTRICT 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 the parties. If defects or deficiencies are discovered, the CITY shall, within sixty (60) days of being notified, address or remedy such defects or deficiencies to the satisfaction of the DISTRICT as detailed in the Approved Plans and Specifications. 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 who shall immediately accept the Recreational Improvements through the execution of a letter of acceptance in a form acceptable to the parties. The CITY agrees to transfer, in writing, all warranties offered on all equipment and personal property installed as part of the Recreational 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 Recreational Improvements.

12.13. 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 and/or attached "Addendum" 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 Stormwater 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 the Stormwater Improvements constructed pursuant to this Agreement and/or attached "Addendum", 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.

13.14. Subsequent Modifications. If at any time after construction of the Public Improvements, the DISTRICT desires to make modifications to existing facilities on DISTRICT property for which the CITY has been granted an easement under this Agreement and/or attached "Addendum", the DISTRICT shall provide the CITY prior notice of such modification prior to any work being conducted to confirm that such modification will not disrupt and/or frustrate the operation of the Stormwater Improvements. Similarly, if at any time after construction of the Public Improvements, the CITY desires to make modifications to existing facilities or install additional

facilities in the same area of the easement, the CITY shall provide notice to the DISTRICT prior to any work being conducted to confirm that such modification will not disrupt and/or frustrate the operation of DISTRICT facilities. It is agreed by the parties that neither the CITY nor the DISTRICT will construct or modify any improvements in a manner that will interfere with the operation of maintenance of the Public Improvements.

~~14.~~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 connections with the Public Improvements constructed under this Agreement and/or the attached “Addendum”.

~~15.~~16. 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 CITY and/or the DISTRICT, and shall be deemed presented on date of mailing.

~~16.~~17. 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 and/or attached “Addendum”.

~~17.~~18. Termination. The CITY may, in its sole discretion and prior to the construction of any Public Improvements, declare this Agreement and/or attached “Addendum” null and void by sending the DISTRICT 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 CITY

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. Further, if the CITY does not enter into an agreement for the construction of the Public Improvements within one (1) year from the execution date of this Agreement and/or the attached “Addendum” the DISTRICT may declare this Agreement and/or attached “Addendum” null and void by the sending the CITY the appropriate notice hereunder. Alternatively, the parties may agree to renegotiate the terms of this Agreement and/or the attached “Addendum”.

~~18.19.~~ Entire Agreement. This Agreement and attached “Addendum” represents the entire agreement between the parties. The parties may agree from time to time to undertake additional projects in furtherance of the Comprehensive Flooding Plan by way of agreeing to adopt and incorporate a new and additional “Addendum” to this Agreement. This Agreement shall inure to the benefit of all successors or assigns to the parties hereto. Any amendments to this Agreement and/or the “Addendum” 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

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Mayor

ATTEST:

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City Clerk