

**INTERGOVERNMENTAL COOPERATION AGREEMENT
REGARDING STORMWATER IMPROVEMENTS AT THE SKOKIE PLAYFIELD
BETWEEN THE WINNETKA PARK DISTRICT AND THE VILLAGE OF WINNETKA**

This Intergovernmental Cooperation Agreement ("**Agreement**") is made and entered into as of the ___ day of January ___, 2020 ("**Effective Date**"), by and between the Winnetka Park District, an Illinois park district, Cook County, Illinois ("**Park District**"), and the Village of Winnetka, a home rule municipal corporation ("**Village**"). The Park District and the Village are sometimes referred to individually as a "**Party**" and collectively as the "**Parties**." In consideration of the foregoing and the mutual promises contained in this Agreement, the Park District and the Village agree to the terms of this Agreement.

I. Background.

A. As a result of long-standing and serious flooding in western and southwestern Winnetka, the Village has identified, as an integral part of its overall stormwater management plan, a stormwater flood reduction vision consisting of a variety of conveyance, storage, and water quality improvements, as well as local and private green infrastructure improvements to address this problem. As part of this vision, the Village and the Forest Preserve District of Cook County ("**CCFPD**") entered into an August 2, 2017 "Memorandum of Understanding" ("**MOU**") related to CCFPD's and the Village's desire to cooperate in providing stormwater relief to these areas of the Village through a constructed stormwater wetland improvement on a portion of a 49.1+/- acre parcel of CCFPD land north of Winnetka Avenue and west of Hibbard Road ("**Village Stormwater Project**"). The Village's current concept vision is shown on **Exhibit A** to this Agreement (Stormwater Management System Opportunities).

B. As contemplated under the MOU as part of the Village Stormwater Project, approximately 74 acre-feet of stormwater management is to be constructed on CCFPD lands

along with naturalized plantings and water quality monitoring for the CCFPD through investment by the Village. Additional passive stormwater storage will be realized on the property, as is currently occurring.

C. The Village has determined that the remaining stormwater storage and conveyance for the Village Stormwater Project necessary to provide flood relief as required by MOU must be constructed on existing open spaces currently owned by the Park District, New Trier Township High School District 203 ("***District 203***"), and Winnetka School District 36 ("***District 36***").

D. The Village and District 203 entered into a June 28, 2019 Intergovernmental Cooperation Agreement regarding stormwater improvements at Duke Childs Field.

E. The Village and District 36 entered into a January 7, 2020 Intergovernmental Cooperation Agreement regarding stormwater improvements at the Crow Island School property.

F. The properties that comprise what is known as the Skokie Playfield are generally located north of Willow Road and west of Hibbard Road in the Village and comprise approximately 158.75 acres (including 1.67 acres leased from the Village) ("***Property***"). The Property is depicted on ***Exhibit B*** to this Agreement. The Park District owns the Property (other than the 1.67 acres leased from the Village) and presently uses the Property for recreational and golf activities. Portions of the Property are located within the FEMA 100-year flood plain in an area that experiences frequent stormwater flooding.

G. As part of the Village Stormwater Project and as required under the MOU, the Village has proposed to utilize a portion of the Property ("***Easement Premises***") (as set forth in the Easement Agreement described in Subsection J of this Section and attached as ***Exhibit C*** to this Agreement), for the uses set forth in Subsection II.B of this Agreement, which include

underground stormwater storage, stormwater conveyance, and water quality improvements, all as more specifically set forth in *Exhibit D* to this Agreement ("*Stormwater Improvements*"). This Agreement does not authorize the construction, operation or use of any Village utilities or improvements on the Property except as specifically set forth in this Agreement. The Village has determined that the Stormwater Improvements are necessary to address serious and repetitive flooding in the Village and on the Property.

H. The Park District has for some time desired to undertake certain improvements at the Property ("*Playfield Improvements*"). The need for and construction of the Stormwater Improvements provides a once in a generation opportunity to create significant stormwater relief to the Village as well as to the Park District for the Property and the ability of the Park District to provide the Playfield Improvements in a cost effective and expedited manner.

I. The Parties have determined that, during and after completion of the Stormwater Improvements, the Village shall, at the Village's expense, grade and restore the Easement Premises and place fill to contour areas of the golf courses and the field south of the Ice Arena to improve drainage on the Property, all as more fully described in *Exhibit E* to this Agreement ("*Village Playfield Improvements*"). The remaining Field Improvements will be undertaken by the Park District at the Park District's expense, which District Playfield Improvements are more fully described in *Exhibit F* to this Agreement ("*District Playfield Improvements*").

J. The Parties desire to memorialize their respective rights and obligations relative to the Stormwater and Playfield Improvements on the Property. To do that, the Parties have agreed to enter into this Agreement and the Easement Agreement attached as *Exhibit C* to this Agreement ("*Easement Agreement*").

K. The Village's construction of the Stormwater Improvements and the Village

Playfield Improvements will provide flood protection for the fields and golf courses, enhanced water features suitable for irrigation use, improved grading and drainage infrastructure for the improved use of the golf courses and the recreational fields, and other related and beneficial improvements as set forth and more particularly described in *Exhibit G* to this Agreement (collectively, “*Performance Standards*”).

L. The Parties have the power and authority to enter into this Agreement pursuant to the provisions of Article VII, Section 10 of the Illinois Constitution of 1970; the Local Land Resource Management Planning Act, 50 ILCS 805/1 *et seq.*; and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*

M. After consideration of utility, planning, and intergovernmental issues affecting this matter, the Park District has determined that it is in the best interests of its constituents and the public welfare to enter into this Agreement in order to ensure a level of cooperation and coordination between the Village and the Park District necessary to maximize flood relief for impacted homes and property and to enhance the facilities on the Property.

N. After consideration of utility, planning, and intergovernmental issues affecting this matter, the Village has determined that it is in the best interests of its citizens and the public welfare to enter into this Agreement in order to ensure a level of cooperation and coordination between the Park District and the Village necessary to maximize flood relief for impacted homes and property and to enhance the facilities on the Property.

O. The Village recognizes that the Park District’s agreement as provided in this Agreement to allow the Village to use the Property as an integral and necessary part of the Village Stormwater Project constitutes an important intergovernmental partnership and authorizes the Village to grant, as provided in this Agreement, a 100 percent credit to the Park

District for the stormwater utility fee that would otherwise be applicable to the Property under Chapter 13.16 of the Village Code.

II. Stormwater Improvements and Village Playfield Improvements.

A. No Obligation. Nothing in this Agreement obligates the Village to construct the Stormwater Improvements on the Property. If the Village determines, in its sole discretion, to construct the Stormwater Improvements on the Property, then the terms and conditions of this Agreement will apply. This Agreement shall terminate if the Village does not commence construction of the Stormwater Improvements ("*Construction Commencement*") by December 31, 2025, unless the Parties agree in writing to extend the date of Construction Commencement ("*Construction Commencement Deadline*"). If the Village does not commence construction by the Construction Commencement Deadline and thereafter does not construct the Stormwater Improvements on the Property and such inaction is not based on a denial of a permit or the actions of a third party, the Village shall pay the Park District up to \$60,000, for costs substantiated by the Park District as costs that it has incurred related to the evaluation and negotiation of this Agreement. The Village shall make such payment to the Park District within 60 days after providing notice to the Park District that it will not proceed with the Stormwater Improvements on the Property or on the Construction Commencement Deadline, whichever date is sooner.

B. Easement. Prior to Construction Commencement and after Park District approval of the Village Final Plans as provided in Paragraph II.E.3 of this Agreement, the Park District shall grant the Village a perpetual and permanent easement on the Easement Premises pursuant to the Easement Agreement that will, among other matters, authorize the Village to own (with regard to the Village Stormwater Improvements but not with regard to the Village Field

Improvements), survey, design, install, construct, operate, use, test, inspect, improve, maintain, repair, remove, and replace, in the locations on the Property as identified in the Easement Agreement (i) the Stormwater Improvements and (ii) the Village Field Improvements (collectively, “**Permitted Village Uses and Facilities**”). The Stormwater Improvements will be owned by the Village. The Playfield Improvements shall be owned by the Park District. The Easement Agreement will be perpetual notwithstanding the term of this Agreement as set forth in Subsection VI.D of this Agreement; provided that if this Agreement terminates prior to Construction Commencement, the Easement Agreement will not be executed or recorded.

C. Village Obligations. The Village will construct and maintain the Stormwater Improvements, if at all, at its sole cost and expense and in compliance with this Agreement and all applicable federal, state, and Village laws, statutes, codes, ordinances, resolutions, rules and regulations, including, without limitation, any and all applicable regulations and permits issued by the Army Corps of Engineers, the Metropolitan Water Reclamation District (“**MWRD**”), the Federal Emergency Management Agency (“**FEMA**”), and any other governmental entity with jurisdiction related to the Village Stormwater Improvements (collectively, “**Requirements of Law**”). The Stormwater Improvements will be constructed and maintained so that they do not make impracticable or infeasible the construction and maintenance of the District Playfield Improvements or make impractical or infeasible the Park District’s continued use of the Property for lawful park and recreational activities including golf activities (“**Park District Purposes**”). The Stormwater Improvements will be sufficient to meet the stormwater detention and compensatory storage permit requirements for the Property and the Playfield Field Improvements, and will provide certain agreed additional detention and compensatory stormwater credits to accommodate future Park District construction on the Property (as

specifically set forth in *Exhibit H* to this Agreement), all under the Requirements of Law, including specifically but without limitation, all MWRD requirements and the terms and condition of the Winnetka Stormwater Management Code and MWRD's Watershed Management Ordinance. The Village will construct the Stormwater Improvements and the Village Playfield Improvements in accordance with the Village Final Plans (as provided in Paragraph II.E.3 of this Agreement) and the Performance Standards. The Stormwater Improvements as provided on the Final Plan will provide a level of protection for the Property as provided in *Exhibit G* to this Agreement. The Village shall provide the Park District with reasonable notice of project meetings related to the Village Stormwater or Playfield Improvements.

D. Joint Application for MWRD Permit. The Village and the Park District will jointly apply for the MWRD permit necessary to authorize construction of the Stormwater Improvements and the Playfield Improvements. The permit application will provide that the Village is constructing a generalized, Village-wide stormwater improvement project in part on land owned by the Park District and that part of the improvement project includes a cooperative undertaking with the Park District to make certain improvements to the Park District's property. The Village will specifically call out in the application the volume of stormwater storage being provided as detention and compensatory storage for the Playfield Improvements, and additional volume shall be allocated as specified in the Stormwater Volume Allocation Table attached as *Exhibit I* to this Agreement and described further in Section II E.1 of this Agreement ("*Allocation Table*"). The Village represents that because the Village is not obligated to provide a particular or specific level of stormwater protection to its community, the Stormwater Improvements include the construction of sufficient stormwater storage to meet the regulatory

detention and compensatory storage required for the Playfield Improvements, while also meeting the Village's flood management goals. If MWRD does not approve the Field Improvements portion of the permit application, the Village will either redesign the Stormwater Improvements and the Playfield Improvements, subject to the agreement of the Park District, or decide not to proceed with the Project as it relates to the Property.

E. Cooperative Development and Review of Plans.

1. Preliminary Plans. The Village has provided the Park District, and the Park District has reviewed and, by approval and execution of this Agreement, preliminarily approved, the Village's preliminary plans and specifications for the Stormwater Improvements and the Village Playfield Improvements related to the Property ("***Village Preliminary Plans***"), which Plans include the Allocation Table. The Allocation Table is a master table of target stormwater detention volume allocating an agreed volume for the Stormwater Improvements, the Playfield Improvements, and the agreed surplus volume for future improvements on the Property by the Park District. The Village Preliminary Plans are attached to this Agreement as ***Exhibit J***. In order to allow the Park District to make any necessary changes to its Preliminary Plans in advance of seeking Village approval of its final plans and specifications for the District Playfield Improvements as provided in Paragraph III.C.2 of this Agreement and to ensure plan development in accordance with the Final Plan Standards, the Village will contemporaneously consult with the Park District when the Village receives new plan versions related to the Village's preparation of its final plans and specifications for the Stormwater Improvements in advance of seeking the District's approval of those plans and specifications as provided in Paragraph 2 of this Subsection.

2. Final Plans. As the Village proceeds with further development and

refinement of its final plans and specifications for the Stormwater Improvements and the Village Playfield Improvements (“**Village Final Plans**”), the Village will provide the Park District with the Village Final Plans for the Park District’s review and comment, along with information on how, if at all, the Village Final Plans may differ from the Village Preliminary Plans. The Park District shall provide the Village with any written comments on the Village Final Plans, if any, within 45 days after receipt of the Village Final Plans (“**Comment Deadline**”). The Village shall consider the Park District’s comments and make any changes to the Village Final Plans that the Village deems appropriate. The Village will also provide to the Park District a written response to the Park District’s comments (“**Final Village Response**”). The Village shall send to the Park District the last version of the Village Final Plans with the Final Village Response and a written notice setting forth the date of the Approval Deadline (defined below).

3. Approval of Final Plans. On or before the Comment Deadline (if the Park District had no written comments) or within 30 days after the Final Village Response is received by the Park District (if the Park District provided written comments) (“**Approval Deadline**”), the Park District shall approve the Village Final Plans in writing (“**District Approval**”) so long as the Final Plans are substantially the same as the Village Preliminary Plans with regard to (i) the general characteristics of the Stormwater Improvements, (ii) the general level of the final grading of the Property, (iii) the general location of the Stormwater Improvements, (iv) the height or elevation of the Stormwater Improvements, and (v) compliance with the Performance Standards and Allocation Table (collectively, the “**Final Plan Standards**”). The Park District will have the right to disapprove the Village Final Plans (“**District Disapproval**”) only on the specific basis that the Final Plans materially fail to satisfy any one or more of the Final Plan Standards. The Final Plans shall be deemed approved if the Park District does not provide the

Village with either Park District Approval or Park District Disapproval on or before the Approval Deadline.

F. Construction Schedule; Field Interruption.

1. Construction Schedule. Prior to Construction Commencement, the Village and the Park District will consult and cooperate with each other to agree upon a construction schedule for the construction of the Stormwater Improvements and the Village Playfield Improvements ("***Village Construction Schedule***"). Once approved in writing by both Parties, which approval shall not be unreasonably withheld, the Village Construction Schedule shall automatically be deemed to be attached to this Agreement as ***Exhibit K***. The Village Construction Schedule will be consistent with the Requirements of Law, including, without limitation, any permits for the project issued by MWRD, the Army Corps of Engineers, or the Illinois Environmental Protection Agency ("***IEPA***"). Construction of the Stormwater Improvements and Village Playfield Improvements will only commence after (i) the establishment of the Village Construction Schedule as provided in this Paragraph and (ii) Park District Approval as provided in Paragraph II.E.3 of this Agreement.

2. Playfield Interruption During Construction. As provided in the Village Construction Schedule, unless otherwise agreed by the Parties in writing, construction of the Stormwater Improvements and the Village Playfield Improvements will only commence after Park District Approval as provided under Paragraph II.E.3 of this Agreement and during one of the following periods ("***Construction Period***").

- Commencing on or after November 1, 2020, with final seeding of the golf courses commencing no earlier than August 1, 2021 and completed no later than September 15, 2021 for golf course construction. Little Duke Field construction commencing on or after July 5, 2020, with final seeding completed no later than September 15, 2021.

- Commencing on or after November 1, 2021, with final seeding of the golf courses commencing no earlier than August 1, 2022 and completed no later than September 15, 2022 for golf course construction. Little Duke Field construction commencing on or after July 5, 2021, with final seeding completed no later than September 15, 2022.
- Commencing on or after November 1, 2022, with final seeding of the golf courses commencing no earlier than August 1, 2023 and completed no later than September 15, 2023 for golf course construction. Little Duke Field construction commencing on or after July 5, 2022, with final seeding completed no later than September 15, 2023.
- Commencing on or after November 1, 2023, with final seeding of the golf courses commencing no earlier than August 1, 2024 and completed no later than September 15, 2024 for golf course construction. Little Duke Field construction commencing on or after July 5, 2023, with final seeding completed no later than September 15, 2024.

The Village will provide the Park District written notice at least 30 calendar days prior to Construction Commencement. During the Construction Period the Village will have exclusive use of the Easement Premises and the Park District will be prevented from undertaking use of the Easement Premises for any of the Park Purposes, except that (i) the Park District may construct the Park District Playfield Improvements in accordance with the Park District Construction Schedule, as set forth in Paragraph III.D.1 of this Agreement; (ii) the Park District shall have the ability to access any portion of the Easement Premises not under construction and the remainder of the Property using the access road located on the Easement Premises or, when the access road is not available as a result of construction activities, other agreed points of ingress and egress. The Village will manage construction of the Stormwater Improvements and the Village Playfield Improvements so that the extent and period of disruption to the Easement Premises is of the shortest duration reasonable under the circumstances, and minimizes to the extent practicable

interference with the Park District's use of the areas of the Property not included within the Easement Premises for Park Purposes.

3. Park District Costs. Prior to Construction Commencement and subject to receipt of Park District Approval as provided in Paragraph II.E.3 of this Agreement, the Village will pay to the Park District the sum of \$390,000 to, among other things, offset costs incurred by the Park District related to the construction of the Stormwater Improvements and interruption of Park District Uses on the Property.

4. Additional Village Obligations.

a. Potable Water Provision and Rate. The Village shall provide potable water for irrigation purposes for the Park District's 18-hole and par-three golf courses at a rate equal to the wholesale rate that the Village contractually provides to the Village of Northfield for potable water, as that rate may change from time to time. The rate provided under this Paragraph shall commence upon commencement of construction of the Stormwater and Village Playfield Improvements.

b. Pond Water. Following construction of the Stormwater Improvements and the Village Playfield Improvements, the Village will provide that (i) all new and existing ponds and creeks shall convey water to the irrigation pond in quantities and under conditions specified in the Village Final Plans and (ii) stormwater will be pumped or otherwise conveyed from the new pond adjacent to the 18th fairway to the existing irrigation pond, in quantities and under conditions specified in the Village Final Plans.

c. Surplus Volume. The Village will provide surplus compensatory stormwater detention/storage volume (as mutually determined by the Parties upon approval of

the Park District Final Plans pursuant to Section III.C.3 of this Agreement) necessary for the Park District Playfield Improvements as set forth in the Park District Final Plans.

d. Operation of the Village Stormwater Improvements and the Village Playfield Improvements shall comply with the Performance Standards.

e. Specific Golf Course Improvements. The Village shall, at its sole cost and expense, design and construct the relocation of the #5 and #9 Greens and the new nursery/practice area on the par-3 golf course, pursuant to mutually agreed plans and specifications. The Park District shall seed and maintain these greens and the new nursery/practice area, once constructed. The Village shall reimburse the Park District's reasonable costs incurred for seeding and maintaining these areas for the first growing season.

5. Compliance with Construction Schedule. The construction of the Stormwater Improvements and the Village Playfield Improvements will be undertaken in accordance with the Village Construction Schedule within the applicable Construction Period. In the event that the Village does not complete construction of the Stormwater Improvements and the Village Playfield Improvements within the applicable Construction Period, the Village will reimburse the Park District on a monthly basis according to the cost schedule attached as *Exhibit L* to this Agreement, which schedule shows the reasonably anticipated lost revenues and expenses for lost green fees, driving range fees, par three greens fees, programming expenses, Little Duke program fees, lost pro shop income, and concession revenues ("**Cost Schedule**").

6. Abandonment. In the event that the Village does not complete the Stormwater Improvements and the Village Playfield Improvements during the applicable Construction Period and thereafter abandons construction activity on the Stormwater Improvements and the Village Playfield Improvements, the Park District shall have the right to

provide the Village with written notice of abandonment ("*Notice of Abandonment*"). Upon receipt of a Notice of Abandonment, the Village shall, within a commercially reasonable period of time, either complete the Stormwater Improvements and the Village Playfield Improvements, or remove any underground improvements and restore the Easement Premises to its condition as of the date immediately preceding the date of Construction Commencement. For purposes of this Agreement, "abandons," or "abandonment" shall mean failure to complete the Project during the applicable Construction Period and cessation of construction or installation of the Stormwater Improvements and the Village Playfield Improvements consistent with this Agreement for a period of 75 consecutive days (unless the Village and the Park District agree in writing to a longer period of abandonment) for any reason other than (i) Force Majeure or (ii) if and to the extent the cessation of work is caused by the Park District's material breach of this Agreement. If the Village fails to comply with this Subsection within a commercially reasonable period of time after the Park District provides written notice, the Park District may restore the Easement Premises and the Village shall reimburse the Park District for the costs the Park District incurs in restoring the Easement Premises within 30 days after the Park District provides the Village with a detailed invoice for such costs. An abandonment, and the Park District's exercise of its rights under this Paragraph, shall not be to the exclusion of any other remedies or rights under this Agreement, including, but not limited to, the right to delay damages (as providing in Exhibit L) for failing to complete the Project within the Construction Period under Paragraph II.F.5 of this Agreement.

G. Acceptance and Maintenance of Stormwater Improvements and Village Playfield Improvements.

1. Village Responsibility. The Village shall have sole responsibility to

construct, at its sole cost, the Village Playfield Improvements in accordance with this Agreement and to construct and maintain, at its sole cost, the Stormwater Improvements in accordance with this Agreement, including, but not limited to, the Stormwater Improvements constructed at the Park District's par-3 golf course, Little Duke Field, the 18-hole course, and treatment of incoming stormwater to ponds and creeks necessary to ensure water quality meets or exceeds the water quality standards set forth in the MOU (which may include the use of settlement catchments upstream of the golf courses to contain sediment and associated pollutants).

2. As-Built Plans. Within 90 days after substantial completion of the Stormwater Improvements, the Village shall provide the Park District as-built construction plans for the Stormwater Improvements. The as-built plans shall include all details about the Stormwater Improvements installed on the Easement Premises.

3. Failure to Comply. If the Park District Executive Director or the Executive Director's designee, determines that the Stormwater Improvements have been constructed or maintained, or that the Village Playfield Improvements have been constructed, so that they do not substantially conform to the Village Final Plans, do not provide a level of flood protection for the Property or the other protections and enhancements as set forth in *Exhibits G, H, and I* to this Agreement, or that they make impracticable or infeasible the construction and maintenance of the District Playfield Improvements, or otherwise unreasonably interfere with or prevent the Park District from continuing to utilize the Property for Park Purposes, the Executive Director, or the Executive Director's designee, shall make a written request of the Village that the Stormwater Improvements and/or the Village Playfield Improvements be repaired or otherwise reconstructed or removed in order to comply with the requirements of this

Agreement. Upon receipt of the Park District notice, the Village and the Park District shall promptly meet to discuss the issues raised by the Park District in order to mutually agree upon a resolution. The Village will be solely responsible for any costs incurred in complying with this Subsection, including any actual costs or losses incurred by the Park District to the extent such costs result from the Village's failure to comply with this Subsection. Said losses and costs to be paid by the Village shall include losses and costs set forth in Exhibit L.

III. District Playfield Improvements.

A. No Obligation. Nothing in this Agreement obligates the Park District to construct the District Playfield Improvements on the Property. If the Park District determines, in its sole discretion, to construct the District Playfield Improvements on the Property, then the terms and conditions of this Agreement will apply to any such construction.

B. Park District Obligations. The Park District will construct and maintain the District Playfield Improvements, if at all, at its sole cost and expense and in compliance with this Agreement and the Requirements of Law. The District Playfield Improvements will be constructed and maintained so that they do not make impracticable or infeasible the construction and maintenance of the Stormwater Improvements or the Village Playfield Improvements or otherwise unreasonably interfere with or prevent the Village from utilizing the Easement Premises for Permitted Village Uses and Facilities.

C. Cooperative Development and Review of Plans.

1. Preliminary Plans. The Park District acknowledges and agrees that if the Park District decides to construct the District Playfield Improvements it will be necessary for the

Park District to design all Playfield Improvements in a manner that will not unreasonably interfere with the safety, integrity, or efficient operation of the Village's Stormwater Improvements. The Park District will provide the Village with the Park District's preliminary plans and specifications for the Park District Playfield Improvements ("***Park District Preliminary Plans***") for the Village's review and comment. If the Village believes that construction based on the Park District Preliminary Plans will (i) unreasonably interfere with or prevent the construction and maintenance of the Stormwater Improvements on the Easement Premises; or (ii) unreasonably interfere with the safety, integrity, or efficient operation of the Stormwater Improvements, then the Village will, within 14 days of its receipt of the Park District Preliminary Plans, provide the Park District written comments on the Park District Preliminary Plans. The Park District shall consider the Village's comments and make any changes that the Park District deems appropriate. The Park District will also provide to the Village a written response to the Village's comments.

2. District Final Plans. As the Park District proceeds with further development and refinement of its final plans and specifications for the District Playfield Improvements (“***District Final Plans***”), the Park District will provide the Village with the District Final Plans for the Village’s review and comment, along with information on how the District Final Plans may differ from the District Preliminary Plans. The Village shall provide the Park District written comments on the District Final Plans, if any, within 45 days after receipt of the District Final Plans (“***Village Comment Deadline***”). The Park District shall consider the Village’s comments and make any changes to the District Final Plans that the Park District deems appropriate. The Park District will also provide to the Village a written response to the Village’s comments (“***Final District Response***”).

3. Approval of Final Plans. On or before the Village Comment Deadline (if the Village had no written comments) or within 14 days after the Final District Response (if the Village provided written comments) (“***Approval Deadline***”), the Village shall approve the District Final Plans in writing so long as the District Final Plans are substantially the same as the District Preliminary Plans with regard to (i) the general characteristics of the District Playfield Improvements, (ii) the general level of the final grading of the Property, (iii) the general location of the District Playfield Improvements, and (iv) the height, elevations, and materials used for the District Playfield Improvements, and demonstrate that the District Playfield Improvements will not unreasonably interfere with or prevent the construction and maintenance of the Stormwater Improvements on the Easement Premises or unreasonably interfere with the safety, integrity, or efficient operation of the Stormwater Improvements (“***Final Plan Standards***”). The Village will have the right to disapprove the District Final Plans (“***Village Disapproval***”) only on the specific basis that the Final Plans materially fail to satisfy the Final Plan Standards. The Final Plans shall

be deemed approved if the Village does not provide the Park District with the Village Approval or the Village Disapproval on or before the Approval Deadline.

D. Construction Schedule.

1. Construction Schedule. Prior to the commencement of construction of the District Playfield Improvements, the Village and the Park District will consult and cooperate with each other to agree upon a construction schedule for the construction of the District Playfield Improvements ("***District Construction Schedule***"). Once approved in writing by both parties, which approval shall not be unreasonably withheld, the agreed upon Construction Schedule shall automatically be deemed to be attached to this Agreement as ***Exhibit M***. The District Construction Schedule will be consistent with the Requirements of Law, including, without limitation, any permits for the project issued by MWRD, the Army Corps of Engineers, or the IEPA. The District Construction Schedule may coincide with the Stormwater Improvements and the Village Playfield Improvements, unless otherwise agreed by the Parties. Construction of the Park District Playfield Improvements will only commence after Village Approval as provided in Paragraph III.C.3 of this Agreement.

2. Compliance with Construction Schedule. The construction of the District Playfield Improvements will be undertaken in accordance with the District Construction Schedule. The Park District will be responsible for any actual damages or losses incurred by the Village as a result of the Park District's failure to comply with the Park District Construction Schedule.

E. Acceptance and Maintenance of Playfield Improvements.

1. Park District Responsibility. The Park District shall have sole responsibility to construct and maintain, at its sole cost, the District Playfield Improvements in

accordance with this Agreement, including, without limitation, dredging of existing ponds and creeks on the 18-hole golf course and any pond or creek on the par-3 course not affected by stormwater work, the cost of the new connection to the existing irrigation pond for incoming potable water, maintenance and re-grass seeding of existing tees and greens not impacted by stormwater work, and all cart paths.

2. As-Built Drawings. Within 90 days after substantial completion of the District Playfield Improvements, the Park District shall provide the Village as-built construction plans for the District Playfield Improvements. The as-built plans shall include all details about the District Playfield Improvements installed on the Property.

3. Failure to Comply. If the Village Manager, or the Manager's designee, determines that the District Playfield Improvements have been constructed or maintained so that they do not substantially conform to the District Final Plans or that they make impracticable or infeasible the construction and maintenance of the Stormwater Improvements or otherwise unreasonably interfere with or prevent the Village from utilizing the Easement Premises for the Permitted Village Uses and Facilities, the Village Manager, or the Manager's designee, shall make a written request of the Park District that the District Playfield Improvements be repaired or otherwise reconstructed in order to comply with the requirements of this Agreement. Upon receipt of the Village's notice, the Park District and the Village shall promptly meet to discuss the issues raised by the Village in order to mutually agree upon a resolution. Unless otherwise agreed by the Parties, the Park District will be solely responsible for any costs incurred in complying with this Paragraph, including any actual costs or losses incurred by the Village to the extent such costs or losses result from the Park District's failure to comply with this Subsection; provided, however, that if the District Field Improvements were constructed and maintained in

substantial conformance with the District Final Plans, then repairs or reconstruction shall be constructed at the Village's sole expense and the Village shall reimburse the Park District for any related costs that it incurs.

F. Zoning Approval of District Preliminary Plans.

1. General. Except as otherwise specifically provided in Paragraph 2 of this Subsection, in addition to the requirements of this Agreement, the District Playfield Improvements will be subject to approval in accordance with the requirements of the Winnetka Zoning Ordinance. In conjunction with any required zoning approvals, the Village will fully cooperate with the Park District in processing any required zoning approvals, which cooperation will include, at a minimum, the timely review and consideration by the Village of the Park District's request. The Village will waive any zoning application fees therefor.

2. Special Village Zoning Approvals. The Village recognizes the Park District's important cooperation with the Village on stormwater matters as provided in this Agreement and the Park District's request for the Village to establish in advance definitive zoning parameters on key zoning regulations for the future construction of the District Playfield Improvements, if the Park District proceeds with those Improvements. Accordingly, the Village Board will, upon application of the Park District and after the approval of the Park District Final Plans as provided in Paragraph III.C.2 of this Agreement, approve, by resolution duly adopted pursuant to Chapter 17.76 of the Winnetka Municipal Code ("***Zoning Approval Resolution***") and substantially the same as *Exhibit N* to this Agreement, zoning relief for the Park District Playfield Improvements with regard to (i) the minimum required front yard setback along the easterly Property line and (ii) the minimum required side yard setback along the southerly Property line.

IV. Partnership Credit.

In recognition of the Park District's agreement on the Village's construction and maintenance of the Stormwater Improvements on the Property, thus making a substantial and tangible contribution to the Village's stormwater system, the Village agrees that on and from the date of Construction Commencement and for so long as the Stormwater Improvements are maintained on the Property in accordance with this Agreement, the Village will provide to the Park District a 100 percent credit for the stormwater utility fee that would otherwise be applicable to the Property under Chapter 13.16 of the Village Code.

V. Indemnification and Insurance.

A. Village Indemnification. To the extent permitted by law, the Village shall indemnify and hold harmless the Park District, its Board of Commissioners, and all Park District elected and appointed officials, officers, employees, agents, representatives, engineers, architects, and attorneys ("***Park District Parties***"), from and against all claims and liability, including reasonable attorneys' fees and costs, that may be asserted at any time by a third party against any of the Park District Parties arising out of or in any way connected with the actions or omissions related to planning, construction, operation, and maintenance of the Stormwater Improvements or the Village Playfield Improvements by the Village as provided in this Agreement, and any related liens or any claim related to flooding or damage to surrounding property resulting from the planning, construction, operation, and maintenance of the Stormwater Improvements or the Village Field Improvements as provided in this Agreement.

B. Park District Indemnification. To the extent permitted by law, the Park District shall indemnify and hold harmless the Village, its corporate authorities, or any Village elected or appointed officials, officers, employees, agents, representatives, engineers, architects and

attorneys (“**Village Parties**”), from and against all claims and liability, including reasonable attorneys’ fees and costs, that may be asserted at any time by a third party against any of the Village Parties arising out of or in any way connected with the actions or omissions related to planning, construction, operation, and maintenance of the District Playfield Improvements by the Park District as provided in this Agreement, and any related liens, or any claim related to flooding or damage to surrounding property resulting from the planning, construction, operation and maintenance of the District Playfield Improvements as provided in this Agreement.

C. Village and Park District Insurance.

1. Village. The Village is self-insured for general liability and workers compensation and does not purchase commercial insurance. The Village has provided the Park District with reasonably detailed information regarding the insurance that the Village maintains, and that the Village requires its contractors to maintain (“**Village Insurance Policies**”). The Village Insurance Policies are acceptable to the Park District. The Village shall provide written notice of any material changes to the Village Insurance Policies. Certificates of insurance showing the coverages of the Village Insurance Policies are attached to this Agreement as **Exhibit O**. The Park District shall be added as an additional insured on the Village’s policies related to this Agreement.

2. Park District. The Park District maintains general liability and workers compensation coverage through a self-insurance risk pool and does not purchase commercial insurance. The Park District has provided the Village with reasonably detailed information regarding the insurance that the Park District maintains and that the Park District requires its contractors to maintain (“**Park District Insurance Policies**”). The Park District Insurance Policies are acceptable to the Village. The Park District shall provide written notice of any

material changes to the Park District Insurance Policies. Certificates of insurance showing the coverages of the Park District Insurance Policies are attached to this Agreement as *Exhibit P*. The Village shall be added as an additional insured on the Park District's policies related to this Agreement.

3. Maintenance of Insurance Policies. The Village, the Village contractors, the Park District, and the Park District contractors will maintain their respective Insurance Policies (or policies that are substantially the same as their respective Insurance Policies) during the term of this Agreement.

VI. Miscellaneous Provisions.

A. Force Majeure. For purposes of this Agreement, "*Force Majeure*" means a strike, lockout, act of God, or other factor beyond a party's reasonable control and reasonable ability to remedy; provided, however, that Force Majeure will not include delays caused by weather conditions, unless those conditions are unusually severe or abnormal considering the time of year and the particular location of the Property. For any delay under this Agreement caused by a Force Majeure, the Party delayed will, upon timely written notice to the other Party, be entitled to an extension of the otherwise applicable time for a period of time equal to the delay resulting from the Force Majeure. The delayed Party shall use reasonable commercial efforts to promptly correct any delay in performance.

B. Intentionally omitted.

C. Enforcement. The Village and the Park District 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.

D. Term. Unless terminated earlier as provided in this Agreement, this Agreement will be in full force and effect from and after its Effective Date, as provided pursuant to Subsection S of this Section, for a period of 75 years; provided, however, that if the 75-year term is held invalid, the term will be the maximum term permitted by applicable law as of the Effective Date of this Agreement or such longer term as may be subsequently allowed. Prior to the expiration of the 75-year term the Parties will meet for the purpose of agreeing on extending the term upon mutually agreed terms and conditions.

E. No Assignment. No Party may assign any rights or duties under this Agreement without the prior express written consent of the other Party.

F. Successors. This Agreement shall be binding upon the successors of the Parties' respective governing boards.

G. Relationship of the Parties; No Third-Party Beneficiaries. No employee, volunteer, or agent of one Party shall be considered the employee, volunteer, or agent of the other Party. Nothing contained in or done pursuant to this Agreement shall be construed as creating a partnership, agency, joint employer, or joint venture relationship between the Park District and the Village. Notwithstanding any provision to the contrary, this Agreement is entered into solely for the benefit of the Parties. 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. No claim as a third-party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against the Park District or the Village.

H. Entire Agreement. This Agreement, including the Exhibits, shall constitute the entire agreement of the Parties with respect to the matters contained in this Agreement and this Agreement supersedes all prior agreements and understandings, whether written or oral, formal, or informal.

I. Notice. Any notice or communication permitted or required under this Agreement shall be in writing and shall become effective upon personal delivery or on the third day after mailing by first class mail, registered, or certified mail, postage prepaid, or on the next day after mailing by a national overnight courier, addressed to:

To the Village:

Attention: Village Manager
Village of Winnetka
510 Green Bay Road
Winnetka, Illinois 60093

To the Park District:

Attention: Executive Director
Winnetka Park District
540 Hibbard Road
Winnetka, Illinois 60093

With a copy to:

Village Attorney
Peter Friedman
Holland & Knight LLP
150 North Riverside Plaza
Suite 2700
Chicago, Illinois 60606

With a copy to:

Park District Attorney
Steven Adams
Robbins Schwartz
55 W. Monroe Street,
Suite 800
Chicago, Illinois 60603

Either party may change the person or address to which such notices are to be given by giving prior written notice to the other party in accordance with this Subsection.

J. Exhibits. Exhibits A - P are incorporated into and made part of this Agreement.

K. Amendments. This Agreement may not be amended except by a written document signed by authorized representatives of both Parties and dated a date after the Effective Date of this Agreement.

L. Compliance with Law. The Parties shall comply with all applicable Requirements of Law.

M. Authority to Execute. Each of the Parties warrants and represents that the persons executing this Agreement on its behalf have been properly authorized to do so.

N. Calendar Days and Time. Unless otherwise provided in this Agreement, any reference in this Agreement to “day” or “days” shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, federal, State, or Park District holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, federal, State, or Park District holiday.

O. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois. Jurisdiction and venue for all disputes shall be the Circuit Court located in Cook County, Illinois, or the federal district court for the Northern District of Illinois.

P. No Waiver. The failure of either Party to insist upon the performance of any terms and conditions, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but they shall continue and remain in full force and effect as if no waiver had occurred.

Q. Severability. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, this Agreement shall terminate, unless the Parties otherwise agree in writing.

R. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but altogether shall constitute one and the same Agreement.

S. Effective Date. This Agreement shall be deemed dated and become effective on the date set forth in the first paragraph on the first page of this Agreement.

VILLAGE OF WINNETKA	WINNETKA PARK DISTRICT
By: _____ Its: President	By: _____ Its: President
Attest: _____	Attest: _____
Village Clerk	Secretary
Dated: _____	Dated: _____

List of Exhibits

Exhibit A	Stormwater Management System Opportunities/Village's Current Concept Vision
Exhibit B	Depiction of Property
Exhibit C	Easement Agreement
Exhibit D	Stormwater Improvements
Exhibit E	Village Playfield Improvements
Exhibit F	District Playfield Improvements
Exhibit G	Performance Standards
Exhibit H	Additional Detention and Compensation Stormwater Credits
Exhibit I	Allocation Table
Exhibit J	Village Preliminary Plans
Exhibit K	Village Construction Schedule
Exhibit L	Cost Schedule
Exhibit M	District Construction Schedule
Exhibit N	Village Approval Resolution
Exhibit O	Village Insurance Certificates
Exhibit P	Park District Insurance Certificates

Exhibit A
Stormwater Management System Opportunities

EXHIBIT A - STORMWATER MANAGEMENT SYSTEM OPPORTUNITIES

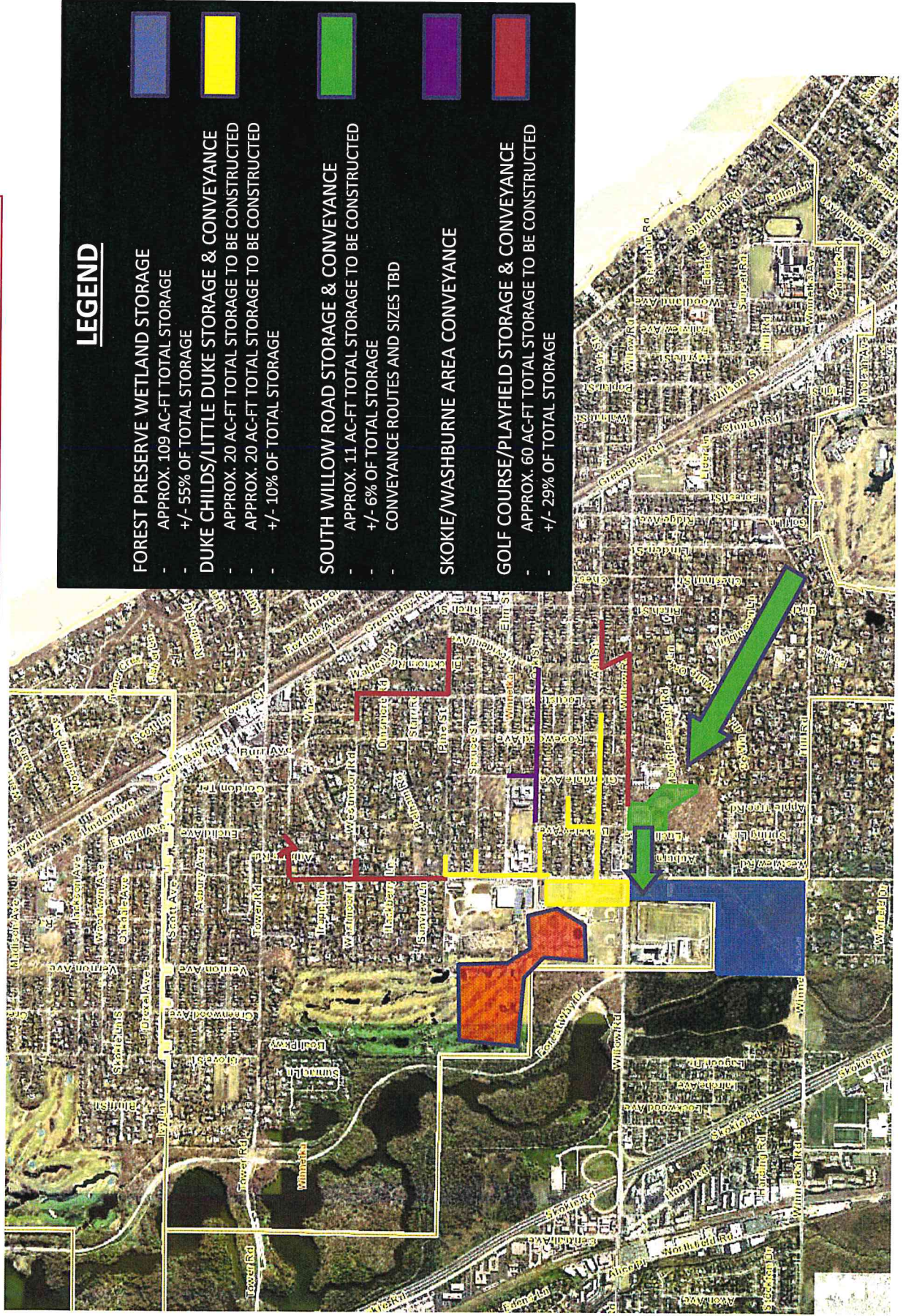


Exhibit B
Depiction of Property