

**INTERGOVERNMENTAL COOPERATION AGREEMENT
REGARDING STORMWATER IMPROVEMENTS AT CROW ISLAND PARK
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 February ___, 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 **Error! Unknown document property name.**

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 Village and the Park District have entered into an Intergovernmental Cooperation Agreement regarding stormwater improvements at the Skokie Playfields.

G. The property known as Crow Island Woods Park is generally located south of Willow Road and east of Euclid Avenue in the Village and comprises approximately 17.6 acres (“*Property*”). The Property is depicted on *Exhibit B* to this Agreement. The Park District owns the Property and presently uses the Property for recreational and open space purposes (“*Park Purposes*”). Portions of the Property are located within the FEMA 100-year flood plain in an area that experiences frequent stormwater flooding.

H. 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

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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.

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 to improve drainage on the Property, all as more fully described in *Exhibit E* to this Agreement ("*Village Restoration Improvements*").

J. The Parties desire to memorialize their respective rights and obligations relative to the Stormwater and Restoration 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 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.*

L. 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 Property.

M. 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 **Error! Unknown document property name.**

Park District and the Village necessary to maximize flood relief for impacted homes and property and to enhance the Property.

N. 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 Restoration 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 \$10,000, 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
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of the Village Final Plans as provided in Paragraph II.D.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 Restoration 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 Restoration Improvements (collectively, “*Permitted Village Uses and Facilities*”). The Stormwater Improvements will be owned by the Village. The Easement Agreement will be perpetual notwithstanding the term of this Agreement as set forth in Subsection V.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.

1. Condition of Easement Premises. The Village acknowledges that neither the Park District nor any agent or employee of the Park District has made any representation or warranty concerning the environmental condition or suitability of the Property, including the Easement Premises, for the Permitted Village Uses and Facilities and the Village accepts the Property, including the Easement Premises, in “as is/where is,” “with all faults” condition.

2. Requirements of Law. 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*”), the Illinois Environmental Protection Agency (“*IEPA*”) and any other governmental entity with jurisdiction related to the Village Stormwater

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Improvements (collectively, “*Requirements of Law*”). The Stormwater Improvements will be constructed and maintained so that they do not make impracticable or infeasible the Park District’s continued use of the Property for lawful park and recreational and open space activities (“*Park District Purposes*”). The Village will construct the Stormwater Improvements and the Village Restoration Improvements in accordance with the Village Final Plans (as provided in Paragraph II.D.3 of this Agreement). The Village shall provide the Park District with reasonable notice of project meetings related to the Village Stormwater and Restoration Improvements. The Village will take all practical precautions to minimize the need to remove trees from the Property as part of the construction of the Village Stormwater and Restoration Improvements. If trees must be removed from the Property in the course of constructing the Village Stormwater or Restoration Improvements, the Village will pay the District a replacement tree planting fee of \$250 per diameter-inch for any removed tree. The Village payment will be made to the Park District within 30 days after any such tree removal.

3. Environmental Compliance. At all times during its construction, operation, or maintenance of the Stormwater Improvements and the Village Restoration Improvements during the term of this Agreement, the Village shall be responsible, at its sole cost and expense, to sample, test, analyze, handle, remove and remediate to residential remediation standards, any “*waste*,” “*special waste*,” “*hazardous substance*,” or “*hazardous materials*” of whatever kind (“*Environmental Materials*”), discovered or otherwise encountered within the entire Property, in compliance with the Requirements of Law, including without limitation, all applicable “*Environmental Laws*.” For purposes of this Agreement, the term “*Environmental Laws*” shall mean all federal, state of Illinois and local laws, including the common law, statutes, ordinances, regulations, orders, criteria and guidelines issued by governmental authorities having jurisdiction, including any judicial or administrative interpretations thereof, in each case as amended, relating to the regulation and

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protection of human health, safety, the environment and natural resources, including, without limitation, the Comprehensive, Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Oil Pollution Act of 1990, the Toxic Substances Control Act, the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, each as amended. “*Waste*,” “*special waste*,” “*hazardous substance*,” and “*hazardous material*” shall be defined as set forth in the Environmental Laws. All Village construction and other activities within the Easement Premises and the Property shall comply at all times with all Environmental Laws. The Park District shall not be prohibited from observing the Village’s activities in a manner that does not interfere with such activities.

D. 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 Restoration Improvements related to the Property (“*Village Preliminary Plans*”). The Village Preliminary Plans are attached to this Agreement as *Exhibit F*. In order to ensure plan development in accordance with the “*Final Plan Standards*” as defined in Paragraph 3 of this Subsection, 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 Restoration 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

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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, and (iv) the height or elevation of the Stormwater Improvements (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.

E. 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 Restoration Improvements

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(“*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 G*. 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 IEPA. Construction of the Stormwater Improvements and Village Restoration 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.D.3 of this Agreement.

2. Park 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 Restoration Improvements will only commence after Park District Approval as provided under Paragraph II.D.3 of this Agreement and during one of the following periods (“*Construction Period*”).

- Commencing on or after March 15, 2021, with final restoration completed no later than October 15, 2021.
- Commencing on or after March 15, 2022, with final restoration completed no later than October 15, 2022.
- Commencing on or after March 15, 2023, with final restoration completed no later than October 15, 2023.
- Commencing on or after March 15, 2024, with final restoration completed no later than October 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 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 agreed points of ingress and egress. The Village will manage construction of the Stormwater Improvements and the Village Restoration 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. Compliance with Construction Schedule. The construction of the Stormwater Improvements and the Village Restoration Improvements will be undertaken in accordance with the Village Construction Schedule within the applicable Construction Period.

4. Abandonment. In the event that the Village does not complete the Stormwater Improvements and the Village Restoration Improvements during the applicable Construction Period and thereafter abandons construction activity on the Stormwater Improvements and the Village Restoration 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 Restoration 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 Restoration 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

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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.

F. Acceptance and Maintenance of Stormwater Improvements and Village Restoration Improvements.

1. Village Responsibility. The Village shall have sole responsibility to construct, at its sole cost, the Village Restoration Improvements in accordance with this Agreement and to construct and maintain, at its sole cost, the Stormwater Improvements in accordance with this Agreement.

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 Restoration Improvements have been constructed, so that they do not substantially conform to the Village Final Plans, 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 Restoration Improvements be repaired or otherwise reconstructed or removed in order to comply with the requirements of this

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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.

III. 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.

IV. Indemnification and Insurance.

A. Village Indemnification. To the extent permitted by law, the Village shall indemnify, defend 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 (past, present, and future) ("***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, errors or omissions related to planning, construction, operation, and maintenance of the Stormwater Improvements or the Village Restoration Improvements by the Village as provided in this Agreement, and any related liens or any claim related to flooding or damage to surrounding property

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resulting from the planning, construction, operation, and maintenance of the Stormwater Improvements or the Village Restoration Improvements as provided in this Agreement.

B. Environmental Indemnification. In addition to the indemnification provided by the Village in Subsection A of this Section, the Village shall, indemnify defend, and hold harmless the Park District Parties from and against all claims, losses, costs, and liability, including reasonable attorneys' and environmental consultants' fees and costs, that may incurred at any time by any of the Park District Parties arising out of or in any way connected to (i) the Village's failure to comply in any way with the requirements and obligations set forth in Paragraph II.C.3 of this Agreement, (ii) any failure of the Village to remediate to residential standards any Environmental Materials encountered during its construction, operation or maintenance of the Stormwater Improvements.

C. 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 costs, losses, 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 Park Uses on the Easement Premises.

D. 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

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of the Village Insurance Policies are attached to this Agreement as ***Exhibit H***. 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 I***. 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.

V. 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 **Error! Unknown document property name.**

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, provided, however, that in the case of investigation and remediation of any Environmental Materials, the party declaring the Force Majeure shall be entitled, and required, to take sufficient time to demonstrate that the Environmental Materials have been remediated as required by this Agreement.

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,

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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 - I are incorporated into and made part of this Agreement.
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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: _____ Village Clerk	Attest: _____ 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 Restoration Improvements
Exhibit F	Village Preliminary Plans
Exhibit G	Village Construction Schedule
Exhibit H	Village Insurance Certificates
Exhibit I	Park District Insurance Certificates

Exhibit A
Stormwater Management System Opportunities

Exhibit B
Depiction of Property

Exhibit C
Easement Agreement

**PREPARED BY AND AFTER
RECORDING RETURN TO:**

Peter M. Friedman
Holland & Knight LLP
150 N. Riverside Plaza
Suite 2700
Chicago, Illinois 60606

For Recorder's Use Only

NON-EXCLUSIVE EASEMENT AND USE AGREEMENT FOR CONSTRUCTION AND
MAINTENANCE OF STORMWATER INFRASTRUCTURE AND STORMWATER
UTILITY SYSTEMS RELATED TO CROW ISLAND PARK

**THIS NON-EXCLUSIVE EASEMENT AND USE AGREEMENT FOR
CONSTRUCTION AND MAINTENANCE OF STORMWATER INFRASTRUCTURE AND
STORMWATER UTILITY SYSTEMS RELATED TO CROW ISLAND PARK**
("Agreement") is dated as of this ___ day of ___, 2020, by and between the **VILLAGE OF
WINNETKA**, an Illinois home rule municipal corporation ("**Village**"), and the **WINNETKA
PARK DISTRICT**, Cook County, Illinois ("**District**" or "**Park District**").

IN CONSIDERATION OF the mutual covenants and agreements set forth herein and
pursuant to the Village's home rule powers, the parties hereto agree as follows:

1. **BACKGROUND.**

A. The District is the owner of the real estate commonly known as Crow Island Park generally located south of Willow Road and east of Euclid Avenue in Winnetka, Illinois, which real estate is legally described on *Exhibit 1* to this Agreement (“*Subject Property*”). The District generally uses the Property for recreational and park activities.

B. In cooperation with the Cook County Forest Preserve District, the Village has determined that it is necessary to construct and maintain underground stormwater storage, conveyance, and water quality improvements on portions of the Property in order to address serious and repetitive flooding in the Village and on the Property.

C. The District and the Village have entered into an “Intergovernmental Cooperation Agreement Regarding Stormwater Improvements at Crow Island Park” dated _____, 2020 (“*IGA*”). The IGA requires the District and the Village to enter into this Agreement to, among other things, grant an easement to the Village for the Stormwater Improvements and Village Restoration Improvements (both as defined in the IGA and collectively here, “*Stormwater Improvements*”) as contemplated and provided in this Agreement.

D. The District and the Village have determined that it is in their respective best interests to enter into this Agreement in order to comply with the terms and conditions of the IGA.

2. **GRANT AND USE OF EASEMENT.** The District grants, conveys and dedicates to the Village a perpetual non-exclusive easement in, at, over, along, across, through, upon and under the locations on the Property as described and depicted on *Exhibit 2* (“*Easement Premises*”), solely to own, survey, design, install, construct, operate, use, test, inspect, improve, maintain, repair, remove, and replace (collectively, “*Work*”) the Stormwater Improvements (collectively, “*Permitted Village Uses and Facilities*”). The Permitted Village Uses and Facilities shall be in strict compliance with the engineering and other plans and documents attached as *Exhibit*
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3 to this Agreement (and defined as the Village Final Plans in the IGA) (“*Final Plans*”), together with all reasonable rights of ingress and egress over, along, across, and upon the Easement Premises necessary for the exercise of the rights granted herein. The Village shall, at its sole cost and expense, complete any Work it undertakes on the Easement Premises related to the Permitted Village Uses and Facilities in a good and workmanlike manner. The granting of the easement hereunder is conditioned on the requirement that the Work and the Stormwater Improvements will not be materially modified or deviate materially from the Final Plans without the prior written approval of the Park District. Failure of the Village to comply with this Section shall constitute a material breach of this Agreement. The Stormwater Improvements and all Village Work on the Stormwater Improvements, shall comply at all times with 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 (“*Requirements of Law*”).

3. **ACCESS.** The Village acknowledges that neither the Park District nor any agent or employee of the Park District has made any representation or warranty concerning the environmental condition or suitability of the Property, including Easement Premises, for the Permitted Village Uses and Facilities and the Village accepts the Property, including the Easement Premises, in “as is/where is,” “with all faults” condition. Except (i) in the event of a bona fide emergency, in which case the Village shall provide notice as soon as reasonably possible, or (ii) for the Stormwater Improvements, the construction schedule for which is attached as *Exhibit 4* to this Agreement (“*Construction Schedule*”), the Village shall provide the District with at least seven days prior written notice of the dates and times it intends to perform any Work under this Agreement. The Village shall take all

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appropriate safety measures, including fencing all construction areas, to ensure that District staff and other users of the Property are not at an increased risk for injury from the Work. Regarding the Stormwater Improvements, the Village shall implement the construction fencing and security measures set forth in the Village Final Plans, which fencing and security measures shall not be permanent. During the Work to construct the Stormwater Improvements 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 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 agreed points of ingress and egress. The Village will manage construction of the Stormwater 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.

4. **CONSTRUCTION ACTIVITY.**

A. The Village will properly maintain the Easement Premises as related to the Work and keep those portions of the Easement Premises related to Work in good order. All trees, stumps, and other debris resulting from the Work will be legally disposed of off of the Easement Premises by the Village.

B. The District will not be responsible for or have control over the construction means, methods, techniques or procedures with respect to the Work, the Permitted Village Uses and Facilities, and the Village's use of the Easement Premises.

C. The Village will ensure that the Easement Premises are maintained in a safe condition during the Work. The Village will install all legally required warning signage, barricades and other safety materials appropriate for the Property and the Easement Premises. The Village shall

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strictly enforce all applicable safety rules and regulations with all of the village's contractors, subcontractors, suppliers and any other third party operating under the direction or control of any of them. All Work by the Village or any contractor, subcontractor, consultant, or other entity hired by the Village to perform Work on the Easement Premises will be performed in a safe and sound manner and in accordance with the Requirements of Law. Except for the Village Restoration Improvements, the Village will be the owner of all Stormwater Improvements constructed on the Easement Premises. The Park District will be the owner of all of the Village Restoration Improvements (as defined in the IGA).

D. The Village will be responsible for the payment of all costs associated with the Village's Work on the Stormwater Improvements on the Easement Premises.

E. At all times during its construction, operation or maintenance of the Stormwater Improvements and the Village Restoration Improvements during the term of this Agreement, the Village shall be responsible, at its sole cost and expense, (i) to sample, test, analyze, handle, remove, and remediate to residential remediation standards any "*waste,*" "*special waste,*" "*hazardous substance,*" or "*hazardous materials*" of whatever kind ("*Environmental Materials*"), discovered or otherwise encountered within the entire Property, in compliance with the Requirements of Law, including without limitation, all applicable "*Environmental Laws.*" For purposes of this Agreement, the term "*Environmental Laws*" shall mean all federal, state of Illinois and local laws, including the common law, statutes, ordinances, regulations, orders, criteria and guidelines issued by governmental authorities having jurisdiction, including any judicial or administrative interpretations thereof, in each case as amended, relating to the regulation and protection of human health, safety, the environment and natural resources, including, without limitation, the Comprehensive, Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Oil Pollution Act of 1990, the Toxic Substances Control Act, the Clean Air Act, **Error! Unknown document property name.**

the Federal Water Pollution Control Act, the Safe Drinking Water Act, each as amended. “*Waste*,” “*special waste*,” “*hazardous substance*,” and “*hazardous material*” shall be defined as set forth in the Environmental Laws. All Village construction and other activities within the Easement Premises and the Property shall comply at all times with all Environmental Laws.

5. **HOLD HARMLESS**. During the term of this easement, to the extent permitted by law, the Village shall indemnify, defend, 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 (past, present, and future) (“*Park District Parties*”), from and against all claims, losses, costs and liability, including reasonable attorneys’ fees and costs, that may be incurred by any of the Park District Parties arising out of or in any way connected with the actions, errors or omissions related to planning, construction, operation, maintenance, repair, and (if applicable) replacement of the Stormwater Improvements, Village Restoration Improvements or to the Village’s performance of its obligations under this Agreement. In addition to the indemnification provided by the Village in this Section 5 above, the Village shall indemnify and hold harmless the Park District Parties from and against any and all claims, losses, costs and liability, including reasonable attorneys’ and environmental consultants’ fees and costs, that may be incurred by any of the Park District Parties arising out of or in any way connected to (i) the Village’s failure to comply in any way with the requirements and obligations set forth in Subsection 4.E of this Agreement, (ii) any Environmental Materials discovered or otherwise encountered during the Village’s construction, operation or maintenance of the Stormwater Improvements or the Village Restoration Improvements within the Easement Premises or anywhere within the Property.

6. **VILLAGE INSURANCE**. The Village is self-insured for general liability and workers compensation and does not purchase commercial insurance. The Village has provided the **Error! Unknown document property name.**

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 and the Village’s requirements for contractor insurance are attached to this Agreement as *Exhibit 4*. The Village and the Village contractors will maintain their respective Insurance Policies (or policies that are substantially the same as their respective Insurance Policies) at all times during the term of this Agreement. The Village Insurance Policies will name the Park District as an additional insured.

7. **RESERVED RIGHTS.** The District reserves the right to occupy, use, and improve the Easement Premises in any manner that will not make impracticable or infeasible the Work or the Permitted Village Uses and Facilities or otherwise materially and unreasonably interfere with or prevent the Village from utilizing the Easement Premises for the Permitted Village Uses and Facilities.

8. **ADDITIONAL EASEMENTS.** The District shall have the right to grant other non-exclusive easements over, along, across or upon the Easement Premises provided such other easements are subject to this Agreement and the rights granted hereby and do not unreasonably interfere with the Village’s rights under this Agreement. The Park District will provide advance written notice to the Village of any such other easements.

9. **VILLAGE RESTORATION.** In compliance with the Final Plans, upon completion of any Work, the Village shall: (a) replace and grade any and all topsoil removed by the Village as a result of such Work; (b) restore the Easement Premises to the condition immediately preceding the Work and any roads, paved areas, plantings, and improvements damaged or removed as a result of such Work; (c) replace any and all sod removed as a result of such Work with sod of like quality;

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and (d) replace any and all natural grass removed as a result of such Work with good quality sod. If after written notice, the Village does not restore the Easement Premises as required by this Agreement and within a commercially reasonable period of time, the Park District may restore the property and the Village shall reimburse the District for its costs within 60 days after the District provides the Village with a detailed invoice.

10. **ABANDONMENT AND REMOVAL.**

A. If the Village abandons construction or use of the Permitted Village Uses and Facilities on the Easement Premises, 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, (i) complete the Permitted Village Use and Facility at issue, or (ii) undertake actions to establish that the Permitted Village Use and Facility has not, in fact, been abandoned, or remove any abandoned underground improvements and restore the Easement Premises to its condition preceding the abandonment as described in Section 9 above. For purposes of this Agreement, “abandons,” “abandonment,” or “abandoned” shall mean cessation of construction, installation, or use of the Village Permitted Use and Facility for a period of 75 consecutive calendar days (unless the Village and the Park District agree in writing to a longer period of abandonment) for any reason other than (i) a force majeure or (ii) if and to the extent the cessation is caused by the Park District’s material breach of this Agreement. If the Village fails to comply with this Subsection 10.A within a commercially reasonable period of time after the Park District provides written notice, the Park District may remove the abandoned Permitted Village Use and Facility and restore the Easement Premises and the Village shall reimburse the 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. Moreover, upon the abandonment of any Permitted Village Use Facility, this Agreement shall

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terminate upon the Village's compliance with the provisions of this Subsection without further action and, upon the request of the District, the Village shall promptly record a release of easement releasing all rights hereunder, in a form reasonably acceptable to the Park District.

B. In the event the Village removes the Permitted Village Use and Facility from the Easement Premises, the Village shall restore the Easement Premises to its condition preceding such removal and this Agreement shall immediately terminate after such removal without further action, and, upon the request of the District, the Village shall promptly record a release of easement releasing all rights hereunder, in a form reasonably acceptable to the Park District. If the Village fails to comply with this Subsection 10.B within a commercially reasonable period of time after the Park District provides written notice, the District may restore the Easement Premises and the Village shall reimburse the District for the costs the District incurs in restoring the Easement Premises within 30 days after the District provides the Village with a detailed invoice for such costs.

11. **COVENANTS RUNNING WITH THE LAND.** The easements and rights granted in this Agreement, the restrictions imposed by this Agreement, the obligations assumed by the Village and the District in this Agreement, and the agreements and covenants contained in this Agreement shall be easements, rights, restrictions, obligations, agreements and covenants which run with the land and be binding upon and inure to the benefit of the District and the Village and their respective heirs, executors, administrators, successors, assigns, agents, licensees, invitees, and representatives, including, without limitation, all subsequent owners of the Subject Property, or any portion thereof, and all persons claiming under them. This Agreement shall be recorded against the Subject Property. If any of the easements, rights, restrictions, agreements or covenants created by this Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such easements, rights, restrictions, **Error! Unknown document property name.**

agreements, or covenants shall continue only until 21 years after the death of the last survivor of the now living lawful descendants of the current Governor of the State of Illinois.

12. **ASSIGNMENT OF RIGHTS.** The Park District agrees that the Village may delegate its duties under this Agreement with written notice to the District or assign this Agreement, with the District's approval (which approval will not be unreasonably withheld), to an assignee: (a) who is reasonably competent to exercise the rights granted herein and perform the obligations imposed herein; and (b) who provides adequate assurances that any Work performed pursuant to such assignment or delegation will be conducted in a good and workmanlike manner and in the manner required by this Agreement. Other than the notice required in Section 3 of this Agreement, nothing in this Section 12 or elsewhere in this Agreement shall require the Village to provide written notice to, or to obtain the consent of, the District for a Village contractor to perform Work on the Village's behalf.

13. **AMENDMENT.** This Agreement may be modified, amended, or annulled only by the written agreement of the District and the Village.

14. **EXHIBITS.** Exhibits 1-5 attached to this Agreement are incorporated into this Agreement and made a part of this Agreement.

15. **ENFORCEMENT.** The District and the Village may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce or compel performance of this Agreement.

16. **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

To the Park District:
Attention: Executive Director

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Village of Winnetka
510 Green Bay Road
Winnetka, Illinois 60093

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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed to be effective as of the date first above written.

WINNETKA PARK DISTRICT

By: _____
Arthur Archambault, President

ATTEST:

By: _____
Its: John Muno, Board Secretary

VILLAGE OF WINNETKA

By: _____
Christopher Rintz, Village President

ATTEST:

By: _____
Robert Bahan, Village Clerk

ACKNOWLEDGEMENTS

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On _____, 2020, Christopher Rintz, the Village President of the Village of Winnetka, an Illinois home rule municipal corporation, and Robert Bahan, the Village Clerk of said municipal corporation, appeared before in person and acknowledged that they signed the attached Agreement as their free and voluntary act and deed pursuant to the authority of the Village council of the Village of Winnetka for the uses and purposes set forth therein.

Signature of Notary

SEAL

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On _____, 2020, Arthur Archambault, the President of the Winnetka Park District, and John Muno, the Board Secretary of said Park District, appeared before in person and acknowledged that they signed the attached Agreement as their free and voluntary act and deed pursuant to the authority of the Winnetka Park District for the uses and purposes set forth therein.

Signature of Notary

SEAL

EXHIBIT 1 TO EASEMENT AGREEMENT

Legal Description of the Subject Property

Execution Copy
February 13, 2020

EXHIBIT 2 TO EASEMENT AGREEMENT

Depiction of Easement Premises

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Execution Copy
February 13, 2020

EXHIBIT 3 TO EASEMENT AGREEMENT

Village Final Plans

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Execution Copy
February 13, 2020

EXHIBIT 4 TO EASEMENT AGREEMENT

Village Construction
Schedule

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Execution Copy
February 13, 2020

EXHIBIT 5 TO EASEMENT AGREEMENT

Village Insurance
Policies

Exhibit D
Stormwater Improvements

Exhibit E
Village Restoration Improvements

Execution Copy
February 13, 2020

Exhibit F
Village Preliminary Plans

Exhibit G
Village Construction Schedule

Execution Copy
February 13, 2020

Exhibit H
Village Insurance Certificates

Execution Copy
February 13, 2020

Exhibit I
Park District Insurance Certificates

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