



**DECEMBER 12, 2017**

**VIA U.S. MAIL AND EMAIL**

Heidi Higgins, President  
Johnathan Kiwala, Executive Director  
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**RE: Supplemental Memorandum of Understanding  
New Village House Project**

Dear Ms. Higgins and Mr. Kiwala,

This memorandum supplements a certain preliminary memorandum of understanding, which was executed on or about April 17, 2017 by and between Kenilworth School District No. 38 and Kenilworth Park District (the “MOU”). The intent of this memorandum is to propose a contractual structure to move forward with the Project, and to outline the important terms of each agreement within this framework. This memorandum is intended to propose a plan of action that each Party’s governing board can review and approve, which will then guide the drafting and negotiations of these contract documents as this Project develops. This memorandum, while not contractually binding, represents each Party’s commitment to proceed as outlined below.

Although the Village of Kenilworth is not a party to this memorandum, in the spirit of intergovernmental cooperation, we are also requesting that the Village review and acknowledge our plan by signing below.

**Proposed Contractual Structure of the Project**

The School District will be the primary tenant of the New Village House and the Park District will retain ownership of the New Village House and the underlying property. The School District will lead the design and construction of the Project as the agent of the Park District. To accomplish this, we propose three separate agreements between the School District and the Park District:

- A. **Development Agreement:** The Development Agreement will provide the structure under which the School District will act as the Park District’s agent, to manage and lead the design and construction of the Project; to give the Park District regular status reports; and to present the Project to the Park District Board and Executive Director for review and approval at various Project-milestones to be agreed by the Parties.



- B. **Lease Agreement:** The Lease Agreement will be the main financing mechanism for the Project. The Park District will obtain the majority of the initial financing for the construction of the Project, backed by the periodic lease payments by the School District. The Lease Agreement will be structured such that the Park District can use it as debt security with respect to the Project financing.
- C. **Management Agreement:** The Management Agreement will address all operational aspects of the New Village House that are not covered in the Lease Agreement. This will include cleaning, maintenance, security, and capital improvements; scheduling and coordination of other users during nights, weekends, and summer breaks when school is not in session; and other administrative functions including accounts payable and receivable, insurance and risk management; and other functions required for a multi-user facility.

### **Development Agreement – Key Terms**

1. The effective date of the Development Agreement will be the date that the School District and the Park District have both signed the agreement, following board approval. The term of the Development Agreement will commence on the effective date, and will expire automatically upon final completion of the New Village House Project.
2. Either Party may terminate if the Park District and the School District cannot obtain initial funding for the Project or if the non-terminating Party materially breaches this Development Agreement or another of the related agreements.
3. The School District will be the agent of the Park District with respect to the Project.
4. The School District and Park District will work together to obtain all necessary permits and approvals.
5. On behalf of the Park District, the School District will draft and negotiate contracts with all design professionals and other professional service providers needed to complete the Project design and let the Project for competitive bidding.
6. The School District will keep the Park District and its legal counsel informed regarding negotiations, and will discuss initial drafts and present the finalized, negotiated design contracts to the Park District for review and approval by the Park District's legal counsel and board.
7. The School District will, in coordination with DLA Architects, prepare the contract documents that will govern the relationship between the Park District and the successful



bidder(s) for the Project. The Park District, in consultation with its legal counsel, will review and approve these contract documents and authorize the School District to let the Project for public bidding in accordance with applicable law.

8. The Project's scope of work will involve the Village of Kenilworth in several capacities:
  - a. The Project will comply with the Village's building regulations and the Kenilworth Zoning Ordinance, and the required approvals and permits will be sought and obtained from the Village.
  - b. The Parties will work with the Village to determine scope, and specification for widening the section of Cumnor Road adjacent to the Property for the purpose of meeting current code for emergency vehicle access. The Parties envision that the cost of widening Cumnor Road will be allocated principally to the total cost of the Project with the Village responsible for that portion of cost typically associated with the resurfacing and repair of Cumnor Road in its current state.
  - c. The Project's scope of work will include the clearing and completion of the Green Bay Trail ("GBT") on the west side of the Property abutting the Metra line and running from approximately the village yards to the north of the Property to the turning circle on Richmond Road to the south of the Property. The Parties acknowledge that the Village has applied for grants to pay for a portion of the design and construction of the GBT. Subject to the Village receiving these grants, the Parties anticipate that the Village and the Park District will reach an agreement wherein the Village, or its designee, will build the GBT. In addition, the Parties and the Village will investigate the feasibility of using the GBT, prior to being placed in service, as a corridor for construction vehicles for the Project. Upon completion of the Project, the GBT will be placed in service and the Park District will continue to own, operate, and maintain the GBT. The parties anticipate working with the Village to obtain the required approvals from Union Pacific and Metra, and where possible, to seek approval from Union Pacific to locate a portion of the GBT on the Union Pacific right-of way. The cost of completion of the GBT in excess of any grants received by the Village will be allocated to the Project.
9. The School District will be designated in the design and construction contracts as an "end user" and third party beneficiary of the Project, and as the agent and owner's representative of the Park District with respect to the Project. (This will allow the School District and Park District to share the right to recover damages in the unlikely event of a breach of contract by a design professional or a contractor.)



10. On a monthly basis, the School District will report to and advise the Park District on the progress of the work, the status of the contractors' payment applications and requests for change orders, the Project schedule, the scheduled completion dates, and any other Project-related information as may be reasonably requested by the Park District. In addition, on a weekly basis, the School District will meet to review with the Executive Director of the Park District the progress and status of the Project.
11. The School District will advise the Park District when the Project is substantially complete. "Substantial completion" means the Project is ready for occupancy for its intended use, and the only remaining work is minor or cosmetic in nature, and does not interfere with use or occupancy. Upon substantial completion, the School District and the Park District will create a punch list and will oversee the contractor(s)' completion of all punch list items within thirty (30) days from substantial completion.
12. The Park District as owner will procure and maintain a builder's risk insurance policy with a term running from commencement of the work through substantial completion of the work, and will cause the School District to be included as an additional insured on this policy.
13. The School District will bear all administrative, legal, insurance and other costs involved in the design, construction, management and oversight of the Project as described herein and in the prior MOU.
14. Upon the completion of the Project's punch list, "final completion" of the Project will be achieved, the Development Agreement will expire, and the Lease Agreement will commence.

### **Lease Agreement – Key Terms**

15. The Lease Agreement will be subject to all requirements of the Park District and its bond counsel, such that it can be used by the Park District to secure the initial financing for the Project.
16. The term of the Lease Agreement will commence upon final completion of the Project, and will continue for a term of 50 years, after which time the School District may, at its option, renew the term for five consecutive extensions of 10 years each.
17. Either Party may terminate if the Park District and the School District cannot obtain initial funding for the Project, or if the non-terminating Party materially breaches this Lease Agreement or another of the related agreements.



18. The School District will make lease payments to the Park District to cover the debt incurred by the Park District to finance the Project. It is anticipated that this annual payment amount will not exceed \$400,000 per year for 20 years.
19. After the first 20 years of the term, the School District's lease payments to the Park District will be a nominal rate to be negotiated between the School District and the Park District.
20. The School District and Park District will use the Village House for educational, administrative and athletic activities, and other events that support the School District's and Park District's mission and objectives.
21. The School District will have exclusive use of the New Village House Monday through Friday, from approximately 7:00 a.m. to 3:30 p.m., while school is in session except for space and rooms designated for the School District's exclusive use. On an annual basis, this period of exclusive use will be reviewed by the Parties, and any adjustments will require mutual written agreement of the Parties. The Lease Agreement will also designate certain rooms and/or spaces within the New Village House to be subject to exclusive use by the School District and the Park District at all times throughout the lease term. Exceptions to exclusive use may be agreed upon in writing by both parties for programs or events that are run jointly by the Park District and the School District
22. At all other times, and except for space and rooms designated for the School District's exclusive use, the Park District will have exclusive use of the New Village House, and will be responsible to control, manage, maintain, and schedule use by the Park District and other third parties, and by the School District for extra-curricular and other special events.
23. Commencing after completion of the Project, the School District and Park District will pay an equal proportion of all expenses related to the maintenance and improvement of the New Village House, which will be in addition to the School District's annual lease payments described above.
24. The Park District will establish utility service connections including electricity, gas, water, sewer, telephone, and internet. The Parties will investigate whether it is appropriate and feasible to share utility infrastructures already in place. The Parties will determine, for each utility, whether separate metering is appropriate. In the case of joint metering, the utility expense will be shared equally as provided above.
25. Either Party, with approval of the other Party, may alter and improve interior portions of the building with signage, paint, wall hangings, equipment, furniture, and other personal property, at their own expense, and will remove such items upon termination or



expiration of the lease, and will restore the Property to its original state, ordinary wear and tear excepted.

26. Any repairs, maintenance, capital repairs and/or capital improvements reasonably necessary for the continued occupation of the New Village House shall be procured and paid for by the Park District, and the Parties will equally share the related expense.
27. The Park District will procure and maintain property insurance for the New Village House, and will cause the School District to be included in the policy as an additional insured.
28. Each Party will procure and maintain liability insurance through a risk pool or insurance company licensed to conduct business in Illinois, with minimum coverage's to be determined by the Parties and specified in the Lease Agreement. If possible, each Party will cause the other to be included as an additional insured on a primary and non-contributory basis.
29. Each Party will, if desired, procure and maintain insurance covering its personal property within the Village House.
30. Each Party will indemnify and defend the other Party for the indemnifying Party's breach of the Lease Agreement and/or from the indemnifying Party's negligence.
31. Neither Party may assign any right or delegate any duty without written consent of the other Party.

### **Management Agreement – Key Terms**

32. The term of the Management Agreement will commence upon final completion of the Project, and will be terminate or expire at the same time as the Lease Agreement.
33. The Park District will procure and manage all goods, materials, equipment and services needed for the operation of the New Village House, including janitorial, grounds maintenance, systems repair and regular maintenance, building security, and equipment. The Parties will equally share the related expenses. Capital repairs and improvements may be proposed by either Party. Capital repairs and improvements required by law for the School District's or Park District's continued use of the New Village House shall be performed by the Park District as soon as practicable and shall not require further approval by either Party. Other capital repairs or improvements must be agreed in advance and in writing by the Parties. The Parties will equally share the expenses related to all capital repairs and improvements. The Parties will, on a regular basis, review all procurements needed for the operation of the New Village House, and whenever



practicable and economical, will share resources and utilize cooperative purchasing as allowed by law. The Park District shall conduct background checks for its personnel at the New Village House to the extent required by Section 10-21.9 of the School Code, 105 ILCS 5/10-21.9(f), and shall provide the results to the District.

34. In March of each year, the School District will establish and provide to the Park District a school calendar reflecting attendance dates and times, during which the School District will have exclusive use of the New Village House, as provided above in the Lease Agreement. In addition, the School District and Park District will meet to consider any adjustments requested with respect to the formula for expense sharing; and to review and discuss any significant procurements, activities, requirements, challenges and/or scheduling considerations anticipated in the upcoming year.
35. The Park District and School District will not permit use of the New Village House by any entity or group whose mission, objectives, goals, or past conduct is not aligned with the School District or Park District mission, objectives, policies, rules, and requirements.
36. The Park District will require other users to execute a facilities use agreement in a simple format approved by the Parties, which protects the interests of both the Park District and the School District.
37. The Park District will perform all other administrative functions required for a multi-user facility, and the School District and Park District will equally share the related expenses.
38. Insurance and indemnity requirements of the Management Operating Agreement will be consistent with those in the Lease Agreement.

Each Party hereby authorizes its administration to negotiate contract documents in accordance with this supplemental memorandum of understanding. The School District authorizes its administration and attorneys to draft the preliminary versions of these agreements for review and discussion by the Parties. This memorandum is not contractually binding, but represents each party's commitment to proceed as outlined above.



**THE JOSEPH SEARS SCHOOL**

Kenilworth School District No. 38 Board of Education

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Approved and Agreed:

The Board of Commissioners of the  
Kenilworth Park District

The Board of Education of  
Kenilworth School District 38

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Acknowledged:

The Village of Kenilworth

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

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