

INTERGOVERNMENTAL DEVELOPMENT AGREEMENT

This intergovernmental development agreement (the “Development Agreement” or “Agreement”) is executed on the date last written below, by and between the Board of Commissioners of Kenilworth Park District (the “Park District”) and the Board of Education of Kenilworth School District No. 38 (the “School District”). The Park District and School District are defined individually as a “Party” and collectively as the “Parties.”

RECITALS

A. The Park District owns the real property located at [600 Ivy Court], and known as Townley Field, which includes an existing building in the north corner of the lot (the “Property”).

B. The Parties are collaborating in the development of a construction project (the “Project”) that involves the demolition of the existing building on the Property, and the design and construction of a new Village House (the “Village House”). This Project is presently in the design phase.

C. On January 16, 2018, the Parties executed a memorandum of understanding concerning the Project (the “MOU”).

D. Through this Development Agreement, the Parties desire to finalize their respective roles and responsibilities with respect to the design and construction of the Project.

E. Prior to commencement of the construction of the Project, or at another time as mutually agreed, the Parties plan to simultaneously execute a lease agreement and a management agreement, which shall specify the Parties’ respective rights and obligations concerning the use, occupancy, management, and maintenance of the new Village House after it is constructed and completed.

In consideration of these recitals, and other good and valuable consideration, the receipt of which is hereby acknowledged by each Party, and intending to be legally bound, the Parties agree as follows:

1. **Incorporation of Recitals.** The above recitals are hereby incorporated into this Agreement by this reference.

2. **Effective Date and Term.** The Effective Date of this Development Agreement is the later of the dates upon which both of the Parties’ respective corporate authorities approved this Agreement. Following those approvals, the Parties will exchange signed counterparts. Subject to the termination provision in Section 3, below, the term of this Development Agreement commences on the Effective Date, and expires automatically upon final completion of the New Village House Project (the “Term”). “Final Completion” means the date that the Project’s punch list is completed and the Project’s architect of record has executed a final certificate of payment in accordance with the Project’s contract documents.

3. **Termination.** Either Party may terminate this Agreement upon written notice to the other Party if:

- a. The Park District and the School District cannot obtain initial funding for the Project prior to the date of publication of notice for bids; or
- b. Acts of law occur to frustrate the intended funding or use; or

- c. The non-terminating Party materially breaches this Development Agreement or another of the related agreements, which are integrated and identified in Section 14, below.

For purposes of this Section 3, the Parties will be deemed to have obtained initial funding for the Project if, by the date of publication of notice for bids, the amount of Project funding then in the possession or under the control of the Parties, collectively, is equal to or exceeds the estimated cost to design, construct, and complete the Project.

4. **Agency Relationship.** For the Term of this Agreement, the Park District hereby appoints the School District as its agent with respect to the Project, and this agency is subject to the following terms, conditions, and limitations:

- a. **Administration.** This Agreement provides for a cooperative undertaking for the mutual benefit of the Parties without creating any separate legal or administrative entity. The Project and related actions are undertaken solely pursuant to law and for the governmental and corporate educational, recreational and economic development purposes as stated in this Agreement. The Parties agree to coordinate their respective duties for the mutual benefits of cooperation, efficiency, and cost savings, and each Party will use their best efforts to efficiently coordinate the Project and communication between the Parties and any contractors. The terms and conditions of this Agreement shall be administered by the Executive Director on behalf of the Park District and by the Superintendent on behalf of the School District (collectively the “Administrators”). Where appropriate, the Administrators may assign delegates to act on their behalf. The Administrators are authorized to negotiate, and, upon authorization by their respective principals, will execute, administer and enforce the necessary agreements contemplated herein.
- b. **Permits and Approvals.** The School District and Park District will work together and with the design professionals and consultants to identify the governmental authorities with jurisdiction over the Project; to complete all applications and provide all information and documents requested by such authorities; and to obtain all necessary permits, approvals, and certificates required to commence and complete the Project, and to occupy the new Village House as contemplated under this Agreement. Specifically, and without limitation, the Project will be designed and constructed to meet the programmatic needs of both Parties and to comply with the Illinois Health / Life Safety Code for Public Schools, and to the extent applicable the Village of Kenilworth’s building regulations and the Kenilworth Zoning Ordinance. The required approvals and permits will be sought and obtained from the governmental authorities with jurisdiction over the Project. When possible, the School District shall cause the design professionals to prepare all required documents and applications required for the Project and submit them to the Park District for review and approval prior to submission to any authorities having jurisdiction. The Parties shall cause the Project to be designed and constructed in compliance with all applicable federal, state, and local laws, rules, and regulations, including but not limited to the Americans with Disabilities Act, as amended.
- c. **Intergovernmental Coordination.** In addition to zoning and building requirements, the Project’s scope of work will involve coordination with the Village of Kenilworth in several capacities as described below:

- i. The School District, in consultation with the architect of record, 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 anticipate 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.
 - ii. 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 its 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. If possible, the Parties shall cause the bid forms to be included in the Contract Documents to itemize and separate from the cost of the work line items to reflect the construction costs associated with the GBT work, and the construction costs associated with the Cumnor Road work.
- d. **Third-Party Professional Service Contracts.** 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. 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 of Commissioners. After approval by the Park District's Board of Commissioners, and after any approval deemed necessary by the School District, the School District, acting as the agent of the Park District, shall administer such agreements on behalf of the Park District.
- e. **Construction Contract Documents.** The School District will, in coordination with the Project's architect of record, prepare the Project Documents for presentation to the market for bidding. The architect of record will prepare the plans and specifications for the Project, and will provide and update estimates of the cost of the work in accordance with its contract. Together, these general conditions, plans, specifications, and other information included in the project manual are known as the "Contract Documents." The Park District, in consultation with its legal counsel and with the School District, will at appropriate intervals review and approve these Contract Documents in conjunction with the updated cost estimates provided by the architect. The Park District will authorize the School District to let the Project for public bidding after all of the following have

occurred: (1) The Parties have each approved the completed Contract Documents; (2) the Parties have each approved the last pre-bid estimate of the cost of the work as provided by the architect; and (3) the Parties have each agreed that funding for the Project is available.

- f. **Project-Related Insurance.** The Park District as owner of the Project 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 to the extent of the School District's interest in the Project. The Parties will consult with their respective insurance agents regarding appropriate insurance requirements for the Project, and the School District will cause such requirements to be included in the Project's Contract Documents.
- g. **The School District's Designation.** The School District will be designated in the Contract Documents 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. The Park District will continue to own the Property and all improvements constructed hereunder.
- h. **Bidding and Award to Contractor(s).** The School District will conduct the bid opening, open and read aloud all timely-received bids, and in coordination with the Project's architect of record tabulate the bid results, identify the lowest responsive and responsible bidder, and make an appropriate recommendation to the Park District. Provided the recommendation is to award one or more bids, and such recommendation is approved by the Park District's Board of Commissioners and by the School District's Board of Education, the School District shall, as agent of the Park District, and in coordination with the architect of record, award the bid(s) and execute the related contracts with the successful contractor(s). Otherwise, no bids shall be awarded.
- i. **Construction Administration.** The School District will consult with the Project's architect of record as the architect provides construction administration of the Project in accordance with the architect's contractual duties.
- j. **Change Order Procedure.** No change orders will be approved without the express written consent of the Park District following a reasonable opportunity for review by the Board of Commissioners. No change orders will be approved without the express written consent of the School District following a reasonable opportunity for review by the Board of Education. Notwithstanding these approval requirements, the Park District hereby delegates to its Executive Director authority to approve any change order in an amount not in excess of \$20,000, and the School District hereby delegates to its Superintendent and Superintendent's designee authority to approve any change order in an amount not in excess of \$20,000.
- k. **Statutory Determinations for Change Orders.** With respect to all change orders or series of change orders that authorize or necessitate an increase or decrease in the cost of the construction contract by \$10,000 or more, or which will change the time of completion by a total of 30 days or more, the Park District hereby authorizes its Executive Director, and the School District hereby authorizes its Superintendent and Superintendent's designee, to make the written determinations required by 720 ILCS 5/33E-9, specifically that: (1) the circumstances said to necessitate the change in

performance were not reasonably foreseeable at the time the contract was signed, or (2) the change is germane to the original contract as signed, or (3) the change order is in the best interest of the District and is authorized by law. Such written determination and all approved change orders shall be preserved in the contract's file and be open to the public for inspection. All contracts and change orders administratively approved and executed in accordance with this Agreement shall be presented to each Party's respective Board at that Board's next regularly scheduled meeting.

5. **Progress Reports.** On a monthly basis, the School District will report to and advise the designee of the Park District on the progress of the work, the status of the contractors' payment applications and requests for change orders, the Project budget, 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.

6. **Design and Construction Costs.** The Parties, through their respective funding sources, will bear a portion of the administrative, legal, insurance and other costs involved in the design, construction, management and oversight of the Project as described herein and in the Supplemental MOU. The amount of each Party's respective contribution to the total cost of the Project, and each related funding source, shall be agreed in writing by Parties prior to the award of bids as provided above in Section 4(h). The School District previously paid certain preliminary costs related to the Project, and anticipates continuing to pay other preliminary costs prior to the commencement of construction. These payments shall be reconciled with the agreed contribution plan to be established under this Section. The Parties anticipate that the project will be funded through a private raise and alternate revenue bonds secured by a Lease Agreement to be executed by the Park District as lessor and School District as lessee.

7. **Compliance with Laws and Policies.** Each Party shall comply with all federal, state and local laws pertaining to its respective rights and obligations under this Agreement.

8. **Substantial Completion.** 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; that the Project has received a certificate of occupancy from all governmental authorities with jurisdiction to issue such certificates; and the only remaining work is minor or cosmetic in nature, and does not interfere with use or occupancy. Substantial Completion may be more specifically defined in the Contract Documents, and the definition contained in the Contract Documents shall control. Upon Substantial Completion, the School District and the Park District shall, in coordination with the architect and the contractor(s), create a punch list, and the School District as agent of the Park District will oversee the contractor(s)' completion of all punch list items within thirty (30) days from Substantial Completion or as otherwise specified in the Contract Documents.

9. **Post-Completion Claims.** If either Party discovers a defect or deficiency in the Project after Substantial Completion, the discovering Party shall report such discovery to the other Party as soon as possible, and the Parties shall cooperate to identify the source of the problem, obtain correction of the problem from the responsible party, if any, and repair, replace, or otherwise correct such defect or deficiency as soon as reasonably practicable. To the extent not prohibited by the Contract Documents, upon request by the School District, the Park District shall assign its contractual rights under the Contract Documents to the School District, such that the School District can pursue such claims against responsible parties.

10. **Notices.** Written notices required or permitted under this Agreement shall be deemed received when sent, and shall be sent by U.S. mail, overnight courier, or hand delivery, and addressed as follows:

If to the Park District: Kenilworth Park District
Attention: Executive Director
419 Richmond Road
Kenilworth, IL 60043

With a copy to: Derke J. Price
Ancel Glink
140 S. Dearborn, Sixth Floor
Chicago, IL 60603
dprice@ancelglink.com

If to the School District: Kenilworth School District 38
Attention: Superintendent
542 Abbotsford Road
Kenilworth, IL 60043

With a copy to: Samuel B. Cavnar
Robbins Schwartz
55 West Monroe Street, Suite 800
Chicago, IL 60603
scavnar@robbins-schwartz.com

11. **Choice of Law.** This Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of Illinois without regard to conflict of law principles.

12. **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the Parties and their heirs, legal representatives, successors and assigns. The provisions of this Agreement are severable and no provision shall be affected by the invalidity of any other provision.

13. **No Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement.

14. **Integration and Precedence.** The Parties have executed additional agreements in connection with the Project, specifically the MOU, which was fully-executed on January 16, 2018. Each of these agreements is hereby incorporated by reference in and made a part of this Development Agreement. The Parties are presently negotiating the Lease Agreement and the Management Agreement, and when they are approved by each Party and fully executed, they will be incorporated into this Agreement by this reference. To the extent of any conflict between these agreements, this Lease Agreement shall control, followed by the Management Agreement, this Development Agreement, and the MOU. Any termination of this Development Agreement in accordance with Section 3, above, will automatically terminate each of the other agreements referenced in this Section, but such termination shall not affect any obligations that existed under this Agreement or such other agreement(s) prior to the effective date of such termination. This Development Agreement and the other agreements referenced in this Section form the complete and integrated agreement of the Parties with respect to this subject matter, and this Development Agreement may only be amended by the subsequent written agreement of the Parties.

15. **Execution in Counterparts.** This Agreement may be executed in counterparts. When both counterparts have been executed, the exchange of counterparts in hardcopy or electronically shall have the same effect as if the Parties had executed and exchanged the same instrument.

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Executed on the date last written below, by and between:

**The Board of Commissioners of the
Kenilworth Park District**

By: _____

Title: _____

Dated: _____

**The Board of Education of
Kenilworth School District No. 38**

By: _____

Title: President _____

Dated: _____

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