

RESOLUTION NO. R-80-12

A RESOLUTION AUTHORIZING THE CONSTRUCTION OF A PROTECTIVE FENCE, COSLEY ZOO, 1356 GARY AVENUE, WHEATON, ILLINOIS

WHEREAS, the Wheaton Park District is seeking to construct a eight foot tall chain link protective fence with three strands of barb wire at Cosley Zoo along Jewel Road and Gary Avenue that meets current Association of Zoos and Aquariums (AZA) and USDA standards; and

WHEREAS, portions of the fence will have slats for the wellbeing of the animals and a section of the fence will be installed in the Gary Avenue right-of-way; and

WHEREAS, Section 22-157 of the Wheaton City Code limits fences in the front yard to no more than three feet in height, fences in the corner side yard to no more than four feet in height and fences in the rear yard to no more than six feet in height; and

WHEREAS, Section 22-163 of the Wheaton City Code allows any school, governmental entity, private utility or public utility to petition the City Council for a permit to construct a protective fence that would not conform to the requirements of the fence regulations; and

WHEREAS, the City Council finds that the proposed fence would not alter the essential character of the area; and

WHEREAS, the City Council finds that the proposed fence would be in harmony with the general intent and purpose of the fence regulations; and

WHEREAS, the City Council finds that the proposed fence would not set any unfavorable precedent either to the locality or to the City as a whole; and

WHEREAS, the City Council finds that the proposed fence would not adversely affect the public safety and general welfare; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois that permission is hereby granted to allow the construction of an eight foot tall chain link fence with three strands of barb wire for Cosley Zoo in substantial compliance with the site plan entitled "Cosley Zoo Perimeter Fence Layout Plan" sheets 1-2, dated September 12, 2012 and subject to attached Exhibit A, An intergovernmental Construction, Use and Indemnification Agreement, being executed.

Michael J. Jones
Mayor

ATTEST:

Shawn Bennett-Hagan
City Clerk

ROLL CALL VOTE:

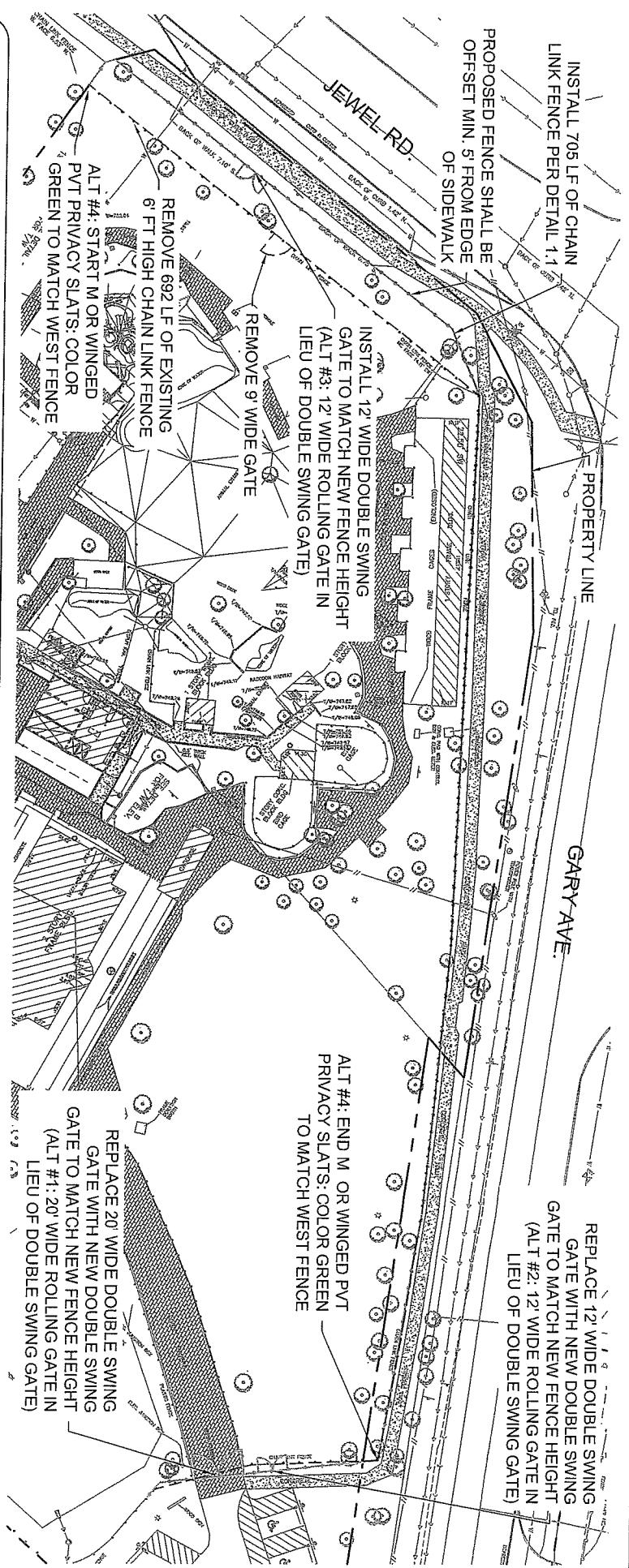
Ayes: Councilman Suess
Councilwoman Ives
Councilman Mouhelis
Councilman Rutledge
Mayor Gresk
Councilwoman Pacino Sanguinetti
Councilman Scalzo

Nays: None

Absent: None

Motion Carried Unanimously

Passed: October 15, 2012
Published: October 16, 2012



NOTES

1. The posts and rails for the chain extender chain link fence shall be black to match the fabric.
2. The core of the PVC coated chain link fabric shall be 9 gauge.
3. The site shall be secured at the end of each day in order to better facilitate this requirement. Contractor is encouraged to install the new fence prior to removing the existing fence.
4. Contractor shall be registered with the City of Wheaton.
5. Owner shall obtain all necessary permits and pay associated fees.
6. Measurements shall be field verified by contractor prior to submitting bid
7. Contractor shall be responsible to locate all property corners necessary to complete work.



WHEATON PARK DISTRICT

102 E. JEWEL WHEATON IL 60187
(630) 665-4710

COSLEY ZOO PERIMETER FENCE LAYOUT PLAN

drawn by:	checked by:	revised by:
SHH 9/12	2012	revising date:
date:	date:	date:

Sheet **1** of **1**



1/2"=1-0"

1/2"=1.0"

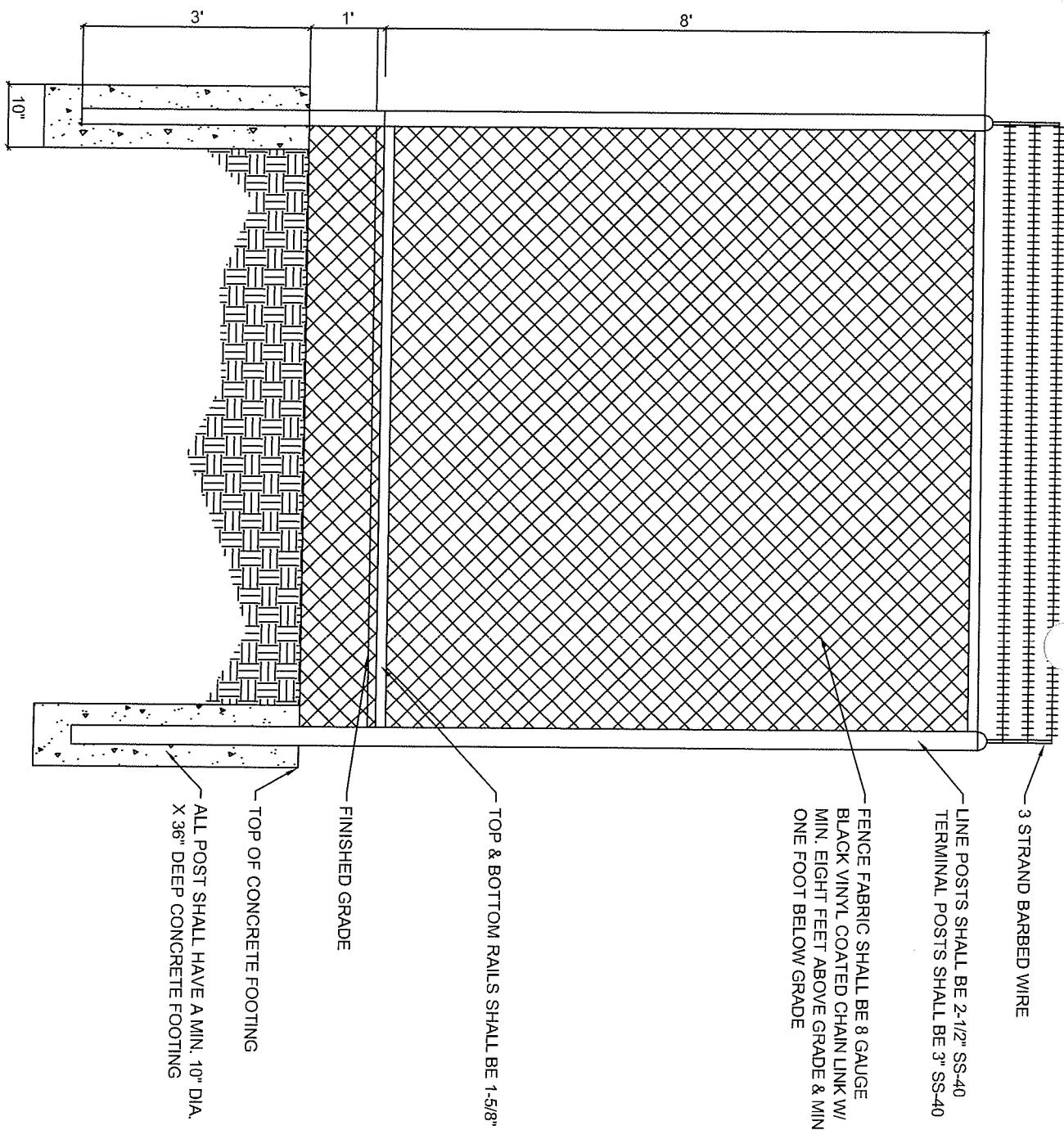


EXHIBIT A

OCT 2012

INTERGOVERNMENTAL
CONSTRUCTION, USE AND
INDEMNIFICATION AGREEMENT
COSLEY ZOO

THIS INTERGOVERNMENTAL CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 5th day of October, 2012, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and the Wheaton Park District ("District").

WITNESSETH

WHEREAS, the City is in possession of a public street within the City limits of the City of Wheaton, Illinois, commonly referred to as Gary Avenue, and legally described herein ("Public Street"); and

WHEREAS, the District is the owner of the premises located at, 1356 Gary Avenue, Wheaton, Illinois, commonly referred to as Cosley Zoo, which property is legally described herein and is contiguous to a portion of the Public Street; and

WHEREAS, the District uses the Public Street to access their property; and

WHEREAS, the District is desirous of installing a fence on a portion of the Public Street for the purpose of meeting current Association of Zoos and Aquariums (AZA) and USDA standards; and

WHEREAS, the District acknowledges that this Agreement is not an easement and does not vest them with any property rights or claims to any portion of the Public Street; and

WHEREAS, the District's successors and heirs will benefit from the construction of a fence over the Public Street as described herein.

NOW, THEREFORE, BE IT AND HEREBY AGREED by the City Council of the City and the Board of Commissioners of the District as follows:

1.) The foregoing recitals are incorporated herein as representing the intent of the undersigned and as substantive representations and covenants.

2.) The District is the owner of property located at, 1356 Gray Avenue, Wheaton, Illinois, commonly referred to as Cosley Zoo, which property is legally described and depicted on Exhibit B, which is attached hereto and incorporated herein as if fully set forth.

3.) The District, for a consideration of Ten Dollars (\$10.00) and other good and valuable consideration as stated herein, is hereby authorized to construct and use a portion of the Public Street more specifically identified as the Gary Avenue right-of-way lying immediately northwest of the Property described in Paragraph 2 of this Agreement, in the following manner: To construct and use a fence in strict conformance with the Cosley Zoo Perimeter Fence Layout Plan, prepared by the Wheaton Park District, Wheaton, Illinois, dated September 12, 2012, depicted on Exhibit C, which is attached hereto and incorporated herein as if fully set forth.

4.) The District shall construct and use the fence in conformance with all applicable City ordinances and in a manner which does not interfere, impede, hinder or otherwise obstruct the lawful use of the Public Street by the City. Upon completion, District shall maintain the fence in good condition and repair and in conformance with all applicable City ordinances. If the District fails to maintain the fence as required by this paragraph, the City shall have the right but not the obligation to make any and all repairs to the fence. The City shall give the District thirty (30) days prior written notice of the City's intent to perform such corrective work, and if the District commences such corrective work within said thirty (30) day period and is pursuing same with diligence to completion within said period, the City shall thereafter not perform corrective work. The District shall reimburse the City for any reasonable and necessary costs incurred by the City in performing corrective work to repair the fence, within thirty (30) days of presentation by the City to the District of an invoice detailing the City's costs therefor.

5.) The City retains the right to enter the Public Street for the purpose of maintaining the existing City utility systems (watermain, storm and sanitary sewers) if any. If the City performs maintenance work on any of the aforesaid utility systems the District shall restore the fence at their sole cost and expense.

6.) The City in its sole discretion may terminate and cancel this Agreement together with all rights and privileges granted hereunder, by notifying the District in writing at least ninety (90) days prior to termination.

7.) Upon termination of this Agreement, the City may destroy, demolish, remove any improvements placed upon the Public Street by the District without liability.

8.) To the greatest extent permitted under Illinois law, the District shall defend, indemnify and hold harmless the City, its council members, officers, employees and agents, against and from any and all liabilities, claims, losses, costs, damages and expenses of every nature whatsoever, including without limitation reasonable attorneys' and paralegals' fees, suffered, incurred or sustained by any such indemnified persons, for any of the following:

a. any and all mechanics' or materialmen's liens, or claims therefor, arising out of the construction or maintenance of the fence or other activity of the District or District's contractors or subcontractors on the Public Street;

b. the death of or injury to any person or the loss, destruction, or theft of or damage to any property, relating directly or indirectly to, or arising directly or indirectly from, the construction, use or maintenance of the fence or other activity by the District, its employees, agents or contractors or any person acting on its or their behalf or with its or their authority or permission, on the Public Street;

c. any breach by the District of any provision of this Agreement, or otherwise incurred by the City in enforcing the terms of this Agreement.

Nothing in this paragraph shall be interpreted to waive any or all statutory or common law privileges and/or immunities of either the District or City.

9.) The District shall maintain and shall cause any contractors performing all or any part of the construction or maintenance of the fence to maintain, the insurance coverages, and shall take such other actions, and cause said contractors to take such actions, as are described in Exhibit D attached hereto and incorporated herein.

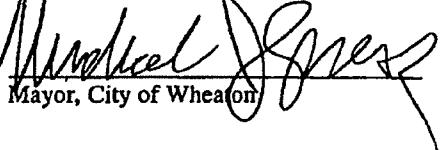
10.) This Agreement is not an easement nor is it intended to grant the District an interest in the real property.

11.) The provisions set forth in this Agreement and exhibits represent the entire Agreement between the parties and shall proceed all prior agreements, contracts, understandings, promises and representations, oral or written, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement. This Agreement may be modified only by a further written Agreement between the parties, and no modification shall be effective unless properly approved and signed by each party.

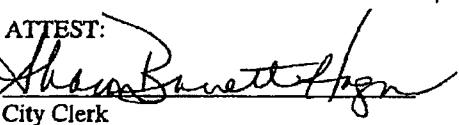
12.) This Agreement shall be binding upon the parties their respective heirs, successors and assigns.

13.) This Agreement shall be recorded in the Office of the Record of Deeds, DuPage County, Illinois.

IN WITNESS WHEREOF, the parties have executed or caused this instrument to be executed by their proper officers duly authorized to execute the same.


Michael J. Bres
Mayor, City of Wheaton

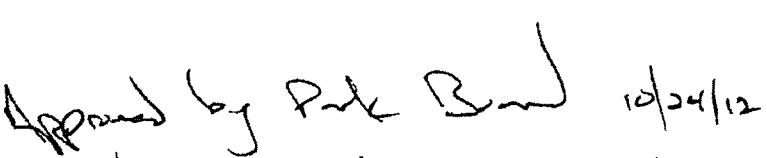
ATTEST:


Sharon Bennett
City Clerk

President, Wheaton Park District Board of Commissioners

ATTEST:

District Secretary


Approved by Park Board 10/24/12
President's Signature to follow

STATE OF ILLINOIS)
COUNTY OF DuPage) ss

Sara Bemer, a Notary Public in and for said county and state, hereby acknowledged that on this 16 day of October, 2012, personally appeared before me Michael Gesk, as Mayor of the City of Wheaton, and Sharon Barrett-Hagan, as City Clerk of the City of Wheaton, known to me to be the persons who executed the foregoing Intergovernmental Construction, Use and Indemnification Agreement, and acknowledged that they executed the said instrument as their free and voluntary act and as the free and voluntary act of the City of Wheaton, for the uses and purposes therein set forth.

Sara Bemer
Notary Public

(SEAL)

My commission expires:



STATE OF ILLINOIS)
COUNTY OF DuPage) ss

DONNA Siciliano, a Notary Public in and for said county and state, hereby acknowledged that on this 25 day of October, 2012, personally appeared before me Michael Ragan, as President of the Wheaton Park District, and Michael Ragan, as Secretary of the Wheaton Park District, known to me to be the persons who executed the foregoing Intergovernmental Construction, Use and Indemnification Agreement, and acknowledged that they executed the said instrument as their free and voluntary act and as the free and voluntary act of the Wheaton Park District, for the uses and purposes therein set forth.

DONNA R Siciliano
Notary Public

(SEAL)

My commission expires: June 25, 2014

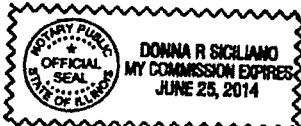


EXHIBIT B

LEGAL DESCRIPTION

PARCEL 1: LOT 1 IN PAULA JONES' ASSESSMENT PLAT OF PART OF LOT 5 IN OYER'S SUBDIVISION OF PART OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE ASSESSMENT PLAT RECORDED NOVEMBER 6, 1967, AS DOCUMENT R67-45287, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 3: THAT PART OF LOT 5 OF AYER'S SUBDIVISION OF PART OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 102898, DESCRIBED BY COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 5, (SAID POINT BEING THE POINT OF INTERSECTION OF THE CENTER LINE OF GARY AVENUE WITH THE CENTER LINE OF PRAIRIE AVENUE), AND RUNNING THENCE SOUTH 89 DEGREES 57 MINUTES WEST ALONG SAID CENTER LINE OF PRAIRIE AVENUE, 152.85 FEET FOR A PLACE OF BEGINNING; THENCE CONTINUING SOUTH 89 DEGREES 57 MINUTES 00 SECONDS WEST ALONG SAID CENTER LINE 50.0 FEET; THENCE NORTH 00 DEGREES 03 MINUTES 00 SECONDS WEST AT RIGHT ANGLES TO SAID CENTER LINE, 45.0 FEET; THENCE NORTH 27 DEGREES 21 MINUTES 00 SECONDS WEST, 174.43 FEET; THENCE SOUTH 89 DEGREES 57 MINUTES 00 SECONDS WEST, 160.0 FEET; THENCE NORTH 00 DEGREES 03 MINUTES 00 SECONDS WEST, 143.69 FEET TO THE SOUTH LINE OF PAULA JONES' ASSESSMENT PLAT OF PART OF SAID LOT 5 RECORDED AS DOUCMENT R67-45287; THENCE NORTH 88 DEGREES 20 MINUTES 00 SECONDS EAST ALONG SAID SOUTH LINE, 66.37 FEET TO AN ANGLE POINT; THENCE SOUTH 82 DEGREES 45 MINUTES 00 SECONDS EAST ALONG SAID SOUTH LINE, 147.74 FEET TO THE CENTER OF GARY AVENUE; THENCE SOUTH 35 DEGREES 11 MINUTES 00 SECONDS EAST ALONG SAID CENTER LINE, 311.64 FEET TO A POINT WHICH IS 87.96 FEET NORTHWESTERLY FROM THE SOUTHEAST CORNER OF SAID LOT 5; THENCE SOUTH 54 DEGREES 49 MINUTES 00 SECONDS WEST AT RIGHT ANGLES TO SAID CENTER LINE, 125.0 FEET TO THE PLACE OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

P.I.N. 05-08-407-002; -010

The Subject Property is commonly known as Cosley Zoo, 1356 North Gary Avenue, Wheaton, IL 60187

EXHIBIT C

COSLEY ZOO PERIMETER FENCE LAYOUT PLAN

EXHIBIT D

INSURANCE COVERAGES

1. From the effective date of the Intergovernmental Construction, Use and Indemnification Agreement and for all time thereafter, the District shall obtain and maintain general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than one million dollars (\$1,000,000) annual aggregate per each personal injury and products completed operations. Additionally the District shall obtain and maintain at all times an excess liability (umbrella) policy in an amount of two million dollars (\$2,000,000). All insurance policies shall name the City as an additional insured as respects all coverages. Coverage shall be on a per occurrence basis in accordance with the limits and provisions specified herein. Claims made policies are unacceptable. All insurance shall provide that it will not be canceled or materially altered to reduce the policy limits until the City has received at least thirty (30) days written notice of such cancellation or change. If at any time such coverage is canceled or materially altered, use of the fence shall cease until such time as the insurance coverages are restored to the satisfaction of the City. After the first five years, and for every five years thereafter, the City shall have the right to require such coverages and limits as are comparable to those specified above, taking into account inflation, or to require such other coverages and limits as may be reasonably necessary to carry out the intent of this paragraph.

- A. Prior to commencement of this Agreement, the District shall file with the City the required original certificates of insurance with endorsements which shall clearly state all of the following:
 - I. The policy number; name of the insurance company; name and address of the agent or authorized representative; name, address, and telephone number of the insured; project name and address; policy expiration date; and specific coverage amounts; and
 - ii. That the City shall receive thirty (30) days written notice prior to cancellation or alterations reducing the policy limits; and
 - iii. That the District's insurance is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions that the City may have; and
 - iv. Any other insurance the City possesses shall be considered excess insurance only and shall not be required to contribute with the District's insurance.
- B. All insurance carriers providing coverage under this Agreement shall be admitted and authorized to do business in the state of Illinois and shall be rated at least A:X in A.M. Best and Companies Insurance Guide. Insurance policies and certificates issued by non-admitted insurance companies are unacceptable.
- C. Any deductibles or self-insured retention shall be stated on the certificates of insurance provided to the City.

D. Should the District hire any Contractor to perform any work on the fence or Public Street on the date of or subsequent to the effective date of this Agreement, the District shall require such Contractor to comply with the requirements of paragraph 2 of this Exhibit D. Furthermore, the District shall require such Contractor to execute a signed indemnification agreement containing an identical promise to hold the City harmless and indemnify Wheaton in conformance with paragraph 5G of this Exhibit D. Such written indemnification shall be provided to the City before the Contractor performs any work on the fence or the Public Street.

2. Prior to commencing work on the fence or on the Public Street, and at all times during any and all work associated with the construction of the fence, the District and the District's Contractor or Contractors shall obtain and maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence (combined single limit) including bodily injury and property damage, and in an amount of not less than one million dollars (\$1,000,000) annual aggregate per each personal injury and products completed operations; and general commercial automobile liability insurance protecting the District and the District's Contractor or Contractors, in an amount not less than one million (\$1,000,000) annual aggregate for personal injury liability and products completed operations. Additionally, District and District's Contractor or Contractors shall obtain and maintain at all times during any construction activities on the fence or on the Public Street, an excess liability (umbrella) policy in an amount of two million dollars (\$2,000,000). All insurance policies shall name the City as an additional insured as respects all coverages. Coverage shall be on a per occurrence basis and in accordance with the limits and provisions specified herein. Claims made policies are unacceptable. All such insurance shall provide that it will not be canceled or materially altered to reduce the policy limits until the City has received at least thirty (30) days written notice of such cancellation or change. If at any time during any construction activities on the fence or on the Public Street, such coverage is canceled or materially altered, all work on the fence or on the Public Street shall cease until such time as the insurance coverages are restored to the satisfaction of the City.

3. Prior to commencement of any work authorized by the Intergovernmental Construction, Use and Indemnification Agreement, District shall file with the City the required original certificates of insurance with endorsements, which shall clearly state all of the following:

- A. The policy number; name of insurance company; name and address of the agent or authorized representative; name, address, and telephone number of the insured; project name and address; policy expiration date; and specific coverage amounts; and
- B. That City shall receive thirty (30) days written notice prior to cancellation or alterations reducing the policy limits; and
- C. That the District's insurance is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions that the City may have; and
- D. Any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with the District's insurance.
- E. District and/or its Contractor or Contractors shall obtain and maintain at all times during any construction activities on the fence or on the Public Street, statutory workmans compensation and employer's liability insurance in those amounts not less than that

required under Illinois law and shall furnish the City with a certificate showing proof of such coverage.

- F. All insurance carriers providing coverages under this Agreement shall be admitted and authorized to do business in the State of Illinois and shall be rated at least A:X in A.M. Best and Companies Insurance Guide. Insurance policies and certificates issued by non-admitted insurance companies are unacceptable.
- G. Any deductibles or self-insured retention shall be stated on the certificates of insurance provided to the City. To the greatest extent permitted under Illinois law, District's Contractor or Contractors shall agree to indemnify, defend, protect and hold harmless the City, its corporate authorities, officers, and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, all costs and clean-up actions of any kind, and all costs and expenses incurred in connection therewith, including but not limited to attorneys fees, expert witness fees and costs of defense (hereinafter "Losses") proximately resulting from the District's Contractor and/or Contractor's acts or omissions related to work on the fence and in, about, around or under the Public Street. District shall be responsible to secure on behalf of City a signed Indemnification Agreement from its Contractor or Contractors providing City with an identical promise to hold the City harmless and to indemnify the City prior to commencing work on the fence.