

RESOLUTION R-43-09

A RESOLUTION AUTHORIZING THE EXECUTION OF  
AN INTERGOVERNMENTAL COOPERATION AGREEMENT  
BETWEEN THE CITY OF WHEATON AND  
THE WHEATON PARK DISTRICT

WHEREAS, the City of Wheaton, DuPage, Illinois, is desirous of undertaking certain improvements to North Main Street, including the replacement of the culvert under the North Main Street bridge over Winfield Creek, which will increase the capacity of the creek as it flows into Northside Park; and

WHEREAS, the Wheaton Park District desires to undertake certain improvements to Northside Park, including the dredging of the lagoon formed by Winfield Creek, and the development of compensatory floodplain storage and detention; and

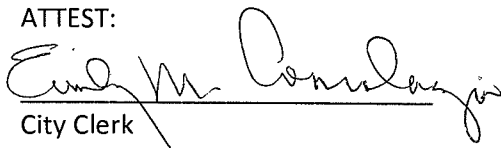
WHEREAS, the replacement of the culvert under North Main Street will require the Wheaton Park District to undertake certain reconstruction activities in Northside Park and to grade, plant, maintain and monitor certain shoreline protections of the Northside Park lagoon; and

WHEREAS, the City of Wheaton has agreed to contribute \$1,000,000 to the Wheaton Park District for certain work associated with the City's improvement to North Main Street.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to execute An Intergovernmental Agreement Between the City of Wheaton and the Wheaton Park District relating to the North Main Street and Northside Park Construction Projects.

ADOPTED this 15<sup>th</sup> day of June, 2009.

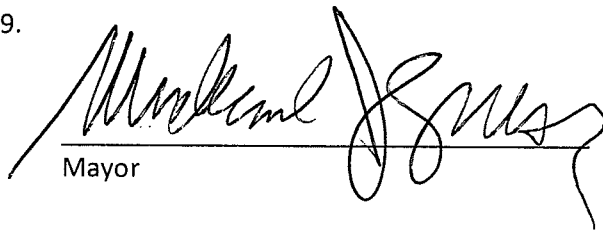
ATTEST:

  
\_\_\_\_\_  
City Clerk

Ayes:

Nays:

Absent:

  
\_\_\_\_\_  
Mayor

Roll Call Vote:

Councilwoman Corry  
Councilman Mouhelis  
Mayor Gresk  
Councilman Prendiville  
Councilman Scalzo  
Councilman Suess

None

Councilman Levine

Motion Carried Unanimously

**INTERGOVERNMENTAL COOPERATION AGREEMENT  
BETWEEN THE CITY OF WHEATON  
AND THE WHEATON PARK DISTRICT**

This Intergovernmental Cooperation Agreement (“Agreement”) made and entered into as of the 15th day of June 2009, by and between the **CITY OF WHEATON**, an Illinois municipal corporation (hereinafter referred to as the “City”) and the **WHEATON PARK DISTRICT**, an Illinois park district (hereinafter referred to as the “Park District”). From time to time, this Agreement may refer to the City and the Park District individually as a “Party” and together as the “Parties”.

**Preamble**

**WHEREAS**, the City and the Park District are public agencies, as that term is defined in the Intergovernmental Cooperation Act, 5 ILCS 220/2; and

**WHEREAS**, the City owns, controls, manages and operates a public street commonly known as North Main Street in Wheaton, Illinois; and

**WHEREAS**, the Park District owns, controls, manages and operates property commonly known Northside Park, located at 1300 N. West Street, Wheaton, Illinois, consisting of nearly 70 acres located a short distance west of North Main Street where it crosses Winfield Creek; and

**WHEREAS**, Winfield Creek currently passes under North Main Street through a culvert and into Northside Park, where it forms a lagoon; and

**WHEREAS**, many years ago, the City constructed a berm on the west side of Northside Park, with the Park District’s permission, in order to reduce flooding in the City’s Pioneer Terrace neighborhood; and

**WHEREAS**, the City wishes to undertake certain improvements to North Main Street, including the replacement of the culvert under North Main Street with a bridge over Winfield Creek, which will increase the capacity of the creek as it flows into Northside Park; and

**WHEREAS**, the Park District wishes to undertake certain improvements to Northside Park, including dredging of the lagoon formed by Winfield Creek and the creation of compensatory floodplain storage and detention; and

**WHEREAS**, the anticipated increase in the capacity of Winfield Creek resulting from the replacement of the culvert under North Main Street with a bridge over the creek will require the Park District to remove, reconstruct and lower the weir adjoining Winfield Creek and to grade, plant, maintain and monitor a buffer on the shoreline of the lagoon, in order to prevent or reduce flooding in the park and adjoining neighborhoods; and

**WHEREAS**, the City and the Park District have jointly submitted a permit application to DuPage County with respect to the proposed improvements to the North Main Street right-of-way and Northside Park; and

**WHEREAS**, Article 7, Section 10 of the Illinois Constitution and the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, authorize and encourage intergovernmental cooperation between public agencies such as the City and the Park District; and

**WHEREAS**, the City and the Park District have overlapping constituencies and wish to serve their residents and others in the most efficient and cost-effective manner possible; and

**WHEREAS**, the Park District has incurred, and will continue to incur, engineering, construction and other costs relating to the foregoing improvements of Northside Park, including those resulting from the City's replacement of the culvert under North Main Street with a bridge; and

**WHEREAS**, the City wishes to cooperate with the Park District by sharing in a portion of the foregoing engineering, construction and other costs;

**NOW, THEREFORE**, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The recitals contained in the foregoing Preamble are hereby incorporated into this Agreement and made a part hereof, and all covenants, terms, conditions and provisions hereinafter contained shall be interpreted and enforced in accordance therewith.

2. **Sharing of Costs.** The City agrees to pay the Park District One Million Dollars, (\$1,000,000.00), for the following engineering, construction and other costs previously incurred, or to be incurred, by the Park District arising from the improvements described in the foregoing Preamble (the "Work"), including:

- Weir removal and reconstruction at lower elevation
- Creation of additional storm water storage
- Preparation of plans and permit application
  - Preliminary design (not including dredging plans, bridges and docks, and sanitary lift design)
  - Preparation of design plans (not including dredging plans, hydraulic calculations, sanitary lift plans and easement documents)
  - Permitting submittals (not including Illinois Environmental Protection Agency permitting, bidding documents, asbestos surveys and demolition plans)

- Initial grading of lagoon shoreline buffer
- Buffer planting
- Labor for annual buffer maintenance
- Monitoring of lagoon shoreline buffer

The City shall make the payment required in this Paragraph 2 either (a) in 10 annual installments of \$100,000.00 each, payable on or before December 31, 2009 and on or before December 31 of each succeeding year through 2018; or (b) in one lump sum on or before December 31, 2010 in the event that, prior to that date, the City secures financing through governmental bonding in an amount equal to or greater than \$1,000,000.00 and under terms acceptable to the Corporate Authorities of the City in their sole discretion; provided, however, that the City shall not be obligated to make any payment to the Park District until such time as the Park District commences construction of the Work described above.

3. **Refund if Work not Completed.** If the City provides the funding described in Paragraph 2 above, but Park District does not complete all Work described herein within four (4) years of any payment by the City to the Park District, the Park District shall refund any unexpended portion of the City's payment(s) in full unless failure to complete the Work within that time period is a result of force majeure in which case the date for completion of the Work shall be extended for a reasonable time to be determined by the Parties based on the nature of the force majeure.

4. **Coordination.** The City and the Park District shall each designate a staff person to coordinate related work on the City and the Park District's respective projects. The City hereby designates the Director of Engineering, Paul Redman, as its coordinator for purposes of this agreement. The Park District hereby designates the Park District's Director of Planning, Robert Sperl, as its coordinator for purposes of this Agreement. The City and Park District staffs shall cooperate in coordinating the Work.

5. **Responsibility Upon Completion.** Upon completion of the Work, the Park District shall be solely responsible, at its cost, for maintaining the District's Work in conformance with applicable laws, regulations and ordinances.

6. **Limited Easement.** The Park District hereby grants a limited perpetual easement to the City for increased storm water storage capacity in the lagoon and its appurtenances only to the extent provided in the permitted engineering plans.

7. **Third Parties.** This Agreement is entered into, and is intended, solely for the benefit of the City and the Park District, and nothing contained in this Agreement is intended as, or shall be interpreted or construed as, either expressly or implicitly, providing any right, privilege or benefit of any kind whatsoever to any person or entity that is not a party to this Agreement, or as acknowledging, establishing or imposing any legal duty or obligation on the part of either Party to any third party, including, without limitation, any consultants or contractors hired or retained by the Park District.

8. **Notices.** All notices, requests, demands, and other writings required or permitted under this Agreement must be in writing, and shall be effective only when deposited in the U.S. Mail, certified and postage prepaid, or when sent by overnight delivery, and addressed to the Parties at the addresses designated below. Either Party may change the place for, or person to receive, notice to it by sending like written notice to the other Party.

To the City:  
City Manager  
City of Wheaton  
303 W. Wesley Street  
Wheaton, IL 60187-0727

To the Park District:  
Executive Director  
Wheaton Park District  
102 E. Wesley Street  
Wheaton, IL 60187-5241

9. **Authority to Enter Into This Agreement.** Each Party represents and warrants that it has full power and authority to enter into this Agreement and to perform the covenants and obligations herein contained. Each person executing this Agreement represents and warrants that he or she is duly authorized by the corporate authority of his or her Party to execute this Agreement.

10. **No Waiver of Immunities.** Nothing contained in this Agreement is intended as, or shall be interpreted or construed as, an express or implied waiver of any common law and/or statutory immunity or privilege, including, without limitation, the immunities for which the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101.1 *et seq.*, provides, of the City, the Park District, or any of their respective elected officials, officers, employees, volunteers and/or agents, as to any claim, cause, cause of action and/or liability of any kind whatsoever.

11. **Miscellaneous.**

- (a) The descriptive headings of the various sections or parts of this Agreement are for convenience only. They shall not affect the meaning or construction or be used in the interpretation of this Agreement or any of its provisions.
- (b) This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois and both the City and the Park District agree to submit to the jurisdiction of the courts of Illinois any dispute regarding this Agreement. The exclusive venue for such purposes shall be the Circuit Court for the 18<sup>th</sup> Judicial Circuit, DuPage County, Illinois.
- (c) The Parties have had the opportunity to freely negotiate and cooperate in the drafting and preparation of this Agreement, and in any interpretation or construction of this Agreement or any word, clause or provision herein, the same shall not be construed against any Party on the basis that the Party was the drafter.

- (d) If any clause, phrase, provision or portion of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable under applicable law, such event shall not affect, impair, or render invalid or unenforceable the remainder of this Agreement, nor any other clause, phrase, provision or portion thereof, nor shall it affect the application of any clause, phrase, provision or portion hereof to other persons or circumstances.
- (e) This Agreement supersedes all prior agreements and understandings, both written and oral, of the Parties with respect to the subject matter hereof. This Agreement may be modified or amended only with the express written approval of both Parties dated subsequent to the date of this Agreement.
- (f) This Agreement is not and shall not be binding upon either Party unless and until executed by both Parties. The Agreement may be executed in counterparts, each of which shall be deemed to be and shall constitute one and the same instrument.
- (g) Subject to the provisions regarding assignment, this Agreement shall be binding upon, and inure to the benefit of the successors-in-interest of the Parties.
- (h) The Parties acknowledge that this Agreement was freely negotiated by each of the Parties hereto and accordingly shall be construed according to the fair meaning of its terms, and not against any Party.
- (i) Nothing contained in this Agreement is intended to create, or shall be construed as creating, a partnership, joint venture or any similar relationship between the Parties.

**IN WITNESS WHEREOF**, the Parties have executed this Intergovernmental Cooperation Agreement as of the day and year first above written.

CITY OF WHEATON

By: 

Name: Michael J. GRESH

Title: Mayor

WHEATON PARK DISTRICT

By: 

Name: Raymond Morrill

Title: Vice President

ATTEST:

By: Emily M. Consolazio

Name: Emily M. Consolazio

Title: City Clerk

ATTEST:

By: [Signature]

Name: M. Michael J. Brennan

Title: Executive