

RESOLUTION R-29-12

**RESOLUTION AUTHORIZING THE EXECUTION
OF A CERTAIN CONSTRUCTION, USE, AND
INDEMNIFICATION AGREEMENT – Glencoe Street**


BE IT AND IT IS HEREBY RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to sign a certain Construction, Use and Indemnification Agreement between the City of Wheaton and Board of Education of Glen Ellyn School District 41 for the construction of Glencoe Street school bus drop-off/pick-up and parking lane, and the City Clerk is authorized to attest to the signature of the Mayor.

ADOPTED this 16th day of April, 2012.



Mayor

Attested:



City Clerk

Roll Call Vote

Ayes:	Councilman Rutledge Mayor Gresk Councilwoman Pacino Sanguinetti Councilman Scalzo Councilman Suess Councilwoman Ives Councilman Mouhelis
Nays:	None
Absent:	None

Motion Carried Unanimously

**CONSTRUCTION, USE AND
INDEMNIFICATION AGREEMENT
Glencoe Street between Hawthorne Blvd. and Thomas Road**

THIS CONSTRUCTION, USE AND INDEMNIFICATION AGREEMENT, made and entered into this 9th day of April, 2012, among the City of Wheaton, Illinois, an Illinois corporation, located in DuPage County, State of Illinois ("City"), and the Board of Education of Glen Ellyn School District 41, DuPage County, Illinois ("School District").

WITNESSETH

WHEREAS, the City is in possession of a public right-of-way within the City limits of the City of Wheaton, Illinois, and legally described herein; and

WHEREAS, the School District is the owner of the premises located at 240 Hawthorne Boulevard Glen Ellyn, Illinois 60137, commonly referred to as Hadley Junior High School, which property is legally described herein and is contiguous to a portion of the public right-of-way; and

WHEREAS, the School District provides educational services to students residing in the City of Wheaton at Hadley Junior High School; and

WHEREAS, the School District is desirous of constructing and maintaining a portion of said public right-of-way for a school bus drop-off/pick-up and parking lane; and

WHEREAS, the School District acknowledges that this Agreement is not an easement and does not vest them with any property rights or claims to any portion of said public right-of-way.

NOW, THEREFORE, BE IT AND HEREBY AGREED by the City Council of the City of Wheaton, an Illinois municipal corporation, and the Board of Education of Glen Ellyn School District 41 as follows:

- 1.) The foregoing recitals are incorporated herein as representing the intent of the undersigned and as substantive representations and covenants.
- 2.) The School District is the owner of property located at 240 Hawthorne Boulevard Glen Ellyn, Illinois 60137, legally described on Exhibit "A", attached hereto.
- 3.) The School 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 right-of-way more specifically identified as the east 20 feet of the public right-of-way of Glencoe Street lying immediately west of the Property described in Paragraph 2 of this Agreement, in the following manner: to construct and maintain a paved school bus drop-off/pick-up and parking lane in strict conformance with the plan prepared by Eriksson Engineering Associates, Ltd., and dated March 30, 2012 which is attached to hereto as Exhibits "1 & 2".
- 4.) The School District shall construct and use the school bus drop-off/pick-up and parking lane 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 right-of-way by the City.

Upon completion of the construction of the school bus drop-off/pick-up and parking lane, the School District shall be responsible for maintaining the school bus drop-off/pick-up and parking lane in good condition and repair including, but not limited to, pavement patching/resurfacing, pavement striping, and repair of sidewalks and curbing.

If the School District fails to maintain the school bus drop-off/pick-up and parking lane as required by this paragraph, and the City determines that the school bus drop-off/pick-up and parking lane requires maintenance due to its condition affecting public safety, City shall have the right but not the obligation to make any and all repairs to the parking area. If the City makes such repairs the School District shall reimburse the City its actual costs.

5.) The City retains the right to enter said public right-of-way for the purpose of maintaining the existing City utility systems, if any. If the City performs maintenance work on any of its utility systems, the City shall backfill all excavations with approved materials to grade, and the School District shall be responsible for restoration of all disturbed areas caused by the City maintenance work including, but not limited to, pavement, curb, sidewalk, and landscaping.

6.) The City shall not be responsible for the plowing or removal of snow from the school bus drop-off/pick-up and parking lane including that snow which may be placed or windrowed onto the school bus drop-off/pick-up and parking lane by the City's operations of snow plowing Glencoe Street.

7.) Either party may terminate and cancel this Agreement together with all rights and privileges granted hereunder, by notifying the other party in writing at least ninety (90) days prior to termination.

8.) Upon termination of this Agreement by the City, the City may destroy, demolish, and remove any improvements placed upon the right-of-way by the School District without liability at no cost to the School District. Upon termination of this Agreement by the School District, the School District shall demolish and remove any improvements placed upon the right-of-way by the School District and restore the right-of-way to its original condition at no cost to the City, within ninety (90) days of the date of the termination.

9.) To the greatest extent permitted under Illinois law, the School District shall defend, indemnify and hold the City harmless from any and all claims, actions, causes of action, costs, judgments, injuries, property damage, expenses (including reasonable attorney's and experts' fees which arise or may be caused by the negligence of the School District, or School District's agents, as a result of the design, construction, maintenance, use or abandonment of the school bus drop-off/pick-up and parking lane described herein.

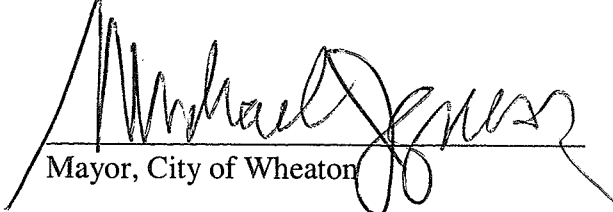
10.) This Agreement is not an easement.

11.) The provisions set forth in this Agreement and exhibits represent the entire Agreement between the parties and shall preceed 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, at the expense of the School District.

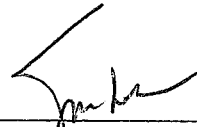
IN WITNESS WHEREOF, the Corporate authorities and the School District have hereunto set their hands and seals, and have caused this instrument to be executed by their duly authorized officials and the Corporate seal attached here all on the date and year first above written.



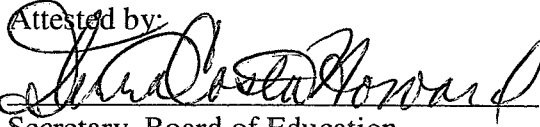
Mayor, City of Wheaton

Attested by:


City Clerk



President, Board of Education,
Glen Ellyn School District 41

Attested by:


Secretary, Board of Education

EXHIBIT A

HADLEY JUNIOR HIGH SCHOOL, 240 Hawthorne Blvd., Glen Ellyn IL 60137

Legal Description: Lots 1,2,3 and 4 in Block 1 of A.T. McIntosh & Co's East Boulevard Subdivision in the South Half of Section 10, Township 39 North, Range 10 East of the Third Principal Meridian according to the plat thereof as recorded in DuPage County, Illinois; And Lots 1,2,3,4 and 5 in A.T. McIntosh & Co's Glenton Acres Subdivision, being a Subdivision in the Northeast Quarter of Section 10 and Southeast Quarter of Section 3, Township 39 North, Range 10 East of the Third Principal Meridian, according to the plat thereof as recorded in DuPage County, Illinois; And Lot 8 in Harrison's Second Resubdivision in the North Half of Section 10, Township 39 North, Range 10 East of the Third Principal Meridian, according the plat thereof as recorded in DuPage County, Illinois.

PINs: 05-10-400-006

05-10-202-012

05-10-202-003

05-10-202-004

05-10-205-011

