

**INTERGOVERNMENTAL COOPERATION AGREEMENT  
REGARDING STORMWATER IMPROVEMENTS AT DUKE CHILDS FIELD  
BETWEEN THE BOARD OF EDUCATION OF NEW TRIER TOWNSHIP HIGH  
SCHOOL DISTRICT NO. 203 AND THE VILLAGE OF WINNETKA**

This Intergovernmental Cooperation Agreement (“*Agreement*”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2019 (“*Effective Date*”), by and between the Board of Education of New Trier Township High School District No. 203, Cook County, Illinois (“*School District*”), and the Village of Winnetka, a home rule municipal corporation (“*Village*”). The School District and the Village are sometimes referred to individually as a “*Party*” and collectively as the “*Parties*.” In consideration of the foregoing and the mutual promises contained in this Agreement, the School District and the Village agree to the terms in this Agreement.

**I. Background.**

A. As a result of long-standing and serious flooding in western and southwestern Winnetka, the Village has identified, as an integral part of its overall stormwater management plan, a stormwater flood reduction vision consisting of a variety of conveyance, storage, and water quality improvements, as well as local and private green infrastructure improvements to address this problem. As part of this vision, the Village and the Forest Preserve District of Cook County (“*CCFPD*”) entered into an August 2, 2017 “Memorandum of Understanding” (“*MOU*”) related to CCFPD’s and the Village’s desire to cooperate in providing stormwater relief to these areas of the Village through a constructed stormwater wetland improvement on a portion of a 49.1+/- acre parcel of CCFPD land north of Winnetka Avenue and west of Hibbard Road (“*Village Stormwater Project*”). The Village’s current concept vision is shown on *Exhibit A* to this Agreement (Stormwater Management System Opportunities).

B. As contemplated under the MOU as part of the Village Stormwater Project, approximately 74 acre-feet of stormwater management is to be constructed on CCFPD lands along

with naturalized plantings and water quality monitoring for the CCFPD through investment by the Village. Additional passive stormwater storage will be realized on the property, as is currently occurring.

C. The Village has determined that the remaining stormwater storage and conveyance for the Village Stormwater Project necessary to provide flood relief must be constructed on existing open spaces currently owned by the School District, the Winnetka Park District, and Winnetka School District 36.

D. The property known as the Duke Childs Field is generally located at the northwest corner of Willow Road and Hibbard Road in the Village (“**Property**”). The Property is depicted on **Exhibit B** to this Agreement and described in **Exhibit 1** to the Easement Agreement, which is attached as **Exhibit D** to this Agreement. The School District is the current owner of the Property and presently uses the Property for sports practices and interscholastic competitions. The Property is generally located within the FEMA 100-year flood plain in an area that experiences frequent stormwater flooding.

E. The Village formerly owned the Property and in conjunction with the conveyance of the Property to the School District in 1979 executed and recorded a “Declaration of Covenants” against the Property on January 31, 1979 (Document No. 24824753) (“**Declaration**”) attached for reference purposes only as **Exhibit C** to this Agreement.

F. Among other things, the Declaration provides that the Property may only be held, transferred, sold, conveyed and occupied subject to the terms and conditions of the Declaration. The Declaration includes restrictions on the School District’s use of the Property and rights of the Village with regard to Village utilities on the Property. The Declaration further identifies a desire to “maintain the concept of open space for the Property,” subject to the terms of the Declaration.

G. As part of the Village Stormwater Project and as required under the MOU, the Village has proposed to utilize a portion of the Property (“**Easement Premises**”) (as set forth in the Easement Agreement described in Subsection J of this Section and attached as **Exhibit D** to this Agreement), for the uses set forth in Subsection II.B of this Agreement, which include underground stormwater storage, conveyance, and water quality improvements (“**Stormwater Improvements**”). The Stormwater Improvements are generally identified and described in **Exhibit E** to this Agreement. The Stormwater Improvements are necessary to address serious and repetitive flooding in the Village and on the Property.

H. The School District has for some time desired to reconfigure the athletic fields on the Property and add other related improvements (“**Field Improvements**”). The need for and construction of the Stormwater Improvements provides a once in a generation opportunity to create significant stormwater relief to the Village as well as to the School District for the Property and the ability of the School District to provide the Field Improvements in a cost-effective and expedited manner.

I. The Parties have determined that, after completion of the Stormwater Improvements, the Village shall, at the Village’s expense, grade the Easement Premises and install a stone base for a parking pad on the Property (“**Village Field Improvements**”), which Village Field Improvements are more fully described in **Exhibit F** to this Agreement. The remaining Field Improvements will be undertaken by the School District, at the School District’s expense (“**District Field Improvements**”), which District Field Improvements are more specifically identified and described in **Exhibit G** to this Agreement.

J. In conjunction with the construction of the Village Stormwater Improvements and the Field Improvements, the Parties desire to better memorialize and clarify the respective rights

and obligations of the Parties with regard to the Property. To do that, the Parties have agreed to terminate the Declaration, pursuant to the terms and conditions of this Agreement, and to have the use and development of the Property governed by this Agreement and a new Easement Agreement to be entered into by the Parties and recorded against the Property, which new Easement Agreement is attached as ***Exhibit D*** to this Agreement (“***Easement Agreement***”). Pursuant to its terms, the Easement Agreement will, among other things, terminate the Declaration but maintain the concept of open space for the Property.

K. The Village’s construction of the Stormwater Improvements and the Village Field Improvements will provide 50-year flood protection for the fields on the Property, detention and compensatory storage valued at approximately \$2.5 million, new and improved drainage infrastructure for the Property, and other related and beneficial improvements.

L. The Parties have the power and authority to enter into this Agreement pursuant to the provisions of Article VII, Section 10 of the Illinois Constitution of 1970; the Local Land Resource Management Planning Act, 50 ILCS 805/1 *et seq.*; and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*

M. After consideration of utility, planning, and intergovernmental issues affecting this matter, the School District has determined that it is in the best interests of its constituents and the public welfare to enter into this Agreement in order to ensure a level of cooperation and coordination between the Village and the School District necessary to maximize flood relief for impacted homes and property and to enhance the facilities on the Property.

N. After consideration of utility, planning, and intergovernmental issues affecting this matter, the Village has determined that it is in the best interests of its citizens and the public welfare to enter into this Agreement in order to ensure a level of cooperation and coordination between the

School District and the Village necessary to maximize flood relief for impacted homes and property and to enhance the facilities on the Property.

O. The Village recognizes that the School District's agreement as provided in this Agreement to allow the Village to use the Property as an integral and necessary part of the Village Stormwater Project constitutes an important intergovernmental partnership and authorizes the Village to grant, as provided in this Agreement, a 100 percent credit to the School District for the stormwater utility fee that would otherwise be applicable to the Property under Chapter 13.16 of the Village Code.

## **II. Stormwater Improvements and Village Field Improvements.**

A. No Obligation. Nothing in this Agreement obligates the Village to construct the Stormwater Improvements on the Property. If the Village determines, in its sole discretion, to construct the Stormwater Improvements on the Property, then the terms and conditions of this Agreement will apply to any such construction. This Agreement shall terminate if the Village does not commence construction of the Stormwater Improvements ("**Construction Commencement**") by December 31, 2022, unless the Parties agree in writing to extend the date of Construction Commencement ("**Construction Commencement Deadline**"). If the Village does not commence construction by the Construction Commencement Deadline and thereafter does not construct the Stormwater Improvements on the Property and such inaction is not based on a denial or the actions of a third party, the Village shall pay the School District \$58,113.00, which are the costs the Parties agree the School District has incurred related to the negotiation of this Agreement. The Village shall make such payment to the School District within 60 days after providing notice to the School District that it will not proceed with the Stormwater Improvements on the Property or on the Construction Commencement Deadline, whichever date is sooner.

B. Easement. Prior to Construction Commencement and after District Approval of the Village Final Plans, as provided in Paragraph II.E.3 of this Agreement, the School District shall grant the Village a perpetual and permanent easement on the Easement Premises pursuant to the Easement Agreement that will, among other matters, authorize the Village to own, survey, design, install, construct, operate, use, test, inspect, improve, maintain, repair, remove, or replace, in the locations on the Property as identified in the Easement Agreement (i) the Stormwater Improvements; (ii) the utilities that exist on the Property as of the Effective Date of this Agreement; and (iii) additional, underground Village-owned water distribution utilities, in the locations on the Property as identified in the Easement Agreement, necessary for a potential second fill-line for the Village's water reservoir (collectively, "***Permitted Village Uses and Facilities***"). The Easement Agreement will be perpetual notwithstanding the term of this Agreement as set forth in Subsection VI.D of this Agreement; provided that if this Agreement terminates prior to Construction Commencement, the Easement Agreement will not be executed or recorded and the Declaration will remain in full force and effect.

C. Village Obligations. The Village will construct and maintain the Stormwater Improvements, if at all, at its sole cost and expense and in compliance with all applicable federal, state, and Village laws, statutes, codes, ordinances, resolutions, rules and regulations, including, without limitation, any and all applicable regulations and permits issued by the Army Corps of Engineers, and any other governmental entity with jurisdiction related to the Village Stormwater Improvements (collectively, "***Requirements of Law***"). The Stormwater Improvements will be constructed and maintained so that they do not make impracticable or infeasible the construction and maintenance of the Field Improvements or otherwise unreasonably interfere with or prevent the School District from continuing to utilize the Property for sports practices and interscholastic

competitions (“*School Purposes*”). The Stormwater Improvements will be sufficient to meet the stormwater detention and compensatory storage permit requirements for the Property and the Field Improvements under the Requirements of Law (presently 7.2 acre feet), including specifically, but without limitation, all requirements of the Metropolitan Water Reclamation District (“*MWRD*”) and the terms and conditions of the Winnetka Stormwater Management Code and MWRD’s Watershed Management Ordinance. The Village will obligate its contractors to construct the Stormwater Improvements consistent with the Final Plans. The Stormwater Improvements as provided on the Final Plan will provide a level of protection for the Property as provided in *Exhibit H* to this Agreement.

D. Joint Application for MWRD Permit. The Village and the School District will jointly apply for the MWRD permit necessary to authorize construction of the Stormwater Improvements and the Field Improvements. The permit application will provide that the Village is constructing a generalized, Village-wide stormwater improvement project on land owned by the School District and that part of the improvement project includes a cooperative undertaking with the School District to make certain improvements to the School District’s property. The Village will specifically call out in the application the volume of stormwater storage being provided as detention and compensatory storage for the Field Improvements. The Village represents that because the Village is not obligated to provide a particular or specific level of stormwater protection to its community, the Stormwater Improvements include the construction of sufficient stormwater storage to meet the regulatory detention and compensatory storage required for the Field Improvements, while also meeting the Village’s flood management goals. In the event that the MWRD does not approve the Field Improvements portion of the Project, the Village will engineer a solution that would segregate off for stormwater detention a portion of the Stormwater

Improvements necessary to provide the required detention for the Field Improvements, estimated to be 7.2 acre feet.

E. Cooperative Development and Review of Plans.

1. Preliminary Plans. The Village has provided the School District, and the School District has reviewed and, by approval and execution of this Agreement, preliminarily approved, the Village's preliminary plans and specifications for the Stormwater Improvements and the Village Field Improvements related to the Property ("**Village Preliminary Plans**"). The Village Preliminary Plans are attached to this Agreement as **Exhibit I**. In order to allow the District to make any necessary changes to its Preliminary Plans in advance of seeking Village approval of its final plans and specifications for the District Field Improvements as provided in Paragraph III.C.2 of this Agreement, the Village will regularly consult with the District regarding the Village's preparation of its final plans and specifications for the Stormwater Improvements in advance of seeking the District's approval of those plans and specifications as provided in Paragraph 2 of this Subsection.

2. Final Plans. As the Village proceeds with further development and refinement of its final plans and specifications for the Stormwater Improvements and the Village Field Improvements ("**Village Final Plans**"), the Village will provide the School District with the Village Final Plans for the School District's review and comment, along with information on how, if at all, the Village Final Plans may differ from the Village Preliminary Plans. The School District shall provide the Village with any written comments on the Village Final Plans, if any, within 45 days after receipt of the Village Final Plans ("**Comment Deadline**"). The Village shall consider the School District's comments and make any changes to the Village Final Plans that the Village deems appropriate. The Village will also provide to the School District a written response to the

School District's comments ("*Final Village Response*").

3. Approval of Final Plans. On or before the Comment Deadline (if the School District had no written comments) or within 30 days after the Final Village Response (if the School District provided written comments) ("*Approval Deadline*"), the School District shall approve the Village Final Plans in writing ("*District Approval*") so long as the Final Plans are substantially the same as the Village Preliminary Plans with regard to (i) the general characteristics of the Stormwater Improvements, (ii) the general level of the final grading of the Property, (iii) the general location of the Stormwater Improvements, (iv) the height or elevation of the Stormwater Improvements, and (vi) the amount of acre feet of storage to be provided by the Stormwater Improvements ("*Final Plan Standards*"). The School District will have the right to disapprove the Village Final Plans ("*District Disapproval*") only on the specific basis that the Final Plans materially fail to satisfy the Final Plan Standards. The Final Plans shall be deemed approved if the School District does not provide the Village with either the District Approval or the District Disapproval on or before the Approval Deadline.

F. Construction Schedule; Field Interruption.

1. Construction Schedule. Prior to Construction Commencement, the Village and the School District will consult and cooperate with each other to agree upon a construction schedule for the construction of the Stormwater Improvements and the Village Field Improvements ("*Village Construction Schedule*"). Once approved in writing by both Parties, which approval shall not be unreasonably withheld, the Village Construction Schedule shall automatically be deemed to be attached to this Agreement as *Exhibit J*. The Village Construction Schedule will be consistent with the Requirements of Law, including, without limitation, any permits for the project issued by MWRD, the Army Corps of Engineers, or the Illinois

Environmental Protection Agency (“*IEPA*”). Construction of the Stormwater Improvements and Village Field Improvements will only commence after District Approval as provided in Paragraph II.E.3 of this Agreement.

2. Field Interruption During Construction. As provided in the Construction Schedule, unless otherwise agreed by the Parties in writing, construction of the Stormwater Improvements and the Village Field Improvements will only commence (i) after District Approval as provided under Paragraph II.E.3 of this Agreement and (ii) during one of the following periods (“*Construction Period*”);

- commencing on or after July 5, 2019, and completed on or before June 1, 2020
- commencing on or after July 5, 2020, and completed on or before June 1, 2021
- commencing on or after July 5, 2021, and completed on or before June 1, 2022
- commencing on or after July 5, 2022, and completed on or before June 1, 2023

The Village will provide the School District written notice at least 30 days prior to Construction Commencement. During the Construction Period the Village will have exclusive use of the Easement Premises and the School District will be prevented from undertaking use of the Easement Premises for any of the School Purposes except that: (i) the School District may construct the District Field Improvements in accordance with the District Construction Schedule, as set forth in Paragraph III.D.1 of this Agreement; (ii) the School District shall have the ability to access the remainder of its Property using the access road located on the Easement Premises;

provided that School District acknowledges that the access road may not be available at various periods of time during the Construction Period as the Parties shall mutually agree as part of the approval of the Village Construction Schedule; and (iii) the School District's use of the remainder of its Property shall not be restricted during the Construction Period. The Village will manage construction of the Stormwater Improvements and the Village Field Improvements so that the extent and period of disruption to the Easement Premises is of the shortest duration reasonable under the circumstances.

3. School District Costs. Prior to Construction Commencement and subject to receipt of District Approval as provided in Paragraph II.E.3 of this Agreement, the Village will make the following payments to the School District:

- \$225,000 to offset costs incurred by the School District related to the construction of the Stormwater Improvements and interruption of School Uses on the Easements Premises.
- \$54,600 to partially off-set the costs of the District Field Improvements related to restoration of the portion of the Easement Premises utilized for athletic fields.

4. Compliance with Construction Schedule. The construction of the Stormwater Improvements and the Village Field Improvements will be undertaken in accordance with the Requirements of Law and the Village Construction Schedule. In the event that the Village does not complete construction of the Stormwater Improvements and the Village Field Improvements within the applicable Construction Period, the Village will reimburse the School District \$72 per day, which is based on the specific costs that the School District would actually be required to incur to reschedule events and activities and rental amounts it will forego that have historically taken place on the Easement Premises as of the Effective Date of this Agreement to

the extent of the amount of time the Village is either late in completing construction or restores the Easement Premises as provided in Paragraph 5 of this Subsection.

5. Abandonment. In the event that the Village does not complete the Stormwater Improvements and the Village Field Improvements during the applicable Construction Period and thereafter abandons construction activity on the Stormwater Improvements and the Village Field Improvements, the School District shall have the right to provide the Village with written notice of abandonment ("*Notice of Abandonment*"). Upon receipt of a Notice of Abandonment, the Village shall, within a commercially reasonable period of time, either complete the Stormwater Improvements and the Village Field Improvements or remove any underground improvements and restore the Easement Premises to its condition as of the date immediately preceding the date of Construction Commencement. For purposes of this Agreement, "abandons," or "abandonment" shall mean cessation of construction or installation of the Stormwater Improvements and the Village Field Improvements consistent with this Agreement for a period of 270 consecutive days (unless the Village and the School District agree in writing to a longer period of abandonment) for any reason other than (i) a Force Majeure or (ii) if and to the extent the cessation of work is caused by an action or inaction of the School District that is not in compliance with the terms of this Agreement. If the Village fails to comply with this Subsection within a commercially reasonable period of time after the School District provides written notice, the School District may restore the Easement Premises and the Village shall reimburse the School District for the costs the School District incurs in restoring the Easement Premises within 30 days after the School District provides the Village with a detailed invoice for such costs.

G. Acceptance and Maintenance of Stormwater Improvements and Village Field Improvements. The Village shall have sole responsibility to construct and maintain, at its sole cost,

the Stormwater Improvements in accordance with this Agreement and to construct, at its sole cost, the Village Field Improvements in accordance with this Agreement. Within 90 days after substantial completion of the Stormwater Improvements, the Village shall provide the School District as-built construction plans for the Stormwater Improvements. The as-built plans shall include all details about the Stormwater Improvements installed on the Easement Premises. If the School District Superintendent, or the Superintendent's designee, determines that the Stormwater Improvements have been constructed or maintained, or that the Village Field Improvements have been constructed, so that they do not substantially conform to the Village Final Plans, do not provide a level of flood protection for the Property as provided in *Exhibit H* to this Agreement, or that they make impracticable or infeasible the construction and maintenance of the District Field Improvements or otherwise unreasonably interfere with or prevent the School District from continuing to utilize the Property for School Purposes, the Superintendent, or the Superintendent's designee, shall make a written request of the Village that the Stormwater Improvements and/or the Village Field Improvements be repaired or otherwise reconstructed or removed in order to comply with the requirements of this Agreement. Upon receipt of the School District's notice, the Village and the School District shall promptly meet to discuss the issues raised by the School District in order to mutually agree upon a resolution. Unless otherwise agreed by the Parties, the Village will be solely responsible for any costs incurred in complying with this Subsection, including any actual costs incurred by the School District to the extent such costs result from the Village's failure to comply with this Subsection.

**III. District Field Improvements.**

A. No Obligation. Nothing in this Agreement obligates the School District to construct the District Field Improvements on the Property. If the School District determines, in its sole

discretion, to construct the District Field Improvements on the Property, then the terms and conditions of this Agreement will apply to any such construction.

B. School District Obligations. The School District will construct and maintain the District Field Improvements, if at all, at its sole cost and expense and in compliance with the Requirements of Law. The District Field Improvements will be constructed and maintained so that they do not make impracticable or infeasible the construction and maintenance of the Stormwater Improvements or the Village Field Improvements or otherwise unreasonably interfere with or prevent the Village from utilizing the Easement Premises for Permitted Village Uses and Facilities.

C. Cooperative Development and Review of Plans.

1. Preliminary Plans. The School District has provided the Village, and the Village has reviewed and, by execution and approval of this Agreement and by resolution duly adopted pursuant to the Text Amendment Ordinance as provided in Section III.F of this Agreement, preliminarily approved, the School District's preliminary plans and specifications for the District Field Improvements related to the Property ("***District Preliminary Plans***"). The District Preliminary Plans are attached to this Agreement as ***Exhibit L***.

2. District Final Plans. As the School District proceeds with further development and refinement of its final plans and specifications for the District Field Improvements ("***District Final Plans***"), the School District will provide the Village with the District Final Plans for the Village's review and comment, along with information on how the District Final Plans may differ from the District Preliminary Plans. The Village shall provide the School District written comments on the District Final Plans, if any, within 45 days after receipt of the District Final Plans ("***Village Comment Deadline***"). The School District shall consider the

Village's comments and make any changes to the District Final Plans that the School District deems appropriate. The School District will also provide to the Village a written response to the Village's comments ("***Final District Response***").

3. Approval of Final Plans. On or before the Village Comment Deadline (if the Village had no written comments) or within 30 days after the Final District Response (if the Village provided written comments) ("***Approval Deadline***"), the Village shall approve the District Final Plans in writing so long as the District Final Plans are substantially the same as the District Preliminary Plans with regard to (i) the general characteristics of the District Field Improvements, (ii) the general level of the final grading of the Property, (iii) the general location of the District Field Improvements, and (iv) the height, elevations, and materials used for the District Field Improvements ("***Final Plan Standards***"). The Village will have the right to disapprove the District Final Plans ("***Village Disapproval***") only on the specific basis that the Final Plans materially fail to satisfy the Final Plan Standards. The Final Plans shall be deemed approved if the Village does not provide the School District with the Village Approval or the Village Disapproval on or before the Approval Deadline.

D. Construction Schedule.

1. Construction Schedule. Prior to the commencement of construction of the District Field Improvements, the Village and the School District will consult and cooperate with each other to agree upon a construction schedule for the construction of the District Field Improvements ("***District Construction Schedule***"). Once approved in writing by both parties, which approval shall not be unreasonably withheld, the agreed upon Construction Schedule shall automatically be deemed to be attached to this Agreement as ***Exhibit M***. The District Construction Schedule will be consistent with the Requirements of Law, including, without limitation, any

permits for project issued by MWRD, the Army Corps of Engineers, or the IEPA. The District Construction Schedule may coincide with the Stormwater Improvements and the Village Field Improvements, unless otherwise agreed by the Parties. Construction of the District Field Improvements will only commence after Village Approval as provided in Paragraph III.C.3 of this Agreement.

2. Compliance with Construction Schedule. The construction of the District Field Improvements will be undertaken in accordance with the Requirements of Law and the District Construction Schedule. The School District will be responsible for any actual damages incurred by the Village as a result of the School District's failure to comply with the District Construction Schedule.

E. Acceptance and Maintenance of Field Improvements. The School District shall have sole responsibility to construct and maintain, at its sole cost, the District Field Improvements in accordance with this Agreement. Within 90 days after substantial completion of the District Field Improvements, the School District shall provide the Village as-built construction plans for the District Field Improvements. The as-built plans shall include all details about the District Field Improvements installed on the Property. If the Village Manager, or the Manager's designee, determines that the District Field Improvements have been constructed or maintained so that they do not substantially conform to the District Final Plans or that they make impracticable or infeasible the maintenance of the Stormwater Improvements or otherwise unreasonably interfere with or prevent the Village from utilizing the Easement Premises for the Permitted Village Uses and Facilities, the Village Manager, or the Manager's designee, shall make a written request of the School District that the District Field Improvements be repaired or otherwise reconstructed or removed in order to comply with the requirements of this Agreement. Upon receipt of the

Village's notice, the School District and the Village shall promptly meet to discuss the issues raised by the Village in order to mutually agree upon a resolution. Unless otherwise agreed by the Parties, the School District will be solely responsible for any costs incurred in complying with this Subsection, including any actual costs incurred by the Village to the extent such costs result from the School District's failure to comply with this Subsection; provided, however, that if the District Field Improvements do cause the maintenance of the Stormwater Improvements to be impracticable or infeasible, but the District Field Improvements were constructed and maintained in substantial conformance with the District Final Plans, then repairs shall be constructed at the Village's sole expense and the Village shall reimburse the School District for any related costs that it incurs.

F. Zoning Approval of District Preliminary Plans. Recognizing the School District's important cooperation with the Village on stormwater matters as provided in this Agreement and the School District's desire for expedited approval of the District Preliminary and Final Plans in order to allow the School District to construct the District Field Improvements in conjunction with the Village's construction of the Stormwater Improvements and the Village Field Improvements, the Village Board, at the time of approval of this Agreement, has adopted a text amendment to the Village Zoning Ordinance in substantially the form attached as *Exhibit N* to this Agreement ("***Text Amendment Ordinance***"). The Text Amendment Ordinance authorizes the Village Board to conduct the required public hearing and approve the District Preliminary Plans by resolution duly adopted and allows for the construction of the Field Improvements without any further Village Board approvals, subject to Village Approval of the Final Plans as provided in Paragraph III.C.3 of this Agreement. The Village's consideration of the District Final Plans will be governed by the

provisions of Subsection III.C of this Agreement. The Village will waive any zoning application fees related to the District Preliminary and Final Plans.

**IV. Partnership Credit.**

In recognition of the School District's agreement on the Village's construction and maintenance of the Stormwater Improvements on the Property, thus making a substantial and tangible contribution to the Village's stormwater system, the Village agrees that on and from the date of Construction Commencement and for so long as the Stormwater Improvements are maintained on the Property in accordance with this Agreement, the Village will provide to the School District a 100 percent credit for the stormwater utility fee that would otherwise be applicable to the Property under Chapter 13.16 of the Village Code

**V. Indemnification and Insurance.**

A. Village Indemnification. To the extent permitted by law, the Village shall indemnify and hold harmless the School District, its Board of Education, and all School District elected and appointed officials, officers, employees, agents, representatives, engineers, architects, and attorneys ("*School District Parties*"), from and against all claims and liability, including reasonable attorneys' fees and costs, that may be asserted at any time by a third party against any of the School District Parties arising out of or in any way connected with the actions or omissions related to planning, construction, operation, and maintenance of the Stormwater Improvements by the Village as provided in this Agreement, the construction of the Village Field Improvements and any related liens, or any claim related to flooding or damage to surrounding property resulting from the planning, construction, operation, and maintenance of the Stormwater Improvements as provided in this Agreement.

B. School District Indemnification. To the extent permitted by law, the School District shall indemnify and hold harmless the Village, its corporate authorities, or any Village elected or appointed officials, officers, employees, agents, representatives, engineers, architects and attorneys (“*Village Parties*”), from and against all claims and liability, including reasonable attorneys’ fees and costs, that may be asserted at any time by a third party against any of the Village Parties arising out of or in any way connected with the actions or omissions related to planning, construction, operation, and maintenance of the District Field Improvements by the School District as provided in this Agreement, the construction of the District Field Improvements and any related liens, or any claim related to flooding or damage to surrounding property resulting from the planning, construction, operation, and maintenance of the District Field Improvements as provided in this Agreement.

C. Village and School District Insurance.

1. Village. The Village is self-insured for general liability and workers compensation and does not purchase commercial insurance. The Village has provided the School District with reasonably detailed information regarding the insurance that the Village maintains and that the Village requires its contractors to maintain (“*Village Insurance Policies*”). The Village Insurance Policies are acceptable to the School District. The Village shall provide written notice of any material changes to the Village Insurance Policies. Certificates of insurance showing the coverages of the Village Insurance Policies are attached to this Agreement as *Exhibit O*.

2. School District. The School District, through a cooperative, is self-insured for general liability and workers compensation and does not purchase commercial insurance. The School District has provided the Village with reasonably detailed information regarding the insurance that the School District maintains and that the School District requires its contractors to

maintain (“*School District Insurance Policies*”). The School District Insurance Policies are acceptable to the Village. The District shall provide written notice of any material changes to the School District Insurance Policies. Certificates of insurance showing the coverages of the School District Insurance Policies are attached to this Agreement as *Exhibit P*.

3. Maintenance of Insurance Policies. The Village, the Village contractors, the School District, and the School District contractors will maintain their respective Insurance Policies (or policies that are substantially the same as their respective Insurance Policies) during the term of this Agreement.

#### **VI. Miscellaneous Provisions.**

A. Force Majeure. For purposes of this Agreement, “*Force Majeure*” means a strike, lockout, act of God, or other factor beyond a party’s reasonable control and reasonable ability to remedy; provided, however, that Force Majeure will not include delays caused by weather conditions, unless those conditions are unusually severe or abnormal considering the time of year and the particular location of the Property. For any delay under this Agreement caused by a Force Majeure, the Party delayed will, upon timely written notice to the other Party, be entitled to an extension of the otherwise applicable time for a period of time equal to the delay resulting from the Force Majeure. The delayed Party shall use reasonable commercial efforts to promptly correct any delay in performance.

B. Intentionally omitted.

C. Enforcement. The Village and the School District may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce or compel the performance of this Agreement.

D. Term. Unless terminated earlier as provided in this Agreement, this Agreement will be in full force and effect from and after its Effective Date, as provided pursuant to Subsection U of this Section, for a period of 75 years; provided, however, that if the 75-year term is held invalid, the term will be the maximum term permitted by applicable law as of the Effective Date of this Agreement or such longer term as may be subsequently allowed.

E. Termination of Declaration of Covenants. Prior to Construction Commencement, the Declaration shall be terminated as provided in the Easement Agreement.

F. No Assignment. No Party may assign any rights or duties under this Agreement without the prior express written consent of the other Party.

G. Successors. This Agreement shall be binding upon the successors of the Parties' respective governing boards.

H. Relationship of the Parties; No Third-Party Beneficiaries. No employee, volunteer, or agent of one Party shall be considered the employee, volunteer, or agent of the other Party. Nothing contained in or done pursuant to this Agreement shall be construed as creating a partnership, agency, joint employer, or joint venture relationship between the School District and the Village. Notwithstanding any provision to the contrary, this Agreement is entered into solely for the benefit of the Parties. Nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement or to acknowledge, establish, or impose any legal duty to any third party. No claim as a third-party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against the School District or the Village.

I. Entire Agreement. Except for the Easement, as provided pursuant to Subsection II.B of this Agreement, this Agreement, including the Exhibits as provided in Subsection K of this

Section, shall constitute the entire agreement of the Parties with respect to the matters contained in this Agreement and this Agreement supersedes all prior agreements and understandings, whether written or oral, formal, or informal, except for the Easement.

J. Notice. Any notice or communication permitted or required under this Agreement shall be in writing and shall become effective upon personal delivery or on the third day after mailing by first class mail, registered, or certified mail, postage prepaid, or on the next day after mailing by a national overnight courier, addressed to:

To the Village:  
Attention: Village Manager  
Village of Winnetka  
510 Green Bay Road  
Winnetka, Illinois 60093

To the School District:  
Attention: Superintendent  
New Trier Township --  
High School District No. 203  
7 Happ Road  
Northfield, Illinois 60093

With a copy to:  
Village Attorney  
Peter Friedman  
Holland & Knight LLP  
131 South Dearborn  
Chicago, Illinois 60603

With a copy to:  
Brian P. Crowley  
Franczek P.C.  
300 South Wacker  
Chicago, Illinois 60606

Either party may change the person or address to which such notices are to be given by giving prior written notice to the other party in accordance with this Subsection.

K. Exhibits. Except for Exhibit C, Exhibits A-P are incorporated into and made part of this Agreement.

L. Amendments. This Agreement may not be amended except by a written document signed by authorized representatives of both Parties and dated a date after the Effective Date of this Agreement.

M. Compliance with Law. The Parties shall comply with all applicable Requirements of Law.

N. Authority to Execute. Each of the Parties warrants and represent that the persons executing this Agreement on its behalf have been properly authorized to do so.

O. Calendar Days and Time. Unless otherwise provided in this Agreement, any reference in this Agreement to “day” or “days” shall mean calendar days and not business calendar days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, federal, State, or School District holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, federal, State, or School District holiday.

P. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois. Jurisdiction and venue for all disputes shall be the Circuit Court located in Cook County, Illinois, or the federal district court for the Northern District of Illinois.

Q. No Waiver. The failure of either Party to insist upon the performance of any terms and conditions, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but they shall continue and remain in full force and effect as if no waiver had occurred.

R. Survival of Terms. Any provision of this Agreement that by its nature is intended to survive termination of this Agreement shall so survive and shall remain enforceable after such termination.

S. Provisions Not Severable. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, this Agreement shall terminate, unless the Parties otherwise agree in writing.

T. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but altogether shall constitute one and the same Agreement.

U. Effective Date. This Agreement shall be deemed dated and become effective on the date set forth in the first paragraph on the first page of this Agreement.

<p>VILLAGE WINNETKA</p> <p>By: _____ _____</p> <p>Its: President</p> <p>Attest: _____ _____</p> <p style="text-align: right;">Village Clerk</p> <p>Dated: _____ _____</p>	<p>OF</p>	<p>BOARD OF EDUCATION OF NEW TRIER TOWNSHIP HIGH SCHOOL DISTRICT NO. 203, COOK COUNTY, ILLINOIS</p> <p>By: _____ Its: President</p> <p>Attest: _____ Secretary</p> <p>Dated: _____</p>
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**List of Exhibits**

<b>Exhibit A</b>	<b>Stormwater Management System Opportunities</b>
<b>Exhibit B</b>	<b>Depiction of Property</b>
<b>Exhibit C</b>	<b>Declaration of Covenants</b>
<b>Exhibit D</b>	<b>Easement Agreement</b>
<b>Exhibit E</b>	<b>Stormwater Improvements</b>
<b>Exhibit F</b>	<b>Village Field Improvements</b>
<b>Exhibit G</b>	<b>District Field Improvements</b>
<b>Exhibit H</b>	<b>Performance Standards</b>
<b>Exhibit I</b>	<b>Village Preliminary Plans</b>
<b>Exhibit J</b>	<b>Village Construction Schedule</b>
<b>Exhibit K</b>	<b>Reserved</b>
<b>Exhibit L</b>	<b>District Preliminary Plans</b>
<b>Exhibit M</b>	<b>District Construction Schedule</b>
<b>Exhibit N</b>	<b>Text Amendment Ordinance</b>
<b>Exhibit O</b>	<b>Village Insurance Policies</b>
<b>Exhibit P</b>	<b>School District Insurance Policies</b>

**Exhibit A**  
**Stormwater Management System Opportunities**

**Exhibit B**  
**Depiction of Property**

**Exhibit C**

**Declaration of Covenants**

**Exhibit D**  
**Termination of Covenants and Easement and Use Agreement**

**PREPARED BY AND AFTER  
RECORDING RETURN TO:**

Peter M. Friedman  
Holland & Knight LLP  
131 S. Dearborn Street  
30<sup>th</sup> Floor  
Chicago, Illinois 60603

*For Recorder's Use Only*

TERMINATION OF DECLARATION OF COVENANTS AND NON-EXCLUSIVE  
EASEMENT AND USE AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF  
STORMWATER INFRASTRUCTURE AND UTILITY DISTRIBUTION SYSTEMS  
RELATED TO DUKE CHILDS FIELD

**THIS TERMINATION OF DECLARATION OF COVENANTS AND NON-EXCLUSIVE EASEMENT AND USE AGREEMENT FOR CONSTRUCTION AND MAINTENANCE OF STORMWATER INFRASTRUCTURE AND UTILITY SYSTEMS RELATED TO DUKE CHILDS FIELD (“*Agreement*”) is dated as of this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the **VILLAGE OF WINNETKA**, an Illinois home rule municipal corporation (“*Village*”), and the **BOARD OF EDUCATION OF NEW TRIER TOWNSHIP HIGH SCHOOL DISTRICT NO. 203**, Cook County, Illinois (“*District*”).**

**IN CONSIDERATION OF** the mutual covenants and agreements set forth herein and pursuant to the Village's home rule powers, the parties hereto agree as follows:

1. **BACKGROUND.**

A. The District is the owner of the real estate commonly known as the Duke Childs Field located at the northwest corner of Willow Road and Hibbard Road in Winnetka, Illinois, which real estate is legally described on *Exhibit 1* to this Agreement (“*Subject Property*”). The District generally uses the Property for sports practices and interscholastic competitions.

B. The Village formerly owned the Property and in conjunction with the conveyance of the Property to the District in 1979 executed and recorded a “Declaration of Covenants” against the Property on January 31, 1979 (Document No. 24824753) (“*Declaration*”).

C. Among other things, the Declaration provided that the Property may only be held, transferred, sold, conveyed and occupied subject to the terms and conditions of the Declaration. The Declaration includes restrictions on the School District’s use of the Property and rights of the Village with regard to Village utilities on the Property. The Declaration further identifies a desire to “maintain the concept of open space for the Property,” subject to the terms of the Declaration.

D. In cooperation with the Cook County Forest Preserve District, the Village has determined that it is necessary to construct and maintain underground stormwater storage, conveyance, and water quality improvements on portions of the Property in order to address serious and repetitive flooding in the Village and on the Property.

E. The District and the Village have entered into an “Intergovernmental Cooperation Agreement Regarding Stormwater Improvements at Duke Childs Field” dated \_\_\_\_\_, 2019 (“*IGA*”). The IGA requires the District and the Village to enter into this Agreement to, among other things, terminate the Declaration, grant an easement to the Village for the Stormwater Improvements and other utilities as contemplated in this Agreement, and to

maintain the open space concept for the Property, all as provided in this Agreement.

F. The District and the Village have determined that it is in their respective best interests to enter into this Agreement in order to comply with the terms and conditions of the IGA.

2. **GRANT AND USE OF EASEMENT.** The District grants, conveys and dedicates to the Village a perpetual non-exclusive easement in, at, over, along, across, through, upon and under the locations on the Property as described and depicted on *Exhibit 2* (“*Easement Premises*”), to own, survey, design, install, construct, operate, use, test, inspect, improve, maintain, repair, remove, and replace (collectively, “*Work*”) (i) underground stormwater storage, conveyance, and water quality improvements; (ii) the other Village utilities that exist on the Property as of the Effective Date of this Agreement; and (iii) additional, underground Village-owned water distribution utilities, in the locations within the Easement Premises as identified in Exhibit 2 to this Agreement, necessary for a potential second fill-line for the Village’s water reservoir (collectively, “*Permitted Village Uses and Facilities*”). The Permitted Village Uses and Facilities shall be in substantial compliance with the engineering plans attached as *Exhibit 3* to this Agreement (and defined as the Village Final Plans in the IGA), together with all reasonable rights of ingress and egress over, along, across, and upon the Easement Premises necessary for the exercise of the rights granted herein. The Village shall, at its sole cost and expense, complete any Work it undertakes on the Easement Premises related to the Permitted Village Uses and Facilities in a good and workmanlike manner.

3. **ACCESS.** Except (i) in the event of an emergency, in which case the Village shall provide notice as soon as reasonably possible, or (ii) for the Stormwater Improvements and Village Field Improvements contemplated by the IGA, which notice period is set forth in Paragraph II.F.2

of the IGA, the Village shall provide the District with at least seven days prior written notice of the dates and times it intends to perform any Work under this Agreement. The Village shall be responsible for (i) ensuring that any Work under this Agreement does not unreasonably infringe upon or interrupt student activities on the Property and (ii) taking all appropriate safety measures, including fencing all construction areas, to ensure that District students, staff, and other users of the Property are not at an increased risk for injury from the Work. Regarding the Stormwater Improvements and Village Field Improvements under the IGA, the Village shall implement the construction fencing and security measures set forth in the Village Final Plans, which fencing and security measures shall not be permanent.

4. **HOLD HARMLESS**. To the extent permitted by law, the Village shall indemnify and hold harmless the District, its Board of Education, and all District elected and appointed officials, officers, employees, agents, representatives, engineers, architects, and attorneys (“*School District Parties*”), from and against all claims and liability, including reasonable attorneys’ fees and costs, that may be asserted at any time against any of the School District Parties arising out of or in any way connected with the actions or omissions related to planning, construction, operation, and maintenance of the Permitted Village Uses and Facilities by the Village on the Easement Premises.

5. **VILLAGE INSURANCE**. The Village is self-insured for general liability and workers compensation and does not purchase commercial insurance. The Village has provided the School District with reasonably detailed information regarding the insurance that the Village maintains and that the Village requires its contractors to maintain (“*Village Insurance Policies*”). The Village Insurance Policies are acceptable to the School District. The Village shall provide written notice of any material changes to the Village Insurance Policies. Certificates of insurance

showing the coverages of the Village Insurance Policies and the Village's requirements for contractor insurance are attached to this Agreement as *Exhibit 4*. The Village and the Village contractors will maintain their respective Insurance Policies (or policies that are substantially the same as their respective Insurance Policies) during the term of this Agreement.

6. **RESERVED RIGHTS**. The District reserves the right to use the Easement Premises in any manner that will not make impracticable or infeasible the Work or the Permitted Village Uses and Facilities or otherwise unreasonably interfere with or prevent the Village from utilizing the Easement Premises for the Permitted Village Uses and Facilities.

7. **RESTRICTIONS ON USE OF PROPERTY**. The Property shall only be used for one or more open space athletic fields and sports facilities, with associated surface parking and storage building or buildings, concessions and locker room facilities, and the necessary appurtenances to such fields, facilities, parking areas, and buildings.

8. **ADDITIONAL EASEMENTS**. The District shall have the right to grant other non-exclusive easements over, along, across or upon the Easement Premises provided such other easements do not unreasonably interfere with the Village's rights under this Agreement. The School District will provide advance written notice to the Village of any such other easements.

9. **VILLAGE RESTORATION**. Upon completion of any Work, the Village shall:  
(a) replace and grade any and all topsoil removed by the Village as a result of such Work;  
(b) restore the Easement Premises to the condition immediately preceding the Work and any roads, plantings, and improvements damaged or removed as a result of such Work; (c) replace any and all sod removed as a result of such Work with sod of like quality; and (d) replace any and all natural grass removed as a result of such Work with good quality sod. If after written notice, the Village does not restore the Easement Premises as required by this Agreement and within a commercially

reasonable period of time, the School District may restore the property and the Village shall reimburse the School District for its costs within 60 days after the School District provides the Village with a detailed invoice.

10. **ABANDONMENT.** Except with regard to the initial construction of the Stormwater Improvements (the failure to complete construction of which is covered under Paragraph II.F.5 of the IGA), if the Village abandons construction or use of any of its utility facilities on the Easement Premises, the School District shall have the right to provide the Village with written notice of abandonment (“*Notice of Abandonment*”). Upon receipt of a Notice of Abandonment, the Village shall, within a commercially reasonable period of time, (i) complete the utility facility at issue, or (ii) undertake actions to establish that the utility facility has not, in fact, been abandoned, or remove any abandoned underground improvements and repair the Easement Premises to its condition preceding the abandonment. For purposes of this Agreement, “abandons,” “abandonment,” or “abandoned” shall mean cessation of construction, installation, or use of the Village Permitted Use and Facility for a period of 270 consecutive calendar days (unless the Village and the School District agree in writing to a longer period of abandonment) for any reason other than (i) a force majeure or (ii) if and to the extent the cessation is caused by an action or inaction of the School District that is not in compliance with the terms of this Agreement. If the Village fails to comply with this Section within a commercially reasonable period of time after the School District provides written notice, the School District may restore the Easement Premises and the Village shall reimburse the School District for the costs the School District incurs in restoring the Easement Premises within 30 days after the School District provides the Village with a detailed invoice for such costs.

11. **COVENANTS RUNNING WITH THE LAND.** The easements and rights granted in this Agreement, the restrictions imposed by this Agreement, the obligations assumed by the Village and the District in this Agreement, and the agreements and covenants contained in this Agreement shall be easements, rights, restrictions, obligations, agreements and covenants which run with the land and are binding upon and inure to the benefit of the District and the Village and their respective heirs, executors, administrators, successors, assigns, agents, licensees, invitees, and representatives, including, without limitation, all subsequent owners of the Subject Property, or any portion thereof, and all persons claiming under them. This Agreement shall be recorded against the Subject Property. If any of the easements, rights, restrictions, agreements or covenants created by this Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such easements, rights, restrictions, agreements, or covenants shall continue only until 21 years after the death of the last survivor of the now living lawful descendants of the current Governor of the State of Illinois.

12. **ASSIGNMENT OF RIGHTS.** The District agrees that the Village may delegate its duties under this Agreement with written notice to the District or assign this Agreement to an assignee: (a) who is reasonably competent to exercise the rights granted herein and perform the obligations imposed herein; and (b) who provides adequate assurances that any Work performed pursuant to such assignment or delegation will be conducted in a good and workmanlike manner and in the manner required by this Agreement. Other than the notice required in Section 3 of this Agreement, nothing in this Section 12 or elsewhere in this Agreement shall require the Village to

provide written notice to, or to obtain the consent of, the District for a Village contractor to perform Work on the Village's behalf.

13. **AMENDMENT**. This Agreement may be modified, amended, or annulled only by the written agreement of the District and the Village.

14. **EXHIBITS**. Exhibits 1-4 attached to this Agreement are incorporated into this Agreement and made a part of this Agreement.

15. **TERMINATION OF DECLARATION**. Upon the recordation of this Agreement, the "Declaration of Covenants" against the Property recorded on January 31, 1979 as Document No. 24824753, shall be terminated and of no further force or effect.

16. **ENFORCEMENT**. The District and the Village may, in law or in equity, by suit, action, mandamus, or any other proceeding, including without limitation specific performance, enforce or compel performance of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed to be effective as of the date first above written.

**BOARD OF EDUCATION OF NEW TRIER  
TOWNSHIP HIGH SCHOOL DISTRICT NO.  
203**

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

ATTEST:

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

**VILLAGE OF WINNETKA**

By: \_\_\_\_\_  
Christopher Rintz, Village President

ATTEST:

By: \_\_\_\_\_  
Robert Bahan, Village Clerk

ACKNOWLEDGEMENTS

STATE OF ILLINOIS        )  
  )  
COUNTY OF COOK        )        SS

On \_\_\_\_\_, 2019, Christopher Rintz, the Village President of the Village of Winnetka, an Illinois home rule municipal corporation, and Robert Bahan, the Village Clerk of said municipal corporation, appeared before in person and acknowledged that they signed the attached Agreement as their free and voluntary act and deed pursuant to the authority of the Village Council of the Village of Winnetka for the uses and purposes set forth therein.

\_\_\_\_\_  
Signature of Notary

SEAL

STATE OF ILLINOIS        )  
  )  
COUNTY OF COOK        )        SS

On \_\_\_\_\_, 2019, \_\_\_\_\_, the President of the Board of Education of New Trier Township High School District No. 203, and \_\_\_\_\_, the Secretary of said school district, appeared before in person and acknowledged that they signed the attached Agreement as their free and voluntary act and deed pursuant to the authority of the Board of Education of New Trier Township High School District No. 203 for the uses and purposes set forth therein.

\_\_\_\_\_  
Signature of Notary

SEAL

**EXHIBIT 1 TO EASEMENT AGREEMENT**

**Legal Description of the Subject Property**

**EXHIBIT 2 TO EASEMENT AGREEMENT**

**Depiction and Legal Description of Easement Premises**

**EXHIBIT 3 TO EASEMENT AGREEMENT**

**Village Final Plans**

**EXHIBIT 4 TO EASEMENT AGREEMENT**

**Village Insurance Policies**

**Exhibit E**

**Stormwater Improvements**

**Exhibit F**

**Village Field Improvements**

**Exhibit G**

**District Field Improvements**

**Exhibit H**  
**Performance Standards**

**Exhibit I**  
**Village Preliminary Plans**

**Exhibit J**

**Village Construction Schedule**

**Exhibit K**

**Reserved**

**Exhibit L**

**District Preliminary Plans**

**Exhibit M**

**District Construction Schedule**

**Exhibit N**

**Text Amendment Ordinance**

**Exhibit O**

**Village Insurance Policies**

**Exhibit P**

**School District Insurance Policies**