



# City of Chicago



O2017-917

Office of the City Clerk

## Document Tracking Sheet

**Meeting Date:** 2/22/2017

**Sponsor(s):** Emanuel (Mayor)

**Type:** Ordinance

**Title:** Expenditure of Open Space Impact Fee funds and intergovernmental agreement with Chicago Park District for expansion of Brown Memorial Park and Christiana Park, and construction of 6049 S Whipple St Park

**Committee(s) Assignment:** Committee on Special Events, Cultural Affairs and Recreation

## ORDINANCE

WHEREAS, the City of Chicago (the "City"), is a home rule unit of government by virtue of the provisions of the Constitution of the State of Illinois of 1970, and as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City is authorized under its home rule powers to regulate the use and development of land; and

WHEREAS, it is a reasonable condition of development approval to ensure that adequate open space and recreational facilities exist within the City; and

WHEREAS, on April 1, 1998, the City Council of the City (the "City Council") adopted the Open Space Impact Fee Ordinance codified at Chapter 18 of Title 16 (the "Open Space Ordinance") of the Municipal Code of Chicago (the "Code") to address the need for additional public space and recreational facilities for the benefit of the residents of newly created residential developments in the City; and

WHEREAS, the Open Space Ordinance authorizes, among other things, the collection of fees from residential developments that create new dwelling units without contributing a proportionate share of open space and recreational facilities for the benefit of their residents as part of the overall development (the "Fee-Paying Developments"); and

WHEREAS, pursuant to the Open Space Ordinance, the Department of Finance ("DOF") has collected fees derived from the Fee-Paying Developments (the "Open Space Fees") and has deposited those fees in separate funds, each fund corresponding to the Community Area (as defined in the Open Space Ordinance) in which each of the Fee-Paying Developments is located and from which the Open Space Fees were collected; and

WHEREAS, the Open Space Ordinance requires that the Open Space Fees: (i) be used for open space acquisition or capital improvements, or both, which provide a direct and material benefit to the new development from which the fees are collected, and (ii) be expended within the same or a contiguous Community Area from which they were collected after a legislative finding by the City Council that the expenditure of the Open Space Fees will directly and materially benefit the developments from which the Open Space Fees were collected; and

WHEREAS, the Department of Planning and Development ("DPD") has determined that the Fee-Paying Developments built in the Chatham Community Area, the North Lawndale Community Area, and the Chicago Lawn Community Area have deepened the already significant deficits of open space in these Community Areas, which deficits were documented in the comprehensive plan entitled "The CitySpace Plan", adopted by the Chicago Plan Commission on September 11, 1997 and adopted by the City Council on May 20, 1998; and

WHEREAS, the Chicago Park District, a municipal corporation (the "Park District"), intends to: expand Brown Memorial Park at 8600 South Champlain Avenue to create open spaces and recreational facilities in the Chatham Community Area; expand Christiana Park at 1533 South Christiana Avenue to create open spaces and recreational facilities in the North Lawndale Community Area; and construct the 6049 South Whipple Street Park at 6049 South Whipple Street

to create open spaces and recreational facilities in the Chicago Lawn Community Area (the foregoing activities shall be known herein as the "Projects"); and

WHEREAS, DPD has determined that the use of the Open Space Fees to assist with the Projects will provide a direct and material benefit to each of the Fee-Paying Developments from which the Open Space Fees were collected in that the Open Space Fees used for the Projects will come from the specific funds set up by DOF for the Chatham Community Area, the North Lawndale Community Area, and the Chicago Lawn Community Area in which the Fee-Paying Developments are located and from which the Open Space Fees were collected; and

WHEREAS, DPD wishes to make available to the Park District proceeds from the Open Space Fees collected by DOF in a total amount not to exceed \$178,545 with \$105,275 coming from the Chatham Community Area, \$32,235 coming from the North Lawndale Community Area, and \$41,035 coming from the Chicago Lawn Community Area for the purpose of partially funding the Projects; and

WHEREAS, the Park District has agreed to use the proceeds from the Open Space Fees for capital improvements relating to the Projects subject to the terms and conditions specified in the forms of the intergovernmental agreements (the "IGAs") attached hereto as Exhibits 1, 2 and 3; and

WHEREAS, DPD has recommended that the City Council approve the use of the Open Space Fees for the Projects; and

WHEREAS, DPD has recommended that the City Council make a finding that the expenditure of the Open Space Fees as described herein will directly and materially benefit the Fee-Paying Developments from which the Open Space Fees were collected; and

WHEREAS, DPD has also recommended that the City enter into the IGAs with the Park District; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The above recitals are expressly incorporated in and made part of this ordinance as though fully set forth herein.

SECTION 2. The City Council hereby finds that the expenditure of the Open Space Fees for the purpose of funding the Projects will directly and materially benefit the residents of those Fee-Paying Developments from which the Open Space Fees were collected and approves the use of the Open Space Fees for the Projects.

SECTION 3. The Commissioner of DPD (the "Commissioner") is hereby authorized to provide Open Space Fee proceeds to the Park District in a total amount not to exceed \$178,545 to pay for expenses permitted under the Open Space Ordinance, with \$105,275 coming from the Chatham Community Area to be used for the Brown Memorial Park expansion, \$32,235 coming from the North Lawndale Community Area to be used for the Christiana Park expansion, and \$41,035 coming from the Chicago Lawn Community Area to be used for the 6049 South Whipple Street Park construction. The foregoing amounts are hereby appropriated for the purposes described herein.

SECTION 4. The Commissioner of DPD is authorized to execute the IGAs (with such changes as the Commissioner deems necessary and appropriate) and any and all documents and take any and all action as may be necessary or appropriate to effectuate the development and maintenance of the Projects, subject to the approval of the Corporation Counsel.

SECTION 5. To the extent that any ordinance, resolution, rule, order or provision of the Code, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any other provisions of this ordinance.

SECTION 6. This ordinance shall take effect immediately upon its passage and approval.

EXHIBIT 1

Brown Memorial Park Intergovernmental Agreement

See Attached

AGREEMENT BETWEEN  
THE CITY OF CHICAGO  
AND THE CHICAGO PARK DISTRICT – BROWN MEMORIAL PARK

This Agreement is entered into this \_\_\_\_\_, 2017, between the City of Chicago (the "City"), a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, by and through its Department of Planning and Development ("DPD") and the Chicago Park District (the "Park District"), a body politic and corporate and a unit of local government under Article VII, Section 1 of the 1970 Constitution of the State of Illinois.

RECITALS

WHEREAS, the Park District has a Public Way Use Agreement dated as of \_\_\_\_\_ with the City of Chicago Department of Transportation to use 0.15 acres of land commonly known as the 86<sup>th</sup> Street and Champlain Avenue Right of Way, Chicago, Illinois (the "Property") as identified on a map attached hereto as Exhibit A; and

WHEREAS, the Park District intends to expand the Brown Memorial Park on the Property to create additional open space in the Chatham Community Area (the "Project"); and

WHEREAS, the Open Space Impact Fee Ordinance, Chapter 18 of Title 16 of the Municipal Code of Chicago (the "Code"), authorizes collection of fees as a condition of issuance of a building permit for proposed new dwelling units to ensure that adequate open space and recreational facilities are available to serve residents of new developments in the City (the "Open Space Fees"); and

WHEREAS, the Department of Finance has collected Open Space Fees for new dwelling units built in the Chatham Community Area and contiguous communities (the "Proceeds") and has deposited such Proceeds in Fund No. PS44 131 54 5044 2604; and

WHEREAS, on \_\_\_\_\_, the City Council of the City adopted an ordinance published in the Journal of the Proceedings of the City Council for said date at pages \_\_\_\_\_ to \_\_\_\_\_, (the "Authorizing Ordinance") among other things, (i) finding that the Project would provide a direct and material benefit to the residents of the new developments originating the Open Space Fees; and (ii) authorizing the transfer of a portion of the Proceeds in an amount not to exceed \$105,275 (the "Project Assistance") to the Park District as a contribution towards the costs of the Project; and

WHEREAS, the Park District, pursuant to Order No. \_\_\_ dated \_\_\_\_\_ and Order No. \_\_\_ dated \_\_\_\_\_ (the "Orders"), is authorized to enter into an intergovernmental agreement with the City for the construction of the Project;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

TERMS AND CONDITIONS

## SECTION 1. INCORPORATION OF RECITALS

The recitals set forth above are incorporated in this Agreement and made a part hereof.

## SECTION 2. THE PROJECT

A. No later than 18 months from the date hereof, or later as the Commissioner of DPD may agree in writing, the Park District shall let one or more contracts for the construction of the Project in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, pertaining to or affecting the Project or the Park District as related thereto. Upon the City's request, the Park District shall provide evidence satisfactory to the City of such compliance.

B. At such time as the Park District begins construction of the Project, the Park District shall also provide the City with copies of all governmental licenses and permits required to construct the Project and to use, occupy and operate the Property as a public park from all appropriate governmental authorities, including evidence that the Property is appropriately zoned to be used, occupied and operated as a public park.

C. If the Park District, without the City's written consent (i) fails to comply with the provisions of paragraphs A and B in this Section 2; or (ii) fails to complete the Project within 48 months after the date of execution of this Agreement, then the City may terminate this Agreement by providing written notice to the Park District. If the City so terminates this Agreement, the Park District shall reimburse the City for the full amount of the Project Assistance:

D. The Park District agrees to construct the Project on the Property in accordance with the architectural plans and specifications prepared by \_\_\_\_\_, dated \_\_\_\_\_ ("Plans and Specifications"), which have been approved by the City and which are incorporated herein by reference. No material deviation from the Plans and Specifications may be made without the prior written approval of the City.

E. In all contracts relating to the Project, the Park District agrees to require its contractors to name the City as an additional insured on all insurance policies and to require its contractors to indemnify the City from all claims, damages, demands, losses, suits, actions, judgments and expenses, including but not limited to attorney's fees, arising out of or resulting from the construction for the Project by its contractors or contractors' suppliers, employees or agents.

F. The Park District agrees to carefully inspect the Property prior to commencement of any activity on the Property to ensure that such activity shall not damage surrounding property, structures, utility lines or any subsurface lines or cables. The Park District shall be solely responsible for the safety and protection of the public. The City reserves the right to inspect the work being done on the Property. The Park District agrees to keep the Property free from all liens and encumbrances arising out of any work performed, materials supplied or obligations incurred by or for the Park District.

## SECTION 3. FUNDING

A. The City shall, subject to the Park District's satisfaction of the conditions precedent for disbursement described in this Section 3 and such other conditions contained in this Agreement, disburse the Project Assistance to the Park District. The Park District shall keep the Project Assistance in a segregated account to be used only for the Project.

B. Within 15 days after the execution of this Agreement (the "Closing Date") or such longer period of time as may be agreed to by the Commissioner of DPD (the "Commissioner"), but in no event later than 30 days after the execution of this Agreement (the "Satisfaction Period"), the Park District must satisfy to the reasonable satisfaction of the Commissioner, the following conditions precedent for the City's disbursement of the Project Assistance to the Park District:

the Park District has provided the City with:

- (i) [intentionally omitted];
- (ii) two copies of a Class A plat survey in the most recently revised form of ALTA/ACSM land title survey, acceptable in form and content to the City prepared by a surveyor registered in the State of Illinois, certified to the Park District, and certifying as to whether the Property is in an area identified by the Federal Emergency Management Agency as having special flood hazards;
- (iii) copies of a phase I environmental audit completed with respect to the Property. Based on the City's review thereof, the City may, in its sole discretion, require the completion of a phase II environmental audit with respect to the Property prior to the Closing Date. The City reserves the right to terminate this Agreement if, in the City's view, such audits reveal the existence of material environmental problems. Prior to the Closing Date, the Park District shall provide a letter from the environmental engineer(s) who completed such audit(s), authorizing the City to rely on such audits.

If the Park District is unable to satisfy these conditions within the Satisfaction Period, either party may terminate this Agreement by providing written notice to the other party.

C. The Park District shall provide the City with monthly reports on the progress of the Project and reasonable access to its books and records relating to the Project.

#### SECTION 4. ENVIRONMENTAL MATTERS

A. It shall be the responsibility of the Park District, at its sole cost and expense, to investigate and determine the soil and environmental condition of the Property, including obtaining phase I and, if applicable, phase II environmental audits for the property. The City makes no covenant, representation or warranty as to the environmental condition of the Property or the suitability of the Property as a park or for any use whatsoever.

B. The Park District may request a right of entry from the property owner for the



purpose of conducting environmental tests on the Property. Prior to exercising its rights under the right of entry, the Park District or its contractor must obtain all necessary permits.

## SECTION 5. INSURANCE

The Park District shall provide and maintain at the Park District's own expense, or cause to be provided during the term of the Agreement, the insurance coverages and requirements specified below, insuring all operations related to the Agreement.

### A. INSURANCE TO BE PROVIDED

#### 1) Workers Compensation and Employers Liability

Workers Compensation as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident or illness.

#### 2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages shall include the following: All premises and operations, products/completed operations, explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

#### 3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Park District shall provide or cause to be provided, Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

#### 4) Professional Liability

When any architects, engineers or professional consultants perform work in connection with this Agreement, the Park District shall cause to be provided, Professional Liability Insurance covering acts, errors, or omissions shall be maintained with limits of not less than \$1,000,000.

## B. OTHER REQUIREMENTS

To the extent permitted by applicable Law, the Park District may self insure for the insurance requirements specified above, it being expressly understood and agreed that, if the Park District does self insure for any such insurance requirements, the Park District must bear all risk of loss for any loss which would otherwise be covered by insurance policies, and the self insurance program must comply with at least such insurance requirements as stipulated above.

The Park District will furnish the City of Chicago, Department of Planning and Development, City Hall, Room 1000, 121 North LaSalle Street 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Park District shall submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent prior to Agreement award. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreements have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Agreement shall not be deemed to be a waiver by the City.

The Park District shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance shall not relieve the Park District of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

The insurance shall provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any and all deductibles or self insured retentions on referenced insurance coverages shall be borne by the Park District and contractors.

The Park District agrees that insurers shall waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The Park District expressly understands and agrees that any coverage and limits furnished by the Park District shall in no way limit the Park District's liabilities and responsibilities specified within the Agreement documents or by law.

The Park District expressly understands and agrees that any insurance or self insurance programs maintained by the City of Chicago shall not contribute with insurance provided by the Park District under the Agreement.

The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

The Park District shall require all subcontractors to provide the insurance required herein or the Park District may provide the coverages for subcontractors. All subcontractors shall be subject to the same insurance requirements of the Park District unless otherwise specified herein.

The City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

## SECTION 6. INDEMNITY

To the extent liability of a municipal corporation, as such is precluded by the Local and Governmental Tort Immunity Act or the common law of the State of Illinois, and subject to the provisions on non-appropriation in Section 17(i) of the Chicago Park District Act, the Park District agrees to indemnify and hold the City, its officers and employees, harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses, including, without limitation, reasonable attorney's fees and court costs suffered or incurred by the City arising from or in connection with (i) the Park District's failure to comply with any of the terms, covenants and conditions contained in this Agreement; or (ii) the Park District's or any contractor's failure to pay general contractors, subcontractors or materialmen in connection with the Project.

## SECTION 7. NO PERSONAL LIABILITY

No elected or appointed official or member or employee or agent of the City or the Park District shall be individually or personally liable in connection with this Agreement.

## SECTION 8. TERM

The term of this Agreement shall commence on the date of its execution and shall expire upon completion of the parties' compliance with their respective obligations hereunder or termination of this Agreement according to its terms, whichever occurs first.

## SECTION 9. GENERAL PROVISIONS

A. **ASSIGNMENT.** This Agreement, or any portion thereof, shall not be assigned by either party without the express prior written consent of the other.

B. **AUTHORITY.** Execution of this Agreement by the City is authorized by the Authorizing Ordinance. Execution of this Agreement by the Park District is authorized by the Order. The parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

C. **COMPLIANCE WITH LAWS.** The parties agree to comply with all federal, state and local laws, status, ordinances, rules, regulations, codes and executive orders relating to this Agreement.

D. **CONSENTS.** Whenever the consent or approval of one or both parties to this Agreement is required hereunder, such consent or approval will not be unreasonably withheld.

E. CONSTRUCTION OF WORDS. As used in this Agreement, the singular of any word shall include the plural, and vice versa. Masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

F. COUNTERPARTS. This Agreement may be executed in counterparts and by different parties in separate counterparts, with the same effect as if all parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.

G. EXHIBITS. Any exhibits to this Agreement will be construed to be an integral part of this Agreement to the same extent as if the same has been set forth verbatim herein.

H. FURTHER ASSURANCES. The parties shall perform such acts, execute and deliver such instruments and documents, and do all such other things as may be reasonably necessary to accomplish the transactions contemplated in this Agreement.

I. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to the principles of conflicts of law thereof.

J. INTEGRATION. This Agreement contains the entire agreement between the parties.

K. MODIFICATION. This Agreement may not be modified or amended except by an agreement in writing signed by the parties.

L. NOTICE. Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the address set forth below by any of the following means: (a) personal service; (b) electronic communication, whether by telex, telegram, or fax; (c) overnight courier; or (d) registered or certified first class mail postage prepaid, return receipt requested.

To the City: City of Chicago  
Department of Planning and Development  
Attention: Commissioner  
City Hall, 10<sup>th</sup> Floor  
121 N. LaSalle Street  
Chicago, Illinois 60602  
(312) 744-4190  
(312) 744-2271 (Fax)

With copies to: City of Chicago  
Department of Law  
Attention: Finance and Economic  
Development Division  
City Hall, Room 600  
121 N. LaSalle Street  
Chicago, Illinois 60602  
(312) 744-0200  
(312) 744-8538 (Fax)

To the Park District: Chicago Park District  
Attention: General Superintendent  
541 North Fairbanks Court  
Chicago, Illinois 60611  
(312) 742-7529  
(312) 742-5328 (Fax)

With copies to: Chicago Park District  
Department of Law  
541 North Fairbanks Court  
Chicago, Illinois 60611  
(312) 742-7529  
(312) 742-5328 (Fax)

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, respectively. Any notice, demand or communication given pursuant to clause (c) hereof shall be deemed received on the day immediately following deposit with the overnight courier. Any notice, demand or communication given pursuant to clause (d) hereof shall be deemed received three (3) business days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given.

M. PARTIES' INTEREST/NO THIRD PARTY BENEFICIARIES. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the respective successors and permitted assigns of the parties hereto. This Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a party of this Agreement and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right. Nothing contained in this Agreement, nor any act of the City or the Park District shall be deemed or construed by any of the parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the City or the Park District.

N. REPRESENTATIVES. Immediately upon execution of this Agreement, the following individuals will represent the parties as a primary contact in all matters under this Agreement.

For the City: Meg Gustafson  
City of Chicago  
Department of Planning and Development  
City Hall, 10<sup>th</sup> Floor  
121 N. LaSalle Street  
Chicago, Illinois 60602  
(312) 744-0524  
(312) 744-6550 (Fax)

For the Park District: Heather Gleason  
Chicago Park District

Director of Planning and Construction  
541 North Fairbanks  
Chicago, Illinois 60611  
(312) 742-4650  
(312) 742-5347 (Fax)

Each party agrees to promptly notify the other party of any change in its designated representative, which notice shall include the name, address, telephone number and fax number of the representative for such party for the purpose hereof.

O. SEVERABILITY. If any provision of this Agreement, or the application thereof, to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms shall provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth herein. In such event, the parties shall negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly affects the parties' intent in entering into this Agreement.

P. TITLES AND HEADINGS. Titles and headings to sections herein are inserted for the convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

Q. TIME. Time is of the essence in the performance of this Agreement.

R. VENUE AND CONSENT TO JURISDICTION. If there is a lawsuit under this Agreement, each party hereto agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois and the United States District Court for the Northern District of Illinois.

*[The remainder of this page is intentionally blank.  
Signatures appear on the following page.]*

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed and delivered as of the date first above written.

CITY OF CHICAGO, a municipal corporation,  
by and through its Department of Planning and Development

By: \_\_\_\_\_  
David L. Reifman  
Commissioner

CHICAGO PARK DISTRICT, a body politic and  
corporate

By: \_\_\_\_\_  
Michael P. Kelly  
General Superintendent and Chief Executive Officer

Attest: \_\_\_\_\_

By: \_\_\_\_\_  
Kantrice Ogletree  
Secretary

Exhibit A

Map

[NOT ATTACHED FOR PURPOSES OF ORDINANCE]



EXHIBIT 2

Christiana Park Intergovernmental Agreement

See Attached

AGREEMENT BETWEEN  
THE CITY OF CHICAGO  
AND THE CHICAGO PARK DISTRICT – CHRISTIANA PARK

This Agreement is entered into this \_\_\_\_\_, 2017, between the City of Chicago (the "City"), a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, by and through its Department of Planning and Development ("DPD") and the Chicago Park District (the "Park District"), a body politic and corporate and a unit of local government under Article VII, Section 1 of the 1970 Constitution of the State of Illinois.

RECITALS

WHEREAS, the Park District owns 0.14 acres located at 1533 South Christiana Avenue, PINs 16-23-227-011 and 16-23-227-012, Chicago, Illinois (the "Property") as identified on a map attached hereto as Exhibit A; and

WHEREAS, the Park District intends to expand Christiana Park on the Property to create additional open space in the North Lawndale Community Area (the "Project"); and

WHEREAS, the Open Space Impact Fee Ordinance, Chapter 18 of Title 16 of the Municipal Code of Chicago (the "Code"), authorizes collection of fees as a condition of issuance of a building permit for proposed new dwelling units to ensure that adequate open space and recreational facilities are available to serve residents of new developments in the City (the "Open Space Fees"); and

WHEREAS, the Department of Finance has collected Open Space Fees for new dwelling units built in the North Lawndale Community Area and contiguous communities (the "Proceeds") and has deposited such Proceeds in Fund No. PS29 131 54 5029 2604; and

WHEREAS, on \_\_\_\_\_, the City Council of the City adopted an ordinance published in the Journal of the Proceedings of the City Council for said date at pages \_\_\_\_\_ to \_\_\_\_\_, (the "Authorizing Ordinance") among other things, (i) finding that the Project would provide a direct and material benefit to the residents of the new developments originating the Open Space Fees; and (ii) authorizing the transfer of a portion of the Proceeds in an amount not to exceed \$32,235 (the "Project Assistance") to the Park District as a contribution towards the costs of the Project; and

WHEREAS, the Park District, pursuant to Order \_\_\_ dated \_\_\_\_\_ and Order \_\_\_ dated \_\_\_\_\_ (the "Orders"), is authorized to enter into an intergovernmental agreement with the City for the construction of the Project;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

TERMS AND CONDITIONS

## SECTION 1. INCORPORATION OF RECITALS

The recitals set forth above are incorporated in this Agreement and made a part hereof.

## SECTION 2. THE PROJECT

A. No later than 18 months from the date hereof, or later as the Commissioner of DPD may agree in writing, the Park District shall let one or more contracts for the construction of the Project in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, pertaining to or affecting the Project or the Park District as related thereto. Upon the City's request, the Park District shall provide evidence satisfactory to the City of such compliance.

B. At such time as the Park District begins construction of the Project, the Park District shall also provide the City with copies of all governmental licenses and permits required to construct the Project and to use, occupy and operate the Property as a public park from all appropriate governmental authorities, including evidence that the Property is appropriately zoned to be used, occupied and operated as a public park.

C. If the Park District, without the City's written consent (i) fails to comply with the provisions of paragraphs A and B in this Section 2; or (ii) fails to complete the Project within 48 months after the date of execution of this Agreement, then the City may terminate this Agreement by providing written notice to the Park District. If the City so terminates this Agreement, the Park District shall reimburse the City for the full amount of the Project Assistance.

D. The Park District agrees to construct the Project on the Property in accordance with the architectural plans and specifications prepared by \_\_\_\_\_, dated \_\_\_\_\_ ("Plans and Specifications"), which have been approved by the City and which are incorporated herein by reference. No material deviation from the Plans and Specifications may be made without the prior written approval of the City.

E. In all contracts relating to the Project, the Park District agrees to require its contractors to name the City as an additional insured on all insurance policies and to require its contractors to indemnify the City from all claims, damages, demands, losses, suits, actions, judgments and expenses, including but not limited to attorney's fees, arising out of or resulting from the construction for the Project by its contractors or contractors' suppliers, employees or agents.

F. The Park District agrees to carefully inspect the Property prior to commencement of any activity on the Property to ensure that such activity shall not damage surrounding property, structures, utility lines or any subsurface lines or cables. The Park District shall be solely responsible for the safety and protection of the public. The City reserves the right to inspect the work being done on the Property. The Park District agrees to keep the Property free from all liens and encumbrances arising out of any work performed, materials supplied or obligations incurred by or for the Park District.

## SECTION 3. FUNDING

A. The City shall, subject to the Park District's satisfaction of the conditions precedent for disbursement described in this Section 3 and such other conditions contained in this Agreement, disburse the Project Assistance to the Park District. The Park District shall keep the Project Assistance in a segregated account to be used only for the Project.

B. Within 15 days after the execution of this Agreement (the "Closing Date") or such longer period of time as may be agreed to by the Commissioner of DPD (the "Commissioner"), but in no event later than 30 days after the execution of this Agreement (the "Satisfaction Period"), the Park District must satisfy to the reasonable satisfaction of the Commissioner, the following conditions precedent for the City's disbursement of the Project Assistance to the Park District:

the Park District has provided the City with:

- (i) [intentionally omitted];
- (ii) two copies of a Class A plat survey in the most recently revised form of ALTA/ACSM land title survey, acceptable in form and content to the City prepared by a surveyor registered in the State of Illinois, certified to the Park District, and certifying as to whether the Property is in an area identified by the Federal Emergency Management Agency as having special flood hazards;
- (iii) copies of a phase I environmental audit completed with respect to the Property. Based on the City's review thereof, the City may, in its sole discretion, require the completion of a phase II environmental audit with respect to the Property prior to the Closing Date. The City reserves the right to terminate this Agreement if, in the City's view, such audits reveal the existence of material environmental problems. Prior to the Closing Date, the Park District shall provide a letter from the environmental engineer(s) who completed such audit(s), authorizing the City to rely on such audits.

If the Park District is unable to satisfy these conditions within the Satisfaction Period, either party may terminate this Agreement by providing written notice to the other party.

C. The Park District shall provide the City with monthly reports on the progress of the Project and reasonable access to its books and records relating to the Project.

#### SECTION 4. ENVIRONMENTAL MATTERS

A. It shall be the responsibility of the Park District, at its sole cost and expense, to investigate and determine the soil and environmental condition of the Property, including obtaining phase I and, if applicable, phase II environmental audits for the property. The City makes no covenant, representation or warranty as to the environmental condition of the Property or the suitability of the Property as a park or for any use whatsoever.

B. The Park District may request a right of entry from the property owner for the purpose of conducting environmental tests on the Property. Prior to exercising its rights under the

right of entry, the Park District or its contractor must obtain all necessary permits.

## SECTION 5. INSURANCE

The Park District shall provide and maintain at the Park District's own expense, or cause to be provided during the term of the Agreement, the insurance coverages and requirements specified below, insuring all operations related to the Agreement.

### A. INSURANCE TO BE PROVIDED

#### 1) Workers Compensation and Employers Liability

Workers Compensation as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident or illness.

#### 2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages shall include the following: All premises and operations, products/completed operations, explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

#### 3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Park District shall provide or cause to be provided, Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

#### 4) Professional Liability

When any architects, engineers or professional consultants perform work in connection with this Agreement, the Park District shall cause to be provided, Professional Liability Insurance covering acts, errors, or omissions shall be maintained with limits of not less than \$1,000,000.

## B. OTHER REQUIREMENTS

To the extent permitted by applicable Law, the Park District may self insure for the insurance requirements specified above, it being expressly understood and agreed that, if the Park District does self insure for any such insurance requirements, the Park District must bear all risk of loss for any loss which would otherwise be covered by insurance policies, and the self insurance program must comply with at least such insurance requirements as stipulated above.

The Park District will furnish the City of Chicago, Department of Planning and Development, City Hall, Room 1000, 121 North LaSalle Street 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Park District shall submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent prior to Agreement award. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreements have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Agreement shall not be deemed to be a waiver by the City.

The Park District shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance shall not relieve the Park District of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

The insurance shall provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any and all deductibles or self insured retentions on referenced insurance coverages shall be borne by the Park District and contractors.

The Park District agrees that insurers shall waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The Park District expressly understands and agrees that any coverage and limits furnished by the Park District shall in no way limit the Park District's liabilities and responsibilities specified within the Agreement documents or by law.

The Park District expressly understands and agrees that any insurance or self insurance programs maintained by the City of Chicago shall not contribute with insurance provided by the Park District under the Agreement.

The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

The Park District shall require all subcontractors to provide the insurance required herein or the Park District may provide the coverages for subcontractors. All subcontractors shall be subject to the same insurance requirements of the Park District unless otherwise specified herein.

The City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

#### SECTION 6. INDEMNITY

To the extent liability of a municipal corporation, as such is precluded by the Local and Governmental Tort Immunity Act or the common law of the State of Illinois, and subject to the provisions on non-appropriation in Section 17(i) of the Chicago Park District Act, the Park District agrees to indemnify and hold the City, its officers and employees, harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses, including, without limitation, reasonable attorney's fees and court costs suffered or incurred by the City arising from or in connection with (i) the Park District's failure to comply with any of the terms, covenants and conditions contained in this Agreement; or (ii) the Park District's or any contractor's failure to pay general contractors, subcontractors or materialmen in connection with the Project.

#### SECTION 7. NO PERSONAL LIABILITY

No elected or appointed official or member or employee or agent of the City or the Park District shall be individually or personally liable in connection with this Agreement.

#### SECTION 8. TERM

The term of this Agreement shall commence on the date of its execution and shall expire upon completion of the parties' compliance with their respective obligations hereunder or termination of this Agreement according to its terms, whichever occurs first.

#### SECTION 9. GENERAL PROVISIONS

A. ASSIGNMENT. This Agreement, or any portion thereof, shall not be assigned by either party without the express prior written consent of the other.

B. AUTHORITY. Execution of this Agreement by the City is authorized by the Authorizing Ordinance. Execution of this Agreement by the Park District is authorized by the Order. The parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

C. COMPLIANCE WITH LAWS. The parties agree to comply with all federal, state and local laws, status, ordinances, rules, regulations, codes and executive orders relating to this Agreement.

D. CONSENTS. Whenever the consent or approval of one or both parties to this Agreement is required hereunder, such consent or approval will not be unreasonably withheld.

E. CONSTRUCTION OF WORDS. As used in this Agreement, the singular of any word shall include the plural, and vice versa. Masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

F. COUNTERPARTS. This Agreement may be executed in counterparts and by different parties in separate counterparts, with the same effect as if all parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.

G. EXHIBITS. Any exhibits to this Agreement will be construed to be an integral part of this Agreement to the same extent as if the same has been set forth verbatim herein.

H. FURTHER ASSURANCES. The parties shall perform such acts, execute and deliver such instruments and documents, and do all such other things as may be reasonably necessary to accomplish the transactions contemplated in this Agreement.

I. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to the principles of conflicts of law thereof.

J. INTEGRATION. This Agreement contains the entire agreement between the parties.

K. MODIFICATION. This Agreement may not be modified or amended except by an agreement in writing signed by the parties.

L. NOTICE. Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the address set forth below by any of the following means: (a) personal service; (b) electronic communication, whether by telex, telegram, or fax; (c) overnight courier; or (d) registered or certified first class mail postage prepaid, return receipt requested.

To the City: City of Chicago  
Department of Planning and Development  
Attention: Commissioner  
City Hall, 10<sup>th</sup> Floor  
121 N. LaSalle Street  
Chicago, Illinois 60602  
(312) 744-4190  
(312) 744-2271 (Fax)

With copies to: City of Chicago  
Department of Law  
Attention: Finance and Economic  
Development Division  
City Hall, Room 600  
121 N. LaSalle Street  
Chicago, Illinois 60602  
(312) 744-0200  
(312) 744-8538 (Fax)



To the Park District: Chicago Park District  
Attention: General Superintendent  
541 North Fairbanks Court  
Chicago, Illinois 60611  
(312) 742-7529  
(312) 742-5328 (Fax)

With copies to: Chicago Park District  
Department of Law  
541 North Fairbanks Court  
Chicago, Illinois 60611  
(312) 742-7529  
(312) 742-5328 (Fax)

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, respectively. Any notice, demand or communication given pursuant to clause (c) hereof shall be deemed received on the day immediately following deposit with the overnight courier. Any notice, demand or communication given pursuant to clause (d) hereof shall be deemed received three (3) business days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given.

M. PARTIES' INTEREST/NO THIRD PARTY BENEFICIARIES. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the respective successors and permitted assigns of the parties hereto. This Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a party of this Agreement and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right. Nothing contained in this Agreement, nor any act of the City or the Park District shall be deemed or construed by any of the parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the City or the Park District.

N. REPRESENTATIVES. Immediately upon execution of this Agreement, the following individuals will represent the parties as a primary contact in all matters under this Agreement.

For the City: Meg Gustafson  
City of Chicago  
Department of Planning and Development  
City Hall, 10<sup>th</sup> Floor  
121 N. LaSalle Street  
Chicago, Illinois 60602  
(312) 744-0524  
(312) 744-6550 (Fax)

For the Park District: Heather Gleason  
Chicago Park District

Director of Planning and Construction  
541 North Fairbanks  
Chicago, Illinois 60611  
(312) 742-4650  
(312) 742-5347 (Fax)

Each party agrees to promptly notify the other party of any change in its designated representative, which notice shall include the name, address, telephone number and fax number of the representative for such party for the purpose hereof.

O. SEVERABILITY. If any provision of this Agreement, or the application thereof, to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms shall provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth herein. In such event, the parties shall negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly affects the parties' intent in entering into this Agreement.

P. TITLES AND HEADINGS. Titles and headings to sections herein are inserted for the convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

Q. TIME. Time is of the essence in the performance of this Agreement.

R. VENUE AND CONSENT TO JURISDICTION. If there is a lawsuit under this Agreement, each party hereto agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois and the United States District Court for the Northern District of Illinois.

*[The remainder of this page is intentionally blank.  
Signatures appear on the following page.]*

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed and delivered as of the date first above written.

CITY OF CHICAGO, a municipal corporation,  
by and through its Department of Planning and Development

By: \_\_\_\_\_  
David L. Reifman  
Commissioner

CHICAGO PARK DISTRICT, a body politic and  
corporate

By: \_\_\_\_\_  
Michael P. Kelly  
General Superintendent and Chief Executive Officer

Attest: \_\_\_\_\_

By: \_\_\_\_\_  
Kantrice Ogletree  
Secretary

Exhibit A

Map

[NOT ATTACHED FOR PURPOSES OF ORDINANCE]

EXHIBIT 3

6049 South Whipple Park Intergovernmental Agreement

See Attached

AGREEMENT BETWEEN THE CITY OF CHICAGO  
AND THE CHICAGO PARK DISTRICT – 6049 SOUTH WHIPPLE STREET PARK

This Agreement is entered into this \_\_\_\_\_, 2017, between the City of Chicago (the "City"), a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, by and through its Department of Planning and Development ("DPD") and the Chicago Park District (the "Park District"), a body politic and corporate and a unit of local government under Article VII, Section 1 of the 1970 Constitution of the State of Illinois.

RECITALS

WHEREAS, the Park District owns certain real property located at 6049 South Whipple Street (the "Property") as identified on a map attached hereto as Exhibit A; and

WHEREAS, the Park District intends to construct a park on the Property to create open spaces and recreational facilities in the Chicago Lawn Community Area (the "Project"); and

WHEREAS, the Open Space Impact Fee Ordinance, Chapter 18 of Title 16 of the Municipal Code of Chicago (the "Code"), authorizes collection of fees as a condition of issuance of a building permit for proposed new dwelling units to ensure that adequate open space and recreational facilities are available to serve residents of new developments in the City (the "Open Space Fees"); and

WHEREAS, the Department of Finance has collected Open Space Fees for new dwelling units built in the Chicago Lawn Community Area and contiguous communities (the "Proceeds") and has deposited such Proceeds in Fund No. PS131 54 5066 2604; and

WHEREAS, on \_\_\_\_\_, the City Council of the City adopted an ordinance published in the Journal of the Proceedings of the City Council for said date at pages \_\_\_\_\_ to \_\_\_\_\_, (the "Authorizing Ordinance") among other things, (i) finding that the Project would provide a direct and material benefit to the residents of the new developments originating the Open Space Fees; and (ii) authorizing the transfer of a portion of the Proceeds in an amount not to exceed \$41,035 (the "Project Assistance") to the Park District as a contribution towards the costs of the Project; and

WHEREAS, the Park District, pursuant to Order No. \_\_\_ dated \_\_\_\_\_ and Order No. \_\_\_ dated \_\_\_\_\_ (the "Orders"), is authorized to enter into an intergovernmental agreement with the City for the construction of the Project;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

TERMS AND CONDITIONS

SECTION 1. INCORPORATION OF RECITALS

The recitals set forth above are incorporated in this Agreement and made a part hereof.

## SECTION 2. THE PROJECT

A. No later than 18 months from the date hereof, or later as the Commissioner of DPD may agree in writing, the Park District shall let one or more contracts for the construction of the Project in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, pertaining to or affecting the Project or the Park District as related thereto. Upon the City's request, the Park District shall provide evidence satisfactory to the City of such compliance.

B. At such time as the Park District begins construction of the Project, the Park District shall also provide the City with copies of all governmental licenses and permits required to construct the Project and to use, occupy and operate the Property as a public park from all appropriate governmental authorities, including evidence that the Property is appropriately zoned to be used, occupied and operated as a public park.

C. If the Park District, without the City's written consent (i) fails to comply with the provisions of paragraphs A and B in this Section 2; or (ii) fails to complete the Project within 48 months after the date of execution of this Agreement, then the City may terminate this Agreement by providing written notice to the Park District. If the City so terminates this Agreement, the Park District shall reimburse the City for the full amount of the Project Assistance.

D. The Park District agrees to construct the Project on the Property in accordance with the architectural plans and specifications prepared by \_\_\_\_\_, dated \_\_\_\_\_ ("Plans and Specifications"), which have been approved by the City and which are incorporated herein by reference. No material deviation from the Plans and Specifications may be made without the prior written approval of the City.

E. In all contracts relating to the Project, the Park District agrees to require its contractors to name the City as an additional insured on all insurance policies and to require its contractors to indemnify the City from all claims, damages, demands, losses, suits, actions, judgments and expenses, including but not limited to attorney's fees, arising out of or resulting from the construction for the Project by its contractors or contractors' suppliers, employees or agents.

F. The Park District agrees to carefully inspect the Property prior to commencement of any activity on the Property to ensure that such activity shall not damage surrounding property, structures, utility lines or any subsurface lines or cables. The Park District shall be solely responsible for the safety and protection of the public. The City reserves the right to inspect the work being done on the Property. The Park District agrees to keep the Property free from all liens and encumbrances arising out of any work performed, materials supplied or obligations incurred by or for the Park District.

## SECTION 3. FUNDING

A. The City shall, subject to the Park District's satisfaction of the conditions precedent for disbursement described in this Section 3 and such other conditions contained in this

Agreement, disburse the Project Assistance to the Park District. The Park District shall keep the Project Assistance in a segregated account to be used only for the Project.

B. Within 15 days after the execution of this Agreement (the "Closing Date") or such longer period of time as may be agreed to by the Commissioner of DPD (the "Commissioner"), but in no event later than 30 days after the execution of this Agreement (the "Satisfaction Period"), the Park District must satisfy to the reasonable satisfaction of the Commissioner, the following conditions precedent for the City's disbursement of the Project Assistance to the Park District:

the Park District has provided the City with:

- (i) [intentionally omitted];
- (ii) two copies of a Class A plat survey in the most recently revised form of ALTA/ACSM land title survey, acceptable in form and content to the City prepared by a surveyor registered in the State of Illinois, certified to the Park District, and certifying as to whether the Property is in an area identified by the Federal Emergency Management Agency as having special flood hazards;
- (iii) copies of a phase I environmental audit completed with respect to the Property. Based on the City's review thereof, the City may, in its sole discretion, require the completion of a phase II environmental audit with respect to the Property prior to the Closing Date. The City reserves the right to terminate this Agreement if, in the City's view, such audits reveal the existence of material environmental problems. Prior to the Closing Date, the Park District shall provide a letter from the environmental engineer(s) who completed such audit(s), authorizing the City to rely on such audits.

If the Park District is unable to satisfy these conditions within the Satisfaction Period, either party may terminate this Agreement by providing written notice to the other party.

C. The Park District shall provide the City with monthly reports on the progress of the Project and reasonable access to its books and records relating to the Project.

#### SECTION 4. ENVIRONMENTAL MATTERS

A. It shall be the responsibility of the Park District, at its sole cost and expense, to investigate and determine the soil and environmental condition of the Property, including obtaining phase I and, if applicable, phase II environmental audits for the property. The City makes no covenant, representation or warranty as to the environmental condition of the Property or the suitability of the Property as a park or for any use whatsoever.

B. The Park District may request a right of entry from the property owner for the purpose of conducting environmental tests on the Property. Prior to exercising its rights under the right of entry, the Park District or its contractor must obtain all necessary permits.



## SECTION 5. INSURANCE

The Park District shall provide and maintain at the Park District's own expense, or cause to be provided during the term of the Agreement, the insurance coverages and requirements specified below, insuring all operations related to the Agreement.

### A. INSURANCE TO BE PROVIDED

#### 1) Workers Compensation and Employers Liability

Workers Compensation as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident or illness.

#### 2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages shall include the following: All premises and operations, products/completed operations, explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

#### 3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Park District shall provide or cause to be provided, Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

#### 4) Professional Liability

When any architects, engineers or professional consultants perform work in connection with this Agreement, the Park District shall cause to be provided, Professional Liability Insurance covering acts, errors, or omissions shall be maintained with limits of not less than \$1,000,000.

### B. OTHER REQUIREMENTS

To the extent permitted by applicable Law, the Park District may self insure for the insurance requirements specified above, it being expressly understood and agreed that, if the Park District does self insure for any such insurance requirements, the Park District must bear all risk of loss for any loss which would otherwise be covered by insurance policies, and the self insurance program must comply with at least such insurance requirements as stipulated above.

The Park District will furnish the City of Chicago, Department of Planning and Development, City Hall, Room 1000, 121 North LaSalle Street 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Park District shall submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent prior to Agreement award. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreements have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Agreement shall not be deemed to be a waiver by the City.

The Park District shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance shall not relieve the Park District of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work until proper evidence of insurance is provided, or the Agreement may be terminated.

The insurance shall provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any and all deductibles or self insured retentions on referenced insurance coverages shall be borne by the Park District and contractors.

The Park District agrees that insurers shall waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The Park District expressly understands and agrees that any coverage and limits furnished by the Park District shall in no way limit the Park District's liabilities and responsibilities specified within the Agreement documents or by law.

The Park District expressly understands and agrees that any insurance or self insurance programs maintained by the City of Chicago shall not contribute with insurance provided by the Park District under the Agreement.

The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

The Park District shall require all subcontractors to provide the insurance required herein or the Park District may provide the coverages for subcontractors. All subcontractors shall be subject to the same insurance requirements of the Park District unless otherwise specified herein.

The City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

## SECTION 6. INDEMNITY

To the extent liability of a municipal corporation, as such is precluded by the Local and Governmental Tort Immunity Act or the common law of the State of Illinois, and subject to the provisions on non-appropriation in Section 17(i) of the Chicago Park District Act, the Park District agrees to indemnify and hold the City, its officers and employees, harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses, including, without limitation, reasonable attorney's fees and court costs suffered or incurred by the City arising from or in connection with (i) the Park District's failure to comply with any of the terms, covenants and conditions contained in this Agreement; or (ii) the Park District's or any contractor's failure to pay general contractors, subcontractors or materialmen in connection with the Project.

#### SECTION 7. NO PERSONAL LIABILITY

No elected or appointed official or member or employee or agent of the City or the Park District shall be individually or personally liable in connection with this Agreement.

#### SECTION 8. TERM

The term of this Agreement shall commence on the date of its execution and shall expire upon completion of the parties' compliance with their respective obligations hereunder or termination of this Agreement according to its terms, whichever occurs first.

#### SECTION 9. GENERAL PROVISIONS

A. ASSIGNMENT. This Agreement, or any portion thereof, shall not be assigned by either party without the express prior written consent of the other.

B. AUTHORITY. Execution of this Agreement by the City is authorized by the Authorizing Ordinance. Execution of this Agreement by the Park District is authorized by the Order. The parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

C. COMPLIANCE WITH LAWS. The parties agree to comply with all federal, state and local laws, status, ordinances, rules, regulations, codes and executive orders relating to this Agreement.

D. CONSENTS. Whenever the consent or approval of one or both parties to this Agreement is required hereunder, such consent or approval will not be unreasonably withheld.

E. CONSTRUCTION OF WORDS. As used in this Agreement, the singular of any word shall include the plural, and vice versa. Masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

F. COUNTERPARTS. This Agreement may be executed in counterparts and by different parties in separate counterparts, with the same effect as if all parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.

G. EXHIBITS. Any exhibits to this Agreement will be construed to be an integral part of this Agreement to the same extent as if the same has been set forth verbatim herein.

H. FURTHER ASSURANCES. The parties shall perform such acts, execute and deliver such instruments and documents, and do all such other things as may be reasonably necessary to accomplish the transactions contemplated in this Agreement.

I. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to the principles of conflicts of law thereof.

J. INTEGRATION. This Agreement contains the entire agreement between the parties.

K. MODIFICATION. This Agreement may not be modified or amended except by an agreement in writing signed by the parties.

L. NOTICE. Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the address set forth below by any of the following means: (a) personal service; (b) electronic communication, whether by telex, telegram, or fax; (c) overnight courier; or (d) registered or certified first class mail postage prepaid, return receipt requested.

To the City: City of Chicago  
Department of Planning and Development  
Attention: Commissioner  
City Hall, 10<sup>th</sup> Floor  
121 N. LaSalle Street  
Chicago, Illinois 60602  
(312) 744-4190  
(312) 744-2271 (Fax)

With copies to: City of Chicago  
Department of Law  
Attention: Finance and Economic Development  
Division  
City Hall, Room 600  
121 N. LaSalle Street  
Chicago, Illinois 60602  
(312) 744-0200  
(312) 744-8538 (Fax)

To the Park District: Chicago Park District  
Attention: General Superintendent  
541 North Fairbanks Court  
Chicago, Illinois 60611  
(312) 742-7529  
(312) 742-5328 (Fax)

With copies to: Chicago Park District

Department of Law  
541 North Fairbanks Court  
Chicago, Illinois 60611  
(312) 742-7529  
(312) 742-5328 (Fax)

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, respectively. Any notice, demand or communication given pursuant to clause (c) hereof shall be deemed received on the day immediately following deposit with the overnight courier. Any notice, demand or communication given pursuant to clause (d) hereof shall be deemed received three (3) business days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given.

**M. PARTIES' INTEREST/NO THIRD PARTY BENEFICIARIES.** The terms and provisions of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the respective successors and permitted assigns of the parties hereto. This Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a party of this Agreement and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right. Nothing contained in this Agreement, nor any act of the City or the Park District shall be deemed or construed by any of the parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the City or the Park District.

**N. REPRESENTATIVES.** Immediately upon execution of this Agreement, the following individuals will represent the parties as a primary contact in all matters under this Agreement.

For the City: Meg Gustafson  
City of Chicago  
Department of Planning and Development  
City Hall, 10<sup>th</sup> Floor  
121 N. LaSalle Street  
Chicago, Illinois 60602  
(312) 744-0524  
(312) 744-6550 (Fax)

For the Park District: Heather Gleason  
Chicago Park District  
Director of Planning and Construction  
541 North Fairbanks  
Chicago, Illinois 60611  
(312) 742-4650  
(312) 742-5347 (Fax)

Each party agrees to promptly notify the other party of any change in its designated representative, which notice shall include the name, address, telephone number and fax number of the representative for such party for the purpose hereof.

O. SEVERABILITY. If any provision of this Agreement, or the application thereof, to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms shall provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth herein. In such event, the parties shall negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly affects the parties' intent in entering into this Agreement.

P. TITLES AND HEADINGS. Titles and headings to sections herein are inserted for the convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

Q. TIME. Time is of the essence in the performance of this Agreement.

R. VENUE AND CONSENT TO JURISDICTION. If there is a lawsuit under this Agreement, each party hereto agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois and the United States District Court for the Northern District of Illinois.

*[The remainder of this page is intentionally blank.  
Signatures appear on the following page.]*

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed and delivered as of the date first above written.

CITY OF CHICAGO, a municipal corporation,  
by and through its Department of Planning and Development

By: \_\_\_\_\_  
David L. Reifman  
Commissioner

CHICAGO PARK DISTRICT, a body politic and  
corporate

By: \_\_\_\_\_  
Michael P. Kelly  
General Superintendent and Chief Executive Officer

Attest: \_\_\_\_\_

By: \_\_\_\_\_  
Kantrice Ogletree  
Secretary

Exhibit A

Map

[NOT ATTACHED FOR PURPOSE OF ORDINANCE]





SP  
1/27/17

OFFICE OF THE MAYOR  
CITY OF CHICAGO

RAHM EMANUEL  
MAYOR

February 22, 2017

TO THE HONORABLE, THE CITY COUNCIL  
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Planning and Development, I transmit herewith ordinances authorizing the expenditure of Open Space Impact Fee Funds.

Your favorable consideration of these ordinances will be appreciated.

Very truly yours,

A handwritten signature in cursive script that reads "Rahm Emanuel".

Mayor

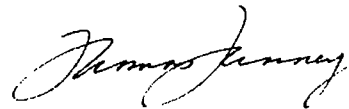
March 29, 2017

To the President and Members of the City Council:

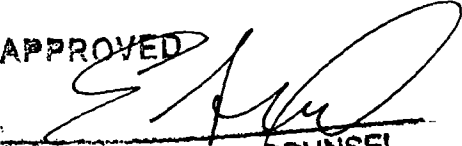
Reporting for your Committee on Special Events, Cultural Affairs and Recreation for which a meeting was held on March 22, 2017 having had under consideration two items. An ordinance authorizing the ~~Expenditure of Open Space Impact Fee funds for Kil Parker Community Garden and 42nd Street Garden projects~~, and an ordinance authorizing the Expenditure of Open Space Impact Fee funds and intergovernmental agreement with Chicago Park District for expansion of Brown Memorial Park, Christiana Park and the construction of 6049 S Whipple St Park, both were introduced by Mayor Emanuel at the February 22<sup>nd</sup> City Council meeting. I beg leave to report and recommend that Your Honorable Body Pass the proposed appointment transmitted herewith.


This recommendation was concurred in by a viva voce vote of the members of the Committee.

Respectfully submitted,



Chairman

APPROVED  
  
CORPORATION COUNSEL

APPROVED  
  
4/13/17 Mayor