



City of Chicago



O2015-8511

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	12/9/2015
Sponsor(s):	Emanuel (Mayor)
Type:	Ordinance
Title:	Expenditure of Open Space Impact Fee funds for North Branch Trail expansion project
Committee(s) Assignment:	Committee on Special Events, Cultural Affairs and Recreation



SP. EV.



OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

December 9, 2015

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 an ordinance authorizing an expenditure of Open Space Impact Fee Funds regarding the North Branch Trail.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Mayor

ORDINANCE

WHEREAS, the City of Chicago (the "**City**"), is a home rule unit of government under Article VII, Section 6(a) of the Constitution of the State of Illinois, and as such may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the Forest Preserve District of Cook County (the "**FPDCC**") is a body politic and corporate of the State of Illinois organized pursuant to the Cook County Forest Preserve Act, 70 ILCS 810/0.01, et seq.; 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 Department of Planning and Development ("**DPD**") has determined that the Norwood Park Community Area, Jefferson Park Community Area, and Forest Glen Community Area (together, the "**Communities**") have all suffered from significant deficits of open space as 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 pursuant to an ordinance published at pages 69309-69311 of the Journal of the Proceedings of the City Council of the same date; and

WHEREAS, the FPDCC is responsible for the care and maintenance of the North Branch Trail (the "**Trail**"), an eighteen (18) mile long hiking and bicycling trail which has a northernmost terminus at the Chicago Botanical Gardens, and southernmost at the forest preserve in Edgebrook, and which, for a significant length, generally follows the common borders shared by and between the Communities; and

WHEREAS, the City and the FPDCC desire the construction of a four (4) mile long extension beginning from the southern terminus of the Trail (the "Project") as described on Exhibit A, which will pass along and through parts of the Communities; and

WHEREAS, the City desires to grant to the FPDCC impact fee funds to pay for or reimburse construction and development costs associated with the Project; and

WHEREAS, DPD desires to provide to the FPDCC Open Space Fees in an amount not to exceed \$191,636 for the Project; and .

WHEREAS, the Open Space Ordinance requires that the Open Space Fees be used for open space acquisition and capital improvements, which provide a direct and material benefit to the new development from which the fees are collected; and

WHEREAS, the Open Space Ordinance requires that the Open Space Fees 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, DPD has determined that the use of the Open Space Fees to fund the Project will provide a direct and material benefit to each of the Fee-Paying Developments from which the Open Space Fees were collected; and

WHEREAS, DPD has determined that Open Space Fees to be used for the purposes set forth herein have come from the specific funds set up by DOF for the Communities, in which the Fee-Paying Developments are located and from which the Open Space Fees were collected; and

WHEREAS, DPD has recommended that the City Council approve the use of the Open Space Fees for the purposes set forth herein through this ordinance; 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, the City Council finds that the planned extension of the Trail for public use will help to alleviate the shortage of public space and recreational facilities in the Communities and is in the best interests of the City; 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 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 purposes described herein.

SECTION 3. The Commissioner of DPD (the "**Commissioner**") or a designee of the Commissioner are each hereby authorized, subject to the approval of the Corporation Counsel, to enter into an intergovernmental agreement with the FPDCC in connection with the Project, in substantially the form attached hereto as Exhibit B, and to provide Open Space Fees proceeds to the FPDCC in an amount not to exceed \$191,636 from the corresponding funds to pay for or reimburse expenses permitted under the Open Space Ordinance.

SECTION 4. Open Space Fees in the amount of \$191,636 from the Communities' Open Space Fees Funds, as described by Exhibit A, are hereby appropriated for the purposes described herein.

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 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 be in full force and effect from and after the date of its passage.

EXHIBIT A

DESCRIPTION OF PROJECT
(Trail Expansion Project)

North Branch Trail Expansion Project

Community Areas Affected:	Norwood Park (Area 10) Jefferson Park (Area 11) Forest Glen (Area 12)						
Description of Project:	4 mile expansion from southern terminus of existing 18 mile hiking and cycling trail already serving many Community Areas.						
Approved Use of Funds:	Open Space Fees will be used to help defray the cost of construction of two bridges along the trail – the first over the North Branch of the Chicago River, and the second over the Metra Tracks at Lehigh Avenue.						
Bridge Construction Budget:	<table><tr><td>Excavation, Concrete Structure, Railings</td><td style="text-align: right;">\$898,214</td></tr><tr><td>Pedestrian Truss Superstructure</td><td style="text-align: right;">1,848,000</td></tr><tr><td style="text-align: center;">Total:</td><td style="text-align: right;"><u>\$2,746,214</u></td></tr></table>	Excavation, Concrete Structure, Railings	\$898,214	Pedestrian Truss Superstructure	1,848,000	Total:	<u>\$2,746,214</u>
Excavation, Concrete Structure, Railings	\$898,214						
Pedestrian Truss Superstructure	1,848,000						
Total:	<u>\$2,746,214</u>						

Sources and Amount of Open Space Fees

Norwood Park – Community Area 10

Available Open Space Fees: \$103,164
Source of Funds/CAPS code: PS10 131 54 5011 2604

Jefferson Park – Community Area 11

Available Open Space Fees: \$12,691
Source of Funds/CAPS code: PS11 131 54 5011 2604

Forest Glen – Community Area 12

Available Open Space Fees: \$75,781
Source of Funds/CAPS code: PS12 131 54 5012 2604

Total Open Space Fees for Project Use: \$191,636

EXHIBIT B

INTERGOVERNMENTAL AGREEMENT
(Forest Preserve District of Cook County)

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (this "**Agreement**") is entered into as of _____, 201_ (the "**Closing Date**"), by and between the City of Chicago (the "**City**"), an Illinois municipal corporation, acting through its Department of Planning and Development (the "**DPD**"), and the Forest Preserve District of Cook County (the "**FPDCC**"), a body politic and corporate of the State of Illinois. The FPDCC and the City are sometimes referred to herein as the "**Parties**" and individually as a "**Party**".

RECITALS

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 DPD has determined that the Norwood Park Community Area, Jefferson Park Community Area, and Forest Glen Community Area (together, the "**Communities**") have all suffered from significant deficits of open space as 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 pursuant to an ordinance published at pages 69309-69311 of the Journal of the Proceedings of the City Council of the same date; and

WHEREAS, the FPDCC is responsible for the care and maintenance of the North Branch Trail (the "**Trail**"), an eighteen (18) mile long hiking and bicycling trail which has a northernmost terminus at the Chicago Botanical Gardens, and southernmost at the forest preserve in Edgebrook, and which, for a significant length, generally follows the common borders shared by and between the Communities; and

WHEREAS, the City and the FPDCC desire the construction of a four (4) mile long extension beginning from the southern terminus of the Trail (the "**Project**") as described on Exhibit A, which will pass along and through parts of the Communities; and

WHEREAS, the City desires to grant to the FPDCC impact fee funds to pay for or reimburse construction and development costs associated with the Project; and

WHEREAS, DPD desires to provide to the FPDCC Open Space Fees in an amount not to exceed \$191,636 for the Project (the "Grant"); and

WHEREAS, on _____, 2016 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 _____, finding, among other things, that the Project would provide a direct and material benefit to the residents of the new developments originating the Open Space Fees and authorizing the Grant and this Agreement is subject to certain terms and conditions (the "Authorizing Ordinance"); and

WHEREAS, on _____, 20____, the FPDCC's Board of Directors passed [a/an resolution/ordinance] expressing its desire to accept Project assistance from the City for the development of the Project and authorizing the execution of this Agreement (the "FPDCC Authorization"); and

WHEREAS, under the terms and conditions hereof, the City agrees to make the Grant available to the FPDCC; and

WHEREAS, the City and the FPDCC have among their powers the authority to contract with each other to perform the undertakings described herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the above recitals which are made a contractual part of this Agreement, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the City and the FPDCC agree as follows:

SECTION 1. THE GRANT

1.1. **Budget.** Subject to the provisions set forth in this Agreement, the City will disburse the Grant to reimburse the FPDCC for part of the cost of completing the Project in accordance with the budget attached to this Agreement as Exhibit B (the "Budget"), which Budget is hereby approved by the DPD, and only after the FPDCC has submitted the Certificate of Expenditure to the DPD (as defined below), once the Project is complete, along with such supporting documentation as the City may reasonably require.

1.2. **Reimbursement.** The FPDCC may request that a certificate of expenditure substantially in the form attached hereto (the "Certificate of Expenditure") as Exhibit C be processed and executed upon Project completion. The City will not execute the Certificate of Expenditure in excess of the actual cost of the Project or in excess of the agreed upon Grant amount, whichever is the lower. Prior to the execution of the Certificate of Expenditure by the City, the FPDCC must submit documentation regarding the applicable expenditures and the completion of the Project to the DPD. Delivery by the FPDCC to the DPD of a request for execution by the City of the Certificate of Expenditure hereunder will, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such request for execution of a Certificate of Expenditure, that,

(A) the total amount of the request for the Certificate of Expenditure represents an amount not in excess of the actual amount payable to (or paid to) the general contractor, subcontractors, and other parties who have performed work on or otherwise provided goods, property or services in connection with the Project, and/or their payees;

(B) the Project has been completed in its entirety and is ready to be opened to the public; and

(C) the FPDCC has complied and is 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 FPDCC as related thereto.

1.3. **Limits of Reimbursement.** The FPDCC hereby acknowledges and agrees that the Grant must be used exclusively to pay for or reimburse costs associated with Project. If the Grant amount should exceed the costs of the Project, the total amount payable to the FPDCC shall be the actual costs incurred by the FPDCC in completion of the Project.

1.4. **Cost Overruns.** The FPDCC is solely responsible for any fees, costs and expenses of the Project in excess of the amount of the Grant and the Budget and will hold the City harmless from all such excess fees, costs and expenses. In the event that either party believes that the Budget may not provide sufficient funds for the construction of the Project, such party must notify the other party and the parties must cooperate to modify the Project so that it can be completed in accordance with the Budget.

1.5. **Source of Funds.** The sources of funds for the City's obligations under this Agreement are funds identified by CAPS Codes: PS10 131 54 5010 2604; PS 11 131 54 5011 2604; PS12 131 54 5012 2604. The FPDCC hereby acknowledges and agrees that the City's obligations hereunder are subject in every respect to the availability of funds as described in and limited by this Section 1.5. If no funds or insufficient funds are appropriated and budgeted for disbursement of the Grant, then the City will notify the FPDCC in writing of that occurrence, and the FPDCC will have the right, but not the obligation to terminate this Agreement by written notice to the City.

SECTION 2. DEVELOPMENT AND CONSTRUCTION OF THE PROJECT

2.1. **Title Commitment and Insurance; Survey.** The FPDCC must be responsible for obtaining, at its own expense, any title commitment or title policy and survey with respect to the property upon which the Project improvements will be constructed (the "Property") that it deems necessary.

2.2. **Construction Documents and Landscape Plan.** The FPDCC has developed the construction documents and a plan for the Project (the "Drawings") as shown on Exhibit D. No material deviation from the Drawings will be made without the prior written approval of the DPD, which approval will not be unreasonably withheld, conditioned or delayed. The approval of the Drawings by the DPD are for the purposes of this Agreement only and other than as set forth in the Drawings, no structures or improvements are to be constructed on the Property by

the FPDCC without the prior written approval of the DPD, which approval will not be unreasonably withheld, conditioned or delayed and will not constitute any approval required by the City's Department of Buildings, or any other Department of the City.

2.3. **Schedule**. The FPDCC has prepared a preliminary schedule for the development and construction of the Project as set forth on Exhibit E (the "**Schedule**"). No material deviation from the Schedule will be made without the prior written approval of the DPD, which approval will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, in no event will the approval of the DPD be required for any changes to the Schedule required in connection with any force majeure event.

2.4. **Use**. The Project must be utilized as open space for use by the public for and on behalf of the City. This Agreement does not confer any special rights upon the FPDCC or any other person or entity to use the Project for private parties or events.

2.5. **Certification**. The FPDCC must submit the Certificate of Expenditure form as attached in Exhibit C prior to any Grant funds being released.

SECTION 3. TERM OF AGREEMENT

Term of Agreement. The term of this Agreement will commence as of the Closing Date and, unless otherwise terminated as provided in this Agreement, will expire on the fifth anniversary of the Closing Date. Notwithstanding the foregoing, if the FPDCC modifies the Schedule pursuant to Section 2.3 of this Agreement and such modification extends beyond the term, the term will be adjusted accordingly.

SECTION 4. COVENANTS AND REPRESENTATIONS

The FPDCC hereby warrants, represents and/or covenants to the City that:

4.1. The FPDCC will use the Grant solely for the Project and to pay for or reimburse eligible costs as determined in the sole discretion of the City and outlined on Exhibit B.

4.2. The FPDCC will comply with all applicable federal, state, and local statutes, laws, ordinances, rules, regulations and executive orders that are in effect from time to time that pertain to or affect the Project, the FPDCC, or the Grant. Upon the City's request, the FPDCC will provide evidence of such compliance satisfactory to the City.

4.3. The FPDCC agrees that provisions required to be inserted in this Agreement by laws, ordinances, rules, regulations or executive orders are deemed inserted whether or not they appear in this Agreement and that in no event will the failure to insert such provisions prevent the enforcement of this Agreement.

4.4. The FPDCC has full power and authority to enter into and perform its obligations under this Agreement, and the signing and delivery of this Agreement and the performance of its obligations under this Agreement have been duly authorized by all requisite corporate action.

4.5. Signing, delivery and performance by the FPDCC of this Agreement does not violate its bylaws, articles of incorporation, resolutions or any applicable provision of law, or constitute a material breach of, default under or require any consent under, any agreement, instrument or document, including any related to borrowing monies, to which the FPDCC is party or by which it is bound.

4.6. There are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting the FPDCC that would materially impair its ability to perform under this Agreement.

4.7. The FPDCC is not in default on any loan or borrowing that may materially affect its ability to perform under this Agreement.

4.8. If the Grant, or a portion thereof, is used to pay for or reimburse construction costs, the FPDCC and all its contractors and subcontractors must meet labor standards and prevailing wage standards required by federal, state and City laws, regulations and ordinances.

4.9. The FPDCC must maintain and keep in force, at its sole cost and expense, at all times during the term of this Agreement, insurance in such amounts and of such type as set forth in Section 6 below.

4.10. The FPDCC must at all times perform its work in fulfilling its corporate mission with the utmost care, skill and diligence in accordance with the applicable standards currently recognized in the community.

4.11. The Parties agree that the FPDCC will maintain the Project improvements on the Property in a condition and manner acceptable to the City.

4.12. It is the duty of the FPDCC and any bidder, proposer, subcontractor and every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners, and employees of the FPDCC and any such bidder, proposer, subcontractor or such applicant to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code. The FPDCC represents that it understands and will abide by all provisions of Chapter 2-56 of the Municipal Code and that it will inform all contractors and subcontractors hired by the FPDCC in connection with this Agreement of this provision in writing and require their compliance.

It is the duty of the FPDCC and any bidder, proposer, subcontractor and every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners, and employees of the FPDCC and any such bidder, proposer, subcontractor or such applicant to cooperate with the Legislative Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-55 of the Municipal Code. The FPDCC represents that it understands and will abide by all provisions of Chapter 2-55 of the Municipal Code and that it will inform all contractors and subcontractors hired by the FPDCC in connection with this Agreement of this provision in writing and require their compliance.

4.13 Failure by the FPDCC or any controlling person (as defined in Section 1-23-010 of the Municipal Code) thereof to maintain eligibility to do business with the City as required by Section 1-23-030 of the Municipal Code will be grounds for termination of this Agreement and the transactions contemplated hereby.

4.14 **Independent Contractor**

A. The FPDCC shall perform under this Agreement as an independent contractor to the City and not as a representative, employee, agent or partner of the City.

B. The City is subject to the June 24, 2011 "City of Chicago Hiring Plan" (the "**City Hiring Plan**") entered into in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United State District Court for the Northern District of Illinois). Among other things, the 2011 City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

C. The FPDCC is aware that City policy prohibits City employees from directing any individual to apply for a position with the FPDCC, either as an employee or as a subcontractor, and from directing the FPDCC to hire an individual as an employee or as a subcontractor. Accordingly, the FPDCC must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by the FPDCC under this Agreement are employees or subcontractors of the FPDCC, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by the FPDCC.

D. The FPDCC will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Agreement, or offer employment to any individual to provide services under this Agreement, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

E. In the event of any communication to the FPDCC by a City employee or City official in violation of Section (C) above, or advocating a violation of Section (D) above, the FPDCC will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General ("**IGO Hiring Oversight**") and also to the head of the DPD. The FPDCC will also cooperate with any inquiries by IGO Hiring Oversight related to this Agreement.

4.15 FOIA and Local Records Act Compliance

A. FOIA. The FPDCC acknowledges that the City is subject to the Illinois Freedom of Information Act, 5ILCS 140/1 et seq., as amended (“**FOIA**”). FOIA requires the City to produce “**Records**” (very broadly defined in FOIA) in response to a FOIA request in a very short period of time, unless the Records requested are exempt under FOIA. If the FPDCC receives a request from the City to produce Records within the scope of FOIA, the FPDCC covenants to comply with such request within 48 hours of the date of such request. Failure by the FPDCC to timely comply with such request will be a breach of this Agreement.

B. Exempt Information. Documents that the FPDCC submits to the City during the term of the Agreement containing trade secrets and commercial or financial information may be exempt if disclosure would result in competitive harm. However, for documents submitted by the FPDCC to be treated as trade secrets or information that would cause competitive harm, FOIA requires that the FPDCC mark any such documents as “proprietary, privileged or confidential.” If the FPDCC marks a document as “proprietary, privileged and confidential”, then the DPD will evaluate whether such document may be withheld under FOIA. The DPD, in its discretion, will determine whether a document will be exempted from disclosure, such determination being subject to review by the Illinois Attorney General’s Office and/or the courts.

C. Local Records Act. The FPDCC acknowledges that the City is subject to the Local Records Act, 50 ILCS 205/1 et seq., as amended (the “**Local Records Act**”). The Local Records Act provides that public records may only be disposed of as provided in the Local Records Act. If requested by the City, the FPDCC covenants to use its best efforts consistently applied to assist the City in its compliance with the Local Records Act concerning records arising under or in connection with this Agreement and the transactions contemplated in this Agreement.

SECTION 5. ENVIRONMENTAL MATTERS

5.1. It will be the responsibility of the FPDCC to investigate and determine the soil and environmental condition of the Property, if deemed necessary, 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 for any use whatsoever.

5.2. The FPDCC agrees to carefully inspect the Property and all easements or other agreements recorded against the Property prior to commencement of any activity on the Property to ensure that such activity will not damage surrounding property, structures, utility lines or any subsurface lines or cables. The FPDCC is solely responsible for the safety and protection of the public on the portions of the Property affected by the Project, until the portion of the Project on each portion of the Property is completed. The City reserves the right to inspect the work being done on the Property. The FPDCC 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 FPDCC.

5.3. Prior to inspecting the Property, the FPDCC or its subcontractors, if any, must obtain insurance in accordance with Section 6 below, all necessary permits and, if applicable, a right of entry.

SECTION 6. INSURANCE

6.1. **Insurance to be Provided.** The FPDCC must provide and maintain, at the FPDCC's own expense, or cause to be provided and maintained, during the term of this Agreement, the insurance coverages and requirements specified below, as applicable, insuring all operations related to this Agreement.

A. **Workers Compensation and Employers Liability.** Workers Compensation Insurance, 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 per each accident or illness.

B. **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 must include the following: all premises and operations, products/completed operations, explosion, collapse, underground, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent). The City is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work or services. Subcontractors performing work or services for the FPDCC must maintain limits of not less than \$1,000,000 with the same terms in this subsection.

C. **Automobile Liability** (Primary and Umbrella). When any motor vehicles (owned, non-owned and hired) are used in connection with the services to be performed, the FPDCC must 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. The City is to be named as an additional insured on a primary, non-contributory basis.

D. **Professional Liability.** When any architects, engineers, or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained or caused to be maintained, with limits of not less than \$1,000,000. When policies are renewed or replaced, the policy retroactive date must coincide with or precede start of work on the Project. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

E. **Self-Insurance.** To the extent permitted by applicable law, the FPDCC may self-insure for the insurance requirements specified above, it being expressly understood and agreed that, if the FPDCC does self-insure for any such insurance requirements, the FPDCC 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.

6.2. **Additional Requirements.** The FPDCC must furnish the City of Chicago, Department of Planning and Development, 121 N. LaSalle Street, Room 905, Chicago, Illinois 60602, original Certificates of Insurance, or such similar evidence, 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 FPDCC must submit evidence of insurance acceptable to the City prior to execution of the Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in this Agreement 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 the FPDCC is not a waiver by the City of any requirements for the FPDCC to obtain and maintain the specified coverages. The FPDCC must advise all insurers of the provisions of this Agreement regarding insurance. Non-conforming insurance does not relieve the FPDCC of the obligation to provide insurance as specified in this Agreement. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to suspend this Agreement until proper evidence of insurance is provided, or the Agreement may be terminated.

The insurance must 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 deductibles or self insured retentions on referenced insurance coverages must be borne by the FPDCC.

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

The coverages and limits furnished by the FPDCC in no way limit the FPDCC's liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self-insurance programs maintained by the City do not contribute with insurance provided by the FPDCC under this Agreement.

The required insurance to be carried out is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

The FPDCC must require all subcontractors to provide insurance required in this Agreement, or the FPDCC may provide the coverages for subcontractors. All subcontractors are subject to the same insurance requirements of the FPDCC unless otherwise specified in this Agreement.

If the FPDCC or its subcontractors desire additional coverages, the party desiring additional coverages is responsible for the acquisition and cost.

Notwithstanding any provision in the Agreement to the contrary, the City's Risk Management Division of the Department of Finance maintains the right to modify, delete, alter or change these requirements.

SECTION 7. INDEMNIFICATION

The FPDCC will indemnify and defend the City, its officials, agents and employees (the "City Indemnitees") against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, attorneys' and expert witnesses' fees and court costs) the City Indemnitees suffer or incur arising from or in connection with the actions or omissions of the FPDCC and/or any contractors or subcontractors in implementing the Project, if any, or the FPDCC's breach of this Agreement. This defense and indemnification obligation survives any termination or expiration of this Agreement.

SECTION 8. NO LIABILITY OF OFFICIALS

No elected or appointed official or member or employee or agent of the City will be charged personally by the FPDCC or by an assignee or subcontractor, with any liability or expenses of defense or be held personally liable under any term or provision of this Agreement because of their execution or attempted execution or because of any breach hereof.

SECTION 9. DEFAULT AND REMEDIES

9.1. **Default.** If the FPDCC, without the City's written consent (which consent will not be unreasonably withheld, conditioned or delayed) defaults by failing to perform any of its obligations under this Agreement then the City may terminate this Agreement if such default is not cured as provided in Section 9.2 below.

9.2. **Cure.** Prior to termination, the City will give the FPDCC 30 days' advance written notice of the City's intent to terminate stating the nature of the default. If the FPDCC does not cure the default within the 30-day period, the termination will become effective at the end of the period. With respect to those defaults that are not capable of being cured within the 30-day period, the FPDCC will not be deemed to be in default if it has begun to cure the default within the 30-day period and thereafter diligently and continuously prosecutes the cure of the default until cured.

9.3. **Remedies.** Either Party may, in any court of competent jurisdiction, by any proceeding at law or in equity, seek the specific performance of this Agreement, or damages for failure of performance, or both.

SECTION 10. BUSINESS RELATIONSHIPS

Pursuant to Section 2-156-030(b) of the Chicago Municipal Code, it is illegal for (i) any elected official of the City, or any person acting at the direction of such official, to contact either orally or in writing any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has any business relationship that creates a "Financial Interest" (as defined in Section 2-156-010 of the Municipal Code) on the part of the official, or the "Domestic Partner" (as defined in Section 2-156-010 of the Municipal Code) or spouse of the official, or from whom or which he has derived any income or compensation during the preceding twelve months or from whom or which he reasonably

expects to derive any income or compensation in the following twelve months, and (ii) for any elected official to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving any person with whom the elected City official or employee has any business relationship that creates a Financial Interest on the part of the official, or the Domestic Partner or spouse of the official, or from whom or which he has derived any income or compensation during the preceding twelve months or from whom or which he reasonably expects to derive any income or compensation in the following twelve months. Any violation of Section 2-156-030(b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. The FPDCC hereby represents and warrants that, to the best of its knowledge after due inquiry, no violation of Section 2-156-030(b) has occurred with respect to this Agreement or the transactions contemplated hereby.

SECTION 11. GENERAL CONDITIONS

11.1. **Assignment**. This Agreement, or any portion thereof, will not be assigned by either Party without the express prior written consent of the other Party which consent will not be unreasonably withheld, conditioned or delayed.

11.2. **Construction of Words**. As used in this Agreement, the singular of any word will include the plural, and vice versa. Masculine, feminine and neuter pronouns will be fully interchangeable, where the context so requires.

11.3. **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 will be deemed an original, will be construed together and will constitute one and the same instrument.

11.4. **Entire Agreement**. This Agreement contains the entire agreement between the Parties and supersedes all prior agreements, negotiations and discussions between the Parties with respect to the Project.

11.5. **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 had been set forth verbatim herein.

11.6. **Governing Law, Venue and Consent to Jurisdiction**. This Agreement will be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to its principles of conflicts of law. If there is a lawsuit under this Agreement, each Party 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.

11.7. **Inspection and Records**. The FPDCC must provide the City with reasonable access to its books and records relating to the Project and the Grant as will be required by the City and necessary to reflect and disclose fully the amount and disposition of the Grant. Any duly authorized representative of the City will, at all reasonable times, have access to all such

books and records, which right of access will continue for five years after the expiration or termination of this Agreement .

11.8. **Modification.** This Agreement may not be modified or amended except by an agreement in writing signed by both Parties.

11.9. **Notice.** Any notice, demand or communication required or permitted to be given hereunder will be given in writing at the address set forth below by any of the following means: (a) personal service; (b) electronic communication, whether by electronic mail 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
121 N. LaSalle Street, Room 905
Chicago, Illinois 60602
(312) 744-4190
(312) 744-2271 (Fax)

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

To the FPDCC: Forest Preserve District of Cook County
Attention: _____

Chicago, Illinois 606__
(____) ____-____
(312) 742-5276 (Fax)

[With a copy to:]

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof will 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 will be deemed received on the day immediately following deposit with the overnight courier. Any notice, demand or communication given pursuant to clause (d) hereof will be deemed received three business days after mailing. The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications will be given.

11.10. **Parties' Interest / No Third Party Beneficiaries**. The terms and provisions of this Agreement will be binding upon and inure to the benefit of, and be enforceable by, the respective successors and permitted assigns of the Parties. This Agreement will not run to the benefit of, or be enforceable by, any person or entity other than a Party to 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 FPDCC, will 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 FPDCC.

11.11. **Severability**. If any provision of this Agreement, or the application thereof, to any person, place or circumstance, will 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 will remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms will provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth herein.

11.12. **Titles and Headings**. Titles and headings in this Agreement are inserted for convenience and are not intended to be part of or affect the meaning or interpretation of this Agreement.

11.13. **Waiver**. Waiver by either party with respect to the breach of this Agreement will not be considered or treated as a waiver of the rights of such party with respect to any other default or with respect to any particular default except to the extent specifically waived by such party in writing.

11.14. **Foreign Assets Control Lists**. Neither the FPDCC, nor any affiliate thereof, is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For the purposes of this paragraph "Affiliate", when used to indicate a relationship with a specified person or entity, will mean a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity will be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

11.15. **Further Actions**. The FPDCC and the City agree to do, execute, acknowledge and deliver all agreements and other documents and to take all actions reasonably necessary or desirable to comply with the provisions of this Agreement and the intent thereof.

*[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 Closing Date.

CITY OF CHICAGO, an Illinois municipal corporation, acting by and through its Department of Planning and Development

By: _____
David L. Reifman
Commissioner

CHICAGO FPDCC, a body politic and Corporate of the State of Illinois

By: _____

Attest:

Secretary

EXHIBIT A

DESCRIPTION OF PROJECT
(OpenSpace Project)

North Branch Trail Expansion Project

Community Areas Affected: Norwood Park (Area 10)
Jefferson Park (Area 11)
Forest Glen (Area 12)

Description of Project: 4 mile expansion from southern terminus of existing 18 mile hiking and cycling trail already serving many Community Areas.

Approved Use of Funds: Open Space Fees will be used to help defray the cost of construction of two bridges along the trail – the first over the North Branch of the Chicago River, and the second over the Metra Tracks at Lehigh Avenue.

Sources and Amount of Open Space Fees

Norwood Park – Community Area 10

Available Open Space Fees: \$103,164
Source of Funds/CAPS code: PS10 131 54 5011 2604

Jefferson Park – Community Area 11

Available Open Space Fees: \$12,691
Source of Funds/CAPS code: PS11 131 54 5011 2604

Forest Glen – Community Area 12

Available Open Space Fees: \$75,781
Source of Funds/CAPS code: PS12 131 54 5012 2604

Total Open Space Fees for Project Use: \$191,636

EXHIBIT B

BUDGET
(OpenSpace Project)

North Branch Trail Expansion Project: \$191,636

Item	
Excavation, Concrete Structure, Railings	\$898,214
Pedestrian Truss Superstructure	\$1,848,000
Total:	\$2,746,214

EXHIBIT C

CERTIFICATE OF EXPENDITURE
(OpenSpace Project)

North Branch Trail Expansion Project

[Certificate on Next Page]

Subscribed and sworn before me this ____ day of _____, _____

My commission expires: _____

Agreed and accepted:

Name

Title: _____

City of Chicago
Department of Planning and Development

Meg Gustafson
Department of Planning and Development
City Hall, Room 905
312.744.0524

EXHIBIT D

DRAWINGS
(OpenSpace Project)

North Branch Trail Expansion Project

[To be attached at Closing]

EXHIBIT E

PROJECT SCHEDULE
(OpenSpace Project)

North Branch Trail Expansion Project

[To be attached at Closing]