



City of Chicago



O2013-6204

Office of the City Clerk

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Meeting Date:	9/11/2013
Sponsor(s):	Emanuel, Rahm (Mayor)
Type:	Ordinance
Title:	Expenditure of open space impact fee funds for Major Taylor Trail
Committee(s) Assignment:	Committee on Special Events, Cultural Affairs and Recreation



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**CITY COUNCIL
CITY OF CHICAGO**

COUNCIL CHAMBER

CITY HALL, ROOM 300
121 NORTH LA SALLE STREET
CHICAGO, ILLINOIS 60602
TELEPHONE 312-744-3067

COMMITTEE MEMBERSHIPS

**SPECIAL EVENTS,
CULTURAL AFFAIRS AND RECREATION**
CHAIRMAN

BUDGET AND GOVERNMENT OPERATIONS

COMMITTEES, RULES AND ETHICS

FINANCE

HEALTH AND ENVIRONMENTAL PROTECTION

HUMAN RELATIONS

October 16, 2013

To the President and Members of the City Council:

Your Committee on Special Events Cultural Affairs and Recreation, for which a meeting was held on October 15, 2013, having had under consideration the reappointment introduced by Mayor Rahm Emanuel on September 11, 2013, this being the expenditure of open space impact fee funds for Major Taylor Trail, begs leave to recommend that Your Honorable Body Approve said appointments transmitted herewith.

This recommendation was concurred in by a via voce vote of all committee members present with no dissenting votes.

Respectfully submitted,

Joseph A. Moore, Chairman
Committee on Special Events,
Cultural Affairs and Recreation





OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

September 11, 2013

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

Ladies and Gentlemen:

At the request of the Commissioner of Housing and Economic 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,

Mayor

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 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 Housing and Economic Development ("HED") has determined that the Fee-Paying Developments built in the Community Areas have deepened the already significant deficit of open space in the Community Areas, which deficit was 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 City owns or holds an easement interest in certain parcels of land along the former Conrail Railroad right-of-way between Dan Ryan Woods and Whistler Woods and has constructed thereon a bicycle trail known as the Major Taylor Trail to create open spaces and recreational facilities in the Community Areas listed on Exhibit A to the IGA; and

WHEREAS, the Chicago Park District, a municipal corporation (the "Park District") uses and occupies certain portions of the Major Taylor Trail pursuant to a Usage Agreement dated September 30, 2006 (the "Property"), as identified on Exhibit B of the IGA (as defined below), and intends to install lighting thereon (the "Project"); and

EXHIBIT A

Intergovernmental Agreement

See Attached

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (this "Agreement") is entered into as of _____, 2013 (the "Closing Date"), between the City of Chicago (the "City"), an Illinois municipal corporation, acting through its Department of Housing and Economic Development ("HED"), and the Chicago Park District (the "Park District") a body politic and corporate of the State of Illinois. The Park District and the City are sometimes referred to herein as the "Parties."

RECITALS

WHEREAS, the Open Space Impact Fee Ordinance, Chapter 18 of Title 16 of the Municipal Code of Chicago (the "Code"), authorizes the collection of fees (the "Open Space 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; and

WHEREAS, the Department of Finance has collected Open Space Fees (the "Open Space Fees Proceeds") for new dwelling units built in the communities listed on Exhibit A hereto ("the Community Areas") and has deposited such Open Space Fees Proceeds in separate funds identified by the CAPS Codes listed on Exhibit A; and

WHEREAS, the City owns or holds an easement interest in certain parcels of land along the former Conrail Railroad right-of-way between Dan Ryan Woods and Whistler Woods and has constructed thereon a bicycle trail known as the Major Taylor Trail to create open spaces and recreational facilities in the Community Areas; and

WHEREAS, the Park District uses and occupies a portion of the Major Taylor Trail pursuant to a Usage Agreement dated September 30, 2006 (the "Property"), as identified on Exhibit B, and intends to install lighting thereon (the "Project"); and

WHEREAS, the Chicago Park District (the "Park District"), is an Illinois municipal corporation and a unit of local government under Article VII, Section 1 of the 1970 Constitution, of the State of Illinois, and as such is authorized to exercise control over and supervise the operation of all parks within the corporate limits of the City; and

WHEREAS, HED desires to provide to the Park District Open Space Fees Proceeds, in an amount not to exceed \$400,000 (the "Grant") for payment or reimbursement of costs associated with the Project; 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 _____, 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 January 16, 2013, the Park District's Board of Commissioners passed an ordinance expressing its desire to accept the Grant from the City for the development of the Project and authorizing the execution of this Agreement (the "Park District Ordinance")

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

WHEREAS, the City and Park District 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 Park District agree as follows:

SECTION 1. THE GRANT

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

1.2 The Park District may request that certificate(s) of expenditure substantially in the form attached hereto ("Certificates of Expenditure") as Exhibit E be processed and executed periodically. The City will not execute Certificates of Expenditure in the aggregate in excess of the actual cost of the Project. Prior to each execution of a Certificate of Expenditure by the City, the Park District must submit documentation regarding the applicable expenditures to HED. Delivery by the Park District to HED of any request for execution by the City of a 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 Certificates of Expenditure represents the actual amount payable to (or paid to) the general contractor, subcontractors, and other parties who have performed work on or otherwise provided goods or services in connection with the Project, and/or their payees;

(b) all amounts shown as previous payments on the current request for a Certificate of Expenditure have been paid to parties entitled to such payment;

(c) the Park District has approved all work and materials for the current request for a Certificate of Expenditure, and such work and materials conform to the Drawings (hereinafter defined); and

(d) the Park District 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 Park District as related thereto.

1.3. the Park District hereby acknowledges and agrees that the Grant must be used exclusively for the Project. If the Grant should exceed the costs of the Project, the Park District must repay to the City any such excess Grant funds received by the Park District.

1.4. The Park District is solely responsible for any fees, costs and expenses of the Project in excess of the amount of the Grant and will hold the City harmless from all such excess fees, costs and expenses. Notwithstanding anything to the contrary in this Agreement, in no event will the City or the Park District be responsible for any cost or expenses of the Project exceeding the Budget. 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. The source of funds for the City's obligations under this Agreement are funds identified by the CAPS Codes listed on Exhibit A. The Park District 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 in any fiscal period of the City for disbursements of the Grant, then the City will notify the Park District in writing of that occurrence, and the Park District 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

A. **Title Commitment and Insurance; Survey.** The Park District must be responsible for obtaining, at its own expense, any title commitment or title policy and survey with respect to the Property that it deems necessary.

B. **Construction Documents and Landscape Plan.** The Park District 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 HED, which approval will not be unreasonably withheld, conditioned or delayed. The approval of the Drawings by HED 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 Park District without the prior written approval of HED, which approval will not be unreasonably withheld, conditioned or delayed and will not constitute the approval required by the City's Department of Buildings, or any other Department of the City.

C. **Schedule.** The Park District has prepared a preliminary schedule (the "Schedule") for the development and construction of the Project as set forth on Exhibit D. No material deviation from the Schedule will be made without the prior written approval of HED, which approval will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, in no event will the approval of HED be required for any changes to the Schedule required because of the City's failure to approve and pay any Certificate of Expenditure, or required in connection with any force majeure event.

D. **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 Park District or any other person or entity to use the Project for private parties or events.

E. **Certification.** The Park District must submit a payment certification form as attached as Exhibit E 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 second anniversary of the Closing Date. Notwithstanding the foregoing, if the Park District modifies the Schedule pursuant to Section 2(c) of this Agreement and such modification extends beyond the term, the term will be adjusted accordingly.

SECTION 4. COVENANTS AND REPRESENTATIONS

Park District hereby warrants, represents and/or covenants to the City that:

4.1. The Park District will use the Grant solely for the Project and to pay for eligible costs as determined in the sole discretion of the City and outlined on Exhibit C.

4.2. The Park District 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 Park District, or the Grant. Upon the City's request, the Park District will provide evidence of such compliance satisfactory to the City.

4.3. The Park District 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 Park District 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 Park District 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 Park District 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 Park District that would materially impair its ability to perform under this Agreement.

4.7. The Park District 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 for construction, the Park District 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 Park District 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 Park District 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. Intentionally Omitted

4.12. Intentionally Omitted

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

4.14. It is the duty of the Park District 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 Park District 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 Park District 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 Park District in connection with this Agreement of this provision in writing and require their compliance.

It is the duty of the Park District 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 Park District 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 Park District 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 Park District in connection with this Agreement of this provision in writing and require their compliance.

4.15. Failure by the Park District 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.

4.16. Independent Contractor

(a) The Park District 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 May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "**Shakman Accord**") and June 24, 2011 "City of Chicago Hiring Plan" (the "City Hiring Plan") entered 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 Shakman Accord and the City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(c) The Park District is aware that City policy prohibits City employees from directing any individual to apply for a position with the Park District, either as an employee or as a subcontractor, and from directing the Park District to hire an individual as an employee or as a subcontractor. Accordingly, the Park District must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by the Park District under this Agreement are employees or subcontractors of the Park District, 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 Park District.

(d) The Park District 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 Park District by a City employee or City official in violation of Section (c) above, or advocating a violation of Section (d) above, the Park District 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 HED. The Park District will also cooperate with any inquiries by IGO Hiring Oversight or the Shakman Monitor's Office related to this Agreement.

4.17 FOIA and Local Records Act Compliance

(a) FOIA. Park District acknowledges that the City is subject to the Illinois Freedom of Information Act, 5ILCS 140/1 et. seq., as amended ("**FOIA**"). The 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 the FOIA. If the Park District receives a request from the City to produce records within the scope of FOIA, then the Park District covenants to comply with such request within 48 hours of the date of such request. Failure by the Park District to timely comply with such request will be a breach of this Agreement.

Exempt Information. Documents that the Park District submits to the City during the term of the Agreement that contain trade secrets and commercial or financial information may be exempt if disclosure would result in competitive harm. However, for documents submitted by the Park District to be treated as a trade secret or information that would cause competitive harm, FOIA requires that the Park District mark any such documents as "proprietary, privileged or confidential." If the Park District marks a document as "proprietary, privileged and confidential", then HED will evaluate whether such document may be withheld under the FOIA. HED, in its discretion, will

determine whether a document will be exempted from disclosure, and that determination is subject to review by the Illinois Attorney General's Office and/or the courts.

Local Records Act. The Park District 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 Park District 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 the Agreement.

SECTION 5. ENVIRONMENTAL MATTERS

5.1. It will be the responsibility of the Park District 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 Park District 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 Park District must be 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 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.

5.3. Prior to inspecting the Property, Park District 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. The Park District must provide and maintain at the Park District's own expense, or cause to be provided during the term of this Agreement, the insurance coverages and requirements specified below, as applicable, insuring all operations related to this Agreement.

INSURANCE TO BE PROVIDED

6.1.1. 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 each accident or illness.

6.1.2. 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 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 Park District must maintain limits of not less than \$1,000,000 with the same terms in this subsection.

6.1.3. 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 Park District 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.

6.1.4. 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 Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

6.1.5 Self Insurance. 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.

6.2. **ADDITIONAL REQUIREMENTS.** The Park District must furnish the City of Chicago, Department of Housing and Economic Development, 121 N. LaSalle Street, Room 1000, 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 Park District must submit evidence of insurance on the City's Insurance Certificate Form (copy attached as Exhibit F) or equivalent 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 Park District is not a waiver by the City of any requirements for Park District to obtain and maintain the specified coverages. The Park District must advise all insurers of the provisions of this Agreement regarding insurance. Non-conforming insurance does not relieve the Park District 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 Park District.

The Park District 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 Park District in no way limit the Park District'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 Park District 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 Park District must require all subcontractors to provide insurance required in this Agreement, or the Park District may provide the coverages for subcontractors. All subcontractors are subject to the same insurance requirements of the Park District unless otherwise specified in this Agreement.

If the Park District 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 Department maintains the right to modify, delete, alter or change these requirements.

SECTION 7. INDEMNIFICATION

The Park District 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 Park District and/or any contractors or subcontractors in implementing the Project, if any, or the Park District'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 Park District 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. If the Park District, 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. Prior to termination, the City will give the Park District 30 days' advance written notice of the City's intent to terminate stating the nature of the default. If the Park District 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 Park District 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. 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. NO BUSINESS RELATIONSHIPS WITH ELECTED OFFICIALS

10.1. Pursuant to Section 2-156-030(b) of the Code, it is illegal for 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 official has a business relationship, or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. Violation of Section 2-156-030(b) by any elected official with respect to this Agreement will be grounds for termination of this Agreement. The term business relationship is defined in Section 2-156-080 of the Code.

10.2. Section 2-156-080 of the Code defines a "business relationship" as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest will not include: (i) any ownership through purchase at fair market value or inheritance of less than 1 percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (ii) the authorized compensation paid to an official or employee for his office or employment; (iii) any economic benefit provided equally to all residents of the City; (iv) a time or demand deposit in a financial institution; or (v) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" will not include any

employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the City.

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 City and Park District and supersedes all prior agreements, negotiation and discussion between them 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 Park District 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 until the date that is 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 Housing and Economic Development
Attention: Commissioner
121 N. LaSalle Street, Room 1000
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) 742-0277 (Fax)

To the Park District: Chicago Park District
Attention: General Superintendent
541 North Fairbanks
Chicago, Illinois 60611
(312) 742-4200
(312) 742-5276 (Fax)

With a copy to: Chicago Park District
General Counsel
541 North Fairbanks, Room 300
Chicago, Illinois 60611
(312) 742-4602
(312) 742-5316 (Fax)

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 Park District, 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 Park District.

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 Park District, 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 Park District 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 Housing and Economic Development

By: _____
Andrew J. Mooney
Commissioner

CHICAGO PARK DISTRICT, a body politic and Corporate of the State of Illinois

By: _____
Michael P. Kelly
General Superintendent and CEO

Attest:

Kantrice Ogletree
Secretary

EXHIBIT A

COMMUNITY AREAS

<u>Community Areas</u>	<u>CAPS Code</u>	<u>Amount</u>
Ashburn	PS70 131 54 5070 2604	\$ 91,752
Auburn Gresham	PS71 131 54 5071 2604	103,594
Washington Heights	PS73 131 54 5073 2604	72,574
Morgan Park	PS75 131 54 5075 2604	66,522
West Pullman	PS53 131 54 5053 2604	60,545
Riverdale	PS54 131 54 5054 2604	<u>5,013</u>
		\$400,000

EXHIBIT B

Property Description

• **Property Address:** A portion of the South Trail of the Major Taylor Trail, from 107th Street to 127th Street]

P.I.N. [Legal description to be attached at Closing]

EXHIBIT C

Budget

Installation of Lighting

\$400,000

EXHIBIT D

Drawings

[To be attached at Closing]

EXHIBIT D

Project Schedule

[To be attached at Closing]

EXHIBIT E

Certificate of Expenditure

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The affiant, Chicago Park District, a body politic and Corporate of the State of Illinois hereby certifies that with respect to that certain Intergovernmental Agreement between Park District and the City of Chicago dated _____, ____ (the "Agreement"):

- A. Expenditures for the Project, in the total amount of \$_____, have been made:
- B. This paragraph B sets forth and is a true and complete statement of all costs of Open Space Impact Fee-Funded Improvements for the Project reimbursed by the City to date: \$_____
- C. Park District requests reimbursement for the following cost of Open Space Impact Fee-Funded Improvements: \$_____
- D. None of the costs referenced in paragraph C above have been previously reimbursed by the City.
- E. Park District hereby certifies to the City that, as of the date hereof:
 - 1. Except as described in the attached certificate, the representations and warranties contained in the Agreement are true and correct and Park District is in compliance with all applicable covenants contained herein.
 - 2. No event of Default or condition or event which, with the giving of notice or passage of time or both, would constitute a Default, exists or has occurred.
 - 3. Park District has approved all work and materials for the current request for a Certificate of Expenditure, and such work and materials conform to the Plans and Specifications.
 - 4. Park District 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 Park District as related thereto.

All capitalized terms which are not defined herein have the meanings given such terms in the Agreement.

By: _____

Name

Title: _____

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

My commission expires: _____

Agreed and accepted:

Name

Title: _____

City of Chicago
Department of Housing
and Economic Development

Meg Gustafson
Department of Housing and
Economic Development
City Hall, Room 1101
312.744.0524

EXHIBIT F

Insurance Certificate Form

[To be attached at Closing]

WHEREAS, HED has determined that the use of the Open Space Fees to assist with the Project 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 Project will come from the specific fund set up by DOF for the Community Area in which a Fee-Paying Development is located and from which the Open Space Fees were collected; and

WHEREAS, HED wishes to make available to the Park District proceeds from the Open Space Fees collected by DOF in an amount not to exceed \$400,000 for the purpose of funding the Project; and

WHEREAS, the Park District has agreed to use the proceeds from the Open Space Fees for capital improvements relating to the Project subject to the terms and conditions specified in the intergovernmental agreement ("IGA") attached hereto as Exhibit A; and

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

WHEREAS, HED 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, HED has also recommended that the City enter into the IGA with the Park District, in substantially the form attached hereto as Exhibit A; 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 Project 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 Project.

SECTION 3. The Commissioner of HED or his designee (the "Commissioner") is hereby authorized to provide Open Space Fee proceeds to the Park District in an amount not to exceed \$400,000 from the corresponding funds to pay for expenses permitted under the Open Space Ordinance.

SECTION 4. The Commissioner is authorized to execute any and all documents and take any and all action as may be necessary or appropriate to effectuate the development and maintenance of the Project, 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 7. This ordinance shall take effect immediately upon its passage.

APPROVED

Stephen R. Wilson
CORPORATION COUNSEL

APPROVED

Robert Emmet
Mayor
10/24/13