



City of Chicago



O2017-8585

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	12/13/2017
Sponsor(s):	Emanuel (Mayor)
Type:	Ordinance
Title:	Expenditure of Open Space Impact Fee funds for Julia de Burgos Park
Committee(s) Assignment:	Committee on Special Events, Cultural Affairs and Recreation

ORDINANCE

WHEREAS, the City of Chicago (the "City") is a home rule unit of government 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 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, 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 City's 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 City's Department of Planning and Development ("DPD") has determined that the Fee-Paying Developments built in the Logan Square Community Area have deepened the already significant deficit of open space in the Logan Square Community Area, 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 appearing on pages 69309-69311 of the Journal of the Proceedings of the City Council of the same date; and

WHEREAS, the Park District desires to acquire from the City, a parcel of land having the common address of 1808 N. Whipple Avenue Chicago, Illinois and its adjacent alley, both adjacent to Julia de Burgos Park (the "Property"); and

WHEREAS, the City will request authority from the City Council to convey the Property to the Park District in a separate ordinance, and

WHEREAS, the City has proposed to vacate the alley and convey it and the Property to the Park District, who will incorporate them into Julia de Burgos Park in the Logan Square Community Area (the "Project"); and

WHEREAS, DPD desires to spend and to make available to the Park District a portion of proceeds of the Open Space Fees collected by DOF in the amount not to exceed \$15,000 for the purpose of funding the Project; and

WHEREAS, DPD desires to use a portion of the Open Space Fees in an amount not to exceed \$90,000 to pay for the alley vacation, utility relocation costs, and certain environmental costs relating to the Project; and

WHEREAS, the Open Space Ordinance requires that the Open Space Fees 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 Open Space 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, the Park District has agreed to use a portion of the proceeds from the Open Space Fees, in the aforesaid amount, for capital improvements relating to the Project, in accordance with the terms and conditions specified in an intergovernmental agreement between the City and the Park District in substantially the form of Exhibit A attached hereto (the "IGA"); and

WHEREAS, DPD has determined that the use of the Open Space Fees to assist 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 funds set up by DOF from the corresponding Logan Square Community Areas in which a Fee-Paying Development is 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 Project, 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; 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 DPD (the "Commissioner") or a designee of the Commissioner is each hereby authorized, subject to the approval of the Corporation Counsel, to enter into the IGA, and to provide Open Space Fees to the Park District in an amount not to exceed \$15,000, from the specific funds set up by DOF for the Logan Square Community Area to pay for expenses permitted under the Open Space Ordinance.

SECTION 4. Open Space Fees in the amount not to exceed \$105,000 from the Logan Square Community Area are hereby appropriated for the Project.

SECTION 5. The Commissioner or a designee of the Commissioner is each hereby authorized, to negotiate, execute and deliver such documents as may be necessary or appropriate to implement the provisions of this ordinance, subject to the approval of the Corporation Counsel. Such documents may contain terms and provisions that the Commissioner deems appropriate.

SECTION 6. 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 be in full force and effect from and after the date of its passage and approval.

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Exhibit A

IGA

**AGREEMENT BETWEEN
THE CITY OF CHICAGO
AND THE CHICAGO PARK DISTRICT**

This Agreement is entered into this ___ day of _____, 2018, between the City of Chicago (the "City"), a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, by and through its Department of Planning and Development ("DPD") and the Chicago Park District (the "Park District"), a body politic and corporate and a unit of local government under Article VII, Section 1 of the 1970 Constitution of the State of Illinois.

RECITALS

WHEREAS, the Park District desires to acquire from the City a parcel of land having the common address of 1808 N. Whipple Avenue Chicago, Illinois and its adjacent alley, both adjacent to Julia de Burgos Park, as legally described on Exhibit A, as attached hereto (the "Property"); and

WHEREAS, the Park District intends to make certain improvements to the Property and incorporate it into Julia de Burgos Park in the Logan Square Community Area (the "Project"); and

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

WHEREAS, the Department of Finance has collected Open Space Fees for new dwelling units built in the Logan Square Community (the "Proceeds") and has deposited such Proceeds in Fund No. PS22 131 54 5022 2604; and

WHEREAS, on _____ 2018, 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 _____, (the "Authorizing Ordinance") among other things, (i) finding that the Project would provide a direct and material benefit to the residents of the new developments originating the Open Space Fees; and (ii) authorizing the transfer of a portion of the Proceeds in an amount not to exceed \$15,000 (the "Project Assistance") to the Park District as a contribution towards the costs of implementing the Project; and

WHEREAS, on January 11, 2017, the Park District's Board of Commissioners passed a resolution expressing its desire to accept the Project Assistance and cooperate with the City in the implementation of the Project (the "Park District Resolution");

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

TERMS AND CONDITIONS

SECTION 1. INCORPORATION OF RECITALS

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

SECTION 2. THE PROJECT

A. No later than 36 months from the date hereof, or later as the Commissioner of DPD may agree in writing, the Park District shall let one or more contracts for the construction of the Project in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, pertaining to or affecting the Project or the Park District as related thereto. Upon the City's request, the Park District shall provide evidence satisfactory to the City of such compliance.

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

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

D. The Park District has developed a plan for the Project (the "Drawings") as shown on Exhibit B hereto. No material deviation from the Drawings will be made without the prior written approval of DPD, which approval will not be unreasonably withheld, conditioned or delayed. The approval of the Drawings by 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 Park District without the prior written approval of DPD, 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.

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

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

G. The City shall be responsible for obtaining, at its own expense, any title commitment or title policy and survey with respect to the Property that the Park District deems necessary.

H. Subject to the terms and conditions set forth herein, the City hereby grants to the Park District a right of entry upon the Property for the sole purpose of carrying out the Project, and to conduct environmental testing. The right of entry granted hereunder extends to the Park District and its Contractees. The Park District shall be responsible for, its agents, employees, contractors, subcontractors, and consultants. Prior to entry, the Park District must provide prior notice to the City of the exact nature of the activities to be conducted, expected dates of entry, and expected personnel conducting the activities if not already included herein. The Park District and its agents, employees, contractors, subcontractors, and consultants must abide by all rules and regulations set forth by the City.

SECTION 3. FUNDING

Within 15 days after the execution of this Agreement (the "Closing Date") or such longer period of time as may be agreed to by the Commissioner of DPD (the "Commissioner"), but in no event later than 90 days after the execution of this Agreement (the "Satisfaction Period"), the Park District must satisfy to the reasonable satisfaction of the Commissioner, the following conditions precedent for the City's disbursement of the Project Assistance to the Park District:

B. The City shall, subject to the Park District's satisfaction of the conditions precedent for disbursement described in this Agreement, disburse the Project Assistance to the Park District. The Park District has delivered to the Commissioner a budget for the Project Assistance, attached as Exhibit C. The Park District shall keep the Project Assistance in a segregated general ledger account to be used only for the Project.

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

SECTION 4. ENVIRONMENTAL MATTERS

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

B. Subject to the terms and conditions set forth herein, The Park District may enter the Property for the purpose of conducting environmental tests on the Property. Prior to exercising its rights under the right of entry, the Park District or its contractor must provide the City notice, as provided under Section 2.H., hereunder, and obtain all necessary permits.

SECTION 5. INSURANCE

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

A. INSURANCE TO BE PROVIDED

1) Workers Compensation and Employers Liability

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

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury, personal injury, and property damage liability. Coverages shall include the following: All premises and operations, products/completed operations, explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

3) Automobile Liability (Primary and Umbrella)

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

4) Professional Liability

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

B. OTHER REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

SECTION 6. INDEMNITY

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

SECTION 7. NO PERSONAL LIABILITY

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

SECTION 8. TERM

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

SECTION 9. GENERAL PROVISIONS

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

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

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

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

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

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

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

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

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

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

For the City: Meg Gustafson
City of Chicago
Department of Planning and Development
City Hall, Room 1101
121 N. LaSalle Street
Chicago, Illinois 60602
(312) 744-0524
(312) 744-8548 (Fax)

For the Park District: Heather Gleason
Director of Planning and Development
Chicago Park District
541 North Fairbanks Court
Chicago, Illinois 60611
(312) 742-4685
(312) 742-5328 (Fax)

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

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

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

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

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

[The remainder of this page is intentionally blank.

Signatures appear on the following page.]

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

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

By: _____
David L. Reifman
Commissioner

CHICAGO PARK DISTRICT, a body politic and
corporate

By: _____
Michael P. Kelly
General Superintendent

By: _____
Kantrice Ogletree
Secretary

Exhibit A

Property Legal Description

[To Be inserted at Closing]

Exhibit B
Project Plans

Not included.

Exhibit C

Project Assistance
Budget*

*The Commissioner may approve changes to the preliminary budget, but may not increase the \$15,000.00 amount of Project Assistance.

<u>Budget</u>	
Installation of sod	\$15,000.00
TOTAL	\$15,000.00

SP EV



OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

December 13, 2017

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

Ladies and Gentlemen:

At the request of the Commissioner of Planning and Development, I transmit herewith an ordinance authorizing the expenditure of Open Space Impact Fee funds for De Burgos Park.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Mayor

January 17, 2018

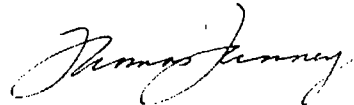
To the President and Members of the City Council:

Reporting for your Committee on Special Events, Cultural Affairs and Recreation for which a meeting was held on January 9, 2018 having had under consideration one item - an ordinance authorizing the expenditure of Open Space Impact Fee Funds

This was introduced by Mayor Emanuel at the December 13, 2017 City Council meeting. I beg leave to report and recommend that Your Honorable Body Pass the proposed appointment transmitted herewith.

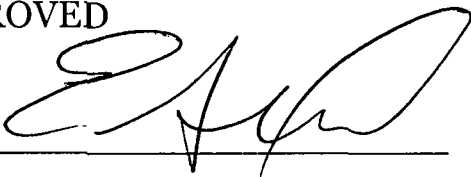
This recommendation was concurred in by a viva voce vote of the members of the Committee.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Thomas J. Janning".

Chairman

APPROVED

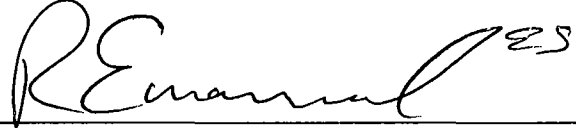


CORPORATION COUNSEL

DATED:

1/26/18

APPROVED



MAYOR

DATED:

1/26/18