

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 Fee-Paying Developments built in the Roseland Community Area have deepened the already significant deficit of open space in that 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 pursuant to an ordinance published at pages 69309-69311 of the Journal of the Proceedings of the City Council (the "Journal") of the same date; and

WHEREAS, the Park District owns a certain parcel of real property located at 658 E. 95th Street as described on Exhibit A hereto (the "Property"); and

WHEREAS, the City and the Park District desire to create a new park on the Property

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(the "Project") for the benefit and use of the general public and the Roseland Community Area; and

WHEREAS, the City desires to grant the Park District impact fee funds to pay for or reimburse development costs associated with the Project at the Property; and

WHEREAS, DPD desires to provide to the Park District Open Space Fees in an amount not to exceed \$74,106 (the "Grant") for the Project; and to create open space and recreational facilities in the Roseland Community Area; 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 fund set up by DOF for the corresponding Community Area 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 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; 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.

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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 Park District in connection with the Project, in substantially the form attached hereto as Exhibit B and to provide Open Space Fees proceeds to the Park District in an amount not to exceed \$74,106 from the corresponding funds to pay for expenses permitted under the Open Space Ordinance.

SECTION 4. Open Space Fees in the amount of \$74,106 from the Roseland Community Area's Open Space Fees Funds 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 of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any other provisions of this ordinance.

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

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EXHIBIT A

DESCRIPTION OF PROPERTY

Address: 658 E. 95th Street, Chicago, Illinois 60619

P.I.N.: 25-03-432-032-0000 Legal Description:
PARCEL 3 (NEW PARK ROSELAND):

LOT 13 IN BLOCK 8 IN BURNSIDE, A SUBDIVISION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 37 NORTH, RANGE 14, EXCLUSIVE OF RIGHTS OF WAY OF THE C. & W. I. R.R. AND THE C.R.I. & P. R.R., AND ALL THAT PART OF THE SOUTH QUARTER OF THE WEST HALF OF SECTION 2 WEST OF THE I.C. R.R. AND NORTH OF A RIGHT OF WAY FOR A "Y" TRACK TO CONNECT THE I.C. R.R. AND THE C. & W. I. R.R., ALL IN TOWNSHIP 37, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

EXHIBIT B INTERGOVERNMENTAL AGREEMENT

**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 658 E. 95th Street, Chicago, Illinois, 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 construct a new park in the Roseland 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 Roseland Community (the "Proceeds") and has deposited such Proceeds in Fund No. PS49 131 54 5049 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 \$74,106 (the "Project Assistance") to the Park District as a contribution towards the costs of implementing the Project; and

WHEREAS, on January 10, 2018, 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. 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.

F. The Park District shall 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.

SECTION 3. FUNDING

A. 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

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.

SECTION 5. INSURANCE

^s 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.

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

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

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

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

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

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

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

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

To the City: City of Chicago

Department of Planning and Development
City Hall, Room 1000
121 N. LaSalle Street
Chicago, Illinois 60602
(312) 744-4190
(312) 744-2271 (Fax)
Attention: Commissioner

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

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

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.

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)

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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.]

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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

David L. Reifman Commissioner

CHICAGO PARK DISTRICT, a body politic and corporate

By:

Michael P. Kelly General Superintendent

Kantrice Ogletree Secretary

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Exhibit A

Property Legal Description

Common address: 658 E. 95th Street, Chicago, Illinois 60619

P.I.N.: 25-03-432-032-0000 Legal Description:

PARCEL 3 (NEW PARK ROSELAND):

LOT 13 IN BLOCK 8 IN BURNSIDE, A SUBDIVISION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 3, TOWNSHIP 37 NORTH, RANGE 14, EXCLUSIVE OF RIGHTS OF WAY OF THE C. & W. I. R.R. AND THE C.R.I. & P. R.R., AND ALL THAT PART OF THE SOUTH QUARTER OF THE WEST HALF OF SECTION 2 WEST OF THE I.C. R.R. AND NORTH OF A RIGHT OF WAY FOR A "Y" TRACK TO CONNECT THE I.C. R.R. AND THE C. & W. I. R.R., ALL IN TOWNSHIP 37, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS.

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Exhibit B Project Plans

Exhibit C

Project Assistance Budget*

The Commissioner may approve changes to the preliminary budget, but may not increase the \$74,106 amount of Project Assistance.

Project Budget:

Site Preparation	\$ 5,000
Removal and Excavation	\$ 16,000
Landscaping	\$ 10,000
Fencing and Furnishing	\$ 43,000
Lighting	\$ 30,000
Design and Contingency	\$ 18,000
<u>Permits</u>	<u>\$ 1,000</u>
TOTAL	\$123,000

Funding Sources:

Amount of Open Space Fees:	\$ 74,106
<u>Amount of Park District Funding:</u>	<u>\$ 48,894</u>
TOTAL	\$ 123,000

*The City's Open Space Impact Fee Project funding shall not exceed \$74,106.

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OFFICE OF THE MAYOR

CITY OF CHICAGO

RAHM EMANUEL
MAYOR

July 25,2018

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

Ladies and Gentlemen:

At the request of the Commissioner of Planning and Development, I transmit herewith ordinances authorizing the expenditure of open space impact fee funds.

Your favorable consideration of these ordinances will be appreciated.

Mayor

Very truly yours,