

RENEWED INTERGOVERNMENTAL AGREEMENT
BETWEEN OAK PARK ELEMENTARY SCHOOL DISTRICT 97
AND THE PARK DISTRICT OF OAK PARK
REGARDING SPORTS FIELD MAINTENANCE

THIS AGREEMENT (“*Agreement*”) is entered into as of _____, 2019, (the “*Effective Date*”) between Oak Park Elementary School District 97, an Illinois public school district, (“*District 97*”) and the Park District of Oak Park, an Illinois park district (the “*Park District*”);

RECITALS:

WHEREAS, Article VII, Section 10, of the Constitution of the State of Illinois of 1970 provides that units of local government may contract or otherwise associate among themselves to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law or by ordinance and may use their credit, revenues, and other resources to pay costs related to intergovernmental activities; and

WHEREAS, intergovernmental cooperation is further authorized by the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.* (“the Act”); and

WHEREAS, this Agreement was first made in November 2014 for the Park District to undertake Field Maintenance, Extraordinary Repairs, and Mower Maintenance for District 97’s sports fields in various locations throughout the Village of Oak Park, and District 97 and the Park District wish to extend this Agreement on the terms stated in this Agreement; and

NOW, THEREFORE, in consideration of the recitals, the payment provisions in this Agreement, the other terms in this Agreement, and other consideration the value and receipt of which are acknowledged by District 97 and the Park District, District 97 and the Park District agree as follows:

Section 1. Recitals. The foregoing recitals are incorporated into this Agreement as findings of District 97 and the Park District.

Section 2. Definitions. The following terms have the meaning ascribed to them:

“*Additional Staffing*” See Subsection 4B of this Agreement.

“*Annual Costs*” See Subsection 4A of this Agreement.

“*Apportioned Park District Affiliates Fees*” See Section 4D of this Agreement.

“*D97 Mower*” See Section 8A of this Agreement.

“*D97 Representative*” means District 97’s Buildings & Grounds Superintendent or her or his designee, unless otherwise designated in writing by District 97.

“*Extraordinary Repairs*” means any work on a Sports Field that because of its unusual and severe nature and expense, is beyond the scope of Field Maintenance. Extraordinary Repairs may include, among other things, extensive damage to turf caused by severe weather conditions, flooding, overuse or misuse, or similar circumstance; heavy damage due to vandalism; extensive disease or infestation; or similar matters.

“*Field Maintenance*” means performing on the Sports Fields the various tasks commonly recognized as routine maintenance for sports fields, including mowing, seeding, core aeration, dragging defined skin areas, repairs to damaged turf, and similar common tasks. The term Field Maintenance does not include weeding or pruning or any maintenance of fences, seating, landscaped areas, or other features outside the boundary of a Sports Field.

“*Mower Maintenance*” See Section 8 of this Agreement.

“*PD Representative*” means the Park District’s Superintendent of Parks and Planning, or her or his designee, unless otherwise designated in writing by the Park District.

“*Sports Fields*” means the parcels of property owned by District 97 listed on the “*District 97 Sports Fields*” list and depicted on the “*Sports Field Boundary Sheets*” included in Exhibit A attached to this Agreement. The term Sports Fields does not include fencing or yards or landscaped areas around the perimeter of a school building.

Section 3. Agreement; Commencement Date; Standard of Performance.

A. Agreement; Commencement Date. The Park District agrees to continue performing Field Maintenance effective July 1, 2019, (in the same manner as the Park District commences work on Park District’s sports fields) at the performance standard, for the stated compensation, and otherwise under the provisions of this Agreement. The Park District also agrees to perform Extraordinary Repairs at the request of District 97.

B. Standard of Performance. The Park District will perform the Field Maintenance and Extraordinary Repairs at the same of level of workmanship as the Park District maintains its own sports fields.

Section 4. Annual Costs; Staffing.

A. District 97 Obligation to Pay Costs and Expenses. District 97 must pay to the Park District, in the manner set forth in Subsection C of this Section, all costs and expenses for materials, supplies, parts, and labor incurred by the Park District in performing Field Maintenance, Extraordinary Repairs, and Mower

Maintenance (the “*Annual Costs*”). The Park District will not charge for Sports Field inspections and analyses undertaken by Park District professional staff.

B. Staffing. The Park District intends to hire one full-time employee and one part-time seasonal employee as the additional staffing necessary to cover the increased workload created by the Field Maintenance (“*Additional Staffing*”). This level of Additional Staffing is an estimate of the need created by the Field Maintenance, and the actual Additional Staffing may be increased or decreased by the Park District, in consultation with District 97, in accordance with actual need. All costs for the Additional Staffing will be included as “labor” in the Annual Costs and will include salaries, benefits, and other costs generally applicable to similarly situated Park District employees.

C. Payments; Invoices. District 97 must pay the Annual Costs in two installments based on District 97’s fiscal year: Payments must be made as follows:

- (i) Payment for January 1 through June 30. District 97 must make Payment of the costs accrued from January 1 through June 30. That Payment will be due within 15 days after receipt of an invoice from the Park District stating the total Costs.
- (ii) Payment for July 1 through December 31. District 97 must make Payment of the costs accrued from July 1 through December 31. That Payment will be due within 15 days after receipt of an invoice from the Park District stating the total Costs.

All costs and expenses for materials, supplies, parts, and labor incurred by the Park District in performing Field Maintenance, Extraordinary Repairs, and Mower Maintenance will be included in the bi-annual payments.

Each invoice from the Park District will include a detailed statement of the Actual Costs and a statement of the Apportioned Park District Affiliates Fees.

If District 97 has an inquiry about the Park District’s Final Payment invoice, then representatives of District 97 and the Park District must meet promptly to discuss and resolve the inquiry. If any inquiry cannot be resolved within the 15-day payment period, then District 97 must pay the Park District 85 percent of the final payment immediately and then, after the inquiry is installed, District 97 must the pay remaining amount due within 15 days or the Park District must reimburse District 97 for any overpayment within 15 days.

D. Apportioned Park District Affiliates Fees. Some Park District affiliates that pay the Park District a usage fee are users of the Sports Fields. The Park District will account separately for the fees paid by those Sports Fields users and will apportion those fees to Field Maintenance costs (the “*Apportioned Park District Affiliates Fees*”). The Apportioned Park District Affiliates Fees will be excluded from the Annual Costs, as provided in Subsection 4C(ii) above.

Section 5. Field Scheduling and Use. The Park District will maintain a schedule for use of the Sports Fields that includes the following time periods for the programs and activities of the Park District and its affiliates:

A. When School is in Session: Subject to the exception in the next sentence of this Subsection A, (i) Monday-Friday commencing one hour after school dismissal and (ii) Saturday and Sunday every week from 8:00 a.m. until 8:00 p.m. Each school, however, will be provided four weekday or weekend days each school year exclusively for school activities (the “*School Activity Days*”). The School Activity Days must be scheduled by each school in advance, in consultation with the Park District.

B. During Summers from End of Spring Term to Beginning of Fall Term: Every day from 8:00 a.m. until 8:00 p.m.

The time periods set forth in this Section 5 may be adjusted from time to time by agreement in writing approved by District 97 and the Park District. Each adjustment must be added to Exhibit B to this Agreement.

C. Park District and Affiliates’ Use: The Park District shall be solely responsible for all programs and activities, including the programs and activities of its affiliates, that occur on the Sports Fields. The Park District’s responsibilities shall also apply to all invitees that participate in the programs and activities. In the event that the Sports Fields or any other property is damaged during the programs or activities addressed in this Section 5.C, the Park District at its cost and expense, shall repair or replace all property damage caused by the Park District or its affiliates or invitees. The Park District’s duty to repair shall include, but not be limited to, replacement of turf or sod to match existing turf, repair and replacement of any sidewalks, and repair or replacement of paths or parking lots. All disturbed areas and restoration work initiated by the Park District shall be completed to the satisfaction of the School District within thirty (30) days after the conclusion of work. This Paragraph shall only apply if the damage arose due to the Park District’s acts or omissions, or the acts or omissions of Park District’s affiliates, invitees, or anyone for whose acts any of them may be liable. None of the expenses attributable to this Section 5.C shall be included in the Annual Costs.

Section 6. Sports Field Closures. When the Park District determines that a Sports Field is unplayable due to weather or other unfavorable field conditions, the Park District will direct District 97, through the D97 Representative, to close that Sports Field. The Park District will notify the D97 Representative when the Park District determines that it can be reopened for play. The Park District will direct a Sports Field closure only when it is absolutely necessary to preserve and protect that Sports Field, using the same decision-making criteria as the Park District applies to its sports fields. The Park District will authorize the reopening of a Sports Field as soon as it is prudent to so, depending on the current conditions of that Sports Field.

Section 7. Work Outside of Sports Fields. The Park District is not responsible under this Agreement for any work within the Sports Fields other than Field Maintenance and Extraordinary Repairs. District 97 may request that the Park District undertake work outside of the boundaries of the Sports Fields, such as maintenance or repairs to fencing, seating areas, or landscaped areas. The Park District will consider those requests based on its available resources. If the Park District undertakes such work, then District 97 must reimburse the actual costs and expenses incurred by the Park District in performing that work. The costs and expenses for the work under this Section 7 will be invoiced by the Park District and must be paid by District 97 within 45 days, separately from the Annual Costs.

Section 8. Mower and Mower Maintenance.

A. Purchase of Mower. D97 purchased a mower in 2014 for the Park District to use in the care of the Sports Fields. This mower is anticipated to last for a minimum of the term of this Agreement.

B. Storage; Primary and Secondary Uses. The D97 Mower typically will be stored with other Park District equipment. The D97 Mower may be stored temporarily in other locations from time to time as determined by the Park District and District 97. The D97 Mower will be used primarily for the Sports Fields. The Park District may use the mower for Park District facilities from time to time, however, if the Park District has an extraordinary demand for mowing, an equipment shortage, or similar circumstance.

C. Mower Maintenance. The Park District will maintain the D97 Mower generally in the same manner as the Park District maintains its mowers. The Park District will not charge District 97 for (i) ordinary maintenance such as gasoline, oil changes, and similar routine items or (ii) for repairs that do not require replacements parts or excessive labor. The Park District will charge District 97, as part of the Annual Costs, 50 percent of the costs for repairs requiring replacement parts or excessive labor and for repairs made by a third-party mechanic. If the Park District estimates that a repair will cost more than \$500, then the Park District Representative will notify the District 97 Representative and they will make a mutual decision about the repair.

Section 9. Insurance Coverage. District 97 and the Park District each must maintain its standard general liability, workers compensation, and other insurance coverage during the Term and any Extended Term of this Agreement.

Section 10. Indemnifications.

A. Indemnity by Park District. The Park District will indemnify and save, and hold harmless, District 97 from any and all liability, damage, reasonable expense, cause of action, suits, claims, or judgments resulting from injury to person or property of others that arises directly out of the Park District's (i) programs

and/or activities, as described in Section 5.C of this Agreement, (ii) breach of this Agreement or (iii) any negligent act or omission of the Park District, including its officials, officers, employees, volunteers, and agents. District 97 agrees that, in the event any claim is asserted or any action brought to recover any such damage, District 97 will give immediate notice thereof in writing to the Park District and will cooperate in the investigation and defense of any such claim or action, and that the handling and settlement of any such action will be performed and concluded by the Park District. District 97 agrees to notify the Park District in writing by delivery to the Park District within five business days and by telephone immediately after District 97 receives any such complaint or claim. The delivery of written notification will include a copy of all pleadings if a complaint is filed or of all correspondence and exhibits if a claim is filed.

B. Indemnity by District 97. District 97 will indemnify and save, and hold harmless, the Park District from any and all liability, damage, reasonable expense, cause of action, suits, claims, or judgments resulting from injury to person or property of others that arises directly out of District 97's (i) breach of this Agreement or (ii) any negligent act or omission of District 97, including its officials, officers, employees, volunteers, and agents. The Park District agrees that, in the event any claim is asserted or any action brought to recover any such damage, the Park District will give immediate notice thereof in writing to District 97 and will cooperate in the investigation and defense of any such claim or action, and that the handling and settlement of any such action will be performed and concluded by District 97. The Park District agrees to notify District 97 in writing by delivery to District 97 within five business days and by telephone immediately after the Park District receives any such complaint or claim. The delivery of written notification will include a copy of all pleadings if a complaint is filed or of all correspondence and exhibits if a claim is filed.

C. Both parties agree to knowingly and intentionally waives the right to assert, under the case of *Kotecki v. Cyclops Welding Corp.*, 146 Ill.2nd 155 (1991), that either party's liability may be limited to the amount of its statutory liability under the Workers' Compensation Act, and agree that their respective liability to indemnify and defend the other party is not limited by the so called "Kotecki Cap".

Section 11. Term. This Agreement is for a term commencing on the Effective Date and expiring on June 30, 2024 (the "*Term*"). The Park District or District 97 may discontinue this Agreement as of June 30 in any year by serving written notice of discontinuation to the other party no later April 1.

Section 12. Termination.

A. Termination by District 97 for Breach. District 97 may terminate this Agreement for breach by the Park District by delivering a written notice including a statement of the breach and a 30-day period within which the Park District may cure the breach. If the Park District does not cure the breach within the 30-day period, then District 97 may terminate this Agreement any time thereafter. In the

event of termination for breach, Park District must continue to perform all duties under this Agreement until the date of termination, and District 97 must pay all costs and expenses properly incurred by the Park District under this Agreement until the date of termination, minus any actual, direct costs or expenses reasonably incurred by District 97 directly related to the breach.

B. Termination by District 97 Without Cause. District 97 may terminate this Agreement without cause by written notice delivered to the Park District not less than 60 days prior to the effective date of the termination. In the event of termination by District 97 without cause, District 97 must pay all costs and expenses properly incurred by the Park District under this Agreement until the date of termination, and District 97 will continue to be liable for, and must pay, all labor costs related to the Additional Staffing until the Park District has reassigned, terminated, or otherwise mitigated the excess labor costs created by the termination without cause.

C. Termination by Park District for Breach. The Park District may terminate this Agreement for breach by District 97 by delivering a written notice including a statement of the breach and a 30-day period within which District 97 may cure the breach. If District 97 does not cure the breach within the 30-day period, then the Park District may terminate this Agreement any time thereafter. In the event of termination for breach, Park District must continue to perform all duties under this Agreement until the date of termination, and District 97 must pay all costs and expenses properly incurred by the Park District under this Agreement until the date of termination. Also in the event of termination for breach, District 97 will continue to be liable for, and must pay, all labor costs related to the Additional Staffing until the Park District has reassigned, terminated, or otherwise mitigated the excess labor costs created by the termination for breach.

D. Termination by Park District Without Cause. The Park District may terminate this Agreement without by written notice delivered to District 97 not less than 120 days prior to the effective date of the termination. In the event of termination by the Park District without cause, the Park District must prepare an invoice stating all costs and expenses for materials, supplies, parts, and labor incurred by the Park District for the current year in performing Field Maintenance, Extraordinary Repairs, and Mower Maintenance until the date of termination. District 97 must pay those costs and expenses *minus* the Mid-Year Payment for that current year if one was made. In the event of termination by the Park District without cause, the Park District must pay all additional costs and expenses properly incurred by District 97 for all labor, equipment, and repair costs necessary to replace the Park District created by the Park District's termination without cause.

Section 13. Assignment Prohibited. Neither District 97 nor the Park District may assign any right, privilege, duty, or responsibility established in this

Agreement at any time except only with the prior written consent of the other party.

Section 14. General Provisions.

A. Notices. Any notice or communication required or permitted to be given under this Agreement must be in writing and be delivered (i), personally, (ii) by a reputable overnight courier, or (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise expressly provided in this Agreement, notices will be deemed received on the earlier of (a) actual receipt, or (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit, or (c) three business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to District 97 must be addressed to, and delivered at, the following address:

Oak Park Elementary School District 97
c/o Superintendent
260 Madison Street
Oak Park, Illinois 60302

With a copy:

Robbins Schwartz
c/o Matthew J. Gardner
55 W. Monroe St., #800
Chicago, IL 60608
mgardner@robbins-schwartz.com

Notices and communications to the Park District must be addressed to, and delivered at, the following address:

Park District of Oak Park
c/o Executive Director
218 Madison Street
Oak Park, Illinois 60302

B. Entire Agreement. This Agreement constitutes the entire agreement between District 97 and the Park District with respect to Field Maintenance and the other matters address in this Agreement, and this Agreement supersedes any and all prior agreements and negotiations between District 97 and the Park District, whether written or oral, relating to the subject matter of this Agreement.

C. Amendments. This Agreement may be amended only in writing and approved and executed by District 97 and the Park District in accordance with all applicable statutory procedures.

D. No Waiver, Enforcement. The failure by a party to insist on strict performance of any provision or right under this Agreement in any one or more instances will not, and may not, be construed as a waiver in any subsequent instance of any such covenant, warranty, condition or rights, but the same shall be and remain in full force and effect.

WHEREFORE, the Park District and District 97 have executed this Agreement by their duly authorized representatives as of the Effective Date.

PARK DISTRICT OF OAK PARK

By: _____

Its: _____

OAK PARK ELEMENTARY SCHOOL DISTRICT 97

By: _____

Its: _____

EXHIBIT A

DISTRICT 97 SPORTS FIELDS

Brooks Middle School:

Baseball diamond and multi-purpose field

Julian Middle School:

Baseball diamond and multi-purpose field

Beye Elementary School:

Multi-purpose field

Longfellow Elementary School:

Multi-purpose field

Holmes Elementary School:

Baseball diamond and multi-purpose field

Hatch Elementary School:

Two baseball diamonds and multi-purpose field

Whittier Elementary School:

Two baseball diamonds and multi-purpose field

See following pages for the Sports Field Boundary Sheets.

EXHIBIT B

**PERIODIC ADJUSTMENTS TO SPORTS FIELD SCHEDULING
SEE SECTION 5 OF AGREEMENT**

[see attached adjustment sheets]