

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF WOOD DALE
AND WOOD DALE SCHOOL DISTRICT 7 FOR THE PHASE II STORMWATER
PROJECT NEAR WESTVIEW ELEMENTARY SCHOOL**

THIS INTERGOVERNMENTAL AGREEMENT, made this ____ day of January 2020, between the CITY OF WOOD DALE, a body corporate and politic, (hereinafter referred to as “City”) and the BOARD OF EDUCATION OF WOOD DALE SCHOOL DISTRICT 7, DuPage County, Illinois, an Illinois School District, organized and existing in accordance with the Illinois School Code, a body corporate and politic (“School District 7”) (collectively referred to as the “Parties”),

WITNESSETH:

WHEREAS, Article VII, Section 10 of the Illinois Constitution of 1970 and 5 ILCS 220/1, *et seq.*, authorize units of local government to contract or otherwise associate among themselves to obtain or share services, to exercise, combine or transfer any power or function, in any manner not prohibited by law, to use their credit, revenues and other reserves to pay costs and to service debt related to intergovernmental activities and further authorize units of local government to contract and otherwise associate with individuals, associations and corporations in any manner not prohibited by any law or by ordinance; and

WHEREAS, the City and School District 7 are public agencies, as defined in the Intergovernmental Cooperation Act, 5 ILCS 220/1, *et seq.*; and

WHEREAS, because of the commonality of territory and population served, the City and School District 7 seek to cooperate in endeavors that benefit each other and the residents of both the City and the School District 7; and

WHEREAS, School District 7 owns property, commonly known as Westview Elementary School, located at the south west corner of Addison Road and Potter Street, with the common

address of 200 N. Addison Road, Wood Dale, which is depicted in Exhibit "A", attached hereto and incorporated herein by reference.

WHEREAS, the Westview Elementary School consists of a land area of approximately 32,320 square feet and is a public Elementary School; and

WHEREAS, the City is undertaking a comprehensive Stormwater Project which is designed to reduce and eliminate flooding in the area and to enhance the Stormwater System throughout the City; and

WHEREAS, the City has requested the use of the open, unimproved area of Westview School to install a portion of its Underground Detention System, including the installation of underground water storage pipes; and

WHEREAS, in exchange for the use and encumbrance of certain portions of the Westview Elementary School Property, the City has agreed to expand and improve the existing Parking Lot; and

WHEREAS, the improvements to the Parking Lot include the expansion of the existing Parking Lot, connecting the eastern and western Parking Lots and repaving and restriping the entire Parking Lot, consisting in the aggregate of approximately 52,000 square feet at the Westview Elementary School, as more fully depicted in Exhibit "B", attached hereto and incorporated herein by reference; and

WHEREAS, the Parties understand that the scope of the Underground Detention System Project is significant and will be constructed in multiple Phases; and

WHEREAS, the Parties have acknowledged that the initial construction impacting School District 7 will consist of the installation of underground water storage pipes in the grass field adjacent to Westview Elementary School (as depicted in Exhibit A, the "Field"), which Field will

Commented [JF1]: Even though this agreement is with the City, does this expansion require any sort of zoning approval? My concern is that in the future, a new administration may claim the expansion did not receive proper approval and constitutes a nonconforming use. I have had something like this happen with other clients.

be restored by the City in the Fall of 2021 to its preconstruction condition, with additional work being performed in the area by the City in the Spring of 2022, after which the Field will again be restored to its preconstruction condition; and

WHEREAS, the Design and Construction Schedule for said work has been agreed to by the Parties and is set forth in Exhibit "C", which is attached hereto and incorporated herein by reference; and

WHEREAS, in order that the construction on the Underground Detention System Project can be performed, School District 7 agrees to provide a temporary construction easement along Potter Street, in favor of the City, commencing in April, 2020 through September, 2022, as set forth more fully in the Temporary Construction Easement attached hereto and incorporated herein as Exhibit "D"; and

WHEREAS, as part of the Underground Detention System Project, and in exchange for the Parking Lot improvements, School District 7 agrees to grant, in favor of the City for the purpose of inspecting, maintaining, improving, and/or repairing the Underground Detention System, a permanent non-exclusive easement over a portion of the Westview Elementary School Property, along Potter Street, as set forth more fully in the Permanent Easement, attached hereto and incorporated herein by reference as Exhibit "E"; and

WHEREAS, as part of the Underground Detention System Project and in exchange for the Parking Lot improvements, School District 7 agrees to dedicate a portion of the School District 7 Property for right-of-way to the City for purposes of accessing the area of the Permanent Easement described in Exhibit E, as set forth more fully in the Plat of Dedication, attached hereto and incorporated herein as Exhibit "F"; and

WHEREAS, the Parties recognize that, once the Project is completed, the Underground Detention System Project will benefit the Westview School Property as well as the area surrounding Westview School.

NOW, THEREFORE, pursuant to their powers of intergovernmental cooperation and in consideration of the foregoing premises and the mutual promises, agreements, covenants, and grants hereinafter made, IT IS MUTUALLY AGREED between the City and the Wood Dale School District 7, as follows:

Section 1. Incorporation of Recitals. The foregoing recitals are incorporated herein by reference as if fully set forth.

Section 2. Term. This Agreement, shall commence on March 1, 2020, and terminate at 12:00 o'clock midnight on September 30, 2022. This term may be extended pursuant to the written agreement of the Parties.

Section 3. City Responsibilities. The City shall be responsible for the planning, engineering, design, bid, contract award, and construction of the Underground Detention System Project. The City shall select and contract with all contractors providing professional services for the Project at its sole discretion.

The City shall also be responsible for the restoration, construction, paving, and striping of the Westview School Parking Lot, as well as the restoration of any property disturbed from the construction on the Project.

The City shall also be responsible for the future operation and maintenance of the Underground Detention System facilities to be constructed in the grass field adjacent to Westview Elementary School and shall have access thereto for said purpose.

The City acknowledges and agrees that none of its activities relating to this Agreement will be conducted in a manner that will cause the District to be unable to reasonably operate its educational and extracurricular programs at Westview Elementary School, including the pick-up and drop off of students on the property via school buses, nor impair the ability of employees working at Westview Elementary School to park their vehicles on the Westview property.

Section 4. School District 7 Responsibilities. School District 7 agrees to dedicate to the City a right of way across its property to access the property required for the Underground Detention System Project as depicted in Exhibit F, along with a Temporary Construction Easement depicted in Exhibit D, and the Permanent Easement depicted in Exhibit E, both of which are necessary in conjunction with the Underground Detention System Project.

Section 5. Default. Any Party in breach of this Agreement shall have thirty (30) days to cure such breach after service of notice of such by the non-breaching Party. If the breach is not cured within such time, the breaching Party shall be deemed in default of this Agreement, and the non-breaching Party shall have any and all legal, equitable, and administrative remedies available to it against the breaching Party on account of said default. The breaching Party shall be obligated to pay all reasonable attorney's fees, court costs, witness fees and expenses, and other expenses of the non-breaching Party relating to an action of any kind by the non-breaching Party to enforce this Agreement. Any action to enforce this Agreement shall be brought in the Circuit Court of DuPage County.

Section 6. Insurance and Indemnification. The City shall be responsible for ensuring that any and all contractors working on the Underground Detention System Project on behalf of the City are properly insured, and shall require all contractors and subcontractors working at any time on School District 7 property to name Wood Dale School District 7, its Board of

Education, officers, agents, and employees as Additional Insured on any and all insurance policies carried by contractors or subcontractors where the City is named Additional Insured. Evidence of compliance shall be provided via policy amendment or endorsement. Documentation of all such policy amendments and endorsements shall be delivered to the School District's superintendent at least 10 business days before any construction activities shall begin. Regardless of the engagement of contractors or subcontractors to construct and install the Underground Drainage System, the City shall be and shall remain ultimately responsible for promptly performing any repairs to the landscape, parking lot, other surface are, or the facility located on the Property resulting from the work performed by the City on School District 7 Property.

The City shall indemnify and hold harmless Wood Dale School District 7, its Board of Education, its individual Board members, officers, employees, volunteers, agents, successors and assigns, against any and all liabilities, damages, losses, expenses, causes of action, demands, claims, suits or judgments, including reasonable attorneys' fees of any nature, kind or description arising out of, caused by or resulting from any claim by or through the work contemplated by this Agreement, including future maintenance and repair work. This obligation shall survive the expiration of this Agreement and shall continue to apply any time the City performs or causes to be performed work on the Underground Detention System.

Section 7. Miscellaneous. Entire Agreement. This Agreement constitutes the entire agreement and understandings of the Parties with respect to this matter and supersedes all prior understandings and agreements.

- A. Notices. All notices required or permitted to be given under this Agreement shall be in writing and mailed prepaid by certified or registered mail to the appropriate addresses indicated below:

City of Wood Dale

Jeffrey Mermuys
City Manager
City of Wood Dale
404 N. Wood Dale Road
Wood Dale, IL 60191

With Copy to: Patrick K. Bond
City Attorney
Bond, Dickson & Conway
400 S. Knoll Street, Unit C
Wheaton, IL 60187

School District 7

John Corbett
Superintendent
School District 7
543 N. Wood Dale Road
Wood Dale, IL 60191
jcorbett@wdsd7.org

With Copy to: John Fester
Himes, Petrarca & Fester
180 N. Stetson, #3100
Chicago, IL 60601
jfester@edlawyer.com

- B. Complete Understanding. This Agreement sets forth all the terms and conditions, and agreements and understandings between the Parties relative to the subject matter hereof, and there are no agreements or conditions, either oral or written, expressed or implied, between them other than as herein set forth
- C. Amendment. This Agreement may be amended at any time, provided such amendment is in writing and approved by the corporate authorities of both Parties.
- D. Binding. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties as if they were parties to this Agreement.

- E. Assignment. Neither Party shall have the right to assign this Agreement without the prior written consent of the other Party.
- F. Validity. The invalidity of any provision of this Agreement shall not render invalid any other provision herein. If for any reason any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, that provision shall be deemed severed, and this Agreement shall remain in full force and effect with that provision severed or modified by court order.
- G. Strict Performance. The failure of any Party to this Agreement to require strict and prompt performance of the terms, covenants, agreements and conditions contained herein, shall not constitute, or be construed as a waiver or relinquishment of any Party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.
- H. Governing Law. This Agreement shall be governed, interpreted and construed according to the laws of the State of Illinois.
- I. Counterparts. This Agreement may be executed in multiple counterparts or duplicate originals, each of which shall constitute and be deemed as one and the same document.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date first above written.

CITY OF WOOD DALE

Annunziato Pulice, Mayor

ATTEST:

Maura Montalvo, Deputy City Clerk

WOOD DALE SCHOOL DISTRICT 7

Joe Petrella, Board President

ATTEST:

Araceli Botello, Secretary

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Exhibit A

**Westview Elementary School
200 N. Addison Road
Wood Dale, IL**

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Exhibit B

Westview Elementary Parking Lot Improvements

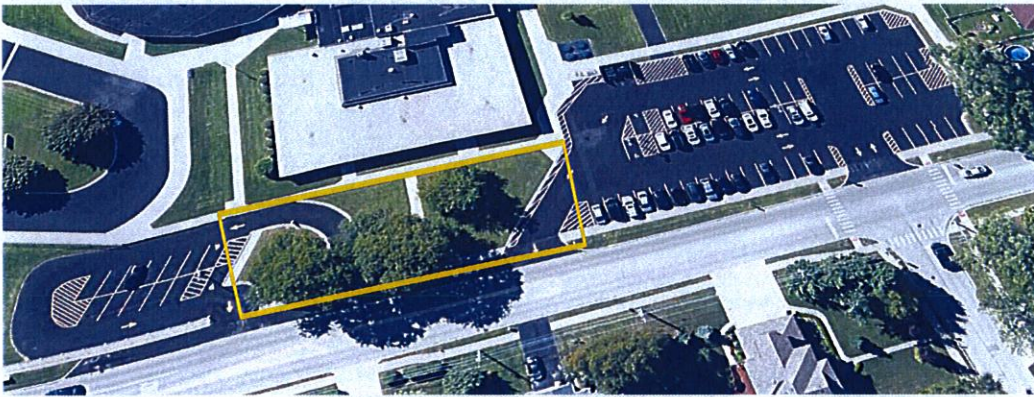


Exhibit "C"

Design and Construction Schedule

Summer 2020	Design Activities on School Property to include topographic field survey of Westview Elementary School property and 4-6 soil borings in the parking lot and/or grassy areas to be impacted by 2021 construction Construction activities within Potter Street ROW to include use of temporary easement in parking lot shown in Exhibit "D".
Spring 2021	Construction of new Parking Lot Improvements between two existing parking lots
Summer 2021	Construction of Underground Detention System Facilities on Westview School Property to be completed before Fall 2021 school year starts
Fall 2021	Final parking lot paving and ground restoration of areas impacted by Underground Detention System construction

Exhibit "D"

2020 Temporary Construction Easement

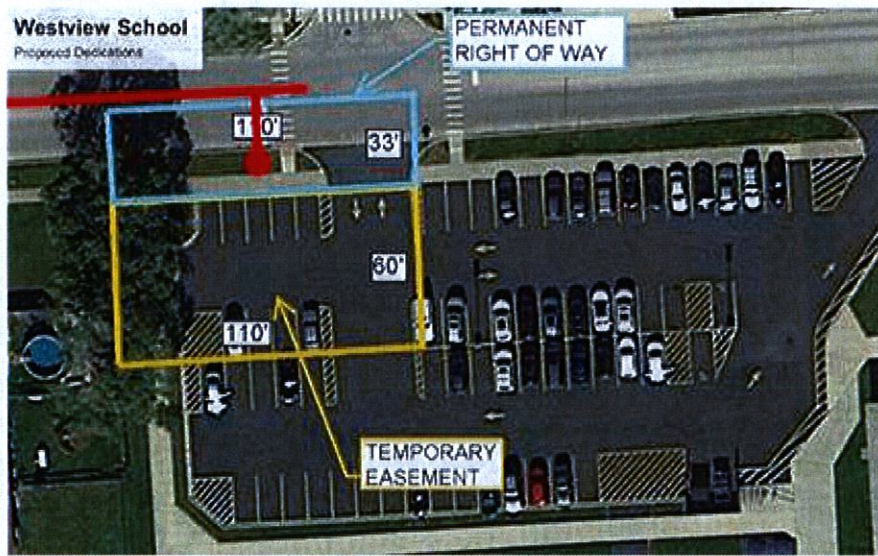


Exhibit "E"

2021 Permanent Easement Area

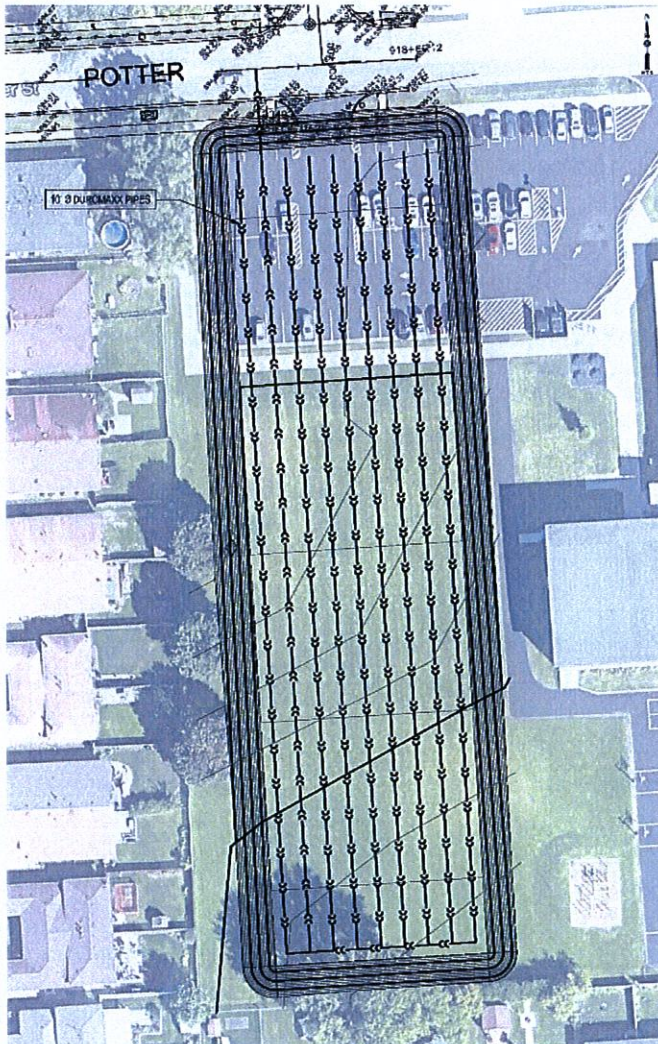


Exhibit "F"

Plat of Potter Street ROW Dedication

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