

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE BOARD OF
EDUCATION OF PROSPECT HEIGHTS SCHOOL DISTRICT NO. 23
AND THE BOARD OF COMMISSIONERS OF THE ARLINGTON
HEIGHTS PARK DISTRICT FOR THE TRANSFER OF THE CERTAIN
PARCELS**

PARTIES

This Agreement (the "Agreement") is made and entered on the latest date shown for a signature on the signature page hereof (the "Effective Date"), between the Board of Education of Prospect Heights School District No. 23, Cook County, Illinois (the "School District") and the Board of Commissioners of the Arlington Heights Park District, Cook County, Illinois (the "Park District"). Individually, the School District and the Park District shall be referred to as a "Party" and collectively, as "the Parties."

PURPOSE

The purpose of this Agreement is to memorialize the Parties' understanding to transfer from the School District to the Park District an approximately 5.74-acre parcel of land improved with a public park owned by the School District and commonly known as Carousel Park with the common address of 1925 E. Suffield Drive in Arlington Heights, Illinois and the parcel number 03-16-105-006-0000, more fully described on Exhibit A, attached to and incorporated into this Agreement. (hereinafter "Carousel Park") and further to transfer from the Park District to the School District an approximately 5.84-acre parcel of land improved with a public park owned by the Park District and commonly known as Patriots Park with the common address of 1815 N. Dale Avenue in Arlington Heights and the parcel number 03-21-201-014-0000, more fully described on Exhibit B, attached to and incorporated into this Agreement (hereinafter "Patriots Park"). Together, Carousel Park and Patriots Park shall be referred to as the "Subject Properties."

LEGAL AUTHORITY

This Agreement is entered into by virtue of the authority and provisions of Article VII, Section 10 of the Illinois Constitution of 1970, the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, the Illinois School Code, 105 ILCS 5/5-22, the Illinois Park District Code, 70 ILCS 1205/1-1 *et seq.*, and the Illinois Local Government Property Transfer Act, 50 ILCS 605/0.01 *et seq.* (the "Transfer Act").

WITNESSETH

WHEREAS, the School District and Park District are authorized by law to enter into agreements with other units of local governmental pursuant to Article VII of the Illinois Constitution of 1970 and the Illinois Intergovernmental Cooperation Act pertaining to matters of mutual concern; and

WHEREAS, pursuant to the Transfer Act, the School District will adopt a resolution declaring that it is necessary and convenient for the School District to use, occupy or improve Patriots Park and it is in the best interest of the School District to acquire Patriots Park; and

WHEREAS, pursuant to the Transfer Act, the Park District will adopt an ordinance declaring that it is necessary and convenient for the Park District to use, occupy or improve Carousel Park and it is in the best interest of the Park District to acquire Carousel Park; and

WHEREAS, pursuant to the Transfer Act, the School District will adopt a resolution expressing its desire to transfer Carousel Park to the Park District, subject to the terms and conditions of this Agreement; and

WHEREAS, pursuant to the Transfer Act, the Park District will adopt a resolution expressing its desire to transfer Patriots Park to the School District, subject to the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, as well as the mutual covenants, obligations and commitments set forth in this Agreement, the Parties agree as follows:

1. Recitals. The School District and the Park District agree that all recitals set forth above are correct and are fully incorporated into this Agreement.
2. Agreement to Transfer Carousel Park. The School District agrees to transfer to the Park District and the Park District agrees to accept from the School District all right, title, and interest in and to Carousel Park, including improvements thereon and appurtenances thereto.
3. Agreement to Transfer Patriots Park. The Park District agrees to transfer to the School District and the School District agrees to accept from the Park District all right, title, and interest in and to Patriots Park, including improvements thereon and appurtenances thereto.
4. Licensed Use of Patriots Park. The Parties shall negotiate in good faith a license agreement authorizing the Park District access to and use of Patriots Park for park and recreational purposes for the period of time beginning on the Closing Date and continuing for a period of ten (10) years, subject to early termination by the School District based on not less than twenty-four (24) months prior written notice. The license agreement shall contain such terms and conditions as are reasonably agreed upon by the Parties, including but not limited to: (i) the Park District assuming all maintenance and repair obligations related to Patriots Park during the term of the license and (ii) reasonable indemnification and insurance obligations. At the Closing, and immediately after the School District shall receive a deed to Patriots Park from the Park District, the School District, as licensor, shall enter into a license agreement for access to and use of Patriots Park with the Park District as licensee. The effective date of the license agreement and the commencement of the license term shall both be the date of title closing.

5. Consideration. The Parties have secured appraisals of Carousel Park and Patriots Park and the two properties are of similar appraised values allowing for an equal transfer of properties between the School District and the Park District without the exchange of further monetary consideration.

6. Parties' Due Diligence.

(a) Within forty-five (45) days of the Effective Date, the Parties will deliver or cause to be delivered to each other the following items relating to Subject Properties which they currently own: (i) a current title commitment issued by the Chicago Title Insurance Company (the "Title Company") with copies of all exception documents; (ii) a current staked survey in whatever form necessary to allow the Title Company to provide title insurance; and (iii) such other information concerning the Subject Properties which the Parties or their representatives may reasonably request and that is in the other Party's possession.

(b) The Parties shall have forty-five (45) days after the Effective Date, at each Parties sole expense, to inspect the Subject Properties, obtain any environmental and/or structural assessments and/or investigations in regard to the Subject Properties they deem appropriate, and satisfy themselves as to title and survey matters. (the "Review Period") If reasonably needed, a Party may extend the Review Period for thirty (30) days by providing written notice to the other Party specifying such need and obtaining the consent of that Party, which consent shall not be unreasonably withheld. If within the Review Period or extended Review Period, if applicable, a Party determines that the results of such assessments or investigations are not acceptable or if it identifies exceptions to title or survey matters that cannot be removed from the commitment or insured against, the Party will have the right to terminate the Agreement consistent with the 'Notices' provision of this Agreement and each Party shall be relieved of all further obligations under this Agreement. The Parties agree to provide access to the Subject Properties and each Party agrees to indemnify the other for any loss or damage to the Subject Properties caused by a Party or its agents performing such assessments or investigations. Following each Parties satisfaction of its rights under this paragraph, the Parties shall convey the Subject Properties to each other in an 'AS IS/WHERE IS' condition.

7. Failure of a Party to Conduct Due Diligence. In the event that either Party fails to conduct the permitted due diligence set forth above, such contingency or contingencies shall be deemed waived by that Party and this Agreement shall remain in full force and effect as if said contingency or contingencies had not been made a part hereof.

8. Closing: The closing shall be on a date and at a time mutually agreed upon by the Parties, but in no event later than thirty (30) days after the expiration of the Review Period or extended Review Period, if applicable, at the Title Company office convenient to the Subject Properties or at such office as mutually agreed to by the Parties. (the "Closing") At the time of the Closing, each Party shall deposit with the Title Company the following documents (the "Escrow Deposits") related to the parcel that Party is transferring: (i) a fully executed and recordable quit claim deed, with release of homestead rights; (ii) the appropriate declarations or exemption certificates in compliance with the provisions of any applicable state transfer tax act and any county or local governmental transaction tax ordinance or similar applicable laws and ordinances; (iii) appropriate affidavits of title; (iv) appropriate ALTA Statements; (v) appropriate

plat act affidavits; and (vi) any other documents deemed necessary for the conveyance of the Subject Properties or that the Title Company reasonably requires in order to issue title insurance insuring each Parties' interest as purchaser of the Subject Properties. The Parties shall further execute and deliver all additional documents customarily required by the Title Company to issue owner's title insurance policies insuring the respective interests in the Subject Properties.

9. Closing Costs. The Parties shall pay the cost of the title commitment and survey for the property that Party is transferring. The Parties shall each pay one-half (½) of the other closing costs including any escrow/closing fee charged by the Title Company. The Parties each warrant that they are governmental entities exempt from State, County, and local transfer taxes under applicable law as of the Effective Date. Each Party shall be responsible for the payment of its own attorneys' fees.

10. Representations and Warranties.

(a) To induce the Park District to execute, deliver and perform this Agreement, the School District hereby represents and warrants to the Park District on and as of the Effective Date that:

(i) All representations and warranties of the School District, if any, appearing in other Sections of this Agreement are true and correct.

(ii) The School District has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by the School District pursuant hereto, and all required action and approvals therefore have been duly taken and obtained. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of the School District are and shall be duly authorized to sign the same on the School District's behalf and to bind the School District to the Agreement. This Agreement and all documents to be executed pursuant hereto by the School District are and shall be binding upon and enforceable against the School District in accordance with their respective terms.

(b) To induce the School District to execute, deliver, and perform this Agreement, the Park District hereby represents and warrants to the School District on and as of Effective Date that:

(i) All representations and warranties of the Park District, if any, appearing in other Sections of this Agreement are true and correct.

(ii) The Park District has full capacity, right, power, and authority to execute, deliver and perform this Agreement and all documents to be executed by the Park District pursuant hereto, and all required action and approvals therefore have been duly taken and obtained. The individual(s) signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of the Park District are and shall be duly authorized to sign the same on the Park District's behalf and to bind the Park District thereto. This Agreement and all documents to be executed pursuant hereto by the Park District are and shall be binding upon and enforceable against the Park District in accordance with their respective terms.

(c) The representations and warranties of both the School District and the Park District shall be deemed remade as of the Closing.

11. Subject Properties Conveyed “AS IS/WHERE IS”. As used in this paragraph:

(a) The term “Hazardous Materials” shall mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic materials, a hazardous or toxic substance, or other similar term by any federal, state or local environmental statute, regulation, or ordinance presently in effect or that may be promulgated in the future as such statutes, regulations, or ordinances may be amended from time to time through the Closing.

(b) The term “Underground Storage Tank” shall mean and include all underground storage tanks as defined in Section 9001 of the RCRA, 42 U.S.C. § 6991, including all underground storage tanks specifically excluded under subparagraphs (a) through (i) of Section 9001 of RCRA, and shall also include any such tanks which would be included in Section 9001(i) of RCRA but for the fact that they contain hazardous wastes.

(c) The term “Environmental Laws” shall mean all federal, state, and local environmental, health and/or safety statutes, ordinances, codes, rules, regulations, orders, decrees, and rules of common law, regulating, relating to, or imposing liability or standards concerning or in connection with Hazardous Materials or Underground Storage Tanks.

(d) Neither the School District nor the Park District make any express or implied representations or warranties with regard to the Subject Properties or matters relating thereto. The Subject Properties will be conveyed on an “AS IS/WHERE IS” basis without any representations or warranties of any kind, express or implied, either oral or written, made by either Party with respect to the physical, environmental, or structural condition of the Subject Properties or with respect to the existence or absence of Hazardous Materials, Underground Storage Tanks, or other toxic or hazardous substances or wastes in, on, under, or affecting the Subject Properties, and subject to existing zoning, flood plain, and any other restrictions on the use or development of the Subject Properties. All warranties with respect to the Subject Properties are hereby expressly disclaimed, including, but not limited to, any implied warranty of merchantability, fitness, or habitability, good or fair condition, repair, or good and workmanlike construction, availability, or capacity of utilities to provide sewer and water service, and any warranties or representations with respect to potential liabilities under or with respect to any Environmental Laws. Any risk and all responsibility relating to any condition of the Subject Properties, including, but not limited to any of the above-described conditions, are assumed by the Party acquiring the respective property and are disclaimed by the Party conveying such property. The disclaimer of warranties by the Parties and the assumption of risk by the Parties with respect to the condition of the Subject Properties, and all other waivers, releases, covenants, and other obligations of the Parties provided under this Section shall survive the Closing of the transfer of the Subject Properties.

12. Notices. All notices, demands or other writings in this Agreement provided to be given, made or sent by either Party and/or the Parties’ attorney(s) to the other shall be deemed to have been fully given (before 6:00 p.m. Central Time, or shall be designated the next business day), made or sent when made in writing: a) on the date delivered personally, b) on the date of

facsimile with printed confirmation of receipt or e-mail communication, or c) two (2) business days after being deposited in the United States Mail, with postage pre-paid, addressed as follows:

To School District: Amy McPartlin
Assistant Superintendent for Business/CSBO
Prospect Heights School District No. 23
700 N. Schoenbeck Rd.
Prospect Heights, IL 60070
(847) 870-5554
amcpartlin@d23.org

With a Copy to: Ares G. Dalianis
Franczek P.C.
300 S. Wacker Dr., Suite 3400
Chicago, IL 60606
(312) 786-6163
agd@franczek.com

To Park District: Carrie Fullerton
Executive Director
Arlington Heights Park District
401 N. Arlington Heights Rd.
Arlington Heights, IL 60004
(847) 577-3005
cfullerton@ahpd.org

With a Copy to: Andrew S. Paine
Tressler LLP
233 S. Wacker Dr., 61st Floor
Chicago, IL 60606
(312) 627-4154
apaine@tresslerllp.com

Notice of change of the foregoing addresses of either Party shall be given to the other Party, as above provided, at least seven (7) days prior to the effective date of such change.

13. Broker Warranty. The Park District warrants to the School District and the School District warrants to the Park District that neither is a party to or in any way obligated under any contract for payment of fees and expenses to any broker or finder in connection with the origin, negotiation, execution, or confirmation of this Agreement.

14. Default and Remedies. If the School District fails to perform its obligations hereunder, and such failure or refusal is not cured within 15 days after notice from the Park District, then the Park District shall have the right to specific performance, or any and all other rights and remedies available at law or in equity for such breach. If the Park District fails to perform its obligations hereunder, and such failure or refusal is not cured within 15 days after notice from the School District, then the School District shall have the right to specific

performance, or any and all other rights and remedies available at law or in equity for such breach. In the event of a default, the non-defaulting party shall be entitled to recover its reasonable attorneys' fees and costs from the defaulting party.

15. Severability. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

16. Entire Agreement. This Agreement is a total and complete integration of any and all agreements relating to the Subject Properties existing between the Park District and the School District, and supersedes any prior oral or written agreements, promises, or representations between them, with respect to the subject matter hereof.

17. Amendment. This Agreement shall only be amended by the adoption and execution of an appropriate written instrument duly approved by the corporate authorities of the Park District and the School District.

18. Assignment. This Agreement may not be assigned by the School District or the Park District without the prior written consent of the other party.

19. Execution. This Agreement and any amendment to this Agreement may be approved and executed in counterparts.

20. Language. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either the Park District or the School District.

21. Time of Essence. Time is of the essence of this Agreement and of every term, covenant, and condition hereof.

22. Successors. All terms, covenants, and conditions of this Agreement shall be binding upon an inure to the benefit of and shall apply to the respective successors and assigns of the Park District and the School District.

23. Counterparts: This Agreement may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same Agreement.

24. Survival of Warranties: The terms, provisions, warranties and covenants made herein, shall survive the Closing and delivery of the deed and other instruments of conveyance, and this Agreement shall not be merged therein, but shall remain binding upon and for the Parties hereto until fully observed, kept or performed.

25. Effective Date. This Agreement shall be deemed dated and become effective on the date the last of the Parties signs as set forth below the signature of their duly authorized representatives.

[signature page follows]

BOARD OF EDUCATION, PROSPECT
HEIGHTS SCHOOL DISTRICT NO. 23,
Cook County, Illinois

BOARD OF COMMISSIONERS,
ARLINGTON HEIGHTS PARK DISTRICT,
Cook County, Illinois

By: _____

Its President

ATTEST: _____

Its Secretary

Dated: _____

By: _____

Its President

ATTEST: _____

Its Secretary

Dated: _____

EXHIBIT A
LEGAL DESCRIPTION OF CAROUSEL PARK

[insert legal description]

Commonly known as Carousel Park with the common address of 1925 E. Suffield Drive in Arlington Heights, Illinois.

PIN: 03-16-105-006-0000

EXHIBIT B
LEGAL DESCRIPTION OF PATRIOTS PARK

[insert legal description]

Commonly known as Patriots Park with the common address of 1815 N. Dale Avenue in Arlington Heights.

PIN: 03-21-201-014-0000