

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into and made effective as of this ___ day of January, 2017 by and between the BOARD OF EDUCATION OF OAK PARK ELEMENTARY SCHOOL DISTRICT NO. 97, an Illinois School District, pursuant to 105 ILCS 5/1-1 et. seq., located in the County of Cook, State of Illinois (“**District**”), and the VILLAGE OF OAK PARK, a home rule municipality located in the County of Cook, State of Illinois (“**Village**”).

RECITALS

WHEREAS, Article VII, Section 10, of the *Constitution of the State of Illinois*, Ill. Const., art. VII, sec.10(a), provides that in furtherance of the exercise of their powers, 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; and

WHEREAS, the Intergovernmental Cooperation Act provides that a public agency may jointly exercise or combine any power, privilege, function or authority with other public agencies, 5 ILCS 220/1 *et seq.*; and

WHEREAS, the Village is a home rule unit of local government, Ill. Const., art. VII, sec. 1, and a public agency, 5 ILCS 220/2, and the District is an Illinois School District, a unit of local government, and a public agency, 5 ILCS 220/2; and

WHEREAS, the Local Government Property Transfer Act, 50 ILCS 605/0.01 *et seq.*, further provides the Village and the District with the authority “to transfer all of the right, title and interest” held by either Party to the other Party upon such terms as are agreeable to the Parties; and

WHEREAS, the Village is the owner of the property commonly known as the Kenilworth Avenue Right-of-Way, located west of Holmes Elementary School, 508 N. Kenilworth Ave., Oak Park, Illinois, depicted in Exhibit A, attached hereto and incorporated herein by reference (“ROW”); and

WHEREAS, the District is the owner of the property commonly known as Hatch Elementary School, located at 1000 N. Ridgeland Ave., Oak Park, Illinois, depicted in Exhibit B, attached hereto and incorporated herein by reference (“Hatch Property”); and

WHEREAS, the District is currently planning a remodel, renovation, and expansion of Holmes Elementary School to add a one story, five classroom addition (“Holmes Project”); and

WHEREAS, the District requires access to, and potential control over the ROW for the construction of the Holmes Project; and

WHEREAS, the Village is the owner of certain water reservoir equipment currently located underneath the Hatch Property; and

WHEREAS, the Village has requested that the District grant an easement to the Village over the portion of the Hatch Property necessary for the operation, maintenance and repair of the water reservoir; and

WHEREAS, the Village and the District desire to enter into this MOU granting the District's request for access to the ROW and committing to the eventual granting of control over the ROW, as well as granting an easement over a portion of the Hatch Property to the Village; and

WHEREAS, the Village and the District shall enter into an intergovernmental agreement consistent with the terms of this MOU at a future date to accomplish the conveyances set forth herein.

NOW, THEREFORE, in consideration of the promises and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of such being hereby acknowledged, the Parties agree to the following:

I. Recitals Incorporated.

The above recitals are incorporated herein as though fully set forth.

II. District Rights and Responsibilities Related to the ROW.

A. The Village hereby grants the District permission to enter the ROW for the purpose of performing soil testing and related inspections ("Permitted Activities") necessary for the design of the Holmes Project. All soil testing and related inspections shall be at the District's sole cost and expense.

B. The District shall provide the Village reasonable notice at least forty-eight (48) hours in advance to the Village Manager or the Village Manager's designee prior to performing any Permitted Activities on the ROW.

C. The District shall be responsible for the Permitted Activities in the ROW, and shall restore the ROW to the same or better condition following such Permitted Activities within forty-eight (48) hours after the completion of said Permitted Activities.

D. The Village agrees to provide the District permanent access to the ROW through either a conveyance/dedication or easement should such be needed for the Holmes Project.

E. Should such a conveyance be necessary, the District shall be responsible for the costs to relocate all public and private utilities located in the ROW as determined by the Village Engineer. The District shall accept the conveyance/dedication of the applicable ROW in as-is condition subject to any and all environmental conditions. If the District determines that any environmental remediation of the ROW is necessary, it shall conduct said environmental remediation at its own cost and expense.

F. The District agrees to allow the Village to preserve a future Right-of-Way that is not impacted by the Holmes Project.

G. The District shall indemnify and hold the Village and its officers, officials, employees, agents and volunteers (“Indemnified Parties”) harmless from any and all claims, damages, causes of action, losses, expenses and liabilities of any type whatsoever, including attorney fees incurred by the Indemnified Parties, arising from, or in connection with the District’s negligent, reckless or intentional misconduct with regard to the Permitted Activities in the ROW. The District shall assume all potential liability for any injuries, deaths, losses, damages, claims or judgments of any nature whatsoever resulting from or in connection with the District’s Permitted Activities in the ROW.

H. The District shall maintain the insurance coverages as specified in Section III of this MOU.

I. The District’s Permitted Activities shall be in strict compliance with all applicable laws, statutes, codes, rules and regulations. The District acknowledges and agrees that its Permitted Activities in the ROW shall be fully at its own risk and the Village shall not be prejudiced in any way by the District’s at risk activities at the ROW.

J. Unless caused by either: (i) the negligent or willful acts or omissions of the Village, its officers, officials, employees, agents and volunteers; or (ii) any condition existing at the ROW not caused by the Permitted Activities: (A) the District forever releases and discharges the Village, its officials, agents, and employees from all claims, demands, damages, actions, or causes of action, arising out of this Agreement or the Permitted Activities pursuant to this Agreement; and (B) the Village and its assigns, hereby covenant not to sue or otherwise bring any action in law or equity against the District, its officials, employees, or agents for any claims, loss, damage, expense, debt or liability of any nature whatsoever as a result of this Agreement or the Permitted Activities pursuant to this Agreement.

III. Village Rights and Responsibilities Related to the Hatch Property.

A. The District agrees to grant the Village a permanent easement over a portion of the Hatch property to be determined so as to allow the Village to operate, maintain and repair the water reservoir.

B. The Village shall be responsible for all maintenance, repair and upkeep of the water reservoir.

C. The Village shall provide the District with reasonable notice before accessing the easement premises to perform service or repair work on the water reservoir.

D. The Village’s access to the easement premises shall not interfere with the District’s use of the Hatch Property.

E. The Village agrees to restore the easement premises to its original condition following any maintenance or repair work.

G. The Village agrees to indemnify and hold the District harmless against any and all claims, damages, causes of action, losses, expenses and liabilities of any type whatsoever,

including attorney fees incurred by the District, arising from or related to the Village's use of the easement premises.

F. The Village shall maintain the insurance coverages as specified in Section IV of this MOU or self-insurance in equal coverages.

IV. Insurance.

A. The Village agrees to maintain the following insurance coverage or self-insurance in equal coverage during the term of this MOU and any resulting Intergovernmental Agreement:

- Commercial General Liability - \$2,000,000
- Automobile Liability - \$1,000,000
- Workers Compensation - Statutory Amount

If applicable, the Village shall provide the District with certificates of insurance showing such coverage is in place and naming the District and its officers, officials, employees, agents and volunteers as additional insureds thereunder. The certificates shall further provide that such policies shall not be cancelled or non-renewed without providing the District with at least sixty (60) days prior written notice.

B. The District agrees to maintain the following insurance coverage during the term of this MOU:

- Commercial General Liability - \$2,000,000
- Automobile Liability - \$1,000,000
- Workers Compensation - Statutory Amount

The District shall provide the Village with certificates of insurance showing such coverage is in place and naming the Village and its officers, officials, employees, agents and volunteers as additional insureds thereunder. The certificates shall further provide that such policies shall not be cancelled or non-renewed without providing the College with at least sixty (60) days prior written notice.

V. Benefit of the Parties.

This MOU is entered into solely for the benefit of the contracting parties, and nothing in this MOU is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this MOU, or to acknowledge, establish or impose any legal duty to any third party.

VI. Notice.

Any notice required to be given by this Agreement shall be deemed sufficient if made in writing and sent by certified mail, return receipt requested, by personal service, or by facsimile or electronic transmission to the persons and addresses indicated below or to such other

addresses as either party hereto shall notify the other party of in writing pursuant to the provisions of this section:

Village:

Village Manager
Village of Oak Park
123 Madison Street
Oak Park, Illinois 60302
Facsimile: (708) 358-5101
Email: villagemanager@oak-park.us

District:

Superintendent
Oak Park School District No. 97
970 Madison Street
Oak Park, Illinois 60302
Facsimile: (708) 524-3019
Email: ckelley@op97.org

VII. Effective Date

The effective date of this MOU shall be the last date that one of the Parties executes this MOU.

VIII. Counterparts; Facsimile or PDF Signatures.

This MOU may be executed in counterparts, each of which shall be considered an original and together shall be one and the same MOU. A facsimile or PDF/email copy of this MOU and any signatures thereon will be considered for all purposes as an original.

IX. Intergovernmental Agreement

The Village and the District shall enter into an intergovernmental agreement consistent with the terms of this MOU on or before May 1, 2017 to accomplish the conveyance(s) of property set forth herein.

X. Entire Agreement

This MOU sets forth all the covenants, conditions and promises between the parties, and it supersedes all prior negotiations, statements or agreements, either written or oral, with regard to its subject matter. There are no covenants, promises, agreements, conditions or understandings between the parties, either oral or written, other than those contained in this MOU.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK-
SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the day and year first above written.

VILLAGE OF OAK PARK

**OAK PARK ELEMENTARY SCHOOL
DISTRICT NUMBER 97**

By: Cara Pavlicek
Its: Village Manager

By: Jim Gates
Its: Board President

Date: _____, 2016

Date: _____, 2016

ATTEST

ATTEST

By: Teresa Powell
Its: Village Clerk

By: Sheryl Mariner
Its: Board Secretary

Date: _____, 2016

Date: _____, 2016

DRAFT

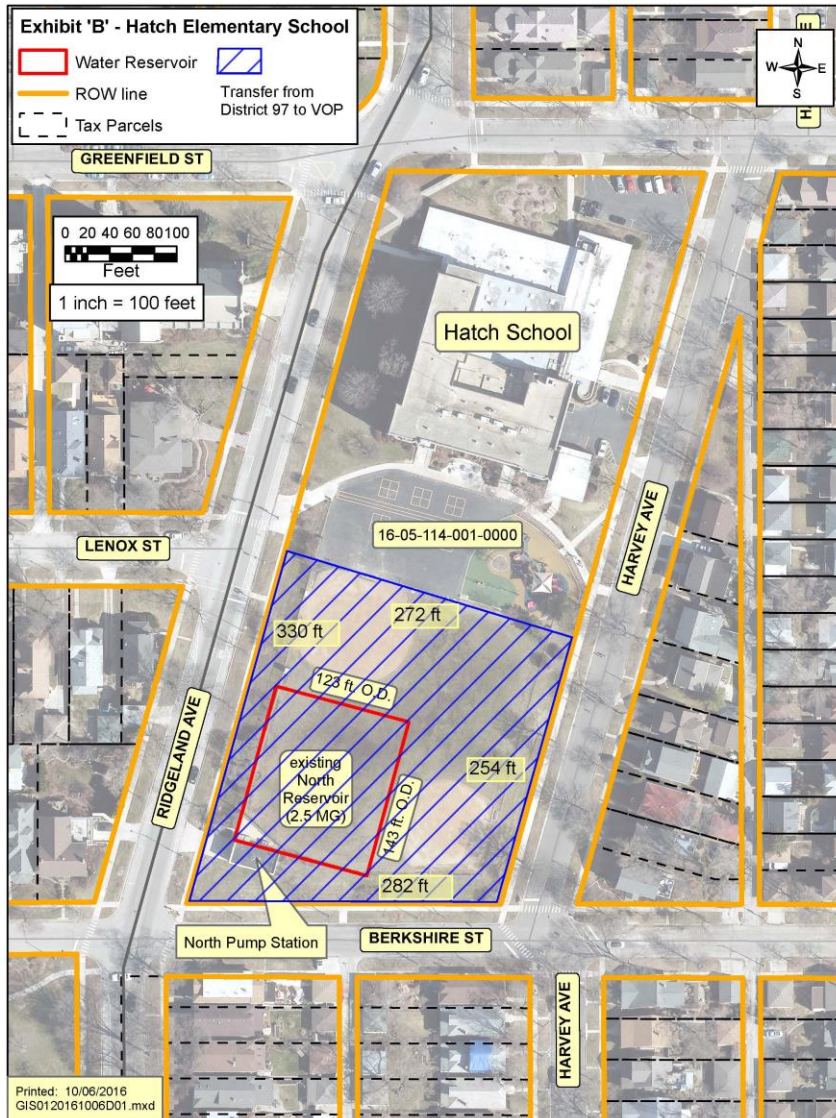
EXHIBIT A



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EXHIBIT B



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