

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into and made 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**”) (the District and the Village are sometimes referred to individually as a "Party" and collectively as the "Parties").

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 by reference (“ROW”); and

WHEREAS, the District is the owner of the property commonly known as Holmes Elementary School Playground, located west of Holmes Elementary School, 508 N. Kenilworth Ave., Oak Park, Illinois, depicted in Exhibit A attached hereto (“District Property”); and

WHEREAS, the District is currently planning a remodel, renovation, and expansion of Holmes Elementary School (“Holmes Project”) pursuant to the proposed timetable attached hereto and incorporated herein by reference as Exhibit B; and

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

WHEREAS, the Village requires control over a portion of the District Property currently being used as part of Kenilworth Avenue; 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 of property 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. Transfer of Title of the ROW

- A. The Village hereby agrees to transfer title of the ROW to the District.
- B. The District shall accept the conveyance/dedication of the 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 and the District waives and releases any and all claims it may have against the Village for any violation of any environmental laws with regard to the condition of the ROW upon the Village's acceptance of the conveyance/dedication of the ROW.
- C. 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 be required to obtain any and all permits from the Village related to public and private utility relocation and sidewalk construction in the ROW and shall reimburse the Village for the Village's construction oversight of said work.
- D. The District shall assume all potential liability and shall indemnify, hold harmless and defend the Village and its officers, officials, employees, agents and volunteers for any injuries, deaths, losses, damages, claims, causes of action, losses, expenses, liabilities or judgments of any nature, including attorneys' fees concerning the ROW on and after the District's acceptance of the conveyance/dedication of the ROW.

III. Transfer of Title of the District Property

- A. The District hereby agrees to transfer title of the District Property to the Village.
- B. The Village shall accept the conveyance/dedication of the District Property in as-is condition subject to any and all environmental conditions. If the Village determines that any environmental remediation of the District Property is necessary, it shall conduct said environmental remediation at its own cost and expense and the Village waives and releases any and all claims it may have against the District for any violation of any environmental laws with regard to the condition of the District Property upon the Village's acceptance of the conveyance/dedication of the District Property.

C. The Village shall assume all potential liability and shall indemnify, hold harmless and defend the District and its officers, officials, employees, agents and volunteers for any injuries, deaths, losses, damages, claims, causes of action, losses, expenses, liabilities or judgments of any nature, including attorneys' fees concerning the environmental condition of the District Property on and after the Village's acceptance of the conveyance/dedication of the District Property.

D. Following conveyance of the District Property to the Village, the Village shall provide the District with reasonable notice before accessing the District Property to perform service or repair work on Kenilworth Avenue, except in the event that emergency repairs are required. The Village shall take all reasonable steps, including scheduling work outside school hours, to ensure that the Village's use and operation of the District Property will not interfere with the District's use of Holmes Elementary School and Playground.

IV. Survey and Title Insurance

A. The District shall prepare an ALTA Plat of Survey, legal description and Plat of Vacation for the ROW. The Village shall prepare an ALTA Plat of Survey, legal description and Plat of Dedication of the District Property. Thereafter, the Village shall deliver to the District, a title commitment issued by a mutually acceptable title insurance company for an ALTA title insurance policy in the policy amount of \$10,000 with extended coverage, subject only to the exceptions listed in the title commitment for the ROW and District Property. All title insurance and closing costs for the conveyance of the ROW shall be the responsibility of the District and all title insurance and closing costs for the conveyance of the District Property shall be the responsibility of the Village. The commitment for title insurance for the ROW will be presumptive evidence of good and merchantable title as therein shown, subject only to the exceptions therein stated. If the title commitment discloses any unpermitted exceptions or if the Plat of Survey for the ROW shows any encroachments or other survey matters that are not acceptable to the District, the Village shall have said exceptions, survey matters or encroachments removed, or have the title insurer commit to either insure against loss or damage that may result from such exceptions or survey matters or insure against any court-ordered removal of the encroachments. The commitment for title insurance for the District Property will be presumptive evidence of good and merchantable title as therein shown, subject only to the exceptions therein stated. If the title commitment discloses any unpermitted exceptions or if the Plat of Survey for the District Property shows any encroachments or other survey matters that are not acceptable to the Village, the District shall have said exceptions, survey matters or encroachments removed, or have the title insurer commit to either insure against loss or damage that may result from such exceptions or survey matters or insure against any court-ordered removal of the encroachments. At Closing for the ROW, the Village shall furnish an Affidavit of Title covering the date of Closing, and shall sign any other customary forms required for issuance of an ALTA Title Insurance Policy. At Closing for the District Property, the District shall furnish an Affidavit of Title covering the date of Closing, and shall sign any other customary forms required for issuance of an ALTA Title Insurance Policy.

V. Closing and Possession

A. Closing shall take place within thirty (30) days from the execution of the Intergovernmental Agreement contemplated by this MOU, or at such other time as mutually

agreed by the Parties in writing. Closing shall take place at the escrow office of the title company that will issue the title insurance policy, or as shall be mutually agreed by the Parties. The Village shall deliver possession of the ROW to the District at Closing. The District shall deliver possession of the District Property to the Village at Closing.

VI. Grant of Easement

A. The District agrees to grant the Village permanent sidewalk and utility easements over a portion of the ROW as depicted in Exhibit A ("Easement Premises"). The District shall not alter, modify or otherwise change the Easement Premises without the express prior written permission of the Village as of the effective date of this MOU.

B. The District shall be responsible for all maintenance, repair and upkeep of any sidewalk easement area and the Village shall be responsible for the maintenance, repair and restoration of any utility easement area.

C. The Village shall provide the District with a forty-eight (48) hour notice before accessing the Easement Premises to perform service or repair work for its utilities, except in the event that emergency repairs are required.

D. The Village shall take all necessary action to limit its service or repair work within the Easement Premises so as to not interfere with the District's use of the ROW to be dedicated/conveyed pursuant to this Agreement.

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, hold harmless and defend the District 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 any utility easement area.

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

VII. Insurance.

The Village agrees to maintain the insurance coverage or self-insurance in equal coverage set forth below during the term of this MOU and any related utility easement. The District agrees to maintain the insurance coverage or self-insurance in equal coverage set forth below for any sidewalk easement:

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

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

VIII. 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.

IX. 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

X. Effective Date

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

XII. 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.

XIII. Intergovernmental Agreement

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

XIV. 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 PAGE INTENTIONALLY LEFT BLANK –
SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the dates indicated below.

VILLAGE OF OAK PARK

**OAK PARK ELEMENTARY SCHOOL
DISTRICT NUMBER 97**

By: Cara Pavlicek
Its: Village Manager

Date: _____, 2017

ATTEST

By: Holly Spurlock
Its: Board President

Date: _____, 2017

ATTEST

By: Vicki Scaman
Its: Village Clerk

Date: _____, 2017

By: Sheryl Mariner
Its: Board Secretary

Date: _____, 2017

EXHIBIT A



EXHIBIT B