

**INTERGOVERNMENTAL AGREEMENT FOR DESIGN, CONSTRUCTION AND
MAINTENANCE OF CERTAIN STORMWATER IMPROVEMENTS AT 660 BLACKHAWK
DRIVE, AND FOR STORMWATER FACILITY AND PARK CONVEYANCE AT WARWICK
AND TRAUBE**

THIS INTERGOVERNMENTAL AGREEMENT FOR DESIGN, CONSTRUCTION AND MAINTENANCE OF CERTAIN STORMWATER IMPROVEMENTS AT 660 BLACKHAWK DRIVE, AND FOR STORMWATER FACILITY AND PARK CONVEYANCE AT WARWICK AND TRAUBE (hereinafter referred to as the "Agreement"), is made this 5th day of July, 2018 ("Effective Date"), by and between the Village of Westmont, an Illinois municipal corporation, 31 W. Quincy Street, Westmont Illinois 60559, and the Westmont Park District, an Illinois unit of local government, 55 E. Richmond Street, Westmont Illinois 60559 (the "Park District"). The Village and the Park District are hereinafter sometimes individually referred to as a "Party" or collectively as the "Parties."

RECITALS

- A. Village is an Illinois municipal corporation, organized and operating pursuant to the Illinois Municipal Code, 65 ILCS 1/1 et seq. (the "Municipal Code").
- B. Park District is an Illinois park district created and operating pursuant to the Illinois Park District Code, 70 ILCS 1205 1/1 et seq. (the "Park District Code").
- C. Article VII, Section 10 of the Constitution of the State of Illinois authorizes units of local government to contract and 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 ordinance.
- D. Under said Constitutional provision, participating units of local government may use their credit, revenues, and other resources to pay costs related to intergovernmental activities.
- E. The Intergovernmental Cooperation Act, as amended (5 ILCS 220/1, *et seq.*) authorizes units of local government to exercise, combine, transfer, and enjoy jointly any power or powers, privileges, functions, or authority exercised or which may be exercised by any one of them, and to enter into intergovernmental agreements for that purpose.
- F. Park District owns the property commonly known as 660 Blackhawk Drive, Westmont, Illinois legally depicted and described in **Exhibit A** ("Subject Property").
- G. Park District is engaged in negotiations with FMC Aquatic Opportunities, Inc. ("FMC"), for the construction and lease of a 60,000-70,000 square foot natatorium (the "Project") on the Subject Property.
- H. The Project requires the construction of compensatory stormwater storage facilities on the Subject Property in order to meet the requirements of the Village ordinances (the "Stormwater Improvements").

- I. In order to ensure the success of the Project, which the Parties acknowledge will provide a public benefit, the Village has agreed to fund a portion of the cost to design and construct the Stormwater Improvements in an amount not to exceed one million dollars (\$1,000,000.00).
- J. In order to offset the loss of open space resulting from the Park District's dedication of the Subject Property for the Project, the Village has agreed to convey certain real property to the Park District on the terms set forth herein.
- K. The Village has acquired title and possession to certain real property depicted and legally described in **Exhibit B** for stormwater control and management purposes, on North Warwick Avenue (the "Warwick Properties"), which are located south of Fritz Werley Park owned and managed by the Park District, located on the southwest corner of Traube Avenue and Warwick Avenue.
- L. The Village intends to construct a stormwater detention basin (the "Warwick Detention Facility") on the Warwick Properties. Additionally, and if acquired as set forth herein, the Village also intends to include one additional privately owned parcel on Warwick Avenue, commonly known as the "418 Warwick Parcel," as part of the Warwick Detention Facility. The Village may construct the stormwater detention basin on the 418 Warwick Property as a separate phase from the construction of the Warwick Detention Facility, but upon completion, to incorporate the 418 Warwick Parcel as part of the Warwick Retention Facility.
- M. The Parties plan to acquire the 418 Warwick Parcel at the Village's cost and expense, and the Park District may attempt to assist to defray the Village's costs associated with the purchase, through application for an OSLAD Grant for up to fifty percent (50%) of the purchase price of the 418 Warwick Parcel as set forth herein.
- N. If the 418 Warwick Parcel is not acquired by the Village and Park District applies for and is awarded an OSLAD Grant, then the Park District will attempt to acquire the 418 Warwick Parcel using said OSLAD Grant, and the Village will reimburse the Park District for the balance of the purchase price and all associated customary and reasonable closing costs; and if grant application is unsuccessful, the Village will attempt to continue to acquire the 418 Warwick Parcel at its sole cost and expense.
- O. By a date certain after closing on the purchase of the 418 Warwick Parcel and after completion of construction of the Warwick Retention Facility, the Village intends to convey ownership of the Warwick Properties and the 418 Warwick Parcel to the Park District, and retain all duties related to the Warwick Detention Facility including the duty to construct, operate, maintain, repair and replace all elements thereof and all related properties and facilities.
- P. Once the Warwick Detention Facility is built and the Warwick Properties and the 418 Warwick Parcel are conveyed to the Park District, the Park District intends to incorporate them into Fritz Werley Park. The Park District may utilize the Warwick Properties and the 418 Warwick Parcel for passive and active park purposes and may install improvements to said properties, provided such purposes and improvements do not interfere with the stormwater management improvements or functionality of those properties.

- Q. In the event that the Parties are unsuccessful in acquiring the 418 Warwick Parcel despite their good faith efforts to do so, then the remaining rights and obligations of the Parties under this Agreement shall continue in full force and effect and the Village shall continue using commercially-reasonable efforts to acquire the 418 Warwick Parcel so long as this Agreement is in effect.

NOW THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged by the Parties, the Village and the Park District agree as follows:

SECTION ONE. RECITALS. The foregoing recitals are accurate and fully incorporated into this Agreement by this reference thereto as if fully set forth in this Section One.

SECTION TWO—DESIGN AND CONSTRUCTION OF STORMWATER IMPROVEMENTS.

- A. **Generally:** Pursuant to the terms of the pending agreement between the Park District and FMC, FMC is required to cause the Stormwater Improvements to be constructed by its contractors in strict accordance with the Plans and Specifications attached to said agreement and in accordance with all applicable laws and regulations.
- B. **Permitting:** The Park District, with such assistance and cooperation as the Park District shall require from FMC, shall petition the Village of Westmont, DuPage County, the State of Illinois, and/or any other agency with jurisdiction over the Project to secure any and all permits required by law from any governmental agency having jurisdiction over the Subject Property for the Project.,
- C. **Construction:** It is understood and agreed by the Parties that once the Project is permitted and approved, FMC intends to promptly proceed with construction of the Stormwater Improvements.
- D. **Payment of Design and Construction Costs:** The Parties acknowledge and agree that the Village has committed to provide a cash reimbursement to the Park District for the design and construction costs of the Stormwater Improvements by FMC, up to one million dollars (\$1,000,000.00). Under the terms of the agreement between the Park District and FMC, as the work progresses, FMC's contractors supplying labor or materials for the construction of the Stormwater Improvements will submit pay requests to the Park District, including lien waivers and sworn statements on forms acceptable to FMC and the Park District. FMC is to forward the pay request, including all supporting documentation, to the Park District for review and approval. Following approval of the pay requests by the Park District, the Park District shall submit the same to the Village. Not more than sixty (60) days following the Village's receipt of each pay request and the accompanying documentation required hereunder, the Village shall pay the Park District the amount of the approved pay request, and immediately following receipt of said payment, the Park District will pay the contractors the full amount of approved pay requests. The Parties shall continue this process until the Village has provided payments for the design and construction of the Stormwater Improvements in the total amount of one million dollars (\$1,000,000.00) The Village shall have no obligation to make payments in excess of one million dollars (\$1,000,000.00) towards the design and construction of the Stormwater Improvements. Any remaining costs for the design and construction of the Stormwater Improvements shall be the responsibility of the FMC in accordance with the terms of their agreement with the Park District.

- E. **Maintenance:** FMC will be solely responsible for all routine maintenance, capital maintenance and repairs, and the re-construction or replacement of all or any component of the Stormwater Improvements in accordance with their agreement and applicable laws. Neither the Village nor the Park District shall have maintenance obligations for the Stormwater Improvements.

SECTION THREE—ACQUISITION OF 418 WARWICK PARCEL.

As promptly after the Effective Date as practicable, the Village shall use commercially-reasonable efforts to enter into a contract to purchase the 418 Warwick Parcel. If successful, the Village shall be responsible for the full purchase price and all costs associated with closing.

In the event that the Village is unsuccessful in purchasing the 418 Warwick Parcel, the Park District shall apply for an OSLAD acquisition grant within a reasonable time period after notice from the Village that its acquisition efforts have failed in an amount not to exceed fifty percent (50%) of the estimated fair market value of the 418 Warwick Parcel. The Park District shall order and obtain an MAI appraisal in a form acceptable to and required by the Illinois Department of Natural Resources to accompany the grant application, and secure any and all other items required to accompany the grant application. Upon receipt of the appraisal, the Parties shall jointly commence negotiations with the owner of the 418 Warwick Parcel. Upon completion of the negotiations, if the grant is awarded, the Park District will use good faith efforts to enter into a contract for purchase of the 418 Warwick Parcel. The Village shall pay all customary and reasonable closing costs when due and shall pay any and all customary and reasonable relocation costs if applicable and required by law. The Village and the Park District shall cooperate on the performance of all pre-acquisition activities required by the grant agreement. The Park District and the owner of the 418 Warwick Parcel shall close as soon as practicable. At closing on the purchase, the Village shall reimburse the Park District a sum equal to the portion of the purchase price not paid for with grant proceeds, and all customary and reasonable closing costs whether or not paid at or prior to closing by the Park District or any third party. In the event that: (i) the Parties reach agreement with the owner on a purchase price for the 418 Warwick Parcel; (ii) the Parties and the owner of the 418 Warwick Parcel are able to close the purchase before IDNR makes its grant award determination; and (iii) the applicable grant regulations permit, then at closing, the Village shall pay the Park District the purchase price and all customary and reasonable costs of the transaction and the Park District shall close on the purchase. If the grant is subsequently awarded to the Park District, the Park District will remit all grant proceeds to the Village within thirty (30) days of receipt of same.

If the grant is not awarded, the Village will continue to use commercially-reasonable efforts to enter into a contract to purchase the 418 Warwick Parcel so long as this Agreement is in effect, and the Village will be responsible for the full purchase price and all costs associated with the closing. At closing on its purchase, or within thirty (30) days thereafter, the Village will convey the 418 Warwick Parcel to the Park District via quit claim deed at no cost to the Park District on terms and conditions mutually agreed to by the Parties.

Under no circumstances shall the Village or Park District be required by this Agreement or otherwise to acquire the 418 Warwick Parcel through the use of its eminent domain powers.

In the event that the Parties, or either of them, are unable to purchase the 418 Warwick Parcel despite their commercially-reasonable efforts to do so, then the rights and obligations set forth in this Agreement

pertaining to the 418 Warwick Parcel shall be postponed until such acquisition occurs, but the remaining rights and obligations of the Parties under this Agreement shall continue in full force and effect.

SECTION FOUR—CONSTRUCTION AND MAINTENANCE OF WARWICK DETENTION FACILITY

- A. **Construction of Warwick Detention Facility:** Upon the Effective Date of this Agreement, the Village shall continue its efforts to complete the final engineering, permitting, bidding and award of construction contracts, and the construction of the Warwick Detention Facility. The Village shall use commercially-reasonable efforts to complete this project within a reasonable time period. The Village shall construct the Warwick Detention Facility at its sole cost and expense.

- B. **Maintenance of Warwick Detention Facility:** The Village shall maintain the Warwick Detention Facility, including but not limited to, all stormwater improvements, in perpetuity for so long as the Warwick Properties and the 418 Warwick Parcel are owned by the Park District. Said maintenance duties shall survive conveyance of the Warwick Properties and 418 Warwick Parcel to the Park District. Said maintenance duties shall survive termination or expiration of this Agreement for any reason. The Park District shall grant an easement to the Village to perform said maintenance work in a form reasonably acceptable to the Parties.

- C. **Village-Park District Stormwater Maintenance Agreement:** The Village and the Park District previously entered into a Stormwater Maintenance Agreement (“Stormwater Maintenance Agreement”) that the Parties acknowledge is out of date and requires revision. Promptly after the Effective Date, the Parties shall meet to amend the Stormwater Maintenance Agreement. It is the Parties’ intention that the Warwick Detention Facility may become subject to said agreement upon terms mutually acceptable to the Parties. In the event that, for any reason, the Parties do not agree to make the Warwick Detention Facility subject to the Stormwater Maintenance Agreement, the terms and conditions of this Agreement pertaining to the maintenance of the Warwick Detention Facility and related improvements, shall apply.

SECTION FIVE—CONVEYANCE OF WARWICK PROPERTIES TO PARK DISTRICT AND USE BY PARK DISTRICT

Upon completion of the Warwick Detention Facility, the Village shall convey the Warwick Properties to the Park District pursuant to the terms and conditions of the real estate purchase agreement, to which the Parties shall reasonably agree . Said conveyance shall occur no later than ninety (90) days after the completion of the Warwick Detention Facility (including the 418 Warwick Parcel, if applicable).

The Park District may use the Warwick Properties and the 418 Warwick Parcel, if acquired, for passive and active park purposes and activities, provided that such purposes and activities do not interfere with the stormwater management performance of the Warwick Detention Facility or cause damage to the Warwick Detention Facility improvements. The Park District may install permanent and temporary park improvements on the Warwick Properties and the 418 Warwick Parcel, if acquired, provided that such improvements to not interfere with the stormwater management performance of the Warwick Detention Facility or cause damage to the Warwick Detention Facility improvements. The Park District shall reimburse the Village for costs incurred by the Village to repair any damage caused by Park District uses or operations to the Warwick Detention Facility improvements or its stormwater management performance.

SECTION SIX—INDEMNIFICATION AND INSURANCE

- A. Village hereby defends, indemnifies and agrees to save harmless the Park District, the Park District's board members, officers, employees, agents and volunteers (“Park District Indemnitees”) from and against all claims, losses, liabilities, damages, and expenses (including but not limited to reasonable attorneys', paralegals', or experts' fees) that arise on the Warwick Properties, the 418 Warwick Property or the Warwick Stormwater Facility from or in connection with (i) the possession, use, occupation, management, repairs, maintenance or control of the Stormwater Improvements or any portion thereof, or (ii) any act or omission of Village, its employees, agents, contractors, licensees, or invitees. Village shall, at its own cost and expense, defend any and all actions which may be brought against any of the Park District Indemnitees with respect to the foregoing, with counsel approved by the Park District. With regard to design and construction of the Warwick Detention Facility, the Village shall pay, satisfy and discharge any and all judgments, orders and decrees, including but not limited to any interest, penalties, fees, charges, and costs which may be sought or recovered against any of the Park District Indemnitees in connection with the foregoing. The obligations on the part of the Village to indemnify, defend, save and hold harmless the Park District shall survive the expiration or termination of this Agreement.
- B. Park District hereby defends, indemnifies and agrees to save harmless the Village, the Village's board members, officers, employees, agents and volunteers (“Village Indemnitees”) from and against all claims, losses, liabilities, damages, and expenses (including but not limited to reasonable attorneys', paralegals', or experts' fees) that arise on the Warwick Properties, the 418 Warwick Property or the Warwick Detention Facility from or in connection with (i) the possession, use, occupation, management, repairs, maintenance or control of the Warwick Properties and/or the 418 Warwick Property or any portion thereof by the Park District, its employees, agents, contractors, licensees, invitees or guests, or (ii) any act or omission of the Park District, its employees, agents, contractors, licensees, or invitees. Park District shall, at its own cost and expense, defend any and all actions which may be brought against any of the Village Indemnitees with respect to the foregoing, with counsel approved by the Village. With regard to any improvements or work performed by the Park District on the Warwick Properties and/or the 418 Warwick Parcel, the Park District shall pay, satisfy and discharge any and all judgments, orders and decrees, including but not limited to any interest, penalties, fees, charges, and costs which may be sought or recovered against any of the Village Indemnitees in connection with the foregoing. The obligations on the part of the Park District to indemnify, defend, save and hold harmless the Village shall survive the expiration or termination of this Agreement.
- C. The Village shall maintain liability insurance in reasonable amounts, and with reputable companies as are reasonably acceptable to the Park District and/or the risk management association of which it is a member, to protect the Park District and the Village against claims arising directly or indirectly out of or in connection with the Village's participation in the construction of the Warwick Detention Facility pursuant to this Agreement. The Village shall name the Park District Indemnitees as additional insureds and prior to commencement of any work related to design and construction of the Warwick Detention Facility, shall provide to the Park District a copy of a Certificate of Insurance evidencing the same.
- D. Upon acquiring ownership of the Warwick Properties and the 418 Warwick Parcel, the Park

District shall maintain liability insurance in reasonable amounts, and with reputable companies as are reasonably acceptable to the Village and/or the risk management association of which it is a member, to protect the Village and the Park District against claims arising directly or indirectly out of or in connection with the ownership and use of said properties by the Park District, its agents, invitees and guests. The Park District shall name the Village Indemnitees as additional insureds and shall provide to the Village a copy of a Certificate of Insurance evidencing the same.

The Parties shall jointly require that all contractors and subcontractors hired by anyone to perform any work on the Project shall maintain insurance in the types and amounts specified in Exhibit C, attached to and incorporated as part of this Agreement, and with reputable companies as are reasonably acceptable to the Parties, and/or the risk management association of which either is a member, to protect the Park District and the Village against claims arising directly or indirectly out of, or in connection with, the Village's contractors' construction activities or the Village's use of the Park District's property, whether before or after conveyance of the Warwick Properties and 418 Warwick, pursuant to this Agreement. The Village shall cause any contractor or subcontractor performing any services pertaining to the Project on the Property to name the Park District Indemnitees as additional insureds on all required insurance policies, and prior to commencing any such activity shall provide to the District a copy of a Certificate of Insurance evidencing the same.

SECTION SEVEN—DEFAULT AND REMEDIES.

- A. If any one or more of the following events occur, said event or events shall hereby be classified as a "Village Default":
1. Village fails to pay or reimburse the Park District for the Village's share of expenses for the Stormwater Improvements or fails to pay for the purchase of the Warwick Properties or the 418 Warwick Parcel, in accordance with the terms and conditions of this Agreement, and such failure continues for thirty (30) days after written notice from the Park District specifying the Village Default; provided, however, that if the Village Default is of such nature that the same cannot reasonably be performed within such thirty (30) day period, such Village Default shall be deemed to have been cured if the Village commences such performance within said thirty (30) day period and thereafter diligently undertakes to complete the same.
 2. Village fails or refuses to convey the Warwick Properties or 418 Warwick Parcel when required to do so under the terms of this Agreement, and such failure continues for thirty (30) days after written notice from the Park District and such failure continues for thirty (30) days after written notice from the Park District specifying the Village Default; provided, however, that if the Village Default is of such nature that the same cannot reasonably be performed within such thirty (30) day period, such Village Default shall be deemed to have been cured if the Village commences such performance within said thirty (30) day period and thereafter diligently undertakes to complete the same.
 3. Village fails to perform or observe any terms and conditions of this Agreement, and such

failure shall continue for thirty (30) days after written notice from Park District and such failure continues for thirty (30) days after written notice from the Park District specifying the Village Default; provided, however, that if the Village Default is of such nature that the same cannot reasonably be performed within such thirty (30) day period, such Village Default shall be deemed to have been cured if the Village commences such performance within said thirty (30) day period and thereafter diligently undertakes to complete the same.

- B. Should a Village Default occur, Park District may pursue any or all of the following remedies:
1. Park District may terminate this Agreement by giving fourteen (14) days written notice of such termination to Village, whereupon this Agreement shall automatically cease and terminate. If Park District elects to terminate this Agreement, everything contained in this Agreement on the part of Park District to be done and performed shall cease without prejudice, subject, however, to the right of Park District to recover from Village all sums due and accrued pursuant to this Agreement plus all other losses or damages arising from such Village Default.
 2. Park District shall have the option, upon ten (10) days written notice to Village, to cure said Village Default for the account of and at the expense of Village. No such notice shall be required for emergency repairs. The Village shall, within ten (10) days of Park District's notice to Village that Park District has cured the Village Default, which notice shall include detailed proof of the costs incurred by the Park District to cure said Village Default, reimburse all of the Park District's costs to cure said Village Default within thirty (30) days .
 3. Park District shall have the right of injunction and the right to invoke any remedy allowed at law or in equity and other remedies where not provided for herein. Mention in this Agreement of any particular remedy shall not preclude Park District from any other remedy, in law or in equity.
 4. Nothing contained herein shall prevent the enforcement of any claim Park District may have against Village for breach or anticipatory breach by Village of any of the covenants, terms or provisions hereof.
- C. The rights and remedies of Park District set forth herein shall be in addition to any other right and remedy now or hereafter provided by law or equity and all such rights and remedies shall be cumulative. No action or inaction by Park District shall constitute a waiver of a Village Default and no waiver of Village Default shall be effective unless it is in writing, signed by Park District.
- D. If any one or more of the following events occur, said event or events shall hereby be classified as a "Park District Default":
1. The failure of the Park District to make timely payments to contractors for Stormwater Improvements after the Park District has received payments therefor from the Village, and such failure continues for thirty (30) days after written notice from the Village specifying the Park District Default; provided, however, that if the Park District Default is of such nature that the same cannot reasonably be performed within such thirty (30)

day period, such Park District Default shall be deemed to have been cured if the Park District commences such performance within said thirty (30) day period and thereafter diligently undertakes to complete the same.

2. The Park District fails to perform or observe any terms and conditions of this Agreement, and such failure shall continue for thirty (30) days after written notice from Village and such failure continues for thirty (30) days after written notice from the Village specifying the Park District Default; provided, however, that if the Park District Default is of such nature that the same cannot reasonably be performed within such thirty (30) day period, such Park District Default shall be deemed to have been cured if the Park District commences such performance within said thirty (30) day period and thereafter diligently undertakes to complete the same.

E. Should a Park District Default occur, Village may pursue any or all of the following remedies:

1. Village may terminate this Agreement by giving fourteen (14) days written notice of such termination to Park District, whereupon this Agreement shall automatically cease and terminate. If Village elects to terminate this Agreement, everything contained in this Agreement on the part of Village to be done and performed shall cease without prejudice, subject, however, to the right of Village to recover from Park District all sums due and accrued pursuant to this Agreement plus all other losses or damages arising from such Park District Default.
2. Village shall have the option, upon ten (10) days written notice to Park District, to cure said Park District Default for the account of and at the expense of Park District. No such notice shall be required for emergency repairs. The Park District shall, within ten (10) days of Village's notice to Park District that Village has cured the Park District Default, which notice shall include detailed proof of the costs incurred by the Village to cure said Park District Default, reimburse all of the Village's costs to cure said Park District Default within thirty (30) days.
3. Village shall have the right of injunction and the right to invoke any remedy allowed at law or in equity and other remedies where not provided for herein. Mention in this Agreement of any particular remedy shall not preclude Village from any other remedy, in law or in equity.
4. Nothing contained herein shall prevent the enforcement of any claim Village may have against Park District for breach or anticipatory breach by Park District of any of the covenants, terms or provisions hereof.

F. The rights and remedies of Village set forth herein shall be in addition to any other right and remedy now or hereafter provided by law or equity and all such rights and remedies shall be cumulative. No action or inaction by Village shall constitute a waiver of a Park District Default and no waiver of Park District Default shall be effective unless it is in writing, signed by Village.

SECTION EIGHT—MUTUAL COOPERATION.

IN WITNESS WHEREOF the Parties hereto have set their respective signatures as of the day and year first above written.

WESTMONT PARK DISTRICT

VILLAGE OF WESTMONT

Board President

Mayor

ATTEST:

ATTEST:

Board Secretary

Village Clerk

EXHIBIT A
MAP AND LEGAL DESCRIPTION OF 660 PLAZA DRIVE (SUBJECT PROPERTY)

EXHIBIT B
MAP AND LEGAL DESCRIPTION OF VILLAGE-OWNED PROPERTIES ON WARWICK
AVENUE

EXHIBIT C

**INSURANCE REQUIREMENTS FOR CONTRACTORS
ON WARWICK STORMWATER FACILITY**