

**WHEATON PARK DISTRICT**

**ORDINANCE NO. 2014-05**

**Ordinance Approving and Authorizing Execution of  
Funding and Reimbursement Agreement for the  
Construction of a Sensory Garden and Playground Between  
the Wheaton Park District and Play for All Playground and Garden**

\* \* \* \*

**WHEREAS**, the Wheaton Park District (“Park District”) is a unit of local government operating pursuant to the Illinois Park District Code, 70 ILCS 1205/1-1 et seq.; and

**WHEREAS**, pursuant to Section 8-1 of the Park District Code [70 ILCS 1205/8-1] the Park District has the power and authority to contract in furtherance of any of its corporate purposes, including but not limited to funding the development, construction and maintenance of recreational improvements; and

**WHEREAS**, the Play for All Playground and Garden (“Foundation”) is an Illinois not-for-profit organization whose purposes include supporting recreational opportunities for disabled children; and

**WHEREAS**, the Park District leases approximately 36.4 acres of real estate (the “Leased Premises”) from the DuPage County Forest Preserve District (the Forest Preserve District) pursuant to a lease between the Park District and the Forest Preserve District dated October 16, 2013 (the “Lease”); and

**WHEREAS**, the Park District and the Foundation desire to collaborate on the financing, development, construction and maintenance of a new, fully inclusive sensory garden and barrier-free playground to be located on the Leased Premises to enhance the recreational opportunities for the disabled residents of the community and the State of Illinois; and

**WHEREAS**, the Foundation has determined that it is in its best interests and wholly in furtherance of its express purposes of providing support for recreational improvements that benefit disabled children to donate money to the Park District for the development and construction of the Project; and

**WHEREAS**, the Foundation and the Park District desire to enter into a Funding and Reimbursement Agreement to specify the terms and conditions under which the Foundation will donate funds for the Project; and

**WHEREAS**, The Park District has determined that it is in the public interest to enter into the Funding and Reimbursement Agreement for the Construction of a Sensory Garden and Playground between the Wheaton Park District and Play for All Playground and Garden (the “Funding and Reimbursement Agreement”) in the form attached hereto as Exhibit A in order to provide additional benefits to the residents of the Park District

**NOW, THEREFORE, IT IS HEREBY ORDAINED** by the Board of Park Commissioners (“Park Board”) of the Wheaton Park District, DuPage County, Illinois as follows:

**Section 1.** All of the foregoing recitals are hereby incorporated in and made a part of this Ordinance.

**Section 2.** The proposed form, terms, and provisions of the Funding and Reimbursement Agreement for the Construction of a Sensory Garden and Playground between the Wheaton Park District and Play for All Playground and Garden, providing for the purposes set forth above, as presented to the Park Board at this meeting, are approved as provided herein.

**Section 3.** The President or Vice President and Secretary of the Park Board are hereby authorized and directed to execute the Funding and Reimbursement Agreement, in the name of, and on behalf of, the Park District, and under its corporate seal, and to deliver a copy thereof to Play for All Playground and Garden.

**Section 4.** This Ordinance shall be in full force and effect immediately upon its passage and approval. All prior ordinances or parts of prior ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Passed this 16 day of April, 2014.

ROLL CALL VOTE:

AYES: Luetkehans, Halgeison, Mel, Morrill, Schobel, VanderSchaaf, Kelly

NAYS: Ø

ABSENT: Ø

[Signature], [Vice] President  
Board of Park Commissioners

Attested and filed this 16 day of April, 2014.

[Signature]  
Michael Benard, Secretary  
Board of Park Commissioners

**EXHIBIT A**

**FUNDING AND REIMBURSEMENT AGREEMENT FOR THE  
CONSTRUCTION OF A SENSORY GARDEN AND PLAYGROUND BETWEEN THE  
WHEATON PARK DISTRICT AND PLAY FOR ALL PLAYGROUND AND GARDEN**

**FUNDING AND REIMBURSEMENT AGREEMENT FOR THE  
CONSTRUCTION OF PHASE I OF A SENSORY GARDEN AND PLAYGROUND  
BETWEEN THE WHEATON PARK DISTRICT AND PLAY FOR ALL PLAYGROUND  
AND GARDEN**

**THIS AGREEMENT** ("Agreement"), made this 16<sup>th</sup> day of April, 2014 (the "Effective Date") between the Wheaton Park District, an Illinois unit of local government, 102 E. Wesley Street, Wheaton, Illinois (the "Park District") and the Play for All Playground and Garden, an Illinois not for profit organization, 855 West Prairie Avenue, Wheaton, Illinois (Play for All"). The Park District and Play for All are sometimes referred to herein as Party or collectively as "Parties."

**Recitals**

- A. The Park District currently leases 36.4 acres of real estate from the DuPage County Forest Preserve District (the Forest Preserve District) pursuant to a lease between the Park District and the Forest Preserve District dated October 16, 2013 (the "Lease"). The leased property is located immediately north of Warrenville Road and east of Naperville Road on property owned by the Forest Preserve District (the "Leased Premises"). A copy of the Lease is attached hereto as **Exhibit A** and incorporated herein by this reference.
- B. Play for All was created to, among other things, raise funds to develop, construct and maintain recreational improvements, including a sensory garden and barrier free playground on the Leased Premises and otherwise raise funds for the promotion of recreational opportunities for disabled children.
- C. The Parties desire to collaborate on the financing, development and construction of Phase I of a new, fully inclusive sensory garden and playground to be located on the Leased Premises to enhance the recreational opportunities for the community and the residents of the State of Illinois (the "Project"), in strict accordance with the terms and conditions of this Agreement and plans and specifications entitled Lucent Proposed Improvements dated March 2011, attached as **Exhibit B** and incorporated herein by this reference (the "Plans").

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Park District and Play for All, the Parties do hereby agree as follows.

1. **FUNDING.** Play for All hereby agrees to pay or reimburse the Park District the sum of Three Hundred Sixty Seven Thousand, One Hundred Thirty Dollars (\$367,130.00), which amount constitutes the full cost of all materials required to construct the Project (the "Construction Fee"), according to the funding procedure outlined in Sections 1 and 2 of this Agreement. In exchange for its receipt of the Construction Fee from Play for All, and subject to and in accordance with the terms and conditions set forth in Sections 1 and 2 of this Agreement, the Park District agrees to cause the Project to be constructed and shall not use funds from Play for All for any other purpose. The Parties anticipate constructing the Project in various construction phases ("Construction Phase(s)"). The budget for each Construction Phase is set forth in Exhibit C. The Park District shall have no duty to commence construction of any

Construction Phase until Play for All has remitted cash or bona fide pledges to the Park District in an amount equal to the budgeted cost for said Construction Phase.

2. REIMBURSEMENT OF CONSTRUCTION EXPENSES.

A. *Play for All Payments to the Park District.* Prior to execution of this Agreement, Play for All has solicited and received pledges and funds dedicated to construction of the Project. Play for All shall continue to secure donations and pledges as defined below to fund construction of the Project until it has received and transmitted to the Park District cash in an amount equal to the Construction Fee. Within fourteen (14) days of the Effective Date, Play for All shall remit to the Park District all of the funds it has received from donors for construction of the Project prior to execution of this Agreement. Play for All shall remit to the Park District all future donated funds dedicated to construction of the Project, within thirty (30) days of receipt of said donated funds. As Play for All receives each bona fide pledge of funds dedicated and restricted to construction of the Project (“Pledge”), Play for All shall cause its Treasurer to immediately notify the Park District President and Executive Director in writing of the Pledge, the Pledge amount, and the time of payment specified in the Pledge. A copy of the Pledge shall be forwarded to the Park District President and Executive Director with the Notice. The Park District shall determine in its sole discretion whether the Pledges sufficiently demonstrate a bona fide obligation of the party making the Pledge. If Play for All has not paid or reimbursed the Park District the full amount of the Construction Fee on or before December 31, 2018 due to a delay in Play For All’s receipt of payment on a Pledge, Play for All shall contact the Park District and the Park District shall establish a revised reimbursement schedule. It is expressly understood and agreed by Play for All that the Park District may choose not to advance funds for the Improvements if, in the Park District’s sole discretion, it finds that reimbursement from Play for All is uncertain or unlikely. In such event, the Parties agree to confer on alternative means of funding construction of the Improvements; provided that Play for All shall remain fully obligated to pay the Park District the full amount of the Construction Fee set forth above in Section 1.

B. *Park District’s Initial Funding of Construction.* The Park District shall have no duty to commence construction of any Construction Phase of the Project unless and until it has received cash or Pledges from Play for All in an amount equal to the budgeted cost of said Construction Phase. The Park District may, however, in its sole discretion, advance some or all of the costs of construction of the Project from its funds (“Park District Funds”) in an amount not to exceed the amount of Pledges that have been reported and submitted to the Park District by Play for All.

C. *Record Keeping.* Play for All shall maintain complete and accurate records of all: (i) donations received for construction of the Project; (ii) payments to the Park District for construction of the Project; (iii) Pledges received for construction of the Project. Play for All shall submit to the Park District a written report on the first day of each month that this Agreement is in effect, identifying the cash and Pledges received to date and for the month of the report, by source and date, and the amounts paid to the Park District to date and for the month of the report. The Park District shall keep complete records of all costs and expenses associated with and paid by the Park District for the construction of the Improvements and shall provide Play for All a monthly account of same.

3. NEW CONSTRUCTION/MAINTENANCE OF IMPROVEMENTS. Upon completion of the Project construction, the Park District shall perform all routine operating inspection repair and maintenance of the Project at its sole cost and expense. Play for All shall fund any new additions, upgrades, expansions beyond the scope of the existing Project following the same process as outlined in Sections 1 and 2 above or as otherwise agreed to by the Parties. Play for All shall also fund all future capital repair, replacement and improvements in excess of \$5,000. The Park District will provide Play for All with a quarterly report of the expenses associated with and paid by the Park District for the same.

4. DURATION; TERMINATION. This Agreement shall commence upon the Effective Date and shall expire upon the earlier of: (i) Park District's receipt of payment in full of the Construction Fee from Play for All; (ii) notice of default to the defaulting Party for a violation or breach of the terms and conditions of this Agreement and continuation of such violation or breach for a period of ten (10) days after notice thereof is given by the non-defaulting Party to the defaulting Party (provided that if the nature of the breach is such that it cannot be cured within said ten (10) day period, the defaulting Party shall be deemed to have cured same upon completion of the corrective action if within said ten (10) day period, it commences and diligently pursues such cure and thereafter completes same within such time as is reasonable under the circumstances); and (iii) by the Park District upon one hundred eighty (180) days prior written notice to Play for All.

In the event of termination or expiration of this Agreement for any reason, all right, title and interest to any Improvements shall vest in the Park District and Play for All shall not be entitled to any reimbursement of the Construction Fee. In the event the Park District uses any fees paid to the Park District from Play for All pursuant to this Agreement for any purpose other than the construction of the Improvements or maintenance of the same, then the Park District shall, after notice from Play for All, immediately reimburse Play for All for fees utilized for other purposes.

5. OWNERSHIP OF IMPROVEMENTS. The Park District shall at all times retain sole legal title to the Improvements, and upon request by Park District, Play for All shall convey, transfer, and quitclaim all of its rights, title and interest to the Improvements.

6. NO WAIVER. The waiver by Park District of any breach or default under any provisions of this Agreement shall not be deemed to constitute a waiver of such provision for any subsequent breach or default of the same or any other provision. The acceptance of any payment by Park District shall not be deemed to constitute a waiver of any prior occurring breach or default by Vendor of any provision of this Agreement regardless of the knowledge of Park District of such breach or default at the time of its acceptance of such payment.

7. PLAY FOR ALL INSURANCE. Play for All shall obtain and maintain Officers and Directors Liability Insurance coverage and/or fidelity bonds to protect against any wrongful acts by Play for All's officers directors, employees and volunteers. Such insurance shall include coverage for any losses incurred due to a fraudulent act or breach of fiduciary duty by an officer, director, employee or volunteer. In lieu of insurance, Play for All may procure a bond or bonds guaranteeing payment of any losses arising from such wrongful acts. The terms and conditions of all insurance coverages and bonds required by this section shall be subject to the Park District's

prior written approval. Play for All shall provide for 30 days' written notice to the Park District prior to the cancellation or material change of any insurance or bond referred to therein. Written notice to the Park District shall be by certified mail, return receipt requested.

8. NO THIRD PARTY BENEFICIARY. This Agreement is entered into solely for the benefit of the Park District and Play for All, nothing in this Agreement 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 Agreement.

9. ENTIRE AGREEMENT / MODIFICATION/ AGREEMENT CONSTRUCTION/ NON-ASSIGNMENT. This Agreement is the entire understanding and agreement of the Parties with respect to the subject matter herein contained, and supersedes all prior and contemporaneous agreements with respect to said subject matter, oral or written. This Agreement may be modified only in writing signed by both Parties. The rule of contract law that any ambiguity in an agreement shall be construed against the party drafting the Agreement shall not be applicable to construction of this Agreement, as the Parties acknowledge they have been represented by counsel in regard to the negotiation and finalizing of this Agreement. This Agreement is non-assignable in whole or in part by Play for All, and any assignment shall be void without the prior written consent of Park District.

10. GOVERNING LAW. This Agreement shall be governed by and its provisions construed in accordance with the laws of the State of Illinois.

11. SEVERABILITY. A final determination by a court of competent jurisdiction that any provision of this Agreement is invalid shall not affect the validity of any other provision, and any provision so determined to be invalid shall, to the extent possible, be construed to accomplish its intended effect.

12. NOTICE. Any notice required or permitted to be given pursuant to this Agreement shall be given to the following addresses (notice to be deemed given when personally delivered or three days after being sent registered or certified mail, return receipt requested) or to such other or further addresses as the Parties may hereafter designate by like notice similarly sent:

If to Park District:

Wheaton Park District  
102 E. Wesley Street  
Wheaton, IL 60067  
Attn: Executive Director

With a copy to:

Steven B. Adams  
Tressler LLP  
233 S. Wacker Drive  
22ndFloor



Chicago, IL 60606

If to Play for All:

Play For All Playground and Garden  
Attn:  
855 W. Prairie Avenue  
Wheaton, Illinois 60187

13. COSTS. Play for All shall pay fifty percent (50%) of all of the Park District's costs associated with the preparation of this Agreement including, but not limited to, any and all legal fees in connection with consultation regarding and drafting of the Agreement.

14. NO WAIVER OF TORT IMMUNITY. Nothing contained herein shall constitute a waiver by the Park District of any right, privilege or defense which it has under statutory or common law, including but not limited to the Illinois Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.*

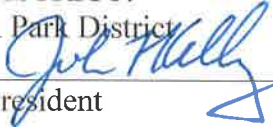
15. COMPLIANCE WITH LAWS. The Parties shall comply with all applicable with all applicable federal, state and local laws, rules and regulations.

16. HEADINGS. The headings herein contained are for convenience and reference only and are not intended to limit the scope of any section.


IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

PARK DISTRICT:

Wheaton Park District

By:   
President

Attest:

By:   
Vice President

PLAY FOR ALL

Play for All Playground and Garden

By: 

ATTEST:

By: 



STATE OF ILLINOIS )  
 )  
COUNTY OF DUPAGE ) ss

I, Donna Siciliano, the undersigned, a Notary Public, in and for the County and State aforesaid, do hereby certify that John Kelly, personally known to me to be the President of the Wheaton Park District, an Illinois park district and unit of local government, and Phillip A. Luetkehans, personally known to me to be the Vice President of said Park District, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Vice President, they signed and delivered the said instrument and caused the seal of said Park District to be affixed thereto, pursuant to authority given by the Board of Park Commissioners of the Wheaton Park District, as their free and voluntary act, and as the free and voluntary act and deed of said Park District, for the uses and purposed therein set forth.

Given under my hand and seal this 16 day of April, 2014.

Donna R Siciliano  
Notary Public



My commission expires:

STATE OF ILLINOIS )  
 )  
COUNTY OF DU PAGE ) ss

I, \_\_\_\_\_, the undersigned, a Notary Public, in and for the County and State aforesaid, do hereby certify that \_\_\_\_\_, personally known to me to be the President of the Play for All Playground and Garden, an Illinois not-for-profit corporation and \_\_\_\_\_, personally known to me to be the Secretary of said corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Secretary, they signed and delivered the said instrument and caused the seal of Play for All Playground and Garden to be affixed thereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposed therein set forth.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public


(SEAL)

My commission expires:

**CERTIFICATION**

I, Michael Benard, the Secretary of the Board of Park Commissioners of the Wheaton Park District of the County of DuPage, State of Illinois, do hereby certify that I am keeper of its books and records and that the foregoing is a true and correct copy of an Ordinance duly adopted by its Board of Park Commissioners at a meeting duly convened and held on the 16 day of April, 2014.

SEAL



Secretary of the Board of Park Commissioners

**To:** Mike Benard, Board of Park Commissioners  
**From:** Steve Adams  
**Re:** Funding and Reimbursement Agreement for Construction of Sensory Garden and Playground-  
Wheaton Park District and Play for All Foundation  
**Date:** April 10, 2014

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Attached to this memorandum is the Funding and Reimbursement Agreement for the Construction of a Sensory Garden and Playground between the Wheaton Park District and the Play for All Foundation ("Agreement"). This Agreement sets forth the terms and conditions under which the Park District and the Foundation will finance, develop and construct Phase I of the new fully inclusive sensory garden and playground on the Danada South property currently under lease to the Park District from the DuPage Forest Preserve District.

Under the terms of the Agreement the Park District will construct the improvements on the property leased from the Forest Preserve District, and the Foundation will transmit to the Park District funds and pledges for funds in amounts sufficient to pay 100% of the material costs of the current construction phase. The Park District is responsible to provide the project labor, either through its own forces or by contract. The Foundation is obligated to pay or reimburse \$367,130.00 of the project cost by turning over cash it presently has in hand from donors, and by providing further cash as pledges are converted into monetary donations.

The Park District has the option to draw down funds from its Section 5-8 levy (upon approval of the expenditure by WDSRA) to pay design and construction costs for the current phase. The Park District may also, in its discretion and upon the satisfaction of certain conditions, advance funds for construction.

Play for All is required to maintain accurate and complete records of the donations and pledges it has received from all sources, and the payments it has made to the Park District. The Foundation is also required to report on funds and pledges to the Park District on a monthly basis. The Foundation is obligated to pay the cost of any additions to the improvements and all capital repair and maintenance costs, defined as any repair or maintenance cost in excess of \$5,000. The Park District shall remain the sole legal title holder to the equipment and improvements constructed and installed on the subject property, subject to the lessor's rights. Either party has the right to terminate the agreement in the event of default by the other party after notice and a 10 day cure period. The Park District may terminate the agreement for convenience on 180 days prior notice. In the event of termination or expiration of the agreement the Park District retains title to the improvements and the Foundation is not entitled to any reimbursement.

An Ordinance Approving and Authorizing Execution of the Agreement is also attached to this memo.

Tressler has reviewed the final Agreement and finds the Agreement legally sufficient. Tressler has also reviewed and approved the form of ordinance for this matter.