

**WHEATON PARK DISTRICT**

**ORDINANCE NO. 2019-03**

**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 November 5, 2013 and amended in February of 2019 (the “Lease”); and

**WHEREAS**, in April of 2014, the Park District and the Foundation executed a successful collaboration via a funding and reimbursement agreement for the financing, development, construction and maintenance of Phase I 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 Park District and the Foundation desire to further collaborate on the financing, development, construction and maintenance of Phase II 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.

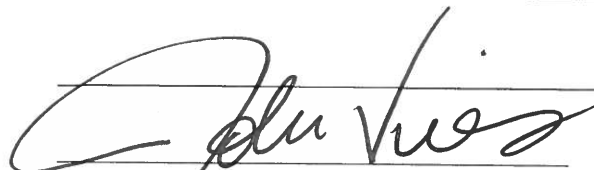
Passed this 17<sup>th</sup> day of April, 2019.

ROLL CALL VOTE:


AYES: Frey, Hodgkinson, Kelley, Mee, Merrill, Vires

NAYS: Ø

ABSENT: Faherty

  
\_\_\_\_\_  
John Vires, President  
Board of Park Commissioners

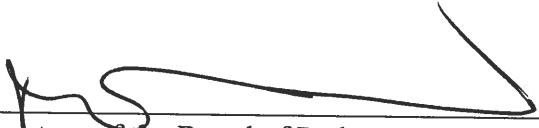
Attested and filed this 17<sup>th</sup> day of April, 2019.

  
\_\_\_\_\_  
Terry A. Mee, Vice President  
Board of Park Commissioners

**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 17<sup>th</sup> day of April, 2019

SEAL

  
\_\_\_\_\_  
Secretary of the 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 II OF A SENSORY GARDEN AND PLAYGROUND  
BETWEEN THE WHEATON PARK DISTRICT AND PLAY FOR ALL PLAYGROUND  
AND GARDEN**

**THIS AGREEMENT** ("Agreement"), made this 17<sup>th</sup> day of April, 2019 (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 November 5, 2013 and amended in February 2019 (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 and Amendment 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 II 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 attached as **Exhibit B** and incorporated herein by this reference (the "Plans"). The Phase II Construction Budget is attached as **Exhibit C** and incorporated herein by this reference.
- D.

**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 Five Hundred Fifty Two Thousand Eight Hundred Sixteen Dollars and Thirty Four Cents (\$552,816.34), 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 coordinate and supervise the execution of the Construction Agreement Entered into by Play For All to cause the Project to be constructed and shall not use funds from Play for All for any other purpose.

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:

Tressler LLP  
233 South Wacker Drive, 61<sup>st</sup> Floor  
Chicago, IL 60606  
Attn: Andrew S. Paine | Partner

If to Play for All:

Play For All Playground and Garden Foundation  
Attn: President  
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 )  
 )  
 ) ss  
COUNTY OF DUPAGE )

I, Donna R Siciliano the undersigned, a Notary Public, in and for the County and State aforesaid, do hereby certify that John Vires, personally known to me to be the President of the Wheaton Park District, an Illinois park district and unit of local government, and Terry A. Mee, 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 17<sup>th</sup> day of April, 2019.

Donna R Siciliano  
Notary Public



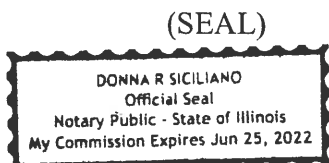
My commission expires:

STATE OF ILLINOIS )  
 )  
 ) ss  
COUNTY OF DU PAGE )

I, Donna Siciliano, the undersigned, a Notary Public, in and for the County and State aforesaid, do hereby certify that Michael Bernard, personally known to me to be the President of the Play for All Playground and Garden, an Illinois not-for-profit corporation and Sandy Gbur, 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 17<sup>th</sup> day of April, 2019.

Donna R Siciliano  
Notary Public



My commission expires: June 25, 2022

**EXHIBIT A**  
**[Park District- Forest Preserve District Lease & Amendment]**

**FIRST AMENDMENT TO LEASE AGREEMENT BETWEEN THE FOREST PRESERVE DISTRICT  
OF DUPAGE COUNTY AND THE WHEATON PARK DISTRICT FOR  
THE LEASE OF A PORTION OF THE LUCENT EAST PARCEL**

This First Amendment ("Amendment") is made and entered into this 19 day of February, 2019, by and between the Forest Preserve District of DuPage County, a body politic and corporate ("District") and the Wheaton Park District, an Illinois park district and unit of local government ("Park District"), and amends, in certain respects, that certain Lease Agreement Between the Forest Preserve District of DuPage County and the Wheaton Park District for the Lease of a Portion of the Lucent East Parcel entered into on November 5, 2013 ("Agreement"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

**RECITALS**

WHEREAS, District and Park District are parties to an Agreement regarding the lease of certain portions of District property commonly referred to as the Lucent East Parcel; and

WHEREAS, District and Park District wish to amend the Agreement to expand the Park District's ability to sublease or sublicense all or portions of the Leased Premises to third-parties; and

WHEREAS, District and Park District have determined that it is in their respective best interests to amend the Agreement on the terms and subject to the conditions set forth below.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree to the following:

1. Incorporation of Recitals. The foregoing recitals are incorporated herein by reference as though fully set forth in this Section 1.

2. Transfers or Sub-leases. The first two sentences of Section 3.06 of the Agreement, entitled "Transfers or Sub-leases" are stricken and replaced with the following (note, new text is underlined for ease of reference):

The Wheaton Park District shall have the right to sub-lease or sub-license (hereinafter "sub-lease", and where appropriate "sub-leasee") all or a portion of the Leased Premises to third-parties pursuant to the Wheaton Park District's Outdoor Athletic Area Policy, a copy of which is attached hereto and incorporated herein and made a part hereof as Exhibit C. The Wheaton Park District shall also have the right to sub-lease or sub-license all or a portion of the Leased Premises to third-party groups for special events and activities that are not athletic in nature, but which fall within and are governed by the terms, conditions, and limitations set forth in the Wheaton Park District's General Use Ordinance, a copy of which is attached hereto and incorporated herein and made a part hereof as Exhibit D. All sub-leases or sub-licenses shall be in writing and shall state that in addition to the Wheaton Park District's Outdoor Athletic Area Policy and the Wheaton Park District's General Use Ordinance, the third-party's

use of the Leased Premises shall be subject to all rules, regulations and ordinances of the Forest Preserve District of DuPage County.

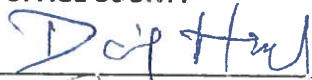
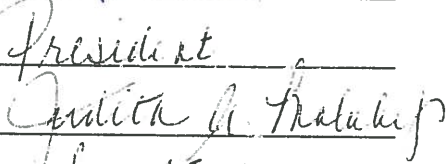
3. Exhibit D. The Agreement shall be further amended by adding the Wheaton Park District General Use Ordinance as Exhibit D.

4. Counterparts. This Amendment may be executed in counterparts, each of which shall be an original but all of which taken together shall constitute but one and the same instrument. In the event any signature is delivered by facsimile or by e-mail delivery of a scanned .pdf file, such signature shall create a valid and binding obligation of the party with the same force and effect as if the facsimile or scanned .pdf signature page were an original thereof.

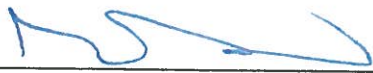
5. Entire Agreement; Modification. All other terms and conditions contained in the Agreement remain unchanged. The Agreement and this Amendment contain all of the terms and conditions agreed on by the parties with respect to the subject matter hereof, and no other alleged communications or agreements between the parties, written or otherwise, shall vary the terms hereof. Any modification of the Agreement or this Amendment must be in writing and signed by all parties.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date set forth below.

**FOREST RESERVE DISTRICT  
OF DUPAGE COUNTY**

By:   
Its: President  
Attest:   
Its: Secretary  
Date: February 19, 2019

**WHEATON PARK DISTRICT**

By:   
Its: Executive Director  
Attest: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: March 7, 2019

**A LEASE AGREEMENT BETWEEN THE FOREST PRESERVE DISTRICT OF  
DUPAGE COUNTY AND THE WHEATON PARK DISTRICT FOR THE LEASE OF A  
PORTION OF THE LUCENT EAST PARCEL.**

THIS LEASE AGREEMENT is made and entered into by and between the Forest Preserve District of DuPage County, a body politic and corporate (hereinafter the "District"), and the Wheaton Park District, an Illinois park district and unit of local government (hereinafter "Park District").

**WITNESSETH:**

WHEREAS, the District owns approximately 52 acres of property which is part of the Danada Forest Preserve, and commonly known as the Lucent East Parcel, which contains natural and recreational areas consisting of two softball fields, a 1.5 mile fitness trail with eight exercise stations and signs, one soccer field and two sand volleyball pits; and

WHEREAS, on April 9, 2008 the parties entered into a Lease entitled "A Lease Agreement Between the Forest Preserve District of DuPage County and the Wheaton Park District" (Ordinance 08-077 the "Lease") for the lease of a 37-acre portion of the Lucent East Parcel containing improvements; and

WHEREAS, since the approval of the Lease a new 80 car asphalt parking lot has been constructed on the leased premises which can be used to provide adequate parking for the Park District's use thereof, so that the Park District is no longer required to access certain off-site parking specified in the Lease to serve its uses of the leased premises; and

WHEREAS, the Parking Easement Agreement which provided the Park District with off-site parking under the Lease for the Park District's use of the leased premises has been terminated by a Declaration of Extinguishment and Release of Easement recorded February 14, 2012, as document R-020024; and

WHEREAS, the Wheaton Park District has requested that it be allowed to sublease the leased premises to third parties; and

WHEREAS, the Wheaton Park District has requested authority to construct and maintain certain additional recreational improvements on the leased premises pursuant to a new improvement plan referred to below; and

WHEREAS, the District and the Park District are municipalities as defined in Section 1(c) of the Local Government Property Transfer Act, 50 ILCS 605/1(c) (hereinafter the "Transfer Act"); and

WHEREAS, Section 3.1 of the Transfer Act authorizes a municipality, upon two-thirds vote of the corporate authorities then holding office, to lease its real property or any portion thereof to another municipality for such uses and upon such terms and conditions as may be agreed to by corporate authorities of the respective municipalities; and

WHEREAS, in accordance with Section 2 of the Transfer Act, the Park District has passed or will pass an ordinance declaring that it is necessary and convenient to use the property hereinafter described for Park District purposes; and

WHEREAS, the District's Board of Commissioners has determined that it is reasonable, necessary and in the public interest and welfare to lease a portion of the Lucent East Parcel to the Park District, subject to the terms and conditions set forth herein; and

WHEREAS, the parties are also authorized to enter into this Agreement under the authority conferred by article VII, Section 10 of the Illinois Constitution of 1970 and the Transfer Act; and

WHEREAS, the District's Board of Commissioners and the Wheaton Park District have determined that it is more efficient to rescind the Lease (Ordinance No. 08-077) and replace it with this new lease.

WHEREAS, a new lease was approved by the District's Board of Commissioners on an agreement titled "A Lease Agreement Between The Forest Preserve District Of DuPage County And The Wheaton Park District For The Lease Of A Portion Of The Lucent East Parcel," dated September 3, 2013, and that lease was subsequently tabled by the Wheaton Park District for revisions; and



WHEREAS, the District's Board of Commissioners has determined that the revisions are reasonable, necessary and in the public interest and welfare; and

NOW, THEREFORE, in consideration of the promises, terms and conditions set forth herein, the parties agree as follows:

### **1.00 INCORPORATION OF PREAMBLES**

**1.01 Incorporation of Preambles:** The preambles set forth above are incorporated herein and made a part hereof.

### **2.00 LEASE RESCINDED**

That the lease between the Forest Preserve District of DuPage County and the Wheaton Park District dated April 9, 2008 is hereby rescinded in its entirety and replaced with this new lease except those provisions of the Lease dated April 9, 2008 requiring the Park District to defend, indemnify and hold harmless the District, shall survive for casualties occurring within the prior leases' term.

### **3.00 LEASE GRANTED**

**3.01 Lease Granted:** The District hereby grants the Park District a lease to enter upon, use, develop and maintain the property described in Section 3.02 (said property hereinafter referred to as the "Lease Premises") for recreational, educational and conservation purposes but as limited in this Agreement. As part of this Lease the Wheaton Park District shall have the right and duty to use and maintain at its sole cost and expense the new eighty (80) car parking lot as part of the Leased Premises. The Wheaton Park District shall further have the right at its sole cost and expense to improve the Leased Premises in strict conformance with the plan entitled "Lucent Proposed Improvements" dated March 2011, a copy of which is attached hereto and incorporated herein as if fully set forth as Exhibit B. The Lease Premises shall not be used for any other purpose as stated in this section, unless prior written approval is obtained from the District's Board of Commissioners under a lawfully approved amendment to this Agreement.

**3.02 Lease Premises:** The Lease Premises shall consist of approximately 36.4 acres generally depicted in Exhibit "A" dated March 4, 2013, attached hereto and incorporated herein, which Exhibit A also contains a legal description, common address and property index number of the entire Lucent East Parcel, of which the Lease Premises are a part.

**3.03 Condition of the Lease Premises:** The Park District acknowledges that it has inspected the Lease Premises, that it knows the condition thereof, and that it accepts the same in "AS IS" condition. The Park District further acknowledges that the District has made no representations or warranties concerning the condition of the Lease Premises. The Park District shall be solely responsible for making such repairs and improvements to the Lease Premises as may be necessary for its intended use as described in Section 3.01 and for taking such action as may be required to ensure that the Lease Premises and improvements located or constructed thereon fully comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the Americans with Disabilities Act of 1990. The Park District shall also maintain the Lease Premises and improvements in a good, clean and safe state of repair and shall promptly correct or repair any condition which endangers the safety or welfare of any person working or entering upon the property. The parties agree that the District shall have no obligation of any kind concerning the condition or safety of the Lease Premises or the maintenance or repair thereof.

**3.04 Lease Term:** This Agreement shall be for a term of 25 years commencing as of the approval of this Agreement and ending on June 30, 2038. The Park District may, subject to the written approval of the District, renew this Agreement for an additional 25-year term, provided that a written notice requesting renewal is served on the District's Executive Director at least 120 days prior to the expiration of the original term

**3.05 Payment:** In consideration of the rights granted to the Park District under this Agreement, the Park District shall pay the District the sum of \$9,380.67 on or before June 15, 2014 for the period through June 30, 2015. For each subsequent year, the lease payment shall be based on the prior year's payment increased by the Chicago Region CPIU (CPIU-CHI) computed by the Bureau of Labor Statistics, United States Department of Labor. If the CPIU-CHI for a prior twelve month period remains flat or decreases the amount of the rent shall remain the same as that due in the previous twelve months. The District shall bill the Park District on or before May 1<sup>st</sup> for each subsequent year, and the payment will be due on or before June 15th, it being understood and acknowledged between the parties that the Park District's commitment to assume all responsibility for the Lease Premises, including, but not limited to, all maintenance, repairs and improvements, serves as additional compensation to the District. No portion of the aforementioned sum shall be refunded to the Park District in the event this Agreement is terminated as provided for in Section 11.00.

**3.06 Transfers or Sub-leases:** The Wheaton Park District shall have the right to sub-lease or sub-license (hereinafter "sub-lease", and where appropriate "sub-leasee") all or a portion of the Leased Premises to third-parties pursuant to the Wheaton Park District's Outdoor Athletic Area Policy, a copy of which is attached hereto and incorporated herein and made a part hereof as Exhibit C. All sub-leases or sub-licenses shall be in writing and shall state that in addition to the Wheaton Park District's Outdoor Athletic Area Policy the third-party's use of the Leased Premises shall be subject to all rules, regulations and ordinances of the Forest Preserve District of DuPage County., Prior to the commencement of any sub-lease or sub-license using any portion of the Leased Premises the Wheaton Park District shall:

(i) provide the Forest Preserve District of DuPage County with a copy of the sub-lease and other pertinent information such as the third-party's contact person, phone number and address;

(ii) provide the Forest Preserve District of DuPage County with evidence of insurance from the sub-leasee as provided below.

(iii) all insurance for sub-leases shall be issued by a company licensed to do business in the State of Illinois and approved by the Forest Preserve District of DuPage County. The insurance

shall be commercial general liability insurance with "occurrence" based coverage protecting the sub-leasee on the Leased Premises against all liability claims which may arise during the course of using the Leased Premises. The limits of liability shall not be less than One Million Dollars (\$1,000,000.00) each occurrence/bodily injury/property damage combined single limit and Three Million (\$3,000,000.00) aggregate bodily injury/property damage combined limit. The policy of commercial general liability insurance shall include an endorsement naming the Forest Preserve District of DuPage County and the Wheaton Park District as additional insureds. The Wheaton Park District shall continue to provide the Forest Preserve District of DuPage County with renewals of such insurance coverage during the term of the sub-lease. All such policies shall be primary and not require contribution from the Forest Preserve District's insurance.

The sub-lease shall further provide that there are no intended third-party beneficiaries in the sub-lease between the sub-leasee and the Wheaton Park District, except the Forest Preserve District of DuPage County, and further that the Leased Premises shall remain subject to all statutory and common law immunities provided to the Forest Preserve District of DuPage County and the Wheaton Park District. The sub-lease shall;

- (i) require the sub-leasee to provide the insurance as provided above;
- (ii) provide that the Forest Preserve District of DuPage County is intended as a third-party beneficiary of the subleases insurance obligation;
- (iii) require the sub-leasee to defend, hold harmless and indemnify the Wheaton Park District and the Forest Preserve District of DuPage County to the same extent required by paragraph 7.01 of this Lease and shall further provide that the Forest Preserve District of DuPage County is a third-party beneficiary of the sub-leasee's indemnification obligation.

No sub-lease shall be longer than a period of twenty-four (24) months except that said sub-lease may provide for renewal upon termination. The sub-lease shall contain a provision which entitles the Forest Preserve District of DuPage County to terminate the sub-lease if it determines in its sole discretion that the sub-leasee is operating the property in a manner inconsistent with this Lease or the rules, regulations and ordinances of the Forest Preserve District of DuPage County. The sub-lease shall provide that the Forest Preserve District is a third-party beneficiary of this termination provision of the Wheaton Park District's sub-lease with the sub-leasee.

**3.07 Assignments:** Except as qualified above the Wheaton Park District shall not transfer or assign this lease to any third-party without the consent of the Board of Commissions of the Forest Preserve District of DuPage County.

#### **4.00 PARK DISTRICT RIGHTS**

**4.01 Lucent Improvements:** The Park District shall be solely responsible for performing all restoration, maintenance, repairs, improvements and other work to the Lease Premises, existing and constructed in the future,(hereinafter collectively referred to as the "Improvements") that are constructed for the use and operation of the property as specified in Section 3.01; all at no cost to the District. In accordance herewith, the Park District has prepared a plan setting forth the Improvements proposed for the Lease Premises, some of which Improvements, including the larger ball fields, have already been completed. Said plan, entitled "Lucent Proposed Improvements" plan, dated March 2011, is attached hereto and incorporated herein as Exhibit B. Any improvements to the Lease Premises not provided for in the Lucent Proposed Improvements plan shall be subject to the provisions of Section 4.02. This Agreement shall constitute approval of the proposed Lucent Improvements as described in Exhibit B. The Park District shall not be entitled to any reimbursement for the value of any Improvements made to the Lease Premises pursuant to the Lucent Proposed Improvements plan, and upon the termination or expiration of this Agreement, all rights, title and interest to the Improvements or grounds shall vest in the District.

**4.02 Additional Improvements to the Lease Premises:** In addition to the Improvements as specified in the Lucent Proposed Improvements plan, the Park District may, at its expense, make or construct or cause to be constructed additions or alterations to the Lease Premises, such additions, alterations, changes and improvements hereinafter collectively referred to as the "Additional Improvements." The construction or installation of any Additional Improvements shall require the prior written approval of the District's Executive Director when the estimated cost thereof is less than \$10,000. The construction or installation of any Additional Improvements shall require the prior written approval of the District's Board of

Commissioners when the estimated cost thereof is \$10,000 or more. Approval of additional improvements when the estimated cost thereof is \$10,000 or more shall be in the absolute discretion of the Forest Preserve District of DuPage County's Board of Commissioners. As used herein, Additional Improvements means (a) any structural alteration of the Lease Premises; (b) the permanent attachment or installation of any item or article to the structures or grounds of the Lease Premises, or (c) the attachment or installation of any item or article to the structures or grounds in a manner which would result in damage to the structures or grounds upon the removal of the item or article. Upon the termination or expiration of this Agreement, all right, title and interest to any Additional Improvements constructed or installed by the Park District to the structures or grounds shall vest in the District, and the Park District shall not be entitled to any reimbursement therefor.

**4.03 Admission Fees:** The Park District may charge admission or service fees for its programs and for other functions held on the Lease Premises. In connection therewith, the Park District may charge "non-resident" rates in accordance with its customary practice involving other Park District programs and activities. The fees charged by the Park District shall remain the Park Districts.

**4.04 Signs:** The Park District may erect appropriate signs on the Lease Premises necessary for the operation of the Lease Premises, provided prior written approval therefor is obtained from the District's Executive Director. The Park District shall pay the costs related to the erection and maintenance of any such sign. The District, after consultation with the Park District, may also erect such signs on the Lease Premises as the District deems necessary for the operation of the areas adjacent to the Lease Premises. All signs shall be maintained by the party who erected or caused to be erected each sign. The District reserves the right, after timely notification, to remove any sign erected by the Park District which contains information that is out of date or is unsightly in appearance. All entrance signs installed by the Park District shall identify the District as the owner of the property and the cooperative arrangement involving the leasing of the Lease Premises.

**4.05 Alarm System:** The Park District may, at its expense, install and maintain systems designed for the purpose of protecting any Improvements or Additional Improvements on the Lease Premises from fire, theft, and burglary. Expenses for maintaining or repairing the alarm system and equipment, or any false alarm charges related thereto, shall be paid by the Park District.

**4.06 Water:** The Park District may utilize District fire hydrants located within the Danada Forest Preserve in conformance with the terms and conditions of this section. Park District shall coordinate the water utilization with the Director of Land Management. Prior to utilizing any water from District fire hydrants the Park District shall secure from the City of Wheaton Water Division any and all permits and water metering devices with backflow preventers necessary to properly take and meter from the hydrants. Park District shall further comply with any additional fire hydrants practices or procedures required by the City of Wheaton. Park District shall be responsible for reporting the metered water to the City of Wheaton so that the Park District will be directly billed for the utilization of the water. The District shall not be responsible for any fees accrued by or related to water or the cost of complying with the City of Wheaton's water regulations in utilizing water from District fire hydrants.

The Park District accepts the District's fire hydrants, adjacent areas, and egress and ingress and to the fire hydrants in "as is" condition. In this respect the Park District shall defend, indemnify and hold harmless the Forest Preserve District of DuPage County, including but not limited to its officers, directors, elected and appointed officials, employees, agents, servants and assigns from any and all claims, injuries, damage, and costs arising out of or in connection with any operations under this section, whether such operation is by Park District employees or by any contractor, either in contract with the Park District directly or indirectly to perform services authorized under this section. The Park District further waives any and all subrogation claims against the District which may be brought by the Park District workman's compensation carrier or health insurance in consequence of injuries to its employees coming to and from the fire hydrants, or while using the fire hydrants to take water. The Park District shall require contractors of the District utilizing the District's fire hydrants for the

purpose set forth in this section to comply with all the terms and conditions of this section. Any contractor hired by the Park District to take water from the District pursuant to this section shall sign a defense and indemnification provision identical to the provisions in this section for the benefit of the District and further waiving any subrogation rights it may in consequence of workman's compensation or health insurance, injuries occurring in the utilization of the District's fire hydrants. The Park District shall report any damage or malfunction of a District fire hydrant to the District's Director of Land Management promptly upon discovery.

**4.07 Grants:** The Park District shall notify the District in writing before applying for any grant pertaining to the Lease Premises and shall provide the District with such information as may be necessary for the District to independently determine how the grant will affect the District. All grants are subject to final approval by the District.

## **5.00 PARK DISTRICT RESPONSIBILITIES**

**5.01 Schedule of Hours:** The Park District shall provide the District with an annual schedule of the Park District's normal operation hours for the Lease Premises and of any special events that are to be held on the property which are outside the normal operation hours. The Park District shall provide written notice of any changes in the aforementioned schedule. Other than security lighting all sport field, parking area and playground lighting shall be extinguished no later than Thirty (30) minutes after completion of activities on the sport fields. The number and location of security lighting shall be subject to the reasonable of the District's Chief Law Enforcement Officer.

**5.02 Compliance with Laws:** In operating the Lease Premises for the purpose specified herein, the Park District shall comply with all applicable federal, state and local laws, rules and regulations, and with all District ordinances, rules and regulations now in force or hereafter enacted, provided that any future amendments by the District do not interfere with the rights granted to the Park District under this Lease. The Park District shall obtain from the appropriate regulatory authority all necessary permits or licenses prior to the beginning the operation of the



Lease Premises, the performance of any work described in Sections 4.01 and 4.02. Upon request, the Park District shall provide copies of all applicable permits to the District. The District shall cooperate with the Park District as necessary to obtain any such required permits.

**5.03 Disorderly Persons:** The Park District shall not knowingly allow any disorderly person to remain on the Lease Premises and, upon discovery of any such disorderly person on the Leased Premises, shall promptly notify the Forest Preserve Police to assist in the removal of disorderly persons if necessary.

**5.04 Illegal Activities:** The Park District shall not knowingly permit any illegal activity to be conducted upon the Lease Premises. The Park District shall not be responsible to police the Leased Premises but shall have the duty to report to the District any known illegal activities on the Lease Premises.

**5.05 Maintenance and Repairs:** The Park District shall be responsible for maintaining the Lease Premises in a clean, safe and sanitary condition and for performing all maintenance and repairs, including, but not limited to, all structural repairs and maintenance-including the trails and parking areas. The Park District shall not permit any debris, refuse, offensive matter, or any material or substance constituting a health or fire hazard to remain or accumulate on the Lease Premises. In addition, the Park District shall perform all maintenance of the grounds, including, but not limited to, mowing, weeding, fertilizing, aeration, seeding, trimming of shrubs and trees, and watering of turf, trees and shrubs. Installation and replacement of any planted materials shall be subject to the approval of the Forest Preserve District of DuPage County's Executive Director. All chemicals and fertilizers proposed to be applied shall be approved by the District prior to application, and all necessary precautions need to be in place to assure that the chemicals and fertilizers do not migrate off the Lease Premises.

**5.06 Utility and Service Charges:** The Park District shall be responsible for providing and paying for all utility services related to the Improvements and Additional Improvements to the

Lease Premises, including charges for gas, water, electric, sewer, septic systems and refuse removal. All utility and telephone service shall be in the Park District's name. The Park District waives any and all claims against the District for compensation for loss or damage caused by any defect, deficiency or impairment in any utility, water supply, drainage, waste, well, septic system, heating or gas system, or in any electrical apparatus or wire now serving or included as an Improvement or Additional Improvement on the Lease Premises.

**5.07 Safety:** The Park District shall be solely responsible for the safety of all persons working on or utilizing the Lease Premises and for ensuring that the Lease Premises is maintained at all times in a reasonably safe condition. In this regard, the Park District shall promptly correct any unsafe condition or practice existing on the Lease Premises and shall make reasonable efforts to obtain emergency medical care for any person requiring such care as a result of illness or injury occurring on the Lease Premises. The Park District shall also fully cooperate with the District in the investigation of any illness, injury or death occurring on the Lease Premises, including providing a prompt written report thereof to the District's Executive Director.

**5.08 Habitation:** The Lease Premises shall not be used at any time for human habitation.

**5.09 Damage to Improvements:** Subject to the provisions of Section 8.01, in the event any of the current structures, Improvements or Additional Improvements constructed or installed by the Park District on the Lease Premises are damaged or destroyed, in whole or in part, from any cause, the Park District shall be solely responsible at its cost and expense for all necessary repairs and restoration as well as the permitting therefore.

**5.10 Construction Activity:** The Park District shall notify the District prior to commencing any construction activity on the Lease Premises. During the construction of the Improvements and Additional Improvements authorized under Sections 4.01 and 4.02, all construction activity shall be confined within the boundaries of the Lease Premises, including, but not limited to, the movement and storage of equipment and

materials. All surplus excavated materials and other debris resulting from the work shall be legally disposed of off of District property. No construction personnel shall be permitted outside the Lease Premises while engaged in construction activities. In the event the Park District, its employees or agents, or any contractor or subcontractor engaged to perform work on the Lease Premises causes any damage to trees, shrubs, or other vegetation or landscaping or any improvements lying outside the Lease Premises and owned by the District, the Park District shall pay the reasonable cost of replacement in the case of trees, shrubs or other vegetation, and in the case of landscaping or improvements, shall pay the reasonable cost of restoration and repair. Said costs shall be calculated at current replacement costs as determined by the District for all materials, labor and incidentals necessary for a complete restoration and repair. In addition to paying for the reasonable cost of restoration and repair, the Park District shall pay an additional 15% charge for administrative and supervision expenses.

**5.11 Archaeological and Threatened Species Studies:** Prior to beginning any construction on the Lease Premises, with the assistance of the District, the Park District shall perform, at its cost and expense, an archaeological study of the property as required under the Archaeological and Paleontological Resources Protection Act. 20 II CS 3435/.01 et seq. Additionally, the Park District shall be responsible for submitting the required threatened and endangered species report to the Illinois Department of Natural Resources.

**5.12 Law Enforcement:** The District shall be responsible for all law enforcement activities on the Lease Premises. Any criminal activity occurring on the Lease Premises shall be promptly reported to the District's Law Enforcement Department.

## **6.00 DISTRICT RIGHTS**

**6.01 Right of Entry:** The District may enter upon the Lease Premises at any and all reasonable times for the purpose of determining whether the Park District is complying with the terms and conditions of this Agreement, and for any other purpose incidental to the rights of the District under this Agreement or any other purpose authorized in the Downstate Forest Preserve

Act 70 ILCS 805/0.001 et seq.

**6.02 Trails and Easements:** The District reserves the right to establish trails on the Lease Premises and to grant or utilize easements, licenses or rights-of-way over, under, along and across the Lease Premises for utilities or for access to any portion of the Lucent East Parcel, provided that the District shall exercise such rights in a manner which will not materially interfere with the Park District's use or operation of the Lease Premises for its intended purposes.

#### **7.00 HOLD HARMLESS AND INDEMNIFICATION**

##### **7.01 Hold Harmless and Indemnification by the Park District:**

(a) The Park District shall defend, hold harmless, and indemnify the District and all of its officers, agents, employees and elected officials from any loss, damage, demand, liability, cause of action, fines, judgment or settlement, together with all costs and expenses related thereto (including reasonable expert witness and attorney fees), that may be incurred by the District as a result of bodily injury, death or property damage or as a result of any other claim or suit of any nature whatsoever arising from or in any manner connected with, directly or indirectly, to the extent resulting from the negligent or intentional acts or omissions of the Park District pertaining to the use of the Lease Premises 1, or to the extent resulting from the negligent or intentional acts or omissions of any independent contractor that is engaged by Park District to perform work on the Lease Premises. The Park District shall require all such contractors or subcontractors to agree to defend, hold harmless and indemnify the District to the same extent required of the Park District under this paragraph. Each contract between the Park District and an independent contractor engaged to perform work on the Lease Premises shall provide that the District is intended as third-party beneficiary of the indemnification obligation required of the contractor under this paragraph. The provisions in this paragraph shall survive the expiration or termination of this Agreement.

(b) Nothing contained in Section 7.01 shall be deemed to constitute a reduction or waiver of any privilege or immunity now or at any time in the future available to either the Park District or the

District, whether by statute, common law or otherwise all such privileges and immunities being fully reserved by both Parties.

**7.02 Independent Contractor Insurance and Indemnification:** If any work not involving an emergency or routine maintenance is performed by an independent contractor on the Lease Premises, the Park District shall, prior to letting, the work for bid or prior to the commencement of such work, whichever is earlier, notify the District in writing of the nature of the work and obtain from the independent contractor such insurance coverages and indemnification as the District deems reasonably necessary for its protection. Certificates establishing proof of all such insurance shall be submitted to the Forest Preserve District prior to the contractor commencing work.

#### **8.00 DESTRUCTION OF THE LEASE PREMISES**

**8.01 Election by the Park District:** If one or more of the current structures, Improvements or Additional Improvements on the Lease Premises are totally or partially destroyed by fire, earthquake, flood, storms, war, insurrection, riot, public disorder or any other cause or casualty so as to prevent the Park District from utilizing the Lease Premises for the purposes specified in Section 3.01, the Park District may, at its option, terminate this Agreement. If a structure or improvement is totally or partially destroyed and the Park District elects to terminate this Agreement the Park District shall continue to have the duty to complete the demolition and remove all debris from the Lease Premises at its sole cost and expense. If the Park District desires to restore the structures or buildings, this Agreement shall continue in full force and effect. The District shall not be responsible for any demolition, restoration or repair costs whatsoever resulting from the total or partial destruction of any of the structure or buildings.

#### **9.00 INSURANCE**

**9.01 General Requirements:** Except as may be waived or reduced by the District's Executive Director, in writing, the Park District and each independent contractor engaged to perform work on the Lease Premises shall purchase and maintain during this Agreement insurance coverage which will satisfactorily insure the Park District, the contractor and, where appropriate, the District against

claims and liabilities which may arise out of the use of the Lease Premises. Such insurance shall be issued by companies licensed to do business in the State of Illinois and approved by the District. All Park District policies and independent contractor insurance shall be considered primary and shall not require contribution from the District's insurance coverage. All insurance companies providing coverage pursuant to this Section 9 shall have a Best's rating of AM/X or better. The insurance coverage shall include the following:

- (A) Worker's compensation insurance with limits as required by the applicable workers' compensation statutes. The employer's liability coverage under the workers' compensation policy shall have limits of not less than \$500,000 each accident/injury; \$500,000 each employee/disease; \$500,000 policy limit.
- (B) Commercial general liability insurance with "occurrence" based coverage protecting the Park District against any and all public liability claims which may arise in the course of using the Lease Premises. The limits of liability shall be not less than \$5,000,000 each occurrence bodily injury/property damage combined single limit and \$5,000,000 aggregate bodily injury/property damage combined single limit. The policy of commercial general liability insurance shall include contractual liability coverage and an endorsement naming the District, as additional insureds. The Park District agrees that Lucent Technologies, Inc., is intended as a third-party beneficiary of the commercial general liability insurance to be provided by the Park District under this Subsection.
- (C) Commercial automobile liability insurance covering The Park District's owned, non-owned and leased vehicles which protects the Park District against automobile liability claims whether on or off the District's premises with coverage limits of not less than \$1,000,000 per accident bodily injury/property damage combined single.
- (D) Umbrella or Excess liability insurance providing "occurrence" based coverage with limits of not less than \$1,000,000 each occurrence bodily injury/property damage combined single limit and \$1,000,000 aggregate bodily injury/property damage combined single limit. The Umbrella or Excess coverage shall apply in excess of the limits stated in subparagraphs (B) and (C) above, and shall either include an endorsement naming the District as an additional or provide "following form" coverage.

Notwithstanding anything to the contrary, the Park District's membership in a government risk management pool that provides coverage equal to or greater than the coverages and policy limits required under this paragraph shall be deemed to satisfy Licensee's insurance obligation as specified herein, provided the Park District furnishes the District with satisfactory written evidence of its membership in said risk management pool. Each contract between the Park District and an independent contractor engaged to perform work on the Lease Premises shall provide that the District is intended as third-party beneficiary of the insurance obligation required of the contractor under this paragraph.

**9.02 Evidence of Insurance:** The Park District shall furnish the District with certificates of insurance and, upon the District's request, copies of all insurance policies and endorsements thereto evidencing the coverages required under Section 9.01. The insurance certificates and policies shall provide that no cancellation or modification of the policy or policies shall occur without at least 30 days prior written notice to the District with respect to the commercial general liability insurance required under Subsection 9.01(B) The Park District shall not enter upon the Lease Premises until evidence of the required insurance has been received and approved by the District.

**9.03 Operation of Lease Premises:** Operation of the Lease Premises shall be suspended during any period that the Park District fails to maintain said policies in full force and effect. Additionally, in the case of the Park District's failure to maintain the required insurance coverages, the District may, on reasonable notice to the Park District, at its discretion, either terminate this Agreement or procure such insurance and pay all premiums in connection therewith, and may thereafter charge said premiums to the Park District. The Park District shall pay the bill submitted by the District within 10 days of service thereof as provided for in Section 17.01.

**9.04 Adjustment of Coverage Limits:** The coverage limits specified in Section 9.01 shall apply during the first five years of this Agreement. On the fifth anniversary hereof, and on each subsequent fifth anniversary, the District shall have the right to increase the coverage limits for each of the policies required in Section 9.01, if necessary, so as to provide the same

level of coverage as existed as of the date of this Agreement, taking into account inflation and changes in the insurance industry.

#### **10.00 DISCRIMINATION PROHIBITED**

**10.01 Equal Opportunity:** In operating the Lease Premises, the Park District shall comply with the provisions of the Illinois Human Rights Act, 775 ILLS 5/1-01 et seq., and with all rules and regulations established enacted by the Department of Human Rights. The Park District further agrees that it will not deny employment to any person or refuse to enter into any contract for the performance of any work or service of any kind by, for or on its behalf with respect to the operation of the Lease Premises on the grounds of unlawful discrimination as defined in the Illinois Human Rights Act.

**10.02 ADA Compliance:** In operating the Lease Premises, the Park District shall comply with all applicable provisions of the American with Disabilities Act of 1990, and the rules and regulations related thereto. The Park District shall be responsible for ensuring structural compliance with the Americans with Disabilities Act.

**10.03 Equal Use:** The use of Lease Premises shall be open on an equal basis to all citizens of DuPage County, except that the Park District may impose "non-resident" fees as authorized by Section 4.04.

#### **11.00 TERMINATION**

**11.01 For Cause:** The District shall have the right to terminate this Agreement for cause if the Park District fails to comply with any provision in Section 12.00. In the event of a default, the Park District shall have 30 days following the effective date of service of the District's notice of default within which to cure the violation, or if the violation is not reasonably of the type which can be cured within such 30-day period, to make continuing appropriate efforts to cure such violation. If the Park District fails to cure the default to the District's satisfaction within said 30-day period, or to commence and continue appropriate efforts to cure the default within



said 30-day period if the default is of the type which cannot reasonably be cured within such 30-day period, this Agreement shall automatically terminate, and the District shall have the right to reenter the Lease Premises without notice or process of law and take possession thereof, including any Improvements or Additional Improvements constructed or installed by the Park District.

**11.02 Waiver:** A waiver by the District of any default of one or more of the terms of this Agreement on the part of the Park District shall not constitute a waiver of any subsequent or other default of the same or other term, nor shall the failure on the part of the District to require exact, full and complete compliance with any of the terms contained herein be construed as changing the terms of this Agreement or estopping the District from enforcing full compliance with the provisions herein. No delay, failure or omission of the District to reenter the Lease Premises or to exercise any right, power, privilege or option arising from any default shall impair any right, privilege or option, or be construed as a waiver or acquiescence in such default or as a relinquishment of any right. No option, right, power, remedy or privilege of the District shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, power, privileges and remedies given the District under this Agreement and by law shall be cumulative.

**11.03 Guarantee of Rights:** Action by either party to effectuate a termination, and in the case of the District, forfeiture of possession, shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

## **12.00 EVENTS OF DEFAULT**

**12.01 Abandonment:** The unauthorized abandonment or vacation of the Lease Premises by the Park District for more than 30 days in any 45-day period during the period of scheduled operations, provided that the cessation of scheduled activities to enable the Park District to undertake major construction, reconstruction or repair of any Improvements or Additional Improvements, regardless of the time period of such cessation, shall not be deemed an

abandonment of the Lease Premises.

**12.02 Failure to Maintain:** The failure on the part of the Park District to maintain the Lease Premises in a clean, sanitary and safe state of repair where such condition continues for more than 30 days after written notice from the Districts Executive Director specifying the violation.

**12.03 Discrimination:** A determination by the appropriate state or federal regulatory agency that the Park District has engaged in unlawful discrimination in violation of state or federal laws and where action to correct or mitigate the violation is not promptly taken. Such corrective or mitigation action shall be suitable to the regulatory agency making a finding of discrimination.

**12.04 Failure to Perform:** The failure of the Park District to keep, perform and observe all other promises, covenants and conditions set forth in this Agreement.

**12.05 Revocation of Occupancy Permit:** Revocation by the applicable regulatory authority of the certificate of occupancy for any Improvement or Additional Improvement as required on the Lease Premises because of a defect which cannot be cured by the Park District within a reasonable time.

### **13.00 SURRENDER**

**13.01 Vacation of Lease Premises:** If either (a) this Agreement is terminated by the District for cause due to a default on the part of the Park District as specified in Section 12.00; (b) the Park District determines not to seek a renewal of this Agreement for an additional term at the expiration of the original term of this Agreement, or (c) the Park District elects to renew this Agreement for an additional term and that term expires, the Park District shall promptly vacate the Lease Premises.

## 14.00 INTERPRETATION

**14.01 Headings:** The headings herein contained are for convenience and reference only and are not intended to limit the scope of any section.

**14.02 No Third Party Beneficiaries:** Unless otherwise specifically stated in this Agreement, this Agreement and all terms, provisions and conditions thereof are for the sole benefit of the District and the Park District, and no person or entity shall be deemed to be a third-party beneficiary of this Agreement or any terms, provisions or conditions of this Agreement.

**14.03 Reasonability Standard:** Except as otherwise specifically provided in this Agreement whenever any term or provision of this Agreement requires one party to this Agreement to consent to, approve or otherwise agree to any act, request, or proposal of the other party, the party whose consent, approval or agreement is sought must act reasonably with respect to same, and such consent, approval or agreement shall not be unreasonably withheld or delayed.

## 15.00 ENFORCEMENT

**15.01 Responsibility:** The District's Executive Director shall be responsible for the enforcement of this Agreement on behalf of the District and shall be assisted therein by such officers and employees of the District as the Executive Director deems necessary.

## 16.00 ATTORNEY FEES AND COSTS

**16.01 Recovery of Costs:** In the event either party is required to institute any proceeding or action, whether at law or in equity, to enforce any provision of this Agreement, the prevailing party, as determined by the court, shall be entitled to recover all of its costs and expenses incurred in connection with said proceeding or action, including, but not limited to, reasonable expert witness and attorney fees.

## 17.00 NOTICES

**17.01 Requirements:** All notices required to be given under the terms of this Agreement shall be in writing and either (a) served personally during regular business hours; (b) served by facsimile transmission during regular business hours, or (c) served by certified or registered mail, return receipt requested, properly addressed with postage prepaid. Notices served upon the District shall be directed to the Executive Director, Forest Preserve District of DuPage County, P.O. Box 5000, Wheaton, Illinois 60189. (For purposes of personal service, the District's administrative offices are located at 3S580 Naperville Road, Wheaton, Illinois.) Notices served upon the Park District shall be directed to the Executive Director, Wheaton Park District, 102 E. Wesley Street, Wheaton, Illinois 60187. Notices served personally or by facsimile transmission shall be effective upon receipt, and notices served by mail shall be effective upon receipt as verified by the United States Postal Service. Each party may designate a new location for service of notices by serving notice thereof in accordance with the requirements of this section.

## 18.00 RECORDATION

**18.01 Filing with Recorder of Deeds:** The Park District may at its cost, record this Agreement in the Office of the Recorder of Deeds, DuPage County, Illinois. The Park District shall provide the District with a copy of the recorded document.

## 19.00 ENTIRE AGREEMENT

**19.01 Integration:** The provisions set forth herein constitute the entire agreement between the parties for the leasing of the Lease Premises and supersede any prior representations, promises or agreements, whether oral or written, as it is the intention of the parties to provide for a complete integration within the terms of this agreement.

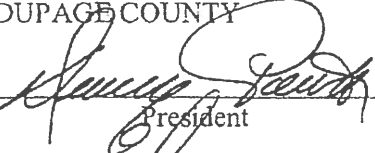
**19.02 Modifications:** This Agreement may be modified only by further written agreement specifically referring to this section. Any such modification shall not be effective unless duly approved by the corporate authorities of each party.

19.03 Execution: This Agreement shall be executed in Duplicate, and each party shall retain a fully executed copy each of which shall be deemed an original.

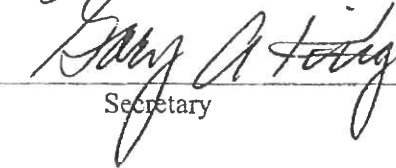
IN WITNESS WHEREOF; the parties have entered into this Lease Agreement as of the 5th day of November, 2013.

FOREST PRESERVE DISTRICT  
OF DUPAGE COUNTY

BY:

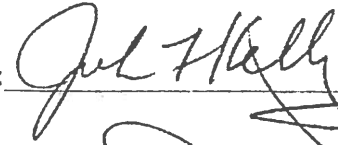
  
\_\_\_\_\_  
President

ATTEST:

  
\_\_\_\_\_  
Secretary

WHEATON PARK DISTRICT

BY:

  
\_\_\_\_\_  
President

ATTEST:

  
\_\_\_\_\_

**EXHIBIT B**  
**PROPOSED IMPROVEMENTS**

- NOTES**
- (2) BALL BOXES & (1) TRASH CAN TO BE PROVIDED BEHIND EACH BACKSTOP.
  - (4) BLEACHERS TO BE PROVIDED TO BE LOCATED NEAR THE ADJACENT TO PLAYERS BENCHES.
  - TO PROVIDE A PLACE FOR BENCHES TO BE LOCATED IN THE WOOD OF PRECAST CONCRETE.
  - STYLE (INITIALLY WILL BE THE LOCATION OF PORTABLE SHELTER TO BE OPEN AIR STYLE WITH PING PONG TABLES LOCATED UNDERNEATH.

- LEGEND**
- TREE REMOVAL (TYP)
  - REMOVALS
  - EASEMENTS
  - FPODC PARCEL
  - SHORT TERM IMPROVEMENTS
  - LONG TERM IMPROVEMENTS
  - EXISTING PATH TO BE PRESERVED AND MAINTAINED
  - EXISTING VITA COURSE TO BE PRESERVED AND MAINTAINED
  - 80 PARKING SPACES TO BE PROVIDED (W/ NAVIGATOR)



drawn by:	SMH	revised by:	SMH
date:	8/07	date:	1/08
checked by:		revised by:	SMH
date:		date:	3/11
file name:	approved by: [signature]		

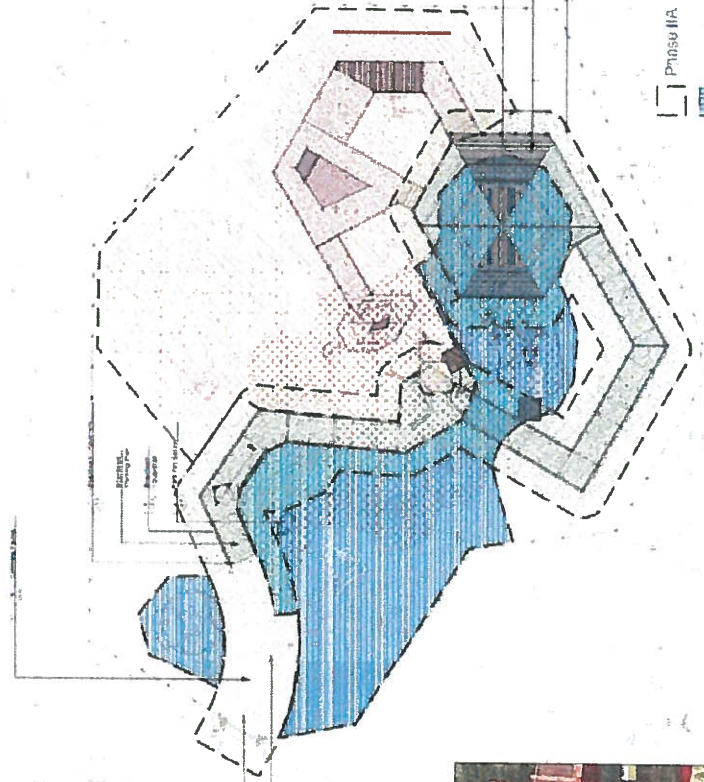
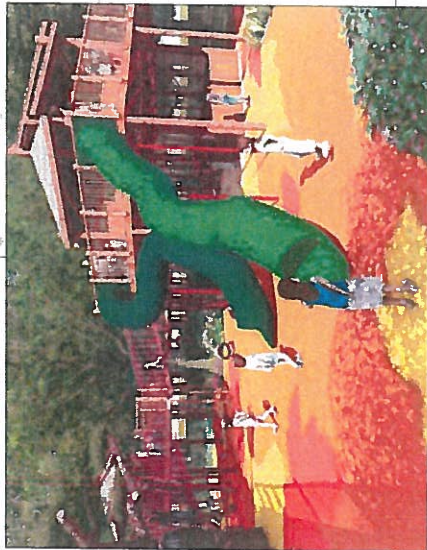
**WHEATON PARK DISTRICT**  
 600 So. MAIN WHEATON IL 60187  
 (630) 965-4770

**LUCENT  
 PROPOSED IMPROVEMENTS  
 EXHIBIT B**

2007

Exhibit B





- Phase IIA
- Phase IIB
- Phase IIC

DESIGNED BY: [Logo] DATE: 07/17/19  
 DRAWN BY: [Logo] DATE: 07/17/19  
 LAYOUT AND MATERIALS  
 PLAN-PHASE ONE  
 SCALE: AS SHOWN  
 SHEET NO. 132  
 11/17/19  
 132

**WHEATON PARK DISTRICT**  
 102 E. WESLEY WHEATON IL 60187  
 630.7.665-4770  
 2019

**DANADA SOUTH PARK  
 SENSORY GARDEN PLAYGROUND  
 PHASE 2**

drawn by: SMH	checked by:	revised by:
date:	date:	date:
date:	date:	date:
file name: 2019-07-17-19	date:	date:



**EXHIBIT C  
BUDGET**

586288

**Wheaton Park District - Play for All Tree House**

Wheaton, IL



Project Code: WPD - TH  
Budget Summary

Date: 3/8/19

*\*Revisions Italicized in Red Updated: 3/12/19*

Specification Division	Trade Code	Trade	Budget	Remarks
<b>Division 1</b>		<b>General Requirements</b>	<b>\$50,360</b>	
	011000	General Conditions	\$37,360	8 week construction schedule - verify
	<i>011100</i>	<i>Survey / Layout</i>	<i>\$13,000</i>	<i>Includes survey layout and As-Built survey as required by DuPage County</i>
	011110	Testing	\$0	By Owner
	011120	Schedule Consultant	\$0	Not Required
<b>Division 2</b>		<b>Existing Conditions</b>	<b>\$0</b>	
	024100	Demolition	\$0	Not Required
<b>Division 3</b>		<b>Concrete</b>	<b>\$142,769</b>	
	033000	Concrete Abutments	\$12,000	3 abutments
	033001	Concrete Sidewalks	\$12,719	Approximately 1,008 SF
	<i>033001.1</i>	<i>Add sidewalk to replace 50' boardwalk</i>	<i>\$5,000</i>	<i>Approximately 364SF</i>
	033002	Concrete Piers	\$145,450	Concrete, finishing, setting anchor bolts, etc. for (97) drilled piers
	<i>033002.1</i>	<i>Delete piers at initial 50' of boardwalk</i>	<i>(\$13,000)</i>	<i>(16) Type A and Type G Piers</i>
	<i>033002.2</i>	<i>Reduce piers due to structural redesign</i>	<i>(\$33,000)</i>	<i>Assumes approx. 25% reduction</i>
	033011	Auger holes	\$13,000	Augering for (97) drilled piers
	<i>033011.1</i>	<i>Delete augering per structural re-design</i>	<i>(\$2,500)</i>	<i>Assumes approx. 25% reduction</i>
	033012	Rebar cages	\$3,100	For Type F and Type G piers
	034500	Architectural Precast	\$0	Deleted
	034600	Diamond Piers	\$0	Deleted
<b>Division 4</b>		<b>Masonry</b>	<b>\$0</b>	
	044300	Masonry Seat wall	\$0	Deleted
	044301	Masonry fireplace veneer	\$0	Deleted
<b>Division 5</b>		<b>Metals</b>	<b>\$22,655</b>	
	051200	Steel / Misc. Iron	\$29,320	(26) Post base / shoe assemblies including hardware, galvanizing
	<i>051201</i>	<i>Reduce Pier Steel / Misc. Iron</i>	<i>(\$7,000)</i>	<i>Reduce Post base / shoe assemblies per final framing design</i>
	055130	Boardwalk Pans	\$335	(4) pan & hardware sets in lieu of diamond piers
	055213	Pipe & Tube Railings	\$0	Deleted
<b>Division 6</b>		<b>Wood &amp; Plastics</b>	<b>\$247,000</b>	
	061000	Rough Carpentry	\$285,000	Boardwalk, treehouse & bridge
	<i>061001</i>	<i>Delete initial 50' of boardwalk</i>	<i>(\$20,000)</i>	<i>Includes materials and associated labor reductions</i>
	<i>061002</i>	<i>Finalize framing design</i>	<i>\$9,000</i>	<i>Economize structural design to reduce foundations, framing &amp; labor</i>
	<i>061003</i>	<i>Reduce carpentry per final design</i>	<i>(\$27,000)</i>	<i>Includes materials and associated labor reductions</i>
<b>Division 7</b>		<b>Thermal &amp; Moisture Protection</b>	<b>\$2,500</b>	
	073110	Waterproofing	\$2,500	Treat bottom of posts
	073129	Cedar Shake Roofing	\$0	Deleted
<b>Division 9</b>		<b>Finishes</b>	<b>\$0</b>	
	099500	Painting & Stain	\$0	Deleted
<b>Division 10</b>		<b>Specialties</b>	<b>\$0</b>	
	101400	Signage	\$0	Deleted
<b>Division 11</b>		<b>Equipment</b>	<b>\$0</b>	
	116800	Play Equipment	\$0	By Owner
<b>Division 13</b>		<b>Special Construction</b>	<b>\$0</b>	
	139500	Hammocks	\$0	Deleted
<b>Division 31</b>		<b>Earthwork</b>	<b>\$32,000</b>	
	311000	Site Clearing	\$0	Included in 312000
	312000	Excavation & Grading - Site	\$20,500	Excavation, subgrade prep., agg. base, grading, spread topsoil (no haul off)
	312001	Excavation & Backfill - Abutments	\$6,500	(3) abutments, Includes on-site soil balance (no haul off)
	<i>312002</i>	<i>Add earth ramp to reduce boardwalk 50'</i>	<i>\$5,000</i>	<i>Place/compact structural clay, supply/install sidewalk base &amp; topsoil respread</i>
	312500	Erosion & Sediment Control	\$0	By Owner
<b>Division 32</b>		<b>Exterior Improvements</b>	<b>\$0</b>	
	321313	Concrete Paving	\$0	Included in 033000
	321314	Concrete Staining	\$0	Deleted
	321440	Crushed Stone Paving	\$0	Included in 312000
	321816.13	Playground Protective Surface	\$0	By Owner
	323115	Wood Fences & Gates	\$0	Deleted
	<i>329200</i>	<i>Turf &amp; Grasses</i>	<i>\$0</i>	<i>By Owner - Restore turf at edge of play areas &amp; sidewalks + maintenance</i>
	329300	Plants	\$0	By Owner
<b>Division 33</b>		<b>Utilities</b>	<b>\$15,440</b>	
	334100	Subdrainage	\$15,440	428 LF subgrade drainage system including cleanouts, mitered outlet & TBF.
<b>Division 50</b>		<b>Other Contractual Items</b>		
	501000	<b>Allowances</b>	<b>\$12,500</b>	
		Access Road Maintenance & Restoration	\$10,000	Access road from Navistar Drive
		Dewatering	\$2,500	Pumping auger holes, abutments, site
		Overexcavation / Unforeseen Cond.	\$0	No unsuitable soils allowance included
	502000	<b>Miscellaneous Contracts</b>	<b>\$4,900</b>	
	503000	Fee	\$23,856	Misc. materials, barricades, etc. 4.50%
	504000	Bond	\$4,986	0.90%

Project Total: \$558,965  
 3/8/19 Estimate: \$654,389  
 Cost Change: (\$95,424)



March 2019 Financial Snapshot

Feb 2019 Ending Bank Balance: 535,578.28

FUTURE INCOME

General Donations:	65.00
WPD Rec Trac Donations:	
WPD Payroll Donations:	81.00
Pledge Payments:	
Outstanding Pledges:	70,000.00
Other: (Light the Torch Night Run)	5,930.82
Pledges Awaiting Final Paperwork: Science of Spirituality	50,000.00
Sponsorship Awaiting Final Paperwork: DuPage Medical Play Days	1,500.00
<b>Total Income:</b>	<b>127,576.82</b>

FUTURE EXPENSES

Monies Restricted to Other Projects (Sports Field)	(7,252.00)
Monies Restricted to Other Projects (Play Day)	(1,500.00)
2018 Tree House Expense Reimbursed to WPD	(67,825.82)
2018 Other PFA Capital Exp to be reimbursed to WPD	(16,337.29)
Art Along the Way Sculpture 4 (per agreement)	(6,250.00)
Hitchcock Construction (Under Contract)	(3,375.00)
WPD Credit Card Expenses to be reimbursed (2018)	(7,798.65)
Other (Marketing, Printing, etc.)	
<b>Total Expenses:</b>	<b>(110,338.76)</b>

Available for Tree House as of 3/11/2019: 552,816.34

POTENTIAL EXPENSES NOT INCLUDED IN AVAILABLE BALANCE

Swing Install & Surfacing (To be bid)	(32,000.00)
Hitchcock Construction Assistance (Not Under Contract)	(46,550.00)
<b>Total Potential Expenses:</b>	<b>(78,550.00)</b>