

**WHEATON PARK DISTRICT  
RESOLUTION NO. 2023-08**

**A RESOLUTION APPROVING THE TERMS AND AUTHORIZING THE EXECUTION OF  
AN ADDENDUM TO EASEMENT AGREEMENT FOR PEDESTRIAN PATH/BICYCLE PATH**

WHEREAS, the Wheaton Sanitary District ("Sanitary District") and the Wheaton Park District ("Park District") are parties to that certain Easement Agreement For Pedestrian Path/Bicycle Path dated November 16, 2016 ("Agreement"); and

WHEREAS, the Sanitary District and Park District wish to amend the Agreement to modify certain aspects, including transferring the maintenance obligations of a certain fence from the Sanitary District to the Muirfield Estates Homeowners' Association ("HOA"); and

WHEREAS, the Sanitary District, Park District, and HOA have negotiated an addendum to the Agreement that reflects the agreed upon changes, a copy of which is attached hereto as Exhibit A ("Addendum"); and

WHEREAS, the Park District's Board of Park Commissioners ("Park Board") has determined that it is in the best interests of the Park District and its residents to approve and enter into the Addendum, subject to the terms and conditions set forth therein.

**NOW THEREFORE, IT IS HEREBY RESOLVED** by the Board of Park Commissioners of the Wheaton Park District, DuPage County, Illinois, as follows:

1. The foregoing recitals to this Resolution are hereby determined to be true and correct and are hereby incorporated in and made part of this Resolution.
2. The form, terms and provisions of the proposed Addendum attached hereto as Exhibit A are hereby in all respects approved, and the President and Secretary of the Park Board are hereby authorized and directed to execute the Addendum in the name and on behalf of the Park District, substantially in the form as presented to this Park Board, with such modifications thereto, if any, as the President of the Park Board in consultation with the Park District's legal counsel shall approve, which approval shall be conclusively evidenced by his or her execution thereof.
3. The President and Secretary of the Park Board, the Park District's Executive Director and the Park District's attorneys are hereby authorized, empowered and directed to take all action and execute any and all documents necessary or appropriate in order to carry out the intent and effectuate the provisions and purposes of this Resolution and the Addendum.
4. This Resolution shall be in full force and effect from and after its adoption as provided by law.

Adopted this 25<sup>th</sup> day of October 2023 by roll call vote as follows:

AYES: Barrett, Frey, Mee, Pecherich, Vires, Kelly

NAYS:  $\emptyset$

ABSENT:  $\emptyset$

ABSTAIN:  $\emptyset$



President  
Board of Park Commissioners  
Wheaton Park District

ATTEST:



Secretary  
Board of Park Commissioners  
Wheaton Park District

STATE OF ILLINOIS     )  
  )  
COUNTY OF DUPAGE    )

**SECRETARY'S CERTIFICATE**

I, Michael J. Benard, do hereby certify that I am the Secretary of the Board of Park Commissioners of the Wheaton Park District, DuPage County, Illinois and as such, I am keeper of the records, ordinances, files and seal of said Park District; and

I HERBY CERTIFY that the foregoing instrument is a true and correct copy of:

**A RESOLUTION APPROVING THE TERMS AND AUTHORIZING THE EXECUTION OF  
  AN ADDENDUM TO EASEMENT AGREEMENT FOR PEDESTRIAN PATH/BICYCLE PATH**

adopted at a duly called regular Meeting of the Board of Park Commissioners of the Wheaton Park District held at the City of Wheaton City Council Chambers, 303 W. Wesley Street, Wheaton, Illinois at 7:00 p.m. on the 25<sup>th</sup> day of October, 2023.

I do further certify that the deliberations of the Board on the adoption of said resolution were conducted openly, that the vote on the adoption of said resolution was taken openly, that said meeting was called and held at a specified time and place convenient to the public, that notice of said meeting was duly given to all of the news media requesting such notice, that an agenda for said meeting was posted as required by the Open Meetings Act and that said meeting was otherwise called and held in strict compliance with the provisions of the Open Meetings Act of the State of Illinois, as amended, and with the provisions of the Park District Code of the State of Illinois, as amended, and that the Board has complied with all of the provisions of said Act and said Code and with all of the procedural rules of the Board.

IN WITNESS WHEREOF, I hereto affix my official signature and the seal of said Wheaton Park District in Wheaton, Illinois, this 25<sup>th</sup> day of October, 2023.



\_\_\_\_\_  
Michael J. Benard  
Secretary

[SEAL]

**EXHIBIT A**

**Addendum**

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## ADDENDUM TO EASEMENT AGREEMENT FOR PEDESTRIAN PATH/BICYCLE PATH

This Addendum ("Addendum") is made to that particular "Easement Agreement For Pedestrian Path/Bicycle Path" ("Agreement") by and between Wheaton Sanitary District ("WSD"), and Wheaton Park District, an Illinois park district ("WPD") (individually referred to as "Party" and collectively the "Parties") dated November 16, 2016. This Addendum modifies and supplements the Agreement. In the event of any conflict between the provisions of the Agreement and this Addendum, the provisions of this Addendum shall control. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

### AGREEMENT

#### 1. Insert New Section "Assignment"

Assignment. WSD assigns, and WPD consents to such assignment, all responsibilities addressed in Section 3(c) regarding the maintenance of the fence on the southerly boundary of a pedestrian path/bike path ("Southerly Fence") to the Muirfield Estates Homeowners' Association ("HOA") (the "Assignment"). The HOA accepts the Assignment of the Southerly Fence. As part of such Assignment, WSD, WPD and HOA agree to the following:

- a. The Southerly Fence is currently in good working condition. Any concerns regarding the condition of the Southerly Fence will be addressed solely between the WSD and the HOA.
- b. Except for the responsibility of the maintenance of the Southerly Fence, the rights and obligations of WPD and WSD as stated in the Agreement remain unchanged.
- c. WPD holds no responsibility for the Southerly Fence or the relationship between the HOA and WSD as it pertains to the Southerly Fence. Notifications of any HOA concerns regarding the Southerly Fence will be made in writing to WSD.
- d. The terms of the HOA's access to the Bike Path for maintenance of the Southerly Fence shall be confirmed in writing to WSD and WPD prior to such access.
- e. The Southerly Fence as maintained by the HOA shall not interfere with use of the Bike Path by pedestrians or cyclists.
- f. Construction. All construction or other work or activity by the HOA or HOA contractors related to the Southerly Fence shall be performed in a safe and sound manner and in accordance with all applicable federal, state and local laws. HOA is responsible for the payment of all costs associated with any work or activity performed on the Southerly Fence. HOA shall be responsible for any impact the maintenance of the Southerly Fence may have on the Bike Path including but not limited to the impact of temporarily closing the Bike Path or any long-term effects the maintenance may have on the Bike Path.
- g. Liens. HOA shall not permit any lien to be imposed upon WSD, WPD, the Bike Path or the Southerly Fence.
- h. Indemnification. To the fullest extent permitted by law, HOA agrees to indemnify, defend (at WSD and WPD's election) and hold harmless WSD and WPD, its agents, employees, officers and trustees (each individually an "Indemnitee" and collectively the "Indemnitees"), from and against any and all liabilities, claims, losses, demands, causes of action, proceedings, costs and expenses including, without limitation, all reasonable attorneys' fees (including separate legal counsel retained by WSD and/or WPD if so elected by either Party), court costs and expert witness fees, incurred by or brought against all or any of the Indemnitees arising out of or caused by, directly or indirectly, any act or omission of (i) HOA, any of HOA's contractors, subcontractors or anyone directly or indirectly employed by or authorized to act on behalf of any of

them; or (ii) any licensee of HOA or member of the public, relating to or in any manner associated with the use or misuse of the rights and/or privileges granted pursuant to the Southerly Fence Assignment.

- i. **Insurance.** HOA shall maintain and shall require any of the HOA's contractors hired to perform any work on the Southerly Fence, to maintain liability insurance in reasonable amounts with reputable companies as are reasonably acceptable to WSD and WPD, to protect WSD, WPD and HOA against claims arising directly or indirectly out of or in connection with the use of the Southerly Fence.
- j. **Termination.** If the Southerly Fence requires replacement, the replacement fence will be installed on the HOA's private property, at the HOA's sole expense. Such replacement of the Southerly Fence on the HOA's private property shall constitute a termination of the relationship between WSD/WPD/HOA established in this Agreement. Such termination will not impact any other aspect of this Agreement established between WSD and WPD.
- k. **Effective Date.** The effective date of this Assignment is January 1, 2024. Until January 1, 2024, the Southerly Fence shall be maintained by WSD as outlined in the Agreement.

2. The following language shall be added to the end of the "Notices" Section.

Notice to Muirfield Estates  
Homeowners' Association (HOA):

Donald Opal  
77 Muirfield Cr.  
Wheaton, IL 60189  
dopal@yahoo.com

All other terms and conditions contained in the Agreement remain unchanged. The Agreement and this Addendum contain all of the terms and conditions agreed to 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 must be in writing and signed by all Parties.

IN WITNESS WHEREOF, the Parties have executed this Addendum as of the dates set forth below.

WHEATON SANITARY DISTRICT

By: Matthew Liso

Its: Executive Director

ATTEST: Bernadette Jefferson

Its: AP/HR Administrator

Date: 11/16/2023

WHEATON PARK DISTRICT

By: M. J. [Signature]

Its: Executive Director

ATTEST: Dona Scilecino

Its: Executive Assistant

Date: 11/9/2023

**MUIRFIELD ESTATES  
HOMEOWNERS' ASSOCIATION**

By: Donald V. Opal

Its: HOA President

ATTEST: Dana Lopp

Its: Secretary

Date: 12/23/23