

## Contract Summary Sheet

**Contract (PO) Number:** 23863

**Specification Number:** 92953

**Name of Contractor:** CHICAGO PARK DISTRICT

**City Department:** DEPT OF ZONING & LAND USE PLANNING

**Title of Contract:** Intergovernmental Agreement

**Term of Contract: Start Date:** 4/27/2010

**End Date:** 12/31/2010

**Dollar Amount of Contract (or maximum compensation if a Term Agreement) (DUR):**  
\$314,588.07

**Brief Description of Work:** Intergovernmental Agreement

**Procurement Services Contract Area:** COMPTROLLER-OTHER

**Vendor Number:** 1050662

**Submission Date:**

DEC 2 2010

10-11-10 10:11:10

*Ordered*, That the Corporation Counsel is hereby authorized and directed to enter into and execute a settlement agreement in the following matter: *Joseph Partyka, Independent Administrator of the Estate of Frederick Partyka, Deceased v. City of Chicago*, cited as 05 L 1458, in the amount of \$3,210,745.

---

INTERGOVERNMENTAL AGREEMENT WITH CHICAGO PARK DISTRICT AND PUBLIC BUILDING COMMISSION OF CHICAGO TO PROVIDE TAX INCREMENT FINANCING ASSISTANCE FOR DEVELOPMENT OF BROMANN PARK AT 5400 N. BROADWAY.

[O2009-5571]

The Committee on Finance submitted the following report:

CHICAGO, October 7, 2009.

*To the President and Members of the City Council:*

Your Committee on Finance, having had under consideration an ordinance authorizing entering into and executing an intergovernmental agreement with the Chicago Park District regarding the rehabilitation of Bromann Park, having had the same under advisement, begs leave to report and recommend that Your Honorable Body *Pass* the proposed ordinance transmitted herewith.

This recommendation was concurred in by a viva voce vote of the members of the Committee.

Respectfully submitted,

(Signed) EDWARD M. BURKE,  
*Chairman.*

On motion of Alderman Burke, the said proposed ordinance transmitted with the foregoing committee report was *Passed* by yeas and nays as follows:

*Yeas* -- Aldermen Fioretti, Dowell, Preckwinkle, Hairston, Lyle, Jackson, Harris, Beale, Pope, Balcer, Cárdenas, Olivo, Burke, Foulkes, Thompson, Thomas, Lane, Rugai, Cochran, Brookins, Muñoz, Zalewski, Dixon, Solis, Maldonado, Burnett, E. Smith, Carothers, Reboyras, Suarez, Waguespack, Mell, Austin, Colón, Rice, Mitts, Allen, Laurino, O'Connor, Doherty, Reilly, Daley, Tunney, Levar, Shiller, Schuller Moore, Stone -- 48.

*Nays* -- None.

Alderman Carothers moved to reconsider the foregoing vote. The motion was lost.

The following is said ordinance as passed:

WHEREAS, The City of Chicago (the "City") is a home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois and, as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, The Legislature of the State of Illinois passed an act to authorize the creation of public building commissions and to define their rights, powers and duties, approved July 5, 1955, as amended (the "Commission Act") to facilitate the construction, improvement and enlargement of buildings and facilities at convenient locations within the county seats and municipalities; and

WHEREAS, Pursuant to the Commission Act, the City Council (the "City Council") of the City, on March 28, 1956, by ordinance, created the Commission for the purpose of assisting in the funding and constructing of public improvements; and

WHEREAS, The Park District, a body politic and corporate organized and existing under the Chicago Park District Act (the "Park District Act"), joined in the organization of the Commission on April 24, 1956; and

WHEREAS, The Commission has heretofore undertaken the acquisition, construction, alteration, repair, renovation, rehabilitation and equipping of buildings and facilities for use by various public bodies including the Park District, the City, the Board of Education of the City of Chicago and the Board of Trustees of Community College District Number 508, County of Cook and State of Illinois; and

WHEREAS, The Park District is the owner of certain real property commonly known as Bromann Park located at 5400 North Broadway in the Edgewater community area and legally described on Exhibit A attached hereto (the "Property"); and

WHEREAS, The Park District and the Commission wish to make improvements to the Property (the "Project"); and

WHEREAS, The Property lies wholly within the boundaries of the Bryn Mawr/Broadway Redevelopment Project Area (as hereinafter defined); and

WHEREAS, The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as amended from time to time (the "T.I.F. Act"), to finance projects that eradicate blight conditions and conservation factors that could lead to blight through the use of tax increment allocation financing for redevelopment projects; and

WHEREAS, In accordance with the provisions of the T.I.F. Act, pursuant to ordinances adopted on December 11, 1996, and published in the *Journal of the Proceedings of the City Council of the City of Chicago* for said date at pages 35413 to 35510, the City Council: (i) approved and adopted a redevelopment plan and project for a portion of the City known as the "Bryn Mawr/Broadway Redevelopment Project Area" (the "Bryn Mawr/Broadway Redevelopment Plan"); (ii) designated the Bryn Mawr/Broadway Redevelopment Area as a "redevelopment project area" (the "Bryn Mawr/Broadway Redevelopment Project Area"); and (iii) adopted tax increment allocation financing for the Bryn Mawr/Broadway Redevelopment Area (collectively, the "Bryn Mawr/Broadway T.I.F. Ordinances"); and

WHEREAS, Under 65 ILCS 5/11-74.4-3(q)(7), such incremental ad valorem taxes which pursuant to the T.I.F. Act have been collected and are allocated to pay redevelopment project costs and obligations incurred in the payment thereof ("Increment") may be used to pay all or a portion of a taxing district's capital costs resulting from a redevelopment project necessarily incurred or to be incurred in furtherance of the objectives of the redevelopment plan and project, to the extent the municipality by written agreement accepts and approves such costs (Increment collected from the Bryn Mawr/Broadway Redevelopment Area shall be known as the "City Increment"); and

WHEREAS, The Bryn Mawr/Broadway Redevelopment Plan contemplates that tax increment financing assistance would be provided for public improvements within the boundaries of the Bryn Mawr/Broadway Redevelopment Area; and

WHEREAS, The Park District is a taxing district under the T.I.F. Act; and

WHEREAS, The City wishes to make available to the Park District a portion of the City Increment in an amount not to exceed Three Hundred Fifty Thousand Dollars (\$350,000) (the "T.I.F. Assistance") for the purpose of funding eligible expenses incurred in the rehabilitation of the Property (the "T.I.F.-Funded Improvements"); and

WHEREAS, In accordance with the T.I.F. Act, the T.I.F.-Funded Improvements shall include such of the Park District's capital costs necessarily incurred or to be incurred in furtherance of the objectives of the Bryn Mawr/Broadway Redevelopment Plan, and the City has found that the T.I.F.-Funded Improvements consist of the cost of the Park District's capital improvements that are necessary and directly result from the redevelopment project constituting the T.I.F. Project and, therefore, constitute "taxing districts' capital costs" as defined in Section 5/11-74.4-3(u) of the T.I.F. Act; and

WHEREAS, The City, the Commission, and the Park District intend to participate in the planning and implementation of the Project including, but not limited to, review and approval of/consent to design elements and materials to be incorporated into the Project and approval of the Budget (as hereinafter defined); and

WHEREAS, The parties have determined that it is necessary, desirable and in the public interest to enter into an Intergovernmental Agreement in substantially the form attached as

Exhibit B (the "Agreement"), pursuant to the Intergovernmental Cooperation Act of the State of Illinois in order to set forth their respective objectives, duties and responsibilities and to describe the procedures and guidelines to be followed with respect to the implementation of the Project; and

WHEREAS, On April 14, 2009, the Commission's Board of Commissioners (the "Commission Board") passed a resolution expressing its desire to undertake the design and construction of the Project and authorizing the execution of this Agreement (the "Commission Resolution"); and

WHEREAS, On July 8, 2009, the Park District's Board of Commissioners adopted an ordinance authorizing the execution of this Agreement to accept the T.I.F. Assistance (the "Park District Ordinances"); and

*Be It Ordained by the City Council of the City of Chicago:*

SECTION 1. The above recitals are expressly incorporated in and made a part of this ordinance as though fully set forth herein.

SECTION 2. The City hereby finds that the T.I.F.-Funded Improvements, among other eligible redevelopment project costs under the Act approved by the City, consist of the cost of the Park District's capital improvements that are necessary and directly result from the redevelopment project constituting the Project and, therefore, constitute "taxing districts' capital costs" as defined in Section 5/11-74.4-3(u) of the Act.

SECTION 3. Subject to the approval of the Corporation Counsel of the City of Chicago as to form and legality, the Commissioner of the Department of Zoning and Land Use Planning (the "D.Z.P. Commissioner"), or a designee of the D.Z.P. Commissioner are each hereby authorized to execute and deliver the Agreement, with such modifications as may be necessary or appropriate, and such other documents as to effectuate said Agreement.

SECTION 4. To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any other provisions of this ordinance.

SECTION 5. This ordinance shall be in full force and effect from and after the date of its passage and approval.

Exhibits "A" and "B" referred to in this ordinance read as follows:

*Exhibit "A".*  
(To Ordinance)

*Legal Description.*

(Subject To Final Survey And Title Commitment)

Parcel 1:

Lots 23 and 24 in Block 8 in Cochran's Third Addition to Edgewater, being a subdivision of the east half of the northwest quarter of Section 8, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Commonly Known As:

5400 North Broadway  
Chicago, Illinois 60640-1704.

Permanent Index Number:

14-08-113-031-0000.

Parcel 2 [Expansion]:

Lot 22 in Block 8 in Cochran's Third Addition to Edgewater, being a subdivision of the east half of the northwest quarter of Section 8, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Commonly Known As:

5406 North Broadway  
Chicago, Illinois 60640-1704.

Permanent Index Number:

14-08-113-030-0000.

*Exhibit "B".*  
(To Ordinance)

*Intergovernmental Agreement With Chicago Park District  
And Public Building Commission Of Chicago.*

(Bromann Park T.I.F. Transfer)

This agreement is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2009 (the "Closing Date"), under authority granted by Article VII, Section 10 of the 1970 Constitution of the State of Illinois, by and among the City of Chicago, an Illinois municipal corporation having its principal offices at City Hall, 121 North LaSalle Street, Chicago, Illinois 60602 (the "City"), acting through its Department of Zoning and Land Use Planning ("D.Z.P.") and its Department of Environment ("D.O.E."); the Chicago Park District, an Illinois municipal corporation having its principal offices at 521 North Fairbanks Court, Chicago, Illinois 60611 (the "Park District"); and the Public Building Commission of Chicago, an Illinois municipal corporation having its offices at the Richard J. Daley Center, Room 200, Chicago, Illinois 60602 (the "Commission"). The Commission, the Park District and the City are sometimes referred to collectively herein as the "Parties".

*Recitals.*

Whereas, The City is a home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois and, as such, may exercise any power and perform any function pertaining to its government and affairs; and

Whereas, The Legislature of the State of Illinois passed an act to authorize the creation of public building commissions and to define their rights, powers and duties, approved July 5, 1955, as amended (the "Commission Act") to facilitate the construction, improvement and enlargement of buildings and facilities at convenient locations within the county seats and municipalities; and

Whereas, Pursuant to the Commission Act, the City Council (the "City Council") of the City, on March 28, 1956, by ordinance, created the Commission for the purpose of assisting in the funding and constructing of public improvements; and

Whereas, The Park District, a body politic and corporate organized and existing under the Chicago Park District Act (the "Park District Act"), joined in the organization of the Commission on April 24, 1956; and

Whereas, The Commission has heretofore undertaken the acquisition, construction, alteration, repair, renovation, rehabilitation and equipping of buildings and facilities for use by various public bodies including the Park District, the City, the Board of Education of the

City of Chicago and the Board of Trustees of Community College District Number 508, County of Cook and State of Illinois; and

Whereas, The Park District is the owner of certain real property located at 5400 North Broadway in the Edgewater Community Area and legally described on (Sub)Exhibit A-1 attached hereto (the "Property"); and

Whereas, On August 11, 2009, the City conveyed to the Park District certain real property located adjacent to the Property and legally described on (Sub)Exhibit A-2 (the "Expansion"); and

Whereas, The Expansion and the Property comprise Bromann Park (the "Park"); and

Whereas, D.O.E. has enrolled the Expansion in the Illinois Environmental Protection Agency ("I.E.P.A.") Site Remediation Program ("S.R.P.") and expects to obtain a final comprehensive "No Further Remediation" letter ("N.F.R. Letter") from I.E.P.A. stating that the Expansion meets Tier I residential remediation objectives as set forth in 35 Ill. Adm. Code Part 742 (the Tiered Approach to Cleanup Objectives or the "T.A.C.O." program); and

Whereas, The Commission and the Park District intend to make improvements to the Park; and

Whereas, The City and the Park District desire to create additional public open space in the Edgewater Community Area, and have proposed that the Commission undertake the development and construction of improvements on the Park (the "Project") as further described in Section 1 hereof; and

Whereas, The Property lies wholly within the boundaries of the Bryn Mawr/Broadway Redevelopment Project Area (as hereinafter defined); and

Whereas, The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1, et seq., as amended from time to time (the "T.I.F. Act"), to finance projects that eradicate blight conditions and conservation factors that could lead to blight through the use of tax increment allocation financing for redevelopment projects; and

Whereas, In accordance with the provisions of the T.I.F. Act, pursuant to ordinances adopted on December 11, 1996, and published in the *Journal of the Proceedings of the City Council of the City of Chicago* for said date at pages 35413 to 35510, the City Council: (i) approved and adopted a redevelopment plan and project for a portion of the City known as the "Bryn Mawr/Broadway Redevelopment Project Area" (the "Bryn Mawr/Broadway Redevelopment Plan"); (ii) designated the Bryn Mawr/Broadway Redevelopment Area as a "redevelopment project area"; and (iii) adopted tax increment allocation financing for the Bryn Mawr/Broadway Redevelopment Area (collectively, the "Bryn Mawr/Broadway T.I.F. Ordinances"); and

Whereas, Under 65 ILCS 5/11-74.4-3(q)(7), such incremental ad valorem taxes which pursuant to the T.I.F. Act have been collected and are allocated to pay redevelopment project costs and obligations incurred in the payment thereof ("Increment") may be used to pay all or a portion of a taxing district's capital costs resulting from a redevelopment project necessarily incurred or to be incurred in furtherance of the objectives of the redevelopment plan and project, to the extent the municipality by written agreement accepts and approves such costs (Increment collected from the Bryn Mawr/Broadway Redevelopment Area shall be known as the "City Increment"); and

Whereas, D.Z.P. wishes to make available to the Park District a portion of the City Increment in an amount not to exceed Three Hundred Fifty Thousand Dollars (\$350,000) (the "T.I.F. Assistance"), subject to Section 3.6 for the purpose of funding eligible expenses for the Project (the "T.I.F.-Funded Improvements") in the Bryn Mawr/Broadway Redevelopment Area to the extent and in the manner provided in this Agreement; and

Whereas, The Bryn Mawr/Broadway Redevelopment Plan contemplates that tax increment financing assistance would be provided for public improvements, such as the Project, within the boundaries of the Bryn Mawr/Broadway Redevelopment Area; and

Whereas, The Park District is a taxing district under the T.I.F. Act; and

Whereas, In accordance with the T.I.F. Act, the T.I.F.-Funded Improvements shall include such of the Park District's capital costs necessarily incurred or to be incurred in furtherance of the objectives of the Bryn Mawr/Broadway Redevelopment Plan, and the City has found that the T.I.F.-Funded Improvements consist of the cost of the Park District's capital improvements that are necessary and directly result from the redevelopment project constituting the Project and, therefore, constitute "taxing districts' capital costs" as defined in Section 5/11-74.4-3(u) of the T.I.F. Act; and

Whereas, The City, the Commission, and the Park District intend to participate in the planning and implementation of the Project including, but not limited to review and approval of consent to design elements and materials to be incorporated into the Project and approval of the Budget (as hereinafter defined); and

Whereas, Pursuant to the terms of this Agreement, the City shall reimburse the Park District for the T.I.F.-Funded Improvements upon completion of the Project by the Commission; and

Whereas, On \_\_\_\_\_, the City Council adopted an ordinance published in the *Journal of the Proceedings of the City Council of the City of Chicago* for said date at pages \_\_\_\_\_ to \_\_\_\_\_, (the "Authorizing Ordinance"), among other things, authorizing the execution of this Agreement; and

Whereas, On April 14, 2009, the Commission's Board of Commissioners (the "Commission Board") passed a Resolution expressing its desire to undertake the design and construction of the Project and authorizing the execution of this Agreement (the "Commission Resolution"); and

Whereas, On July 8, 2009, the Park District's Board of Commissioners authorized the execution of this Agreement (the "Park District Ordinances"); and

Whereas, The parties have determined that it is necessary, desirable and in the public interest to enter into this Agreement pursuant to the Intergovernmental Cooperation Act of the State of Illinois in order to set forth their respective objectives, duties and responsibilities and to describe the procedures and guidelines to be followed with respect to the implementation of the Project;

Now, Therefore, In consideration of the mutual covenants and agreements contained herein, the above recitals which are made a contractual part of this Agreement, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

*Terms And Conditions.*

*Section 1.*

*The Project.*

1.1

The Commission will coordinate and manage the planning, development, design, selected demolition, construction and improvement of the Project pursuant to the terms of this Agreement and all applicable Laws, including but not limited to the Commission Act, the T.I.F. Act, the Park District Act and the Municipal Code of the City.

1.2

No later than three (3) months from the Closing Date, or later as the Commissioner of D.Z.P. (the "D.Z.P. Commissioner") and the Authorized Park District Representative may agree in writing, the Commission shall let one or more contracts for the Project in compliance with all applicable Laws pertaining to or affecting the Project.

1.2.1 Selection Of Contractor. The Commission shall review and evaluate the bids or proposals submitted and conduct such investigations as may be necessary and appropriate to determine the qualifications of the bidders or proposers and the responsiveness of the bid or proposal. During the bid review period, the Authorized D.Z.P. Representative and the Authorized Park District Representative shall have the right to attend meetings and participate in the evaluation process. Following the bid review process, the Contractor determined by the Commission Board to be the lowest responsible bidder in accordance with the Commission's usual and customary bid procedures shall be awarded the Contract upon recommendation of the Executive Director of the Commission.

1.2.2 Limited Applicability Of Approval. Any approvals of the Contract Documents for the Project made by the Authorized D.Z.P. Representative or the Authorized Park District Representative are for purposes of this Agreement only and do not affect any required approvals pursuant to any ordinance or regulation of the City or the Park District. Any such approval by the Authorized D.Z.P. Representative or the Authorized Park District Representative to this Agreement also does not constitute approval of the quality, structural soundness or the safety of the Project.

1.2.3 Ownership Of Documents. All construction documents, data, schematics, warranties, design documents, copyrights and Contract Documents with regard to the construction of the Project shall be the property of the Commission. After Final Acceptance of the Work, the Commission shall promptly assign all of its rights in and to such documents to the Park District and shall deliver such documents and the Record Documents as directed by the Authorized Park District Representative. Upon request, a copy of said documents and Record Documents shall be made available to the City.

### 1.3

The plans and specifications for the Project (the "Plans and Specifications") shall at a minimum be in conformance with the Site Plans set forth in (Sub)Exhibit C hereof. The Plans and Specifications shall be provided to the City by the Commission prior to letting any contract pursuant to Section 1.2 hereof. No material deviation from the Plans and Specifications may be made without the prior written approval of the Authorized Park District Representative and the Authorized D.Z.P. Representative. The Park District and Commission shall comply with all applicable Laws as may be in effect from time to time, pertaining to or affecting the Project.

### 1.4

Prior to the commencement of the Work, the Commission shall provide the Authorized Park District Representative and the Authorized D.Z.P. Representative with copies of any required governmental licenses and permits required to construct the Project.

### 1.5

The Park District shall include a certification of compliance with the requirements of Sections 1.2, 1.3 and 1.4 hereof with the request for the T.I.F. Assistance hereunder at the time the Project is completed. The City shall be entitled to rely on this certification without further inquiry. Upon the City's request, the Park District shall provide evidence satisfactory to the City of such compliance.

#### 1.6 Administration Of the Project.

1.6.1 Enforcement Of Contract. The Commission shall comply with, and cause the Contractor to comply with, as appropriate and applicable, the terms and conditions of the Contract Documents for the Project including all applicable Laws. Such requirements include, but are not limited to, accessibility standards for persons with disabilities or environmentally limited persons, the Illinois Prevailing Wage Act, the City's Human Rights Ordinance, the City's Building Codes, EEO and affirmative action requirements.

1.6.2 Coordination With The City And The Park District. The Commission shall apprise the Authorized Park District Representative of the status of progress regarding the Project on a monthly basis and, upon request, provide the Authorized Park District Representative and the Authorized D.Z.P. Representative with copies of reports and other documents prepared by or for the Commission. As soon as reasonably practicable, the Commission shall provide the Authorized Park District Representative and the Authorized D.Z.P. Representative with any information which may result in a request for a Change Order or Field Order or require the expenditure of additional funds or resultant delays. The Authorized Park District Representative shall have access to the Property, the right to inspect the Work wherever it is in process at all reasonable times and to attend meetings with representatives of the Commission, the Contractor and others regarding the Project. The Authorized Park District Representative will provide to the Commission prompt and accurate information regarding the programs and requirements of the Park District so that the progress of the Project will not be impeded. All data provided by the Authorized Park District Representative shall be evaluated by the Commission, who shall have the right to recommend alternative approaches and value engineering in order to reduce costs while maintaining the overall quality of the Project and the Budget.

1.6.3 Payment And Performance Bond. The Commission shall require the Contractor to provide a payment and performance bond to ensure that the terms and conditions of the Contract Documents will be faithfully performed. The payment and performance bond shall be in the amount specified in the Contract Documents and issued by a surety company licensed to do business in the State of Illinois and approved by the Commission. If the surety fails or is deemed by the Commission to be insufficient security for the payment of the bond, the Commission will require the Contractor to furnish an additional bond in such amount as shall be determined by the Commission. Any proceeds derived by the Commission as a result of the payment and performance bond shall be credited to the Project Account and applied as agreed by the Commission and the Authorized Park District Representative.

1.6.4 Waiver And Release Of Liens. The Commission shall require and procure from the Contractor waivers of liens or rights of lien for all labor and materials furnished in the construction of the Project. This provision shall be construed as being solely for the benefit of the Commission, the City and the Park District and shall not confer any rights hereunder for the benefit of the Contractor or its subcontractors. To ensure payment of lien claims, the Commission shall retain the amounts of the liens claimed by subcontractors or suppliers from payments to the Contractor in accordance with applicable Illinois statutory requirements.

1.6.5 Standards For Construction. The Commission shall require the Contractor to provide for the Project materials that are new and work of good quality, free from faults and defects, and in conformity with the requirements of the Contract Documents. The Commission shall also require the Contractor to correct any deficient or defective work or materials in accordance with the procedures described in the Contract Documents. For a period of one (1) year from the date of Final Acceptance of the Work, or such longer period as may be provided by any applicable special warranty in any of the various subcontracts to the Contract, the Park District in collaboration with the Commission shall cause the Contractor to correct any work or materials found to be defective or nonconforming and any damage caused by such work and materials.

#### 1.7 Definitions.

Certain capitalized terms that are not otherwise set forth in this Agreement have the meanings as set forth in Appendix A attached hereto.

### *Section 2.*

#### *Responsibilities Of The Parties.*

##### 2.1 The Commission.

The Commission will undertake the coordination, management and administration of the Project in accordance with Section 1 hereof. Specific responsibilities of the Commission include, but are not limited to, the following:

2.1.1 Prepare or cause to be prepared the terms and conditions of the Contract, which upon request shall be forwarded to the Authorized Park District Representative and the Authorized D.Z.P. Representative for review;

2.1.2 Solicit bids and/or proposals as may be required for the development, construction, improvement or selected demolition of the Project and award the Contract in accordance with Section 1.2.1 hereof;

2.1.3 Engage the services of such planning, architectural, engineering and other consultants as may be necessary for the completion of the Project;

2.1.4 Examine any and all documents submitted by D.Z.P., the Park District or the Contractor and render decisions pertaining thereto with reasonable promptness to avoid delay in the completion of the Project;

2.1.5 Require that the Contractor provide the types and amounts of insurance and bond during the construction of the Project pursuant the guidelines set forth in Sections 1.6.3 and 6.1 and (Sub)Exhibit G, hereof;

2.1.6 Require, and procure from the Contractor, waivers of all liens or rights of lien for labor and materials furnished by or through it in the construction of the Project prior to processing interim and final pay requests as more fully described in Section 1.6.4 hereof;

2.1.7 Require, by appropriate provision in the Contract Documents, that the Contractor perform the Work in a manner that will avoid any damage to existing building, structures, underground service and utility lines and other improvements;

2.1.8 Require, by appropriate provision in the Contract Documents, that the Contractor insure, indemnify, save and hold harmless the City, the Park District and the Commission as more fully described in Section 7.1.2 hereof;

2.1.9 Amend Contract Documents in accordance with Sections 3.1.11 and 3.2.4 of the Master Park District/Commission I.G.A.;

2.1.10 Apply the funds deposited in the Project Account or otherwise paid by the Park District to obtain the full and faithful completion of the Project in accordance with the Contract Documents and the Budget unless otherwise authorized by the Authorized Park District Representative;

2.1.11 Provide such additional services as may be requested by D.Z.P. or the Park District with respect to the Project provided that sufficient funds are available to pay the costs of such services; and

2.1.12 Project Completion Requirements.

(a) The Commission shall require the Contractor to comply with the requirements of the Contract Documents with respect to the completion and closeout of the Project including, but not limited to, the completion of Punch List Work, the furnishing of material and equipment guarantees, warranties, operating and maintenance data, manuals, Record Documents, waivers of lien, certified payrolls, and such other documents as may be required to comply with the terms of the Contract Documents. Upon completion, the Commission will cause a copy of all such relevant documents to be delivered as directed by the Authorized Park District Representative and, upon request, to the Authorized D.Z.P. Representative. Any liquidated damages which may be assessed by the Commission against the Contractor for non-performance or delay and any amounts which may be recovered from the Contractor or its surety for failure to comply with the requirements of the Contract Documents or for errors and omissions shall be credited to the Project Account or otherwise disbursed as agreed by the Commission, the Authorized Park District Representative and the Authorized D.Z.P. Representative.

(b) Inspections. All Work and materials constituting the Project shall be inspected by the Authorized Commission Representative and designees or personnel of the City and the Park District as required by applicable codes or ordinance. The Commission shall notify the Authorized Park District Representative and the Authorized D.Z.P. Representative when the Project has been scheduled for inspections to certify Substantial Completion and Final Acceptance of the Work. The Authorized Park District Representative and the Authorized D.Z.P. Representative shall have the right to attend any and all such inspections and will assist the Authorized Commission Representative in determining when the Project has been sufficiently completed for beneficial use and occupancy. The Commission, the Authorized Park District Representative and the Authorized D.Z.P. Representative will monitor completion of Punch List Work by the Contractor.

(c) Final Acceptance and Payment to Contractor. Unless otherwise provided by the Contract Documents, upon completion of all the Work required to be completed by the Contractor and issuance of the certificate of Final Acceptance of the Work, the Commission shall process final payment to the Contractor in accordance with the procedures set forth in the Contract Documents.

(d) Certificate of Completion. Upon Substantial Completion of the Work, the Authorized Commission Representative shall deliver to the Authorized Park District Representative and the Authorized D.Z.P. Representative a Certificate of Completion, substantially in the form attached hereto as Exhibit F, to be accepted in writing on behalf of the City and the Park District, and returned to the Authorized Commission Representative. In the event that, within ten (10) business days following receipt of the Certificate of Completion, the Authorized Park District Representative and the Authorized D.Z.P. Representative do not (a) return an executed counterpart of the Certificate of Completion to the Authorized Commission Representative or (b) advise the Authorized Commission Representative in writing that there are material defects in the Project which preclude beneficial use and occupancy, the Project will be deemed completed and accepted by the City and the Park District.

## 2.2 The Park District.

The Park District, in consultation with the Authorized Commission Representative and the Authorized D.Z.P. Representative, shall determine the nature and scope of the Project. The Park District shall pay all costs of the Project as set forth in the Budget, attached hereto as (Sub)Exhibit D-1. In no event shall the Commission be obligated to pay nor shall the Commission disburse any funds from the Project Account which exceed the overall Budget for the Project without the written approval of the Authorized Park District Representative and the Authorized D.Z.P. Representative. Specific responsibilities of the Park District include, but are not limited to, the following:

2.2.1 Designate the Authorized Park District Representative to act in the Park District's behalf with respect to the implementation of the Project for the purpose of attending meetings, examining documents and rendering timely decisions pertaining to design and construction of the Project;

2.2.2 Approve requests pursuant to Section 2.1.9 hereof in accordance with Sections 3.1.11 and 3.2.4 of the Master Park District/Commission I.G.A.;

2.2.3 Pay all costs incurred in the development and construction of the Project as provided in the Budget in accordance with Section 3 hereof;

2.2.4 Cooperate with the designated representatives of the Commission and the City in the execution of any applications for, and in obtaining any and all approvals pertaining to, all permits or the like as may be required in order to develop and construct the Project;

2.2.5 In consultation with the Commission provide prior approval to the Commission and notice to the Authorized D.Z.P. Representative for all changes in the Budget for the Project, including any reallocation of funds among line items therein; and

2.2.6 Record the NFR Letter and comply with the terms and provisions thereof and all Environmental Laws; and

2.2.7 Provide such additional assistance as shall be agreed by the parties.

### 2.3 The City.

The City, acting by and through D.Z.P., will provide T.I.F. Assistance in accordance with the provisions set forth in Section 3. Specific responsibilities of the City include the following:

2.3.1 Designate an Authorized D.Z.P. Representative to act in the City's behalf with respect to the Project or the purpose of attending meetings, examining documents and rendering timely decisions with respect to the Project;

2.3.2 Cooperate with the designated representatives of the Commission and the Park District in the execution of any applications for, and in obtaining any and all approvals pertaining to, all permits or the like as may be required in order to develop and construct the Project;

2.3.3 Participate in inspections, attend meetings with representatives of the Contractor, the Park District and the Commission, and provide such additional assistance as may be necessary in order to facilitate Substantial Completion and Final Acceptance of the Project.

2.3.4 Provide all necessary reporting and remedial oversight as necessary to obtain an NFR Letter for the Expansion in accordance with the Comprehensive Site Investigation Report/Remedial Objectives Report/Remedial Action Plan prepared by Environmental

Design International, Inc., dated June 2009 (the "R.O.R./R.A.P."), including, without limitation, responding to comments from the I.E.P.A., reviewing and approving analytical data for imported clean fill (topsoil) to be brought to the Expansion, overseeing the import of clean fill and submitting a Remedial Action Completion Report.

### *Section 3.*

#### *Funding And Payment Of Project Costs.*

##### 3.1 Funding Of The Project Account.

3.1.1 Park District Funds. The Commission shall prepare and submit to the Authorized Park District Representative, on a quarterly basis in advance, the estimated amounts pursuant to the Budget that will be required to pay the costs of the Project during the next succeeding ninety (90) days. Requests for payment shall include professional services, construction, administrative costs, contingency reserves and such other items as shall have been agreed by the Commission and the Park District. Within ten (10) days following receipt of a quarterly estimate and request for payment, the Park District shall pay to the Commission the estimated costs to be incurred during the applicable period notwithstanding receipt by the Park District of any funds from the City, including the T.I.F. Assistance. In the event that a request for payment has not been paid to the Commission within thirty (30) days following the submission of the payment request, the Commission shall have the right to suspend its performance of this Agreement until payment is received. Funds received pursuant to this Section 3.1.1 shall be deposited into the Project Account.

3.1.2 The T.I.F. Assistance. The City shall, subject to the Park District's satisfaction of the conditions precedent for disbursement described in Sections 1 and 2 hereof and such other conditions contained in this Agreement, disburse the T.I.F. Assistance to the Park District upon submission and approval of the Certificate of Expenditure for the Project.

##### 3.2

The City shall establish a special account within the Bryn Mawr/Broadway Redevelopment Project Area Special Tax Allocation Fund; such special account is or shall be known as the "Bromann Park Account". Disbursement of T.I.F. Assistance funds will be subject to the availability of City Increment in the Bromann Park Account, subject to all restrictions on and obligations of the City contained in all Bryn Mawr/Broadway Ordinances, or relating to the City Increment and all agreements and other documents entered into by the City pursuant thereto.

### 3.3 Disbursement Of Project Costs.

3.3.1 The Commission will disburse funds deposited in the Project Account to pay eligible costs of the Project in accordance with the procedures specified in the Contract Documents for interim and final payments. Payments for professional services shall be on the basis of invoices approved by the Commission pursuant to its usual and customary payment procedures. In the event that the amounts in the Project Account shall be insufficient to complete the Project, the Commission shall notify the Authorized Park District Representative and the Authorized D.Z.P. Representative in writing and request additional funding.

3.3.2 If the Park District at any point does not have sufficient funds to complete the Project, the Park District shall so notify the City in writing and may ask the City to provide additional funding to the Park District to complete the Project; provided, however, that the decision whether to provide additional funding shall be in the City's sole discretion and shall be subject to the appropriation of such funds; if the City does not provide additional funding to the Park District to complete the Project, then the Park District shall narrow the scope of the Project as agreed with the City (the "Revised Project") in order to complete the Revised Project with the available funds. In no event shall the Commission be obligated to expend any funds for completing the Project in excess of the amounts provided by the Park District. Any balance remaining in the Project Account upon completion of the Project shall be paid by the Commission as directed by the Authorized Park District Representative.

### 3.4

The Park District may request that a certificate(s) of expenditure in the form of (Sub)Exhibit E hereto ("Certificates of Expenditure") be processed and executed periodically. The City shall not execute the Certificate of Expenditure for an amount in excess of the T.I.F. Assistance. Included with the executed Certificate of Expenditure, the Park District shall submit documentation substantiating the T.I.F.-Funded Improvements to the Authorized D.Z.P. Representative. Delivery by the Park District to D.Z.P. of the request for execution by the City of the Certificate of Expenditure hereunder shall, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such request for execution of a Certificate of Expenditure, that:

3.4.1 The total amount of the request for the Certificate of Expenditure represents the actual amount payable to (or paid to) the Contractor, subcontractors, and other parties who have performed work on or otherwise provided goods or services in connection with the Project, and/or their payees;

3.4.2 [Intentionally Omitted];

3.4.3 The Park District has approved all work and materials for the request for the Certificate of Expenditure, and such work and materials conform to the Site Plans, as set forth in (Sub)Exhibit C; and

3.4.4 The Park District is in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, pertaining to or affecting the Project or the Park District as related thereto.

### 3.5

The City shall have the right, in its discretion, to require the Park District to submit further documentation as the City may require in order to verify that the matters certified to in Section 3.4 hereof are true and correct, and the execution of the Certificate of Expenditure by the City shall be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct; provided, however, that nothing in this sentence shall be deemed to prevent the City from relying on such certifications by the Park District.

### 3.6

The current estimate of the cost of the Project is Three Hundred Fifty Thousand Dollars (\$350,000). The Commission has delivered to the Authorized Park District Representative and the Authorized D.Z.P. Representative the Budget for the Project in an amount not to exceed Three Hundred Fifty Thousand Dollars (\$350,000), as attached as (Sub)Exhibit D-1. The Park District certifies that the sources of funds set forth in the Budget are sufficient to complete the Project. The Park District agrees that the City will reimburse the Park District with the T.I.F. Assistance for a portion of the costs of the Project and that all costs of completing the Project in excess of the T.I.F. Assistance shall be the sole responsibility of the Park District.

### 3.7

(Sub)Exhibit D-2 sets forth a preliminary list of costs recognized by the City as being eligible redevelopment project costs under the T.I.F. Act with respect to the Project, to be paid for out of the T.I.F. Assistance. To the extent the T.I.F.-Funded Improvements are included as taxing district capital costs under the T.I.F. Act, the Park District acknowledges that the T.I.F.-Funded Improvements are costs for capital improvements and the City acknowledges it has determined that these T.I.F.-Funded Improvements are necessary and directly result from the Plan. Prior to the expenditure of T.I.F. Assistance funds on the Project, the D.Z.P. Commissioner, based upon the Budget, may make such modifications to (Sub)Exhibit D-2 as he or she wishes in his or her discretion to account for all of the T.I.F. Assistance funds to be expended under this Agreement; provided, however, that all T.I.F.-Funded Improvements shall (i) qualify as redevelopment project costs under the T.I.F. Act, (ii) qualify as eligible costs under the Plan; and (iii) be improvements that D.Z.P. has agreed to pay for out of T.I.F. Assistance funds, subject to the terms of this Agreement.

## 3.8

The Park District hereby acknowledges and agrees that the City's obligations hereunder with respect to the T.I.F. Assistance are subject in every respect to the availability of funds as described in and limited by this Section 3.8 and by Section 3.2. If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for disbursements of the T.I.F. Assistance, then the City will notify the Park District in writing of that occurrence, and the City may terminate this Agreement on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for disbursement under this Agreement are exhausted.

## 3.9

If the aggregate cost of the T.I.F.-Funded Improvements is less than the amount of the T.I.F. Assistance contemplated by this Agreement, the Park District shall have no claim to the difference between the amount of the T.I.F. Assistance contemplated by this Agreement and the amount of the T.I.F. Assistance actually paid by the City to the Park District and expended by the Park District on the Project.

*Section 4.*

*Term And Rights Of Entry.*

## 4.1

The term of this Agreement shall commence on the Closing Date and shall expire on the date on which the Bryn Mawr/Broadway Redevelopment Project Area is no longer in effect, or on the date of termination of this Agreement according to its terms, whichever occurs first.

## 4.2

[Intentionally Omitted Pertaining To Leases]

## 4.3

The Park District hereby agrees that the Commission, the City, the Contractor and any designee thereof shall have such right or rights-of-entry upon the Park as may be required in order to commence, manage and after completion maintain the Project. The Contractor shall provide evidence of the types and amounts of insurance as set forth in Section 6.1 and indemnification as set forth in Section 7.1.2.

## 4.4

[Intentionally Omitted Related To Conveyance]

*Section 5.**Environmental Matters.*

## 5.1

The City has provided oversight of the removal of contaminated material from the Expansion, and has agreed to complete the work necessary to obtain an NFR Letter for the Expansion in accordance with the R.O.R./R.A.P.. The Commission and the Park District acknowledge and agree that the City is responsible only for the tasks outlined in Section 2.3.4 above and shall have no obligation to undertake investigative or remedial activities arising out of modifications to the scope of work set forth in the R.O.R./R.A.P.. In the event the I.E.P.A. requests additional work for the NFR Letter, the parties shall work cooperatively to identify funding sources for such costs. If the Final NFR Letter is voided as a result of the acts or omissions of the Park District or the Commission, the City shall have no obligation to obtain a new NFR Letter or amend the existing NFR Letter covering the Expansion.

## 5.2

Each party shall deliver to the other copies of any written communications received from or submitted to the I.E.P.A. or other regulatory agencies in connection with the Park and the Project. To its knowledge, the City has delivered or otherwise made available to the Park District and the Commission copies of all environmental tests, reports or studies relating to the Property in its possession or control, and such documents are listed on Exhibit B attached hereto. The City, the Park District and the Commission hereby acknowledge and agree that the environmental documents listed on (Sub)Exhibit B disclose various adverse environmental conditions on the Expansion.

## 5.3

No party hereto is responsible for any other party's compliance with Environmental Laws and the terms and conditions of any draft or final NFR Letter affecting the Property, and each party hereto completely and forever waives, releases and discharges the other parties harmless from and against any and all claims, demands, actions, legal or administrative proceedings, losses, damages, obligations, liabilities, judgments, fines, costs and expenses based upon, arising out of, or related to such party's failure to comply with applicable Environmental Laws, including, without limitation, any I.E.P.A. directives, orders, rules and regulations, and the terms and conditions of any draft or final NFR Letter affecting the Property. This provision shall survive any termination of this Agreement, but shall not relieve the City from any of its obligations under Section 5.1. and 2.3.4 of this Agreement.

## 5.4

The Commission agrees to carefully inspect the Property prior to commencement of any activity related to the Project to ensure that such activity shall not damage surrounding property, structures, utility lines or any subsurface lines or cables. The Commission shall be solely responsible for the safety and protection of the public. The City reserves the right to inspect the work being done on the Property. The Commission agrees to keep the Property free from all liens and encumbrances arising out of any work performed, materials supplied or obligations incurred by or for the Commission or the Park District.

*Section 6.**Insurance.*

## 6.1

The Contractor and all subcontractors shall be required to purchase and maintain during the construction of the Project the types and amounts of insurance as set forth in (Sub)Exhibit G. All such insurance shall be placed in financially responsible companies, satisfactory to the Commission and authorized under the insurance laws of the State of Illinois to do business in the State of Illinois.

## 6.2

Any insurance proceeds derived by the Commission in connection with the Project shall be credited to the Project Account and applied as agreed by the Commission and the Authorized D.Z.P. Representative and the Park District Risk Manager.

*Section 7.**Indemnity/No Personal Liability.*

## 7.1 Indemnification.

## 7.1.1 Indemnification By The Parties.

(a) To the extent permitted by applicable Laws, the City agrees to indemnify, defend and hold the Park District harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, reasonable attorneys' fees and court costs) suffered or incurred by the Park District or the Commission arising from any incident or accident related to the Project that results from:

(a) a material breach of this Agreement by the City, its agents or employees; or (b) the negligence or intentional misconduct of the City or its agents, representatives, contractors, subcontractors, employees, licensees or invitees. Nothing in this paragraph shall be deemed to limit in any way the liability provisions of the Local Government and Governmental Employees Tort Immunity Act (745 ILCS 10/, et seq.)

(b) To the extent permitted by applicable Laws, the Park District agrees to indemnify, defend and hold the City harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, reasonable attorneys' fees and court costs) suffered or incurred by the City or the Commission arising from any incident or accident related to the Project that results from: (a) a material breach of this Agreement by the Park District, its agents or employees; or (b) the negligence or intentional misconduct of the Park District or its agents, representatives, contractors, subcontractors, employees, licensees or invitees. Nothing in this paragraph shall be deemed to limit in any way the liability provisions of the Local Government and Governmental Employees Tort Immunity Act (745 ILCS 10/, et seq.)

#### 7.1.2 Indemnification By The Contractor.

Any contract to be awarded by the Commission for the Project shall require the Contractor to indemnify, save and hold harmless the Commission, the City, the Park District and their respective commissioners, board members, officers, agents and employees and representatives, individually and collectively, from all claims, demands, actions and the like, made or instituted by third parties arising or alleged to arise out of the Work as a result of any negligent or willful act or omission of the Contractor or its subcontractors or any of their employees or agents.

#### 7.2

No elected or appointed official or member or employee or agent of the City, the Commission or the Park District shall be individually or personally liable in connection with this Agreement.

#### 7.3 Construction And Other Third Party Claims.

7.3.1 Claims or proceedings against the Commission or the Contractor that arise out of a claim or proceeding that is instituted by third parties as a result of any negligent or willful act of the Contractor or any of its subcontractors or subconsultants shall be tendered to the Contractor for defense of the Commission, the Park District and the City pursuant to Section 7.1.3 hereof.

7.3.2 The Commission will use its best efforts to enforce the provisions of the Agreement so that the Project is completed in a cost efficient, timely manner. The Commission will defend or prosecute, as applicable, rights and remedies afforded by the Contract in a reasonable, prudent manner. Unless the Park District and the City consent otherwise, the Commission shall pursue and exhaust, and shall pursuant to the Contract require the Contractor to pursue and exhaust all dispute resolution requirements provided for under the Contract before litigating any dispute in connection with the Project. To the extent that payment of the Commission's legal costs and expenses are not recovered from the Contractor or any surety, the Park District agrees to pay or reimburse the Commission for costs incurred for legal costs and expenses subject to the following conditions:

(a) the Commission will not initiate any legal proceeding related to the Project and no settlement shall be made without the prior consent of the Park District General Counsel and the Corporation Counsel of the City;

(b) the Park District shall have the right to approve legal counsel selected by the Commission in any legal proceeding in which the Park District is a party under this Agreement, and the City shall have the right to approve legal counsel selected by the Commission to represent the City in any legal proceeding in which the City is a party under this Agreement;

(c) the Commission will notify the Authorized Park District Representative and the Park District General Counsel and the Authorized D.Z.P. Representative and the Corporation Counsel of the City of any proceeding related to the Project within ten (10) days following receipt of summons and complaint or as otherwise directed by the Park District General Counsel and the Corporation Counsel of the City;

(d) the Commission will apprise the Authorized Park District Representative and the Park District General Counsel and the Authorized D.Z.P. Representative and the Corporation Counsel of the City on a quarterly basis or otherwise as agreed by the Parties concerning the status of any legal proceeding related to the Project;

(e) the Commission, the Park District, and the Corporation Counsel of the City shall establish a separate legal budget as soon as practicable after the commencement of any legal proceeding related to the Project;

(f) the Commission will provide a quarterly legal services report summary related to the Project to the Authorized Park District Representative and the Park District General Counsel and the Authorized D.Z.P. Representative and the Corporation Counsel of the City;

(g) any legal fees, costs of expenses incurred (collectively, "legal costs") must comply with the City's Outside Counsel Guidelines (the "Guidelines"). All invoices for legal costs shall be submitted to: (i) the Authorized Park District Representative if payment is sought to be received from the Park District, and (ii) Patrick Ryan, the Corporation Counsel's Director of Administration, and online to the City's legal auditor, Examen, if payment is sought to be received from the City. The Commission shall review the charges not in compliance with the Guidelines, as determined by the Authorized Park District Representative or Examen, as the case may be, and process the invoices for payment. The Parties shall endeavor to approve invoices within ten (10) business days following written receipt in order for the Commission to comply with the Prompt Payment Act (50 ILCS 20/12.1); and

(h) notwithstanding the foregoing, in the event that the Commission is judged by a court of competent jurisdiction to have been negligent or to have committed other acts of misconduct involving a claim or other legal proceeding the Parties will equitably adjust the reimbursement of legal fees and costs as appropriate.

7.3.3 Any funds which may be recovered by the Commission as a result of any such legal proceedings shall be deposited in the Project Account and disbursed as directed by the Authorized Park District Representative.

7.3.4 It is expressly understood and agreed that the City and the Park District will not reimburse the Commission for any legal fees on account of findings against the Commission for breach of contract or the breach of the Agreement.

#### 7.4

The defense and indemnification obligations in this Section 7.1 shall survive any termination or expiration of this Agreement.

### *Section 8.*

#### *Default.*

#### 8.1 Default By Contractor.

In the event that a Contractor defaults in its obligations to perform, the Commission shall pursue all rights and remedies afforded to it pursuant to the terms of the Contract, at law or in equity. Upon request by the Park District and approval by the Commission, the Commission shall assign any of its rights and remedies for default by the Contractor to the Park District.

### *Section 9.*

#### *General Provisions.*

#### 9.1 Authority.

Execution of this Agreement by the City and the transfer of the Property from the City to the Park District is authorized by the Authorizing Ordinance. Execution of this Agreement by the Park District is authorized by the Park District Ordinances. Execution of this Agreement by the Commission is authorized by the Commission Resolution. The Parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their respective obligations hereunder.

#### 9.2 Records; Audit.

The Commission shall maintain records and accounts which shall include entries of all transactions relating to the expenditure of funds required for the Project. The Authorized Park District Representative and the Authorized D.Z.P. Representative shall have the right to inspect the books and records of the Commission pertaining to a Project upon request at all reasonable times.

#### 9.3 Compliance With Laws.

The Parties agree to comply with all Laws relating to this Agreement.

#### 9.4 Consents.

Whenever the consent or approval of a Party to this Agreement is required hereunder, such consent or approval will not be unreasonably withheld.

#### 9.5 Construction Of Words.

As used in this Agreement, the singular of any word shall include the plural, and vice versa. Masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

#### 9.6 Counterparts.

This Agreement may be executed in several counterparts and by a different Party in separate counterparts, with the same effect as if all Parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.

#### 9.7 Further Assurance.

The Parties shall perform such acts, execute and deliver such instruments and documents, and do all such other things as may be reasonably necessary to accomplish the transactions contemplated in this Agreement.

#### 9.8 Governing Law And Venue.

This Agreement will be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to the principles of conflicts of law thereof. If there is a lawsuit under this Agreement, each Party hereto agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois.

#### 9.9 Integration.

This Agreement constitutes the entire agreement between the Parties, merges all discussions between them and supersedes and replaces any and every other prior or contemporaneous agreement, negotiation, understanding, commitments and writing with respect to such subject matter hereof.

#### 9.10 Parties' Interest/No Third Party Beneficiaries.

This Agreement shall be binding upon the Parties, and their respective successors and permitted assigns (as provided herein) and shall inure to the benefit of the Parties, and their respective successors and permitted assigns (as provided herein). This Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a Party and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right. Nothing contained in this Agreement, nor any act of the Parties shall be deemed or construed by any of the Parties hereto or by third parties, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving any of the Parties.

#### 9.11 Modification Or Amendment.

This Agreement may not be altered, modified or amended except by a written instrument signed by all Parties.

#### 9.12 No Implied Waivers.

No waiver by a Party of any breach of any provision of this Agreement will be a waiver of any continuing or succeeding breach of the breached provision, a waiver of the breached provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to, or demand on, a Party in any case will, of itself, entitle that Party to any further notice or demand in similar or other circumstances.

#### 9.13 Notices.

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram, facsimile (fax); (c) overnight courier or (d) registered or certified first class mail, return receipt requested:

## To The City:

City of Chicago  
Department of Community Development  
Attention: Commissioner  
City Hall, Room 1000  
121 North LaSalle Street  
Chicago, Illinois 60602  
(312) 744-4190  
(312) 744-2271 (Fax)

with copies to:

City of Chicago  
Department of Law  
Attention: Finance and Economic  
Development Division  
City Hall, Room 600  
121 North LaSalle Street  
Chicago, Illinois 60602  
(312) 744-0200  
(312) 744-8538 (Fax)

## To The Park District:

Chicago Park District  
Attention: General Superintendent  
541 North Fairbanks Court  
Chicago, Illinois 60611  
(312) 742-4200  
(312) 742-5360 (Fax)

with copies to:

Chicago Park District  
General Counsel  
541 North Fairbanks Court  
Chicago, Illinois 60611  
(312) 742-4602  
(312) 742-5316 (Fax)

## To The Commission:

Public Building Commission of Chicago  
50 West Washington Street  
Room 200  
Chicago, Illinois 60602  
Attention: Executive Director

with a copy to:

Neal & Leroy, L.L.C.  
203 North LaSalle Street  
Suite 2300  
Chicago, Illinois 60601  
Attention: Anne L. Fredd

Such addresses may be changed by notice to the other Parties given in the same manner provided above. Any notice, demand or request sent pursuant to either clause (a) or (b) above shall be deemed received upon such personal service or dispatch. Any notice, demand or request sent pursuant to clause (c) above shall be deemed received on the day immediately following deposit with the overnight courier and any notices, demands or requests sent pursuant to clause (d) above shall be deemed received two (2) business days following deposit in the mail.

Any notice sent pursuant to this Section 9.14 shall also be sent to the Authorized D.Z.P. Representative, the Authorized Park District Representative and the Authorized Commission Representative, as the case may be.

#### 9.14 Remedies Cumulative.

The remedies of a Party hereunder are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any other remedies of such Party unless specifically so provided herein.

#### 9.15 Representatives.

Immediately upon execution of this Agreement, the following individuals will represent the Parties pursuant to Section 2.2 hereof as a primary contact in all matters under this Agreement.

Authorized D.Z.P. Representative:

[Name]  
[Title]  
City of Chicago  
Department of Zoning and Land Use  
Planning  
City Hall, Room 1003  
121 North LaSalle Street  
Chicago, Illinois 60602  
(312) 744-5756  
(312) 744-7996 (Fax)

Authorized Park District  
Representative:

[Name]  
[Title]  
Chicago Park District  
541 North Fairbanks Court  
Chicago, Illinois 60611  
(312) 472-4200  
(312) 472-5360 (Fax)

Authorized Commission  
Representative:

[Name]  
[Title]  
Public Building Commission of Chicago  
50 West Washington Street  
Room 200  
Chicago, Illinois 60602  
(312) 744-9286  
(312) 744-8005 (Fax)

Each Party agrees to promptly notify the other Party of any change in its designated representative, which notice shall include the name, address, telephone number and fax number of the representative for such Party for the purpose hereof.

#### 9.16 Severability.

If any provision of this Agreement, or the application thereof, to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms shall provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth herein.

#### 9.17 Survival Of Agreements.

Except as otherwise contemplated by this Agreement, all covenants and agreements of the Parties contained in this Agreement will survive the consummation of the transactions contemplated hereby.

#### 9.18 Titles And Headings.

Titles and headings to paragraphs contained in this Agreement are for convenience only and are not intended to limit, vary, define or expand the content of this Agreement.

9.19 Assignment.

This Agreement, or any portion thereof, shall not be assigned by a Party without the prior written consent of the other Parties.

9.20 Time.

Time is of the essence in the performance of this Agreement.

In Witness Whereof, Each of the Parties has caused this Agreement to be executed and delivered as of the date first above written.

City of Chicago, a municipal corporation, by  
and through its Department of Zoning and  
Land Use Planning

By: \_\_\_\_\_  
Commissioner

Chicago Park District, a body politic and  
corporate

By: \_\_\_\_\_  
General Superintendent and  
Chief Executive Officer

Attest: \_\_\_\_\_  
Secretary

Public Building Commission of Chicago,  
a body politic and corporate

By: \_\_\_\_\_  
Executive Director

[(Sub)Exhibits "B" and "C" referred to in this Intergovernmental Agreement with Chicago Park District and the Public Building Commission of Chicago unavailable at time of printing.]

Appendix "A", (Sub)Exhibits "A-1", "A-2", "D-1", "D-2", "E", "F" and "G" referred to in this Intergovernmental Agreement with the Chicago Park District and the Public Building Commission of Chicago read as follows:

*Appendix "A".*

(To Intergovernmental Agreement With Chicago Park District  
And Public Building Commission Of Chicago)

*Definitions.*

**Authorized Commission Representative:** The person or entity employed or retained by the Commission to provide construction management, administration and coordination services with respect to the implementation of the Project.

**Authorized D.Z.P. Representative:** The person or firm employed by D.Z.P. for the purpose of facilitating the construction of the Project, approving charge orders and material substitutions which affect or cause the Project to exceed the overall Budget, and obtaining all other required approvals by D.Z.P..

**Authorized Park District Representative:** The person or firm employed by the Park District as its representative for purposes of receiving notices, attending meetings and inspections, and otherwise participating in the development and completion of the Project.

**Budget:** The amount determined by the Authorized D.Z.P. Representative, the Authorized Park District Representative and the Authorized Commission Representative as the estimated cost of completing the Project and attached hereto as (Sub)Exhibit D-1.

**Certificate of Expenditure:** The Certificate, substantially in the form attached hereto as (Sub)Exhibit E, which shall be issued by the Commission on behalf of the Park District as provided in Section 1.6.9 hereof to certify that the Project substantially conforms to the Contract Documents and that the Project has been completed except for Punch List Work that will not materially interfere with the use and occupancy of the Project.

**Change Order:** The document which authorizes either an adjustment in the Contract sum and/or Contract time or a change in the Work that may result in such an adjustment.

**Contract:** The contract, including all of the Contract Documents as described therein, to provide the labor, materials and other Work, for the construction, repair or renovation of the Project. For purposes of this Agreement, the term "contract" may include a general construction contract or construction management services agreement.

**Contract Documents:** The drawings, specifications and program requirements (including civil, architectural, structural, mechanical, plumbing, fire protection and electrical drawings and technical specifications) for the construction of the Project.

**Contractor:** The contractor which contracts with the Commission to perform services and provide Work in connection with the development, design, selected demolition, construction, repair or renovation of the Project. For purposes of this Agreement, the term "contractor" may include a general contractor, construction manager or other consultants engaged by the Commission to construct the Project.

**Environmental Laws:** Any and all Laws relating to the regulation and protection of human health, safety, the environment and natural resources now or hereafter in effect, as amended or supplemented from time to time, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., the Clean Air Act, 42 U.S.C. § 7401, et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136, et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651, et seq., and any and all regulations promulgated thereunder, and all analogous state and local counterparts or equivalents, including, without limitation, the Illinois Environmental Protection Act, 415 ILCS 5/1, et seq.

**Field Order:** A written order to the Contractor unilaterally directing changes in the Work or the Project Schedule.

**Final Acceptance:** The date on which the Authorized Commission Representative in consultation and agreement with the Authorized D.Z.P. Representative and the Authorized Park District Representative determines that all of the requirements of the Contract for the construction of the Project or portions thereof have been completed in accordance with the Contract Documents.

**Laws:** All applicable federal, state, local or other laws (including common law), statutes, codes, ordinances, rules, regulations or other requirements, now or hereafter in effect, as amended or supplemented from time to time, and any applicable judicial or administrative interpretation thereof, including any applicable judicial or administrative orders, consent decrees or judgments.

Master Park District/Commission I.G.A.: The Master Intergovernmental Agreement between the Park District and the Commission dated as of August 31, 1999, for the development and redevelopment of various Park District buildings and facilities by the Commission, as amended or supplemented from time to time.

Project: The development, design, selected demolition, repair and renovation, construction and improvement of buildings and facilities for use in providing recreational services to residents of the City to be constructed on the Sites as more fully described on (Sub)Exhibit C entitled, "Site Plans", attached hereto and incorporated herein by reference.

Project Account: An existing interest-bearing account of the Commission that will be used for purposes of depositing funds advanced by the Park District to pay the costs incurred by the Commission in designing, constructing and improving the Project or portions thereof as more fully described in Section 3.1.1 hereof.

Punch List Work: Minor adjustments, repairs or deficiencies in the Work as determined by the Authorized Commission Representative in consultation and agreement with the Authorized D.Z.P. Representative and the Authorized Park District Representative, which must be completed prior to Final Acceptance of the Work and the issuance of the Certificate of Completion for the Project.

Record Documents: Operating and maintenance manuals, "as built" documents (1 mylar set) and CAD files of all drawings relating to the Project.

Schedule: The anticipated date or dates on which the Project or portion thereof will be completed.

Substantial Completion: The date on which the Authorized Commission Representative in consultation with the Authorized D.Z.P. Representative and the Authorized Park District Representative determines that the Project has been substantially completed (except for Punch List Work that will not materially interfere with the use and occupancy of the Project) and the Contractor has delivered to the Commission a "Certificate of Occupancy" issued by the City for such Project.

Work: All materials, labor, equipment, supplies, plant, tools, scaffolding, transportation, superintendence, permits, inspections, occupancy approvals, insurance, taxes and all other services, facilities and expenses necessary for the full performance and completion of the requirements of the Contract Documents. Work also means that which is furnished, produced, constructed or built pursuant to the Contract Documents.

*(Sub)Exhibit "A-1".*

(To Intergovernmental Agreement With Chicago Park District  
And Public Building Commission Of Chicago)

Legal Description (subject to survey and title commitment):

Lots 23 and 24 in Block 8 in Cochran's Third Addition to Edgewater being a subdivision of the east half of the northwest quarter of Section 8, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Commonly Known As:

5400 North Broadway  
Chicago, Illinois 60640-1704.

Permanent Index Number:

14-08-113-031-0000.

*(Sub)Exhibit "A-2".*  
(To Intergovernmental Agreement With Chicago Park District  
And Public Building Commission Of Chicago)

Legal Description (subject to survey and title commitment):

Lot 22 in Block 8 in Cochran's Third Addition to Edgewater being a subdivision of the east half of the northwest quarter of Section 8, Township 40 North, Range 14 East of the Third Principal Meridian, in Cook County, Illinois.

Commonly Known As:

5406 North Broadway  
Chicago, Illinois 60640-1704.

Permanent Index Number:

14-08-113-030-0000.

*(Sub)Exhibit "D-1".*  
(To Intergovernmental Agreement With Chicago Park District  
And Public Building Commission Of Chicago)

*Project Budget.*

Bromann Park Playground Budget

Design	\$ 50,000.00
Demolition	10,000.00

Drainage/Utilities	\$ 45,000.00
Surfacing -- Paving and Soft Surface	100,000.00
Play Equipment/Site Furnishings	100,000.00
Landscaping/Earthwork	15,000.00
General Construction	<u>30,000.00</u>
TOTAL:	\$350,000.00

*(Sub)Exhibit "D-2".*

(To Intergovernmental Agreement With Chicago Park District  
And Public Building Commission Of Chicago)

*T.I.F.-Funded Improvements.\**

## Bromann Park Playground Budget

Design	\$ 50,000.00
Demolition	10,000.00
Drainage/Utilities	45,000.00
Surfacing -- Paving and Soft Surface	100,000.00
Play Equipment/Site Furnishings	100,000.00
Landscaping/Earthwork	15,000.00
General Construction	<u>30,000.00</u>
TOTAL:	\$350,000.00

---

\* The maximum amount of T.I.F. Assistance shall not exceed Three Hundred Fifty Thousand and no/100 Dollars (\$350,000.00).



3. The Park District has approved all work and materials for the current request for a Certificate of Expenditure, and such work and materials conform to the Plans and Specifications.

4. The Park District is in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, pertaining to or affecting the Project or the Park District as related thereto.

All capitalized terms which are not defined herein have the meanings given such terms in the Agreement.

Park District

By: \_\_\_\_\_  
Name

Title: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_  
day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

My commission expires: \_\_\_\_\_

Agreed and Accepted:

\_\_\_\_\_  
Name

Title: \_\_\_\_\_

City of Chicago  
Department of Zoning and Land Use Planning

10/7/2009

REPORTS OF COMMITTEES

72041

*(Sub)Exhibit "F".*  
(To Intergovernmental Agreement With Chicago Park District  
And Public Building Commission Of Chicago)

*Form Of Certificate Of Completion.*

Date: \_\_\_\_\_

[Park District  
Address Block]

[City Of Chicago, Department Of Zoning And Land Use Planning Address Block]

Dear \_\_\_\_\_:

Enclosed please find a Certificate of Preliminary Acceptance as issued by \_\_\_\_\_, the Architect of Record, along with a Certificate of Occupancy (if applicable) for the above referenced project.

The Public Building Commission is in the process of completing the remaining punch list work. Copies of all warranties, operations/maintenance manuals and as-built drawings are currently being assembled and will be transmitted to you shortly. Training of Chicago Park District staff has been completed and all keys have been turned over.

Please confirm your acceptance of the Name of Project by signing in the space provided below and returning a copy of this letter to the attention of the [Executive Director].

Please contact the writer at (312) 74\_\_- \_\_\_\_\_ should you have any questions.

Very truly yours,

Public Building Commission of Chicago

P.B.C. Project Manager

Accepted By:

\_\_\_\_\_  
Chicago Park District

\_\_\_\_\_, 20\_\_\_\_

Accepted By:

\_\_\_\_\_, 20\_\_\_\_

City of Chicago  
Department of Zoning and Land Use Planning

[Date]

Enclosure

cc: \_\_\_\_\_ - D.Z.P.

\_\_\_\_\_ - P.B.C.

*(Sub)Exhibit "G".*  
(To Intergovernmental Agreement With Chicago Park District  
And Public Building Commission Of Chicago)

*Insurance Requirements.\**

A. Insurance Provided By The Park District.

The Park District must provide and maintain, at Park District's own expense, or cause to be provided and maintained during the term of this Agreement, the insurance coverage and requirements specified below, insuring all operations related to the Agreement:

(a) In connection With The Execution And Delivery Of This Agreement:

(i) Workers' Compensation And Employer's Liability.

Workers' Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employer's Liability coverage with limits of not less than One Hundred Thousand Dollars (\$100,000) each accident, illness or disease.

\_\_\_\_\_  
\* The City maintains the right to modify, delete, alter or change the requirements set forth in this (Sub)Exhibit G.

(ii) Commercial General Liability (Primary And Umbrella).

Commercial General Liability Insurance or equivalent with limits of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage liability. Coverage must include the following: all premises and operations, products/completed operations independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City is to be named as an additional insured on a primary, noncontributory basis for any liability arising directly or indirectly from the work or services.

(iii) Automobile Liability (Primary And Umbrella).

When any motor vehicles (owned, non-owned and hired) are used in connection with this Agreement, the Automobile Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury and property damage. The City is to be named as an additional insured on a primary, noncontributory basis.

(iv) Self-Insurance.

To the extent permitted by applicable Law, the Park District may self-insure for the insurance requirements specified in items (i), (ii) and (iii) above, it being expressly understood and agreed that, if the Park District does self-insure for any such insurance requirements, the Park District must bear all risk of loss for any loss which would otherwise be covered by insurance policies, and the self-insurance program must comply with at least such insurance requirements as stipulated above.

(v) Post Construction.

All Risk Property Insurance at replacement value of the Property to protect against loss of, damage to, or destruction of the building/facility pursuant to the terms of the Lease.

(b) Other Requirements:

The Park District must furnish the Authorized D.Z.P. Representative, at the notice address provided in Section 9.15, original Certificates of Insurance, or such similar

evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if such coverage has an expiration or renewal date occurring during the term of this Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from the Park District is not a waiver by the City of any requirements for the Park District to obtain and maintain the specified coverage. The Park District shall advise all insurers of the Agreement provisions regarding insurance. Nonconforming insurance does not relieve the Park District of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work and/or terminate the Agreement until proper evidence of insurance is provided.

The insurance must provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self-insured retentions on referenced insurance must be borne by the Park District and other contractors, as applicable.

The Park District hereby waives and agrees to require their insurers to waive their rights of subrogation against the City, its employees, elected officials, agents, or representatives.

The insurance and limits furnished by the Park District in no way limit the Park District's or any other contractors' liabilities and responsibilities specified within the Agreement or by applicable Law.

Any insurance or self-insurance programs maintained by the City do not contribute with insurance provided by the Park District under the Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

The City maintains the right to modify, delete, alter or change the requirements set forth in this Section A.

#### B. Insurance Provided By The Commission.

The Commission must provide and maintain, at the Commission's own expense, or cause to be provided and maintained, from the date of execution of the Agreement until and including the date of the Certificate of Completion, the insurance coverage and requirements specified below, insuring all operations related to the completion of the Project:

(a) Workers' Compensation And Employer's Liability.

Workers' Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employer's Liability coverage with limits of not less than One Hundred Thousand Dollars (\$100,000) each accident, illness or disease.

(b) Commercial General Liability (Primary And Umbrella).

Commercial General Liability Insurance or equivalent with limits of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage liability. Coverage must include the following: all premises and operations, products/completed operations independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City and the Park District are to be named as an additional insured on a primary, noncontributory basis for any liability arising directly or indirectly from the work or services.

(c) Automobile Liability (Primary And Umbrella).

When any motor vehicles (owned, non-owned and hired) are used in connection with this Agreement, the Automobile Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury and property damage. The City and the Park District are to be named as an additional insured on a primary, noncontributory basis.

(d) Self-Insurance.

To the extent permitted by applicable Law, the Commission may self insure for the insurance requirements specified in items (a), (b) and (c) above, it being expressly understood and agreed that, if the Commission does self-insure for any such insurance requirements, the Commission must bear all risk of loss for any loss which would otherwise be covered by insurance policies, and the self-insurance program must comply with at least such insurance requirements as stipulated above.

(e) Other Requirements.

The Commission must furnish the Authorized DZP Representative and the Authorized Park District Representative, at the notice address provided in Section 9.15, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if such coverage has an expiration or renewal date occurring during the term such insurance

coverage is required under the Agreement. The receipt of any certificate does not constitute agreement by the City or the Park District that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City or the Park District to obtain certificates or other insurance evidence from the Commission is not a waiver by the City or the Park District, as the case may be, of any requirements for the Commission to obtain and maintain the specified coverage. The Commission shall advise all insurers of the Agreement provisions regarding insurance. Nonconforming insurance does not relieve the Commission of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City and the Park District retain the right to stop work and/or terminate the Agreement until proper evidence of insurance is provided.

The insurance must provide for sixty (60) days prior written notice to be given to the City and the Park District in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self-insured retentions on referenced insurance must be borne by the Commission and other contractors, as applicable.

The Commission hereby waives and agrees to require their insurers to waive their rights of subrogation against the City and the Park District, and their respective employees, elected officials, agents, or representatives.

The insurance and limits furnished by the Commission in no way limit the Commission's or any other contractors' liabilities and responsibilities specified within the Agreement or by applicable Law.

Any insurance or self-insurance programs maintained by the City or the Park District do not contribute with insurance provided by the Commission under the Agreement.

The Commission must require the Contractors to provide the insurance as set forth in Section D herein, or the Commission may provide the coverage for the Contractors.

The City, with the prior consent of the Park District, maintains the right to modify, delete, alter or change the requirements set forth in this Section B.

#### C. Insurance Provided By The City.

The City must provide and maintain, at City's own expense, or cause to be provided and maintained, from the date of execution of the Agreement until and including the date of the Certificate of Completion, the insurance coverage and requirements specified below, insuring all operations related to the completion of the Project:

(a) Workers' Compensation And Employer's Liability.

Workers' Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employer's Liability coverage with limits of not less than One Hundred Thousand Dollars (\$100,000) each accident, illness or disease.

(b) Commercial General Liability (Primary And Umbrella).

Commercial General Liability Insurance or equivalent with limits of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage liability. Coverage must include the following: all premises and operations, products/completed operations independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The Park District is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work or services.

(c) Automobile Liability (Primary And Umbrella).

When any motor vehicles (owned, non-owned and hired) are used in connection with this Agreement, the Automobile Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury and property damage. The Park District is to be named as an additional insured on a primary, non-contributory basis.

(d) Self-Insurance.

To the extent permitted by applicable Law, the City may self insure for the insurance requirements specified in items (a), (b) and (c) above, it being expressly understood and agreed that, if the City does self-insure for any such insurance requirements, the City must bear all risk of loss for any loss which would otherwise be covered by insurance policies, and the self-insurance program must comply with at least such insurance requirements as stipulated above.

(e) Other Requirements.

The City must furnish the Authorized Park District Representative and the Authorized Commission Representative, at the notice address provided in Section 9.15, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if such coverage has an expiration or renewal date occurring during the term such insurance coverage is required under the Agreement. The receipt of any certificate does not

constitute agreement by the Park District or the Commission that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the Park District or the Commission to obtain certificates or other insurance evidence from the City is not a waiver by the Park District or the Commission, as the case may be, of any requirements for the City to obtain and maintain the specified coverage. The City shall advise all insurers of the Agreement provisions regarding insurance. Nonconforming insurance does not relieve the City of the obligation to provide insurance as specified herein.

The insurance must provide for sixty (60) days prior written notice to be given to the Park District and the Commission in the event coverage is substantially changed, canceled, or nonrenewed.

Any deductibles or self-insured retentions on referenced insurance must be borne by the City and other contractors, as applicable.

The City hereby waives and agrees to require their insurers to waive their rights of subrogation against the Park District, its employees, elected officials, agents, or representatives.

The insurance and limits furnished by the City in no way limit the City's or any other contractors' liabilities and responsibilities specified within the Agreement or by applicable Law.

Any insurance or self-insurance programs maintained by the Park District or the Commission do not contribute with insurance provided by the City under the Agreement.

The City, with the prior consent of the Park District and the Commission, maintains the right to modify, delete, alter or change the requirements set forth in this Section C.

#### D. Insurance Provisions Of The Contractors.

Each Contractor must provide and maintain at such Contractor's own expense, until Contract completion and during the time period following final completion if such Contractor is required to return and perform any additional work, the minimum insurance coverage and requirements specified below, insuring all operations related to the Contract.

##### (a) Workers' Compensation And Employer's Liability.

Workers' Compensation Insurance, as prescribed by applicable law, covering all employees who are to provide a service under this Contract and Employer's Liability coverage with limits of not less than Five Hundred Thousand Dollars (\$500,000) each accident, illness or disease.

(b) Commercial General Liability (Primary And Umbrella).

Commercial General Liability Insurance or equivalent with limits of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage liability. Coverage must include the following: all premises and operations, products/completed operations, (for minimum of two (2) years following project completion), explosion, collapse, underground, separation of insureds, defense and contractual liability (with no limitation endorsement). The Commission, the Park District and the City are to be named as additional insureds on a primary, noncontributory basis for any liability arising directly or indirectly from the work.

Subcontractors performing work for a Contractor must maintain limits of not less than One Million Dollars (\$1,000,000) per occurrence with the same terms herein.

(c) Automobile Liability (Primary And Umbrella).

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, such Contractor must provide Automobile Liability Insurance, with limits of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury or property damage. The Commission, the Park District and the City are to be named as additional insureds on a primary, noncontributory basis.

Subcontractors performing work for a Contractor must maintain limits of not less than One Million Dollars (\$1,000,000) per occurrence with the same terms herein.

(d) Contractor's Pollution Liability.

When any work is performed which may cause a pollution exposure, Contractors Pollution Liability must be provided covering bodily injury, property damage and other losses caused by pollution conditions that arise from the Contract scope of services with limits of not less than One Million Dollars (\$1,000,000) per occurrence. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Contract. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years. The Commission, the Park District and the City are to be named as additional insureds on a primary, noncontributory basis.

(e) Professional Liability.

When any architects, engineers or any other professional consultants perform work in connection with this Contract, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than One Million Dollars (\$1,000,000). The architect of record and project manager must maintain

limits of not less than Five Million Dollars (\$5,000,000). Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Contract. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years.

(f) Builders Risk.

When a Contractor undertakes any construction, including improvements, betterments, and/or repairs, such Contractor must provide All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage must include but is not limited to the following: right to partial occupancy, collapse, water including overflow, leakage, sewer backup, or seepage, damage to adjoining or existing property, debris removal, scaffolding, faulty workmanship or materials, mechanical-electrical breakdown, testing, and equipment stored off site or in transit. The Commission, the Park District and the City are to be named as additional insureds and loss payees.

The Contractor is responsible for all loss or damage to Commission, Park District and/or City property at full replacement cost.

The Contractor is responsible for all loss or damage to personal property (including but not limited to materials, equipment, tools and supplies) owned, rented or used by such Contractor.

(g) Valuable Papers.

When any designs, drawings, plans, specifications and documents are produced or used under the Contract, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient for the re-creation and reconstruction of such records.

(h) Additional Requirements.

Each Contractor must furnish the Commission Procurement Department, Richard J. Daley Center, Room 200, Chicago, Illinois 60602, original Certificates of Insurance, or such similar evidence and Renewal Certificates of Insurance, or such similar evidence, if any insurance has an expiration or renewal date occurring during the term of this Agreement. The Contractor must submit evidence of insurance to the Commission prior to Contract award. The receipt of any certificate does not constitute agreement by the Commission that the insurance requirements in this Agreement or

the Contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all Contract or Agreement requirements. The failure of the Commission to obtain certificates or other insurance evidence from Contractor is not a waiver by the Commission of any requirements for the Contractor to obtain and maintain the specified insurance. The Contractor shall advise all insurers of the Contract provisions regarding insurance. Non-conforming insurance does not relieve Contractor of the obligation to provide insurance as specified herein. Non-fulfillment of the insurance conditions may constitute a violation of the Contract, and the Commission retains the right to stop work until proper evidence of insurance is provided, or the Contract may be terminated.

The Commission reserves the right to obtain copies of insurance policies and records from any Contractor at any time upon written request.

The insurance must provide for sixty (60) days prior written notice to be given to the Commission in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self-insured retentions on referenced insurance must be borne by the Contractor.

The Contractor agrees that insurers waive their rights of subrogation against the Commission, the Park District and the City and their respective board members, employees, elected and appointed officials, agents, and representatives.

The coverage and limits furnished by Contractor in no way limit the Contractor's liabilities and responsibilities specified within the Contract or by law.

Any insurance or self-insurance programs maintained by the Commission, the Park District and City do not contribute with insurance provided by the Contractor under the Contract.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement or in the Contract given as a matter of Law.

If a Contractor is a joint venture or a limited liability company, the insurance policies must name such joint venture or such limited liability company as a named insured.

Each Contractor must provide the insurance required herein. If a Contractor desires additional coverage, such Contractor is responsible for the acquisition and cost.

The Commission, with the prior consent of the City and the Park District, maintains the right to modify, delete, alter or change the requirements set forth in this Section D.

**INTERGOVERNMENTAL AGREEMENT  
AMONG THE CITY OF CHICAGO, THE  
CHICAGO PARK DISTRICT AND THE  
PUBLIC BUILDING COMMISSION OF CHICAGO  
(Bromann Park TIF Transfer)**

This Agreement is made this as of the <sup>27<sup>th</sup></sup> day of April, 2010 (the "Closing Date"), under authority granted by Article VII, Section 10 of the 1970 Constitution of the State of Illinois, by and among the City of Chicago, an Illinois municipal corporation having its principal offices at City Hall, 121 N. LaSalle Street, Chicago, Illinois 60602 (the "City"), acting through its Department of Zoning and Land Use Planning ("DZP") and its Department of Environment ("DOE"); the Chicago Park District, an Illinois municipal corporation having its principal offices at 521 N. Fairbanks Court, Chicago, Illinois 60611 (the "Park District"); and the Public Building Commission of Chicago, an Illinois municipal corporation having its offices at the Richard J. Daley Center, Room 200, Chicago, Illinois 60602 (the "Commission"). The Commission, the Park District and the City are sometimes referred to collectively herein as the "Parties."

**RECITALS**

WHEREAS, the City is a home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, and as such may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the Legislature of the State of Illinois passed an act to authorize the creation of public building commissions and to define their rights, powers and duties, approved July 5, 1955, as amended (the "Commission Act") to facilitate the construction, improvement and enlargement of buildings and facilities at convenient locations within the county seats and municipalities; and

WHEREAS, pursuant to the Commission Act, the City Council (the "City Council") of the City, on March 28, 1956, by Ordinance, created the Commission for the purpose of assisting in the funding and constructing of public improvements; and

WHEREAS, the Park District, a body politic and corporate organized and existing under the Chicago Park District Act (the "Park District Act"), joined in the organization of the Commission on April 24, 1956; and

WHEREAS, the Commission has heretofore undertaken the acquisition, construction, alteration, repair, renovation, rehabilitation and equipping of buildings and facilities for use by various public bodies including the Park District, the City, the Board of Education of the City of Chicago and the Board of Trustees of Community College District No. 508, County of Cook and State of Illinois; and

WHEREAS, the Park District is the owner of certain real property located at 5400 North Broadway Avenue in the Edgewater Community Area and legally described on Exhibit A-1 attached hereto (the "Property"); and

WHEREAS, on August 11, 2009, the City conveyed to the Park District certain real property located adjacent to the Property and legally described on Exhibit A-2 (the "Expansion"); and

WHEREAS, the Expansion and the Property comprise Bromann Park (the "Park"); and

WHEREAS, DOE has enrolled the Expansion in the Illinois Environmental Protection Agency ("IEPA") Site Remediation Program ("SRP") and expects to obtain a final comprehensive "No Further Remediation" letter ("NFR Letter") from IEPA stating that the Expansion meets Tier I residential remediation objectives as set forth in 35 Ill. Adm. Code Part 742 (the Tiered Approach to Cleanup Objectives or the "TACO" program); and

WHEREAS, the Commission and the Park District intend to make improvements to the Park; and

WHEREAS, the City and the Park District desire to create additional public open space in the Edgewater Community Area, and have proposed that the Commission undertake the development and construction of improvements on the Park (the "Project") as further described in Section 1 hereof; and

WHEREAS, the Property lies wholly within the boundaries of the Bryn Mawr/Broadway Redevelopment Project Area (as hereinafter defined); and

WHEREAS, the City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 *et seq.*, as amended from time to time (the "TIF Act"), to finance projects that eradicate blight conditions and conservation factors that could lead to blight through the use of tax increment allocation financing for redevelopment projects; and

WHEREAS, in accordance with the provisions of the TIF Act, pursuant to ordinances adopted on December 11, 1996, and published in the Journal of Proceedings for said date at pages 35413 to 35510, the City Council: (i) approved and adopted a redevelopment plan and project for a portion of the City known as the "Bryn Mawr/Broadway Redevelopment Project Area" (the "Bryn Mawr/Broadway Redevelopment Plan"); (ii) designated the Bryn Mawr/Broadway Redevelopment Area as a "redevelopment project area"; and (iii) adopted tax increment allocation financing for the Bryn Mawr/Broadway Redevelopment Area (collectively, the "Bryn Mawr/Broadway TIF Ordinances"); and

WHEREAS, under 65 ILCS 5/11-74.4-3(q)(7), such incremental ad valorem taxes which pursuant to the TIF Act have been collected and are allocated to pay redevelopment project costs and obligations incurred in the payment thereof ("Increment") may be used to pay all or a portion of a taxing district's capital costs resulting from a redevelopment project necessarily incurred or to be incurred in furtherance of the objectives of the redevelopment plan and project, to the extent the municipality by written agreement accepts and approves such costs (Increment collected from the Bryn Mawr/Broadway Redevelopment Area shall be known as the "City Increment"); and

WHEREAS, DZP wishes to make available to the Park District a portion of the City Increment in an amount not to exceed \$350,000 (the "TIF Assistance"), subject to Section 3.6, for the purpose of funding eligible expenses for the Project (the "TIF-Funded Improvements") in the Bryn Mawr/Broadway Redevelopment Area to the extent and in the manner provided in this Agreement; and

WHEREAS, the Bryn Mawr/Broadway Redevelopment Plan contemplates that tax increment

financing assistance would be provided for public improvements, such as the Project, within the boundaries of the Bryn Mawr/Broadway Redevelopment Area; and

WHEREAS, the Park District is a taxing district under the TIF Act; and

WHEREAS, in accordance with the TIF Act, the TIF-Funded Improvements shall include such of the Park District's capital costs necessarily incurred or to be incurred in furtherance of the objectives of the Bryn Mawr/Broadway Redevelopment Plan, and the City has found that the TIF-Funded Improvements consist of the cost of the Park District's capital improvements that are necessary and directly result from the redevelopment project constituting the Project and, therefore, constitute "taxing districts' capital costs" as defined in Section 5/11-74.4-3(u) of the TIF Act; and

WHEREAS, the City, the Commission, and the Park District intend to participate in the planning and implementation of the Project including, but not limited to review and approval of/consent to design elements and materials to be incorporated into the Project and approval of the Budget (as hereinafter defined); and

WHEREAS, pursuant to the terms of this Agreement, the City shall reimburse the Park District for the TIF-Funded Improvements upon completion of the Project by the Commission; and

WHEREAS, on October 7, 2009, the City Council adopted an ordinance published in the Journal of Proceedings for said date at pages 72005 to 72051, (the "Authorizing Ordinance"), among other things, authorizing the execution of this Agreement; and

WHEREAS, on April 14, 2009, the Commission's Board of Commissioners (the "Commission Board") passed a Resolution expressing its desire to undertake the design and construction of the Project and authorizing the execution of this Agreement (the "Commission Resolution")

WHEREAS, on July 8, 2009, the Park District's Board of Commissioners authorized the execution of this Agreement (the "Park District Ordinances"); and

WHEREAS, the parties have determined that it is necessary, desirable and in the public interest to enter into this Agreement pursuant to the Intergovernmental Cooperation Act of the State of Illinois in order to set forth their respective objectives, duties and responsibilities and to describe the procedures and guidelines to be followed with respect to the implementation of the Project;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the above recitals which are made a contractual part of this Agreement, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **TERMS AND CONDITIONS**

### **SECTION 1. THE PROJECT.**

1.1. The Commission will coordinate and manage the planning, development, design, selected demolition, construction and improvement of the Project pursuant to the terms of this Agreement and all applicable Laws, including but not limited to the Commission Act, the TIF Act, the

Park District Act and the Municipal Code of the City.

1.2. No later than three months from the Closing Date, or later as the Commissioner of DZP (the "DZP Commissioner") and the Authorized Park District Representative may agree in writing, the Commission shall let one or more contracts for the Project in compliance with all applicable Laws pertaining to or affecting the Project.

1.2.1 Selection of Contractor. The Commission shall review and evaluate the bids or proposals submitted and conduct such investigations as may be necessary and appropriate to determine the qualifications of the bidders or proposers and the responsiveness of the bid or proposal. During the bid review period, the Authorized DZP Representative and the Authorized Park District Representative shall have the right to attend meetings and participate in the evaluation process. Following the bid review process, the Contractor determined by the Commission Board to be the lowest responsible bidder in accordance with the Commission's usual and customary bid procedures shall be awarded the Contract upon recommendation of the Executive Director of the Commission.

1.2.2 Limited Applicability of Approval. Any approvals of the Contract Documents for the Project made by the Authorized DZP Representative or the Authorized Park District Representative are for purposes of this Agreement only and do not affect any required approvals pursuant to any ordinance or regulation of the City or the Park District. Any such approval by the Authorized DZP Representative or the Authorized Park District Representative to this Agreement also does not constitute approval of the quality, structural soundness or the safety of the Project.

1.2.3 Ownership of Documents. All construction documents, data, schematics, warranties, design documents, copyrights and Contract Documents with regard to the construction of the Project shall be the property of the Commission. After Final Acceptance of the Work, the Commission shall promptly assign all of its rights in and to such documents to the Park District and shall deliver such documents and the Record Documents as directed by the Authorized Park District Representative. Upon request, a copy of said documents and Record Documents shall be made available to the City.

1.3. The plans and specifications for the Project (the "Plans and Specifications") shall at a minimum be in conformance with the Site Plans set forth in Exhibit C hereof. The Plans and Specifications shall be provided to the City by the Commission prior to letting any contract pursuant to Section 1.2 hereof. No material deviation from the Plans and Specifications may be made without the prior written approval of the Authorized Park District Representative and the Authorized DZP Representative. The Park District and Commission shall comply with all applicable Laws as may be in effect from time to time, pertaining to or affecting the Project.

1.4. Prior to the commencement of the Work, the Commission shall provide the Authorized Park District Representative and the Authorized DZP Representative with copies of any required governmental licenses and permits required to construct the Project.

1.5. The Park District shall include a certification of compliance with the requirements of Sections 1.2, 1.3 and 1.4 hereof with the request for the TIF Assistance hereunder at the time the Project is completed. The City shall be entitled to rely on this certification without further inquiry. Upon the City's request, the Park District shall provide evidence satisfactory to the City of such

compliance.

1.6. *Administration of the Project.*

1.6.1 Enforcement of Contract. The Commission shall comply with, and cause the Contractor to comply with, as appropriate and applicable, the terms and conditions of the Contract Documents for the Project including all applicable Laws. Such requirements include, but are not limited to, accessibility standards for persons with disabilities or environmentally limited persons, the Illinois Prevailing Wage Act, the City's Human Rights Ordinance, the City's Building Codes, EEO and affirmative action requirements.

1.6.2 Coordination with the City and the Park District. The Commission shall apprise the Authorized Park District Representative of the status of progress regarding the Project on a monthly basis and, upon request, provide the Authorized Park District Representative and the Authorized DZP Representative with copies of reports and other documents prepared by or for the Commission. As soon as reasonably practicable, the Commission shall provide the Authorized Park District Representative and the Authorized DZP Representative with any information which may result in a request for a Change Order or Field Order or require the expenditure of additional funds or resultant delays. The Authorized Park District Representative shall have access to the Property, the right to inspect the Work wherever it is in process at all reasonable times and to attend meetings with representatives of the Commission, the Contractor and others regarding the Project. The Authorized Park District Representative will provide to the Commission prompt and accurate information regarding the programs and requirements of the Park District so that the progress of the Project will not be impeded. All data provided by the Authorized Park District Representative shall be evaluated by the Commission, who shall have the right to recommend alternative approaches and value engineering in order to reduce costs while maintaining the overall quality of the Project and the Budget.

1.6.3 Payment and Performance Bond. The Commission shall require the Contractor to provide a payment and performance bond to ensure that the terms and conditions of the Contract Documents will be faithfully performed. The payment and performance bond shall be in the amount specified in the Contract Documents and issued by a surety company licensed to do business in the State of Illinois and approved by the Commission. If the surety fails or is deemed by the Commission to be insufficient security for the payment of the bond, the Commission will require the Contractor to furnish an additional bond in such amount as shall be determined by the Commission. Any proceeds derived by the Commission as a result of the payment and performance bond shall be credited to the Project Account and applied as agreed by the Commission and the Authorized Park District Representative.

1.6.4 Waiver and Release of Liens. The Commission shall require and procure from the Contractor waivers of liens or rights of lien for all labor and materials furnished in the construction of the Project. This provision shall be construed as being solely for the benefit of the Commission, the City and the Park District and shall not confer any rights hereunder for the benefit of the Contractor or its subcontractors. To ensure payment of lien claims, the Commission shall retain the amounts of the liens claimed by subcontractors or suppliers from payments to the Contractor in accordance with applicable Illinois statutory requirements.

1.6.5 Standards for Construction. The Commission shall require the Contractor to provide for the Project materials that are new and work of good quality, free from faults and defects, and in conformity with the requirements of the Contract Documents. The Commission shall also require the Contractor to correct any deficient or defective work or materials in accordance with the procedures described in the Contract Documents. For a period of one (1) year from the date of Final Acceptance of the Work, or such longer period as may be provided by any applicable special warranty in any of the various subcontracts to the Contract, the Park District in collaboration with the Commission shall cause the Contractor to correct any work or materials found to be defective or non-conforming and any damage caused by such work and materials.

1.7. *Definitions*. Certain capitalized terms that are not otherwise set forth in this Agreement have the meanings as set forth in Appendix A attached hereto.

## **SECTION 2. RESPONSIBILITIES OF THE PARTIES.**

2.1. *The Commission*. The Commission will undertake the coordination, management and administration of the Project in accordance with Section 1 hereof. Specific responsibilities of the Commission include, but are not limited to, the following:

2.1.1 Prepare or cause to be prepared the terms and conditions of the Contract, which upon request shall be forwarded to the Authorized Park District Representative and the Authorized DZP Representative for review;

2.1.2 Solicit bids and/or proposals as may be required for the development, construction, improvement or selected demolition of the Project and award the Contract in accordance with Section 1.2.1 hereof;

2.1.3 Engage the services of such planning, architectural, engineering and other consultants as may be necessary for the completion of the Project;

2.1.4 Examine any and all documents submitted by DZP, the Park District or the Contractor and render decisions pertaining thereto with reasonable promptness to avoid delay in the completion of the Project;

2.1.5 Require that the Contractor provide the types and amounts of insurance and bond during the construction of the Project pursuant the guidelines set forth in Sections 1.6.3 and 6.1 and Exhibit G, hereof;

2.1.6 Require, and procure from the Contractor, waivers of all liens or rights of lien for labor and materials furnished by or through it in the construction of the Project prior to processing interim and final pay requests as more fully described in Section 1.6.4 hereof;

2.1.7 Require, by appropriate provision in the Contract Documents, that the Contractor perform the Work in a manner that will avoid any damage to existing building, structures, underground service and utility lines and other improvements;

2.1.8 Require, by appropriate provision in the Contract Documents, that the

Contractor insure, indemnify, save and hold harmless the City, the Park District and the Commission as more fully described in Section 7.1.2 hereof;

2.1.9 Amend Contract Documents in accordance with Sections 3.1.11 and 3.2.4 of the Master Park District/Commission IGA;

2.1.10 Apply the funds deposited in the Project Account or otherwise paid by the Park District to obtain the full and faithful completion of the Project in accordance with the Contract Documents and the Budget unless otherwise authorized by the Authorized Park District Representative;

2.1.11 Provide such additional services as may be requested by DZP or the Park District with respect to the Project provided that sufficient funds are available to pay the costs of such services; and

2.1.12 Project Completion Requirements.

(a) The Commission shall require the Contractor to comply with the requirements of the Contract Documents with respect to the completion and close-out of the Project including, but not limited to, the completion of Punch List Work, the furnishing of material and equipment guarantees, warranties, operating and maintenance data, manuals, Record Documents, waivers of lien, certified payrolls, and such other documents as may be required to comply with the terms of the Contract Documents. Upon completion, the Commission will cause a copy of all such relevant documents to be delivered as directed by the Authorized Park District Representative and, upon request, to the Authorized DZP Representative. Any liquidated damages which may be assessed by the Commission against the Contractor for non-performance or delay and any amounts which may be recovered from the Contractor or its surety for failure to comply with the requirements of the Contract Documents or for errors and omissions shall be credited to the Project Account or otherwise disbursed as agreed by the Commission, the Authorized Park District Representative and the Authorized DZP Representative.

(b) Inspections. All Work and materials constituting the Project shall be inspected by the Authorized Commission Representative and designees or personnel of the City and the Park District as required by applicable codes or ordinance. The Commission shall notify the Authorized Park District Representative and the Authorized DZP Representative when the Project has been scheduled for inspections to certify Substantial Completion and Final Acceptance of the Work. The Authorized Park District Representative and the Authorized DZP Representative shall have the right to attend any and all such inspections and will assist the Authorized Commission Representative in determining when the Project has been sufficiently completed for beneficial use and occupancy. The Commission, the Authorized Park District Representative and the Authorized DZP Representative will monitor completion of Punch List Work by the Contractor.

(c) Final Acceptance and Payment to Contractor. Unless otherwise provided by the Contract Documents, upon completion of all the Work required to be completed by the Contractor and issuance of the certificate of Final Acceptance of

the Work, the Commission shall process final payment to the Contractor in accordance with the procedures set forth in the Contract Documents.

(d) Certificate of Completion. Upon Substantial Completion of the Work, the Authorized Commission Representative shall deliver to the Authorized Park District Representative and the Authorized DZP Representative a Certificate of Completion, substantially in the form attached hereto as Exhibit F, to be accepted in writing on behalf of the City and the Park District, and returned to the Authorized Commission Representative. In the event that, within ten (10) business days following receipt of the Certificate of Completion, the Authorized Park District Representative and the Authorized DZP Representative do not (a) return an executed counterpart of the Certificate of Completion to the Authorized Commission Representative or (b) advise the Authorized Commission Representative in writing that there are material defects in the Project which preclude beneficial use and occupancy, the Project will be deemed completed and accepted by the City and the Park District.

2.2. *The Park District.* The Park District, in consultation with the Authorized Commission Representative and the Authorized DZP Representative, shall determine the nature and scope of the Project. The Park District shall pay all costs of the Project as set forth in the Budget, attached hereto as Exhibit D-1. In no event shall the Commission be obligated to pay nor shall the Commission disburse any funds from the Project Account which exceed the overall Budget for the Project without the written approval of the Authorized Park District Representative and the Authorized DZP Representative. Specific responsibilities of the Park District include, but are not limited to, the following:

2.2.1 Designate the Authorized Park District Representative to act in the Park District's behalf with respect to the implementation of the Project for the purpose of attending meetings, examining documents and rendering timely decisions pertaining to design and construction of the Project;

2.2.2 Approve requests pursuant to Section 2.1.9 hereof in accordance with Sections 3.1.11 and 3.2.4 of the Master Park District/Commission IGA;

2.2.3 Pay all costs incurred in the development and construction of the Project as provided in the Budget in accordance with Section 3 hereof;

2.2.4 Cooperate with the designated representatives of the Commission and the City in the execution of any applications for, and in obtaining any and all approvals pertaining to, all permits or the like as may be required in order to develop and construct the Project;

2.2.5 In consultation with the Commission provide prior approval to the Commission and notice to the Authorized DZP Representative for all changes in the Budget for the Project, including any reallocation of funds among line items therein; and

2.2.6 Record the NFR Letter and comply with the terms and provisions thereof and all Environmental Laws; and

2.2.7 Provide such additional assistance as shall be agreed by the parties.

2.3. *The City.* The City, acting by and through DZP, will provide TIF Assistance in accordance with the provisions set forth in Section 3. Specific responsibilities of the City include the following:

2.3.1 Designate an Authorized DZP Representative to act in the City's behalf with respect to the Project or the purpose of attending meetings, examining documents and rendering timely decisions with respect to the Project;

2.3.2 Cooperate with the designated representatives of the Commission and the Park District in the execution of any applications for, and in obtaining any and all approvals pertaining to, all permits or the like as may be required in order to develop and construct the Project;

2.3.3 Participate in inspections, attend meetings with representatives of the Contractor, the Park District and the Commission, and provide such additional assistance as may be necessary in order to facilitate Substantial Completion and Final Acceptance of the Project.

2.3.4 Provide all necessary reporting and remedial oversight as necessary to obtain an NFR Letter for the Expansion in accordance with the Comprehensive Site Investigation Report/Remedial Objectives Report/Remedial Action Plan prepared by Environmental Design International, Inc., dated June 2009 (the "ROR/RAP"), including, without limitation, responding to comments from the IEPA, reviewing and approving analytical data for imported clean fill (topsoil) to be brought to the Expansion, overseeing the import of clean fill and submitting a Remedial Action Completion Report.

### **SECTION 3. FUNDING AND PAYMENT OF PROJECT COSTS.**

#### ***3.1. Funding of the Project Account.***

3.1.1 Park District Funds. The Commission shall prepare and submit to the Authorized Park District Representative, on a quarterly basis in advance, the estimated amounts pursuant to the Budget that will be required to pay the costs of the Project during the next succeeding 90 days. Requests for payment shall include professional services, construction, administrative costs, contingency reserves and such other items as shall have been agreed by the Commission and the Park District. Within ten (10) days following receipt of a quarterly estimate and request for payment, the Park District shall pay to the Commission the estimated costs to be incurred during the applicable period notwithstanding receipt by the Park District of any funds from the City, including the TIF Assistance. In the event that a request for payment has not been paid to the Commission within 30 days following the submission of the payment request, the Commission shall have the right to suspend its performance of this Agreement until payment is received. Funds received pursuant to this Section 3.1.1 shall be deposited into the Project Account.

3.1.2 The TIF Assistance. The City shall, subject to the Park District's satisfaction of the conditions precedent for disbursement described in Sections 1 and 2 hereof and such other conditions contained in this Agreement, disburse the TIF Assistance to the Park

District upon submission and approval of the Certificate of Expenditure for the Project.

3.2. The City shall establish a special account within the Bryn Mawr/Broadway Redevelopment Project Area Special Tax Allocation Fund; such special account is or shall be known as the "Bromann Park Account." Disbursement of TIF Assistance funds will be subject to the availability of City Increment in the Bromann Park Account, subject to all restrictions on and obligations of the City contained in all Bryn Mawr/Broadway Ordinances, or relating to the City Increment and all agreements and other documents entered into by the City pursuant thereto.

3.3. *Disbursement of Project Costs.*

3.3.1 The Commission will disburse funds deposited in the Project Account to pay eligible costs of the Project in accordance with the procedures specified in the Contract Documents for interim and final payments. Payments for professional services shall be on the basis of invoices approved by the Commission pursuant to its usual and customary payment procedures. In the event that the amounts in the Project Account shall be insufficient to complete the Project, the Commission shall notify the Authorized Park District Representative and the Authorized DZP Representative in writing and request additional funding.

3.3.2 If the Park District at any point does not have sufficient funds to complete the Project, the Park District shall so notify the City in writing and may ask the City to provide additional funding to the Park District to complete the Project; provided, however, that the decision whether to provide additional funding shall be in the City's sole discretion and shall be subject to the appropriation of such funds; if the City does not provide additional funding to the Park District to complete the Project, then the Park District shall narrow the scope of the Project as agreed with the City (the "Revised Project") in order to complete the Revised Project with the available funds. In no event shall the Commission be obligated to expend any funds for completing the Project in excess of the amounts provided by the Park District. Any balance remaining in the Project Account upon completion of the Project shall be paid by the Commission as directed by the Authorized Park District Representative.

3.4. The Park District may request that a certificate(s) of expenditure in the form of Exhibit E hereto ("Certificates of Expenditure") be processed and executed periodically. The City shall not execute the Certificate of Expenditure for an amount in excess of the TIF Assistance. Included with the executed Certificate of Expenditure, the Park District shall submit documentation substantiating the TIF-Funded Improvements to the Authorized DZP Representative. Delivery by the Park District to DZP of the request for execution by the City of the Certificate of Expenditure hereunder shall, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such request for execution of a Certificate of Expenditure, that:

3.4.1 the total amount of the request for the Certificate of Expenditure represents the actual amount payable to (or paid to) the Contractor, subcontractors, and other parties who have performed work on or otherwise provided goods or services in connection with the Project, and/or their payees;

3.4.2 [Intentionally Omitted.];

3.4.3 the Park District has approved all work and materials for the request for the

Certificate of Expenditure, and such work and materials conform to the Site Plans, as set forth in Exhibit C; and

3.4.4 the Park District is in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, pertaining to or affecting the Project or the Park District as related thereto.

3.5. The City shall have the right, in its discretion, to require the Park District to submit further documentation as the City may require in order to verify that the matters certified to in Section 3.4 hereof are true and correct, and the execution of the Certificate of Expenditure by the City shall be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct; provided, however, that nothing in this sentence shall be deemed to prevent the City from relying on such certifications by the Park District.

3.6. The current estimate of the cost of the Project is \$350,000. The Commission has delivered to the Authorized Park District Representative and the Authorized DZP Representative the Budget for the Project in an amount not to exceed \$350,000, as attached as Exhibit D-1. The Park District certifies that the sources of funds set forth in the Budget are sufficient to complete the Project. The Park District agrees that the City will reimburse the Park District with the TIF Assistance for a portion of the costs of the Project and that all costs of completing the Project in excess of the TIF Assistance shall be the sole responsibility of the Park District.

3.7. Exhibit D-2 sets forth a preliminary list of costs recognized by the City as being eligible redevelopment project costs under the TIF Act with respect to the Project, to be paid for out of the TIF Assistance. To the extent the TIF-Funded Improvements are included as taxing district capital costs under the TIF Act, the Park District acknowledges that the TIF-Funded Improvements are costs for capital improvements and the City acknowledges it has determined that these TIF-Funded Improvements are necessary and directly result from the Plan. Prior to the expenditure of TIF Assistance funds on the Project, the DZP Commissioner, based upon the Budget, may make such modifications to Exhibit D-2 as he or she wishes in his or her discretion to account for all of the TIF Assistance funds to be expended under this Agreement; provided, however, that all TIF-Funded Improvements shall (i) qualify as redevelopment project costs under the TIF Act, (ii) qualify as eligible costs under the Plan; and (iii) be improvements that DZP has agreed to pay for out of TIF Assistance funds, subject to the terms of this Agreement.

3.8. The Park District hereby acknowledges and agrees that the City's obligations hereunder with respect to the TIF Assistance are subject in every respect to the availability of funds as described in and limited by this Section 3.8 and by Section 3.2. If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for disbursements of the TIF Assistance, then the City will notify the Park District in writing of that occurrence, and the City may terminate this Agreement on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for disbursement under this Agreement are exhausted.

3.9. If the aggregate cost of the TIF-Funded Improvements is less than the amount of the TIF Assistance contemplated by this Agreement, the Park District shall have no claim to the difference between the amount of the TIF Assistance contemplated by this Agreement and the amount of the TIF Assistance actually paid by the City to the Park District and expended by the Park

District on the Project.

**SECTION 4. TERM AND RIGHTS OF ENTRY.**

4.1. The term of this Agreement shall commence on the Closing Date and shall expire on the date on which the Bryn Mawr/Broadway Redevelopment Project Area is no longer in effect, or on the date of termination of this Agreement according to its terms, whichever occurs first.

4.2. [Intentionally Omitted – Pertaining to Leases]

4.3. The Park District hereby agrees that the Commission, the City, the Contractor and any designee thereof shall have such right or rights of entry upon the Park as may be required in order to commence, manage and after completion maintain the Project. The Contractor shall provide evidence of the types and amounts of insurance as set forth in Section 6.1 and indemnification as set forth in Section 7.1.2.

4.4. [Intentionally Omitted – related to conveyance]

**SECTION 5. ENVIRONMENTAL MATTERS.**

5.1. The City has provided oversight of the removal of contaminated material from the Expansion, and has agreed to complete the work necessary to obtain an NFR Letter for the Expansion in accordance with the ROR/RAP. The Commission and the Park District acknowledge and agree that the City is responsible only for the tasks outlined in Section 2.3.4 above and shall have no obligation to undertake investigative or remedial activities arising out of modifications to the scope of work set forth in the ROR/RAP. In the event the IEPA requests additional work for the NFR Letter, the parties shall work cooperatively to identify funding sources for such costs. If the Final NFR Letter is voided as a result of the acts or omissions of the Park District or the Commission, the City shall have no obligation to obtain a new NFR Letter or amend the existing NFR Letter covering the Expansion.

5.2. Each party shall deliver to the other copies of any written communications received from or submitted to the IEPA or other regulatory agencies in connection with the Park and the Project. To its knowledge, the City has delivered or otherwise made available to the Park District and the Commission copies of all environmental tests, reports or studies relating to the Property in its possession or control, and such documents are listed on Exhibit B attached hereto. The City, the Park District and the Commission hereby acknowledge and agree that the environmental documents listed on Exhibit B disclose various adverse environmental conditions on the Expansion.

5.3. No party hereto is responsible for any other party's compliance with Environmental Laws and the terms and conditions of any draft or final NFR Letter affecting the Property, and each party hereto completely and forever waives, releases and discharges the other parties harmless from and against any and all claims, demands, actions, legal or administrative proceedings, losses, damages, obligations, liabilities, judgments, fines, costs and expenses based upon, arising out of, or related to such party's failure to comply with applicable Environmental Laws, including, without limitation, any IEPA directives, orders, rules and regulations, and the terms and conditions of any draft or final NFR Letter affecting the Property. This provision shall survive any termination of this Agreement, but shall not relieve the City from any of its obligations under Section 5.1. and 2.3.4 of

this Agreement.

5.4. The Commission agrees to carefully inspect the Property prior to commencement of any activity related to the Project to ensure that such activity shall not damage surrounding property, structures, utility lines or any subsurface lines or cables. The Commission shall be solely responsible for the safety and protection of the public. The City reserves the right to inspect the work being done on the Property. The Commission agrees to keep the Property free from all liens and encumbrances arising out of any work performed, materials supplied or obligations incurred by or for the Commission or the Park District.

#### **SECTION 6. INSURANCE.**

6.1. The Contractor and all subcontractors shall be required to purchase and maintain during the construction of the Project the types and amounts of insurance as set forth in Exhibit G. All such insurance shall be placed in financially responsible companies, satisfactory to the Commission and authorized under the insurance laws of the State of Illinois to do business in the State of Illinois.

6.2. Any insurance proceeds derived by the Commission in connection with the Project shall be credited to the Project Account and applied as agreed by the Commission and the Authorized DZP Representative and the Park District Risk Manager.

6.3. Any contract to be awarded by the Commission for the Project shall contain provisions requiring the Contractor to:

- (a) purchase and maintain insurance as provided in Section 6.1;
- (b) provide evidence of insurance including declaration pages, endorsements, and insurance certificates;
- (c) obligate any and all subcontractors to purchase and maintain insurance as provided in Section 6.1; and
- (d) obligate any and all subcontractors to provide evidence of insurance including declaration pages, endorsements, and insurance certificates.

6.4. Each Party shall maintain Workers' Compensation, Employer's Liability and Automobile Liability insurance as required by law or self insurance programs to cover work performed by their respective employees on the Property under this Agreement.

#### **SECTION 7. INDEMNITY / NO PERSONAL LIABILITY.**

7.1. Indemnification by the Contractor. Any contract to be awarded by the Commission for the Project shall require the Contractor to indemnify, save and hold harmless the Commission, the City, the Park District and their respective commissioners, board members, officers, agents and employees and representatives, individually and collectively, from all claims, demands, actions and the like, made or instituted by third parties arising or alleged to arise out of the Work as a result of any negligent or willful act or omission of the Contractor or its subcontractors or any of their employees or agents.

7.2. No elected or appointed official or member or employee or agent of the City, the Commission or the Park District shall be individually or personally liable in connection with this Agreement.

7.3. Construction and Other Third Party Claims.

7.3.1 Claims or proceedings against the Commission or the Contractor that arise out of a claim or proceeding that is instituted by third parties as a result of any negligent or willful act of the Contractor or any of its subcontractors or subconsultants shall be tendered to the Contractor for defense of the Commission, the Park District and the City pursuant to Section 7.1.3 hereof.

7.3.2 The Commission will use its best efforts to enforce the provisions of the Agreement so that the Project is completed in a cost efficient, timely manner. The Commission will defend or prosecute, as applicable, rights and remedies afforded by the Contract in a reasonable, prudent manner. Unless the Park District and the City consent otherwise, the Commission shall pursue and exhaust, and shall pursuant to the Contract require the Contractor to pursue and exhaust all dispute resolution requirements provided for under the Contract before litigating any dispute in connection with the Project. To the extent that payment of the Commission's legal costs and expenses are not recovered from the Contractor or any surety, the Park District agrees to pay or reimburse the Commission for costs incurred for legal costs and expenses subject to the following conditions:

(a) the Commission will not initiate any legal proceeding related to the Project and no settlement shall be made without the prior consent of the Park District General Counsel and the Corporation Counsel of the City;

(b) the Park District shall have the right to approve legal counsel selected by the Commission in any legal proceeding in which the Park District is a party under this Agreement, and the City shall have the right to approve legal counsel selected by the Commission to represent the City in any legal proceeding in which the City is a party under this Agreement;

(c) the Commission will notify the Authorized Park District Representative and the Park District General Counsel and the Authorized DZP Representative and the Corporation Counsel of the City of any proceeding related to the Project within ten (10) days following receipt of summons and complaint or as otherwise directed by of the Park District General Counsel and the Corporation Counsel of the City;

(d) the Commission will apprise the Authorized Park District Representative and the Park District General Counsel and the Authorized DZP Representative and the Corporation Counsel of the City on a quarterly basis or otherwise as agreed by the Parties concerning the status of any legal proceeding related to the Project;

(e) the Commission, the Park District, and the Corporation Counsel of the City shall establish a separate legal budget as soon as practicable after the commencement of any legal proceeding related to the Project;

(f) the Commission will provide a quarterly legal services report summary related to the Project to the Authorized Park District Representative and the Park District General Counsel and the Authorized DZP Representative and the Corporation Counsel of the City;

(g) any legal fees, costs of expenses incurred (collectively, "legal costs") must comply with the City's Outside Counsel Guidelines (the "Guidelines"). All invoices for legal costs shall be submitted to: (i) the Authorized Park District Representative if payment is sought to be received from the Park District, and (ii) Patrick Ryan, the Corporation Counsel's Director of Administration, and online to the City's legal auditor, Examen, if payment is sought to be received from the City. The Commission shall review the charges not in compliance with the Guidelines, as determined by the Authorized Park District Representative or Examen, as the case may be, and process the invoices for payment. The Parties shall endeavor to approve invoices within 10 business days following written receipt in order for the Commission to comply with the Prompt Payment Act (50 ILCS 20/12.1); and

(h) notwithstanding the foregoing, in the event that the Commission is judged by a court of competent jurisdiction to have been negligent or to have committed other acts of misconduct involving a claim or other legal proceeding the Parties will equitably adjust the reimbursement of legal fees and costs as appropriate.

7.3.3 Any funds which may be recovered by the Commission as a result of any such legal proceedings shall be deposited in the Project Account and disbursed as directed by the Authorized Park District Representative.

7.3.4 It is expressly understood and agreed that the City and the Park District will not reimburse the Commission for any legal fees on account of findings against the Commission for breach of contract or the breach of the Agreement.

7.4. The defense and indemnification obligations in this Section 7.1 shall survive any termination or expiration of this Agreement.

## **SECTION 8. DEFAULT.**

8.1. *Default by Contractor.* In the event that a Contractor defaults in its obligations to perform, the Commission shall pursue all rights and remedies afforded to it pursuant to the terms of the Contract, at law or in equity. Upon request by the Park District and approval by the Commission, the Commission shall assign any of its rights and remedies for default by the Contractor to the Park District.

## **SECTION 9. GENERAL PROVISIONS.**

9.1. Authority. Execution of this Agreement by the City and the transfer of the Property from the City to the Park District is authorized by the Authorizing Ordinance. Execution of this

Agreement by the Park District is authorized by the Park District Ordinances. Execution of this Agreement by the Commission is authorized by the Commission Resolution. The Parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their respective obligations hereunder.

9.2. Records; Audit. The Commission shall maintain records and accounts which shall include entries of all transactions relating to the expenditure of funds required for the Project. The Authorized Park District Representative and the Authorized DZP Representative shall have the right to inspect the books and records of the Commission pertaining to a Project upon request at all reasonable times.

9.3. Compliance with Laws. The Parties agree to comply with all Laws relating to this Agreement.

9.4. Consents. Whenever the consent or approval of a Party to this Agreement is required hereunder, such consent or approval will not be unreasonably withheld.

9.5. Construction of Words. As used in this Agreement, the singular of any word shall include the plural, and vice versa. Masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

9.6. Counterparts. This Agreement may be executed in several counterparts and by a different Party in separate counterparts, with the same effect as if all Parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.

9.7. Further Assurance. The Parties shall perform such acts, execute and deliver such instruments and documents, and do all such other things as may be reasonably necessary to accomplish the transactions contemplated in this Agreement.

9.8. Governing Law and Venue. This Agreement will be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to the principles of conflicts of law thereof. If there is a lawsuit under this Agreement, each Party hereto agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois.

9.9. Integration. This Agreement constitutes the entire agreement between the Parties, merges all discussions between them and supersedes and replaces any and every other prior or contemporaneous agreement, negotiation, understanding, commitments and writing with respect to such subject matter hereof.

9.10. Parties' Interest/No Third Party Beneficiaries. This Agreement shall be binding upon the Parties, and their respective successors and permitted assigns (as provided herein) and shall inure to the benefit of the Parties, and their respective successors and permitted assigns (as provided herein). This Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a Party and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right. Nothing contained in this Agreement, nor any act of the Parties shall be deemed or construed by any of the Parties hereto or by third parties, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving any of

the Parties.

9.11. Modification or Amendment. This Agreement may not be altered, modified or amended except by a written instrument signed by all Parties.

9.12. No Implied Waivers. No waiver by a Party of any breach of any provision of this Agreement will be a waiver of any continuing or succeeding breach of the breached provision, a waiver of the breached provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to, or demand on, a Party in any case will, of itself, entitle that Party to any further notice or demand in similar or other circumstances.

9.13. Notices. Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram, facsimile (fax); (c) overnight courier or (d) registered or certified first class mail, return receipt requested.

To the City: City of Chicago  
Department of Community Development  
Attention: Commissioner  
City Hall, Room 1000  
121 N. LaSalle Street  
Chicago, Illinois 60602  
(312) 744-4190  
(312) 744-2271 (Fax)

With copies to: City of Chicago  
Department of Law  
Attention: Finance and Economic Development  
Division  
City Hall, Room 600  
121 N. LaSalle Street  
Chicago, Illinois 60602  
(312) 744-0200  
(312) 744-8538 (Fax)

To the Park District: Chicago Park District  
Attention: General Superintendent  
541 North Fairbanks  
Chicago, Illinois 60611  
(312) 742-4200  
(312) 742-5360 (Fax)

With copies to: Chicago Park District  
General Counsel  
541 North Fairbanks  
Chicago, Illinois 60611  
(312) 742-4602  
(312) 742-5316 (Fax)

To the Commission: Public Building Commission of Chicago  
50 West Washington Street  
Room 200  
Chicago, Illinois 60602  
Attn: Executive Director

With a copy to: Neal & Leroy, LLC  
203 N. LaSalle Street  
Suite 2300  
Chicago, Illinois 60601  
Attn: Anne L. Fredd

Such addresses may be changed by notice to the other Parties given in the same manner provided above. Any notice, demand or request sent pursuant to either clause (a) or (b) above shall be deemed received upon such personal service or dispatch. Any notice, demand or request sent pursuant to clause (c) above shall be deemed received on the day immediately following deposit with the overnight courier and any notices, demands or requests sent pursuant to clause (d) above shall be deemed received two business days following deposit in the mail.

Any notice sent pursuant to this Section 9.14 shall also be sent to the Authorized DZP Representative, the Authorized Park District Representative and the Authorized Commission Representative, as the case may be.

9.14. Remedies Cumulative. The remedies of a Party hereunder are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any other remedies of such Party unless specifically so provided herein.

9.15. Representatives. Immediately upon execution of this Agreement, the following individuals will represent the Parties pursuant to Section 2.2 hereof as a primary contact in all matters under this Agreement.

Authorized DZP  
Representative:

Nelson Chueng  
Coordinating Planner  
City of Chicago  
Department of Zoning and Land Use Planning  
City Hall, Room 1003  
121 N. LaSalle Street  
Chicago, Illinois 60602  
(312) 744-5756  
(312) 744-7996 (Fax)

Authorized Park District  
Representative:

Gia Biagi  
Director, Department of Planning and Development  
Chicago Park District  
541 North Fairbanks  
Chicago, Illinois 60611  
(312) 472-4200

(312) 472-5360 (Fax)

Authorized Commission  
Representative:

Jennifer Valentin  
Project Manager  
Public Building Commission of Chicago  
50 West Washington Street  
Room 200  
Chicago, Illinois 60602  
(312) 744-8339  
(312) 744-8005 (Fax)

Each Party agrees to promptly notify the other Party of any change in its designated representative, which notice shall include the name, address, telephone number and fax number of the representative for such Party for the purpose hereof.

9.16. Severability. If any provision of this Agreement, or the application thereof, to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms shall provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth herein.

9.17. Survival of Agreements. Except as otherwise contemplated by this Agreement, all covenants and agreements of the Parties contained in this Agreement will survive the consummation of the transactions contemplated hereby.

9.18. Titles and Headings. Titles and headings to paragraphs contained in this Agreement are for convenience only and are not intended to limit, vary, define or expand the content of this Agreement.

9.19. Assignment. This Agreement, or any portion thereof, shall not be assigned by a Party without the prior written consent of the other Parties.

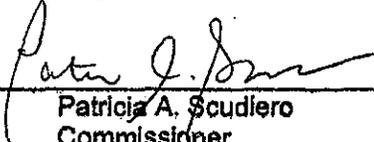
9.20. Time. Time is of the essence in the performance of this Agreement.

9.21. Tort Immunity. Nothing in this Agreement shall be deemed to limit in any way the liability provisions of the Local Government and Governmental Employees Tort Immunity Act (745 ILCS 10/et seq.)

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed and delivered as of the date first above written.

CITY OF CHICAGO, a municipal corporation,

By and through its Department of Zoning and  
Land Use Planning

By:   
Patricia A. Scudiero  
Commissioner

CHICAGO PARK DISTRICT, a body politic and  
corporate

By: \_\_\_\_\_  
Timothy Mitchell  
General Superintendent and CEO

Attest: \_\_\_\_\_  
Kantrice Ogletree  
Secretary

PUBLIC BUILDING COMMISSION OF CHICAGO,  
a body politic and corporate

By: \_\_\_\_\_  
Erin Lavin Cabonargi  
Executive Director

**Bromann Park Expansion  
Intergovernmental Agreement**

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed and delivered as of the date first above written.

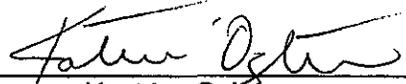
CITY OF CHICAGO, a municipal corporation,

By and through its Department of Zoning and  
Land Use Planning

By: \_\_\_\_\_  
Patricia A. Scudiero  
Commissioner

CHICAGO PARK DISTRICT, a body politic and  
corporate

By:  \_\_\_\_\_  
Timothy J. Mitchell  
General Superintendent and CEO

Attest:  \_\_\_\_\_  
Kantrice Ogdefree  
Secretary

PUBLIC BUILDING COMMISSION OF CHICAGO,  
a body politic and corporate

By: \_\_\_\_\_  
Erin Lavin Cabonargi  
Executive Director

**Bromann Park Expansion  
Intergovernmental Agreement**

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed and delivered as of the date first above written.

CITY OF CHICAGO, a municipal corporation,

By and through its Department of Zoning and  
Land Use Planning

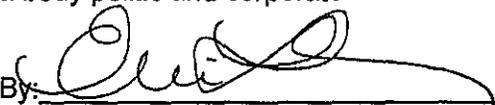
By: \_\_\_\_\_  
Patricia A. Scudiero  
Commissioner

CHICAGO PARK DISTRICT, a body politic and  
corporate

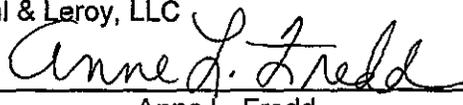
By: \_\_\_\_\_  
Timothy J. Mitchell  
General Superintendent and CEO

Attest: \_\_\_\_\_  
Kantrice Ogletree  
Secretary

PUBLIC BUILDING COMMISSION OF CHICAGO,  
a body politic and corporate

By:  \_\_\_\_\_  
Erin Lavin Cabonargi  
Executive Director

Approved as to form and legality:

Neal & Leroy, LLC  
By:  \_\_\_\_\_  
Anne L. Fredd

*Appendix A*  
*Definitions*

Authorized Commission Representative: The person or entity employed or retained by the Commission to provide construction management, administration and coordination services with respect to the implementation of the Project.

Authorized DZP Representative: The person or firm employed by DZP for the purpose of facilitating the construction of the Project, approving charge orders and material substitutions which affect or cause the Project to exceed the overall Budget, and obtaining all other required approvals by DZP.

Authorized Park District Representative: The person or firm employed by the Park District as its representative for purposes of receiving notices, attending meetings and inspections, and otherwise participating in the development and completion of the Project.

Budget: The amount determined by the Authorized DZP Representative, the Authorized Park District Representative and the Authorized Commission Representative as the estimated cost of completing the Project and attached hereto as Exhibit D-1.

Certificate of Expenditure: The Certificate, substantially in the form attached hereto as Exhibit E, which shall be issued by the Commission on behalf of the Park District as provided in Section 1.6.9 hereof to certify that the Project substantially conforms to the Contract Documents and that the Project has been completed except for Punch List Work that will not materially interfere with the use and occupancy of the Project.

Change Order: The document which authorizes either an adjustment in the Contract sum and/or Contract time or a change in the Work that may result in such an adjustment

Contract: The contract, including all of the Contract Documents as described therein, to provide the labor, materials and other Work, for the construction, repair or renovation of the Project. For purposes of this Agreement, the term "contract" may include a general construction contract or construction management services agreement.

Contract Documents: The drawings, specifications and program requirements (including civil, architectural, structural, mechanical, plumbing, fire protection and electrical drawings and technical specifications) for the construction of the Project.

Contractor: The contractor which contracts with the Commission to perform services and provide Work in connection with the development, design, selected demolition, construction, repair or renovation of the Project. For purposes of this Agreement, the term "contractor" may include a general contractor, construction manager or other consultants engaged by the Commission to construct the Project.

Environmental Laws: Any and all Laws relating to the regulation and protection of human health, safety, the environment and natural resources now or hereafter in effect, as amended or supplemented from time to time, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., the Federal Water

Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., and any and all regulations promulgated thereunder, and all analogous state and local counterparts or equivalents, including, without limitation, the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq.

**Field Order:** A written order to the Contractor unilaterally directing changes in the Work or the Project Schedule.

**Final Acceptance:** The date on which the Authorized Commission Representative in consultation and agreement with the Authorized DZP Representative and the Authorized Park District Representative determines that all of the requirements of the Contract for the construction of the Project or portions thereof have been completed in accordance with the Contract Documents.

**Laws:** All applicable federal, state, local or other laws (including common law), statutes, codes, ordinances, rules, regulations or other requirements, now or hereafter in effect, as amended or supplemented from time to time, and any applicable judicial or administrative interpretation thereof, including any applicable judicial or administrative orders, consent decrees or judgments.

**Master Park District/Commission IGA:** The Master Intergovernmental Agreement between the Park District and the Commission dated as of August 31, 1999, for the development and redevelopment of various Park District buildings and facilities by the Commission, as amended or supplemented from time to time.

**Project:** The development, design, selected demolition, repair and renovation, construction and improvement of buildings and facilities for use in providing recreational services to residents of the City to be constructed on the Sites as more fully described on Exhibit C entitled, "Site Plans", attached hereto and incorporated herein by reference.

**Project Account:** An existing interest-bearing account of the Commission that will be used for purposes of depositing funds advanced by the Park District to pay the costs incurred by the Commission in designing, constructing and improving the Project or portions thereof as more fully described in Section 3.1.1 hereof.

**Punch List Work:** Minor adjustments, repairs or deficiencies in the Work as determined by the Authorized Commission Representative in consultation and agreement with the Authorized DZP Representative and the Authorized Park District Representative, which must be completed prior to Final Acceptance of the Work and the issuance of the Certificate of Completion for the Project.

**Record Documents:** Operating and maintenance manuals, "as built" documents (1 mylar set) and CAD files of all drawings relating to the Project.

**Schedule:** The anticipated date or dates on which the Project or portion thereof will be completed.

**Substantial Completion:** The date on which the Authorized Commission Representative in

consultation with the Authorized DZP Representative and the Authorized Park District Representative determines that the Project has been substantially completed (except for Punch List Work that will not materially interfere with the use and occupancy of the Project) and the Contractor has delivered to the Commission a "Certificate of Occupancy" issued by the City for such Project.

Work: All materials, labor, equipment, supplies, plant, tools, scaffolding, transportation, superintendence, permits, inspections, occupancy approvals, insurance, taxes and all other services, facilities and expenses necessary for the full performance and completion of the requirements of the Contract Documents. Work also means that which is furnished, produced, constructed or built pursuant to the Contract Documents.

**Exhibit A-1**

*Legal Description*

(SUBJECT TO SURVEY AND TITLE COMMITMENT)

LOTS 23 AND 24 IN BLOCK 8 IN COCHRAN'S THIRD ADDITION TO EDGEWATER BEING A SUBDIVISION OF THE EAST ½ OF THE NORTHWEST ¼ OF SECTION 8, TOWNSHIP 40 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS:	5400 NORTH BROADWAY CHICAGO, ILLINOIS 60640-1704
PERMANENT INDEX NO.	14-08-113-031-0000

**Exhibit A-2**

**LEGAL DESCRIPTION**

(Subject to Survey and Title Commitment)

LOT 22 IN BLOCK 8 IN COCHRANS THIRD ADDITION TO EDGEWATER BEING A  
SUBDIVISION OF THE EAST ½ OF THE NORTHWEST ¼ OF SECTION 8, TOWNSHIP 40  
NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY,  
ILLINOIS.

COMMONLY KNOWN AS: 5406 NORTH BROADWAY  
CHICAGO, ILLINOIS 60640-1704

PERMANENT INDEX NO. 14-08-113-030-0000

## **Exhibit B**

### List of Environmental Documents

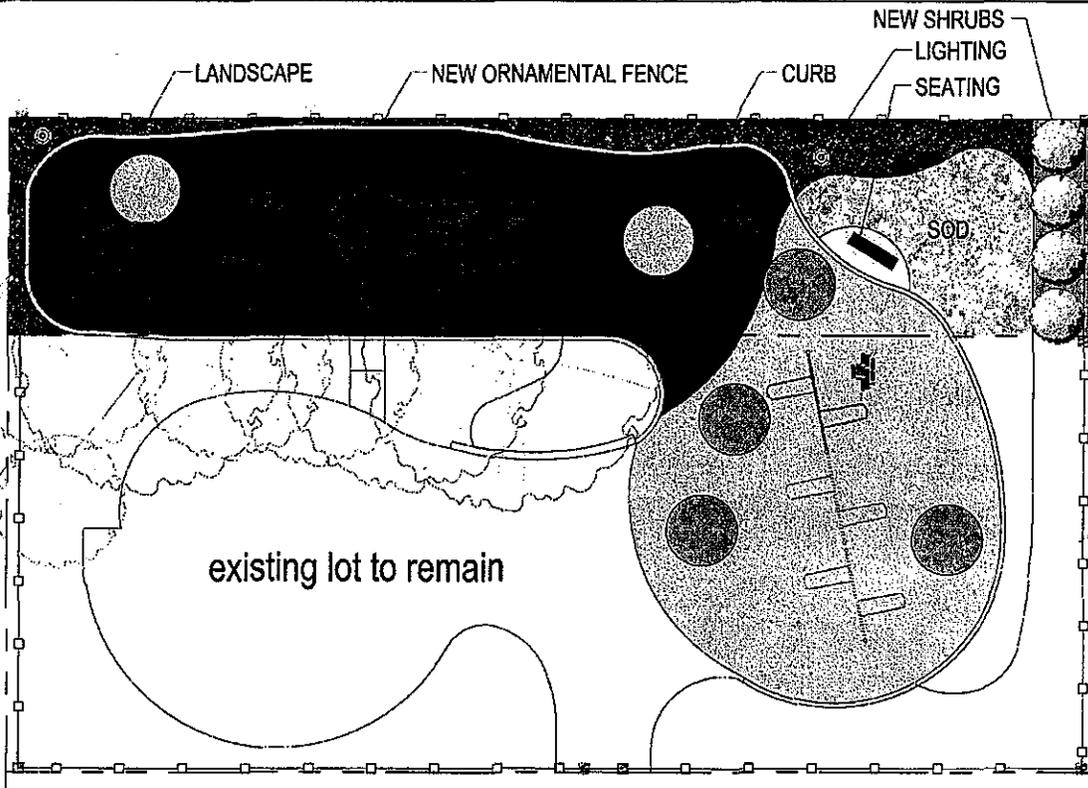
- 1. Phase I Environmental Site Assessment**  
Conducted on 5406 North Broadway Street, Chicago, Illinois, 60640  
Prepared by: Carnow, Conibear & Assoc., Ltd.  
Dated: August 31, 2007
- 2. Memorandum**  
From Zachery Clayton, Environmental Engineer III, Department of Environment to  
Nelson Chueng, City Planner V, Department of Planning and Development  
Re: 5406 North Broadway Street  
Phase I Environmental Site Assessment Report  
5408 North Broadway Street  
Acquisition Screen  
Dated: July 27, 2007 with attachments
- 3. Draft Comprehensive Site Investigation and Remedial Objectives  
Report/Remedial Action Plan (CSIR/ROR/RAP)**  
5406 North Broadway Street, Chicago, Illinois  
Prepared by: Environmental Design International, Inc.  
Dated: June 5, 2009
- 4. Final CSIR/ROR/RAP**  
5406 North Broadway Street, Chicago, IL  
Prepared by: Environmental Design International, Inc.  
Dated: June 23, 2009
- 5. Remedial Action Completion Report**  
5406 North Broadway Street, Chicago, IL (Bromann Park Expansion)  
Prepared by: Environmental Design International, Inc.  
Dated: November 25, 2009

**Exhibit C**

**Site Plan**

ALLEY

N. BROADWAY AVE.



**Bromann Park**

**Concept A**

© 2009 DLK CIVIL DESIGN

DATE: 2009

SCALE: 1:5



**Exhibit D-1**

**Project Budget**

**Bromann Park Playground Budget**

Design	\$50,000.00
Demolition	\$10,000.00
Drainage/Utilities	\$45,000.00
Surfacing – Paving and Soft Surface	\$100,000.00
Play Equipment/Site Furnishings	\$100,000.00
Landscaping/Earthwork	\$15,000.00
General Construction	<u>\$30,000.00</u>
<b>TOTAL</b>	<b>\$350,000.00</b>

**Exhibit D-2**

TIF-Funded Improvements\*

**Bromann Park Playground Budget**

Design	\$50,000.00
Demolition	\$10,000.00
Drainage/Utilities	\$45,000.00
Surfacing – Paving and Soft Surface	\$100,000.00
Play Equipment/Site Furnishings	\$100,000.00
Landscaping/Earthwork	\$15,000.00
General Construction	<u>\$30,000.00</u>
<b>TOTAL</b>	<b>\$350,000.00</b>

\* The maximum amount of TIF Assistance shall not exceed \$350,000.



All capitalized terms which are not defined herein has the meanings given such terms in the Agreement.

Park District

By: \_\_\_\_\_  
Name  
Title: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
My commission expires: \_\_\_\_\_

Agreed and accepted:

\_\_\_\_\_  
Name  
Title: \_\_\_\_\_  
City of Chicago  
Department of Zoning and Land Use Planning

**Exhibit F**

*Form of Certificate of Completion*

Date:

[PARK DISTRICT  
ADDRESS BLOCK]

[CITY OF CHICAGO, DEPARTMENT OF ZONING AND LAND USE PLANNING  
ADDRESS BLOCK]

Dear \_\_\_\_\_:

Enclosed please find a Certificate of Preliminary Acceptance as issued by \_\_\_\_\_,  
the Architect of Record, along with a Certificate of Occupancy (if applicable) for the above-  
referenced project.

The Public Building Commission is in the process of completing the remaining punch list work.  
Copies of all warranties, operations/maintenance manuals and as-built drawings are currently being  
assembled and will be transmitted to you shortly. Training of Chicago Park District staff has been  
completed and all keys have been turned over.

Please confirm your acceptance of the Name of Project by signing in the space provided below and  
returning a copy of this letter to the attention of the [Executive Director].

Please contact the writer at (312) 74\_-\_\_\_\_ should you have any questions.

Very truly yours,

Public Building Commission of Chicago

PBC Project Manager

ACCEPTED BY:

\_\_\_\_\_, 20\_\_\_\_  
Chicago Park District

ACCEPTED BY:

\_\_\_\_\_, 20\_\_\_\_  
City of Chicago  
Department of Zoning and Land Use Planning  
[Date]

Enclosure

cc: \_\_\_\_\_ - DZP  
\_\_\_\_\_ - PBC

## Exhibit G

### *Insurance Requirements\**

#### A. INSURANCE PROVIDED BY THE COMMISSION

The Commission must provide and maintain, or cause to be provided and maintained, from the date of execution of the Agreement until and including the date of the Certificate of Completion, the insurance coverage and requirements specified below, insuring all operations related to the completion of the Project:

(a) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident, illness or disease.

(b) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverage must include the following: All premises and operations, products/completed operations independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City and the Park District are to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work or services.

(c) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with this Agreement, the Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The City and the Park District are to be named as an additional insured on a primary, non-contributory basis.

(d) Self Insurance

To the extent permitted by applicable Law, the Commission may self insure for the insurance requirements specified in items (a), (b) and (c) above, it being expressly understood and agreed that, if the Commission does self insure for any such insurance requirements, the Commission must bear all risk of loss for any loss which would otherwise be covered by insurance policies, and the self insurance program must comply with at least such insurance requirements as stipulated above.

(e) Other Requirements:

The Commission must furnish the Authorized DZP Representative and the Authorized Park District Representative, at the notice address provided in Section 9.15, original Certificates

\* The City maintains the right to modify, delete, alter or change the requirements set forth in this Exhibit G

of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if such coverage has an expiration or renewal date occurring during the term such insurance coverage is required under the Agreement. The receipt of any certificate does not constitute agreement by the City or the Park District that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City or the Park District to obtain certificates or other insurance evidence from the Commission is not a waiver by the City or the Park District, as the case may be, of any requirements for the Commission to obtain and maintain the specified coverage. The Commission shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve the Commission of the obligation to provide insurance as specified herein. Non-fulfillment of the insurance conditions may constitute a violation of the Agreement, and the City and the Park District retain the right to stop work and/or terminate the Agreement until proper evidence of insurance is provided.

The insurance must provide for 60 days prior written notice to be given to the City and the Park District in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self insured retentions on referenced insurance must be borne by the Commission and other contractors, as applicable.

The Commission hereby waives and agrees to require their insurers to waive their rights of subrogation against the City and the Park District, and their respective employees, elected officials, agents, or representatives.

The insurance and limits furnished by the Commission in no way limit the Commission's or any other contractors' liabilities and responsibilities specified within the Agreement or by applicable Law.

Any insurance or self insurance programs maintained by the City or the Park District do not contribute with insurance provided by the Commission under the Agreement.

The Commission must require the Contractors to provide the insurance as set forth in Section D herein, or the Commission may provide the coverage for the Contractors.

The City, with the prior consent of the Park District, maintains the right to modify, delete, alter or change the requirements set forth in this Section A.

## **B. INSURANCE PROVISIONS OF THE CONTRACTORS**

Each Contractor must provide and maintain at such Contractor's own expense, until Contract completion and during the time period following final completion if such Contractor is required to return and perform any additional work, the minimum insurance coverage and requirements specified below, insuring all operations related to the Contract.

### **(a) Workers Compensation and Employers Liability**

\* The City maintains the right to modify, delete, alter or change the requirements set forth in this Exhibit G

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a service under this Contract and Employers Liability coverage with limits of not less than \$500,000 each accident, illness or disease.

(b) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverage must include the following: All premises and operations, products/completed operations, (for minimum of two (2) years following project completion), explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The Commission, the Park District and the City are to be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

Subcontractors performing work for a Contractor must maintain limits of not less than \$1,000,000 per occurrence with the same terms herein.

(c) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, such Contractor must provide Automobile Liability Insurance, with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The Commission, the Park District and the City are to be named as additional insureds on a primary, non-contributory basis.

Subcontractors performing work for a Contractor must maintain limits of not less than \$1,000,000 per occurrence with the same terms herein.

(d) Contractors Pollution Liability

When any work is performed which may cause a pollution exposure, Contractors Pollution Liability must be provided covering bodily injury, property damage and other losses caused by pollution conditions that arise from the Contract scope of services with limits of not less than \$1,000,000 per occurrence. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Contract. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years. The Commission, the Park District and the City are to be named as additional insureds on a primary, non-contributory basis.

(e) Professional Liability

When any architects, engineers or any other professional consultants perform work in connection with this Contract, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$1,000,000. The architect of record and project manager must maintain limits of not less than \$5,000,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Contract. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of

\* The City maintains the right to modify, delete, alter or change the requirements set forth in this Exhibit G

two (2) years.

(f) Builders Risk

When a Contractor undertakes any construction, including improvements, betterments, and/or repairs, such Contractor must provide All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage must include but are not limited to the following: right to partial occupancy, collapse, water including overflow, leakage, sewer backup, or seepage, damage to adjoining or existing property, debris removal, scaffolding, faulty workmanship or materials, mechanical-electrical breakdown, testing, and equipment stored off site or in transit. The Commission, the Park District and the City are to be named as additional insureds and loss payees.

The Contractor is responsible for all loss or damage to Commission, Park District and/or City property at full replacement cost.

The Contractor is responsible for all loss or damage to personal property (including but not limited to materials, equipment, tools, and supplies) owned, rented, or used by such Contractor.

(g) Valuable Papers

When any designs, drawings, plans, specifications and documents are produced or used under the Contract, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient for the re-creation and reconstruction of such records.

(h) Additional Requirements

Each Contractor must furnish the Commission Procurement Department, Richard J. Daley Center, Room 200, Chicago, IL 60602, original Certificates of Insurance, or such similar evidence and Renewal Certificates of Insurance, or such similar evidence, if any insurance has an expiration or renewal date occurring during the term of this Agreement. The Contractor must submit evidence of insurance to the Commission prior to Contract award. The receipt of any certificate does not constitute agreement by the Commission that the insurance requirements in this Agreement or the Contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all Contract or Agreement requirements. The failure of the Commission to obtain certificates or other insurance evidence from Contractor is not a waiver by the Commission of any requirements for the Contractor to obtain and maintain the specified insurance. The Contractor shall advise all insurers of the Contract provisions regarding insurance. Non-conforming insurance does not relieve Contractor of the obligation to provide insurance as specified herein. Non-fulfillment of the insurance conditions may constitute a violation of the Contract, and the Commission retains the right to stop work until proper evidence of insurance is provided, or the Contract may be terminated.

The Commission reserves the right to obtain copies of insurance policies and records from any Contractor at any time upon written request.

\* The City maintains the right to modify, delete, alter or change the requirements set forth in this Exhibit G

The insurance must provide for 60 days prior written notice to be given to the Commission in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self-insured retentions on referenced insurance must be borne by the Contractor.

The Contractor agrees that insurers waive their rights of subrogation against the Commission, the Park District and the City and their respective Board Members, employees, elected and appointed officials, agents, and representatives.

The coverage and limits furnished by Contractor in no way limit the Contractor's liabilities and responsibilities specified within the Contract or by law.

Any insurance or self-insurance programs maintained by the Commission, the Park District and City do not contribute with insurance provided by the Contractor under the Contract.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement or in the Contract given as a matter of law.

If a Contractor is a joint venture or a limited liability company, the insurance policies must name such joint venture or such limited liability company as a named insured.

Each Contractor must provide the insurance required herein. If a Contractor desires additional coverage, such Contractor is responsible for the acquisition and cost.

The Commission, with the prior consent of the City and the Park District, maintains the right to modify, delete, alter or change the requirements set forth in this Section B.

\* The City maintains the right to modify, delete, alter or change the requirements set forth in this Exhibit G