



LAKE COUNTY FOREST PRESERVES
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Preservation, Restoration, Education and Recreation

DATE: August 27, 2018

MEMO TO: Carol Calabresa, Chair
Planning Committee

Agenda Item# 9.4

FROM: Randall L. Seebach
Director of Planning and Land Preservation

RECOMMENDATION: Recommend approval of a Resolution approving an Intergovernmental Agreement with the Village of Lindenhurst for a trail connection to Hastings Lake Forest Preserve.

STRATEGIC DIRECTIONS SUPPORTED: Public Access and Connections; Leadership

FINANCIAL DATA: The District will be committing time and resources to complete the project and provide future maintenance and operational costs for a portion of the trail connection. The Village of Lindenhurst (Village) will reimburse the District for all materials required for construction of the trail.

BACKGROUND: The District and the Village have received numerous requests over the last several years to construct a small section of trail (370 lineal feet) connecting Hazelwood Drive, within the Village, to the District's existing trails at Hastings Lake Forest Preserve. The local residents are using an unimproved, informal path to access the District trails through Village and District property and a vacant lot adjacent to Hazelwood Drive. The worn path becomes muddy and inaccessible certain times of the year.

Staff presented a draft memorandum of understanding (MOU) to members of the Planning Committee at their November 2017 meeting and received direction to (i) sign the MOU, and (ii) negotiate a mutually acceptable intergovernmental agreement (IGA). Pursuant to the execution of the MOU, the Village has acquired the vacant lot, so the trail can now be built as planned.

District and Village staff have prepared a draft Intergovernmental Agreement (IGA) for the construction and long term maintenance of the proposed trail connection. General terms of the IGA include:

- 1) The District will provide all labor and equipment to construct the trail using in-house crews.
- 2) The Village will reimburse the District for all materials required to construct the trail.
- 3) The District will prepare construction plans, secure all permits and administer the project.
- 4) Maintenance responsibilities for the trail will be assigned by jurisdiction (District maintains only the portion of trail that is on District property).
- 5) Patrol obligations for the trail will be assigned by jurisdiction (District may, but is not obligated to, patrol the portion of trail on Village property).

The proposed asphalt trail connection, when complete, will provide over 1,000 homes and over 2,900 people with improved, direct access to the trails at Hastings Lake Forest Preserve. The construction activities are anticipated to begin late spring/early summer 2019.

REVIEW BY OTHERS: Executive Director, Chief Operations Officer, Director of Finance, Corporate Counsel.

STATE OF ILLINOIS)
)
COUNTY OF LAKE)

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**BOARD OF COMMISSIONERS
LAKE COUNTY FOREST PRESERVE DISTRICT
REGULAR SEPTEMBER MEETING
SEPTEMBER 11, 2018**

MADAM PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:

Your **PLANNING COMMITTEE** presents herewith "A Resolution Approving an Intergovernmental Agreement with the Village of Lindenhurst for a Trail Connection to Hastings Lake Forest Preserve," and requests its approval.

PLANNING COMMITTEE:

Date: 8.27.2018 Roll Call Vote: Ayes: _____ Nays: _____
 Voice Vote Majority Ayes; Nays: 0

**LAKE COUNTY FOREST PRESERVE DISTRICT
LAKE COUNTY, ILLINOIS**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT
WITH THE VILLAGE OF LINDENHURST FOR A TRAIL CONNECTION
TO HASTINGS LAKE FOREST PRESERVE**

WHEREAS, the Lake County Forest Preserve District (the “District”) owns fee simple interest in certain property that is known as Hastings Lake Forest Preserve (the “Preserve”); and

WHEREAS, the Village of Lindenhurst (the “Village”) owns fee simple interest in certain property adjacent to the Preserve (the “Village Property”); and

WHEREAS, the District and the Village desire to have constructed a segment of a public bicycle and pedestrian trail across a portion of the Preserve and the Village Property to connect the existing trails within the Preserve to Hazelwood Drive, a public street within the Village; and

WHEREAS, the District and the Village have negotiated an intergovernmental agreement, in the form attached hereto (the “Agreement”), that provides for, among other matters :

- (i) The District will construct the trail ;
- (ii) The Village will reimburse the District for all materials required to construct the trail;
- (iii) The District will prepare the construction plans and secure all permits for the project;
- (iv) Each party will maintain that portion of the trail within the property that it owns;
- (v) If a party terminates its maintenance obligations, it will (at the other party’s request) grant the other party a perpetual maintenance easement;
- (vi) The Village will patrol the portion of the trail on property that it owns, and the District has concurrent police power over such portion; and

WHEREAS, pursuant to Section 10 of Article VII of the Illinois Constitution of 1970, units of local government, such as the District and the Village may contract or otherwise associate among themselves in any manner not prohibited by law or ordinance; and

WHEREAS, pursuant to the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., any power, privilege, function, or authority exercised by a public agency, including the District and the Village, may be exercised, combined, transferred, and enjoyed jointly with any other public agency to the extent not prohibited by law; and

WHEREAS, pursuant to Section 6 of the Downstate Forest Preserve District Act, 70 ILCS 805/6, the District has power to grant easements and rights-of-way for the maintenance upon District property of public service facilities, such as trails; and

WHEREAS, it is in the best interests for the District to approve the Agreement in substantially the form attached hereto as Exhibit A;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Lake County Forest Preserve District, Lake County, Illinois THAT:

Section 1. Recitals. The recitals set forth above are incorporated as a part of this Resolution by this reference.

Section 2. Approval of the Agreement. The Agreement is hereby approved in substantially the form attached hereto. The President, Executive Director and Secretary are authorized and directed to execute on behalf of the District the Agreement, in substantially the form attached hereto, and whatever other documents are necessary to effectuate the transactions contemplated by such Agreement.

Section 3. Effective Date. This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this ____ day of _____, 2018

AYES:

NAYS:

APPROVED this ____ day of _____, 2018

Ann B. Maine, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Secretary
Lake County Forest Preserve District

Exhibit No. _____

Exhibit A

Intergovernmental Agreement

**Agreement
by and between
Lake County Forest Preserve District
and
Village of Lindenhurst**

This Intergovernmental Agreement (this "**Agreement**") is dated as of the ____ day of _____, 2018 ("**Effective Date**"), and is by and between the **Lake County Forest Preserve District**, a body politic and corporate, organized and existing under the Downstate Forest Preserve District Act, 70 ILCS 805/001 et seq. (the "**District**"), and the **Village of Lindenhurst**, an Illinois municipal corporation organized and existing under the Illinois Municipal Code, 65 ILCS 5/1-1-1, et seq. (the "**Village**") (the District and the Village are, collectively, the "**Parties**"). In consideration of the recitals and agreements set forth in this Agreement, and pursuant to all applicable authority, including without limitation, the Illinois Constitution, the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., the statutes and authorities identified above, and all other applicable authority, the District and the Village agree as follows:

Section 1. Recitals.

A. The District owns fee simple interest in certain real property known as Hastings Lake Forest Preserve ("**Hastings Lake**"). The District operates and maintains existing public trails in Hastings Lake (collectively, the "**Existing District Trail**"). Portions of Hastings Lake and the Existing District Trail are generally depicted on Exhibit A attached hereto.

B. The Village owns fee simple interest in certain real property that is adjacent to Hastings Lake (the "**Village Property**"). A portion of the Village Property is generally depicted on Exhibit A attached hereto.

C. The Parties desire to have constructed a segment of a public bicycle and pedestrian trail across the District Property and the Village Property to connect the Existing District Trail with Hazelwood Drive, a public street located within the Village, in the general location depicted on Exhibit A as the "**8' Asphalt Trail**". The planning, design, and construction of the 8' Asphalt Trail is referred to in this Agreement as the "**Project**".

D. The Parties desire to identify certain ongoing maintenance and operational obligations for the Project upon its completion.

E. Pursuant to Section 8a of the Downstate Forest Preserve District Act, the District's police are authorized to exercise police powers over property over which the District has easement or license rights for the preservation of the public peace, and the observance and enforcement of laws, such as are conferred upon and exercised by the police of municipalities (the "**District's Statutory Police Power**").

Section 2. Pre-Construction Obligations.

A. **Permits and Final Design.** The District shall, at no cost to the Village:

- (i) use commercially reasonable efforts to obtain, and send to the Village copies of, the necessary permits for the Project from the United States Army Corps of Engineers, the Illinois Department of Natural Resources Division of Water Resources, the Lake County Stormwater Management Commission, the County of Lake, and any other governmental agency with jurisdiction over the Project (the "**Permits**"); and
- (ii) cause to be prepared final engineering and design plans for the Project ("**Final Design Plans**") and send the Final Design Plans to the Village Administrator for his or her review.

The Parties acknowledge that, because it is a District project, the Project is subject to the County of Lake building codes and that a Village building permit is not necessary for the Project. The Village Administrator (or his or her designee) shall (i) review the Final Design Plans, (ii) if the Final Design Plans include a design for the Project that substantially conforms to Exhibit A, approve the Final Design Plans and (iii) send the District a written notice of such approval (the "**Final Plan Approval Notice**").

B. Termination. After the first anniversary of the Effective Date, the District's Executive Director (on behalf of the District) or the Village Administrator (on behalf of the Village) may terminate this Agreement if (i) the Village Administrator (or his or her designee) has not sent a Final Plan Approval Notice to the District or (ii) the District, despite exercising commercially reasonable efforts, has not obtained all the Permits.

Section 3. Construction of Project.

A. District Construction. After the Village has sent the District the Final Plan Approval Notice and the District has obtained all Permits, the District, at no cost to the Village, except as provided in Section 3.B, shall cause the Project to be constructed in accordance with the Final Design Plans approved by the Village.

B. Reimbursement of Material Costs. Upon completion of construction of the Project, the Village shall reimburse the District for the costs of all materials purchased by the District for construction of the Project, within 60 days after receipt by the Village of an invoice, and copies of receipts for, such costs, in an amount not to exceed \$19,450.00.

Section 4. Post-Construction Obligations.

A. Village Operation and Maintenance Obligations. After completion of the Project, the Village, at no cost to the District, shall maintain the portion of the 8' Asphalt Trail that is located within the Village Property (the "**Village Trail Portion**") by periodically:

- (i) repairing any damage or deterioration to the asphalt trail within the Village Trail Portion that is necessary to maintain its surface in a safe and operable condition,
- (ii) removing trash and rubbish from the Village Trail Portion,
- (iii) mowing the grass located within six (6) feet of each side of the asphalt trail within the Village Trail Portion, and

- (iv) pruning trees and shrubs to provide a clearance of not less than ten feet above the Village Trail Portion.

B. District Maintenance Obligations. After completion of the Project, the District, at no cost to the Village, shall maintain the portion of the 8' Asphalt Trail that is located within the District Property (the "***District Trail Portion***") by periodically:

- (i) repairing any damage or deterioration to the asphalt trail within the District Trail Portion that is necessary to maintain its surface in a safe and operable condition,
- (ii) removing trash and rubbish from the District Trail Portion,
- (iii) mowing the grass located within six (6) feet of each side of the asphalt trail within the District Trail Portion, and
- (iv) pruning trees and shrubs to provide a clearance of not less than ten feet above the District Trail Portion.

C. Termination of Maintenance Obligations; Easement Rights. After the twentieth (20th) anniversary of the Effective Date, the Village and the District may each terminate their respective maintenance obligations provided for in this Section by (i) approving a resolution stating that it is terminating its maintenance obligations, effective as of a date stated in the resolution that is not less than 90 days after the date such resolution is approved (the "***Termination Date***"), (ii) delivering to the other Party, at least 30 days before such resolution is approved, written notice of the public meeting at which such resolution is to be considered, and (iii) delivering to the other Party, within 7 days after such resolution is approved, a certified copy of such resolution. Upon receipt of such a notice, the non-terminating Party may send the terminating Party a request, before the Termination Date, that the terminating Party grant to the non-terminating Party, at no cost to the non-terminating Party, a perpetual 20-foot easement (ten feet on each side of the centerline of the 8' Asphalt Trail) to use, operate, maintain, and replace the District Trail Portion (if the District is the terminating property) or the Village Trail Portion (if the Village is the terminating property) (an "***Easement Request***"). Upon receipt of an Easement Request, the terminating Party shall grant such an easement to the non-terminating party in a form of easement grant approved to by the District's Executive Director and the Village Manger, which approval will not be unreasonably withheld or delayed.

D. License for Concurrent Exercise of Police Jurisdiction. The Village hereby grants the District a license, which shall become effective after completion of the Project, over the Village Trail Portion, for the purpose of the District exercising the District's Statutory Police Power therein, concurrently with the Village.

Section 5. General Provisions.

A. Compliance with Laws. The Project will be designed and constructed in accordance with all applicable laws.

B. Effect of Termination. If this Agreement is terminated pursuant to Section 2.B, upon such termination, neither Party will have any further rights or obligations under this Agreement.

C. Notice. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered: (i) personally, (ii) overnight by a reputable overnight courier, or (iii) by electronic mail. Electronic mail notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i) or (ii) above within three business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; or (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit. By notice complying with the requirements of this Section, each Party shall have the right to change the address or the addressee, or both, for all future notices and communications to such Party, but no notice of a change of addressee or address shall be effective until actually received. Notices and communications to the District shall be addressed to, and delivered at, the following address:

Lake County Forest Preserve District
1899 W. Winchester Road
Libertyville, IL 60048
Attention: Executive Director
Email: akovach@lcfpd.org

With a copy to:

Matthew E. Norton, Esq.
Burke, Warren, MacKay & Serritella, P.C.
330 N. Wabash Ave.
Suite 2100
Chicago, IL 60611-3607
Email: mnorton@burkelaw.com

Notices and communications to the Village shall be addressed to, and delivered at, the following addresses:

Village of Lindenhurst
2301 East Sand Lake Road
Lindenhurst, Illinois 60046
Attention: Village Administrator
Email: cjohnson@lindenhurstil.org

With a copy to:

Ancel Glink, P.C.
140 S. Dearborn St, 6th Floor
Chicago, Illinois 60603
Attention: Julie Tappendorf
Email: jtappendorf@ancelglink.com

The requirements of this Section shall not be deemed to invalidate any notice actually received.

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

E. Governing Law. This Agreement shall be governed by, and enforced in accordance with, the internal laws, but not the conflicts of laws rules, of the State of Illinois.

F. Exhibit. The exhibit attached to this Agreement is, by this reference, incorporated in and made a part of this Agreement.

G. Amendments and Modifications. No amendment or modification to this Agreement shall be effective unless and until it is reduced to writing and approved and executed by all Parties to this Agreement in accordance with applicable law.

H. Authority to Execute. Each person executing this Agreement warrants and represents to the Parties (i) that he or she has the full and complete right, power and authority to execute this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement on behalf of the Party on whose behalf he or she is executing; and (ii) that all legal actions necessary to authorize him or her to execute and deliver this Agreement have been taken.

I. No Third-Party Beneficiaries. No claim as a third-party beneficiary under this Agreement by any person, firm, or corporation, or entity shall be made, or be valid, against the Parties.

ATTEST:

Lake County Forest Preserve District

By: _____
Julie Gragnani, Secretary

By: _____
Ann B. Maine, President

ATTEST:

Village of Lindenhurst

By: _____

By: _____
Dominic Marturano, Mayor

Name: _____

Title: _____

EXHIBIT A

**General Depiction of Portions of Hastings Lake,
Existing District Trail, Village Property, and 8' Asphalt Trail**

Exhibit A

Lake County Forest Preserve District
1899 W Winchester Rd
Libertyville, IL 60048
847-387-2840
www.lcfd.org



Legend

- Forest Preserve Boundary
- Existing District Trail

- Village Property
- Trail Connection (8' Asphalt Trail)

Courtesy Copy Only.
Property boundaries indicated are provided for general location purposes. Wetland and flood limits shown are approximate and should not be used to determine setbacks for structure or as a basis for purchasing property.

Prepared using information from:
Lake County Department of Information & Technology: GIS/Mapping Division
18 North County Street
Waukegan, Illinois 60085-4357
847-377-2373

2015 Aerial Photo

Map Prepared 12 July 2018

