



DATE: December 6, 2021

MEMO TO: Terry Wilke, Chair
Planning Committee

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

RECOMMENDATION: Recommend approval of a Resolution approving an Easement Agreement with the County of Lake for a permanent easement to allow its Department of Public Works (“Public Works”) to operate an existing sewer line along Linden Avenue at Rollins Savanna Forest Preserve.

STRATEGIC DIRECTION SUPPORTED: Organizational Sustainability

FINANCIAL DATA: Public Works will pay a \$1,000.00 application fee for the easement; there is no other financial impact.

BACKGROUND: Under Section 6 of the Downstate Forest Preserve District Act, the Lake County Forest Preserve District (the “District”) has the “power to grant licenses, easements and rights-of-way for the construction, operation and maintenance upon, under or across any property of [the] District facilities for water, sewage, telephone, telegraph, electric, gas or other public service...”

Public Works has requested access to District property for the replacement of an existing sanitary sewer line located along Linden Avenue north of Washington Street on the eastern portion of Rollins Savanna Forest Preserve. In reviewing this request, District staff discovered that there are existing sewer easements on District property along most of the Linden Avenue frontage, but there is an approximately 100-foot gap beginning 1,400 feet north of the Washington Street right-of-way. While the existing sewer line runs through the “gap,” there is no written easement grant covering this “gap”.

Public Works may have “prescriptive”, i.e., unwritten, rights to the land, because they used the land for a significant period of time for the sewer line, before it was acquired by the District. However, it benefits both Public Works and the District for the parties to enter into a written easement agreement that would, (i) grant Public Works a permanent easement to maintain, operate, and replace the existing sewer line within the “gap”, (ii) allow Public Works to perform regularly scheduled maintenance without having to seek permission from the District each time, and (iii) require Public Works to restore any District property damaged by their project.

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

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

**BOARD OF COMMISSIONERS
LAKE COUNTY FOREST PRESERVE DISTRICT
REGULAR DECEMBER MEETING
DECEMBER 14, 2021**

MISTER PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:

Your **PLANNING COMMITTEE** presents herewith “A Resolution approving an Easement Agreement with the County of Lake for a permanent easement for an existing sewer line at Rollins Savanna Forest Preserve,” and requests its approval.

PLANNING COMMITTEE:

Date: _____ Roll Call Vote: Ayes: ____ Nays: _____
 Voice Vote Majority Ayes; Nays: _____

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

**A RESOLUTION APPROVING AN EASEMENT AGREEMENT WITH
THE COUNTY OF LAKE FOR A PERMANENT EASEMENT FOR AN EXISTING
SEWER LINE AT ROLLINS SAVANNA FOREST PRESERVE**

WHEREAS, the Lake County Forest Preserve District (the “District”) owns properties commonly known as Rollins Savanna Forest Preserve (the “Property”); and

WHEREAS, Lake County Department of Public Works (“Public Works”) operates an existing sewer line within the Property along Linden Avenue (the “Sewer Line”); and

WHEREAS, there is no existing record of an easement, lease, or other property right authorizing Public Works to operate a the Sewer Line within a 100-foot long portion of the Property (the “Sewer Line Gap”); and

WHEREAS, Public Works desires that the District grant to the County of Lake (the “County”) a permanent easement to allow the County (through Public Works) to operate, maintain, and replace the Sewer Line with necessary equipment on the Property, pursuant to an easement agreement in substantially the form attached hereto (the “Easement Agreement”); and

WHEREAS, it is in the best interest of the District to approve the Easement Agreement in substantially the form attached hereto; and

WHEREAS, Section 6 of the Downstate Forest Preserve District Act, 70 ILCS 805/6, authorizes the District to grant easements under or across District property for the construction, operation, and maintenance of public sewer services; and

WHEREAS, the District has adopted an Ordinance Regarding Licenses and Easements (the “License and Easement Ordinance”) which sets forth the general requirements for granting easements;

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 Easement Agreements. The Easement Agreement is hereby approved in substantially the form attached hereto. The President, Secretary, and Executive Director of the District are hereby authorized and directed to execute and attest to, on behalf of the District, the Easement Agreement in substantially the form attached hereto. In the event that any provision of the Easement Agreement conflicts with the License and Easement Ordinance, the conflicting provision of the License and Easement Ordinance is hereby waived.

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 _____, 2021

AYES:

NAYS:

APPROVED this _____ day of _____, 2021

Angelo D. Kyle, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Secretary
Lake County Forest Preserve District

Exhibit No. _____

Prepared by and after
recording return to:
Matthew E. Norton
Burke, Warren, MacKay
& Serritella, P.C.
330 North Wabash
21st Floor
Chicago, IL 60611

Above Space For Recorder's Use Only

**EASEMENT AGREEMENT
BY AND BETWEEN
LAKE COUNTY FOREST PRESERVE DISTRICT
AND
COUNTY OF LAKE**

This Easement Agreement (this "Agreement") is dated and executed as of the ___ day of _____, 2021 (the "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 805/0.001 *et seq.* (the "District"), and the COUNTY OF LAKE, a body politic and corporate, organized and existing under the Illinois Counties Code, 55 ILCS 5/1-1001, *et seq.* (the "County"). In consideration of the provisions below and other consideration, the receipt and sufficiency of which are hereby acknowledged, the District and the County (collectively, the "Parties") agree as follows:

1. **BACKGROUND.** The District holds fee simple title to property commonly known as Rollins Savanna Forest Preserve in Lake County, Illinois (the "Subject Property"). On approximately March 6, 1975, the District's predecessor in title to a portion of the Subject Property granted a sanitary sewer easement to the County within such portion (the "North Easement Premises") pursuant to a "Utility Easement" recorded with the office of the Recorder of Lake County, Illinois as document number 1762071. On approximately June 5, 1975, the District's predecessor in title to a different portion of the Subject Property granted a sanitary sewer easement to the County within such portion (the "South Easement Premises") pursuant to a "Utility Easement" recorded with the office of the Recorder of Lake County, Illinois as document number 1762072. Each of the North Easement Premises and the South Easement Premises is twenty (20) feet wide and abuts the public right of way commonly known as Linden Avenue, which is adjacent to the Subject Property. There currently exists a "gap" of approximately 93 feet between the North Easement Premises and the South Easement Premises, which "gap" is legally described and generally depicted as the "Easement Area" on Exhibit A attached hereto. The Parties desire that the District, as the current owner of the Subject Property, grant a sanitary sewer easement to the County to close this "gap" and to allow the County to continue to install, operate, maintain, and replace underground public

sanitary sewer improvements (the “Facilities”) within the Easement Area, including the Facilities that have already been installed within the Easement Area.

2. GRANT OF EASEMENT. The District hereby grants to the County a non-exclusive easement in, on, over and under the Easement Area for the sole purpose of allowing the County to install, maintain, operate, and replace the Facilities (the “Easement”). The County shall use the Easement in compliance of with all applicable laws (the “Requirements of Law”).

3. TERM OF EASEMENT. The term of the Easement shall commence on the Effective Date and shall be perpetual.

4. MAINTENANCE OF EASEMENT AREA.

A. Easement Area. At all times while any work is being performed, the County shall maintain (or if the work is being performed by its contractors, shall cause its contractors to maintain), the Easement Area in a safe, good, and clean condition without hazard to public use. Additionally, the County must comply with all Requirements of Law that prohibit, restrict, or regulate any hazardous materials.

B. District Property. If the County’s use of the Easement results in any damage to the Easement Area or any other property owned by the District, the County must repair such damage and restore the property to its condition prior to such damage. If the County fails to commence such repair and restoration with due diligence, within 30 days after the District gives the County notice thereof, then the District shall have the right, but not the obligation, to cause the affected property to be repaired and restored and to recover from the County all costs incurred by the District to cause the affected property to be repaired or restored.

C. Abatement of Dangerous Condition. If the Facilities or any acts or omissions by or through the County threaten the public’s health or safety, (i) the County shall take all necessary action to abate the dangerous condition and (ii) if the County fails to undertake such abatement with due diligence, within 48 hours after the District gives the County notice thereof, the District shall have the right, but not the obligation, to take all necessary action to abate the dangerous condition, including restricting access near or installing barriers around the dangerous condition, and the County shall reimburse the District for all costs incurred by the District in the performance of such abatement.

5. RESTORATION AND VACATION. Upon termination or abandonment of the Easement for any reason, the County shall, at no cost to the District, (i) remove the Facilities from the Easement Area, (ii) restore the Easement Area to a natural condition acceptable to the District in accordance with a restoration plan approved by the District, and (iii) thereafter, vacate the Easement Area. If the County fails to remove the Facilities, or to restore the Easement Area, the District shall have the right, but not the obligation, to perform and complete the removal and restoration, and to charge the County for all costs and expenses, including legal and administrative costs, incurred by the District for such work.

6. RESERVATION OF RIGHTS. The District reserves its right to: (i) use the Easement Area for any public use, in any manner that will not unreasonably prevent, impede, or interfere with the County’s use of the Easement Area and (ii) grant other non-exclusive licenses or easements within the Easement Area that do not unreasonably prevent, impede, or interfere with the County’s use of the Easement Area. The County will maintain the Facilities so that they do not unreasonably interfere with the District’s use and occupancy of the Easement Area.

7. NO ASSESSMENTS AND LIENS. The County represents and warrants that it will: (i) not assess or impose, or allow to be assessed or imposed, against the Easement Area or the Subject Property any

special assessment, special service area tax, recapture fee, or similar assessment, tax, or fee (an “Assessment”), (ii) indemnify the District from any Assessment that is imposed, (iii) take all necessary action to keep the Easement Area free and clear of all liens, claims, and demands, including without limitation mechanic’s liens, in connection with the Facilities, and (iv) cause, at the County’s sole cost and expense, (a) any lien that is filed against the Easement Area in connection with the Facilities to be discharged and released, and (b) evidence of this discharge and release to be recorded against the Easement Area, all within 30 days after the date of filing of the lien.

8. SECURITY. If the County fails to comply with its obligations in Sections 4, 5, or 7, then the District may require the County to deposit with the District security in the form of cash or a certified or cashier’s check made payable to the District, in an amount determined by the District, as a guarantee that the County shall comply in the future with such obligations, including any required restoration and repair of any damage to the Easement Area or any other property owned by the District. Refund of such funds shall be in the manner prescribed by the District’s “Ordinance Regarding Licenses and Easements for Public Services” approved July 15, 2014, and as may be amended (the “License and Easement Ordinance”).

9. INDEMNITY. The County assumes sole and complete responsibility for any personal injury, including death, and damage to property that may arise directly or indirectly from the use of the Easement Area by the County, its officers, board members, employees, agents, representatives, and contractors. The County shall indemnify, hold harmless, defend, and release the District, its commissioners, officers, agents, representatives, and employees from and against any alleged loss, claim, damage, and expense (including, without limitation, attorneys’ fees and litigation costs) that may be alleged or asserted against any of those parties in connection with (i) the Facilities, the Easement, or the use of the Easement Area by the County or its officers, board members, employees, agents, representatives, or contractors or (ii) the County’s performance of, or failure to perform, its obligations under this Agreement (collectively, the “Indemnified Claims”), whether or not any such performance or failure to perform is alleged to result from the County’s breach of this Agreement, negligence, willful misconduct, or any other standard of conduct; however, this indemnity will not apply to the extent any Indemnified Claims are caused by the willful misconduct or gross negligence of the District.

10. INSURANCE. The County shall obtain and maintain, and cause its contractors to obtain and maintain, adequate insurance coverage to protect the District and satisfy the County’s indemnification obligations under this Agreement.

11. INTENTIONALLY OMITTED.

12. REVOCAION OF EASEMENT; REVERTER.

A. Revocation. If the County breaches any term or provision of this Agreement, and the County fails to cure such breach within the time provided for in this Agreement, or if no time is provided for in this Agreement, within a reasonable time, the District, in addition to any other remedy it may have, may: (i) terminate this Agreement, (ii) revoke the Easement, (iii) record with the office of the Recorder of Lake County, Illinois, a certified copy of a document revoking the Easement, and (iv) pursue any of the remedies set forth in this Agreement or otherwise available to the District at law or in equity.

B. Reverter. If the County ceases to use the Easement for the purposes set forth in Sections 1 and 2 of this Agreement for a period of twelve months or more, the County will be deemed to have abandoned the Easement and all of the County’s rights in the Easement Area shall revert to the District, and the District may prepare and record with the office of the Recorder of Lake County, Illinois, a certified copy of a document memorializing such abandonment.

13. COVENANTS RUNNING WITH THE LAND. The Easement and the rights granted in this Agreement, the restrictions imposed by this Agreement, and the agreements and covenants contained in this Agreement shall run with the land, shall be recorded against the Easement Area, and shall be binding upon and inure to the benefit of the District and the County and their respective mortgagees, lessees, heirs, executors, administrators, successors, assigns, agents, licensees, invitees, and representatives, including, without limitation, all subsequent owners of the Easement Area, or any portion thereof, and all persons claiming under them.

14. NOTICES. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered: (i) personally, (ii) by a reputable overnight courier, or by (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of: (i) actual receipt, (ii) one business day after deposit with an overnight courier, as evidenced by a receipt of deposit, or (iii) four business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section 14, each Party shall have the right to change the address or the addressee, or both, for all future notices and communications to the other 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 and delivered to the following address:

Lake County Forest Preserve District
1899 West Winchester Road
Libertyville, IL 60048
Attention: Executive Director

with a copy to:

Burke, Warren, MacKay & Serritella, P.C.
330 North Wabash, 21st Floor
Chicago, IL 60611
Attention: Mathew E. Norton

Notices and communications to the County shall be addressed and delivered to the following address:

Lake County Public Works
650 W Winchester Road
Libertyville, IL 60048

Attention: Austin McFarlane

with a Copy to:

Lake County State's Attorney
18 N County Street
Waukegan, IL 60085

Attention: Stephen Rice

15. GENERAL PROVISIONS.

A. Entire Agreement. This Agreement is the entire agreement between the Parties and supersedes all of their prior agreements and negotiations, written or oral, relating to the subject matter of this Agreement.

B. Governing Law. This Agreement is governed by the internal laws, but not the conflict of laws rules, of the State of Illinois.

C. No Waiver. Any act or omission by the District that may constitute a waiver of one or more its rights under this Agreement shall not constitute or be deemed to be a waiver of any other right that the District has or may have in the future under this Agreement.

D. Authority. Each person signing this Agreement hereby states and covenants that he or she has read, and understands, this Agreement, that he or she has the authority to execute this Agreement on behalf of the Party whom he or she represents, and that such Party intends to be legally bound by the provisions of this Agreement.


COUNTY:

By: 
Name: Austin McFarlane
Its: Interim Director

DISTRICT:

By: _____
Name: _____
Its: _____

ATTEST

By: 
Name: David Humbert
Its: Principal Engineer

ATTEST

By: _____
Name: _____
Its: _____

ACKNOWLEDGMENTS

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

This instrument was acknowledged before me on _____, 2021, by _____, the _____ of the LAKE COUNTY FOREST PRESERVE DISTRICT, a body politic and corporate, and by _____, the _____ of said District.

Signature of Notary

SEAL

My Commission expires:

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

This instrument was acknowledged before me on NOVEMBER 30TH, 2021, by AUSTIN MCFARLANE, the INTERIM DIRECTOR of the COUNTY OF LAKE, a body politic and corporate, and by _____, the LAKE COUNTY PUBLIC WORKS, the _____ of said County.

[Handwritten Signature]
Signature of Notary

SEAL

My Commission expires: 12/6/21

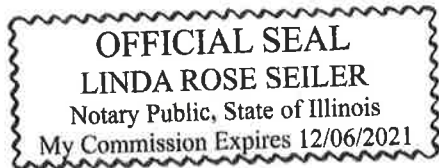
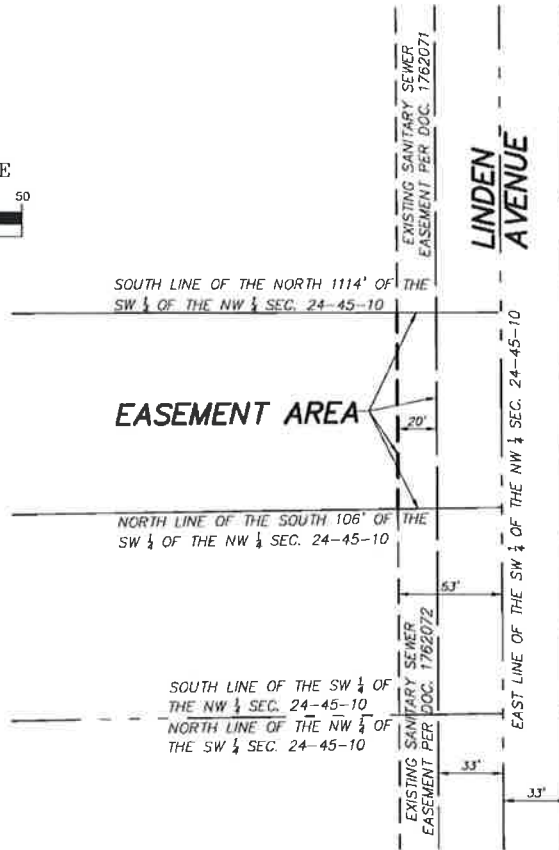
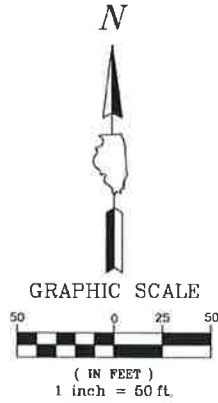


Exhibit A

EXHIBIT A
FOR
SANITARY SEWER

DESCRIPTION OF THE EASEMENT AREA:

THE WEST 20.00 FEET OF THE EAST 53.00 FEET OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 45 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN EXCEPT THE NORTH 1114.00 FEET OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND EXCEPT THE SOUTH 106.00 FEET OF SAID SOUTHWEST QUARTER OF THE NORTHWEST QUARTER, IN LAKE COUNTY, ILLINOIS.



STATE OF ILLINOIS) SS.
COUNTY OF LAKE)

WE GEWALT HAMILTON ASSOCIATES, INC DO HEREBY CERTIFY THAT WE HAVE PREPARED THIS EASEMENT EXHIBIT, AND THAT IT IS A TRUE AND CORRECT REPRESENTATION OF SAID EASEMENT AREA. ALL DISTANCES SHOWN HEREON ARE IN FEET AND DECIMAL PARTS THEREOF.

DATED THIS 19TH DAY OF OCTOBER, 2021 AD.

GEWALT HAMILTON ASSOCIATES, INC.
PROFESSIONAL DESIGN FIRM LICENSE NO. 184-000922

Edward A. Hedge
EDWARD A. HEDGE
ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 3028
MY LICENSE EXPIRES NOVEMBER 30, 2022

GEWALT HAMILTON ASSOCIATES, INC. 625 Forest Edge Drive • Vernon Hills, IL 60061 Tel.: 847.478.9700 • Fax: 847.478.9701	FILE: 5600.008_ESM T.dwg	
	DRAWN BY: EAH	GHA PROJECT #
	DATE: 05-27-21	5600.008
	CHECKED BY:	SCALE: 1"=50'