

RESOLUTION R-2024-30

A RESOLUTION APPROVING
TEMPORARY AND PERMANENT EASEMENT AGREEMENTS
FOR THE GARY AVENUE RECONSTRUCTION PROJECT

WHEREAS, the City is reconstructing and widening Gary Avenue between Harrison Avenue and Jewell Road; and

WHEREAS, the reconstruction and widening necessitates temporary easements for minor grading and permanent easements for culvert extension and compensatory stormwater storage; and

WHEREAS, the Wheaton Park District and Forest Preserve District of DuPage County are the owners of the property adjoining the project who the easements need to be obtained from; and

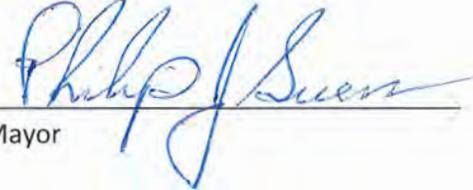
WHEREAS, the owners of the property located on the east and west side of Gary Avenue between Jewell Road and Harrison Avenue with PINS 0508409023, 0508414023, and 0508414027 grant the City of Wheaton permanent easements via a permanent easement agreement attached to this resolution as Exhibit A; and

WHEREAS, the owners of the property located on the east and west side of Gary Avenue between Jewell Road and Harrison Avenue with PINS 0508407010, 0508408032, 0508408033, 0508408034, 0508408035, 0508409022, 0508415002, and 0508418006 grant the City of Wheaton temporary easements via a temporary easement agreement attached to this resolution as Exhibit B; and

WHEREAS, Wheaton City staff recommend that the permanent and temporary easement agreements be approved.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the temporary and permanent Easement Agreements for the Gary Avenue Reconstruction Project, approved by the Illinois Department of Transportation, are hereby approved, and the Mayor is hereby authorized to sign, and the City Clerk is directed to attest to, the easement agreements incorporated herein as Exhibit A and Exhibit B.

ADOPTED this 15th day of April 2024.


Philip J. Sauer
Mayor

ATTEST:


Andrea Romedale
City Clerk

Roll Call Vote:

Ayes: Councilman Barbier
Councilwoman Bray-Parker
Councilman Brown
Mayor Suess
Councilman Clousing
Councilwoman Robbins
Councilman Weller

Nays: None

Absent: None

Motion Carried Unanimously

EXHIBIT A

PREPARED BY AND RETURN TO:

Rachel K. Robert
Day & Robert, P.C.
300 East 5th Avenue, Suite 365
Naperville, Illinois 60563

Property Address:

Vacant land on the East and West sides of
Gary Avenue and South of Jewell Road,
Wheaton, IL 60187
PINs: 05-08-409-023, 05-08-414-023 & 05-08-414-027

PERMANENT EASEMENT AGREEMENT FOR GARY AVENUE ROADWAY IMPROVEMENT PROJECT

THIS PERMANENT EASEMENT AGREEMENT FOR ROADWAY IMPROVEMENT PROJECT ("Agreement") is made effective upon being executed by all parties hereto and is hereby made and entered into by and among the WHEATON PARK DISTRICT, an Illinois park district (the "Park District") having its principal address located at 102 East Wesley Street, Wheaton, Illinois 60187, the FOREST PRESERVE DISTRICT OF DUPAGE COUNTY, a body corporate and politic, (the "Forest Preserve District") having its principal address located at 3S580 Naperville Road, Wheaton, Illinois 60187, and the CITY OF WHEATON, an Illinois home rule municipal corporation (the "City") having its principal address located at 303 West Wesley Street, Wheaton, Illinois 60187. The Park District, the Forest Preserve District and the City who may be referred to hereafter collectively as the "Parties" and individually as a "Party".

RECITALS

WHEREAS, Lincoln Marsh is a public natural area in which certain portions are solely owned by the Park District, solely owned by the Forest Preserve District, and jointly owned by the Park District and Forest Preserve District; and

WHEREAS, the City has been engaged in an on-going roadway improvement project on Gary Avenue between Prairie Avenue and Harrison Avenue in Wheaton, Illinois (the "Project"); and

WHEREAS, in order to further the Project, the City has requested that the Park District and the Forest Preserve District grant the City a permanent easement over certain portions of Lincoln Marsh so that the City can undertake the work needed to construct and maintain a culvert extension and compensatory storage area associated with the Project; and

WHEREAS, the Park District is the owner of one parcel of real property identified, legally described and depicted on Exhibit A attached hereto and incorporated herein (the "Park District Parcel"); and

WHEREAS, the Park District and the Forest Preserve District are the joint owners of one parcel of real property identified, legally described and depicted on Exhibit B attached hereto and incorporated herein (the "Co-Owned Parcel"); and

WHEREAS, the Park District Parcel and the Co-Owned Parcel are collectively referred to hereafter as the "Permanent Easement Area" as identified, legally described and depicted on Exhibits A and B attached hereto and incorporated herein; and

WHEREAS, the Park District is planning to construct a parking lot on the east side of Gary Avenue for the Cosley Zoo that will directly benefit from the traffic signal and pedestrian improvements being constructed by the City; and

WHEREAS, the Project also includes the construction of a path within the right-of-way of Gary Avenue, which will improve public access to Lincoln Marsh; and

WHEREAS, pursuant to Section 8-11 of the Park District Code, 70 ILCS 1205, *et seq.*, the Park District is authorized and empowered to grant easements for public services; and

WHEREAS, pursuant to Section 6 of the Downstate Forest Preserve District Act, 70 ILCS 805/6, the Forest Preserve District is authorized and empowered to grant easements for public services; and

WHEREAS, the Park District and the Forest Preserve District have determined that it is reasonable, necessary and in the public interest to grant the City the needed permanent easement over the Permanent Easement Area in accordance with, and subject to, the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the Parties' intergovernmental cooperation, the foregoing recitals, the terms and conditions set forth herein and other good and valuable consideration, the receipt of which is expressly acknowledged by the Parties, the Parties agree as follows:

1. Recitals Incorporated. The foregoing recitals are hereby adopted and incorporated herein by reference as though fully set forth herein.

2. Permanent Easement Granted. The Park District hereby grants to the City and the City's employees, agents, licensees, contractors, successors and assigns a permanent easement over the Park District Parcel, and the Park District and Forest Preserve District hereby jointly grant to the City and the City's employees, agents, licensees, contractors, successors and assigns a permanent easement over the Co-Owned Parcel (collectively the "City Permanent Easement"), for the following limited purposes: to provide all access and to perform all work activities commonly used to undertake and complete the construction, maintenance, repair, and replacement of the

culvert extension and compensatory storage area to be built as part of the Project, which also includes post completion restoration of the Permanent Easement Area (collectively, the “Permanent Easement Work”). The City Permanent Easement shall be deemed to be a non-exclusive perpetual easement and shall run with the land within the Permanent Easement Area. The Park District and Forest Preserve District shall have no responsibility for the maintenance, repair, or replacement of the culvert extension and compensatory storage within the City Permanent Easement. Maintenance, repair or replacement of the Permanent Easement Work shall be the exclusive responsibility of the City at its sole cost unless the damage or destruction of the Permanent Easement Work is caused by the Forest Preserve District or the Park District in which case the costs shall be paid by the party causing the damage or destruction.

3. Scope of Project.

(a) The City shall design, permit and construct the Permanent Easement Work in accordance with the plan drawings (the “Final Plans”) prepared by Thomas Engineering. The Final Plans shall be deemed incorporated herein by reference without attaching said Final Plans hereto due to their size.

(b) The City shall pay all fees and costs necessary to design, permit, construct, implement, repair and maintain the Permanent Easement Work in perpetuity and as provided for in this Agreement.

4. Forest Preserve District and Park District Rights and Responsibilities.

(a) On or within seven days after completion of the Final Plans, the City shall provide the Final Plans to the Forest Preserve District and the Park District which may review and issue comments to the City regarding the Final Plans within ten days after receipt thereof.

(b) The Forest Preserve District and the Park District may attend any pre-bid meetings, construction progress meetings or site visits conducted by the City for the Permanent Easement Work with proper advance notice being required and given by the City.

(c) The City shall give prompt advance notice to the Forest Preserve District and the Park District and provide copies of all relevant documents if any significant changes, alterations or modifications are proposed to the Final Plans or bid documents including, but not limited to, any proposed bidding addenda, field adjustments, change orders or other significant changes to the Permanent Easement Work. The Forest Preserve District and the Park District shall provide review comments on any proposed changes within ten days after receipt of the foregoing notice and documents from the City.

(d) The Forest Preserve District and the Park District shall provide appropriate staff representative(s) and/or consultant(s) to attend the final inspection of the Permanent Easement Work and any field inspections, as scheduled and coordinated by the City. The City shall, in an appropriate and timely manner, properly address and correct any noted

deficiencies that are determined to exist in any part or component of the Permanent Easement Work.

(e) The Forest Preserve District and the Park District shall each bear their own expenses related to the use of their employees or consultants for any review, site inspections, meeting attendance and the preparation and issuance of any comments provided for in this Agreement.

5. Permanent Easement Area Conditions. The City Permanent Easement and ancillary rights given to the City under this Agreement shall be subject to the following conditions:

(a) The Park District and the Forest Preserve District reserve the right of access to, and use of, the Permanent Easement Area in any manner not inconsistent with the rights granted to the City under this Agreement. The Park District and the Forest Preserve District also expressly reserve the right to grant additional easements or otherwise encumber the Permanent Easement Area provided that any such grants or encumbrances are not inconsistent and do not unreasonably interfere with the rights granted to the City under this Agreement.

(b) The City shall notify the Park District and Forest Preserve District in writing at least thirty days prior to the commencement of any Permanent Easement Work within the Permanent Easement Area. The Parties shall reasonably cooperate with respect to the commencement, timing and location of the Permanent Easement Work so as to protect the public at large and to avoid any interference with the Park District and Forest Preserve District's use of the Permanent Easement Area.

(c) All of the Permanent Easement Work conducted by any entity in the Permanent Easement Area shall be performed in a safe and sound manner and in accordance with all applicable federal, state and local laws, including the ordinances and regulations of the City, and any requirements of the Illinois Department of Transportation and the Illinois Department of Natural Resources.

(d) The City shall be responsible for the payment of all costs associated with the Permanent Easement Work.

(e) Restoration Work.

(i) The City shall restore the Permanent Easement Area with a native seed mix of forbs and grasses appropriate to or improving upon the pre-disturbance condition of the Permanent Easement Area. Plans for this restoration including species, soil conditions and planning methods will be developed by the City for written approval by the Park District and Forest Preserve District prior to installation. The City shall similarly restore any other real estate damaged or otherwise disturbed in connection with the Permanent Easement Work. All restoration shall be completed within thirty days after the Permanent Easement Work is completed or, if due to weather conditions or other circumstances which

would make any such restoration inadvisable, then within such later time period as the Park District and Forest Preserve District shall reasonably request. The City shall be solely responsible for all costs associated with said restoration of the Permanent Easement Area and other real estate damaged or otherwise disturbed as provided for herein. If any improvements are damaged in performing the Permanent Easement Work either within or outside the Permanent Easement Area, the appropriate repair or replacement work shall be developed by the City and tendered to the Forest Preserve District and the Park District for written approval prior to any repair or replacement work being undertaken. All such work shall again be undertaken at the sole cost and expense of the City.

(ii) Upon completion of the restoration work, the City will contract for maintenance of the restored areas in order to establish and maintain the native seeds for a period of three years (or as otherwise required by permitting authorities) at the City's sole expense, which expense is estimated by the Park District and the Forest Preserve District to be no more than a few thousand dollars each year. If the City fails to timely complete any of the restoration or repair work, the Park District and Forest Preserve District reserve the right to perform any of the restoration or repair work set forth in this Section with the City being obligated to fully reimburse the Forest Preserve and the Park District for all costs, plus an additional charge of five percent (5%) of the total costs for the administrative and supervision time incurred if, after notice and an opportunity to cure, the City fails to perform the required restoration work.

(f) While performing any Permanent Easement Work, the City shall maintain the Permanent Easement Area in accordance with all applicable safety rules and regulations.

(g) The Forest Preserve District and the Park District shall not be responsible for or have control over the construction means, methods, techniques or procedures with respect to the Permanent Easement Work. In no event shall the Forest Preserve District and the Park District be responsible for or have any obligation with respect to the safety of any person performing any activity or any Permanent Easement Work on or in the Permanent Easement Area, including, but not limited to, the employees of the City or of any contractor, subcontractor, agent or consultant.

(h) Prior to commencing access and any Permanent Easement Work within the Permanent Easement Area, the City shall delineate the Permanent Easement Area and all Permanent Easement Work shall be confined to the Permanent Easement Area. Delineation shall be made by high visibility silt fence or construction/snow fencing installed in accordance with applicable ordinances and permits from DuPage County.

(i) All Permanent Easement Work shall be confined within the Permanent Easement Area, including, but not limited to, the movement and storage of equipment and materials. All trees, stumps and other debris resulting from the Permanent Easement Work

shall be legally disposed of off of the Permanent Easement Area. No construction personnel shall be permitted outside the designated areas while engaged in construction activities.

6. Fees and Costs.

(a) In consideration of the benefit of the Project in facilitating both pedestrian and vehicular access to Lincoln Marsh and other public lands, any typical easement fees are being waived by the Park District and the Forest Preserve District.

(b) Any direct reasonable costs incurred by the Park District, primarily in the form of attorney fees incurred in preparing this Agreement, will be paid by the City upon receipt of an invoice itemizing those costs.

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

8. Hazardous Materials. No explosives or flammable or hazardous materials of any kind shall be transported across, brought upon, stored or deposited on the Permanent Easement Area (except as needed for vehicles or equipment for the Permanent Easement Work provided that the City and its contractors shall be liable for any damage to or contamination of the Permanent Easement Area or any other property owned by the Park District or the Forest Preserve District resulting from such activity or use). As used in this Agreement, "hazardous materials" means any hazardous or toxic substances, materials or wastes, including, but not limited to solid, semi-solid, liquid or gaseous substances which are toxic, ignitable, corrosive, carcinogenic or otherwise dangerous to human, plant or animal health or well-being and those substances, materials, and wastes listed in the United States Department of Transportation Table (49 CFR 972.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto or such substances, materials, and wastes regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which is (i) petroleum; (ii) asbestos; (iii) polychlorinated biphenyls; (iv) designated as "Hazardous substances" pursuant to Section 1251 *et. seq.* (33 U.S.C. Section 1321) or listed pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et. seq.* (42 U.S.C. Section 6903); or (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et. seq.* (42 U.S.C. Section 9601) or any other applicable environmental law.

9. Liens. The City shall not permit or suffer any lien to be imposed upon or to accrue against the Park District, the Forest Preserve District or the Permanent Easement Area. The City shall indemnify, defend and hold harmless the Park District and the Forest Preserve District from and against any liens and encumbrances arising out of any Permanent Easement Work. In the event that any such lien shall arise or accrue against the Park District, the Forest Preserve District or the Permanent Easement Area, the City shall promptly cause such lien to be released of record by payment thereof or posting a bond with the Park District and the Forest Preserve District in a form and amount which is reasonably satisfactory to the Park District and the Forest Preserve District.

10. Indemnification.

(a) To the extent permitted by law, the City shall defend, save, and hold harmless the Forest Preserve District and the Park District, their elected officials, officers, employees and agents from any and all claims, liabilities, causes of action, losses and damages that may at any time arise or be claimed by any person or entity as a result of bodily injury, sickness, death or property damage, or as a result of any other claim or suit of any nature whatsoever, allegedly arising out of or in any manner connected with, directly or indirectly, the Permanent Easement Work, when such bodily injury, sickness, death, property damage or other claim is allegedly caused by a negligent or intentional act or omission on the part of the City or its contractors, subcontractors, engineers, consultants, employees, or agents. In the event any person or entity obtains a judgment or settlement against the Forest Preserve District and the Park District or any of their elected officials, officers, employees or agents, by reason of any negligent or intentional act or omission on the part of the City or its contractors, subcontractors, consultants, employees or agents, the City shall promptly, to the extent allowed by law, indemnify the Forest Preserve District and the Park District or their elected officials, officers, employees and agents, as the case may be, in the amount of said judgment or settlement and for all costs and expenses related thereto, including, without limitation, reasonable attorney and expert witness fees.

(b) To the extent permitted by law, the City shall also defend, save, hold harmless and indemnify the Forest Preserve District and the Park District from any and all claims, liabilities, causes of action, losses and damages that may arise or be claimed by any person or entity for bodily injury, sickness, death or property damage, or for any other claim or suit of any nature whatsoever, arising from or in any manner connected with, directly or indirectly, any defect in the Permanent Easement Work whether caused by defective materials, workmanship, construction methods or otherwise.

(c) The City shall require each contractor who performs any work in the Permanent Easement Area, to defend, hold harmless and indemnify the Forest Preserve District and Park District to the same extent as required of the City, and the City shall include in all of its contracts a statement expressly declaring the Forest Preserve District and Park District to be a third-party beneficiary of this indemnification provision.

(d) The obligation on the part of the City to defend, hold harmless and indemnify the Forest Preserve District and the Park District shall be perpetual, consistent with the perpetual term of the City Permanent Easement granted under this Agreement.

11. Insurance.

(a) The City shall maintain, and shall require any of its contractors or subcontractors hired to perform any Permanent Easement Work to maintain liability insurance with reputable companies and in coverage amounts as are reasonably acceptable to the Park District and the Forest Preserve District and/or the risk management association of which the Park District and the Forest Preserve District is a member, to protect the Park District and the Forest Preserve District and City against claims arising directly or indirectly out of or in connection with City's Permanent Easement Work pursuant to this Agreement. The City shall name and shall require any contractor, subcontractor or other individual or entity accessing or using the Permanent Easement Area or hired to perform any work in the Permanent Easement Area to name the Park District and Forest Preserve District, its elected and appointed officials, officers, employees and agents as an additional insured and prior to commencing any Permanent Easement Work, shall provide to Park District and the Forest Preserve District a copy of a Certificate of Insurance evidencing the same.

(b) After the Permanent Easement Work and associated restoration is complete, the City shall maintain a policy of Commercial General Liability Insurance providing coverage for bodily injury and property damage claims arising on or from the use of the City Permanent Easement. The City shall provide evidence of said insurance coverage upon request by the Park District or Forest Preserve District by furnishing a current Certificate of Insurance.

12. Term. The City Permanent Easement granted herein shall be non-exclusive, perpetual and shall run with the land included within the Permanent Easement Area.

13. Notice of Completion. The City shall provide the Park District and Forest Preserve District with prompt written notice upon the completion of construction of the initial improvements included within the Final Plans for the Permanent Easement Work, specifying the date of completion.

14. Exceptions. The City Permanent Easement granted shall be subject to all OSLAD restrictions and requirements, if any, all other covenants, easements and restrictions of record, building and zoning ordinances, resolutions and regulations affecting the Permanent Easement Area, and to all questions of survey and the rights of any parties which would be revealed by a physical inspection of the Permanent Easement Area.

15. Breach of Agreement. If a Party reasonably believes that a breach of this Agreement has occurred or is occurring, the Party shall serve written notice thereof upon the Party committing or permitting such breach to occur, specifying in detail the breach and the facts supporting such claim. The Party alleged to have committed the breach shall have thirty days

within which to cure the violation. If the Party in violation is the City, and the City fails to cure the breach within the thirty day period, the Forest Preserve District or the Park District may pursue monetary damages or specific performance provided that the thirty day cure period shall be extended for a reasonable time if the City has undertaken to cure the breach within the thirty day period and continues to diligently and in good faith to complete the corrective action. Given the importance of the Project to public health and safety and given the nature and scope of the Project, the remedies available to the Forest Preserve District and the Park District do not, and shall not, include termination of this Agreement or prevention of access to the Permanent Easement Area except as provided in Section 5 of this Agreement.

16. Entire Agreement. This instrument contains the entire agreement made by and among the Parties relating to the rights granted herein and the obligations herein assumed. Any oral representation or modification to this Agreement shall be of no force and effect, and any modification to this Agreement must be in writing and signed by all Parties to this Agreement.

17. Severability. The invalidation by judgment or court order of any one or more of the terms contained herein shall in no way affect any other terms which shall remain in full force and effect.

18. Law Governing. The laws of the State of Illinois shall govern the terms of this Agreement as to both interpretation and performance.

19. Captions and Section Headings. Captions and section headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.

20. Notices. All notices provided for herein shall be served upon the Parties by certified United States mail, return receipt requested, at the following locations, or at such other location or locations as the Parties may from time to time designate in writing:

Notice to Park District:

Wheaton Park District
102 East Wesley Street
Wheaton, Illinois 60187

Notice to Forest Preserve District:

Forest Preserve District of DuPage County
P.O. Box 5000
Wheaton, Illinois 60189-5000

Notice to the City:

City of Wheaton
303 West Wesley Street
Wheaton, Illinois 60187

Notices shall be deemed given when received by the Party to whom it was sent.

21. No Waiver of Tort Immunity. Nothing contained in this Agreement shall constitute a waiver by the Park District, the Forest Preserve District or the City of any right, privilege or defense which they have under statutory or common law, included but not limited to the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10.

22. No Third-Party Beneficiaries. This Agreement is entered into solely for the benefit of the Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and entity who is not a party to this Agreement or to acknowledge, establish, or impose any legal duty to any third party.

23. Covenant Running With The Land. This City Permanent Easement and the promises contained in this Agreement shall be a covenant running with the land and shall be binding upon the City, the Park District and the Forest Preserve District and any of their lessees, successors in interest, heirs, devisees and assigns from and after the date of execution by the Parties.

24. Enforcement. In any action to enforce this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs of litigation.

25. Recording. Upon full execution of this Agreement, the City shall promptly record this Agreement with the DuPage County Recorder's Office at the City's sole expense, with the City promptly providing the Park District and the Forest Preserve District with recorded copies.

26. Board Approval. This Agreement is subject to the approval by the respective Boards of the Park District, the Forest Preserve District and the City.

27. Counterpart Signatures. Four originals of this Agreement shall be executed and may be executed by counterpart signatures. The Park District, the Forest Preserve District and the City shall each retain an original, with the fourth original being recorded as set forth in this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Permanent Easement Agreement for Roadway Improvement Project as of the date first above written.

WHEATON PARK DISTRICT, an Illinois park district

BY: John Kelly

ITS: President

ATTEST:

ITS: Executive Director/Secretary

April 17, 2024

Date

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that John Kelly personally known to me to be the President and Michael Benard personally known to me to be the Executive Director/Secretary of the Wheaton Park District, an Illinois park district, both personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such John Kelly and Michael Benard, they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Commissioners of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 17 day of April, 2024, 2024.

Donna R Siciliano
Notary Public



FOREST PRESERVE DISTRICT OF DUPAGE
COUNTY, a body corporate and politic

BY: D. H.

ITS: PRESIDENT

ATTEST: Judith A. Malahy

ITS: Secretary

Date April 16, 2024

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Daniel Hebreard personally known to me to be the President and Judith Malahy personally known to me to be the Board Secretary of the Forest Preserve District of DuPage County, a body corporate and politic, both personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Daniel Hebreard and Judith Malahy, they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Commissioners of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 16 day of Apr '1,
2024.

Mary Frances P. Sheahan
Notary Public



CITY OF WHEATON, an Illinois home rule municipal corporation

BY: Philip Suess

ITS: Mayor

ATTEST: Andrea Rosedale

ITS: CITY CLERK

4/16/2024

Date

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Philip Suess and Andrea Rosedale personally known to me to be the Mayor and City Clerk personally known to me to be the _____ of the City of Wheaton, an Illinois home rule municipal corporation, both personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor and City Clerk, they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the City Council of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 16 day of April,
2024.

Carly A Johns
Notary Public



Route: F.A.U. 2561 (Gary Avenue)
Section : 20-00123-00-PV
Job Number: R-55-001-97
Parcel Number: 0007PE
Beginning to End Station: 28+28.30
to 30+28.30
Parcel Index Number: 05-08-414-027

That part of Lot 1 in Schmitt's Assessment Plat, according to the plat thereof recorded April 1, 1947 as Document Number 518263 being a part of the Southeast Quarter of Section 8, Township 39 North, Range 10, East of the Third Principal Meridian (excepting therefrom that part thereof falling within the public highway known as Gary Avenue, as the same was constituted in the year 1942) in DuPage County, Illinois, bearings and distances based on the Illinois State Plane Coordinate System, East Zone, NAD83 (2011 Adjustment), with a combined scale factor of 0.99994401, described as follows:

Beginning at the Southwesterly corner of Lot 2 in said Schmitt's Assessment Plat, said point being on the northeasterly right-of-way line of Gary Avenue, thence along the southerly line of said Lot 2 and line extended North 53 degrees 18 minutes 29 seconds East 210.00 feet, thence South 36 degrees 41 minutes 31 seconds East 130.00 feet, thence South 53 degrees 18 minutes 29 seconds West 80.00 feet, thence South 36 degrees 41 minutes 31 seconds East 60.00 feet, thence South 53 degrees 18 minutes 29 seconds West 80.00 feet, thence South 36 degrees 41 minutes 31 seconds East 10.00 feet to the south line of the northwesterly 200.00 feet of said Lot 1 as measured parallel to the southerly line of said Lot 2, thence along said southerly line South 53 degrees 18 minutes 29 seconds West 50.00 feet to the northeasterly line of Gary Avenue, thence North 36 degrees 41 minutes 31 seconds West along said northeasterly line of Gary Avenue 200.00 feet to point of beginning.

Said parcel containing 0.817 Acres, more or less.

Route: F.A.U. 2561 (Gary Avenue)
Section : 20-00123-00-PV
Job Number: R-55-001-97
Parcel Number: 0002TE
Beginning to End Station: 20+42.46
to 20+82.21
Parcel Index Number: 05-08-407-010

That part of Lot 1 in Ray W. Macdonald County Clerk's Wheaton Oaks Assessment Plat, being a subdivision of part of Section 8, Township 39 North, Range 10 East of the Third Principal Meridian, according to the plat thereof recorded January 11, 1977 as Document Number R1977-002348, in DuPage County, Illinois, bearings and distances based on the Illinois State Plane Coordinate System, East Zone, NAD83 (2011 Adjustment), with a combined scale factor of 0.99994401, described as follows:

Commencing at the northeasterly corner of said Lot 1, thence South 36 degrees 41 minutes 31 seconds East along the northeasterly line of said Lot 1 also being the southwesterly line of Gary Avenue 271.79 feet for a point of beginning, thence South 53 degrees 18 minutes 29 seconds West 5.00 feet, thence South 36 degrees 41 minutes 31 seconds East 22.91 feet, thence South 08 degrees 39 minutes 44 seconds West 16.83 feet, thence South 53 degrees 39 minutes 13 seconds West 7.93 feet, thence South 36 degrees 20 minutes 47 seconds East 5.00 feet to the south line of said Lot 1 also being the north line of Prairie Avenue, thence North 53 degrees 39 minutes 13 seconds East along said south line of Lot 1 a distance of 10.00 feet to the westerly line of that part conveyed to the State of Illinois by warranty deed recorded February 3, 1986 as Document Number R86-10808, thence North 08 degrees 39 minutes 44 seconds East along said westerly line of R86-10808 a distance of 20.99 feet to the northeasterly line of said Lot 1, thence North 36 degrees 41 minutes 31 seconds West along said northeasterly line 25.00 feet to the point of beginning, all in DuPage County, Illinois.

Said Parcel containing 0.006 Acres (259 Square Feet), more or less.

Route: F.A.U. 2561 (Gary Avenue)
Section : 20-00123-00-PV
Job Number: R-55-001-97
Parcel Number: 0004TE
Beginning to End Station: 23+00.00
to 24+00.00
Parcel Index Number: 05-08-418-006

That part of Lot 8 (except the southeasterly 20.0 feet, as measured at right angles to the southeasterly line of said lot 8) in Wheaton Oaks O-R Zone P.U.D. of part of the South Half of Section 8, Township 39 North, Range 10, East of the Third Principal Meridian, according to the plat thereof recorded November 19, 1976, as Document R76-84403, in DuPage County, Illinois, bearings and distances based on the Illinois State Plane Coordinate System, East Zone, NAD83 (2011 Adjustment), with a combined scale factor of 0.99994401, described as follows:

Commencing at the northeasterly corner of said Lot 8 (also being the intersection of the southerly right of way line of Prairie Avenue and the southwesterly right of way line of Gary Avenue), thence South 36 degrees 41 minutes 31 seconds East along the northeasterly line of said Lot 8 a distance of 155.80 feet for the point of beginning, thence continuing along said northeasterly line South 36 degrees 41 minutes 31 seconds East 100.00 feet, thence South 53 degrees 18 minutes 29 seconds West 10.00 feet, thence North 36 degrees 41 minutes 31 seconds West 100.00 feet, thence North 53 degrees 18 minutes 29 seconds East 10.00 feet to the point of beginning, all in DuPage County, Illinois.

Said parcel containing 0.023 Acres, more or less.

Route: F.A.U. 2561 (Gary Avenue)
Section : 20-00123-00-PV
Job Number: R-55-001-97
Parcel Number: 0008TE
Beginning to End Station: 37+24.44
to 37+60.32
Parcel Index Number: 05-08-415-002

That part of Lot 1 (except that part of said Lot 1 falling within Gary Avenue and Harrison Street) of Joseph H. Lanzarotta's Plat of Survey of part of the Southeast Quarter of Section 8, Township 39 North, Range 10 East of the Third Principal Meridian, according to the plat thereof recorded February 24, 1948 as Document 539923, in DuPage County, Illinois, bearings and distances based on the Illinois State Plane Coordinate System, East Zone, NAD83 (2011 Adjustment), with a combined scale factor of 0.99994401, described as follows:

Beginning at the Southwest corner of said Lot 1 (same being the northeast right-of-way corner of Gary Avenue and Harrison Avenue), thence North 36 degrees 41 minutes 31 seconds West along the northeasterly right-of-way line of Gary Avenue 30.00 feet, thence North 53 degrees 18 minutes 29 seconds East 5.00 feet, thence South 36 degrees 41 minutes 31 seconds East 27.41 feet, thence North 88 degrees 32 minutes 54 seconds East 7.60 feet, thence South 01 degrees 27 minutes 06 seconds East 5.00 feet to the north right-of-way line of Harrison Avenue, thence South 88 degrees 32 minutes 54 seconds West along said north right-of-way line 10.19 feet to the point of beginning, all in DuPage County, Illinois.

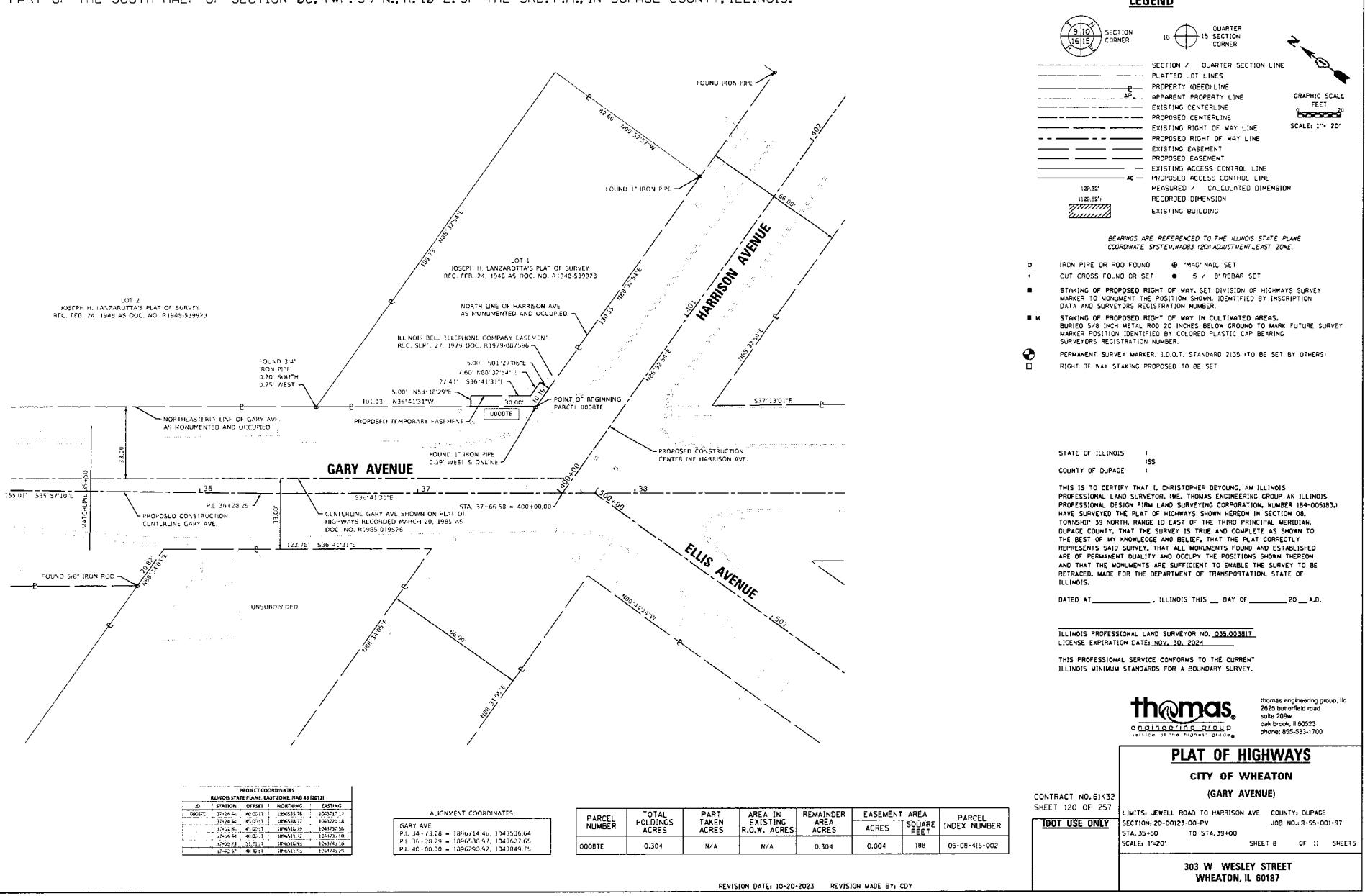
Said parcel containing 0.004 Acres (188 square feet), more or less.

Route: F.A.U. 2561 (Gary Avenue)
Section : 20-00123-00-PV
Job Number: R-55-001-97
Parcel Number: 0003TE
Beginning to End Station: 20+53.98
to 23+20.98
Parcel Index Number: 05-08-409-022

The southwesterly 10.00 feet of Lot 1 (as measured perpendicular to the northeasterly line of Gary Avenue) in Wheaton Park District's Assessment Plat of part of the Southeast Quarter of Section 8, Township 39 North, Range 10 East of the Third Principal Meridian according to the plat thereof recorded November 27, 1990 as Document Number R1990-160205, in DuPage County, Illinois.

Said parcel containing 0.061 Acres, more or less.

PART OF THE SOUTH HALF OF SECTION 08, TWP. 39 N., R. 10 E. OF THE 3RD. P.M., IN DUPAGE COUNTY, ILLINOIS.



PART OF THE SOUTH HALF OF SECTION 08, TWP. 39 N., R. 10 E. OF THE 3RD. P.M., IN DUPAGE COUNTY, ILLINOIS.

MAILED 23-00

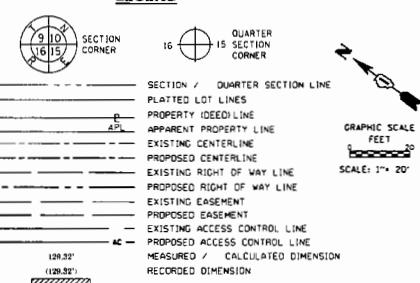
PROJECT COORDINATES			
STATION	OFFSET	NORTHING	EASTING
ILLINOIS STATE PLANE, EAST ZONE, NAD 83 (2011)			
2+26-31	45.00' L1	1897326.34	1041301.71
2+26-32	246.00' L1	1897329.82	1041301.12
2+26-33	214.00' L1	1897327.98	1041301.71
2+26-34	164.00' L1	1897322.76	1041301.44
2+26-35	164.00' L1	1897319.60	1041301.79
2+26-36	45.00' L1	1897313.87	1041301.25
2+26-37	45.00' L1	1897313.87	1041301.71
2+26-38	38.00' L1	1897309.17	1041301.71

ALIGNMENT COORDINATES:

PARCEL NUMBER	TOTAL HOLDINGS ACRES	PART TAKEN ACRES	AREA IN EXISTING R.O.W. ACRES	REMAINDER AREA ACRES	EASEMENT AREA		PARCEL INDEX NUMBER
					ACRES	SQUARE FEET	
000405	1.03	N/A	N/A	1.03	0.017	N/A	05-08-614-027

REVISION DATE: 11-20-2023

EXHIBIT A



BEARINGS ARE REFERENCED TO THE ILLINOIS STATE PLANE
COORDINATE SYSTEM, NAD83 (2011 ADJUSTMENT), EAST ZONE.

- IRON PIPE OR ROD FOUND • "MAG" NAIL SET
- CUT CROSS FOUND TO SET • 5 / 8" REBAR SET
- STAKING OF PROPOSED RIGHT OF WAY, SET DIVISION OF HIGHWAYS SURVEY MARKER TO MONUMENT THE POSITION SHOWN, IDENTIFIED BY INSCRIPTION DATA AND SURVEYORS REGISTRATION NUMBER.
- M STAKING OF PROPOSED RIGHT OF WAY IN CULTIVATED AREAS.
BURIED 5/8 INCH METAL ROD 20 INCHES BELOW GROUND TO MARK FUTURE SURVEY MARKER POSITION IDENTIFIED BY COLORED PLASTIC CAP BEARING SURVEYORS REGISTRATION NUMBER.
- PERMANENT SURVEY MARKER I.O.T.T. STANDARD 2135 (TO BE SET BY OTHERS)
- RIGHT OF WAY STAKING PROPOSED TO BE SET

STATE OF ILLINOIS
COUNTY OF DUPAGE

THIS IS TO CERTIFY THAT I, CHRISTOPHER DEYOUNG, AN ILLINOIS PROFESSIONAL LAND SURVEYOR, FOR THOMAS ENGINEERING GROUP AN ILLINOIS PROFESSIONAL DESIGN FIRM, LAND SURVEYING CORPORATION, NUMBER 184-005183, HAVE SURVEYED THE PLAT OF HIGHWAYS SHOWN HEREON IN SECTION 08, TOWNSHIP 10, RANGE 10, ILLINOIS. THIS PLAT IS PREPARED BY ME, DUPAGE COUNTY, ILLINOIS. THE SURVEY IS TRUE AND COMPLETE AS SHOWN TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THE PLAT CORRECTLY REPRESENTS SAID SURVEY, THAT ALL MONUMENTS FOUND AND ESTABLISHED ARE OF PERMANENT QUALITY AND OCCUPY THE POSITIONS SHOWN THEREON AND THAT THE MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, MADE FOR THE DEPARTMENT OF TRANSPORTATION, STATE OF ILLINOIS.

DATED AT _____, ILLINOIS THIS ____ DAY OF _____ 20____ A.D.

ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 015.003817
LICENSE EXPIRATION DATE: NOV. 30, 2024

THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT
ILLINOIS MINIMUM STANDARDS FOR A BOUNDARY SURVEY.

thomas.
engineering group

PLAT OF HIGHWAYS

CITY OF WHEATON

CONTRACT NO. 61K3
SHEET 118 OF 257

LIMITS: JEWELL ROAD TO HARRISON AVE COUNTY: DUPAGE
SECTION: 20-00123-00-PV JOB NO.: R-55-001-97

303 W WESLEY STREET
WHEATON, IL 60187

Route: F.A.U. 2561 (Gary Avenue)
Section : 20-00123-00-PV
Job Number: R-55-001-97
Parcel Number: 0005PE
Beginning to End Station: 23+59.99
to 24+16.38
Parcel Index Number: 05-08-409-023

That part of Lot 2 in Wheaton Park District's Assessment Plat of part of the Southeast Quarter of Section 8, Township 39 North, Range 10 East of the Third Principal Meridian according to the plat thereof recorded November 27, 1990 as Document Number R1990-160205, in DuPage County, Illinois, bearings and distances based on the Illinois State Plane Coordinate System, East Zone, NAD83 (2011 Adjustment), with a combined scale factor of 0.99994401, described as follows:

Beginning at the southwesterly most corner of said Lot 2, thence North 36 degrees 41 minutes 31 seconds West along the southwesterly line of said Lot 2 (said line also being the northeasterly line of Gary Avenue) 54.93 feet, thence North 53 degrees 18 minutes 29 seconds East 15.00 feet, thence South 36 degrees 41 minutes 31 seconds East 56.40 feet to the southerly line of said Lot 2, thence along said southerly line South 58 degrees 53 minutes 34 seconds West 15.07 feet to the point of beginning, all in DuPage County, Illinois.

Said parcel containing 0.019 Acres, more or less.

Route: F.A.U. 2561 (Gary Avenue)
Section : 20-00123-00-PV
Job Number: R-55-001-97
Parcel Number: 0006PE
Beginning to End Station: 24+14.92
to 24+59.81
Parcel Index Number: 05-08-414-023

That part of the Southeast Quarter of Section 8, Township 39 North, Range 10, East of the Third Principal Meridian, in DuPage County, Illinois, bearings and distances based on the Illinois State Plane Coordinate System, East Zone, NAD83 (2011 Adjustment), with a combined scale factor of 0.99994401, Described as follows:

Beginning at the intersection of the centerline of Union Drainage Ditch No. 2 with the northeasterly line of Gary Avenue as dedicated per Document R1985-080176, also known as the southwestern most corner of Lot 2 in Wheaton Park Districts Assessment plat recorded November 27, 1990 as Document Number R1990-160205, thence South 36 degrees 41 minutes 31 seconds East along said northeasterly line of Gary Avenue 45.07 feet, thence North 53 degrees 18 minutes 29 seconds East 15.00 feet, thence North 36 degrees 41 minutes 31 seconds West 43.60 feet to the said centerline of Union Drainage Ditch No. 2 (also being the south line of said Lot 2 in Wheaton Park District's Assessment Plat), thence South 58 degrees 53 minutes 34 seconds West along said centerline 15.07 feet to the point of beginning.

Said parcel containing 0.015 Acres, more or less.

PART OF THE SOUTH HALF OF SECTION 08, TWP. 39 N., R. 10 E. OF THE 3RD. P.M., IN DUPAGE COUNTY, ILLINOIS.

LEGEND

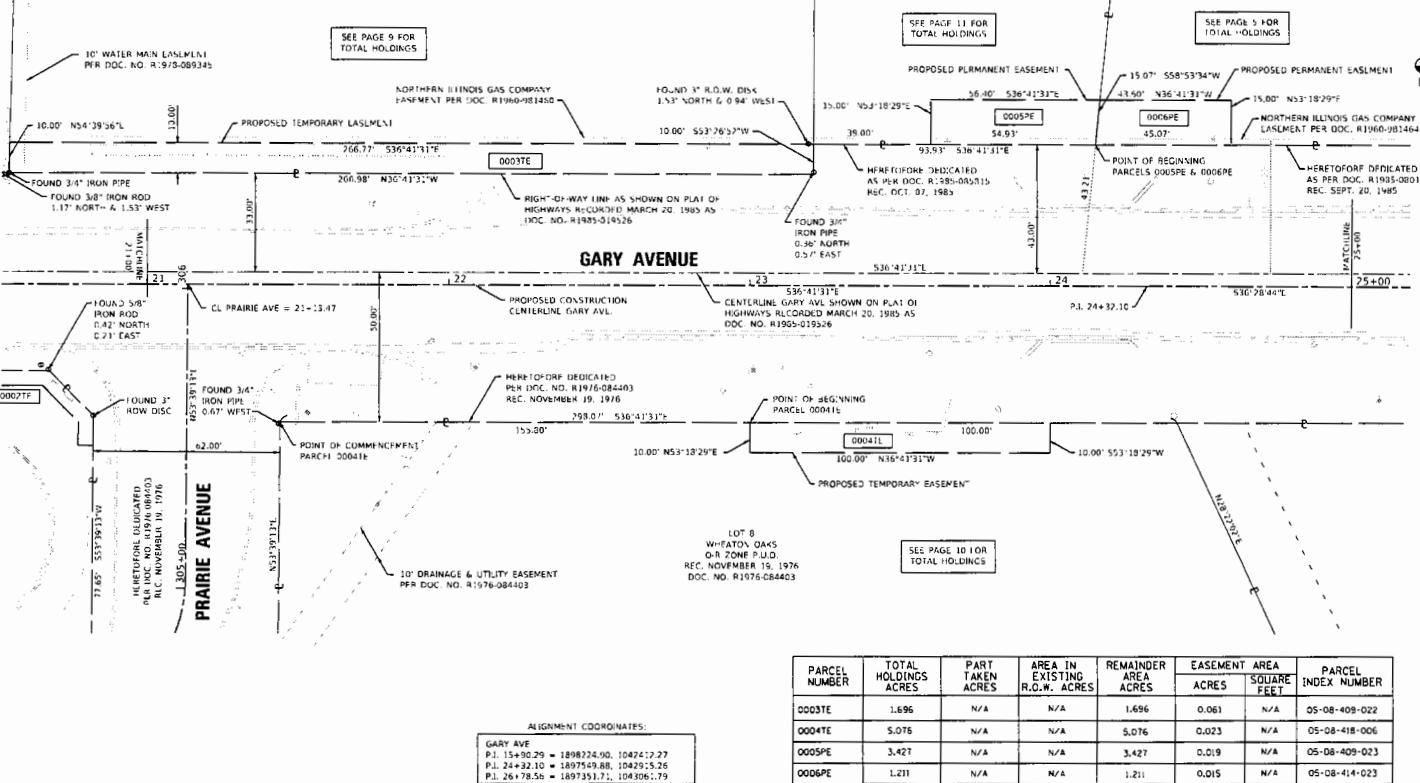
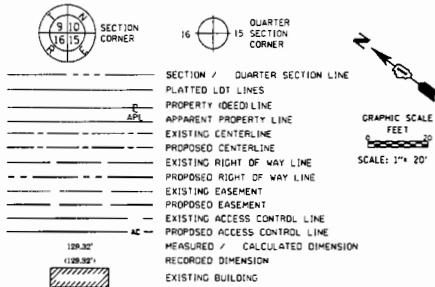


EXHIBIT B

PARCEL NUMBER	TOTAL HOLDINGS ACRES	PART TAKEN ACRES	AREA IN EXISTING R.O.W. ACRES	REMAINDER AREA ACRES	EASEMENT AREA		PARCEL INDEX NUMBER
					ACRES	SQUARE FEET	
0003TE	1.696	N/A	N/A	1.696	0.061	N/A	05-08-409-022
0004TE	5.076	N/A	N/A	5.076	0.023	N/A	05-08-418-006
0005PE	3.427	N/A	N/A	3.427	0.019	N/A	05-08-409-023
0006PE	1.211	N/A	N/A	1.211	0.015	N/A	05-08-414-023

REVISION DATE: 11-20-2023 REVISION MADE BY: CDY

CITY OF WHEATON	
(GARY AVENUE)	
CONTRACT NO. 61K32	SHEET 116 OF 257
LIMITS: JEWELL ROAD TO HARRISON AVE COUNTY: DUPAGE	
SECTION: 20-00123-00-PV JOB NO. R-55-001-97	
STA. 21+00 TO 25+00	
SCALE: 1"=20'	
SHEET 4 OF 11 SHEETS	
303 W WESLEY STREET	
WHEATON, IL 60187	

thomas
engineering group, inc.
2125 butterfly road
suite 209w
oak brook, il 60523
phone: 855-533-1700

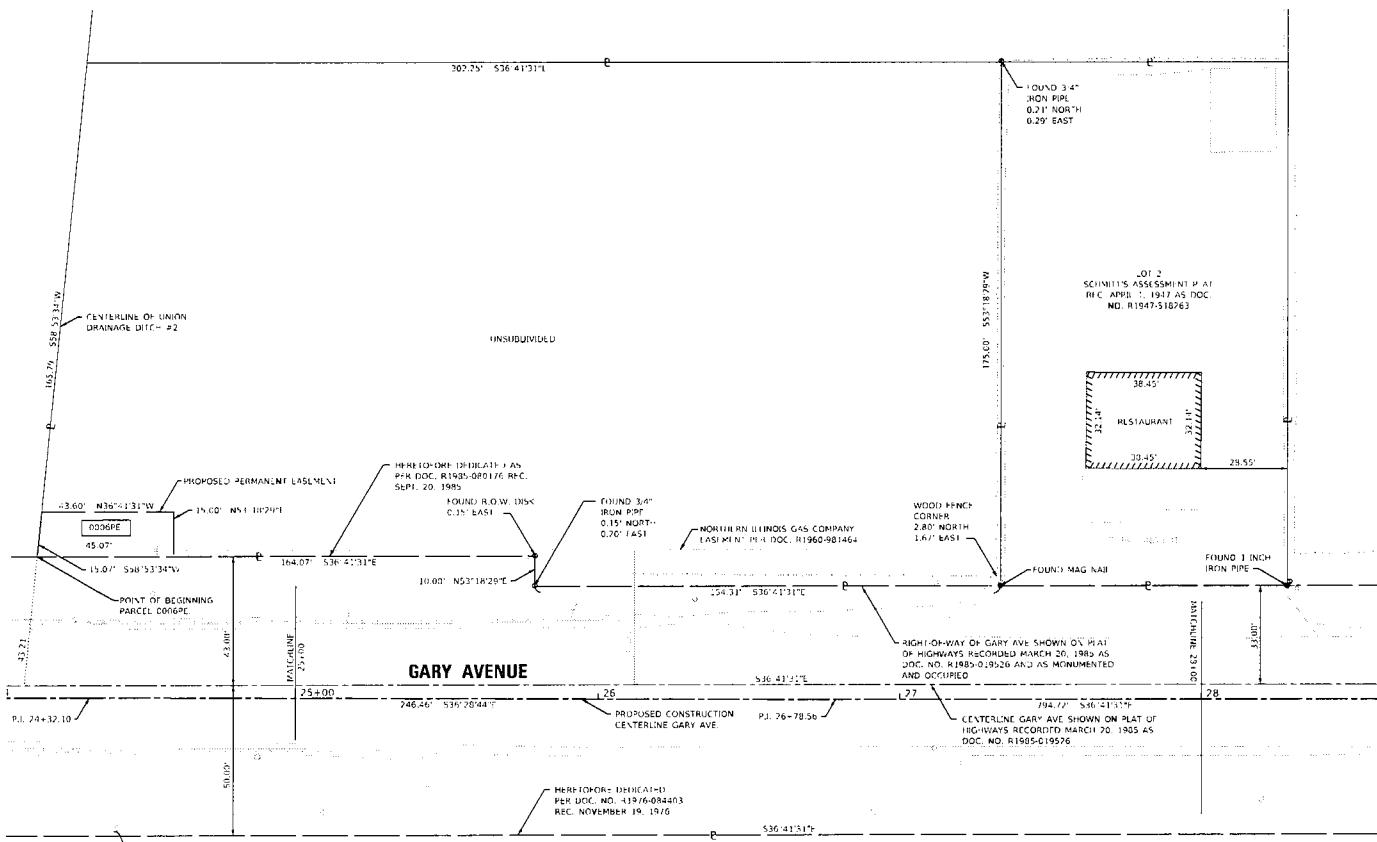
BEARINGS ARE REFERENCED TO THE ILLINOIS STATE PLANE COORDINATE SYSTEM, NAD 1983 ADJUSTMENT, EAST ZONE.
 IRON PIPE OR ROD FOUND MAIL SET
 CUT CROSS FOUND OR SET S / REBAR SET
 STAKING OF PROPOSED RIGHT OF WAY, SET DIVISION OF HIGHWAYS SURVEY MARKER TO MONUMENT THE POSITION SHOWN, IDENTIFIED BY INSRIPTION DATA AND SURVEYORS REGISTRATION NUMBER.
 STAKING OF PROPOSED RIGHT OF WAY IN CULTIVATED AREAS, BURIED 5/8 INCH METAL ROD 20 INCHES BELOW GROUND TO MARK FUTURE SURVEY MARKER POSITION IDENTIFIED BY COLORED PLASTIC CAP BEARING SURVEYORS REGISTRATION NUMBER.
 PERMANENT SURVEY MARKER, I.D.O.T. STANDARD 2125 (TO BE SET BY OTHERS)
 RIGHT OF WAY STAKING PROPOSED TO BE SET.

STATE OF ILLINOIS 155
 COUNTY OF DUPAGE 1
 THIS IS TO CERTIFY THAT I, CHRISTOPHER DEYOLING, AN ILLINOIS PROFESSIONAL LAND SURVEYOR, ING., THOMAS ENGINEERING GROUP AN ILLINOIS PROFESSIONAL DESIGN FIRM LAND SURVEYING CORPORATION, NUMBER 184-005183, HAVE SURVEYED THE PLAT OF HIGHWAYS SHOWN HEREIN IN SECTION 08, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, DUPAGE COUNTY, ILLINOIS, THAT THE SURVEY IS TRUE AND COMPLETE, AS SHOWN TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THE MONUMENTS ERECTED REPRESENTS SAID SURVEY, THAT ALL MONUMENTS FOUND AND ESTABLISHED ARE OF PERMANENT QUALITY AND OCCUPY THE POSITIONS SHOWN THEREON AND THAT THE MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, MADE FOR THE DEPARTMENT OF TRANSPORTATION, STATE OF ILLINOIS.
 DATED AT _____, ILLINOIS THIS ____ DAY OF ____ 20 ____ A.D.

ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 035-00381
 LICENSE EXPIRATION DATE: NOV. 30, 2024

THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT ILLINOIS MINIMUM STANDARDS FOR A BOUNDARY SURVEY.

PART OF THE SOUTH HALF OF SECTION 08, TWP. 39 N., R. 10 E. OF THE 3RD. P.M., IN DUPAGE COUNTY, ILLINOIS.



POINT COORDINATES			
ILLINOIS STATE PLANE EAST ZONE, NAD83 (2011)			
ID	STATION	DEPMT	NORTHING
OD008	24+4.00	22.001	1087412.15
OD009	24+10.00	22.001	1087412.15
OD010	24+17.00	22.001	1087412.15
OD011	24+23.00	22.001	1087412.15
OD012	24+29.00	22.001	1087412.15

ALIGNMENT COORDINATES:	
GARY AVE	
PJ. 15+00.29	1087273.90, 1042912.27
PJ. 24+32.10	1087346.88, 1042915.26
PJ. 26+78.56	1087351.71, 1043081.79

PARCEL NUMBER	TOTAL HOLDINGS ACRES	PART TAKEN ACRES	AREA IN EXISTING R.O.W. ACRES	REMAINDER AREA ACRES	EASEMENT AREA ACRES	SQUARE FEET	PARCEL INDEX NUMBER
0006PE	1.211	N/A	N/A	1.211	0.015	N/A	05-08-414-023

REVISION DATE: 11-20-2023 REVISION MADE BY: COY

EXHIBIT B

thomas
engineering group, llc
2025 balfour road
suite 200w
oak brook, il 60521
phone: 855-533-1700

PLAT OF HIGHWAYS

CITY OF WHEATON (GARY AVENUE)

CONTRACT NO. 61K32	SHEET 117 OF 257	LIMITS: JEWELL ROAD TO HARRISON AVE	COUNTY: DUPAGE
SECTION: 20-00123-00-PV	STA. 25+00	TO STA. 28+00	JOB NO. R-55-001-97
SCALE: 1"=20'	SHEET 5 OF 11 SHEETS		
303 W. WESLEY STREET			WHEATON, IL 60187

PREPARED BY AND RETURN TO:

Rachel K. Robert
Day & Robert, P.C.
300 East 5th Avenue, Suite 365
Naperville, Illinois 60563

Property Address:

Vacant Land on the East and West sides of
Gary Avenue and South of Jewell Road,
Wheaton, IL 60187

PINs: 05-08-407-010, 05-08-408-032,
05-08-408-033, 05-08-408-034,
05-08-408-035, 05-08-409-022,
05-08-415-002, 05-08-418-006

**TEMPORARY EASEMENT AGREEMENT
FOR GARY AVENUE ROADWAY IMPROVEMENT PROJECT**

THIS TEMPORARY EASEMENT AGREEMENT FOR ROADWAY IMPROVEMENT PROJECT (“Agreement”) is made effective upon being executed by all parties hereto and is hereby made and entered into by and among the WHEATON PARK DISTRICT, an Illinois park district (the “Park District”) having its principal address located at 102 East Wesley Street, Wheaton, Illinois 60187, the FOREST PRESERVE DISTRICT OF DUPAGE COUNTY, a body corporate and politic, (the “Forest Preserve District”) having its principal address located at 3S580 Naperville Road, Wheaton, Illinois 60187, and the CITY OF WHEATON, an Illinois home rule municipal corporation (the “City”) having its principal address located at 303 West Wesley Street, Wheaton, Illinois 60187. The Park District, the Forest Preserve District and the City who may be referred to hereafter collectively as the “Parties” and individually as a “Party”.

RECITALS

WHEREAS, Lincoln Marsh is a public natural area in which certain portions are solely owned by the Park District, solely owned by the Forest Preserve District, and jointly owned by the Park District and Forest Preserve District; and

WHEREAS, the City has been engaged in an on-going roadway improvement project on Gary Avenue between Prairie Avenue and Harrison Avenue in Wheaton, Illinois (the “Project”); and

WHEREAS, in order to further the Project, the City has requested that the Park District and the Forest Preserve District grant the City temporary easements over certain portions of Lincoln Marsh so that the City can undertake the work needed to conduct grading work associated with the Project; and

WHEREAS, the Park District is the owner of six parcels of real property identified, legally described on Exhibit A attached hereto and incorporated herein (the "Park District Parcels"); and

WHEREAS, the Forest Preserve District is the owner of one parcel of real property identified, legally described on Exhibit B attached hereto and incorporated herein (the "Forest Preserve District Parcel"); and

WHEREAS, the Park District and the Forest Preserve District are the joint owners of one parcel of real property identified, legally described on Exhibit C attached hereto and incorporated herein (the "Co-Owned Parcel"); and

WHEREAS, the Park District Parcels, the Forest Preserve District Parcel and the Co-Owned Parcel are collectively referred to hereafter as the "Temporary Easement Area"; and

WHEREAS, the Park District is planning to construct a parking lot on the east side of Gary Avenue for the Cosley Zoo that will directly benefit from the traffic signal and pedestrian improvements being constructed by the City; and

WHEREAS, the Project also includes the construction of a path within the right-of-way of Gary Avenue, which will improve public access to Lincoln Marsh; and

WHEREAS, pursuant to Section 8-11 of the Park District Code, 70 ILCS 1205, *et seq.*, the Park District is authorized and empowered to grant easements for public services; and

WHEREAS, pursuant to Section 6 of the Downstate Forest Preserve District Act, 70 ILCS 805/6, the Forest Preserve District is authorized and empowered to grant easements for public services; and

WHEREAS, the Park District and the Forest Preserve District have determined that it is reasonable, necessary and in the public interest to grant the City the needed temporary easement over the Temporary Easement Area in accordance with, and subject to, the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the Parties' intergovernmental cooperation, the foregoing recitals, the terms and conditions set forth herein and other good and valuable consideration, the receipt of which is expressly acknowledged by the Parties, the Parties agree as follows:

1. Recitals Incorporated. The foregoing recitals are hereby adopted and incorporated by reference as though fully set forth herein.

2. Temporary Easement Granted. The Park District hereby grants to the City and the City's employees, agents, licensees, contractors, successors and assigns a temporary easement over the Park District Parcels; the Forest Preserve District grants to the City and the City's employees, agents, licensees, contractors, successors and assigns a temporary easement over the Forest Preserve District Parcel; and the Park District and Forest Preserve District hereby jointly grant to

the City and the City's employees, agents, licensees, contractors, successors and assigns a temporary easement over the Co-Owned Parcel (collectively the "City Temporary Easement"), for the following limited purposes: to provide all access and to perform all work activities commonly used in undertaking and completing the regrading work needed to meet existing ground elevations as part of the Project, which also includes post completion restoration of the Temporary Easement Area (collectively, the "Temporary Easement Work"). The area and the boundaries of the Temporary Easement Area are depicted on Exhibit D which is incorporated herein as if fully set forth.

3. Temporary Easement Area Conditions. The City Temporary Easement and ancillary rights given to the City under this Agreement shall be subject to the following conditions:

- (a) The Park District and Forest Preserve District reserve the right of access to, and use of, the Temporary Easement Area in any manner not inconsistent with the rights granted to the City under this Agreement;
- (b) The City shall notify the Park District and Forest Preserve District in writing at least thirty days prior to the commencement of any Temporary Easement Work within the Temporary Easement Area. The Parties shall reasonably cooperate with respect to the commencement, timing and location of the Temporary Easement Work so as to protect the public at large and to avoid any interference with the Park District and Forest Preserve District's use of the Temporary Easement Area;
- (c) All of the Temporary Easement Work conducted by any entity in the Temporary Easement Area shall be performed in a safe and sound manner and in accordance with all applicable federal, state and local laws, including the ordinances and regulations of the City, and any requirements of the Illinois Department of Transportation and the Illinois Department of Natural Resources;
- (d) The City shall be responsible for the payment of all costs associated with the Temporary Easement Work;
- (e) The City shall restore the Temporary Easement Area with a native seed mix of forbs and grasses appropriate to the pre-disturbance condition of the Temporary Easement Area. Plans for this restoration including species, soil conditions, and planning methods will be developed by the City for written approval by the Park District and Forest Preserve District prior to installation. The City shall similarly restore any other real estate damaged or otherwise disturbed in connection with the Temporary Easement Work. All restoration shall be completed within thirty days after the Temporary Easement Work is complete or, if due to weather conditions or other circumstances which would make any such restoration inadvisable, then within such later time period as the Park District and Forest Preserve District shall request. The City shall be solely responsible for all costs associated with said restoration of the Temporary Easement Area and other real estate damaged or otherwise disturbed as provided for herein. The Park District and Forest Preserve District reserve the right to perform restoration work at the City's expense if, after notice and an opportunity to cure, the City fails to perform the required restoration work.

Upon completion of the restoration work, the City shall contract for maintenance of the restored areas in order to establish and maintain the native seeds for a period of three years (or as otherwise required by permitting authorities) at the City's sole expense, which expense is estimated by the Park District and the Forest Preserve District to be no more than a few thousand dollars each year.

(f) While performing any Temporary Easement Work, the City shall maintain the Temporary Easement Area in accordance with all applicable safety rules and regulations.

(g) The Forest Preserve District and the Park District shall not be responsible for or have control over the construction means, methods, techniques or procedures with respect to the Temporary Easement Work. In no event shall the Forest Preserve District and the Park District be responsible for or have any obligation with respect to the safety of any person performing any Temporary Easement Work on or in the Temporary Easement Area, including, but not limited to, the employees of the City or of any contractor, subcontractor, agent or consultant.

4. Fees and Costs.

(a) In consideration of the benefit of the Project in facilitating both pedestrian and vehicular access to Lincoln Marsh and other public lands, any typical easement fees are being waived by the Park District and the Forest Preserve District.

(b) Any reasonable direct costs, primarily in the form of attorney fees incurred by the Park District in preparing this Agreement, will be paid by the City upon receipt of an invoice itemizing those costs.

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

6. Hazardous Materials. No explosives or flammable or hazardous materials of any kind shall be transported across, brought upon, stored or deposited on the Temporary Easement Area (except as needed for vehicles or equipment for the Temporary Easement Work, provided that the City and its contractors shall be liable for any damage to, or contamination of, the Temporary Easement Area or any other property owned by the Park District or Forest Preserve District resulting from such activity or use). As used in this Agreement, "hazardous materials"

means any hazardous or toxic substances, materials or wastes, including, but not limited to solid, semi-solid, liquid or gaseous substances which are toxic, ignitable, corrosive, carcinogenic or otherwise dangerous to human, plant or animal health or well-being and those substances, materials, and wastes listed in the United States Department of Transportation Table (49 CFR 972.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto or such substances, materials, and wastes regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which is (i) petroleum; (ii) asbestos; (iii) polychlorinated biphenyls; (iv) designated as "Hazardous substances" pursuant to Section 1251 *et. seq.* (33 U.S.C. Section 1321) or listed pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et. seq.* (42 U.S.C. Section 6903); or (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et. seq.* (42 U.S.C. Section 9601) or any other applicable environmental law.

7. Liens. The City shall not permit or suffer any lien to be imposed upon or to accrue against the Park District, the Forest Preserve District or any part of the Temporary Easement Area. The City shall indemnify, defend and hold harmless the Park District and Forest Preserve District from and against any liens and encumbrances arising out of any Temporary Easement Work. If any such lien shall arise or accrue against the Park District, the Forest Preserve District or the Temporary Easement Area, the City shall promptly cause such lien to be released of record by payment thereof or posting a bond with the Park District and Forest Preserve District in a form and amount which is reasonably satisfactory to the Park District and the Forest Preserve District.

8. Indemnification.

(a) To the extent permitted by law, the City shall defend, save, and hold harmless the Forest Preserve District and the Park District, their elected officials, officers, employees and agents from any and all claims, liabilities, causes of action, losses and damages that may at any time arise or be claimed by any person or entity as a result of bodily injury, sickness, death or property damage, or as a result of any other claim or suit of any nature whatsoever, allegedly arising out of or in any manner connected with, directly or indirectly, the Temporary Easement Work, when such bodily injury, sickness, death, property damage or other claim is allegedly caused by a negligent or intentional act or omission on the part of the City or its contractors, subcontractors, engineers, consultants, employees, or agents. In the event any person or entity obtains a judgment or settlement against the Forest Preserve District and the Park District or any of their elected officials, officers, employees or agents, by reason of any negligent or intentional act or omission on the part of the City or its contractors, subcontractors, consultants, employees or agents, the City shall promptly, to the extent allowed by law, indemnify the Forest Preserve District and the Park District or their elected officials, officers, employees and agents, as the case may be, in the amount of said judgment or settlement and for all costs and expenses related thereto, including, without limitation, reasonable attorney and expert witness fees.

(b) The City shall require each contractor who performs any work in the Temporary Easement Area, to defend, hold harmless and indemnify the Forest Preserve District and Park District to the same extent as required of the City, and the City shall

include in all contractor contracts a statement expressly declaring the Forest Preserve District and Park District to be a third-party beneficiary of the indemnification provision.

(c) The obligation on the part of the City to defend, hold harmless and indemnify the Forest Preserve District and the Park District as set forth in this Section 8 shall survive expiration of this Agreement.

9. Insurance. The City shall maintain, and shall require any of its contractors or subcontractors hired to perform any Temporary Easement Work to maintain, liability insurance with reputable companies and in coverage amounts as are reasonably acceptable to the Park District and the Forest Preserve District and/or the risk management association of which the Park District and the Forest Preserve District is a member, to protect the Park District and the Forest Preserve District and City against claims arising directly or indirectly out of or in connection with the Temporary Easement Work. The City shall name and shall require any contractor, subcontractor or other individual or entity accessing or using the Temporary Easement Area or hired to perform any work in the Temporary Easement Area to name the Park District and the Forest Preserve District, its elected and appointed officials, officers, employees and agents as additional insureds and prior to commencing any Temporary Easement Work, shall provide to the Park District and the Forest Preserve District a copy of a Certificate of Insurance evidencing the same.

10. Term. The City Temporary Easement shall automatically expire upon completion of the Temporary Easement Work and approval of the restoration within the Temporary Easement Area by the Park District and Forest Preserve District.

11. Notice of Completion. The City shall provide the Park District and Forest Preserve District with prompt written notice upon the completion of the Temporary Easement Work, specifying the date of completion.

12. Exceptions. The City Temporary Easement shall be subject to all OSLAD requirements and restrictions, covenants, easements and restrictions of record, building and zoning ordinances, resolutions and regulations applicable to the Temporary Easement Area, and to all questions of survey and the rights of any parties which would be revealed by a physical inspection of the Temporary Easement Area.

13. Breach of Agreement. If a Party reasonably believes that a breach of this Agreement has occurred or is occurring, said Party shall serve written notice thereof upon the Party committing or permitting such breach to occur, specifying in detail the breach and the facts supporting such claim. The Party alleged to have committed the breach shall have thirty days within which to cure the violation. If the Party in violation is the City, and the City fails to cure the breach within the thirty day period, the Forest Preserve District or the Park District may pursue monetary damages or specific performance provided that the thirty day cure period shall be extended for a reasonable time if the City has undertaken to cure the breach within the thirty day period and continues to diligently and in good faith to complete the corrective action. Given the scope and importance of the Project to public health and safety, the remedies available to the Forest Preserve District and the Park District do not and shall not include termination of this Agreement

or prevention of access to the Temporary Easement Area except as provided in Section 3 of this Agreement.

14. Entire Agreement. This instrument contains the entire agreement made by and among the Parties relating to the rights granted herein and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect, and any modifications to this Agreement must be in writing and must be signed by all Parties to this Agreement.

15. Severability. The invalidation by judgment or court order of any one or more of the terms contained herein shall in no way affect any other terms which shall remain in full force and effect.

16. Law Governing. The laws of the State of Illinois shall govern the terms of this Agreement as to both interpretation and performance.

17. Captions and Paragraph Headings. Captions and paragraph headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.

18. Notices. All notices provided for herein shall be served upon the Parties by certified United States mail, return receipt requested, at the following locations, or at such other location or locations as the Parties may from time to time designate in writing:

Notice to Park District:

Wheaton Park District
102 East Wesley Street
Wheaton, Illinois 60187

Notice to Forest Preserve District:

Forest Preserve District of DuPage County
P.O. Box 5000
Wheaton, Illinois 60189-5000

Notice to the City:

City of Wheaton
303 West Wesley Street
Wheaton, Illinois 60187

Notices shall be deemed given when received by the Party to whom it was sent.

19. No Waiver of Tort Immunity. Nothing contained in this Agreement shall constitute a waiver by the Park District, the Forest Preserve District or the City of any right, privilege or

defense which they have under statutory or common law including, but not limited to, the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10.

20. No Third-Party Beneficiaries. This Agreement is entered into solely for the benefit of the Parties and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and entity who is not a party to this Agreement or to acknowledge, establish or impose any legal duty to any third party.

21. Enforcement. In any action to enforce this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs of litigation.

22. Recording. Upon full execution of this Agreement, the City shall promptly record this Agreement with the DuPage County Recorder's Office at the City's sole expense, with the City thereafter promptly providing the Park District and the Forest Preserve District with recorded copies.

23. Board Approval. This Agreement is subject to the approval by the respective Boards of the Park District, the Forest Preserve District, and the City.

24. Counterpart Signatures. Four originals of this Agreement shall be executed and may be executed by counterpart signatures. The Park District, the Forest Preserve District and the City shall each retain an original, with the fourth original being recorded as set forth in this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Temporary Easement Agreement for Roadway Improvement Project as of the date first above written.

WHEATON PARK DISTRICT, an Illinois park district

BY: _____

ITS: _____

ATTEST: _____

ITS: _____

Jul Hally
President

Date

Executive Director/Secretary
April 17, 2024

STATE OF ILLINOIS)
)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that John Kelly personally known to me to be the President and Michael Benard personally known to me to be the Executive Director/Secretary of the Wheaton Park District, an Illinois park district, both personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such John Kelly and Michael Benard, they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Commissioners of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 17 day of April, 2024,
2024.

Donna R Siciliano
Notary Public



FOREST PRESERVE DISTRICT OF DUPAGE
COUNTY, a body corporate and politic

BY: DJM

ITS: President

ATTEST: Judith A. Malaby

ITS: Secretary

Date April 16, 2024

STATE OF ILLINOIS)
)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Daniel Hebreard personally known to me to be the President and Judith Malaby personally known to me to be the Board Secretary of the Forest Preserve District of DuPage County, a body corporate and politic, both personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Daniel Hebreard and Judith Malaby, they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the Board of Commissioners of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 16 day of April,
2024.

Mary Frances P. Sheahan
Notary Public

MARY FRANCES P. SHEAHAN
OFFICIAL SEAL
Notary Public - State of Illinois
My Commission Expires Nov 20, 2024

CITY OF WHEATON, an Illinois home rule municipal corporation

BY: Philip Suess

ITS: MAYOR

ATTEST: Andrea Rosedale

ITS: CITY CLERK

4/16/2024

Date

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Philip Suess and Andrea Rosedale personally known to me to be the Mayor and City Clerk personally known to me to be the _____ of the City of Wheaton, an Illinois home rule municipal corporation, both personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor and City Clerk, they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto, pursuant to authority given by the City Council of said corporation, as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 16 day of April,
2024.

Carly A Johnson
Notary Public



Route: F.A.U. 2561 (Gary Avenue)
Section : 20-00123-00-PV
Job Number : R-55-001-97
Parcel Number: 0001TE
Beginning to End Station: 17+99.98
to 20+54.22
Parcel Index Number: 05-08-408-
032, 05-08-408-033, 05-08-408-034,
05-08-408-035

That part of Lots 1 thru 4 in Williams Resubdivision, being a resubdivision of part of the Southeast Quarter of Section 8, Township 39 North, Range 10, East of the Third Principal Meridian, according to the plat thereof recorded September 28, 1989, as Document R89-120886, in DuPage County, Illinois, bearings and distances based on the Illinois State Plane Coordinate System, East Zone, NAD83 (2011 Adjustment), with a combined scale factor of 0.99994401, described as follows:

Beginning at the southwesterly corner of said Lot 4, thence North 36 degrees 41 minutes 31 seconds West along the southwesterly line of said Lots 4 thru 1 a distance of 254.00 feet, thence North 53 degrees 18 minutes 29 seconds East 10.00 feet, thence South 36 degrees 41 minutes 31 seconds East 254.24 feet to the southerly line of said Lot 4, thence South 54 degrees 39 minutes 56 seconds West 10.00 feet to the point of beginning, all in DuPage County, Illinois.

Said parcel containing 0.058 Acres, more or less.