

ORDINANCE O-2024-30

**AN ORDINANCE APPROVING
A PERMANENT EASEMENT AGREEMENT
FOR THE INSTALLATION OF NEW SIDEWALK ALONG HARRISON AVENUE AND GARY AVENUE**

WHEREAS, the FOREST PRESERVE DISTRICT owns certain property commonly known as the Lincoln Marsh Forest Preserve (hereinafter "Lincoln Marsh"); and

WHEREAS, the CITY is in the design stage for a pedestrian sidewalk project in the vicinity of Lincoln Marsh. The City has identified one small area of Lincoln Marsh at the Northeast corner of the intersection of Harrison Avenue and Gary Avenue where the proposed pedestrian sidewalk crosses Lincoln Marsh (hereinafter "Harrison and Gary Pedestrian Sidewalk"); and

WHEREAS, the CITY requested the granting of a permanent easement to allow the construction, operation, and maintenance of the Harrison and Gary Pedestrian Sidewalk within the certain portion of Lincoln Marsh that is legally described in the attached **Exhibit A** and depicted in the attached **Exhibit B**, both of which are attached hereto and incorporated herein (hereinafter "Easement Premises"); and

WHEREAS, the FOREST PRESERVE DISTRICT and the CITY are municipalities as defined in Section 1(c) of the Local Government Property Transfer Act, 50 ILCS 605/1(c), hereinafter referred to as the "Transfer Act"; and

WHEREAS, Section 2 of the Transfer Act authorizes transfers of real estate, or interests therein, between municipalities for any public purpose upon such terms as are agreed to by the corporate authorities of the respective municipalities; and

WHEREAS, in accordance with Section 2 of the Transfer Act, the CITY, pursuant to a duly passed ordinance, has determined that it is necessary and convenient to use and occupy a portion of Forest Preserve District property for the operation and maintenance of the Harrison and Gary Pedestrian Sidewalk within the Easement Premises; and

WHEREAS, the FOREST PRESERVE DISTRICT has determined that it is reasonable, necessary and in the public interest and welfare to grant the CITY a permanent easement subject to the terms and conditions set forth herein.

WHEREAS, the corporate authorities of the City of Wheaton, DuPage County, Illinois find it reasonable, necessary and appropriate to enter into a permanent easement agreement with the Forest Preserve District for the use of a portion of the property at the northeast corner of Harrison Avenue and Gary Avenue for the construction and use of a public sidewalk.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule powers, as follows:

Section 1: The recitals above are hereby incorporated into this Section 1 as though fully set forth herein.

Section 2: The Mayor is hereby authorized to execute, and the City Clerk is hereby directed to attest to, the Permanent Easement Agreement for Sidewalk between the Forest Preserve District of

DuPage County and the City of Wheaton for the use of a portion of the property at the northeast corner of Harrison Avenue and Gary Avenue for the construction and use of a public sidewalk; and that a copy of that certain Permanent Easement Agreement for Sidewalk is on file with the City Clerk's office.

Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.

ADOPTED this 4th day of November 2024.



Mayor

ATTEST:


City Clerk

Ayes:

Roll Call Vote:

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

Nays:

None

Absent:

None

Motion Carried Unanimously

Passed: November 4, 2024

Published: November 5, 2024



DocId:320242115

Tx:40606815

(Prepared by and return to)
Forest Preserve District of
DuPage County
C/O Land Preservation Manager
P.O. Box 5000
Wheaton, IL 60189-5000

KATHLEEN V. CARRIER
RECORDER
DUPAGE COUNTY, IL
11/26/2024 04:00 PM
DOC NO. R2024-071019

Property Address: Vacant Land
Northeast corner of Gary Avenue and Harrison Street,
Wheaton, IL 60187
P.I.N.: 05-08-415-002 (part)

**AN EASEMENT AGREEMENT BETWEEN THE FOREST PRESERVE DISTRICT OF DUPAGE COUNTY
AND THE CITY OF WHEATON FOR A PEDESTRIAN SIDEWALK WITHIN A PORTION OF
LINCOLN MARSH FOREST PRESERVE**

THIS EASEMENT AGREEMENT (hereinafter referred to as the "Agreement") is effective upon being signed by all parties and is made and entered into by and between the Forest Preserve District of DuPage County, a body politic and corporate (hereinafter referred to as the "FOREST PRESERVE DISTRICT") and the City of Wheaton, an Illinois Municipality (hereinafter referred to as the "CITY"). The FOREST PRESERVE DISTRICT and the CITY are sometimes referred herein individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the FOREST PRESERVE DISTRICT owns certain property commonly known as the Lincoln Marsh Forest Preserve (hereinafter "Lincoln Marsh"); and

WHEREAS, the CITY is in the design stage for a pedestrian sidewalk project in the vicinity of Lincoln Marsh. The City has identified one small area of Lincoln Marsh at the Northeast corner of the intersection of Harrison Street and Gary Avenue where the proposed pedestrian sidewalk crosses Lincoln Marsh (hereinafter "Harrison and Gary Pedestrian Sidewalk"); and

WHEREAS, the CITY requests the granting of a permanent easement to allow the construction, operation, and maintenance of the Harrison and Gary Pedestrian Sidewalk within the certain portion of Lincoln Marsh that is legally described in the attached **Exhibit A** and depicted in the attached **Exhibit B**, both of which are attached hereto and incorporated herein (hereinafter "Easement Premises"); and

WHEREAS, the FOREST PRESERVE DISTRICT and the CITY are municipalities as defined in Section 1(c) of the Local Government Property Transfer Act, 50 ILCS 605/1(c), hereinafter referred to as the "Transfer Act"; and

WHEREAS, Section 2 of the Transfer Act authorizes transfers of real estate, or interests therein, between municipalities for any public purpose upon such terms as are agreed to by the

corporate authorities of the respective municipalities; and

WHEREAS, in accordance with Section 2 of the Transfer Act, the CITY, pursuant to a duly passed ordinance, has determined that it is necessary to be granted a permanent easement for the operation and maintenance of the Harrison and Gary Pedestrian Sidewalk within the Easement Premises; and

WHEREAS, the FOREST PRESERVE DISTRICT has determined that it is reasonable, necessary and in the public interest and welfare to grant the CITY a permanent easement subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing preambles and the promises, terms and conditions set forth herein, the Parties agree as follows:

1.0 INCORPORATION OF RECITALS

1.1 The recitals set forth above are incorporated herein and made a part of this Agreement.

2.0 EASEMENT GRANTED

2.1 The FOREST PRESERVE DISTRICT hereby grants the CITY a non-exclusive, permanent easement for the construction, operation, and maintenance of the Harrison and Gary Pedestrian Sidewalk within the Easement Premises on the terms and conditions as provided for in this Agreement.

3.0 HARRISON AND GARY PEDESTRIAN SIDEWALK PROJECT

3.1 The Harrison and Gary Pedestrian Sidewalk shall be constructed in accordance with the plan drawings, prepared by Stephen Mark Richards and dated June 27th, 2024 (hereinafter referred to as "Final Plan"). The Final Plan shall be deemed incorporated herein by reference but without attaching said document hereto due to its size.

4.0 EASEMENT FEE

4.1 The CITY shall pay the fee as provided for in this Agreement. The easement fee to be paid by the CITY to the FOREST PRESERVE DISTRICT for the granting of the easement shall be based on a permanent easement fee in accordance with the FOREST PRESERVE DISTRICT'S Easement and License Ordinance (No. 96-096). The fee for the permanent easement is \$2,800.00, which is based on a land value of \$200,000.00 per acre ($\$200,000.00 \times 0.014 \text{ acres} = \$2,800.00$). The easement fee shall be paid to the FOREST PRESERVE DISTRICT prior to execution of this Agreement by the FOREST PRESERVE DISTRICT.

4.2 The CITY shall not charge or attempt to collect from the FOREST PRESERVE DISTRICT any future costs or expenses nor require any maintenance, including snow removal, related to the Harrison Street sidewalk fronting on FOREST PRESERVE DISTRICT property.

5.0 INSURANCE

5.1 Before commencing with access to and work activities within the Easement Premises, the CITY and each contractor engaged to perform any work on the Easement Premises shall obtain the following insurance coverages, which shall be maintained in force until the

FOREST PRESERVE DISTRICT has accepted the restoration work within the Easement Premises:

- (a) Workers' Compensation Insurance with limits as required by the applicable statutes of the State of Illinois.
- (b) Employer's Liability Insurance with limits as required by the applicable statutes of the State of Illinois.
- (c) Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence bodily injury/ property damage combined single limit; \$2,000,000 aggregate bodily injury/property damage combined single limit. The Commercial General Liability policy shall include, but not be limited to, the following:
 - (i) premises/operations coverage;
 - (ii) products/completed operations coverage;
 - (iii) contractual liability coverage (specifically covering the indemnification obligations referred to in paragraph 8);
 - (iv) personal injury coverage (with the employment exclusion deleted);
 - (v) broad form property damage coverage;
 - (vi) explosion, collapse and underground coverage; and
 - (vii) independent contractor liability coverage.
- (d) Comprehensive Motor Vehicle Liability Insurance with limits of not less than \$2,000,000 each accident bodily injury/property damage combined single limit.

The policy of Commercial General Liability Insurance shall provide "occurrence" based coverage and shall include an endorsement naming the FOREST PRESERVE DISTRICT as additional insured.

- 5.2 The coverage limits specified in subparagraphs (c) and (d) may be satisfied through a combination of primary and excess insurance or through a program of self-insurance. The foregoing insurance coverages shall be provided by companies authorized to transact business in the State of Illinois and with a "Best" rating of "A" or higher. The CITY and its contractors shall provide the FOREST PRESERVE DISTRICT with a Certificate of Insurance for each of the coverages specified above and, if requested, copies of the policies issued by the insurers prior to the commencement of any work on the Easement Premises. Each certificate and policy shall provide that no cancellation or modification of the policy will occur without at least 30 days' prior written notice to the FOREST PRESERVE DISTRICT. The CITY shall not allow any contractor to commence work on the Easement Premises until all the insurance coverages required under this paragraph have been obtained and satisfactory evidence thereof has been furnished in writing to the FOREST PRESERVE DISTRICT. Each contract between the CITY and a contractor performing work on the Easement Premises shall provide that the FOREST PRESERVE DISTRICT is intended as a third-party beneficiary of the insurance obligation that is required of the contractor under this paragraph.

- 5.3 The CITY shall procure and 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 Easement Premises. The policy shall (a) provide "occurrence" based coverage; (b) be issued by a company authorized to transact business in this State under the Illinois Insurance Code and acceptable to the FOREST PRESERVE DISTRICT; (c) include an endorsement naming the FOREST PRESERVE DISTRICT as an additional insured; (d) include contractual liability coverage; and (e) not be subject to cancellation or modification without at least 30 days'

written notice to the FOREST PRESERVE DISTRICT, unless otherwise agreed to in writing between the CITY and FOREST PRESERVE DISTRICT. The CITY shall provide evidence of said insurance coverage during the work activities within the Easement Premises and as requested thereafter by furnishing the FOREST PRESERVE DISTRICT with a current Certificate of Insurance and, if requested, a certified copy of the policy issued by the insurer. This insurance requirement may be satisfied through a program of self-insurance.

- 5.4 The CITY shall comply with all insurance requirements as modified by law, ordinance, resolution, or other means from time to time by the FOREST PRESERVE DISTRICT.

6.0 RESTORATION

- 6.1 If the CITY or its contractor damages the Easement Premises or adjacent preserve land, the CITY shall restore all damaged areas according to the FOREST PRESERVE DISTRICT'S specifications. If the CITY fails to properly restore the Easement Premises or adjacent preserve land within 45 days of service of the FOREST PRESERVE DISTRICT'S written demand for the restoration work, the FOREST PRESERVE DISTRICT shall have the right to take such action as it deems necessary to perform the restoration work, which shall include the authority to (a) perform the work with its own personnel and/or; (b) engage the services of an independent contractor to perform the work. The CITY shall reimburse the FOREST PRESERVE DISTRICT for costs associated with said restoration work, within 45 days of service of the FOREST PRESERVE DISTRICT's written demand for payment.

7.0 FUTURE WORK

- 7.1 The CITY shall provide written notice to the FOREST PRESERVE DISTRICT no less than 60 days prior to access to the Easement Premises for any work within the Easement Premises.

8.0 INDEMNIFICATION

- 8.1 To the extent permitted by law, the CITY shall defend, save, and hold harmless the FOREST PRESERVE DISTRICT, its elected officials, officers, employees and agents from any and all claims, liabilities, causes of action, losses, damages and for all costs and expenses related thereto, including, without limitation, reasonable attorney and expert witness fees that may 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 Easement Premises.
- 8.2 The obligation on the part of the CITY to defend, hold harmless and indemnify the FOREST PRESERVE DISTRICT is perpetual.
- 8.3 The CITY shall promptly pay all costs and expenses relating to any and all work within the Easement Premises and shall not allow any liens on FOREST PRESERVE DISTRICT property as a result of the work. To the extent permitted by law, the CITY shall defend, indemnify and hold the FOREST PRESERVE DISTRICT harmless from any and all liens, costs and expenses arising from any work performed under this Agreement.

9.0 BREACH OF AGREEMENT

- 9.1 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 30 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 30-day period, the FOREST PRESERVE DISTRICT may pursue monetary damages or specific performance provided that the 30-day cure period shall be extended for a reasonable time if the CITY has undertaken to cure the breach within the 30-day period and continues to diligently and in good faith to complete the corrective action.

9.2 Action by any Party to enforce this Agreement shall be without prejudice to the exercise of any other rights provided herein or by law or in equity to remedy a breach of this Agreement, subject to the terms of the preceding Paragraph 9.1.

9.3 A waiver by a Party of any breach of one or more of the terms of this Agreement on the part of the other Party 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.

10.0 NOTICES

10.1 All notices required to be given under the terms of this Agreement shall be in writing and served by certified or registered mail, return receipt requested, properly addressed with the postage prepaid and deposited in the United States mail. Notices served upon the FOREST PRESERVE DISTRICT shall be directed to the Executive Director, Forest Preserve District of DuPage County, P.O. Box 5000, Wheaton, IL 60189-5000. Notices served upon the CITY shall be directed to the City Manager, City of Wheaton, 303 W. Wesley Street, Wheaton, IL 60187. Any Party may designate a new location for service of notices by serving notice of the change in accordance with the requirements of this paragraph.

11.0 MISCELLANEOUS TERMS

11.1 All rights, title and privileges herein granted, including all benefits and burdens, shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and assigns.

11.2 The FOREST PRESERVE DISTRICT hereby reserves the right to use, or permit to be used, the Easement Premises in any manner that will not prevent or materially interfere with the exercise by the CITY of the rights granted herein.

11.3 If any Party initiates any legal proceeding or action, whether at law or in equity, to enforce any provision of this Agreement, the prevailing Party (as determined by the court) shall be entitled to recover its reasonable costs and expenses incurred in connection with said proceeding or action, including, but not limited to, reasonable expert witness and attorney fees.

11.4 The FOREST PRESERVE DISTRICT shall be responsible for recording this Agreement, at its expense, in the Office of the Recorder of Deeds, DuPage County, and for providing the CITY

with a recorded copy.

- 11.5 The provisions set forth herein represent the entire agreement between the Parties and supersede any previous oral or written agreements, as it is the intent of the Parties to provide for a complete integration within the terms of this Agreement. No provision may be modified in any respect unless such modification is in writing, duly approved and signed by all Parties.
- 11.6 This Agreement shall be construed in accordance with the laws of the State of Illinois. The jurisdiction and venue for resolving any disputes concerning the Parties respective performance, or failure to perform, under this Agreement, shall be in the 18th Judicial Circuit Court, DuPage County, Illinois.
- 11.7 This Agreement shall be executed in duplicate, and each Party shall retain a fully executed original, all of which shall be deemed to be one Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates stated below.

**FOREST PRESERVE DISTRICT OF
DUPAGE COUNTY**

BY: _____

Daniel Hebreard, President

ATTEST: _____

Judith Malahy, Secretary

Date signed: _____

November 19, 2024

CITY OF WHEATON

BY: _____

Phil Suess, Mayor

ATTEST: _____

Andrea Rosedale, Clerk

Date signed: _____

11/5/2024

LEGAL DESCRIPTION

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, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 45.00 FEET EAST OF THE NORTHEAST RIGHT-OF-WAY CORNER OF GARY AVENUE AND HARRISON AVENUE, THENCE WESTERLY ALONG THE NORTH RIGHT-OF-WAY LINE OF HARRISON AVENUE 45.00 FEET TO THE NORTHEAST RIGHT-OF-WAY CORNER OF GARY AVENUE AND HARRISON AVENUE, THENCE NORTHWESTERLY ALONG THE EASTERLY RIGHT-OF-WAY LINE OF GARY AVENUE 45.00 FEET, THENCE SOUTHEASTERLY TO THE POINT OF BEGINNING.

PIN: 05-08-415-002 (part)

CITY OF WHEATON SIDEWALK EASEMENT LINCOLN MARSH



FPD Bounds



Easement Premises (0.014 +/- Acres)

0 15 30 60
Feet



Land Preservation Department

Exhibit B