

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda


 X Resolution or Ordinance (Blue) X *Waiver of First Requested*
____ Recommendations of Boards, Commissions & Committees (Green)
____ Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: Tim Sexton, Acting Village Manager

DATE: October 21, 2013 (B of T) DATE: November 7, 2013

TITLE: AN ORDINANCE AUTHORIZING THE ACQUISITION OF
THE PROPERTY COMMONLY KNOWN AS 1134 SOUTH
FAIRVIEW AVENUE, AND ACCEPTING A TEMPORARY
CONSTRUCTION LICENSE AGREEMENT IN RELATION TO THE
PROPERTY IMMEDIATELY SOUTH THEREOF, PURSUANT TO
THE LOCAL GOVERNMENT PROPERTY TRANSFER ACT

SUBMITTED BY: Carl Goldsmith, Director of Public Works 

BACKGROUND/POLICY IMPLICATIONS:

As part of the Village's ongoing efforts to address sanitary and stormwater issues, staff has developed a project to reconstruct the Fairview Lift Station. In order to accommodate the construction, the Village needs to acquire an additional ten (10') feet of property from the Park District and obtain a five (5') foot temporary construction easement. This project has been included in the Village of Lombard Capital Improvement Plan for construction in 2015.

The Village Board approved this agreement at the October 3, 2013 meeting. Upon review by the Park District, it was determined that the Agreement needed to be revised to reflect changes requested by the Park District.

FISCAL IMPACT/FUNDING SOURCE

\$25,000 520,790.715

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X _____ Date _____

NOTE: Materials must be submitted to / approved by the Village Manager's Office by 12:00 pm, Wednesday, prior to the Agenda Distribution.



October 21, 2013

TO: Village President and Board of Trustees

THROUGH: Timothy Sexton, Acting Village Manager

FROM: Carl Goldsmith, Director of Public Works *g*

SUBJECT: Fairview Lift Station Improvements - Revised

BACKGROUND

The Village of Lombard Board of Trustees took action to approve an Ordinance that provided for the Village's purchase of ten (10') feet of Park District property, along with a five (5') foot temporary construction easement for improvements at the Fairview Lift Station. Upon presentation of the executed contract, it was determined that changes were necessary to comply with the the terms of the agreement. As such, a revised Agreement has been provided and requires the Village Board to take action to approve the Ordinance authorizing the execution of the sales contact.

Staff has attached a copy of the original memorandum that went to the Village Board for the October 3, 2013 meeting. The Park District Commissioners have reviewed this item and approved the agreements at their October 22, 2013 meeting. The final agreement has been prepared by the Village Attorney and the Park District's counsel.

Staff has included a copy of the Ordinance and the the Grant of Easement relative to the Fairview Lift Station. Should you have any questions, please feel free to contact me.

RECOMMENDATION

Staff recommends that the Village President and Board of Trustees adopt AN ORDINANCE AUTHORIZING THE ACQUISITION OF THE PROPERTY COMMONLY KNOWN AS 1134 SOUTH FAIRVIEW AVENUE, AND ACCEPTING A TEMPORARY CONSTRUCTION LICENSE AGREEMENT IN RELATION TO THE PROPERTY IMMEDIATELY SOUTH THEREOF, PURSUANT TO THE LOCAL GOVERNMENT PROPERTY TRANSFER ACT (50 ILCS 605/0.01 et seq.)



September 23, 2013

TO: Village President and Board of Trustees

THROUGH: Timothy Sexton, Acting Village Manager

FROM: Carl Goldsmith, Director of Public Works

SUBJECT: Fairview Lift Station Improvements

BACKGROUND

Following the July 2010 storm event, the Village embarked on an aggressive plan to upgrade the Village's critical pumping infrastructure to enhance our ability to effectively operate during storm conditions. To that end, the last several years of the Village's CIP have contained significant dollars to upgrade facilities. In some cases the upgrade was an onsite generator, while other projects included the full replacement of facilities (i.e. Route 53 Storm Station).

The Fairview Lift station serves the Old Grove area in District #6. This is the final station anticipated to be renovated or improved as part of the plan established by the Public Works Department and funded by the Village. The station is located on the west side of Fairview Avenue approximately 125 feet south of Cherry Lane. The station is bordered by Fairview Avenue on the east, a private residence to the north, and Park District property to the south and west

The original intent of the Fairview Lift Station improvement included the installation of an on-site generator to supply back-up power to the station. The Village retained Baxter & Woodman to perform an evaluation of the station to determine whether additional repairs/improvements should be considered for the Fairview Lift Station. Baxter & Woodman completed their partial evaluation of the pump station, which evaluated permanent back-up power, control cabinetry, pump hydraulics and easements. Baxter & Woodman concluded the following improvements should be made to the station:

- Generator - The facility needs a permanent back-up power source to allow uninterrupted sanitary sewer service during storm events and power outages. The recommended improvements include a new generator to be located on the existing property.
- Control Cabinet – The electrical cabinet was inspected and needs to be replaced and raised to avoid the high-water level of the site.
- Pump Hydraulics – The existing pumps, motors and bases all need to be replaced. The detailed analysis of pump hydraulics is attached. In summary, the existing

pumps are operating outside of preferred range, which causes excessive vibration, frequent pump starts/stops, and pump base failures.

- Property and Easements - The pumping station is located on a lot that is 37 feet by 100 feet (0.085 acres). There is room on site to replace all the required components, but constructability and access are two major concerns. A permanent easement from the Park District will be required to properly rehabilitate or replace the facility.

Since receiving the preliminary report, the Village has been discussing the property and easement issues with the Lombard Park District. The District has indicated its willingness to sell the Village property that will facilitate the construction of the new station. The agreement provides that the Village would acquire a parcel, immediately south of the existing station that measures 10' by 145.74'. The documents have been developed to provide for a fee simple acquisition of ten (10) feet, as well as a five (5) foot temporary construction easement. The cost of the purchase and temporary easement has been negotiated and set at twenty-five thousand (\$25,000) dollars. The CIP does contain funding to cover the cost of the property acquisition. The construction of the Fairview Lift Station Improvements is scheduled for 2015.

The Village staff looked at various preliminary designs for the new station with the hopes of avoiding the need to acquire additional property for the improvements. In every scenario, the costs for alternate designs would be problematic from an operational perspective and in many cases, was more costly than anticipated costs for the station with the acquisition costs.

The Ordinance has been prepared so that the transaction is covered by the Local Government Property Transfer Act (50 ILCS 605/0.01 et seq.). In this regard, the Lombard Park District will need to approve the transaction, after the Ordinance is approved by the Village Board, by a resolution passed by a two-thirds (2/3rds) vote of the members of the Board of Commissioners of the Lombard Park District, with a certified copy thereof being recorded with the DuPage County Recorder's Office. The Park District Commissioners have reviewed this item and approved the first reading of this item. The final agreement has been prepared by the Village Attorney and the Park District's counsel.

Staff has included a copy of the Ordinance and the the Grant of Easement relative to the Fairview Lift Station. Should you have any questions, please feel free to contact me.

RECOMMENDATION

Staff recommends that the Village President and Board of Trustees adopt AN ORDINANCE AUTHORIZING THE ACQUISITION OF THE PROPERTY COMMONLY KNOWN AS 1134 SOUTH FAIRVIEW AVENUE, AND ACCEPTING A TEMPORARY CONSTRUCTION LICENSE AGREEMENT IN RELATION TO THE PROPERTY IMMEDIATELY SOUTH THEREOF, PURSUANT TO THE LOCAL GOVERNMENT PROPERTY TRANSFER ACT (50 ILCS 605/0.01 et seq.)

ORDINANCE NO. _____

**AN ORDINANCE AUTHORIZING THE ACQUISITION OF
THE PROPERTY COMMONLY KNOWN AS 1134 SOUTH FAIRVIEW AVENUE,
AND ACCEPTING A TEMPORARY CONSTRUCTION LICENSE AGREEMENT
IN RELATION TO THE PROPERTY IMMEDIATELY SOUTH THEREOF,
PURSUANT TO THE LOCAL GOVERNMENT PROPERTY TRANSFER ACT
(50 ILCS 605/0.01 et seq.)**

WHEREAS, the President and Board of Trustees of the Village of Lombard deem it necessary for the health, welfare and safety of the residents of the Village of Lombard to purchase real estate to enable the Village to use, occupy and improve said real estate with the installation of a sanitary sewer lift station, and all facilities incidental thereto, at the location set forth below; and

WHEREAS, the President and Board of Trustees of the Village of Lombard desire to purchase the property commonly known as 1134 South Fairview Avenue, Lombard, Illinois, DuPage County, to accomplish the aforesaid purpose; said property being legally described as follows:

THE NORTH 10 FEET OF THE EAST 145.74 FEET OF LOT 1 IN OLD GROVE PARK PLAT OF CONSOLIDATION, LYING ADJACENT TO THE WEST LINE OF FAIRVIEW AVENUE, OF THAT PART OF THE SOUTHEAST QUARTER OF SECTION 17 AND THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 4, 2001 AS DOCUMENT R2001-263190, IN DUPAGE COUNTY, ILLINOIS;

P.I.N.: Pt. 06-17-412-013;

(hereinafter the "Real Estate"); and

WHEREAS, the Village has, after extensive inquiries and negotiations, agreed to purchase the Real Estate for a purchase price of TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00), plus title insurance and survey costs; and

WHEREAS, in order to develop the real estate with the sanitary sewer lift station, and all facilities incidental thereto, it is necessary to acquire a temporary construction license over the following legally-described property, being a five (5) foot wide strip of land located immediately South of the Real Estate:

THE SOUTH 5 FEET OF THE NORTH 15 FEET OF THE EAST 145.74 FEET OF LOT 1 IN OLD GROVE PARK PLAT OF CONSOLIDATION, LYING ADJACENT TO THE WEST LINE OF FAIRVIEW AVENUE, OF

THAT PART OF THE SOUTHEAST QUARTER OF SECTION 17 AND THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 4, 2001 AS DOCUMENT R2001-263190, IN DUPAGE COUNTY, ILLINOIS;

P.I.N.: Pt. 06-17-412-013;

Common address: 1134 South Fairview Avenue, Lombard, Illinois;

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

SECTION 1: That the Real Estate Purchase and Sales Contract, attached hereto as **Exhibit 1**, and incorporated herein by reference, is hereby approved, and the Village President and Village Clerk are hereby authorized and directed to execute same on behalf of the Village. The Village President and Village Clerk are hereby further authorized and directed to execute all appropriate documents and take such other action as is required of them to consummate the purchase by the Village of the Real Estate, in accordance with the terms of the Real Estate Purchase and Sales Contract.

SECTION 2: That the Temporary Construction License Agreement, attached hereto as **Exhibit 2** and incorporated herein by reference, is hereby accepted, and the Village President and Village Clerk are hereby authorized and directed to execute same on behalf of the Village.

SECTION 3: This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this ____ day of _____, 2013.

First reading waived by action of the Board of Trustees this ____ day of _____, 2013.

Passed on second reading this ____ day of _____, 2013.

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED by me this _____ day of _____, 2013.

Keith Giagnorio, Village President

ATTEST:

Sharon Kuderna, Village Clerk

Published by me in pamphlet form this _____ day of _____,
2013.

Sharon Kuderna, Village Clerk

Exhibit 1

REAL ESTATE PURCHASE AND SALES CONTRACT

(see attached)

Exhibit 2

TEMPORARY CONSTRUCTION LICENSE AGREEMENT

(see attached)

**REAL ESTATE PURCHASE AND SALES CONTRACT
PURSUANT TO THE LOCAL GOVERNMENT
PROPERTY TRANSFER ACT (50 ILCS 605/0.01 et seq.)**

THIS REAL ESTATE PURCHASE AND SALES CONTRACT (the "Contract") is made as of the Effective Date (as defined in Paragraph 23 hereof) between the **LOMBARD PARK DISTRICT**, an Illinois park district (the "Seller") and the **VILLAGE OF LOMBARD**, an Illinois municipal corporation (the "Buyer"), pursuant to the provisions of the Local Government Property Transfer Act (50 ILCS 605/0.01 et seq.). (The Seller and the Buyer are sometimes referred to herein individually as a "Party" and collectively as the "Parties.")

AGREEMENT:

1. **THE SELLER AND THE BUYER ARE UNITS OF LOCAL GOVERNMENT, AND THIS CONTRACT IS SUBJECT TO THE APPROVAL OF, AND IS NOT ENFORCEABLE UNLESS APPROVED AT AN OPEN MEETING BY, THE BOARD OF TRUSTEES OF THE BUYER AND THE BOARD OF COMMISSIONERS OF THE SELLER.**

2. **SALE.** The Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions set forth in this Contract, the fee simple title to a parcel of land commonly known as 1134 South Fairview Avenue, Lombard, Illinois, with PIN: Pt. 06-17-412-013, located in the County of Du Page (the "Property"), which Property is legally described in Exhibit A attached hereto and made a part hereof.

3. **PURCHASE PRICE.** The purchase price for the purchase of the Property by Buyer is **TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00)** (the "Purchase Price"). At closing, Buyer shall pay to Seller, in good and available funds by wire transfer or cashier's check, the Purchase Price.

4. **EARNEST MONEY DEPOSIT.** None required. All money will be paid at closing.

5. **CLOSING DATE.** The closing (the "Closing") of the contemplated purchase and sale of the Property shall take place through a deed and money escrow ("Escrow") on November 30, 2013 (the "Closing Date") at the office of Chicago Title Insurance Company, 171 North Clark Street, Third Floor, Chicago, Illinois (the "Title Company") or at such other time and place as mutually agreed to by the Parties. The cost of the Closing fee shall be paid for by Buyer.

6. **ENVIRONMENTAL INSPECTION.**

A. The Buyer shall have the right, at its sole cost and expense, and at reasonable times mutually agreed to by the Parties prior to the Closing, to select and retain environmental and other consultants to examine and inspect the physical condition of the Property (including the groundwater thereunder), to conduct a site assessment and environmental audit, and to perform any environmental and engineering investigation or testing it deems necessary and appropriate (the

"Environmental Assessment"). At Seller's request, Buyer will promptly furnish to Seller copies of any reports or other written materials received by Buyer relating to any Environmental Assessment performed at the Property. Seller hereby grants, and will cause any tenants to grant, to the Buyer and its consultants, their employees, agents, subcontractors and representatives, authorization to enter upon the Property at reasonable, mutually agreed times to conduct the environmental and engineering investigation. Seller shall provide to the Buyer and its employees, agents, representatives and consultants full and complete access to the Property (including the groundwater thereunder).

B. Prior to any entry by Buyer contemplated by this Paragraph 6, Buyer shall deliver to Seller a certificate or other proof that such party has comprehensive and general liability insurance including premises liability, in the amount of \$1,000,000 per occurrence, \$1,000,000 aggregate all of which shall be primary as to any valid and collectible insurance available to Seller. Buyer shall also require all consultants, contractors and sub-contractors engaged by Buyer to obtain and maintain insurance of the same types and amounts as the insurance coverages set forth hereinabove. Buyer's insurance obligations under this paragraph 6 shall survive the Closing.

C. Buyer agrees to protect, indemnify, defend (with counsel acceptable to Seller) and hold Seller, its elected and appointed officials, officers, employees, agents, and volunteers (collectively, the "Seller Indemnified Parties") harmless from and against any claim for liabilities, losses, costs, expenses (including reasonable attorneys' fees), damages or injuries suffered or incurred by any of the Seller Indemnified Parties arising out of, resulting from, relating to or connected with: (i) any Environmental Assessment performed at the Property by Buyer or any of Buyer's employees, agents, representatives, contractors and consultants; and/or (ii) the willful misconduct of, or other acts or omissions of, Buyer or its employees, agents, representatives, contractors and consultants at the Property. Buyer's indemnification obligations under this paragraph 6 shall survive the Closing.

7. **BUYER'S OPTION TO TERMINATE CONTRACT.** The Buyer shall not be obligated to take title to the Property if, in the Buyer's sole and exclusive judgment, for any reason whatsoever, Buyer determines that the use or condition of the Property (including the groundwater thereunder), or any part thereof or any adjacent property, poses a material health, safety or environmental hazard, or if the Environmental Assessment reveals the existence of any environmental condition which may be dangerous and/or unacceptable to the Buyer, or in violation of any environmental law or regulation including, but not limited to, the presence of any hazardous material (the foregoing collectively, an "Environmental Defect"). If, in the sole and exclusive judgment of Buyer, Buyer determines that there is an Environmental Defect, Buyer shall have the right to revoke its acceptance of the Contract and the adoption of the Ordinance, if any, accepting the Contract and approving the purchase of the Property contemplated herein, and to declare the Contract and its Ordinance approving the purchase

and execution of the Contract and related closing documents null and void, in which event the Earnest Money Deposit, if any, shall be immediately returned to the Buyer.

8. **TITLE INSURANCE.** Prior to Closing, Buyer, at Buyer's expense, shall obtain a title commitment issued by the Title Company, in the amount of the Purchase Price, with extended coverage over the standard exceptions 1 through 5 (the "Title Commitment"), together with copies of all underlying title documents listed in the Title Commitment (the "Underlying Title Documents"), subject only to those matters described in Exhibit B, attached hereto and made a part hereof (the "Permitted Exceptions"). If the Title Commitment, Underlying Title Documents or the Survey (as hereinafter defined) disclose exceptions to title, which are not acceptable to Buyer (the "Unpermitted Exceptions"), Buyer shall have five (5) days from the later of the delivery of the Title Commitment, the Underlying Title Documents and the Survey to object to the Unpermitted Exceptions. Buyer shall provide Seller with an objection letter (the "Buyer's Objection Letter") listing the Unpermitted Exceptions, which are not acceptable to Buyer. Seller shall have five (5) days from the date of receipt of the Buyer's Objection Letter ("Seller's Cure Period") to have the Unpermitted Exceptions removed from the Title Commitment or to cure such Unpermitted Exceptions or to have the Title Company commit to insure against loss or damage that may be occasioned by such Unpermitted Exceptions, and the Closing shall be extended such additional time, but not beyond January 31, 2014 (the "Extended Title Closing Date") after Buyer's receipt of a proforma title policy (the "Proforma Title Policy") reflecting the Title Company's commitment to insure the Unpermitted Exceptions. If Seller fails to have the Unpermitted Exceptions removed or, in the alternative, to obtain a Title Commitment insuring the Unpermitted Exceptions within the specified time, Buyer may elect to either (i) terminate this Contract, at which time the Buyer shall be entitled to have the Earnest Money Deposit, if any, returned to Buyer and this Contract shall become null and void without further action of the Parties, or (ii) upon notice to Seller within ten (10) days after Buyer's receipt of Seller's intention not to cure the Unpermitted Exceptions, take title as it then is without reduction in Purchase Price. All Unpermitted Exceptions, which the Title Company commits to insure, shall be included within the definition of Permitted Exceptions. The Proforma Title Policy shall be conclusive evidence of good title as shown therein as to all matters insured by the Title Company, subject only to the Permitted Exceptions. The Buyer shall pay the cost for any later date title commitments, and Buyer shall pay for the cost of the later date to its Proforma Title Policy.

9. **SURVEY.** Prior to Closing, Buyer, at Buyer's cost and expense, shall obtain a Plat of Survey that conforms to the Minimum Standards of Practice for boundary surveys, is dated not more than six (6) months prior to the date of Closing, and is prepared by a professional land surveyor licensed to practice land surveying under the laws of the State of Illinois. The Plat of Survey shall show visible evidence of improvements, rights of way, easements, use and measurements of all parcel lines. The land surveyor shall set monuments or witness corners at all accessible corners of the land. All such corners shall also be visibly staked or flagged. The Plat of Survey shall include the following statement, placed near the professional land surveyor seal and signature: "This professional service conforms to the current Illinois Minimum Standards for a boundary survey."

10. **DEED.** Seller shall convey fee simple title to the Property to Buyer, by a recordable Special Warranty Deed (the "Deed"), subject only to the Permitted Exceptions. Seller shall also execute and deliver, at Closing, any and all documents, in addition to the Deed, including an Affidavit of Title, Covenant and Warranty, Title Company documentation including, but not limited to, an ALTA Statement, GAP Undertaking or such other documents reasonably requested either by the Buyer or the Title Company to consummate the transaction contemplated herein and to vest fee simple title to the Property in Buyer subject only to the Permitted Exceptions and the issuance of the Buyer's Title Company owners title insurance policy. Buyer shall be responsible for the recording fee of the Deed.

11. **TEMPORARY CONSTRUCTION LICENSE.** At closing, the Seller shall also convey a temporary construction license to the Buyer, relative to a five (5) foot wide strip of property located immediately South of the Property, in the form of the Grant of Temporary Construction License attached hereto as Exhibit C, and made part hereof (the "Temporary Construction License").

12. **CLOSING DOCUMENTS.** On the Closing Date, the obligations of the Buyer and Seller shall be as follows:

- A. Seller shall deliver or cause to be delivered to the Title Company:
 - i. the original executed and properly notarized Deed;
 - ii. the original executed and property notarized Affidavit of Title, Warranty and Covenant;
 - iii. the original executed and properly notarized Non-Foreign Affidavit;
 - iv. counterpart originals of Seller's Closing Statement;
 - v. such other standard closing documents or other documentation as is required by applicable law or the Title Company to effectuate the transaction contemplated hereby, including, without limitation, ALTA statements and GAP Undertaking, such other documentation as is reasonably required by the Title Company to issue Buyer its owners title insurance policy in accordance with the Proforma Title Policy and in the amount of the Purchase Price insuring the fee simple title to the Property in the Buyer as of the Closing Date, subject only to the Permitted Exceptions; and
 - vi. the original executed and properly notarized Temporary Construction License.
- B. Buyer shall deliver or cause to be delivered to the Title Company:

- i. the Purchase Price;
 - ii. counterpart originals of Seller's Closing Statement; and
 - iii. ALTA Statement and such other standard closing documents or other documentation as is required by applicable law or the Title Company to effectuate the transaction contemplated herein.
- C. The Parties shall jointly deposit fully executed State of Illinois Transfer Declarations and County Transfer Declarations.

13. **POSSESSION.** Possession of the Property shall be delivered to Buyer on the Closing Date subject to the Permitted Exceptions, and in the same condition as at the time of the execution of this Contract.

14. **INTENTIONALLY OMITTED.**

15. **CONVEYANCE TAXES.** The Parties acknowledge that, as Buyer and Seller are governmental entities, this transaction is exempt from any State, County or local real estate transfer tax pursuant to 35 ILCS 200/31-45(b). Seller is obligated to furnish completed Real Estate Transfer Declarations signed by Seller or Seller's agent in the form required pursuant to the Real Estate Transfer Tax Act of the State of Illinois.

16. **NO COVENANTS, REPRESENTATIONS OR WARRANTIES OF SELLER.** Nothing contained in this Contract shall be construed as (i) a representation of the state of title to the Property, or (ii) a requirement on Seller to bring any action or proceeding or otherwise to incur any expense to render title to the Property insurable or marketable or to cure any Unpermitted Exceptions. Any attempt by Seller to cure any Unpermitted Exceptions or other exceptions shall not be construed as an admission by Seller that such objection is a valid title objection under this Contract.

17. **DEFAULT AND CONDITIONS PRECEDENT TO CLOSING.**

- A. It is a condition precedent to Closing that:
- i. fee simple title to the Property is shown to be good and marketable, subject only to the Permitted Exceptions, as required hereunder and is accepted by Buyer;
 - ii. intentionally omitted; and
 - iii. Seller has performed under the Contract and otherwise has performed all of its covenants and obligations and fulfilled all of the conditions required of it under the Contract in order to Close on the Closing Date.

- B. If, before the Closing Date, Buyer becomes aware of a breach of any of Seller's representations and warranties or of Seller failing to perform all of its covenants or otherwise failing to perform all of its obligations and fulfill all of the conditions required of Seller in order to Close on the Closing Date, Buyer may, at its option:
- i. elect to enforce the terms hereof by action for specific performance; or
 - ii. attempt to cure such breach or failure by Seller for a period of up to thirty (30) days following the Closing Date, and, following such attempt, to either:
 - a. terminate this Contract and receive a prompt refund of the Earnest Money Deposit, if any; or
 - b. proceed to Close notwithstanding such breach or nonperformance.

In all events, Buyer's rights and remedies under this Contract shall always be non-exclusive and cumulative and the exercise of one remedy shall not be exclusive of or constitute the waiver of any other, including all rights and remedies available to it at law or in equity

- C. In the event of a default by Buyer, Seller's sole and exclusive right and remedy shall be a payment by Buyer to Seller of Five Thousand and No/100 Dollars (\$5,000.00) (the "Default Payment") as its sole liquidated damages, it being understood that Seller's actual damages in the event of such default are difficult to ascertain and that the Default Payment is the Parties' best current estimate of such damages. Notwithstanding the foregoing, the Parties agree that no default of or by either Party shall be deemed to have occurred unless and until notice of any failure by the non-defaulting Party has been sent to the defaulting Party and the defaulting Party has been given a period of ten (10) days from receipt of the notice to cure the default.

18. **BINDING EFFECT.** This Contract shall inure to the benefit of and shall be binding upon the heirs, legatees, transferees, assigns, personal representatives, owners, agents, administrators, executors and/or successors in interest of any kind whatsoever of the Parties hereto.

19. **BROKERAGE.** Each Party hereto hereby represents and warrants to the other that, in connection with this transaction, no third-party broker or finder has been engaged or consulted by it or, through such Party's actions (or claiming through such Party), is entitled to compensation as a consequence of this transaction. Each Party hereby defends, indemnifies and holds the other harmless against any and all claims of brokers, finders or the like, and against the claims of all third parties claiming any right to a commission or compensation by or through acts of that Party or that Party's elected officials, officers, employees, agents or

affiliates in connection with this Contract. Each Party's indemnity obligations shall include all damages, losses, costs, liabilities and expenses, including reasonable attorneys' fees, which may be incurred by the other in connection with all matters against which the other is being indemnified hereunder. This provision shall survive the Closing.

20. **NOTICES.** Any and all notices, demands, consents and approvals required under this Contract shall be sent and deemed received: (A) on the third business day after mailed by certified or registered mail, postage prepaid, return receipt requested, or (B) on the next business day after deposit with a nationally-recognized overnight delivery service (such as Federal Express or Airborne) for guaranteed next business day delivery, or (C) by facsimile transmission on the day of transmission, with the sender retaining a copy of the confirmation of transmission, or (D) by personal delivery, if addressed to the Parties as follows:

To Seller: LOMBARD PARK DISTRICT
 227 West Parkside Avenue
 Lombard, Illinois 60148
 Attn: Executive Director
 FAX: (630) 627-1286

With a copy to: Tressler, LLP
 233 South Wacker Drive
 22nd Floor
 Chicago, Illinois 60606
 Attn: Andrew S. Paine
 FAX: (312) 627-1717

To Buyer: VILLAGE OF LOMBARD
 255 East Wilson Avenue
 Lombard, Illinois 60148
 Attn: Village Manager
 FAX: (630) 620-8222

With a copy to: Klein, Thorpe and Jenkins, Ltd.
 20 North Wacker Drive, Suite 1660
 Chicago, Illinois 60606-2903
 Attn: Thomas P. Bayer/Jason A. Guisinger
 FAX: (312) 984-6444

Either Party hereto may change the name(s) and address(es) of the designee to whom notice shall be sent by giving written notice of such change to the other Party hereto in the same manner, as all other notices are required to be delivered hereunder.

21. **RIGHT OF WAIVER.** Each and every condition of the Closing, other than the Buyer's duties at Closing, is intended for and is for the sole and exclusive benefit of Buyer. Accordingly, Buyer may at any time and from time to time waive each and any condition of the

Closing, without waiver of any other condition or other prejudice of its rights hereunder. Such waiver by Buyer shall, unless otherwise herein provided, be in a writing signed by Buyer and delivered to Seller.

22. MISCELLANEOUS.

- A. Buyer and Seller mutually agree that time is of the essence throughout the term of this Contract and every provision hereof in which time is an element. No extension of time for performance of any obligations or acts shall be deemed an extension of time for performance of any other obligations or acts. If any date for performance of any of the terms, conditions or provisions hereof shall fall on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day thereafter.
- B. This Contract provides for the purchase and sale of property located in the State of Illinois, and is to be performed within the State of Illinois. Accordingly, this Contract, and all questions of interpretation, construction and enforcement hereof, and all controversies hereunder, shall be governed by the applicable statutory and common law of the State of Illinois. The Parties agree that, for the purpose of any litigation relative to this Contract and its enforcement, venue shall be in the Circuit Court in the county where the Property is located and the Parties consent to the *in personam* jurisdiction of said Court for any such action or proceeding.
- C. Intentionally Omitted.
- D. The provisions of the Uniform Vendor and Buyer Risk Act of the State of Illinois shall be applicable to this Contract.
- E. Buyer and Seller hereby agree to make all disclosures and do all things necessary to comply with the applicable provisions of the Property Settlement Procedures Act of 1974. In the event that either Party shall fail to make appropriate disclosures when asked, such failure shall be considered a breach on the part of said Party.
- F. The Parties warrant and represent that the execution, delivery of and performance under this Contract is pursuant to authority, validly and duly conferred upon the Parties and the signatories hereto.
- G. The paragraph headings contained in this Contract are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof.
- H. Whenever used in this Contract, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

- I. Intentionally Omitted.
 - J. In the event either Party elects to file any action in order to enforce the terms of this Contract, or for a declaration of rights hereunder, the prevailing Party, as determined by the court in such action, shall be entitled to recover all of its court costs and reasonable attorneys' fees as a result thereof from the losing Party.
 - K. Buyer may record this Contract or any memorandum or short form of this Contract against the Property, provided that if the transaction contemplated herein does not occur and the Contract is terminated as provided herein, Buyer shall record a termination of the Contract. The recording fees for either shall be borne by the Buyer.
 - L. If any of the provisions of this Contract, or the application thereof to any person or circumstance, shall be invalid or unenforceable to any extent, the remainder of the provisions of this Contract shall not be affected thereby, and every other provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
 - M. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument.
23. **EFFECTIVE DATE.** This Contract shall be deemed dated and become effective on the date that the last of the authorized signatories of Buyer and Seller shall sign the Contract, as set forth below.
24. **CONTRACT MODIFICATION.** This Contract and the Exhibits attached hereto and made a part hereof, or required hereby, embody the entire Contract between the Parties hereto with respect to the Property and supersede any and all prior agreements and understandings, whether written or oral, and whether formal or informal. No extensions, changes, modifications or amendments to or of this Contract, of any kind whatsoever, shall be made or claimed by Seller or Buyer, and no notices of any extension, change, modification or amendment made or claimed by Seller or Buyer (except with respect to permitted unilateral waivers of conditions precedent by Buyer) shall have any force or effect whatsoever unless the same shall be endorsed in writing and fully signed by Seller and Buyer.
25. **EXHIBITS.** The following Exhibits are attached hereto and made a part hereof by reference:
- | | |
|------------------|---|
| <u>Exhibit A</u> | Legal Description of the Property |
| <u>Exhibit B</u> | Permitted Exceptions |
| <u>Exhibit C</u> | Grant of Temporary Construction License |

IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the date below their respective signatures.

SELLER:

LOMBARD PARK DISTRICT,
an Illinois Park District

By: _____

Name: Gregory Ludwig

Title: Park Board President

ATTEST:

By: _____

Name: Paul Friedrichs

Title: Park Board Secretary

Date Seller executed: _____

BUYER:

VILLAGE OF LOMBARD,
an Illinois municipal corporation

By: _____

Name: Keith Giagnorio

Title: Village President

ATTEST:

By: _____

Name: Sharon Kuderna

Title: Village Clerk

Date Buyer executed: _____

Exhibit A

Legal Description of the Property

THE NORTH 10 FEET OF THE EAST 145.74 FEET OF LOT 1 IN OLD GROVE PARK PLAT OF CONSOLIDATION, LYING ADJACENT TO THE WEST LINE OF FAIRVIEW AVENUE, OF THAT PART OF THE SOUTHEAST QUARTER OF SECTION 17 AND THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 4, 2001 AS DOCUMENT R2001-263190, IN DUPAGE COUNTY, ILLINOIS;

P.I.N.: Pt. 06-17-412-013;

Common address: 1134 South Fairview Avenue, Lombard, Illinois.

Exhibit B

Permitted Exceptions

1. 2013 real estate taxes and subsequent years, not due and payable for the Property, if any.
2. Covenants, conditions, restrictions and easements of record, which do not prevent the Buyer from installing, operating and maintaining a sanitary sewer lift station and all facilities incidental thereto on the Property.

Exhibit C

Grant of Temporary Construction License

(see attached)

#582091

TEMPORARY CONSTRUCTION LICENSE AGREEMENT

THIS TEMPORARY CONSTRUCTION LICENSE AGREEMENT ("Agreement") is made this ____ day of _____, 2013, by the Lombard Park District, DuPage County, Illinois (hereinafter referred to as the "Grantor") to the Village of Lombard, DuPage County, Illinois (hereinafter referred to as the "Grantee"). Grantor and Grantee are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, Grantor is the owner of the following-described property:

LOT 1 (EXCEPT THE NORTH 10 FEET OF THE EAST 145.74 FEET THEREOF) IN OLD GROVE PARK PLAT OF CONSOLIDATION, LYING ADJACENT TO THE WEST LINE OF FAIRVIEW AVENUE, OF THAT PART OF THE SOUTHEAST QUARTER OF SECTION 17 AND THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 4, 2001 AS DOCUMENT R2001-263190, IN DUPAGE COUNTY, ILLINOIS;

P.I.N.: Pt. 06-17-412-013;

Common address: 1134 South Fairview Avenue, Lombard, Illinois;

(hereinafter referred to as the "Grantor Property"); and

WHEREAS, the Grantee desires to construct a sanitary lift station on property owned by, or to be acquired by, the Grantee, that is adjacent to the Grantor Property (hereinafter referred to as the "Lift Station Improvements"); and

WHEREAS, the Grantee needs to temporarily enter upon a portion of the Grantor Property in order to properly construct the Lift Station Improvements; and

WHEREAS, Grantor has agreed to grant the Grantee the necessary temporary construction license relative to the construction of the Lift Station Improvements, subject to certain terms and conditions as more fully set forth below;

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration in hand paid, receipt of which is hereby acknowledged, the terms and conditions set forth below and the benefits to be derived from this Agreement, the Parties agree as follows:

1. That the recitals set forth above are incorporated herein and made a part hereof as if set forth fully herein.

2. Grantor hereby grants the Village of Lombard, DuPage County, Illinois, as Grantee, a temporary construction license ("License"), subject to the terms and conditions of this Agreement, for the full and free right, privilege and authority to enter upon that portion of the Grantor Property as legally described below, and as depicted on Exhibit A attached hereto and made part hereof, solely for the purpose of constructing the Lift Station Improvements (hereinafter the "Licensed Activities") on the property owned by, or to be acquired by, the Grantee, that is adjacent to the Grantor Property:

THE SOUTH 5 FEET OF THE NORTH 15 FEET OF THE EAST 145.74 FEET OF LOT 1 IN OLD GROVE PARK PLAT OF CONSOLIDATION, LYING ADJACENT TO THE WEST LINE OF FAIRVIEW AVENUE, OF THAT PART OF THE SOUTHEAST QUARTER OF SECTION 17 AND THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 4, 2001 AS DOCUMENT R2001-263190, IN DUPAGE COUNTY, ILLINOIS;

P.I.N.: Pt. 06-17-412-013;

Common address: 1134 South Fairview Avenue, Lombard, Illinois;

(hereinafter referred to as the "Temporary License Area").

3. The License shall be used and enjoyed solely by Grantee and its duly authorized officers, agents, contractors or employees to conduct the Licensed Activities in accordance with this Agreement. Grantee shall not assign its rights under this Agreement in whole or in part or grant permission to traverse,

enter upon or otherwise use the Temporary License Area to any other person or entity without the prior written consent of Grantor.

4. Grantor hereby agrees to and with the Grantee that the officers, agents, contractors or employees of the Grantee may, at any and all times designated herein, when necessary and convenient to do so, go in, on, upon, over, through, across and under the Temporary License Area, and do and perform any and all acts necessary or convenient to the carrying into effect the purposes for which this Agreement and the License are made. Grantee shall provide Grantor five (5) days prior written notice, or if five (5) days is not practicable with as much advance notice as possible under the circumstances, in accordance with Paragraph 19 below, of the commencement, anticipated duration, and termination of any Licensed Activities, as applicable, and shall, to the greatest extent practicable, conduct the Licensed Activities so as not to unreasonably interfere with Grantor's use of Grantor's Property or the Temporary License Area.

5. The Grantor reserves the right to make any use of the Temporary License Area, whether on, above or below its surface, for any lawful purpose.

6. The Grantee, and its officers, agents, contractors and employees, shall promptly, and as soon as practicable after completion of the construction of the Lift Station Improvements, restore to its former condition any portion of the Grantor Property which is damaged, disturbed or altered in any manner by the construction of the Lift Station Improvements, at the Grantee's sole cost and expense.

7. All work, labor, services, equipment, tools and materials to be performed, furnished or used directly or indirectly in, or in connection with, construction of the Lift

Station Improvements, and all other matters and things to be performed, furnished or used, or expenses to be paid, under the term of this Agreement are to be at the sole expense of the Grantee, and all such work shall be performed promptly and completed in each instance with diligence and as soon as reasonably practicable after commencement thereof. Grantee shall not cause or suffer or permit to be created any mechanics' or materialmen's liens or claims against the Grantor Property or the Temporary License Area. Grantee shall defend, indemnify and hold harmless Grantor from and against any such claims or liens.

8. No equipment or machinery shall be brought or permitted to come into or onto the Grantor Property except across the Temporary License Area, and subject to such reasonable restrictions as shall be determined by Grantor.

9. No explosives or flammable or hazardous materials of any kind shall be transported across, brought upon, or stored or deposited in the Grantor Property, or used on the Temporary License Area, in such a manner as to cause contamination of the Grantor Property either on, above or below the surface of the ground.

10. The Temporary License Area and other portions of the Grantor Property shall at all times be kept free of accumulations of debris, waste and garbage caused by the Licensed Activities.

11. Grantee shall obtain all necessary permits and approvals and shall otherwise comply with all applicable federal, state and local laws, rules, regulations, and ordinances in the conduct of the Licensed Activities.

12. Grantee shall conduct the Licensed Activities in the Grantor Property and the Temporary License Area entirely at Grantee's own risk. To the fullest extent

permitted by the laws of the State of Illinois, Grantee hereby forever waives, relinquishes and discharges and holds harmless Grantor, its park commissioners, officers, officials, employees, volunteers, and agents from any and all claims of every nature whatsoever, which Grantee may have at any time against Grantor, its park commissioners, officers, officials, employees, volunteers, and agents, including without limitation claims for personal injury or property damage sustained or incurred by Grantee or any person claiming by, through or under Grantee, relating directly or indirectly to this Agreement, the License, or the Licensed Activities.

13. Grantee shall defend, indemnify and hold harmless Grantor, its park commissioners, officers, officials, employees, volunteers and agents (Grantor and such other persons being hereinafter collectively called the "Indemnitees") against and from any and all liabilities, claims, losses, costs, damages and expenses of every nature whatsoever, including without limitation reasonable attorneys' and paralegal fees, suffered, incurred or sustained by any of the Indemnitees, including without limitation liabilities for the death of or injury to any person or the loss, destruction or theft of or damage to any property, relating directly or indirectly to, or arising directly or indirectly from, the exercise by Grantee, or any other person acting on its behalf or with its authority or permission, of the rights and privileges granted Grantee under this Agreement. Grantee shall similarly defend, indemnify and hold harmless the Indemnitees against and from any and all claims, losses, costs, damages and expenses, including without limitation reasonable attorneys' and paralegal fees, suffered, sustained or incurred by any of the Indemnitees as a result of Grantee's breach of any provision of this Agreement or otherwise incurred by any of the

Indemnitees in enforcing the terms of this Agreement. Notwithstanding the foregoing, Grantee shall not be required to defend, indemnify, or hold harmless the Indemnitees for the Indemnitees intentional or negligent acts or omissions.

14. Grantee shall keep in full force and effect at all times during this Agreement general public liability insurance, Workers' Compensation insurance, and such other types of insurance in such amounts and with such companies or self-insurance pools as are reasonably acceptable to the Grantor, but, in any event, no less than the coverages and amounts carried by Grantee for its general activities. The minimum insurance coverage specified in this Paragraph 14 may be provided by self-insurance, participation in a risk management pool, commercial policies of insurance, or a combination thereof. Such insurance shall be evidenced by copies of the policies and/or certificates of insurance at the request of Grantor, and said insurance shall not be modified, terminated, canceled or not renewed without at least thirty (30) days advanced written notice to the Grantor.

In addition to, and in furtherance and not in limitation of, Grantee's insurance obligations set forth above, and at no cost to Grantor, Grantee shall require any contractor(s) performing any of the work contemplated by this Agreement to obtain and keep in full force and effect for so long as any claim relating to the Licensed Activities legally may be asserted, comprehensive general liability and property damage insurance written to include the coverages and for not less than the minimum limits, or greater if required by law, as provided on Exhibit B attached hereto and incorporated herein by reference. Grantee shall similarly require any contractor(s) performing any of the work contemplated by this Agreement to defend, indemnify and hold harmless

Grantor in accordance with and as more fully set forth in Subsection F. of Exhibit B attached hereto and incorporated herein by reference.

15. The License granted Grantee hereunder shall be in full force and effect through and including December 31, 2015, or until the completion of the Lift Station Improvements, whichever occurs first, unless sooner terminated by Grantor in accordance with Paragraph 16 below.

16. The License granted Grantee hereunder may be terminated prior to its expiration date:

- a. immediately upon written notice to Grantee in the event Grantee or its contractor(s) shall fail to procure or maintain the insurance required under Paragraph 15 above, or shall fail to provide evidence of such coverage as required above; or
- b. immediately upon Grantee's failure to remedy or obtain remedy by its contractor(s) of any breach of any term or condition of this Agreement (other than Paragraph 15 regarding insurance) within forty-eight (48) hours after written notice of such breach is delivered to Grantee.

17. This Agreement and the License granted hereunder does not convey to, or create in favor of, Grantee any legal or equitable title to or interest, in whole or in part, in or to the Grantor Property, or any portion thereof, it being acknowledged that this Agreement and the License granted hereunder provide for a temporary license and not a lease, and merely grant temporary and limited permission to Grantee to use the

Temporary License Area solely for the Licensed Activities on and subject to the terms and conditions of this Agreement.

18. No waiver of any rights which Grantor has in the event of any default or breach by Grantee under this Agreement shall be implied from failure by Grantor to take any action on account of such breach or default, and no express waiver by Grantor shall affect any breach or default other than the breach or default specified in the express waiver and then only for the time and to the extent therein stated.

19. Any and all notices, demands, consents and approvals required under this Agreement shall be sent and deemed received: (A) on the third business day after being mailed by certified or registered mail, postage prepaid, return receipt requested, or (B) on the next business day after deposit with a nationally-recognized overnight delivery service (such as Federal Express or Airborne) for guaranteed next business day delivery, or (C) by facsimile transmission on the day of transmission, with the sender retaining a copy of the confirmation of transmission, or (D) by personal delivery, if addressed to the Parties as follows:

To Grantor: LOMBARD PARK DISTRICT
 227 West Parkside Avenue
 Lombard, Illinois 60148
 Attn: Executive Director
 FAX: (630) 627-1286

With a copy to: Tressler, LLP
 233 South Wacker Drive
 22nd Floor
 Chicago, Illinois 60606
 Attn: Andrew S. Paine
 FAX: (312) 627-1717

To Grantee: VILLAGE OF LOMBARD
 255 East Wilson Avenue

Lombard, Illinois 60148
Attn: Village Manager
FAX: (630) 620-8222

With a copy to: Klein, Thorpe and Jenkins, Ltd.
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606-2903
Attn: Thomas P. Bayer/Jason A. Guisinger
FAX: (312) 984-6444

20. This Agreement contains the entire agreement between the Parties with respect to the use of the Temporary License Area and the Grantor Property by Grantee in connection with the Licensed Activities and cannot be modified except by a writing, dated subsequent to the date hereof, and signed by both Parties.

21. Nothing contained in this Agreement is intended to be, nor shall operate as, a waiver by Grantor or Grantee of the rights, defenses, and immunities afforded under the Local Governmental and Governmental Employees Tort Immunity Act.

IN WITNESS WHEREOF, the Grantor has caused its name to be signed to these presents the day and year first above written.

Grantor: LOMBARD PARK DISTRICT

By: _____
Name: Gregory Ludwig
Title: President

ATTEST: _____
Name: Paul Friedrichs
Title: Secretary

Agreed to and accepted by the Village of Lombard, DuPage County, Illinois, this ____ day of _____, 2013.

By: _____
Keith Giagnorio, Village President

ATTEST: _____
Sharon Kuderna, Village Clerk

ACKNOWLEDGMENT

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 Keith Giagnorio and Sharon Kuderna, personally known to me to be the Village President and the Village Clerk, respectively, of the Village of Lombard (the "Village"), and 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 Village President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of the Village to be affixed thereto, pursuant to authority given by the Board of Trustees of said Village, as their free and voluntary act, and as the free and voluntary act and deed of the Village, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this ____ day of _____, 2013.

Notary Public

ACKNOWLEDGMENT

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 the above-named Gregory Ludwig and Paul Friedrichs, personally known to me to be the President and Secretary of the Lombard Park District, (the "Grantor"), and also personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such President and Secretary, appeared before me this day in person and acknowledged that as such President and Secretary, they signed and delivered the said instrument, as their free and voluntary act, and the free and voluntary act of the Grantor, for the uses and purposes therein set forth.

GIVEN under my hand and Notary Seal this _____ day of _____, 2013.

Notary Public

EXHIBIT A

Drawing of Temporary License Area

(attached)

EXHIBIT B

CONSTRUCTION ACCESS LICENSE INSURANCE REQUIREMENTS FOR CONTRACTORS

Every contractor performing any of the work contemplated by this Agreement, whether in whole or in part ("Contractor"), shall procure and maintain for at least the duration of this Agreement, insurance of the types and in the amounts listed below.

A. Commercial General and Umbrella Liability Insurance

Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Lombard Park District ("District") and its park commissioners, officers, officials, employees, volunteers and agents shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to District. Any insurance or self-insurance maintained by District shall be excess of the Contractor's insurance and shall not contribute with it.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

B. Continuing Completed Operations Liability Insurance

Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 each occurrence for at least three years following substantial completion of the work.

Continuing CGL insurance shall be written on ISO occurrence form CG 00 01 10 93, or substitute form providing equivalent coverage, and shall, at minimum,

cover liability arising from products-completed operations and liability assumed under an insured contract.

Continuing CGL insurance shall have a products-completed operations aggregate of at least two times its each occurrence limit.

Continuing commercial umbrella coverage, if any, shall include liability coverage for damage to the insured's completed work equivalent to that provided under ISO form CG 00 01.

C. Business Auto and Umbrella Liability Insurance

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

D. Workers Compensation Insurance

Contractor shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If District and its park commissioners, officers, officials, employees, volunteers and agents has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Contract, the Contractor waives all rights against District and its park commissioners, officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractor's work.

E. General Insurance Provisions

1. Evidence of Insurance

Prior to beginning work, Contractor shall furnish District with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days written notice to District prior to the cancellation or material change of any insurance referred to therein. Written notice to District shall be by certified mail, return receipt requested.

Failure of District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of District to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

District shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by District.

Failure to maintain the required insurance may result in termination of this Agreement at District's option.

With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to District whenever requested.

Contractor shall provide certified copies of all insurance policies required above within 10 days of District's written request for said copies.

2. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the District has the right to reject insurance written by an insurer it deems unacceptable.

3. Cross-Liability Coverage

If Contractor's liability policies do not contain the standard ISO separation of insured's provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the District. At the option of the District, the Contractor may be asked to eliminate such deductibles or self-insured retentions as respects the District, its park commissioners, officers, officials, employees, volunteers and agents or required to procure a

bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

5. Subcontractors

Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified above. When requested by the District, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

F. Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the District and its park commissioners, officers, officials, employees, volunteers and agents (hereinafter collectively the "Indemnitees") from and against all claims, damages, losses and expenses including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising out of or resulting from the performance of the Contractor's work, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, other than the work itself, including the loss of use resulting there from and (ii) is caused in whole or in part by any wrongful or negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Contractor shall similarly protect, indemnify and hold and save harmless the Indemnitees against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of Contractor's breach of any of its obligations under, or Contractor's default of, any provision of the Agreement. Notwithstanding the foregoing, Contractor shall not be required to defend, indemnify, or hold harmless the Indemnitees for the Indemnitees intentional or negligent acts or omissions.