

July 19, 2017

Mr. Arnold Randall, General Superintendent
Forest Preserve District of Cook County
536 North Harlem Avenue
River Forest, IL 60305

Subject: Memorandum of Mutual Understanding Related to Use of Forest Preserve of Cook County ("FPCC") Lands for Construction and Continuous Term Usage of **Stormwater Management Wetlands Project** by the Village of Winnetka

This Memorandum of Mutual Understanding ("MOU") provides the high level concepts and baseline conditions for the Village of Winnetka, State of Illinois ("Winnetka") to pursue a Land Use License from the Forest Preserves of Cook County ("FPCC") for the construction and continuous term usage of certain land restoration and stormwater improvements to FPCC land, sometimes referred to as the Hibbard Road Forest Preserve, located in the southwestern part of Winnetka. The proposed project within the 49.1 +/- acre forest preserves ("Stormwater Management Wetlands Project") would function as part of the Village's flood control system under its stormwater management plan.

The purpose of the proposed use of the FPCC land would be to: (1) improve the quality of life in Winnetka by realigning and improving the existing stormwater drainage function of the Hibbard Road Forest Preserve portion of the Skokie Lagoons; while (2) enhancing and maintaining the conservation value of the forest preserves and improving the quality of the waters draining into the Skokie River, in a manner consistent with the mission of the FPCC.

In preparation of this MOU, the FPCC considered the requisite criteria under its Land Use Policy Ordinance. The FPCC determined that, with the circumstances, conditions and requirements set forth in this MOU, the proposed use of the Hibbard Road Forest Preserve for the Stormwater Management Wetlands Project: (1) is in the interest of the District; (2) provides benefits to the public in relation to the burden imposed on the District; (3) is consistent with the District's land management policies; (4) will involve site improvements that are consistent with the mission of the FPCC; and (5) promotes public safety and general welfare. The rationale for this initial determination is described in the sections below. Any IGA must continue to demonstrate that the proposed use of the Hibbard Road Forest Preserve for the Stormwater Management Wetland Project meets the criteria of the Land Use Policy Ordinance and any other requirement of FPCC Policy or Code.

This MOU is a product of meetings conducted at the FPCC offices with representatives of the FPCC, Winnetka, and Strand Associates ("Strand"), the contractor for Winnetka that developed its stormwater management plan. These meetings were held on: November 8, 2015; February 24, 2016; April 7, 2016; June 23, 2016; August 22, 2016; September 16, 2016; November 10, 2016; November 29, 2016; and February 27, 2017.

Once the FPCCC and Winnetka (each a "Party", collectively "the "Parties") agree to the framework and conditions in this MOU, they will make a recommendation to the FPCC Board that the Parties engage in the process of developing an Inter-Governmental License Agreement ("IGA") to use FPCC land for the Stormwater Management Wetlands Project, as outlined below. That process will allow for meaningful public participation and input into the IGA.

The FPCC and Winnetka agree to the following terms and conditions that must be satisfied before the FPCC would consider entering into an IGA to use FPCC land for the Stormwater Management Wetland Project.

1. The Parties understand and agree that, since the late-1800s, stormwater in western and southwestern Winnetka has been conveyed through a ditch that runs across what is now the Hibbard Road Forest Preserves, discharging by a pump (commonly referred to as the “Winnetka Avenue Pump Station”) into the Skokie River. The ditch is located north of Winnetka Avenue and west of Hibbard Road. All of the stormwater from western and southwestern Winnetka is eventually conveyed through this system during rain events. However, due to storage and conveyance limitations within Winnetka and the FPCC properties, substantial areas within Winnetka experience severe flooding during moderate and severe rain events. The Hibbard Road Forest Preserves is also inundated by stormwater runoff during moderate and severe rain events, which impacts the conservation value and recreational potential of the property identified as a long-term property asset of the FPCC.
2. The Parties recognize the property that is the subject of this MOU was part of the largest Civilian Conservation Corps project in the nation to build a regional flood control and recreational project. According to historic documents, the FPCC acquired land in and around the Skokie Lagoons area with the intention that it would be used for flood control, conservation and recreation. The depression-era project provided fishing and outdoor recreation as well as substantial flooding relief to the communities along this system, including Winnetka. The FPCC property that is subject to this MOU is unique in that, as FPCC acquired the property, it was understood and accepted that the site was part of the overall Skokie Lagoons flood control system. Winnetka proposes to adapt this flood control system in a manner that is consistent with both the existing lagoon projects and the land use mission of the FPCC.
3. In late 2015, Winnetka entered into a contract with Strand to establish a broad and comprehensive menu of potential relief projects related to the extensive and destructive flooding that currently occurs during significant rainfall events in Winnetka. This menu of options was presented to the community and the various stakeholders over the course of six months, in eight public sessions, in an effort to assess and determine the feasibility, practicality, and extent of public support for the various flood mitigation options. In June 2016, the Winnetka Village Council reviewed the Strand report and all of the public comment and information from the public meetings, and after extensive community and stakeholder response determined that certain flood mitigation options warranted further action towards potential implementation. The Council also recognized that certain mitigation options were either financially impractical or did not obtain sufficient public consensus that would warrant further action at this time. While Winnetka officials and residents remain committed to the fundamental goal of flood mitigation, Winnetka has appropriately prioritized its flood mitigation resources to be consistent with and to reflect the extensive public process that has been undertaken. Upon execution of this Memorandum, Winnetka will immediately authorize Strand to begin work on preliminary designs which will be submitted to the FPCC incrementally and in accordance with the FPCC process for review and comment to ensure consistency with the preliminary concepts outlined herein.
4. As a result of long-standing and serious flooding in western and southwestern Winnetka, Winnetka has identified, as an integral part of its overall stormwater management plan, a stormwater flood reduction vision consisting of a variety of conveyance, storage, and water quality improvements, as well as local and private green infrastructure improvements to address this problem. As part of this vision, Winnetka and the FPCC desire to cooperate in providing

stormwater relief to these areas of Winnetka through a constructed stormwater wetland improvement on a portion of a 49.1+/- acre parcel of FPCC lands north of Winnetka Avenue and west of Hibbard Road. Approximately 74 acre-feet of stormwater management is to be constructed on FPCC lands that will also include naturalized plantings and water quality monitoring for the FPCC via Village of Winnetka investment. Additional passive stormwater storage will be realized on the property, as is currently occurring. The remaining stormwater storage and conveyance necessary to provide flood relief is to be constructed on existing open spaces controlled by the Winnetka Park District, Winnetka School District 36, and the New Trier High School District. The Village's current concept vision, showing planned stormwater storage and conveyance projects upstream of FPCC lands, is shown on attached **Exhibit 1** (Stormwater Management System Opportunities).

7. The construction on FPCC lands also includes construction of an open-water feature, wetlands, and sedge meadow reflecting Winnetka's investment to better match this infrastructure project with the natural condition of FPCC lands. The agreed layout and engineering details for the Stormwater Management Wetlands Project are shown on attached **Exhibits 2A through 2G** (Project Layout, Preliminary Grading Plan, Existing and Proposed 2, 5, 10, 100-year Inundation Levels, Existing and Proposed High Water Levels).
8. The FPCC has embarked on a master planning and gateway improvement program for the Skokie Lagoons, and the Village will design and construct a parking area at the intersection of Willow Road and Forestway Drive in conjunction with the planned reconfiguration of the intersection of Forestway Drive and Willow Road.
9. As part of the vision, Winnetka will provide water quality improvement measures upstream of discharge points onto FPCC lands. The water quality improvement measures will include mechanical treatment, wetland treatment, stormwater Best Management Practices/green infrastructure, and municipal operational measures. Since the offsite assets available are not yet fully understood at this time, the FPCC agrees to review Winnetka's application based on a standard of volume, with the understanding that initial event runoff from a 0.5-inch rain event applied to existing impervious surface in the tributary watershed will be treated prior to discharge onto FPCC property. The Village proposes to provide additional water quality improvements of stormwater runoff prior to entering FPCC property. This approach employs a combination of non-structural operations and maintenance as well as structural water quality practices that together will reduce existing pollutant loading. Any IGA would be contingent upon discharging a net-zero increase of stormwater and pollutant loading onto the site. The detailed plan is shown in **Exhibit 3** (Winnetka Stormwater Quality Improvement Program).
10. Should the post-project water quality monitoring indicate a pattern that does not achieve anticipated water quality improvements, and upon notice by FPCC to the Village, the Village will: 1) initiate an investigation to identify the source(s) of the measured water quality deficiencies; 2) develop an action plan, with FPCC input and concurrence, to address the measured water quality deficiencies; 3) implement the agreed action plan; and, 4) perform follow-up monitoring to confirm that the corrective action has satisfactorily addressed the measured water quality deficiencies.
11. The Land Use License allows for the construction and continuous term operation of the Stormwater Management Wetlands Project on FPCC properties. The total estimated Land Use License Fee is \$1,405,925, consisting of a (i) License Fee component; (ii) Youth Education, Land Acquisition, Restoration (YELAR) Program Fee; (iii) Construction Permit Fee component, and

(iv) License Application Fee. The final Land Use License Fee will be determined based upon actual final use of FPCC properties (including temporary construction areas), the actual final cost of the FPCC's Construction Inspector /Owner's Representative, and the actual application fee. All fees and additional benefit costs are summarized in **Exhibit 8**.

12. The License Fee component is estimated to be \$1,339,200, based on estimated use of 18.6 acres of land area detailed on attached **Exhibit 4** (License Area). The actual final License Fee component will be calculated based on the actual disturbance to FPCC lands for stormwater control and management purposes.
13. The Youth Education, Land Acquisition, Restoration (YELAR) Program fee component will be \$3,600 as required by the FPCC Code.
14. The estimated Construction Permit Fee component is \$13,125.24, and will be paid to the FPCC in installments by the Permittee constructing the project. The actual Construction Permit Fee will be based on the actual construction/staging land area and the actual project duration.
15. An additional contribution of \$500,000 for ecological land restoration in the sub-watershed will be payable upon execution of that IGA and issuance of the Land Use License. An additional contribution of \$50,000 to offset costs incurred by FPCC on overall planning for the Skokie Lagoons will be payable upon execution of this Memorandum of Mutual Understanding.
16. The time frame necessary to construct the Stormwater Management Wetlands Project on FPCC properties is estimated at six months, and is currently estimated to commence in late 2018 or early 2019 and be substantially complete by the end of 2019.
17. The Village and FPCC agree that a Construction Inspector/Owner's Representative shall be provided for inspection and oversight of the project for the FPCC. The Construction Inspector/Owner's Representative will be jointly procured, and contracted and paid directly by Winnetka to the service provider performing this work. Payment shall be made upon receipt of service provider's monthly invoice and upon the prior written advisement and payment recommendation of the FPCC. Total Construction Inspector/Owner's Representative costs are estimated at \$24,000, but are dependent on the overall timeframe of construction of the Stormwater Management Wetlands Project. Construction Inspector/Owner's representative professional services will commence with the Project's pre-construction meeting and conclude upon the non-Ecological Land Restoration portion of the Project reaching the substantial completion milestone. The expected timeframe for this service is estimated at six months.
18. Winnetka will maintain the Stormwater Management Wetlands Project throughout the license period. As design progresses, Winnetka will develop performance-based standards for the maintenance and health of the various vegetative zones and areas provided in the project. These standards will address factors including, but not limited to, erosion and sediment control, invasive species control and removal, vegetative quality, and the ratio of native to non-native vegetation. Winnetka's maintenance will extend beyond disturbed areas to provide a buffer against erosion or encroachment of invasives. The maintenance costs will be borne by Winnetka and limited to the area defined by the license. A sample outlining typical expected post-construction maintenance requirements and activities is depicted in **Exhibit 5** (Post-Construction Inspection and Maintenance).

19. Tree removal mitigation fees, estimated at \$1,103,533, will be based upon the FPCC's tree mitigation requirements. It is agreed that there will be no tree mitigation fee payable for Ash trees, Buckthorn trees, or standing dead trees. Winnetka has completed a tree survey, depicted in **Exhibit 6** (Tree Inventory Information).
20. Winnetka's proposed expenditure associated with installation of wetland and sedge vegetation in the stormwater improvement area is provided in **Exhibit 7** (Estimate of Probable Cost for Planting).
21. This project will likely require mitigation of existing wetlands on the project site to satisfy U.S. Army Corps of Engineers requirements. At the FPCC's option, mitigation may consist of restoration or improvement of wetlands on other properties owned by FPCC. If the required wetland mitigation occurs on FPCC property, the tree mitigation fee shall also be reduced by an amount equal to 50% of Winnetka's cost associated with wetland mitigation on FPCC property.
22. The final lump-sum payment for tree mitigation fees will be made as a one-time, upfront payment as required by FPCC Code, and will be based on the final total tree removal.
23. Winnetka will investigate and obtain all required third party permits and authorizations necessary to route, design and construct the Stormwater Management Wetlands Project on FPCC lands. The FPCC agrees to assist Winnetka in applying for such permits (i.e. by providing necessary records, documentation of land ownership, documentation of permission given to Winnetka to apply for permits, signature of application documents, etc.).
24. Entering into this MOU will provide Winnetka with the clarity and confidence it needs to invest significant financial resources on detailed design plans and engineering. The MOU also summarizes the project, required elements, and certain contingencies for FPCC approval that will allow for a factual community based discussion in Winnetka. The Parties agree that, if all the contingencies and requirements of the MOU are met, and the proposed project satisfies the criteria of the FPCC Land Policy Ordinance, Land Management Policy and other FPCC policies and Code, FPCC staff will prepare an IGA for consideration by the FPCC Board.
25. Any license agreement between the Parties for the use of FPCC property for Winnetka's Stormwater Management Wetlands Project would at minimum be contingent upon meeting all of the conditions and terms of this MOU.
26. Prior to final execution of the IGA, Winnetka will obtain approval – in the form of Intergovernmental Agreements - from other local units of government controlling open spaces to be incorporated for stormwater storage, conveyance, or water quality improvements, including the Winnetka Park District, Winnetka School District 36, and New Trier High School District (“*Agreements*”). Winnetka agrees that the FPCC will not approve and execute the IGA unless and until the Agreements are provided to the FPCC and the FPCC finds that they are sufficient in form and content to assure that the projects they describe satisfy the foregoing Paragraph 7. The Village agrees to construct as much upstream storage as possible in advance of, or concurrently within a reasonable time (no more than one year), the construction of storage on Forest Preserve land and to capture and treat a specified volume of stormwater upstream on non-Forest Preserve sites as described in Paragraph 7 and to monitor and maintain new native vegetation as described in paragraph 15 *regardless* of whether the agreements with other jurisdictions are implemented. Failure by the Village to honor the upstream capture and

treatment standards in Paragraph 7 and the native vegetation maintenance in paragraph 15 will result in the assessment of substantial penalties on the Village and or pursuit of other legal remedies.

27. Winnetka acknowledges that the FPCC Executive Staff has negotiated the terms and conditions of this Memorandum of Mutual Understanding in good faith and that all terms are not final and binding until such time as approved by the Forest Preserve District of Cook County Board of Commissioners.
28. No covenant or agreement contained in this Memorandum of Mutual Understanding shall be deemed to be the agreement of any official, officer, member, manager, director, agent, employee, consultant, or attorney of Winnetka or the FPCC in his or her individual capacity and no official, officer, member, manager, director, agent, employee, consultant, or attorney of Winnetka or the FPCC shall be personally liable under this Memorandum of Mutual Understanding or be subject to any personal liability or accountability by reason for or in connection with or arising out of the execution, delivery, and performance of this Memorandum of Mutual Understanding, or any failure in connection therewith.

The Parties agree as set forth in this Memorandum of Mutual Understanding. Winnetka looks forward to submission of its final Land Use License petition to the FPCC Real Estate Committee at the earliest practical time, and to answering any related questions that this review and recommendation body may have regarding the draft and execution of an IGA-based Land Use License.

Mr. Robert M. Bahan
Village Manager
Village of Winnetka

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Mr. Arnold Randall
General Superintendent
Forest Preserve District of Cook County

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List of Exhibits

1. Stormwater Management System Opportunities
2. A through F: Project Layout, Preliminary Grading Plan, Existing and Proposed Inundation Levels, and Existing and Proposed High Water Levels
3. Winnetka Stormwater Quality Improvement Plan
4. License Area
5. Post-Construction Inspection and Maintenance
6. Tree Inventory Information
7. Estimate of Probable Cost for Planting
8. Fee and Additional Benefit Summary

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