

KANE COUNTY
DIVISION of TRANSPORTATION

Carl Schoedel, P.E.
Director of Transportation
County Engineer

41W011 Burlington Road
St. Charles, IL 60175
Phone: (630) 584-1170
Fax: (630) 584-5265



DATE: November 13, 2008

TO: Jean Weems
County Board Office

FROM: Linda Haines *Linda*

SUBJECT: October County Board

3 – Lease Agreement with St. Charles Park District for the Randall Road
Bicycle/Foot Path with Document Vet Sheet (Kane County Res. #08-317)

TRANSMITTED FOR:

- YOUR INFORMATION AND FILE
- YOUR APPROVAL AND/OR CORRECTION
- AS REQUESTED
- SEE BELOW

REMARKS: Please have the County Board Chairman sign, send to County Clerk for signature and seal, and then return to our office for further processing.

Thanks.

STATE OF ILLINOIS

COUNTY OF KANE

RESOLUTION NO. 08 - 317

**APPROVING AMENDED INTERGOVERNMENTAL LEASE AGREEMENT BETWEEN
THE ST. CHARLES PARK DISTRICT AND THE COUNTY OF KANE
REGARDING THE RANDALL ROAD OVERPASS AT SILVER GLEN ROAD
KANE COUNTY SECTION NO. 03-00312-00-BT**

WHEREAS, the Illinois Constitution of 1970, Article VII, Section 10 and 5 ILCS 220/1 *et seq.* authorizes the County of Kane (hereinafter the "County") and the St. Charles Park District (hereinafter the "Park District") to cooperate in the performance of their respective duties and responsibilities by contract and other agreements; and

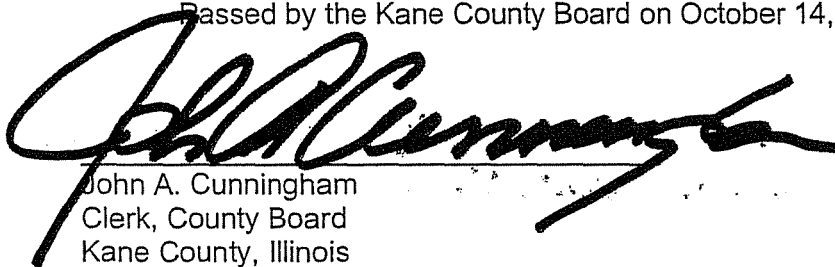
WHEREAS, pursuant to County Board Resolution No. 95-83, the Park District and the County entered into a lease agreement dated April 25, 1995 for the Randall Road bike path between the Leroy Oakes Forest Preserve and Silver Glen Road; and

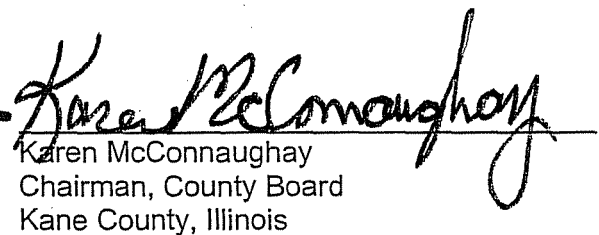
WHEREAS, the Park District and the County desire to amend the terms of the agreement; and

WHEREAS, the amendment will provide for a pedestrian overpass over Randall Road at Silver Glen Road, which shall facilitate the safe and efficient movement of traffic and provide for the safety of the motoring and bicycling public.

NOW, THEREFORE, BE IT RESOLVED by the Kane County Board that the Chairman thereof is hereby authorized to execute an amended intergovernmental lease agreement (a copy of which is on file with the County Clerk's Office) with the St. Charles Park District.

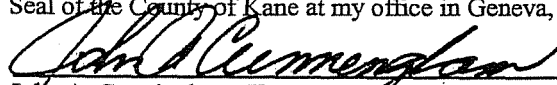
Passed by the Kane County Board on October 14, 2008.

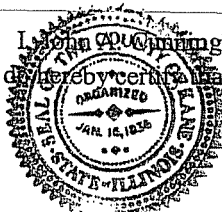

John A. Cunningham
Clerk, County Board
Kane County, Illinois


Karen McConaughay
Chairman, County Board
Kane County, Illinois

Vote:
Yes 24
No -
Voice -
Abstentions -

10RNDSTCHPRKAMNDIGA.4LH

STATE OF ILLINOIS COUNTY OF KANE	DATE <u>OCT 23 2008</u>
<p>I, <u>John A. Cunningham</u>, Kane County Clerk and Keeper of the Records in Kane County, Illinois do hereby certify that the attached is a true and correct copy of the original record on file.</p>	
<p>In witness whereof, I have hereunto set my hand and affixed the Seal of the County of Kane at my office in Geneva, Illinois.</p>	
<p> John A. Cunningham, Kane County Clerk</p>	



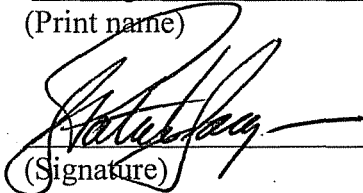
DOCUMENT VET SHEET
for
Karen McConnaughay
Chairman, Kane County Board

Name of Document: Amended Intergovernmental Lease Agreement between the St.
Charles Park District and the County of Kane – Randall Road – Bicycle/Foot Path

Submitted by: Linda Haines

Date Submitted: August 19, 2008

Examined by: Pat Jaeger
(Print name)


(Signature)

Sept. 17, 2008
(Date)

Comments: _____

Chairman signed: Yes No _____
(Date)

Document returned to: _____

**AMENDED
INTERGOVERNMENTAL LEASE AGREEMENT
BETWEEN THE
ST. CHARLES PARK DISTRICT AND THE COUNTY OF KANE
KANE COUNTY SECTION NO. 03-00312-00-BT**

This Amended Lease Agreement (hereinafter referred to as the "Amendment") is entered into this 14th day of October 2008, by and between the St. Charles Park District, Kane and DuPage Counties, Illinois, a body corporate and politic of the State of Illinois, (hereinafter referred to as the "District") and the County of Kane, a body corporate and politic of the State of Illinois (hereinafter referred to as the "County"). Both the County and the District are hereinafter collectively referred to as the "Parties" and individually as a "Party".

WITNESSETH

WHEREAS, the County and the District previously entered into a Lease Agreement on April 25, 1995 entitled: INTERGOVERNMENTAL LEASE AGREEMENT BETWEEN THE ST. CHARLES PARK DISTRICT AND THE COUNTY OF KANE, (hereinafter referred to as the "Agreement") wherein the County agreed to lease to the District certain portions of the right of way of Kane County Highway No. 34, also know as Randall Road, for the purpose of the construction, use and maintenance of a bicycle and foot path; and,

WHEREAS, the Parties now desire to amend the Agreement to include the design, construction, use and maintenance of a bicycle/foot path grade separation over Randall Road just north of its intersection with Kane County Highway No.5 also known as Silver Glen Road; and,

WHEREAS, both the County and the District are co-sponsors of the project to construct a bicycle/foot path and bicycle/foot path grade separation, (hereinafter collectively referred to as the "Facility"), along Randall Road and over and across Randall Road immediately north of where Randall Road intersects Silver Glen Road; and,

WHEREAS, both the District and the County desire to co-operate among themselves to ensure that the Facility is successfully completed, used and maintained and that it shall be of a long term benefit to the people of Kane County and the State of Illinois by providing alternative transportation as well as recreational opportunities.

NOW, THEREFORE, the County, in consideration of the above stated preambles, and for good and valuable consideration, the sufficiency of which is agreed to by the Parties hereto, and in consideration of the covenants, conditions and agreements hereinafter contained on both the part of the County and the District to be made, performed, kept and observed, has herein demised and leased, and by these presents does so demise and lease unto the District, that portion of the County's property so designated on the plat attached hereto, marked Exhibit "A" and incorporated herein and made a part hereof (hereinafter referred to as the "Premises").

1. INCORPORATION. The Parties acknowledge and agree that the preambles as set forth hereinabove are incorporated into and made a part of the Amendment.

2. PRIOR AGREEMENT. The Parties further acknowledge and agree that this Amendment replaces in its entirety the Agreement and that the Agreement shall be of no further force and effect and is upon the approval and execution hereof null and void.

3. TERM. The term of this Amendment shall commence at the date of execution hereof and shall remain in effect until January 1, 2058, unless sooner terminated.

4. PURPOSE. The District shall use the Premises only for those purposes enumerated herein. The District shall, subject to advance notice to the County, have the right to construct, use, operate, maintain, repair, replace, alter, service and remove the Facility, insofar as is permitted by law, together with the right of ingress and egress to and from the Premises for the purposes herein contained, and for no other purpose whatsoever. To that end the District shall not assign its interests hereunder. However, the District shall be permitted to enter into agreements with other governmental entities regarding the construction, use and maintenance of the Premises. In no event however shall any such agreement(s) in any way relieve the District of its obligations to the County under the terms of this Amendment. Such agreement(s) shall provide that the Premises shall not be used for any other purpose other than those herein enumerated. The District, however, must give the County prior written notice of such agreement(s) and must obtain first the written permission of the County prior to entering into such agreement(s) which permission shall not be unreasonably withheld.

5. USE AND FINANCING. The Facility shall be designed, installed, constructed and maintained at the sole expense of the District, provided however that the parties acknowledge that the Kane County Forest Preserve District has agreed to contribute a minimum of two hundred thousand dollars (\$200,000) toward the construction and installation of the facility. Additionally, the District shall remove all debris, material, false work and the like caused by or used during the construction, installation or maintenance of the facility. In no event shall the Premises be used for the operation of any motorized vehicle such as motorcycles, snow mobiles, all terrain vehicles, go carts, mini bikes and the like except as may be necessary for the construction, repair, replacement alteration, service or removal of the Facility by the District or its agents.

6. TRANSFER. The District shall not assign its interests hereunder without prior written consent of the County which may be withheld in the County's sole discretion. The terms and conditions of this Amendment shall be both implicitly and explicitly included in any transfer, conveyance, or encumbrance of the Facility or any part thereof, and any instrument affecting all or part of the Facility shall set forth the terms and conditions of this Amendment either by reference or as set forth in full.

7. REPAIRS. The County reserves the right to request the District to make reasonable repairs to the Facility or the Premises and if the District shall fail within thirty (30) days after receipt of written notice to make such repairs as the County reasonably deems necessary, the County may at its election make such repairs. The County reserves the right to make any emergency repairs to the Facility in the event that the County reasonably deems such repairs necessary. The District shall promptly reimburse the County for the cost and expense of any County repairs within ninety (90) days of receipt of demand therefor.

8. DESIGN. The Facility shall be designed and constructed in accordance with the design standards and specifications as promulgated by the American Association of State Highway Transportation Officials, AASHTO and the Illinois Department of Transportation and shall be installed on the Premises in strict conformity with the plans that are to be attached hereto as Exhibit "B" and which are incorporated herein. The County shall approve said plans (Exhibit "B") in writing executed by the County Engineer, prior to the commencement of construction of the Facility. Any proposed change in said plans, before, during or after the installation of the Facility, shall be submitted to the County for its written approval and no work shall commence until such written approval, executed by the County Engineer, has been first obtained. In any event, the County shall not unreasonably withhold its approval. Upon completion of the Facility, the District agrees to furnish to the County a copy of the plans for the Facility as built.

9. NOTIFICATION. The District shall notify the County in writing at least forty eight (48) hours in advance, except in the case of a bona fide emergency, before entering upon the Premises or the Facility to conduct any maintenance or make any repair, replacement or removal thereof in order that the County can have a representative present at such time or times if the County sees fit. Notice shall be in writing and directed to the Director of the Kane County Division of Transportation, 41W011 Burlington Road, St. Charles, Illinois 60175. The District agrees that any work on the Premises or the Facility shall be done to the satisfaction of the County. The County shall not unreasonably withhold its approval.

10. CONDITION OF THE PREMISES. Except for any express representations and warranties of the County as set forth herein, the District acknowledges and agrees that it will be leasing the Premises based solely upon its inspections and investigations of the Premises, and that the District will be leasing the Premises "as is", "where is" and "with all faults", based upon the condition of the Premises as of the date of this Amendment, ordinary wear and tear and loss by fire or other casualty or condemnation excepted and that the County makes no warranty or representation, express or implied, or arising by operation of law, including, but not limited to, any warranty of condition, habitability, merchantability or fitness for a particular purpose, with respect to the Premises. Without limiting any representation and warranty set forth herein, the District hereby releases the County from any and all liability in connection with any claims that the District may have against the County relating directly or indirectly to the existence of asbestos or hazardous materials or substances on, or environmental conditions of, the Premises, whether known or unknown. As used herein, the terms "hazardous substances" and "hazardous materials or substances" mean (i) hazardous wastes, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including but not limited to substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "pollutants," "contaminants," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9601 et seq.; the Toxic Substance Control Act, 15 U.S.C. §2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1802; the Resource Conservation and Recovery Act, 42 U.S.C. §9601. Et seq.; the Clean Water Act, 33 U.S.C. §1251; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; and in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar federal, state or local laws, regulations, rules or ordinance now or hereafter in effect relating to environmental matters (collectively, "environmental laws"); and (ii)

any other substances, constituents or wastes subject to any applicable federal, state or local law, regulation or ordinance, including any environmental law, now or hereafter in effect, including but not limited to (a) petroleum, (b) refined petroleum products, (c) waste oil, (d) waste aviation or motor vehicle fuel (e) asbestos etc. The District has examined the Premises and knows its condition. No representation as to the condition of the Premises and the repair thereof, and no agreements to make any alterations, repairs or improvements in or about the Premises have been made by the County, unless otherwise contained herein.

11. EXCAVATION. The District agrees that in the event the District performs any grading, leveling or any type of excavation or dirt work on the Premises and damages any underground Facility presently or later located on the Premises the District shall be liable for the cost of replacement or repair thereof including the cost of reasonably foreseeable consequential or incidental damages. Prior to any excavation work, the District shall call Joint Utility Locating Information for Excavators (J.U.L.I.E.). Any work, construction, maintenance or alteration to or on the Premises shall not create surface water drainage problems for the County or any adjoining landowners and any such drainage problems shall be corrected by the District at the District's sole expense. The County reserves the right to make any emergency drainage alterations to the Facility in the event that the County reasonably deems such alterations necessary. The District shall promptly reimburse the County for the cost and expense of such alterations within ninety (90) days of receipt of demand therefor.

12. BUILDINGS. The District agrees not to erect, install construct or permit to be erected, installed or constructed, any building of either a temporary or permanent nature on the Premises. This provision does not apply to any trailers or temporary structures that are utilized by the District or its contractors during the construction of the Facility.

13. SIGNS. The District shall not place or maintain or allow to be placed or maintained by themselves or any person or persons any sign or advertising billboard on the Premises or the facility; provided however, the District, only with the prior written consent of the County, which consent shall not be unreasonable withheld, may: (i) place signs as may be required by state or federal law or regulation of any state or federal agency providing funding for the trail and, (ii) place neat, and inoffensive signs on the Premises for purposes of controlling the bicycle and pedestrian traffic on the premise and the Facility and for prohibiting the use of snowmobiles and other motorized vehicles on the Premises and the Facility.

14. USE AND IMPROVEMENT OF THE PREMISES. The Parties acknowledge and agree that in the event that the Facility or any part thereof requires, in the opinion of either Party, to be removed or relocated for any reason, the Parties will share equally in the cost of said removal or relocation. The Party initially incurring any such cost for relocation or removal shall submit an invoice to the other Party which shall pay its 50% share of said cost within 30 days of the receipt of any invoice therefor. In the event that the parties decide to relocate the Facility or any part thereof, it is the intention of the District to utilize proceeds of the Kane County Land/Cash Ordinance that may be available to the District, for said relocation or for the acquisition of right-of-way necessary to relocate the facility. The Parties obligations pursuant to this paragraph shall survive the term of this Amendment.

15. PERMITS AND ZONING. The District agrees that the County has made no representations that the Premises are properly zoned for the District's use. The District assumes all obligations and responsibilities for compliance with zoning laws and ordinances and other regulations of any regulatory body having jurisdiction. The District specifically understands and agrees that the District has no right or authority nor does the County grant any right or authority for the District to have the Premises rezoned or its use or status as Kane County Highway right of way changed. The District shall at its sole cost and expense obtain any permits, licenses or other authority which may be required from the County, State or any other authority before using said Premises for the purpose herein proposed and agrees to comply with and strictly observe any and all laws, rules, statutes, ordinances and regulations of any such authorities.

16. MAINTENANCE. The District shall maintain the Premises in a neat, clean orderly and presentable condition to the satisfaction of the County. The County agrees to mow the grass on the Premises upon completion of the construction thereof whenever the County mows the adjacent right of way of Randall Road.

17. ENVIRONMENTAL PROTECTION. The District shall comply with any and all applicable environmental statutes, ordinances, rules, regulations and orders (hereinafter referred to as standards) issued or promulgated by any federal, state or local government or agency thereof. Such standards are intended to encompass but are not limited to those that concern air, water, noise, solid waste, any hazardous substances and hazardous wastes. The District shall not use oil as a means of suppressing dust anywhere on the Premises. The District shall reimburse the County for all reasonable costs incurred by the County including, without limitation, fines and penalties imposed for the violation of standards and the actual expense of correcting any actual or alleged violation when said violation is caused or permitted to be caused by the District or arises from the District's use of the Premises; provided however, that the District shall not be obligated to reimburse the County for costs, fines, penalties, or expenses of correction which shall arise as a result of the use of the Facility or the surrounding area by the County or for violations of standards which existed prior to the execution of this Amendment. The District shall assume liability for and shall indemnify, defend and hold the County harmless from any claim or violation of the standards which result in any way from the District's use of the Premises. The District agrees to assume, at the request of the State's Attorney of Kane County, the defense of those claims of violation of the standards caused by the District or the District's use of the Premises regardless of whether said claims are asserted against the District or the County, excepting therefrom those claims that result from the negligence of the County. The County agrees to hold harmless the District, its Board members, officers, employees and agents from any and all claims or liabilities arising from violations of the standards that existed prior to the execution of this Amendment or that are the result of the County's use of the Premises or the surrounding right of way of the County. Notwithstanding the expiration or termination of this Amendment, the District shall remain liable for all costs provided for in this paragraph 17, and shall further remain obligated to defend, indemnify and hold harmless the County for any and all violations or alleged violations of the standards that were caused during the actual term of this Amendment.

18. INDEMNITY. The District shall indemnify and save harmless the County, its officers, employees and agents, from all claims, litigation and liability asserted against them or any of them, and any costs and attorney's fees incidental thereto, on account of injury or death to

any person or persons whomsoever, or on account of damage to property, from any cause whatsoever, arising or growing, directly or indirectly; (a) out of the design, construction, installation, operation, maintenance, use, repair, renewal, replacement or removal of the Facility by the District, its employees and agents; (b) out of any defect in said Facility or any failure thereof caused by any act error or omission of the District; (c) out of any act or omission of the District, its officers, officials, agents or employees in any way related to the Facility or the Premises, including while on or about the Premises or the property of the County or while on or using said Facility; and (d) out of the failure of the District, its officials, officers, agents or employees to abide by or comply with the terms and conditions of this Amendment, excepting therefrom those injuries, deaths and losses caused by the negligence of the County, and; (e) the use of the Premises and the Facility by the District or any member of the public.. The District shall, upon the request of the Kane County State's Attorney, undertake the defense of the County, its officers and employees, in any such litigation as herein provided if the Kane County State's Attorney so requests.

19. FUTURE USE. The County shall not be liable to the District for damage to the Premises or the Facility due to the operation, maintenance or removal by the County of any present or future use of the County in or upon the property of the County. If such damage does occur, however, the County shall not be entitled to enforce Section 7 of this Amendment in order to require the District to repair such damage. The District may, but is not obligated to, make such repairs in its sole discretion and at its own cost. The County reserves the right to construct, maintain, use, operate, relocate, reconstruct and renew any highway or highway appurtenance adjacent to or on the Premises as it may at any time and from time to time desire.

20. LIENS. The District covenants and agrees that it shall not let or shall not permit or suffer any lien to be put upon or arise or accrue against the Premises or against the funds of the County in favor of any person or persons, individual or corporate, furnishing either labor or material in any work herein proposed. The District further covenants and agrees to hold said Premises and the funds of the County free from any and all liens, or rights or claims of lien relating to the design, construction, use repair, and replacement of the Facility or the Premises which or might arise or accrue under or be based upon any mechanic's lien law of the State of Illinois either now in force or to be enacted. All contracts and agreements that may be made by the District relating to any work herein proposed shall expressly state that the interest and reversion of the County in and to said Premises shall be wholly free from and not subject to any lien or claim of any contractor, subcontractor, mechanic, material man or laborer, whether passed upon any law or regulation of the State of Illinois, or any other authority, now in force or hereafter to be enacted, and The District also agrees and covenants that it will not enter into any contract for such work which shall not in express terms contain the aforesaid provisions.

21. INSURANCE. The District agrees to require its contractor or contractors, before commencing any work or maintenance on the Premises or the facility, to purchase and maintain an Owner's Protective Policy covering such work in the name of the County at the cost of the District or the District's contractor or contractors in the amounts as set forth in the most recent edition of the "Standards for Road and Bridge Construction In Illinois" published by the Illinois Department of Transportation as may be amended from time to time, in a form and with an insurance company satisfactory to the County, with an AM Best rating of A- or better, and licensed to do business in the State of Illinois. The District shall furnish or cause to be furnished

to the County, prior to the commencement of any work on the Premises a certificate of insurance showing the issuance of insurance policies pursuant to the requirements contained in this paragraph which policies shall be held by the District and delivered to the County upon the County's request. Insurance coverage shall be kept in force during the term of all work to be performed on the Premises and until such work is completed. Declarations in each policy of insurance shall identify the work as being done by and for others on property owned by the County and there shall be no exclusions in any policy not otherwise approved by the County. Each certificate of insurance shall provide therein that said insurance shall not be cancelled without thirty (30) days notice to the County. In lieu of any insurance required from the District in this Section, the District may self insure hereunder and use a Self Administered Claims Program for this purpose. The District will notify the County in writing thirty (30) days prior to cancellation of the Self Administered Claims Program. The provision of insurance by the District will not relieve the District's contractors from the obligation to purchase and maintain an Owner's Protective Policy covering such work in the name of the County

22. **RETAINED RIGHTS OF THE COUNTY.** The rights of the County to utilize the Premises for use as highway right of way shall at all times remain paramount to any and all rights granted to the District and nothing contained herein is to be construed as restricting the County from granting rights to other persons or parties in, upon or under the Premises; provided however, that the County's granting of such rights to other persons or parties shall not in any manner unreasonably interfere with the rights of the District as provided herein. Without limiting the generality of the foregoing, the Parties hereto specifically refer to rights relating to the construction and maintenance of any driveways, roads, highways, sewers, water pipes and mains, drainage tiles and pipes, gas mains and pipelines and facilities for the transmission of electricity, telephone or cable television, as well as other allied and appurtenant uses. The County shall have at all times free and unrestricted access for its employees, agents, representatives assigns and grantees to come upon the Premises either on foot or by vehicle or to come upon the Facility on foot for any purpose whatsoever. This lease shall not in any manner or to any extent limit or restrict the right of the County to use or dispose of the Premises as the County sees fit, subject only to the rights of the District as herein expressly contained. This Amendment is subject to all existing and future roads and highways, all existing and future rights of ingress and egress and rights of way of any governmental unit or public utility to occupy the Premises for the use and maintenance of utilities or allied and appurtenant purposes.

23. **TERMINATION.** In the event that either Party hereto materially fails at any time to observe or perform any of the covenants, agreements or terms hereof, the other Party may at its option give written notice of termination of this Amendment to the first Party, whereupon the first Party shall have ten (10) days to cure said failure. In the event the first Party fails to timely cure, this Amendment shall terminate and shall be of no force and effect. Upon the termination of this Amendment or the District's rights hereunder due to the District's failure to comply with the terms of this Amendment and subsequent failure to cure such failure as herein provided, the District shall, only upon demand of the County, and at the sole expense of the County, remove the Facility and restore the property to the satisfaction of the County. If the District shall fail to remove the Facility in the manner aforesaid within ninety (90) days of the County's request after termination, the Facility shall become the sole property of the County. Termination of this Amendment shall not affect the rights of the Parties to indemnification as set forth herein above arising from any acts, omissions or errors occurring prior to such termination. Termination

hereof shall not affect either Party's right to reimbursement from the other Party pursuant to any provision of this Amendment.

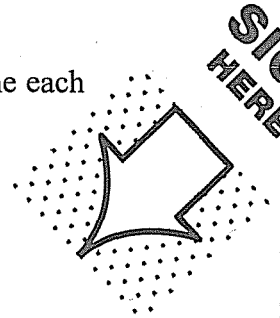
24. WAIVER The failure of the County, at any time, to insist upon performance or observation of any term, covenant, agreement or condition contained herein shall not in any manner be construed as a release of any right of the County hereunder or as waiver of any right to enforce any term, covenant, agreement or condition herein contained.

25. AMENDMENT. No purported oral amendment, change or alteration hereto shall be allowed. Any amendment hereto shall be in writing approved by the governing body of each Party hereto and signed by their respective president or chairman.

26. SUCCESSION. This Amendment shall inure to the benefit of the Parties hereto their heirs, successors and assigns.

27. EFFECTIVE. This Amendment shall become effective upon the approval of the each respective governing body of the Parties.

Entered into at Geneva, Illinois on the date as setforth hereinabove.



County of Kane

Attest:

By: Karen McConnaughay
Karen McConnaughay
County Board Chairman

John Cunningham
Kane County Clerk

St. Charles Park District
Kane and DuPage Counties, Illinois

Attest:

By: Nancy Cox
Nancy Cox
President

James Cooke
Secretary