
THE VILLAGE OF OAK BROOK

COOK AND DUPAGE COUNTIES, ILLINOIS

RESOLUTION 2020-IGA-OBPKD-POOL-TEN & SOC-EX-R-1849

A RESOLUTION APPROVING AND AUTHORIZING AN
INTERGOVERNMENTAL AGREEMENT BETWEEN THE
VILLAGE AND THE PARK DISTRICT
RELATING TO THE OPERATION OF THE VILLAGE'S
SWIMMING POOL, TENNIS AND SOCCER

GOPAL G. LALMALANI, Village President
CHARLOTTE K. PRUSS, Village Clerk

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Village Board

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President and the Board of Trustees of the Village of Oak
Brook on this the 14th day of January 2020

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A RESOLUTION APPROVING AND AUTHORIZING

AN INTERGOVERNMENTAL AGREEMENT

BETWEEN THE VILLAGE AND THE PARK DISTRICT

RELATING TO THE OPERATION OF THE VILLAGE'S SWIMMING POOL, TENNIS AND SOCCER

WHEREAS, the Village of Oak Brook maintains a pool complex, tennis courts and soccer fields and the Village has concluded that it would be best to enter into an Intergovernmental Agreement ("**Agreement**") with the Oak Brook Park District to operate that swimming pool, tennis and soccer fields during the 2020 season; and

WHEREAS, an Agreement has been negotiated between the parties which will result in the payment of a flat fee of \$1.00 to the Park District to operate the swimming pool, tennis courts and soccer fields in accordance with the terms and conditions of that Agreement; and

WHEREAS, the Park District is experienced in operating similar swimming pool, tennis courts, and soccer fields and the parties contemplate that the persons utilizing the swimming pool, tennis courts and soccer fields during the 2020 season will be pleased at the experienced manner in which the Park District carries out its administration; and

WHEREAS, the Agreement entered into between the parties contains extensive and specific terms and conditions under which the swimming pool, tennis courts and soccer fields will be operated and establishes the responsibilities of both the Village and the Park District; and

WHEREAS, the Park District will carefully select those individuals who will be placed in charge of administering this contract and all of the operations of the Park District, as they are at its own facilities, will be in full compliance with all federal and state regulations relating to the operation of a public swimming pool facility, tennis facility and soccer facility; and

WHEREAS, the President and Board of Trustees have determined that it is in the best interests of the Village to enter into the Agreement, in a final form as approved by the Village Attorney.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF OAK BROOK, DUPAGE AND COOK COUNTIES, ILLINOIS, as follows:

Section 1: Recitals. The foregoing recitals are hereby incorporated into, and made a part of, this Resolution as the findings of the President and Board of Trustees of the Village of Oak Brook.


Section 2: Approval of the Agreement. The President and Board of Trustees hereby approve the Agreement by and between the Village and the Park District in a form acceptable to the Village Manager and the Village Attorney.

Section 3: Authorization and Execution of the Agreement. The Village Manager and Village Clerk shall be, and hereby are, authorized to execute the final Agreement on behalf of the Village.

Section 4: Effective Date. This Resolution shall be in full force and effect upon passage and approval in the manner provided by law.

[SIGNATURE PAGE FOLLOWS]

APPROVED THIS 14th day of January, 2020



Gopal G. Lalimalani
Village President

PASSED THIS 14th day of January, 2020

Ayes: Trustees Baar, Cuevas, Manzo, Saiyed, Tiesenga, Yusuf,

Nays: None

Absent: None



ATTEST:



Charlotte K. Pruss
Village Clerk

EXHIBIT A

[Intergovernmental Agreement]

**INTERGOVERNMENTAL AGREEMENT FOR SPORTS CORE MANAGEMENT SERVICES
VILLAGE OF OAK BROOK—OAK BROOK PARK DISTRICT**

This INTERGOVERNMENTAL AGREEMENT ("Agreement"), dated this ____ day of _____, 2020 ("Effective Date") is by and between the VILLAGE OF OAK BROOK, 1200 Oak Brook Road, Oak Brook Illinois 60523, an Illinois municipal corporation ("Village") and the OAK BROOK PARK DISTRICT, 1450 Forest Gate Road, Oak Brook, Illinois 60523, an Illinois unit of local government ("Park District"). The Village and the Park District are sometimes referred to herein as "Party" and collectively as "Parties."

In consideration of the mutual covenants and agreements hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. RECITALS.

- A. The Village owns the Village Pool located at 800 Oak Brook Road, Oak Brook Illinois ("Village Pool"), and desires to engage the Park District to perform management services at the Village Pool as described in this Agreement. Whenever reference is made in this Intergovernmental Agreement to the Village Pool, it shall be a reference to all Pools presently located at 800 Oak Brook Road.
- B. The Village owns the Tennis Court located at 800 Oak Brook Road, Oak Brook Illinois ("Tennis Court"), and desires to engage the Park District to perform management services at the Tennis Court as described in this Agreement. Whenever reference is made in this Intergovernmental Agreement to the Tennis Court, it shall be a reference to all eight clay courts presently located at 800 Oak Brook Road.
- C. The Village owns the Soccer Fields located at 800 Oak Brook Road, Oak Brook Illinois ("Soccer Field"), and desires to engage the Park District to perform management services at the Soccer Field as described in this Agreement. Whenever reference is made in this Intergovernmental Agreement to the Soccer Fields, it shall be a reference to all nine (9) Fields presently located at 800 Oak Brook Road.
- D. Collectively the Village Pool, Tennis Court and Soccer Field as defined above shall be referred to herein as the "Facilities." The Village and the Park District mutually desire that the Park District assume the management and operation of the Facilities pursuant to the terms and conditions set forth in this Agreement for the recreational benefit of the residents of the Village and the Park District (the "Services").

SECTION 2. RETENTION, COMMENCEMENT AND REPORTING.

- A. Retention. The Village hereby retains the Park District and the Park District agrees to perform the Services as set forth herein.

- B. Commencement; Term; Time of Performance; Termination. The Park District shall commence performance of the Services annually, beginning on February 1, ("Commencement Date") and shall continue to perform the Services until the termination of this Agreement ("Time of Performance"). Unless terminated earlier pursuant to the terms and conditions of this Agreement, the term of this Agreement shall be three years. ("Term"). On or before October 1 of each calendar year that this Agreement is in effect, either party shall have the right to terminate this Agreement, which shall be effective on February 1 of the next ensuing year. Upon termination for any reason, or upon expiration of this Agreement, the Park District shall promptly return possession the Facilities to the Village in substantially the same condition as existed upon the Effective Date, normal wear and tear excepted.
- C. Reporting. The Park District shall regularly report to the Village Manager, or his designee, regarding the performance of the Services. The Village shall have the right to inspect any and all financial information relating to the performance of services described for the time period in which the Park District is performing the services described herein.

SECTION 3. COMPENSATION AND METHOD OF PAYMENT.

A. Payment.

1. On or before the Effective Date, the Park District shall pay to the Village \$1.00 (one dollar and no cents) per year ("Agreement Amount").
2. Except as otherwise provided in this Agreement, the Park District shall collect and retain all gross revenues generated by operation of the Facilities and shall pay for all labor and materials reasonably necessary for the operation of the Facilities.
3. The Park District agrees to invest 25% of the net profit from its operation of the Facilities for the purpose of improving the Facilities and related structures and the operation thereof in its reasonable discretion ("Annual Improvements"). Before proceeding with the Annual Improvements, the Park District shall provide notice to the Village stating the dollar amount equal to 25% of the annual net profit and describing the intended Annual Improvements ("Annual Improvements Notice"). In the event the Village does not agree on the intended Annual Improvements it shall notify the Park District in writing within fourteen days after its receipt of the Annual Improvements Notice. The Village's notification shall set forth the specific reasons for its objection. Promptly after the Park District's receipt of the Village's response to the Annual Improvements Notice, the Parties shall meet and determine a mutually acceptable allocation of the 25% net profit. If no agreement can be reached, either Party may terminate this Agreement upon sixty (60) days advance written notice to the other Party.

- B. Completion of Services. Prior to termination of this Agreement, the Park District shall complete all Services reasonably required to be performed up to and including the date of termination.

SECTION 4. STAFFING: SUBCONTRACTORS.

- A. Staffing. The Park District shall provide all personnel necessary to perform the Services, including the "key personnel" identified in Exhibit B attached hereto and incorporated herein by this reference. The Park District shall have full right and authority to manage and control all employees hired to provide services at the Facilities except that the Village shall be responsible for the acts, omissions or liabilities of any employee(s) engaged in activities directly for the benefit of, or on behalf of, the Village, including but not limited to any of the following activities: (i) activities that the Village is required to perform under the terms of this Agreement; and (ii) activities that provide a direct benefit exclusively for the Village under the terms of this Agreement, including but not limited to, employees engaged in: (a) concession related activities; (b) pool filling activities; (c) swim team activities; (d) assisting in the delivery of Andre's duties; (v) mowing and landscaping activities; (e) lightning detection system activities.
- B. Subcontractors. If any personnel or subcontractor engages in any illegal conduct or whose performance is unsatisfactory to the Village in the course of performance of the Services, the Village and the Park District shall meet and discuss said employee or subcontractor within 5 days of notice from the Village. Following said meeting the Park District shall determine whether removal or replacement of said employee or subcontractor is warranted and if it so determines, the Park District shall remove or replace said employee or subcontractor. Park District shall, within 14 days after its receipt of notice from the Village, remove and replace such personnel or subcontractor. Unless approved in advance by the Village, the Park District shall have no claim for damages, for compensation in excess of the amount contained in this Agreement or for a delay or extension of the Time of Performance as a result of any such removal or replacement. The Village shall not hire any subcontractors or employees to provide services, labor or material at any of the Facilities without the prior express consent of the Park District.
- C. Criminal Background Checks. The Park District shall obtain a criminal background check as required by applicable law for any Park District employee providing Services on Village property.

SECTION 6. INDEMNIFICATION; INSURANCE.

- A. Indemnification. To the fullest extent permitted by law, each Party shall each indemnify, defend and hold harmless the other Party, its elected and appointed officers, officials, employees, attorneys, volunteers and agents (collectively, the "Indemnitees"), from and against any and all claims, damages, losses and expenses, including but not limited to legal fees (attorneys' and paralegals' fees and court costs), incurred by any of the Indemnitees

for injuries to persons or for damage, destruction or theft of property arising out of or resulting from any activity, act or omission of the indemnifying Party ("Indemnitor"), or of any employee, agent, contractor or volunteer of the Indemnitor, but only to the extent caused in whole or in part by any wrongful or negligent act or omission of the Indemnitor.

- B. Insurance. Each Party, at its sole cost and expense, shall keep in full force and effect at all times during the Term and any Renewal Term of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with this Agreement. Each Party shall provide coverage that is at least as broad as:
1. Comprehensive general public liability insurance, including contractual liability coverages, and such other types of insurance in such amounts and with such A-rated companies or through self-insurance risk pools as are reasonably acceptable to the Village, but, in any event, no less than \$1,000,000.00 per occurrence. Such insurance shall be evidenced by annually providing to the other Party certificates of insurance. The Park District's policy (or in the event of self-insurance, coverage evidenced by certificate) will name the Village, its board, board members, employees, volunteers and agents as an additional insured. The Village's policy (or in the event of self-insurance, coverage evidenced by certificate) will name the Park District, its board, commissioners, employees, volunteers and agents as additional insureds.
 2. Workers' Compensation Insurance covering all costs, statutory benefits and liabilities under State Workers' Compensation and similar laws for their respective employees. Any employee claim related to this Agreement will be the responsibility of the Party employer and the other Party shall have no obligation whatsoever to provide workers' compensation for the other Party's employees.
 3. The Village shall maintain property insurance for the full replacement cost of the pool, tennis courts, soccer fields and related structures. The Park District will maintain insurance protecting against damage, destruction, theft or loss of any of its equipment located at the Facilities.
 4. For any events where liquor will be consumed, sold or distributed at any of the Facilities during the term of this Agreement, the Party hosting the event shall maintain liquor liability insurance against damages, claims and liability arising under the Illinois Dram Shop Act and Liquor Control Act in amounts not less than those required in section 6.B.1 above for comprehensive general public liability insurance, and shall also extend that coverage to the other Party as an additional insured.
- C. No Personal Liability. No elected or appointed official or employee of either Party shall be personally liable, in law or in contract, to the other Party, as the result of this Agreement, unless such elected or appointed official or employee engages in wrongful conduct that

causes bodily injury or property damage to the other Party, or any of the other Party's elected officials, officers, employees, volunteers agents or assigns.

SECTION 7. RESPONSIBILITIES OF THE PARTIES.

Pool

1. The Park District will keep the pool as a membership arrangement with a resident and non-resident rate but may increase the rates for both proportionately.
2. The Park District shall provide, or cause to be provided all marketing for the Facilities that the Park District determines is reasonable and necessary, including placement of information in their brochure.
3. The Village shall be entitled to collect the fees and related charges from the swim team.
4. The Village will maintain and operate the Concession Stand, at its sole cost and expense for the season. The Village will be entitled to all revenues generated by the Concession Stand. The Park District will have access to the ice machine.
5. The Park District shall be responsible for the opening and closing of the pool.
6. The Park District shall be responsible for the routine annual maintenance and repair of the pool, pool facilities and related pool equipment. The Park District agrees to comply with all applicable federal, state and local laws, regulations, ordinances or rules.
7. Park District shall provide all of the pool staff unless otherwise set forth herein including but not limited to life guards.
8. The Village shall be required to fill the pool at the beginning of each year.
9. The Village will pay Andre's to do the daily cleaning of the locker rooms, however, the life guards shall be required to perform routine spot checking and cleaning of said area.
10. The Village will cut the grass and perform the landscaping services around the pool.
11. The Village will provide and maintain a Thorguard Lightning Detection System at the Village Pool.

Tennis

1. The Park District would open and prepare the 8 clay courts.
2. The Park District shall hire a tennis professional, to manage the tennis program.
3. The Park District shall be required to make any repairs necessary to the nets.
4. The Village shall be required to make any repairs necessary to the fencing. The Village shall continue to provide irrigation to the tennis courts and will coordinate irrigation activities with the Park District before scheduling.

Soccer Fields

1. The Park District shall be responsible for the rental and lease of the soccer fields.
2. The Park District shall be responsible for cutting of the soccer field grass, fertilization and seeding of said fields consistent with the Park District's recreational standards.

3. The Village shall be entitled to collect all revenue from the rental of the soccer building from Eclipse.
4. The Village will continue to operate and maintain all irrigation of the soccer fields, and will coordinate the irrigation schedule with the Park District.

SECTION 8. RELATIONSHIP OF THE PARTIES, DEFAULT, COOPERATION.

- A. Relationship of the Parties. Nothing in, nor done pursuant to, this Agreement shall be construed (i) to create the relationship of principal and agent, employer and employee, partners, or joint venturers between the Village and Park District; (ii) to create any relationship between the Village and any subcontractor of the Park District or (iii) create any relationship between the Park District and any employee or subcontractor providing labor, material or services to or on behalf of the Village.
- B. Conflict of Interest. The Park District represents and certifies to the Village that, to the best of its knowledge, (i) no Village employee or agent is interested in the business of the Park District or this Agreement; (ii) as of the date of this Agreement neither the Park District nor any person employed or associated with the Park District has any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (iii) neither the Park District nor any person employed by or associated with the Park District will at any time during the Term or any Renewal Term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement. The Village represents and certifies to the Park District that, to the best of its knowledge, (i) no Park District employee or agent is interested in the business of the Village or this Agreement; (ii) as of the date of this Agreement neither the Village nor any person employed or associated with the Village has any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (iii) neither the Village nor any person employed by or associated with the Village will at any time during the Term or any Renewal Term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.
- C. Sexual Harassment Policy. Each Party hereby certifies to the other Party that is has a written sexual harassment policy in full compliance with Section 2-105(A)(4) of the Illinois Human Rights Act, 775 ILCS 5/2-105(A)(4).
- D. Compliance with Laws and Grants. Each Party shall give all notices, pay all fees, and take all other action that may be necessary to ensure that their respective duties under this Agreement are performed in accordance with all required governmental permits, licenses, or other approvals and authorizations that may be required in connection with said duties, and with all applicable statutes, ordinances, rules, and regulations, including without limitation: the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes prohibiting discrimination because of, or requiring affirmative

action based on, race, creed, color, national origin, age, sex, or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. Each Party shall also comply with all conditions of any federal, state, or local grant received by the Village or Park District with respect to this Agreement or the Services. Each Party shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise out of or in connection with that Party's, or its subcontractors', performance of, or failure to perform, its duties hereunder, or any part thereof.

- E. **Default.** If either Party fails to perform its material duties under the terms of this Agreement ("Event of Default") and fails to cure any such Event of Default within ten business days after the defaulting Party's receipt of written notice of such Event of Default from the non-defaulting Party, then the non-defaulting Party shall have the right, without prejudice to any and all legal and equitable remedies, to pursue any one or more of the following remedies:
1. **Cure by Defaulting Party.** The non-defaulting Party may require the defaulting Party, within a reasonable time, to take such action as is required to cure the Event of Default; and to take any or all other action necessary to bring the defaulting Party into compliance with this Agreement.
 2. **Termination of Agreement.** The non-defaulting Party may terminate this Agreement if the defaulting Party does not cure an Event of Default within 14 days after defaulting Party's receipt of notice of the default from the non-defaulting Party.
- F. **No Additional Obligation.** Neither Party is under any obligation as a result of this Agreement to negotiate or enter into any other or additional contracts or agreements with the other Party, or with any vendor solicited or recommended by the other Party.
- G. **Mutual Cooperation.** The Village agrees to cooperate with the Park District in the performance of the Services, and shall meet with the Park District promptly after the Effective Date to provide the Park District with any information in the Village's possession relevant and helpful to the Park District's performance of the Services, including without limitation, operating manuals, operating checklists, safety information, audits, health department inspection data and financial statements, income/operating statements, warranty and any other information related to operation of any of the Facilities over the last three years. Thereafter the Parties shall meet by agreement. Notwithstanding the foregoing, the Village acknowledges and agrees that the Park District will retain full operational control of the Facilities for the Term and any Renewal Term.

SECTION 9. GENERAL PROVISIONS.

- A. **Amendment.** No amendment or modification to this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved by both Parties, in accordance with applicable procedures, and executed.
- B. **Assignment.** This Agreement may not be assigned by the Village or by the Park District without the prior written consent of the other Party.
- C. **Binding Effect.** The terms of this Agreement shall bind and inure to the benefit of the Parties hereto and their agents, successors, and assigns.
- D. **Notice.** Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, (iv) by facsimile, or (v) by electronic internet mail ("e-mail"). Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three business days thereafter at the appropriate address set forth below. E-mail notices shall be deemed valid and received by the addressee thereof when delivered by e-mail and (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or above within three business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Subsection, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the Village shall be addressed to, and delivered at, the following address:

Village of Oak Brook
1200 Oak Brook Road
Oak Brook, Illinois 23

Attention: Riccardo F. Ginex, Village Manager
E-mail: rginex@oak-brook.org

Notices and communications to the Park District shall be addressed to, and delivered at, the following address:

Oak Brook Park District
1450 Forest Gate Road
Oak Brook, Illinois 60523

Attention: Laure L. Kosey, Executive Director Ed.D.
Manager Email: lkosey@obparks.org


- E. Third Party Beneficiary. No claim as a third party beneficiary under this Agreement by any person, firm, or corporation other than a Party shall be made or be valid against either Party.
- F. Provisions Severable. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- G. Time. Time is of the essence in the performance of this Agreement.
- H. Governing Laws. This Agreement shall be interpreted according to the laws of the State of Illinois.
- I. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any and all previous or contemporaneous oral or written agreements and negotiations between the Village and the Park District with respect to the Services.
- J. Waiver. No waiver of any provision of this Agreement shall be deemed to or constitute a waiver of any other provision of this Agreement (whether or not similar) nor shall any such waiver be deemed to or constitute a continuing waiver unless otherwise expressly provided in this Agreement.
- K. Exhibits. Exhibits are attached hereto and, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between any Exhibit and the text of this Agreement, the text of this Agreement shall control.
- L. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided to either Party by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies, and benefits allowed by law.
- M. Counterpart Execution. This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed the Agreement as of the date first above written.

VILLAGE OF OAK BROOK


By: Village President

ATTEST:


By: Village Clerk

OAK BROOK PARK DISTRICT


By: President, Board of Park Commissioners

ATTEST:


By: Secretary, Board of Park Commissioners