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**Special Meeting of the
HAMPSHIRE TOWNSHIP PARK DISTRICT
Board of Commissioners
October 9, 2023
4:00 p.m.
390 South Ave.**

AGENDA

- I. Call to Order**
- II. Pledge of Allegiance**
- III. Approval of Agenda**
- IV. Citizens to be Heard**
The public is invited to make an issue-oriented comment on any matter of public concern not otherwise on the agenda. The public comment may be no longer than 5 minutes in duration. Interrogation of the Park District Staff, President or Board of Commissioners will not be allowed at this time, nor will any comment from the Board.
- V. Commissioner and Staff Comments**
- VI. Old Business**
- VII. New Business**
 - A. Discussion and possible approval of a landscaping agreement with Crown companies or an affiliated entity
- VIII. Executive Session**
- IX. Adjournment** – Next meeting – October 23, 2023

In compliance with the Americans with Disabilities Act, if you need assistance or special accommodations in order to participate in the meeting, please contact the Hampshire Township Park District Administration Office at (847) 683-2690 a minimum of 72 hours in advance of the scheduled meeting. Every effort will be made to allow for meeting participation.



Memorandum

To: Hampshire Park District Board of Commissioners
From: Laura Schraw, Executive Director
Date: October 9, 2023
Agenda Item: VII.A.
Subject: Landscape Agreement

Background

The attached agreement is for the landscaping (grade/seed) of the parcel on State Street that the Park District has entered into a separate agreement to purchase. The developer indicated that they are working on other sites in the development and are prepared to complete the work on this parcel this fall. Typically fall planting has better germination rates. The terms of the attached agreement will include the reimbursement for the work as part of the purchase, however, should the Park District not purchase the land, the developer would still be reimbursed for the grade/seed work outside of the purchase.

Recommendation

Motion and a second to approve the landscaping agreement for the landscaping between Hampshire East LLC and Brier Hill Crossing, LLC.

LANDSCAPING AGREEMENT

FOR GRADING AND SEEDING

BETWEEN

HAMPSHIRE WEST LLC, AN ILLINOIS LIMITED LIABILITY COMPANY,

AND

THE HAMPSHIRE TOWNSHIP PARK DISTRICT

THIS LANDSCAPING AGREEMENT ("Agreement") is made and entered into as of _____, 2023, by and between **HAMPSHIRE WEST LLC, an Illinois Limited Liability Company** ("Developer") and the **HAMPSHIRE TOWNSHIP PARK DISTRICT, an Illinois park district**, located in Kane County, Illinois (the "Park"). Developer and the Park are hereinafter individually referred to as a "Party" and collectively as the "Parties."

RECITALS:

A. The Parties have previously entered into a Purchase and Sales Agreement dated April 20, 2023 , as amended (the "Purchase and Sale Agreement"), concerning the real property legally described on **Exhibit A**, attached hereto (the "Subject Property").

B. The Parties have agreed that it is desirable that the Subject Property be graded and seeded for the purpose of enhancing or protecting the Subject Property (the "Landscaping"). The Landscaping is limited to grading and seeding the Subject Property and no other improvements or services.

C. The Parties have agreed that the Developer will grade and seed the Subject Property, that such work may be done before the Subject Property is acquired by the Park pursuant to the Purchase and Sale Agreement and that the Park will be fully responsible for all costs and expenses related thereto.

D. The Developer undertaking the grading and seeding of the Subject Property benefits the health, safety and welfare of the residents of the Park.

E. The Park has the authority to enter into this Agreement pursuant to the Park District Code. 70 ILCS 1205/8-1.

F. The Park has adopted and shall adopt the necessary approvals required by the Park District Code to approve this Agreement and to authorize the payment contemplated above.

G. In reliance on the Park's covenants, agreements and representations contained in this Agreement, Developer has and shall incur substantial costs and expenses in funding the Landscaping.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. **Recitals.** The foregoing recitals are material to this Agreement and are expressly incorporated into and made a part of this Agreement as fully as though set forth in their entirety in this Paragraph 1. The Parties acknowledge the accuracy and truth of the foregoing recitals. All exhibits identified in this Agreement are hereby incorporated into and made part of this Agreement by this reference.

2. **Landscaping.** Developer shall grade and seed the Subject Property in accordance with **Exhibit B**. It is understood that grading may not be in strict compliance with **Exhibit B** because of its nature, but it will generally comply with **Exhibit B**.

3. **Obligations not Predicated on Purchase Agreement.** Park's obligations under this Agreement are not subject to its acquisition of the Subject Property, the Parties intent being to grade and seed the Subject Property on or before the dates herein provided, notwithstanding the Park may not have acquired title to the Subject Property or may never acquire title to the Subject Property.

4. **Certified Cost and Certified Capacity.**

(a) Developer's current estimate for the cost of the Landscaping is between \$65,000 and \$71,000 depending on site conditions (the "Estimated Cost"). The Estimated Cost is subject to change.

(b) The actual cost (the "Certified Cost") of constructing each component of the Landscaping shall include the following:

(i) All engineering costs and expense for preparation of plans, if any, for the grading and seeding and expenses incurred by Developer in designing and undertaking the Landscaping.

(ii) The total amounts paid in connection with the Landscaping which shall be verified by the Park's engineer's review of contracts, final waivers of lien, and proofs of payment;

(iii) All permit fees, construction engineering fees paid to the Park, or any other governmental agencies having jurisdiction over the Subject Property, in connection with the construction of each component of the Landscaping;

(iv) All costs and expenses paid or incurred in connection with the securing of any easements or licenses necessary to the construction, installation, and completion of each component of the Landscaping; and

(v) All costs and expenses paid or incurred by the Park, Developer, or their contractors in connection with the repair or replacement of each component of the Landscaping prior to completion of the Landscaping.

(c) Within thirty (30) days after the date of completion, the Park shall certify the Certified Cost for the Landscaping.

5. **Time of Performance.** Subject to seasonal delays, weather delays and matters beyond the control of Developer, the Landscaping will commence _____ and shall be completed no later than ____ days thereafter.

6. **Time of Payment.** The Park shall pay and reimburse the Developer for all costs and expenses set forth in Paragraph 3 above no later than thirty (30) days after the purchase of the land for the completion of the Landscaping to the reasonable satisfaction of the Park (completion of the Landscaping does not require any grass growth, the act of seeding being Developer's only obligation as to grass or plantings on the Subject Property). The Park shall make its determination of completion and acceptance of the Landscaping in writing. The Park shall deliver written acceptance of the Landscaping to the Developer. The Park shall be under no obligation to deliver the written instrument accepting the Landscaping prior to (a) the Park being in possession of all lien waivers and sworn contractors statements evidencing that the Developer paid for all improvements and other costs and expenses associated with the Landscaping; (b) the Park being in possession of all required permits or other documents; and (c) the Park being reasonably

satisfied with the Landscaping as undertaken by the Developer and its contractors. The payment contemplated by this Paragraph shall be made by wire transfer.

7. **Easements.** Park hereby grants to Developer and its agents and contractors, at no cost to Developer, any necessary temporary and non-exclusive personal easements for the construction and installation of the Landscaping, and access, egress, and ingress related to the undertakings set forth in this Agreement.

8. **Indemnification.** Each Party shall indemnify, defend and hold harmless the other and its officers, secretaries, clerks, employees, agents, representatives, attorneys, and engineers ("Indemnified Parties"), in both their official and individual capacities, from and against any litigation arising out of or in any way relating to the operation of or terms of this Agreement (other than litigation arising out of or relating to the wrongful acts or omissions of the Park Indemnified Parties or the claims or demands of Developer originating under this Agreement).

9. **Books and Records.** Developer and the Park shall maintain complete books and records showing their respective expenses kept in accordance with generally accepted accounting principles for construction of the Landscaping. The maintenance of such books and records by the Park shall be deemed complete if kept in accordance with generally accepted accounting principles as applied to park districts in the state of Illinois. Such books and records shall be available for examination by the duly authorized officers or agents of the Park and Developer during normal business hours, upon request being made a reasonable time prior to the intended examination date.

10. **Notice.** Any notice which any Party hereto may desire or may be required to give to any other Party shall be in writing and shall either be mailed by certified or registered mail,

postage prepaid, return receipt requested, or delivered by an overnight courier service (e.g., by Federal Express) to the respective addresses of the Parties set forth below. Mailed notices shall be deemed given two business days after the mailing thereof; notices delivered by an overnight courier service shall be deemed given the day following their delivery to such service. Any such notice may be served by personal delivery thereof to the other Party which delivery shall constitute service of notice hereunder on the date of such delivery.

If to the Park:	Hampshire Township Park District 390 South Ave. PO Box 953 Hampshire, IL 60140-0457 Attention: Executive Director- HTPD
If to Developer:	Hampshire West LLC 1751 West Diehl Road, Suite A Naperville, IL 60563 Attention: Theresa O. Frankiewicz
Copy to:	Gould & Ratner LLP 222 North LaSalle Street, Suite 300 Chicago, Illinois 60601 Attention: John Mays

or to such other address as any Party may, from time to time, designate in a written notice to the other Party.

11. **Successors and Assigns.** This Agreement shall inure to the benefit of, and be binding upon, successors, grantees and assigns of the Parties. No delegation of Developer's duties and obligations, however, shall relieve Developer of its obligations and liabilities under this Agreement, unless said third party purchaser fully accepts and assumes responsibility, in writing directed to the Park, for all duties and obligations of Developer relating to the Subject Property.

12. **Merger/Amendment.** This Agreement and the agreements identified herein contain the entire agreement of the Parties relative to the subject matter hereof. The same may be modified only by a written instrument executed by the Party to be charged. In the event of any inconsistency between the terms of this Agreement and the terms of the Purchase and Sales Agreement, the terms of this Agreement shall control.

13. **Remedies.**

(a) It is agreed that the Parties may, at law or in equity, by suit, action, mandamus or other proceeding, enforce or compel the performance of this Agreement. No action taken by any Party hereto pursuant to the provisions of this Article or pursuant to the provisions of any other Article of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity.

(b) In the event of a material breach of this Agreement, the Party claiming breach shall give prompt written notice of such alleged breach to the other Party and the Party receiving such notice shall have thirty (30) days after receipt of such notice to correct such alleged breach, prior to the seeking by the Party affected by such default of any remedy provided for herein (provided, however that said 30-day period shall be extended if the defaulting Party has initiated the cure of said default and is diligently proceeding to cure the same or if such cure cannot be performed due to weather or seasonal limitations.).

(c) The failure of a Party to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon

the Party imposed, shall not constitute or be construed as a waiver or relinquishment of such Party's right thereafter to enforce any such terms, covenants, agreements or conditions, but the same shall continue in full force and effect.

14. **No Third-Party Beneficiaries.** Except as otherwise specified herein, the provisions of this Agreement are for the exclusive benefit of the Park and the Developer, their successors and assigns, and not for the benefit of any third person or entity, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person or entity.

15. **Captions and Designations.** Throughout this Agreement, the singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires. Article and paragraph numbers and caption headings are purely descriptive and shall be disregarded in construing this Agreement.

16. **Severability.** If any provision of this Agreement is held to be invalid by any court of competent jurisdiction, such provision shall be deemed to be excised from this Agreement and the invalidity thereof shall not affect any other provision contained herein. No Party to this Agreement shall contest its validity or enforceability, or assert the invalidity or unenforceability of any provision of this Agreement.

17. **Further Assurances.** The Parties shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions and in furthering the intentions of the Parties as evidenced by such terms and provisions. Specifically, but without limitation, the Park shall enact such resolutions and ordinances and take such other actions as may be necessary or desirable to enable the Park

and Developer to comply with and effectuate the terms and provisions hereof and to further the intentions of the Parties as evidenced by the terms and provisions of this Agreement.

18. **Authorizations.** The Parties represent and warrant that the individuals executing this Agreement on their behalf have been duly authorized to do so and that all necessary actions, authorizations, resolutions and approvals have been secured prior to the execution and delivery of this Agreement.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized corporate officers all as of the day and year first above written.

**HAMPSHIRE TOWNSHIP PARK DISTRICT, an
Illinois Park District**

By: _____
Its: President

ATTEST:

By: _____
Its: Park Secretary

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

I, the undersigned, a Notary Public in and for said County and State aforesaid, DO
HEREBY CERTIFY that _____
and _____, personally known to me to
be the Park President and Park Secretary, respectively, of the **PARK OF HAMPSHIRE**, and
personally known to me to be the same persons whose names are subscribed to the foregoing
Agreement, appeared before me this day in person and severally acknowledged that as such Park
Mayor and Park Secretary, they signed and delivered this Agreement, pursuant to authority given
by the Park Board, as their free and voluntary act and deed of said Park, for the uses and purposes
therein set forth.

GIVEN under my hand and seal, this ____ day of _____, 2023.

Notary Public

**HAMPSHIRE WEST LLC, an Illinois Limited
Liability Company**

By: _____
Its: _____

STATE OF ILLINOIS)
) SS
COUNTY OF KANE)

I, _____, a Notary Public in and for said County, in the State
aforesaid, DO HEREBY CERTIFY that _____ of **Hampshire
West LLC, an Illinois Limited Liability Company**, personally known to me to be the same person
whose name is subscribed to the foregoing Agreement, appeared before me this day in person and
acknowledged that he signed, sealed and delivered the Agreement, on behalf of the Limited
Liability Company and as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this ____ day of _____, 2023.

Notary Public

EXHIBIT A
The Subject Property

EXHIBIT B
The Landscaping