

PUBLIC WAY USE AND MAINTENANCE AGREEMENT

THIS AGREEMENT (the "Agreement") is entered into as of this 3rd day of April, 2023 (the "Effective Date"), by and between the **City of Chicago**, an Illinois home rule municipality, acting by and through its Commissioner of Transportation ("CDOT Commissioner") and Commissioner of the Department of Water Management ("DWM Commissioner") (collectively, the "City"), and the **Board of Education of the City of Chicago School**, an Illinois body politic and corporate, commonly known as the Chicago Public Schools ("Board" or "CPS"). The CDOT Commissioner and DWM Commissioner collectively shall be referred to as the "Commissioners".

WITNESSETH:

WHEREAS, CPS is the owner of the Hibbard Elementary School located at 3244 W. Ainslie St, Chicago, IL 60625 ("Abutting Property"); and

WHEREAS, the City is the public trustee for (owner of) and maintains the public way named North Sawyer Avenue, a local public street within the corporate boundary of the City; and

WHEREAS, CPS desires to use, occupy, improve, and maintain for a public purpose as a playground, open space serving a public school, and other school related purposes ("Authorized Purpose") in that portion of Sawyer Avenue as shaded in orange in **Exhibit A** which is attached and incorporated ("Parcel"); and

WHEREAS, in connection with such desired use, CPS proposes to improve the Parcel for its use as depicted in **Exhibit B** which is attached and incorporated ("Project Concept"); and

WHEREAS, the Parcel shall remain the "public way" as defined under Section 1-4-090(f) of the Municipal Code of Chicago; and

WHEREAS, the City owns, repairs, and maintains the existing water infrastructure, the sewer main infrastructure, the street lighting and associated appurtenances located in and adjacent to the Parcel (collectively the "City Assets"); and

WHEREAS, CPS has agreed to maintain the improvements that it constructs and installs in implementing the Project Concept, and also the catch basins falling within the Parcel ("Parcel Catch Basins") as well as any sewer infrastructure installed by CPS; and

WHEREAS, CPS desires that it be granted permission and authority to use, improve and maintain the Parcel for such Authorized Purpose, and, to the extent of its authority, the City desires to grant such permission and authority for the Authorized Purpose of supporting a public school within its corporate boundary;

NOW, THEREFORE, for consideration described in the foregoing recitations which are hereby mutual acknowledged, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, CPS and the City agree as follows:

1. **Permission and Authority.** The CDOT Commissioner hereby grants to CPS, and the CPS hereby accepts from City, the permission and authority to use and occupy the public way of the Parcel as provided in this Agreement for the Authorized Purpose ("Permit").

2. **Term.** Subject to the provisions of Section 13 hereof, the term of the Permit shall be ten (10) years commencing with the Effective Date hereof, with two (2) automatic renewal periods of ten (10) years each.
3. **Project.** CPS, at its sole cost and expense, shall be responsible for and pay for the design, construction, installation operation, maintenance, inspection, repair, replacement, reconstructing and, as authorized herein, removal of all improvements, equipment and facilities constructed or installed by CPS for the Authorized Purpose all in accordance with this Agreement ("Project"). As a part of the Project, no temporary or permanent buildings or other structures shall be erected upon or over the City Assets within the Parcel.
4. **City Approval of Construction of Improvements.** Work performed by or for CPS in furtherance of the Project ("Project Work"), includes Project Work which has been installed and completed prior to the date of this Agreement and such installed and completed Project Work is described on **Exhibit C**, attached hereto and made a part hereof ("Prior Project Work"). Prior to performing any additional Project Work, CPS shall prepare and deliver to each of the Commissioners for review and approval proposed plans and specifications for the Project Work, which shall be in compliance with this Agreement. CPS shall expressly warrant with submittal of the proposed plans and specifications that they have been prepared under the direct supervision of the CPS and are or will be in full compliance with all applicable laws, ordinances and other governmental regulation including, but not limited to all City Standards and "Title 35 of the Administrative Code: Environmental Protection" requirements ("Law"). Upon approval by the Commissioner, the plans and specifications shall be known as the Project Plans. CPS also hereby warrants that all Prior Project Work was performed in compliance with the Law.
5. **Utilities and public service facilities adjustments.** CPS shall be responsible for obtaining permits and approvals, and performing and/or paying for any and all removals, relocations, alterations, additional maintenance and restorations of or to any utility or public service structures or facilities, including the catch basins installed on the Parcel ("Parcel Catch Basins") and any other City-owned or City-controlled structures or facilities located in or adjacent to the Parcel ("Utility Facilities"), which work is, in the sole reasonable opinion of the Commissioners, necessary or appropriate for construction of the Project and/or the Project Work. CPS shall be solely responsible for obtaining the required permits, consents, and approvals from, and making suitable arrangements with, all entities owning or having an interest in the Utility Facilities, including any department of the City, and the Permit is granted subject to the existing Utility Facilities, including the access necessary for the maintenance thereof. CPS shall pay costs resulting from the construction, maintenance or use of the Project and the Project Work; provided, however, that City restoration of the Parcel and Project following the performance of City work or adjacent to the City Assets or on or in the Parcel, shall be governed by Sections 9(c) and 11 below.
6. **Completion of Construction.** CPS shall diligently pursue and complete all Project Work on a timely basis, and all Project Work shall be subject to final inspection required by the Commissioners. CPS shall submit before and after construction televising reports of City's sewer main on the Parcel and catch basin outlets, including the Parcel Catch Basins, for such review and approval by the DWM Commissioner.

7. **Restriction on Uses within Parcel.** To the extent authorized by Law, CPS may restrict the public use of the Parcel to the Authorized Purpose subject to reasonable regulations reasonably and fairly applied.
8. **Compensation.** Because the installation, construction, use, operation, maintenance, inspection, repair, replacement, reconstruction and removal of the Project and the performance of the Project Work for the Authorized Purpose in accordance with this Agreement will benefit the public as required pursuant to the public trust by which the City holds legal title to the Parcel on behalf of the people of the State of Illinois, the Permit is hereby granted without requiring payment of compensation by CPS.
9. **Maintenance.**
 - a. CPS shall maintain the Project, Parcel Catch Basins, Project Work, and any portion of the Abutting Property or facilities located thereon which supports or serves the Project and Project Work, so that they do not materially and adversely interfere in any way with the use of the portions of the public way outside of the Parcel. In addition, CPS shall maintain the Parcel, Parcel Catch Basins, and Project Work including sewer facilities installed, owned, and maintained by CPS (“CPS Sewer Infrastructure”), and portions of the Abutting Property supporting the Project in a neat, clean and usable condition consistent with general custom and practice for similar improvements located on CPS properties.
 - b. CPS shall provide and maintain adequate drainage of the Parcel and the Abutting Property, and shall be responsible for any drainage issues or damage that arise or are caused by or related to the Parcel Catch Basins or CPS Sewer Infrastructure.
 - c. After the completion of the Project Work, CPS shall be responsible for the Project Work, including any CPS-owned infrastructure or utilities; the City shall be responsible for the repair and maintenance of the City Assets.
10. **City has no maintenance or operational duties.** CPS acknowledges that City is not responsible for the operation, maintenance, repair of or security of the Parcel, the Project, the Project Work, or any private infrastructures, or utilities within the Parcel installed by CPS or any facilities on the Abutting Property, nor is City responsible for anyone coming into contact with such items, and City has no obligations with respect thereto.
11. **City access.** CPS acknowledges that, prior to and upon completion of the Project Work, the City, acting through its Department of Water Management, shall have continuous 24-hour access in and through the Parcel to repair, maintain, replace, or relocate the City Assets (“City Work”). Except for emergencies, the City shall coordinate access in and through the Parcel with CPS in order to undertake the City Work. In the event the need for such City Work arises, the City shall pay for the costs associated with the City Work. Upon completion of the City Work, the City shall be under no obligation to return the Parcel to the condition the Parcel was in prior to the commencement of the City Work, provided however, that the City shall be responsible for repairing the Parcel to such condition so that CPS can re-install its improvements.
12. **Compliance with Law.** CPS agrees that the Parcel, Project Work and Project shall be used and the Project shall be constructed, installed, used, operated, inspected, maintained, repaired and replaced in compliance with Law.

13. **Amendment and early termination.** The Permit shall be subject to termination or amendment for any reason in the sole and reasonable discretion of the Commissioner upon 60 days written notice to CPS. CPS may obtain a postponement of such termination or amendment for an additional 60-day period by providing timely written notice to the Commissioner with a detailed description of the reasons why such termination or amendment would cause hardship to CPS. Any amendment shall be in writing and signed by both parties. In the event CPS determines in its reasonable discretion that any amendment would not be in the best interest of CPS or would cause hardship, CPS may terminate the Agreement upon 60 days written notice to the City.
14. **Removal and Restoration.** Prior to the expiration or within 180 days of the termination of the Permit, CPS shall, without cost or expense to the City, completely remove the Project and Project Work and restore the Parcel and the adjacent public ways to the extent altered or disturbed by the Project or Project Work. Such restoration shall be with new materials and shall be subject to the reasonable inspection and approval by the Commissioners or their respective designee. In the event that CPS shall fail to comply with such restoration obligation, the Commissioner may cause such work to be performed on behalf of CPS and upon its receipt of a statement detailing costs and demanding payment therefor, CPS shall immediately reimburse the City for all such costs that it has reasonably incurred.
15. **Indemnity.** To the full extent under the Law, CPS shall indemnify, defend and hold harmless the City, its officers, agents and employees (collectively, the "City Parties") from and against any and all liability, loss, damage, costs and expenses (including reasonable attorneys' fees) for injury to person or death or property damage arising out of or resulting from the Project or the Project Work, or the use of the Parcel by CPS, their agents, employees, lessees, permittees, licensees, or invitees, except to the extent proximately caused by a City Parties. Upon City's notice to CPS of any claim for which City intends to be indemnified under this provision, CPS may request, and City shall grant tender of the defense of the claim which CPS may settle only with the consent of the City, which consent shall not be unreasonably withheld or denied. To the extent permissible by Law, CPS hereby waives any limits to the amount of its obligations to indemnify, defend, hold harmless or contribute to same, any sums due under any losses, including any claim by an employee of CPS that may be subject to the Workers Compensation Act, 820 ILCS 305/1 et seq or any other law or judicial decision (See, *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991)).
16. **Insurance.** At all times during any Project Work performed by CPS contractors, CPS shall maintain or cause each contractor to maintain in full force and effect such policies of insurance with such coverages and endorsements that are, in the sole opinion of the City Risk Manager, appropriate therefor. Prior to the commencement of any Project Work, CPS shall submit for approval by the City Risk Manager, evidence of all required coverages, together with evidence of having the City named as an additional insured on all appropriate policies of insurance obtained by CPS or its contractors in connection with the Project Work. CPS represents and warrants that its self-insurance program is and will be managed and conducted in good faith and in accordance with all applicable Law.

17. Notices

- (a) All notices or other communications required or given under the terms of this Agreement shall be in writing, and may be delivered by: (i) personal delivery; (ii)

commercial overnight courier service; (iii) certified mail, return receipt requested; or (iv) email followed by an acknowledgment of receipt to:

If to CPS: Chicago Board of Education
42 W. Madison Street, 3rd Floor
Chicago, Illinois 60602
Attn: Chief Operating Officer

With a copy to: General Counsel
Chicago Board of Education
1 North Dearborn Street, 9th Floor
Chicago, Illinois 60602
Attn: Ruchi Verma, General Counsel
rverma@cps.edu

If to City: City of Chicago
Department of Transportation
Project Coordination Office
City Hall room 905
121 North LaSalle
Chicago, Illinois 60602
Attention: Bryan Gallardo, Assistant Commissioner
bryan.gallardo@cityofchicago.org

With a copy to: City of Chicago
Department of Water Management
1000 E. Ohio Street
Chicago, Illinois 60611
Attn: Commissioner
Andrea.Cheng@cityofchicago.org

With copy to: Corporation Counsel
City of Chicago
City Hall, Room 600
121 N. LaSalle Street
Chicago, IL 60602
Attention: Deputy Corporation Counsel – Real Estate
Lisa.misher@CityofChicago.gov

(b) A notice shall be deemed to have been served upon receipt.

(c) Either party may change the address to whom service of notices shall be sent by sending a notice as provide in this Section 17.

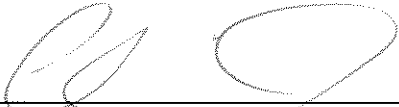
18. Covenants Running with the Land. This Agreement and all rights granted and obligations created shall run with the Abutting Property and shall bind, be enforceable by, and inure to the benefit of the City, CPS and their respective successors and assigns.


19. **Illinois Law and Public Trust.** This Agreement has been negotiated, executed and delivered, and shall be construed and enforced in accordance with the laws of Illinois, including the law of public trust with respect to the use and occupation of a public way. In the event that the City is required to exercise its discretion and does require changes to the Parcel, the Project or the Project Work, the City agrees to exercise its discretion under the public trust to reasonably minimize disruption or impact to CPS.
20. **Recordation Permitted.** Either party, at its sole expense, may, without the consent of the other party, record this Agreement. The party recording this Agreement shall provide the other party with a copy of the recorded Agreement in a timely manner.
21. **Authority and Validity.** CPS represents that this Agreement is duly authorized by Board Rule 7-13(b). The City represents that this Agreement is duly authorized by Municipal Code of Chicago Section 2-102- 030(w).

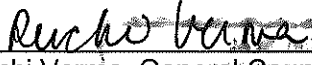
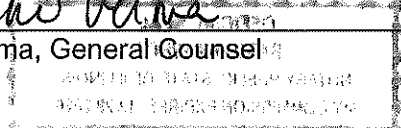
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IN WITNESS WHEREOF, CPS and City have caused this Agreement to be executed by their duly authorized officers, as of the day and year first written above.

Board of Education of the City of Chicago,
an Illinois body politic and corporate

By: 
Name: Charles E. Mayfield
Interim Chief Operating Officer

Approved as to legal form: 

By: 
Ruchi Verma, General Counsel


CITY OF CHICAGO, a municipal corporation

By: _____
Commissioner of Transportation

CITY OF CHICAGO, a municipal corporation

By: _____
Commissioner of Water Management

APPROVED AS TO FORM AND LEGALITY:

By: _____
Asst. Corporation Counsel

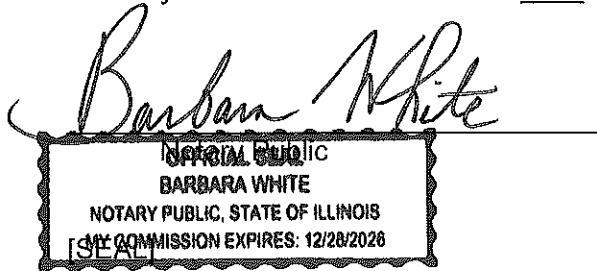
State of Illinois)

County of Cook)

) SS

I, Barbara White, a notary public in and for said county, in the State aforesaid do hereby certify that Charles E. Mayfield _____, personally known to me to be the Interim Chief Operating Officer _____ of the Board of Education of the City of Chicago, an Illinois body politic and corporate, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that in such capacity, he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said body for the uses and purposes therein set forth.

Given under my hand and notarial seal this 23rd day of March, 2023.



State of Illinois)

County of Cook)

) SS

I, _____, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Gia Biagi, personally known to me to be the Commissioner of Transportation of the City of Chicago, an Illinois municipal corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day and acknowledged that as said Commissioner, she signed and delivered said instrument, as her free and voluntary acts, and as the free and voluntary acts and deed of said corporation, for the uses and purposes therein set forth.

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

[SEAL]

Notary Public

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

Board of Education of the City of Chicago,
an Illinois body politic and corporate

By: _____
Name: Charles E. Mayfield
Interim Chief Operating Officer

Approved as to legal form:

By: _____
Ruchi Verma, General Counsel

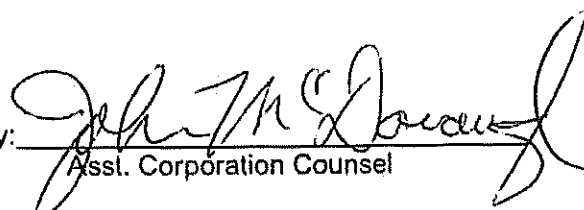
CITY OF CHICAGO, a municipal corporation

By:  _____
Commissioner of Transportation

CITY OF CHICAGO, a municipal corporation

By: _____
Commissioner of Water Management

APPROVED AS TO FORM AND LEGALITY:

By:  _____
Asst. Corporation Counsel

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

Board of Education of the City of Chicago,
an Illinois body politic and corporate

By: _____
Name: Charles E. Mayfield
Interim Chief Operating Officer

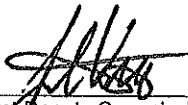
Approved as to legal form:

By: _____
Joseph T. Moriarty, General Counsel

CITY OF CHICAGO, a municipal corporation

By: _____
Commissioner of Transportation

CITY OF CHICAGO, a municipal corporation

By:  _____
First Deputy Commissioner
Department of Water Management

APPROVED AS TO FORM AND LEGALITY:

By: _____
Asst. Corporation Counsel

State of Illinois)
) SS
County of Cook)

I, _____, a notary public in and for said county, in the State aforesaid do hereby certify that Charles E. Mayfield _____, personally known to me to be the Interim Chief Operating Officer _____ of the Board of Education of the City of Chicago, an Illinois body politic and corporate, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that in such capacity, he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said body for the uses and purposes therein set forth.

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

Notary Public

[SEAL]

State of Illinois)
) SS
County of Cook)

I, _____, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Gia Biagi, personally known to me to be the Commissioner of Transportation of the City of Chicago, an Illinois municipal corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day and acknowledged that as said Commissioner, she signed and delivered said instrument, as her free and voluntary acts, and as the free and voluntary acts and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 3rd day of April, 2023.

Rachel Decorvo

[SEAL]

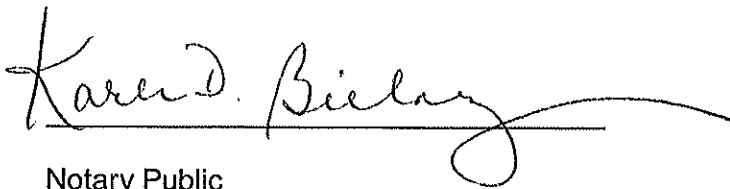
Notary Public



State of Illinois)
) SS
County of Cook)

I, Karen D. Bielarz, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Joel Vieyra, personally known to me to be the First Deputy Commissioner of Water Management of the City of Chicago, an Illinois municipal corporation, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day and acknowledged that as said First Deputy Commissioner, he signed and delivered said instrument, as his free and voluntary acts, and as the free and voluntary acts and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal, this 3rd day of April, 2023.



Notary Public

[SEAL]

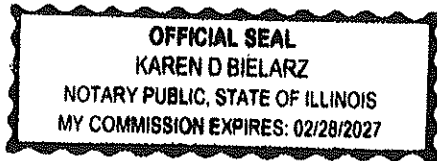


Exhibit A

Parcel

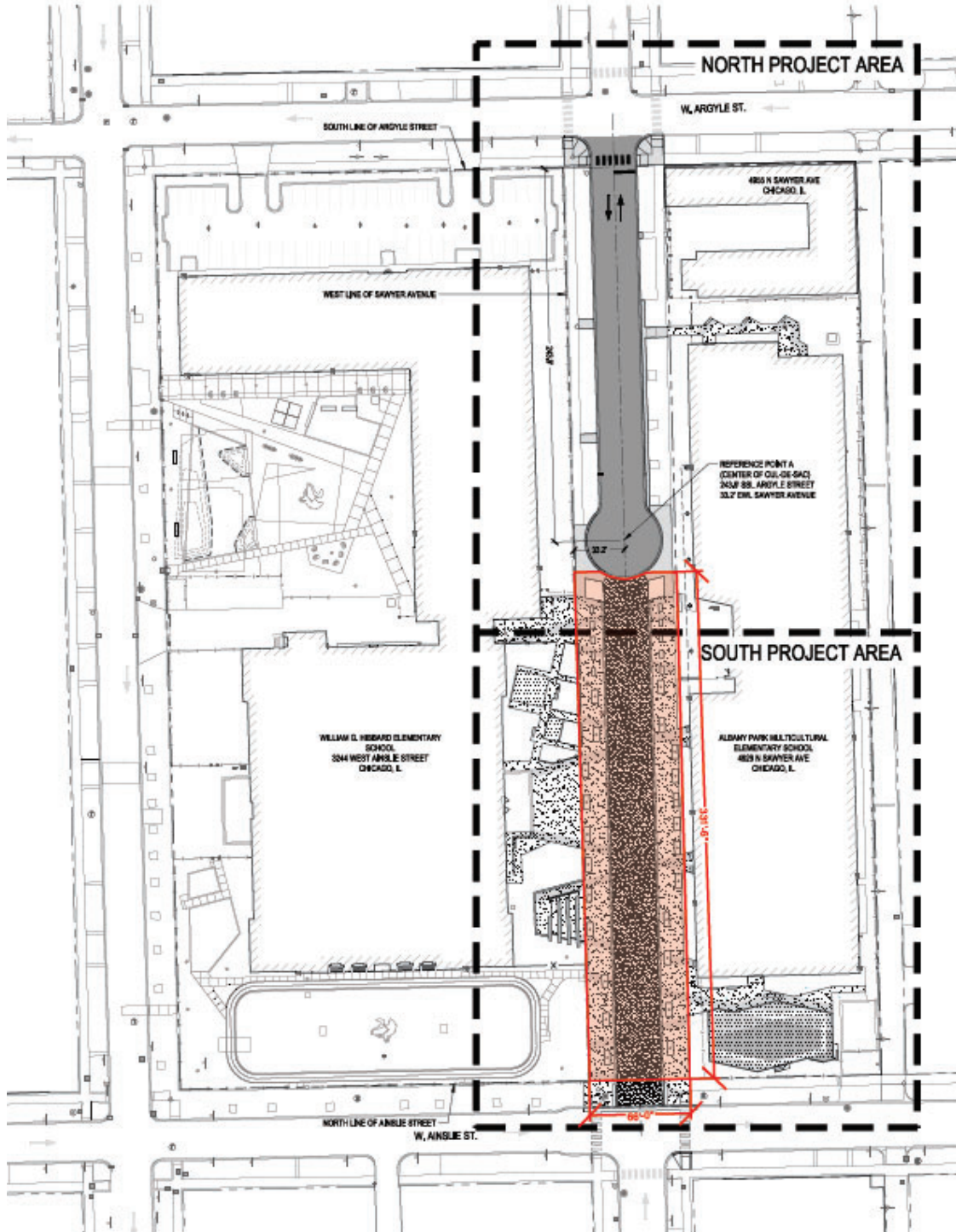
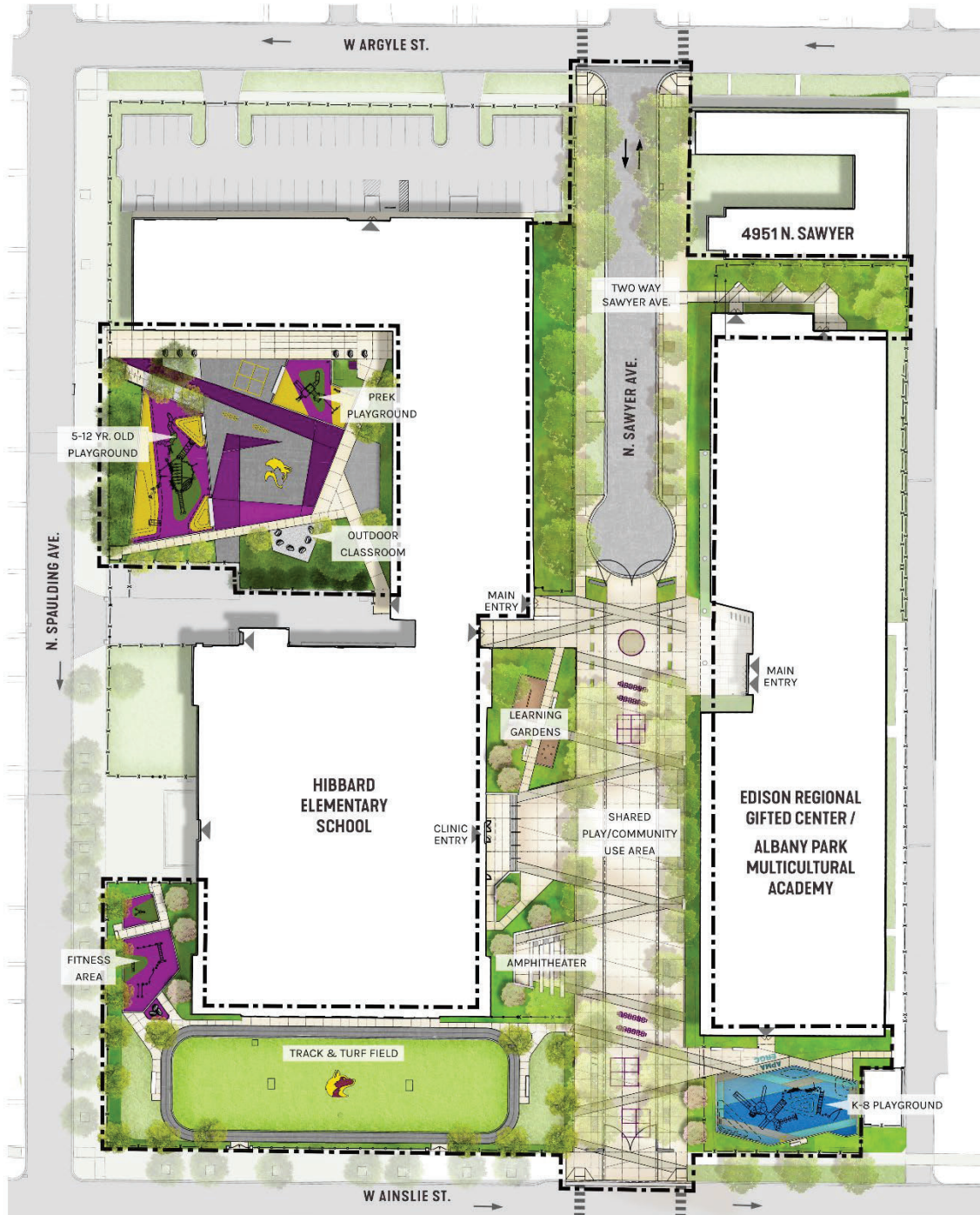


Exhibit B

Project Concept



HIBBARD / EDISON / APMA CAMPUS PLAN



MAY, 2021



SMITHGROUP

EXHIBIT C
PRIOR PROJECT WORK

The improvements to the site include natural and artificial turf, drainage infrastructure, architectural seating and pedestrian spaces, playground equipment, outdoor classrooms, open interactive spaces and sustainable site development features.

The Project Work includes:

Tier 1 – New Infrastructure including:

- Concrete Flatwork
- Structural Soil
- Underdrains

Tier 2 – Aboveground elements

- Raised planters (10)
- Gate and Masonry Wall Sign system (2)
- Tree grates (23)
- Bike Racks (6)
- Light Poles at east playground (2)
- Freestanding concrete seatwall – cast in place (2)
- Game pavement striping