

**RESOLUTION NO. R-17-35**

**A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF WOOD DALE AND MAHER-LUMBER-MILLWORK FOR WORK ON THE MAHER PARKING LOT IN A NOT TO EXCEED AMOUNT OF \$115,500.00**

**WHEREAS**, the City of Wood Dale (hereinafter referred to as "City") is a body politic and corporate, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; and

**WHEREAS**, the City is authorized and empowered, pursuant to the Illinois Municipal Code to enter into agreements in furtherance of its statutory charges; and

**WHEREAS**, the City utilized the property of Maher Lumber-Millwork Company (hereinafter referred to as "Maher") during the construction of the City's Wastewater Treatment Plant expansion for staging and parking; and

**WHEREAS**, the City and Maher agreed that the City would be responsible for any and all excessive wear and tear and damages occasioned by the use of the Maher Parking Lot by the City and its contractors; and

**WHEREAS**, Maher is scheduled to improve its Parking Lot, including repair of the excessive wear and tear and damage resulting from the City's use of said Parking Lot; and

**WHEREAS**, the City determined that it is possible to remedy a water drainage issue in the area as part of the Maher Parking Lot improvements; and

**WHEREAS**, the City has agreed to pay for the remedy to the water drainage issue and for the damages to the Parking Lot from the City's use thereof; and

**WHEREAS**, the City has determined that it is in the best interests of the City and its Citizens to enter into a Redevelopment Agreement in connection with the Project, as

fully detailed in the Agreement, a copy of which is attached hereto and incorporated by reference herein as Exhibit A.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WOOD DALE, DUPAGE COUNTY, ILLINOIS, as follows:**

**SECTION 1:** The recitals set forth above are incorporated herein and made a part hereof.

**SECTION 2:** That the Mayor and City Clerk are hereby authorized to, and directed to execute the City of Wood Dale/Maher Lumber-Millwork Redevelopment Agreement attached hereto and incorporated by reference herein as Exhibit A.

**SECTION 3:** That this Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this 18th day of May 2017.

AYES: Aldermen Catalano, Jaxas, Messina, Sorrentino, Susmarski, E. Wesley  
and Woods

NAYS: None

ABSENT: None

Abstained: Alderman Roy Wesley

APPROVED this 18th day of May 2017.

SIGNED: Annunziato Pulice

Annunziato Pulice, Mayor

ATTEST: Shirley J. Siebert  
Shirley J. Siebert, City Clerk

**CITY OF WOOD DALE/ MAHER LUMBER-MILLWORK**

**REDEVELOPMENT AGREEMENT**

THIS AGREEMENT entered into this 18th day of May, 2017, by and between Maher Lumber-Millwork (hereinafter “Maher”) and the City of Wood Dale, Illinois (hereinafter referred to as the “City”), a unit of local government located in DuPage County, Illinois. Maher and the City are collectively referred to as “Parties”.

WITNESSETH:

WHEREAS, Maher owns certain real property (hereinafter referred to as “Subject Property”) which is reflected upon the Plat of Survey, a copy of which is attached hereto and incorporated herein by reference as Exhibit “A”, which Subject Property is legally described in the Plat of Survey; and

WHEREAS, Maher wishes to install a new inlet in the southeast corner of the Subject Property connecting to the existing Parking Lot on the Subject Property (hereinafter referred to the “Improvement”); and

WHEREAS, during the construction of the City’s Wastewater Treatment Plant expansion, by agreement of the Parties, Maher permitted the City and its contractors to utilize the Maher Parking Lot during the construction of the Wastewater Treatment Plant expansion for parking and staging during the duration of the Wastewater Treatment construction ; and

WHEREAS, the Parties agreed that the City would be responsible for any and all excessive wear and tear and damages occasioned by the use of the Maher Parking Lot by the City and its contractors; and

WHEREAS, the City agreed that, upon the completion of the Wastewater Treatment Plant construction, the City would provide Maher with financial remuneration to compensate Maher for the excessive wear and tear and the damages resulting from said construction; and

WHEREAS, the Parties have estimated that the excessive wear and tear and damages to the Maher Parking Lot resulting from the construction of the City's Wastewater Treatment Plant expansion to be approximately \$60,000.00; and

WHEREAS, the Parties have determined that it is possible to remedy a water drainage issue in the southeast corner of the Maher Property, adjacent to and including, a portion of the City owned Property through sharing in the cost of certain drainage improvements; and;

WHEREAS, Maher now desires to improve its Parking Lot, including the repair of the excessive wear and tear and damage to the Parking Lot resulting from the City's use of said Parking Lot during the construction of the Wastewater Treatment Plant, along with certain drainage improvements to remedy the drainage issues on the Maher Property and the adjacent City Property; and

WHEREAS, the Parties wish to memorialize their collective understanding in a Re-Development Agreement delineating the responsibilities of the Parties.

NOW, THEREFORE, in consideration of the promises and covenants in the Re-Development Agreement of Maher and the City herein, it is agreed to by and between the Parties as follows:

**I. Incorporation for Recitals.**

The foregoing recitals are incorporated herein as if fully set forth in this Section I.

**II. Approval by the Corporate Authorities of the City.**

Prior to such approval by the Corporate Authorities of the City (hereinafter “City Council”) of this Redevelopment Agreement, the Community Development Department reviewed the Redevelopment and improvements of the Maher Property and recommends approval thereof. Accordingly, the *City of Wood Dale/Maher Lumber-Millwork Redevelopment Agreement* is hereby approved.

**III. Stormwater Permitting Required.**

Within thirty (30) days of the date hereof, Maher will apply for a Stormwater Permit for any work contemplated in the floodplain to allow the collected stormwater to be conveyed to the Compensatory Storage Basin on the City’s Wastewater Treatment Plant property adjacent to Veterans Park, in accordance with the Final Engineering Plans, which have been approved by the City Engineer. Thereafter the Subject Property shall be used only as and for the development contemplated herein and no other uses. Accordingly, there shall be no further development of the Subject Property or any part thereof, unless by the mutual agreement of the Parties.

A. The Parties acknowledge that the Redevelopment will entail construction of certain improvements (hereinafter referred to as “Improvements”).

1. The Improvements and their appurtenances consist of three (3) Phases: The Red Phase, which consists of the North side of the yard, which is approximately 57,062 square feet; the Blue Phase, which consists of the East side of the Parking Lot, which approximates 50,462 square feet; and the Yellow Phase, which consists of the West side of the Parking Lot, which is approximately 26,976 square feet. See Bituminous Pavement and Stormwater Improvement

identified in Exhibit "B", a copy of which is attached hereto and incorporated herein by reference.

a. Drainage improvements providing for level transitions for the inlets/sewers.

b. Parking Lot improvements consisting of the removal of any damaged concrete and asphalt pavement, installing new concrete "O" rings, installation of 4" Bituminous Binder, 2" Bituminous Surface and re-stripping of the newly constructed Parking Lot.

B. Following approval by the City Council, the City and Maher will share in the costs of the improvements contemplated herein. The total cost of the Project is \$497,975.00. The cost of the Red Phase of the Project is \$216,835.00. Maher Lumber is solely responsible for the total costs of the Red Phase of the Project. The cost of the Blue Phase of the Project is \$179,645.00. The City will be responsible for its proportionate share of the replacement cost for said Phase of the Project in the amount of \$67,000.00. The cost of the Yellow Phase of the Project is \$101,495.00. The City will be responsible for its proportionate share of the replacement cost for said Phase of the Project in the amount of \$36,000.00. The cost of the work to remedy the water drainage problem on the Maher Property and adjacent City Property is \$12,500.00. The City will be responsible for the costs to remedy the water drainage issue, said costs totaling \$12,500.00.

C. Construction on the Improvements shall commence on or before June 19, 2017, which period of time shall be extended automatically because of delays caused by *force majeure*. The improvements, including drainage, Parking Lot and landscaping, in accordance with the Plan, a copy of which is attached hereto and incorporated herein by reference as Exhibit "C", and the Storm Water Management, in accordance with the Final Engineering Plans, a copy of which

is attached hereto and incorporated herein by reference as Exhibit "D", including final on-site drainage and grading and off-street parking, all substantially in accordance with the Final Engineering Plans.

D. Maintenance Guaranty.

1. Following completion of the Improvements, Maher shall Guaranty the Improvements against defects in workmanship and material for a period of one (1) year following acknowledgement of completion thereof by the City. During such Guaranty period, Maher shall cure defects in workmanship and/or materials and/or cause such defects to be corrected by way of replacement of such Improvement if replacement is deemed necessary in the sole judgment of the City Engineer. Immediately upon the acknowledgement of completion of the Improvements by the City, in order to assure such repairs and Guaranty its obligations hereunder, Maher shall deposit with the Treasurer of the City either of the following financial guaranty (hereinafter referred to as "Maintenance Guaranty"):

a. A Cash Bond in the amount of 110% of the actual cost of such improvements, as determined by the City Engineer: or

b. A Letter of Credit issued by a bank or company licensed in the State of Illinois, with a Triple AAA rating in the amount of 110% of said actual cost of such Improvements.

2. At the expiration of the said Guaranty Period, the City shall release the Maintenance Guaranty, to the extent it has not been called upon for payment. In the event the said Maintenance Guaranty is insufficient to pay the costs of curing such defects in workmanship and or materials, Maher shall pay the amount of such insufficiency within thirty (30) days of the City's giving notice thereof.



E. In addition to the costs agreed upon in this Agreement to be paid by the Parties, any and all other costs, expenses, and fees, as and when customarily charged by the City pursuant to duly enacted ordinances for as they may be changed from time to time hereafter, shall be the responsibility of Maher.

F. The City will, as part of its financial undertaking, be responsible for all legal services performed and undertaken by them in connection with this Agreement, including but not limited to, negotiating and drafting this Agreement, and the fees and charges of the City's Engineers reviewing the Plans for and inspecting the construction of the Improvement.

#### **IV. Miscellaneous Provisions.**

A. Except as expressly set forth herein, this Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior and contemporaneous agreements and undertakings of the Parties pertaining to the subject matter hereof. The terms of this Agreement may be modified and amended from time to time by a written amendment signed by the Parties hereto or their successors and assigns. All provisions, conditions, and regulations set forth in this Agreement and the documents or plans to which it refers shall supersede all ordinances, code and regulations of the City that are in conflict herewith as they may apply to the Redevelopment. However, where this Agreement (and the other documents referred to herein) is silent, City Ordinances shall apply to and control the Redevelopment.

1. This Agreement shall bind the successors and assigns of Maher and the City, their corporate officials and their successors in office, and their respective successors in interest.

2. Nothing herein shall in any way prevent the alienation or sale of the Subject Property or any portion thereof; however, the new titleholder of record shall be both benefited and bound by the conditions and restrictions herein expressed.

B. By execution hereof:

1. Maher certifies hereby that it is not barred from entering into this Agreement as a result of violations of either Section 33E-3 or Section 33E-4 of the Illinois Criminal Code and that it has a written policy against sexual harassment in place in full compliance with 775 ILCS 5/2-105(A)(4); and

2. The City certifies hereby that it is not barred from entering into this Agreement as a result of violations of either Section 33E-3 or Section 33E-4 of the Illinois Criminal Code and that it has a written policy against sexual harassment in place in full compliance with 775 ILCS 5/2-105(A)(4); and

3. Each signatory for a Party warrants to the other Party hereto that the execution, delivery and performance of this Agreement by the Party on whose behalf such signatory is signed, and its consummation of the transactions contemplated hereby have been duly and effectively authorized by all corporate action on the part of such Party. Each signatory further warrants that this Agreement has been duly executed and delivered by such Party and is a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditor's rights generally and except that the availability of equitable remedies, including specific performance, is subject to the discretion of the court before which any proceeding therefore may be brought. In addition, each signatory has presented its Corporate Resolution or Ordinance, as the case may be, authorizing the execution of this Agreement.

C. The failure of any Party to exercise any right, power or remedy given to it under this Agreement, or to insist upon strict compliance with it, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach, nor a waiver by any Party of its rights at any time to require exact and strict compliance with all of the terms of this Agreement.

1. The failure of any Party to perform any provision of this Agreement required of it to be performed shall constitute a default hereof. The continuation of any such default for thirty (30) days following written Notice by the non-defaulting Party specifying such default to the defaulting Party shall permit the non-defaulting Party, at its sole discretion, to enforce or compel the performance of this Agreement by such defaulting party by suitable action or other proceeding brought at law or in equity.

2. Maher and its successors and assigns shall, and hereby covenant to, indemnify and hold harmless, the City's Party and its Elected Officials, Staff, agents, officers and representatives, at all times from and after the date of this Agreement and in respect to any damages (as defined below), insofar as such damages arise out of, are based upon, or result from an event of default as set forth above as well as any damages directly relating to:

a. Any misrepresentation or breach of any covenants by Maher made or contained in this Agreement or in connection therewith, or in any certificate, document or instrument delivered on behalf of Maher under or in connection with this Agreement; and

b. Any and all action, suits, proceedings or claims demands, assessments, and/or judgments brought by or awarded to third parties incident to or as a result of any action undertaken by Maher concerning the matters or transactions contemplated by or provided for under the terms of this Agreement.

3. "Damages" as used herein, means any and all loss, liability, expenses, costs, actions, causes of action, lawsuits, claims, demands, losses, liabilities, costs and expenses, other damages, and deficiencies, including without limitation interest, penalties and attorneys fees.

4. The rights or remedies under this Agreement are exclusive to any other rights or remedies which may be granted by law.

D. This Agreement shall be construed in accordance with the laws of State of Illinois. If any provision of this Agreement is capable of two (2) constructions, one of which would render the provision invalid and the other of which would make the provision valid, then the provision shall have the meaning which renders it valid.

E. In the event any portion of this Agreement or Party thereto shall be deemed invalid by a court of competent jurisdiction, such invalidity of said provision or part thereof shall not affect the validity of any other provision hereof. In addition, the invalidity or unenforceability of any provision of this Agreement shall not offset or invalidate any other provision.

F. This Agreement shall be effective for a term of five (5) years from the date hereof and shall bind Maher and its successors and assigns in interest, as well as the City, its Officials, and its and their successors in Office. However, the Declaration shall run with the land comprising the Development and shall bind Maher and their successors and assigns in interest, as well as the City, its Officials, and its and their successors in Office.

G. Maher may not sell, assign or otherwise transfer their interest in this Agreement in whole or in part without the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. Any successor in interest to Maher under this Agreement shall certify in writing to the City its agreement to abide by all remaining terms of

this Agreements for the term hereof. Notwithstanding the foregoing, the Parties hereto acknowledge and agree that Maher shall have the right to collaterally assign this document to its lender without obtaining consent of the City, but with prior notice to the City, provided the document evidencing such collateral assignment shall be subject to the City's reasonable approval.

**V. Notices.**

Any Notice required to be given pursuant to this Agreement shall be deemed to have been given when written and mailed via United States certified mail, return receipt requested, addressed:

TO THE CITY:

Jeffrey Mermuys  
City Manager  
City of Wood Dale  
404 N. Wood Dale Road  
Wood Dale, IL 60191

and

Patrick K. Bond  
City Attorney  
Bond, Dickson & Conway  
400 S. Knoll Street, Unit C  
Wheaton, IL 60187

TO MAHER:

Kathy Maher  
President  
Maher Lumber-Millwork  
301 W. Irving Park Road  
Wood Dale, IL 60190

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Any Party hereto may change the place and/or person listed in the notice provision herein and/or add persons to the above list for the giving of Notices by giving notice as to the effective date of such change.

**VI. Duplicate.**

This Agreement may be executed in duplicate, each of which shall be deemed an original, provided all Parties have each signed such duplicate; and in such instance each such duplicate shall constitute an original hereof.

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement on the date above written.

CITY OF WOOD DALE

ATTEST:

Annunziato Pulice  
Annunziato Pulice, Mayor

Shirley J. Siebert  
Shirley Siebert, City Clerk

MAHER:

By: Kathy O. Maher  
Kathy Maher, President

Attest: [Signature]  
Secretary