

Agreement prepared by and after
Recording mail to:

Dominick L. Lanzito
Peterson Johnson & Murray, LLC
200 W Adams, Suite 2125
Chicago, Illinois 60606

Legal description prepared by:
Willett Hofmann & Associates, Inc.
809 East 2nd Street
Dixon, IL 61021-0367

**TEMPORARY CONSTRUCTION AND
PERMANENT UTILITY EASEMENT AGREEMENT**

This Temporary Construction and Permanent Utility Easement Agreement (this "Agreement") is effective as of the 17th day of July, 2017 ("Effective Date"), by and between Flagg-Rochelle Community Park District ("Grantor") and the City of Rochelle, an Illinois municipal corporation ("Grantee"). Grantor and Grantee are sometimes referred to in this Agreement individually as "Party" and collectively as the "Parties".

RECITALS

WHEREAS, Grantor is the owner of record of certain real property with parcel number 24-14-226-020, Rochelle, Ogle County, Illinois and legally described on the attached and incorporated Exhibit A ("Grantor's Property") upon which a bike path is located; and

WHEREAS, Grantee is the owner and operator of the Rochelle Municipal Utility, which is undergoing major improvements and expansion to support surrounding municipalities; and

WHEREAS, as part of the improvements, an Ingress-Egress Road, a new 12-inch diameter potable water transmission main and related appurtenances and a Gravity Sanitary Sewer Main ("Water and Sewer Mains"), and a storm water drain will be installed to convey potable water and receive sanitary sewer water between Grantee and adjacent municipalities; and

WHEREAS, to install the Ingress-Egress Road, Water and Sewer Mains, storm water retention drains, Grantee needs a temporary construction easement on Grantor's Property to temporarily locate equipment and materials and a permanent utility easement; and

WHEREAS, Grantee has offered and Grantor is willing to accept payment of TEN DOLLARS AND NO CENTS (\$10.00) as consideration for the requested easements; and

WHEREAS, Grantor desires to grant Grantee a temporary construction and permanent utility easement in and along Grantor's Property for the construction and installation of the Ingress-Egress Road, Water and Sewer Mains, storm water retention drains on terms and conditions contained herein; and

NOW, THEREFORE, for sum of TEN DOLLARS AND NO CENTS 10.00) to be paid by Grantee to Grantor, Grantor and Grantee covenant and agree as follows:

1. **INCORPORATION OF RECITALS.** The above recitals are hereby incorporated by reference as if set forth fully herein.
2. **GRANT OF EASEMENTS.** Grantor, for themselves and for their successors and assigns, hereby conveys and grants to Grantee, its successors and assigns, the following:

2.1 Temporary Construction Easement. Two temporary, non-exclusive easements over, under, in, along, across and upon the three portions of Grantor's Property described on the attached and incorporated Group Exhibit A ("Construction Easement Area"). Grantee may use the Construction Easement Areas for the purposes of constructing and installing the Ingress-Egress Road, Water and Sewer Mains, storm water retention drains and other work necessary and incident to the construction and installation of the Ingress-Egress Road, Water and Sewer Mains, storm water retention drains, including but not limited to the right to conduct studies, tests, examinations and surveys; the right to temporarily place and store equipment, vehicles and materials, and to erect structures; the right to trim, cut, and remove all trees, structures, and any other obstruction or obstacles. Except as in cases of emergencies, Grantee's access to the Construction Easement Area shall be restricted to normal business hours.

2.2 Utility Easement. A permanent, non-exclusive easement over, under, in, along, across and upon the three portions of Grantor's Property on the attached and incorporated Group Exhibit A ("Utility Easement Areas"), including the right to ingress and egress for the lawful construction, installation, operation, maintenance, repair, replacement and use of the Water and Sewer Mains.

Grantee's rights in the Easement Areas described above include the right to have Grantee's contractors and subcontractors upon the Easement Areas for the purposes described above.

3. **TERM OF EASEMENTS.**

3.1 Temporary Construction Easement. The Temporary Construction Easement shall commence on the Effective Date of this Agreement and shall automatically terminate and expire upon the later of: (i) the date construction of the Ingress-Egress Road, Water and Sewer Mains, storm water retention drains are completed, or (ii) twelve (12) months after the effective date of this Agreement. Upon the expiration of the term of the Temporary Construction Easement, all of the rights and benefits of Grantee in, to and under this Agreement with respect to the Temporary Construction Easement shall automatically terminate and be of no further force and effect.

3.2 Utility Easement. The Utility Easement shall commence on the Effective Date of this Agreement and shall run with the land and continue in full force and effect until Grantee formally vacates the Utility Easement.

4. RESERVATION BY GRANTOR/NON-EXCLUSIVE USE. All right, title and interest in and to the Temporary Construction Easement and Utility Easement under this Agreement which may be used and enjoyed without interfering with the rights conveyed by this Agreement are reserved to Grantor; provided, however, that Grantor shall not locate any structures which may cause damage to or interfere with the Water and Sewer Mains to be placed within the Utility Easement Areas; or develop, landscape, or beautify any easement area in any way which would unreasonably or materially increase the costs to Grantee of constructing and installing the Water and Sewer Mains or restoring any of the Easement Areas after such installation.

5. RESTORATION. Grantee agrees to repair each section of the bike path where the utilities cross with concrete instead of the current asphalt that is present. The concrete will be finished at a height two inches above the current asphalt surface at the road crossing and brought to the current height of asphalt at the storm water and sanitary crossings. Grantor represents that it will thereafter construct an asphalt ramp to transition from the existing height of the asphalt surface to be even with the concrete surface installed by Grantee at the roadway crossing. See attached detail for design information.

Further, should Grantee's construction and restoration delay Grantor's planned resurfacing of the bike path or modify the manner in which the bike path has to be restored, the Grantee agrees to pay for any and all additional construction and/or engineering costs that are due solely to the Grantee's conduct. The alternate bid area covered by this provision is identified in Exhibit B attached hereto. Grantee shall not be responsible for any costs due to delays that are not the result of Grantee's conduct.

6. INDEMNIFICATION. Grantee does hereby agree to defend, hold harmless, and indemnify Grantor, its successors and assigns, from and against any and all claims, causes of action, liability, loss, damage, costs and expenses (including reasonable attorneys' fees) for damage to property or persons whatsoever, arising from or caused by Grantee's negligent exercise of any of Grantee's rights under this Agreement. Nothing contained herein shall be interpreted to waive any statutory or common law grant of privilege of immunity.

7. **COMPLIANCE WITH LAWS.** Grantee shall construct and install the Water and Sewer Mains in a workmanlike manner and in compliance with applicable laws, statutes, ordinances, rules and regulations of all governing public authorities as those statutes, ordinances, rules and regulation are amended from time to time.
8. **COVENANTS RUNNING WITH THE LAND.** The Parties agree that the easements and other rights conferred by this Agreement are intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the Parties and their respective grantees, heirs, successors and assigns.
9. **AUTHORIZED REPRESENTATIVE.** Each individual signing on behalf of a party to this Agreement states that he or she is the duly authorized representative of the signing party and that his or her signature on this Agreement has been duly authorized by, and creates the binding and enforceable obligation of, the party on whose behalf the representative is signing.
10. **NOTICES.** Any notice, request or other communication to be given by any party hereunder shall be in writing and shall be deemed adequately given only if (i) sent by personal delivery, (ii) by Federal Express or other overnight messenger service, (iii) first class registered or certified mail, postage prepaid, return receipt requested or (iv) by electronic mail, and addressed to the party for whom such notices are intended, addressed in each case as follows:

All notices to Grantor shall be sent to:

Flagg-Rochelle Community Park District
735 N. 2nd Street
Rochelle, Illinois 61068
Attn: Mic Brooks, President

All notices to Grantee shall be sent to:

City of Rochelle
420 North 6th St.
PO Box 601
Rochelle, IL 61068
Attention: Sue Messer, Interim City Manager

With a copy to:

Dominick L. Lanzito, City Attorney
Peterson Johnson & Murray
200 W. Adams, Suite 2125
Chicago, Illinois 60606
dlanzito@pjmlaw.com

11. **ASSIGNMENT.** Grantee may not assign their rights hereunder without the prior written consent of Grantor.
12. **ENTIRE AGREEMENT; AMENDMENT.** This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by the parties hereto. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter of this Agreement, and the parties acknowledge and understand that, upon completion, any and all such Schedules and Exhibits shall be deemed to be made a part collectively hereof.
13. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to conflict of laws provisions. If legal action, arbitration or other proceeding is brought to enforce or to resolve any dispute arising under this Agreement, the prevailing Party shall be entitled to recover reasonable Attorneys' fees and other costs incurred in such proceeding, in addition to any other relief to which it may be entitled.
14. **SEVERABILITY.** Should any one or more of the provisions of this Agreement be determined to be invalid, unlawful or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby and each such provision shall be valid and remain in full force and effect.
15. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument. Facsimile and electronic mail signatures shall be treated as original signatures of the parties for the purposes hereto.
16. **ELECTRONIC/FAX SIGNATURES.** Unless required otherwise elsewhere in this Agreement, any signed document transmitted electronically or by facsimile (fax) machine shall be treated in all manner and respect as an original document and the signature of any party hereto upon a document transmitted electronically or by fax machine shall be considered an original signature.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement by persons legally entitled to do so as of the day and year first set forth above.

[SIGNATURES ON FOLLOWING PAGE]

GRANTEE:

City of Rochelle, an Illinois municipal corporation

By: _____
Sue Messer, Interim City Manager

STATE OF ILLINOIS)
) SS.
COUNTY OF OGLE)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that _____ 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 severally acknowledged that he signed and delivered the said instrument as his free and voluntary act for the uses and purposes herein set forth.

Given under my and official seal, this ____ day of _____, 2017

Notary Public

Printed Name of Notary

My Commission Expires:

INGRESS-EGRESS EASEMENT PLAT

Pin: 24-14-226-020

PERMANENT EASEMENT

A part of the East Half of the West Half of the Northeast Quarter of Section 14, Township 40 North, Range 1 East of the Third Principal Meridian, Ogle County Illinois, described as follows:
 Commencing at the northwest corner of the Northeast Quarter of said Section 14; thence North 88 degrees 22 minutes 51 seconds East (bearing assumed for description purposes) a distance of 658.87 feet on the north line of said Northeast Quarter, thence South 1 degree 31 minutes 01 second East a distance of 17.00 feet on the west line of the East Half of the West Half of said Northeast Quarter to the Point of Beginning; thence North 88 degrees 22 minutes 51 seconds East a distance of 35.82 feet; thence South 47 degrees 20 minutes 27 seconds East a distance of 32.77 feet to the northerly line of the property conveyed to the City of Rochelle, Illinois, a municipal corporation, by Trustees Deed recorded on November 12, 2002 as Document Number 0215670 in the Ogle County Recorder's Office, Oregon, Illinois and a point on a 92.00 foot radius curve to the left; thence southwesterly 30.07 feet on said curve having a chord bearing South 42 degrees 38 minutes 23 seconds West and a chord distance of 29.94 feet; thence North 47 degrees 20 minutes 27 seconds West a distance of 29.17 feet; thence South 88 degrees 22 minutes 51 seconds West to the west line of the East Half of the West Half of said Northeast Quarter; thence North 1 degree 31 minutes 01 second West on said west line to the Point of Beginning.

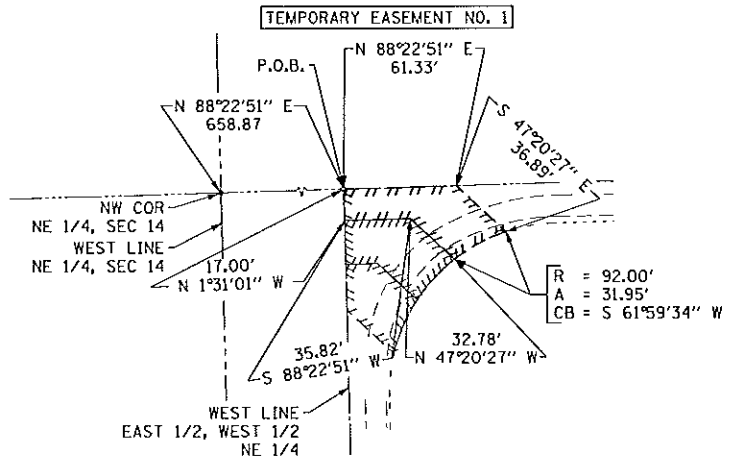
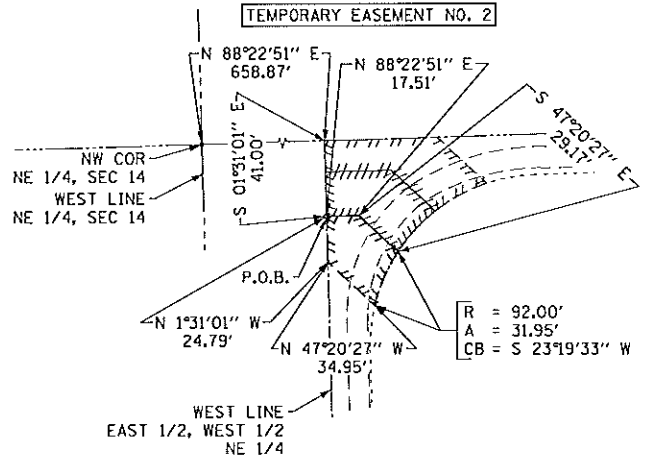
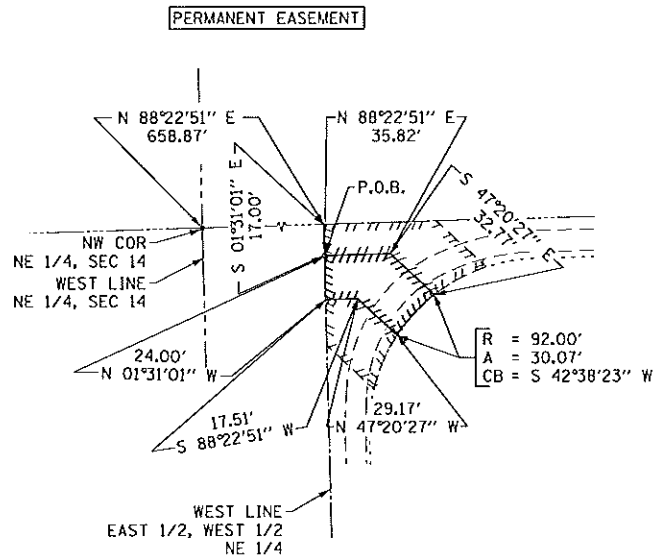
ALSO,

TEMPORARY EASEMENT NO. 1

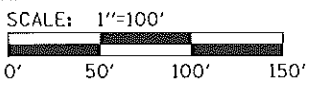
A temporary construction easement, Commencing at the northwest corner of the Northeast Quarter of said Section 14; thence North 88 degrees 22 minutes 51 seconds East (bearing assumed for description purposes) a distance of 658.87 feet on the north line of said Northeast Quarter to the Point of Beginning; thence continuing North 88 degrees 22 minutes 51 seconds East a distance of 61.33 feet on the north line of said Northeast Quarter; thence South 47 degree 20 minutes 27 seconds East a distance of 36.89 feet to the northerly line of the property conveyed to the City of Rochelle, Illinois, a municipal corporation, by Trustees Deed recorded on November 12, 2002 as Document Number 0215670 in the Ogle County Recorder's Office, Oregon, Illinois and a point on a 92.00 foot radius curve to the left; thence southwesterly 31.95 feet on said curve having a chord bearing South 61 degrees 59 minutes 34 seconds West and a chord distance of 31.80 feet; thence North 47 degrees 20 minutes 27 seconds West a distance of 32.78 feet; thence South 88 degrees 22 minutes 51 seconds West a distance of 35.82 feet to the west line of the East Half of the West Half of said Northeast Quarter; thence North 1 degree 31 minutes 01 second West on said west line a distance of 17.00 feet to the Point of Beginning.

TEMPORARY EASEMENT NO. 2

A temporary construction easement, Commencing at the northwest corner of the Northeast Quarter of said Section 14; thence North 88 degrees 22 minutes 51 seconds East (bearing assumed for description purposes) a distance of 658.87 feet on the north line of said Northeast Quarter, thence South 1 degree 31 minutes 01 seconds East a distance of 41.00 feet on the west line of the East Half of the West Half of said Northeast Quarter to the Point of Beginning; thence North 88 degrees 22 minutes 51 seconds East a distance of 17.51 feet; thence South 47 degrees 20 minutes 27 seconds East a distance of 29.17 feet to the northerly line of the property conveyed to the City of Rochelle, Illinois, a municipal corporation, by Trustees Deed recorded on November 12, 2002 as Document Number 0215670 in the Ogle County Recorder's Office, Oregon, Illinois and a point on a 92.00 foot radius curve to the left; thence southwesterly 31.95 feet on said curve having a chord bearing South 23 degrees 19 minutes 33 seconds West and a chord distance of 31.79 feet; thence North 47 degree 20 minutes 27 seconds West a distance of 34.95 feet to the west line of the East Half of the West Half of said Northeast Quarter; thence North 1 degree 31 minutes 01 second West on said west line to the Point of Beginning.



LEGEND	
R.O.W. LINE	-----
PERMANENT EASEMENT LINE	
TEMP CONST EASEMENT LINE	
SECTION LINE	-----
PROPERTY LINE	-----



WILLET HOFMANN ASSOCIATES, INC.
 ENGINEERS AND SURVEYORS
 428 EAST 25th STREET, DUNON, IL 61002-0147
 T. 815.244.3331 FAX. 815.244.3009 F.

ROCHELLE, ILLINOIS
OGLE COUNTY

Pin: 24-14-226-020 INGRESS_EGRESS EASEMENT PLAT

FILE: S:\PROJECTS\2016\1978016.DWG DESIGN WATER-WASTEWATER\Enasments\24-14-226-02001 Ok.dwg

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UTILITY EASEMENT PLAT

Pin: 24-14-226-020

PERMANENT EASEMENT

A part of the Northeast Quarter of Section 14, Township 40 North, Range 1 East of the Third Principal Meridian, Ogle County, Illinois described as follows:
 Commencing at the northwest corner of said Northeast Quarter; thence North 88 degrees 22 minutes 51 seconds East (bearing assumed for description purposes) a distance of 1565.43 feet on the north line of said Northeast Quarter, to the Point of Beginning; thence continuing North 88 degrees 22 minutes 51 seconds East a distance of 20.00 feet; thence South 1 degree 37 minutes 09 seconds East a distance of 19.42 feet to the north line of the property conveyed to the Board of Education of Rochelle Township High School District No. 212, by Trustees Deed recorded on July 3, 2003 as Document Number 0311937 in the Ogle County Recorder's Office, Oregon, Illinois; thence South 88 degrees 11 minutes 56 seconds West a distance of 30.00 feet on said north property line; thence North 1 degree 37 minutes 09 seconds West a distance of 19.48 feet to the Point of Beginning.

ALSO,

TEMPORARY EASEMENT NO. 1

A temporary construction easement described as follows:

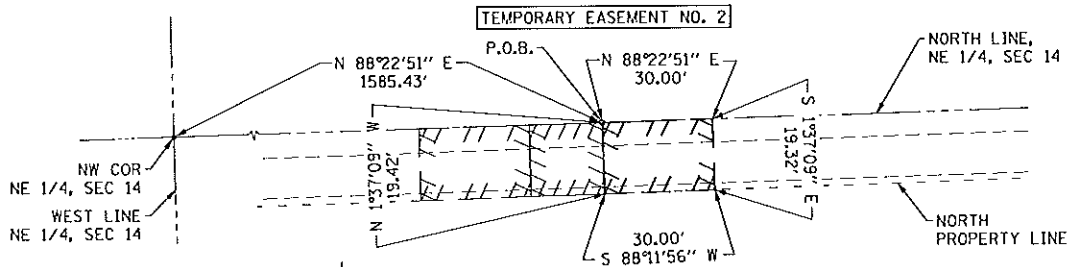
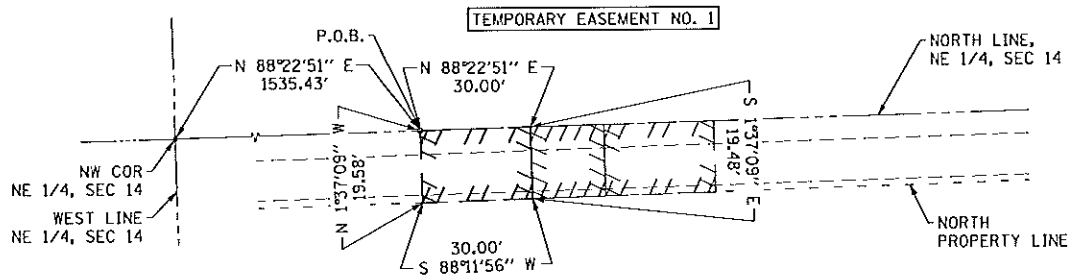
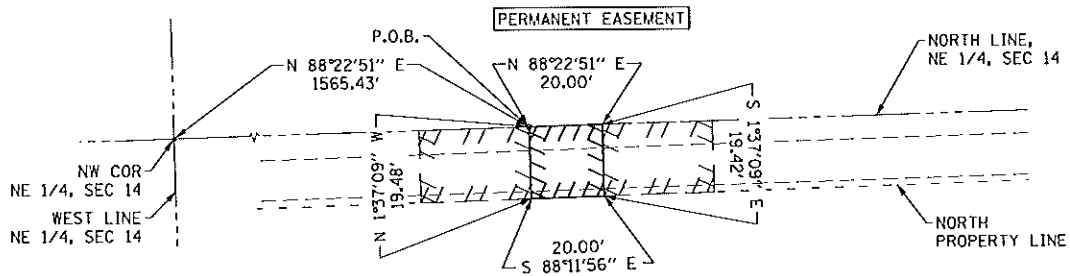
Commencing at the northwest corner of said Northeast Quarter; thence North 88 degrees 22 minutes 51 seconds East (bearing assumed for description purposes) a distance of 1535.43 feet on the north line of said Northeast Quarter, to the Point of Beginning; thence continuing North 88 degrees 22 minutes and 51 seconds East a distance of 30.00 feet; thence South 1 degree 37 minutes 09 seconds East a distance of 19.48 feet to the north line of the property conveyed to the Board of Education of Rochelle Township High School District No. 212, by Trustees Deed recorded on July 3, 2003 as Document Number 0311937 in the Ogle County Recorder's Office, Oregon, Illinois; thence South 88 degrees 11 minutes 56 seconds West a distance of 30.00 feet on said north property line; thence North 1 degree 37 minutes 09 seconds West a distance of 19.58 feet to the Point of Beginning.

ALSO,

TEMPORARY EASEMENT NO. 2

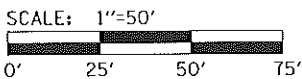
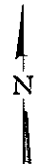
A temporary construction easement described as follows:

Commencing at the northwest corner of said Northeast Quarter; thence North 88 degrees 22 minutes 51 seconds East (bearing assumed for description purposes) a distance of 1585.43 feet on the north line of said Northeast Quarter, to the Point of Beginning; thence continuing North 88 degrees 22 minutes 51 seconds East a distance of 30.00 feet; thence South 1 degree 37 minutes 09 seconds East a distance of 19.32 feet to the north line of the property conveyed to the Board of Education of Rochelle Township High School District No. 212, by Trustees Deed recorded on July 3, 2003 as Document Number 0311937 in the Ogle County Recorder's Office, Oregon, Illinois; thence South 88 degrees 11 minutes 56 seconds West a distance of 30.00 feet on said north property line; thence North 1 degree 37 minutes 09 seconds West a distance of 19.42 feet to the Point of Beginning.



LEGEND

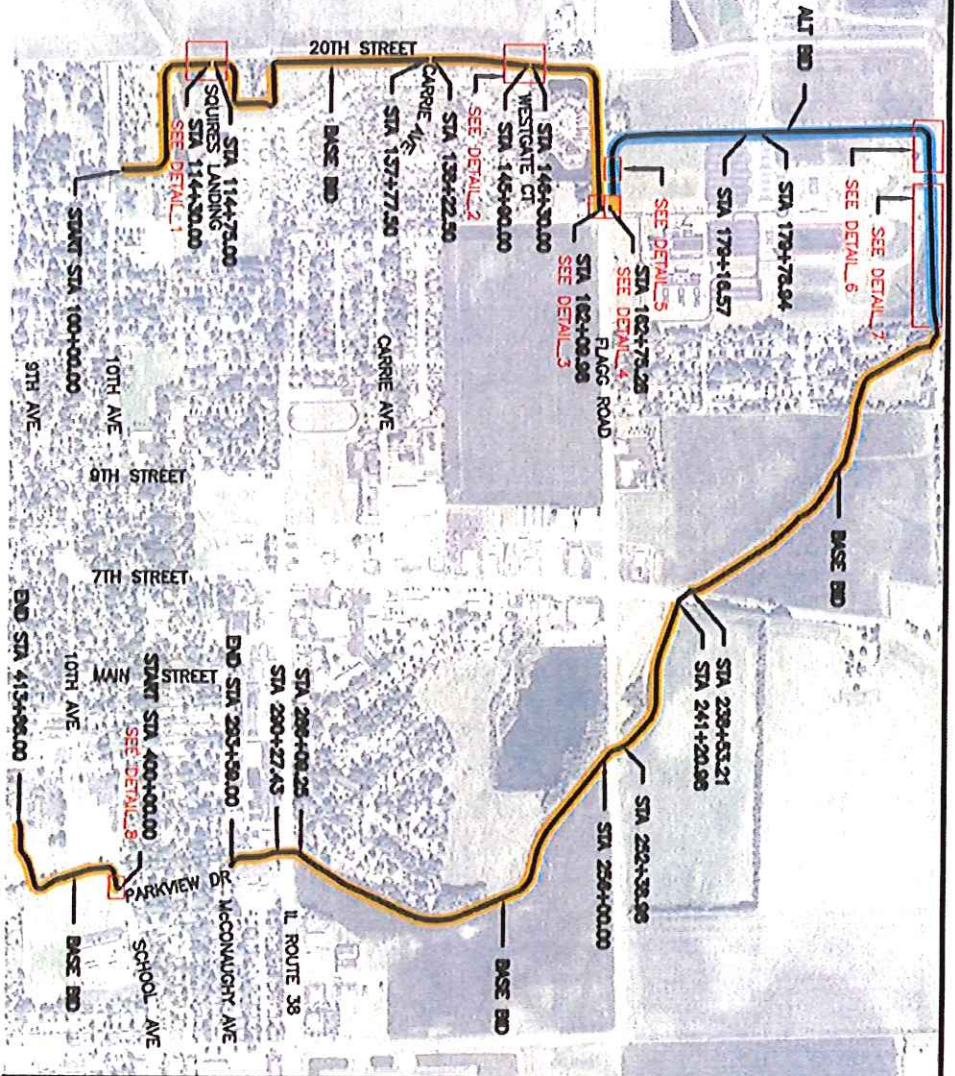
- R.O.W. LINE
- PERMANENT EASEMENT LINE
- TEMP CONST EASEMENT LINE
- SECTION LINE
- PROPERTY LINE



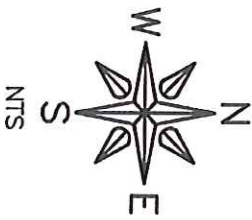
WILLET HOFMANN ASSOCIATES, INC.
 824 EAST 29th STREET, OREGON, IL 61057-0317
 P. 815.234.3785 FAX 815.234.3785

ROCHELLE, ILLINOIS
OGLE COUNTY

Pin: 24-14-226-020 UTILITY EASEMENT PLAT



— BASE BID
— ALT BID



OVERALL IMPROVEMENT PLAN FLAGG ROCHELLE PARK DISTRICT BIKE PATH ROCHELLE, IL



LEGEND (FOR EXHIBIT 1-9)

- A. REMOVE HMA BIKE PATH PAVEMENT (10'x11'), REPLACE WITH P.C. CONCRETE PAVEMENT, 5" AND INSTALL DETECTABLE WARNING (10 S.F.)
- B. REMOVE BENCH AND CONCRETE PAD (VARIABLE SIZE). REPLACE WITH P.C. CONCRETE PAVEMENT, 4" (5'x8). NEW BENCH TO BE INSTALLED BY OTHER.
- C. BOLLARD REMOVAL, 6" DIA.
- D. MANHOLE ADJUSTMENT TO FINISHED GRADE.
- E. REMOVE DRINKING FOUNTAIN AND CONCRETE PAD (4'x8). REPLACE WITH P.C. CONCRETE PAVEMENT, 6" (5'x8). NEW WATER FOUNTAIN TO BE INSTALLED BY OTHERS.

SHEET 2 OF 25
05/08/17

FEHR GRAHAM

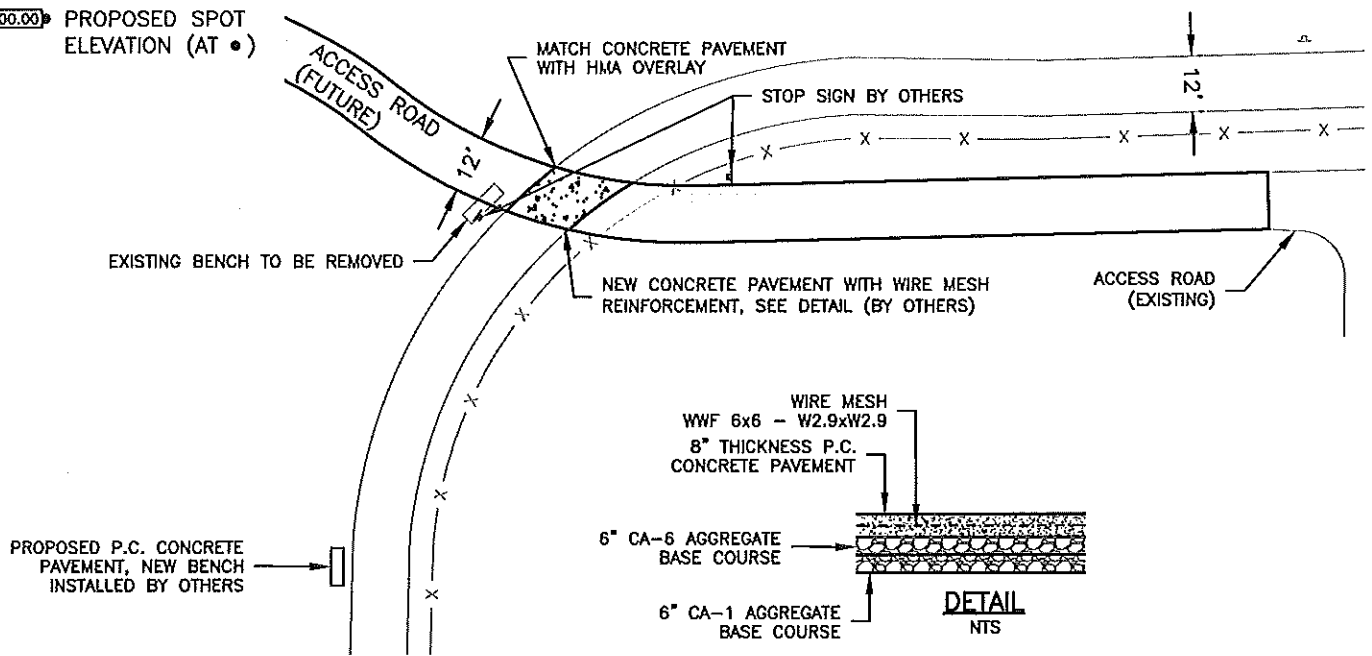
ENGINEERING & ENVIRONMENTAL

ILLINOIS
IOWA
WISCONSIN

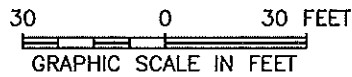
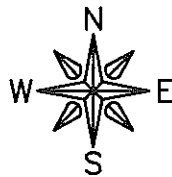
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000.00 EXISTING SPOT ELEVATION (AT •)

000.00 PROPOSED SPOT ELEVATION (AT •)



ALT BID



DETAIL_6

FLAGG ROCHELLE PARK DISTRICT
BIKE PATH
ROCHELLE, IL

SHEET 17 OF 25
05/08/17

FEHR GRAHAM

ENGINEERING & ENVIRONMENTAL

ILLINOIS DESIGN PROF. NO. 154-003625

ILLINOIS
IOWA
WISCONSIN