

**TERMINATION AGREEMENT
LINCOLN PARK SOUTH FIELD**

This Termination Agreement Lincoln Park South Field (the "Agreement") is entered into as of June 19, 2008 (the "Effective Date") by and between the Chicago Park District, an Illinois unit of local government (the "Park District") and The Latin School of Chicago, an Illinois not for profit corporation ("Latin"). The Park District and Latin are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the Park District owns and operates a parcel of land located at the southern end of Lincoln Park, north of North Avenue, west of Lake Shore Drive and east of Clark Street (the "Site");

WHEREAS, the Parties previously entered into that certain Lincoln Park South Field Agreement dated as of December 1, 2006, together with any amendments thereto (the "Original Agreement"), with respect to the design, construction, operation, maintenance and repair of a regulation sized artificial surface playing field and related amenities to be located at the Site for the advancement of the interests, opportunities, fitness and wellbeing of the general public, including the Latin community (the "Project");

WHEREAS, pursuant to the Original Agreement, Latin agreed to pay for and coordinate the work with respect to the design and development of the Project, subject to the approval of the Park District and in accordance with the terms of the Original Agreement, in all cases subject to certain termination rights contained in the Original Agreement;

WHEREAS, Latin undertook the design and development of the Project with the Park District's approval and the construction thereof is partially completed;

WHEREAS, for reasons unrelated to Latin's performance under the Original Agreement, the Park District and Latin have elected to terminate the Original Agreement;

WHEREAS, the Parties desire to enter into this Agreement to memorialize such termination and to address certain issues relating thereto which arise because the termination is occurring while the Project is under construction.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

TERMS AND CONDITIONS

1. **Recitals and Defined Terms.** The above recitals are incorporated herein by reference. Capitalized terms used but not defined herein shall have the definitions ascribed thereto in the Original Agreement.
2. **Approval.** Latin represents and warrants to the Park District that it has the power and authority to enter into and perform its obligations hereunder. The Park District represents and warrants to Latin that it has the power and authority to enter into and perform its obligations hereunder.
3. **Termination.** This Agreement constitutes the mutual election of the Park District and Latin to hereby terminate the Original Agreement (the "Termination") pursuant to this Agreement. The Park District and Latin agree that the Termination is not due to any default or alleged default under the Original Agreement.
4. **Assignment and Assumption.** As of the Effective Date, Latin does hereby sell, assign, transfer, and set over to the Park District, (i) all of Latin's right, title and interest in and to those contracts, agreements, warranties and indemnities affecting the design and construction of the Project listed on Exhibit A attached hereto and incorporated herein by reference (the "Project Contracts"), and (ii) all of Latin's right, title and interest in and to (a) plans, drawings (including but not limited to those certain drawings dated as of August 2, 2007 and prepared by JJR, LLC, (the "JJR Design Plans")), specifications (including, but not limited to the Specifications to the Project Manual dated October 24, 2007 for the Latin School of Chicago/Chicago Park District Cooperative Venture South Lincoln Park Athletic Field, URS File No. 41302682.09 and JJR Project Number 24872.000 prepared by Landscape Architect/Civil Engineer JJR, LLC (the "JJR Specifications")), blueprints, surveys, and (b) to the extent assignable without the payment of any fee or the execution of any documents (other than this Agreement), licenses, franchises, occupancy and use certificates, permits, authorizations, consents, approvals and the like from any governmental or quasi-governmental entity or instrumentality affecting the Project, clauses (a) and (b) being collectively, the "Project Intangibles". Subject to the terms and conditions herein and only to the extent that the Park District determines in its reasonable judgment that the Project Contracts are consistent with the JJR Design Plans and Specifications, as of the Effective Date, the Park District hereby accepts the foregoing assignment and hereby assumes the performance of and obligations under all the terms, covenants and conditions of the Project Contracts and the Project Intangibles, with respect to the period from and after the Effective Date. Latin represents and warrants to the Park District that: (A) it has not previously assigned, transferred or pledged any of the Project Contracts or Project Intangibles; (B) Latin has received no written notice from any party, individual or entity of any breach, default or failure to perform under any Project Contract that has not heretofore been cured other than the letter from the Alter Construction Group dated June 3, 2008 attached hereto as Exhibit C; and Latin has delivered no notice to any other party or entity to any such Project Contract alleging any breach thereunder which has not heretofore been cured; (C) other than the Project Contracts and the Original Agreement, Latin has entered into no contracts relating to the design and construction of the Project; (D) the copies of the Project Contracts delivered to the Park District by or on behalf of Latin are true, correct

and complete copies of the Project Contracts; (E) all consents to the assignment of the Project Contracts by Latin to the Park District have been obtained other than that of the Alter Construction Group; (F) the Preliminary Project Costs designated as "Costs Paid to Date" on Exhibit B have been paid by Latin; and (G) the Preliminary Project Costs designated as "Identified but Unpaid Costs" on Exhibit B are all the outstanding costs identified and claimed by the other parties or entities to the Project Contracts as of June 1, 2008 that have not yet been paid. Latin will indemnify, defend and hold harmless the Park District Indemnities against any actual losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses that the Park District Indemnities may suffer, incur or sustain or for which it or they may become liable resulting from, arising out of, or relating to (x) the breach of the representations and warranties of Latin to the Park District contained in this Section 4, (y) the failure of the assignments set forth in this Section 4 (other than the Alter Construction Project Contract), and (z) the breach by Latin of Section 5(c) of the Original Agreement. Notwithstanding any other provision contained herein, in the event that the Alter Construction Project Contract is not effectively assigned to the Park District hereunder or is formally terminated prior to such assignment, then the Park District shall not be deemed to have assumed nor shall the Park District have any obligations under the Alter Construction Project Contract. Further notwithstanding, provided that the Alter Construction Project Contract is not assigned to the Park District hereby or is formally terminated prior to such assignment, at the request of the Park District, Latin shall reasonably cooperate with the Park District with respect to prosecuting claims under the Alter Construction Project Contract including, but not limited to warranty and indemnification claims. The parties hereto agree that the Park District shall take the lead in prosecuting such claims but may bring such claims in Latin's name and use attorneys and agents reasonably selected by the Park District. The Park District is and shall be fully responsible for the cost of any such claim prosecution requested by the Park District, including reasonable costs incurred by Latin in responding to or otherwise related to the Park District's requests. Nothing herein shall limit Latin's right in the future to secure an assignment to the Park District of its right to bring claims under the Alter Construction Project Contract as opposed to a complete assignment of such agreement or to bring claims directly under such agreement. In the event that the Park District subsequently enters into a separate new agreement with Alter Construction relating to the Project, the immediately prior sentence shall give Latin no right to bring actions with respect thereto.

5. Reimbursement.

- (a) Latin's actual costs and expenses incurred and either paid or known with respect to the Project as of the date hereof are set forth on Exhibit B attached hereto and incorporated herein by reference (the "Preliminary Project Costs"). Latin has contacted the parties and entities to the various Project Contracts and requested final billing information for work through May 1st, 2008 as well as any applicable demobilization and/or contract suspension costs through the Effective Date; and any such amounts owed under the Project Contracts through the Effective Date and not reflected on Exhibit B shall be the "Supplemental Project Costs".
- (b) Latin has previously delivered to the Park District the supporting documentation for the Preliminary Project Costs designated as "Costs Paid to Date" on Exhibit B

that have been paid by Latin. The Park District shall have twenty (20) business days following receipt by the Park District of all requested documentation to review such documentation to confirm, in the exercise of the Park District's reasonable judgment, that such amounts were paid in accordance with the applicable Project Contracts in all material respects (the "Paid Cost Confirmation Date"). Unless objected to (in a written notice to Latin) by the Park District in the exercise of its reasonable judgment because the previously payment by Latin was inconsistent with the applicable Project Contract, the JJR Design Plans and Specifications and/or the Original Agreement ("Disputed Payments"), such Preliminary Project Costs which are Costs Paid to Date (excluding Disputed Payments) shall be reimbursed to Latin by the Park District within forty (40) days of the Paid Cost Confirmation Date.

- (c) Preliminary Project Costs designated as "Identified But Unpaid Costs" on Exhibit B shall be subject to adjustment as Latin conducts its standard pay application review and approval process and vets the underlying supporting documentation provided by the other party to the applicable Project Contract. Once resolved, Latin shall provide the applicable summary information and backup to the Park District substantially in the form of the materials delivered pursuant to Section 5(b) above and such other information as reasonably and timely requested by the Park District. The Park District shall have twenty (20) business days following receipt by the Park District of all requested documentation to review such documentation to confirm, in the exercise of the Park District's reasonable judgment, that such amounts are due and payable in accordance with the applicable Project Contracts in all material respects (the "Identified Cost Confirmation Date"). Unless objected to (in a written notice to Latin) by the Park District in the exercise of its reasonable judgment because payment thereof would be inconsistent with the applicable Project Contract, the JJR Design Plans and Specifications, and/or the Original Agreement ("Disputed Secondary Payments"), Latin shall pay such Preliminary Project Costs which are adjusted Identified But Unpaid Costs (excluding Disputed Secondary Payments) and notify the Park District thereof and such amounts shall be reimbursed to Latin by the Park District within forty (40) days of such notification.
- (d) Supplemental Project Costs incurred prior to the Effective Date shall be subject to adjustment as Latin conducts its standard pay application review and approval process and vets the underlying supporting documentation provided by the other party to the applicable Project Contract. Once resolved, Latin shall provide the applicable summary information and backup to the Park District substantially in the form of the materials delivered pursuant to Section 5(b) above and such other information as reasonably and timely requested by the Park District. The Park District shall have twenty (20) business days following receipt by the Park District of all requested documentation to review such documentation on the Supplemental Project Costs to confirm, in the exercise of the Park District's reasonable judgment, that such amounts are due and payable in accordance with the applicable Project Contracts in all material respects (each a "Supplemental

Cost Confirmation Date”). Unless objected to (in a written notice to Latin) by the Park District in the exercise of its reasonable judgment because payment thereof would be inconsistent with the applicable Project Contract, the JJR Design Plans and Specifications and/or the Original Agreement (“**Disputed Supplemental Payments**”), Latin shall pay such Supplemental Project Costs (excluding Disputed Supplemental Payments) and notify the Park District thereof and such amounts shall be reimbursed to Latin by the Park District within forty (40) days of such notification.

- (e) To the extent that the Park District notifies Latin in writing of the Park District’s intent to assume all responsibility for, any Preliminary Project Costs designated as “Identified But Unpaid Costs” or any Supplemental Project Costs, then as between Latin and the Park District, the Park District shall be deemed to have assumed the responsibility for such amounts and the payment thereof to the applicable payee and the Park District shall thereafter make such payments and hold Latin harmless with respect thereto.
- (f) With respect to any Disputed Payments, Disputed Secondary Payments or Disputed Supplemental Payments, the Park District’s notice(s) to Latin shall include a detailed explanation of why such payment constitutes a Disputed Payment, Disputed Secondary Payment or Disputed Supplemental Payment, as applicable, and shall include supporting documentation to the extent that such documentation is reasonably available. Thereafter, the Parties shall work together in good faith to resolve any such Disputed Payments, Disputed Secondary Payments or Disputed Supplemental Payments. In the event the Parties resolve the foregoing, payment thereof shall be made as provided in Sections 5(b), 5(c) and/or 5(d).
- (g) Notwithstanding any provision contained herein, the Park District shall not be obligated to pay or reimburse Latin for any Preliminary Project Costs, Supplemental Project Costs or any other costs in excess of \$2,000,000 in the aggregate plus the indemnification obligation referenced in Section 6 hereof as it pertains to Section 11, of the Original Agreement, as limited in Section 6 hereof.
- (h) Subject to Section 5(i) but notwithstanding any other provision contained herein, Latin shall remain responsible for and the Park District shall not be obligated to reimburse Latin or pay (i) any Preliminary Project Costs or Supplemental Project Costs properly objected to by the Park District in its reasonable judgment, (ii) and any cost or expense incurred in connection with any material supplemental additions, alterations, changes or deletions to the JJR Design Plans and Specifications, project budget or construction schedule not approved by the Park District in accordance with the Original Agreement.
- (i) The Parties shall seek to resolve any dispute, claim or controversy arising out of or relating to this Section 5 or any other Section of this Agreement (a “Dispute”) including, but not limited to whether the Park District used its reasonable

judgment in disapproving any Preliminary Project Costs or Supplemental Project Costs, by submitting such Dispute to the General Superintendent of the Park District for resolution. In the event that Latin disagrees with the General Superintendent's resolution or the General Superintendent fails to provide his resolution in a reasonable period of time, then such Dispute shall be determined by arbitration in Chicago, Illinois, before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures and any judgment on the award may be entered in any court having appropriate jurisdiction. The immediately preceding sentence shall not preclude the Parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Each Party shall bear its own costs in any such arbitration and shall equally divide the costs of the arbitrator.

(j) At the reasonable request of the Park District, Latin shall deliver (to the extent it has not already done so) all applicable lien waivers prior to the Park District making any payments under this Section 5 with respect to the amounts covered by such lien waivers.

6/20/07
 J.G.
 against
 Latin

6. **Termination of Original Agreement.** The Parties expressly agree, acknowledge and intend that this Termination shall constitute the termination of Latin's and the Park District's respective obligations to each other pursuant to the Original Agreement as of the Effective Date; provided however, that notwithstanding the foregoing, Sections 5(c), 6(c), 13 and 16 of the Original Agreement are intended to survive and not be terminated hereby; and further provided, that notwithstanding the foregoing, Section 11 of the Original Agreement, which is hereby limited solely to personal injury claims made by individual persons, is intended to survive and not be terminated hereby to the extent permitted by law; and provided, that Latin shall not pay, compromise nor settle any claim for which it will seek indemnification without the prior written consent of the Park District, such consent not to be unreasonably withheld or delayed.

19
 6/20/08
 J.G.

7. **Future Use of the Project.** Latin may, if it desires, apply to the Park District for permits to use the Project in the same manner and following the same procedures as other members of the general public and is entitled to no greater and no lesser priority with respect thereto than other members of the general public. Nothing contained herein obligates the Park District to complete the Project or impairs the Park District's ability to limit the scope of the Project.

8. **No Personal Liability.** Each Party expressly agrees that no member, official, employee or agent of the other Party will be individually or personally liable to it, its successors or assigns under any term or provision of this Agreement or because of his or her execution or attempted execution of this Agreement or in the event of any default or breach by such Party under this Agreement. The limitations on liability in this Section 8 shall survive the expiration or termination of this Agreement and the expiration or termination of any obligation owing to either Party under this Agreement.

9. **Conflicts.** This Agreement shall not be legally binding on the Chicago Park District if entered into in violation of the provisions of 50 ILCS 105, the Public Officer Prohibited Activities Act.

10. Miscellaneous.

a. Notices. Unless otherwise specified, any notice, demand or request required under this Agreement must be given in writing at the addresses set forth below by any of the following means: personal service or overnight courier.

If to the Park District: Chicago Park District
541 North Fairbanks Court
Chicago, Illinois 60611
Attn: General Superintendent

With Copies to: Chicago Park District
541 North Fairbanks Court
Chicago, Illinois 60611
Attn: General Counsel

If to Latin: The Latin School of Chicago
59 West North Boulevard
Chicago, Illinois 60610-1492
Attention: Head of School

With Copies to: Meckler Bulger & Tilson LLP
123 North Wacker Drive, Suite 1800
Chicago, Illinois 60606
Attention: Bruce R. Meckler

Drane Freyer & Lapins Limited
150 North Wacker Drive, Suite 800
Chicago, Illinois 60606
Attn: Wendy Freyer

b. Governing Law. This Agreement will be governed by and construed in accordance with the internal laws of the State of Illinois and applicable municipalities, without regard to the principles of conflicts of law thereof. If there is a lawsuit under this Agreement, each Party hereto agrees to submit to the jurisdiction of the courts of Cook County in the State of Illinois. The Parties agree that prior to seeking any right or remedy that may be available following an event of default hereunder, the General Superintendent of the Park District and the Latin Head of School, or their respective designees, will use good faith efforts to resolve any dispute between the Parties.

c. Severability. In the event that any provision of this Agreement is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by any court or any other governmental body, this Agreement shall be construed as not containing such provision and any and all other provisions hereof which otherwise are lawful and valid shall remain in full force and effect.

d. Integration. All exhibits to this Agreement are expressly incorporated herein by this reference thereto. This Agreement constitutes the entire agreement between the Parties, merges all discussions between them and supersedes and replaces any and every other prior agreement (including the Original Agreement) or contemporaneous agreement, negotiation, understanding, commitments and writing with respect to the specific subject matter hereof.

e. Assignment. This Agreement shall not be assigned by either Party without the prior written consent of the other.

f. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which when taken together shall be deemed to be one and the same instrument.

g. Parties' Interest/No Third Party Beneficiaries. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns and shall inure to the benefit of the Parties, and their respective successors and permitted assigns. This Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a Party and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right. Nothing contained in this Agreement, nor any act of the Parties shall be deemed or construed by any of the Parties hereto or by third parties, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving any of the Parties.

h. Modification or Amendment: Entire Agreement. This Agreement may not be altered, modified or amended except by a written instrument signed by both Parties. This Agreement and the attached exhibits constitute the entire agreement between the Parties with respect to the subject matter hereof and no other warranties, inducements, considerations, promises or interpretations are implied or impressed upon the Agreement that are not expressly addressed in the Agreement.

i. No Implied Waivers. No waiver by either Party of any breach of any provision of this Agreement will be a waiver of any continuing or succeeding breach of the breached provision, a waiver of the breached provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to, or demand on, either Party in any case will, of itself, entitle that Party to any further notice or demand in similar or other circumstances.

j. Cooperation. The Parties agree to cooperate in good faith to effectuate this Agreement.

IN WITNESS WHEREOF, the Chicago Park District and The Latin School of Chicago have caused this Agreement to be executed as of the date first above written.

CHICAGO PARK DISTRICT

By: *Timothy J. Mitchell*
Timothy J. Mitchell
General Superintendent & CEO

By: *Darlene Lesniak*
Darlene Lesniak
Secretary

THE LATIN SCHOOL OF CHICAGO

By: *Shelley Greenwood*
Shelley Greenwood
VICE PRESIDENT
Office

EXHIBIT A

Project Contracts

1. Alter Construction Contract for the Project
2. JJR Design Contract for the Project
3. URS Corporation Contract for Project Management for the Project (Work Order #8 and #9 Scope only)
4. Burnham permit expediting
5. STS Consultants

EXHIBIT B**Preliminary Project Costs**

| Vendor | Service | Cost Paid to Date | Identified but Unpaid Costs |
|--------------------|---------------------------|--------------------------|------------------------------------|
| Alter Construction | Project Construction | \$544,775.06 | \$1,046,920.04* |
| JJR | Design/Engineering | \$132,847.53 | \$ 8,113.38 |
| URS Corporation | Project Management | \$ 43,820.59 | \$ 53,125.26* |
| Burnham | Permit Expeditor | \$ 900.00 | |
| STS Consultants | Soil Testing | \$ 11,822.76 | |
| STS Consultants | QA Testing | \$ 4,092.76 | |
| Byrne & Byrne | Builder's Risk Insurance | \$ 1,779.00 | |
| Steve Friedland | Legal - Initial Agreement | \$ 7,593.25 | |

* estimated

ALTERCONSTRUCTIONGROUP*

5500 West Howard Street
Skokie, Illinois 60077
TEL (847) 676-4300
FAX (847) 676-4313
NET alterconstruction.com
An affiliate of The Alter Group®

June 3, 2008



Ms. Wendy Freyer
Drayer Freyer & Lapins Limited
150 North Wacker Drive
Suite 800
Chicago, IL 60606

BY E-MAIL AND REGULAR US MAIL

RE: Alter/ Latin Lincoln Park South Field
Our File No. 03-169

Dear Ms. Freyer:

More than 30 days have elapsed since Alter Construction Group was Issued a Stop Work Order for the South Lincoln Park Athletic Field. Since that time, although we have had numerous conversations and meetings with The Latin School and its representatives, we see no pending resolution to payment or contract issues. Although our final billing has been submitted, Alter Construction Group and our subcontractors remain unpaid. We do not know if you have a signed agreement with the Park District or not, however we do know that there have been no attempts by the Park District to contact us.

In your May 28, 2008 e-mail you indicate that the Chicago Park District has "approved the termination of the Schools agreement with the Park District, and the assignment of the project contracts including the Alter Contract to the Park District". Any assignment by The Latin School requires Alter's consent under General Conditions. In Section 13.2.1, it provides "if either party attempts to make such an assignment without consent, that party shall never the less remain legally responsible for all obligations under the contract". As I explained to you in our conversation, Alter Construction has been willing to consider an assignment of its contract to the Chicago Park District, provided The Latin School pays Alter's last draw and there is a mutual agreement about going forward with the contract for the construction of the athletic field.

The opposition, that brought the lawsuit that bars The Latin School from constructing the athletic field, has publicly stated it is opposed to any attempt to continue construction of the field and wants restoration of the park land to its original condition. The Latin School has directed us to stop construction of the field due to the Court Order. The Order provides that The Latin School can never go forward with the construction. Peter Brown of The Latin School requested us to attempt to have items ready for delivery to be restocked including the turf which Mr. Brown knows has been specially manufactured for the field. That, coupled with a lack of resolution on behalf of The Latin School and the Park District indicates to us that there is no immediate prospect of going forward with the construction efforts.

Under Section 14.4 of the General Conditions, The Latin School, as the owner, can terminate for convenience. Since the project cannot go forward, and The Latin School has



asked for cancellation of the turf subcontract, which is the central component of the athletic field, it appears that The Latin School should be asking for a termination for convenience. Under Section 14.4.3 Alter Construction as a contractor is "entitled to receive payment for Work Executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed".

I have already indicated to Mr. Brown that Alter is willing to negotiate a mutually satisfactory termination of the contract. At this time, given the fact that there has been no attempt by the Chicago Park District to contact Alter or give us assurances that the project will go forward in the immediate term and the fact that Alter's payment application has not been processed it appears the contract is terminated. If The Latin School, as the owner, does not declare termination for convenience then Alter may consider the Court Order to stop work and the failure to pay Alter's last payment application as a default.

Latin cannot shift its obligations to the Park District with the promise to pay Alter pending an approval for reimbursement from the Park District to The Latin School for work performed and materials stored. Alter Construction remains willing to work through these issues, but is not willing to accept any assignment to the Chicago Park District unless it is paid for work performed and there is mutual agreement by Alter Construction, The Latin School, and the Chicago Park District as to the value of the remaining work and a restart date for construction.

We await your response as to how you intend to proceed with this matter. We ask that you communicate Alter's concerns to The Latin School Board, and schedule a meeting for us with the Board for resolution to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ronald M. Clarkson", written over the closing text.

Ronald M. Clarkson
President
Alter Construction Group

CC: Bruce Logan
Michael Alter