

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF DU PAGE
AND THE CITY OF WHEATON
FOR IMPROVEMENTS OF CITY-OWNED PROPERTY
ADJOINING THE DUPAGE COUNTY GOVERNMENT CAMPUS**

This Intergovernmental Agreement (hereinafter referred to as "AGREEMENT") is entered into this _____ day of _____, 2024, between the County of DuPage, a body corporate and politic, with offices at 421 North County Farm Road, Wheaton, Illinois (hereinafter referred to as the "COUNTY") and the City of Wheaton, a body politic and corporate, with offices at 303 W. Wesley Street, Wheaton, Illinois (hereinafter referred to as "CITY"). The COUNTY and the CITY are hereinafter sometimes individually referred to as a "party" or together as the "parties."

RECITALS

WHEREAS, the COUNTY has received funding from the Illinois State Board of Elections Polling Place Accessibility Grant to improve accessibility at election facilities within the DuPage County Fairgrounds, 2015 Manchester Road, Wheaton, IL 60187 (hereinafter referred to as the "PROJECT"); and

WHEREAS, the PROJECT will include engineering and construction of new pavement and associated drainage improvements serving the northeast parking lot of the DuPage County Fairgrounds; and

WHEREAS, the CITY has requested that the COUNTY construct, as a part of the PROJECT, new pavement suitable for heavy truck traffic within the CITY-owned portion of the PROJECT area (hereinafter referred to as the "WORK"); and

WHEREAS, the COUNTY is willing to incorporate the WORK into the construction of the PROJECT because of the benefit to the residents of DuPage County, the CITY and the public; and

WHEREAS, the COUNTY by virtue of its power set forth in "Counties Code" (55 ILCS 5/5-1001 *et seq.*) and "Illinois Highway Code" (605 ILCS 5/5-101 *et seq.*) and the CITY by virtue of its home rule power set forth in the "Illinois Municipal Code" (65 ILCS 5/1-1-1 *et seq.*) are authorized to enter into this AGREEMENT; and

WHEREAS, a cooperative intergovernmental agreement is appropriate and such an agreement is authorized and encouraged by Article 7, Section 10 of the Illinois Constitution and Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*); and

WHEREAS, the COUNTY and CITY are public agencies as that term is defined in the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq.

NOW, THEREFORE, in consideration of the premises, the mutual covenants, terms, and conditions herein set forth, and the understandings of each party to the other, the parties do hereby mutually covenant, promise and agree as follows:

1.0 INCORPORATION

- 1.1. All recitals set forth above are incorporated herein and made part thereof, the same constituting the factual basis for this AGREEMENT.
- 1.2. The headings of the paragraphs and subparagraphs of this AGREEMENT are inserted for convenience of reference only and shall not be deemed to constitute part of this AGREEMENT or to affect the construction hereof.

2.0 SCOPE OF PROJECT

- 2.1. The parties agree to cooperate in and make every effort to cause the construction of the PROJECT and the WORK.
- 2.2. The COUNTY and CITY agree that the scope of the PROJECT includes paving of the northeast parking lot of the DuPage County Fairgrounds, including associated subgrade improvements, drainage improvements, pavement markings, and other appurtenant work.
- 2.3. The WORK requested by the CITY consists of the construction, within the CITY-owned portion of the PROJECT area, of a 15-foot-wide access drive, suitable for heavy truck traffic, to serve the CITY-owned water tower facility which adjoins the PROJECT area.

3.0 RESPONSIBILITIES OF THE COUNTY

- 3.1. The COUNTY shall act as the lead agency and be responsible for completing preliminary engineering, design engineering, permit processing, construction engineering, and construction for the PROJECT and the WORK. The COUNTY shall be responsible for securing/paying all PROJECT costs.

- 3.2. The COUNTY shall administer the contract for the construction of the PROJECT including the WORK. The COUNTY agrees to administer the PROJECT in the best interest of both parties and to consult with, and keep advised, officials of the CITY regarding the progress of the WORK and any problems encountered or changes recommended.
- 3.3. The COUNTY shall require the General Contractor for the PROJECT and the WORK to name the CITY as an additional insured for the Commercial General Liability in the Special Provisions section of the contract for the PROJECT.

4.0 RESPONSIBILITIES OF THE CITY

- 4.1. The CITY hereby grants to the COUNTY, its employees, contractors and agents a right-of-entry for ingress and egress onto, over, under and above the CITY property within the boundaries of the PROJECT and the WORK for the purpose of constructing the PROJECT/WORK. The CITY shall retain the right of ingress and egress over said areas so long as it does not interfere with the WORK.
- 4.2. The CITY agrees to exclude from the calculation of local permit fees that portion of PROJECT construction that is to be within CITY-owned property.

5.0 INDEMNIFICATION

- 5.1. The COUNTY shall indemnify, hold harmless and defend the CITY, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and action, including costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with, the COUNTY's negligent or willful acts, errors or omissions in its performance under this AGREEMENT to the extent permitted by law.
 - 5.1.1. The CITY acknowledges that the COUNTY has made no representations, assurances or guaranties regarding the COUNTY's or any successor's or assign's authority and legal capacity to indemnify CITY as provided for in this AGREEMENT. In the event a court of competent jurisdiction holds that the COUNTY, or any successor or assign, is deemed to lack the lawful authority or ability to indemnify,

defend or hold harmless the CITY, or any person or entity claiming a right through CITY, or in the event of change in the laws of the State of Illinois governing COUNTY's or any successor's or assign's indemnification authority, such occurrence(s) shall not affect the validity and enforceability of the remainder of this AGREEMENT or the parties rights and obligations provided for therein.

5.2. The CITY shall indemnify, hold harmless and defend the COUNTY, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and action, including costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with, the CITY's negligent or willful acts, errors or omissions in its performance under this AGREEMENT to the extent permitted by law.

5.2.1. The COUNTY acknowledges that the CITY has made no representations, assurances or guaranties regarding the CITY's or any successor's or assign's authority and legal capacity to indemnify COUNTY as provided for in this AGREEMENT. In the event a court of competent jurisdiction holds that the CITY, or any successor or assign, is deemed to lack the lawful authority or ability to indemnify, defend or hold harmless the COUNTY, or any person or entity claiming a right through COUNTY, or in the event of change in the laws of the State of Illinois governing CITY's or any successor's or assign's indemnification authority, such occurrence(s) shall not affect the validity and enforceability of the remainder of this AGREEMENT or the parties rights and obligations provided for therein.

5.3. Nothing contained herein shall be construed as prohibiting the COUNTY, its officials, directors, officers, agents and employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. Pursuant to Illinois law, 55 ILCS 5/3-9005, any attorney representing the COUNTY, who is not already an Assistant State's Attorney, is to be appointed a Special Assistant State's Attorney, as provided in 55 ILCS 5/3-9008. The COUNTY's participation in its defense shall not remove CITY's duty to indemnify, defend, and hold the COUNTY harmless, as set forth above.

- 5.4. Neither party waives, by these indemnity requirements, any defenses or protections under the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1 *et seq.*) or otherwise available to it, or to the other party, under the law.
- 5.5. Any indemnity as provided in this AGREEMENT shall not be limited by reason of the enumeration of any insurance coverage herein provided. Except with respect to occurrences arising before the completion of the PROJECT, the CITY'S and COUNTY'S indemnification under this section 5.0 hereof shall terminate when the PROJECT is completed.

6.0 GENERAL

- 6.1. It is understood and agreed by the parties hereto that this AGREEMENT is intended to address the construction of the PROJECT, including the WORK, and no changes to existing right-of-way and appurtenance, property rights, maintenance responsibilities and/or jurisdiction, are intended or made in this AGREEMENT.
- 6.2. Whenever in this AGREEMENT approval or review by either the COUNTY or CITY is provided for, said approval or review shall not be unreasonably delayed or withheld.
- 6.3. In the event of a dispute between the COUNTY and CITY representatives in the preparation of the Plans and Specifications, or changes thereto, or in carrying out the terms of this AGREEMENT, the County Engineer of the COUNTY and the Director of Engineering for the CITY shall meet and resolve the issue.
- 6.4. No later than fourteen (14) days after the execution of this AGREEMENT, each party shall designate a representative to the other party who shall serve as the full-time representative of said party during the construction of the PROJECT. Each representative shall have authority, on behalf of such party, to receive notices and make inspections relating to the WORK covered in this AGREEMENT. Representatives shall be readily available to the other party.
- 6.5. This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same instrument.

6.6. This AGREEMENT and the covenants contained herein shall be null and void in the event the contract covering the construction work contemplated herein is not awarded within four (4) years subsequent to the execution of this AGREEMENT.

7.0 ENTIRE AGREEMENT

7.1. This AGREEMENT represents the entire AGREEMENT between the parties with respect to the PROJECT and supersedes all previous communications or understandings whether oral or written.

8.0 NOTICES

8.1. Any notice required hereunder shall be deemed properly given to the party to be notified at the time it is personally delivered or mailed by certified mail, return receipt requested, to the party's address or confirmed email. The address of each party is as specified below. Either party may change its address for receiving notices by giving notices thereof in compliance with the terms of this subsection.

For CITY:

Joseph Tebrugge, P.E.
Director of Engineering
City of Wheaton
303 Wesley Street, 1st Floor
Wheaton, IL 60187
Phone: 630.260.2065
Email: jtebrugge@wheaton.il.us

For COUNTY:

William C. Eidson, P.E.
County Engineer / Acting Director of Transportation
DuPage County Division of Transportation
421 N. County Farm Road
Wheaton, IL 60187
Phone: 630.407.6900
Email: william.eidson@dupagecounty.gov

9.0 AMENDMENT, MODIFICATION OR TERMINATION OF THIS AGREEMENT

9.1. No modification or amendment to this AGREEMENT shall be effective until approved by the parties in writing.

10.0 NON-ASSIGNMENT

10.1. This AGREEMENT shall not be assigned by either party without the written consent of the other party, whose consent shall not be unreasonably withheld.

11.0 AUTHORITY TO EXECUTE/RELATIONSHIP

11.1. The parties hereto have read and reviewed the terms of this AGREEMENT and by their signature as affixed below represent that the signing party has the authority to execute this AGREEMENT and that the parties intend to be bound by the terms and conditions contained herein.

11.2. This AGREEMENT shall not be deemed or construed to create any employment, joint venture, partnership or other agency relationship between the parties.

12.0 GOVERNING LAW

12.1. This AGREEMENT shall be governed by the laws of the State of Illinois as to both interpretation and performance.

12.2. The forum for resolving any disputes concerning the parties' respective performance, or failure to perform, under this AGREEMENT, shall be the Judicial Circuit Court for DuPage County.

13.0 SEVERABILITY

13.1. In the event any provision of this AGREEMENT is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the AGREEMENT. The remainder of this AGREEMENT shall be construed as if not containing the particular provision and shall continue in full force, effect, and enforceability, in accordance with its terms.

14.0 FORCE MAJEURE

14.1. Neither party shall be liable for any delay or non-performance of its obligations caused by any contingency beyond its control including but not limited to Acts of God, war, civil unrest, strikes, walkouts, fires or natural disasters.

IN WITNESS whereof, the parties set their hands and seals as of the date first written above.

COUNTY OF DU PAGE

CITY OF WHEATON

Signature on File

Deborah A. Conroy, Chair
DuPage County Board

Philip Sues
Mayor

ATTEST:

ATTEST:

Signature on File

Jean Kaczmarek
County Clerk

Andrea Rosedale
City Clerk

