

**INTERGOVERNMENTAL AGREEMENT BETWEEN COUNTY OF DUPAGE,
ILLINOIS AND BLOOMINGDALE TOWNSHIP FOR THE MALLARD LAKES
DRAINAGE IMPROVEMENT PROJECT**

This INTERGOVERNMENTAL AGREEMENT is made this 13th day of August 2024, between the County of DuPage, a body politic and corporate, with offices at 421 North County Farm Road, Wheaton, Illinois (hereinafter referred to as the COUNTY) and Bloomingdale Township, a body politic and corporate, with offices at 6N030 Rosedale Avenue, Bloomingdale, Illinois 60108 (hereinafter referred to as the TOWNSHIP).

R E C I T A L S

WHEREAS, Bloomingdale Township (“TOWNSHIP”) and the County of DuPage (“COUNTY”) are public agencies within the meaning of the Illinois “Intergovernmental Cooperation Act” and as authorized by Article 7, Section 10 of the Constitution of the State of Illinois; and

WHEREAS, the purposes of the “Intergovernmental Cooperation Act” and Article 7 of the Constitution of the State of Illinois include fostering cooperation among government bodies; and

WHEREAS, the Illinois General Assembly has granted the COUNTY authority to take action to control flooding, manage stormwater runoff and improve drainage throughout the COUNTY’S territory and to enter into agreements for the aforesaid purposes (Illinois Compiled Statutes, Chapter 55 paragraphs 5/5-1062.3 and 5/5-15001 et. seq.); and

WHEREAS, pursuant to said authority, the TOWNSHIP has sought to undertake a project to improve drainage by performing ditch, culvert, and storm sewer maintenance within the Mallard Lakes Subdivision, generally located north of Lawrence Avenue and South of Webster Avenue within unincorporated Bloomingdale Township; and

WHEREAS, the TOWNSHIP has developed a design to rehabilitate improvements associated with the Mallard Lakes subdivision, (herein referred to as the “PROJECT”); and

WHEREAS, the COUNTY and the TOWNSHIP have determined that the construction of the PROJECT’S drainage components will benefit local citizens by improving drainage and reducing the occurrence of localized flooding within Bloomingdale Township; and

WHEREAS, the TOWNSHIP has requested that the COUNTY contribute funding for the PROJECT’S construction costs, through the COUNTY’S Drainage Assistance Program, in an amount not to exceed ninety thousand dollars and zero cents (\$90,000.00); and

WHEREAS, the TOWNSHIP shall undertake the PROJECT and pay all PROJECT expenses up front, subject to being reimbursed by the COUNTY for qualified expenses, following substantial completion of the PROJECT, per the below Intergovernmental Agreement (“AGREEMENT”).

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 AND CONSTRUCTION.

- 1.1 All recitals set forth above are incorporated herein and made a 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 PROJECT DESCRIPTION.

- 2.1 The PROJECT involves rehabilitation of existing improvements associated with ditch, storm sewer, and all other appurtenances within the roadway rights of way within the Mallard Lakes subdivision, along with any related site restoration.
- 2.2 The PROJECT shall be completed by the TOWNSHIP in substantial conformity to the design plans prepared by Morris Engineering titled MALLARD LAKES DRAINAGE IMPROVEMENT PHASE I, and which plans are incorporated herein as Exhibit A, but may not be attached hereto due to their size.

3.0 FUNDING.

- 3.1 The total PROJECT costs for construction is estimated to be seven hundred thousand dollars and no cents (\$700,000.00). The COUNTY's total contribution amount shall not exceed the amount of ninety thousand dollars and no cents (\$90,000.00), or 20% of the total PROJECT costs, whichever is lesser. The COUNTY'S contribution amount shall only be used to reimburse actual PROJECT construction expenses or engineering fees to design the PROJECT.
- 3.2 The TOWNSHIP shall be responsible for securing all third party professional services (architectural, construction management, etc.), construction labor, bid advertising, permit fees, etc., related to the PROJECT. TOWNSHIP shall also be responsible for bearing all administrative costs, overhead, land acquisition, legal or accounting services related to the PROJECT.
- 3.3 The TOWNSHIP shall be responsible for bearing any cost overruns or expenses in excess of the cost estimate listed in Paragraph 3.1, regardless of the cause, unless the TOWNSHIP and COUNTY agree to apportion such extra costs before they are incurred.

- 3.3 This AGREEMENT shall in no way obligate the TOWNSHIP to undertake this PROJECT if the TOWNSHIP in its sole discretion determines that it is no longer in the TOWNSHIP'S best interest to proceed with this PROJECT. The TOWNSHIP'S right to receive COUNTY reimbursement of PROJECT costs is expressly conditioned upon the TOWNSHIP'S timely and satisfactory completion of the PROJECT by November 30, 2025. The TOWNSHIP'S failure to progress the PROJECT'S construction to substantial completion on or before the date stated in this provision relieves the COUNTY of its obligations under this AGREEMENT.
- 3.4 The TOWNSHIP may only seek COUNTY reimbursement for allowable PROJECT expenses. Allowable PROJECT expenses incurred and paid by the TOWNSHIP in relation to the PROJECT shall only include construction and direct engineering costs necessary to complete the PROJECT.

4.0 TOWNSHIP'S RESPONSIBILITIES.

- 4.1 The TOWNSHIP shall be responsible for the preparation of the plans, specifications, and bid documents for the PROJECT, together with the advertisement and award of all PROJECT-related public bids. The TOWNSHIP shall select, and contract with, all vendors providing professional services for the PROJECT.
- 4.2 The TOWNSHIP shall be responsible for successful completion of all phases of the PROJECT, from design and construction through maintenance.
- 4.3 The TOWNSHIP shall be responsible for securing all local, county, state, and federal permits necessary for completion of the PROJECT.
- 4.4 The TOWNSHIP shall be responsible for submitting copies of all permit applications and related correspondence to the COUNTY in a timely manner to ensure sufficient review by the COUNTY. The purpose of the COUNTY'S review shall be for the sole purpose of documenting whether PROJECT work components qualify as allowable expenses.
- 4.5 The TOWNSHIP shall be responsible for obtaining all required land rights necessary for the completion of the PROJECT.
- 4.6 The TOWNSHIP shall not be reimbursed by the COUNTY for work undertaken prior to the signing of this AGREEMENT.

- 4.7 The TOWNSHIP may enter into additional agreements to secure the services of other project partners to perform or undertake the TOWNSHIP'S functions under this Agreement, but in all instances the TOWNSHIP shall remain responsible for ensuring the satisfactory performance and/or substantial completion by its additional project partners.
- 4.8 The TOWNSHIP shall submit one invoice to the COUNTY following substantial completion of the PROJECT'S construction. Under no circumstances should the COUNTY be invoiced more than the dollar amount stated in Section 3.0. The invoice shall be supported by documentation of all allowable PROJECT expenses for which the TOWNSHIP seeks reimbursement.
- 4.9 The TOWNSHIP shall make direct payments to all parties providing services related to this PROJECT. This requirement will not affect the COUNTY'S obligation to reimburse the TOWNSHIP in the amounts herein agreed upon, nor shall this provision affect the TOWNSHIP'S obligation to repay the COUNTY in the event the PROJECT is not undertaken or completed, as established in paragraph 3.3.
- 4.10 The TOWNSHIP shall allow the COUNTY, including the COUNTY'S employees and professional consultants, reasonable access to the PROJECT area to observe and review PROJECT work and to examine and copy all work documents (i.e., plans, change orders, field orders, manager diaries, etc.).
- 4.11 The COUNTY shall not be responsible for or have control over the design, construction, means, methods, techniques, or procedures with respect to any work performed for the PROJECT. The TOWNSHIP and TOWNSHIP'S contractors shall be solely responsible for the safety of all individuals performing work on the PROJECT. The TOWNSHIP shall take such measures as are necessary to ensure that its contractors maintain the PROJECT areas in a safe condition and install appropriate barricades and warning signs, and the TOWNSHIP shall strictly enforce all applicable safety rules and regulations.

This provision is not intended to create any new burden or liability for the TOWNSHIP beyond the usual burdens and liabilities for a municipality in the construction of public improvements. This section is intended merely to relieve the COUNTY from such liabilities in this PROJECT. The COUNTY'S role in conducting any review, site inspection or granting any consent or approval, as set forth in this provision and Section 4.10, above, relates solely to the COUNTY'S verification of the PROJECT'S eligibility for reimbursement under the COUNTY'S Drainage Assistance Program.

5.0 COUNTY'S RESPONSIBILITIES.

- 5.1 The COUNTY shall reserve the right to review the PROJECT'S plans and specifications, prior to the advertisement for contract services, together with any subsequent change orders, addendums, or revisions thereto, for the purpose of verifying that PROJECT components qualify for reimbursement through the COUNTY'S Drainage Assistance Program.
- 5.2 The COUNTY shall cost share in the PROJECT as follows:
- 5.2.1 The COUNTY shall reimburse the TOWNSHIP for costs associated with the PROJECT up to the sum of ninety thousand dollars and no cents (\$90,000.00) or 20% of the total PROJECT cost, whichever is lesser. The COUNTY shall only reimburse expenses for completed work that has already been paid for by the TOWNSHIP, as specified in paragraph 3.1.
- 5.2.2 The total reimbursement amount paid by the COUNTY shall not exceed ninety thousand dollars and no cents (\$90,000.00). The COUNTY shall make a single payment to the TOWNSHIP following substantial completion of the PROJECT'S work. There shall be no progress payments.
- 5.2.3 In the event actual costs for the PROJECT total less than ninety thousand dollars and no cents (\$90,000.00), the COUNTY'S total reimbursement amount shall not be more than the actual PROJECT construction costs incurred by the TOWNSHIP. In the event it is subsequently determined that the COUNTY has overpaid the TOWNSHIP, for any reason, the TOWNSHIP shall promptly refund the COUNTY the amount of such overpayment.
- 5.2.4 The COUNTY shall not be obligated to pay invoices received after December 31, 2025, regardless of when the work was completed. The invoiced work must have been completed before November 30, 2025.
- 5.3 The COUNTY shall be allowed unlimited, but reasonable, access to the PROJECT area to observe and review PROJECT work and work documents (i.e., plans, change orders, field orders, manager diaries, etc.) for eligibility for COUNTY reimbursement.

6.0 GOVERNMENT REGULATIONS.

- 6.1 The TOWNSHIP shall comply with all local, county, state and federal requirements now in force, or which may hereafter be in force, pertaining to the PROJECT.

7.0 INDEMNIFICATION.

- 7.1 The TOWNSHIP shall indemnify, hold harmless and defend the COUNTY or any of its officials, officers, employees, and agents from and against all liability, claims, suits, demands, liens, proceedings and actions, 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 TOWNSHIP'S performance under this AGREEMENT to the fullest extent the TOWNSHIP is so authorized under the law; provided, however, that the TOWNSHIP shall not be obligated to indemnify, hold harmless and defend the COUNTY for any negligent or intentional wrongful misconduct or omissions by COUNTY officials, employees, agents, contractors or personnel.
- 7.2 The TOWNSHIP shall require each consultant and contractor responsible for the design, construction, maintenance, or monitoring of the PROJECT to name the TOWNSHIP and COUNTY as additional insured parties on said vendor's liability insurance policy. Further, the TOWNSHIP shall require that its consultants and contractors indemnify, defend, and hold harmless the TOWNSHIP and COUNTY, their officers, employees, and elected officials from and against any claims, liability or judgments resulting from, or caused by, the negligence or willful conduct of such consultant and, or contractor.
- 7.3 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, liens, proceedings, and actions brought against them. Pursuant to Illinois law, any attorney representing the COUNTY, under this paragraph or paragraph 7.1, shall be the State's Attorney, or appointed thereby, in accord with the applicable law. The COUNTY'S participation in its defense shall not remove TOWNSHIP'S duty to indemnify, defend, and hold the COUNTY harmless, as set forth above. Moreover, indemnity as provided in this AGREEMENT shall not be limited by reason of any insurance coverage maintained by the TOWNSHIP or its consultants, contractors, or agents. The TOWNSHIP'S indemnification of the COUNTY shall survive the termination, or expiration, of this AGREEMENT.

8.0 AMENDMENT OR MODIFICATION OF THIS AGREEMENT.

- 8.1 The parties may modify or amend terms of this AGREEMENT only by a written document duly approved and executed by both parties, excluding term extensions as provided for in the following provision.
- 8.2 Notwithstanding Paragraph 8.1, above, the term for performing this AGREEMENT may be extended by any suitable County-designated form,

signed by both parties without formal amendment pursuant to Paragraph 8.1, above.

9.0 TERM OF THIS AGREEMENT.

9.1 The term of this AGREEMENT shall begin on the date the AGREEMENT is fully executed, and shall continue in full force and effect until the earlier of the following occurs:

9.1.1 November 30, 2025 or to a new date agreed upon by the parties.

9.1.2 The completion by the TOWNSHIP and COUNTY of their respective obligations under this AGREEMENT in the event such completion occurs before November 30, 2025.

10.0 ENTIRE AGREEMENT.

10.1 This AGREEMENT, including matters incorporated herein, contains the entire AGREEMENT between parties.

10.2 There are no other covenants, warranties, representations, promises, conditions, or understandings; either oral or written, other than those contained herein.

10.3 This AGREEMENT may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

10.4 In event of a conflict between the terms or conditions or this AGREEMENT and any term or condition found in any exhibit or attachment, the terms and conditions of this AGREEMENT shall prevail.

11.0 SEVERABILITY.

11.1 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.

12.0 GOVERNING LAW.

12.1 The laws of the State of Illinois shall govern this AGREEMENT as to both interpretation and performance.

12.2 The venue 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 NOTICES.

13.1 Any required notice shall be sent to the following addresses and parties:

Michael D. Hovde, Jr.
Bloomingdale Township Supervisor
123 N Rosedale Ave
Ste 200
Bloomingdale , IL 60108
630-529-7715

Bob Nogan
Director of Highways and Facilities
Bloomingdale Township
6N030 Rosedale Avenue
Bloomingdale, Illinois 60108
(630) 529 - 5221

Sarah Hunn, Director
DuPage County Stormwater Management Department
421 North County Farm Road
Wheaton, Illinois 60187
(630) 407-6700

DuPage County State's Attorney's Office
Attn: Civil Bureau
503 North County Farm Road
Wheaton, Illinois 60187

14.0 WAIVER OF/FAILURE TO ENFORCE BREACH.

14.1 The parties agree that the waiver of, or failure to enforce, any breach of this AGREEMENT by the remaining party shall not be construed, or otherwise operate, as a waiver of any future breach of this AGREEMENT. Further the failure to enforce any particular breach shall not bar or prevent the remaining party from enforcing this AGREEMENT with respect to a different breach.

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

COUNTY OF DUPAGE

BLOOMINGDALE TOWNSHIP

Deborah A. Conroy
Chair, DuPage County Board

Michael D. Hovde, Jr.
Bloomingtondale Township Supervisor

ATTEST:

ATTEST:

Jean Kaczmarek
County Clerk

Branka Poplonski
Bloomingtondale Township Clerk

EXHIBIT A