

INTERGOVERNMENTAL AGREEMENT BETWEEN COUNTY OF DUPAGE, ILLINOIS
AND THE VILLAGE OF WINFIELD FOR THE WINFIELD CREEK STREAM
RESTORATION PROJECT

This INTERGOVERNMENTAL AGREEMENT (hereinafter referred to as the “AGREEMENT”) is made this 8th day of April 2025 between the COUNTY OF DUPAGE, a body politic and corporate, with offices at 421 N. County Farm Road, Wheaton, Illinois (hereinafter referred to as the “COUNTY”) and the VILLAGE OF WINFIELD, a body politic and corporate, with offices at 27W465 Jewell Road, Winfield, IL 60190 (hereinafter referred to as the “VILLAGE”). The VILLAGE and COUNTY are hereinafter sometimes individually referred to as a “party” or together as the “parties.”

R E C I T A L S

WHEREAS, the VILLAGE and the 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 manage stormwater and control flooding and to enter into agreements for the purposes of stormwater management and flood control (Illinois Compiled Statutes, Chapter 55 paragraphs 5/5-1062.3 and 5/5-15001 et. seq.); and

WHEREAS, pursuant to said authority, the COUNTY has sought to undertake a project to restore a section of Winfield Creek including streambank stabilization, native vegetation, installation of rock toe and riffles, bioswales, filter strips and wetland restoration, located within the Village of Winfield (herein referred to as the “PROJECT”); and

WHEREAS, the COUNTY has been awarded \$472,452.12 in funding for the PROJECT through the Illinois Environmental Protection Agency Section 319(h) Nonpoint Source Pollution Control Financial Assistance Program; and

WHEREAS, the Illinois Environmental Protection Agency permits the use of Section 319(h) funds for stream stabilization projects; and

WHEREAS, DuPage County Board adopted the Winfield Creek Watershed-Based Plan on April 13, 2021; and

WHEREAS, the Winfield Creek Watershed-Based Plan recommends streambank stabilization practices, wetland restoration, bioswales, and filter strips to improve water quality in Winfield Creek; and

WHEREAS, the PROJECT will be located on properties owned by the COUNTY, Winfield Park District, and the VILLAGE, and undertaken in accordance with the following Intergovernmental Agreement, the COUNTY's authority to use said properties for the PROJECT'S construction being granted by said Agreement; and

WHEREAS, the COUNTY shall pay all PROJECT expenses including planning, design, and construction expenses per this AGREEMENT; and

NOW, THEREFORE, in consideration of the promises, 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 includes stabilizing eroded streambanks with bank shaping and installation of rock toe, planting native vegetation, placement of riffle structures in the stream, planting a native filter strip, installation of bioswales at outfalls, wetland enhancement, and educational signage.
- 2.2 The PROJECT shall be developed essentially in accord with the engineering report and engineering plans prepared by Hey and Associates, Inc. with a latest revision date of October 9, 2024, which document is incorporated herein by reference but is not attached hereto due to space limitations.

3.0 FUNDING.

- 3.1 The COUNTY shall pay all expenses and costs necessary to design, permit, construct and implement the PROJECT.

- 3.2 This AGREEMENT shall in no way obligate the COUNTY to undertake this PROJECT if the COUNTY in its sole discretion determines that it is no longer in the COUNTY's best interest to proceed with this PROJECT.

4.0 COUNTY RIGHTS AND RESPONSIBILITIES

- 4.1 At no cost to the VILLAGE, the COUNTY shall complete the design of the PROJECT, including all plan sets, drawings, specifications, and cost estimates necessary to publicly solicit bids for the PROJECT. The VILLAGE may participate in any pre-bid meetings or site visits conducted by the COUNTY as part of the COUNTY's procurement process. The COUNTY agrees to cooperate with the VILLAGE regarding any significant proposed changes, alterations, or modifications to the BID DOCUMENTS involving VILLAGE property including, but not limited to any proposed bidding addenda, field adjustments, or change orders, by providing reasonable advance notification and opportunity for review, comment, and concurrence, which shall not be unreasonably withheld, conditioned, delayed or denied by the VILLAGE. The final versions of the aforesaid documents, together with any invitations to bid, bid notices and addendums, contractor contracts (including general and special conditions) (collectively hereafter the "BID DOCUMENTS") shall be provided to the VILLAGE prior to publishing any invitation to bid.
- 4.2 The COUNTY shall comply with all applicable federal, state, and local laws, rules, and regulations with regard to every phase of the PROJECT, including the following:
- 4.2.1 The COUNTY shall obtain all necessary federal, state, and local permits or other approvals required for the construction of the PROJECT and shall provide copies of said permits and approvals to the Parties upon request.
- 4.2.2 The COUNTY shall be responsible for obtaining all required land rights necessary for the completion of the PROJECT.
- 4.3 To the extent required by law or ordinance, the COUNTY shall publicly advertise the PROJECT to bidders, and award and administer all associated construction-related contracts. The COUNTY shall select professional service providers, including, but not limited to, those that may be related to field surveying, resident engineering, materials testing, and vegetation management, including the preparation of any monitoring and management reports that may be required by the permitting agencies prior to final project completion and permit close-out in accordance with the COUNTY'S own procurement procedures.
- 4.4 Before beginning any PROJECT work, the COUNTY shall require each of its contractors, and consultants, (including their sub-contractors) to obtain the following minimum insurance coverage, which shall be maintained in force until

the COUNTY has furnished the Parties with a letter certifying that all construction and restoration work has been completed:

- 4.4.1 Workers' Compensation Insurance with limits as required by the applicable statutes of the State of Illinois.
- 4.4.2 Employer's Liability Insurance with limits of not less than one million dollars (\$1,000,000.00) each accident/injury; five hundred thousand dollars (\$500,000.00) each employee/disease.
- 4.4.3 Commercial General Liability Insurance with limits of not less than one million dollars (\$1,000,000.00) per occurrence bodily injury/ property damage combined single limit; two million dollars (\$2,000,000.00) aggregate bodily injury/property damage combined single limit. The policy of Commercial General Liability Insurance shall provide "occurrence" based coverage and shall include an endorsement naming the Parties as an additional insureds. The Commercial General Liability policy shall include, but not be limited to, the following:
 - (a) premises/operations coverage;
 - (b) products/completed operations coverage;
 - (c) contractual liability;
 - (d) personal injury coverage;
 - (e) broad form property damage coverage;
 - (f) explosion, collapse, and underground coverage; and
 - (g) independent contractor liability coverage.
- 4.4.4 Comprehensive Motor Vehicle Liability Insurance with limits of not less than two million dollars (\$2,000,000.00) each accident bodily injury/property damage combined single limit.
- 4.4.5 Umbrella/excess liability insurance shall be in force for a minimum limit of one million dollars (\$1,000,000) per each occurrence bodily injury/property damage combined single limit. The umbrella coverage shall apply in excess above the limits stated in subparagraphs 4.4.3 and 4.4.4 above. The foregoing insurance coverage shall be provided by companies authorized to transact business in the State of Illinois and acceptable to and approved by the Parties. To the extent practicable, the COUNTY shall provide the Parties with a Certificate of Insurance for each of the coverages specified above and, if requested, copies of the policies or endorsements issued by the insurers. Each certificate and policy shall provide that no cancellation or modification of the policy will occur without at least thirty (30) days' prior written notice to the Parties. The COUNTY shall not allow any contractor, or consultant, to commence work on properties owned by the Parties until all the insurance coverage required under this paragraph have been obtained and satisfactory

evidence thereof has been furnished in writing to the Parties. From the date of execution of this agreement until the PROJECT's satisfactory completion, each contract between the COUNTY and a contractor and, or consultant, performing work and/or maintenance on the properties owned by the Parties shall provide that each of the Parties is intended as a third-party beneficiary of the insurance obligation that is required of the contractor, or consultant, under this paragraph. Each party may require, as part of their pre-bid comments, that any COUNTY-hired vendor performing work and/or maintenance on their property, or right-of-way, maintain insurance coverage in higher amounts and, or, that such coverage include specific endorsements.

- 4.5 The COUNTY agrees to cooperate with the VILLAGE regarding any reasonable proposed changes, alterations, or modifications to the BID DOCUMENTS, including, but not limited to any proposed bidding addenda, field adjustments, or change orders. To the extent that said changes, alterations or modifications affects another Party's costs, use of its property and, or, future maintenance requirements, the affected Party shall be given reasonable advance notification and opportunity for review, comment, and concurrence prior to implementing such changes, alterations, or modifications to the BID DOCUMENTS. No Party shall unreasonably withhold, condition, delay or deny a request made by another Party. Minor plan revisions which become necessary due to any field conditions may be made without the other Parties' review, comment, or concurrence.
- 4.6 The COUNTY shall confine all construction activities, including temporary staging areas and equipment access routes on VILLAGE property to those areas designated in the Temporary Access Agreement, attached to this document as EXHIBIT A (hereinafter referred to as the "PROJECT AREA"), or as otherwise agreed to by the contractor, VILLAGE, and COUNTY. The COUNTY shall be responsible for restoring any and all property of the VILLAGE located outside of the PROJECT AREA that is disturbed during the course of construction to the satisfaction of the affected Party. VILLAGE property located inside the PROJECT AREA shall be restored to pre-existing conditions as depicted in the BID DOCUMENTS.
- 4.7 The COUNTY shall be responsible for any day-to-day inspection and construction management of the construction work on the PROJECT. The VILLAGE shall have the right to monitor the work for the purpose of ensuring that the work occurring on their respective property conforms to the approved BID DOCUMENTS. Should the VILLAGE determine that any work being performed on the PROJECT is not proceeding in accordance with approved BID DOCUMENTS, the VILLAGE shall notify the COUNTY in writing of such failure. The COUNTY shall be responsible for causing the improper work to be adjusted so as to comply with approved BID DOCUMENTS.

- 4.8 During construction of the PROJECT, the COUNTY shall require its contractor(s) to prohibit public access to the various construction sites and provide for the general security of the work limits, including the prevention of dumping, by taking appropriate measures such as signage, barricades, and temporary fencing, where appropriate.
- 4.9 The COUNTY shall require its contractor(s) to assume sole responsibility for the safety of all persons involved in the construction of the PROJECT and to take such measures as are necessary to ensure that the work site is maintained in a reasonably safe condition, which shall include the installation of appropriate barricades and warning signs.
- 4.10 Following the construction activities, the COUNTY shall be responsible for establishing the native planting plan as depicted in the Final Plan (collectively the "Restoration Component"). The COUNTY shall perform vegetation restoration on VILLAGE property as shown on the plans. Such work shall include seeding, planting, other vegetation restoration measures and post-planting management on the VILLAGE property for the duration of the 10-year Operations & Maintenance Plan (hereinafter referred to as the "O&M PLAN") following the completion of the construction activities. More specifically, the VILLAGE agrees that such restoration and enhancement work shall be as depicted and described in the plan drawings of the Final Plan and within the O&M PLAN, and such amendments and addendum thereto that may be approved by the COUNTY and VILLAGE.
- 4.11 The COUNTY shall be responsible for successful completion of all phases of the PROJECT, from design and construction through the 10-year O&M PLAN for the practices implemented under this Agreement as required by Illinois Environmental Protection Agency under the Section 319(h) grant award.
- 4.12 Long-term maintenance of all project components on COUNTY property shall be the responsibility of the COUNTY.
- 4.13 During the Restoration Component work on VILLAGE property, the COUNTY shall be responsible for scheduling and coordinating an annual joint field inspection of the PROJECT's restoration with appropriate staff representatives from each of those Parties. The COUNTY shall document the results of said field inspections, which shall: include descriptions of any noted PROJECT deficiencies; recommend corrective actions; and identify the party designated for proper and timely response.
- 4.14 The COUNTY shall give notice(s) to the VILLAGE of the date(s) for a final inspection of the PROJECT'S construction work following completion thereof. The VILLAGE shall have thirty (30) calendar days from the receipt of said notices to conduct their final inspections of the completed site or phase and issue its approval or rejection, as circumstances warrant, for the work completed on their respective properties. In the event that the VILLAGE determines that work

on their property does not conform to the BID DOCUMENTS, the VILLAGE shall give notice within the thirty (30) day period of any defects or deficiencies thereof. Said notice shall describe, in detail, the work not performed according to the BID DOCUMENTS and shall also set out the VILLAGE's recommendations for any corrective work it deems necessary. Even after the VILLAGE has determined the PROJECT work to have been satisfactorily completed, the COUNTY shall remain responsible for conditional compliance with all applicable outstanding permits until such time as the issuing agency signs-off on the PROJECT, or any particular PROJECT component, as applicable. During this time the VILLAGE shall take no action that causes the PROJECT to fail regulatory acceptance. Should the VILLAGE fail to timely notify the COUNTY of any nonconforming work, defects or deficiencies, the VILLAGE shall be deemed to have approved and accepted that PROJECT work.

- 4.15 The COUNTY shall bear its own expenses related to the use of its employees or consultants for any review, site inspections, meeting attendance or the preparation and issuance of any comments provided for in this AGREEMENT.

5.0 VILLAGE RIGHTS AND RESPONSIBILITIES

- 5.1 The VILLAGE shall reserve the right to review the PROJECT plans and specifications, prior to the COUNTY'S advertisement for contract services, together with any subsequent change orders, addendums, or revisions thereto ("CONTRACT DOCUMENTS"), for the purpose of verifying that PROJECT components meet all VILLAGE requirements.
- 5.2 The VILLAGE may attend any pre-bid meeting, construction progress meetings or site visits conducted by the COUNTY as part of the COUNTY's procurement process, as specified in Paragraph 4.1 of this AGREEMENT.
- 5.3 The VILLAGE agrees to cooperate with the COUNTY regarding any significant proposed changes, alterations, or modifications to the BID DOCUMENTS including, but not limited to any proposed bidding addenda, field adjustments, or change orders, to the extent that said changes, alterations or modifications affects the COUNTY's costs, use of its property and, or, future maintenance requirements, by providing reasonably prompt review, comment, and concurrence, which shall not be unreasonably withheld, conditioned, delayed or denied by the VILLAGE.
- 5.4 The VILLAGE hereby grants the COUNTY'S employees, consultant(s) and contractor(s) permission to enter upon VILLAGE property, depicted in EXHIBIT A, within the East Avenue right of way north of Sunnyside Ave, and within the Manchester Road right of way as shown on the Final Plan, at no cost to the COUNTY, for such purposes necessary and attendant to establishing and constructing the PROJECT pursuant to this AGREEMENT. The VILLAGE shall

grant to the COUNTY, at no cost to the COUNTY the authority to access and undertake PROJECT-related activities, including but not limited to construction, construction management, grading, excavation, filling, vegetative plantings, site restoration, monitoring and testing throughout the PROJECT AREA lying on VILLAGE property. The VILLAGE shall not be responsible for the means, methods, techniques, or procedures with respect to the construction of the PROJECT, nor for the safety of persons performing work on VILLAGE property.

- 5.5 The VILLAGE shall have the right to monitor the work in the PROJECT AREA for the purpose of insuring that the work conforms to the approved BID DOCUMENTS, the bid terms, and conditions of this AGREEMENT.
- 5.6 The VILLAGE shall grant to the COUNTY, at no cost to the COUNTY, permission to access, maintain, and monitor the native vegetation within the PROJECT AREA on VILLAGE property for the duration of the maintenance and monitoring period, in accordance with the PROJECT documents.
- 5.7 The VILLAGE shall provide appropriate staff representative(s), or consultant(s), to attend the final inspection of the PROJECT, and any annual field inspections, as scheduled and coordinated by the COUNTY. The COUNTY shall, in an appropriate and timely manner, properly address and correct any noted PROJECT deficiencies that are determined to exist in any part or component of the PROJECT.
- 5.8 The VILLAGE shall bear its own expenses related to the use of its employees or consultants for any review, site inspections, meeting attendance or the preparation and issuance of any comments provided for in this AGREEMENT.
- 5.9 The VILLAGE shall acknowledge the COUNTY in any publications resulting from work achieved in conjunction with this PROJECT. Any publications shall include the following phrase: "Funding for this project provided, in part, by the Illinois Environmental Protection Agency through Section 319 of the Clean Water Act."
- 5.10 Following the 10-year O&M PLAN, long-term maintenance of all project components on VILLAGE property shall be the responsibility of the VILLAGE.
- 5.11 Upon PROJECT completion, the VILLAGE shall be responsible for permanently maintaining all improvements outside of PROJECT scope.

6.0 GOVERNMENT REGULATIONS.

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

6.2 The VILLAGE understands and agrees that Illinois Environmental Protection Agency funds are subject to audit. The VILLAGE agrees to assist the COUNTY in responding to any audits of the funds used for the PROJECT.

7.0 INDEMNIFICATION.

- 7.1 The COUNTY shall indemnify, hold harmless and defend the VILLAGE or any of its officials, officers, employees, and agents from and against all liability, claims, suits, demands, liens, proceedings and actions, including reasonable 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 performance under this AGREEMENT to the fullest extent the COUNTY is so authorized under the law; provided, however, that the COUNTY shall not be obligated to indemnify, hold harmless and defend the VILLAGE for any negligent or intentional wrongful misconduct or omissions by VILLAGE officials, employees, agents, contractors or personnel.
- 7.2 The COUNTY shall specifically indemnify, hold harmless and defend the VILLAGE or any of its officials, officers, employees, and agents from and against all liability, claims, suits, demands, liens, proceedings and actions, including reasonable 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 use of Section 319(h) funds for this project, including, but not limited to audits, recoupment of the Section 319(h) funds used for this project, or fines and penalties assessed related to using Section 319(h) funds for this project.
- 7.3 The VILLAGE shall indemnify, hold harmless and defend the COUNTY and any of its officials, officers, employees, and agents from and against all liability, claims, suits, demands, liens, proceedings and actions, including reasonable 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 VILLAGE's performance under this AGREEMENT to the fullest extent the VILLAGE is so authorized under the law; provided, however, that the VILLAGE 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.
- 7.4 The COUNTY shall require each consultant and contractor responsible for the construction, maintenance, or monitoring of the PROJECT to name the VILLAGE and COUNTY as an additional insured party on said vendor's liability insurance policy. Further, the COUNTY shall require that its consultants and contractors indemnify, defend and hold harmless the VILLAGE and COUNTY, its 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.

7.5 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 paragraphs 7.1 through 7.4 is to be the State's Attorney, in accord with the applicable law. The COUNTY'S participation in its defense shall not remove VILLAGE'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 either Party or its consultants, contractors or agents. The indemnification obligations hereunder 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 December 31, 2036, or to a new date agreed upon by the parties.

9.1.2 The completion by the VILLAGE and COUNTY of their respective obligations under this AGREEMENT, in the event such completion occurs before December 31, 2036.

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 the event of a conflict between the terms or conditions of 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:

Village Manager
Village of Winfield
27 W 465 Jewell Road
Winfield, IL 60190

DuPage County State's
Attorney's Office
ATTN: Civil Bureau
503 N. County Farm Rd.
Wheaton, Illinois 60187

Sarah Hunn
Director
DuPage County
Stormwater Management
421 N. 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.

15.0 NO WAIVER OF TORT IMMUNITIES

- 15.1 Nothing contained in any provision of this Agreement is intended to constitute nor shall constitute a waiver of the defenses, privileges or immunities available to the parties under the Illinois Local Governmental and Governmental Employees Tort Immunity Act.

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

COUNTY OF DUPAGE

ATTEST

Deborah A. Conroy,
Chair
DuPage County Board

Jean Kaczmarek
County Clerk

VILLAGE OF WINFIELD

ATTEST

EXHIBIT A