

## Resolution

SM-R-0176-22

### INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF BURR RIDGE AND THE COUNTY OF DUPAGE FOR THE ELM STREET CULVERT REPLACEMENT PROJECT

THIS INTERGOVERNMENTAL AGREEMENT is entered into this 12<sup>TH</sup> day of April, 2022 between the County of DuPage, a body corporate and politic, (hereinafter referred to as the "COUNTY") with offices located at 421 North County Farm Road, Wheaton, Illinois 60187 and the Village of Burr Ridge, (hereinafter referred to as the "VILLAGE") with offices located at 7660 S. County Line Road, Burr Ridge, Illinois, 60527.

#### RECITALS

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 to cooperate for public purpose; and

WHEREAS, the purposes of the Intergovernmental Cooperation Act and Article 7 of the Constitution of the State of Illinois includes fostering cooperation among governmental bodies; and

WHEREAS, pursuant to authority granted at 55 ILCS 5/5-1062.3, and 5/5-15001, et seq., the COUNTY is authorized to take action to control flooding, manage stormwater and to enter into agreements for the purposes of stormwater management and flood control; and

WHEREAS, the COUNTY has adopted the DuPage County Stormwater Management Plan, which plan recognizes on-site detention, stream maintenance, erosion control, and water quality as integral parts of the proper management of storm and flood waters; and

WHEREAS, the COUNTY has further adopted a Post Construction Best Management Practices Fee In Lieu Program ("PROGRAM") which provides funding assistance to design, construct, and maintain water quality or runoff volume reduction improvements; and

WHEREAS, the VILLAGE has identified an area along Elm Street conveying the "63rd Street Ditch" that experiences extreme erosion in a channelized ditch with high channel velocities causing uprooting of trees and continued erosion to the streambanks; and

WHEREAS, the VILLAGE has developed a work plan for a project ("PROJECT") that will reduce soil loss and reduce TSS, BOD, TP and TN pollution transport to downstream waterways including the Des Plaines River and directly increase DO levels; and

WHEREAS, the COUNTY, VILLAGE, and the general public will benefit from the PROJECT through improved water quality in the watershed; and

WHEREAS, the PROJECT qualifies for funding through the PROGRAM; and

WHEREAS, the cost to construct the PROJECT is estimated to be nine hundred eighty-two thousand and no cents (\$982,000.00); and

WHEREAS, the VILLAGE has requested that the COUNTY provide funding assistance

Resolution

SM-R-0176-22

for the PROJECT in the amount of fifty thousand dollars and no cents (\$50,000.00), which funding assistance shall be paid by the COUNTY from the PROGRAM; and

WHEREAS, insofar as the VILLAGE is the PROGRAM funding recipient, the VILLAGE shall provide all funds for the PROJECT, paying all PROJECT expenses up front, and being reimbursed by the COUNTY at a later date in the amounts specified per the attached INTERGOVERNMENTAL AGREEMENT (also hereafter "AGREEMENT"); and

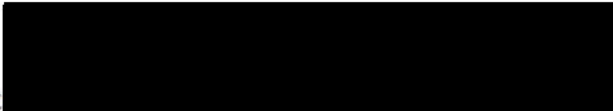
NOW, THEREFORE, BE IT RESOLVED by the DuPage County Board that the attached AGREEMENT between the COUNTY and the VILLAGE is hereby accepted and approved, and that the Chairman of the DuPage County Board is hereby authorized and directed to execute the AGREEMENT on behalf of the COUNTY.

BE IT FURTHER RESOLVED that the DuPage County Clerk be directed to transmit a copy of this Resolution and the attached AGREEMENT, by and through the Stormwater Management Department, to the Village of Burr Ridge, Attn: David Preissig, 7660 S. County Line Rd, Burr Ridge, IL 60527; Patrick Collins/State's Attorney's Office; County Auditor; Finance Director; Treasurer; Purchasing; and three (3) copies to the DuPage County Stormwater Management Department.

Enacted and approved this 12th day of April, 2022 at Wheaton, Illinois.

  
DANIEL J. CRONIN, CHAIRMAN  
DU PAGE COUNTY BOARD

Attest

  
JEAN KACZMAREK, COUNTY CLERK

INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF BURR RIDGE  
AND THE COUNTY OF DUPAGE FOR THE ELM STREET CULVERT REPLACEMENT  
PROJECT

THIS INTERGOVERNMENTAL AGREEMENT is entered into this 12<sup>TH</sup> day of April, 2022 between the County of DuPage, a body corporate and politic, (hereinafter referred to as the "COUNTY") with offices located at 421 North County Farm Road, Wheaton, Illinois 60187 and the Village of Burr Ridge, (hereinafter referred to as the "VILLAGE") with offices located at 7660 S. County Line Road, Burr Ridge, Illinois, 60527.

RECITALS

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 to cooperate for public purpose; and

WHEREAS, the purposes of the Intergovernmental Cooperation Act and Article 7 of the Constitution of the State of Illinois includes fostering cooperation among governmental bodies; and

WHEREAS, pursuant to authority granted at 55 ILCS 5/5-1062.3, and 5/5-15001, et seq., the COUNTY is authorized to take action to control flooding, manage stormwater and to enter into agreements for the purposes of stormwater management and flood control; and

WHEREAS, the COUNTY has adopted the DuPage County Stormwater Management Plan, which plan recognizes on-site detention, stream maintenance, erosion control, and water quality as integral parts of the proper management of storm and flood waters; and

WHEREAS, the COUNTY has further adopted a Post Construction Best Management Practices Fee In Lieu Program ("PROGRAM") which provides funding assistance to design, construct, and maintain water quality or runoff volume reduction improvements; and

WHEREAS, the VILLAGE has identified an area along Elm Street conveying the "63rd Street Ditch" that experiences extreme erosion in a channelized ditch with high channel velocities causing uprooting of trees and continued erosion to the streambanks; and

WHEREAS, the VILLAGE has developed a work plan for a project ("PROJECT") that will reduce soil loss and reduce TSS, BOD, TP and TN pollution transport to downstream waterways including the Des Plaines River and directly increase DO levels; and

WHEREAS, the COUNTY, VILLAGE, and the general public will benefit from the PROJECT through improved water quality in the watershed; and

WHEREAS, the PROJECT qualifies for funding through the PROGRAM; and

WHEREAS, the cost to construct the PROJECT is estimated to be nine hundred eighty-two thousand and no cents (\$982,000.00); and

WHEREAS, the VILLAGE has requested that the COUNTY provide funding assistance for the PROJECT in the amount of fifty thousand dollars and no cents (\$50,000.00), which funding assistance shall be paid by the COUNTY from the PROGRAM; and

WHEREAS, insofar as the VILLAGE is the PROGRAM funding recipient, the VILLAGE shall provide all funds for the PROJECT, paying all PROJECT expenses up front, and being reimbursed by the COUNTY at a later date in the amounts specified per the attached INTERGOVERNMENTAL AGREEMENT (also hereafter "AGREEMENT"); and

NOW, THEREFORE, in consideration of the premises and covenants contained herein, the parties agree that:

#### 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.

The PROJECT addresses the existing site issues including extreme erosion in a channelized ditch with lack of native vegetation or wetland habitat. It also has high channel velocities causing uprooting of trees and continued erosion to the streambanks. The solution to these problems is to implement the following best management practices:

- Large box culvert installed with increased capacity to disperse concentrated stream flow,
- Native vegetation buffer plantings both upstream and downstream to provide new habitat for aquatic species,
- Bank stabilization with bioengineering practices to reduce eroding streambanks,
- Establishment of new riffles and pools for oxygenating the low-flow stream flows,
- Embedding the box culvert into the stream channel to allow aquatic species passage,
- Creating 800 square feet of new wetland upstream and 2000 square feet of side

channel wetland downstream to improve water quality and habitat.

### 3.0 FUNDING.

- 3.1 The PROJECT costs are estimated to be nine hundred eighty-two dollars and no cents (\$982,000). Fifty thousand dollars and no cents (\$50,000.00) are being requested from the DuPage County Fee-In-Lieu funds, which is five and nine hundredths percent of the overall cost of the PROJECT. The cost share is as follows, unless otherwise agreed to in writing as provided in Paragraph 3.2 below:

|                                                                            |                                            |
|----------------------------------------------------------------------------|--------------------------------------------|
| <b>Engineer Opinion of Probable Cost</b>                                   | <b>\$982,000</b>                           |
| <u>Secured Grant Funding</u>                                               |                                            |
| o Rep. Sean Casten (IL-06) Community Project                               | <u>\$ 785,000</u>                          |
| <b>total secured grant funding</b>                                         | <b><u>\$ 785,000</u></b>                   |
| <u>Local Funding Requests for Commitment - Grant Funding Being Pursued</u> |                                            |
| o DuPage County BMP fee-in-lieu Program                                    | \$ 50,000 (5.09% of overall project costs) |
| o Village of Burr Ridge – Capital Funding                                  | <u>\$ 147,000</u>                          |
| <b>total commitment – grant funding being pursued</b>                      | <b>\$ 197,000</b>                          |

- 3.2 The VILLAGE shall be responsible for bearing all cost overruns, which includes all PROJECT expenses in excess of the PROJECT cost estimate in Paragraph 3.1, above, regardless of the cause of such cost increase, unless the VILLAGE and COUNTY agree to apportion such extra costs before such additional costs are incurred.
- 3.3 This AGREEMENT shall in no way obligate the VILLAGE to undertake this PROJECT if the VILLAGE in its sole discretion determines that it is no longer in the VILLAGE'S best interest to proceed with this PROJECT. However, in the event the PROJECT is not substantially completed by November 30, 2024, the VILLAGE shall promptly reimburse the COUNTY any monies paid by the COUNTY to the VILLAGE pursuant to this AGREEMENT. The VILLAGE'S right to retain the COUNTY'S reimbursement of PROJECT costs is expressly conditioned upon the VILLAGE'S timely and satisfactory completion of the PROJECT.
- 3.4 The VILLAGE may only seek COUNTY reimbursement for allowable PROJECT expenses. Allowable PROJECT expenses incurred and paid by the VILLAGE in relation to the PROJECT shall include third-party professional services (construction management, etc.), construction (labor and materials), bid

advertising, etc. Notwithstanding the foregoing, allowable expenses shall not include the VILLAGE'S administrative costs, overhead, payroll, land acquisition, legal or accounting services.

4 VILLAGE'S RESPONSIBILITIES.

- 4.1 The VILLAGE 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 VILLAGE shall select, and contract with, all vendors providing professional services for the PROJECT.
- 4.2 The VILLAGE shall be responsible for successful completion of all phases of the PROJECT, from design and construction through maintenance.
- 4.3 The VILLAGE shall be responsible for securing all local, county, state, and federal permits necessary for completion of the PROJECT.
- 4.4 The VILLAGE 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 VILLAGE shall be responsible for obtaining all required land rights necessary for the completion of the PROJECT.
- 4.6 The VILLAGE shall not be reimbursed by the COUNTY for work undertaken prior to the signing of this AGREEMENT.
- 4.7 The VILLAGE may enter into additional agreements to secure its portion of the local PROJECT costs.
- 4.8 The VILLAGE shall submit no more than one invoice per month to the COUNTY during the construction and maintenance phases of the PROJECT. Under no circumstances should the COUNTY be invoiced more than five and nine hundredths percent (5.09%) of total incurred PROJECT costs up to the dollar limit established in Paragraph 3.1. Each invoice shall show the quantities and cost per item and be summarized by PROJECT area.
- 4.9 The VILLAGE 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 VILLAGE in the amounts herein agreed upon, nor shall this provision affect the VILLAGE'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 VILLAGE shall make any data collected from the PROJECT available to the COUNTY. The COUNTY shall be allowed unlimited, but reasonable, access to the PROJECT area to observe and review PROJECT work and all work documents (i.e., plans, change orders, field orders, construction 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 VILLAGE and VILLAGE'S contractors shall be solely responsible for the safety of all individuals performing work on the PROJECT. The VILLAGE 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 VILLAGE shall strictly enforce all applicable safety rules and regulations. This provision is not intended to create any new burden or liability for the VILLAGE beyond the usual burdens and liabilities for an Illinois VILLAGE in the construction of public improvements. This section is intended merely to relieve the COUNTY from such liabilities in this PROJECT. COUNTY'S role in conducting any review or granting any consent or approval relates solely to the PROJECT'S eligibility, or whether any particular costs is an allowable expense, under the COUNTY'S Countywide Post Construction Best Management Practices Program for water quality.
- 4.12 The VILLAGE shall acknowledge the COUNTY using logo(s) and/or wording provided by the COUNTY in any printed materials promoting the PROJECT.
- 4.13 The VILLAGE agrees to provide the COUNTY with estimates of pollutant load reduction from the project for Total Phosphorus (lb/yr), Total Nitrogen (lb/yr), Total Suspended Solids (t/yr), and Biological Oxygen Demand (lb/yr). Pollutant Load Reduction estimates should be determined by methodology approved by DuPage County and/ or the Illinois EPA.

5.0 COUNTY'S RESPONSIBILITIES.

- 5.1 The COUNTY shall reserve the right to review the PROJECT'S plans and specifications, prior to the VILLAGE'S 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 Site Runoff Storage Variance Fee Program.
- 5.2 The COUNTY shall cost share in the PROJECT as follows:
  - 5.2.1 The COUNTY shall reimburse the VILLAGE for approved costs

associated with the PROJECT at a fixed proportion of five and nine hundredths percent (5.09%) of the PROJECT costs, which have been incurred and paid for by the VILLAGE, as specified in Paragraph 3.1.

5.2.2 The total reimbursement amount paid by the COUNTY shall not exceed fifty thousand dollars and no cents (\$50,000.00).

5.2.3 In the event that the PROJECT'S costs total less than fifty thousand dollars and no cents (\$50,000.00), the COUNTY'S total reimbursement amount shall be not more than five and nine hundredths percent (5.09%) of the actual total PROJECT costs. Any amounts overpaid by the COUNTY shall be promptly refunded by the VILLAGE.

5.2.4 The COUNTY shall not be obligated to pay invoices received after November 30, 2024, regardless of when the work was completed and notwithstanding that the COUNTY'S contribution limit has not been reached.

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 the limited purpose of determining eligibility for COUNTY reimbursement, and the use of all data collected as part of the PROJECT.

## 6.0 GOVERNMENT REGULATIONS.

6.1 The VILLAGE shall comply with all local, State and Federal requirements now in force, or which may hereafter be in force, pertaining to the Project.

## 7.0 INDEMNIFICATION.

7.1 The VILLAGE 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 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.

7.2 The VILLAGE 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 VILLAGE 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.

- 7.3 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 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 the VILLAGE or its consultants, contractors or agents. The VILLAGE'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, 2024 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 November 30, 2024.

10 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 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 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 REQUIRED UNDER THIS AGREEMENT.

- 13.1 Any notice required by the provisions of this Agreement shall be mailed to:

Mr. David Preissig  
Director of Public Works/Village Engineer  
Village of Burr Ridge  
Burr Ridge, Illinois 60527

Ms. Sarah Hunn  
Director  
DuPage County Stormwater Management

421 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 WHEREOF, the parties set their hands and seals as of the date first written above.

COUNTY OF DUKE

BY [REDACTED]  
DANIEL J. CRONIN  
CHAIRMAN

VILLAGE OF BURRIDGE

BY [REDACTED]  
GARY A. GRASSO  
MAYOR

AT [REDACTED]  
BY [REDACTED]  
COUNTY CLERK

ATT [REDACTED]  
BY: [REDACTED]  
SUSAN SCHAUS  
VILLAGE CLERK

AYES 17  
NAYS 0  
ABSENT 1