

**INTERGOVERNMENTAL AGREEMENT BETWEEN COUNTY OF DUPAGE,
ILLINOIS AND NAPERVILLE TOWNSHIP FOR THE
GREEN ACRES STORMWATER IMPROVEMENT PROJECT**

This INTERGOVERNMENTAL AGREEMENT is made this 14th day of November 2023 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 Naperville Township, a body politic and corporate, with offices at 113 Water Street, Naperville, Illinois 60540 (hereinafter referred to as the TOWNSHIP).

R E C I T A L S

WHEREAS, the TOWNSHIP and 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, the COUNTY has adopted the DuPage County Stormwater Management Plan which recognizes the reduction of stormwater runoff as an integral part of the proper management of storm and flood waters; and

WHEREAS, the COUNTY has been awarded \$179,266,585 in funding through the American Rescue Plan Act (ARPA); and

WHEREAS, ARPA permits the use of ARPA funds for stormwater infrastructure projects; and

WHEREAS, the COUNTY Board has allocated a portion of its ARPA funds be dedicated towards qualifying stormwater infrastructure projects; and

WHEREAS, the Stormwater Management Planning Committee and the DuPage County Board has approved a township road district cost share program, and a portion of the funds

dedicated to Stormwater Infrastructure are to be used to fund program specific shovel-ready projects that demonstrate flood protection and resilience measures; and

WHEREAS, the Stormwater Management Department on behalf of the COUNTY has developed and implemented a competitive grant program available to all township road districts in DuPage County; and

WHEREAS, the TOWNSHIP has submitted an application under this grant program for the "GREEN ACRES STORMWATER IMPROVEMENT PROJECT" that meets the criteria as a project that qualifies as an ARPA Stormwater Infrastructure Project (herein referred to as the "PROJECT"); and

WHEREAS, the COUNTY and the TOWNSHIP have determined that the implementation of the PROJECT will benefit local citizens with flood protection, water quality and/or resilience measures; and

WHEREAS, the TOWNSHIP has requested COUNTY participation in cost sharing of the PROJECT through a grant from the COUNTY'S American Rescue Plan Act in an amount not to exceed forty five thousand and dollars (\$45,000.00); and

WHEREAS, the TOWNSHIP shall pay all PROJECT expenses up front and will be reimbursed for qualified expenses per this AGREEMENT; and

WHEREAS, the TOWNSHIP shall share any available data collected from the PROJECT for the purposes of fostering community education and improving upon similar future projects; 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 involves construction of storm sewer improvements to address drainage concerns in the Green Acres Subdivision. The proposed project will help alleviate localized flooding experienced in the neighborhood by collecting and

conveying stormwater more efficiently through an improved system of ditches and storm sewer.

- 2.2 The PROJECT shall be developed essentially in accord with the Grant Funding Request provided to the COUNTY by the TOWNSHIP.

3.0 FUNDING.

- 3.1 The total construction related PROJECT costs are estimated to be forty five thousand dollars (\$45,000.00). The COUNTY's maximum reimbursement amount is \$45,000.00 or 100% of the estimated PROJECT cost, whichever is least.
- 3.2 The TOWNSHIP shall be responsible for bearing any cost overruns or expenses in excess of the funding listed in Paragraph 3.1, regardless of the cause, unless the TOWNSHIP and COUNTY agree to apportion such extra costs (through an amendment consistent with Paragraph 8.1) 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. However, in the event the PROJECT is not substantially completed by October 31, 2024, the TOWNSHIP shall promptly reimburse the COUNTY any monies paid by the COUNTY to the TOWNSHIP pursuant to this AGREEMENT. The TOWNSHIP's right to retain the COUNTY'S reimbursement of PROJECT costs is expressly conditioned upon the TOWNSHIP's timely and satisfactory completion of the PROJECT.
- 3.3 The TOWNSHIP may only seek COUNTY reimbursement for allowable PROJECT construction expenses incurred on, or before, October 31, 2024. Allowable PROJECT expenses incurred and paid by the TOWNSHIP in relation to the PROJECT shall include third-party professional services related to the construction of the PROJECT, but does not include construction management, bid advertising, etc. Notwithstanding the foregoing, allowable expenses shall not include the TOWNSHIP's administrative costs, overhead, payroll, land acquisition, legal or accounting services.
- 3.4 As this Agreement utilizes ARPA funds, the TOWNSHIP is aware that time is of the essence in notifications as to whether the TOWNSHIP will proceed with this project to substantial completion not later than October 31, 2024. If the TOWNSHIP fails to communicate that the TOWNSHIP is not proceeding with this project or if the TOWNSHIP fails to substantially complete this project by October 31, 2024, the COUNTY may recoup any expended funds and withhold any unexpended funds to be used for other permissible purposes in advance of the December 31, 2026 federal recapture deadline.

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 any portion of the local PROJECT costs that exceed the original PROJECT estimate as long as the funding does not conflict with the ARPA criteria.
- 4.8 The TOWNSHIP 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 forty five thousand dollars (\$45,000.00) or 100% of the estimated PROJECT costs, whichever is lesser. The invoice shall show the quantities, cost per item, date of work incurred, proof of payment (copy of check), final waivers from the primary contractor, and a brief summary of work completed on the PROJECT.
- 4.9 The TOWNSHIP shall make direct payments, or cause to have payments made, 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 make any data collected from the PROJECT available to the COUNTY upon reasonable request by 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.). The COUNTY shall provide the TOWNSHIP reasonable advanced notice of when the COUNTY requires such access.
- 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 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 or cause to have strictly enforced 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. COUNTY'S role in conducting any review or granting any consent or approval relates solely to the PROJECT'S eligibility under the COUNTY'S ARPA funding.
- 4.12 The TOWNSHIP must acknowledge the COUNTY using logo(s) and wording provided by the COUNTY in permanent onsite signage (if applicable) and other promotion of the PROJECT including, but not limited to, printed materials, press releases and presentations.

5.0 COUNTY'S RESPONSIBILITIES.

- 5.1 The COUNTY shall reserve the right to review the PROJECT plans and specifications, prior to the TOWNSHIP'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 qualify for reimbursement through the COUNTY'S ARPA Grant. The COUNTY shall promptly provide the TOWNSHIP with any recommended changes to the CONTRACT DOCUMENTS for PROJECT components to qualify for reimbursement.
- 5.2 The COUNTY shall cost share in the PROJECT as follows:
- 5.2.1 The COUNTY shall reimburse the TOWNSHIP for approved costs associated with the PROJECT at a maximum amount of \$95,000.00, or 100% of the estimated PROJECT cost whichever is least, which have been incurred and 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 forty five thousand dollars (\$45,000.00).
- 5.2.3 In the event PROJECT costs total less than forty five thousand dollars (\$45,000.00), the COUNTY'S total reimbursement amount shall be only for 100% of the actual total PROJECT costs. Any amounts overpaid by the COUNTY shall be promptly refunded by the TOWNSHIP.
- 5.2.4 The COUNTY shall not be obligated to pay invoices received after December 30, 2024, regardless of when the work was completed and notwithstanding that the COUNTY'S contribution limit has not been reached.
- 5.2.5 The COUNTY shall not reimburse for any work completed before entering into the IGA, nor shall pay for any work completed after October 31, 2024.
- 5.2.6 The COUNTY shall not reimburse for any work completed for invoices received after December 30, 2024.
- 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.
- 5.4 The COUNTY does not, and shall not warrant, and makes no representations that the project meets all the qualifications and requirements for the expenditure of ARPA funds.

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.
- 6.2 The TOWNSHIP understands and agrees that ARPA funds are subject to audit and potential recoupment by the Federal Government of the United States of America. The TOWNSHIP agrees to assist the COUNTY in responding to any audits of the ARPA funds used for 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 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 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 specifically 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 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 ARPA funds for this project, including, but not limited to audits, recoupment of the ARPA funds used for this project, or fines and penalties assessed related to using ARPA funds for this project.
- 7.3 The TOWNSHIP shall require each consultant and contractor responsible for the construction, maintenance, or monitoring of the PROJECT to name the TOWNSHIP and COUNTY as an additional insured party 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, 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.
- 7.4 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, 7.2 or 7.3 is to be the State's Attorney, 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 December 30, 2024, 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 December 30, 2024.

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:

Eddie Bedford
Naperville Township Supervisor, Director of Road Services
113 Water Street
Naperville, IL 60540
630-388-4401

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.

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.

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

COUNTY OF DUPAGE

NAPERVILLE TOWNSHIP

Deborah A. Conroy
Chairman, DuPage County Board

Eddie Bedford
Naperville Township Supervisor

ATTEST:

ATTEST:

Jean Kaczmarek
County Clerk

Name:
Title: *Admin Asst.*

State of Illinois County of DuPage

This Instrument was acknowledged before me

On *October 13*, 20*23* by

Eddie Bedford

Signature of Notary Public

