

**INTERGOVERNMENTAL AGREEMENT BETWEEN COUNTY OF DUPAGE, ILLINOIS AND THE VILLAGE OF WESTMONT FOR THE LIBERTY PARK WATER EXPANSION PROJECT (ARPA)**

This INTERGOVERNMENTAL AGREEMENT (“AGREEMENT”) is made this 10th day of December, 2024 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 Westmont, a body politic and corporate, with offices at 31 W. Quincy Street, Westmont, IL 60559 (hereinafter referred to as the “VILLAGE”).

**R E C I T A L S**

WHEREAS, the VILLAGE and COUNTY are public agencies within the meaning of the Illinois “Intergovernmental Cooperation Act,” 5 ILCS 220/1, et seq. (the “ACT”), and are authorized by the ACT and by Article 7, Section 10 of the Constitution of the State of Illinois to enter into this AGREEMENT; and

WHEREAS, the purposes of the 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 acquire, construct, extend or improve any waterworks system, and to enter into agreements for the purposes of waterworks management (Illinois Compiled Statutes, Chapter 55, paragraphs 5/5-15009 and 5/5-15001, et. seq.); and

WHEREAS, the COUNTY and the VILLAGE are hereafter sometimes referred to individually as the “PARTY” and collectively known herein as the “PARTIES”; and

WHEREAS, the COUNTY has been allocated \$179,266,585.00 (ONE HUNDRED SEVENTY-NINE MILLION, TWO HUNDRED SIXTY-SIX THOUSAND, FIVE HUNDRED EIGHTY-FIVE AND 00/100 DOLLARS) in funding by the American Rescue Plan Act (“ARPA”) (P.L. 117-2); and

WHEREAS, ARPA permits the use of allocated funds for water and sewer infrastructure that that promotes clean drinking water; and

WHEREAS, the COUNTY’s Public Works Committee and the COUNTY Board have approved the Water Connection Assistance Program pursuant to FI-R 0225-22 as amended by FI-R-0146-24, which includes \$700,000 (SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS) of ARPA funding for the Liberty Park Water Expansion Project (hereinafter referred to as the “PROJECT”); and

WHEREAS, the VILLAGE agrees to construct the PROJECT in compliance with ARPA rules and regulations, including meeting the eligibility requirements of the Clean Water State Revolving Fund (“CWSRF”) or the Drinking Water State Revolving Fund (“DWSRF”) administered by the Environmental Protection Agency (“EPA”), and the COUNTY agrees to reimburse the VILLAGE in an amount not to exceed \$700,000 (SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS) for said PROJECT; and

WHEREAS, the COUNTY and the VILLAGE have determined that the implementation of the PROJECT will benefit local citizens by the delivery of clean drinking water from Lake Michigan; and

WHEREAS, The COUNTY agrees to reimburse the VILLAGE in an amount not to exceed \$700,000 (SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS) for the actual costs of the PROJECT; and

WHEREAS, the VILLAGE shall share any available data collected from the PROJECT for the purposes of fostering community education and improving upon similar future projects.

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. 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. PROJECT DESCRIPTION.**

- 2.1. The PROJECT involves the construction and installation of approximately 2025 linear feet of 8" watermain within the Liberty Park Subdivision to improve water quality, reliability, accessibility, and safety by eliminating the use of well water. The PROJECT includes a new watermain along Lincoln Street giving access to watermain where none existed prior, and the PROJECT also extends and loops watermain along 41st Street in preparation for extending the watermain into the rest of the subdivision. A site map showing the approximate locations of the new watermain is attached hereto as Exhibit A and incorporated herein.
- 2.2. The PROJECT shall be constructed by the VILLAGE.
- 2.3. The VILLAGE shall complete the PROJECT no later than November 30, 2025.

## **3. FUNDING.**

- 3.1. The COUNTY's reimbursement obligation to the VILLAGE for eligible costs for the PROJECT shall not exceed \$700,000 (SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS). Payments from the COUNTY shall be made from ARPA funds received by the COUNTY.
- 3.2. The VILLAGE shall be responsible for all costs exceeding the funding listed in Paragraph 3.1.
- 3.3. In the event the PROJECT is not substantially completed by November 30, 2025, the VILLAGE shall reimburse the COUNTY for all funds paid by the COUNTY to the VILLAGE pursuant to this AGREEMENT and the COUNTY shall return said funds to the U.S. Treasury Department. The VILLAGE's right to retain the COUNTY's ARPA funding for PROJECT costs is expressly conditioned upon the VILLAGE's timely and satisfactory completion of the PROJECT. For the purposes of this Agreement, and unless terms of the ARPA contain a contrary definition, the term "substantially completed" means that the PROJECT is sufficiently complete for its intended purpose/use, excluding minor corrective work, warranty items, and landscaping/pavement restoration work.
- 3.4. The VILLAGE shall have sole ownership and control over the completed PROJECT.
- 3.5. The VILLAGE shall be solely responsible for the operation, inspection, repair, maintenance, extension, and replacement of the completed PROJECT.

## **4. COUNTY'S RESPONSIBILITIES.**

- 4.1. The COUNTY shall reimburse the VILLAGE for eligible costs associated with the PROJECT, which have been incurred and paid for by the VILLAGE, as specified in Paragraph 3.1. Eligible costs include, but are not limited to, engineering work to manage the PROJECT (Phase I, Phase II, and Phase III engineering), bidding of work for the construction of the PROJECT, construction work to complete the PROJECT, including change orders, permits for the PROJECT, and necessary testing of the PROJECT as required by the Illinois Environmental Protection Agency and other public agencies.



- 4.2 The COUNTY shall not reimburse the VILLAGE for any eligible costs incurred before entering into the IGA, nor shall the COUNTY pay for any eligible costs incurred or for work completed by the VILLAGE after November 30, 2025.
- 4.3 The COUNTY shall issue periodic reimbursement payments to the VILLAGE upon the COUNTY's receipt of paid invoices from the VILLAGE which contain sufficient detail of the eligible costs incurred by the VILLAGE for the PROJECT. The COUNTY shall issue such payments in compliance with the Local Government Prompt Payment Act, 50 ILCS 505/1, et seq. The COUNTY's reimbursement obligation to the VILLAGE shall not exceed \$700,000 (SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS), and is subject to compliance with all other terms and requirements of this AGREEMENT.
- 4.4 The COUNTY reserves the right to review the construction contract, change orders, addendums, or revisions thereto ("CONTRACT DOCUMENTS"), for the purpose of verifying that PROJECT components meet PROJECT goals and ARPA's technical requirements. The COUNTY shall promptly provide the VILLAGE with any recommended changes to the CONTRACT DOCUMENTS for PROJECT components to meet goals and technical requirements. Given the strict deadline for the VILLAGE to complete the PROJECT, the COUNTY shall review and issue any recommended changes to the CONTRACT DOCUMENTS within fourteen (14) days of its receipt thereof.
- 4.5 In no case shall the COUNTY's reimbursement obligation for the PROJECT exceed \$700,000 (SEVEN HUNDRED THOUSAND AND 00/100 DOLLARS).
- 4.6 The COUNTY's reimbursement obligations under this AGREEMENT shall survive the termination of this AGREEMENT for all work on the PROJECT performed prior to November 30, 2025, provided that the PROJECT is substantially completed by November 30, 2025 and provided that the VILLAGE promptly submits requests for reimbursement to the COUNTY after substantial completion.
- 4.7 The County's execution of this IGA is contingent upon the VILLAGE's prior award of the construction contract for the PROJECT. Should the VILLAGE fail to award the construction contract, this IGA shall be null and void.
- 4.8 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.
- 4.9 Upon the request of the VILLAGE, the COUNTY shall reasonably cooperate with the VILLAGE towards granting necessary right-of-way permits, easements, and land rights for the PROJECT.

## **5. VILLAGE RESPONSIBILITIES.**

- 5.1 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.
- 5.2 The VILLAGE shall be responsible for successful completion of all phases of the PROJECT.
- 5.3 The VILLAGE shall be responsible for securing all local, county, state, and federal permits necessary for completion of the PROJECT.
- 5.4 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 meet goals and technical requirements. Given the strict deadline for the VILLAGE to complete the PROJECT, the COUNTY shall review and issue any recommended changes to the permit applications and related correspondence within fourteen (14) days of its receipt thereof.

- 5.5 The VILLAGE shall be responsible for obtaining any and all required land rights necessary for the completion of the PROJECT.
- 5.6 The VILLAGE 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 VILLAGE, 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.
- 5.7 The VILLAGE shall be responsible for and have control over the design, construction, means, methods, techniques and procedures with respect to any work performed for the PROJECT. The VILLAGE and VILLAGE 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 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 VILLAGE beyond the usual burdens and liabilities for a municipality in the construction of public improvements.
- 5.8 The VILLAGE agrees to email invoices to the County's ARPA inbox (ARPAExpenses@dupageco.org) for reimbursement along with the ARPA invoice coversheet and proof of payment documentation such as invoices, receipts, check stubs, and bank statements.
- 5.9 The VILLAGE shall make any data collected from the PROJECT available to the COUNTY upon reasonable request by the COUNTY.
- 5.10 The VILLAGE shall provide the COUNTY unlimited, but reasonable, access to the PROJECT area to observe and review PROJECT work until substantial completion.
- 5.11 The VILLAGE shall provide the COUNTY all work documents (i.e., plans, change orders, field orders, construction manager diaries, etc.) for purposes including but not limited to determining the PROJECT meets the eligibility requirements of ARPA, and the use of all data collected as part of the PROJECT.
- 5.12 The VILLAGE must acknowledge and permit 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.

## **6. GOVERNMENT REGULATIONS.**

- 6.1 The VILLAGE 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 agrees to retain and provide access to all financial records and documents related to the PROJECT for a period of not less than seven (7) years for audit purposes. Under ARPA, the use of these funds may be audited and reviewed by the Office of the County Auditor, external audit, single audit, and U.S. Department of the Treasury audit. The VILLAGE understands that ARPA funds are subject recoupment by the U.S. Treasury Department.

## **7. 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 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 PROJECT 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 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 (collectively, "LOSSES"), provided however that LOSSES are proximately caused by the negligent or intentional actions or inactions of the VILLAGE and/or caused by the VILLAGE's breach of any term of this AGREEMENT.
- 7.3 The VILLAGE shall require each consultant and contractor responsible for the construction, oversight, maintenance, or monitoring of the PROJECT to name the 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 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 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. AMENDMENT OR MODIFICATION OF THIS AGREEMENT.**

- 8.1 The parties may modify or amend the 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. 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 VILLAGE and COUNTY of their respective obligations under this AGREEMENT, in the event such completion occurs before November 30, 2025.
- 9.2 Should the VILLAGE fail to fully execute and return this AGREEMENT to the COUNTY by December 10, 2024, the AGREEMENT shall be voided and the funds shall be reallocated for other COUNTY purposes.

## **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 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. 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 exclusive venue for disputes arising from this AGREEMENT shall be the 18th Judicial Circuit Court, sitting in Wheaton, Illinois.

#### **13. NOTICES.**

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

Stephan May, Village Manager  
Village of Westmont  
31 West Quincy Street  
Westmont, IL 60559  
(630) 981-6210

Nick Kottmeyer, Superintendent  
DuPage County Public Works Department  
421 North County Farm Road  
Wheaton, Illinois 60187  
(630) 407-6818

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

#### **14. 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. 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

VILLAGE OF WESTMONT

\_\_\_\_\_  
Deborah Conroy  
Chair, DuPage County Board

\_\_\_\_\_  
Stephen May  
Village Manager, Village of Westmont

ATTEST:

ATTEST:

\_\_\_\_\_  
Jean Kaczmarek  
County Clerk

\_\_\_\_\_  
Name:  
Title: **DEPUTY VILLAGE CLERK**



**EXHIBIT A**

**SITE MAP SHOWING APPROXIMATE LOCATIONS OF NEW WATERMAIN**





