

INTERGOVERNMENTAL AGREEMENT BETWEEN COUNTY OF DUPAGE, ILLINOIS
AND THE VILLAGE OF VILLA PARK FOR THE LUFKIN PARK POND BASIN PROJECT

This INTERGOVERNMENTAL AGREEMENT is made this 13 day of June 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 the VILLAGE OF VILLA PARK, a body politic and corporate, with offices at 20 S. Ardmore Avenue, Villa Park, IL 60181 (hereinafter referred to as the VILLAGE).

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, 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 have approved 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 DuPage County Board adopted the Sugar Creek Watershed Plan on September 11, 2018; and

WHEREAS, the expansion of the Lufkin Pond in Villa Park was a recommended project in the adopted Sugar Creek Watershed Plan; and

WHEREAS, the VILLAGE and COUNTY have agreed in concept that the “LUFKIN PARK POND BASIN PROJECT” 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 VILLAGE have determined that the implementation of the PROJECT will benefit local citizens with flood protection, water quality and/or resilience measures; and

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

WHEREAS, the VILLAGE has agreed to allow the COUNTY and their contractors and staff to have full access to Lufkin Park until the project is substantially complete; 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 the regrading and expansion of an existing stormwater basin located in the southern half of the area known as Lufkin Park within the limits of the Village of Villa Park.
- 2.2 The PROJECT shall be developed essentially in accord with the engineering report and engineering plans prepared by V3 Companies with a latest revision date of June, 2023, which document is incorporated herein by reference but is not attached hereto due to space limitations.

3.0 FUNDING.

- 3.1 The total construction related PROJECT costs are estimated to be one million two hundred forty-three thousand, six hundred and twenty dollars (\$1,243,620). The anticipated cost share is as follows, unless otherwise agreed to in writing as provided in Paragraph 3.2 below:

VILLAGE OF VILLA PARK	\$0
COUNTY OF DUPAGE	\$1,243,620
TOTAL	\$1,243,620

- 3.2 The COUNTY 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 VILLAGE 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 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.
- 3.4 As this Agreement utilizes ARPA funds, the COUNTY is aware that time is of the essence in notifications as to whether the COUNTY will proceed with this project to substantial completion not later than September 30, 2024.

4.0 VILLAGE'S RESPONSIBILITIES.

- 4.1 The VILLAGE shall be responsible for allowing access to the property commonly known as Lufkin Park to the COUNTY and their contractors in order to carry out and complete the PROJECT.
- 4.2 The VILLAGE shall be responsible for obtaining all required land rights necessary for the completion of the PROJECT.
- 4.3 The VILLAGE shall not be reimbursed by the COUNTY for any work undertaken related to the PROJECT prior to the signing of this AGREEMENT.

- 4.4 The VILLAGE 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.).
- 4.5 The VILLAGE 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 COUNTY and COUNTY'S contractors shall be solely responsible for the safety of all individuals performing work on the PROJECT. The COUNTY 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. This section is intended merely to relieve the VILLAGE from such liabilities in this PROJECT.
- 4.6 The VILLAGE 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.
- 4.7 Long-term maintenance of all storm structures, storm sewers, and pond grading shall be the responsibility of the VILLAGE. In addition, long-term maintenance of all pond wetland plugs, native vegetation, and turf grass surrounding the pond shall be the responsibility of the VILLAGE at the end of the 3-year vegetation maintenance and monitoring period.

5.0 COUNTY'S 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 COUNTY shall cost share in the PROJECT as follows:

The COUNTY shall pay 100% of the cost of the PROJECT including all approved design and construction costs associated with the PROJECT.

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 shall be responsible for securing all local, county, state, and federal permits necessary for the completion of the PROJECT.

5.5 The preparation of the plans, specifications, and bid documents for the PROJECT, together with the advertisement and award of all PROJECT-related public bids, shall be the sole responsibility of the COUNTY. The COUNTY shall select, and contract with, all vendors providing professional services for the PROJECT.

5.6 The COUNTY shall be responsible for successful completion of all phases of the PROJECT, from design and construction through the 3 year Maintenance and Monitoring period for the vegetation.

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 ARPA funds are subject to audit and potential recoupment by the Federal Government of the United States of America. The VILLAGE agrees to assist the COUNTY in responding to any audits of the ARPA 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 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 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.
- 7.4 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.

8.0 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 VILLAGE 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:

Michael Guerra
Director of Public Works
Village of Villa Park
20 S. Ardmore Avenue
Villa Park, IL 60181

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.

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

COUNTY OF DUPAGE

VILLAGE OF VILLA PARK

Deborah A. Conroy,
Chair
DuPage County Board

ATTEST:

Jean Kaczmarek,
County Clerk

Nick Cuzzone,
Village President

ATTEST:

Hosanna Korynecky,
Village Clerk