

INTERGOVERNMENTAL AGREEMENT BETWEEN COUNTY OF DUPAGE, ILLINOIS  
AND THE ITASCA PARK DISTRICT GRANTING A PERMANENT NON-EXCLUSIVE  
EASEMENT FOR THE ROHLWING ROAD MULTI-USE PATH PROJECT

This INTERGOVERNMENTAL AGREEMENT is made this 25th of June, 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 ITASCA PARK DISTRICT, a body politic and corporate, with offices at 350 Irving Park Rd, Itasca, IL 60143 (hereinafter referred to as the DISTRICT).

R E C I T A L S

WHEREAS, the DISTRICT 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 authorized the COUNTY to operate a system of waterworks and sanitary sewers, and to regulate the use and operation thereof, pursuant to 55 ILCS 5/5-15001, *et seq.*; and

WHEREAS, the DISTRICT and COUNTY are municipalities as defined in Section 1(c) of the Local Government Property Transfer Act, 50 ILCS 605/1(c), hereinafter referred to as the “Transfer Act”; and

WHEREAS, Section 2 of the Transfer Act authorizes transfers of real estate, or interests therein, between municipalities for any public purpose upon such terms as are agreed to by the corporate authorities of the respective municipalities; and

WHEREAS, the COUNTY currently owns and operates a property known as the Nordic Wastewater Treatment Plant located at 649 Rohlwing Road, Itasca, Illinois 60143, Parcel Identification Number 03-18-100-002; and

WHEREAS, in accordance with Section 2 of the Transfer Act, the DISTRICT, pursuant to a duly passed ordinance, has determined that it is necessary to be granted a permanent non-exclusive easement for the construction of the Multi Use Path within the portion of the premises of the Nordic Wastewater Treatment Plant property legally described in **Exhibit A**, attached

hereto and incorporated herein, and depicted in **Exhibit B**, attached hereto and incorporated herein (hereinafter referred to as “Easement Premises”); and

WHEREAS, the COUNTY and the DISTRICT have determined that a multi-use path (“path”) may be constructed upon the Easement Premises, so long as the construction of the path (hereinafter “PROJECT”) is wholly organized and paid for by the DISTRICT, and subject to the terms of 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 involves the construction of a boardwalk path that will cross DuPage County owned property known as the Nordic Wastewater Treatment Plant located east of Rohlwing Road in Itasca, Illinois.
- 2.2 The PROJECT shall be developed essentially in accord with the engineering plans prepared by Hitchcock Design Group with a latest revision date of February 2024, which document is incorporated herein by reference but is not attached hereto due to space limitations.
- 2.3 The COUNTY shall grant to the DISTRICT a permanent, non-exclusive “Multi-Use Path Easement” over and along the area of the proposed multi-use path through the Nordic Wastewater Treatment Plant property in compliance with the Local Government Property Transfer Act, 50 ILCS 605/0.01 *et seq.*, with a plat of said easement attached hereto as Exhibit B.
- 2.4 The legal description for the easement plat has been prepared prior to the execution of this Agreement. The need to correct any legal description, at any time, shall therefore not require a formal amendment to this AGREEMENT and, or, its exhibits.

### **3.0 FUNDING.**

- 3.1 The entire cost of the PROJECT will be paid by the DISTRICT.

#### **4.0 DISTRICT'S RESPONSIBILITIES.**

- 4.1 The DISTRICT 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.).
- 4.2 The DISTRICT shall be solely responsible for the construction of the multi-use path and all costs associated therewith, which construction shall occur pursuant to plans approved by both the DISTRICT and COUNTY, and such approval shall not be unreasonably withheld. The DISTRICT shall maintain the landscape within the Easement. The DISTRICT shall be solely responsible for the operation, inspection, repair, maintenance, extension, and replacement of the multi-use path located in the Easement. Short and Long-term maintenance of the multi-use path on COUNTY property known as the PROJECT site shall also be the responsibility of the DISTRICT. The cost of the multi-use path and its maintenance shall be paid by the DISTRICT.
- 4.3 The DISTRICT will have three (3) years from the date of execution of this AGREEMENT to complete the construction of the multi-use path. Should the DISTRICT fail to complete construction of the path within the allotted time, the Easement herein contemplated to be granted shall be null and void. The construction of the multi-use path will be the sole responsibility of the VILLAGE to obtain permits, provide construction plans, and complete the bid process for the work.
- 4.4 It will be the sole responsibility of the DISTRICT to pay for any and all costs related to the permitting and construction of the multi-use path.
- 4.5 The DISTRICT will be responsible for making direct payments to all contractors, consultants, and vendors providing services related to the multi-use path.
- 4.6 The Parties acknowledge and agree that nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any third party or person other than the Parties hereto and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever, with respect to the DISTRICT's construction of the multi-use path.

#### **5.0 COUNTY'S RESPONSIBILITIES.**

- 5.1 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 COUNTY project approval, and the use of all data collected as part of the PROJECT.

- 5.2 If the DISTRICT chooses not to construct the multi-use path at this time the COUNTY will grant the DISTRICT three (3) years from the date of this AGREEMENT to construct the path at a later time.
- 5.9 The COUNTY retains the right to use the Easement in such manner as is necessary and appropriate, specifically including for the purposes of public and private utility installations, provided that no permanent obstruction or structure shall be erected or located over said Easement by the COUNTY, nor shall any other activities be undertaken that unreasonably interfere with the intended use thereof as a multi-use path.

## **6.0 GOVERNMENT REGULATIONS.**

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

## **7.0 INDEMNIFICATION.**

- 7.1 The DISTRICT shall indemnify, hold harmless and defend the COUNTY, its successors and assigns, including the COUNTY's officials, officers, employees, and agents, from and against all liability, claims, suits, demands, 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 use, operation, inspection, repair, maintenance and replacement of the multi-use path constructed within the Easement.
- 7.2 The DISTRICT agrees to include the COUNTY as additional insured on all policies required of the third parties (consultants and contractors) performing work and, or, maintenance on the multi-use path. The minimum insurance coverage amounts, as stated in the DISTRICT's PROJECT bid specifications, shall be maintained in force at all times a DISTRICT-hired third party is performing work and, or, maintenance on the multi-use path. The DISTRICT further agrees to require all DISTRICT-hired third parties (consultants and contractors) performing work and, or, maintenance on the multi-use path to execute individual agreements with the County agreeing to indemnify, defend, and hold the party harmless from and against all claims of any sort arising out of the negligent or willful misconduct, errors or omissions by said DISTRICT-hired third parties.
- 7.3 The DISTRICT shall require each consultant and contractor responsible for the construction, maintenance, or monitoring of the PROJECT to name the COUNTY as an additional insured party on said vendor's liability insurance policy. Further,

the DISTRICT 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, 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 DISTRICT'S or its consultants', contractors' or agents' 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 DISTRICT or its consultants, contractors or agents. The DISTRICT'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 May 30, 2027, or to a new date agreed upon by the parties.
- 9.1.2 The completion by the DISTRICT and COUNTY of their respective obligations under this AGREEMENT, in the event such completion occurs before May 30, 2027.
- 9.2 Further, notwithstanding Paragraph 9.1, all terms and conditions that by their nature the Parties intend to survive termination or completion of this AGREEMENT, including without limitation the time permitted the DISTRICT

for completion of construction of the multi-use path, shall survive any earlier termination of the AGREEMENT in full force and effect.

#### **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 18<sup>th</sup> Judicial Circuit Court for DuPage County.

#### **13.0 NOTICES.**

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

Maryfran Leno  
Executive Director  
Itasca Park District  
350 E. Irving Park Road  
Itasca, Illinois 60143

Nicholas Kottmeyer  
Superintendent  
DuPage County Public Works  
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

ITASCA PARK DISTRICT

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

\_\_\_\_\_  
LINDA AIANI  
President  
Itasca Park District Board of Commissioners

ATTEST:

ATTEST:

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

\_\_\_\_\_  
Dan Kompanowski  
Secretary Itasca Park District