

**INTERGOVERNMENTAL AGREEMENT BETWEEN COUNTY OF DUPAGE,  
ILLINOIS AND YORK TOWNSHIP ROAD DISTRICT FOR THE LUTHER – HIGH  
RIDGE FLOOD MITIGATION PROJECT**

This INTERGOVERNMENTAL AGREEMENT is made this 2nd day of July 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 York Township Road District, a body politic and corporate, with offices at 19W475 East Roosevelt Road, Lombard, IL 60148 (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,” 5 ILCS 220/1 *et seq.*, 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

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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 COUNTY Board has approved and directed a portion of the funds to be dedicated to Stormwater Infrastructure and 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 creation of the Luther – High Ridge Project was a recommended project in the Sugar Creek Watershed Plan; and

WHEREAS, the COUNTY will plan, design, and construct using ARPA grant funds for the “LUTHER – HIGH RIDGE FLOOD MITIGATION PROJECT” that meets the criteria for, and 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 the PROJECT through the COUNTY’S American Rescue Plan Act grant funds in an approximate amount of one million eight hundred twenty-nine thousand six hundred fifty dollars (\$1,829,650); and

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

WHEREAS, the COUNTY 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 the construction and installation of a flood relief storm sewer in the area along Luther Avenue and Edward Street Right-of-Way within unincorporated York Township, and under Roosevelt Road (Illinois Route 38). The existing depressed area south of Roosevelt Road continues to flood on a regular basis and make Luther Avenue impassable after heavy rainfall, requiring the frequent and extended closure of the road. The new flood relief storm sewer will convey this water north and east and discharge flood water into the High Ridge Forest Preserve where the water will ultimately flow to Sugar Creek. The installation of this storm sewer will provide water quality benefits, improve conveyance and address safety concerns on township roadways in the PROJECT area.
- 2.2 The PROJECT shall be developed and constructed in cooperation with the TOWNSHIP as well as the Forest Preserve District of DuPage County.
- 2.3 The TOWNSHIP and the COUNTY have agreed that the PROJECT work shall be as depicted and described in the plan drawings, prepared by Engineering Resource Associates, and dated February 2, 2024. The final plans shall be deemed incorporated herein by reference but without attaching said document due to its size.
- 2.4 The COUNTY intends to begin construction of the PROJECT in September, 2024, with final completion on or before April 30, 2025.

## **3.0 FUNDING.**

- 3.1 The total construction related PROJECT costs are estimated to be one million eight-hundred twenty-nine thousand six hundred fifty dollars (\$1,829,650). The COUNTY's cost is expected to be 100% of the estimated PROJECT cost.
- 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 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 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. However, in the event the PROJECT is not substantially completed by April 30, 2025, the



COUNTY shall promptly reimburse the TOWNSHIP any monies paid by the TOWNSHIP to the COUNTY pursuant to this AGREEMENT. The COUNTY's right to retain the TOWNSHIP's reimbursement of PROJECT costs is expressly conditioned upon the COUNTY's timely and satisfactory completion of the 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 April 30, 2025.

#### **4.0 TOWNSHIP'S RESPONSIBILITIES.**

- 4.1 The TOWNSHIP 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 PROJECT goals and technical requirements. The TOWNSHIP shall promptly provide the COUNTY with any recommended changes to the CONTRACT DOCUMENTS for PROJECT components to meet goals and technical requirements.
- 4.2 The TOWNSHIP 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.
- 4.3 The TOWNSHIP shall provide adequate right-of-way and grant adequate land rights for the PROJECT, including but not limited to the granting and recording of necessary easements, with the exception of that portion of the PROJECT on the Illinois Department of Transportation Right-of-Way and on property owned by the Forest Preserve District of DuPage County.
- 4.4 The TOWNSHIP shall not be reimbursed by the COUNTY for work undertaken prior to the signing of this AGREEMENT.
- 4.5 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.) for purposes including but not limited to determining the PROJECT meets all goals and technical requirements, [future maintenance?], and the use of all data collected as part of the PROJECT. It can be expected the COUNTY shall require PROJECT access from the TOWNSHIP until substantial completion of the PROJECT is attained.
- 4.6 The TOWNSHIP 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 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 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.

- 4.7 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 cost share in the PROJECT as follows:

5.1.1 The COUNTY shall reimburse the TOWNSHIP for approved costs associated with the PROJECT, which have been incurred and paid for by the TOWNSHIP, as specified in Paragraph 3.1.

5.1.2 The COUNTY shall not reimburse the TOWNSHIP for any work completed before entering into the IGA, nor shall pay for any work completed by the TOWNSHIP after April 30, 2025.

- 5.2 The COUNTY 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 COUNTY shall select, and contract with, all vendors providing professional services for the PROJECT.

- 5.3 The COUNTY shall be responsible for successful completion of all phases of the PROJECT, from planning and design through construction and maintenance.

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

- 5.5 The COUNTY shall be responsible for submitting copies of all permit applications and related correspondence to the TOWNSHIP in a timely manner to ensure sufficient review by the TOWNSHIP. The purpose of the COUNTY'S review shall be for the sole purpose of documenting whether PROJECT work components meet goals and technical requirements.

- 5.6 The COUNTY shall be responsible for obtaining any and all required land rights necessary for the completion of the PROJECT.



- 5.7 The COUNTY 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.
- 5.8 The COUNTY 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 COUNTY and COUNTY 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 COUNTY 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.
- 5.9 The COUNTY shall confine all construction activities, including temporary staging areas and equipment access routes on TOWNSHIP property to those areas designated in the BID DOCUMENTS, or as agreed to by the contractor, TOWNSHIP, and COUNTY. The COUNTY shall be responsible for restoring any and all property of the TOWNSHIP located outside of the PROJECT area that are disturbed during the course of construction to the satisfaction of the affected party. TOWNSHIP and property located inside the PROJECT area shall be restored to conditions depicted in the BID DOCUMENTS [and maintained as agreed pursuant to any easement(s) granted].

## **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 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.
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## **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 COUNTY'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 COUNTY shall require each consultant and contractor responsible for the construction, maintenance, or monitoring of the PROJECT to name the COUNTY and TOWNSHIP 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 COUNTY and TOWNSHIP, 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 June 30, 2025, 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 June 30, 2025.

**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:

Dick Schroeder  
Highway Commissioner  
York Township Road District  
19W475 Roosevelt Road  
Lombard, IL 60148  
(630) 627-2200

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

YORK TOWNSHIP ROAD DISTRICT


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

  
Dick Schroeder  
Highway Commissioner, York Township Road  
District

ATTEST:

ATTEST:

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Jean Kaczmarek  
County Clerk

  
Name: Sharon Ruderna  
Title: Administrative Assistant