

**AN INTERGOVERNMENTAL AGREEMENT BETWEEN
THE NAPERVILLE PARK DISTRICT AND
THE COUNTY OF DU PAGE, FOR THE INTERGOVERNMENTAL
COOPERATION & UTILIZATION OF AVAILABLE RESOURCES FOR
THE RIVERWALK PROJECT**

This INTERGOVERNMENTAL AGREEMENT (hereinafter “AGREEMENT”) is made this 8TH day of April, 2025, by and between the County of DuPage, a body politic and corporate, with offices at 421 North County Farm Road, Wheaton, Illinois (hereinafter the “COUNTY”) and the Naperville Park District, a body politic and corporate, with offices at 320 W. Jackson Ave, Naperville, Illinois 60540 (hereinafter the “DISTRICT”). The DISTRICT and COUNTY are sometimes individually referred to herein as a “party” or together as the “parties.”

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 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 and improving water quality as an integral part of the proper management of storm and flood waters; and

WHEREAS, in July 2023, pursuant to DuPage County Board Resolution No. SM-R-0069-23, the Parties entered into an “Intergovernmental Agreement Between the Naperville Park District and the County of DuPage, for the Intergovernmental Cooperation and Utilization of Available Resources for Partnership Projects” (hereinafter the “Partnership Projects Agreement”); and

WHEREAS, the Projects anticipated by the Partnership Projects Agreement included shoreline stabilization work on the west end of the Naperville Riverwalk, generally described as being from the Riverwalk Park Playground west to north, to the Sindt Woods (hereinafter referred to interchangeably as the “Riverwalk Project” and/or the “PROJECT”); and

WHEREAS, in November 2023, pursuant to DuPage County Board Resolution No. SM-P-0070-23, the COUNTY executed an “on-call Contract” with Earthwerks Land Improvement and Development Corporation (hereinafter “Earthwerks”), with offices located at 2111 Ogden

Ave, Lisle, IL 60532, for Earthwerks to develop and/or construct on-call Countywide Stormwater construction projects; and

WHEREAS, the COUNTY and DISTRICT each desire and consent to have Earthwerks complete the Riverwalk Project for an amount not to exceed \$300,000.00, under the terms and conditions of the County's on-call Contract (SM-P-0070-23), attached hereto as Exhibit "A"; and

WHEREAS, the DISTRICT shall reimburse the COUNTY one-hundred percent (100%) of the total final costs to construct the Riverwalk Project and the COUNTY shall administer the construction of the Riverwalk Project; and

WHEREAS, the DISTRICT will grant a Temporary Construction Easement to COUNTY and its contractors for completion of the Riverwalk Project.

NOW, THEREFORE, in consideration of the foregoing recitals, as well as the promises, terms and conditions set forth herein, and in the spirit of intergovernmental cooperation, the Parties hereby 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 Riverwalk Project involves shoreline stabilization work on the west end of the Naperville Riverwalk, generally described as being from the Riverwalk Park Playground west to north, to the Sindt Woods, as well as any further restoration and/or stormwater improvements associated with the PROJECT.
- 2.2 The PROJECT shall be completed in substantial conformity with the designs and specifications to be provided by the DISTRICT pursuant to its responsibilities under paragraph 4.1 below.

3.0 FUNDING.

- 3.1 The Parties acknowledge and agree that the total PROJECT costs for construction are estimated to be three hundred thousand dollars and no cents (\$300,000.00). The DISTRICT's total contribution shall be either three hundred thousand dollars and no cents (\$300,000.00) or 100 % of the total project costs, whichever is greater.

- 3.2 The COUNTY'S contribution shall be limited solely to administration of the PROJECT's construction.
- 3.3 The DISTRICT shall be responsible for reimbursing the COUNTY for all PROJECT construction costs, including labor and materials, construction management, bid advertising (if applicable), professional services, overhead, payroll, and/or legal or accounting services related to the PROJECT. The DISTRICT shall also be responsible for securing, at its own expense, any third-party professional services (architectural, construction management, etc.) related to the PROJECT's completion.
- 3.4 The DISTRICT shall be responsible for bearing any cost overruns or expenses in excess of the total PROJECT costs estimate listed in Paragraph 3.1, regardless of the cause, unless the DISTRICT and COUNTY agree to apportion such extra costs in writing before they are incurred.
- 3.5 This AGREEMENT shall in no way obligate the COUNTY or DISTRICT to undertake or complete the PROJECT if the COUNTY or DISTRICT in their sole discretion determines that it is no longer in their best interest to proceed with this PROJECT. In the event the PROJECT is cancelled prior to completion, the DISTRICT shall reimburse the COUNTY one hundred percent (100%) of the actual total project costs incurred at the time of the PROJECT'S cancellation.
- 3.6 The DISTRICT hereby acknowledges and agrees to the COUNTY'S use of Earthwerks, an approved contractor properly vetted through the COUNTY's procurement process, to complete the PROJECT under the terms and conditions of the COUNTY's Awarded Contract No. SM-P-0070-23. The DISTRICT further acknowledges and agrees that the COUNTY's use of Awarded Contract SM-P-0070-23 to construct the PROJECT comports with the DISTRICT's procurement requirements and all further applicable laws, rules, and regulations.

4.0 DISTRICT'S RESPONSIBILITIES.

- 4.1 The DISTRICT, in consultation with the COUNTY, shall be solely responsible for the preparation and provision of all construction plans and/or specifications for the PROJECT. The DISTRICT shall, at its own expense, select, and contract with, all vendors providing professional services for the PROJECT, if determined to be necessary by the DISTRICT.
- 4.2 The DISTRICT shall secure, at its own expense, all local, county, state, and federal permits necessary for completion of the PROJECT.

- 4.3 The DISTRICT shall be responsible for obtaining, at its own expense, all required land rights necessary for the completion of the PROJECT.
- 4.4 The DISTRICT shall not be responsible for reimbursing the COUNTY for the costs of work undertaken prior to the signing of this AGREEMENT.
- 4.5 Subject to the COUNTY's prior approval, the DISTRICT may enter into additional agreements to secure the services of other project partners to perform or undertake the DISTRICT'S functions under this Agreement, but in all instances the DISTRICT shall remain responsible for ensuring the satisfactory performance and/or substantial completion of the PROJECT by any such additional project partners.
- 4.6 The DISTRICT shall allow the COUNTY, including the COUNTY'S employees, contractors and consultants, etc., unlimited access to the PROJECT area to perform, supervise, review, administer, and inspect all PROJECT work and work documents (i.e., plans, change orders, field orders, manager diaries, etc.).
- 4.7 The DISTRICT, shall be responsible for oversight and successful completion of the Design phase of the PROJECT.
- 4.8 After substantial completion of the PROJECT's construction, the DISTRICT shall be solely responsible for the ownership, operation, supervision, staffing, control, and maintenance of the PROJECT.
- 4.9 The DISTRICT shall make a single payment to the COUNTY in the amount of either three hundred thousand dollars and no cents (\$300,000.00) or one hundred percent (100%) the total project costs, whichever is greater, upon receipt of the COUNTY's final invoice following substantial completion of the PROJECT. There shall be no progress payments.

5.0 COUNTY'S RESPONSIBILITIES.

- 5.1 The COUNTY shall be responsible for the award of the PROJECT construction contract through its existing Awarded Contract with Earthwerks (SM-P-0070-23).
- 5.2 The COUNTY may enter into additional agreements to secure the services of other project partners to perform or undertake the COUNTY'S functions under this Agreement, but in all instances the COUNTY shall remain responsible for ensuring the satisfactory performance and/or substantial completion of the PROJECT.
- 5.3 The COUNTY shall reserve the right to review and modify the PROJECT'S plans and specifications, prior to the commencement of the PROJECT, together with any subsequent change orders, addendums, or

revisions thereto, for the purpose of verifying that PROJECT components qualify for payment through the COUNTY'S Stormwater program. The COUNTY shall further have the right to review all plans and specifications related to the DISTRICT's retention of third-party professional services for the PROJECT and any additional agreements by the DISTRICT to secure the services of other project partners.

5.4 The COUNTY shall cost share in the PROJECT as follows:

5.4.1 The COUNTY shall pay for all construction costs associated with the project, up to three hundred thousand dollars (\$300,000.00) up-front, subject to a one hundred percent (100%) reimbursement from the DISTRICT upon the PROJECT's substantial completion. The COUNTY shall submit a final invoice to the DISTRICT within a reasonable time following substantial completion. The COUNTY's final invoice shall be supported by documentation of all PROJECT construction expenses for which the COUNTY seeks reimbursement

5.4.2 In the event actual costs for the PROJECT at the time of completion total less than three hundred thousand dollars and no cents (\$300,000.00), the COUNTY'S total reimbursement amount from the DISTRICT shall not be more than one-hundred percent (100%) of the actual final PROJECT construction costs. In the event it is determined that the COUNTY has overpaid more than its agreed share of the PROJECT'S costs, for any reason, the DISTRICT shall promptly reimburse the COUNTY for the amount of such overpayment.

5.5 The COUNTY shall make direct payments to all parties providing construction services related to this PROJECT. This requirement will not affect the DISTRICT'S obligation to reimburse the COUNTY in the amounts herein agreed upon, nor shall this provision affect the DISTRICT'S obligation to reimburse the COUNTY in the event the PROJECT is not undertaken or completed, as established in paragraph 3.5.

5.6 The COUNTY shall allow the DISTRICT unlimited, but reasonable, access to the RIVERWALK PROJECT area to observe and review PROJECT work and work documents (i.e., plans, change orders, field orders, manager diaries, etc.) for eligibility for DISTRICT reimbursement.

6.0 GOVERNMENT REGULATIONS.

6.1 The COUNTY and 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 and its officials, officers, employees, and agents from and against all liability, claims, suits, demands, liens, 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 DISTRICT'S performance under this AGREEMENT to the fullest extent the DISTRICT is so authorized under the law; provided, however, that the DISTRICT 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 COUNTY shall indemnify, hold harmless and defend the DISTRICT and its officials, officers, employees, and agents from and against all liability, claims, suits, demands, liens, 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 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 DISTRICT for any negligent or intentional wrongful misconduct or omissions by DISTRICT officials, employees, agents, contractors, consultants, or personnel.
- 7.3 The DISTRICT and COUNTY shall require each consultant and contractor responsible for the design, construction, maintenance, or monitoring of the PROJECT to name both the DISTRICT and COUNTY as additional insured parties on said consultant or contractor's liability insurance policy. Further, the DISTRICT and COUNTY shall each require that their consultants and contractors indemnify, defend, and hold harmless both the DISTRICT and COUNTY, their 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 AGREEMENT, shall be the State's Attorney, or appointed thereby, in accord with the applicable law. The COUNTY'S participation in its defense shall not remove DISTRICT'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 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 November 30, 2025 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 November 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 event of a conflict between the terms or conditions or 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:

Brad Wilson
Executive Director
Naperville Park District
P: 630-848-3532
bwilson@napervilleparks.org
napervilleparks.org

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.

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

COUNTY OF DUPAGE

NAPERVILLE PARK DISTRICT

Deborah A. Conroy
Chair, DuPage County Board

Board President

ATTEST:

ATTEST:

Jean Kaczmarek
County Clerk

Board Secretary

EXHIBIT A