

**Prepared by and Return to:
Land Preservation Manager
Forest Preserve District of DuPage County
P.O. Box 5000
Wheaton, IL 60189-5000**

**Property Address:
Vacant Land on North Side of Edward Street
and West of Addison Avenue
Lombard, Illinois 60148
P.I.N.: 06-16-401-003 (part)**

**EASEMENT AGREEMENT BETWEEN THE FOREST PRESERVE DISTRICT OF DUPAGE COUNTY AND
COUNTY OF DUPAGE FOR A STORMWATER SEWER WITHIN YORK/HIGH RIDGE FOREST PRESERVE**

THIS EASEMENT AGREEMENT (hereinafter referred to as the "Agreement") is effective upon being signed by all parties and is made and entered into by and between the Forest Preserve District of DuPage County, a body politic and corporate (hereinafter referred to as the "DISTRICT") and the County of DuPage, a body politic and corporate (hereinafter referred to as the "COUNTY"). The DISTRICT and the COUNTY are sometimes referred herein individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the DISTRICT owns certain property commonly known as the York/High Ridge Forest Preserve (hereinafter "York/High Ridge"); and

WHEREAS, the COUNTY is in the design stage for the Luther High Ridge Flood Relief Stormwater Sewer Project to reduce stormwater ponding in Roosevelt Road within unincorporated York Township; and

WHEREAS, the COUNTY has requested to use a certain portion of York/High Ridge for the construction of a stormwater sewer (hereinafter "PROJECT"); and

WHEREAS, the COUNTY has requested that the DISTRICT grant a permanent easement for the proposed stormwater sewer improvements and a temporary easement for the work area and grading; and

WHEREAS, the DISTRICT and the 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, in accordance with Section 2 of the Transfer Act, the COUNTY, pursuant to a duly passed ordinance, has determined that it is necessary to be granted a permanent easement for the proposed stormwater sewer improvements and a temporary easement for work area and grading; and

WHEREAS, the DISTRICT has determined that it is reasonable, necessary and in the public interest and welfare to grant the COUNTY a permanent easement and temporary easements subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing preambles and the promises, terms and conditions set forth herein, the Parties agree as follows:

1.0 INCORPORATION OF RECITALS

1.1 The recitals set forth above are incorporated herein and made a part of this Agreement.

2.0 EASEMENTS GRANTED

2.1 The DISTRICT hereby grants the COUNTY a non-exclusive, permanent easement for the construction and future operation, maintenance and replacement of a stormwater sewer and stormwater water improvements in a certain portion of York/High Ridge as depicted in the easement exhibit attached hereto and incorporated herein as **Exhibit A** and legally described in **Exhibit B**, attached hereto and incorporated herein (hereinafter "Permanent Easement Premises") on the terms and conditions as provided for in this Agreement.

2.2 The DISTRICT also hereby grants the COUNTY a non-exclusive, temporary easement for work area and to conduct grading in a certain portion of York/High Ridge as depicted in the easement exhibit attached hereto as Exhibit A (hereinafter "Temporary Easement Premises") on the terms and conditions as provided for in this Agreement.

2.3 The temporary easement shall expire upon DISTRICT written acceptance of the restoration of all disturbed areas.

3.0 SCOPE OF PROJECT

3.1 The PROJECT is located within York/High Ridge as depicted in Exhibit A. The Parties have agreed that the PROJECT work shall be as depicted and described in the plan drawings, prepared by Engineering Resource Associates and dated May 7, 2024 (hereinafter referred to as "Final Plan"). The Final Plan shall be deemed incorporated herein by reference but without attaching said document hereto due to its size.

3.2 The COUNTY intends to begin construction of the PROJECT no earlier than October 1, 2024, with substantial completion anticipated on or before June 30, 2025.

3.3 The Parties agree that the PROJECT work shall be consistent with the terms and conditions of each and every permit and, or, approval issued by any regulatory authority having jurisdiction over the PROJECT.

3.4 The COUNTY shall notify the DISTRICT'S designated project representative (Kevin Stough, kstough@dupageforest.org) no less than five business days prior to the first access to the Permanent Easement Premises and Temporary Easement Premises. The COUNTY shall notify the DISTRICT no less than 14 business days prior to any in-river work so that the

DISTRICT can perform mussel relocation in advance of the work. The COUNTY shall notify the DISTRICT no less than six weeks prior to any future construction project within the Permanent Easement Premises related to the compensatory storage in accordance with the notice provisions in paragraph 12.0 herein. The COUNTY shall make any independent contractor accessing the Permanent Easement Premises and Temporary Easement Premises aware of the terms and conditions of this Agreement.

- 3.5 The COUNTY shall notify the DISTRICT'S designated project representative within two days after the completion of the restoration of the Permanent Easement Premises and Temporary Easement Premises.

4.0 EASEMENT FEE

- 4.1 The DISTRICT'S Ordinance 96-096 (Rules and Regulations for Easements and Licenses) provides that easement fees are based on 1) an easement fee and 2) the value of the trees within an easement. The fee for the permanent easement is \$38,000.00, which is based on a land value of \$200,000 per acre ($\$200,000 \times 0.19 \text{ acres} = \$38,000.00$). The fee for the temporary easement is \$3,677.38, which is based on \$26,267 per acre ($\$26,267 \times 0.14 \text{ acres} = \$3,677.38$). The total of the fees for the permanent and temporary easements is \$41,677.38. The COUNTY intends to remove only a portion of the trees within the Permanent Easement Premises and Temporary Easement Premises as referenced in the Tree Survey Report prepared by Engineering Resources Associates and revision dated 4/11/2024, attached hereto and incorporated herein as **Exhibit C**. The total tree value fee is \$65,170.00 as calculated in the Tree Value Table attached hereto and incorporated herein as **Exhibit D**. Ordinance 96-096 also authorizes the DISTRICT to accept in-kind services and construction of improvements in lieu of paying easement fees. The COUNTY has requested that the natural resource restoration work within West Branch Forest Preserve (2022 Smith Road Storm Sewer Easement Agreement) be accepted by the DISTRICT in lieu of paying tree removal fees. The DISTRICT agrees to the COUNTY'S natural resource restoration work within West Branch Forest Preserve as payment in lieu of paying tree removal fees. The total easement fee shall be paid to the DISTRICT prior to the execution of this Agreement by the DISTRICT.

- 4.2 Upon COUNTY written notice of the completion of the PROJECT to the DISTRICT, the COUNTY shall provide the DISTRICT with an updated Tree Survey Report which identifies all of the trees removed within the Permanent Easement Premises and Temporary Easement Premises. After DISTRICT inspection and confirmation of the total number of trees removed, the DISTRICT will prepare an updated Tree Value Table to establish a final tree value fee. If the final tree value exceeds the original tree value identified in Exhibit F, the COUNTY will pay the DISTRICT the balance of the tree value fee. If the COUNTY removes any trees within the Permanent Easement Premises in the future, the County shall pay the DISTRICT the requisite tree removal fees then in existence in the DISTRICT'S regulations.

5.0 PERMITS AND APPROVALS

- 5.1 The COUNTY shall complete the design of the PROJECT, including all plan sets, drawings, specifications, and cost estimates. The COUNTY agrees to cooperate with the DISTRICT regarding any significant proposed changes, alterations, or modifications to the Final Plans that materially affect the DISTRICT including, but not limited to any field adjustments or

change orders, by providing reasonable advance notification and opportunity for review and comment.

- 5.2 The COUNTY shall obtain all necessary permits or other approvals required for the stormwater improvements. The COUNTY shall also comply with all applicable federal, state, and local laws, rules, and regulations (including, but not limited to, those relating to safety) whenever it performs any work on the Permanent Easement Premises and Temporary Easement Premises or exercises any rights conferred under this Agreement.
- 5.3 The COUNTY agrees to provide the DISTRICT with as-built record drawings of the PROJECT within 90 days following completion of the PROJECT.

6.0 INSURANCE

- 6.1 The COUNTY is self-insured and does not purchase insurance on a case-by-case basis. Before beginning any PROJECT work and any future work (as referenced in paragraph 9.0) within the Permanent Easement Premises, the COUNTY shall require each of its contractors and consultants (including their sub-contractors) to obtain the following minimum insurance coverages, which shall be maintained in force until the COUNTY has furnished the DISTRICT with a letter certifying that all PROJECT work, restoration work, and future work has been completed:
- (a) Workers' Compensation Insurance with limits as required by the applicable statutes of the State of Illinois.
 - (b) Employer's Liability Insurance with limits of not less than \$1,000,000.00 each accident/injury; \$500,000.00 each employee/disease.
 - (c) Commercial General Liability Insurance with limits of not less than \$1,000,000 per occurrence bodily injury/ property damage combined single limit; \$2,000,000 aggregate bodily injury/property damage combined single limit. The policy of Commercial General Liability Insurance shall provide "occurrence" based coverage and shall include an endorsement naming the DISTRICT as an additional insured. The Commercial General Liability policy shall include, but not be limited to, the following:
 - (i) premises/operations coverage;
 - (ii) products/completed operations coverage;
 - (iii) contractual liability coverage (specifically covering the indemnification obligations referred to in paragraph 10);
 - (iv) personal injury coverage (with the employment exclusion deleted);
 - (v) broad form property damage coverage;
 - (vi) explosion, collapse, and underground coverage; and
 - (vii) independent contractor liability coverage.
 - (d) Comprehensive Motor Vehicle Liability Insurance with limits of not less than \$2,000,000 each accident bodily injury/property damage combined single limit.
 - (e) Umbrella/excess liability insurance shall be in force for a minimum limit of \$1,000,000 per each occurrence bodily injury/property damage combined single limit. The umbrella coverage shall apply in excess above the limits stated in subparagraphs (b) and (c).

The foregoing insurance coverage shall be provided by companies authorized to transact business in the State of Illinois and acceptable to and approved by the Parties. The COUNTY

shall provide the DISTRICT with Certificates of Insurance from their contractors and consultants and if requested, copies of the policies or endorsements issued by the insurers. Each certificate and policy shall provide that no cancellation or modification of the policy will occur without at least 30 days' prior written notice to the DISTRICT. The COUNTY shall not allow any contractor or consultant to commence work on properties owned by the DISTRICT until all the insurance coverage required under this paragraph have been obtained and satisfactory evidence thereof has been furnished in writing to the DISTRICT. Each contract between the COUNTY and a contractor and, or consultant, performing work on the properties owned by the DISTRICT shall provide that the DISTRICT is intended as a third-party beneficiary of the insurance obligation that is required of the contractor, or consultant, under this paragraph. The DISTRICT may require, as part of their pre-bid comments, that any COUNTY-hired vendor performing work on DISTRICT property maintain insurance coverage in higher amounts and, or, that such coverage include specific endorsements. The COUNTY shall maintain during the term of this Agreement, as part of their self-insurance, a policy of Commercial General Liability Insurance providing coverage for bodily injury and property damage claims arising on or from the use of the Permanent Easement Premises.

7.0 CONSTRUCTION ACTIVITY

- 7.1 All construction activities shall be confined to the Permanent Easement Premises and Temporary Easement Premises. No construction personnel or equipment shall be permitted outside the Permanent Easement Premises and Temporary Easement Premises while engaged in construction activities. The COUNTY shall install temporary construction fencing or silt fencing at the boundary of the Permanent Easement Premises and Temporary Easement Premises prior to starting the work.
- 7.2 The DISTRICT shall not be responsible for or have control over the construction means, methods, techniques, or procedures with respect to the construction of the PROJECT. In no event shall the DISTRICT be responsible for or have any obligation with respect to the safety of any person performing work on the Permanent Easement Premises and Temporary Easement Premises, including, but not limited to, the employees of the COUNTY or of any contractor, subcontractor, agent, or consultant.
- 7.3 The COUNTY shall maintain the Permanent Easement Premises and Temporary Easement Premises in accordance with applicable safety rules and regulations.
- 7.4 In the event the COUNTY, its employees or agents, or any contractor or subcontractor engaged to perform work on the Permanent Easement Premises and Temporary Easement Premises causes any damage to trees, shrubs, or other vegetation or landscaping, or any improvements lying outside the boundaries thereof, the COUNTY shall pay the cost of replacement in the case of trees, shrubs or other vegetation, and in the case of landscaping or improvements, shall pay the cost of restoration and repair. Said costs shall be calculated at current replacement costs as reasonably determined by the DISTRICT for all material, labor, and incidentals necessary for a complete restoration and repair. In addition to paying for the cost of restoration and repair, the COUNTY shall pay the DISTRICT an amount equal to 15 percent of the cost of restoration and repair for administrative and supervision expenses.

8.0 RESTORATION

8.1 Following completion of the PROJECT, all areas affected or disturbed within the Permanent Easement Premises and Temporary Easement Premises shall be restored in accordance with the Final Plan. The COUNTY'S restoration of the Permanent Easement Premises and Temporary Easement Premises is subject to DISTRICT inspection and acceptance.

8.2 If the COUNTY fails to properly restore the Permanent Easement Premises and Temporary Easement Premises within 30 days of service of the DISTRICT'S written demand for the restoration work, the DISTRICT shall have the right to take such action as it deems necessary to perform the restoration or corrective work, which shall include the authority to (a) perform the work with its own personnel and (b) engage the services of an independent contractor to perform the work. The COUNTY shall reimburse the DISTRICT for costs associated with said DISTRICT restoration or corrective work within 30 days of service of the DISTRICT'S written demand for payment. In addition to paying for the cost of restoration or corrective work, the COUNTY shall pay the DISTRICT an amount equal to 15 percent of the cost of restoration and corrective work for administrative and supervision expenses.

9.0 FUTURE WORK

9.1 The COUNTY shall provide written notice to the DISTRICT no less than 60 days prior to access to the Permanent Easement Premises for any major work. The COUNTY shall notify the DISTRICT'S designated project representative no less than five business days prior to access to the Permanent Easement Premises for any minor maintenance work.

10.0 INDEMNIFICATION

10.1 To the extent permitted by law, the COUNTY shall defend, save, and hold harmless the DISTRICT, its elected officials, officers, employees and agents from any and all claims, liabilities, causes of action, losses, damages and for all costs and expenses related thereto, including, without limitation, reasonable attorney and expert witness fees that may at any time arise or be claimed by any person or entity as a result of bodily injury, sickness, death or property damage, or as a result of any other claim or suit of any nature whatsoever, allegedly arising out of or in any manner connected with, directly or indirectly, the construction activities, when such bodily injury, sickness, death, property damage or other claim is allegedly caused by a negligent or intentional act or omission on the part of the COUNTY or its contractors, subcontractors, engineers, consultants, employees, or agents.

10.2 To the extent permitted by law, the COUNTY shall also defend, save, hold harmless and indemnify the DISTRICT from any and all claims, liabilities, causes of action, losses and damages that may arise or be claimed by any person or entity for bodily injury, sickness, death or property damage, or for any other claim or suit of any nature whatsoever, arising from or in any manner connected with, directly or indirectly, any defect in the proposed stormwater sewer and swale caused by defective materials, workmanship or construction methods.

10.3 The obligation on the part of the COUNTY to defend, hold harmless and indemnify the DISTRICT relative to the activities contemplated within this Agreement is perpetual. Nothing contained herein shall be construed as prohibiting the COUNTY, its officers, agents, or its employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, actions or suits brought against them and/or the DISTRICT. The COUNTY

does not waive its defenses or immunities under the Local Government and Governmental Employees Tort Immunity Act, 745 ILCS 10/1 et seq. by reason of indemnification or insurance.

- 10.4 The COUNTY shall require each contractor who performs any work on the Permanent Easement Premises and Temporary Easement Premises, to defend, hold harmless and indemnify the DISTRICT to the same extent as required of the COUNTY under paragraph 10.0.
- 10.5 The COUNTY shall promptly pay all costs and expenses relating to any and all work within the Permanent Easement Premises and Temporary Easement Premises and shall not allow any liens on DISTRICT property as a result of the work. To the extent permitted by law, the COUNTY shall defend, indemnify, and hold the DISTRICT harmless from any and all liens, costs and expenses arising from any work performed under this Agreement.

11.0 BREACH OF AGREEMENT

- 11.1 If a Party reasonably believes that a breach of this Agreement has occurred or is occurring, the Party shall serve written notice thereof upon the Party committing or permitting such breach to occur, specifying in detail the breach and the facts supporting such claim. The Party alleged to have committed the breach shall have 30 days within which to cure the violation. If the Party in violation is the COUNTY, and the COUNTY fails to cure the breach within the 30-day period, the DISTRICT may pursue monetary damages or specific performance provided that the 30-day cure period shall be extended for a reasonable time if the COUNTY has undertaken to cure the breach within the 30-day period and continues to diligently and in good faith to complete the corrective action.
- 11.2 Action by any Party to enforce this Agreement shall be without prejudice to the exercise of any other rights provided herein or by law or in equity to remedy a breach of this Agreement, subject to the terms of the preceding Paragraph 11.1.
- 11.3 A waiver by a Party of any breach of one or more of the terms of this Agreement on the part of the other Party shall not constitute a waiver of any subsequent or other breach of the same or other term, nor shall the failure on the part of a Party to require exact, full and complete compliance with any of the terms contained herein be construed as changing the terms of this Agreement or estopping a Party from enforcing full compliance with the provisions set forth herein. No delay, failure, or omission of a Party to exercise any right, power, privilege or option arising from a breach shall impair any right, privilege or option, or be construed as a waiver or acquiescence in such breach or as a relinquishment of any right. No option, right, power, remedy or privilege of the Parties shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, power, privileges, and remedies given the Parties under this Agreement and by law shall be cumulative.

12.0 NOTICES

- 12.1 All notices required to be given under the terms of this Agreement shall be in writing and served by certified or registered mail, return receipt requested, properly addressed with the postage prepaid and deposited in the United States mail. Notices served upon the DISTRICT shall be directed to the Executive Director, Forest Preserve District of DuPage County, P.O. Box 5000, Wheaton, IL 60189-5000. Notices served upon COUNTY shall be directed to the Director, DuPage County Department of Stormwater Management, County of DuPage, 421 N. County Farm Road, Wheaton, Illinois 60187. Any Party may designate a new location for

service of notices by serving notice of the change in accordance with the requirements of this paragraph.

13.0 MISCELLANEOUS TERMS

- 13.1 All rights, title and privileges herein granted, including all benefits and burdens, shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and assigns.
- 13.2 The DISTRICT hereby reserves the right to use, or permit to be used, the Permanent Easement Premises in any manner that will not prevent or materially interfere with the exercise by the COUNTY of the rights granted herein.
- 13.3 If any Party initiates any legal proceeding or action, whether at law or in equity, to enforce any provision of this Agreement, the prevailing Party (as determined by the court) shall be entitled to recover its reasonable costs and expenses incurred in connection with said proceeding or action, including, but not limited to, reasonable expert witness and attorney fees.
- 13.4 The DISTRICT shall be responsible for recording this Agreement, at its expense, in the Office of the Recorder of Deeds, DuPage County, and for providing the COUNTY with a recorded copy.
- 13.5 The provisions set forth herein represent the entire agreement between the Parties and supersede any previous oral or written agreements, as it is the intent of the Parties to provide for a complete integration within the terms of this Agreement. No provision may be modified in any respect unless such modification is in writing, duly approved and signed by all Parties.
- 13.6 This Agreement shall be construed in accordance with the laws of the State of Illinois. The jurisdiction and venue for resolving any disputes concerning the Parties respective performance, or failure to perform, under this Agreement, shall be in the 18th Judicial Circuit Court, DuPage County, Illinois.
- 13.7 This Agreement shall be executed in duplicate, and each Party shall retain a fully executed original, all of which shall be deemed to be one Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates stated below.

**FOREST PRESERVE DISTRICT OF
DUPAGE COUNTY**

BY: _____
Daniel Hebreard, President

ATTEST: _____
Judith Malahy, Secretary

Date signed: _____

COUNTY OF DUPAGE

BY: _____
Deborah A. Conroy, Chair,
DuPage County Board

ATTEST: _____
Jean Kaczmarek, County Clerk

Date signed: _____