

RESOLUTION NO. R2024-13

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT
WITH THE COUNTY OF DUPAGE, ILLINOIS
FOR WEST BRANCH DUPAGE RIVER RESTORATION IMPROVEMENTS**

WHEREAS, the City is a home rule municipal corporation pursuant to Article VII, Section 6(a) of the Constitution of the State of Illinois of 1970 and the County of DuPage ("**County**") is an Illinois county governed by the Illinois Counties Code, 55 ILCS 5/1 *et seq.*; and

WHEREAS, the City and the County are both public agencies under the Illinois Constitution of 1970 and the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.* and are authorized to exercise their powers and duties in a cooperative manner among themselves as public agencies; and

WHEREAS, the City and the County desire to construct certain riparian restoration improvements along the bank of the West Branch of the DuPage River located adjacent to 28W224 Warrenville Road, including, without limitation, the planting of trees and shrubs ("**Project**"); and

WHEREAS, the City and the County desire to enter into an intergovernmental agreement pursuant to which the City and the County will share the cost of the Project ("**Agreement**"); and

WHEREAS, the estimated cost of the Project is \$36,000.00; and

WHEREAS, pursuant to the Agreement, the County will reimburse the City for up to \$25,000.00 of allowable costs related to the Project; and

WHEREAS, the Mayor and the City Council have determined that it is in the best interest of the City and the public to approve the Agreement with the County;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF WARRENVILLE, DU PAGE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: Recitals. The recitals listed above are incorporated in this Resolution as if fully set forth in this Resolution.

SECTION 2: Approval of Agreement. The Agreement with the County, substantially in the form attached to this Resolution as **Exhibit A**, and in a final form to be approved by the City Administrator, is hereby approved.

SECTION 3: Execution. The Mayor and City Clerk of the City are authorized and directed to execute and affix the City seal to the Agreement and transmit executed and sealed copies to the County.

SECTION 4: Effective Date. This Resolution shall be in full force and effect following its passage and approval in the manner provided by law.

[Voting record and signature page follows]

PASSED THIS 20th day of February, 2024.

AYES: Aids: Lockett, Barry, Davolos, Wilkie, Augustynowicz, and Kruckenberg

NAYS: None

ABSENT: Aids: Aschauer and Weidner

ABSTAIN: None

APPROVED THIS 20th day of February, 2024.



MAYOR

ATTEST:



CITY CLERK

#60353088_v1

EXHIBIT A

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY OF DUPAGE,
ILLINOIS AND THE CITY OF WARRENVILLE FOR COST SHARE ADDITIONAL WORK
RELATED TO THE WEST BRANCH RIVER RESTORATION AND HYDRAULIC
IMPROVEMENTS PROJECT**

INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY OF DUPAGE,
ILLINOIS AND THE CITY OF WARRENVILLE FOR COST SHARE ADDITIONAL WORK
RELATED TO THE WEST BRANCH RIVER RESTORATION AND HYDRAULIC
IMPROVEMENTS PROJECT

This INTERGOVERNMENTAL AGREEMENT is made this __ day of March 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 CITY OF WARRENVILLE, an Illinois home rule municipality, with offices at 3S258 Manning Avenue, WARRENVILLE, IL 60555 (hereinafter referred to as the CITY).

R E C I T A L S

WHEREAS, the CITY 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 Illinois General Assembly has granted the COUNTY authority to construct stormwater management and flood control facilities (55 ILCS 5/5-1062 and 5/5-15001, et seq.); and

WHEREAS, the Illinois General Assembly has granted the CITY authority to construct stormwater management and flood control facilities (65 ILCS 5/11-110-1 and 5/11-112-6); and

WHEREAS, pursuant to its authority, the COUNTY has completed a project to construct stormwater management and flood control facilities known as the West Branch River Restoration and Hydraulic Improvements Project (the “PROJECT”); and

WHEREAS, the PROJECT involved construction of various improvements intended to provide stormwater management and flood control benefits to residences and businesses located within the CITY’S municipal territory and the proximate unincorporated areas; and

WHEREAS, the COUNTY and the CITY entered in to an MOU in 2016 for the allocation of excess compensatory storage created during the construction of the “PROJECT; and

WHEREAS, the CITY has and the COUNTY have jointly agreed to share the costs of the additional riparian restoration (the “RESTORATION”) located along the bank of the West Branch of the DuPage River adjacent to the property commonly known as 28W224 Warrenville Road, Warrenville, Illinois, which is within the PROJECT area (the “RESTORATION AREA”); and

WHEREAS, the COUNTY’s cost for the RESTORATION will not to exceed twenty-five thousand dollars (\$25,000.00); and

WHEREAS, the CITY will pay the entire cost of the RESTORATION up front and the COUNTY will reimburse the CITY for its qualified expenses and costs in accordance with this AGREEMENT; and

WHEREAS, the CITY shall share any reasonably 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 RESTORATION involves additional riparian restoration, including the planting of trees, shrubs and native seed within the RESTORATION AREA.
- 2.2 The Compensatory Storage Request, included herewith as “Attachment A” shall be developed in substantial accordance with the engineering report prepared on the CITY’s behalf by Engineering Resource Associates (the “ENGINEERING

REPORT”), which ENGINEERING REPORT is also incorporated herein by reference but is not attached hereto due to space limitations.

3.0 FUNDING.

3.1 The total construction costs related to the RESTORATION are estimated to be thirty-six thousand dollars (\$36,000). The COUNTY’s maximum reimbursement amount is \$25,000, or the costs quoted or bid for the RESTORATION work, whichever is less. The anticipated cost share is as follows, unless otherwise agreed to in writing as provided in Paragraph 3.2 below:

CITY OF WARRENVILLE	\$11,000
COUNTY OF DUPAGE	\$25,000
TOTAL	\$36,000

3.2 The CITY shall be responsible for bearing any cost overruns or expenses in excess of the estimated RESTORATION cost listed in Paragraph 3.1, regardless of the cause, unless the CITY 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 CITY to undertake the RESTORATION if the CITY, in its sole discretion, determines that it is no longer in the CITY’s best interest to proceed with the RESTORATION. However, in the event the RESTORATION is not substantially completed by November 30, 2025, the CITY shall promptly reimburse the COUNTY any monies paid by the COUNTY to the CITY pursuant to this AGREEMENT.

3.4 The CITY may only seek COUNTY reimbursement for allowable RESTORATION expenses incurred on, or before, November 30, 2025. Allowable expenses incurred and paid by the CITY in relation to the RESTORATION shall include third-party professional services including direct and indirect costs for the initial installation of riverine, riparian plantings, including but not limited to: topsoil, native seed, erosion control blanket, native trees, native shrubs, and native plugs..

4.0 CITY’S RESPONSIBILITIES.

4.1 The CITY shall be responsible for the preparation of the plans, specifications, and bid/quotation documents for the RESTORATION. The CITY shall select, and contract with, all vendors providing professional services for the RESTORATION.

4.2 The CITY shall be responsible for successful completion of all phases of the RESTORATION, from design and construction through maintenance.

- 4.3 The CITY shall be responsible for securing all local, county, state, and federal permits necessary for completion of the RESTORATION.
- 4.4 The CITY shall be responsible for submitting copies of all permit applications and related correspondence to the COUNTY in a timely manner to ensure sufficient review by the COUNTY. The purpose of the COUNTY'S review shall be for the sole purpose of documenting whether particular RESTORATION components qualify as allowable expenses.
- 4.5 The CITY shall be responsible for obtaining all required land rights necessary, as determined in the sole discretion of the City, for the completion of the RESTORATION.
- 4.6 The CITY shall not be reimbursed by the COUNTY for work undertaken prior to the signing of this AGREEMENT.
- 4.7 The CITY shall make direct payments, or cause to have payments made, to all parties providing services related to this agreement. This requirement will not affect the COUNTY'S obligation to reimburse the CITY in the amounts herein agreed upon, nor shall this provision affect the CITY'S obligation to repay the COUNTY in the event the RESTORATION is not undertaken or completed, as established in Paragraph 3.3.
- 4.8 The CITY shall make any data collected from the RESTORATION available to the COUNTY upon reasonable request by the COUNTY. The COUNTY shall be allowed unlimited, but reasonable, access to the RESTORATION area to observe and review RESTORATION work and all work documents (i.e., plans, change orders, field orders, construction manager diaries, etc.). The COUNTY shall provide the CITY reasonable advanced notice of when the COUNTY requires such access.
- 4.9 The COUNTY 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 RESTORATION. The CITY and CITY'S contractors shall be solely responsible for the safety of all individuals performing work on the RESTORATION. The CITY shall take such measures as are reasonably necessary to ensure that its contractors maintain the RESTORATION AREA in a safe condition and install appropriate barricades and warning signs, and the CITY 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 CITY beyond the usual burdens and liabilities for a municipality in the construction of public improvements. This section is intended merely to relieve the COUNTY from such liabilities in this RESTORATION.

5.0 COUNTY'S RESPONSIBILITIES.

5.1 The COUNTY shall cost share in the RESTORATION as follows:

5.1.1 The COUNTY shall reimburse the CITY for approved costs incurred and paid for by the CITY associated with the PROJECT up to a maximum amount of \$25,000 of the RESTORATION, as specified in Paragraph 3.1.

5.1.2 The total reimbursement amount paid by the COUNTY shall not exceed twenty-five thousand dollars (\$25,000).

5.1.3 The COUNTY shall not be obligated to pay invoices received after December 30, 2025, regardless of when the work was completed and notwithstanding that the COUNTY'S contribution limit has not been reached.

5.1.4 The COUNTY shall not reimburse for any work completed before entering into this Agreement, nor shall the COUNTY reimburse for any work completed after November 30, 2025.

5.2 The CITY will ensure that the COUNTY has unlimited, but reasonable access to the RESTORATION AREA to observe and review RESTORATION work related 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 RESTORATION.

6.0 GOVERNMENT REGULATIONS.

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

7.0 INDEMNIFICATION.

7.1 The CITY 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 CITY'S performance under this AGREEMENT to the fullest extent the CITY is so authorized under the law; provided, however, that the CITY 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 CITY shall require each consultant and contractor responsible for the construction, maintenance, or monitoring of the RESTORATION to name the CITY and COUNTY as an additional insured party on said vendor's liability insurance policy. Further, the CITY shall require that its consultants and contractors indemnify, defend and hold harmless the CITY 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.
- 7.3 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 CITY'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 CITY or its consultants, contractors or agents. The CITY'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, 2025, or to a new date agreed upon pursuant to Section 8.2 of this Agreement, by the parties.

9.1.2 The completion by the CITY and COUNTY of their respective obligations under this AGREEMENT, in the event such completion occurs before December 30, 2025.

10.0 ENTIRE AGREEMENT.

- 10.1 This AGREEMENT, including matters incorporated herein, contains the entire AGREEMENT between parties related to the subject matter of this AGREEMENT.
- 10.2 There are no other covenants, warranties, representations, promises, conditions or understandings, either oral or written, regarding the subject matter of this AGREEMENT 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:

Public Works Director
CITY of WARRENVILLE
3S258 Manning Avenue

WARRENVILLE, IL
60555

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 either 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

CITY OF WARRENVILLE

Deborah A. Conroy,
Chair




David Brummel
Mayor

ATTEST:

ATTEST:

Jean Kaczmarek,
County Clerk



Julie Clark
City Clerk



ATTACHMENT A

COMPENSATORY STORAGE REQUEST FROM CITY TO COUNTY



City of Warrenville
35258 Manning Avenue
Warrenville, IL 60555

(630) 836 3050 tel
(630) 393 1531 fax
www.warrenville.il.us

January 16, 2024

Mrs. Sarah Hunn, Director
DuPage County Stormwater Management
421 North County Farm Road
Wheaton, IL 60187

RE: CITY OF WARRENVILLE – COMPENSATORY STORAGE REQUEST

Dear Director Hunn,

As part of DuPage County Stormwater Management's flood protection improvements, bridge replacement and river re-meander projects in 2012-2016, excess volume was created in the regulatory floodplain. A MOU, dated April 6 2015, was created to document the County's control of the excess volume (13,000 cubic yards) with willingness to allocate the volume to the City on a case-by-case basis as needed for future projects.

In 2020, the City acquired the former Phillips 66/Citgo gas station on the NE corner of Warrenville Road and Batavia Road. Since that point, the City has been working diligently to demolish the existing structures and perform environmental remediation on the property. As part of the final site project in spring 2024, the City will perform the final environmental remediation task and will lay the foundation for future development on this property and to the City owned properties to the north. In order to construct a parking lot with a reasonable ADA slope, fill must be brought into the site. Some of this fill will be located in the floodplain.

We understand that 1,613.3 cubic yards of fill was already used to remove 3 Warrenville homes from the floodplain, leaving 11,386.7 cubic yards of 0-10 year floodplain still available. The City of Warrenville is requesting DuPage County authorization to utilize available compensatory storage in the West Branch DuPage River in the area of Warrenville Road and River Road for our Old Town Redevelopment Site #2 Phase 1 Improvements for the 0-10 year floodplain of 44,019 cubic feet or **1,630.3 cubic yards**. The 0-10 year floodplain is effective storage as the fill is located within the 0-10 year elevations of the floodplain of the West Branch adjacent to where the excess compensatory storage is located and is hydraulically connected. The fill for the 10-100 year floodplain will be compensated onsite.

This is a very unique and important project in our "Old Town" area. City staff are excited about the development possibilities and this project is the first step. Time is of the essence as the remediation work (and this construction work) must be completed by summer in order to obtain a No Further Remediation letter from the IEPA by September 2024.

If you require any additional information, please feel free to contact Kristine Hocking, Senior Civil Engineer, directly at (630) 836-3066 or khocking@warrenville.il.us.

Sincerely,

David Brummel, Mayor
City of Warrenville

Attachments