

Prepared by and return to:
Forest Preserve District of
DuPage County
C/O Executive Director
P.O. Box 5000
Wheaton, IL 60189-5000

Property Address:
Vacant Land
East and West sides of Greene Road and
1/2 mile South of 79th Street, Naperville, IL
P.I.N.: 08-34-200-005 (part), 08-34-201-002 (part),
08-35-100-001 (part) & 08-35-101-004 (part)

**AN EASEMENT AGREEMENT BETWEEN THE FOREST PRESERVE DISTRICT OF DUPAGE COUNTY
AND THE COUNTY OF DUPAGE FOR THE OPERATION AND MAINTENANCE OF A SANITARY SEWER
FORCE MAIN IN A PORTION OF GREENE VALLEY FOREST PRESERVE**

THIS EASEMENT AGREEMENT for the Grant, Conveyance, and Warranty of a Permanent Easement (hereinafter referred to as the "Agreement") is entered into this _____ day of _____, 2023 by and between the Forest Preserve District of DuPage County, a body politic and corporate (hereinafter referred to as the "DISTRICT"), with its principal office at 3S580 Naperville Road, Wheaton, Illinois 60189, as property owner, and the County of DuPage, a body politic and corporate (hereinafter referred to as the "COUNTY"), with its principal offices at 421 N. County Farm Road, Wheaton, Illinois 60187, as grantee. The DISTRICT and the COUNTY shall collectively be referred to herein as the "Parties" and may be individually referred to as a "Party."

WITNESSETH:

WHEREAS, the DISTRICT owns certain property commonly known as Greene Valley Forest Preserve (hereinafter referred to as "Greene Valley"); and

WHEREAS, the DISTRICT, COUNTY and Waste Management, Inc. executed an agreement titled Greene Valley Landfill Leachate Agreement, dated July 20, 2021 (hereinafter referred to as the "Leachate Agreement"), which generally provides for the construction of an underground sanitary force main within a portion of the Greene Valley (hereinafter referred to as the "Force Main") to convey leachate from the Greene Valley landfill to the DuPage County-owned Woodridge Greene Valley Sanitary Treatment Plant located at 7900 S. IL Route 53, Woodridge, IL. The Leachate Agreement is attached hereto and incorporated herein as **Exhibit A**; and

WHEREAS, the COUNTY has agreed to operate and maintain the Force Main upon completion of construction and acceptance of the Force Main and requests that a permanent easement be granted for access, operation, and maintenance of the Force Main; and

WHEREAS, Waste Management, Inc. has completed the construction of the Force Main, and

the COUNTY has inspected and accepted the Force Main; 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, 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 Force Main within the portion of Greene Valley legally described in **Exhibit B**, attached hereto and incorporated herein, and depicted in **Exhibit C**, attached hereto and incorporated herein (hereinafter referred to as “Easement Premises”); 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 for the Force Main, 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 EASEMENT GRANTED

2.1 The DISTRICT hereby grants the COUNTY a permanent, non-exclusive easement for the access, operation, maintenance, and re-construction of the Force Main within the Easement Premises on the terms and conditions as provided for in this Agreement.

3.0 FEES

3.1 In accordance with the Leachate Agreement, the easement fees are hereby waived.

4.0 NOTICE OF FUTURE WORK

4.1 The COUNTY is hereby granted the unrestricted right to access the Easement Premises at any time to perform emergency maintenance related work associated with this Agreement. The COUNTY is further granted the unrestricted right to access and occupy the Easement Premises, upon no less than eight weeks prior written notice to the DISTRICT, for any “invasive activities” (defined as activities beyond routine operation and maintenance or emergency related work, including but not limited to large scale construction projects), within the Easement Premises. Conversely, the DISTRICT shall provide the COUNTY notice and an opportunity to review and comment upon any “invasive activities” it intends to perform within the Easement Premises subsequent to the effective date of this Agreement. Notice to either the COUNTY or DISTRICT under this section shall be provided in accordance with the notice provisions in paragraph 10 herein. The COUNTY and DISTRICT shall make any independent contractor or other assigns

accessing the Easement Premises for purposes of said invasive activities aware of the terms and conditions of this Agreement.

5.0 PERMITS AND APPROVALS

5.1 The COUNTY shall obtain all necessary permits or other approvals required for maintaining and any construction work on the Force Main within the Easement Premises. 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 Easement Premises or exercises any rights conferred under this Easement Agreement. The COUNTY shall also comply with all applicable DISTRICT ordinances now in force. For purposes of ordinances enacted subsequent to this Agreement, the Agreement may be amended in accordance with the provisions of paragraph 11.5.

6.0 RESTORATION

6.1 The COUNTY shall promptly restore the Easement Premises to its condition at the time of the grant of this easement and repair any damage to other pre-existing DISTRICT property resulting, directly or indirectly, from the use of the Easement Premises. Such restoration shall not include damage and/or overgrowth caused by natural occurrences, the mere passage of time, or the DISTRICT's neglect. All restoration and repair work shall be performed in accordance with the specifications established by the DISTRICT and shall be subject to the approval of the DISTRICT'S Executive Director. In the event the COUNTY fails to initiate restoration of the Easement Premises or repair any damage caused by the COUNTY's use of the premises to areas adjacent to the boundaries thereof within 45 days of effective date of written notice from the DISTRICT demanding the repair, or fails to complete restoration within 90 days of said demand, the DISTRICT shall have the right to take such action as it deems necessary to perform the restoration work or repair damage, which shall include the authority to engage the services of an independent contractor. The District shall account for all costs incurred to restore the Easement Premises or adjacent preserve land and the COUNTY shall be responsible for reimbursing the DISTRICT for the cost and expenses within 45 days of service of the DISTRICT'S written demand of payment.

7.0 INSURANCE

7.1 The COUNTY is self-insured and does not purchase insurance on a case-by-case basis. The COUNTY shall require its independent contractors doing work within the Easement Premises to purchase and/or provide proof of insurance coverage which will satisfactorily insure the COUNTY and, where appropriate, the DISTRICT against claims and liabilities which may arise out of their activity upon the Easement Premises. Such insurance shall be issued by companies licensed to do business in the State of Illinois and having an A.M. Best Rating of A minus or better. Independent contractors shall provide Certificates of Insurance naming the DISTRICT and any of its officers, trustees, agents, or employees as additionally insured on all coverages in this Agreement except Workers' Compensation and Employer's Liability. The insurance coverages shall include the following:

- (A) Workers' compensation insurance with limits as required by the applicable workers' compensation statutes. The employer's liability coverage under the workers' compensation policy shall have limits of not less than \$500,000 each accident/injury;

- \$500,000 each employee/disease; \$500,000 policy limit.
- (B) Commercial general liability insurance protecting the COUNTY against public liability claims which may arise in the course of using the Easement Premises. The limits of liability shall not be less than \$1,000,000 each occurrence bodily injury/property damage combined single limit and \$2,000,000 aggregate bodily injury/property damage combined single limit. The policy of commercial general liability insurance shall include contractual liability coverage and an endorsement naming the DISTRICT as an additional insured.
 - (C) Commercial automobile liability insurance covering owned, non-owned and leased vehicles which protects against automobile liability claims whether on or off the DISTRICT'S premises with coverage limits of not less than \$1,000,000 each accident bodily injury/property damage combined single limit.
 - (D) Umbrella or Excess liability insurance with limits of not less than \$1,000,000 each occurrence bodily injury/property damage combined single limit and \$1,000,000 aggregate bodily injury/property damage combined single limit. The Umbrella or Excess coverage shall apply in excess of the limits stated in subparagraphs (B) and (C) above and shall either include an endorsement naming the DISTRICT as an additional insured or provide "following form" coverage.

The independent contractor's policy of Commercial General Liability Insurance shall provide "occurrence" based coverage and shall include an endorsement naming the DISTRICT as additional insured. The COUNTY shall provide evidence of its insurance coverage, as requested by the DISTRICT, by furnishing a self-insurance letter.

8.0 INDEMNIFICATION

- 8.1 To the extent permitted by law, the COUNTY and the DISTRICT shall each indemnify, hold harmless and defend the other, their 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 other's negligent or willful acts, errors or omissions in its performance under this Agreement. Neither waives any defenses or immunity available to it with respect to third parties; and all such defenses and immunities are hereby reserved.
- 8.2 Nothing contained herein shall be construed as prohibiting the COUNTY or the DISTRICT, their officials, directors, officers, agents, and employees from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings, and actions brought against them. Pursuant to Illinois law, any attorney representing the COUNTY under this paragraph is to be appointed a Special Prosecutor, as provided in 55 ILCS 5/3-9008, unless the attorney is already an Assistant State's Attorney. 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. The DISTRICT's participation in its defense shall not remove the COUNTY'S duty to indemnify, defend, and hold harmless, as set forth above.
- 8.3 Neither the COUNTY nor the DISTRICT by these indemnity requirements, waive, forfeit or otherwise in any manner relinquish any defenses, privileges or immunities under the Local Government and Governmental Employees Tort Liability Act (745 ILCS 10/1 *et seq.*) or which

may be otherwise available to them, jointly and/or severally under any applicable law. All tort immunities and privileges are hereby specifically reserved.

8.4 There are no third-party beneficiaries of this Agreement except to the extent provided for in paragraph 7.1 above.

8.5 The parties' obligations to defend, hold harmless, and indemnify shall survive until termination of the easement contemplated herein.

9.0 BREACH OF AGREEMENT

9.1 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 45 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 45-day cure period shall be extended for a reasonable time if the COUNTY has undertaken to cure the breach within the 45-day period and continues to diligently and in good faith to complete the corrective action. Given the importance of the Force Main project to public health and safety and given the nature and scope of the Force Main project, remedies available to the DISTRICT do not and shall not include termination of this Agreement or prevention of access to the Easement Premises.

9.2 Action by any party to enforce any term of 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 9.1.

9.3 A waiver by any party of any breach of one or more of the terms of this Agreement on the part of one of the other parties 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, unless otherwise agreed to in a writing signed by all parties hereto. 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.

10.0 NOTICES

10.1 All notices required to be given under the terms of this Agreement shall be deemed properly given to the party to be notified in writing at the time it is personally delivered or served by certified or registered mail, return receipt requested, properly addressed with the postage prepaid and deposited in the United States mail, or sent by confirmed facsimile or email to the party's address. Notices served by mail 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 by mail upon the COUNTY shall be directed to the Director, DuPage County Department of Public Works, County of DuPage, 421 N. County Farm Road, Wheaton, Illinois

60187. Notices served by mail shall be effective upon receipt as verified by the United States Postal Service. Notice served by facsimile or email shall be effective upon date sent. Notwithstanding anything to the contrary, any notice by a party alleging a breach of this Agreement shall be by certified or registered mail as set forth above. 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.

11.0 MISCELLANEOUS TERMS

- 11.1 The DISTRICT hereby reserves the right to use, or permit to be used, the Easement Premises in any manner that will not prevent or materially interfere with the exercise by the COUNTY of the rights granted herein. Whenever in this Agreement approval or review of either the COUNTY or the DISTRICT is provided for, said approval or review shall not be unreasonably delayed or withheld.
- 11.2 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.
- 11.3 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.
- 11.4 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.
- 11.5 This Agreement may be modified only in writing, duly approved, and signed by all parties.
- 11.6 This Agreement shall not be deemed or construed as creating an employment, joint venture, partnership, or principal agency relationship between the parties.
- 11.7 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.
- 11.8 Neither party shall be liable for any delay or non-performance of their obligations caused by any contingency beyond their control including but not limited to Acts of God, war, civil unrest, strikes, walkouts, fires, plagues, or natural disasters.
- 11.9 This Agreement shall be executed in duplicate, and each party shall retain a fully executed original.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement on the date(s) stated below.

**FOREST PRESERVE DISTRICT OF
DU PAGE COUNTY – AS GRANTOR**

BY: _____
Daniel Hebreard, President

ATTEST: _____
Judith Malahy, Secretary

Date signed: _____

COUNTY OF DUPAGE – AS GRANTEE

BY: _____
Deborah A. Conroy, Chair

ATTEST: _____
Jean Kaczmarek, Clerk

Date signed: _____