

INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY OF DUPAGE,
ILLINOIS AND THE GLEN ELLYN PARK DISTRICT FOR THE CHURCHILL PARK SITE
IMPROVEMENTS PROJECT

This INTERGOVERNMENTAL AGREEMENT is made this 9th day of May 2023 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 GLEN ELLYN PARK DISTRICT, a body politic and corporate, with offices at 185 Spring Avenue, Glen Ellyn, Illinois 60137 (hereinafter referred to as the DISTRICT).

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, the DISTRICT has developed a conceptual design for the construction of site improvements at Churchill Park (herein referred to as the “PROJECT”); and

WHEREAS, the COUNTY and the DISTRICT have determined that the construction of the PROJECT will benefit local citizens by improving the water quality in Winfield Creek, a tributary to the West Branch DuPage River; and

WHEREAS, the DISTRICT has requested COUNTY participation in cost sharing of the PROJECT through a grant from the COUNTY’S Water Quality Improvement Program in an amount not to exceed thirty-four thousand five hundred dollars (\$34,500); and

WHEREAS, the DISTRICT shall pay PROJECT expenses to the contractors as they become due and will be reimbursed by the County for qualified expenses not to exceed thirty-four thousand five hundred dollars (\$34,500) per this AGREEMENT; and

WHEREAS, the DISTRICT 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 premises, 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 hereof, 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 various site improvements to benefit water quality at Churchill Park in Glen Ellyn. The project includes pond improvements, invasive vegetation removal, planting of native vegetation, and flood plain shelf enhancements. The goal of the DISTRICT is to reduce pollutant loadings associated with urban runoff into Winfield Creek and the West Branch DuPage River watershed.
- 2.2 The PROJECT shall be developed essentially in accord with the conceptual design (Churchill Park- Site Improvements 2023), as prepared by the Glen Ellyn Park District submitted January 6, 2023, which document is incorporated herein by reference but is not attached hereto due to space limitations.

3.0 FUNDING.

- 3.1 The total water quality related PROJECT costs are estimated to be one hundred seventy-two thousand five hundred dollars (\$172,500). The cost share is as follows, unless otherwise agreed to in writing as provided in Paragraph 3.2 below:

GLEN ELLYN PARK DISTRICT	\$138,000
<u>COUNTY OF DUPAGE</u>	<u>\$ 34,500</u>

TOTAL \$172,500

- 3.2 The DISTRICT 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 DISTRICT and COUNTY agree to apportion such extra costs in writing before they are incurred.
- 3.3 This AGREEMENT shall in no way obligate the DISTRICT to undertake this PROJECT if the DISTRICT in its sole discretion determines that it is no longer in the DISTRICT'S best interest to proceed with this PROJECT. However, in the event the PROJECT is not substantially completed by November 30, 2024, the DISTRICT shall promptly reimburse the COUNTY any monies paid by the COUNTY to the DISTRICT pursuant to this AGREEMENT. The DISTRICT'S right to retain the COUNTY'S reimbursement of PROJECT costs is expressly conditioned upon the DISTRICT'S timely and satisfactory completion of the PROJECT.
- 3.4 The DISTRICT may only seek COUNTY reimbursement for allowable PROJECT expenses. Allowable PROJECT expenses incurred and paid by the DISTRICT in relation to the PROJECT shall include third-party professional services related to the construction of the PROJECT (construction management, etc.), construction (labor and materials), bid advertising, etc. Notwithstanding the foregoing, allowable expenses shall not include the DISTRICT'S administrative costs, overhead, payroll, land acquisition, legal or accounting services.

4.0 DISTRICT'S RESPONSIBILITIES.

- 4.1 The DISTRICT 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 DISTRICT shall select, and contract with, all vendors providing professional services for the PROJECT.
- 4.2 The DISTRICT shall be responsible for successful completion of all phases of the PROJECT, from design and construction through maintenance.
- 4.3 The DISTRICT shall be responsible for securing all local, county, state, and federal permits necessary for completion of the PROJECT.
- 4.4 The DISTRICT 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 PROJECT work components qualify as allowable expenses.

- 4.5 The DISTRICT shall be responsible for obtaining all required land rights necessary for the completion of the PROJECT.
- 4.6 The DISTRICT shall not be reimbursed by the COUNTY for work undertaken prior to the signing of this AGREEMENT.
- 4.7 The DISTRICT may enter into additional agreements to secure its portion of the local PROJECT costs.
- 4.8 The DISTRICT shall submit no more than one invoice per month to the COUNTY during the construction of the PROJECT. Under no circumstances should the COUNTY be invoiced more than thirty-four thousand five hundred dollars (\$34,500). The invoice shall show the quantities and cost per item and be summarized by PROJECT area.
- 4.9 The DISTRICT 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 DISTRICT in the amounts herein agreed upon, nor shall this provision affect the DISTRICT'S obligation to repay the COUNTY in the event the PROJECT is not undertaken or completed, as established in Paragraph 3.3.
- 4.10 The DISTRICT shall make any data collected from the PROJECT available to the COUNTY upon reasonable request by the COUNTY.
- 4.11 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 PROJECT. The DISTRICT and DISTRICT'S contractors shall be solely responsible for the safety of all individuals performing work on the PROJECT. The DISTRICT 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 DISTRICT 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 DISTRICT 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 PROJECT. COUNTY'S role in conducting any review or granting any consent or approval relates solely to the PROJECT'S eligibility under the COUNTY'S Water Quality Improvement Program.
- 4.12 The DISTRICT must acknowledge the COUNTY using logo(s) and wording provided by the COUNTY in permanent onsite signage 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 reserve the right to review the PROJECT'S plans and specifications, prior to the DISTRICT'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 qualify for reimbursement through the COUNTY'S Water Quality Improvement Program. The COUNTY shall promptly provide the DISTRICT with any recommended changes to the CONTRACT DOCUMENTS for PROJECT components to qualify for reimbursement.
- 5.2 The COUNTY shall cost share in the PROJECT as follows:
 - 5.2.1 The COUNTY shall reimburse the DISTRICT for approved costs associated with the PROJECT which have been incurred and paid for by the DISTRICT, as specified in Paragraph 3.1.
 - 5.2.2 The total reimbursement amount paid by the COUNTY shall not exceed thirty-four thousand five hundred dollars (\$34,500).
 - 5.2.3 In the event PROJECT costs total less than one hundred seventy-two thousand five hundred dollars (\$172,500), the COUNTY'S total reimbursement amount shall not be more than twenty five percent (25%) of the actual total PROJECT costs. Any amounts overpaid by the COUNTY shall be promptly refunded by the DISTRICT.
 - 5.2.4 The COUNTY shall not be obligated to pay invoices received after November 30, 2024, regardless of when the work was completed and notwithstanding that the COUNTY'S contribution limit has not been reached.
- 5.3 The COUNTY shall be allowed unlimited, but reasonable, access to the PROJECT area to observe and review PROJECT work and work 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 PROJECT. The COUNTY shall provide the DISTRICT reasonable advance notice of when the COUNTY requires such access.

6.0 GOVERNMENT REGULATIONS.

- 6.1 The 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 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 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 DISTRICT shall require each consultant and contractor responsible for the construction of the PROJECT to name the DISTRICT and COUNTY as an additional insured party on said vendor's liability insurance policy. Further, the DISTRICT shall require that its consultants and contractors indemnify, defend and hold harmless the DISTRICT 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 paragraph 7.1 is to be the State's Attorney, in accord with the applicable law. The COUNTY'S participation in its defense shall not remove the 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 VILLAGE 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, 2024, 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, 2024.

10.0 ENTIRE AGREEMENT.

- 10.1 This AGREEMENT, including matters incorporated herein, contains the entire AGREEMENT between the 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:

Nathan Troia, PLA
Superintendent of Planning and
Natural Resources
Glen Ellyn Park District
185 Spring Ave.
Glen Ellyn, Illinois, 60137

Mary Beth Falsey
Water Quality Supervisor
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 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

GLEN ELLYN PARK DISTRICT

Deborah A. Conroy,
Chair

Alex Durham
President

ATTEST:

ATTEST:

Jean Kaczmarek,
County Clerk
