

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

**PROPERTY ADDRESS:
VACANT LAND
South of I-55 and East and West of Cass Avenue
Lemont, IL 60439
P.I.N.: 10-03-400-008 & 10-04-401-003**

**AN EASEMENT AGREEMENT BETWEEN THE COUNTY OF DU PAGE AND THE FOREST PRESERVE
DISTRICT OF DU PAGE COUNTY PROVIDING FOR THE OPERATION AND MAINTENANCE OF
EXISTING SANITARY INTERCEPTORS WITHIN PORTIONS OF WATERFALL GLEN FOREST PRESERVE**

THIS EASEMENT AGREEMENT (hereinafter referred to as the "Agreement") for the Grant, Conveyance, and Warranty of a Permanent Easement 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 35580 Naperville Road, Wheaton, Illinois 60189, as grantor, 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 COUNTY and the DISTRICT are public agencies within the meaning of the Illinois "Intergovernmental Cooperation Act," as specified in Illinois Statute, 5 ILCS 220/1 *et seq.*, 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 governmental bodies; and

WHEREAS, the DISTRICT owns certain property commonly known as the Waterfall Glen Forest Preserve (hereinafter "Waterfall Glen"); and

WHEREAS, on June 11, 1984, the DISTRICT granted a license to the COUNTY for the construction, operation, and maintenance of about 1.7 +/- miles of sanitary Interceptors within Waterfall Glen; and

WHEREAS, the 1984 license for the sanitary Interceptors expired on June 11, 2004; and

WHEREAS, the COUNTY also constructed two additional sanitary interceptor segments of about

0.5 +/- miles in length within Waterfall Glen without a License or Easement as depicted in **EXHIBIT A**, attached hereto and incorporated herein; and

WHEREAS, the COUNTY requests the granting of easements to allow the access to and continued operation and maintenance of the existing sanitary interceptors within certain portions of Waterfall Glen (hereinafter referred to as “Sanitary Interceptors”); 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 easements to allow the COUNTY access to and continued use and maintenance of the Sanitary Interceptors within Waterfall Glen; and

WHEREAS, the DISTRICT has determined that it is reasonable, necessary and in the public interest and welfare to grant the COUNTY easements within Waterfall Glen 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 non-exclusive, permanent easements for access to and continued operation, maintenance, and replacement of the Sanitary Interceptors within the certain portions of Waterfall Glen legally described in **EXHIBIT B** and depicted in **EXHIBIT C**, both of which are attached hereto and incorporated herein (hereinafter referred to as “Easement Premises”).

2.2 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 two weeks prior written notice to the DISTRICT, for any “invasive activities” (defined as activities beyond routine operation and maintenance 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. Notice to either the COUNTY or DISTRICT under this section shall be provided in accordance with the notice provisions in paragraph 9 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.

3.0 NO ASSIGNMENT

3.1 The COUNTY shall not assign this Agreement or the easements granted herein without written approval from the DISTRICT, nor shall the DISTRICT assign this Agreement or the rights granted hereunder without written approval from the COUNTY.

4.0 EASEMENT FEE

4.1 Easement fees for the granting of easements by the DISTRICT are assessed in accordance with the DISTRICT'S Easement and License Ordinance (No. 96-096). In consideration that the COUNTY was originally granted a license at a time when there were no license fees for public utilities, and given that the COUNTY has maintained the existing Sanitary Interceptors in good condition, the DISTRICT hereby waives the COUNTY'S easement fee.

5.0 RESTORATION

5.1 If the COUNTY or its contractor damages the Easement Premises or adjacent preserve land, the COUNTY shall restore all damaged areas according to the DISTRICT'S specifications. If the COUNTY fails to initiate restoration the Easement Premises or adjacent preserve land within 45 days of service of the DISTRICT'S written demand for the restoration work, 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, which shall include the authority to (a) perform the work with its own personnel and/or; (b) engage the services of an independent contractor to perform the work. The DISTRICT shall account for all costs incurred to restore the Easement Premises or adjacent preserve land, and the COUNTY shall reimburse the DISTRICT for costs associated with said restoration work within 45 days of service of the DISTRICT's written demand for payment.

6.0 INSURANCE

6.1 The COUNTY is self-insured and does not purchase insurance on a case-by-case basis. The COUNTY shall require independent contractors doing work within the Easement Premises to purchase and/or provide proof of insurance coverage which will satisfactorily insure 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 said insurance coverage, as requested by the DISTRICT, by furnishing a self-insurance letter.

7.0 INDEMNIFICATION

- 7.1 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..
- 7.2 The COUNTY shall require each contractor who performs any work on the Easement Premises, to defend, hold harmless and indemnify the DISTRICT to the same extent as required of the COUNTY under paragraph 7, and the COUNTY shall include in all of its contracts a statement expressly declaring the DISTRICT to be a third-party beneficiary of the contractors' indemnification provision.
- 7.3 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.
- 7.4 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.
- 7.5 There are no third-party beneficiaries of this Agreement except to the extent provided for in paragraph 7.2 above.
- 7.6 Any indemnity as provided in this Agreement shall not be limited by reason of the enumeration of any insurance coverage herein provided. Except with respect to occurrences arising before reversion of the Easement, the DISTRICT'S and COUNTY'S indemnification under Section 7 hereof shall terminate upon reversion of the Easement to the DISTRICT whensoever shall occur and the DISTRICT shall assume maintenance over the Easement Premises.
- 7.7 The COUNTY shall promptly pay all costs and expenses relating to any and all work contracted by the County or necessitated by restoration efforts within the Easement Premises and shall not allow any liens on DISTRICT property as a result of said 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 the work performed under this Agreement.

8.0 BREACH OF AGREEMENT

- 8.1 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 45 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 Sanitary Interceptors to public health and safety and given the nature and scope of the Sanitary Interceptors, remedies available to the DISTRICT do not and shall not include termination of this Agreement or prevention of access to the Easement Premises.
- 8.2 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 8.1.
- 8.3 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, 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.

9.0 NOTICES

- 9.1 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, or sent by confirmed facsimile or email, to the party's address. Notices served upon the DISTRICT shall be directed to the Executive Director, Forest Preserve District of DuPage County, P.O. Box 5000, 35580 Naperville Road, Wheaton, IL 60189-5000. Notices served upon the COUNTY shall be directed to the Director, Division of Public Works and Operations, 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.

10.0 MISCELLANEOUS TERMS

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 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.
- 10.5 The provisions set forth herein represent the entire agreement between the Parties and supersede any previous oral or written agreements related to Sanitary Interceptors within a portion of Waterfall Glen Forest Preserve, as it is the intent of the Parties to provide for a complete integration within the terms of this Agreement.
- 10.6 No provision may be modified in any respect unless such modification is in writing, duly approved and signed by all Parties.
- 10.7 This Agreement shall not be deemed or construed to create an employment, joint venture, partnership or agency relationship between the parties.
- 10.8 This Agreement shall be construed in accordance with the laws of the State of Illinois as to both interpretation and performance.
- 10.9 The forum for resolving disputes concerning the Parties' respective performance, or failure to perform, under this agreement shall be the 18th Judicial Circuit Court in DuPage County, Illinois.
- 10.10 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.

10.11 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**

COUNTY OF DUPAGE

BY: _____
Daniel Hebreard, President

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

ATTEST: _____
Judith Malahy, Secretary

ATTEST: _____
Jean Kaczmarek, County Clerk

Date signed: _____

Date signed: _____