

## **SERVICES AGREEMENT**

**THIS SERVICES AGREEMENT** (hereinafter the "Agreement") is made and entered into by and between the County of DuPage, a body politic and corporate, non-home rule governmental unit (the "County"), with offices at 421 N. County Farm Road, Wheaton, Illinois, and Choose DuPage ("Choose DuPage"), an Illinois not-for-profit corporation, with offices at 2001 Butterfield Rd, Ste 235, Downers Grove, Illinois, (collectively the "Parties"), to be effective as of the 1<sup>st</sup> day of December, 2023 (the "Effective Date"). The purpose of this Agreement is to memorialize the terms of the agreement between the County and Choose DuPage with respect to the County's performance of services for, and contribution to Choose DuPage, as set forth herein.

**WHEREAS**, the parties agree that Choose DuPage is the economic development agency of record for the County and is the party primarily responsible for promotion of the County's economic development through appropriate means including, but not limited to, marketing the County outside of the region, developing a qualified workforce, and creating and retaining jobs by attracting business investments and fostering business retention programs; and

**WHEREAS**, Choose DuPage continues to significantly augment its current revenue with private sector investments procured within the authorized parameters set by Choose DuPage; and

**WHEREAS**, the County is committed to the continued development of Choose DuPage, and the County will invest in the activities of Choose DuPage in part as a contribution to Choose DuPage and in part in return for securing private sector investment within DuPage County; and

**WHEREAS**, the Parties desire to enter into this Agreement for the purposes of establishing their respective rights and obligations with respect to the one another, all as set forth in this Agreement and subject to the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants of the parties as set forth in this Agreement, the County and Choose DuPage (collectively, the "Parties" and individually, a "Party") agree to the terms and conditions set forth below:

**Section 1.**      **Incorporation.** All recitals set forth above are incorporated herein and made a part thereof, the same constituting the factual basis for this Agreement.

**Section 2.**      **County Contribution.** During each of the 2024 and 2025 DuPage County Budget Years the County shall provide Choose DuPage with assistance in the form of professional services and direct financial payments having a collective value in the amount of four hundred twenty-five thousand dollars (\$425,000.00), (the "County Contribution Limit"), per year, as set forth in this Agreement. Funding is subject to and contingent upon future budgetary appropriations by the County Board. The County's contribution shall be in the form of a monthly Financial Contribution ("Financial Contribution") and direct funding for a fixed-sum contract with Costar Realty Information, Inc. (for a License Agreement to access industrial, office and commercial real estate listings in the Chicago Metro Region) for the use and benefit of Choose DuPage ("Contract Contribution"). In no event shall the combined annual value of the

County's Financial Contribution and Contract Contribution exceed the County Contribution Limit without the prior budgetary authorization of the DuPage County Board. Choose DuPage will refund the value of any overpayment(s) or contribution(s) which cause the County to exceed its contribution limit. The County reserves the right to alter the valuation of its various contributions, in any manner and, in accordance with accepted accounting practices and, or, as County budgetary considerations warrant.

The County's Financial Contribution shall only be used by Choose DuPage to pay expenses incurred by, and charged to, Choose DuPage for the following: i) costs chargeable to Choose DuPage pursuant to the Memorandum of Understanding between Choose DuPage and the County for the use of office space at 2001 Butterfield Rd, Suite 235, Downers Grove, Illinois, (i.e., rent, annual rental adjustments, utility charges, etc.); ii) Choose DuPage administrative costs related to staffing, office operations, and programmatic costs for local and regional economic development activities; and iii) Choose DuPage's portion of the Costar License Agreement (to be paid by the County directly, as set forth elsewhere in this Agreement).

**Section 3. Calculation of Monthly Contribution.** The annual County Contribution Limit shall be set by the County Board on an annual basis by an appropriation. The Contract Contribution is anticipated to be less than the annual County Contribution Limit and, accordingly, the parties have agreed that the County shall contribute the difference in monthly cash payments to Choose DuPage. The monthly payments shall be calculated as follows:

The on-tract Contribution shall be the amount paid by the County directly to Co-Star, on a monthly basis, for the License Agreement described herein. The total annual County Contribution Limit shall be divided equally into twelve (12) monthly payments. From each monthly sum the County shall then deduct an amount equal to that month's Contract Contribution amount paid by the County to Costar Realty Information, Inc., or its successor, for the above-described License. The remaining balance shall be the amount for that month's payment to Choose DuPage. The last monthly payment from the County to Choose DuPage, which shall be made immediately after the close of the fiscal year, shall be adjusted accordingly to reconcile the value of the total actual County Contributions made during the fiscal year with the total County Contribution Limit authorized for that fiscal year, with the last monthly payment increased or decreased accordingly. The County will keep an accounting of all Costar expenses. At the end of each fiscal year, the County shall provide Choose DuPage with an accounting of the County Contribution showing the County-paid costs comprising the Contract Contribution and all monthly County payments made to date. In the event the *actual* County Contribution after the last monthly payment from the County to Choose DuPage for any given fiscal year, as calculated above, exceeds the total County Contribution Limit authorized for that fiscal year, Choose DuPage shall promptly upon receipt of invoice from the County reimburse the County in an amount equal to the value of the County's excess contribution.

**Section 4. Joint Rights and Responsibilities.** Each party shall undertake reasonable efforts to cooperate with and assist the other Party in their respective performance under this Agreement. Whenever a Party has the authority to grant approval of any matter, such approval shall not be unreasonably denied, delayed, withheld or conditioned.

**Section 5. Relationship of Parties.** Except as otherwise expressly provided in this Agreement, no action taken by either Party, or by its officers, employees or agents, pursuant to this Agreement, shall be deemed to constitute either Party as the employee, agent or representative of the other Party, or shall be construed to place the Parties in a relationship of partners, joint ventures, principal and agent, or employer and employee, or shall be deemed to confer upon either Party any express or implied power, right or authority to enter into any agreement or commitment, express or implied, or to incur any obligation or liability on behalf of the other Party. The County and Choose DuPage intend and agree that the County, and any of the County's agents or employees, shall serve as independent contractors and not as employees of Choose DuPage with respect to it or their provision of the Services as set forth in this Agreement.

However, as the economic development agency for the County, Choose DuPage shall report to the Economic Development Committee of the DuPage County Board. The Chair of the Economic Development Committee shall serve as a member of Choose DuPage, representing the County Board. The Chair of the County Board, shall also serve as a member of Choose DuPage as the public-sector co-chair of that organization, representing the County.

**Section 6. Term and Termination.** This agreement shall be effective as of the 1<sup>st</sup> day of December, 2023 and shall continue through and including the 30<sup>th</sup> day of November, 2025, with the understanding that County Contributions for FY 2024 and FY 2025 are contingent upon the County Board's appropriation of funding for each of those fiscal years. This Agreement may thereafter renew for a successive one (1) year period provided that each Party shall give the other Party written notice of its intent to renew, at least thirty (30) days prior to the expiration of the 2025 County fiscal year and is further contingent upon the County budgeting sufficient funds for each subsequent fiscal year. This Agreement shall terminate upon the occurrence of either of the following: (i) The Parties agree mutually in writing to terminate this Agreement; or (ii) Either Party may terminate this Agreement with or without cause effective upon the 30<sup>th</sup> day of the next following November, provided sixty (60) days written notice to the other party has first been given. Upon termination or non-renewal, neither Party shall have any further liabilities or obligations to the other Party under this Agreement excepting those liabilities that accrued prior to the effective date of such termination or non-renewal.

**Section 7. Amendment.** This agreement may only be amended or modified by a written instrument executed by both Parties.

**Section 8. Waiver.** Any of the terms, covenants, representatives, warranties or conditions of this Agreement may be waived. The waiver of any conditions, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be or construed as a further or continuing waiver of any such condition or breach of any other condition or the breach of any other provision, term, covenant, representation, or warranty of this Agreement.

**Section 9. Assignment.** Neither Party shall assign its rights or delegate its duties hereunder without the prior written consent of the other Party. All of the terms, provisions, covenants, conditions

and obligations of this Agreement shall be binding on and inure to the benefit of the successors and assigns of the Parties hereto.

**Section 10. Notice.** All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed received by the addressee thereof when delivered in person on a business day at the address set forth below or on the third business day after being deposited in any main or branch United States post office, for delivery at the address set forth below by properly addressed, postage prepaid, certified or registered mail, return receipt requested.

If to Choose DuPage: Choose DuPage  
2001 Butterfield Rd, Suite 235  
Downers Grove, Illinois 60515  
Attn: Greg Bedalov, President & CEO

If to the County: DuPage County Board Office  
421 North County Farm Rd.  
Wheaton, Illinois 60187  
Attn: Joan Olson, Chief Communications Officer  
Nick Kottmeyer, Chief Administrative Officer

**Section 11. Entire Agreement.** This Agreement sets forth the entire understanding between the Parties with respect to the matters contemplated by this Agreement and supersedes and replaces all prior and contemporaneous agreements and understandings, oral or written, with regard to these matters.

**Section 12. Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any provisions of this Agreement that can be given effect without the invalid or unenforceable provisions. 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.

**Section 13. Governing Law.** The parties affirm that this Agreement has been entered into in the State of Illinois and will be governed by and construed in accordance with the laws of the State of Illinois, notwithstanding any state's choice of law rules to the contrary. Further, 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 the DuPage County.

**Section 14. Audits.** The Parties shall keep on file for five (5) years documentation of all costs which Choose DuPage received in the form of cost-sharing, reimbursement or a contribution from the County, which documentation shall include copies of all invoices, bills, receipts, vouchers, proofs of payment, ledgers and contract documents related to the expenses, if any. Choose DuPage shall allow the County's Auditor, and any outside auditor hired by either Party, reasonable access to such materials for auditing purposes.

**CHOOSE DUPAGE**

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**COUNTY OF DUPAGE**

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_