

**AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE FOREST PRESERVE  
DISTRICT OF DUPAGE COUNTY AND THE CITY OF NAPERVILLE PROVIDING  
FOR ACCESS AND RIVERBANK STABILIZATION WORK WITHIN CERTAIN  
PORTIONS OF WEST BRANCH RIVERWAY  
FOREST PRESERVE**

THIS INTERGOVERNMENTAL AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into by and between the Forest Preserve District of DuPage County, a body corporate and politic (hereinafter referred to as the “DISTRICT”) and the City of Naperville, a municipal corporation and home rule unit of local government under the laws and Constitution of the State of Illinois, (hereinafter referred to as the “CITY”). The DISTRICT and CITY are hereinafter sometimes individually referred to as an “Agency” or together as “Agencies”.

WITNESSETH:

WHEREAS, the DISTRICT owns a forest preserve commonly known as the West Branch Riverway Forest Preserve (hereinafter referred to as the “West Branch Riverway”); and

WHEREAS, the CITY has an existing sanitary sewer interceptor within an existing easement along the east side of the West Branch DuPage River, including within certain portions of West Branch Riverway; and

WHEREAS, the CITY has determined that the riverbank of the West Branch DuPage River that is in close proximity of the existing sanitary sewer interceptor is in need of stabilization to reduce the erosion of the riverbank; and

WHEREAS, the CITY is in the design phase of a riverbank stabilization project generally referred to as the West Branch DuPage River Stabilization Project that will help stabilize the riverbank that is in close proximity of the existing sanitary sewer interceptor, including certain portions within West Branch Riverway (the work within West Branch Riverway is hereinafter referred to as the "Project"); and

WHEREAS, the CITY is responsible for designing, permitting and constructing the Project; and

WHEREAS, the CITY has requested a license from the DISTRICT for access and work activities related to the Project within the certain portions of West Branch Riverway as depicted in **Exhibit A**, attached hereto and incorporated herein; and

WHEREAS, the DISTRICT, pursuant to Section 6 of the Downstate Forest Preserve District Act, 70 ILCS 805/6, is empowered to grant licenses for public services; and

WHEREAS, the DISTRICT has determined that it is reasonable and appropriate for the DISTRICT to grant the CITY a license for access and work activities in conformance with this Agreement and the license agreement titled “A LICENSE AGREEMENT BETWEEN THE FOREST PRESERVE DISTRICT OF DUPAGE COUNTY AND THE CITY OF NAPERVILLE PROVIDING FOR ACCESS AND RIVERBANK STABILIZATION WORK

WITHIN CERTAIN PORTIONS OF WEST BRANCH RIVERWAY FOREST PRESERVE” which is attached hereto and incorporated herein as Exhibit B (hereinafter referred to as the “License Agreement”); and

WHEREAS, under Section 6 of the Downstate Forest Preserve Act, 70 ILCS 805/6 (West 1994), the DISTRICT is authorized “to grant licenses, easements and rights of way for the construction, operation and maintenances upon, under or across any property of [the] District of facilities for water, sewage, telephone, telegraph, electric, gas or other public service, subject to such terms and conditions as may be determined by [the] District,” and

WHEREAS, the Agencies are authorized to enter into this Intergovernmental Agreement pursuant to the provisions of article VII, section 10, of the Illinois Constitution of 1970, which provides in part that units of local government may contract or otherwise associate themselves to “obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance,” and the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq; and,

NOW, THEREFORE, in consideration of the mutual promises, terms and conditions set forth herein, and in the spirit of intergovernmental cooperation, the Agencies agree as follows:

## **1.0 INCORPORATION OF RECITALS**

- 1.1. The recitals set forth above are incorporated herein and made part hereof as substantive terms and conditions and evidencing the intent of the Agencies.
- 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 SCOPE OF WORK**

- 2.1 The access and Work Activities for the Project, as Work Activities are set forth in the License Agreement attached hereto as Exhibit B, shall be limited to the locations depicted in Exhibit A. Implementation of the Project shall be in accordance with the plan drawings, revision dated November 2021, prepared by Strand Associates (hereinafter referred to as the “Final Plan”). Said Final Plan may be modified pursuant to the provisions set forth in paragraph 6.1 of the License Agreement attached hereto as Exhibit B. The Final Plan shall be deemed incorporated herein by reference but without attaching said document hereto due to its size.
- 2.2 The CITY shall act as the lead agency and be responsible for completing all preliminary and design engineering, awarding of contract(s), permit fees and processing of permit applications, utility coordination, construction engineering and construction for the Project and bear all costs associated with the Project.
- 2.3 The CITY agrees to manage the Project in the best interest of the public and to consult with, and keep advised, officials of the DISTRICT regarding the progress of the Project and any problems encountered or changes recommended.
- 2.4 Upon completion of the Project, the DISTRICT shall have the right to conduct an inspection prior to final acceptance of the work performed pursuant to the Project.

Approval of the inspection of the Project by the DISTRICT shall not be unreasonably withheld.

- 2.5 Immediately following the final written acceptance of the Project by the DISTRICT, the DISTRICT shall be responsible for maintenance of its lands within the License Area in accordance with DISTRICT policies. The CITY shall continue to be responsible for the operation and maintenance of its sanitary sewer interceptor within its easement.

### **3.0 COOPERATION**

- 3.1 If an Agency has reason to believe that a violation of this Agreement has occurred or is occurring, written notice thereof specifying in detail the violation and the facts supporting the claim shall be served upon the Agency that allegedly committed or is permitting such violation to occur.
- 3.2 The Agencies agree to act in good faith and to cooperate with each other to resolve any disputes which may arise in the performance of this Agreement.
- 3.3 In the event an Agency is required to institute any legal action or proceeding, whether at law or in equity, to enforce any provision of this Agreement, the prevailing Agency in such action or proceeding (as determined by a final non-appealable judicial determination) shall be entitled to recover its reasonable costs and expenses, including but not limited to, reasonable expert witness and attorney fees.

### **4.0 INDEMNIFICATION**

- 4.1 Each Agency shall defend, hold harmless and indemnify the other Agency, its elected officials, officers, employees and agents from and against all claims, liabilities, causes of action, losses, judgments, settlements, damages and expenses (including, but not limited to, reasonable expert witness and attorney fees) that may at any time arise or be claimed by any person or entity as a result of bodily injury, sickness, death or property damage, or as a result of any other claim or suit of any nature whatsoever, allegedly arising out of the negligent or intentional acts or omissions of the indemnifying Agency's performance of its obligations under this Agreement. This provision is not intended to waive any statutory or common law privileges or immunities as they relate to other persons or entities. There are no third-party beneficiaries of this Indemnity.

### **5.0 LICENSE GRANTED**

- 5.1 The DISTRICT hereby grants a license to the CITY within West Branch Riverway on the terms and conditions as provided for in the attached License Agreement (Exhibit B), which includes all associated exhibits.

### **6.0 NOTICES**

- 6.1 All notices required to be given under the terms of this Agreement shall be in writing and served by certified or registered mail, return receipt requested, properly addressed with the postage prepaid and deposited in the United States mail. Notices served upon the DISTRICT shall be directed to the Executive Director, Forest Preserve District of DuPage County, P.O. BOX 5000, Wheaton, Illinois 60189-5000. Notices served upon the CITY shall be directed to the City Manager, City of Naperville, 400 S. Eagle Street,

Naperville, IL 60540. Notices served by mail shall be effective upon receipt as verified by the United States Postal Service.

## **7.0 SEVERABILITY**

7.1 In the event any provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not invalidate or render unenforceable any other provision of this Agreement, providing that the spirit and intent of this Agreement can be given effect.

## **8.0 ENTIRE AGREEMENT**

8.1 The provisions set forth and referenced herein, including but not limited to the License Agreement attached hereto as Exhibit B, represent the entire agreement between the Agencies and supersede any previous oral or written negotiations and agreements. No provision may be modified in any respect unless such modification is in writing and signed by all Agencies.

## **9.0 TERMINATION**

9.1 This Agreement may be terminated by the CITY if it determines that it does not have adequate funding to undertake or complete the FPD Stabilization Work so long as any needed restoration has been accomplished or provided for as set forth in paragraphs 8.5 and 9 of the License Agreement attached hereto as Exhibit B.

## **10.0 MISCELLANEOUS TERMS**

10.1 Each Agency shall approve this Agreement pursuant to a duly passed ordinance or resolution. This Agreement shall be executed in multiple counterparts, and each copy shall be deemed an original. After all the original signatures on this Agreement have been received, the DISTRICT shall provide the CITY with a fully executed copy of this Agreement.

10.2 This Agreement shall be governed by the laws of the State of Illinois as to both interpretation and performance. The forum for resolving any disputes concerning the Agencies' respective performance, or failure to perform, under this Agreement, shall be as provided for by the laws of the State of Illinois.

10.3 This Agreement shall not be recorded as this Agreement terminates upon the completion of the Project and final written acceptance by the DISTRICT and as otherwise provided herein.

10.4 This Agreement may be amended or modified only by written instrument duly approved and signed by all Agencies to the Agreement.

10.5 No course of dealing or failure of any Agency to enforce strictly any term, right, or condition of this Agreement shall be construed as a waiver of such term, right, or condition. No express waiver of any term, right, or condition of this Agreement shall operate as a waiver of any other term, right, or condition.

10.6 If the terms of this Agreement conflict or are inconsistent with the provisions of the License Agreement attached hereto as Exhibit B, the terms of the License Agreement shall control.

IN WITNESS WHEREOF, the Agencies have entered into this Agreement as of the  
\_\_\_\_\_ day of \_\_\_\_\_, 2022.

**FOREST PRESERVE DISTRICT OF  
DU PAGE COUNTY**

**CITY OF NAPERVILLE**

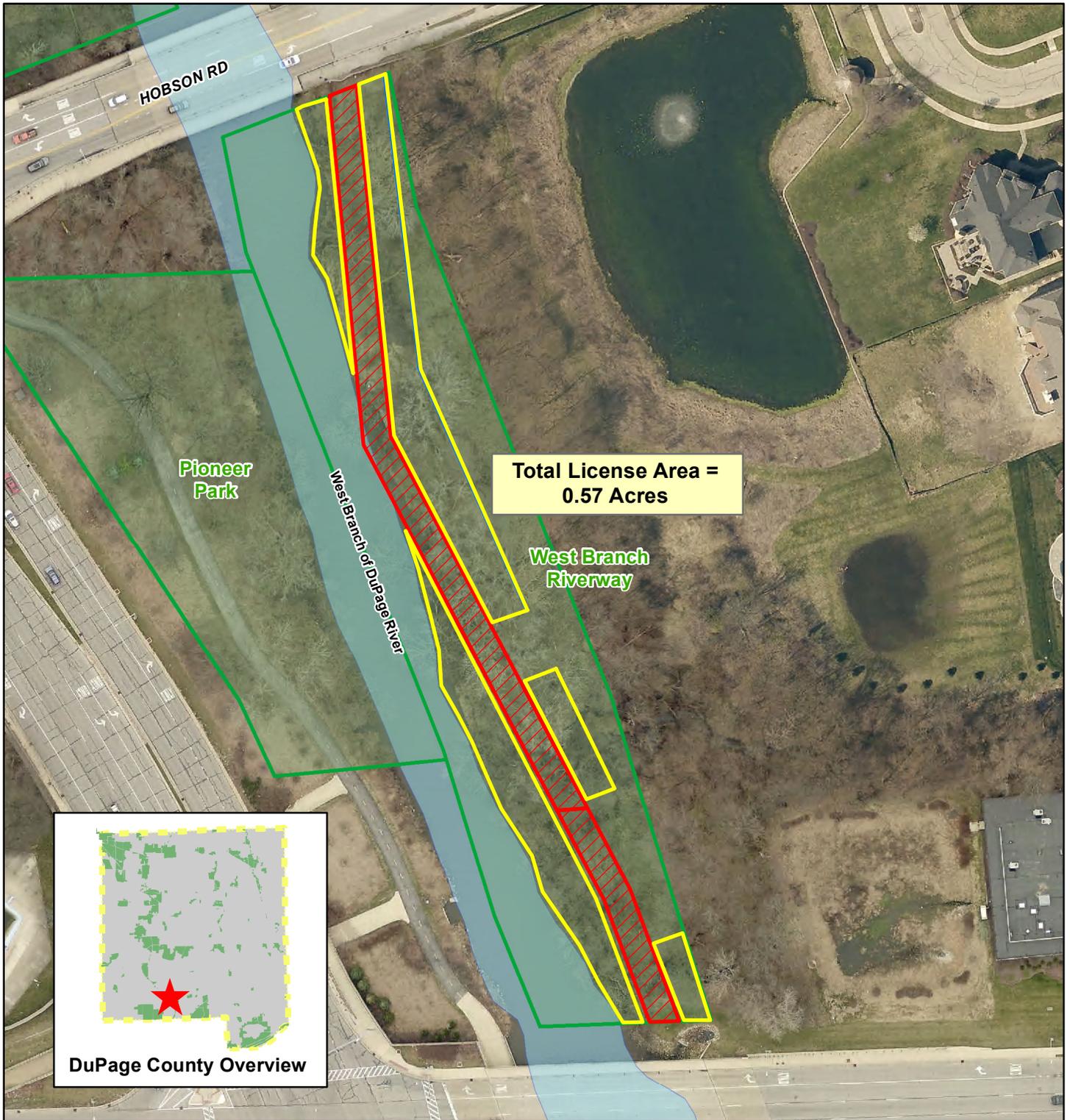
BY: \_\_\_\_\_  
Daniel Hebreard, President

BY: \_\_\_\_\_  
Steve Chirico, Mayor

ATTEST: \_\_\_\_\_  
Judith Malahy, Secretary

ATTEST: \_\_\_\_\_  
Pam Gallahue, City Clerk

# WEST BRANCH RIVERWAY CITY OF NAPERVILLE STREAMBANK STABILIZATION PROJECT



- FPD Bounds
- License Area (0.57 Acres)
- Existing Sanitary Sewer Easement



## EXHIBIT B to IGA

LICENSE NO. X-220-007L

NOT TO BE RECORDED

### **A LICENSE AGREEMENT BETWEEN THE FOREST PRESERVE DISTRICT OF DUPAGE COUNTY AND THE CITY OF NAPERVILLE PROVIDING FOR ACCESS AND RIVERBANK STABILIZATION WORK WITHIN CERTAIN PORTIONS OF WEST BRANCH RIVERWAY FOREST PRESERVE**

THIS LICENSE AGREEMENT (hereinafter referred to as the “**License Agreement**”) is effective upon being signed by all parties and is made and entered into by and between the Forest Preserve District of DuPage County, a body politic and corporate (hereinafter referred to as the “**DISTRICT**”) and the City of Naperville, a municipal corporation and home rule unit of local government under the laws and Constitution of the State of Illinois, (hereinafter referred to as the “**LICENSEE**”). The **DISTRICT** and **LICENSEE** are sometimes referred herein individually as a “**Party**” and collectively as the “**Parties**.”

#### WITNESSETH:

WHEREAS, the **DISTRICT** owns a certain forest preserve commonly known as West Branch Riverway Forest Preserve (hereinafter referred to as “**West Branch Riverway**”); and

WHEREAS, the **LICENSEE** has an existing sanitary interceptor within previously granted permanent easements located within certain portions West Branch Riverway (and areas adjacent to West Branch Riverway), said easements are hereafter referred to as “**Easement Area**” and depicted with a red outline on the attached **Exhibit A**, which is part of this License Agreement; and

WHEREAS, the **LICENSEE** has determined that the riverbank of the West Branch DuPage River is in need of stabilization work in certain areas. Said stabilization work is referred to as the West Branch DuPage River Stabilization Project); and

WHEREAS, a portion of the improvements which comprise the West Branch DuPage River Stabilization Project are located in portions of West Branch Riverway in close proximity of Licensee’s existing sanitary interceptor (hereinafter referred to as “**FP Stabilization Work**”); and

WHEREAS, the **LICENSEE** requests the granting of a temporary license within certain portions of West Branch Riverway for access and work activities related to the FP Stabilization Work. Said certain portions are hereinafter referred to as the “**License Area**” and are depicted with a yellow outline on the attached **Exhibit A**; and

WHEREAS, the work activities in the License Area, and in the Easement Area as necessary, includes all work activities commonly used in riverbank stabilization projects, including without limitation, tree and shrub removal, excavating, filling, stockpiling of materials, storage of equipment and materials, storage and removal of excess or unneeded materials, and post completion restoration work (hereinafter referred to as “**Work Activities**”); and

WHEREAS, the DISTRICT, pursuant to Section 6 of the Downstate Forest Preserve District Act, 70 ILCS 805/6, is empowered to grant licenses for public services; and

WHEREAS, the DISTRICT has determined that it is reasonable, necessary and in the public interest and welfare to grant the LICENSEE a license for access to and Work Activities in the License Area, 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 License Agreement.

**2.0 LICENSE GRANTED**

2.1 The DISTRICT hereby grants the LICENSEE a temporary license for access and Work Activities within the License Area on the terms and conditions as provided for in this License Agreement.

2.2 The License granted herein shall expire upon satisfactory completion of the restoration of the License Area provided that the LICENSEE has reasonable access to the License Area after completion of the restoration to assure that the portion of the FP Stabilization Work which traverses West Branch Riverway is operating properly.

2.3 The LICENSEE shall notify the DISTRICT'S designated project representative (Kevin Stough, [kstough@dupageforest.org](mailto:kstough@dupageforest.org)) no less than five business days prior to the first access to the License Area. The LICENSEE shall make any independent contractor accessing the License Area aware of the terms and conditions of this License Agreement.

2.4 The LICENSEE shall notify the DISTRICT'S designated project representative within two business days after the completion of the restoration of the License Area.

**3.0 SCOPE OF PROJECT**

3.1 The LICENSEE shall design, permit, and construct the FP Stabilization Work. Construction of the FP Stabilization Work shall be in accordance with the plan drawings (hereinafter referred to as the "**Final Plan**") prepared by Strand Associates and dated November 2021. Said Final Plan may be modified as provided in paragraph 6.1 below. The Final Plan shall be deemed incorporated herein by reference but without attaching said document hereto due to its size. Licensee shall maintain the FP Stabilization Work until acceptance by the DISTRICT. 3.2 The LICENSEE shall pay all fees and costs necessary to design, permit, construct and implement the FP Stabilization Work and as provided for in this License Agreement. LICENSEE'S obligations to design, permit, construct, and implement the FP Stabilization Work shall terminate upon Final Written Acceptance of the FP Stabilization Work as provided in paragraph 4.3 below or upon termination of this License Agreement as provided herein.

#### **4.0 FOREST PRESERVE DISTRICT RIGHTS AND RESPONSIBILITIES**

- 4.1 The DISTRICT may review and issue comments to the LICENSEE regarding the Final Plan within ten days of receipt thereof.
- 4.2 The LICENSEE shall e-mail the DISTRICT'S designated project representative (Kevin Stough, [kstough@dupageforest.org](mailto:kstough@dupageforest.org)) no less than thirty days prior to the expected start of construction. DISTRICT staff will perform a mussel survey in that river reach and relocate mussels to a different part of the river. Also, the LICENSEE shall e-mail the DISTRICT'S designated project representative (Kevin Stough, [kstough@dupageforest.org](mailto:kstough@dupageforest.org)) within five days after the cofferdam has been placed to allow DISTRICT staff to walk the river bed immediately after the cofferdam has been placed and water is being drawn down to search for additional mussels in the exposed river bed.
- 4.3 Upon completion of the FP Stabilization Work, and restoration as provided in paragraph 9 below, the LICENSEE shall give notice of completion and a request for final written acceptance of the FP Stabilization Work to the DISTRICT'S designated project representative. Such notice may be given by email.

Within thirty days of receipt of LICENSEE'S notice of completion and request for final written acceptance, or such other timeframe as may be agreed upon by the Parties, the DISTRICT will conduct an inspection of the License Area and Easement Area and shall issue a final written acceptance of the FP Stabilization Work or a rejection thereof. If the FP Stabilization Work is rejected, the DISTRICT shall detail in its rejection the specific reasons upon which the rejection is based and the LICENSEE shall, in an appropriate and timely manner, properly address and correct any noted deficiencies.

- 4.4 The DISTRICT shall bear its own expenses related to the use of its employees or consultants for any review, site inspections, meeting attendance or the preparation and issuance of any comments provided for in this License Agreement.

#### **5.0 FEES**

- 5.1 The LICENSEE shall pay the fees as provided for in this Agreement. The license fees to be paid by the LICENSEE to the DISTRICT for the granting of the license shall be based on 1) a temporary license fee and 2) the value of the trees to be removed within the License Area in accordance with the DISTRICT'S Easement and License Ordinance (No. 96-096). The fee for the temporary license is \$14,972.19 which is based on \$26,267 per acre ( $\$26,267 \times 0.57 \text{ acres} = \$14,972.19$ ). The value of trees to be removed from the License Area has been determined by the DISTRICT to be \$222,268.00. The basis for the DISTRICT'S determination of the appropriate fee for tree removal under this License Agreement is attached hereto as **Exhibit B**, which is part of this License Agreement. Also, the LICENSEE is adding trees to the License Area with a value of \$2,330.00. The total tree removal fee is \$219,938.00. The total fees owed by the LICENSEE is \$234,910.19. The total fees shall be paid to the DISTRICT prior to execution of this License Agreement by the DISTRICT. If this Agreement is terminated for any reason, within thirty days of such termination, the

DISTRICT shall reimburse the LICENSEE for the value of those trees which were not removed using the calculations set forth in Exhibit B.

## **6.0 PERMITS AND APPROVALS**

- 6.1 The LICENSEE shall complete the design of the FP Stabilization Work, including all plan sets, drawings, specifications and cost estimates. The LICENSEE and the DISTRICT agree to cooperate with each other regarding any significant proposed changes, alterations, or modifications to the Final Plan including, but not limited to any field adjustments or change orders, by providing reasonable advance notification and opportunity for review and comment.
- 6.2 The LICENSEE shall obtain all necessary permits or other approvals required for the FP Stabilization Work. The LICENSEE 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 within the License Area or exercises any rights conferred under this License Agreement.
- 6.3 The LICENSEE agrees to provide the DISTRICT with as-built record drawings of the FP Stabilization Work within ninety days following completion of the portion of the FP Stabilization Work within West Branch Riverway.

## **7.0 INSURANCE**

- 7.1 LICENSEE shall require that the LICENSEE'S contractors performing any work within the License Area to purchase and maintain insurance coverage which will satisfactorily insure LICENSEE and the DISTRICT against claims and liabilities which may arise out of the Work Activities within the License Area. Such insurance shall be issued by companies licensed to do business in the State of Illinois and with a Best rating of "A" or higher. 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. Further, the workers' compensation policy shall contain a waiver of subrogation endorsement.
  - (B) Commercial general liability insurance protecting LICENSEE against any and all public liability claims which may arise in the course of using the License Area. The limits of liability shall be not 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 and the LICENSEE as additional insureds.
  - (C) Commercial automobile liability insurance covering LICENSEE'S contractors' owned, non-owned and leased vehicles which protects LICENSEE'S contractors against automobile liability claims whether on or off the DISTRICT'S Area with coverage limits of not less than \$1,000,000 each accident bodily injury/property damage combined single limit. Said policy shall include an endorsement naming the DISTRICT and the

LICENSEE as additional insureds.

- (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 LICENSEE and the DISTRICT as additional insureds or provide “following form” coverage.
- (E) LICENSEE shall require that its contractors’ insurance be primary and non-contributing.

7.2 LICENSEE’S contractors shall furnish the DISTRICT with certificates of insurance evidencing the coverages required under paragraph 7 prior to accessing the License Area.

7.3 LICENSEE is self-insured and shall provide the DISTRICT with a letter explaining their self-insurance program and their coverage prior to first access to the License Areas

## **8.0 CONSTRUCTION ACTIVITY**

8.1 Prior to commencing access and Work Activities within the License Area, the LICENSEE shall delineate the perimeter of the License Area and all Work Activities shall be confined to the License Area. Delineation shall be made by high visibility silt fence or construction/snow fencing installed in accordance with applicable ordinances and permits from DuPage County.

8.2 During the term of this License Agreement, all Work Activities shall be confined within the License Area and Easement Area including, but not limited to, the movement and storage of equipment and materials. All trees, stumps and other debris resulting from the Work Activities shall be legally disposed of off of West Branch Riverway premises. No construction personnel shall be permitted outside the designated areas while engaged in construction activities.

8.3 The DISTRICT shall not be responsible for or have control over the construction means, methods, techniques or procedures with respect to the construction of the FP Stabilization Work. In no event shall the DISTRICT be responsible for or have any obligation with respect to the safety of any person performing work on the License Area and Easement Area, including, but not limited to, the employees of the LICENSEE or of any contractor, subcontractor, agent or consultant.

8.4 The LICENSEE shall maintain the License Area and Easement Area in accordance with applicable safety rules and regulations.

8.5 In the event the LICENSEE, its employees or agents, or any contractor or subcontractor engaged to perform work on the License Area and Easement Area causes any damage to trees, shrubs, or other vegetation or landscaping, or any improvements lying outside the boundaries thereof, the LICENSEE shall pay the cost of replacement in the case of trees, shrubs or other vegetation, and in the case of landscaping or improvements, shall pay the cost of restoration and repair. Said costs shall be calculated at current replacement costs as reasonably determined by the DISTRICT for all material, labor and incidentals reasonably necessary for a complete restoration and repair. In addition to paying for the cost of restoration and repair, the LICENSEE shall pay the DISTRICT an amount equal to 15 percent of the cost of restoration and repair for administrative and supervision expenses.

## **9.0 RESTORATION**

- 9.1 Following completion of the FP Stabilization Work, the LICENSEE will restore the License Area and Easement Area as provided for on pages 18 – 19 of the Final Plan, which are attached as **Exhibit C** and a part of this License Agreement, and the specifications in the attached **Exhibit D**, which is part of this License Agreement. . In order to ensure that all affected areas are properly restored, the LICENSEE shall provide the DISTRICT with a restoration deposit in the amount of \$10,000.00 in the form of a City of Naperville check made payable to the Forest Preserve District of DuPage County (hereinafter “Restoration Deposit”). The Restoration Deposit shall be submitted to the DISTRICT prior to execution of this License Agreement by the DISTRICT. All restoration work shall be subject to the DISTRICT's acceptance. The Restoration Deposit shall be refunded, without interest, upon the satisfactory performance and establishment of the restoration work of all affected areas and the acceptance thereof by the District.
- 9.2 If the LICENSEE fails to properly restore the License Area and Easement Area as specified in paragraph 9.1 above, or fails to restore any damage occurring outside the boundaries thereof as required under paragraph 8.5 above within a timeframe specified by the DISTRICT’S designated project representative or any agreed upon extension thereto, the DISTRICT shall, after seven days’ written notice to LICENSEE, have the right to take such action as it deems necessary to perform the restoration or corrective 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. Unless LICENSEE disputes the restoration or corrective actions taken by or on behalf of the DISTRICT, or the costs thereof, the LICENSEE shall reimburse the DISTRICT for reasonable costs associated with said restoration or corrective work within sixty days of service of the DISTRICT’S written demand for payment. The Parties shall cooperate to resolve any such dispute. The DISTRICT may utilize part or all of the Restoration Deposit in taking the actions described above, and shall provide an accounting of such use to the LICENSEE within thirty days of a request therefor.

## **10.0 INDEMNIFICATION**

- 10.1 To the extent permitted by law, the LICENSEE shall defend, save, and hold harmless the DISTRICT, its elected officials, officers, employees and agents from any and all claims, liabilities, causes of action, losses and damages that may at any time arise or be claimed by any person or entity as a result of bodily injury, sickness, death or property damage, or as a result of any other claim or suit of any nature whatsoever, allegedly arising out of the LICENSEE’S Work Activities, when such bodily injury, sickness, death, property damage or other claim is allegedly caused by a negligent or intentional act or omission on the part of the LICENSEE or its contractors, subcontractors, engineers, consultants, employees, or agents.
- 10.2 To the extent permitted by law, the LICENSEE shall also defend, save, hold harmless and indemnify the DISTRICT from any and all claims, liabilities, causes of action, losses and damages claimed by any person or entity for bodily injury, sickness, death or property damage, or for any other claim or suit of any nature whatsoever, caused by defective materials, workmanship or construction methods of LICENSEE’S Work Activities. The LICENSEE shall require each contractor who performs any work on the License Area and Easement Area, to defend, hold harmless and indemnify the DISTRICT to the same extent as required of the LICENSEE under paragraph 10.0, and the LICENSEE shall include in all of its contracts a

statement expressly declaring the DISTRICT to be a third-party beneficiary of the indemnification provision.

- 10.3 The LICENSEE shall promptly pay all costs and expenses incurred by it relating to the FP Stabilization Work and shall not allow any liens on DISTRICT property as a result of LICENSEE'S Work Activities. To the extent permitted by law, the LICENSEE shall defend, indemnify and hold the DISTRICT harmless from any and all liens, costs and expenses caused by any work performed under this License Agreement.

## **11.0 BREACH OF AGREEMENT**

- 11.1 If a Party reasonably believes that a breach of this License 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 a reasonable timeframe within which to cure the violation, or a timeframe for cure may be agreed upon by the Parties in writing. If the Party in violation is the LICENSEE, and the LICENSEE fails to cure the breach within a reasonable timeframe, or within an agreed upon timeframe, the DISTRICT may pursue monetary damages and/or specific performance provided that the timeframe for cure shall be extended for a reasonable time if the LICENSEE has undertaken to cure the breach within and continues to diligently and in good faith to complete the corrective action.
- 11.2 Action by any Party to enforce this License 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 License Agreement, subject to the terms of the preceding Paragraph 11.1.
- 11.3 A waiver by any Party of any breach of one or more of the terms of this License 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 License Agreement or estopping a Party from enforcing full compliance with the provisions set forth herein. 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.

## **12.0 NOTICES**

- 12.1 Except where notice by email is specifically provided for herein, all notices required to be given under the terms of this License Agreement shall be in writing and served by certified or registered mail, return receipt requested, properly addressed with the postage prepaid and deposited in the United States mail. Notices served upon the DISTRICT shall be directed to the Executive Director, Forest Preserve District of DuPage County, P.O. BOX 5000, Wheaton, Illinois 60189-5000. Notices served upon the LICENSEE shall be directed to the City Manager, City of Naperville, 400 S. Eagle Street, Naperville, IL 60540. Notices served by mail shall be effective upon receipt as verified by the United States Postal Service. 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.

**13.0 TERMINATION**

13.1 LICENSEE may terminate this License Agreement if it determines that it does not have adequate funding to undertake or complete the FP Stabilization Work so long as any needed restoration has been accomplished or provided for as set forth in paragraphs 8.5 and 9 hereof.

**14.0 MISCELLANEOUS TERMS**

14.1 The DISTRICT hereby reserves the right to use, or permit to be used, the License Area in any manner that will not prevent or materially interfere with the exercise by the LICENSEE of the rights granted herein.

14.2 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 a final non-appealable judicial determination) 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.

14.3 This License Agreement or any memorandum or other document referring hereto shall not be recorded without the written consent of the DISTRICT.

14.4 The provisions set forth herein, and the provisions of the “Intergovernmental Agreement between the Forest Preserve District of DuPage County and the City of Naperville Providing for Access and Riverbank Stabilization Work within Certain Portions of West Branch Riverway”, to which this License Agreement is attached as Exhibit B, represent the entire agreement between the Parties and supersede any previous oral or written agreements. Except as otherwise specifically provided herein, no provision of this License Agreement may be modified in any respect unless such modification is in writing, duly approved and signed by all Parties.

14.5. This License Agreement shall be construed in accordance with the laws of the State of Illinois.

14.6 This License Agreement shall be executed in duplicate, and each Party shall retain a fully executed original, all of which shall be deemed to be one License Agreement.

14.7 Where the word “days” is used herein, calendar days are intended unless otherwise noted.

14.8 If the terms of this License Agreement conflict or are inconsistent with the provisions of the “Intergovernmental Agreement between the Forest Preserve District of DuPage County and the City of Naperville Providing for Access and Riverbank Stabilization Work within Certain Portions of West Branch Riverway” to which this License Agreement is attached as Exhibit B, the terms of this License Agreement shall control.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates stated below.

**FOREST PRESERVE DISTRICT OF  
DU PAGE COUNTY**

**CITY OF NAPERVILLE**

BY: \_\_\_\_\_  
Karie Friling, Executive Director

BY: \_\_\_\_\_  
Steve Chirico, Mayor

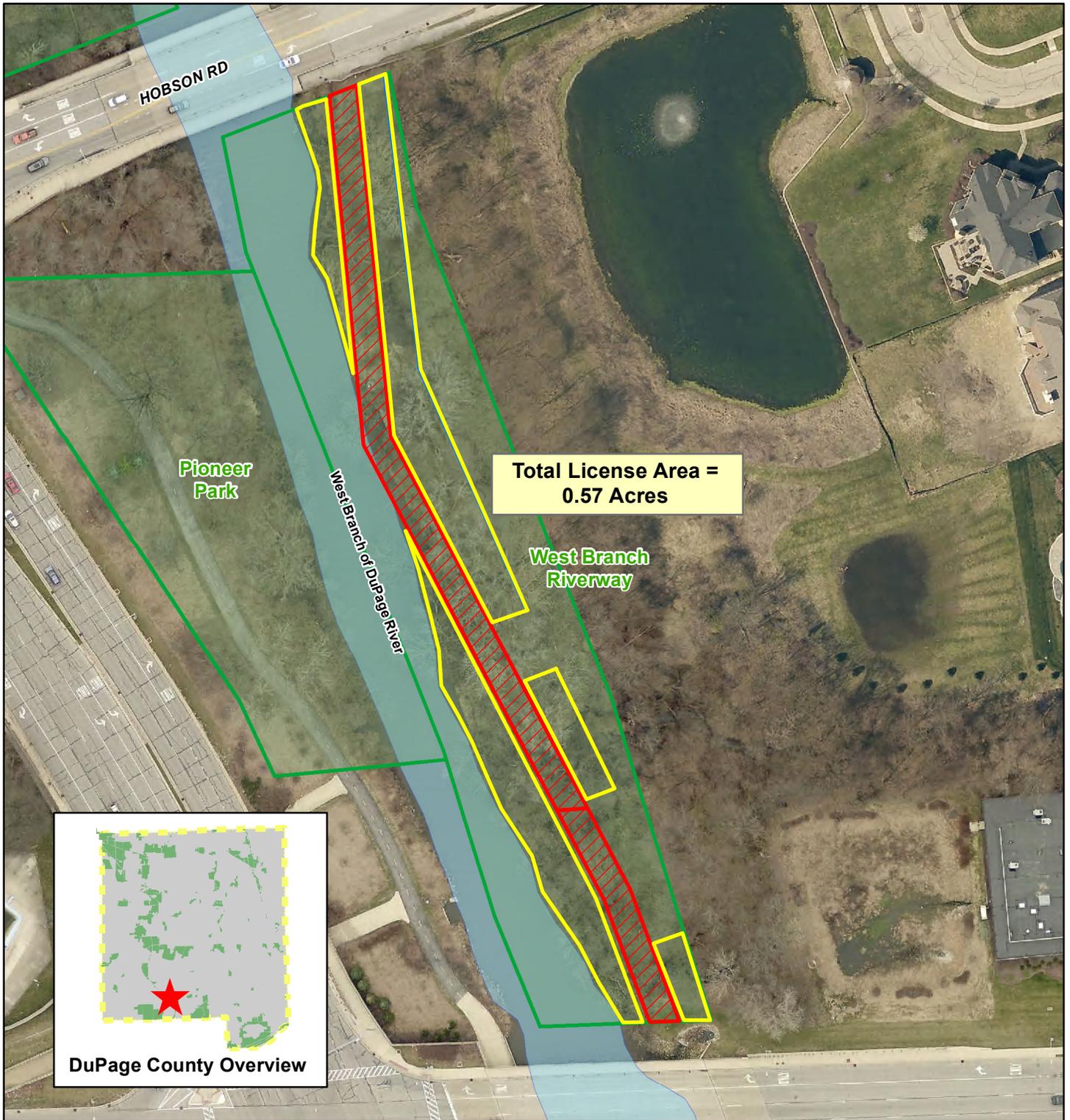
ATTEST: \_\_\_\_\_  
Judith Malahy, Secretary

ATTEST: \_\_\_\_\_  
Pam Gallahue, City Clerk

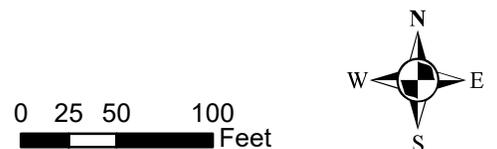
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# WEST BRANCH RIVERWAY CITY OF NAPERVILLE STREAMBANK STABILIZATION PROJECT



- FPD Bounds
- License Area (0.57 Acres)
- Existing Sanitary Sewer Easement



**Naperville License Agreement West Branch Riverway**  
**FOREST PRESERVE DISTRICT DUPAGE COUNTY - TREE VALUE TABLE**

Diameter Squared x 0.785 x \$36.00 Sq.In. x 75% x 75% x 75%  
 Base Value x Species x Condition x Location

<u>CALIPER</u>	<u>COST</u>	<u>NO.</u>	<u>TOTAL</u>	<u>CALIPER</u>	<u>COST</u>	<u>NO.</u>	<u>TOTAL</u>
1"	\$81.00		\$0.00	22"	\$5,770.00		\$0.00
1.5"	\$114.00		\$0.00	23"	\$6,306.00	1	\$6,306.00
2"	\$139.00		\$0.00	24"	\$6,867.00	6	\$41,202.00
2.5"	\$187.00		\$0.00	25"	\$7,451.00		\$0.00
3"	\$233.00		\$0.00	26"	\$8,059.00	2	\$16,118.00
3.5"	\$276.00		\$0.00	27"	\$8,691.00		\$0.00
4"	\$319.00	3	\$957.00	28"	\$9,347.00	2	\$18,694.00
4.5"	\$367.00		\$0.00	29"	\$10,026.00		\$0.00
5"	\$423.00	1	\$423.00	30"	\$10,729.00		\$0.00
5.5"	\$473.00		\$0.00	31"	\$11,457.00		\$0.00
6"	\$545.00	5	\$2,725.00	32"	\$12,208.00		\$0.00
7"	\$584.00		\$0.00	33"	\$12,983.00		\$0.00
8"	\$763.00	4	\$3,052.00	34"	\$13,782.00		\$0.00
9"	\$965.00		\$0.00	35"	\$14,605.00		\$0.00
10"	\$1,192.00	10	\$11,920.00	36"	\$15,451.00	1	\$15,451.00
11"	\$1,442.00		\$0.00	37"	\$16,321.00		\$0.00
12"	\$1,716.00	11	\$18,876.00	38"	\$17,216.00		\$0.00
13"	\$2,017.00		\$0.00	39"	\$18,134.00		\$0.00
14"	\$2,336.00	1	\$2,336.00	40"	\$19,075.00		\$0.00
15"	\$2,682.00		\$0.00	41"	\$20,041.00		\$0.00
16"	\$3,052.00	5	\$15,260.00	42"	\$21,030.00	1	\$21,030.00
17"	\$3,445.00		\$0.00	43"	\$22,044.00		\$0.00
18"	\$3,862.00	5	\$19,310.00	44"	\$23,081.00		\$0.00
19"	\$4,304.00		\$0.00	45"	\$24,142.00		\$0.00
20"	\$4,768.00	6	\$28,608.00	46"	\$25,227.00		\$0.00
21"	\$5,257.00		\$0.00	.			
Total			\$103,467.00				\$118,801.00
Grand Total							\$222,268.00





## SECTION 32 93 00

### NATIVE SEEDING

#### PART 1–GENERAL

##### 1.01 SUMMARY

- A. The work under this section shall consist of providing all work, materials, labor, equipment and supervision necessary to complete native seeding and maintenance as indicated on the drawings.
- B. Work included:
  - 1. Preparation of subsoil.
  - 2. Providing and placing topsoil.
  - 3. Native seeding.
  - 4. Installation of turf reinforcement mat or erosion control mat where show on the Drawings.
  - 5. Maintenance.
- C. Payment: Seeding shall be paid for at the unit price bid for Native Seeding. The unit price shall include costs of furnishing and constructing all items in this section including subsoil preparation, topsoil placement, seeding, installation of turf reinforcement mat or erosion control mat, and maintenance.

##### 1.02 RELATED WORK

- A. Applicable provisions of Division 01 govern work under this section.

##### 1.03 REFERENCES

- A. Standard Specifications: Unless otherwise indicated, standard specifications within this section refer to IDOT Standard Specifications for Road and Bridge Construction.

##### 1.04 SUBMITTALS

- A. Submit shop drawings under provisions of Section 01 33 00–Submittals and Operation and Maintenance manuals under Section 01 33 00–Submittals. Submit the following information:
  - 1. Provide native seed samples and data showing native seed mix composition and a guarantee of germination.
  - 2. Provide native seed mixture.
  - 3. Provide anticipated planting dates.
  - 4. Provide information on method of sowing seed.
  - 5. Provide recommended maintenance procedures to be established by OWNER after the two-year warranty period for maintenance of native seeding areas during a calendar year. Submit before expiration of required maintenance periods.
  - 6. Provide erosion control blanket sample.
  - 7. Verify that no purple loosestrife, noxious weeds, or other invasive species exist on-site and within imported topsoil at native seeding restoration areas.

#### 1.05 DELIVERY, STORAGE AND HANDLING

- A. Seed shall be delivered to the site in its original, unopened container, labeled as to weight, analysis, source, and manufacturer. Store any seed delivered prior to use in a manner safe from damage from heat, moisture, rodents, or other causes. Any seed damaged after acceptance shall be replaced by CONTRACTOR at CONTRACTOR's expense.
- B. Provide seed mix in containers showing percentage of seed mix, year of production, net weight, pure live seed (PLS) weight (as applicable), date of packaging, seed origin, and location of packaging.
- C. Seed tags with proof of origin shall be copied and e-mailed to OWNER for approval prior to planting.

#### 1.06 EQUIPMENT

- A. All equipment brought into project site shall be clean and free of weed seed or seed from previous applications.

#### 1.07 PLANTING SEASON

- A. Native Seed Mix: March 15 to June 15 and September 1 to October 15 when ground is not frozen and as agreed upon by ENGINEER, OWNER, and CONTRACTOR.
- B. Dormant seeding is allowed October 15 to March 15 during a period that erosion control mat can be properly installed over the restored area. Dormant seeding shall be provided at twice the specified pure live seed (PLS) rate.
- C. Planting between June 15 and September 1 may be approved by OWNER and ENGINEER if moist soil conditions are maintained through watering and seed is stratified to break seed dormancy. Watering shall consist of applied or rainfall-derived amounts of 1-inch per week. CONTRACTOR shall provide documentation showing adequate watering has been provided.

#### 1.08 GUARANTEE

- A. CONTRACTOR shall guarantee the germination of all seed installed.

#### 1.09 QUALITY ASSURANCE

- A. Nursery Qualifications: Company specializing in growing and cultivating the plants with three years of experience. Plant materials shall be free of disease and hazardous insects.
- B. Installer Qualifications: A landscape or restoration company specializing in installing and planting with five years or experience.
- C. Restoration Qualifications: Company specializing in restoration. Staff with proof of arborist certification, erosion control certification, or ecological expertise.

## 1.10 JOB CONDITIONS

- A. CONTRACTOR shall protect all plants, lawns, and grass areas from damage at all times. Damaged plants, lawns, or grass areas shall be replaced or treated as required to conform with specifications herein for fresh seed, sod, or stock.
- B. Work areas shall be kept clean and orderly during the installation period. Under no conditions shall debris from planting activities result in a safety concern on-site or to adjacent off-site property.
- C. Damage to lawns or seeded areas incurred as a result of replacement operations shall be repaired by CONTRACTOR at no cost to OWNER.

## PART 2-PRODUCTS

### 2.01 TOPSOIL

- A. Topsoil: Fertile, agricultural soil, typical for locality, capable of sustaining vigorous plant growth, taken from drained site; free of subsoil, clay, or impurities, plants, weeds, roots and rocks; pH value of minimum 5.4 and maximum 7.0. Salvaged topsoil with roots, rhizomes, seed, and propagules is favored for wetland seeding areas.
- B. Topsoil from the site may be used if it meets the above requirements. Additional topsoil shall be provided as required by drawings and specifications. Non-frozen, friable topsoil shall be used for all restoration activities. Hauled-in topsoil meeting these requirements may be necessary, at CONTRACTOR's expense.

### 2.01 NATIVE SEED

- A. Forb and grass seed shall conform to the Illinois Statutes regarding labeling and noxious weed seed content.
- B. Test forb and grass seed according to the methods and procedure used for sampling and analyzing seed for purity, germination, and noxious weed seed content specified in the current edition of Rules for Testing Seed, Published by the Association of Official Seed Analysts.
- C. Use seed within one year of the test date appearing on the label.
- D. Discard and replace any previously tested and accepted seed that becomes damaged.
- E. Seed carrier (only when hand broadcasting) shall be inert material, sawdust, perlite, peat moss or vermiculite mixed with seed at a ratio of not less than two parts seed carrier to one part seed.
- F. All seed shall be appropriately stored, sorted/graded, inoculated, stratified, and otherwise pretreated per industry standards.

2.02 NATIVE SEED MIX

- A. Provide seed of grass species and varieties, proportions by weight, and minimum percentages of purity, germination and maximum percentage of weed seed as indicated below.
- B. Species shall be composed of 100% pure live seed (PLS) and shall contain no named or improved varieties. PLS shall be from Southern Wisconsin, Northern Illinois, Iowa or Southern Minnesota nurseries specializing in growing native species from Illinois genotypes.
- C. To increase genetic diversity and improve success rates of revegetation efforts, all stock used for revegetation shall be certified prior to installation as having a genetic point of origin within 100 miles of DuPage County. Materials should be procured from sources as near to the site as possible. Information documenting the above-mentioned specifications and protocol to follow must be presented to OWNER five days prior to any seeding activities.
- D. Grasses classified as “agriculture grasses” shall be PLS as specified. Other seed shall be “clean” according to high quality industry standards. All seed shall be cold, dry stratified; legumes shall be inoculated with proper rhizobia immediately prior to planting (three hours or less). Legumes shall be kept out of the forb mixture until after inoculation. Seed mixture shall be blended by the vendor and ratios of various species shall be guaranteed by the vendor in writing as specified. Minimum percent purity for native species is 90 percent. Any substitutions of species due to availability must be approved by OWNER.
- E. Native Seed Mix for Restoration Areas:

<b>Shadier Riparian Mix- (Grasses/Sedges)</b>		
<b>Scientific Name</b>	<b>Common Name</b>	<b>Quantity (lbs/ac)</b>
<b>Cover Crop</b>		
Avena sativa	Seed Oats	34
<b>Permanent Seed</b>		
Carex frankii	Frank's Sedge	0.5
Carex grayii	Gray's Sedge	0.25
Carex grisea	Wood Gray Sedge	1
Carex lupulina	Hop Sedge	0.5
Carex normalis	Normal Sedge	0.5
Carex projecta	Necklace Sedge	0.5
Carex vulpinoidea	Fox Sedge	1
Cinna arundinacea	Wood Reed	2
Elymus canadensis	Canada Wild Rye	3
Elymus riparius	Riverbank Wild Rye	3
Elymus villosus	Silky Wild Rye	3
Elymus virginicus	Virginia Wild Rye	3
Festuca obtusa (F. subverticillata)	Nodding Fescue	0.75
Glyceria striata	Fowl Manna Grass	1

<b>Shadier Riparian Mix- (Grasses/Sedges)</b>		
<b>Scientific Name</b>	<b>Common Name</b>	<b>Quantity (lbs/ac)</b>
Hystrix patula (Elymus h.)	Bottlebrush Grass	2
Schizachyrium scoparium	Little Bluestem	2
Rudbeckia laciniata	Wild Golden Glow	2
Verbesina alternifolia	Wingstem	2

F. Native Seed Suppliers/Vendors:

Agrecol Native Nursery 10101 N. Casey Rd. Evansville, WI 53536 (608) 223-3571	Prairie Moon Nursery 32115 Prairie Ln. Winona, MN 55987 (507) 452-1362
Genesis Nursery 23200 Hurd Road Tampico, IL 61283 (815) 438-2220	Taylor Creek Restoration Nursery 17921 Smith Road P.O. Box 256 Brodhead, WI 53520 (608) 897-8547

2.03 NURSE CROP

- A. Nurse crops shall be planted with the native seed to stabilize the soil and reduce weed growth.

2.04 WATER

- A. Use water free of wastewater effluent and materials that are harmful to plant establishment and growth.

2.05 NONSELECTIVE HERBICIDES

- A. EPA registered and approved glyphosate-based herbicide (broad spectrum, non-persistent) intended for vegetation removal while preparing seed beds and for maintenance during establishment period and recommended surfactants and adjuvants.

PART 3–EXECUTION

3.01 WEED CONTROL

- A. On a daily basis, prior to entering the project site all equipment to be used at the project shall be sprayed clean of all dirt, sod, or foreign matter with high-pressure water in an upland location outside of the project site that does not drain to the site or in CONTRACTOR's shop. Equipment cleaned shall include, but is not limited to, all dozers, scrapers, backhoes, trucks, shovels, picks, and hand tools that enter the project site. Special care shall be taken to cleanse the underbody, suspension, tracks, wheels, tires, and wheel wells of all motorized equipment. If necessary, hand tools, brushes, or scrapers may be required to remove heavy accumulations of debris from any item. After a thorough cleaning and inspection, each item of equipment shall be allowed to enter and be used on

the project site. If it is necessary for the equipment to leave and reenter the project site, each item shall be cleaned and inspected.

### 3.02 EXAMINATION

- A. Verify that prepared soil base is ready to receive the work of this section.

### 3.03 PREPARATION OF SUBSOIL

- A. Prepare subsoil to eliminate uneven areas and low spots. Maintain lines, levels, profiles, and contours. Make changes in grade gradual. Blend slopes into level areas.
- B. Remove foreign materials, weeds, and undesirable plants and their roots. Remove contaminated subsoil in accordance with local, state, and federal regulations. Salvaged wetland topsoil and associated seedbank, rhizomes, and plant materials shall be managed as a resource when stripping, regrading, and restoring natural vegetation areas.
- C. Scarify subsoil to a depth of 3 inches where topsoil is to be placed.
- D. Deep till to a depth of 18 inches all areas experiencing compaction during construction, including, but not limited to, staging areas and construction traffic areas.
- E. No seeding shall occur on frozen ground or at daytime temperatures lower than 32°F (0°C) unless approved in writing.
- F. Mow vegetation to 4 inches or less in height 4 to 6 weeks before seeding. Five days after mowing, spray vegetation with a broad spectrum, non-persistent glyphosate-based herbicide per manufacturer's instructions. Spray vegetation a second time with broad spectrum, non-persistent glyphosate-based herbicide no sooner than 2 weeks after initial application and greater than 2 weeks prior to proposed seeding date. Seeding or planting should occur after time period specified by herbicide manufacturer.

### 3.04 PLACING TOPSOIL

- A. Spread topsoil to a minimum depth of 6 inches over area to be seeded. Rake until smooth.
- A. Place topsoil during dry weather and on dry unfrozen subgrade.
- B. In nonwetland areas, remove vegetative matter and foreign nonorganic material from topsoil while spreading.
- C. In lawn-like areas, grade topsoil to eliminate rough, low or soft areas, and to ensure positive drainage. When working in wetland areas, an irregular surface topography ( $\pm 4$  inches) is acceptable, provided seeding operations can still be administered fully.
- D. Manually spread topsoil around trees, plants, and buildings to prevent damage. Final grade of soil shall not be above root collar of tree or shrubs.
- E. Leave stockpile area and site clean and raked, ready to receive landscaping.

### 3.05 SOWING

- A. Sow the selected seed mixture with a rangeland type drill with one or more seed boxes that can be calibrated independently to deliver different sized seeds uniformly at the required rate equipped with area-mounted press wheel for each seed drop tube or by scattering it uniformly over the areas to be seeded. If seeding into existing vegetation use a rangeland type drill with a no-till attachment that can cut through the thatch in front of the V disc and seed drop tube. If the configuration of the area to be seeded allows, apply at half the specified seed rate and apply the second half in a perpendicular direction. For hand broadcast seeding lightly rake or drag to cover the seed with approximately 1/4-inch of soil, lightly roll or compact the areas using suitable equipment, preferably the cultipacker type, if the seedbed is too loose or if the seedbed contains clods that might reduce seed germination. CONTRACTOR shall not roll slopes steeper than 1:3.

### 3.06 EROSION CONTROL

- A. Erosion control blanket per Section 31 25 00 and as shown on the drawings shall be provided.

### 3.07 CLEANING AND REPAIR

- A. Waste and excess material from the seeding operation shall be promptly removed. Adjacent paved areas are to be cleaned, and any damage to existing adjacent turf areas shall be repaired.
- A. Verify maintenance watering and mowing requirements based on project specific conditions.

### 3.08 INITIAL ACCEPTANCE

- A. Upon providing the specified native seed mix and erosion control mat(s) over native seed restoration areas, the seeded areas shall be evaluated for Initial Acceptance. Initial Acceptance shall be based on receipt and approval of submittals and visual inspection by OWNER and ENGINEER that the specified native seed mix has been applied at the specified seeding rate.

### 3.09 GENERAL MAINTENANCE

- A. Immediately reseed areas which do not show a developing stand of cover. Reseeding shall be the same as that originally specified for that particular area. As native mixtures are difficult to assess the first year of growth, satisfactory establishment of the cover crop and general erosion control in these mixes shall constitute baseline establishment. Development of native seeds will be assessed as noted below.
- B. Correct damage resulting from erosion, gullies, rills, or other causes by filling with topsoil, tamping, and reseeding if damage occurs prior to end of warranty period.
- C. Do not seed areas in excess of that which can be provided with erosion mat on same day.
- D. Do not sow immediately following rain, when ground is too dry, or during windy periods.
- E. Apply water with a fine spray immediately after each area has been seeded and erosion matted.

### 3.10 MAINTENANCE

- A. Begin maintenance immediately after each area is planted and continue until acceptable Native Seeding is established.
- B. Maintain Native Seeding for two growing seasons following initial acceptance.
- C. Maintain by mowing the planting when the nurse cover or weed vegetation reaches a height of 10 to 12 inches. Mow to a height of 6 inches except for first mowing which shall be to a 4-inch height. Mowing can be expected approximately every 3 to 4 weeks the first season depending on the weed species present. Raking and removal of clippings shall occur when greater than 50% of the plant height is removed. Mow as necessary in years 2 through 5 to assist in meeting warranty provisions.
- D. Water just enough to keep the soil moist, every other day for 15 minutes to half an hour to maintain adequate surface soil moisture for proper seed germination. Watering shall continue for not less than 60 days following seeding. After the first 60 days, water as needed to meet warranty provisions. If dormant seeding, watering shall begin at the start of the growing season in the spring (approximately April 4). Watering for seeding occurring from June 15 to September 1, if allowed, shall be provided per Section 1.07.C.
- E. Selectively treat with a broad spectrum, non-persistent glyphosate-based herbicide aggressive weeds such as Canada Thistle and Horse Nettle. Treat only on cool windless days preferably by gloved hand wiping method.
- F. Prior to Initial Acceptance and during the Warranty period beginning with the Initial Acceptance:
  - 1. Weeding Field Review: Review the seeded areas at a sufficient frequency to ensure that weeds do not re-seed themselves. Minimum inspection frequency shall include a spring, summer, and fall review.
  - 2. Notify OWNER of the review no less than 48 hours prior to a review. The review shall be performed with OWNER in attendance. A report of the findings will be sent to CONTRACTOR from OWNER including agreed upon maintenance required.
  - 3. CONTRACTOR shall implement the appropriate weed control approach(es) within 7 calendar days of the review, as conditions allow. If weather and/or site conditions would cause unnecessary damage to the site, notify OWNER.
  - 4. Maintain the weed coverage as defined in 3.11 Warranty below. Weed control methods shall be approved by OWNER.
  - 5. Track maintenance activities performed (including herbiciding, weeding, seeding, and watering) and provide a written report to OWNER at the end of each of the five full growing seasons documenting the completed activities.
  - 6. Other maintenance activities may be completed at CONTRACTOR's discretion to meet the Warranty performance criteria. Notify OWNER of planned additional maintenance activities prior to implementation.

### 3.11 WARRANTY

- A. CONTRACTOR shall warranty all seeding for a period of two full growing seasons, beginning with the Initial Acceptance.

- B. After one full growing season, all areas receiving native seed shall meet the following:
  - 1. The seeded species including nurse crop shall provide at least 60% coverage, with native seed no less than 10% coverage, and with no area devoid of the seeded species greater than 9 square feet.
  - 2. The weed coverage shall be less than 30% of this coverage, of which less than 20% shall be invasive species.
  - 3. CONTRACTOR shall set up with OWNER an end of first full growing season warranty review.
- C. After two full growing seasons, all areas receiving native seed shall meet the following.
  - 1. The seeded species including nurse crop shall provide at least 70% coverage, with native seed no less than 25% coverage, and with no area devoid of the seeded species greater than 6 square feet.
  - 2. The weed coverage shall be less than 25% of this coverage, of which less than 15% shall be invasive species.
  - 3. CONTRACTOR shall set up with OWNER an end of second full growing season warranty review.
- D. If CONTRACTOR fails to meet the Warranty performance criteria at the end of the first through second full growing seasons, OWNER and CONTRACTOR shall agree to an approach for increasing the density of the seeded species and/or decreasing the density of weeds, which may include, but not be limited to:
  - 1. Herbiciding portions of or the entire seeded area.
  - 2. Reseeding portions of or the entire seeded area.
  - 3. Selective use of live plants.
- E. If over 25 percent of the seeded area requires non-selective herbiciding and reseeded at the end of any of the two full growing seasons, CONTRACTOR shall provide additional maintenance for one full growing season following the warranty period for the re-seeded areas.

### 3.12 WARRANTY REVIEW

- A. OWNER will perform a warranty review at the end of the first through second full growing seasons.
- B. The review will consist of visual review of the native seeded areas.
- C. The visual review will be used to determine conformance with warranty provisions.
- D. After the warranty review, a written report will be provided to CONTRACTOR from OWNER documenting the findings and listing the suggested maintenance for meeting warranty provisions.
- E. CONTRACTOR shall provide to OWNER a schedule for implementing maintenance activities within 2 weeks of receipt of the written report.
- F. Protect seeded areas with warning signs during warranty period.

END OF SECTION