

INTERGOVERNMENTAL AGREEMENT BETWEEN COUNTY OF DUPAGE, ILLINOIS
AND THE CITY OF NAPERVILLE FOR THE 8TH, ELLSWORTH, MAIN STORMWATER
IMPROVEMENTS PROJECT

This INTERGOVERNMENTAL AGREEMENT (“AGREEMENT”) is made this 9th day of August 2022 between the COUNTY OF DUPAGE, a body politic and corporate, with offices at 421 N. County Farm Road, Wheaton, Illinois (hereinafter referred to as the COUNTY) and the CITY OF NAPERVILLE, a body politic and corporate and home rule unit of local government under the laws and Constitution of the State of Illinois, with offices at 400 S. Eagle Street, Naperville, IL 60540 (hereinafter referred to as the CITY).

R E C I T A L S

WHEREAS, the CITY and the COUNTY are public agencies within the meaning of the Illinois “Intergovernmental Cooperation Act” and as authorized by Article 7, Section 10 of the Constitution of the State of Illinois; and

WHEREAS, the purposes of the “Intergovernmental Cooperation Act” and Article 7 of the Constitution of the State of Illinois include fostering cooperation among government bodies; and

WHEREAS, the Illinois General Assembly has granted the COUNTY authority to take action to manage stormwater and control flooding and to enter into agreements for the purposes of stormwater management and flood control (Illinois Compiled Statutes, Chapter 55 paragraphs 5/5-1062.3 and 5/5-15001 et. seq.); and

WHEREAS, the COUNTY has adopted the DuPage County Stormwater Management Plan which recognizes the reduction of stormwater runoff as an integral part of the proper management of storm and flood waters; and

WHEREAS, the COUNTY has been awarded \$179,266,585 in funding through the American Rescue Plan Act (ARPA); and

WHEREAS, ARPA permits the use of ARPA funds for stormwater infrastructure projects; and

WHEREAS, the COUNTY Board has allocated a portion of its ARPA funds be dedicated towards qualifying stormwater infrastructure projects; and

WHEREAS, the Stormwater Management Planning Committee and the DuPage County Board has approved a municipal cost share program, and a portion of the funds dedicated to

Stormwater Infrastructure are to be used to fund program specific shovel-ready projects that demonstrate flood protection and resilience measures; and

WHEREAS, the Stormwater Management Department on behalf of the COUNTY has developed and implemented a competitive grant program available to all municipalities in DuPage County;

WHEREAS, the CITY has submitted an application under this grant program for the “8TH, ELLSWORTH, MAIN STORMWATER IMPROVEMENT PROJECT” that meets the criteria as a project that qualifies as an ARPA Stormwater Infrastructure Project (herein referred to as the “PROJECT”); and

WHEREAS, the COUNTY and the CITY have determined that the implementation of the PROJECT will benefit local citizens with flood protection, water quality and/or resilience measures; and;

WHEREAS, the CITY has requested COUNTY participation in cost sharing of the PROJECT through a grant from the COUNTY’S American Rescue Plan Act in an amount not to exceed two hundred thirty-eight thousand dollars (\$238,000); and

WHEREAS, the CITY shall pay all PROJECT expenses up front and will be reimbursed for qualified expenses per this AGREEMENT; and

WHEREAS, the CITY shall share any available data collected from the PROJECT for the purposes of fostering community education and improving upon similar future projects; and

NOW, THEREFORE, in consideration of the promises, the mutual covenants, terms, and conditions herein set forth, and the understandings of each party to the other, the parties do hereby mutually covenant, promise and agree as follows:

1.0 INCORPORATION AND CONSTRUCTION.

- 1.1 All recitals set forth above are incorporated herein and made a part thereof, the same constituting the factual basis for this AGREEMENT.
- 1.2 The headings of the paragraphs and subparagraphs of this AGREEMENT are inserted for convenience of reference only and shall not be deemed to constitute part of this AGREEMENT or to affect the construction hereof.

2.0 PROJECT DESCRIPTION.

- 2.1 The PROJECT will include replacing and upgrading all the existing undersized storm sewers along Ellsworth Street in Naperville to a 30-inch storm sewer during the summer of 2022.

- 2.2 The PROJECT shall be developed essentially in accord with the engineering plans as prepared by the City of Naperville Department of Public Utilities-Water, latest revision date of February 14, 2022 which document is incorporated herein by reference but is not attached hereto due to space limitations. The project shall be maintained and monitored by the CITY or their consultant.

3.0 FUNDING.

- 3.1 The total construction related PROJECT costs are estimated to be four hundred seventy-seven thousand, five hundred and sixty-three dollars (\$477,563). The COUNTY's maximum reimbursement amount is \$238,000 or 50% of the project cost, whichever is less. The anticipated cost share is as follows, unless otherwise agreed to in writing as provided in Paragraph 3.2 below:

CITY OF NAPERVILLE	50%	\$239,563
COUNTY OF DUPAGE	50%	\$238,000
TOTAL	100.0%	\$477,563

- 3.2 The CITY shall be responsible for bearing any cost overruns or expenses in excess of the funding listed in Paragraph 3.1, regardless of the cause, unless the CITY and COUNTY agree to apportion such extra costs (through an amendment consistent with Paragraph 8.1) before they are incurred. Notwithstanding the foregoing, the COUNTY may, at its sole discretion, agree to pay a portion of such extra costs after they are incurred, or incurred in part.
- 3.3 This AGREEMENT shall in no way obligate the CITY to undertake or to continue this PROJECT if the CITY in its sole discretion determines that it is no longer in the CITY's best interest to proceed or continue with this PROJECT. However, in the event the PROJECT is not substantially completed by **October 31, 2024**, the CITY shall promptly reimburse the COUNTY any monies paid by the COUNTY to the CITY pursuant to this AGREEMENT. The CITY's right to retain the COUNTY'S reimbursement of PROJECT costs is expressly conditioned upon the CITY'S timely and satisfactory completion of the PROJECT.
- 3.4 The CITY may only seek COUNTY reimbursement for allowable PROJECT construction expenses incurred on, or before, October 31, 2024 unless otherwise agreed by the COUNTY. Allowable PROJECT expenses incurred and paid by the CITY in relation to the PROJECT shall include construction costs related to the construction of the PROJECT, but does not include construction management, bid advertising, etc. Notwithstanding the foregoing, allowable expenses shall not include the CITY'S administrative costs, overhead, payroll, land acquisition, legal or accounting services.

- 3.5 As this Agreement utilizes ARPA funds, the CITY is aware that time is of the essence in notifications as to whether the CITY will proceed with this PROJECT to substantial completion not later than October 31, 2024. If the CITY fails to communicate that the CITY is not proceeding with this PROJECT or if the CITY fails to substantially complete this PROJECT by October 31, 2024, the COUNTY may recoup any expended funds and withhold any unexpended funds to be used for other permissible purposes in advance of the December 31, 2026 federal recapture deadline.

4.0 CITY'S RESPONSIBILITIES.

- 4.1 The CITY shall be responsible for the preparation of the plans, specifications, and bid documents for the PROJECT, together with the advertisement and award of all PROJECT-related public bids. The CITY shall select, and contract with, all vendors providing professional and construction services for the PROJECT.
- 4.2 The CITY shall be responsible for successful completion of all phases of the PROJECT, from design and construction through maintenance.
- 4.3 The CITY shall be responsible for securing all local, county, state, and federal permits necessary for completion of the PROJECT.
- 4.4 The CITY shall be responsible for submitting copies of all permit applications and related correspondence to the COUNTY in a timely manner to ensure sufficient review by the COUNTY. The purpose of the COUNTY'S review shall be for the sole purpose of documenting whether PROJECT work components qualify as allowable expenses.
- 4.5 The CITY shall be responsible for obtaining all required land rights necessary for the completion of the PROJECT.
- 4.6 The CITY shall not be reimbursed by the COUNTY for work undertaken prior to the signing of this AGREEMENT
- 4.7 The CITY may enter into additional agreements to secure its portion of the local PROJECT costs.
- 4.8 The CITY shall submit no more than one invoice per month to the COUNTY during the construction and maintenance phases of the PROJECT. Under no

circumstances should the COUNTY be invoiced more than fifty percent (50%) of total incurred PROJECT construction costs up to the limits as established in Paragraph 3.1. The invoice shall show the quantities, cost per item, date of work incurred, proof of payment (copy of check), final waivers from the primary contractor, and a brief summary of work completed on the PROJECT.

- 4.9 The CITY shall make direct payments, or cause to have payments made, to all parties providing services related to this PROJECT. This requirement will not affect the COUNTY'S obligation to reimburse the CITY in the amounts herein agreed upon, nor shall this provision affect the CITY'S obligation to repay the COUNTY in the event the PROJECT is not undertaken or completed, as established in Paragraph 3.3.
- 4.10 The CITY shall make any data collected from the PROJECT available to the COUNTY upon reasonable request by the COUNTY. The COUNTY shall be allowed unlimited, but reasonable, access to the PROJECT area to observe and review PROJECT work and all work documents (i.e., plans, change orders, field orders, construction manager diaries, etc.). The COUNTY shall provide the CITY reasonable advanced notice of when the COUNTY requires such access.
- 4.11 The COUNTY shall not be responsible for or have control over the design, construction, means, methods, techniques or procedures with respect to any work performed for the PROJECT. The CITY and CITY'S contractors shall be solely responsible for the safety of all individuals performing work on the PROJECT. The CITY shall take such measures as are necessary to ensure that its contractors maintain the PROJECT areas in a safe condition and install appropriate barricades and warning signs, and the CITY shall strictly enforce or cause to have strictly enforced all applicable safety rules and regulations. This provision is not intended to create any new burden or liability for the CITY beyond the usual burdens and liabilities for a municipality in the construction of public improvements. This section is intended merely to relieve the COUNTY from such liabilities in this PROJECT. COUNTY'S role in conducting any review or granting any consent or approval relates solely to the PROJECT'S eligibility under the COUNTY'S ARPA funding.
- 4.12 The CITY must acknowledge the COUNTY using logo(s) and wording provided by the COUNTY in permanent onsite signage (if applicable) and other promotion of the PROJECT including, but not limited to, printed materials, press releases and presentations.

5.0 COUNTY'S RESPONSIBILITIES.

- 5.1 The COUNTY shall reserve the right to review the PROJECT plans and specifications, together with any subsequent change orders, addendums, or revisions thereto (“**CONTRACT DOCUMENTS**”), for the purpose of verifying that PROJECT components qualify for reimbursement through the COUNTY’S ARPA Grant. The COUNTY shall promptly provide the CITY with any recommended changes to the **CONTRACT DOCUMENTS** for PROJECT components to qualify for reimbursement.
- 5.2 The COUNTY shall cost share in the PROJECT as follows:
- 5.2.1 The COUNTY shall reimburse the CITY for approved costs associated with the PROJECT at a fixed proportion of fifty percent (50%) of the PROJECT costs, or a maximum of \$238,000 which have been incurred and paid for by the CITY, as specified in Paragraph 3.1.
- 5.2.2 The total reimbursement amount paid by the COUNTY shall not exceed two-hundred thirty-eight thousand dollars (\$238,000).
- 5.2.3 In the event PROJECT costs total less than four hundred seventy-seven thousand, five hundred and sixty-three dollars (\$477,563), the COUNTY’S total reimbursement amount shall be not more than (50%) of the actual total PROJECT costs. Any amounts overpaid by the COUNTY shall be promptly refunded by the CITY.
- 5.2.4 The COUNTY shall not be obligated to pay invoices received after December 30, 2024, regardless of when the work was completed and notwithstanding that the COUNTY’S contribution limit has not been reached.
- 5.2.5 The COUNTY shall not reimburse for any work completed before entering into the IGA, nor shall pay for any work completed after October 31, 2024 unless otherwise agreed to in writing by the COUNTY.
- 5.2.6 The COUNTY shall not reimburse for any work completed for invoices received after December 30, 2024.
- 5.3 The COUNTY shall be allowed unlimited, but reasonable, access to the PROJECT area to observe and review PROJECT work and work documents (i.e., plans, change orders, field orders, manager diaries, etc.) for the limited purpose of determining eligibility for COUNTY reimbursement, and the use of all data collected as part of the PROJECT.

- 5.4 The COUNTY does not, and shall not warrant, and makes no representations that the PROJECT meets all the qualifications and requirements for the expenditure of ARPA funds.

6.0 GOVERNMENT REGULATIONS.

- 6.1 The CITY shall comply with all local, county, state and federal requirements now in force, or which may hereafter be in force, pertaining to the PROJECT.
- 6.2 The CITY understands and agrees that ARPA funds are subject to audit and potential recoupment by the Federal Government of the United States of America. The CITY agrees to assist the COUNTY in responding to any audits of the ARPA funds used for the project.

7.0 INDEMNIFICATION.

- 7.1 The CITY shall indemnify and hold harmless the COUNTY or any of its officials, officers, employees, and agents from and against all liability, claims, suits, demands, liens, proceedings and actions, , 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 CITY'S performance under this AGREEMENT to the fullest extent the CITY is so authorized under the law; provided, however, that the CITY shall not be obligated to indemnify, hold harmless and defend the COUNTY or any of its officials, officers, employees, and agents for any negligent or intentional wrongful misconduct or omissions by COUNTY officials, employees, agents, contractors or personnel.
- 7.2 The CITY shall specifically indemnify, hold harmless and defend the COUNTY or any of its officials, officers, employees, and agents from and against all liability, claims, suits, demands, liens, proceedings and actions, 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 CITY'S performance under this AGREEMENT resulting from, or connected with the use of ARPA funds for this PROJECT, including, but not limited to audits, recoupment of the ARPA funds used for this project, or fines and penalties assessed related to using ARPA funds for this PROJECT.
- 7.3 The CITY shall require each consultant and contractor responsible for the construction, maintenance, or monitoring of the PROJECT to name the CITY and COUNTY as an additional insured on said vendor's liability insurance policy. Further, the CITY shall require that its consultants and contractors indemnify, defend and hold harmless the CITY and COUNTY, its officers, employees and

elected officials from and against any claims, liability or judgments resulting from, or caused by, the negligence or willful conduct of such consultant and, or contractor, except said consultants and contractors shall not be obligated to indemnify, hold harmless and defend the CITY or the COUNTY for any negligent or intentional wrongful misconduct or omissions by the CITY or COUNTY officials, employees, agents, contractors or personnel

- 7.4 Nothing contained herein shall be construed as prohibiting the COUNTY, its officials, directors, officers, agents and employees, from defending, at their own cost, through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, liens, proceedings and actions brought against them. Pursuant to Illinois law, any attorney representing the COUNTY, under this paragraph or paragraphs 7.1, 7.2 or 7.3 is to be the State's Attorney, in accord with the applicable law. The COUNTY'S participation in its defense shall not remove CITY'S duty to indemnify, defend, and hold the COUNTY harmless, as set forth above. Moreover, indemnity as provided in this AGREEMENT shall not be limited by reason of any insurance coverage maintained by the CITY or its consultants, contractors or agents. The CITY'S indemnification of the COUNTY shall survive the termination, or expiration, of this AGREEMENT.

8.0 AMENDMENT OR MODIFICATION OF THIS AGREEMENT.

- 8.1 The parties may modify or amend terms of this AGREEMENT only by a written document duly approved and executed by both parties, excluding term extensions as provided for in the following provision.
- 8.2 Notwithstanding Paragraph 8.1, above, the term for performing this AGREEMENT may be extended by any suitable COUNTY designated form, signed by both parties without formal amendment pursuant to Paragraph 8.1, above.

9.0 TERM OF THIS AGREEMENT.

- 9.1 The term of this AGREEMENT shall begin on the date the AGREEMENT is fully executed, and shall continue in full force and effect until the earlier of the following occurs:
- 9.1.1 December 30, 2024, or to a new date agreed upon by the parties.
- 9.1.2 The completion by the CITY and COUNTY of their respective obligations under this AGREEMENT, in the event such completion occurs before December 30, 2024.

10.0 ENTIRE AGREEMENT.

- 10.1 This AGREEMENT, including matters incorporated herein, contains the entire AGREEMENT between parties.
- 10.2 There are no other covenants, warranties, representations, promises, conditions or understandings, either oral or written, other than those contained herein.
- 10.3 This AGREEMENT may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.
- 10.4 In the event of a conflict between the terms or conditions of this AGREEMENT and any term or condition found in any exhibit or attachment, the terms and conditions of this AGREEMENT shall prevail.

11.0 SEVERABILITY.

- 11.1 In the event any provision of this AGREEMENT is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the AGREEMENT. The remainder of this AGREEMENT shall be construed as if not containing the particular provision and shall continue in full force, effect, and enforceability, in accordance with its terms.

12.0 GOVERNING LAW.

- 12.1 The laws of the State of Illinois shall govern this AGREEMENT as to both interpretation and performance.
- 12.2 The venue for resolving any disputes concerning the parties' respective performance, or failure to perform, under this AGREEMENT, shall be the judicial circuit court for DuPage County.

13.0 NOTICES.

13.1 Any required notice shall be sent to the following addresses and parties:

Doug Krieger
City Manager
City of Naperville
400 S. Eagle Street
Naperville, IL 60540

DuPage County State's Attorney's Office
ATTN: Civil Bureau
503 N. County Farm Rd.
Wheaton, Illinois 60187

Sarah Hunn
Director
DuPage County Stormwater Management
421 N. County Farm Road
Wheaton, Illinois 60187

City Attorney
City of Naperville
400 South Eagle Street
Naperville, IL 60540

14.0 WAIVER OF/FAILURE TO ENFORCE BREACH.

14.1 The parties agree that the waiver of, or failure to enforce, any breach of this AGREEMENT by the remaining party shall not be construed, or otherwise operate, as a waiver of any future breach of this AGREEMENT. Further the failure to enforce any particular breach shall not bar or prevent the remaining party from enforcing this AGREEMENT with respect to a different breach.

15.0 NO WAIVER OF TORT IMMUNITIES

15.1 Nothing contained in any provision of this Agreement is intended to constitute nor shall constitute a waiver of the defenses, privileges or immunities available to the parties under the Illinois Local Governmental and Governmental Employees Tort Immunity Act.

IN WITNESS OF, the parties set their hands and seals as of the date first written above.

COUNTY OF DUPAGE

CITY OF NAPERVILLE

Daniel Cronin,
Chairman

Steve Chirico
Mayor

ATTEST:

ATTEST:

Jean Kaczmarek,
County Clerk

Pam Gallahue, Ph.D.
City Clerk