

**INTERGOVERNMENTAL AGREEMENT BETWEEN COUNTY OF DUPAGE,
ILLINOIS AND THE CITY OF NAPERVILLE FOR THE COLUMBIA STREET
FLOOD IMPROVEMENT PROJECT**

This INTERGOVERNMENTAL AGREEMENT (“**AGREEMENT**”) is made this 13th day of December 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**). COUNTY and CITY are together hereinafter referred to as the "**Parties**" and sometimes individually as "**Party**".

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 Resource and Recovery Act (ARPA); and

WHEREAS, the COUNTY Board has allocated a portion of those 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 portion of the funds dedicated to

Stormwater Infrastructure are to be used to fund this 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 “COLUMBIA STREET FLOOD 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 five hundred thousand dollars (\$500,000); 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 premises, the mutual covenants, terms, and conditions herein set forth, and the understandings of each Party to the other, the Parties do hereby mutually covenant, promise and agree as follows:

1.0 INCORPORATION AND CONSTRUCTION.

- 1.1 All Recitals set forth above are incorporated herein and made a part 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 involves bringing Columbia Street in Naperville up to collector street standards complete with curb and gutter, storm sewer, sidewalks and lighting. The width of the road will be 31’ and the number of lanes will stay at two. The sidewalks will be realigned and straightened so that the ones that are currently too close to the road will be moved farther away. This will provide greater separation

between the road and the sidewalk thus improving safety for pedestrians. To address the nuisance flooding and street flooding issues along Columbia, the cross section of the road will be 4-percent on the southbound lane and 2-percent on the northbound lane. Having a 4-percent cross slope on the southbound lane will lower the curb and gutter along the west side of the road and create a parkway that drains towards the street. This will minimize the amount of stormwater runoff from heading west towards the residential homes. In addition, a major component of the PROJECT will be the precast 4’x5’ concrete box culverts intended to handle nuisance flooding and street flooding and minimize structural damage for homes along Columbia Street and along 8th Avenue. The box culverts will be installed along the center of the road at different locations.

- 2.2 The PROJECT shall be developed essentially in accord with the engineering plans as prepared by Thomas Engineering Group, latest revision date of January 30, 2023, 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 its consultant.
- 2.3 The PROJECT shall be Substantially Complete as defined herein on or before **October 31, 2024** unless a different timeframe is agreed upon in writing by the Parties (the “**Project Completion Date**”). For the purposes of this Agreement, “**Substantially Complete**” shall mean that the majority of the stormwater portion of the PROJECT is complete. The stormwater portion of the PROJECT includes the following items as described on the engineering plans of the Thomas Engineering Group referenced in Section 2.2 above: (i) the precast 4’x5’ concrete box culverts; (ii) storm sewer pipes; (iii) catch basins; (iv) manholes; and (v) inlets.

3.0 FUNDING.

- 3.1 The total construction related PROJECT costs are estimated to be two million, two hundred twenty-four thousand dollars (\$2,224,000). The COUNTY’s maximum reimbursement amount is \$500,000 or 50% of the PROJECT cost, whichever is least. The anticipated cost share is as follows, unless otherwise agreed to in writing as provided in Paragraph 3.2 below:

CITY OF NAPERVILLE	77.5%	\$1,724,000
COUNTY OF DUPAGE	22.5%	<u>\$ 500,000</u>
TOTAL	100.0%	\$2,224,000

The CITY shall be responsible for bearing any cost overruns or expenses for the PROJECT 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 before they are incurred.

- 3.2 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 with this PROJECT. However, the CITY shall promptly reimburse the COUNTY any monies paid by the COUNTY to the CITY pursuant to this AGREEMENT if the PROJECT is not Substantially Complete by the Project Completion Date. The CITY's right to retain the COUNTY'S reimbursement of PROJECT costs is expressly conditioned upon the Substantial Completion of the PROJECT by the Project Completion Date.

- 3.3 The CITY may only seek COUNTY reimbursement for allowable PROJECT construction expenses incurred after this AGREEMENT is fully executed and through October 31, 2024 ("**Allowable Project Expenses**"). Allowable PROJECT expenses incurred and paid by the CITY in relation to the PROJECT include construction costs related to the construction of the PROJECT but does not include construction management, bid advertising, the CITY'S administrative costs, overhead, payroll, land acquisition, legal or accounting services.

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 non-professional 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 Project 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, prior to the CITY's advertisement for contract services, together with any subsequent change orders, addendums, or revisions thereto ("CONTRACT DOCUMENTS"), for the purpose of verifying that PROJECT

components qualify for reimbursement through the COUNTY'S 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 \$500,000 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 five hundred thousand dollars (\$500,000).
 - 5.2.3 In the event PROJECT costs total less than two million two hundred twenty-four thousand dollars (\$2,224,000), the COUNTY'S total reimbursement amount shall be not more than fifty percent (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.
 - 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.

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 COUNTY and CITY shall comply with all federal grant requirements associated with the ARPA program compliance.

7.0 DEFENSE, INDEMNIFICATION, AND HOLD HARMLESS.

- 7.1 The CITY shall defend, indemnify, and hold harmless the COUNTY and 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 for any negligent or intentional wrongful misconduct or omissions by COUNTY officials, employees, agents, contractors or personnel.
- 7.2 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 defend, indemnify, and hold harmless the CITY and COUNTY, and their respective 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 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 .
- 7.3 Nothing contained herein shall be construed as prohibiting the COUNTY, its officials, directors, officers, agents and employees, from defending, at its own cost, through the selection and use of its own agents, attorneys and experts, any claims, suits, demands, liens, proceedings and actions brought against them. Pursuant to Illinois law, any attorney representing the COUNTY, under this paragraph or paragraph 7.1 is to be the State's Attorney, in accord with the applicable law. The COUNTY'S participation in its defense shall not remove 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, including Substantial Completion of the PROJECT, 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 by both Parties 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 the Parties.

10.2 There are no other covenants, warranties, representations, promises, conditions or understandings, either oral or written, other than those contained herein.

10.3 This AGREEMENT may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

10.4 In the event of a conflict between the terms or conditions of this AGREEMENT and any term or condition found in any exhibit or attachment, the terms and conditions of this AGREEMENT shall prevail.

11.0 SEVERABILITY.

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

12.0 GOVERNING LAW.

12.1 The laws of the State of Illinois shall govern this AGREEMENT as to both interpretation and performance.

12.2 This AGREEMENT shall in all respects be subject to and construed in accordance with and governed by the laws of the State of Illinois irrespective of its choice of

law rules. 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:

Douglas A. Krieger
City Manager
CITY of Naperville
400 South 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

Ashley Selmon,
Vice Chair

Steve Chirico,
Mayor

ATTEST:

ATTEST:

Jean Kaczmarek,
County Clerk

Pam Gallahue, Ph.D.
City Clerk