

Resolution

SM-R-0057-22

INTERGOVERNMENTAL AGREEMENT BETWEEN COUNTY OF DUPAGE, ILLINOIS
ELMHURST PARK DISTRICT, AND THE VILLAGE OF VILLA PARK FOR THE SUGAR
CREEK RESTORATION PROJECT

This INTERGOVERNMENTAL AGREEMENT is made this 8th day of February 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), ELMHURST PARK DISTRICT, a body politic and corporate, with offices at 375 W. First Street, Elmhurst, Illinois 60126 (hereinafter referred to as the PARK DISTRICT), THE VILLAGE OF VILLA PARK, a body politic and corporate, with offices at 20 S. Ardmore Avenue, Villa Park, Illinois 60181 (hereinafter referred to as the VILLAGE).

WHEREAS, the PARK DISTRICT, the VILLAGE, 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 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 and improving water quality as an integral part of the proper management of storm and flood waters; and

WHEREAS, the PARK DISTRICT and the VILLAGE have developed a conceptual design report for the design, construction, and maintenance of stream restoration practices on Sugar Creek (herein referred to as the “PROJECT”); and

WHEREAS, the COUNTY, the PARK DISTRICT, and the VILLAGE have determined that the construction of the PROJECT will benefit local citizens by improving the water quality in Sugar Creek, a tributary to Salt Creek; and

WHEREAS, the PARK DISTRICT and the VILLAGE have requested COUNTY participation in cost sharing of the PROJECT through a grant from the COUNTY’S Water Quality Improvement Program in an amount not to exceed sixty thousand dollars (\$60,000); and

WHEREAS, the Sugar Creek Golf Course Operating Agreement, enacted January 20, 1975, established a financial fund for the Sugar Creek Golf Course under the jurisdiction of the PARK DISTRICT; and

WHEREAS, the PARK DISTRICT shall pay PROJECT expenses to the contractors as they become due and will be reimbursed by the County for qualified expenses per this AGREEMENT; and

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

WHEREAS, the Stormwater Management Planning Committee of the DuPage County Board has reviewed and recommended approval of the attached AGREEMENT at the specified amount.

NOW, THEREFORE, BE IT RESOLVED by the DuPage County Board that the attached AGREEMENT between the COUNTY, the PARK DISTRICT, and the VILLAGE is hereby accepted and approved in an amount not to exceed sixty thousand dollars (\$60,000); and that the Chairman of the DuPage County Board is hereby authorized and directed to execute the AGREEMENT on behalf of the COUNTY.

BE IT FURTHER RESOLVED that the DuPage County Clerk be directed to transmit certified copies of this Resolution and the attached AGREEMENT to Elmhurst Park District, 375 W. First Street, Elmhurst, Illinois 60126; Village of Villa Park, 20 S. Ardmore Avenue, Villa Park, Illinois 60181; and Patrick Collins/State's Attorney's Office.

Enacted and approved this 8th day of February, 2022 at Wheaton, Illinois.



DANIEL J. CRONIN, CHAIRMAN
DU PAGE COUNTY BOARD

Attest:



JEAN KACZMAREK, COUNTY CLERK

AYES 18
NAYS 0
ABSENT 0

INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY OF DUPAGE,
ILLINOIS, ELMHURST PARK DISTRICT, AND THE VILLAGE OF VILLA PARK FOR
THE SUGAR CREEK RESTORATION PROJECT

This INTERGOVERNMENTAL AGREEMENT is made this 8th day of February 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), ELMHURST PARK DISTRICT, a body politic and corporate, with offices at 375 W. First Street, Elmhurst, Illinois 60126 (hereinafter referred to as the PARK DISTRICT), THE VILLAGE OF VILLA PARK, a body politic and corporate, with offices at 20 S. Ardmore Avenue, Villa Park, Illinois 60181 (hereinafter referred to as the VILLAGE).

R E C I T A L S

WHEREAS, the PARK DISTRICT, the VILLAGE, 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 stormwater management and flood control purposes (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 and improving water quality as an integral part of the proper management of storm and flood waters; and

WHEREAS, the PARK DISTRICT and the VILLAGE have developed a conceptual design report for the design, construction, and maintenance of stream restoration practices on Sugar Creek (herein referred to as the "PROJECT"); and

WHEREAS, the COUNTY, the PARK DISTRICT, and the VILLAGE have determined that the construction of the PROJECT will benefit local citizens by improving the water quality in Sugar Creek, a tributary to Salt Creek; and

WHEREAS, the PARK DISTRICT and the VILLAGE have requested COUNTY participation in cost sharing of the PROJECT through a grant from the COUNTY'S Water Quality Improvement Program in an amount not to exceed sixty thousand dollars (\$60,000); and

WHEREAS, the Sugar Creek Golf Course Operating Agreement, enacted January 20, 1975, established a financial fund for the Sugar Creek Golf Course under the jurisdiction of the PARK DISTRICT; and

WHEREAS, the PARK DISTRICT shall pay PROJECT expenses to the contractors as they become due and will be reimbursed by the County for qualified expenses per this AGREEMENT; and

WHEREAS, the PARK DISTRICT and the VILLAGE 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 hereof, 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 stream restoration practices along Sugar Creek through the Sugar Creek Golf Course property. The improvements include removing an existing dam and sheet pile, stabilizing streambanks by regrading slopes and installing rock toe and rock riffles, wetland creation, installation of a sediment forebay, and planting native vegetation. The goal of the PARK DISTRICT and VILLAGE the is to reduce pollutant loadings associated with an impounded and eroded stream system into Sugar Creek and Salt Creek.
- 2.2 The PROJECT shall be developed essentially in accord with the conceptual design report (DuPage County Water Quality Improvement Program Grant Application, Sugar Creek Restoration Project), as prepared by Living Waters Consultants and dated January 7, 2021, which document is incorporated herein by reference but is not attached hereto due to space limitations. The best management practices shall

be maintained and monitored by the PARK DISTRICT and the VILLAGE or their consultant.

3.0 FUNDING.

3.1 The total water quality related PROJECT costs are estimated to be one million one hundred fifty thousand twenty dollars and sixty-one cents (\$1,150,020.61). The cost share is as follows, unless otherwise agreed to in writing as provided in Paragraph 3.2 below:

| | | |
|--|-----------|------------------|
| ELMHURST PARK DISTRICT VILLAGE OF VILLA PARK OR OTHER GRANT SOURCES | 95% | \$ 1,090,020.61 |
| <u>COUNTY OF DUPAGE</u> | <u>5%</u> | <u>\$ 60,000</u> |
| TOTAL | 100.0% | \$1,150,020.61 |

3.2 The PARK DISTRICT and the VILLAGE 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 PARK DISTRICT, the VILLAGE, and COUNTY agree to apportion such extra costs before they are incurred.

3.3 This AGREEMENT shall in no way obligate the PARK DISTRICT and the VILLAGE to undertake this PROJECT if the PARK DISTRICT and the VILLAGE in their sole discretion determine that it is no longer in the PARK DISTRICT and the VILLAGE'S best interest to proceed with this PROJECT. However, in the event the PROJECT is not substantially completed (excepting post-construction monitoring) by December 31, 2023, the PARK DISTRICT shall promptly reimburse the COUNTY any monies paid by the COUNTY to the PARK DISTRICT pursuant to this AGREEMENT. The PARK DISTRICT'S right to retain the COUNTY'S reimbursement of PROJECT costs is expressly conditioned upon the PARK DISTRICT'S timely and satisfactory completion of the PROJECT.

3.4 The PARK DISTRICT may only seek COUNTY reimbursement for allowable PROJECT expenses. Allowable PROJECT expenses incurred and paid by the PARK DISTRICT in relation to the PROJECT shall include third-party professional services related to the construction of the PROJECT (construction management, etc.), construction (labor and materials), bid advertising, etc. Notwithstanding the foregoing, allowable expenses shall not include the PARK DISTRICT'S administrative costs, overhead, payroll, land acquisition, legal or accounting services.

4.0 PARK DISTRICT and VILLAGE'S RESPONSIBILITIES.

- 4.1 The PARK DISTRICT and the VILLAGE 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 PARK DISTRICT and the VILLAGE shall select, and contract with, all vendors providing professional services for the PROJECT.
- 4.2 The PARK DISTRICT and the VILLAGE shall be responsible for successful completion of all phases of the PROJECT, from design and construction through maintenance.
- 4.3 The PARK DISTRICT and the VILLAGE shall be responsible for securing all local, county, state, and federal permits necessary for completion of the PROJECT.
- 4.4 The PARK DISTRICT and the VILLAGE 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 PARK DISTRICT and the VILLAGE shall be responsible for obtaining all required land rights necessary for the completion of the PROJECT.
- 4.6 The PARK DISTRICT shall not be reimbursed by the COUNTY for work undertaken prior to the signing of this AGREEMENT.
- 4.7 The PARK DISTRICT and the VILLAGE may enter into additional agreements to secure its portion of the local PROJECT costs.
- 4.8 The PARK DISTRICT 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 five percent (5%) of total incurred PROJECT costs up to the limits as established in Paragraph 3.1. The invoice shall show the quantities and cost per item and be summarized by PROJECT area.
- 4.9 The PARK DISTRICT 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 PARK DISTRICT in the amounts herein agreed upon, nor shall this provision affect the PARK DISTRICT'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 PARK DISTRICT and the VILLAGE shall make any data collected from the PROJECT available to the COUNTY upon reasonable request by the COUNTY.
- 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 PARK DISTRICT and the VILLAGE and PARK DISTRICT and the VILLAGE'S contractors shall be solely responsible for the safety of all individuals performing work on the PROJECT. The PARK DISTRICT and the VILLAGE 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 PARK DISTRICT and the VILLAGE 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 PARK DISTRICT and the VILLAGE 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 Water Quality Improvement Program.
- 4.12 The PARK DISTRICT and the VILLAGE must acknowledge the COUNTY using logo(s) and wording provided by the COUNTY in permanent onsite signage 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'S plans and specifications, prior to the PARK DISTRICT and the VILLAGE'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 Water Quality Improvement Program. The COUNTY shall promptly provide the PARK DISTRICT and the VILLAGE 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 PARK DISTRICT for approved costs associated with the PROJECT at a fixed proportion of five percent (5%) of the PROJECT costs, which have been incurred and paid for by the PARK DISTRICT, as specified in Paragraph 3.1.

- 5.2.2 The total reimbursement amount paid by the COUNTY shall not exceed sixty thousand dollars (\$60,000).
- 5.2.3 In the event PROJECT costs total less than one million one hundred fifty thousand twenty dollars and sixty-one cents (\$1,150,020.61), the COUNTY'S total reimbursement amount shall be not more than five percent (5%) of the actual total PROJECT costs. Any amounts overpaid by the COUNTY shall be promptly refunded by the PARK DISTRICT.
- 5.2.4 The COUNTY shall not be obligated to pay invoices received after January 31, 2024, regardless of when the work was completed and notwithstanding that the COUNTY'S contribution limit has not been reached.
- 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. The COUNTY shall provide the PARK DISTRICT and the VILLAGE reasonable advance notice of when the COUNTY requires such access.

6.0 GOVERNMENT REGULATIONS.

- 6.1 The VILLAGE and the PARK DISTRICT shall comply with all local, county, state and federal requirements now in force, or which may hereafter be in force, pertaining to the PROJECT.

7.0 INDEMNIFICATION.

- 7.1 The VILLAGE and the PARK DISTRICT shall 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, including reasonable costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with the PARK DISTRICT and the VILLAGE'S performance under this AGREEMENT to the fullest extent the PARK DISTRICT and the VILLAGE are so authorized under the law; provided, however, that the PARK DISTRICT and the VILLAGE 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 PARK DISTRICT and the VILLAGE shall require each consultant and contractor responsible for the construction of the PROJECT to name the PARK DISTRICT, VILLAGE, and COUNTY as an additional insured party on said vendor's liability insurance policy. Further, the PARK DISTRICT and the VILLAGE shall require that consultants and contractors indemnify, defend and hold harmless the PARK DISTRICT, VILLAGE, 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.

7.3 Nothing contained herein shall be construed as prohibiting the COUNTY, its officials, directors, officers, agents and employees, from defending 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 paragraph 7.1 is to be the DuPage County State's Attorney's Office, in accord with the applicable law. The COUNTY'S participation in its defense shall not remove the PARK DISTRICT and the VILLAGE'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 PARK DISTRICT and the VILLAGE, or their consultants, contractors or agents. The PARK DISTRICT and the VILLAGE'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 January 31, 2024 or to a new date agreed upon by the parties.

9.1.2 The completion by the PARK DISTRICT, VILLAGE and COUNTY of their respective obligations under this AGREEMENT, in the event such completion occurs before January 31, 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 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:

Brian Mc Dermott
Director of Enterprise Services
Elmhurst Park District
186 S. West Ave.
Elmhurst, IL 60126

Greg Gola
Director, Parks, Recreation, and Fleet Services
Village of Villa Park
11 West Home Ave.
Villa Park, IL 60181

Mary Beth Falsey
Water Quality Supervisor
DuPage County Stormwater Management
421 N. County Farm Road
Wheaton, Illinois 60187

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

14.0 WAIVER OF/FAILURE TO ENFORCE BREACH.

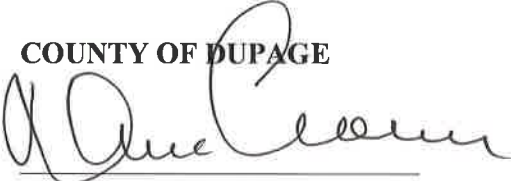
14.1 The parties agree that the waiver of, or failure to enforce, any breach of this AGREEMENT by the remaining party shall not be construed, or otherwise operate, as a waiver of any future breach of this AGREEMENT. Further the failure to enforce any particular breach shall not bar or prevent the remaining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



Daniel J. Cronin,
Chairman

VILLAGE OF VILLA PARK



Nick Cuzzone
Village President



ATTEST:



Jean Kaczmarek,
County Clerk

ATTEST:



ELMHURST PARK DISTRICT



Vince Spaeth
President

ATTEST:

