

R E S O L U T I O N

SMP-011-13

INTERGOVERNMENTAL AGREEMENT BETWEEN COUNTY OF DUPAGE, ILLINOIS
AND THE WHEATON PARK DISTRICT FOR THE
COSLEY ZOO AND PRAIRIE AVENUE PARKING LOT PERMEABLE PAVER
WATER QUALITY IMPROVEMENT PROJECT

WHEREAS, the WHEATON PARK DISTRICT ("DISTRICT") and the County of DuPage ("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 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 DISTRICT has developed a Conceptual Design Report for the Wheaton Park District's Permeable Parking Lot Water Quality Improvement Project which involves retrofitting permeable pavers at Cosley Zoo, located at 1356 North Gary Avenue, and the 855 Prairie Avenue parking lot, which is adjacent to the zoo, all in Wheaton, Illinois (herein referred to as the "PROJECT"); and

WHEREAS, the COUNTY and the DISTRICT have determined that the construction of the PROJECT will benefit local citizens by improving the water quality and reduction of stormwater runoff into the West Branch DuPage River Watershed Winfield Creek Tributary; and

WHEREAS, the DISTRICT has requested COUNTY participation in cost sharing the PROJECT through the COUNTY'S Water Quality

Grant Program in an amount not to exceed seventy two thousand two hundred fifty two dollars and forty cents (\$72,252.40); and

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

WHEREAS, the DISTRICT 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 and the DISTRICT is hereby accepted and approved in an amount not to exceed seventy two thousand two hundred fifty two thousand and forty cents (\$72,252.40) 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 Wheaton Park District, 1000 Manchester Road, Wheaton, Illinois 60187; and Anthony Hayman/State's Attorney's Office.

Enacted and approved this 11th day of June 2013 at Wheaton, Illinois.



Daniel J. Cronin, Chairman
DuPage County Board

ATTEST:



Gary A. King, County Clerk

Ayes: 17
Absent: 1

INTERGOVERNMENTAL AGREEMENT BETWEEN COUNTY OF DUPAGE, ILLINOIS
AND THE WHEATON PARK DISTRICT FOR THE
COSLEY ZOO AND PRAIRIE AVENUE PARKING LOT PERMEABLE PAVER
WATER QUALITY IMPROVEMENT PROJECT

This INTERGOVERNMENTAL AGREEMENT is made this 11th day of June, 2013 between the County of DuPage, a body politic and corporate, with offices at 421 North County Farm Road, Wheaton, Illinois (hereinafter referred to as the COUNTY) and the WHEATON PARK DISTRICT, a body politic and corporate, with offices at 1000 Manchester Road, Wheaton, Illinois 60187 (hereinafter referred to as the DISTRICT).

R E C I T A L S

WHEREAS, the WHEATON PARK DISTRICT ("DISTRICT") and the County of DuPage ("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 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 DISTRICT has developed a Conceptual Design Report for the Wheaton Park District's Permeable Parking Lot Water Quality Improvement Project which involves retrofitting permeable pavers at Cosley Zoo, located at 1356 North Gary Avenue, and the 855 Prairie Avenue parking lot, adjacent to the Cosley Zoo, all in Wheaton, Illinois (herein referred to as the "PROJECT"); and

WHEREAS, the COUNTY and the DISTRICT have determined that the construction of the PROJECT will benefit local citizens by

improving the water quality and reduction of stormwater runoff into the West Branch DuPage River Watershed Winfield Creek Tributary; and

WHEREAS, the DISTRICT has requested COUNTY participation in cost sharing the PROJECT through the COUNTY'S Water Quality Grant Program in an amount not to exceed seventy two thousand two hundred fifty two dollars and forty cents (\$72,252.40); and

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

WHEREAS, the DISTRICT 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 the design, construction, and maintenance of a permeable paver retrofit to be installed at the Cosley Zoo and Prairie Avenue parking lots. The water quality improvements will include the replacement of 20,490 square feet of existing asphalt pavement with permeable pavers and 1,100 linear feet of concrete curb at the Cosley Zoo parking lot located at 1356 N. Gary Avenue in Wheaton. The Cosley Zoo is located

north of Winfield Creek. Additionally, the parking lot at 855 Prairie Avenue adjacent to Cosley Zoo will be retrofitted with the installation of 13,600 square feet of permeable pavers to replace the existing asphalt pavement and 715 linear feet of concrete curb.

A separate, existing rain garden, wetland detention basin and permeable paver parking lot at Cosley Zoo will work in concert with the proposed permeable paver parking lots to treat the urban stormwater runoff by infiltrating runoff on site within the pavers and thereby improving the water quality. The water quality improvements will reduce runoff non-point source pollutants such as total suspended solids, dissolved oxygen, chemical oxygen demand, total nitrogen, zinc and total phosphorus prior to discharging into the West Branch DuPage River Winfield Creek Tributary.

2.2 The PROJECT shall be developed essentially in accord with the *Conceptual Design Report* (Wheaton Park District Permeable Parking Lots Improvements DuPage County Water Quality Improvement Program Conceptual Design Report), as prepared by the DISTRICT, submitted January 10, 2013, which document is incorporated herein by reference but is not attached hereto due to space limitations.

3.0 FUNDING.

3.1 The total Water Quality related PROJECT costs are estimated to be three hundred sixty one thousand two hundred sixty two dollars (\$361,262.00). The cost share is as follows, unless otherwise agreed to in writing as provided in Paragraph 3.2 below:

WHEATON PARK DISTRICT	80.0%	\$ 289,009.60
<u>COUNTY OF DUPAGE</u>	<u>20.0%</u>	<u>\$ 72,252.40</u>
TOTAL		\$ 361,262.00

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

3.3 This AGREEMENT shall in no way obligate the DISTRICT to undertake this PROJECT if the DISTRICT in its sole discretion determines that it is no longer in the DISTRICT'S best interest to proceed with this PROJECT. However, in the event the PROJECT is not substantially completed (excepting post-construction monitoring) by November 30, 2017, the DISTRICT shall promptly reimburse the COUNTY any monies paid by the COUNTY to the DISTRICT pursuant to this AGREEMENT. The DISTRICT'S right to retain the COUNTY'S reimbursement of PROJECT costs is expressly conditioned upon the DISTRICT'S timely and satisfactory completion of the PROJECT.

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

4.0 DISTRICT'S RESPONSIBILITIES.

4.1 The DISTRICT 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 DISTRICT shall select, and contract with, all vendors providing professional services for the PROJECT.

4.2 The DISTRICT shall be responsible for successful completion of all phases of the PROJECT, from design and construction through maintenance.

- 4.3 The DISTRICT shall be responsible for securing all local, county, state, and federal permits necessary for completion of the PROJECT.
- 4.4 The DISTRICT 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 component qualify as allowable expenses.
- 4.5 The DISTRICT shall be responsible for obtaining all required land rights necessary for the completion of the PROJECT.
- 4.6 The DISTRICT shall not be reimbursed by the COUNTY for work undertaken prior to the signing of this AGREEMENT, except for qualifying expenses directly related to the following: Preparation of the PROJECT'S plans, specifications and bid documents; PROJECT permitting; and, preliminary work specifically set forth in the Conceptual Design Report.
- 4.7 The DISTRICT may enter into additional agreements to secure its portion of the local PROJECT costs.
- 4.8 The 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 twenty percent (20%) 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 DISTRICT shall make direct payments to all parties providing services related to this PROJECT. This requirement will not affect the COUNTY'S obligation to reimburse the DISTRICT in the amounts herein agreed upon, nor shall this provision affect the 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 DISTRICT shall make any data collected from the PROJECT available to 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.).
- 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 DISTRICT and DISTRICT'S contractors shall be solely responsible for the safety of all individuals performing work on the PROJECT. The DISTRICT 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 DISTRICT shall strictly enforce all applicable safety rules and regulations.

This provision is not intended to create any new burden or liability for the DISTRICT 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 relate solely to the PROJECT'S eligibility under the COUNTY'S Water Quality Grant Program.

5.0 COUNTY'S RESPONSIBILITIES.

- 5.1 The COUNTY shall reserve the right to review the PROJECT'S plans and specifications, prior to the DISTRICT'S advertisement for contract services, together with any subsequent change orders, addendums, or revisions thereto, for the purpose of verifying that PROJECT components qualify for reimbursement through the COUNTY'S Water Quality Grant Program.
- 5.2 The COUNTY shall cost share in the PROJECT as follows:

- 5.2.1 The COUNTY shall reimburse the DISTRICT for approved costs associated with the PROJECT at a fixed proportion of twenty percent (20%) of the PROJECT costs, which have been incurred and paid for by the DISTRICT, as specified in paragraph 3.1.
- 5.2.2 The total reimbursement amount paid by the COUNTY shall not exceed seventy two thousand two hundred fifty two dollars and forty cents (\$72,252.40).
- 5.2.3 In the event PROJECT costs total less than three hundred sixty one thousand two hundred sixty two dollars (\$361,262.00), the COUNTY'S total reimbursement amount shall be not more than twenty percent (20%) of the actual total PROJECT costs. Any amounts overpaid by the COUNTY shall be promptly refunded by the DISTRICT.
- 5.2.4 The COUNTY shall not be obligated to pay invoices received after November 30, 2017, 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 eligibility for COUNTY reimbursement, and the use of all data collected as part of the PROJECT.

6.0 GOVERNMENT REGULATIONS.

6.1 The 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 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 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 DISTRICT'S performance under this AGREEMENT to the fullest extent the DISTRICT is so authorized under the law; provided, however, that the DISTRICT 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 DISTRICT shall require each consultant and contractor responsible for the design, construction, maintenance, or monitoring of the PROJECT to name the DISTRICT and COUNTY as an additional insured party on said vendor's liability insurance policy. Further, the DISTRICT shall require that its consultants and contractors indemnify, defend and hold harmless the DISTRICT 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 State's Attorney, in accord with the applicable law. The COUNTY'S participation in its defense shall not remove DISTRICT'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 DISTRICT or its consultants, contractors or agents. The DISTRICT'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 November 30, 2017 or to a new date agreed upon by the parties.

9.1.2 The completion by the DISTRICT and COUNTY of their respective obligations under this AGREEMENT, in the event such completion occurs before November 30, 2017.

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 event of a conflict between the terms or conditions or 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:

Steven Hinchee
Park Planner
Wheaton Park District
1000 Manchester Road
Wheaton, Illinois 60187
(630)510-4976

Robert Swanson
Water Quality Supervisor
DuPage County Stormwater, Management Division
421 North County Farm Road

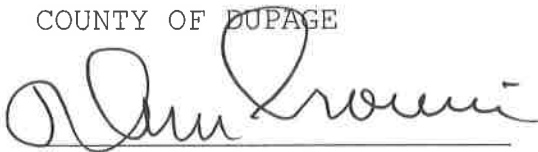
Wheaton, Illinois 60187
(630) 407-6720

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.

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

COUNTY OF DUPAGE



Daniel J. Cronin,
Chairman

WHEATON PARK DISTRICT



Michael Bernard,
Executive Director

ATTEST:



Gary A. King,
County Clerk

ATTEST:



Name:

Title:

Director of Planning