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**THE VILLAGE OF BLOOMINGDALE**  
DUPAGE COUNTY, ILLINOIS

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**RESOLUTION**  
NUMBER 2022-R-22

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**A RESOLUTION APPROVING AN INTERGOVERNMENTAL  
AGREEMENT BETWEEN THE VILLAGE OF  
BLOOMINGDALE AND THE COUNTY OF DUPAGE FOR  
THE LEAVITT POND AT LESLIE PARK STORMWATER  
IMPROVEMENT PROJECT**

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FRANCO A. COLADIPIETRO, Mayor

PAMELA S. HAGER, Village Clerk

VINCE ACKERMAN  
WILLIAM BELMONTE  
BILL BOLEN  
FRANK BUCARO  
PATRICK SHANNON  
JUDI VON HUBEN

Village Board

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Published in pamphlet form by authority of the  
President and the Board of Trustees of the Village of Bloomingdale  
on this the 12<sup>th</sup> day of September, 2022

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**RESOLUTION NO. 2022-R-22**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF BLOOMINGDALE AND THE COUNTY OF DUPAGE FOR THE LEAVITT POND AT LESLIE PARK STORMWATER IMPROVEMENT PROJECT**

**WHEREAS**, the Village of Bloomingdale (hereinafter referred to as "Village") is a home rule unit of local government under Article VII, Section 6 of the 1970 Illinois Constitution and, except as limited by such Section 6, it may exercise any power and perform any function pertaining to its government and affairs; and

**WHEREAS**, Article VII, Section 10 of the Illinois Constitution of 1971 and the Illinois Intergovernmental Cooperation Act 5 ILCS 220/1, et seq., allow units of local government to enter into intergovernmental agreements in the furtherance of their governmental purposes; and

**WHEREAS**, the Illinois General Assembly has granted the County authority to act 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 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 Village has applied under this grant program for the "*LEAVITT POND AT LESLIE PARK STORMWATER IMPROVEMENT PROJECT*" that meets the criteria as a project that qualifies as an ARPA Stormwater Infrastructure Project; and

**WHEREAS**, the County and the Village have determined that the implementation of the Leslie Park Stormwater Improvement Project will benefit local citizens with flood protection, water

quality and/or resilience measures; and;

**WHEREAS,** THE Village has requested County participation in cost sharing of the Leslie Park Stormwater Improvement Project through a grant from the County's American Rescue Plan Act in an amount not to exceed two hundred ninety-nine thousand, four hundred and ten dollars (\$299,410) dollars; and

**NOW, THEREFORE BE IT RESOLVED,** by the Village President and Board of Trustees of the Village of Bloomingdale, DuPage County, Illinois, as follows:

**SECTION 1.** That the Village President and Village Clerk are each respectively authorized to execute and attest to the Intergovernmental Agreement between the Village of Bloomingdale and the County of DuPage in substantially the form attached hereto as Exhibit "A".

**SECTION 2.** That this Resolution shall be in full force and effect after its passage and

***[Remainder of Page Intentionally left Blank; Roll Call to Follow]***

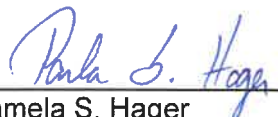
**DECIDED** pursuant to a roll call vote as follows:

	YES	NO	ABSENT	PRESENT
Vince Ackerman	X			
William Belmonte	X			
Bill Bolen	X			
Frank Bucaro	X			
Patrick Shannon	X			
Judi Von Huben	X			
Franco A. Coladipietro (only if necessary)				
<b>TOTAL</b>	<b>6</b>	<b>0</b>	<b>0</b>	

**PASSED AND APPROVED** by the Village of Bloomingdale Board of Trustees on the 12<sup>th</sup> day of September, 2022.

  
\_\_\_\_\_  
Franco A. Coladipietro  
Village President

ATTEST:

  
\_\_\_\_\_  
Pamela S. Hager  
Village Clerk

INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE COUNTY OF DUPAGE, ILLINOIS AND THE VILLAGE OF BLOOMINGDALE  
FOR THE LEVITT POND AT LESLIE PARK STORMWATER IMPROVEMENT PROJECT

This INTERGOVERNMENTAL AGREEMENT is made this 12th day of September 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 VILLAGE OF BLOOMINGDALE, a body politic and corporate, with offices at 201 S. Bloomingdale Road, Bloomindale, IL 60108 (hereinafter referred to as the "VILLAGE").

R E C I T A L S

WHEREAS, 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 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 one hundred seventy-nine million two hundred sixty-six thousand five hundred eighty-five (\$179,266,585) dollars in funding through the American Rescue Plan Act (hereinafter "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 VILLAGE has submitted an application under this grant program for the “LEVITT POND AT LESLE PARK 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 VILLAGE have determined that the implementation of the PROJECT will benefit local citizens with flood protection, water quality and/or resilience measures; and;

WHEREAS, the VILLAGE 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 ninety-nine thousand, four hundred and ten dollars (\$299,410) dollars; and

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

WHEREAS, 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 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 excavation of accumulated silt materials within the Levitt Pond, expansion of the pond banks to provide additional stormwater storage volume, and restoration of disturbed areas with native plants. Education signs will be installed as part of the improvements.

2.2 The PROJECT shall be developed essentially in accord with the concepts outlined as prepared by Christopher B. Burke Engineering, Ltd. dated October 14, 2020, 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 VILLAGE or their consultant.

**3.0 FUNDING.**

3.1 The total construction related PROJECT costs are estimated to be five-hundred ninety-eight thousand, eight hundred and twenty dollars (\$598,820). The COUNTY's maximum reimbursement amount is two hundred ninety-nine thousand, four hundred and ten dollars (\$299,410) dollars or fifty (50%) percent 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:

VILLAGE OF BLOOMINGDALE	\$299,410
COUNTY OF DUPAGE	\$299,410
TOTAL	\$598,820

3.2 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 VILLAGE and COUNTY agree to apportion such extra costs (through an amendment consistent with Paragraph 8.1) before they are incurred.

3.3 This AGREEMENT shall in no way obligate the VILLAGE to undertake this PROJECT if the VILLAGE in its sole discretion determines that it is no longer in the VILLAGE's best interest to proceed with this PROJECT. However, in the event the PROJECT is not substantially completed by October 31, 2024, the VILLAGE shall promptly reimburse the COUNTY any monies paid by the COUNTY to the VILLAGE pursuant to this AGREEMENT. The VILLAGE's right to retain the COUNTY'S reimbursement of PROJECT costs is expressly conditioned upon the VILLAGE'S timely and satisfactory completion of the PROJECT.

3.4 The VILLAGE may only seek COUNTY reimbursement for allowable PROJECT construction expenses incurred on, or before, October 31, 2024. Allowable PROJECT expenses incurred and paid by the VILLAGE in relation to the PROJECT shall include third-party professional services 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 VILLAGE'S administrative costs, overhead, payroll, land acquisition, legal or accounting services.

3.5 As this Agreement utilizes ARPA funds, the VILLAGE is aware that time is of the essence in notifications as to whether the VILLAGE will proceed with this project to substantial completion not later than October 31, 2024. If the VILLAGE fails to communicate that the VILLAGE is not proceeding with this project or if the VILLAGE 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 VILLAGE'S RESPONSIBILITIES.**

- 4.1 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 VILLAGE shall select, and contract with, all vendors providing professional services for the PROJECT.
- 4.2 The VILLAGE shall be responsible for successful completion of all phases of the PROJECT, from design and construction through maintenance.
- 4.3 The VILLAGE shall be responsible for securing all local, county, state, and federal permits necessary for completion of the PROJECT.
- 4.4 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 VILLAGE shall be responsible for obtaining all required land rights necessary for the completion of the PROJECT.
- 4.6 The VILLAGE shall not be reimbursed by the COUNTY for work undertaken prior to the signing of this AGREEMENT.
- 4.7 The VILLAGE may enter into additional agreements to secure its portion of the local PROJECT costs.
- 4.8 The VILLAGE shall submit no more than one (1) 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 (50%) percent 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 VILLAGE 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 VILLAGE in the amounts herein agreed upon, nor shall this provision affect the VILLAGE'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 VILLAGE 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 VILLAGE 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 VILLAGE and VILLAGE'S contractors shall be solely responsible for the safety of all individuals performing work on the PROJECT. 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 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 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 ARPA funding.
- 4.12 The VILLAGE 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 VILLAGES advertisement for contract services, together with any subsequent change orders, addendums, or revisions thereto (hereinafter the "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 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 VILLAGE for approved costs associated with the PROJECT at a fixed proportion of fifty percent (50%) of the PROJECT costs, or a maximum of two hundred ninety-nine thousand, four hundred and ten dollars (\$299,410) which have been incurred and paid for by the VILLAGE, as specified in Paragraph 3.1.

- 5.2.2 The total reimbursement amount paid by the COUNTY shall not exceed two-hundred ninety-nine thousand, four hundred and ten dollars (\$299,410).
- 5.2.3 In the event PROJECT costs total less than five hundred ninety-eight thousand, eight hundred and ten (\$598,820) dollars, the COUNTY'S total reimbursement amount shall be not more than fifty (50%) percent of the actual total PROJECT costs. Any amounts overpaid by the COUNTY shall be promptly refunded by the VILLAGE.
- 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 be obligated to 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 be obligated to 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 VILLAGE 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 VILLAGE understands and agrees that ARPA funds are subject to audit and potential recoupment by the Federal Government of the United States of America. The VILLAGE agrees to assist the COUNTY in responding to any audits of the ARPA funds used for the project.

## **7.0 INDEMNIFICATION.**

- 7.1 The VILLAGE 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 VILLAGE'S performance under this AGREEMENT to the fullest extent the VILLAGE is so authorized under the law; provided, however, that 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 VILLAGE 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, 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 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 VILLAGE shall require each consultant and contractor responsible for the construction, maintenance, or monitoring of the PROJECT to name the VILLAGE and COUNTY as an additional insured party on said vendor's liability insurance policy. Further, the VILLAGE shall require that its consultants and contractors indemnify, defend and hold harmless the 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.
- 7.4 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 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 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 VILLAGE or its consultants, contractors or agents. 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 December 30, 2024, or to a new date agreed upon by the parties.

9.1.2 The completion by the VILLAGE 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:

Village of  
BLOOMINGDALE  
Robert Prohaska  
201 S. Bloomingdale Road  
BLOOMINGDALE, IL  
60108

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

**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.

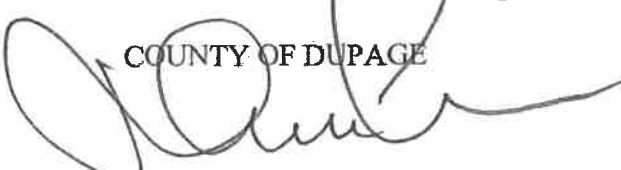
**15.0 NO WAIVER OF TORT IMMUNITIES**

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

VILLAGE OF BLOOMINGDALE

  
Daniel Cronin, Chairman

  
Franco A. Coladipietro, Village President

ATTEST:

ATTEST:

  
Jean Kaczmarek, County Clerk

  
Pamela Hager, Village Clerk