INTERGOVERNMENTAL AGREEMENT BETWEEN COUNTY OF DUPAGE, ILLINOIS AND THE VILLAGE OF WESTMONT FOR THE 61ST STREET AND RICHMOND AVENUE DETENTION BASIN RETROFIT WATER QUALITY IMPROVEMENT PROJECT

This INTERGOVERNMENTAL AGREEMENT is made this 8th day of October 2019 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 WESTMONT, a body politic and corporate, with offices at 31 West Quincy Street, Westmont, IL 60559 (hereinafter referred to as the VILLAGE).

RECITALS

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 and improving water quality as an integral part of the proper management of storm and flood waters; and

WHEREAS, the VILLAGE has developed a conceptual design report for the design, construction, and maintenance of a detention basin retrofit project at 61st Street and Richmond Avenue to include minor grading of the basin bottom to create wetland pockets and planting of native wetland vegetation (herein referred to as the “PROJECT”); and

WHEREAS, the COUNTY and the VILLAGE have determined that the construction of the PROJECT will benefit local citizens by improving the water quality and reduction of stormwater runoff in the Flagg Creek watershed; and

WHEREAS, the VILLAGE has 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 fifty-one thousand eleven dollars and ten cents ($51,011.10); 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 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. **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. **PROJECT DESCRIPTION.**
   2.1. The PROJECT involves the conversion of a dry-bottom mowed turf grass detention basin to a wetland bottom basin to increase water quality benefits. The improvements include minor grading of the basin bottom to create wetland pockets and planting of native vegetation. The goal of the VILLAGE is to complete the detention basin retrofit project which will reduce pollutant loadings to Flagg Creek.

   2.2. The PROJECT shall be developed essentially in accord with the conceptual design report (61st Street and Richmond Avenue Stormwater Detention), dated January 11, 2019, as prepared by WBK Engineering, 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 VILLAGE or their consultant.

3. **FUNDING.**
3.1. The total water quality related PROJECT costs are estimated to be two hundred ninety-eight thousand two hundred forty-four thousand four hundred forty-eight dollars and eighty-four cents ($244,448.84). The cost share is as follows, unless otherwise agreed to in writing as provided in Paragraph 3.2 below:

<table>
<thead>
<tr>
<th></th>
<th>Percentage</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>VILLAGE OF WESTMONT</td>
<td>75%</td>
<td>$193,437.74</td>
</tr>
<tr>
<td>COUNTY OF DUPAGE</td>
<td>25%</td>
<td>$ 51,011.10</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>100.0%</strong></td>
<td><strong>$244,448.84</strong></td>
</tr>
</tbody>
</table>

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 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 December 1, 2020, 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 expenses. 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 (construction management, etc.), construction (labor and materials), bid advertising, etc. Notwithstanding the foregoing, allowable expenses shall not include the VILLAGE’S administrative costs, overhead, payroll, land acquisition, legal or accounting services.

4. **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 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 twenty-five percent (25%) 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 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 Water Quality Improvement Program.

4.12. The VILLAGE must acknowledge the COUNTY using logo(s) and/or wording provided by the COUNTY in permanent onsite signage as well as any printed materials promoting the PROJECT.

5. COUNTY’S RESPONSIBILITIES.

5.1. The COUNTY shall reserve the right to review the PROJECT’S plans and specifications, prior to 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 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 twenty-five percent (25%) of the PROJECT costs, 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 fifty-one thousand eleven dollars and ten cents ($51,011.10).

5.2.3. In the event PROJECT costs total less than two hundred forty-four thousand four hundred forty-eight dollars and eighty-four cents ($244,448.84), the COUNTY’S total reimbursement amount shall be not more than twenty-five percent (25%) 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 February 28, 2021, 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 VILLAGE reasonable advance notice of when the COUNTY requires such access.

6. 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.

7. 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 require each consultant and contractor responsible for the construction 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.

7.3. 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 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. **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. **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. February 28, 2021 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 February 28, 2021.

10. **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. 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. NOTICES.

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

Noriel Noriega                           Mary Beth Falsey
Asst. Dir. of Public Works              Water Quality Supervisor
Village of Westmont                     DuPage County Stormwater Management
31 West Quincy Street                   421 N. County Farm Road
Westmont, Illinois 60559                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 WESTMONT

__________________________                        ______________________________
Daniel J. Cronin,                                      Ron Gunter,
Chairman                                               Mayor

ATTEST:                                                ATTEST:

__________________________                        ______________________________
Jean Kaczmarek,                                      Virginia Szymski,
County Clerk                                        Village Clerk