

DRAFT

INTERGOVERNMENTAL AGREEMENT FOR INSTALLATION OF BUFFER PLANTING AT BUFFALO CREEK FOREST PRESERVE

This INTERGOVERNMENTAL AGREEMENT FOR INSTALLATION OF BUFFER PLANTING AT BUFFALO CREEK FOREST PRESERVE (the “**Agreement**”) is hereby entered into by and between the VILLAGE OF LONG GROVE, a non-home rule municipality located in Lake County, Illinois (the “**Village**”), the LAKE COUNTY FOREST PRESERVE DISTRICT, a body politic and corporate, organized and existing under the Downstate Forest Preserve Act, 70 ILCS 805/0.001 et seq. (the “**District**”), and the COUNTY OF LAKE, an Illinois body politic and corporate, organized and existing under the Illinois Counties Code, 55 ILCS 5/1-1001, et seq. (the “**County**”) (collectively, the Village, the District, and the County are hereinafter referred to as the “**Parties**”) as of this ____ day of _____, 2021 (the “**Effective Date**”). In consideration of the mutual promises and undertakings hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1: Recitals.

A. The District owns the Buffalo Creek Forest Preserve (the “**BCFP**”), which is located partially within the corporate limits of the Village, with the remainder thereof located within the unincorporated area of the County.

B. The County has recently completed construction of a wetland mitigation bank (the “**WMB**”) within the BCFP, pursuant to a license agreement between the District and the County originally dated October 11, 2016, and amended effective as of January 30, 2017 (the “**WMB License Agreement**”) and in accordance with a contract between the County and Semper Fi Land Services Inc. (the “**County’s WMB Contractor**”). As part of the WMB project, the County undertook certain improvements to convert former agricultural fields into a sustainable natural condition including the creation of 25 acres of wetlands, the restoration of 37 acres of upland prairie, and the construction of over one mile of new trails. Said improvements have resulted in the removal of vegetation that had previously afforded a buffer for certain properties within the Village from Lake Cook Road.

C. The Village desires to supplement the landscaping within a certain portion of the WMB (the “**Buffer Planting Project Area**”), which area is generally depicted on Exhibit 1 (the “**Preliminary Landscape Plan**”) attached hereto and made a part hereof, to provide an additional buffer for certain properties within the Village from Lake Cook Road. The District and the County are willing to provide such supplemental landscaping as provided in this Agreement.

D. The Parties desire to cooperate to achieve the foregoing objectives in accordance with the terms and conditions set forth in this Agreement.

Section 2: Supplemental Landscaping.

A. Overview. The parties desire to install supplemental landscaping (the “**Supplemental Landscaping**”) within the Buffer Planting Project Area in general conformity with the Preliminary Landscape Plan. The plant materials for the Supplemental Landscaping, with a

one-year warranty (the "**Plant Materials**"), are estimated to cost \$30,000.00 or less, and the cost of installing, watering, and warranting the work to install the Supplemental Landscaping is estimated to be \$60,000.00 or less. In addition, installation of the Supplemental Landscaping will require permits and approvals from the U.S. Army Corps of Engineers (the "**USACE Approvals**").

B. County Undertakings. In furtherance of providing Supplemental Landscaping within the Buffer Planting Project Area, the County (through its Division of Transportation ("**LCDOT**")) agrees to:

1. Cooperate with the District's preparation of the Final Landscape Plan (defined below) for the Supplemental Landscaping as provided in Section 2.C.1 of this Agreement.
2. Seek all necessary USACE Approvals, without reimbursement from the District or the Village.
3. Upon receipt of the USACE Approvals, solicit a proposal from the County's WMB Contractor for a change order to the existing contract between the County and County's WMB Contractor (an "**Installation Change Order**") pursuant to which County's WMB Contractor would agree to (i) install the Supplemental Landscaping, including the Plant Materials that will be depicted in the Final Landscape Plan, in accordance with the Final Landscape Plan during a time period commencing on approximately March 1, 2022, and ending on approximately May 15, 2022, (ii) provide for up to four (4) waterings of the Plant Materials following such installation, (iii) warranty, for one year, the workmanship of its installation of the Supplemental Landscaping (which warranty will not extend to the life or health of the Plant Materials) (the "**Work Warranty**"), (iv) install any necessary Replacement Plant Material (as defined in Section 2.E) in accordance with the Final Landscape Plan, and (v) accept for such installation, watering, and warranty the sum of unit prices multiplied by actual Supplemental Landscaping units installed (the "**Supplemental Landscaping Installation Price**") in a total amount not to exceed \$60,000.00. The Parties estimate that the Installation Change Order will be awarded during the fall of 2021 (contingent upon outside factors including whether the County is able to obtain and, if so, the timing of obtaining, the USACE Approvals).
4. In cooperation with the District, perform, or cause to be performed oversight of the County's WMB Contractor and the Installation Change Order, including for compliance with the Final Landscape Plan.
5. Pay for 50% of the Supplemental Landscaping Installation Price, currently estimated by the Parties to be less than or equal to \$30,000.00.

C. District Undertakings. In furtherance of providing Supplemental Landscaping within the Buffer Planting Project Area, the District agrees to:

1. At its cost and through one or more contracts (collectively, the “**Materials Contract**”), procure and have delivered to the Buffer Planting Project Area, the Plant Materials depicted in the Final Landscape Plan that will be installed pursuant to the Installation Change Order (which the Parties expect to be the Plant Materials identified on Exhibit 1), all for a total contract price (the “**Plant Materials Price**”) that is less than or equal to \$30,000.00. The District also warrants, for a period of one year, that, if the County’s WMB Contractor has performed the four (4) waterings as required by the Installation Change Order, the Plant Materials will be free of dead or dying branches and branch tips and bear foliage of normal density, size and color (the “**Materials Warranty**”). The District is not required to procure or deliver mulch or other non-plant materials that will be part of the Supplemental Landscaping.
2. Prepare or cause to be prepared a “**Final Landscape Plan**” for the Supplemental Landscaping that is (i) compliant with the USACE Approvals, (ii) consistent with the Preliminary Landscaping Plan, and (iii) intended to result in a Supplemental Landscaping Installation Price not greater than \$60,000.00 and a Plant Materials Price not greater than \$30,000.00. The Final Landscape Plan shall be subject to the review and approval of the County Engineer and the Village Administrator.
3. Cooperate with the County in the submission of such additional plans and materials necessary to assist with securing the USACE Approvals.
4. In cooperation with the County, perform, or cause to be performed oversight of the County’s WMB Contractor and the Installation Change Order, including for compliance with the Final Landscape Plan.

D. Village Undertakings. In furtherance of providing Supplemental Landscaping within the Buffer Planting Project Area, the Village agrees to pay for 50% of the Supplemental Landscaping Installation Price, currently estimated by the Parties to be less than or equal to \$30,000.00, as follows:

1. After the County’s award of the Installation Change Order, and within thirty (30) days after receipt of an invoice from the County, the Village shall pay to the County a lump sum amount equal to ninety-five percent (95%) of the Village’s 50% share of the Supplemental Landscaping Installation Price, currently estimated by the Parties to be \$28,500.00 or less and
2. After the County’s WMB Contractor completes the installation of the Supplemental Landscaping pursuant to the Installation Change Order, and within thirty (30) days after the receipt of an invoice from the County, the Village shall pay to the County the remaining five percent (5%) of the Village’s 50% share of the Supplemental Landscaping Installation Price, currently estimated by the Parties to be \$1,500.00 or less.

E. Warranty Claims. If the installation of the Supplemental Landscaping breaches the Work Warranty, and the Village notifies the County of such breach prior to the expiration of the Work Warranty, then the County shall cause the County's WMB Contractor to comply with such warranty. If the Plant Material breaches the Materials Warranty, and the Village notifies the District of such breach prior to the expiration of the Material Warranty, then (i) the District shall procure and deliver to the Buffer Planting Project Area new Plant Material to replace the Plant Material that breaches the Materials Warranty (the "**Replacement Plant Material**") and (ii) the County will cause the WMB Contractor to install the Replacement Plant Material. Other than the obligations in this Subsection, the County and the District will have no other cure, maintenance, or replacement obligations with respect to the Supplemental Landscaping, including the Plant Material.

F. Parties' Mutual Obligations.

1. Good Faith Negotiations; Termination. If the County does not obtain the USACE Approvals within one year after the Effective Date, then any Party may terminate this Agreement and no Party will have any further obligations hereunder. If (i) the County is unable to procure an Installation Change Order that has a Supplemental Landscaping Installation Price equal to or less than \$60,000.00 or (ii) the District is unable to procure a Materials Contract that has a Plant Materials Price equal to or less than \$30,000.00, then the Parties shall discuss in good faith whether there are mutually acceptable changes to the Final Landscape Plan, Installation Change Order, or Materials Contract that may result in such prices and, if so, the Parties shall make such changes and the County or the District (as the case may be) shall attempt again in good faith to procure such contracts. If, despite such good faith efforts, (i) the County is unable to procure an Installation Change Order that has a Supplemental Landscaping Installation Price equal to or less than \$60,000.00 or (ii) the District is unable to procure a Materials Contract that has a Plant Materials Price equal to or less than \$30,000.00 (including, without limitation, because of a shortage of plant materials), then, after January 31, 2022, any Party may terminate this Agreement and no Party will have any further obligations hereunder.
2. Inspection and Approval of Materials. Within fourteen (14) days after the County notifies the other Parties that the Supplemental Landscaping, including the Plant Material, is fully installed, the Parties shall meet at the Buffer Planting Project Area and inspect the Supplemental Landscaping, including the Plant Materials, to determine whether (i) the Supplemental Landscaping has been installed in accordance with the Installation Change Order and (ii) the Plant Materials comply with the Plant Materials identified in the Final Landscape Plan. After the Parties, through the County Engineer, the District Executive Director, and the Village Manager (or their designees), determine in writing that the Supplemental Landscaping has been installed in accordance with the Installation Change Order (the "**Work Acceptance**"), the term of the Installation Warranty shall commence. After (i) the Work Acceptance and (ii) the Parties, through the County Engineer, the District Executive Director, and the Village Manager (or their designees), determine in writing that the Plant Materials comply with the Plant Materials

identified in the Final Landscape Plan, the term of the Materials Warranty shall commence.

Section 4: Entire Agreement. All understandings and agreements, whether written or oral, heretofore had between the Parties hereto are merged in this Agreement, which alone fully and completely expresses their agreement concerning the Supplemental Landscaping and other matters set forth herein. Neither Party is relying upon any statement or representation not embodied in this Agreement, made by the other. This Agreement may not be changed except by an instrument in writing signed by both Parties. This Agreement does not amend or supersede the WMB License Agreement.

Section 5: Representation. Each of the Village, the County, and the District represents that the person signing this Agreement on its behalf has the authority and the legal right to make, deliver, and perform this Agreement.

Section 6: Notice. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (1) personally, (2) by a reputable overnight courier, (3) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, or (4) via e-mail. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of: (a) actual receipt; (b) one (1) business day after deposit with an overnight courier, as evidenced by a receipt of deposit; (c) four (4) business days following deposit in the U.S. mail, as evidenced by a return receipt, or (d) on the date that an e-mail is sent, provided that such e-mail is also delivered by one of the other manners set forth in subparts (1) – (3) of this Section. By notice complying with the requirements of this Section, each Party shall have the right to change the address or the addressee, or both, for all future notices and communications to the other Party, but no notice of a change of addressee or address shall be effective until actually received. Additionally, notices sent by any other means (e.g., facsimile) may be acceptable subject to written confirmation of both the transmission and receipt of the notice. Nothing in this Section will be deemed to invalidate a notice that is actually received. Notice recipients shall be:

For the District:

Lake County Forest Preserve District
1899 W. Winchester Road
Libertyville, IL 60048
Attention: Executive Director
E-Mail: akovach@lcfpd.org

With a copy to:

Matthew E. Norton, Esq.
Burke, Warren, MacKay & Serritella, P.C.
330 N. Wabash
Suite 2100
Chicago, IL 60611-3607
Email: mnorton@burkelaw.com

For the County:

Lake County Division of Transportation

Attn: County Engineer
600 W. Winchester Road
Libertyville, IL 60048
E-Mail:sschneider2@lakecountyil.gov

With a copy to:

Lake County State's Attorney
18 N. County Street
Waukegan, IL 60085
Attention: Civil Division
Email: ggunnarsson@lakecountyil.gov

For the Village:

Village of Long Grove
Attn: Village Manager
3110 RFD
Long Grove IL 60047
E-Mail:bballing@longgroveil.gov

Section 7: Enforcement. Each and any of the Parties may seek to enforce this Agreement or any of its terms in an action at law or in equity filed in the 19th Judicial Circuit, Lake County, Illinois.

[Signature page to follow.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the Effective Date.

VILLAGE OF LONG GROVE

ATTEST:

By: _____

Its: _____

LAKE COUNTY FOREST PRESERVE DISTRICT

ATTEST:

By: _____

Angelo D. Kyle
President

Julie Gragnani
Secretary

RECOMMENDED FOR EXECUTION

Shane E. Schneider, P.E.
County Engineer/Director of Transportation
Lake County

COUNTY OF LAKE

ATTEST:

By: _____

Sandy Hart
Lake County Board Chair

Robin M. O'Connor
Lake County Clerk

Date: _____

EXHIBIT 1

Preliminary Landscape Plan



MATERIALS SCHEDULE

Qty	Symbol	Unit	Common Name	Scientific Name / Notes	Type	Size
25	SWO	EA	Swamp White Oak	<i>Quercus bicolor</i>	B&B	3"
20	HACK	EA	Hackberry	<i>Celtis occidentalis</i>	B&B	3"
18	BHAW	EA	Blackhaw	<i>Viburnum prunifolium</i>	B&B	8'
12	HAW	EA	Cockspur Hawthorn	<i>Crataegus crusgalli</i>	B&B	8'
155	ALD	EA	Speckled Alder	<i>Alnus rugosa</i>	5G	30"
40	HAZ	EA	American Hazelnut	<i>Corylus americana</i>	5G	30"
70	BB	EA	Buttonbush	<i>Cephalanthus occidentalis</i>	5G	30"
60	CY		Mulch, 4" Depth	Triple ground		
45	EA		Tree Bark Protectors	A.M. Leonard		48"

* Owner shall select, purchase and deliver to site all plant material. Other materials supplied by Contractor.
 * All plants to be warranted by Contractor to be live and vigorous for one year from approved completion.

