

RESOLUTION NUMBER 24 - 10

RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF EAST DUNDEE AND DUNDEE TOWNSHIP PARK DISTRICT RELATING TO THE INSTALLATION OF A SIDEWALK ON THE NORTH SIDE OF ROUTE 68 EAST OF ROUTE 25

WHEREAS, the Dundee Township Park District has indicated a desire to construct a public sidewalk along the north side of Route 68, adjacent to the Bonnie Dundee Golf Course, and east of Route 25, all located within the Village of East Dundee; and

WHEREAS, construction of the sidewalk would also require upgrades to the traffic signals at Route 68 and Route 25; and

WHEREAS, construction of this sidewalk would significantly enhance pedestrian safety, and facilitate access to park district facilities, township offices and library facilities all located west of Route 25; and

WHEREAS, pedestrian safety and access to public facilities is important; and

WHEREAS, the Dundee Township Park District has asked for financial assistance from the Village to help pay for the sidewalk improvements and traffic signal upgrades, the cost of which is estimated to be in excess of \$130,000.00; and

WHEREAS, the Village of East Dundee is willing to participate.

NOW THEREFORE BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS, AS FOLLOWS:

Section One. The Village agrees to pay to the Park District a total of \$5,000 a year for each of the next three years, for a total contribution of \$15,000.00. These payments shall be made on the first of June 2010, 2011 and 2012.

Section Two. Severability. If any section, paragraph or provision of this ordinance shall be held to be invalid or unenforceable for any reason, the validity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this ordinance.

Section Three. Repeal. All ordinances, resolutions, motions or parts thereof in conflict herewith shall be and the same are hereby repealed.

Section Four. Publication. This ordinance shall be in full force and effect forthwith upon its adoption, approval and publication in pamphlet form as provided by law.

Adopted this 21st day of May, 2010, pursuant to a roll call vote as follows:

AYES: 6 - Trustees Gorman, Lynam, Miller, Cichowski, VanOstenbidge

NAYES: 0 & President Bartels

ABSENT: 1 - Trustee Ruffalo

Approved by me this 17th day of May, 2010.

Jerald Bartels
JERALD BARTELS, President

Published in pamphlet form this 21st day of May, 2010, under the authority of the President and Board of Trustees.

ATTEST:

Jennifer Rehberg
JENNIFER REHBERG, Village Clerk

Recorded in the Village Records on May 21st, 2010.



**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE VILLAGE OF EAST DUNDEE AND DUNDEE TOWNSHIP PARK DISTRICT
RELATING TO THE INSTALLATION OF A SIDEWALK
ON THE NORTH SIDE OF ROUTE 68 EAST OF ROUTE 25**

THIS INTERGOVERNMENTAL AGREEMENT (“**Agreement**”) is made and entered into this 17th day of May, 2010, by and between the Village of East Dundee (hereafter “**Village**”) and the Dundee Township Park District (hereafter “**District**”) sometimes referred to herein as “**Parties**”.

RECITALS:

WHEREAS, the District wants to install a sidewalk on the north side of Route 68, east of Route 25 in the Village of East Dundee, Illinois, Kane County; and,

WHEREAS, the cost of the project exceeds the amount budgeted by the District; and,

WHEREAS, the sidewalk would benefit the residents of East Dundee, Illinois, and enhance the safety and well being of the residents of East Dundee by enhancing pedestrian safety, and facilitating access to the District facilities all located west of Route 25; and,

WHEREAS, the District and the Village are municipalities or units of local government as provided by Article VII of the 1970 Constitution; and,

WHEREAS, Article VII of the 1970 Constitution provides authority for intergovernmental cooperation; and,

WHEREAS, the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) provides further authority for intergovernmental cooperation, and §5 of the Act (5 ILCS 220/5) specifically provides authority for the formation and execution of intergovernmental contracts; and,

WHEREAS, the cost of the installation of the sidewalk and the associated expenses is estimated to exceed One Hundred Thirty Thousand (\$130,000.00) Dollars; and,

WHEREAS, the District has asked the Village, and other local governmental entities, for financial assistance;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties hereto agree as follows:

AGREEMENT:

1. **Geographic Area.** This Agreement pertains to the areas and improvements described

as the area on the north side of Route 68 east of Route 25 extending from the northwest corner of Route 68 and Route 25 easterly for approximately _____ feet.

2. **Purpose.** The purpose of this Agreement is to set forth the obligations of and benefits to the Parties in relation to the installation of a sidewalk.

3. **Term.** The term of this Agreement shall be three calendar years.

4. **Funding.** The District shall be responsible for the funding of the project, except as provided by this Agreement, or other similar agreements with other municipalities and units of local government. The Village agrees to contribute a total of Fifteen Thousand (\$15,000.00) Dollars toward the cost of the installation of the sidewalk. The Village's contribution is payable in installments over a three (3) year period, in an amount not to exceed Five Thousand (\$5,000.00) Dollars in any fiscal year. The Village will remit the first installment after the completion of the installation of the sidewalk, upon an invoice submitted to the Village. Each successive year's contribution shall be made on or near the anniversary date of the initial installment, but only after a written invoice is submitted to the Village by the District.

5. **Ownership/Maintenance Responsibilities.** The maintenance of the sidewalk installed shall be the sole responsibility of the District. The Village obtains no ownership or control of the sidewalk under the terms of this Agreement and no duty or obligation to maintain the sidewalk in the right-of-way along Route 68, proposed to be installed pursuant to this Agreement.

6. **Miscellaneous.**

a. **Notices.** Any notice, request, assignment, payment, consent, approval, demand or other communication required or permitted hereby shall be in writing and shall be deemed to have been given when personally delivered or when deposited in the United States Postal Service, certified or registered, return receipt requested, postage prepaid, properly addressed to the persons to whom such notice is intended to be given at their respective addresses as follows:

If to the Village:
Attention: Village President
Village of East Dundee
120 Barrington Road
East Dundee, IL 60801

If to the District:
Attention: President
Dundee Township Park District

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The address of any person entitled to notice hereunder, including any assignee of this

Agreement, may be changed by notice to the parties entitled to notice hereunder of the name and address of the person thereafter entitled to give or receive such notice or direction.

b. Assignment. The Village and the District are relying on each other to perform the obligations of this Agreement. Therefore, this Agreement may only be assigned by one Party with the consent of the other Party.

c. Independent Contractor. Nothing in this Agreement shall be construed to constitute or designate the District or the Village or any of either Party's officers, directors, employees, agents or subcontractors as agents or employees of the other Party.

d. Governing Law. This Agreement shall be governed by the laws of the State of Illinois.

e. Severability. Should any provision of this Agreement be held invalid, illegal or unenforceable, it shall not affect or impair the validity, legality or enforceability of any other provision of this Agreement. Furthermore, if a material provision of this Agreement is held invalid, illegal or unenforceable, the Parties hereto agree to renegotiate that provision to be a valid, legal and enforceable provision which reflects as closely as possible the original intent of the Parties hereto as expressed herein with respect to the subject matter of that provision.

f. Entire Agreement and Amendments. This Agreement embodies the whole agreement of the Parties relating to the subject matter of this Agreement. No modification of this Agreement shall be effective unless agreed to in writing by both parties in an amendment to this Agreement that is properly executed by both parties and approved in accordance with applicable law.

g. Termination.

1. The District or the Village may terminate this Agreement if one Party is in default of the terms of the Agreement beyond applicable notice and cure periods. The non-defaulting Party shall provide notice to the defaulting Party of the default and the defaulting Party shall have thirty (30) days to correct the default. If the default is not corrected within said time, the Agreement may be terminated only after the Parties submit to Alternative Dispute Resolution as set forth herein and then only to the extent that such default is not resolved through such mechanism. The Parties may agree to extend the time period within which the default may be corrected.

h. Alternative Dispute Resolution. To the extent permitted by law, should any dispute arise regarding the interpretation or implementation of this Agreement, or in connection with any covenant, obligation or act to be performed under this Agreement, or should any continuing event of default exist, the Parties agree that except for those matters set forth in subsection h.4. below, such disputes and/or continuing events of default shall be resolved in the following manner:

1 . The Village and the District shall continue in good faith to attempt to resolve such dispute or cure such continuing event of default for a period of not less than fifteen (15) days following the identification by either Party and written notice to the other Party of the existence of a dispute or a continuing event of default.

2. In the event such dispute is not resolved or such continuing event of default is not cured within the fifteen (15) day period set forth above, the Village and the District shall employ a mutually acceptable professional mediator to assist them in resolving the dispute, and shall bear the fees and costs of such mediator equally between them. Such mediation efforts shall be pursued for not less than fifteen (15) days.

3. In the event the dispute or the continuing event of default is not resolved by mediation within the fifteen (15) day period set forth above, the Parties shall submit the dispute to a mutually acceptable professional arbitrator, in accordance with the rules of the American Arbitration Association then in effect, to finally resolve the dispute. The arbitrator shall have authority to impose all available remedies at law or in equity, including but not limited to, specific performance and damages. The arbitrator may, in his or her discretion, allocate the fees and costs of the arbitration, including attorneys' fees, equitably between the Parties. The award or decision made or rendered by the arbitrator shall be final and binding upon the Parties. Either Party shall have the right to have such arbitration award or determination enforced by any Court of competent jurisdiction.

4. Alternative Dispute Resolution shall not be employed in such a manner as to constitute a delegation of the Village Council's legislative authority nor shall it be employed if either Party, in its discretion, determines it must seek the equitable relief of an injunction (seeking either affirmative relief, i.e., specific performance, or relief restraining the other Party's actions) or temporary restraining order.

i. Waiver. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party. Any waiver shall be in writing.

j. No Third Party Beneficiaries. Nothing in this Agreement is intended to create, or confer upon any third party any rights or benefits. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Village and the District.

k. Compliance with Ordinances and Regulations. This Agreement shall be administered consistent with both the Village's current and future laws, rules, charters, ordinances, and regulations.

I. Illinois Governmental and Governmental Employees Tort Immunity Act. Both parties to this Agreement are governmental entities subject to and protected by the limitations on liability set forth in the Illinois Governmental and Governmental Employees Tort Immunity Act. Nothing contained herein shall be deemed to waive any rights or immunities established pursuant

to the Illinois Governmental and Governmental Employees Tort Immunity Act.

m. Nonperformance. In the event the District is unable or unwilling to continue to perform its obligations under this Agreement, and fails to construct the sidewalk, the Village shall have no obligation to pay any amount to the District, and all monies paid shall be returned.

n. No Joint Venture. The Parties agree and acknowledge that there shall not be, and this Agreement does not create, any joint venture, partnership, agency or employee relationship between the Village and the District.

o. Insurance. The District shall procure and continuously maintain, during the term of the Agreement, the minimum insurance coverage's listed below. The District's insurer must be rated "A" or better, according to Best's Key Rating Guide and must be admitted to do business in the State of Illinois.

Commercial General Liability (CGL) coverage with a limit of not less than One Million (\$1,000,000.00) Dollars each occurrence, plus an additional amount sufficient to pay related defense costs and attorneys' fees. This coverage shall include contractual liability, products/completed operations liability and shall include the Village, its officers, officials, and employees as additional named insureds with respect to this Agreement.

Workers' Compensation coverage in accordance with the Workers' Compensation Act of the State of Illinois.

Every policy required above shall be primary insurance and any insurance carried by or provided by the Village, its officers or its employees, or carried by or provided through any self-insurance pool of the Village, shall be excess and not contributory insurance to that provided by the District.

The District shall be responsible for any deductible losses under its policies.

For Commercial General Liability coverage, the District shall provide a waiver of subrogation in favor of the Village, its officers, officials, and employees with respect to this Agreement.

The insurance policies required above shall include a thirty-day (30) notice of cancellation provision. All cancellation notices shall be sent to the Village pursuant to the notice provision of this Agreement.

A certificate of insurance must be provided at the time the agreement is executed by the District unless the Parties arrange otherwise.

p. East Dundee Contribution/Appropriations. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation and, therefore, notwithstanding anything in this Agreement to the contrary, all obligations of the Village and the District are expressly dependent and conditioned upon the continuing availability of funds

beyond the term of the Village's and District's current fiscal period ending upon the next succeeding fiscal year. Financial obligations of the Village and the District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. Failure of the Village or the District to appropriate, budget or otherwise make funds available for payment from one entity to the other shall not constitute nonperformance or breach of any part or all of this Agreement. Any payment provision of this Agreement shall be suspended and not terminated in the event the Village or the District fails to appropriate, budget or otherwise make funds available. Said suspension shall expire upon the Village or the District appropriating, budgeting, and otherwise making funds available for payment.

q. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the Parties, their respective legal representatives, successors, heirs, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

r. Compliance with Regulations. The District shall comply with all Village, State and Federal laws and regulations that relate to the activities described in this Agreement.

s. Indemnification. Both Parties shall be responsible for their own negligence. To the fullest extent permitted by law, the District shall indemnify and hold harmless the Village, its officers, employees, and insurers, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from District's performance of this Agreement, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the District, a District contractor, a District subcontractor, anyone directly or indirectly employed by the District or anyone for whose acts the District may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this paragraph. The District agrees to investigate, handle, respond to, and to provide defense for any such liability, claims, or demands at the sole expense of the District, and agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent.

t. Effective Date. The terms of this Agreement shall become binding on all parties hereto on the passage of appropriate legislation authorizing execution.

u. Titles. Titles of paragraphs or sections of this Agreement have been included solely for convenience of the parties and are not to be considered or deemed a part of this Agreement, nor are they intended to be a full or accurate description of the contents thereof.

v. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

w. Authority. The Parties represent that they possess the requisite authority to perform the respective functions and obligations set forth in this Agreement. The Parties represent that they possess the requisite authority to sign this Agreement.

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VILLAGE OF EAST DUNDEE

James Bant
_____, Village President

ATTEST:

Jennifer Behlberg
_____, Village Clerk

DISTRICT
Dundee Township Park District

_____, President

STATE OF ILLINOIS)
) ss:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by _____, as President of the Dundee Township Park District.

Witness my hand and official seal.
My commission expires: _____

Notary Public

[SEAL]