

**RESOLUTION 23 -11**

**AUTHORIZING THE INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE SCHOOL DISTRICT NUMBER 300  
AND THE VILLAGE OF EAST DUNDEE**

WHEREAS, Article VII, Section 10 of the Illinois Constitution of 1970 and 5 ILCS 22011 et seq. authorize units of local government to contract or otherwise associate among themselves to obtain or share services, to exercise, combine or transfer any power or function, in any manner not prohibited by law, to use their credit, revenues and other reserves to pay costs and to service debt related to intergovernmental activities; and

WHEREAS, the purpose of the Intergovernmental Cooperation Act and Article 7 of the Constitution of the State of Illinois includes fostering cooperation among governmental bodies; and

WHEREAS, pursuant to authority granted, the VILLAGE OF EAST DUNDEE (hereinafter referred to as the "VILLAGE") is authorized to take action to control flooding and to enter into agreements for the purposes of stormwater management and flood control; and

WHEREAS, the VILLAGE in order to alleviate a flooding condition, will be constructing a detention pond and a storm sewer system (hereinafter referred to as the "PROJECT") and generally described as follows:

The excavation of a stormwater detention facility, relocation of the existing baseball backstop, installation of a fence, the installation of storm sewers, landscaping, and other appurtenant items.

WHEREAS, the VILLAGE requests that SCHOOL DISTRICT NUMBER 300 (hereinafter referred to as "SCHOOL DISTRICT") allow the detention pond and storm sewer system being built as part of its PROJECT to be constructed partially on SCHOOL DISTRICT property; and

WHEREAS, the SCHOOL DISTRICT agrees to the VILLAGE's request to construct the detention pond and storm sewer system on SCHOOL DISTRICT property; and

WHEREAS, subsequent to this AGREEMENT, the VILLAGE agrees to obtain all necessary approvals for the construction of the detention pond, storm sewer system, and if required, a long-term maintenance plan located on SCHOOL DISTRICT property, and to abide

by all conditions set forth therein; and

WHEREAS, the SCHOOL DISTRICT and the VILLAGE by this instrument, desire to determine and establish their respective responsibilities toward engineering, right of way acquisition, utility relocation, construction, funding and maintenance of the PROJECT as proposed; and

WHEREAS, the SCHOOL DISTRICT by virtue of its powers as set forth in State law is authorized to enter into this AGREEMENT; and

WHEREAS, the VILLAGE by virtue of its powers as set forth in State law is authorized to enter into this AGREEMENT; and

WHEREAS, a cooperative Intergovernmental Agreement is appropriate and such an Agreement is authorized and encouraged by Article VII, Section 10 of the Illinois Constitution and Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq.

NOW THEREFORE, BE IT RESOLVED by the VILLAGE that the attached Intergovernmental Agreement between the SCHOOL DISTRICT and the VILLAGE is hereby accepted and approved and that the President of the VILLAGE is hereby authorized and directed to execute the Agreement on behalf of the VILLAGE; and

BE IT FURTHER RESOLVED that the Clerk of the VILLAGE be directed to transmit certified copies of this Agreement to the SCHOOL DISTRICT, \_\_\_\_\_(insert address)\_\_\_\_\_.

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

Section Three. Publication. This ordinance shall be in full force and effect forthwith upon its

adoption, approval and publication in pamphlet form as provided by law.

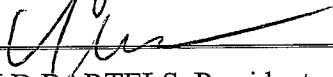
Adopted this 6<sup>th</sup> day of June, 2011, pursuant to a roll call vote as follows:

AYES: 5 - Trustees Gormon, Lynam, Miller, VanOstenbridge & Skillicorn

NAYES: 0

ABSENT: 2 - Trustee Ruffulo & President Bartels

Approved by me this 6<sup>th</sup> day of June, 2011.

  
\_\_\_\_\_  
~~JERALD BARTELS, President~~  
President Pro Tem, Trustee Lael Miller

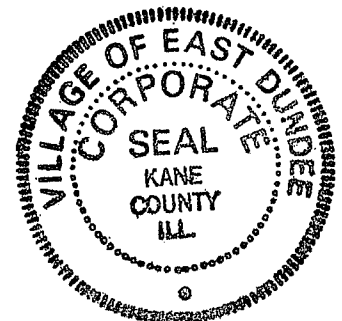
Published in pamphlet form this 16<sup>th</sup> day of June, 2011, under the authority of the President and Board of Trustees.

ATTEST:

  
\_\_\_\_\_  
JENNIFER REHBERG, Village Clerk

Recorded in the Village Records on June 16<sup>th</sup>, 2011.

Enacted and approved this 6<sup>th</sup> day of, June, 2011 at E. Dundee, Illinois.



**INTERGOVERNMENTAL AGREEMENT BETWEEN  
SCHOOL DISTRICT NUMBER 300  
AND  
THE VILLAGE OF EAST DUNDEE**

This AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_ AD, 2011, by and between SCHOOL DISTRICT NUMBER \_\_\_\_\_, hereinafter called the "SCHOOL DISTRICT", and THE VILLAGE OF EAST DUNDEE, a body corporate and politic, of the State of Illinois, acting by and through its Board of Trustees, hereinafter called the "VILLAGE".

**WITNESSETH:**

WHEREAS, the VILLAGE in order to alleviate a flooding condition will construct a detention pond and storm sewer system (hereinafter referred to as the "PROJECT") and generally described as follows:

The excavation of a stormwater detention facility, relocation of the existing baseball backstop, installation of a fence, the installation of storm sewers, landscaping, and other appurtenant items.

WHEREAS, the VILLAGE requests that the SCHOOL DISTRICT allow the detention pond and storm sewer system being built as part of its PROJECT to be constructed partially on SCHOOL DISTRICT property; and

WHEREAS, the SCHOOL DISTRICT agrees to the VILLAGE's request to construct the detention pond and storm sewer system on SCHOOL DISTRICT property; and

WHEREAS, subsequent to this AGREEMENT, the VILLAGE agrees to obtain all necessary approvals for the detention pond, storm sewer system, and if required, a long-term maintenance plan located on SCHOOL DISTRICT property, and to abide by all conditions set forth therein; and

WHEREAS, the SCHOOL DISTRICT and the VILLAGE by this instrument, desire to determine and establish their respective responsibilities toward engineering, right of way acquisition, utility relocation, construction, funding and maintenance of the PROJECT as proposed; and

WHEREAS, the SCHOOL DISTRICT by virtue of its powers as set forth in State law is authorized to enter into this AGREEMENT; and

WHEREAS, the VILLAGE by virtue of its powers as set forth in State law is authorized to enter into this AGREEMENT; and

WHEREAS, a cooperative Intergovernmental Agreement is appropriate and such an Agreement is authorized and encouraged by Article VII, Section 10 of the Illinois Constitution and Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*

NOW, THEREFORE, in consideration of the aforementioned recitals and the mutual covenants contained herein, the parties hereto agree as follows:

## **I. ENGINEERING**

A. The VILLAGE agrees, at its expense, to perform preliminary and final design engineering, obtain necessary surveys, and prepare the final plans and specifications for the PROJECT.

B. The VILLAGE shall provide and the SCHOOL DISTRICT shall review the plans and specifications which impact the SCHOOL DISTRICT's property within thirty (30) calendar days of receipt thereof. The SCHOOL DISTRICT will send a letter to the VILLAGE indicating its approval, or its disapproval. Approval by the SCHOOL DISTRICT shall mean the SCHOOL DISTRICT agrees with all specifications in the plans, including the location of the PROJECT improvements which impact the SCHOOL DISTRICT's property. In the event of disapproval, the SCHOOL DISTRICT will detail in writing its objections to the proposed plans and specifications. Notwithstanding, any disapproval by the SCHOOL DISTRICT, the VILLAGE after considering the SCHOOL DISTRICT's objections shall proceed as the Chief Engineer of the SCHOOL DISTRICT deems appropriate.

C. The VILLAGE shall promptly provide to the SCHOOL DISTRICT all drainage reports and/or drainage calculations.

D. Any dispute concerning the plans and specifications shall be resolved in accordance with Section IX, of this AGREEMENT.

E. The final approved plans and specifications for the PROJECT shall be promptly delivered to the SCHOOL DISTRICT by the VILLAGE.

F. The VILLAGE agrees to assume the overall PROJECT responsibility including assuring that all permits (U.S. Army Corps of Engineers, Office of Natural Resources, Protection Agency, etc.) and joint participation and/or force account agreements (County, Township, Railroad, Utility, etc.), as may be required by the PROJECT, are secured by the parties hereto in support of general project schedules and deadlines. All parties hereto agree to cooperate, insofar as their individual jurisdictional authorities allow with the timely acquisition and clearance of said permits and agreements and in complying with all applicable Federal, State, and local regulations and requirements pertaining to work proposed for the PROJECT.

G. The VILLAGE shall provide to the SCHOOL DISTRICT copies of permit applications and final permit documents upon approval.

H. The VILLAGE shall require all construction (if any) performed within the SCHOOL DISTRICT's rights of way to comply with the Standard Specifications and Supplemental Specifications for Construction, issued on January 1, 2007 or the current version of the Standard Specifications.

## **II. RIGHT OF WAY**

A. It is understood that neither the VILLAGE nor the SCHOOL DISTRICT have consented in this AGREEMENT to the transfer of any interest in the VILLAGE's or the SCHOOL DISTRICT's property or rights of way which the VILLAGE or the SCHOOL DISTRICT deem necessary for the maintenance and operation of their systems.

## **III. UTILITY RELOCATION**

A. The VILLAGE agrees to provide the SCHOOL DISTRICT, as soon as they are identified, the locations (existing and proposed) of public and/or private utility facilities within existing SCHOOL DISTRICT rights of way which require adjustment as part of the PROJECT. As part of its PROJECT engineering responsibilities, the VILLAGE shall identify adjustments to the aforementioned existing utilities.

B. The VILLAGE agrees to make all reasonable efforts to minimize the number of utility adjustments in the design of improvements: 1) to SCHOOL DISTRICT facilities; as well as 2) to VILLAGE facilities improved as part of the PROJECT.

C. At all locations where utilities are located on SCHOOL DISTRICT rights of way and must be adjusted due to work proposed by the VILLAGE, the SCHOOL DISTRICT agrees to make arrangements with the applicable utility and issue all permits for the requisite adjustment(s). At all locations where the VILLAGE's utilities are located on SCHOOL DISTRICT rights of way and must be adjusted due to work proposed by the VILLAGE, the VILLAGE agrees to obtain from the SCHOOL DISTRICT an approved permit for the facility, and to abide by all conditions set forth therein. The VILLAGE agrees to reimburse the SCHOOL DISTRICT for any and all out of pocket costs the SCHOOL DISTRICT may incur in causing the aforementioned utility or utilities to be adjusted.

## **IV. CONSTRUCTION**

A. The VILLAGE shall advertise and receive bids, provide construction engineering inspections for and cause the PROJECT to be constructed in accordance with the PROJECT plans and specifications.

B. The VILLAGE shall be responsible for any errors or omissions in the plans and specifications, any errors in constructing the PROJECT, or any permit violations.

C. After award of the construction contract(s), any proposed changes from the plans and specifications that affect the SCHOOL DISTRICT shall be submitted to the SCHOOL DISTRICT for approval prior to commencing such work. The SCHOOL DISTRICT shall review the proposed changes and indicate its approval or disapproval thereof in writing. If the proposed change to the plans and specifications are not acceptable, the SCHOOL DISTRICT shall detail in writing its specific objections. If the VILLAGE receives no written response from the SCHOOL DISTRICT within fifteen (15) calendar days after delivery to the SCHOOL DISTRICT of the proposed change, the proposed change shall be deemed approved by the SCHOOL DISTRICT.

D. After award of the construction contract(s), assuming there are no proposed changes from the plans and specifications that affect the SCHOOL DISTRICT, the VILLAGE shall provide no less than five (5) calendar days written notice to the SCHOOL DISTRICT prior to commencement of work on the PROJECT.

E. The VILLAGE shall require its contractor(s) working within the SCHOOL DISTRICT's rights of way to comply with the indemnification provision contained in the Standard Specifications or Supplemental Specifications for Construction, issued on January 1, 2007 or the current version of Standard Specifications.

F. The VILLAGE shall require that the SCHOOL DISTRICT, the SCHOOL DISTRICT's agents, officers and employees be included as additional insured parties in the General Liability Insurance the VILLAGE requires of its contractor(s) and that the SCHOOL DISTRICT will be added as an additional protected party on all performance bonds required of the contractor(s). These requirements shall be included in the Special Provisions of the construction contract(s). The VILLAGE will require its contractor(s) to maintain with the SCHOOL DISTRICT insurance documentation of said insurance throughout the construction phase. Said insurance documentation will include copies of policies or insurance certificates including copies of the applicable additional insured endorsements as required by this AGREEMENT.

G. The SCHOOL DISTRICT and its authorized agents shall have all reasonable rights of inspection (including pre-final and final inspection) during the progress of work included in the PROJECT that affects the SCHOOL DISTRICT's system. The SCHOOL DISTRICT shall assign personnel to perform inspections on behalf of the SCHOOL DISTRICT of all work included in the PROJECT that affects the SCHOOL DISTRICT's system.

H. Notices required to be delivered by either party pursuant to this AGREEMENT shall be delivered as indicated in Section IX of this AGREEMENT.

I. No inspections, approvals of the specifications or the work by the SCHOOL DISTRICT or its employees, officers or agents shall relieve the VILLAGE's contractor(s) of responsibility and liability for the proper performance of the work, and VILLAGE inspections and approvals shall not be considered a waiver of any right the SCHOOL DISTRICT may have pursuant to this AGREEMENT. All SCHOOL DISTRICT communications and correspondence with the VILLAGE's contractor(s) or relating to a contract shall be through the VILLAGE, unless otherwise specifically approved by the Engineer of the VILLAGE. In the event a SCHOOL DISTRICT representative discovers SCHOOL DISTRICT related work that is not being performed or has not been performed in accordance with the approved plans and specifications, the representative shall promptly notify in writing the County Engineer of the VILLAGE or the Engineer's duly designated representative.

## **V. FINANCIAL**

A. The VILLAGE agrees to pay all PROJECT related engineering, construction engineering and construction costs.

B. The SCHOOL DISTRICT and the VILLAGE shall maintain, for a minimum of three (3) years after the completion of the PROJECT, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with this AGREEMENT. All books, records, and supporting documents related to the PROJECT shall be available for review and audit by the SCHOOL DISTRICT and the VILLAGE agree to cooperate fully with any audit.

## **VI. MAINTENANCE - DEFINITIONS**

A. The term "local" means any party to this AGREEMENT other than the SCHOOL DISTRICT. With respect to this AGREEMENT, it means the VILLAGE.

B. The term "local road" refers to any highway, road or street under the jurisdiction of the VILLAGE.

C. As used herein, the terms "maintenance" or "maintain" mean keeping the facility being maintained in good and sufficient repair. Such maintenance includes the full responsibility for the construction, removal, replacement of the maintained facility when needed, and unless specifically excluded in Section VII MAINTENANCE - RESPONSIBILITIES, other activities as more specifically set forth in the following subparts of this Section VI. Maintenance includes but is not limited to:

i. "Routine maintenance" refers to the day to day pavement maintenance, mowing, litter and debris removal, and grate cleaning and repair.

ii. "Emergency maintenance" refers to any maintenance activity which must be



performed immediately in order to avoid or to repair a condition on the roadway or right of way which causes or threatens imminent danger or destruction to roadway facilities or rights of way of the parties hereto, to the motoring public, or to public health, safety or welfare, including but not limited to accident restoration, chemical or biological removal or remediation, or response to acts of God or terrorism.

D. The term "drainage facilities" refers to both open and enclosed systems. The term "drainage structures" refers to enclosed systems only, and includes those elements of the drainage facility affixed to the bridge superstructures downstream from the scupper.

E. The terms "notify", "give notice" and "notification" refer to written, verbal or digital communication from one party to another concerning a matter covered by this AGREEMENT, for which the party transmitting the communication produces and retains a record which substantiates the content, date, time, manner of communication, identification of sender and recipient, and manner in which the recipient may respond to the sender, as to the communication.

F. The terms "be responsible for" or "responsibility" refer to the obligation to ensure performance of a duty or provision of a service under this AGREEMENT, provided, that a party may arrange for actual performance of the duty or provision of the service by another competent entity if the other party to this AGREEMENT is notified of such arrangement, but in no case shall the entity with the duty be relieved of ultimate responsibility for performance of the duty or provision of the service.

G. The terms "consultation" or "consult with" refer to the duty of a party to give notice to the other party of a proposed action, with reasonable time for that party to respond, but the party with the duty to consult may proceed with the proposed action if the other party does not respond within the time frame set forth in the notice provided, or in the case of the SCHOOL DISTRICT, it may proceed with the proposed action if deemed necessary by the Engineer.

H. The term "approve" refers to the duty of a party not only to consult with the other party but also to receive consent from the other party to the proposed action and to retain a record which documents such consent from the party with the right to approve the action.

## **VII. MAINTENANCE - RESPONSIBILITIES**

A. The VILLAGE agrees to maintain, or cause to be maintained, the detention pond located within the limits of the proposed fence, see Exhibit A.

B. The parties agree that each party has the duty to perform such regular inspections, surveys and reviews as are reasonably necessary to fulfill their respective obligations

under this AGREEMENT.

C. The VILLAGE agrees to assume responsibility for the reconstruction and maintenance of the detention pond and storm sewer system located partially on SCHOOL DISTRICT property, in its entirety. The VILLAGE agrees to indemnify the SCHOOL DISTRICT to the extent allowable by law and assume all risk of loss and hold the SCHOOL DISTRICT and its employees, officers and agents harmless from all claims for death, injuries and damages to persons or property relating to the use, maintenance or reconstruction of the detention pond and the storm sewer system, but excepting those claims arising out of any intentional acts or omissions by the SCHOOL DISTRICT or its employees, officers, contractors or agents. The SCHOOL DISTRICT has no identifiable improvements scheduled in its current Capital Program which runs through the year 2015 which would require the VILLAGE to relocate or redesign the detention pond and storm sewer system. In the event the SCHOOL DISTRICT further improves the property requiring the removal of the detention pond and/or storm sewer system the SCHOOL DISTRICT agrees to bear all of the costs associated with the removal or reconstruction of these facilities.

D. The VILLAGE agrees to maintain or cause to be maintained all improvements constructed on SCHOOL DISTRICT property, located on SCHOOL DISTRICT property within the proposed fence, including the eradication of all aggressive weed species and replacement of plant material as necessary, to the SCHOOL DISTRICT's satisfaction or if required by another governing agency. In the event the VILLAGE fails to provide satisfactory care of the detention pond and/or the storm sewer system on SCHOOL DISTRICT property, as determined by the SCHOOL DISTRICT or any or all of the improvements constructed on the SCHOOL DISTRICT's property, the VILLAGE shall, at the VILLAGE's sole cost and expense, either correct the said deficiencies or with the approval of the SCHOOL DISTRICT and in accordance with the applicable portions of the SCHOOL DISTRICT's current Standard Specifications remove the detention pond and/or the storm sewer system built as part of this PROJECT, replacing it with sod or other materials as directed by the SCHOOL DISTRICT, restoring the SCHOOL DISTRICT's property to its previous condition (prior to construction of the PROJECT). The SCHOOL DISTRICT shall then maintain or cause to be maintained its property.

E. In the event the VILLAGE fails to maintain the detention pond and/or the storm sewer system located on SCHOOL DISTRICT property in its entirety and the SCHOOL DISTRICT is required to maintain such detention pond and/or storm sewer system to protect the integrity of the SCHOOL DISTRICT from imminent danger, the VILLAGE agrees to reimburse the SCHOOL DISTRICT for the cost of the emergency maintenance plus 10% for overhead within thirty (30) calendar days of receipt of an invoice from the SCHOOL DISTRICT.

#### **VIII. ADDITIONAL MAINTENANCE PROVISIONS**

A. It is understood and agreed by the parties hereto that this AGREEMENT shall supersede any and all earlier Agreements entered into by the parties hereto.

B. During construction, the VILLAGE shall continue to maintain all portions of the PROJECT within the VILLAGE's right of way that are not to be improved or maintained by the construction contractor(s) pursuant to the approved plans and specifications, and the SCHOOL DISTRICT shall continue to maintain all portions of the SCHOOL DISTRICT property that are not required to be maintained by the construction contractor(s).

C. All items of construction which are stipulated in this AGREEMENT to be maintained by the VILLAGE shall, upon completion of construction, and upon completion of the final inspection, be the sole maintenance responsibility of the VILLAGE, and all items of construction which are stipulated in this AGREEMENT to be maintained by the SCHOOL DISTRICT shall, upon completion of construction, be the sole maintenance responsibility of the SCHOOL DISTRICT.

#### **IX. GENERAL PROVISIONS**

A. It is understood and agreed that this is an INTERGOVERNMENTAL AGREEMENT between the VILLAGE and the SCHOOL DISTRICT for the purpose of allowing the VILLAGE to construct a stormwater detention facility on SCHOOL DISTRICT property, in general conformance to Exhibit A.

B. The VILLAGE shall retain jurisdiction of any and all improvements of the PROJECT located within the stormwater detention area north and west of the proposed fence. For the purpose of this AGREEMENT, jurisdiction shall mean the authority and obligation to administer, control, construct, maintain, and operate.

C. Wherever in this AGREEMENT, approval or review by either the VILLAGE or the SCHOOL DISTRICT is provided for, said approval or review shall not be unreasonably delayed or withheld.

D. Not later than fourteen (14) calendar days after execution of this AGREEMENT, each party shall designate a representative, in writing, to the other party who shall serve as the full time representative of the said party during the carrying out of the construction of the PROJECT. Each representative shall have authority, on behalf of such party, to make decisions relating to the work covered by this AGREEMENT. Representatives may be changed, from time to time, by subsequent written notice. Each representative shall be readily available to the other party.

E. In the event of a dispute between the VILLAGE and the SCHOOL DISTRICT representatives in the preparation of the plans and specifications, or changes thereto, or in the carrying out of the terms of this AGREEMENT, the Chief Engineer of the SCHOOL

DISTRICT and the Engineer of the VILLAGE shall meet and resolve the issue.

F. Any dispute concerning the plans and specifications or in the carrying out of the terms of this AGREEMENT that is not resolved as provided above shall be resolved by decision of the President of the VILLAGE and the Chairman of the SCHOOL DISTRICT, and their decision shall be final. In the event that the President of the VILLAGE and the Chairman of the SCHOOL DISTRICT cannot mutually agree on the resolution of a dispute concerning the plans and specifications or in the carrying out of the terms of this AGREEMENT, the decision of the Chairman of the SCHOOL DISTRICT shall be final.

G. This AGREEMENT may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same instrument.

H. This AGREEMENT may only be modified by written modification executed by duly authorized representatives of the parties hereto.

I. This AGREEMENT and the covenants contained herein shall become null and void in the event the contract covering the construction work contemplated herein is not awarded within three (3) years subsequent to the date of execution of this AGREEMENT.

J. This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective successors and approved assigns.

K. It is agreed that the laws of the State of Illinois shall apply to this AGREEMENT and that, in the event of litigation, venue shall lie in Kane County, Illinois.

L. All notices shall be in writing and shall be personally delivered or mailed to the following persons at the following addresses:

To the SCHOOL DISTRICT: Keith Hinz (847) 532-6704

To the VILLAGE: Robert Skurla, Village Administrator (847) 426-2822

M. The introductory recitals included at the beginning of this AGREEMENT are agreed to and incorporated into this AGREEMENT.