

RESOLUTION R-2023-98

A RESOLUTION AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WHEATON AND THE COUNTY OF DUPAGE, ILLINOIS DESIGNATING THE COUNTY AS THE RESPONSIBLE ENTITY FOR AN ENVIRONMENTAL REVIEW OF THE WHEATON LIBRARY'S PROPOSED WEST PLAZA REPLACEMENT PROJECT

WHEREAS, the City of Wheaton, Illinois, ("City") is an Illinois home rule municipality pursuant to the provisions of Article VII, Section 6, of the Illinois Constitution of 1970; and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the Illinois General Assembly has granted the County of DuPage ("County") authority to make all contracts and do all other acts concerning the property and concerns of the County necessary to the exercise of its corporate powers (55 ILCS 5/5 1005), and to enter into agreements to receive funds from the United States government under the Housing and Community Development Act of 1974 (the "Act"), and other subsequent housing acts, and to disburse those funds and other County funds for community development and other housing program activities (55 ILCS 5/5-1093); and

WHEREAS, County has been a participating jurisdiction in the United States Department of Housing and Urban Development's ("HUD") Housing and Community Development Program since 1975, and has applied for Community Development Block Grant Funds from HUD as provided by the Act, as amended; and

WHEREAS, the City is an awardee under the Community Project Funding ("CPF") Grant; and

WHEREAS, HUD has indicated the County is a qualified and appropriate staff agency to carry out the environmental review required for CPF awards to the extent required under 24 CFR part 58, which the County will do for the City for the Wheaton Library's proposed West Plaza Replacement Project; and

WHEREAS, the County and the City desire to enter into a Memorandum of Understanding according to their respective powers to enter into such agreements, as those powers are defined in the Illinois Constitution and applicable statutes.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the City Council of the City of Wheaton, Illinois, that the MOU between the County and the City to designate the County as the Responsible Entity for an environmental review of the Wheaton Library's proposed West Plaza Replacement Project attached hereto and incorporated herein as if fully set forth as Exhibit 1 is hereby approved. The Mayor is hereby authorized to sign the MOU and the City Clerk shall attest the MOU, and City staff is authorized to undertake any and all other tasks necessary, or in furtherance of effectuating the MOU, in conformance with its terms.

ADOPTED this 6th day of November 2023.



Mayor

ATTEST:



City Clerk

Roll Call Vote:

Ayes: Councilwoman Bray-Parker
Councilman Brown
Mayor Suess
Councilwoman Robbins
Councilman Weller
Councilman Barbier

Nays: None

Absent: Councilman Clousing

Motion Carried Unanimously

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE COUNTY OF DUPAGE AND
CITY OF WHEATON**

This AGREEMENT is entered into as of the 6th day of November, 2023, between the COUNTY OF DUPAGE, a politic body and corporate of the State of Illinois (hereinafter called "COUNTY") with offices at 421 N. County Farm Road, Wheaton, IL 60187 and the CITY OF WHEATON, an Illinois Municipal Corporation, (hereinafter called "Community Project Funding Awardee") having a principal place of business at 303 W. Wesley Street, Wheaton, Illinois 60187.

RECITALS

WHEREAS, the Illinois General Assembly has granted COUNTY authority to make all contracts and do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate powers (Illinois Compiled Statutes, Chapter 55, paragraphs 5/5-1005), and to enter into agreements for the purposes of receiving funds from the United States government under the "Housing and Community Development Act of 1974", and other subsequent housing acts, and may disburse those funds and other county funds for community development and other housing program activities (Illinois Compiled Statutes, Chapter 55, paragraph 5/5-1093); and

WHEREAS, COUNTY has been a participating jurisdiction in the United States Department of Housing and Urban Development's ("HUD's") Housing and Community Development Program since 1975, and has applied for Community Development Block Grant Funds from HUD as provided by the Housing and Community Development Act of 1974, as amended (P.L. 93-383)("ACT"); and

WHEREAS, the COUNTY, as a Responsible Entity and pursuant to 24 CFR Part 58, will complete the Environmental Review for the Community Project Funding ("CPF") Grant the CPF Awardee has applied for; and

WHEREAS, HUD has indicated the COUNTY is a qualified and appropriate staff agency to carry out the environmental review required for CPF awards to the extent required under 24 CFR part 58; and

WHEREAS, the COUNTY and the CPF Awardee enter into this Memorandum of Understanding (MOU or MEMORANDUM) pursuant to their respective powers to enter into such agreements, as those powers are defined in the Illinois Constitution and applicable statutes.

NOW, THEREFORE, in consideration of the premises, the mutual covenants, terms and conditions hereinafter set forth, and the understandings of each party to the other, the parties do hereby mutually covenant, promise and agree as follows:

I. INCORPORATION AND CONSTRUCTION

- A. All recitals set forth above are incorporated herein and made part hereof, the same constituting the factual basis for this MEMORANDUM.
- B. The headings of the paragraphs and subparagraphs of this MOU are inserted for convenience of reference only and this shall not be deemed to constitute part of this MOU or to affect the construction hereof.

II. SCOPE OF THE PROJECT

- A. The CPF AWARDEE shall provide the COUNTY with a full detailed project scope in accordance with 24 CFR part 58, including but not limited to all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions.
- B. The scope of the activities for the CPF awarded project includes:
 - 1. Repairs and restoration to the outdoor areas surrounding the Wheaton Public Library, located at 225 N. Cross Street, Wheaton, IL 60187. Improvements include removing and replacing concrete stairs, ramp, and patio area, adding a free-standing monument sign with LED electronic messaging capabilities, cleaning and/or replacing existing limestone panels, replacing existing concrete pavers, installing poles for sound system, lighting, and tensile shade structure, as well as installation of a tensile shade structure, all along the Library's exterior.
 - 2. CPF AWARDEE shall reimburse all costs/services associated with the DuPage County Community Services staff completing the Environmental Review process, pursuant to Section III. F. below.

III. CPF AWARDEE'S COMPLIANCE WITH THE ACT

- A. The CPF Awardee shall comply and assist the COUNTY in complying with 24 CFR part 58 during the environmental review process. Failure to comply with or violate the provisions in subparagraphs (1), (2), and (3) set forth below may result in the COUNTY'S and/or DEPARTMENT'S inability to complete the Environmental Review Record (ERR). CPF Awardee shall:
 - 1. At COUNTY'S request, supply COUNTY with all available and relevant information necessary for COUNTY to perform any environmental review required by 24 CFR part 58 for the project; and
 - 2. Carry out mitigating measures identified and included in the Environmental Review Record; and
 - 3. Not acquire, rehabilitate, convert, lease, repair or construct property, nor commit or expend CPF or local funds for these program activities on a HUD assisted project until COUNTY has completed an environmental review to the extent

required under 24 CFR part 58 and has given notification of its approval in accordance with 24 CFR part 58.

- B. Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review under 24 CFR part 58. The parties further agree that the provision of any funds to the project is conditioned on HUD's determination to proceed with, modify, or cancel the project based on the results of a subsequent environmental review.
- C. REPORTS: CPF Awardee shall provide the COUNTY with any and all reports necessary for the COUNTY to complete the environmental review. CPF Awardee understands and agrees that there may be certain testing/reports required under 24 CFR part 58 that the COUNTY staff is not qualified to complete. Any and all additional testing/reports identified by the COUNTY, which is necessary for the completion of the environmental review, is the responsibility of the CPF Awardee to obtain and pay for. Any and all results from additional testing/reports must be provided to the COUNTY for review and inclusion in the environmental review. The CPF Awardee must ensure any procurement requirements associated with obtaining the testing/reporting are followed. The COUNTY will not be responsible for assisting in the procurement or providing guidance related to any aspect of the CPF award. The CPF Awardee must direct all CPF related questions to the appropriate federal agency administering the grant.
- D. SITE VISITS: CPF Awardee agrees and authorizes the COUNTY staff to conduct on-site visits and to conduct any other procedures or practices to ensure compliance with the provisions set forth in Paragraph A above. CPF awardee shall make the site accessible to COUNTY staff as needed to complete the environmental review.
- E. TIMEFRAME: CPF awardee acknowledges and agrees that COUNTY projects will take priority over their environmental review process. As such, County does not guarantee a specific completion timeline. CPF awardee acknowledges and agrees that the environmental review process could take a year or more, depending on the demands of the COUNTY'S current projects and planning processes.
- F. PAYMENT FOR SERVICES: CPF awardee acknowledges and agrees that the environmental review process is estimated to take approximately 100 hours to complete.
 - 1. Upon completion of the ERR by County staff, the CPF Awardee shall reimburse the COUNTY for expenses incurred by the COUNTY upon the COUNTY'S submission of an invoice for services rendered. Should environmental conditions be identified prohibiting the project from moving forward, COUNTY staff will be reimbursed by the CPF Awardee for all time spent on preparation of the ERR.

2. CPF Awardee agrees that it shall be responsible for making all required payments against expenses incurred by COUNTY under this Memorandum. COUNTY shall forward an invoice for services rendered to the CPF Awardee for reimbursement of the hourly rate plus benefit rate of each COUNTY staff member's hours worked on the CPF Awardee's Environmental Review.
3. Compensation for COUNTY staff's time and reimbursement for expenses shall be paid by the CPF Awardee with the CPF funding and/or general funds available from the CPF Awardee. The County will invoice the CPF Awardee on a quarterly basis for the actual time spent on the project at the assigned employee's hourly rate, including fringe benefits.

IV. INDEMNIFICATION AND HOLD HARMLESS: CPF Awardee shall assume the defense of and shall pay, indemnify, and hold harmless COUNTY, its designees, and its employees from all suits, actions, claims, demands, damages, losses, expenses, and costs of every kind and description to which the COUNTY, its designees, and its employees may be subject by reason of any act or omission of CPF Awardee, its agents or employees, in undertaking and performing the environmental review process under this Agreement.

- A. In the event of any violation or breach of this Agreement by CPF Awardee, misuse or misapplication of funds derived from this Agreement by CPF Awardee, or any violation of any statutes, rules and regulations, directly or indirectly, by the CPF Awardee and/or any of its agents or representatives, then CPF Awardee, to the fullest extent permitted by law, agrees to indemnify, and hold the COUNTY harmless from any damages, penalties, and expenses, including attorneys' fees and other costs of defense, resulting from such act or omission by CPF Awardee.
- B. As long as the COUNTY is not in jeopardy of losing any other Federal funding, of any kind or description, as a result of the alleged breach, the CPF Awardee shall have complete right to settle or compromise any claim and to pay any judgment to the Federal government, so long as the COUNTY is indemnified.
- C. If the COUNTY has lost or been prevented from receiving any Federal funds as a result of any alleged violation of 24 CFR part 58, the CPF Awardee shall repay, upon demand by the COUNTY, such amount of GRANT FUNDS allegedly due, as a result of the alleged breach.

V. MISCELLANEOUS PROVISIONS

- A. AMENDMENTS - This AGREEMENT constitutes the entire agreement between the parties hereto. Any proposed change in this AGREEMENT shall be submitted to the other party for prior approval. No modifications, additions, deletions, or the like, to this AGREEMENT shall be effective unless and until such changes are executed, in writing, by the authorized officers of each party.

- B. ATTORNEY'S OPINION - If requested, CPF Awardee shall provide an opinion of its attorney, in a form reasonably satisfactory to the State's Attorney's Office, that all steps necessary to adopt this AGREEMENT, in a manner binding upon CPF Awardee, have been taken by CPF Awardee, and that CPF Awardee is in compliance with applicable local, State and Federal statutes, rules and regulations for the purpose of complying with this AGREEMENT.
- C. DURATION – Unless determined otherwise by the COUNTY pursuant to the terms of this Agreement above, this Agreement will remain in effect for the period of compliance required by federal regulations under the ACT.
- D. SEVERABILITY – 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.
- E. DISCLAIMER – Nothing in this AGREEMENT is to be construed as creating a partnership between the COUNTY and any other party to this AGREEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the dates recited below.

COUNTY OF DU PAGE, a body politic in the State of Illinois

BY:


Deborah A. Conroy, DuPage County Board Chair

DATE:

11-14-2023

ATTEST:


Jean Kaczmarek, County Clerk

CPF AWAREDEE: CITY OF WHEATON, an Illinois Municipal Corporation

ADDRESS: 303 W. Wesley Street
Wheaton, IL 60187

BY:


Philip J. Suess, Mayor

DATE:

11/14/2023

ATTEST:


Andrea Rosedale, City Clerk

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT on the dates recited below.

COUNTY OF DU PAGE, a body politic in the State of Illinois

BY:

Deborah A. Conroy, DuPage County Board Chair

DATE:

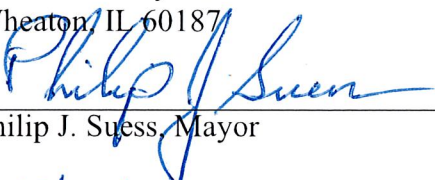
ATTEST:

Jean Kaczmarek, County Clerk

CPF AWAREDEE: CITY OF WHEATON, an Illinois Municipal Corporation

ADDRESS: 303 W. Wesley Street
Wheaton, IL 60187

BY:



Philip J. Suess, Mayor

DATE:



ATTEST:



Andrea Rosedale, City Clerk



HS Resolution

421 N. COUNTY FARM
ROAD
WHEATON, IL 60187
www.dupagecounty.gov

File #: HS-R-0067-23

Agenda Date: 11/7/2023

Agenda #: 16.C.

MEMORANDUM OF UNDERSTANDING BETWEEN
THE COUNTY OF DUPAGE AND
CITY OF WHEATON

WHEREAS, the Illinois General Assembly has granted COUNTY authority to make all contracts and do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate powers (Illinois Compiled Statutes, Chapter 55, paragraphs 5/5-1005), and to enter into agreements for the purposes of receiving funds from the United States government under the "Housing and Community Development Act of 1974", the National Affordable Housing Act of 1990, and the Housing and Community Development Act of 1992, and COUNTY may disburse those funds and other county funds for community development and other housing program activities (Illinois Compiled Statutes, Chapter 55, paragraph 5/5 1093); and

WHEREAS, COUNTY has been a participating jurisdiction in the United States Department of Housing and Urban Development's ("HUD's") Housing and Community Development Program since 1975, and has applied for Community Development Block Grant Funds from HUD as provided by the Housing and Community Development Act of 1974, as amended (P.L. 93-383)("ACT"); and

WHEREAS, HUD has indicated the COUNTY is qualified and the appropriate staff agency to act as a Responsible Entity under 24 CFR Part 58 and to carry out and complete an Environmental Review Record (ERR) for Community Project Funding (CPF) projects on behalf of CPF Awardees; and

WHEREAS, the City of Wheaton has received a CPF award, hereinafter known as the "CPF AWARDDEE"; and

WHEREAS, the CPF AWARDDEE wishes to enter into an MOU with the COUNTY for the purposes of utilizing COUNTY staff to complete the required ERR; and

WHEREAS, an MOU has been prepared outlining the CPF AWARDDEE's responsibilities for compliance with 24 CFR Part 58 Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities and obligations to the COUNTY.

NOW THEREFORE BE IT RESOLVED by the County Board that said MOU between the County of DuPage and the City of Wheaton, attached hereto, is hereby approved; and

BE IT FURTHER RESOLVED, that the Chair of the DuPage County Board is authorized and directed to execute said MOU on behalf of DuPage County and the Clerk is hereby authorized and directed to attest to such execution and affix the official seal thereto; and

BE IT FURTHER RESOLVED, that the Chair of the DuPage County Board, or his designee, is authorized and directed to execute additional documents that may be required to complete the transaction on behalf of DuPage County and the Clerk is hereby authorized and directed to attest to such execution and affix the official seal thereto; and

BE IT FURTHER RESOLVED, that the Chair of the DuPage County Board is hereby authorized to approve amendments to MOU so long as such amendments further the completion of the project and are in accordance with regulations applicable to 24 CFR Part 58 and the policies of DuPage County; and

BE IT FURTHER RESOLVED that the County Clerk be directed to send certified copies of this Resolution to the CITY OF WHEATON, 303 W. Wesley Street, Wheaton, Illinois 60187

Enacted and approved this 14th of November 2023 at Wheaton, Illinois.



DEBORAH A. CONROY, CHAIR
DU PAGE COUNTY BOARD

Attest:



JEAN KACZMAREK, COUNTY CLERK

AYES 16
NAYS 0
ABSENT 2



**DUPAGE
COUNTY**

**Community
Development**

630-407-6600
Fax: 630-407-6601

Family Center

422 N. County Farm Rd.
Wheaton, IL 60187
630-407-2450
Fax: 630-407-2451

**Housing Supports
and Self-Sufficiency**

630-407-6500
Fax: 630-407-6501

Intake and Referral

630-407-6500
Fax: 630-407-6501

Senior Services

630-407-6500
Fax: 630-407-6501

COMMUNITY SERVICES

630-407-6500
Fax: 630-407-6501
csprograms@dupageco.org

www.dupageco.org/community

TO: Greg Schwarze, Chairman and Committee Members
Human Services Committee

FROM: Mary A. Keating, Director,
Department of Community Services

DATE: October 13, 2023

**SUBJECT: Community Project Funding Memorandum of Understanding –
Environmental Review Records**

Action Requested: The Community Development Commission staff recommends approval of a Memorandum of Understanding (MOU) between DuPage County and three Community Project Funding (CPF) Awardees; Village of Addison, Wood Dale Park District, and the City of Wheaton, to allow for completion of Environmental Review Records (ERR) under 24 CFR Part 58.

Details: HUD's Office of Community Planning and Development, Congressional Grants Division is responsible for the administration of congressionally-directed spending under the Economic Development Initiative - Community Project Funding (CPF). CPF grants are selected through a congressionally-directed application process. HUD does not facilitate the grant application process.

CPF grants, like all awards funded by HUD, are subject to requirements under the National Environmental Policy Act (NEPA), HUD's NEPA-implementing regulations at 24 CFR Part 50 or 24 CFR Part 58, and all appropriate federal environmental and historic preservation laws, regulations, and Executive Orders. All projects must have a completed environmental review, and where applicable, an approved Request for Release of Funds/Certification, prior to committing Federal or non-Federal funds for choice-limiting actions or undertaking such actions on the project. HUD's Region 5 Office of Environment and Energy has requested DuPage County act as the Responsible Entity and complete CPF ERRs under Part 58 to alleviate the burden of HUD completing the ERR under Part 50. To accommodate HUD's request, an MOU has been prepared outlining responsibilities of the County and CPF Awardee, along with reimbursement requirements to County staff for time put forth completing each ERR.

Of note, CPF has been allocated directly to each CPF Awardee and has not been appropriated to DuPage County.