

RESOLUTION NO. R-2020-59

A RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY OF DU PAGE AND THE CITY OF WHEATON FOR THE REIMBURSEMENT OF ELIGIBLE COVID-19 EXPENSES

WHEREAS, the Illinois Constitution and the Intergovernmental Cooperation Act (5 ILCS 220/ et. Seq) authorize units of local government, including counties and municipalities, to contract or otherwise associate among themselves in any manner not prohibited by law and to jointly exercise any power, privilege or authority conferred upon them by law; and

WHEREAS, Article 7, Section 10 of the Illinois Constitution of 1971 and the Illinois Intergovernmental Cooperation Act 5 ILCS 220/1 et seq. allow units of public entities to enter into intergovernmental agreements in the furtherance of their governmental purposes; and

WHEREAS, the County of DuPage ("County") as the jurisdiction responsible for disbursement of funds under the CARES ACT, finds it is appropriate to use these funds to defray certain costs incurred by the municipalities related to the coronavirus emergency; and

WHEREAS, the City of Wheaton ("City") has incurred certain costs related to the coronavirus emergency; and

WHEREAS, the City incurred certain coronavirus emergency costs that are defined as an authorized use of funds to be allocated to local municipalities as set forth in guidelines issued by the United States Department of the Treasury; and

WHEREAS, the County and City believe it is necessary to enter into an Agreement to govern the reimbursement of COVID-19 related expenses; and

WHEREAS, an Agreement has been prepared and attached hereto which outlines the financial arrangement between the County and the City and the process by which the City may apply for reimbursement.

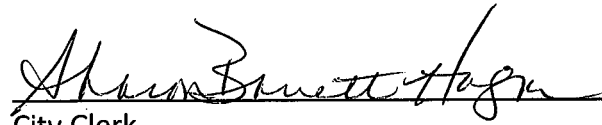
NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is hereby authorized to sign, and the City Clerk is hereby directed to attest to an Intergovernmental Agreement Between the County of DuPage and the City of Wheaton outlining the financial arrangement between the County and the City and the process by which the City may apply for reimbursement of eligible COVID-19 expenses; a copy of the Intergovernmental Agreement is attached hereto and incorporated herein as Exhibit A.

DATED this 3rd day of August 2020.



Mayor

ATTEST:



City Clerk

Roll Call Vote:

Ayes: Councilwoman Fitch
Mayor Suess
Councilwoman Robbins
Councilman Rutledge
Councilman Zaruba
Councilwoman Bray-Parker

Nays: None

Absent: Councilman Barbier
Motion Carried Unanimously

INTERGOVERNMENTAL AGREEMENT FOR PARTICIPATION IN DUPAGE COUNTY
LOCAL GOVERNMENT COVID-19 REIMBURSEMENT PROGRAM.

THIS AGREEMENT is made and entered into on this 14th day of July, 2020 by and between the County of DuPage, a body politic and corporate, hereinafter referred to as "COUNTY" and the municipality of City of Wheaton, an unit of municipal government, hereinafter referred to as "MUNICIPALITY", and collectively referred to as "the Parties".

RECITALS

WHEREAS, the Illinois Constitution and the Intergovernmental Cooperation Act (5 ILCS 220/ et. seq) authorize units of local government, including counties and municipalities, to contract or otherwise associate among themselves in any manner not prohibited by law and to jointly exercise any power, privilege or authority conferred upon them by law; and

WHEREAS, Article 7, Section 10 of the Illinois Constitution of 1971 and the Illinois Intergovernmental Cooperation Act 5 ILCS 220/1 et seq. allow units of public entities to enter into intergovernmental agreements in the furtherance of their governmental purposes; and

WHEREAS, the County of DuPage received approximately one hundred sixty-one million dollars (\$161,000,000) from the United States Government pursuant to the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"); and

WHEREAS, the CARES Act provides for payments to local governments navigating the impact of the COVID-19 outbreak via the Coronavirus Relief Fund; and

WHEREAS, the CARES Act provides that payments from the Coronavirus Relief Fund may only be used to cover expenses which: (1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); (2) were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the local government; and (3) were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020; and

WHEREAS, the County of DuPage was eligible to receive payments under the CARES Act, as it is a unit of local government in excess of 500,000 residents; and

WHEREAS, the United States Department of Treasury has issued guidelines with regards to the authorized use of funds allocated to local governments under the CARES Act; and

WHEREAS, neither the CARES Act, the United States Department of Treasury, nor state law, requires that the County disburse any funds to local municipalities within its geographic boundaries; and

WHEREAS, under the CARES Act, the County is ultimately responsible for any expenditures from CARES Act funds; and

WHEREAS, much uncertainty remains regarding future costs the County and local municipalities will be forced to bear related to the coronavirus emergency, and

WHEREAS, much uncertainty exists as to the potential for future allocations of federal or state monies to defray those future costs, and

WHEREAS, this agreement is intended to promote the most efficient distribution of resources which have been made available to the State of Illinois and the County of DuPage to benefit the citizens of DuPage County, and

WHEREAS, under the CARES Act, should the Office of the Inspector General determine that the funds were used in a manner contrary to the intent of the legislature or contrary to the United States' Department of Treasury guidelines, the CARES ACT provides that the federal government may recoup the improperly spent funds from the County; and

WHEREAS, the County, those municipalities within DuPage County, and their residents, have suffered secondary effects of the coronavirus emergency, as the State of Illinois has ordered the closure of non-essential businesses; and

WHEREAS, the County of DuPage, as the jurisdiction responsible for disbursement of funds under the CARES Act, finds that it is appropriate to use these funds to defray certain costs incurred by the Municipality related to the coronavirus emergency; and

WHEREAS, the disbursement of funds under the CARES Act to the Municipality is in the best interests of the County, the Municipality and their residents.

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

1.0 Recitals, Definitions, and Purpose.

1.1 Recitals Incorporated. The recitals set forth above are incorporated in this Agreement by reference and made a part of this Intergovernmental Agreement ("IGA").

1.2 Definitions.

- A. **"CARES Act funds"** shall refer to funds which have been allocated to DuPage County under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") of which DuPage County is responsible for the disposition.
- B. **"Forms"** shall refer to forms or application documents used to seek reimbursement of coronavirus related expenses under this agreement.
- C. **"Expenses"** shall refer to the cost of tangible goods and services which (1) were necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); (2) were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the local government; and (3) were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020. Examples of "Tangible Goods" would include, but are not limited to, personal protection and medical equipment, sanitation and disinfectant products, software, laptops and technology equipment necessary for employees to telecommute. "Services" as used in this definition means actions or intangible things which were performed by individuals who are not municipal employees. Further, "Expenses" shall include payroll costs for municipal employees where such employees time was substantially dedicated to mitigating the spread or responding to the public

health emergency and/or who have been reassigned from their budgeted role to a different function to substantially support COVID-19 related activities. "Expenses" shall not include the complete payroll costs for employees who are not substantially dedicated to the mitigation or response to the public health emergency, except as set forth in 5.1 of this Agreement. Expenses may also include economic development programs designed to support and defray the costs of local businesses (within the geographic boundaries of DuPage County) negatively impacted by the executive orders which required such businesses be closed or have their operations seriously curtailed.

D. All other words used in this agreement which are not specifically defined shall have their normal and ordinary meaning.

1.3 Purpose. The purpose of this Agreement is to establish a contractual relationship between the County and Municipality with regards to the proposed reimbursement of municipal expenses associated with the coronavirus emergency from federal CARES Act funds which the United States Federal Government has disbursed to the County. The County has, by resolution, created the DuPage County Local Government COVID-19 Reimbursement program. This agreement shall remain in effect between the parties to govern the form of applications for reimbursement, the review of applications, the criteria for reimbursable expenses, the retention of documents, and other material terms governing the processing of reimbursement applications.

2.0 Obligations of the County

2.1 Generally. The County, by and through its Finance Department or Third-Party Consultant hired by the County, shall process requests for reimbursement received by Municipality subject to the requirements set forth herein.

2.2 Submittal does not guarantee approval. The County, by receiving and processing the reimbursement requests of Municipality, does not guarantee approval of the reimbursement requests by the DuPage County Board, the DuPage County Finance Department, the United States

Department of Treasury, or the Office of the Inspector General.

2.3 No further obligations. The County shall have no further obligations under this IGA other than those expressly set forth.

3.0 Obligations of the Municipality

3.1 Generally. In order to submit requests for reimbursement of coronavirus emergency related expenditures, Municipality agrees to submit the forms, certifications and documentations set forth in this IGA for any expense for which Municipality seeks reimbursement under this Agreement. Municipality agrees that the sole and exclusive decision as to whether or not Municipalities request is granted lies within the discretion of the DuPage County Board, and that submission of expenses for reimbursement does not obligate the County to agree to reimburse those expenses. Municipality agrees that the County Board, through its Finance Department or Third-Party Administrator, may reject expenses which are clearly not permitted uses for CARES ACT funds such as using the funds for revenue replacement.

4.0 Form of Expense Submittals, Certification, failure to use form or comply with criteria

4.1 Generally. The Parties agree that expenses for which Municipality seeks reimbursement shall be submitted in a manner and on forms created by the Third Party Administrator hired by the County to process reimbursement requests. County and Third Party Administrator shall work collaboratively with Municipality and DuPage Mayors and Managers Conference to ensure that the forms and process properly balance administrative convenience to the Parties and provide sufficient information for the County Board to issue a reimbursement.

4.2 Certification. Each request for reimbursement shall be accompanied by a certification wherein the Mayor/President, certifies that the expenses for which Municipality seeks reimbursement: (i) are necessary expenditures incurred due to the public health emergency with response to the Coronavirus Disease 2019, (ii) which were not accounted for in the most recently approved budget of the municipality, as of March 27, 2020, (iii) were

incurred during the period between March 1, 2020 and December 30, 2020. By entering into the IGA, Municipality authorizes its Mayor or President to sign such certification on behalf of Municipality.

4.3 Failure to comply with Department of Treasury Guidelines. The County reserves the right to reject any reimbursement which it feels, in its sole and exclusive discretion, does not meet the criteria of the CARES Act or United States Department of Treasury guidelines associated with disbursement of funds under the CARES Act. Such rejection may be made by the DuPage County Board. This section shall not be held to restrict the County Finance Department or Third-Party Administrator from rejecting requests which clearly fail to comply with the CARES Act or with Department of Treasury guidelines.

5.0 Expenses to be reimbursed; Caps of maximum amount of reimbursements available to Municipality; prohibition on duplicate reimbursement.

5.1 Municipality may submit expenses as set forth in section 1.2(c) of this Agreement. Where submitted expenses are seeking reimbursement for employee payroll, the County requires that the expenses be separated into two categories. The first category shall be employees whose time was substantially dedicated to mitigating the spread or responding to the public health emergency and/or who have been reassigned from their budgeted role to a different function to substantially support COVID-19 related activities. For purposes of this section "substantially dedicated" shall mean that sixty percent (60%) or more of the employees' time was dedicated to mitigating the spread or responding to the public health emergency related to COVID-19. Municipality may submit, and the County Board will consider, reimbursing 100% of the salary of "substantially dedicated" employees. The second category shall consist of employees whose time is not "substantially dedicated" to mitigating the spread of or responding to the COVID-19 public health emergency, but who have spent some portion of their compensated time (but less than sixty percent (60%)) mitigating the spread of or responding to the COVID-19 Public Health Emergency. The Municipality may submit, and the County Board will

consider, reimbursing payroll in the amount of the proportion of the individual employees' time spent mitigating the spread of or responding to the COVID-19 public health emergency. For example, if an employee spent twenty percent (20%) of his or her compensated time mitigating the spread of or responding to the COVID-19 public health emergency, the municipality may submit for reimbursement of twenty percent (20%) of the employees' salary during the period of time in which the employee was engaging in COVID-19 related responses.

5.2 Municipality shall not be entitled to reimbursement of expenses for which it has received reimbursement from another County, State, or federal program designed to reimburse local government for costs associated with the coronavirus emergency or other emergencies. If Municipality receives reimbursement from any program referenced above, Municipality shall refund any duplicate reimbursement to the County.

5.3 Under this program, Municipality shall receive, in aggregate, no more than fifty-one dollars and eighty-four cents (\$51.84) for each resident of the Municipality who resides within the geographic boundaries of DuPage County as set forth in Schedule 1 attached to this Agreement. This section shall not bar future additional expenditures by County for specific municipalities which may be disproportionately impacted by COVID-19 and which, in the County's sole opinion, require additional resources to respond to the COVID-19 public health emergency.

5.4 Where Municipality is located, in part, in DuPage County and in part, in other Counties, Municipality should pro-rate their requested expense reimbursements based upon the population of their residents which reside within DuPage County. For Example, if Municipality has sixty percent (60%) of its population in DuPage County, a municipality may seek reimbursement for sixty percent (60%) of the total cost of the expense eligible for reimbursement. Municipality shall not pro-rate expenses which were used only to the benefit of DuPage County residents.

6.0 Cooperation

- 6.1 The County shall assist Municipality in complying with the requirements of the CARES Act and the United States Department of Treasury guidelines by preparing sample forms and providing feedback and guidance with regards to the type and quality of information required to complete such forms.
- 6.2 Municipality agrees to abide by the terms of the CARES Act and all United States Department of Treasury guidelines.
- 6.3 Municipality shall, at the County's request, supply County with all relevant information for the County to evaluate whether a request for reimbursement meets the criteria under the CARES Act and United States Department of Treasury guidelines.

7.0 Records

- 7.1 Municipality shall maintain all records relating to the expenses which Municipality seeks to have reimbursed by County from CARES Act funds for a period of at least ten (10) years or the period of time required by other state or federal law, whichever is longer.
- 7.2 At any time, DuPage County, the DuPage County Finance Department, or the DuPage County Auditor, may request that the Municipality provide records relating to the expenses which Municipality seeks to have reimbursed. Municipality agrees to provide records in response to such requests.
- 7.3 Failure to provide records may result in the denial of the reimbursement request. In circumstances where the reimbursement request has been granted and the records are needed to justify the reimbursement to the Office of the Inspector General or any other office, official, or department which may later become responsible for auditing disbursements of CARES Act funds, failure by Municipality to provide these records, for any reason including the prior destruction of these records, shall constitute a breach of this Agreement. The sole and exclusive remedy for such a breach is that Municipality shall be responsible for repayment of any disbursement which the Office of Inspector General, or its successor, finds improper, unsupported, or unable to be verified. Additionally, Municipality agrees to indemnify the County or make the County whole for any penalty assessed against the County

based upon Municipality's failure to retain or provide records.

8.0 Timeliness.

8.1 The Parties agree that time is of the essence in the processing of applications for reimbursement. The County shall use all reasonable speed and diligence in the processing of applications for reimbursement.

8.2 The Parties agree that time is of the essence in communications seeking supporting documents or requesting records under this agreement. The Parties agree that they shall use all reasonable speed and diligence in responding to requests for records or supporting documents.

9.0 Indemnity.

9.1 The Parties agree that where the County relied upon the certification of the Municipality that such expenses which Municipality sought to have reimbursed from CARES Act funds met the minimum requirements of the CARES Act, and where the Office of the Inspector General, or any other person, official, or department which is charged with the auditing and review of expenditures of CARES Act funds determines that such reimbursement was not permitted under the CARES Act, Municipality agrees to indemnify, reimburse and make whole the County for any funds which the United States Government or its agencies seeks to recoup or collect, either by litigation, or by withholding other federal funds owed to the County. Municipality further agrees to indemnify, reimburse, or make whole the County for any penalties associated with the federal government seeking to recoup the expended CARES Act funds which the County disbursed to Municipality including interest, or any penalty provided by law.

9.2 Municipality agrees to hold County harmless for any evaluation or advice which the County provided to Municipality as to whether the requested reimbursement is a permissible use of the CARES Act funds.

10.0 Term and termination

10.1 Term. This Agreement shall remain in effect until either party provides written notice of termination to the other. Such notice shall be effective 14 days after receipt of the termination.

10.2 Survival of Terms. Those terms relating to the party's obligation to maintain records and provide records, and the Municipality's indemnification of the County shall survive the termination of this Agreement.

11.0 Amendment

11.1 Amendments to this Agreement may be performed with the written consent of the DuPage County Board and Municipal governing board.

12.0 Notices and duplicate copies.

12.1 Written notices required pursuant to this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested or electronic mail:

DuPage County: Daniel J. Cronin,
DuPage County Board Chairman
421 N. County Farm Road
Wheaton, IL 60187

With a copy to:

DuPage County State's Attorney's Office
ATTN: ASA CONOR MCCARTHY
503 N. County Farm Road
Wheaton, IL 60187

Municipality: City of Wheaton

With Copies to: [ADDITIONAL RECIPIENT]

12.2 The Parties agree that this agreement may be entered into using identical counterparts, each of which when executed and delivered to the other party shall constitute

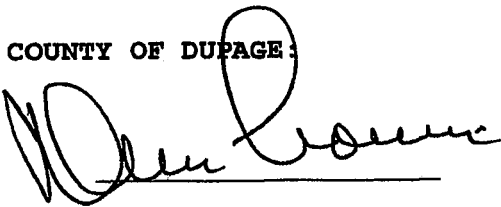
a duplicate original, but all counterparts together shall constitute a single agreement. Upon ratification by the governing board of the respective parties, the parties shall each transmit the signed counterparts of this agreement to the other using the recipients listed above in Section 12.1 of this Agreement. This agreement shall go into effect immediately upon the ratification of the last party to execute this agreement.

[Signature Page to Follow]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, using duplicate counterparts, on the dates listed below.

COUNTY OF DUPAGE:



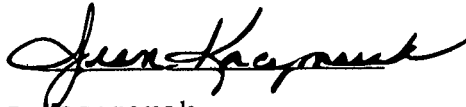
Daniel J. Cronin
DuPage County Board Chairman

City of Wheaton:



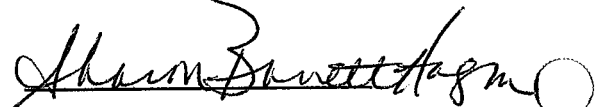
Phillip J. Sues
Mayor, City of Wheaton

Attest:



Jean Kaczmarek
DuPage County Clerk

Attest:



Sharon Barrett-Hagen
City Clerk

Date:

7-14-2020

Date:

8-4-2020