



City of Chicago



O2015-6583

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	9/24/2015
Sponsor(s):	Emanuel (Mayor)
Type:	Ordinance
Title:	Intergovernmental agreement with State of Illinois Department of Natural Resources for Albany Park Flood Control Project
Committee(s) Assignment:	Committee on Budget and Government Operations

BUDG.



OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

September 24, 2015

TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Water Management, I transmit herewith an ordinance authorizing the execution of an intergovernmental agreement with the Illinois Department of Natural Resources regarding a Stormwater Diversion Tunnel.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Mayor

O R D I N A N C E

WHEREAS, the City of Chicago (the "City") is a home rule unit of government under Article VII, Section 6(a) of the Constitution of the State of Illinois, and as such may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City and the State of Illinois, Department of Natural Resources/Office of Water Resources (the "Department") are both legal entities, organized and existing under the laws of the State of Illinois, having among their powers the authority to perform such undertakings as described herein under the "Intergovernmental Cooperation Act," 5 ILCS 220 et seq.; and

WHEREAS, the Department has approved participation in flood control projects to the extent allowed by its statutory authority under the Flood Control Act of 1945, 615 ILCS 15 et seq.; and

WHEREAS, the City, acting through its Department of Water Management ("DWM"), and the Department wish to complete the Albany Park Flood Control Project, hereinafter referred to as the "Project", which includes the construction of a diversion tunnel be constructed 100 feet below grade (roughly following the right of way of Foster Avenue), to take the excess waters during a potential flood and divert them directly into the Chicago River, thereby bypassing the Albany Park neighborhood and reducing the potential for flooding in the Albany Park area as defined in the report, "Economic Justification of Albany Park Stormwater Diversion Tunnel," prepared by the Department and filed with the Illinois General Assembly; and

WHEREAS, the Illinois Environmental Protection Agency has provided, through a separate agreement, up to \$11,000,000 of funds appropriated to itself from the Illinois General Assembly for water resource management projects to the Department to pay for costs of the Project; and

WHEREAS, the Department wishes to make such funds available to the City for costs of construction of the Project; and

WHEREAS, the City and Department have agreed to enter into an intergovernmental agreement to memorialize their respective roles in such an effort; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The above recitals are expressly incorporated in and made part of this ordinance as though fully set forth herein.

SECTION 2. The Commissioner of DWM or his designee (the "Commissioner") is authorized to execute an agreement substantially in the form attached hereto as Exhibit A (the "Agreement"), including indemnification provisions as provided therein, and such other documents as are necessary, between the City and the Department, subject to the approval of the Corporation Counsel of the City as to form and legality.

~~SECTION 3.~~ To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this ordinance.

SECTION 4. This ordinance takes effect upon passage and approval.

EXHIBIT A

Intergovernmental Agreement
(See Attached)

INTERGOVERNMENTAL AGREEMENT
between the
CITY OF CHICAGO
and the
STATE OF ILLINOIS/DEPARTMENT OF NATURAL RESOURCES
for the
ALBANY PARK FLOOD CONTROL PROJECT

Contract Number OWR-337

THIS INTERGOVERNMENTAL AGREEMENT (this "**AGREEMENT**") is made between the City of Chicago, a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois (the "**CITY**"), acting through its Department of Water Management ("**DWM**") and the State of Illinois, Department of Natural Resources/Office of Water Resources (the "**DEPARTMENT**")"

WITNESSETH:

WHEREAS, the CITY and the DEPARTMENT are both legal entities, organized and existing under the laws of the State of Illinois, having among their powers the authority to perform such undertakings as described herein under the "Intergovernmental Cooperation Act," 5 ILCS 220; and

WHEREAS, the DEPARTMENT has approved participation in flood control projects to the extent allowed by its statutory authority under the "Flood Control Act of 1945," 615 ILCS 15; and

WHEREAS, the CITY and the DEPARTMENT wish to complete the Albany Park Flood Control Project, hereinafter referred to as the "**PROJECT**", which includes the construction of a diversion tunnel be constructed 100 feet below grade (roughly following the right of way of Foster Avenue), to take the excess waters during a potential flood and divert them directly into the Chicago River, thereby bypassing the Albany Park neighborhood and reducing the potential for flooding in Albany Park area as defined in the report "Economic Justification of Albany Park Stormwater Diversion Tunnel " prepared by the DEPARTMENT and filed with the Illinois General Assembly; and

WHEREAS, the Illinois Environmental Protection Agency has provided, through a separate agreement, up to \$11,000,000 of funds appropriated to itself from the Illinois General Assembly for water resource management projects to the DEPARTMENT to pay for costs of the PROJECT

WHEREAS, the DEPARTMENT has determined that the execution of this AGREEMENT is subject to the signature requirements of the State Finance Act, 30 ILCS 105/9.02; and

WHEREAS, on _____, 2015 the City Council adopted an ordinance published in the Journal of the Proceedings for said date at pages _____ to _____, which, among other things, authorizes the execution of this Agreement;

WHEREAS, under penalties of perjury, the CITY certifies that 36-6005820 is its correct Federal Taxpayer Identification Number and that the CITY is doing business as a government entity.

NOW THEREFORE, for and in consideration of the benefits to be derived from the completion of the PROJECT, the sufficiency of which is hereby acknowledged, it is agreed between the parties hereto as follows:

PART A. SPECIAL CONDITIONS

1. The recitals set forth are incorporated by reference and made a part hereof, the same constituting the factual basis for this transaction.

2. The DEPARTMENT maximum cost share under this AGREEMENT is \$11,000,000 for construction costs for the PROJECT. The DEPARTMENT'S funding obligation will terminate upon the completion of the PROJECT, when DEPARTMENT'S cost share is expended, or June 30, 2018, whichever comes first. This AGREEMENT is contingent upon and subject to the availability of funds. The DEPARTMENT, at its sole option, may terminate or suspend this contract, in whole or in part, without penalty or further payment being required, if (1) the Illinois General Assembly or the federal funding source fails to make an appropriation sufficient to pay such obligation, or if funds needed are insufficient for any reason, (2) the Governor decreases the DEPARTMENT's funding by reserving some or all of the DEPARTMENT's appropriation(s) pursuant to power delegated to the Governor by the Illinois General Assembly; or (3) the DEPARTMENT determines, in its sole discretion or as directed by the Office of the Governor, that a reduction is necessary or advisable based upon actual or projected budgetary considerations.

3. The DEPARTMENT will not participate in any PROJECT costs incurred by the CITY prior to the full execution of the AGREEMENT.

4. All provisions of this AGREEMENT will be binding upon the successors and assigns of the parties hereto.

5. This AGREEMENT may only be modified, assigned, supplemented or amended by mutual agreement, in writing, by the parties hereto.

6. Attached hereto, marked "ATTACHMENT A", consisting of one page and made part hereof by reference, is a listing of certifications, which must be completed by the CITY.

7. Attached hereto, marked "ATTACHMENT B", consisting of one page and made part hereof by reference, is a certification of taxpayer identification number, which must be completed by the CITY.

PART B. DEPARTMENT OF NATURAL RESOURCES

1. [The DEPARTMENT will review and approve, in writing, the final construction bid documents for the PROJECT and will provide such written approval to the CITY, prior to the CITY advertising for bids.] Further, the DEPARTMENT reserves the right to review all bids received and approve the acceptance of a bid or the rejection thereof, and the right to make random inspections during the construction of the PROJECT.

2. The DEPARTMENT will submit required documentation for the DEPARTMENT's Comprehensive Environmental Review Process and acquire all approvals before the CITY commences advertising for bids for the PROJECT.

3. The DEPARTMENT's maximum cost share in this PROJECT is \$11,000,000. The CITY will be responsible for all costs in excess of the DEPARTMENT's share. The DEPARTMENT will make payments to the CITY as defined herein, for PROJECT costs based on billings furnished by the CITY to the DEPARTMENT with documentation in the form of a "Report of Work Completed", approved by the CITY, certifying that the work covered under such billings has been completed, and is in connection with the PROJECT. The DEPARTMENT will review and give final approval of submitted costs prior to payment.

4. The DEPARTMENT will make periodic inspections subsequent to the completion of the PROJECT to ensure that maintenance is being performed in accordance with Part C.10 of this AGREEMENT. Should the DEPARTMENT determine that a maintenance problem exists, a joint inspection will be scheduled and made by the CITY and the DEPARTMENT. Failure of the CITY to properly maintain the PROJECT, as indicated by a written report of such inspection, will permit the DEPARTMENT, upon thirty (30) days written notice and continued failure of the CITY to perform the necessary maintenance work, to enter upon any of the PROJECT property rights for the purpose of performing such maintenance work. In this instance, the CITY will reimburse the DEPARTMENT for any and all costs that may be incurred by the DEPARTMENT in connection therewith.

PART C. CITY OF CHICAGO

1. The CITY will prepare, or cause to be prepared, final construction bid documents for the PROJECT, advertise for bids; make the contract award; and shall supervise the construction for the PROJECT.

2. The CITY will be responsible for all constructions costs above the DEPARTMENT's \$11,000,000 maximum construction cost share. The CITY will document through resolution provided to the DEPARTMENT, that it has sufficient funds to complete the PROJECT before awarding the contract.

3. All contracts let by the CITY for construction of the PROJECT will (i) require that the contractor abide by the provisions of the "Prevailing Wage Act," 820 ILCS 130; and (ii) require that the DEPARTMENT be included as a named insured by said contractor's commercial general liability insurance policy.

4. The CITY will acquire in the name of the CITY, without cost to the DEPARTMENT, all privately owned property rights required for the construction, operation and maintenance of the PROJECT. The CITY will provide the DEPARTMENT written certification of acquisition of all property rights shown in the plans. It is understood that any required PROJECT property rights now owned by a unit of local government or school district may remain in the name of such unit of local government or school district. However, the CITY must obtain a permanent right of entry on any such property rights that will allow for the periodic inspection of the PROJECT by the DEPARTMENT. All expenses associated with the property rights acquisition such as title commitments, attorney fees, survey costs, preparation of legal descriptions and plat drawings, appraisal costs, recording costs, and any other such incidental expenses will be borne by the CITY.

5. The CITY will be required to abide by all parts of the State of Illinois Wetland Mitigation Policy, as described in Article 3 of the Illinois Interagency Wetlands Policy Act of 1989, 20 ILCS 830/3-1 et seq., and to bear sole responsibility for all costs incurred in complying with said policy.

6. The City will obtain all federal and state permits, in the name of the CITY as may be necessary to construct and maintain the PROJECT. Execution of this agreement does not relieve the CITY from obtaining any permit required by the DEPARTMENT. The CITY will be responsible to pay any and all permit fees that may be required for the issuance of a permit for the PROJECT.

7. The CITY hereby grants to the DEPARTMENT, or its assignees, the right to enter upon any such property rights for construction inspection and in the event the provisions of Part B.4 herein are invoked by the DEPARTMENT for failure of the CITY to operate and maintain the PROJECT as described in Part C.10.

8. The CITY will be responsible to abide by all federal, state and local laws, ordinances, rules and regulations during construction, operation and maintenance of the PROJECT and to satisfy all state environmental laws, regulations and executive orders that apply because of state funds being used on the PROJECT.

9. The CITY will be responsible for, without costs to the DEPARTMENT, all utility alterations or relocations and for all fence removal and/or replacement required as a result of the PROJECT construction, including any utility and fence related work shown on the plans. Utilities include, but are not limited to, electrical, cable television, and communication lines and oil, gas, sewer, and water pipelines.

10. Upon completion of the PROJECT, and at no cost to the DEPARTMENT, the CITY will assume responsibility for the operation, maintenance, repair, and rehabilitation of the PROJECT, to ensure that the PROJECT continues to serve its intended purpose. Maintenance will include, but not be limited to, dam safety inspections and repairs, keeping the PROJECT area clear of all trash and other debris, or any other matter that might tend to impede proper and free flow of water and ensuring grass covered areas are mowed to a height of six inches or less at least twice each year. On areas that cannot be mowed, measures will be taken annually to eliminate unwanted woody growth larger than one-half inch in diameter. Measures will also be taken as conditions require, to correct any substantial erosion problems within the PROJECT area.

11. The CITY will maintain, for a minimum of three 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 paid in conjunction with this AGREEMENT. This AGREEMENT and all books, records, and supporting documents related to the PROJECT will be made available for review and audit by the Illinois Auditor General and/or the DEPARTMENT. The CITY agrees to cooperate fully with any audit conducted by the Auditor General and/or the DEPARTMENT and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this Part, C.8, will establish a presumption in favor of the DEPARTMENT for the recovery of any funds paid by the DEPARTMENT under this AGREEMENT for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

12. The CITY will maintain eligibility in the National Flood Insurance Program. The CITY will continue to adopt and enforce required ordinances, satisfactory to the Federal Emergency Management Agency and the DEPARTMENT, relative to the regulation of development in floodplains under the jurisdiction and control of the CITY. At no cost to the DEPARTMENT, the CITY will be responsible for updating any flood insurance studies related to the PROJECT.

13. The CITY will hold and save the DEPARTMENT and any of its duly appointed agents and employees harmless against any loss, damage, cause of action, fine or judgment, including all cost connected therewith, such as attorney and witness fees, filing fees and any other expenses incident thereto, that may be incurred by reason of personal injury, death, property damage and any and all other claims or suits of whatsoever nature that might arise or result from or as a consequence of the location, existence, operation and maintenance of the PROJECT. The CITY will further hold the DEPARTMENT harmless in regard to the handling and disposal of any hazardous or special wastes that might be discovered on any of the PROJECT property rights. The CITY will not be responsible to hold the DEPARTMENT harmless against any loss, damages, cost or expenses arising out of negligent acts or omissions by the DEPARTMENT or its agents or employees.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year written, and represent that the signatories below are duly authorized to execute this ALBANY PARK FLOOD CONTROL PROJECT INTERGOVERNMENTAL AGREEMENT on behalf of their respective bodies, and that the effective date of this AGREEMENT is the date approved and executed by the Director of the DEPARTMENT.

STATE OF ILLINOIS

RECOMMENDED:

APPROVED:

Daniel A. Injerd, Director
Office of Water Resources

Wayne Rosenthal, Director
Department of Natural Resources

Date: _____

Date: _____

APPROVED:

APPROVED:

Doug Florence, Chief Fiscal Officer
Department of Natural Resources

Brent Krebs, Chief Legal Counsel
Department of Natural Resources

Date: _____

Date: _____

CITY OF CHICAGO

DEPARTMENT OF WATER MANAGEMENT

ATTEST:

APPROVED:

Susana A. Mendoza, City Clerk

Thomas H. Powers, Commissioner

Date: _____

STANDARD CERTIFICATIONS FOR INTERGOVERNMENTAL AGREEMENTS

Public Agency acknowledges and agrees that compliance with this section and each subsection for the term of the contract and any renewals is a material requirement and condition of this contract. By executing this contract Public Agency certifies compliance with this section and each subsection and is under a continuing obligation to remain in compliance and report any non-compliance.

If this contract extends over multiple fiscal years including the initial term and all renewals, Public Agency shall confirm compliance with this section in the manner and format determined by the State by the date specified by the State and in no event later than July 1 of each year that this contract remains in effect.

If the Parties determine that any certification in this section is not applicable to this contract it may be stricken without affecting the remaining subsections.

1. As part of each certification, Public Agency acknowledges and agrees that should Public Agency provide false information, or fail to be or remain in compliance with the Standard Certification requirements, one or more of the following sanctions will apply:

- the contract may be void by operation of law,
- the State may void the contract, and
- the Public Agency or its agents may be subject to one or more of the following: suspension, debarment, denial of payment, civil fine, or criminal penalty.

Identifying a sanction or failing to identify a sanction in relation to any of the specific certifications does not waive imposition of other sanctions or preclude application of sanctions not specifically identified.

2. Public Agency certifies it and its employees will comply with applicable provisions of the U.S. Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and applicable rules in performance under this contract.
3. If Public Agency employs 25 or more employees and this contract is worth more than \$5000, Public Agency certifies it will provide a drug free workplace pursuant to the Drug Free Workplace Act. (30 ILCS 580)
4. Public Agency certifies that the Public Agency is not participating or shall not participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the U.S. Department of Commerce. This applies to contracts that exceed \$10,000 (30 ILCS 582).
5. Public Agency certifies it complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, including equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies (775 ILCS 5/2-105).
6. Public Agency certifies it does not pay dues to or reimburse or subsidize payments by its employees for any dues or fees to any "discriminatory club" (775 ILCS 25/2).
7. Public Agency warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits Contractors and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.

8. Public Agency certifies that information technology, including electronic information, software, systems and equipment, developed or provided under this contract will comply with the applicable requirements of the Illinois Information Technology Accessibility Act Standards as published at www.dhs.state.il.us/iitaa. (30 ILCS 587)

AGENCY

SIGNATURE

PRINTED NAME

TITLE

TAXPAYER IDENTIFICATION NUMBER

I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).
 - *If you are an individual, enter your name and SSN as it appears on your Social Security Card.*
 - *If you are a sole proprietor, enter the owner's name on the name line followed by the name of the business and the owner's SSN or EIN.*
 - *If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's name on the name line and the d/b/a on the business name line and enter the owner's SSN or EIN.*
 - *If the LLC is a corporation or partnership, enter the entity's business name and EIN and for corporations, attach IRS acceptance letter (CP261 or CP277).*
 - *For all other entities, enter the name of the entity as used to apply for the entity's EIN and the EIN.*

Name: _____

Business Name: _____

Taxpayer Identification Number:
Social Security Number _____
or
Employer Identification Number _____

Legal Status (*check one*):

- | | |
|---|---|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Governmental |
| <input type="checkbox"/> Sole Proprietor | <input type="checkbox"/> Nonresident alien |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Estate or trust |
| <input type="checkbox"/> Legal Services Corporation | <input type="checkbox"/> Pharmacy (Non-Corp.) |
| <input type="checkbox"/> Tax-exempt | <input type="checkbox"/> Pharmacy/Funeral Home/Cemetery (Corp.) |
| <input type="checkbox"/> Corporation providing or billing medical and/or health care services | <input type="checkbox"/> Limited Liability Company (select applicable tax classification) |
| <input type="checkbox"/> Corporation NOT providing or billing medical and/or health care services | <input type="checkbox"/> D = disregarded entity |
| | <input type="checkbox"/> C = corporation |
| | <input type="checkbox"/> P = partnership |

Signature: _____

Date: _____