INTERGOVERNMENTAL AGREEMENT REGARDING LEVIES AND MAINTENANCE ACTIVITIES RELATED TO THE MORGAN CREEK DRAINAGE DISTRICT WITHIN THE VILLAGE OF OSWEGO

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is by and between the Morgan Creek Drainage District, a body politic and corporate (“Drainage District”) and the Village of Oswego (“Village”), located in Kendall County, Illinois.

WITNESSETH:

WHEREAS, the Constitution of the State of Illinois of 1970, Article VIII, Section 10, provides that units of local government may contract or otherwise associate among themselves to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law or by ordinance and may use their credit, revenues, and other resources to pay costs related to intergovernmental activities; and

WHEREAS, the Drainage District and the Village (the “parties”) are units of local government within the meaning of Article VII, Section 1 of the Illinois Constitution of 1970 who are authorized to enter into intergovernmental agreements pursuant to the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq. and the Illinois Drainage Code, 70 ILCS 605/3-24; and

WHEREAS, the Village is a Home Rule Unit of government pursuant to and by virtue of the Constitution of the State of Illinois; and

WHEREAS, there is currently pending in the Circuit Court of Kendall County Petitions filed by the Drainage District to (i) annex land into the boundaries of the district, (ii) establish and levy Special Assessment, (iii) to establish and levy annual maintenance fee, (iv) to establish the right-of-way of the District, and (v) to establish the boundaries of the District in Case No. 14 MC 1 (the “Court Case”).
WHEREAS, upon approval by the Court, Drainage Districts are empowered to cooperate and enter into agreements with units of local government for the formulation of plans and for construction, operations and maintenance of any and all improvements for flood control, drainage, conservation, regulation, development, utilization and disposal of water and water resources or other purposes of the Act. Such agreements may provide for joint understandings for said purposes and for contributions between the parties to execute any work agreed upon to carry out the provisions of the Act pursuant to 70 ILCS 605/4-27; and

WHEREAS, the Village and Drainage District wish to enter into a mutually beneficial agreement, so that the lands and waterways within the subject Drainage District may be protected and enhanced for the citizens of Kendall County; and

WHEREAS, the Village has in effect certain Ordinances, standards and regulations with respect to Stormwater Management (the “Village Storm Water Regulations”).

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereafter set forth, the parties agree as follows:

Section I – Incorporation of Recitals

1. The foregoing preambles are hereby incorporated into this Agreement as if fully restated in this paragraph 1.

Section II – Cooperation in Maintenance of Drainage:

2. The Parties agree that a significant portion of the lands within the boundaries of the Drainage District (as depicted on Exhibit A to be attached hereto and incorporated herein after determination in the Court Case) are also within the corporate limits of the Village of Oswego (as depicted on Exhibit B attached hereto and incorporated herein). Exhibit B shall automatically be amended when additional properties are annexed to the Village, the Village shall provide notice of
such annexations to the Drainage District. As such, the Village must endeavor to provide
governance to the lands within its boundaries in accordance with the Illinois Municipal Code 65
ILCS 5/1-1-1 et seq. However, this Agreement is being entered into in an effort by both parties to
cooperate with each other, while not seeking to diminish the rights of any party to meet its statutory
objectives.

3. The parties agree that the Drainage District has a duty to operate and maintain its
facilities to provide adequate drainage in a manner consistent with the Illinois Drainage Code 70
ILCS 605/1-1 et. Deq., and that the Village has in effect the Village Stormwater Regulations to
manage stormwater to its point of discharge into the facilities of the Drainage District.

4. The Parties agree that the Drainage District has such right-of-way along and
adjacent to Morgan Creek as determined by the Court in the Court Case for the purpose of access to
and maintenance of the Morgan Creek channel. The Parties agree that the right-of-way was acquired
at or around the time of the original formation of the Drainage District.

5. The parties agree that the Village is a Home-Rule municipal corporation which is
exercising storm drainage powers within the boundaries of the Drainage District.

6. The Village and the Drainage District shall make every effort to cooperate in the
planning and execution of maintenance / construction activities that will occur within the corporate
limits of the Village that will impact the facilities of the Drainage District. The Drainage District
agrees that it will accept into its facilities all stormwater discharge in conformance with the Village
Stormwater Regulations and other applicable laws.

7. This Agreement shall control any and all construction / maintenance to take place on
Drainage District right-of-ways existing upon lands within the corporate limits of the Village.
8. Pursuant to 70 ILCS 605/4-15.1, and consistent with the Village Stormwater Regulations, the Drainage District shall use all practicable means and measures, including consideration of alternative methods of providing the necessary drainage, to protect such environmental values as trees and fish and wildlife habitat, and to avoid erosion and pollution of the land, water or air. Further, the Drainage District shall provide for the Village’s consideration its strategies and approaches that the Drainage District will consider as best management practices for storm water management within the Drainage District.

9. Whenever the Drainage District is planning any maintenance activities within the Village, it shall provide such construction / maintenance plans to the Village Engineer forty-five (45) days in advance of such planned activities so that the Village has time to determine the effect the planned activities will have upon lands within the Village. The Village shall not unreasonably withhold approval of a proposed maintenance or construction plan.

10. If the Village determines that the maintenance / construction plans of the Drainage District will prohibit the lawful discharge of stormwater in the Morgan Creek channel, it shall communicate such concern to the Drainage District within thirty (30) days of receiving such plans. At that time the two (2) parties shall endeavor to determine a mutually beneficial plan for such work to progress. No work shall occur until the parties have reached an agreement or it has been ordered under Paragraph 13 of Section II below.

11. Whenever the Village is planning any maintenance / construction activities that will take place on the established Drainage District right-of-ways, it too shall provide such construction / maintenance plans to the Drainage District forty-five (45) days in advance of such activities so that the Drainage District has time to determine if such plans will have a detrimental effect upon proper
drainage. The Drainage District shall not unreasonably withhold approval of a proposed maintenance or construction plan.

12. If the Drainage District determines that the maintenance / construction plans on Drainage District right of way will have a detrimental effect upon drainage, it shall communicate such concern to the Village within thirty (30) days of receiving such plans. At that time the two (2) parties shall endeavor to determine a mutually beneficial plan for such work to progress. No work shall occur until the parties have reached an agreement or it has been ordered under Paragraph 13 of Section II below. It is agreed that accepting lawfully discharged stormwater will not have a detrimental effect upon drainage.

13. Should the Village and the Drainage District be unable to agree on the method of work to be completed and / or the resulting effect on the natural resources found within such lands, and / or the resulting effect upon proper drainage, they shall be authorized to bring the matter before the Circuit Court pursuant to 70 ILCS 605/4-26.

14. In the event of emergency circumstances Village and / or Drainage District may undertake those acts and complete that work necessary to respond to the emergency conditions without prior notification to the other party. The party undertaking emergency action shall notify the other party as soon as practical via phone, e-mail, physical meeting or other means of rapid communication, and shall provide information about the means, methods, and undertakings of said party in responding to the emergency circumstances.
Section III – Entry upon Lands within the Village:

15. The Drainage District shall be allowed to enter upon and utilize the right-of-ways that have been approved by the Court. Any land disturbance by Drainage District activities shall be promptly restored as nearly as practicable to its former condition upon project completion.

16. Prior to entry upon private property to perform maintenance activities the Drainage District shall endeavor to provide no less than the forty-eight (48) hours notice to the private property owners and shall provide the purpose for such entry.

Section IV – Drainage District Duties and Obligations:

17. Upon determination of the right-of-way by the Court, the Drainage District within a reasonable time shall prepare notices to the Village and each land owner within the Drainage District upon which Drainage District right-of-way exists to alert the property owner and all future owners to the existence of said right-of-way. Said notices shall be recorded with the Recorder of Kendall County. Thereafter, notices shall be prepared and recorded for all properties within the Village within twenty four (24) months of the execution and approval of this Agreement. Subsequently, said notices shall be prepared and recorded for all remaining properties wherein Drainage District right-of-way exists within thirty-six (36) months of the execution and approval of this Agreement. The right-of-way shall be in reasonable conformance with Exhibit C with respect to encroachments that exist as of the date of this agreement.

18. The Drainage District shall provide the Village with a map depicting its boundaries within thirty (30) days of a boundary determination in the Court Case and shall thereafter prepare and record a legal description encompassing the boundaries of the Drainage District within seventy-two (72) months of the execution and approval of this Agreement. The Drainage District shall prepare and adopt written rules and regulations governing construction activities within the Morgan
Creek Channel operated by the Drainage District as well as governing compatible use of the Drainage District right-of-way. Said rules and regulations shall be adopted by the Drainage District within twenty-four (24) months of the execution and approval of this Agreement. The Rules adopted by the District shall not be inconsistent with the Village Regulations or any State, County or other law or regulation.

19. The Drainage District shall adopt written by-laws governing the operation and administration of the Drainage District within twelve (12) months of the execution and approval of this Agreement.

20. The Drainage District shall use best efforts to contact all landowners within the Village upon which Drainage District right-of-way already exists. The landowners will be invited to a public meeting at which time the Drainage District will inform the landowners about the right-of-way, channel floodwater flow issues, compatible uses of the Drainage District right-of-way, and likely impacts of future Drainage District maintenance activities upon their lands. The meeting shall take place within sixty (60) days of the execution and approval of this Agreement.

21. The Drainage District shall use best efforts to spend approximately seventy-five (75) percent or more of its annual maintenance assessment upon actual channel maintenance work that provides drainage benefits to the lands and citizens within the Drainage District.

22. In the event that the Illinois Environmental Protection Agency requires the Drainage District to enter into the MS4 program for the region surrounding the Village the Drainage District shall coordinate activities with the Village to provide for jointly beneficial actions so as to reduce the costs of the MS4 program for the citizens of the Village.

23. The Drainage District acknowledges its obligation to obtain appropriate insurance coverage for the benefit of Drainage District, Drainage District’s officers, employees and agents and
property owners when working on their property. The Village is not responsible for providing any insurance coverage for the benefit of Drainage District, Drainage District’s officers, employees and agents or property owners.

24. The Drainage District agrees to comply with all applicable federal, state and local laws and regulatory requirements and to secure such licenses as may be required for its employees and / or agents and to conduct business in the state, municipality, county and location. Such obligation includes, but is not limited to, environmental laws, civil rights laws, prevailing wage and labor laws.

25. The Drainage District shall notify J.U.L.I.E. for public utility locations at least 48 hours prior to commencement of maintenance and / or construction activities so that they any locate and stake out any buried services. Any services or utilities damaged by the Drainage District will have to be replaced and / or repaired at the Drainage District’s expense.

Section V – Village Duties and Obligations:

26. The Village will endeavor to notify the Drainage District whenever lands not already in an approved subdivision or Planned Unit Development within the Drainage District and also under the jurisdiction of the Village are designated for conversion from cropland to some other type of urban use. Said notifications shall occur not less than thirty (30) days prior the approval of said conversions by the Village.

27. After notification by the District of the District’s boundaries as established by the Court Case, the Village shall not authorize man made obstructions within the right-of-way of the Drainage District. Sidewalks, bike paths and other similar improvements that are compatible with stormwater runoff flow and channel maintenance activities shall not be considered obstructions to flow or obstacles for maintenance. The Drainage District acknowledges that many such obstructions
exist within the Right-of-Way and that the Village has no obligation to remove or mitigate such obstructions. The District shall work with all property owners in the Village where obstructions already exist to allow the obstructions to remain whenever practical.

28. The Village shall endeavor to require subdividers and developers of lands that contain Drainage District right-of-way to modify the Morgan Creek Channel to accommodate urbanization. Such modifications shall be in conformance with the typical Section set forth on Exhibit ____ (to be prepared by the District).
29. The Village shall require construction of stormwater management basins or facilities as and when required by the Village Regulations. Such basins or facilities shall provide storage volume to store excess stormwater runoff from not less than the 100 year return period storm event under developed conditions. Such basins or facilities shall release excess stormwater runoff at a rate not greater than 0.04 cubic feet per second per acre for the two-year frequency storm and 0.15 feet per second per acre for the 100 year storm. In no case shall the allowable release rate from the site exceed the existing release rate.

30. The Village shall submit all Preliminary Plats, Final Plats, Site Development Plans, Subdivision Infrastructure Construction Plans or other similar development documents for lands which contain Drainage District right-of-way to the Drainage District for comments and suggestions. The Drainage District shall review the documents for detrimental effects upon proper drainage or upon Drainage District facilities. The Drainage District and the Village shall work together in an attempt to alleviate Drainage District concerns. Development documents that do not involve Drainage District right-of-way are not subject to review by the Drainage District.

Section VI – Withdrawal of Objections:

31. In consideration of the obligations undertaken in this agreement, the Village of Oswego shall withdraw its objections filed on __________, 2016 in the matter of the Morgan Creek Drainage District (No. 2014 MC 1), pending in the Twenty Third Judicial Circuit, Kendall County, Illinois. Further, the Village shall not object to the collection of a one-time special assessment upon Village owned lands within the boundaries and to the collection of a yearly Maintenance Assessment to Village owned lands within the boundaries of the Drainage District provided that such assessments are approved by the Court. The funds collected by the Drainage
District shall be used to pay the cost of repair, construction, maintenance and operation of the system as approved by the Court. However, to the extent permitted by law, the Village reserves the right to raise any future objections to Maintenance Assessment rates requested or to attempts to modify, enlarge, or acquire further right-of-ways within the Village. The Village also to the extent permitted by law reserves the right to file any necessary litigation or otherwise object to any future attempts to exercise Eminent Domain over property within the Village. [NOTE: Need to verify this.]

Section V – Miscellaneous Provisions

32. This Agreement shall continue for a period of two (2) years after the last party’s execution of this Agreement and will automatically renew for successive additional one (1) year terms unless terminated. Any party may terminate this intergovernmental agreement for cause by providing one-hundred-twenty (120) calendar days advance written notice to the other party. [NOTE: need to discuss.]

33. This Agreement and the rights of the parties hereunder may not be assigned without consent (except by operation of law), and the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties and their respective successors and assignees, any rights, remedies, obligations or liabilities under or by reason of such agreements.

34. The Drainage District shall indemnify, hold harmless and defend with counsel of the Village’s own choosing, the Village, its officials, officers, employees, including their past, present and future board members, elected officials and agents (collectively the “Village”) from and against all liability, claims, suits, demands, proceedings and actions, including costs, reasonable fees and expense of defense, arising from any loss, damage, injury, death, or loss or damage to property
(collectively, the “Claims”), to the extent such Claims result from the performance of work by the Drainage District or those Claims are due to the Drainage District’s failure to adequately perform its obligations pursuant to this Agreement and / or any act or omission, neglect, willful acts, errors or misconduct of the Drainage District in its performance under this Agreement.

Nothing contained herein shall be construed as prohibiting the Village from defending through the selection and use of its own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. Village’s participation in its defense shall not remove Drainage District’s duty to indemnify, defend, and hold the Village harmless, as set forth above. The Village does not waive its defenses or immunities under the Local Government and Governmental Employees Tort Immunity Act (745 ILCS 10/1 et seq.), or similar law, by reason of indemnification or insurance. Indemnification shall survive the termination of this contract.

35. The Village shall indemnify, hold harmless and defend the Drainage District, its officials, officers, employees, including their past, present and future Commission members, and agents (collectively the “Drainage District”) from and against all liability, claims, suits, demands, proceedings and actions, including costs, reasonable fees and expense of defense, arising from any loss, damage, injury, death, or loss or damage to property (collectively, the “Claims”), to the extent such Claims result from the performance of work by the Village on the Drainage District right-of-ways or those Claims are due to any act or omission, neglect, willful acts, errors or misconduct of the Village in its performance under this Agreement.

Nothing contained herein shall be construed as prohibiting the Drainage District from defending through the selection and use of its own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. Drainage District’s participation in its defense shall not remove Village’s duty to indemnify, defend, and hold the Drainage District
harmless, as set forth above. The Drainage District does not waive its defenses or immunities under the Local Governmental Employees Tort Immunity Act (745 ILCS 10/1 et seq.), or similar law, by reason of indemnification or insurance. Indemnification shall survive the termination of this contract.
36. Any notice required or permitted to be given pursuant to this Agreement shall be duly given if sent by certified mail or courier service and received. As such, all notices required or permitted hereunder shall be in writing and may be given by depositing the same in the United States Mail, addressed to the party to be notified, postage prepaid and certified with the return receipt requested.

*If to the Drainage District:*
Mr. Kyle Emkes, Esq.
Maatuka, Al-Heeti, Dorantes, Emkes LLC
303 S Mattis Avenue, Suite 201
Champaign, Illinois 61821-3070

*If to the Village:*
Village of Oswego
100 Parkers Mill
Oswego, IL 60543

*Attn: Public Works Director*

*With a Copy to:*
Village of Oswego
100 Parkers Mill
Oswego, IL 60543
*Attn: Village Administrator*

37. This Agreement represents the entire Agreement between the parties and there are no other promises or conditions in any other Agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties and may not be modified except in writing acknowledged by both parties.

38. This Agreement shall be interpreted and enforced under the laws of the State of Illinois. Any legal proceeding related to enforcement of this Agreement shall be brought in the Circuit Court of Kendall County, Illinois. If any provision of this Agreement shall be declared or found invalid, illegal or unenforceable by a Court of competent jurisdiction, such provision shall, to the extent possible, be modified by the Court in such manner as to be valid, legal and enforceable so as to most nearly retain the intent of the parties, and, if such modification is not possible, such provision shall be severed from this Agreement, and in either case the validity, legality, and
enforceability of the remaining provisions of this Agreement shall not in any way be affected thereby.

39. This Agreement may be executed in counterparts (including facsimile signatures), each of which shall be deemed to be an original and both of which shall constitute one and the same Agreement.

40. This Agreement shall be submitted for approval to the Circuit Court of the Twenty Third Judicial Circuit, Kendall County, Illinois, and upon approval thereof shall be binding upon the parties hereto, their successors and assigns.

The Drainage District and the Village each hereby warrant and represent that their respective signatures set for below have been, and are on the date of this Agreement, duly authorized by all necessary and appropriate corporate and / or governmental action to execute this Agreement;

IN WITNESS WHEREOF, the parties hereto have caused this Intergovernmental Agreement to be executed by their duly authorized officers on the date listed below.

Morgan Creek Drainage District  
Village of Oswego

By: ____________________________  By: ____________________________
Commissioner  
President, Board of Trustees

Attest:

Commissioner

Commissioner

Village Clerk