

RESOLUTION NO. 20-010

A Resolution Authorizing the Execution of an Intergovernmental Agreement with the Fox Valley Park District

WHEREAS, Article 7, Section 10 of the Illinois Constitution authorizes units of local government to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law or ordinance; and,

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/3, provides that any power or powers, privileges, functions, or authority exercised or which may be exercised by a public agency, may be exercised, combined, transferred, and enjoyed jointly with any other public agency of the State, except where it is specifically prohibited by law; and,

WHEREAS, the Village of Montgomery is an Illinois municipal corporation operating pursuant to the provisions of the Illinois Municipal Code, 65 ILCS 5/1-1-1 et seq.; and,

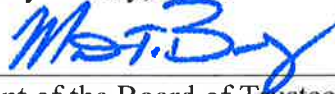
WHEREAS, the Fox Valley Park District is an Illinois park district operating pursuant to the provisions of the Illinois Park District Code, 70 ILCS 1205/et seq.; and,

WHEREAS, the Village and the Park District desire to enter into an intergovernmental agreement with regard to construction and maintenance responsibilities with regard to the installation of a bike path.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Montgomery, Kane County, Illinois, as follows:

1. The Intergovernmental Agreement attached hereto as **Exhibit A** is hereby approved.
2. That the Village President and Village Clerk are hereby authorized to execute said agreement on behalf of the Village of Montgomery.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Montgomery, Kane and Kendall Counties, this 11th day of May, 2020.




President of the Board of Trustees of the Village of Montgomery, Kane and Kendall Counties, Illinois

AYES: _____
NAYS: _____
ABSENT: _____



ATTEST: _____
Clerk, Village of Montgomery



**INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF
MONTGOMERY AND THE FOX VALLEY PARK DISTRICT**

This Intergovernmental Agreement (“Agreement”) is made this _____ day of _____, 2020 by and between the Fox Valley Park District, a park district organized and existing under the Illinois Park District Code (70 ILCS 1205/1 *et seq.*) (hereinafter “FVPD”), and the Village of Montgomery, a municipal corporation organized and existing under the Illinois Municipal Code (65 ILCS 5/ *et seq.*) (hereinafter the “Village”) (as may be collectively referred to as “Parties”).

WITNESSETH

WHEREAS, the Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*) and the intergovernmental cooperation provision of Article VII, Section 10 of the Illinois Constitution of 1970, permit the Parties to jointly exercise, combine, or transfer any power or function in any manner not prohibited by law, and pursuant thereto, the Parties wish to work cooperatively in fulfilling the terms of this Agreement; and,

WHEREAS, non-motorized modes of travel are a critical element in developing regional and local transportation systems; and,

WHEREAS, the Parties desire to encourage bicycle and pedestrian facilities as viable transportation options that contribute to the overall health and safety of residents and visitors of the community; and,

WHEREAS, the Village has adopted a Sidewalk and Bike Path Installation Plan (“Plan”) which establishes a five-year phased plan for the installation of sidewalks and bicycle paths throughout the Village in order to eliminate gaps in connectivity; and,

WHEREAS, the proposed path (“Path”) constitutes a portion of the Plan and is approximately 2,380 feet in length and will provide connectivity from Simpson Parkway (Foxmoor Subdivision) to the Stuart Sports Complex; and,

WHEREAS, the Path and was identified as an area of high priority pursuant to the Plan in order to provide greater connectivity throughout the Village; and,

WHEREAS, the Path, or portions thereof, are within the respective jurisdiction of the Parties; and,

WHEREAS, it is in the best interests of the Parties to enter into this Agreement to delineate certain responsibilities with regard to the plan approval, construction, maintenance, restoration, use, and related responsibilities with regard to the Path.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and stipulations contained in this agreement, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

SECTION 1: INCORPORATION OF RECITALS

The foregoing recitals are incorporated by reference as though fully set forth herein.

SECTION 2: USE AND OPERATION OF PATH

A. License. FVPD grants to the Village the non-exclusive right and privilege to use certain portions of its property, as more specifically depicted on the attached **Exhibit A** (“Property”), for the uses and purposes set forth in this Agreement. FVPD further states that to the extent that any portion of the Property has been leased for agricultural use, that said leases contemplate and allow for the Village’s construction and operation of the Path as set forth herein.

B. Open to Public Use. Upon and after completion of the Path, the public shall have the right to use the Path for public purposes, including pedestrian and bicycle uses, in accordance with the Village’s generally applicable ordinances and policies.

SECTION 3: CONSTRUCTION AND SCOPE OF WORK

A. Construction. The Project may include the construction of a shared use path, sidewalk, and all other ancillary work. Subject to the terms of this Agreement, the Village shall be responsible for the design, engineering, permitting, contractor and engineer selection, construction, bidding, and management of the of the Project. The Village shall bear all costs and expenses with regard to the foregoing.

B. Continued Access. During construction of the Project, the Village shall work with FVPD so as to not impede access to FVPD facilities to the greatest extent possible.

SECTION 3: MAINTAINENCE AND RESTORATION

A. Village Responsibilities. After completion of the Project, the Village shall maintain responsibility for: a) closure during times of unsafe conditions; b) removal of debris and/or cleanup; c) tree and brush removal along the Path,; d) maintenance/repair/replacement of asphalt, concrete or other path surfaces and shoulders thereof; e) determining the extent to which snow removal and/or de-icing operations are required and completing such operations to the extent determined to be appropriate; and f) such other maintenance, repair, replacement as the Village shall determine necessary to ensure the Path’s availability for safe use by the public.

B. FVPD Responsibilities. FVPD hereby grants to the Village a license for the continuous access to the Property for the Village’s performance and completion of the Project, including the completion of any restoration associated thereto, as well as for the performance of all Village responsibilities set forth in the above Section 3(A). FVPD, at its sole cost and expense, shall be responsible for providing mowing services for areas adjacent to the Path.

SECTION 4: MISCELLANEOUS PROVISIONS

A. Indemnification. FVPD shall, to the extent allowed by law, indemnify, hold harmless, and defend the VILLAGE, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and action, including costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with, FVPD's negligent or willful acts, errors, or omissions in its performance under this Agreement to the extent permitted by law. FVPD does not hereby waive any defenses or immunity available with respect to third parties.

The Village shall indemnify, hold harmless and defend FVPD, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and action, including costs, fees and expense of defense, arising from, growing out of, or related to, and loss or damage to property resulting from, or connected with, the Village's negligent or willful acts, errors or omissions in its performance under this Agreement to the extent permitted by law. The Village does not hereby waive any defenses or immunity available to it with respect to third parties.

Each Party shall maintain liability insurance naming the other as an additional insured.

B. Entire Agreement. This represents the entire Agreement between FVPD and the Village with respect to the Project, and supersedes all previous communication or understanding whether oral or written.

C. Notices. Any notice required hereunder shall be deemed properly given to either FVPD or the Village to be notified at the time it is personally delivered or mailed by certified mail, return receipt requested, to the respective addresses below. The address of FVPD and the VILLAGE is as specified below; either FVPD or the Village may change its address for receiving notices by giving notices thereof in compliance with the terms of this subsection.

If to Village: 200 N. River Street
Montgomery, IL 60538
Attn: Village Clerk

With copy to: Mickey, Wilson, Weiler, Renzi, Lenert & Julien,
P.C.
140 S. Municipal Dr.
Sugar Grove, IL 60554

If to FVPD: _____

With copy to: _____

D. Force Majeure. Neither FVPD nor the Village shall be liable for any delay or non-performance of their obligations caused by any contingency beyond their control, including but not limited to, Acts of God, war, civil unrest, strikes, walkouts, fires, natural disasters, or any federal, state, or local declaration of emergency.

E. Cooperation. The Parties hereto agree to and shall mutually cooperate in good faith in the implementation of this Agreement and the successful completion of the contemplated improvements which collectively comprise the Project.

F. Compliance with Laws. The Project will be designed and constructed in accordance with all applicable laws.

G. Time of the Essence. Time is of the essence in the performance of this Agreement.

H. Authority to Execute. Each person executing this Agreement warrants and represents to the Parties (i) that he or she has the full and complete right, power and authority to execute this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement on behalf of the Party on whose behalf he or she is executing; and (ii) that all legal actions necessary to authorize him or her to execute and deliver this Agreement have been taken.

I. Term of Agreement. This Agreement shall have a perpetual term. FVPD shall have the right to terminate this Agreement in the event the construction work contemplated herein is not completed within two (2) years subsequent to the date of full execution of this Agreement. FVPD and the Village shall work together to reroute the Path if necessitated by future development on FVPD property. If any party shall at any time be in default in the performance of any of the terms, conditions, or provisions of this Agreement and the defaulting party shall fail to remedy such default within sixty (60) days after written notice thereof from the non-defaulting party, then the non-defaulting party may terminate this Agreement upon written notice to the defaulting party.

J. Severability. In the event that any provision of this Agreement is determined to be legally invalid, the Parties agree that the particular provision shall be null and void, but the remainder of this Agreement shall remain in full force and effect.

K. Governing Law and Venue. This Agreement is governed by and shall be construed according to the laws of the State of Illinois without regard to the principles of conflicts of law thereof. Venue shall be proper only in a court of competent jurisdiction located within Kane County, Illinois.

Dated this _____ day of _____, 2020.

Fox Valley Park District

Village of Montgomery

By:
Its:

By:
Its:

Attest: _____

Attest: _____