

INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND THE COUNTY OF DUPAGE FOR THE LACEY CREEK WATER QUALITY IMPROVEMENT PROJECT

THIS AGREEMENT is entered into this _____ day of _____, 2000 between the County of DuPage, a body corporate and politic, (hereinafter referred to as the "COUNTY") with offices located at 421 North County Farm Road, Wheaton, Illinois 60187 and the Village of Downers Grove, a municipal corporation, (hereinafter referred to as the "VILLAGE") with offices located at _____, Downers Grove, Illinois 60_____.

RECITALS

WHEREAS, the Village of Downers Grove ("VILLAGE") and the County of DuPage ("COUNTY") are public agencies within the meaning of the Illinois "Intergovernmental Cooperation Act", as specified at 5 ILCS 220/1, et seq., and are authorized by Article 7 Section 10 of the Constitution of the State of Illinois to cooperate for public purposes; and

WHEREAS, the purpose of the Intergovernmental Cooperation Act and Article 7 of the Constitution of the State of Illinois includes fostering cooperation among governmental bodies; and

WHEREAS, pursuant to authority granted at 55 ILCS 5/5-1062, and 5/5-15001, et seq., the COUNTY is authorized to take action to control flooding and to enter into agreements for the purposes of stormwater management and flood control; and

WHEREAS, the COUNTY has adopted the DuPage County Stormwater Management Plan which recognizes stream maintenance, erosion control, and water quality as an integral part of the proper management of storm and flood waters; and

WHEREAS, the VILLAGE has determined that stream maintenance and erosion control improvements to Lacey Creek are necessary and that Lacey Creek water quality would benefit from such improvements; and

WHEREAS, the VILLAGE is willing to undertake the Lacey Creek Water Quality Improvement Project ("Project") along a portion of Lacey Creek located within the VILLAGE'S municipal boundary; and

WHEREAS, The VILLAGE has completed a Preliminary Study, Lacey Creek Conceptual Design Report, for the Project and has identified bioengineering techniques as recommended by the COUNTY; and

WHEREAS, the Project will improve habitats for local flora and fauna; and

WHEREAS, COUNTY and VILLAGE area residents and the general public will benefit from the Project through improved water quality in the Lacey Creek watersheds; and

WHEREAS, the Project will serve as a model of water quality improvement projects for the general public, conservationists, developers, public entities, engineers and other interested parties.

WHEREAS, the VILLAGE shall continue to monitor the Project area for a minimum of five years after construction completion for purposes of community education and total Project success; and

WHEREAS, the Project shall be divided into two phases, where all construction shall take place in year 2001 and total vegetative enhancements shall be completed in year 2002; and

WHEREAS, the estimated cost to construct the Project is \$720,171.00, but that the VILLAGE lacks sufficient funding to pay for the entire estimated cost of the Project; and

WHEREAS, the VILLAGE has received Section 319, Nonpoint Source Implementation grant funds from the U.S. Environmental Protection Agency (EPA) for the Project in which the VILLAGE will be reimbursed for 29.6% of the Project cost; and

WHEREAS, the VILLAGE has received U.S. Fish and Wildlife funds in which the VILLAGE will be reimbursed for 11.8% of the Project cost; and

WHEREAS, the VILLAGE has applied for Conservation 2000 Ecosystems Program grant funds from the Illinois Department of Natural Resources (IDNR) for the Project in which the VILLAGE will be reimbursed for 13.9% of the Project cost; and

WHEREAS, the VILLAGE has received funds from the Orchard Brook Homeowners Association which total 3.7% of the Project cost; and

WHEREAS, the VILLAGE has requested COUNTY participation in cost sharing the Project cost at 19.4% not to exceed \$140,000.00; and

WHEREAS, the COUNTY has requested the VILLAGE apply for additional U.S. EPA 319 Grant funds to at a minimum account for the present 2.2% Project funding deficit; and

WHEREAS, as the VILLAGE is the grant recipient, the VILLAGE shall provide all funds for the Project and will be reimbursed by the COUNTY at a later date in the amounts specified per the attached agreement.

NOW, THEREFORE, in consideration of the premises and covenants contained herein, the parties agree that:

1.0 RECITALS INCORPORATED.

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

2.0 PROJECT DESCRIPTION.

2.1 The Lacey Creek Water Quality Improvement Project (hereinafter referred to as "Project") shall consist of the design, construction, and construction management of water quality improvement along approximately 0.9 miles of Lacey Creek within the municipal limits of the Village.

2.2 The Project shall be undertaken in two phases:

2.2.1 Phase I shall consist of all streambank stabilization and wetland area construction work. All of Phase I work shall be undertaken and concluded during fiscal year 2001. At the end of each working day during Phase I work, all disturbed stream banks shall be fully stabilized.

2.2.2 Phase II of the Project shall involve all work associated with vegetative enhancements in the wetland and riparian zones. This work shall may commence whenever funding permits but shall be completed during fiscal year 2002. Vegetative enhancements in the wetland and riparian zones shall be monitored and observed to ensure successful implementation through fiscal year 2007.

3.0 FUNDING.

3.1 The Project cost is estimated to be \$720,171.00, with the parties agreeing to Project cost shares as follows, unless otherwise agreed to in writing as provided in paragraph 3.5 below.

U.S. EPA Sec. 319	29.6%	\$213,000.00
U.S. Fish and Wildlife	11.8%	\$84,875.00
IDNR Conservation 2000	13.9%	\$100,000.00
Orchard Brook Homeowners Assoc.	3.7%	\$27,000.00
VILLAGE	19.4%	\$140,000.00
COUNTY	19.4%	\$140,000.00

OTHER 2.2% \$15,296.00

- 3.2 In the event that IDNR Conservation 2000 funding is unavailable, the COUNTY and VILLAGE shall not be obligated to proceed with the Project, and either party shall have the right to terminate this Agreement by giving the other party written notice of their intent to terminate.
- 3.3 The COUNTY and VILLAGE may elect to proceed with the Project, and amend this Agreement accordingly, if partial U.S. EPA Section 319 and/or IDNR Conservation 2000 funding is available, or, if an alternative funding source becomes available to pay all or part of the Project costs.
- 3.4 The VILLAGE shall undertake a reasonable effort to secure further U.S. EPA 319 funds in order to cover the \$15,296.00 currently designated as OTHER. The VILLAGE shall seek additional funding in order to maximize funding from all exterior sources. The VILLAGE shall undertake a reasonable effort to secure Federal grants that provide 60.0% of total project costs for the Lacey Creek Project.
- 3.4.1 If the VILLAGE obtains additional state or federal funds for the Project, the matching share for the VILLAGE and the COUNTY, as described in section 3.1, shall be reduced equally. Under all circumstances, funds provided by the COUNTY shall be less than or equal to the funds provided by the VILLAGE.
- 3.4.2 If the VILLAGE fails to obtain further U.S. EPA 319 funds in order to cover the \$15,296.00 currently designated as OTHER, the VILLAGE shall be responsible for providing this funding.
- 3.4.3 If the actual Project costs are less than the amount estimated, the matching share for the VILLAGE and the COUNTY, as described in section 3.1, shall be reduced equally. Under all circumstances, funds provided by the COUNTY shall be less than or equal to the funds provided by the VILLAGE.
- 3.5 The VILLAGE shall be responsible for bearing all cost overruns or Project expenses in excess of the Project cost estimate described in Paragraph 3.1, regardless of the cause of such cost increase, unless the VILLAGE and COUNTY agree to apportion such extra costs before such additional costs are incurred.

4.0 VILLAGE'S RESPONSIBILITIES.

- 4.1 The VILLAGE shall be responsible for the preparation of the plans and specification and the bid documents for the Project.
- 4.2 The Village shall be responsible for the construction management of the Project.
- 4.3 The VILLAGE reserves the right to enter into additional agreements to secure their portion of the local Project costs, additional federal and state funding being subject to Subparagraph 3.4.1, above.
- 4.4 In the event the VILLAGE is able to secure funds sufficient to complete the Project construction the VILLAGE shall be responsible for the following:
 - 4.6.1 Securing and overseeing contractors and consultants to perform the Project construction and construction management, with technical advisory assistance from the VILLAGE and in kind engineering services;
 - 4.6.2 Furnishing technical assistance in the selection of plants, trees and shrubs along the streambank;
- 4.5 The VILLAGE shall be allowed unlimited access to, and use of, all data collected as part of this Project.
- 4.6 The VILLAGE shall be responsible for securing all necessary local, State and Federal permits necessary for completion of the Project.
- 4.7 The VILLAGE is responsible for obtaining all required land rights necessary for the completion of the Project.
- 4.8 The VILLAGE shall be responsible for submitting copies of all permit applications and related correspondence to the COUNTY.
- 4.9 The VILLAGE shall be responsible to meet all U.S. EPA Section 319 funding program requirements.
- 4.10 The VILLAGE shall provide a copy of all documentation supplied to the U.S. EPA as part of its requirement for Section 319 funding to the COUNTY.
- 4.11 The VILLAGE shall be responsible to meet all IDNR Conservation 2000

funding program requirements.

- 4.12 The VILLAGE shall provide a copy of all documentation supplied to the IDNR as part of its requirement for Conservation 2000 funding to the COUNTY.
- 4.13 The VILLAGE shall submit no more than one invoice per month to the COUNTY during Project construction and maintenance. Under no circumstances shall the COUNTY be invoiced more than 19.4% of total estimated Project costs, up to the limits as established in Section 3.1, as modified by Subparagraph 3.4.1. All invoices shall show the quantities and cost per bid item and shall be summarized by reach.
- 4.14 The VILLAGE shall make direct payments to all parties providing services related to this Project. This requirement shall not effect the COUNTY'S obligation to reimburse the VILLAGE in the amounts herein agreed upon.
- 4.15 The VILLAGE is responsible to monitor all Project work and to educate all private property owners directly affected by the Project in the proper care of Project work.
 - 4.15.1 The VILLAGE shall work with the Orchard Brook Homeowners Association through general mailings to remind and educate homeowners on how to properly care for streamside properties.
 - 4.15.2 The VILLAGE shall notify the COUNTY when actions of private property owners endanger the success of the Project.
 - 4.15.3 The VILLAGE shall monitor the Project Area for no less than five (5) years after Project completion
- 4.16 The COUNTY shall not be responsible for or have control over the construction, means, methods, techniques or procedures with respect to any work performed on the Project Areas or the construction of the Other Improvements. The VILLAGE shall be solely responsible for the safety of all individuals performing work on the Project Areas or involved in the construction of the Other Improvements. The VILLAGE shall take such measures as are necessary to ensure that the Project Areas are maintained in a reasonably safe condition, including, but not limited to, the installation of appropriate barricades and warning signs, and the strict enforcement of all-applicable safety rules and regulations. This provision

is not intended to create any new burden or liability for the VILLAGE beyond the usual burdens and liabilities for a municipality in the construction of public improvements. This section is intended merely to relieve the COUNTY from such liabilities in this Project.

5.0 COUNTY'S RESPONSIBILITIES.

- 5.1 The County shall have the right to review and approve the plans and specifications prior to advertising for contract services, which approval shall not be unreasonably withheld or delayed.
- 5.2 The COUNTY shall have the right to review and provide comments concerning the preparation of bid documents and the selection of the contractor and any subcontractors.
- 5.3 Within ninety (90) days of receipt of the properly documented invoice, the COUNTY shall reimburse the VILLAGE for costs associated with the Project as provided in paragraphs 3.1, 3.4.1 and 4.13, provided the COUNTY has not yet paid its cost share of Project expenses.
- 5.4 The COUNTY shall cost share in the Project at an amount not to exceed \$140,000.00, over two (2) years, based on the percentage estimates provided in paragraph 3.1.
 - 5.4.1 The COUNTY shall reimburse the VILLAGE for costs associated with the Project at a fixed proportion of 19.4% of the Project's estimated costs, as such costs are incurred as specified in paragraph 4.13.
 - 5.4.2 The total reimbursement amount shall not exceed \$140,000.00, and each yearly reimbursement amount shall not exceed \$70,000.00, unless otherwise agreed to in writing in accord with paragraphs 3.5 and 8.1.
 - 5.4.3 The disbursement of County funds shall be as follows:

<u>Funding Year</u>	<u>Funding Amount</u>
2001	\$70,000.00
2002	\$70,000.00
- 5.5 The COUNTY shall be allowed unlimited access to the Project Area and to all data collected as part of this Project.

6.0 GOVERNMENT REGULATIONS.

6.1 The COUNTY and VILLAGE shall each comply with all local, State and Federal requirements now in force, or which may hereafter be in force, pertaining to the Project.

7.0 INDEMNIFICATION.

7.1 The VILLAGE shall indemnify, hold harmless, and defend the COUNTY or any of its officers, employees, or agents from and against all liability, claims, demands, and causes of action arising out of or related to any loss, damage, injury, death, or loss or damage to property resulting from the VILLAGE'S performance of this Agreement to the fullest extent the VILLAGE is so authorized under the law, provided, however, that the VILLAGE shall not be obligated to indemnify, hold harmless and defend the COUNTY for any negligent or intentional wrongful acts or omissions by COUNTY officials, employees, agents, contractors, subcontractors or personnel.

8.0 AMENDMENT OR MODIFICATION OF THIS AGREEMENT.

8.1 This Agreement may be amended or modified only by written instrument signed by both the COUNTY and VILLAGE.

9.0 EFFECTIVE DATE.

9.1 This Agreement shall become effective upon the date fully executed by the parties.

10.0 ENTIRE AGREEMENT.

10.1 This Agreement represents the entire agreement between the COUNTY and VILLAGE and supersedes all prior negotiations, representations or agreements, either written or oral.

11.0 AGREEMENT BINDING.

11.1 This Agreement shall be binding upon the parties and their respective transferees, successors, and assigns.

12.0 NOTICES REQUIRED UNDER THIS AGREEMENT.

12.1 Any notice required by the provisions of this Agreement shall be mailed to:

Village of Downers Grove
Civic Center
Downers Grove, IL 60515

DuPage County Department of
Development and Environmental Concerns
421 No. County Farm Road
Wheaton, IL 60187

13.0 SEVERABILITY.

13.1 The invalidity or enforceability of any of the provisions of this Agreement shall not affect the validity or enforceability of the remainder of this Agreement.

14.0 GOVERNING LAW.

14.1 This Agreement shall be governed by the laws of the State of Illinois both as to interpretation and performance.

15.0 TERM OF THIS AGREEMENT.

15.1 The term of this AGREEMENT shall begin on the date the AGREEMENT is fully executed, and shall continue in full force and effect until the earlier of the following occurs:

15.1.1 The termination of this AGREEMENT in accordance with the terms of Section 3.2, or

15.1.2 November 30, 2007, or to a new date agreed upon by the parties.

15.1.3 The completion by the VILLAGE and COUNTY of their respective obligations under this AGREEMENT, in the event such completion occurs before November 30, 2007.

15.2 The COUNTY is not liable and will not pay the VILLAGE for any invoice received after the AGREEMENT'S expiration or termination.

IN WITNESS WHEREOF, the parties set their hands and seals as of the date first written above.

VILLAGE OF DOWNERS GROVE

COUNTY OF DUPAGE

By: _____
Brian J. Krajewski
Mayor, Village of Downers Grove

By: _____
Robert J. Schillerstrom
Chairman, DuPage County Board

Attest

By: _____
NAME:
TITLE:

By: _____
Gary A. King,
County Clerk