

COUNCIL WORKSHOP ITEM

ITEM: Lacey Creek Improvements
DATE: January 17, 2001
PREPARED BY: Jerry Sprecher, Deputy Village Manager
PURPOSE: Approve restoration contract, intergovernmental agreement with DuPage County for funding, and submittal of C-2000 grant request.

DISCUSSION: In December Council renewed the agreement with the Orchard Brook Homeowners Association for the completion of improvements to the east and west wetlands falling within the subdivision's boundaries, as well as stream bank improvements to Lacey Creek, which connects the two wetlands. The original agreement was signed in 1998 and followed background work begun by the Homeowners Association and a consulting firm, Conservation Design Forum (CDF) in 1995.

After more than a year, we have at long last received from the County the confirmation that this project has successfully completed the permit application review process, and work can begin.

If the background work to get to this point was difficult, at least in part it was due to the magnitude of the project and its ecological significance. The project seeks to restore two wetlands, one bordering Highland Avenue on the east, the other near Downers Drive on the west. In between, a significant stream bank stabilization/restoration project will be completed. The project will include removing sedimentation from the pond areas, removing "nuisance" species of plant growth along the corridor, stabilizing the stream bank with bioengineering techniques, and re-introducing native vegetation throughout the corridor. It should also be noted that this is not a one-time "construction" project but rather, will be a work in progress after the initial restoration is completed, with maintenance and education components as important considerations.

The difficulty in the permitting of this project has contributed to the initiating of a dialogue between the County and interested parties regarding County review of restoration projects. From the County's perspective a restoration project is treated no differently than a development project in their plan review. It is hoped that this dialogue might help to improve the process in the future.

We have also worked to secure funding for the project. The commitment to the Orchard Brook Homeowners Association in 1998 was to contribute \$100,000 to the project. An additional commitment of \$40,000 was added when the scope of the project was expanded to include improvements reaching into the Innisbrook subdivision, along 35th Street. Concurrent with the restoration contract proposal we are submitting a proposed intergovernmental agreement with the County that will provide up to \$140,000 in additional funding. This will bring the overall funding to a level adequate to complete the restoration project. Additional funding will be sought, including C-2000 funds for which an application must be submitted next month. Several

funding opportunities will be explored which will address project needs beyond the initial restoration project.

A representative of the Conservation Design Forum will be present at the Council Workshop to provide an overview of the project.

ATTACHMENT:

CDF Restoration Contract Proposal
Intergovernmental Agreement with DuPage County
C-2000 Application for Funds

RECOMMENDATION: It is recommended that a contract totaling \$537,332 for design/build services for the completion of restoration work to Lacey Creek and wetland areas be awarded to Conservation Land Stewardship, an affiliate of Conservation Design Forum. Of that amount, \$17,660 is a change order to the original design services contract with CDF, attributed to additional stream bank documentation related to regulatory approvals.

It is also requested that an intergovernmental agreement with DuPage County be approved for funding up to \$140,000 for this contract. A grant application for \$100,000 from C-2000 funds is also requested to be authorized by resolution.



DuPage County
ROBERT J. SCHILLERSTROM
COUNTY BOARD CHAIRMAN

DEVELOPMENT & ENVIRONMENTAL CONCERNS

BUILDING
(630) 682-7220
FAX (630) 682-7224

PLANNING
(630) 682-7230
FAX (630) 784-3773

STORMWATER
(630) 682-7230
FAX (630) 784-3773

ZONING/SUBDIVISION
(630) 682-7220
FAX (630) 682-7224

January 16, 2001

Mr. Jerry Sprecher
VILLAGE OF DOWNERS GROVE
801 Burlington Road
Downers Grove, IL 60515

RE: Certification for Stormwater Management Permit/Application No. 00-13-4000
Lacey Creek Stream Restoration, Incorporated Downers Grove, Illinois

Dear Mr. Sprecher:

As you may be aware, the Department of Development and Environmental Concerns (DEC) has received copies of a stormwater permit submittal/application from Conservation Design Forum (CDF), on behalf of Orchard Brook Homeowners Association, for the stabilization/restoration of approximately 4,771 lineal feet of streambanks along Lacey Creek, throughout the Orchard Brook Subdivision, from Highland Avenue to Interstate 355 in Downers Grove, Illinois.

Staff has completed its review of this application and hereby certifies the following documents for compliance with the DuPage County Countywide Stormwater and Flood Plain Ordinance (DCSFPO):

1. Stormwater submittal package entitled "Lacey Creek - Wetland & Stream Corridor Restoration, Downers Grove, Illinois," dated August 2000, latest revision dated December 2000 (December 22, 2000 per Professional Engineer license certification statement as provided by Tom Price, P.E., of CDF), as prepared by Conservation Design Forum.
2. Engineering Plan set entitled "Lacey Creek Stream Corridor Restoration Plan" as prepared by Conservation Design Forum, Project No. 99035, dated August 14, 2000, containing the following plan sheets as identified:
 - a. Plan sheet labeled as "C", entitled "Cover Sheet", with latest revision dated December 4, 2000.
 - b. Plan sheet labeled as "L1.1", entitled "Site Conditions & Topographic Map", with latest revision dated December 4, 2000.
 - c. Plan sheet labeled as "L1.2 and L1.3", entitled "Wetland Delineation Plan View," with latest revision dated December 4, 2000.
 - d. Plan sheet labeled as "L1.4 and L1.5", entitled "Wetland Mitigation Plan View," with latest revision dated January 9, 2001.
 - e. Plan sheet labeled as "L2.1 - L2.9", entitled "Riparian Plan View," with latest revision dated December 4, 2000.

E-mail: develop@dupageco.org

January 16, 2001

RE: SWP #00-13-4000; Lacey Creek Stream Restoration, Downers Grove, IL

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- f. Plan sheet labeled as "L3.1 and L3.2", entitled "Sediment & Erosion Control Plan," with latest revision dated December 4, 2000.
- g. Plan sheet labeled as "L4.1", entitled "Site Details and Cross Sections," with latest revision dated January 9, 2001.
- h. Plan sheet labeled as "L4.2", entitled "Tributary B Stabilization Details," with latest revision dated January 9, 2001.
- i. Plan sheet labeled as "L4.3", entitled "Tributary B Cross Sections," with latest revision dated December 4, 2000.
- j. Plan sheet labeled as "L4.4", entitled "Plant Lists Tables I - V" with latest revision dated December 4, 2000.
- k. Plan sheet labeled as "L4.5", entitled "Plant Lists Tables VI - XI" with latest revision dated December 4, 2000.

Based upon our certification of the above referenced documents, our office hereby authorizes the Village of Downers Grove to issue permits for the above referenced development with the following conditions.

1. Stationary photo monitoring points shall be established to depict the entire reach of the project. Before and after photos showing the reach of the project during the growing season, shall be provided to the DEC, concentrating especially on areas of proposed streambank stabilization. The photos showing the existing reach of the project (the before photos) shall be approved by DEC prior to commencement of site work. The photos showing the reach of the project after site work should be contained in the annual monitoring reports.
2. Per Article 13 "Performance Security", Section 15-176 "General Security Requirements" of the DCSFPO, prior to the issuance of a stormwater management permit a development security, a sediment and erosion control security, and a security for the mitigation area, as well as the riparian area replacement plantings, must be posted. It is our understanding that the Village of Downers Grove will collect and maintain appropriate development securities as required by ordinance for the subject development.
3. Per Section 15-177.3 of the DCSFPO, after approval of record (as-built) drawings and final inspection by the Director or the Administrator, not more than ninety percent (90%) of the security provided (110% of an approved engineer's cost estimate) may be released. A minimum of ten percent (10%) of the security shall be retained for a period of time not to exceed one year for developments that do not involve wetland mitigation, and/or five years for developments that do involve wetland mitigation.
4. As you are aware, per Article 9, Section 15-113.7 of the DCSFPO, "major and minor stormwater systems shall be located within easements or rights-of-way explicitly providing for public access for maintenance of such facilities". Therefore, prior to the release of the development security for the referenced development, Plat of Easement document should be forwarded to our office for review and approval. The following should be incorporated into said document:
 - A Wetland Conservation Easement needs to be granted over the limits of all wetland, wetland buffer, and wetland mitigation areas.

January 16, 2001

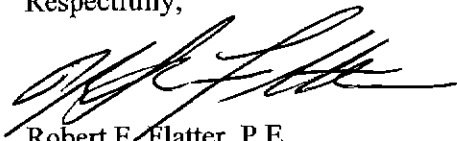
RE: SWP #00-13-4000; Lacey Creek Stream Restoration, Downers Grove, IL

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- Access Easements need to be granted to allow access to the wetland, wetland buffer, and wetland mitigation areas, for maintenance and monitoring purposes.
- Wetland Conservation Easement provisions need to be incorporated into the Plat.
- Access Easement provisions need to be incorporated into the Plat.

Three (3) copies of the submittal, as certified by our office, are enclosed for your use. Please forward at least one (1) submittal onto the developer at time of permit issuance. In addition, as a reminder, it is the Village of Downers Grove's responsibility to enforce the provisions of the DCSFPO.

Respectfully,



Robert E. Flatter, P.E.
Stormwater Division Manager

REF:ref

Att-

Cc: Thomas F. Bennington, Jr., County Board Member District 3
Diedra Willis, USACOE, Chicago District
Karon Marzec, USACOE, Chicago District
Robert Jungwirth, P.E., Village of Downers Grove, 5101 Walnut Avenue, Downers Grove, IL 60515
Orchard Brook Homeowners Association, 3825 Downers Drive, Downers Grove, IL 60515-1327
James M. Patchett, CONSERVATION DESIGN FORUM, 324 North York Rd., Elmhurst, Illinois 60126
Becca Cerf, Conservation Design Forum, 324 N. York Rd, Elmhurst, IL 60126
Bruce Maki, Regulatory Services Administrator, DEC
Jon Steffen, Principal Environmental Engineer, DEC
Clayton Heffter, Wetland Supervisor, DEC
Meredith Seymour, Senior Civil Engineer, DEC
Jennifer Boyer, Wetland Specialist I, DEC
Jay Nemeth, Senior Civil Engineer, DEC
Sheila Sahu, Civil Engineer, DEC
SWP #00-13-4000

CONSERVATION LAND STEWARDSHIP

Ecological Restoration
Native Landscape
Implementation
Landscape Contracting
& Maintenance



January 15, 2001

Mr. Jerry Sprecher
Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515-4776

324 North York Road
Elmhurst, Illinois
60126
630.758.0355 phone
630.758.0320 fax

RE: *Lacey Creek Streambank Stabilization, Wetland and East Pond Restoration – Proposal for Professional Services and Restoration Management*

RESTORATION PROPOSAL

Materials:		Size:	Cost:
1,100	Bank Stabilization Treatment 'A' (16" dia.) Includes poly rope and oak stakes	LF	\$ 35,200.00
2,275	Bank Stabilization Treatment 'B' See attached plans for specifications	SY	\$ 9,759.75
1,460	Stabilization Treatment 'C' See attached plans for specifications	SY	\$ 28,313.51
7,800	Erosion Control Blanket Includes all specified and approved products C75BN, C125BN & Geocoir 800 Pricing included in above bank stabilization Treatments 'A', 'B' & 'C'	SY	Priced above
14,520	No-Mow Fescue	SY	\$ 4,118.40
9,43	Mesic Prairie Seed Installation See attached plant lists for specific seed lists	AC	\$ 27,724.00
12,000	Misc. Native Plant Plugs As per plans delineate enhancements areas	GT38	\$ 33,000.00
118	Misc. Native Trees	2" cal.	\$ 45,784.00
380	Misc. Native Woody Shrubs Note: See specifications for species	5gal.	\$ 23,880.00
5000	Aquatic Bare Root Plants	BR	\$ 21,450.00
60	Herbivore Protection Cages	EA	\$ 8,800.00
430	Limestone Fines / CA-6 w/ Fines Gravel	TN	\$ 19,588.86
800	Heavy Duty Landscape Fabric W/Bio-staples	SY	\$ 5,711.00

Continued...

TERMS AND CONDITIONS OF AGREEMENT

1. Project Description

- 1.1 The performance of this Agreement shall be completed according to the terms and conditions hereinafter set forth. Plant sizes specified herein are in accordance with the standards of the American Association of Nurserymen.

2. Limited Warranty and Disclaimer

- 2.1 Contractor warrants that certain plant materials, as set forth below, are free from defect, and will replace warranted plant materials, which die during the warranty period, at no additional charge to Client, as follows:
2.2 The warranty period for trees and shrubs installed by Contractor shall be one year from date of installation.
2.3 The warranty period for sodded turf or wildflowers installed by the Contractor shall be (30) thirty days from date of installation.
2.4 No warranty is given with respect to annuals, perennials, and groundcover, or any other plant material not installed by Contractor, including plant material transplanted by Contractor as part of the Project.
2.5 Contractor shall not be responsible for death or damage to any plant materials caused by failure of Client to maintain, protect or water such plant material property, or caused by any agency not under Contractor's control, including, without limitation, cold, frost, insects, fire, animals, vandalism, drought, storms or flooding.
2.6 No warranted plant materials will be replaced unless Client shall notify Contractor in writing of the death of the plant within ten (10) days after the end of the warranty period. This is a limited warranty. No other express warranty is given. Contractor disclaims all warranties for incidental or consequential damages.

3. Contractor's Responsibilities and Standard of Care

- 3.1 All work shall be completed in a workmanlike manner according to accepted standard landscape practices. Upon completion of the work, the work site shall be left clean and free of debris caused by work performed by the Contractor.
3.2 The Contractor shall not be responsible for any soil settlement, seepage or other water damage that may occur as a result of its excavation, construction, planting, removing or replanting of plants. The Client indemnifies and holds the Contractor harmless for any loss that may be caused by such occurrences.
3.3 The Contractor shall exercise all reasonable caution to prevent damage to existing pavement, septic system and underground lines (e.g. utility, cable, sprinkler, electrical, telephonic, etc.) provided, however, the Contractor shall not be responsible for damage to said facilities and lines occurring during the exercise of ordinary care in the execution of the work by the Contractor herein. The Client assumes all responsibility relating to indicating the exact location of underground facilities and lines including but not limited to septic system, cable, sprinkler, electrical and other utility lines. Client indemnifies and holds the Contractor harmless for any loss that may be caused to such facilities or lines.
3.4 This Agreement is subject to change as may be required by building or zoning codes or any other laws or regulations adopted by any governmental authority whether by statute or executive order. The Agreement price shall be increased by additional costs or expenses incurred by the Contractor required for compliance with any of these building codes, zoning codes or laws or regulations.
3.5 Planting time of plants specified herein is subject to the seasonal availability of the plant materials, and the climatic and cultural requirements of the plant species.
3.6 The Contractor shall use his best effort that a reasonable stand of grass in seeded turf areas shall be obtained considering climatic conditions and soil conditions.
3.7 The Contractor shall have no responsibility for any delay of completion of the Agreement or for any losses incurred, including but not limited to, strikes, weather, accidents or delays beyond Contractor's control.

4. Client's Responsibilities

- 4.1 Client shall be responsible for determining the location and properly marking all property and building lines and underground lines that may be pertinent to the execution of the work outlined herein, and for ascertaining whether the work, labor and materials required by the Agreement are in compliance with applicable building or zoning codes and other laws or regulations.
4.2 Completion of the finish grade is the responsibility of the Client. Client represents that the grading presented to the Contractor at the start of the Contractor's work is the finish grade unless otherwise stipulated herein. Contractor shall have no responsibility for grade whatsoever. It is the responsibility of the Client that if any additional fill soil and grading are needed, the Client shall pay whatever additional cost is incurred. This Agreement does not include additional fill soil from off the site as may be necessary to establish the finish grade unless otherwise stipulated herein. Should there be an excess of soil or material above the specified grade the Client shall be responsible for paying for the removal of excess soil or material and any needed grading.
4.3 Client shall arrange for the site to be free of debris prior to the Contractor starting work unless otherwise stipulated herein.
4.4 Client shall be responsible for securing and payment for any permits, inspections, or action required by law or regulation. Contractor shall not be liable for any loss or delay due to Client's failure to secure such permits, inspections or any action that may be required by law or otherwise.
4.5 Client represents and warrants that he has full authority to enter into this Agreement, and is either the owner of the property to be landscaped or is authorized by the owner to contract for the Project.

5. Limitation of Liability

- 5.1 The Contractor makes no representations or warranties other than those expressly set forth in this Agreement. Except as stated in this Agreement, Client accepts plants specified in the plans and the Contractor makes no representation or warranty of any other kind, express or implied, with respect to the plants, whether as to fitness for a particular purpose or any other matter.
5.2 The Contractor and Client specifically agree that should the Client suffer any damages or should the Client have any claim against the Contractor whatsoever that the Client's only and exclusive remedy shall be for monetary damages. Because of the difficulty in determining loss or damage, Client agrees that the Contractor's liability for any and all losses and damages to Client resulting from any cause whatsoever, including the Contractor's negligence, alleged damaged or defective goods, irrespective of whether such defects are discoverable or latent, shall in no event exceed the original purchase price of the particular plants or materials with respect to which losses or damages are claimed. At the election of the Contractor the defective or damaged goods may be repaired or replaced. In no event shall the Contractor be liable for incidental or consequential damages. The Contractor will make no cash refunds for work performed.
5.3 All claims, disputes and other matters in question between the parties to this Agreement, arising out of or relating to this Agreement or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, unless the parties mutually agree otherwise. No arbitration, arising out of or relating to this Agreement, shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement except by written consent containing a specific reference to this Agreement and signed by the Contractor, the Client, and any other person sought to be joined. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein or with any person not named or described therein. This Agreement to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the parties to this Agreement shall be specifically enforceable.
5.4 Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand shall be made within sixty (60) days after completion of the Project or cessation of work hereunder, whichever is earlier. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

6. Payment to Contractor

- 6.1 This Agreement requires an initial payment of 25% of the initial Agreement price agreed to herein.
6.2 All work and materials shall be fully paid for within ten (10) days after presentation of the final invoice upon completion. Payment shall include the Agreement price and any authorized extras, or in the event of emergencies, extra costs that may be incurred in the connection with the performance of this Agreement. Failure of the Client to remit the full amount due within thirty (30) days of completion shall result in this Agreement being in default, and the Contractor shall have the right to exercise remedies that it may have, including but not limited to those remedies listed under Article 7 hereof.
6.3 If the Project requires more than two (2) weeks to complete, progress payments shall be made in two (2) week intervals, commencing with the first two-week period after start of the Project. Payments shall be for materials and for work performed.
6.4 In the event that the Project's completion is delayed by the Client or the Client's representatives, any cost increases, including but not limited to plants, supplies, labor, rental of equipment and materials shall be passed through to the Client, which cost increases shall be made a part of this Agreement and which Client agrees to pay to the Contractor upon written request.

7. Default and Remedies

- 7.1 Any payments not made as agreed upon shall bear interest at the rate of 1-1/2% per month or if such rate shall not then be lawful at the highest legal rate from date such payment is due and continue until payment is made in full.
7.2 Until such time as the Contractor has received full payment, Client grants permission to Contractor or Contractor's agent to enter on Client's property or premises in order for Contractor to remove some or all of Contractor's materials and plants. Contractor shall and does have a right to record a Mechanic's Lien for Contractor's materials and services in the event that payment is not made in accordance with this Contract.
7.3 All rights and remedies of the Agreement set forth herein are cumulative and failure to execute some or all such rights and remedies shall not constitute a waiver or modification by the Contractor of its rights and remedies under this Agreement.
7.4 You have a legal right under federal law to cancel this transaction by advising us in writing within three (3) business days after signing. This agreement is not an extension of commercial credit. Prices quoted are valid for thirty (30) days.

8. Miscellaneous Provisions

- 8.1 This Agreement shall be deemed withdrawn by the Contractor if not accepted by the Client in writing within thirty (30) days of presentation.
8.2 If any item or paragraph is found to be void or unenforceable for any reason this Agreement shall be read and construed as if such item or paragraph had never been a part of this Agreement.
8.3 This Agreement shall be construed, enforced and interpreted according to the laws of the State of Illinois.
8.4 The singular shall be construed, where necessary, to mean plural, and the plural the singular.
8.5 This Agreement shall not be binding until signed by the Client and accepted by an authorized agent of the Contractor.

9. Modification

- 9.1 The Agreement contains the entire agreement of the parties hereto, and no other representation, inducements, promises or agreement, oral or written or otherwise between the parties, not embodied herein, shall have nor be of any force or effect. Any such representations, inducements, promises or agreements being merged herein make this the final and expressed Agreement of the parties.
9.2 This Agreement or the other attachments hereto may be amended by the parties hereto from time to time, but only if such changes, modifications or amendments are in writing and agreed by both parties. Except as changed, modified or amended, this Agreement shall continue to remain in full force and effect.

10. Owner

- 10.1 If Client is not the Owner of the property, Owner must enter into this Agreement. Owner(s) and Client(s) acknowledge that this Agreement creates joint and several liability upon Owner with Client for full performance including but not limited to the payment of the Agreement price.

Mr. Jerry Sprecher
 Village of Downers Grove
 January 15, 2001
 Lacey Creek Streambank Stabilization and West Wetland
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Materials (cont.):

1800	Face square feet Railroad Ties - 6"x8"x8'	\$ 33,505.56
1100	Square feet Geo-Grid Fabric	\$ 733.63
24	Cubic yards Gravel (#9 w/fines)	\$ 1,242.24
110	Cubic yards Pea Gravel	\$ 5,560.90
440	Square yards Heavy Duty Landscape Fabric	\$ 205.02
500	Linear feet 6" Corrugated P.E. pipe w/ Sock	\$ 2,268.93
45	Cubic yards Non-Pulverized Soil	\$ 1,757.36
48	Cubic yards Pulverized Topsoil	\$ 2,481.81

Labor:

Seed Bed Preparation	Priced above
Price included in above material seed pricing	
Installation of above quantity landscape material	Priced above
Price included in above material pricing	
Installation of above quantity construction material	Priced above
Selective clearing and removal of invasive woody species	\$ 71,282.09
See attached specifications for target species	
Excavation of low-flow channel	\$ 9,723.00
Includes equipment and hand excavation for west wetland as prescribed by CDF, Inc. & DEC	
Excavation of east pond to create open water depth and littoral shelf	\$ 28,798.00
Includes equipment and hand excavation for east pond as prescribed by CDF, Inc. & DEC	
Herbicide application	\$ 6,406.40
Removal and disposal of debris - including brush and soil	\$ 8,338.00
Removal of existing walls (@ 3780 Downer Drive & 3548 Saratoga)	\$ 2,112.00
Removal & disposal of debris (Existing retaining walls)	\$ 1,069.20
Installation of about quantity retaining wall	Priced above
Installation of above quantity gravel (#9 w/ fines)	Priced above
Installation of above quantity pea gravel	Priced above
Installation of heavy-duty landscape fabric	Priced above
Installation of above quantity p.e. pipe w/ sock & geo-grid	Priced above
Installation of above quantity non-pulverized and pulverized soil	Priced above
Freight & equipment charges	\$ 2,230.80
<i>Year One Maintenance</i>	\$ 23,650.00
<i>Includes first year mowing, herbicide and stewardship activities.</i>	

Continued...

TERMS AND CONDITIONS OF AGREEMENT

1. Project Description

1.1 The performance of this Agreement shall be completed according to the terms and conditions hereinafter set forth. Plant sizes specified herein are in accordance with the standards of the American Association of Nurserymen.

2. Limited Warranty and Disclaimer

- 2.1 Contractor warrants that certain plant materials, as set forth below, are free from defect, and will replace warranted plant materials, which die during the warranty period, at no additional charge to Client, as follows:
- 2.2 The warranty period for trees and shrubs installed by Contractor shall be one year from date of installation.
- 2.3 The warranty period for sodded turf or wildflowers installed by the Contractor shall be (30) thirty days from date of installation.
- 2.4 No warranty is given with respect to annuals, perennials, and groundcover, or any other plant material not installed by Contractor, including plant material transplanted by Contractor as part of the Project.
- 2.5 Contractor shall not be responsible for death or damage to any plant materials caused by failure of Client to maintain, protect or water such plant material properly, or caused by any agency not under Contractor's control, including, without limitation, cold, frost, insects, fire, animals, vandalism, drought, storms or flooding.
- 2.6 No warranted plant materials will be replaced unless Client shall notify Contractor in writing of the death of the plant within ten (10) days after the end of the warranty period. This is a limited warranty. No other express warranty is given. Contractor disclaims all warranties for incidental or consequential damages.

3. Contractor's Responsibilities and Standard of Care

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- 3.2 The Contractor shall not be responsible for any soil settlement, seepage or other water damage that may occur as a result of its excavation, construction, planting, removing or replanting of plants. The Client indemnifies and holds the Contractor harmless for any loss that may be caused by such occurrences.
- 3.3 The Contractor shall exercise all reasonable caution to prevent damage to existing pavement, septic system and underground lines (e.g. utility, cable, sprinkler, electrical, telephone, etc.); provided, however, the Contractor shall not be responsible for damage to said facilities and lines occurring during the exercise of ordinary care in the execution of the work by the Contractor herein. The Client assumes all responsibility relating to indicating the exact location of underground facilities and lines including but not limited to septic system, cable, sprinkler, electrical and other utility lines. Client indemnifies and holds the Contractor harmless for any loss that may be caused to such facilities or lines.
- 3.4 This Agreement is subject to change as may be required by building or zoning codes or any other laws or regulations adopted by any governmental authority whether by statute or executive order. The Agreement price shall be increased by additional costs or expenses incurred by the Contractor required for compliance with any of these building codes, zoning codes or laws or regulations.
- 3.5 Planting time of plants specified herein is subject to the seasonal availability of the plant materials, and the climatic and cultural requirements of the plant species.
- 3.6 The Contractor shall use his best effort that a reasonable stand of grass in seeded turf areas shall be obtained considering climatic conditions and soil conditions.
- 3.7 The Contractor shall have no responsibility for any delay of completion of the Agreement or for any losses incurred, including but not limited to, strikes, weather, accidents or delays beyond Contractor's control.

4. Client's Responsibilities

- 4.1 Client shall be responsible for determining the location and properly marking all property and building lines and underground lines that may be pertinent to the execution of the work outlined herein, and for ascertaining whether the work, labor and materials required by the Agreement are in compliance with applicable building or zoning codes and other laws or regulations.
- 4.2 Completion of the finish grade is the responsibility of the Client. Client represents that the grading presented to the Contractor at the start of the Contractor's work is the finish grade unless otherwise stipulated herein. Contractor shall have no responsibility for grade whatsoever. It is the responsibility of the Client that if any additional fill soil and grading are needed, the Client shall pay whatever additional cost is incurred. This Agreement does not include additional fill soil from off the site as may be necessary to establish the finish grade unless otherwise stipulated herein. Should there be an excess of soil or material above the specified grade the Client shall be responsible for paying for the removal of excess soil or material and any needed grading.
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- 4.4 Client shall be responsible for securing and payment for any permits, inspections, or action required by law or regulation. Contractor shall not be liable for any loss or delay due to Client's failure to secure such permits, inspections or any action that may be required by law or otherwise.
- 4.5 Client represents and warrants that he has full authority to enter into this Agreement, and is either the owner of the property to be landscaped or is authorized by the owner to contract for the Project.

5. Limitation of Liability

- 5.1 The Contractor makes no representations or warranties other than those expressly set forth in this Agreement. Except as stated in this Agreement, Client accepts plants specified in the plans and the Contractor makes no representation or warranty of any other kind, express or implied, with respect to the plants, whether as to fitness for a particular purpose or any other matter.
- 5.2 The Contractor and Client specifically agree that should the Client suffer any damages or should the Client have any claim against the Contractor whatsoever that the Client's only and exclusive remedy shall be for monetary damages. Because of the difficulty in determining loss or damage, Client agrees that the Contractor's liability for any and all losses and damages to Client resulting from any cause whatsoever, including the Contractor's negligence, alleged damaged or defective goods, irrespective of whether such defects are discoverable or latent, shall in no event exceed the original purchase price of the particular plants or materials with respect to which losses or damages are claimed. At the election of the Contractor the defective or damaged goods may be repaired or replaced. In no event shall the Contractor be liable for incidental or consequential damages. The Contractor will make no cash refunds for work performed.
- 5.3 All claims, disputes and other matters in question between the parties to this Agreement, arising out of or relating to this Agreement or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, unless the parties mutually agree otherwise. No arbitration, arising out of or relating to this Agreement, shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement except by written consent containing a specific reference to this Agreement and signed by the Contractor, the Client, and any other person sought to be joined. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein or with any person not named or described therein. This Agreement to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the parties to this Agreement shall be specifically enforceable.
- 5.4 Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand shall be made within sixty (60) days after completion of the Project or cessation of work hereunder, whichever is earlier. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

6. Payment to Contractor

- 6.1 This Agreement requires an initial payment of 25 % of the initial Agreement price agreed to herein.
- 6.2 All work and materials shall be fully paid for within ten (10) days after presentation of the final invoice upon completion. Payment shall include the Agreement price and any authorized extras, or in the event of emergencies, extra costs that may be incurred in the connection with the performance of this Agreement. Failure of the Client to remit the full amount due within thirty (30) days of completion shall result in this Agreement being in default, and the Contractor shall have the right to exercise remedies that it may have, including but not limited to those remedies listed under Article 7 hereof.
- 6.3 If the Project requires more than two (2) weeks to complete, progress payments shall be made in two (2) week intervals, commencing with the first two-week period after start of the Project. Payments shall be for materials and for work performed.
- 6.4 In the event that the Project's completion is delayed by the Client or the Client's representatives, any cost increases, including but not limited to plants, supplies, labor, rental of equipment and materials shall be passed through to the Client, which cost increases shall be made a part of this Agreement and which Client agrees to pay to the Contractor upon written request.

7. Default and Remedies

- 7.1 Any payments not made as agreed upon shall bear interest at the rate of 1-1/2% per month or if such rate shall not then be lawful at the highest legal rate from date such payment is due and continue until payment is made in full.
- 7.2 Until such time as the Contractor has received full payment, Client grants permission to Contractor or Contractor's agent to enter on Client's property or premises in order for Contractor to remove some or all of Contractor's materials and plants. Contractor shall and does have a right to record a Mechanic's Lien for Contractor's materials and services in the event that payment is not made in accordance with this Contract.
- 7.3 All rights and remedies of the Agreement set forth herein are cumulative and failure to execute some or all such rights and remedies shall not constitute a waiver or modification by the Contractor of its rights and remedies under this Agreement.
- 7.4 You have a legal right under federal law to cancel this transaction by advising us in writing within three (3) business days after signing. This agreement is not an extension of commercial credit. Prices quoted are valid for thirty (30) days.

8. Miscellaneous Provisions

- 8.1 This Agreement shall be deemed withdrawn by the Contractor if not accepted by the Client in writing within thirty (30) days of presentation.
- 8.2 If any item or paragraph is found to be void or unenforceable for any reason this Agreement shall be read and construed as if such item or paragraph had never been a part of this Agreement.
- 8.3 This Agreement shall be construed, enforced and interpreted according to the laws of the State of Illinois.
- 8.4 The singular shall be construed, where necessary, to mean plural, and the plural the singular.
- 8.5 This Agreement shall not be binding until signed by the Client and accepted by an authorized agent of the Contractor.

9. Modification

- 9.1 The Agreement contains the entire agreement of the parties hereto, and no other representation, inducements, promises or agreement, oral or written or otherwise between the parties, not embodied herein, shall have nor be of any force or effect. Any such representations, inducements, promises or agreements being merged herein make this the final and expressed Agreement of the parties.
- 9.2 This Agreement or the other attachments hereto may be amended by the parties hereto from time to time, but only if such changes, modifications or amendments are in writing and agreed by both parties. Except as changed, modified or amended, this Agreement shall continue to remain in full force and effect.

10. Owner

- 10.1 If Client is not the Owner of the property, Owner must enter into this Agreement. Owner(s) and Client(s) acknowledge that this Agreement creates joint and several liability upon Owner with Client for full performance including but not limited to the payment of the Agreement price.

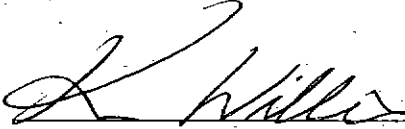
Mr. Jerry Sprecher
Village of Downers Grove
January 15, 2001
Lacey Creek Streambank Stabilization and West Wetland
Page 3 of 3

Total Materials & Labor:	\$ 464,694.46
Design, Engineering & Regulatory Permitting:	\$ 72,637.96
*CDF, Inc. contracts 99035.00 & 99035.01	

Total Project Cost: \$ 537,332.42

Note: Above pricing includes specified contracting services for the east wetland, west wetland, Lacey Creek and its tributary. Billing will be separated for funding purposes as Streambank and East Wetland Restorations.

*Proposal valid for thirty days
15% down payment due upon acceptance- plant & material procurement*



CONSERVATION LAND
STEWARDSHIP, INC.
Director
Title

1/15/01

Date

Accepted

Date

TERMS AND CONDITIONS OF AGREEMENT

1. Project Description

- 1.1 The performance of this Agreement shall be completed according to the terms and conditions hereinafter set forth. Plant sizes specified herein are in accordance with the standards of the American Association of Nurserymen.

2. Limited Warranty and Disclaimer

- 2.1 Contractor warrants that certain plant materials, as set forth below, are free from defect, and will replace warranted plant materials, which die during the warranty period, at no additional charge to Client, as follows:
2.2 The warranty period for trees and shrubs installed by Contractor shall be one year from date of installation.
2.3 The warranty period for sodded turf or wildflowers installed by the Contractor shall be (30) thirty days from date of installation.
2.4 No warranty is given with respect to annuals, perennials, and groundcover, or any other plant material not installed by Contractor, including plant material transplanted by Contractor as part of the Project.
2.5 Contractor shall not be responsible for death or damage to any plant materials caused by failure of Client to maintain, protect or water such plant material properly, or caused by any agency not under Contractor's control, including, without limitation, cold, frost, insects, fire, animals, vandalism, drought, storms or flooding.
2.6 No warranted plant materials will be replaced unless Client shall notify Contractor in writing of the death of the plant within ten (10) days after the end of the warranty period. This is a limited warranty. No other express warranty is given. Contractor disclaims all warranties for incidental or consequential damages.

3. Contractor's Responsibilities and Standard of Care

- 3.1 All work shall be completed in a workmanlike manner according to accepted standard landscape practices. Upon completion of the work, the work site shall be left clean and free of debris caused by work performed by the Contractor.
3.2 The Contractor shall not be responsible for any soil settlement, seepage or other water damage that may occur as a result of its excavation, construction, planting, removing or replanting of plants. The Client indemnifies and holds the Contractor harmless for any loss that may be caused by such occurrences.
3.3 The Contractor shall exercise all reasonable caution to prevent damage to existing pavement, septic system and underground lines (e.g. utility, cable, sprinkler, electrical, telephone, etc.); provided, however, the Contractor shall not be responsible for damage to said facilities and lines occurring during the exercise of ordinary care in the execution of the work by the Contractor herein. The Client assumes all responsibility relating to indicating the exact location of underground facilities and lines including but not limited to septic system, cable, sprinkler, electrical and other utility lines. Client indemnifies and holds the Contractor harmless for any loss that may be caused to such facilities or lines.
3.4 This Agreement is subject to change as may be required by building or zoning codes or any other laws or regulations adopted by any governmental authority whether by statute or executive order. The Agreement price shall be increased by additional costs or expenses incurred by the Contractor required for compliance with any of these building codes, zoning codes or laws or regulations.
3.5 Planting time of plants specified herein is subject to the seasonal availability of the plant materials, and the climatic and cultural requirements of the plant species.
3.6 The Contractor shall use his best effort that a reasonable stand of grass in seeded turf areas shall be obtained considering climatic conditions and soil conditions.
3.7 The Contractor shall have no responsibility for any delay of completion of the Agreement or for any losses incurred, including but not limited to, strikes, weather, accidents or delays beyond Contractor's control.

4. Client's Responsibilities

- 4.1 Client shall be responsible for determining the location and properly marking all property and building lines and underground lines that may be pertinent to the execution of the work outlined herein, and for ascertaining whether the work, labor and materials required by the Agreement are in compliance with applicable building or zoning codes and other laws or regulations.
4.2 Completion of the finish grade is the responsibility of the Client. Client represents that the grading presented to the Contractor at the start of the Contractor's work is the finish grade unless otherwise stipulated herein. Contractor shall have no responsibility for grade whatsoever. It is the responsibility of the Client that if any additional fill soil and grading are needed, the Client shall pay whatever additional cost is incurred. This Agreement does not include additional fill soil from off the site as may be necessary to establish the finish grade unless otherwise stipulated herein. Should there be an excess of soil or material above the specified grade the Client shall be responsible for paying for the removal of excess soil or material and any needed grading.
4.3 Client shall arrange for the site to be free of debris prior to the Contractor starting work unless otherwise stipulated herein.
4.4 Client shall be responsible for securing and payment for any permits, inspections, or action required by law or regulation. Contractor shall not be liable for any loss or delay due to Client's failure to secure such permits, inspections or any action that may be required by law or otherwise.
4.5 Client represents and warrants that he has full authority to enter into this Agreement, and is either the owner of the property to be landscaped or is authorized by the owner to contract for the Project.

5. Limitation of Liability

- 5.1 The Contractor makes no representations or warranties other than those expressly set forth in this Agreement. Except as stated in this Agreement, Client accepts plants specified in the plans and the Contractor makes no representation or warranty of any other kind, express or implied, with respect to the plants, whether as to fitness for a particular purpose or any other matter.
5.2 The Contractor and Client specifically agree that should the Client suffer any damages or should the Client have any claim against the Contractor whatsoever that the Client's only and exclusive remedy shall be for monetary damages. Because of the difficulty in determining loss or damage, Client agrees that the Contractor's liability for any and all losses and damages to Client resulting from any cause whatsoever, including the Contractor's negligence, alleged damaged or defective goods, irrespective of whether such defects are discoverable or latent, shall in no event exceed the original purchase price of the particular plants or materials with respect to which losses or damages are claimed. At the election of the Contractor the defective or damaged goods may be repaired or replaced. In no event shall the Contractor be liable for incidental or consequential damages. The Contractor will make no cash refunds for work performed.
5.3 All claims, disputes and other matters in question between the parties to this Agreement, arising out of or relating to this Agreement or the breach thereof, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, unless the parties mutually agree otherwise. No arbitration, arising out of or relating to this Agreement, shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement except by written consent containing a specific reference to this Agreement and signed by the Contractor, the Client, and any other person sought to be joined. Any consent to arbitration involving an additional person or persons shall not constitute consent to arbitration of any dispute not described therein or with any person not named or described therein. This Agreement to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the parties to this Agreement shall be specifically enforceable.
5.4 Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand shall be made within sixty (60) days after completion of the Project or cessation of work hereunder, whichever is earlier. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

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7.3 All rights and remedies of the Agreement set forth herein are cumulative and failure to execute some or all such rights and remedies shall not constitute a waiver or modification by the Contractor of its rights and remedies under this Agreement.
7.4 You have a legal right under federal law to cancel this transaction by advising us in writing within three (3) business days after signing. This agreement is not an extension of commercial credit. Prices quoted are valid for thirty (30) days.

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- 9.1 The Agreement contains the entire agreement of the parties hereto, and no other representation, inducements, promises or agreement, oral or written or otherwise between the parties, not embodied herein, shall have nor be of any force or effect. Any such representations, inducements, promises or agreements being merged herein make this the final and expressed Agreement of the parties.
9.2 This Agreement or the other attachments hereto may be amended by the parties hereto from time to time, but only if such changes, modifications or amendments are in writing and agreed by both parties. Except as changed, modified or amended, this Agreement shall continue to remain in full force and effect.

10. Owner

- 10.1 If Client is not the Owner of the property, Owner must enter into this Agreement. Owner(s) and Client(s) acknowledge that this Agreement creates joint and several liability upon Owner with Client for full performance including but not limited to the payment of the Agreement price.



CONSERVATION DESIGN FORUM

Landscape Architecture • Community Planning • Ecological Restoration • Resource Management

324 North York Road
Elmhurst, Illinois 60126
630.758.0355 phone
630.758.0320 fax
cdf@cdfinc.com

15 January 2001

Mr. Jerry Sprecher
Assistant Village Manager
Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515-4776

Re: Review of Contract Services and Fees
Lacey Creek Stream Corridor and Wetland Restoration Design & Implementation
Downers Grove, Illinois

Dear Mr. Sprecher:

Per your request, the following correspondence will provide you with a complete, up to date summary of the design and regulatory permitting phases of the Lacey Creek Stream Corridor and Wetland Restoration project. This summary contains a review of the current contract between **Conservation Design Forum (CDF)** and the **Village of Downers Grove** dated 23 July 1999, including a description of contracted tasks and associated fees. It also provides a complete breakdown of all costs and services for pond/wetland design, as well as stream corridor stabilization design and regulatory permitting services completed to date. This total includes all sub-consultant fees associated with surveying the stream corridor, and the preparation of stream cross-sections, hydrologic evaluations, stream stabilization plans and details, and all other plans and documents required for regulatory approval from the **Du Page County Department of Environmental Concerns** for stream corridor restoration work.

It should be noted that the evaluation and design of appropriate stream stabilization plans and documents, as well as the preparation of regulatory permitting documents pertaining to the stream corridor restoration, was always intended to be covered by a separate Design/Build contract with the preferred wetland/ stream corridor restoration consultant/ contractor. For your information, the attached proposal from **Conservation Land Stewardship** includes costs for the design, engineering, regulatory permitting, construction implementation, and first year maintenance, stewardship, and monitoring services for the proposed restoration improvements. The proposal also includes fees for construction administration services to be provided by **Conservation Design Forum** staff members during the 2001 construction season.

For purposes of review, CDF's original contract authorized our firm to complete preliminary design and final design development documents for the east pond/wetland system, the west pond/wetland system, and to assist the stream stabilization consultant in plant species selection, and naturalized buffer design for the stream corridor stabilization and restoration portions of the project. In addition to the pond/wetland design services, CDF was also authorized to prepare regulatory permitting documents for the pond/wetland restoration components of the project, and

Mr. Jerry Sprecher

15 January 2001

Page 2

to administer the permitting process through approval of proposed plans. CDF's services were contracted for a lump sum fee of \$47,500. Costs for future services including design/build coordination, construction administration, environmental education and outreach, and on-site restoration management, stewardship, and monitoring, were intended to be covered under a separate, future contract following project design and regulatory approval.

Specifically, the original CDF contract language authorized completion of the following services: *"The detailed design documents will include proposed improvements for the recommended wetland and landscape restoration activities situated within and adjacent to the Orchard Brook east pond located immediately west of Highland Avenue in the Lacey Creek corridor, the wetland restoration and native landscape buffer improvements situated in the west pond located immediately upstream from the stream's intersection with Downers Drive, and appropriate native landscape buffer solutions for various reaches of the stream corridor. CDF staff members will also assist the streambank restoration contractor, **Biotechnical Erosion Control (BEC)**, in the selection of appropriate native plant species and stabilization techniques to be utilized in the preferred bio-engineering, or other structural solutions for those portions of the streambank that will be stabilized as part of this project."*

CDF was also responsible for developing a long term restoration and management plan for all restored native landscapes as follows: *"CDF's project team will prepare a Comprehensive Restoration Management & Monitoring Plan for the naturalized landscape and restoration components of the project. This plan will clearly outline all critical measures and procedures necessary to restore and maintain the long term integrity of the site's unique natural and cultural resources including a description of existing and proposed restoration opportunities within specific management units. Restoration implementation and long-term maintenance measures will be outlined for each unit including a thorough description of maintenance techniques such as clearing, weeding, controlled burn management, and overseeding. Anticipated maintenance costs and alternatives will be described. An appropriate monitoring method designed to effectively evaluate the success of the various restoration initiatives will be prepared and presented as part of the plan."*

As you are aware, subsequent to the initiation of our original contract in July, 1999, the **Village of Downers Grove** and **Conservation Design Forum** determined it necessary to change streambank restoration consultants. This decision was due in large part to the significant workload that **Biotechnical Erosion Control** had at the time, and a general concern about their ability to complete the required plans and documents on a timely basis, based upon that workload. It was determined, therefore, that **Confluence Consulting Incorporated**, a nationally recognized stream restoration consultant, would be hired to prepare the stream stabilization and restoration design documents, with assistance from CDF and CLS staff.

As noted earlier, the streambank stabilization and restoration design, permitting, and construction aspects of this project were to be covered under a separate design/build contract with **Conservation Land Stewardship (CLS)**, **Conservation Design Forum's** construction and management affiliate. Under the direction of **Ken Willis**, **Conservation Land Stewardship** assumed the responsibility of hiring **Confluence Consulting Inc.** to prepare streambank restoration plans, specifications, and regulatory permitting documents.

During the permit application process, the **Du Page County Department of Environmental Concerns** determined it was necessary to obtain additional baseline data concerning the stream corridor including detailed one-foot contour interval topographic maps, and updated stream cross-sections and hydrological data. CLS contracted with **Andrews Environmental Engineering**,

Mr. Jerry Sprecher

15 January 2001

Page 3

Inc. to complete the required updated topographic mapping in April and May of 2000 for a total cost of \$7,124.89. **Confluence Consulting** prepared the updated stream cross-sectional data, and designed the appropriate streambank stabilization and restoration measures for a total cost of \$24,359.57. **Conservation Design Forum** and **Conservation Land Stewardship** staff members assisted **Confluence Consulting** staff in developing the plans and preparing the required regulatory plans and specifications for the stream corridor submittal, including attendance at site visits or meetings with agency representatives. **CDF** and **CLS's** labor fees for this work totaled \$41,153.50. The complete labor fee for the streambank stabilization design work including the preparation of required regulatory documents has totaled \$72,637.96.

Per your request, the stream corridor stabilization design and permitting fees have been included in the attached **Conservation Land Stewardship** proposal. As stated previously, this proposal incorporates the additional costs for **Conservation Design Forum** staff to provide construction administration, and stewardship/management and monitoring services during the first year's construction activities. These services were listed as "future services" in the original **CDF** contract.

For your information, the attached proposal will provide you with a complete breakdown of the projected implementation costs. Should you have any questions following your review of this correspondence or any of the attachments, please do not hesitate to contact me personally. Thank you again for your consideration in this matter. On behalf of **Conservation Design Forum** and **Conservation Land Stewardship**, we remain very excited about, and committed to implementing this important watershed restoration initiative.

Sincerely,



James M. Patchett
President

RESOLUTION

SM-XXXX-01

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

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 Lacey Creek water quality would benefit from the improvements; 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 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 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 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 cost to construct the Project is estimated at \$720,171.00; 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, BE IT RESOLVED by the DuPage County Board that the attached Agreement between the County and the Village of Downers Grove is hereby accepted and approved in an amount not to exceed \$140,000.00 and that the Chairman of the DuPage County Board is hereby authorized and directed to execute the Agreement on behalf of the County; and

BE IT FURTHER RESOLVED that the DuPage County Clerk be directed to transmit certified copies of this Resolution and the attached Agreement to the Village of Downers Grove, Civic Center, Downers Grove, IL 60515; Anthony Hayman, Assistant State's Attorney; County Auditor; Finance Director; Treasurer; Purchasing; Karen Wilson, 7900 South Route 53, Woodridge, IL 60517; and three (3) copies to the DuPage County Department of Development and Environmental Concerns.

Enacted and approved this _____ day of _____,
2001 at Wheaton, Illinois.

By: _____
ROBERT J. SCHILLERSTROM
CHAIRMAN, DUPAGE COUNTY
BOARD

ATTEST

By: _____
GARY A. KING, COUNTY CLERK

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 Lacey Creek water quality would benefit from the improvements; 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

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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

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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, BE IT RESOLVED by the DuPage County Board that the attached Agreement between the County and the Village of Downers Grove is hereby accepted and approved in an amount not to exceed \$140,000.00 and that the Chairman of the DuPage County Board is hereby authorized and directed to execute the Agreement on behalf of the County; and

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") is the design, construction, and construction management of water quality improvement measures along approximately 0.9 miles of Lacey Creek within the incorporated limits of Downers Grove, Illinois.

2.2 The Project shall be broken down into two phases:

2.2.1 Phase I shall consist of all streambank stabilization and wetland area construction work. All of Phase I work will begin and end in 2001. At the end of each working day in Phase I, all disturbed 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 be completed in year 2002 and observed for successfulness through 2007.

3.0 FUNDING.

3.1 The Project cost is estimated to be \$720,171.00 with the 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 seek further U.S. EPA 319 funds in order to cover the \$15,296.00 currently not funded. 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 Should the VILLAGE obtain additional state or federal funds to be made available for the Project, the local matching share shall be reduced for the VILLAGE and the COUNTY than as described in section 3.1. Under this circumstance, matching funds provided by the COUNTY shall be less than or equal to the matching share 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 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.
- 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 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 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 CITY 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 the construction and maintenance of the Project. Under no circumstances should the COUNTY be invoiced more than 19.4% of total incurred Project costs up to the limits as established in Section 3.1 and 3.4.1. The invoice 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 take care of 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.
- 5.2 The COUNTY shall have input in the preparation of bid documents and the selection of the contractor and any subcontractors.
- 5.3 Within 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 and 3.4.1.

5.4 The COUNTY shall cost share in the Project at an amount not to exceed \$140,000.00 based on the percentages 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 costs incurred as specified in paragraph 3.1.

5.4.2 The reimbursement amount shall not exceed \$140,000.00.

5.4.3 The dispersement of County funds is 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 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 Stormwater
421 N. 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, 2002, 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, 2002.

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

Conservation 2000 Ecosystem Project Application

Ecosystem Partnership: East Branch Du Page River

IDNR Use Only

Project #

Applicant Information

Applicant Information

Contact Person (if different from applicant)

(Use this box, if Applicant is and individual)

Name: (Last) _____
(First) _____ (M) _____

Name: (Last) Sprecher _____
(First) Jerry _____ (M) _____

(Use this box, if Applicant is and organization)

Village of Downers Grove

Relationship to applicant:
Village Manager

Address: 801 Burlington Avenue _____
City: Downers Grove _____
State: IL Zip Code: 60515 _____

Address: same _____
City: _____
State: _____ Zip Code: _____

Affiliation: _____
Title: _____
Phone: _____ Ext. _____
Fax: _____

Affiliation: _____
Title: _____
Phone: 630 - 434 - 5525 Ext. _____
Fax: 630 - 434 - 5571 _____

Project Summary

Project Title: Lacey Creek Wetland & Stream Corridor Restoration

Classifications: Resource Economics Habitat Outreach Research Capital

Land use information (Complete this section IF application is classified above as Habitat)

Existing Land Use Conditions: Open Water _____ Ac. Wetland 1.4 Ac. Grassland _____ Ac. Highly Erodible _____ Ac.
Riparian Woodland 3.3 Ac. Cropland _____ Ac. X Other Ac. 0.77 Ac. silted ponds

Proposed Land Use Conditions: Open Water _____ Ac. Wetland 1.9 Ac. Grassland _____ Ac. Highly Erodible _____ Ac.
Restored Riparian Woodland 3.3 Ac. Cropland _____ Ac. Other Ac. 9.5 Ac. prairie

Objectives: This project is focused on a portion of the Lacey Creek corridor including two on-line ponds to Lacey Creek. Presently, the creek system is severely degraded - the stream banks are eroding with a continuing loss of land and the ponds have been heavily silted with sediments of 3 to 6 feet thick. This degraded environment provides limited function in terms of ecological or storm water value and aids in the proliferation of nuisance species. The goals and objectives of the Lacey Creek wetlands and stream corridor restoration project are to restore and maintain the ecological health of the stream system through the incorporation of a variety of stabilization and restoration measures designed to enhance water quality, reduce point and non-point source pollution, reduce surface water runoff, improve aquatic and wildlife habitat, restore biological diversity to the aquatic and adjacent terrestrial resources, increase the aesthetic quality of the riparian corridor, and provide important public educational and interpretive opportunities that communicate the multiple benefits of watershed preservation and restoration. Through the success of this project, this area will be a multi-functional site which shall provide both ecological and storm water value, including a wildlife habitat corridor connecting Lyman Woods (upstream) and Hidden Lake Forest reserve (downstream), and be utilized as a demonstration tool to educate the community on the importance of a healthy watershed. The goals and objectives of this project are consistent with the goals of the Upper DuPage River Watershed Plan. Specifically, it addresses the goals of: educating the watershed community, improving water quality, promoting biological diversity, and providing a connecting link between preserved lands.

Description: The project is located in Section 31, T39N, R11E and is primarily contained within the Orchard Brook subdivision in Downers Grove, IL. C2000 funding will provide for native vegetation plantings to increase diversity and enhance wildlife habitat for the created emergent shelf within the ponds as well as the adjacent restored prairie and riparian woodland habitats. C2000 funding will also be used for the development of educational services and the initial monitoring of the restored creek corridor ecosystem. The wetland habitats will contain a combination of deep water pockets and a shallow emergent shelf that will provide fish and wading bird habitat. The naturalized buffer will diminish runoff rates, encourage infiltration of storm water as well as provide filtration of runoff from adjacent backyards. This will ultimately reduce non-point source pollution and erosion of the shorelines. The construction activities of excavation and rough grading the pond areas will begin 2001 after securing a 404 Permit. Construction work and planting, will be provided by professional contractors. The wetland and stream restoration is a collaborative effort with the partnering of the Orchard Brook Homeowners Association, the Village of Downers Grove, DuPage County, U.S. Fish & Wildlife Service, The Conservation Foundation, and other local and state organizations. Local schools and educational organizations will be involved in various phases of the restoration. Streambank stabilization for portions of Lacey Creek will be undertaken as part of another project for this area. As a condition of the wetland permit, DuPage County will require a conservation easement.

Project Budget

Project Cost:

Personnel..... \$ _____
 Equipment (see 2)..... \$ _____
 Commodities (see 3)..... \$ _____
 Services (see 4)..... \$ 303,661
 Land Acq./Ease.(see 5)..... \$ _____
 Other ()..... \$ _____

Estimated *TOTAL* Project Cost.....\$ 303,661

MINUS Total Matching Funds (see 6).....\$ 203,661

C-2000 FUNDS REQUESTED..... \$ 100,000

(C-2000 Funds Requested=Estimated Total Project Cost-Total Matching Funds)

(1) Complete this box IF application is for a multi-year project

Expenditures: C-2000 Match

1st Yr.(7/1/___ - 6/30___).....\$ _____ \$ _____

2nd Yr.(7/1/___ - 6/30___).....\$ _____ \$ _____

(2) Complete the box IF application includes equipment

(List all equipment > or = \$300 in value)

Item	Unit Cost	Qty.	Amt. Paid by:	
			C-2000	Match

(5) Complete this box IF application includes Land Acquisition or Conservation Easement

Land Acquisition Conservation Easement (Check one only)

_____ x _____ + _____ - _____
 # of Acres (\$/Acre) (15 % Incidentals) (Total)

Right Held by: _____ Ease. Terms: Perpetual 30 Yrs.

(3) Complete this box IF application includes Commodities

Item	Unit Cost	Qty.	Amt. Paid by:	
			C-2000	Match

(6) Complete this box IF application includes Matching Funds or In-Kind Service or Labor

Source: Village of Downers Grove \$ 100,000

Source: Orchard Brook Home Owners Assoc. \$ 40,000

Source: Northeastern IL Wetland Restoration \$ 63,661

Total Matching Funds..... \$ 203,661

(4) Complete this box IF application includes Services

Item	Unit Cost	Qty.	Amt. Paid by:	
			C-2000	Match
Excavation			0	45,000
Grading			0	78,661
Planting			85,000	80,000
Educational Services			5,000	
Year 1 Monitoring			10,000	

Maps and Drawings

(No additional Maps or Drawings allowed beyond those listed below)

County Plat Map USGS Map Project Site Map Design Drawing

(Scaled Map(s) and/or Drawing(s), with a North Arrow, which clearly shows the specific location(s) of all proposed project site(s) if required for any application proposing on-the-ground activities or acquisition(s) or conservation easement(s). **NO COLORS, HIGHLIGHTING OR SHADING ALLOWED ON THE MAPS OR DRAWINGS.**)

List all county(s) project is located in: DuPage County _____

Signatures

(Signatures are required on all applications. Failure to sign will invalidate the application)

Applicant Signature: _____ Date: _____

Landowner(s) Signature(s) (if applicable): _____ Date: _____

PARTNERSHIP Use Only

Application Received..... / / _____ Partnership Recommendation Date..... / / _____

Partnership Review Date..... / / _____ Partnership Ranking: High Medium Low

Comments: _____

Mail Applications to:

**Illinois Department of Natural Resources
 Office of Realty and Environmental Planning
 524 South Second Street, Lincoln Tower Plaza
 Springfield, Illinois 62701-1787
 Attention: C-2000 Coordinator**

Revised: 12/01/99
 Original: 10/31/97