

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Public Works **DATE:** May 20, 2003
(Name)

RECOMMENDATION FROM: _____ **FILE REF:** _____
(Board or Department)

NATURE OF ACTION:

- Ordinance
- Resolution
- Motion
- Other

STEPS NEEDED TO IMPLEMENT ACTION:

Motion to Adopt "A RESOLUTION AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND THE COUNTY OF DUPAGE FOR THE CONSTRUCTION OF THE LOMOND AVENUE DRAINAGE IMPROVEMENT PROJECT", as presented.

ENG

SUMMARY OF ITEM:

Adoption of the attached resolution shall authorize execution of an intergovernmental agreement between the Village of Downers Grove and DuPage County for the construction of the Lomond Avenue drainage improvement project.

RECORD OF ACTION TAKEN:

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND THE COUNTY OF DUPAGE FOR THE CONSTRUCTION OF THE LOMOND AVENUE DRAINAGE IMPROVEMENT PROJECT

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Intergovernmental Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and DuPage County (the "County"), in relation to the Lomond Avenue Drainage Improvement Project, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____

Village Clerk

INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE, AND THE COUNTY OF DUPAGE FOR THE CONSTRUCTION OF THE LOMOND AVENUE DRAINAGE IMPROVEMENT PROJECT

THIS AGREEMENT is entered into this _____ day of _____, 2003 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 801 Burlington Avenue, Downers Grove, Illinois 60515.

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 purpose; 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 Board previously approved the Lomond Avenue Drainage Improvement Project (hereinafter referred to as the "Drainage Project") as an eligible project to be funded by the DuPage County Drainage Bond Issue; and

WHEREAS, the County's Public Works Committee has identified the need for stormwater system design, maintenance, construction activities, drainage improvements in the vicinity of Lomond Avenue and Inverness, located, generally, within and about the municipal limits of the VILLAGE; and

WHEREAS, the VILLAGE is preparing to undertake a project to install watermains and other related appurtenances in an area that encompasses the "Drainage Project" area; and

WHEREAS, the project to be undertaken by the VILLAGE would involve some of the same type of work necessary for the "Drainage Project" thus causing a wasteful duplication of work efforts; and

WHEREAS, the VILLAGE and COUNTY have determined that it would be cost effective to combine and coordinate the two projects as a single project and to have a single contractor perform all necessary work; and

WHEREAS, the VILLAGE and COUNTY have determined that the VILLAGE is better situated to act as the lead body in a combined and coordinated project; and

WHEREAS, it is therefore necessary to enter into an intergovernmental agreement for the purpose of having the VILLAGE perform Permitting, Construction and Resident Engineering for the Drainage Project as requested by the COUNTY; and

WHEREAS, COUNTY and VILLAGE area residents and the general public will benefit from the Drainage Project through improved stormwater conveyance systems and reduced flooding; and

WHEREAS, the COUNTY has completed Final Design for the Drainage Project and will forward the design to the VILLAGE for incorporation into the combined project; and

WHEREAS, the cost to permit, manage and construct the Drainage Project has been estimated in Exhibit A at \$501,050.00; and

WHEREAS, the VILLAGE and COUNTY agree that the VILLAGE shall undertake the Drainage Project and that the COUNTY shall reimburse the VILLAGE for the costs of the Drainage Project in the amount herein specified; and

WHEREAS, the Public Works Committee of the DuPage County Board has reviewed and recommends approval of the attached Intergovernmental Agreement with the Village of Downers Grove for a cost-share amount not to exceed \$501,050.00; and

WHEREAS, as the VILLAGE will serve as the lead agency, the VILLAGE shall provide all funds for the Project and pay all expenses up front, and will be reimbursed by the COUNTY at a later date by submitting pay requests with the associated details of the County work completed in the amount herein specified.

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

RECITALS INCORPORATED

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

- 1.2 The headings of the paragraphs and subparagraphs of the AGREEMENT are inserted for convenience on reference only and shall not be deemed to constitute part of the AGREEMENT or to affect the construction hereof.

PROJECT DESCRIPTION

- 2.1 The construction of the Lomond Avenue Drainage Improvement Project (hereinafter referred to as "Drainage Project") involves the installation of underground storm sewers in the vicinity of Lomond Avenue and Inverness, in and about the Village of Downers Grove, Illinois.
- 2.2 The Drainage Project shall be undertaken in conjunction with a VILLAGE project to install watermains and related appurtenances within and about the Village of Downers Grove, and specifically including the Drainage Project Area.
- 2.3 The Project shall be constructed in accordance with the plans entitled "to be filled in by Downers Grove" and dated _____.

FUNDING

- 3.1 The Drainage Project cost is estimated to be \$501,050.00. The COUNTY'S cost-share contribution to the VILLAGE shall be limited to \$501,050.00 unless otherwise agreed to in writing as provided in paragraph 3.2 below.
- 3.2 The VILLAGE shall be responsible for bearing any cost overruns for Drainage Project expenses in excess of the Drainage Project cost estimate in Paragraph 3.1, unless the VILLAGE and COUNTY agree to apportion such extra costs before such additional costs are incurred, or as soon as practical thereafter.
- 3.3 All Change Order increases and/or decreases initiated at the request of the COUNTY, shall be the sole responsibility of the COUNTY. In addition, all Change Orders must be approved by the VILLAGE.

VILLAGE'S RESPONSIBILITIES

- 4.1 The VILLAGE shall be responsible for the preparation of the final design plans, specifications, and bid documents for the Drainage Project.
- 4.2 The VILLAGE shall publish and award the bid for the joint project work, which work shall include the Drainage Project.
- 4.3 The VILLAGE shall be responsible for the construction management of the Drainage Project.

- 4.4 The VILLAGE reserves the right to enter into additional agreements to secure funding to cover costs of the VILLAGE project.
- 4.5 In the event the VILLAGE is able to secure funds sufficient to complete the Project construction, the VILLAGE shall be responsible for the following:
 - 4.5.1 Securing and overseeing contractors to perform the Project construction and construction management, with technical advisory assistance from the VILLAGE and in kind engineering services;
 - 4.5.2 Furnishing as-built drawings for the County's portion of the Drainage Project upon joint project's completion;
- 4.6 The VILLAGE shall be responsible for securing all local, State, and Federal permits necessary for completion.
- 4.7 The VILLAGE shall be responsible for submitting copies of all permit applications and related correspondence to the COUNTY.
- 4.8 The VILLAGE shall supply copies of all grants received by the USEPA for the project to the COUNTY.
- 4.9 The VILLAGE shall supply the COUNTY as-built drawings of the Drainage Project portion of the Project upon completion, to ensure that it was built in accordance with the approved plan.
- 4.10 The VILLAGE shall invoice the COUNTY for Drainage Project costs only after installation and/or completion of the billed items. The invoice shall show work performed and total expended funds for the Drainage Project. Under no circumstances shall the VILLAGE invoice the COUNTY for an amount greater than the COUNTY'S cost share of Drainage Project costs, up to the dollar limits established in Section 3.1 unless modified by an approved change order.
- 4.11 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'S contractor shall be solely responsible for the safety of all individuals performing work on the Project Areas or involved in the construction of Other Improvements. The VILLAGE shall take such measures as are necessary to ensure that its contractors maintain the Project Areas in a safe condition and cause 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 of the Drainage Project.

COUNTY'S RESPONSIBILITIES

- 5.1 The COUNTY shall have the right to review and approve the final design plans and specifications prior to the VILLAGE advertising for contract services.
- 5.2 The COUNTY is responsible for obtaining all required land rights necessary for the completion of the COUNTY'S portion of the joint project.
- 5.3 Within sixty (60) days of receipt of the invoice, prepared according to Section 4.9 the COUNTY shall reimburse the VILLAGE for costs associated with the project as provided in paragraph 3.1.
- 5.4 The COUNTY shall cost share with the VILLAGE at a total cost not to exceed \$501,050.00 as indicated in paragraph 3.1.
- 5.5 The COUNTY shall be allowed unlimited access to the Drainage Project Area for the limited purpose of observing and monitoring the Drainage Project's progress.
- 5.6 Upon completion of the Drainage Project, the COUNTY shall inspect the work and, if deemed satisfactory, shall accept the Drainage Project. From and after the dated of acceptance, the COUNTY shall be solely responsible for maintaining and operating the drainage improvements installed, built and constructed as part of the Drainage Project.

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.

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.

- 7.2 The VILLAGE shall each require each consultant and contractor responsible for the design, construction or maintenance of the System Extension to name the VILLAGE and COUNTY as an additional insured party on said vendor's liability insurance policy. Further, the VILLAGE shall require that its consultants and contractors indemnify, defend and hold harmless the VILLAGE and COUNTY, its officers, employees and elected officials from and against any claims, liability or judgements resulting from, or caused by the negligence or willful conduct of such consultant and or contractors.
- 7.3 The VILLAGE'S obligation to indemnify hold harmless, and defend the COUNTY shall terminate upon the completion of the Drainage Project and the acceptance thereof by the COUNTY with respect to any liability arising from or out of any injury, death, loss or damage occurring after said date acceptance. However, with respect to any potential liability that arose prior to the acceptance date, the VILLAGE'S indemnification obligations shall survive the expiration of this Agreement.

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.

EFFECTIVE DATE

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

ENTIRE AREEMENT

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

AGREEMENT BINDING

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

NOTICES REQUIRED UNDER THIS AGREEMENT

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

Village of Downers Grove
Public Works Department
5101 Walnut Avenue
Downers Grove, IL 60515
ATTN: Jack Bajor

DuPage County
Public Works Department
421 N. County Farm Road
Wheaton, IL 60187
ATTN: Nick Kottmeyer

12.2 All notices required to be given under the terms of this AGREEMENT shall be in writing and either (a) served personally during regular business hours; (b) served by facsimile transmission during regular business hours; or (c) served by certified or registered mail, return receipt requested, properly addressed with postage prepaid. Notices served personally or by facsimile transmission shall be effective upon receipt, and notices served by mail shall be effective upon receipt as verified by the United States Postal Service. Each party may designate a new location for service of notices by serving notice thereof in accordance with the requirements of this Paragraph, and without compliance to the amendment procedures set forth in Paragraph 14.1, above.

SERVERABILITY

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.

GOVERNING LAW

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

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 July 1, 2004, or to a new date agreed upon by the parties.

15.1.2 The completion by the VILLAGE and COUNTY of their respective

obligations under this Agreement, in the event such completion occurs before July 1, 2004.

15.2 The COUNTY is not liable for 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.

COUNTY OF DU PAGE

VILLAGE OF DOWNERS GROVE

BY: _____
ROBERT J. SCHILLERSTROM
CHAIRMAN, DU PAGE COUNTY BOARD

BY: _____
BRIAN J. KRAJEWSKI, MAYOR
VILLAGE OF DOWNERS GROVE

Attest:

Attest:

BY: _____
GARY A. KING, COUNTY CLERK

BY: _____
APRIL HOLDEN, VILLAGE CLERK