

**VILLAGE OF DOWNERS GROVE**  
**REPORT FOR THE VILLAGE COUNCIL MEETING**  
**OCTOBER 15, 2013 AGENDA**

<b>SUBJECT:</b>	<b>TYPE:</b>	<b>SUBMITTED BY:</b>
Memorandum of Understanding with Downers Grove Park District - Barth Pond Compliance Dredging	✓ Resolution Ordinance Motion Discussion Only	Nan Newlon, P.E. Director of Public Works

**SYNOPSIS**

A resolution has been prepared to approve a Memorandum of Understanding (MOU) between the Village and the Downers Grove Park District for the dredging of Barth Pond wherein the Park District will contract for the work and the Village will make payment to the Park District in the amount of \$1,587,206.00.

**STRATEGIC PLAN ALIGNMENT**

The Goals for 2013 to 2017 identified *Top Quality Infrastructure*.

**FISCAL IMPACT**

The adopted FY 2013 Community Investment Program included \$1,500,000 for the Barth Pond dredging project (DR-034).

**UPDATE & RECOMMENDATION**

This item was discussed at the October 8, 2013 Village Council meeting. Staff recommends approval on the October 15, 2013 Active Agenda.

**BACKGROUND**

Barth Pond is located along the south branch of St. Joseph's Creek, within the limits of the Village of Downers Grove. The property is owned by the Park District and is jointly maintained by the Village of Downers Grove and the Park District as required by a 1987 Intergovernmental Agreement between the Village and Park District governing maintenance of public lakes. The 1987 IGA provides that the Village shall be responsible for certain maintenance activities with respect to public lakes including storm water structures, periodic removal of accumulated silt, and the establishment of measures to control silt accumulation. "Public lake" is defined as a body of water which is owned by either the Village or the Park District and serves the joint purpose of storm water management and use by the public for recreational purposes.

The proposed MOU was created to clarify an understanding between the Village and the Park District wherein the Park District will contract for and manage the removal of accumulated silt in Barth Pond, restoring it to its originally excavated depth. As set forth in the 1987 IGA, the Village is required to pay for this work, but the MOU sets a maximum dollar amount the Village will be required to pay. The contract includes a maximum price of \$1,587,206; the actual cost may be less. As part of the agreement, the Village will make a payment to the Park District in advance of the work. If the cost of the project is less than the payment amount, the Park District will reimburse the difference to the Village.

Village staff assisted the Park District with a selection process where the most advantageous method of silt removal was determined. This was accomplished through issuing a Request for Qualifications and a later Request for Proposals, following the prequalification of six design/build firms. After careful review the Park District is prepared to enter into a contract with Merrell Brothers, Inc.

**ATTACHMENTS**

Resolution

Memorandum of Understanding

Resolution 87-1/1987 IGA

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING EXECUTION OF A MEMORANDUM  
OF UNDERSTANDING BETWEEN THE VILLAGE OF DOWNERS GROVE  
AND THE DOWNERS GROVE PARK DISTRICT**

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 Memorandum of Understanding (the “MOU”), between the Village of Downers Grove (the “Village”) and the Downers Grove Park District (the “Park District”), for the maintenance and sediment removal of Barth Pond, as set forth in the form of the MOU submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Mayor and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the MOU, 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 MOU.

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

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE VILLAGE OF DOWNERS GROVE  
AND THE DOWNERS GROVE PARK DISTRICT**

**THIS MEMORANDUM OF UNDERSTANDING** (“MOU”) is made and entered into between the Village of Downers Grove, an Illinois municipal corporation (hereafter “Village”), and the Downers Grove Park District, an Illinois municipal corporation (hereafter “Park District”).

**RECITALS**

**WHEREAS**, the Village is an Illinois municipal corporation organized under the Constitution of the State of Illinois and the Illinois municipal code and has acted and is acting in the exercise of its statutory and home rule powers in making this Agreement; and

**WHEREAS**, the Park District is an Illinois Park District organized under the Constitution of the State of Illinois and the Illinois Park Code, and has acted and is acting pursuant to its constitutional and statutory powers in making this Agreement; and

**WHEREAS**, the Village and the Park District are public agencies within the meaning of Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*; and

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

**WHEREAS**, the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.* further authorizes intergovernmental cooperation; and

**WHEREAS**, the Park District owns that property commonly known as Barth Pond; and

**WHEREAS**, Barth Pond, in addition to being a recreational amenity for the Park District, is also a component of the Village’s storm water management infrastructure; and

**WHEREAS**, on January 12, 1987 the Village and Park District entered into an Intergovernmental Agreement concerning the maintenance of Barth Pond and the apportionment of costs for that maintenance (“1987 IGA” ); and

**WHEREAS**, the Village and Park District have agreed that Barth Pond requires maintenance in the form of silt removal and the parties have therefore worked cooperatively to solicit design-build proposals from qualified candidates to perform the silt removal work and other work under specified terms and conditions; and

**WHEREAS**, the Park District has chosen to accept the proposal of Merrel Brothers for an amount not to exceed \$1,587,206.00 (“Design-Build Proposal”); and

**NOW THEREFORE**, in consideration of the promises, terms and conditions set forth herein, the parties agree as follows:

**1.0 RECITALS INCORPORATED.**

The Recitals set forth above are incorporated herein and made a part hereof.

**2.0 UNDERSTANDING AND AGREEMENT**

The Village, in accordance with the 1987 IGA and this MOU, shall pay to the Park District the sum of \$1,587,206.00 within ten (10) business days of the approval of this MOU by both parties to fund the work of the Design-Build Proposal. The Village shall not be required to pay any additional amounts in relation to the Design-Build Proposal and shall have no further obligation of any kind. In accordance with Section 1.2.2 of the contract between Merrel Brothers and the Park District, the parties acknowledge that under no circumstances shall the total project cost exceed \$1,587,206.00. In the event the final cost of the work under the Design-Build

Proposal is less than \$1,587,206.00, the Park District shall reimburse the Village any such overpayment no later than sixty (60) days after the completion of the work. The Park District shall provide documentation to the Village showing payments made for the work. The Park District agrees to enter into and be solely responsible for administering the Design-Build Proposal.

**3.0 INDEMNIFICATION AND INSURANCE**

The District shall indemnify and hold harmless the Village against any loss, damage, claim, demand, or lawsuit incurred as a result of any injury or loss relating to the Design-Build Proposal or any activities performed pursuant to this MOU, except to the extent such loss, damage, claim, demand or lawsuit arises out of the direct or indirect conduct, act or omission of the Village or is the result of natural causes such as flooding due to weather.

The District shall have Merrell Brothers and any subcontractors add the Village as an additional insured to their insurance policies for the work to be performed under the Design-Build Proposal.

**4.0 REMAINDER**

The terms of the 1987 IGA are not changed by this MOU.

VILLAGE OF DOWNERS GROVE

DOWNERS GROVE PARK DISTRICT

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Clerk

\_\_\_\_\_  
Secretary

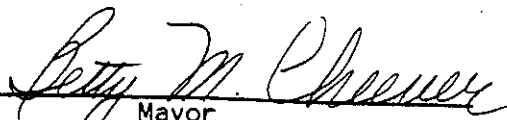
1/87

RESOLUTION NO. 87-1

A RESOLUTION AUTHORIZING EXECUTION OF AN  
INTERGOVERNMENTAL AGREEMENT WITH THE DOWNERS GROVE PARK  
DISTRICT GOVERNING MAINTENANCE OF PUBLIC LAKES

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

1. That the form and substance of a proposed Agreement (the "Agreement") between the Village of Downers Grove (the "Village") and the Downers Grove Park District (the "District"), governing maintenance of public lakes by the Village and the District respectively, and other matters related thereto, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, are hereby approved.
2. That the Mayor 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.
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 this resolution or with any provision of the Agreement 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: January 12, 1987

Attest:   
\_\_\_\_\_  
Village Clerk

11/86

**AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE  
VILLAGE OF DOWNERS GROVE AND THE DOWNERS GROVE  
PARK DISTRICT GOVERNING MAINTENANCE OF PUBLIC LAKES**

This Agreement, made and entered into this 12th day of January, 1987, between the Village of Downers Grove (the "Village") and the Downers Grove Park District (the "District"),

**WITNESSETH**

WHEREAS, the Constitution of the State of Illinois, 1970, Article VII, Section 10, authorizes units of local government to contract or otherwise associate among themselves in any manner not prohibited by law or ordinance; and

WHEREAS, Ill. Rev. Stat., 1983, Chap. 127, Section 743 provides that any power or powers, privileges or authority exercised or which may be exercised by a unit of local government may be exercised jointly with any other unit of local government; and

WHEREAS, the Village of Downers Grove, and the Downers Grove Park District, as units of local government, desire to enter an intergovernmental agreement governing the maintenance of public lakes, in order to encourage use of parks and the inclusion of lakes in the park system for the benefit of the public as a whole,

NOW, THEREFORE, in consideration of the covenants and agreements herein set forth, the parties hereto agree as follows:



1. For purposes of this Agreement, a "public lake" shall be defined as a body of water which is owned by the Village or the District and which serves the joint purpose of storm water management and use by the general public for recreational activities.

2. The Village shall be responsible for the following maintenance activities with respect to public lakes:

- a. Storm water structures.
- b. Periodic removal of accumulated silt.
- c. Establishment of measures to control and alleviate the problem of silt accumulation.

3. The District shall be responsible for the following maintenance activities with respect to public lakes:

- a. Maintenance of shrubs, grass, trees and other land areas.
- b. Maintenance of the edge of the water area, including prevention and repair of land erosion.
- c. Maintenance of all District-owned and controlled equipment located on any site in the area of a public lake.
- d. Maintenance of water quality, including control of aquatic vegetation, pollution due to stagnation, and mosquitoes.

4. The Village agrees to indemnify and defend the District with respect to any and all claims of damages to person or property which may arise directly from the negligence of the Village, its agents or employees in performing its obligations pursuant to paragraph 2 hereof, and the District agrees to indemnify and defend the Village with respect to any and all claims of damages to person or property which may arise directly from the negligence of the District, its agents or employees in performing its obligations pursuant to paragraph 3 hereof.

5. Any body of water accepted or created by either party after the date of this Agreement shall first be accepted in writing by the other party before qualifying as a public lake under the definition set forth in paragraph 1 above.

6. This Agreement may be amended from time to time by mutual written consent of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date hereinabove written.

VILLAGE OF DOWNERS GROVE

BY: Betty M. Cheever  
Mayor

Attest: Barbara Walker  
Village Clerk

DOWNERS GROVE PARK DISTRICT

BY: James Anderson  
President

Attest: W. E. Silva  
Secretary