

VILLAGE OF DOWNERS GROVE
Report for the Village
6/11/2019

SUBJECT:	SUBMITTED BY:
Intergovernmental Agreement with the Village of Westmont and the Westmont Park District for Stormwater Improvements in Deer Creek	Nan Newlon Director of Public Works

SYNOPSIS

A resolution has been prepared to authorize the execution of an intergovernmental agreement between the Village of Downers Grove, the Village of Westmont and the Westmont Park District to construct stormwater improvements for the Deer Creek Subdivision.

STRATEGIC PLAN ALIGNMENT

The goals for 2017-2019 includes *Top Quality Infrastructure*.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval on the June 18, 2019 Consent Agenda.

BACKGROUND

The 2014 Stormwater Project Analysis identified improvements to stormwater management for the Deer Creek Subdivision as a priority project. St. Joseph's Creek flows through the Deer Creek Subdivision from east to west. A stormwater study has been completed that identified a number of proposed improvements projects for the Deer Creek Subdivision that will provide benefits for more frequent stormwater events. In order for the Village of Downers Grove to construct these improvements, temporary construction easements are needed from the Westmont Park District. Following completion of these improvements the permanent easements will be granted to the Village of Westmont for ongoing maintenance. Please see the [Deer Creek Drainage Study](#) page for detailed information on the proposed improvements.

The engineering services for the Deer Creek Stormwater Improvements were approved by Council at the June 4, 2019 Council Meeting and the project design work is currently in progress. Preparation for the removal of invasive plant species is underway and the contractor is expected to begin invasive plant removal in the next two weeks. Those who will be impacted by the invasive plant removal will be notified prior to the work beginning.

ATTACHMENTS

Agreement

INTERGOVERNMENTAL EASEMENT AGREEMENT

This Intergovernmental Easement Agreement (the "Agreement") made this ___ day of _____, 2019 ("Effective Date"), by and among the Westmont Park District, an Illinois park district ("Grantor"), the Village of Downers Grove, an Illinois municipality ("Grantee") and the Village of Westmont, an Illinois municipality ("Westmont"), all of which hereinafter may be referred collectively as the "Parties" or individually as a "Party."

RECITALS

WHEREAS, Grantor is the owner of certain real property located at _____, _____ Westmont, Illinois, legally described and depicted in the aerial photograph as set forth in **Exhibit A** (the "Subject Property");

WHEREAS, Section 8-11 of the Park District Code authorizes the District to grant easements to municipalities, corporations or persons for the construction, operation and maintenance of facilities upon, under or across any District property for various utilities including for storm water or other public services;

WHEREAS, the Grantee desires to make certain stormwater improvements on the Subject Property ("Improvements") described as Projects B and D in **Exhibit B** attached hereto ("Projects") for the benefit of certain residents of Downers Grove;

WHEREAS, Grantor has determined that it is in the public's interest to grant a temporary construction easement on the Subject Property to the Grantee for the Grantee's construction of the Improvements pursuant to the terms of this Agreement;

WHEREAS, Grantor has determined that it is in the public's interest to grant a permanent easement Westmont on the Subject Property for the use, operation and maintenance of the Improvements pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree that:

1. **Recitals Incorporated.** The foregoing recitals are incorporated herein by reference as though fully set forth. All exhibits identified in this Agreement are by this reference incorporated into this Agreement and made a part hereof.

2. **Grant of Temporary Easement for Construction-Expiration.** Grantor, as the owner of the Subject Property, for itself and its successors in title to all or any portion of the Subject Property, hereby grants and conveys to Grantee, its officers, agents, employees, officials, contractors, and subcontractors a non-exclusive and temporary easement (the "Temporary Construction Easement") on, over, across and through that portion of the Subject Property legally described and depicted in **Exhibit C** ("Temporary Construction Easement Area") in order to construct the Improvements. Grantee's use, construction and all other activities related to construction and commencement of operation of the Improvements on the Temporary Construction Easement Area or Subject Property are hereinafter referred to as the "Temporary Construction Easement Activities." This Temporary Construction Easement is a temporary easement and, unless it is extended in writing by the Grantor, shall expire, without any action by any Party, on

_____. Grantor shall have no responsibility to design, construct, operate or maintain the Improvements.

3. Temporary Construction Easement Activities.

a. Grantee agrees to use due care in the construction and installation of the Improvements, so as not to unreasonably disturb Grantor's use of the Subject Property.

b. Prior to beginning construction of the Improvements, Grantee shall erect a temporary construction fence acceptable to the Grantor around the Temporary Construction Easement Area, to ensure that all construction activity and access are confined within the designated areas. The fence shall not be removed until all construction work on the Improvements has been completed. The Grantee shall not permit its construction personnel to be outside of the designated construction areas while engaged in construction activities.

c. Grantee covenants and agrees to properly maintain the Temporary Construction Easement Area and the Subject Property and keep same in good order, free and clear from rubbish. All trees, stumps, and other debris resulting from the construction of the Improvements shall be legally disposed of off of the Subject Property by the Grantee.

d. Grantor shall not be responsible for or have control over the construction means, methods, techniques or procedures with respect to the construction of the Improvements performed by Grantee. In no event shall Grantor be responsible for or have any obligation with respect to the safety of any person performing work for, or on behalf of, Grantee on the Improvements, including, without limitation, the Grantee's employees or the personnel of any contractor, subcontractor, agent or consultant retained by the Grantee.

e. Grantee shall take such measures as are necessary to ensure that the Temporary Construction Easement Area and the Subject Property are maintained in a reasonably safe condition during construction of the Improvements. Such measures shall include the installation of appropriate barricades and warning signs, and the strict enforcement of all applicable safety rules and regulations. All construction or other work or activity by Grantee or by any contractor, subcontractor, consultant, or other entity hired by Grantee to perform such construction or other work or activity within the Temporary Construction Easement Area shall be performed in a safe and sound manner and in accordance with all applicable federal, state and local laws.

4. Restoration. Upon the earlier of completion of the construction of the Improvements, or expiration of the Temporary Construction Easement, the Grantee shall, at its sole cost and expense, restore the Temporary Construction Easement Area to the condition existing immediately prior to the commencement of the work, including but not limited to: (i) replacing any and all topsoil removed by Grantee on any portion of the Temporary Construction Easement Area; (ii) replacing any and all natural grass removed by seeding with a good quality seed on any portion of the Temporary Construction Easement Area; (iii) re-installing any park signage that was removed; (iv) restoring any pavement damaged or removed during construction on any portion of the Temporary Construction Easement Area; (v) replacing any damaged or destroyed park amenity, with a new amenity of the same kind and as approved by the Grantor; and (vi) restoring any portion of the Subject Property and any other adjacent property damaged or otherwise disturbed in connection with the construction of the Improvements to the same condition which existed immediately prior to the beginning the construction of the

Improvements performed on the Temporary Construction Easement Area in accordance with this Section. All restoration shall be completed within thirty (30) days after construction of the Improvements are complete or, if the restoration cannot be reasonably completed within 30 days, the period for restoration shall be extended for a reasonable time, as approved by the Grantor, if the Grantee has commenced the restoration work, weather permitting, within the 30-day period and continues to diligently and in good faith to complete the restoration. Grantor shall determine in its sole and reasonable discretion when restoration of the Temporary Construction Easement Area, the Subject Property, and any adjacent property owned by Grantor is complete.

5. Grant of Non-exclusive Permanent Easement. Upon the earlier of Grantee's completion of the construction of the Improvements or expiration of the Temporary Construction Easement, Grantee shall convey all of its right title and interest in and to the Improvements to Westmont. Upon the earlier of Grantee's completion of the construction of the Improvements or expiration of the Temporary Construction Easement, Grantor grants to Westmont, and any of Westmont's officers, agents, contractors, sub-contractors, representatives, employees, licensees, successors or assigns, a non-exclusive permanent easement over, on, and across that portion of the Subject Property as legally described in Exhibit D attached hereto, consisting of _____ square feet, more or less ("Permanent Easement Premises"), for the right, privilege and authority to enter upon the Permanent Easement Premises from time to time as Westmont, in its reasonable discretion deems necessary, or as otherwise specified pursuant to Paragraph 6 and Paragraph 7, or either of them, of this Agreement, in order to use, inspect, repair, construct and maintain the Improvements (collectively, "Permanent Easement"). Westmont's use, inspection, repair, construction and maintenance activities on the Permanent Easement Premises are hereinafter referred to as the "Permanent Easement Activities." Westmont shall have the right of access across the Subject Property, by vehicle or foot, for workers and equipment as necessary to perform the Permanent Easement Activities on the Permanent Easement Premises. Grantor shall have no responsibility to use, operate, inspect, repair, construct, or maintain any of the Improvements.

6. Permanent Easement Conditions. The grant of permanent easement and ancillary rights given to Westmont under this Agreement shall be subject to the conditions that:

a. Grantor reserves the right of access to and use of the Permanent Easement Premises in any manner not inconsistent with the rights granted to Westmont under this Agreement, including but not limited to the right to install structures, landscaping, gardens, shrubs, driveways, sidewalks, parking lots, and ingress and egress roadways on the Permanent Easement Premises that do not then or later conflict with the Improvements or the easement rights granted hereunder;

b. Westmont shall notify Grantor prior to commencement of any excavation, construction, repair, maintenance or other work or activity on the Permanent Easement Premises. The Parties shall reasonably cooperate with respect to the commencement, timing, and location of such work or activity so as to protect the public at large and to avoid any interference with Grantor's use of the Subject Property or the Permanent Easement Premises;

c. All construction or other work or activity by any entity within the Permanent Easement Premises shall be performed in a safe and sound manner and in accordance with all applicable federal, state and local laws, including the ordinances and regulations of Westmont;

d. Westmont shall restore the Permanent Easement Premises to the condition which existed immediately prior to the beginning of any work or activity performed on the Permanent Easement

Premises. Westmont shall similarly restore any portions of the Subject Property and any other real estate owned by Grantor that are damaged or otherwise disturbed in connection with any work or activity performed on the Permanent Easement Premises to the requirements, standards and specifications set forth in Paragraph 4 above. Westmont shall be responsible for all costs associated with said restoration of the Permanent Easement Premises and the Subject Property as provided herein.

7. Maintenance. Westmont shall be responsible for all maintenance of the Permanent Easement Premises, including mowing. Westmont shall plant and maintain bushes or other landscaping, as approved by the Grantor, on the Permanent Easement Premises. Westmont shall maintain the Permanent Easement Premises in such a manner so as to ensure that the Permanent Easement Premises comply at all times with applicable federal, state and local law. In the event that Grantor determines that Westmont is not in compliance with the terms of this paragraph 7, Grantor shall provide Westmont written notice of said noncompliance. Upon receipt of said notice, Westmont shall have thirty (30) days to commence the necessary measures to cure said noncompliance. Notwithstanding the above thirty (30) day cure period, Westmont shall take immediate action to cure said noncompliance in the case of an emergency likely to cause immediate harm, damage or danger to surrounding property or to the public or private health, safety or welfare. In the event that Westmont fails to commence the necessary measures to cure said noncompliance before the expiration of the periods set forth herein, or otherwise exhibits an unwillingness to cure said non-compliance, Grantor shall have the right, but not the obligation, to take all steps necessary to bring the Permanent Easement Premises and Subject Property if applicable, into good working order and repair and to ensure compliance with all applicable federal, state and local laws, and Westmont shall be responsible for all reasonable costs and expenses incurred by Grantor in connection with same, including reasonable attorneys' fees.

8. Hazardous Materials. Neither Grantee nor Westmont shall at any time, transport, bring upon, store or deposit on the Subject Property any explosives or flammable or hazardous materials of any kind, except as needed for vehicles or equipment for the Temporary or Permanent Easement Activities, provided that the Grantee or Westmont, as the case may be, and their respective contractors shall be liable for any damage to or contamination of Subject Property resulting from such activity or use. As used in this Agreement, "hazardous materials" means any hazardous or toxic substances, materials or wastes, including, but not limited to solid, semi-solid, liquid or gaseous substances which are toxic, ignitable, corrosive, carcinogenic or otherwise dangerous to human, plant or animal health or well-being and those substances, materials, and wastes listed in the United States Department of Transportation Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto or such substances, materials, and wastes regulated under any applicable local, state or federal law including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as "Hazardous substances" pursuant to Section 1251 *et. seq.* (33 U.S.C. Section 1321) or listed pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et. seq.* (42 U.S.C. Section 6903), or (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et. seq.* (42 U.S.C. Section 9601) or any other applicable environmental law.

9. Indemnification. Grantee agrees to indemnify, defend and save Grantor, and Westmont, their respective officers, elected officials, agents and employees, and all other persons or entities acting at the direction of Grantor or Westmont, harmless from and against any and all liabilities, claims, losses, or demands for personal injury, including death, or property damage arising out of or caused by any act or omission of Grantee, any of its contractors or subcontractors, anyone directly or indirectly employed

or engaged by any of them, or anyone for whose acts any of them may be liable, arising from Grantee's conduct of the Temporary Construction Easement Activities or Grantee's performance, exercise or use of any of the easement rights or responsibilities granted to it under this Agreement. Westmont agrees to indemnify, defend and save Grantor and Grantee, their respective officers, elected officials, agents and employees, and all other persons or entities acting at the direction of Grantor or Grantee, harmless from and against any and all liabilities, claims, losses, or demands for personal injury, including death, or property damage arising out of or caused by any act or omission of Westmont, any of its contractors or subcontractors, anyone directly or indirectly employed or engaged by any of them, or anyone for whose acts any of them may be liable, arising from Westmont's conduct of the Permanent Easement Activities or Westmont's performance, exercise or use of any of the easement rights or responsibilities granted to it under this Agreement.

10. Insurance.

a. Grantee shall maintain liability insurance in reasonable amounts, and with reputable companies as are reasonably acceptable to Grantor and/or the risk management association of which it is a member or may be self-insured for this coverage, to protect Grantor and Westmont against claims arising directly or indirectly out of or in connection with Grantee's conduct of the Temporary Construction Easement Activities or use of the Temporary Construction Easement Area or Subject Property pursuant to this Agreement at any time. Grantee shall name, or cause any contractor hired to perform any work on the Temporary Construction Easement Area to name the Grantor and Westmont, their respective elected and appointed officials, officers, employees and agents as an additional insureds in the same coverages and coverage amounts that Grantee requires said contractors to provide for Grantee's benefit. Prior to commencing any activity on the Subject Property, Grantee shall provide to Grantor and Westmont a copy of a Certificate of Insurance evidencing the coverages and additional insured status required hereby, including evidence satisfactory to Grantor of the amount of any self-insured retentions available for and applicable to claims arising under this Agreement.

b. Westmont shall maintain liability insurance in reasonable amounts, and with reputable companies as are reasonably acceptable to Grantor and/or the risk management association of which it is a member, to protect Grantor and Grantee against claims arising directly or indirectly out of or in connection with Westmont's conduct of the Permanent Easement Activities or use of the Permanent Easement Premises or Subject Property pursuant to this Agreement at any time. Westmont shall name, or cause any contractor hired to perform any work on the Permanent Easement Premises to name the Grantor and Grantee, their respective elected and appointed officials, officers, employees and agents as an additional insureds in the same coverages and coverage amounts that Westmont requires said contractors to provide for Westmont's benefit. Prior to commencing any such activity on the Subject Property, Westmont shall provide to Grantor and Grantee a copy of a Certificate of Insurance evidencing the coverages and additional insured status required hereby.

11. Project Coordination; Permits; Payment of Fees, Costs, and Expenses.

a. Grantee shall be solely responsible for the payment of all fees, costs, and expenses associated in any way with the Temporary Construction Easement Activities, including but not by limitation, the costs for any and all design, construction, and initial operation of the Improvements. Neither Westmont nor Grantor shall have any duty to make any payments or expend any funds related in any way thereto. .

b. Westmont shall assist in coordination of the Projects. Westmont shall be solely responsible for the payment of all fees, costs, and expenses associated in any way with the Permanent Easement Activities and the maintenance duties specified in Section 7. Neither Grantor nor Grantee shall have any duty to make any payments or expend any funds related in any way thereto. Westmont agrees to waive any and all permit fees for any work associated with the Projects.

12. Term. This Agreement shall commence on the Effective Date and shall be in full force and effect for so long as the Improvements are required for stormwater or flood control, unless the Parties, or their successors, mutually agree in writing to terminate this Agreement. Unless otherwise agreed to by Grantor's Board of Park Commissioners, in the event of termination of this for any reason, Grantee and Westmont shall remove the Improvements and restore the Subject Property pursuant to the requirements set forth in Paragraph 4 hereof.

13. Entire Agreement. This instrument contains the entire agreement between the Parties relating to the rights granted herein and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect, and modifications to this Agreement must be in writing and must be signed by all Parties to this Agreement.

14. Severability. Invalidation by judgment or court order of any one or more of the covenants or restrictions contained herein shall in no way affect any other provisions which shall remain in full force and effect.

15. Covenant Running with the Land. This easement and the promises contained in this Agreement shall be a covenant running with the land and shall be binding upon Grantor, Grantee, and Westmont, and any of their respective lessees, successors in interest, heirs, devisees and assigns from and after the date of execution by the Parties.

16. Law Governing. The laws of the State of Illinois shall govern the terms of this Agreement both as to interpretation and performance.

17. Captions and Paragraph Headings. Captions and paragraph headings are for convenience only and are not a part of this Agreement and shall not be used in construing it.

18. Notices. All notices provided for herein shall be served upon the Parties by personal delivery, fax or Certified United States mail, return receipt requested, at the following locations, or at such other location or locations as the Parties may from time to time designate in writing:

Notice to Grantee:

Village of Downers Grove
Attention:
801 Burlington Avenue
Downers Grove, Illinois 60515
Email:

Notice to Grantor:

Executive Director
Westmont Park District
55 E. Richmond Street
Westmont, Illinois 60559
Email: rfleck@westmontparks.org

Notice to Westmont:

Village of Westmont
Attn:
31 W. Quincy Street
Westmont, Illinois 60559
Email:

Notices shall be deemed given when received by the Party to whom it was sent.

19. No Waiver of Tort Immunity. Nothing contained in this Agreement shall constitute a waiver by any of the Parties of any right, privilege or defense which it has under statutory or common law, included but not limited to the Illinois Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10.

20. No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and entity who is not a party to this Agreement or to acknowledge, establish, or impose any legal duty to any third party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

GRANTOR

GRANTEE

WESTMONT PARK DISTRICT

VILLAGE OF DOWNERS GROVE

By: _____

By: _____

Its: _____

Its: _____

Attest: _____

Attest: _____

Its: _____

Its: _____

VILLAGE OF WESTMONT

By: _____

Its: _____

Attest: _____

Its: _____

GRANTOR'S ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS
COUNTY OF ____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT _____ and _____, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this __ day of _____, 20__.

Notary Public

My Commission expires:_____

GRANTEE'S ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS
COUNTY OF ____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT _____ and _____, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this __ day of _____, 20__.

Notary Public

My Commission expires:_____

WESTMONT'S ACKNOWLEDGMENT

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT _____ and _____, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this __ day of _____, 20__.

Notary Public

My Commission expires: _____

EXHIBIT A**SUBJECT PROPERTY**

Deer Creek Detention (West Detention)

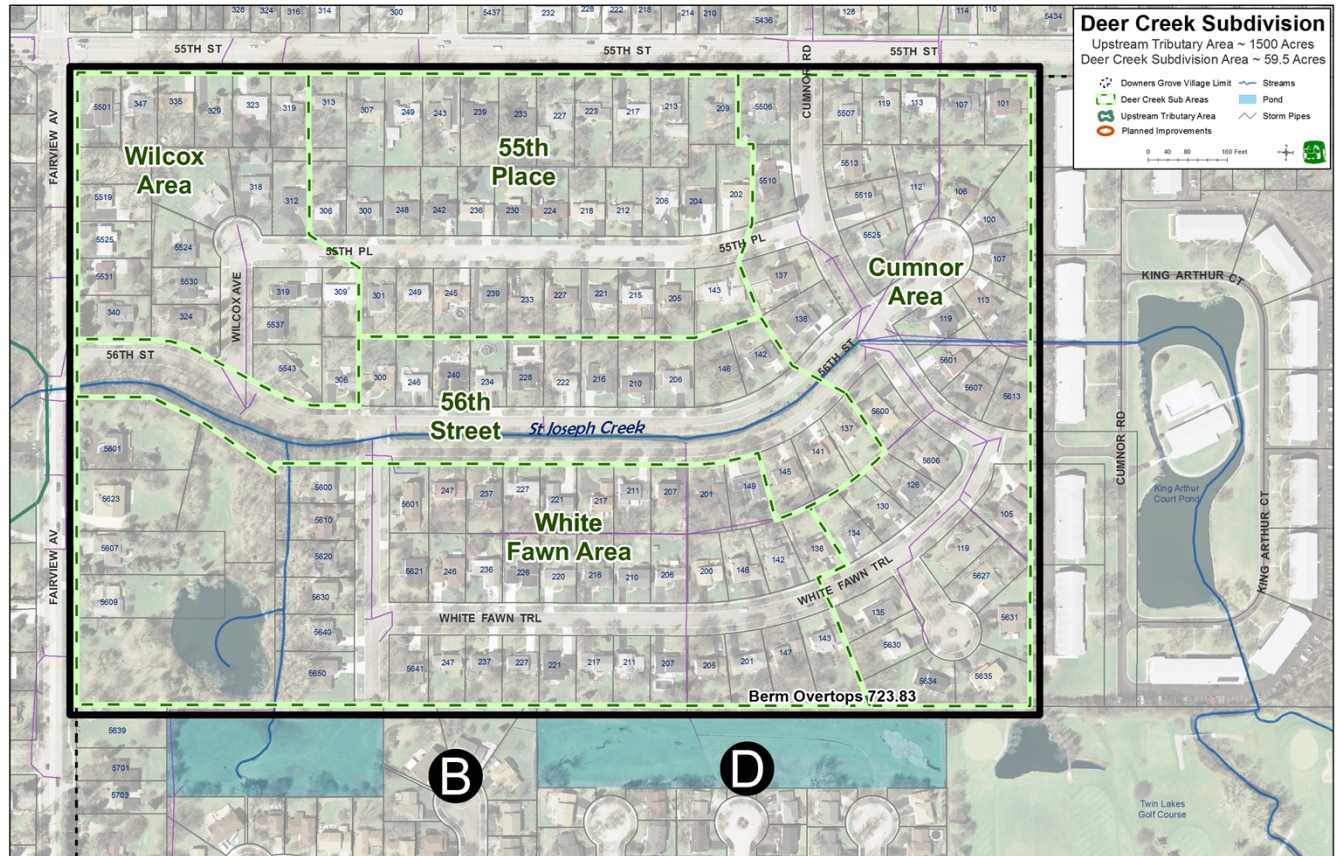
LOT 46 IN THE VILLAS OF DEER CREEK BEING A SUBDIVISION OF PART OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DU PAGE COUNTY, ILLINOIS.

PIN: 09-16-110-001

Deer Creek II Detention (East Detention)

LOT 129 IN GOLFVIEW ADDITION TO DEER CREEK IN WESTMONT, BEING A SUBDIVISION OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 38 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DU PAGE COUNTY, ILLINOIS.

PIN: 09-16-104-028

EXHIBIT B**VILLAGE OF DOWNERS GROVE
STORM WATER/DRAINAGE PROJECTS B AND D****Project B:**

Widen and lower the inter-pond weir (channel).

Project D:

Reconstruct/elevate the north berm or the east detention area to the elevation from the 1977 approved plans.

EXHIBIT C

TEMPORARY CONSTRUCTION EASEMENT AREA



EXHIBIT D

PERMANENT EASEMENT PREMISES

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF
AN INTERGOVERNMENTAL EASEMENT AGREEMENT BETWEEN
THE VILLAGE OF DOWNERS GROVE, THE WESTMONT PARK DISTRICT
AND THE VILLAGE OF WESTMONT**

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 Easement Agreement (the "Agreement"), between the Village of Downers Grove (the "Grantee"), the Westmont Park District ("Grantor") and the Village of Westmont ("Westmont") for the construction of stormwater improvements for the Deer Creek Subdivision, 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