

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
6/21/2022

SUBJECT:	SUBMITTED BY:
Intergovernmental Agreement with DuPage County for ARPA Stormwater Grant – Otis-Grant-Florence Drainage Improvements	Andy Sikich Public Works Director

SYNOPSIS

A resolution has been prepared to approve an Intergovernmental Agreement (IGA) with DuPage County for Stormwater Drainage Improvements on the Otis-Grant-Florence project.

STRATEGIC PLAN ALIGNMENT

The goals for 2021-2023 include *Steward of Financial, Environmental and Neighborhood Sustainability* and *Top Quality Infrastructure*.

FISCAL IMPACT

The FY22 budget includes \$600,000 in the Stormwater and Capital Improvements funds for the Otis-Grant-Florence project (SW-096).

RECOMMENDATION

Staff recommends approval on the June 21, 2022 consent agenda.

BACKGROUND

DuPage County Stormwater Management has nearly \$8 million of American Rescue Plan Act (APRA) funding to assist with construction costs for stormwater management, flood control, and water quality projects.

The Village submitted a funding request application to DuPage County Stormwater Management to assist in the construction costs of the proposed drainage improvements at Otis-Grant-Florence. The county has awarded funding for up to half of the estimated project costs, and will reimburse the Village up to 50% of the total project construction costs; a maximum amount of \$251,540.

The proposed project includes the construction of storm sewers on Grant Street, Florence Avenue, and Otis Street to redirect stormwater away from homes. The project is currently being designed and bid. Staff expects to bring a construction contract to the Village Council for approval in July 2022.

ATTACHMENTS

Resolution
Intergovernmental Agreement

RESOLUTION NO. ____

**A RESOLUTION AUTHORIZING EXECUTION OF AN
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE COUNTY OF DUPAGE AND THE VILLAGE OF DOWNERS GROVE
FOR THE OTIS-GRANT-FLORENCE
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 the County of DuPage, Illinois (the "County"), for the Otis-Grant-Florence 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 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, 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 COUNTY OF DUPAGE, ILLINOIS
AND THE VILLAGE OF DOWNERS GROVE FOR THE OTIS-GRANT-FLORENCE
DRAINAGE IMPROVEMENT PROJECT

This INTERGOVERNMENTAL AGREEMENT is made this 28th day of June 2022 between the COUNTY OF DUPAGE, a body politic and corporate, with offices at 421 N. County Farm Road, Wheaton, Illinois (hereinafter referred to as the COUNTY) and the VILLAGE OF DOWNERS GROVE, a body politic and corporate, with offices at 801 Burlington Avenue, Downers Grove, IL 60515 (hereinafter referred to as the VILLAGE).

R E C I T A L S

WHEREAS, the VILLAGE and the COUNTY are public agencies within the meaning of the Illinois “Intergovernmental Cooperation Act” and as authorized by Article 7, Section 10 of the Constitution of the State of Illinois; and

WHEREAS, the purposes of the “Intergovernmental Cooperation Act” and Article 7 of the Constitution of the State of Illinois include fostering cooperation among government bodies; and

WHEREAS, the Illinois General Assembly has granted the COUNTY authority to take action to manage stormwater and control flooding and to enter into agreements for the purposes of stormwater management and flood control (Illinois Compiled Statutes, Chapter 55 paragraphs 5/5-1062.3 and 5/5-15001 et. seq.); and

WHEREAS, the COUNTY has adopted the DuPage County Stormwater Management Plan which recognizes the reduction of stormwater runoff as an integral part of the proper management of storm and flood waters; and

WHEREAS, the COUNTY has been awarded \$179,266,585 in funding through the American Resource and Recovery Act (ARPA); and

WHEREAS, ARPA permits the use of ARPA funds for stormwater infrastructure projects; and

WHEREAS, the COUNTY Board has allocated a portion of its ARPA funds be dedicated towards qualifying stormwater infrastructure projects; and

WHEREAS, the Stormwater Management Planning Committee and the DuPage County Board has approved a municipal cost share program, and a portion of the funds dedicated to

Stormwater Infrastructure are to be used to fund program specific shovel-ready projects that demonstrate flood protection and resilience measures; and

WHEREAS, the Stormwater Management Department on behalf of the COUNTY has developed and implemented a competitive grant program available to all municipalities in DuPage County; and

WHEREAS, the VILLAGE has submitted an application under this grant program for the “OTIS-GRANT-FLORENCE DRAINAGE IMPROVEMENT PROJECT” that meets the criteria as a project that qualifies as an ARPA Stormwater Infrastructure Project (herein referred to as the “PROJECT”); and

WHEREAS, the COUNTY and the VILLAGE have determined that the implementation of the PROJECT will benefit local citizens with flood protection, water quality and/or resilience measures; and

WHEREAS, the VILLAGE has requested COUNTY participation in cost sharing of the PROJECT through a grant from the COUNTY’S American Rescue Plan Act in an amount not to exceed two-hundred fifty-one thousand, five hundred forty dollars (\$251,540); and

WHEREAS, the VILLAGE shall pay all PROJECT expenses up front and will be reimbursed for qualified expenses per this AGREEMENT; and

WHEREAS, the VILLAGE shall share any available data collected from the PROJECT for the purposes of fostering community education and improving upon similar future projects; and

NOW, THEREFORE, in consideration of the premises, the mutual covenants, terms, and conditions herein set forth, and the understandings of each party to the other, the parties do hereby mutually covenant, promise and agree as follows:

1.0 INCORPORATION AND CONSTRUCTION.

- 1.1 All recitals set forth above are incorporated herein and made a part hereof, the same constituting the factual basis for this AGREEMENT.
- 1.2 The headings of the paragraphs and subparagraphs of this AGREEMENT are inserted for convenience of reference only and shall not be deemed to constitute part of this AGREEMENT or to affect the construction hereof.

2.0 PROJECT DESCRIPTION.

- 2.1 The PROJECT involves an area where stormwater runoff is directed to residential backyards and through a storm sewer on private property of unknown condition. The PROJECT involves the installation of storm sewer in VILLAGE right-of-way that will discharge to a rain garden.
- 2.2 The PROJECT shall be developed essentially in accord with the engineering plans as prepared by Engineering Resource Associates, Inc., latest revision date of March 2022, which document is incorporated herein by reference but is not attached hereto due to space limitations. The project shall be maintained and monitored by the VILLAGE or its consultant.

3.0 FUNDING.

- 3.1 The total construction related PROJECT costs are estimated to be five hundred three thousand, eighty dollars (\$503,080). The COUNTY's maximum reimbursement amount is \$251,540 or 50% of the project cost, whichever is less. The anticipated cost share is as follows, unless otherwise agreed to in writing as provided in Paragraph 3.2 below:

VILLAGE OF DOWNERS GROVE	50%	\$251,540
COUNTY OF DUPAGE	50%	\$251,540
TOTAL	100.0%	\$503,080

- 3.2 The VILLAGE shall be responsible for bearing any cost overruns or expenses in excess of the funding listed in Paragraph 3.1, regardless of the cause, unless the VILLAGE and COUNTY agree to apportion such extra costs (through an amendment consistent with Paragraph 8.1) before they are incurred.
- 3.3 This AGREEMENT shall in no way obligate the VILLAGE to undertake this PROJECT if the VILLAGE in its sole discretion determines that it is no longer in the VILLAGE's best interest to proceed with this PROJECT. However, in the event the PROJECT is not substantially completed by October 31, 2023, the VILLAGE shall promptly reimburse the COUNTY any monies paid by the COUNTY to the VILLAGE pursuant to this AGREEMENT. The VILLAGE's right to retain the COUNTY'S reimbursement of PROJECT costs is expressly conditioned upon the VILLAGE'S timely and satisfactory completion of the PROJECT.
- 3.3 The VILLAGE may only seek COUNTY reimbursement for allowable PROJECT construction expenses incurred on, or before, October 31, 2023. Allowable PROJECT expenses incurred and paid by the VILLAGE in relation to the PROJECT shall include third-party professional services related to the construction of the PROJECT, but does not include construction management, bid advertising, etc. Notwithstanding the foregoing, allowable expenses shall not

include the VILLAGE'S administrative costs, overhead, payroll, land acquisition, legal or accounting services.

- 3.4 As this Agreement utilizes ARPA funds, the VILLAGE is aware that time is of the essence in notifications as to whether the VILLAGE will proceed with this project to substantial completion not later than October 31, 2023. If the VILLAGE fails to communicate that the VILLAGE is not proceeding with this project or if the VILLAGE fails to substantially complete this project by October 31, 2023, the COUNTY may recoup any expended funds and withhold any unexpended funds to be used for other permissible purposes in advance of the December 31, 2026, federal recapture deadline.

4.0 VILLAGE'S RESPONSIBILITIES.

- 4.1 The VILLAGE shall be responsible for the preparation of the plans, specifications, and bid documents for the PROJECT, together with the advertisement and award of all PROJECT-related public bids. The VILLAGE shall select, and contract with, all vendors providing professional services for the PROJECT.
- 4.2 The VILLAGE shall be responsible for successful completion of all phases of the PROJECT, from design and construction through maintenance.
- 4.3 The VILLAGE shall be responsible for securing all local, county, state, and federal permits necessary for completion of the PROJECT.
- 4.4 The VILLAGE shall be responsible for submitting copies of all permit applications and related correspondence to the COUNTY in a timely manner to ensure sufficient review by the COUNTY. The purpose of the COUNTY'S review shall be for the sole purpose of documenting whether PROJECT work components qualify as allowable expenses.
- 4.5 The VILLAGE shall be responsible for obtaining all required land rights necessary for the completion of the PROJECT.
- 4.6 The VILLAGE shall not be reimbursed by the COUNTY for work undertaken prior to the signing of this AGREEMENT.
- 4.7 The VILLAGE may enter into additional agreements to secure its portion of the local PROJECT costs.
- 4.8 The VILLAGE shall submit no more than one invoice per month to the COUNTY during the construction and maintenance phases of the PROJECT. Under no circumstances should the COUNTY be invoiced more than fifty percent (50%) of total incurred PROJECT construction costs up to the limits as established in

Paragraph 3.1. The invoice shall show the quantities, cost per item, date of work incurred, proof of payment (copy of check), final waivers from the primary contractor, and a brief summary of work completed on the PROJECT.

- 4.9 The VILLAGE shall make direct payments, or cause to have payments made, to all parties providing services related to this PROJECT. This requirement will not affect the COUNTY'S obligation to reimburse the VILLAGE in the amounts herein agreed upon, nor shall this provision affect the VILLAGE'S obligation to repay the COUNTY in the event the PROJECT is not undertaken or completed, as established in Paragraph 3.3.
- 4.10 The VILLAGE shall make any data collected from the PROJECT available to the COUNTY upon reasonable request by the COUNTY. The COUNTY shall be allowed unlimited, but reasonable, access to the PROJECT area to observe and review PROJECT work and all work documents (i.e., plans, change orders, field orders, construction manager diaries, etc.). The COUNTY shall provide the VILLAGE reasonable advanced notice of when the COUNTY requires such access.
- 4.11 The COUNTY shall not be responsible for or have control over the design, construction, means, methods, techniques or procedures with respect to any work performed for the PROJECT. The VILLAGE and VILLAGE'S contractors shall be solely responsible for the safety of all individuals performing work on the PROJECT. The VILLAGE shall take such measures as are necessary to ensure that its contractors maintain the PROJECT areas in a safe condition and install appropriate barricades and warning signs, and the VILLAGE shall strictly enforce or cause to have strictly enforced 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. COUNTY'S role in conducting any review or granting any consent or approval relates solely to the PROJECT'S eligibility under the COUNTY'S ARPA funding.
- 4.12 The VILLAGE must acknowledge the COUNTY using logo(s) and wording provided by the COUNTY in permanent onsite signage (if applicable) and other promotion of the PROJECT including, but not limited to, printed materials, press releases and presentations.

5.0 COUNTY'S RESPONSIBILITIES.

- 5.1 The COUNTY shall reserve the right to review the PROJECT plans and specifications, prior to the VILLAGE's advertisement for contract services, together with any subsequent change orders, addendums, or revisions thereto

(“CONTRACT DOCUMENTS”), for the purpose of verifying that PROJECT components qualify for reimbursement through the COUNTY’S ARPA Grant. The COUNTY shall promptly provide the VILLAGE with any recommended changes to the CONTRACT DOCUMENTS for PROJECT components to qualify for reimbursement.

- 5.2 The COUNTY shall cost share in the PROJECT as follows:
 - 5.2.1 The COUNTY shall reimburse the VILLAGE for approved costs associated with the PROJECT at a fixed proportion of fifty percent (50%) of the PROJECT costs, or a maximum of \$251,540 which have been incurred and paid for by the VILLAGE, as specified in Paragraph 3.1.
 - 5.2.2 The total reimbursement amount paid by the COUNTY shall not exceed two hundred fifty-one thousand, five hundred forty dollars (\$251,540).
 - 5.2.3 In the event PROJECT costs total less than five hundred three thousand, eighty dollars (\$503,080), the COUNTY’S total reimbursement amount shall be not more than fifty percent (50%) of the actual total PROJECT costs. Any amounts overpaid by the COUNTY shall be promptly refunded by the VILLAGE.
 - 5.2.4 The COUNTY shall not be obligated to pay invoices received after December 30, 2023, regardless of when the work was completed and notwithstanding that the COUNTY’S contribution limit has not been reached.
 - 5.2.5 The COUNTY shall not reimburse for any work completed before entering into the IGA, nor shall pay for any work completed after October 31, 2023.
 - 5.2.6 The COUNTY shall not reimburse for any work completed for invoices received after December 30, 2023.
- 5.3 The COUNTY shall be allowed unlimited, but reasonable, access to the PROJECT area to observe and review PROJECT work and work documents (i.e., plans, change orders, field orders, manager diaries, etc.) for the limited purpose of determining eligibility for COUNTY reimbursement, and the use of all data collected as part of the PROJECT.
- 5.4 The COUNTY does not, and shall not warrant, and makes no representations that the project meets all the qualifications and requirements for the expenditure of ARPA funds.

6.0 GOVERNMENT REGULATIONS.

- 6.1 The VILLAGE shall comply with all local, county, state and federal requirements now in force, or which may hereafter be in force, pertaining to the PROJECT.
- 6.2 The VILLAGE understands and agrees that ARPA funds are subject to audit and potential recoupment by the Federal Government of the United States of America. The VILLAGE agrees to assist the COUNTY in responding to any audits of the ARPA funds used for the project.

7.0 INDEMNIFICATION.

- 7.1 The VILLAGE shall indemnify, hold harmless and defend the COUNTY or any of its officials, officers, employees, and agents from and against all liability, claims, suits, demands, liens, proceedings and actions, including reasonable costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with, the VILLAGE'S performance under 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 misconduct or omissions by COUNTY officials, employees, agents, contractors or personnel.
- 7.2 The VILLAGE shall specifically indemnify, hold harmless and defend the County or any of its officials, officers, employees, and agents from and against all liability, claims, suits, demands, liens, proceedings and actions, including reasonable costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with the use of ARPA funds for this project, including, but not limited to audits, recoupment of the ARPA funds used for this project, or fines and penalties assessed related to using ARPA funds for this project.
- 7.3 The VILLAGE shall require each consultant and contractor responsible for the construction, maintenance, or monitoring of the PROJECT 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 judgments resulting from, or caused by, the negligence or willful conduct of such consultant and, or contractor.
- 7.4 Nothing contained herein shall be construed as prohibiting the COUNTY, its officials, directors, officers, agents and employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, suits,

demands, liens, proceedings and actions brought against them. Pursuant to Illinois law, any attorney representing the COUNTY, under this paragraph or paragraphs 7.1, 7.2, or 7.3 is to be the State's Attorney, in accord with the applicable law. The COUNTY'S participation in its defense shall not remove VILLAGE'S duty to indemnify, defend, and hold the COUNTY harmless, as set forth above. Moreover, indemnity as provided in this AGREEMENT shall not be limited by reason of any insurance coverage maintained by the VILLAGE or its consultants, contractors or agents. The VILLAGE'S indemnification of the COUNTY shall survive the termination, or expiration, of this AGREEMENT.

8.0 AMENDMENT OR MODIFICATION OF THIS AGREEMENT.

- 8.1 The parties may modify or amend terms of this AGREEMENT only by a written document duly approved and executed by both parties, excluding term extensions as provided for in the following provision.
- 8.2 Notwithstanding Paragraph 8.1, above, the term for performing this AGREEMENT may be extended by any suitable COUNTY designated form, signed by both parties without formal amendment pursuant to Paragraph 8.1, above.

9.0 TERM OF THIS AGREEMENT.

- 9.1 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:
 - 9.1.1 December 30, 2023, or to a new date agreed upon by the parties.
 - 9.1.2 The completion by the VILLAGE and COUNTY of their respective obligations under this AGREEMENT, in the event such completion occurs before December 30, 2023.

10.0 ENTIRE AGREEMENT.

- 10.1 This AGREEMENT, including matters incorporated herein, contains the entire AGREEMENT between parties.
- 10.2 There are no other covenants, warranties, representations, promises, conditions or understandings, either oral or written, other than those contained herein.

- 10.3 This AGREEMENT may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.
- 10.4 In the event of a conflict between the terms or conditions of this AGREEMENT and any term or condition found in any exhibit or attachment, the terms and conditions of this AGREEMENT shall prevail.

11.0 SEVERABILITY.

- 11.1 In the event any provision of this AGREEMENT is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the AGREEMENT. The remainder of this AGREEMENT shall be construed as if not containing the particular provision and shall continue in full force, effect, and enforceability, in accordance with its terms.

12.0 GOVERNING LAW.

- 12.1 The laws of the State of Illinois shall govern this AGREEMENT as to both interpretation and performance.
- 12.2 The venue for resolving any disputes concerning the parties' respective performance, or failure to perform, under this AGREEMENT, shall be the judicial circuit court for DuPage County.

13.0 NOTICES.

- 13.1 Any required notice shall be sent to the following addresses and parties:

Julie Lomax
Stormwater Administrator
Village of Downers Grove
5101 Walnut Ave
Downers Grove, IL 60515

DuPage County State's
Attorney's Office
ATTN: Civil Bureau
503 N. County Farm Rd.
Wheaton, Illinois 60187

Sarah Hunn
Director
DuPage County
Stormwater Management
421 N. County Farm Road
Wheaton, Illinois 60187

14.0 WAIVER OF/FAILURE TO ENFORCE BREACH.

- 14.1 The parties agree that the waiver of, or failure to enforce, any breach of this AGREEMENT by the remaining party shall not be construed, or otherwise operate, as a waiver of any future breach of this AGREEMENT. Further the failure to enforce any particular breach shall not bar or prevent the remaining party from enforcing this AGREEMENT with respect to a different breach.

15.0 NO WAIVER OF TORT IMMUNITIES

- 15.1 Nothing contained in any provision of this Agreement is intended to constitute nor shall constitute a waiver of the defenses, privileges or immunities available to the parties under the Illinois Local Governmental and Governmental Employees Tort Immunity Act.

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

COUNTY OF DUPAGE

VILLAGE OF DOWNERS GROVE

Ashley Selmon
Vice Chair

Robert Barnett
Mayor

ATTEST:

ATTEST:

Jean Kaczmarek,
County Clerk

Rosa Berardi
Village Clerk