



**STORMWATER MANAGEMENT COMMISSION**

Date: May 28<sup>th</sup>, 2019

To: Stormwater Management Commission

From: Mike Warner

Re: Intergovernmental Agreement w/IDNR (Flood Hazard Mitigation) – 13 Floodprone Property Buyouts

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**ACTION REQUESTED: APPROVAL**

SMC staff had applied for this grant in July 2018, and the current grant funds the project at 100% from the IDNR mitigation fund, with no match required, except for expenses in excess of the total grant value. SMC has managed this type of grant several times and has never exceeded the total value on this type of project in the past. Additional IGA's with local governments will be forthcoming regarding land ownership, maintenance, and SMC project management.

Project points are:

1. Properties are designated as FEMA SRL & RL properties. Four of these homes are substantially damaged homes from July 2017 Flood Event. All homes are located in the floodway.
2. Property Ownership initially County of Lake, and then transferred to local municipality, township or other local government.
3. Several properties are in Low-mod income area

**AGREEMENT**  
**Between**  
**LAKE COUNTY STORMWATER MANAGEMENT COMMISSION, ILLINOIS**  
**and the**  
**STATE OF ILLINOIS/DEPARTMENT OF NATURAL RESOURCES**  
**for the**  
**LAKE COUNTY FLOOD HAZARD MITIGATION PROJECT**

**Contract Number OWR-**

**THIS AGREEMENT** is made between Lake County Stormwater Management Commission, Illinois, hereinafter referred to as the “**COMMISSION**,” and the Department of Natural Resources, acting for and on behalf of the State of Illinois, hereinafter referred to as the “**DEPARTMENT**.”

**WITNESSETH:**

**WHEREAS**, the COMMISSION and the DEPARTMENT are legal entities organized and existing under the laws of the State of Illinois, having among their powers the authority to contract with one another to perform such undertakings as described herein; and

**WHEREAS**, under penalties of perjury, the COMMISSION certifies that 36-6006600 is its correct Federal Taxpayer Identification Number and that the COMMISSION is doing business as a government entity; and

**WHEREAS**, Lake County has experienced repeated flooding and flood damages from the Des Plaines River, the Skokie River and the North Branch of the Chicago River with the most recent flooding occurring in 2017; and

**WHEREAS**, the COUNTY 's 2017 Natural Hazard Mitigation Plan recommends that certain repetitive flood loss properties located within the 100-year floodplain within the corporate limits of the COUNTY be acquired for public use, thereby eliminating future flood damages; and

**WHEREAS**, the COMMISSION proposes the acquisition of twelve homes on twelve parcels, asbestos abatement, clearance of the property acquired; reshaping property acquired to a safe and manageable condition; and preparation of designs, plans and specifications for the clearance and reshaping of property and property acquisition transaction expenses (such as title commitments, attorney fees, preparation of legal descriptions , plat drawings, recording costs, associated appraisal costs and, if necessary, associated survey costs or other similar expenses), hereinafter referred to as the “**PROJECT**” and

**WHEREAS**, the Lake County Stormwater Management Commission Flood Hazard Mitigation Project has been reviewed and approved by the DEPARTMENT for participation in the implementation thereof to the extent allowed by its statutory authority under the “Flood Control Act of 1945,” 615 ILCS 15/1 *et. seq.*; and

**WHEREAS**, based on a document entitled “Report on Lake County Stormwater Management Commission, Illinois Flood Hazard Mitigation Project ” prepared by the DEPARTMENT and filed with the Illinois General Assembly as required by law, it has been

determined that the DEPARTMENT should proceed to assist the COMMISSION in implementing the PROJECT (Flood Control Act of 1945, 615 ILCS 15/5); and

**WHEREAS**, the Illinois General Assembly has appropriated funds to the DEPARTMENT for the PROJECT under Public Act 98-0675, Article 8, Section 10 and Public Act 98-0675, Article 8, Section 125; and

**WHEREAS**, the COMMISSION affirms by the execution of this AGREEMENT that the COMMISSION will accept the local requirements as indicated herein for DEPARTMENT participation in the PROJECT and will assume the perpetual operation and maintenance of the PROJECT; and

**WHEREAS**, the DEPARTMENT has determined that the execution of this agreement is subject to the signature requirements of the "State Finance Act," 30 ILCS 105/9.02.

**NOW THEREFORE**, for and in consideration of the benefits to be derived from the implementation of this PROJECT, the sufficiency of which is hereby acknowledged, the parties hereto agree to the following terms and conditions:

**A. SPECIAL CONDITIONS**

1. The recitals set forth above are incorporated herein by reference and made a part hereof, the same constituting the factual basis for this transaction.

2. The PROJECT is completely voluntary. Neither the state nor the local government will use its eminent domain authority or any other non-voluntary means to acquire the property for open space purposes if the seller chooses not to participate or if the negotiations fail.

3. **The total estimated cost of the PROJECT is \$3,503,373. The DEPARTMENT will provide up to \$3,503,373**, the capitalized value of the flood damage reduction benefits, in the funding of the PROJECT. The COMMISSION will be responsible for the remainder of the costs.

4. **The DEPARTMENT's funding obligation of \$3,503,373 will expire upon expenditure of its \$3,503,373 funding obligation, completion of the work covered hereunder or June 30, 2020, whichever occurs first.** The DEPARTMENT, at its sole option, may terminate or suspend this contract, in whole or in part, without penalty or further payment being required, if the Illinois General Assembly fails to make an appropriation sufficient to pay such obligation, or if the Governor decreases the DEPARTMENT's funding for the PROJECT by reserving some or all of the DEPARTMENT's appropriation(s) pursuant to the power delegated to the Governor by the Illinois General Assembly, or if The DEPARTMENT determines, in its sole discretion or as directed by the Office of the Governor, that a reduction is necessary or advisable based upon actual or projected budgetary considerations, or if funds needed are insufficient for any reason. The DEPARTMENT will have no obligation to implement or complete the PROJECT without the necessary appropriation, re-appropriation, and availability of state funds. The COMMISSION will be notified in writing of the failure of appropriation or of a reduction or decrease.

5. Attached hereto, marked "ATTACHMENT A," consisting of one page and made a part hereof by reference, is a listing of each property within the PROJECT. No

additional properties or funding will be included without the written consent of both the COMMISSION and the DEPARTMENT, and an amendment to this AGREEMENT.

6. All the provisions of this AGREEMENT will be binding upon the successors and assigns of the principal parties hereto.

7. This AGREEMENT may only be modified, assigned, supplemented, amended or extended by mutual agreement, in writing, by the principal parties hereto.

8. Attached hereto, marked "ATTACHMENT B", and made a part hereof by reference, is a listing of certifications, which must be completed by the COMMISSION.

## **B. DEPARTMENT OF NATURAL RESOURCES**

1. The DEPARTMENT will reimburse the COMMISSION for approved PROJECT costs of acquiring property and clearing property. Items eligible for reimbursement by the DEPARTMENT as costs for acquiring property and clearing property are specified in Sections D and E in this AGREEMENT.

2. The DEPARTMENT will reimburse authorized costs based on billing(s) furnished by the COMMISSION to the DEPARTMENT with supporting documentation as evidence that the work covered under such billing(s) is completed and in connection with the PROJECT. No billing(s) from the COMMISSION covering any work will be paid by the DEPARTMENT until the state funds appropriated are released and obligated, and the DEPARTMENT has given written permission to the COMMISSION to proceed with the work. No billing(s) will be honored covering any work accomplished prior to the obligation of funds and written permission by the DEPARTMENT to proceed.

3. If state or federal financial assistance or private flood insurance was received by any of the owners of properties listed on ATTACHMENT A after the effective date of the COMMISSION's appraisal of the property for purposes of the PROJECT, then benefits affidavits must be completed by the owner(s) of those properties regarding duplication of benefits (ATTACHMENT C) along with receipts and any other applicable documentation of the received financial assistance. Every completed benefit affidavit shall be provided to the DEPARTMENT by the COMMISSION. If the financial assistance was spent on repairs to the property, the COMMISSION will not subtract any amount of the financial assistance from the acquisition purchase price. If the financial assistance was not spent on repairs to the property, the DEPARTMENT will require the COMMISSION to subtract the amount of the financial assistance received by the owner(s) of each property not used for the intended purpose from the acquisition purchase price.

4. Plans, specifications, bids and any contract awarded for the PROJECT that is to be reimbursed in whole or in part with DEPARTMENT funds must be pre-approved by the DEPARTMENT. All appraisals, title commitments, offers and property acquisition transactions must be reviewed and approved by the DEPARTMENT before closing. The DEPARTMENT may have personnel present at any closing involving DEPARTMENT funds.

5. The DEPARTMENT will order all title commitments for each property within the PROJECT and will prepare all legal descriptions and plat drawings for those properties as required for the PROJECT. The DEPARTMENT may, at its sole discretion, choose to defer preparation of any legal descriptions and plat drawings required for the

PROJECT to the COMMISSION for review, approval and reimbursement by the DEPARTMENT, throughout the implementation of the PROJECT.

6. The DEPARTMENT will furnish technical assistance, guidance, and personnel to aid and assist the COMMISSION, as determined by the DEPARTMENT, throughout the implementation of the PROJECT. Administration costs and work accomplished by DEPARTMENT personnel (including travel expenses) will not be charged to the PROJECT.

**C. LAKE COUNTY STORMWATER MANAGEMENT COMMISSION**

1. The COMMISSION will acquire the property, demolish or otherwise remove the improvement(s) on the property acquired, develop the designs, plans and specifications needed, prepare contract documents, solicit bids, award contracts, supervise the work and perform all other work necessary to complete the PROJECT. Administration costs and work performed by COMMISSION personnel (including travel expenses) will not be a part of the PROJECT costs.

2. All contracts let by the COMMISSION for construction of the PROJECT will (i) require that the contractor abide by the provisions of the "Prevailing Wage Act," 820 ILCS 130/0.01 *et. seq.*; and (ii) require that the DEPARTMENT be included as a named insured by said contractor's commercial general liability insurance policy.

3. The COMMISSION will be responsible for the payment of all costs over and above the DEPARTMENT's \$3,503,373 maximum funding obligation. The COMMISSION will document through resolution provided to the DEPARTMENT, that it has sufficient funds to complete the PROJECT before the DEPARTMENT's written permission to proceed with this AGREEMENT.

4. The COMMISSION will obtain all federal and state permits, in the name of the COMMISSION, as may be necessary to implement and maintain the PROJECT. The COMMISSION will be responsible to pay any and all permit fees that may be required for the issuance of a permit for the PROJECT. The COMMISSION will be responsible to obtain any local permits required to construct and maintain the PROJECT and will provide copies of all such permits obtained to the DEPARTMENT. Execution of this agreement does not relieve the COMMISSION from obtaining any permit required by the DEPARTMENT.

5. The COMMISSION will be responsible to abide by all federal, state and local laws, ordinances, rules and regulations during construction, operation and maintenance of the PROJECT and to satisfy all state environmental laws, regulations and executive orders that apply because of state funds being used on the PROJECT.

6. The COMMISSION will maintain, for a minimum of five years after the completion of this PROJECT, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with this AGREEMENT; all books, records and supporting documents related to the PROJECT will be available for review and audit by the Auditor General and/or the DEPARTMENT; and the COMMISSION agrees to cooperate fully with any audit conducted by the Auditor General and/or the DEPARTMENT and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this Paragraph 6 will establish a presumption in favor of the DEPARTMENT for the recovery of any funds paid by

the DEPARTMENT under this AGREEMENT for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

7. The COMMISSSION will vigorously enforce the COUNTY zoning and subdivision ordinances. The COMMISSION will further maintain eligibility in the National Flood Insurance Program and will continue to adopt and enforce appropriate ordinances to satisfy the Federal Emergency Management Agency and the DEPARTMENT's requirements relative to the regulation of development in floodways and floodplains under the jurisdiction and control of the COMMISSION.

8. The COMMISSION will maintain all acquired flood prone property in an open, safe, neat and manageable condition from the time of closing with the private owner, hereinafter referred to as the "**SELLER(S)**," until fee title is transferred by the DEPARTMENT pursuant to Section F herein. Plans for redeveloping the property for open space public use will be subject to review and pre-approval by the DEPARTMENT.

9. The COMMISSSION will hold and save the DEPARTMENT and any of its duly appointed agents and employees harmless against any loss, damage, cause of action, fine or judgment, including all costs connected therewith such as attorney and witness fees, filing fees and any other expenses incident thereto, that may be incurred by reason of personal injury, death, property damage or any and all other claims or suits of whatsoever nature that might arise or result from or as a consequence of the implementation, construction, operation and maintenance of the PROJECT. The COMMISSION will further hold the DEPARTMENT harmless in regard to the handling and disposal of any special or hazardous wastes which might be discovered on property rights acquired by the COMMISSION in connection with this PROJECT. The COMMISSION will not be obligated or responsible to hold the DEPARTMENT harmless against any loss, damages, costs or expenses arising out of the negligent acts or omissions by the DEPARTMENT or its agents or employees.

#### **D. ACQUISITION OF PROPERTY**

1. Acquisition of property means the fee purchase of real property, vacant or with fixed improvements, from private owners within the PROJECT area. Acquisition of property does not include the purchase of any real property owned by a unit of local government.

2. The DEPARTMENT will reimburse the COMMISSION for property acquisition costs including associated transaction expenses (such as attorney fees, recording costs, associated appraisal costs and, if necessary, associated survey costs, preparation of legal descriptions and plat drawings costs, or other similar expenses), based on billings from the COMMISSION and approved by the DEPARTMENT. Any expenses incurred by the COMMISSION prior to the execution date of this AGREEMENT will be the sole responsibility of the COMMISSION. Moving and relocation expenses are not reimbursable costs.

3. Property acquired will be purchased in fee with title running in the name of the People of the State of Illinois, Department of Natural Resources, Office of Water Resources. Property acquired will have title insurance coverage equal to the purchase price of each parcel. The approval of title by the Illinois Attorney General will be required before closing and will be coordinated by the DEPARTMENT.

4. Should litigation be necessary to quiet title in the purchase of any property, the COMMISSION agrees to join such proceedings in accordance with direction

given by the Illinois Attorney General's Office. Should the Attorney General hire a Special Assistant Attorney General, such services will be paid by the DEPARTMENT as part of the PROJECT costs.

5. One written appraisal will be required for each parcel of property being acquired as part of the PROJECT. This appraisal will be done by a Certified General Appraiser, licensed in the State of Illinois, selected by the COMMISSION, pursuant to a bid solicitation process and approved by the DEPARTMENT. The DEPARTMENT will have the right to require a second appraisal on any property. Should a second appraisal be required by the DEPARTMENT, a Certified General Appraiser, licensed in the State of Illinois and approved by the DEPARTMENT will be used and paid for directly by the DEPARTMENT as part of the PROJECT costs. If the SELLER desires an appraisal not required by the DEPARTMENT, the cost incurred for that appraisal shall be borne by the SELLER.

6. Salvage of any structural items may be removed by the SELLER only if the value of those items is deducted from the appraised value of the property and only if requested and identified by the SELLER before the property appraisal and only if permission is given by the DEPARTMENT in writing. The SELLER must remove the salvage by the time of closing. All structures must be demolished and all improvements must be demolished or removed by the COMMISSION under an advertising/bid process approved by the DEPARTMENT. Only non-porous materials and non-porous items may be salvaged.

#### **E. CLEARANCE OF PROPERTY**

1. Clearance of property means the clearance of all structures from and the restoration to a safe and manageable condition of any property purchased with state funds, located within the PROJECT area. Clearance of property also includes sealing abandoned wells and private sewer disposal systems and the reshaping and reseeded of property to meet the public use plan. The DEPARTMENT will review and approve the COMMISSION property clearance and public use plans.

2. All abandoned water wells within the PROJECT area are required to be sealed in accordance with the rules and regulations of the Illinois Department of Public Health.

3. All abandoned private sewer disposal systems are required to be filled in and sealed in accordance with the rules and regulations of the Illinois Department of Public Health.

4. The DEPARTMENT will reimburse the COMMISSION for clearance of property costs based on billings from the COMMISSION and approved by the DEPARTMENT.

5. All contractors performing the clearance of property must be selected by the COMMISSION pursuant to a bid solicitation and pre-approved by the DEPARTMENT.

6. The relocation or alteration of franchised, public or company owned utilities such as electrical, telephone and cable television lines, gas, oil, sewer and water pipelines within the PROJECT area are not reimbursable costs.

#### **F. TRANSFER OF PROPERTY**

1. Title to the property acquired under the terms of this AGREEMENT will be conveyed by the DEPARTMENT to the COMMISSION as soon as possible after the closing between the DEPARTMENT and the SELLER, and all clearance of property has been accomplished. The DEPARTMENT will prepare a Quit Claim Deed covering each parcel of property acquired to convey fee simple title to the COMMISSION and submit such to the Governor of Illinois for approval as provided by law, 615 ILCS 15/4. Upon approval by the Governor, the conveyance will be forwarded to the COUNTY for recording. The COMMISSION will provide the DEPARTMENT with a copy of the recorded conveyance. The COMMISSION will bear the cost of recording this conveyance. After the DEPARTMENT receives copies of the recorded final conveyances, the DEPARTMENT and the COMMISSION will contact the title insurer and request that the property title be updated to include the final conveyance and that the title insurance policy be transferred to the name of the COMMISSION for a nominal fee. Any expenses of title examination, survey and related work for this transaction will also be borne by the COMMISSION. These expenses are not included as part of the PROJECT costs.

2. The COMMISSION will assume responsibility for any legal, administrative or other expenses that may be incurred as a result of the transfer. Any taxes, general and special assessments, sewer assessments, water charges, utility charges and similar expenses are not to be apportioned and will be assumed by the COMMISSION. The property will be conveyed in an "as is" condition. The DEPARTMENT will not be responsible for compliance with any notes or notices of violations of the law or municipal ordinances or requirements issued by any governmental body having jurisdiction against or affecting the premises.

3. The conveyance from the DEPARTMENT to the COMMISSION will be subject to specific restrictive covenants that the property is dedicated in perpetuity for open space public use and purposes and that the COMMISSION will faithfully manage the property for its designated open space purpose and for public use. Further, the restrictive covenants will not allow the COMMISSION to erect or permit to be erected any structures or other improvements on the property unless such structures and improvements are pre-approved in writing by the DEPARTMENT to assure that they will not be subject to flood damage. All of the foregoing restrictive covenants and agreements will run with the property.

4. The property will be transferred from the DEPARTMENT to the COMMISSION subject to zoning and building laws and ordinances, easements, agreements, reservations, covenants and restrictions of record, any statement of facts an accurate survey might show, encroachments and variations from the record lines of hedges, retaining walls, sidewalks and fences and any prior reservation of minerals. The property will be transferred to the COMMISSION, as accepted by the DEPARTMENT, from the SELLER.

5. The DEPARTMENT will reserve all present rights and any future rights which may occur to enforce the restrictive covenants or agreements both at law and in equity. The COMMISSION agrees that any breach or threatened breach of the covenants and conditions may be enjoined upon the application by the DEPARTMENT. In addition, the Director of the DEPARTMENT will have the option to reclaim the property if the COUNTY fails to remove or correct any violation of the covenants or conditions within thirty (30) days after the mailing of written notice thereof by said Director to the COUNTY.

6. The COMMISSION agrees that it will not convey the property or any interest therein without the express written approval and consent of the Director of the DEPARTMENT. The DEPARTMENT will only consider conveyance of the property by the COMMISSION to another unit of government for open space public use and purposes. Any



such unit of government must be willing to accept the restrictive covenants running with the property. Any conveyance document from the COMMISSION to another unit of government must be approved by the DEPARTMENT before it is executed by the COMMISSION or accepted by the unit of local government.

**G. MAINTENANCE OF PROPERTY**

1. The COMMISSION agrees to maintain the property as public open space. If any property ceases to be used for public open space, it shall revert back to the DEPARTMENT.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals the day and year written, and represent that the signatories below are duly authorized to execute this AGREEMENT on behalf of their respective bodies, and the effective date of this AGREEMENT is the date approved and executed by the Director of the DEPARTMENT.

**STATE OF ILLINOIS**

**RECOMMENDED:**

**APPROVED:**

\_\_\_\_\_  
Loren Wobig, Director  
Office of Water Resources

\_\_\_\_\_  
Colleen Callahan, Director  
Department of Natural Resources

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED:**

**APPROVED:**

\_\_\_\_\_  
Renee Snow, Legal Counsel

\_\_\_\_\_  
Doug Florence, Chief Fiscal Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**LAKE COUNTY STORMWATER MANAGEMENT COMMISSION**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Robin M. O'Connor, County Clerk

\_\_\_\_\_  
Michael Warner, Lake County  
Stormwater Commission  
Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## ATTACHMENT A

### Lake County Stormwater Management Commission

#### List of Potential Acquisition Sites

ADDRESS	PROPERTY IDENTIFICATION NUMBER
, Gurnee	XX-XX-XXX-XXX
, Gurnee	XX-XX-XXX-XXX
, Gurnee	XX-XX-XXX-XXX
, Highland Park	XX-XX-XXX-XXX
, Highland Park	XX-XX-XXX-XXX
, Highland Park	XX-XX-XXX-XXX
, Highland Park	XX-XX-XXX-XXX
, Highland Park	XX-XX-XXX-XXX
, Highland Park	XX-XX-XXX-XXX
., Lincolnshire	XX-XX-XXX-XXX
., Lincolnshire	XX-XX-XXX-XXX
, Riverwoods	XX-XX-XXX-XXX
, Zion	XX-XX-XXX-XXX