



STORMWATER MANAGEMENT COMMISSION

Date: August 23rd, 2019
To: Stormwater Management Commission
From: Mike Warner, Sharon Østerby
Re: Intergovernmental Agreement with the City of Waukegan and Waukegan Park District
for the Carnation Court Buyout Project

ACTION REQUESTED: APPROVAL OF INTERGOVERNMENTAL AGREEMENT AND AMENDED SMC FUNDING

SMC staff presented the Carnation Court Buyout Project to the Commission on May 2, 2019 for approval to purchase the Carnation Court property. The total estimated project cost has increased to \$221,749, to be split between three parties, with SMC funding of \$99,000. This is an increase of \$10k for the acquisition of the adjacent owned vacant parcel at Bluff Street.

The increased project cost and SMC funding is reflected in the IGA with the City of Waukegan and the Waukegan Park District and identified in IGA items 2c, 3diii and the Project Budget and Location Map.

Project points are:

1. Three party agreement similar to Gurnee Grade School project, represents an increased attention to this type of flood problem and builds working relationships to resolve.
2. Severe repetitive flooded home – Floods every 2" + rainfall.
3. Property Ownership will be WPD, without SMC purchase/transfer overhead.
4. Within and Environmental Justice Area and Low-mod income area
5. SMC buyout funding is available
6. Resolves existing environmental hazard of the property and potential floodwater transport
7. AMENDED Cost Share Ratio – Total Estimated Project Cost \$221,749 to be split between three parties, with SMC funding at \$99,000.

INTERGOVERNMENTAL AGREEMENT
Between the
WAUKEGAN PARK DISTRICT
and the
THE CITY OF WAUKEGAN
and the
LAKE COUNTY STORMWATER MANAGEMENT COMMISSION
for the
CARNATION COURT PROJECT

WHEREAS, the Waukegan Park District ("DISTRICT") as part of its statutory authority participates in property acquisitions, and flood mitigation projects; and

WHEREAS, the CITY OF WAUKEGAN ("CITY") as part of its statutory authority participates in property acquisitions, and flood mitigation projects; and

WHEREAS, the Lake County Stormwater Management Commission ("SMC") also as part of its statutory authority participates in floodprone property acquisitions, plans and implements flood mitigation and drainage improvement projects; and

WHEREAS, the DISTRICT, CITY, and the SMC are working towards jointly implementing a flood mitigation project , that includes property acquisition within the Mc Kay's Subdivision and Mrs. Caroline E. Voellmy's Subdivision in the City of Waukegan as described in Exhibit A, and as part of those activities include; collaboratively purchase of flood-prone property, demolition of structures, and to maintain the use of the property as open space and for flood storage in perpetuity ("PROJECT"); and

WHEREAS, the DISTRICT, CITY, and the SMC are authorized by the terms and provisions of the Intergovernmental Cooperation Act, 5 ILCS §220/5, to enter into intergovernmental agreements, ventures and undertakings to perform jointly any governmental purpose or undertaking either of them could do singularly; and

WHEREAS, the parties hereto, by their respective governing boards, find this Agreement to be fair and to the mutual benefit of the parties hereto.

NOW, THEREFORE, the DISTRICT, CITY, and the SMC agree, by their authorized representatives, to the following:

1. Mutual Agreements. DISTRICT, CITY, and SMC agree:

- a. The DISTRICT, CITY, and the SMC (hereinafter the "Parties") will work cooperatively to achieve the following goals and tasks of this PROJECT to mutually gain experience and knowledge in working towards future flood mitigation efforts.
- b. Cost-share. The cost share partnership, as specified in this Agreement, is only valid for this PROJECT.
- c. Joint Approvals. PROJECT staff review and approval by all Parties of this Agreement shall be made prior to purchase arrangements for property, construction plans, or bidding processes.

d. Property Purchase

- i. SMC agrees to contribute, as provided in Par. 2(c) below, to the DISTRICT's purchase of the subject real property and improvements thereon (PIN 08-21-324-024), a single-family home, and appurtenances, commonly known as 219 Carnation Court, and PIN 08-21-324-013) vacant lot, commonly known as 549 Bluff Street, in the City of Waukegan, Illinois, 60085, as described in Exhibit A.
- ii. The DISTRICT shall become fee simple owner of the parcel, with SMC retaining only contingent future consent and/or ownership rights as detailed in the Restrictive Covenants, and attached in Exhibit B, in perpetuity to said real property upon and after the DISTRICT's acquisition thereof (see, Par. 3(d) below).
- iii. Both the DISTRICT and SMC representatives shall be present at the property closing.

e. Demolition. Implement demolition process of the building and all appurtenances.

f. Restoration. Excavation, grading, seeding and necessary construction according to the construction and restoration plans for the property to convert it to passive open space use with floodwater storage as feasible.

2. SMC Agreements. SMC agrees as follows:

- a. Documentation. SMC will coordinate with the DISTRICT and CITY to document all tasks, methods, and outcomes to mutually gain experience and knowledge from this PROJECT.
- b. Engineering. SMC will create a demolition plan sheet for the PROJECT to be used for bidding and construction purposes.
- c. Property Purchase. SMC will provide to the DISTRICT the not-to-exceed amount of funding, based on the PROJECT budget presented in Exhibit C, for the subject property of \$99,000, at closing, for the purchase of the subject real property and improvements thereon.
- d. Demolition. SMC agrees to provide technical and construction assistance as necessary to the DISTRICT and/or CITY in tasks related to the Demolition process.
- e. Restoration. SMC agrees to provide technical and construction assistance as necessary to the DISTRICT and/or CITY in tasks related to the Restoration process.

3. DISTRICT Agreements. DISTRICT agrees as follows:

- a. Documentation. DISTRICT will coordinate with SMC to document all tasks, methods, and outcomes to mutually gain experience and knowledge from this PROJECT.
- b. Engineering. Construction plans shall be jointly agreed on and completed for the overall PROJECT.
- c. Permits and Landowner Agreements. The DISTRICT in coordination with the CITY, shall secure all necessary permits prior to the implementation of the construction plans.

- d. Property Purchase.
 - i. DISTRICT will be the Purchaser of the subject property at closing; and the DISTRICT agrees that the Warranty Deed transferring fee simple title to the DISTRICT shall include in perpetuity, 'Restrictive Covenants' preserving the subject property as open space and flood storage in the text and form attached hereto as Exhibit B.
 - ii. The DISTRICT will record an open space restriction on the property, naming SMC as an authorized signatory entity on the mutually agreed deed Restrictive Covenants document (see attached Exhibit B).
 - iii. The DISTRICT will pay any exceedance of the SMC non-to-exceed amount of \$99,000, based on the PROJECT budget presented in Exhibit C, for the purchase of the subject real property and improvements thereon.
- e. Demolition.
 - i. The DISTRICT will work with the CITY to perform work necessary to properly and safely demolish the structure and appurtenances, include utility coordination and disposal of debris.
 - ii. The DISTRICT will work with the CITY to ensure demolition work is completed within 120 calendar days after the date of closing, or if delayed due to winter weather, the latest date shall be as of May 30, 2020.
- f. Restoration.
 - i. The DISTRICT agrees to provide technical assistance to the CITY for rough excavation and for the property, in accordance with the construction plans.
 - ii. The DISTRICT agrees to perform final grading, seeding, and/or site stabilization measures within 60 days of completion of the demolition.
- g. Maintenance.
 - i. The DISTRICT, in perpetuity, shall perform or have performed, long term maintenance for the property.

4. CITY Agreements. CITY agrees as follows:

- a. Documentation. CITY will coordinate with DISTRICT and SMC to document all tasks, methods, and outcomes to mutually gain experience and knowledge from this PROJECT.
- b. Engineering. Construction plans shall be jointly agreed on and completed for the overall PROJECT.
- c. Permits. The CITY, in coordination with the DISTRICT, shall secure and provide all necessary permits prior to the implementation of the construction plans.
- d. Demolition.
 - i. The CITY will perform work necessary to properly and safely demolish the structure and appurtenances, include utility coordination and disposal of debris.

- ii. The CITY will complete the demolition work within 120 calendar days after the date of closing, or if delayed due to winter weather, the latest date shall be as of May 30, 2020.
- e. Restoration. The CITY shall provide excavation and grading for the property, in accordance with the construction plans, and that the Restoration work shall be completed within 60 days of completion of the demolition.

The effective date of this Agreement shall be _____, 20____.

Agreed and executed by the parties hereto, by their duly authorized representatives, on the date first written above.

Waukegan Park District

By: _____

Title: _____

Lake County Stormwater Management Commission

By: _____

Title: _____

City of Waukegan

By: _____

Title: _____

EXHIBIT A
LEGAL DESCRIPTIONS

08-21-324-013 (549 Bluff Street, Waukegan, Illinois 60085)

PARCEL 1:

LOT 3 AND THE NORTH 25 FEET OF THE WEST 50 FEET OF LOT 11 IN MRS. CAROLINE E. VOELLMY'S SUBDIVISION OF PART OF LOT 2 IN BLOCK 1 IN MCKAY'S SECOND ADDITION TO THE TOWN OF LITTLE FORT (NOW CITY OF WAUKEGAN) IN THE SOUTHWEST $\frac{1}{4}$ OF SECTION 21, TOWNSHIP 45 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF, RECORDED FEBRUARY 20, 1894, AS DOCUMENT 57832, IN BOOK "C" OF PLATS PAGE 77, IN LAKE COUNTY, ILLINOIS.

08-21-324-024 (219 Carnation Court, Waukegan, Illinois 60085)

PARCEL 2:

LOTS 9, 10 AND 11 (EXCEPT THE NORTH 25 FEET OF THE WEST 50 FEET OF SAID LOT 11) IN MRS. CAROLINE E. VOELLMY'S SUBDIVISION OF LOT 2 IN BLOCK 1 IN MCKAY'S SECOND ADDITION TO THE TOWN OF LITTLE FORT (NEW CITY OF WAUKEGAN), AFORESAID, IN LAKE COUNTY, ILLINOIS.

PARCEL 3:

THE SOUTH 120 FEET OF THE EAST 175 FEET OF THE WEST 300 FEET OF LOT 2 IN BLOCK 1 IN MCKAY'S SECOND ADDITION TO THE TOWN OF LITTLE FORT (NEW CITY OF WAUKEGAN), A SUBDIVISION OF PART OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 21, TOWNSHIP 45 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN LAKE COUNTY, ILLINOIS

PIN(S):

08-21-324-013 (549 Bluff Street, Waukegan, Illinois 60085)

08-21-324-024 (219 Carnation Court, Waukegan, Illinois 60085)

EXHIBIT B RESTRICTIVE COVENANTS

In reference to the property or properties ("PROPERTY") conveyed by the Deeds between Kurt S. Richter and Stephen Patrick Regul ("GRANTORS") participating in the MC KAY'S SUBDIVISION AND MRS CAROLINE E. VOELLMY'S SUBDIVISION PROJECT, the Waukegan Park District ("GRANTEE"), the City of Waukegan and the Lake County Stormwater Management Commission, its successors and assigns:

WHEREAS, the Intergovernmental Agreement ("AGREEMENT") between the Waukegan Park District ("DISTRICT"), the City of Waukegan (CITY) and the Lake County Stormwater Management Commission ("SMC") identifies a cost-share partnership for the MC KAY'S SUBDIVISION AND MRS CAROLINE E. VOELLMY'S SUBDIVISION PROJECT ("PROJECT"), to acquire interest in PROPERTY, including the acquisition of flood-prone structure(s), to demolish and/or remove the structure(s), and to maintain the use of the PROPERTY as open space and flood storage in perpetuity;

WHEREAS, the DISTRICT and the CITY has entered into an agreement dated XXXXXX, 2019 with the SMC and herein incorporated by reference;

WHEREAS, the PROPERTY is located in the City of Waukegan in Lake County;

WHEREAS, the terms of the MC KAY'S SUBDIVISION AND MRS CAROLINE E. VOELLMY'S SUBDIVISION PROJECT require that the DISTRICT, CITY and SMC agree to conditions that restrict the use of the land to open space and flood storage in perpetuity in order to protect, preserve and enhance flood-prone areas;

Now, therefore, the AGREEMENT for the PROJECT is made subject to the following terms and conditions:

1. TERMS. Pursuant to the terms of the AGREEMENT, the following conditions and restrictions shall apply in perpetuity to the PROPERTY as described and acquired by the DISTRICT pursuant to the PROJECT AGREEMENT requirements concerning the acquisition of PROPERTY for open space and flood storage:
 - a. Compatible uses. The PROPERTY shall be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions. Such uses may include parks for outdoor recreational activities; wetlands management; unimproved, unpaved parking lots; buffer zones; and other uses consistent with FEMA guidance for open space acquisition.
 - b. Structures. No new structures or improvements shall be erected on the PROPERTY other than:

- i. A public facility that is open on all sides and functionally related to a designated open space or recreational use;
- ii. A public restroom; or
- iii. A structure that is compatible with open space and conserves the natural function of the floodplain, including uses described in paragraph 1.a., above, and approved by the SMC in writing before construction of the structure begins.

Any improvements on the PROPERTY shall be in accordance with proper floodplain management policies and practices. Structures built on the PROPERTY according to paragraph b. of this section shall be floodproofed or elevated to at least the base flood level plus 1 foot of freeboard, or greater, if required, and in accordance with Watershed Development Ordinance criteria.

- c. Transfer. The DISTRICT, including successors in interest, shall convey any interest in the PROPERTY only if the SMC gives prior written approval of the transferee in accordance with this paragraph.
 - i. The request by the DISTRICT must include a signed statement from the proposed transferee that it acknowledges and agrees to be bound by the terms of this section, and documentation of its status as a qualified conservation organization if applicable.
 - ii. The DISTRICT may convey a PROPERTY interest only to a public entity or to a qualified conservation organization. However, the DISTRICT may convey an easement or lease to a private individual or entity for purposes compatible with the uses described in paragraph (a), of this section, with the prior approval of the SMC, and so long as the conveyance does not include authority to control and enforce the terms and conditions of this section.
 - iii. If title to the PROPERTY is transferred to a public entity other than one with a conservation mission, it must be conveyed subject to a conservation easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth in this section, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:
 - a. The DISTRICT shall convey, in accordance with this paragraph, a conservation easement to an entity other than the title holder, which shall be recorded with the deed, or
 - b. At the time of title transfer, the DISTRICT shall retain such conservation easement and record it with the deed.

- iv. Conveyance of any PROPERTY interest must reference and incorporate the original deed restrictions providing notice of the conditions in this section and must incorporate a provision for the PROPERTY interest to revert to the SMC, or DISTRICT in the event that the transferee ceases to exist or loses its eligible status under this section.
- 2. Inspection. SMC, its representatives and assigns shall have the right to enter upon the PROPERTY, at reasonable times and with reasonable notice, for the purpose of inspecting the PROPERTY to ensure compliance with the terms of this part, the PROPERTY conveyance and of the PROJECT AGREEMENT.
- 3. Enforcement. The DISTRICT, the SMC, and their respective representatives, successors and assigns, are responsible for taking measures to bring the PROPERTY back into compliance if the PROPERTY is not maintained according to the terms of the PROPERTY conveyance, and with the provisions of the PROJECT AGREEMENT.
- 4. Amendment. This agreement may be amended upon signatures of SMC and the DISTRICT only to the extent that such amendment does not affect the fundamental statutory purposes underlying the PROJECT AGREEMENT.
- 5. Severability. Should any provision of this PROJECT AGREEMENT or the application thereof to any person or circumstance be found to be invalid or unenforceable, the rest and remainder of the provisions of the PROJECT AGREEMENT and their application shall not be affected and shall remain valid and enforceable.

LAKE COUNTY STORMWATER MANAGEMENT COMMISSION

Property: 219 Carnation Court, Waukegan, IL 60085
PIN: 08-21-324-024

549 Bluff Street, Waukegan, IL 60085
PIN: 08-21-324-013

Dated this _____ day of _____, 20____

Michael Warner (Signature)
Lake County Stormwater Management Commission

Executive Director
Title (Print/Type)

Wendy Morey (Signature)
Lake County Stormwater Management Commission

Executive Recording Secretary
Title (Print/Type)

STATE OF ILLINOIS, COUNTY OF _____SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Michael Warner, personally known to me to be the Executive Director of the Lake County Stormwater Management Commission, and Wendy Morey, personally known to me to be the Executive Recording Secretary of the Lake County Stormwater Management Commission, personally known to me to be the same person(s) whose name(s) are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed and delivered the said instrument, pursuant to the authority given by the Lake County Stormwater Management Commission Board of Commissioners, as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this _____ day of _____, 20____

Notary Public

My commission expires on _____20____

EXHIBIT C

Project Budget & Location Map

| CARNATION COURT PROJECT | | | | |
|--------------------------------------|------------------|------------------|-----------------|-----------------|
| Project | Total Cost | City of Waukegan | Waukegan P.D. | SMC |
| % Contribution | 100% | 30% | 25% | 45% |
| Property (Est. Asking Price from HO) | \$99,000 | \$0 | \$0 | \$99,000 |
| Appraisal | \$300 | \$0 | \$300 | |
| Survey | \$650 | \$0 | \$650 | |
| Title/Closing* | \$1,503 | \$0 | \$1,503 | |
| Gas/Electric Disconnect | \$1,800 | \$0 | \$1,800 | |
| Water/Sewer Disconnect | \$1,500 | \$1,500 | \$0 | |
| Harmful Materials Survey | \$1,996 | \$0 | \$1,996 | |
| UST-Estimate | \$20,000 | \$0 | \$20,000 | |
| Asbestos Abatement-Estimate | \$25,000 | \$0 | \$25,000 | |
| Demolition | \$65,000 | \$65,000 | \$0 | |
| Site Restoration | \$5,000 | | \$5,000 | |
| Total Project Cost | \$221,749 | \$66,500 | \$56,249 | \$99,000 |

PROJECT LOCATION PARCEL MAP

