

RESOLUTION NUMBER 16 - 02

**RESOLUTION AUTHORIZING THE EXECUTION
OF AN INTERGOVERNMENTAL AGREEMENT FOR
THE FOX RIVER WATERSHED IMPROVEMENT
PROJECT, PHASE I**

WHEREAS, the corporate authorities of the Village of East Dundee have determined that it is advisable, necessary and in the public interest that the Village enter into and authorize the execution of an Intergovernmental Agreement for the Fox River Watershed Improvement Project, Phase I between the County of Kane and the Village of East Dundee, a copy of which Intergovernmental Agreement is attached hereto as an exhibit.

NOW THEREFORE BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF EAST DUNDEE, COOK AND KANE COUNTIES, ILLINOIS, AS FOLLOWS:

Section One. That the Village of East Dundee adopts and approves and the President be and he is hereby authorized and directed to sign and the Village Clerk is directed to attest to the execution of an Intergovernmental Agreement for the Fox River Watershed Improvement Project, Phase I between the County of Kane and the Village of East Dundee, a copy of which Intergovernmental Agreement is attached hereto as an exhibit.

Section Two. Severability. If any section, paragraph or provision of this resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this resolution.

Section Three. Repeal. All ordinances, resolutions, motions or parts thereof in conflict herewith shall be and the same are hereby repealed.

Section Four. Publication. This resolution shall be in full force and effect forthwith upon its adoption, approval and publication in pamphlet form as provided by law.

Adopted this 3rd day of June, 2002, pursuant to a roll call vote as follows:

AYES: Scalla, Zaeske, Arnone, Ruffalo, Bartels, Schock.

NAYES: None.

ABSENT: None.

Approved by me this 3rd day of June, 2002.

Roger Ahrens
ROGER AHRENS, President

Published in pamphlet form this 5th day of June, 2002, under the authority of the President and Board of Trustees.

ATTEST:

Jane E. Theis
JANE THEIS, Village Clerk

Recorded in the Village Records on June 5th, 2002.

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AN INTERGOVERNMENTAL AGREEMENT
FOR THE FOX RIVER WATERSHED IMPROVEMENT PROJECT PHASE 1

This Agreement is made as of ^{June} ~~May~~ 3, 2002, by and between the COUNTY OF KANE, a body corporate and politic and a unit of local government of the State of Illinois (the "County"), and the VILLAGE OF EAST DUNDEE, an Illinois municipal corporation and a unit of local government of the State of Illinois (the "Village").

§ 1. Recitals

This agreement is based upon the following recitals:

(a) Article VII, §10 of the 1970 Illinois Constitution permits units of local government to contract and otherwise associate among themselves to obtain and share services.

(b) Pursuant to 55 ILCS 5/5-1062 and 5-15001 *et. seq.*, the parties may control streambank erosion.

(c) The County has adopted the Kane County Stormwater Management Plan which has among its goals the identification and protection of floodplains, waterways, lakes, ponds, wetlands and groundwater recharge areas, the improvement of water quality and the minimization and reduction of damage to existing structures and land uses from stormwater and streambank erosion in order to maximize the protection of the public health, safety and welfare.

(d) The County has adopted the Kane County Stormwater Ordinance, which incorporates the goals of the Kane County Stormwater Management Plan and sets minimum regulatory standards throughout Kane County.

(e) The Village has adopted the Kane County Stormwater Ordinance by reference and recognizes the need for streambank stabilization in order to protect the Fox River and its tributary stream systems from erosion.

(f) Fox River North and its tributary watersheds are part of the Fox River watershed and cover portions of Carpentersville, East Dundee, West Dundee, and unincorporated Kane County.

(g) The parties, in cooperation with the United States Environmental Protection Agency, wish to minimize non-point source pollution due to eroding streambanks and improve water quality by repairing streambank erosion using sustainable bioengineering techniques. An additional benefit will be improved riparian habitat. This project proposes, through a series of best management practices, to mitigate streambank erosion and enhance the quality of the Fox River and its watershed.

ABE350

(h) Residents of the County and the Village will benefit from the work being done through the reduced streambank erosion, improved water quality and the demonstration of best management practices within the Fox River watershed.

§ 2. Recitals incorporated

The foregoing recitals are hereby incorporated into this agreement by reference as though fully set forth herein.

§ 3. Project description

The purpose of the Fox River North Watershed Improvement Project (the "Project"), is to improve water quality in the Fox River North Watershed by repairing and preventing streambank erosion and improving riparian habitat conditions along river and tributary corridors. To achieve this goal, sustainable bioengineering methods will be used. Critical segments of the Fox River mainstem and tributary riparian areas in the Fox River North Watershed will be identified and streambank stabilization measures will be implemented, habitat restored and buffer strips enhanced.

§ 4. Project cost

The Project is estimated to cost \$2 million. The Village shall pay as its share of the cost of the Project, the sum of \$100,000 in cash and/or in-kind contributions. The County will invoice the Village for its share of the cost upon completion of the Project. The Village will pay said invoice within 60 days of receipt. With respect to any in-kind contributions for which the Village will seek credit, the parties shall agree in writing upon the types or kinds of services, products or materials to be contributed and their value prior to the provision thereof.

§ 5. Rights and duties of the County

(a) The County shall administer the Project. The County shall secure all federal, state and local permits necessary for the completion of the Project. The County, with input from the Village, shall contract for the work. The County shall direct and supervise the course of the work and shall pay all contractors and consultants directly. All contracts shall contain the provisions with respect to insurance and indemnification of the parties set forth in Exhibit A.

(b) The County reserves the right to seek additional sources of funding or to contract with additional parties to share the cost of the Project. Any such additional funds or cost-sharing arrangements shall not affect the Village's share of the cost of the Project.

(c) At any time during the course of the Project, the County, in its sole and unlimited discretion, may terminate the work. In that event the Village shall pay its pro rata share of the cost of the Project incurred prior to termination.

§ 6. Rights and duties of the Village

(a) The Village shall have the right to review and approve the scope of the data collection and modeling tasks associated with the Project and shall be allowed unlimited access to the Project area and all data collected during the Project for its own use.

(b) After their approval and acceptance by the Illinois Environmental Protection Agency, the County and the Village, the Village shall maintain all of the streambank stabilization improvements associated with the Project within its corporate limits for a period of 10 years. Maintenance shall be performed in accordance with the approved Operations and Maintenance Plan. If the Village fails to maintain the improvements as required, the Village shall reimburse the County for all costs associated with their construction.

§ 7. Miscellaneous

(a) This agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the parties hereto with respect to the subject matter hereof, and no party shall be liable or bound to the other in any manner by any representations or warranties not set forth herein.

(b) This agreement and the rights of the parties hereunder may not be assigned (except by operation of law), and the terms and conditions of this agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto. Nothing in this agreement, express or implied, is intended to confer upon any party, other than the parties and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of such agreements.

(c) This agreement may be executed in one or more counterparts, each of which shall be deemed for all purposes to be an original and all of which shall constitute the same instrument.

(d) 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.

(e) The party entitled to the benefits thereof may waive any of the terms or conditions of this agreement in writing at any time. No supplement, modification or amendment of this agreement shall be binding unless executed in writing by all of the parties hereto. No waiver of any of the provisions of this agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

(f) All notices required or permitted hereunder shall be in writing and may be given by depositing the same in United States mail, addressed to the party to be notified at the address set

ABE350

forth below, or at such other address as may be specified pursuant to this section from time to time, postage prepaid and certified with return receipt requested, delivering the same in person, or via telefacsimile with electronic confirmation of receipt.

(1) If to the County: Director
Kane County Department of Environmental Management
719 Batavia Avenue
Geneva, Illinois 60134
(Fax No: 630-208-5137)

(2) If to the Village: Village Administrator
Village of East Dundee
120 Barrington Avenue
East Dundee, Illinois 60118
(Fax No: 847-426-2956)

(g) Time is of the essence with respect to this Agreement.

(h) In case any provision of this agreement shall be invalid, illegal or unenforceable, it shall, to the extent possible, be modified in such manner as to be valid, legal and enforceable but so as to most nearly retain the intent of the parties, and if such modification is not possible, such provision shall be severed from this agreement, and in either case the validity, legality and enforceability of the remaining provisions of this agreement shall not in any way be affected or impaired thereby.

(i) No right, remedy or election given by any term of this Agreement shall be deemed exclusive but each shall be cumulative with all other rights, remedies and elections available at law or in equity.

(j) This agreement shall be in full effect and legally binding at such time as an ordinance or resolution authorizing its execution has been passed and approved by both parties. A certified copy of such ordinance or resolution entering into this agreement shall be filed by each party at the office of the other within 30 days of passage and approval.

COUNTY OF KANE

Chairman of the County Board

Attest:

County Clerk

Village of East Dundee

Roy W. Adams
President

Attest:

Jane E. Jones
Village Clerk

ABE350

EXHIBIT A

1) Insurance

- a) The consultant/contractor shall maintain at its sole expense, insurance coverage as follows:
- i) Worker's Compensation Insurance for the statutorily required amount;
 - ii) Employer's Liability Insurance with a limit of not less than \$500,000 for each accident/injury and \$500,000 for each employee/disease;
 - iii) Commercial (Comprehensive) General Liability Insurance with a combined single limit of not less than \$3 million (which may be partially under an umbrella policy), which insurance shall contain contractual liability and shall name the County and the Village and their respective officers employees and agents as additional insured.
 - iv) Commercial (Comprehensive) Automobile Liability Insurance with a combined single limit of not less than \$1 million;
 - v) Professional Errors and Omissions Insurance with a limit of not less than \$1 million.
- b) Within 10 days of its execution of the contract, the consultant/contractor shall deliver to the County and the Village certificates evidencing that the insurance coverage's required hereunder have been obtained and are in full force and effect.
- c) The insurance required to be maintained by the consultant/contractor shall be written by an insurance company reasonably acceptable to the County and the Village and licensed to do business in Illinois and shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused without at least 30 days prior written notice to the County and the Village.

2) Indemnification

- a) The consultant/contractor shall indemnify, hold harmless and defend the County and the Village and their respective officers, employees and agents from and against all liability, claims, suits, demands, proceedings and actions, including costs, fees and expenses 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 consultant/contractor's negligent or willful acts, errors or omissions in its performance under this agreement.
- b) Nothing contained herein shall be construed as prohibiting the County and/or the Village or their respective officers, employees or agents from defending themselves through the selection and use of their own agents, attorneys and experts, any claims, suits, demands,

proceedings or actions brought against them. Pursuant to Illinois law, 55 ILCS 5/3-9005, any attorney representing the County under this paragraph is to be appointed a Special Assistant State's Attorney, as provided in 55 ILCS 5/3-9008. The County's and/or the Village's participation in its defense shall not affect or eliminate the consultant/contractor's duty to indemnify, defend and hold the County and the Village and their respective officers, employees and agents harmless as set forth above.

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