

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
MAY 4, 2010 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Intergovernmental Agreement to Dissolve the Westmont Surface Water Protection District	✓ Resolution Ordinance Motion Discussion Only	Dave Fieldman Village Manager

SYNOPSIS

A resolution has been prepared to enter into an Intergovernmental Agreement (IGA) with DuPage County and the Village of Westmont to dissolve the Westmont Surface Water Protection District (WSWPD). The IGA would also transfer the stormwater management and maintenance responsibilities formerly under the jurisdiction of the WSWPD.

STRATEGIC PLAN ALIGNMENT

The Five Year Plan and Goals includes *Exceptional Services and Communication*.

FISCAL IMPACT

There would be minimal fiscal impact to the Village as a result of the proposed IGA. The Village already provides some services to residents located within the Downers Grove portion of the WSWPD. The services provided by the Village include building permit review and response to drainage complaints. These services have been provided by the Village due to the District’s lack of financial resources and would continue to be provided by the Village under the proposed IGA.

UPDATE & RECOMMENDATION

This item was discussed at the April 20, 2010 meeting. Staff recommends approval on the May 4, 2010 consent agenda.

BACKGROUND

The WSWPD has provided stormwater management services to an area which includes portions of the Village of Downers Grove, the Village of Westmont and unincorporated DuPage County (map attached). However, due to a lack of financial resources, the WSWPD has been unable to properly manage the stormwater system in this area. As a result, the Village of Downers Grove, Westmont and DuPage County have been working cooperatively with the WSWPD to facilitate its dissolution. Additionally, in February, 2010, area voters approved an advisory referendum to dissolve the WSWPD.

The Village already provides some services to residents located within the Downers Grove portion of the WSWPD. The services provided by the Village include building permit review and response to drainage complaints which the WSWPD could not resolve. Due to the fact the Village is already providing stormwater management services to areas within the WSWPD; staff anticipates a minimal fiscal impact as a result of the IGA.

Per the proposed IGA, the responsibilities of the Village, Westmont and DuPage County would be as follows:

- The Village of Downers Grove would assume ownership of the WSWPD stormwater management system located within the Village’s boundaries

- DuPage County would assume ownership of the WSWPD stormwater management system located within unincorporated areas
- The Village of Westmont would assume ownership of the WSWPD stormwater management system located within Westmont's boundaries

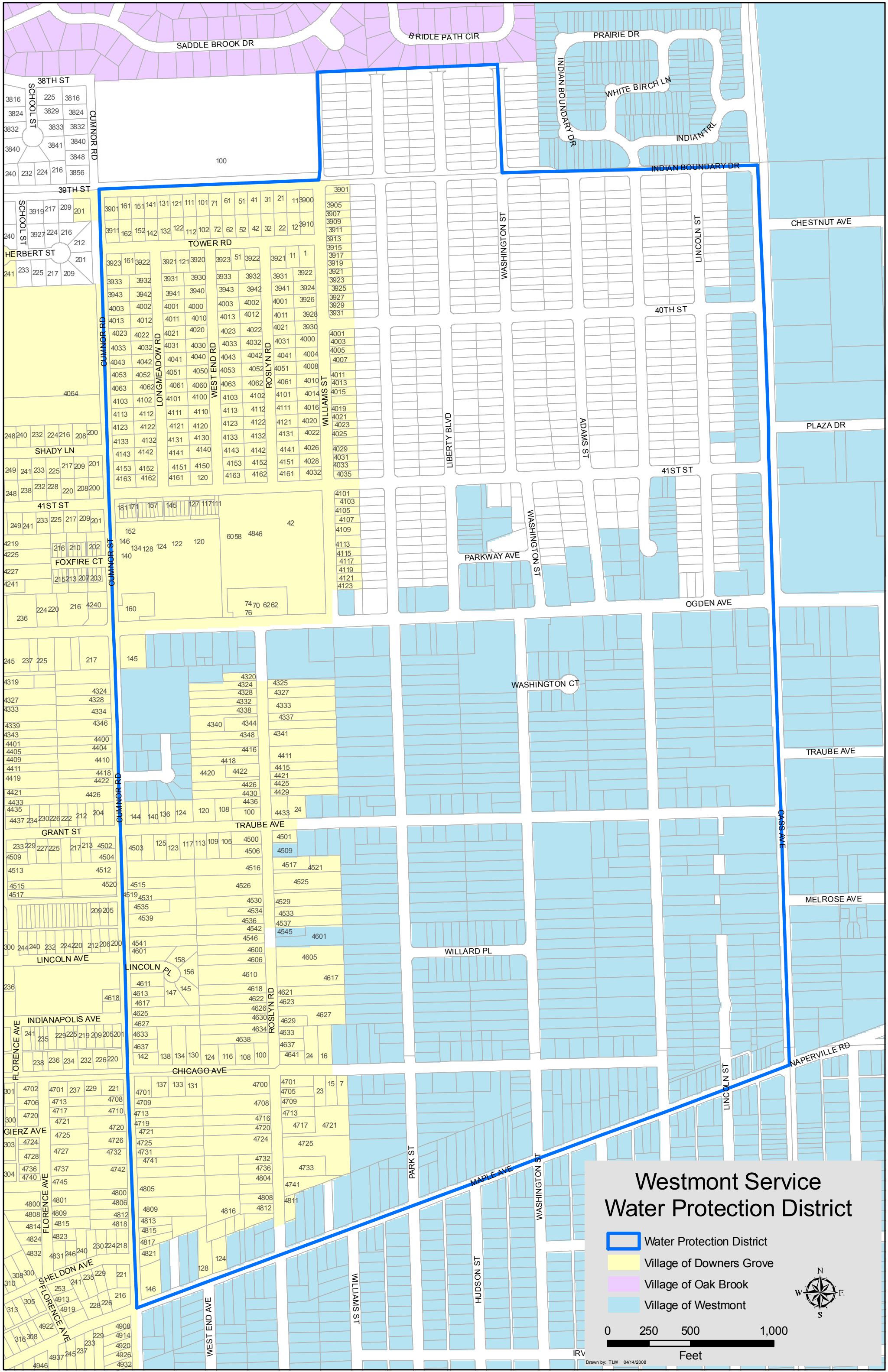
Village residents presently located within the WSWPD would experience several benefits as a result of the proposed IGA. First, residents located within the Village's portion of the WSWPD will experience a property tax bill reduction as a result of the dissolution of the District. In addition, the dissolution of the WSWPD would eliminate the need for residents to obtain building permit approval from two government units. These residents would now be required to obtain building permit approval from the Village only.

ATTACHMENTS

Map

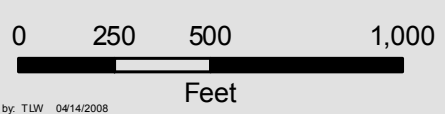
Resolution

Agreement



Westmont Service Water Protection District

- Water Protection District
- Village of Downers Grove
- Village of Oak Brook
- Village of Westmont



RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN
INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF DUPAGE,
VILLAGE OF DOWNERS GROVE, ILLINOIS
AND VILLAGE OF WESTMONT, ILLINOIS FOR THE
TRANSFER OF PROPERTY AND MAINTENANCE
RESPONSIBILITY FOR DRAINAGE SYSTEM COMPONENTS**

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 ("Downers Grove"), the County of DuPage ("County") and the Village of Westmont ("Westmont"), for stormwater management and flood control, 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

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF DUPAGE,
VILLAGE OF DOWNERS GROVE, ILLINOIS
AND VILLAGE OF WESTMONT, ILLINOIS FOR THE
TRANSFER OF PROPERTY AND MAINTENANCE
RESPONSIBILITY FOR DRAINAGE SYSTEM COMPONENTS

THIS AGREEMENT made and entered into this 9th day of March 2010, between the VILLAGE OF DOWNERS GROVE, ILLINOIS, a municipal community (hereinafter referred to as "DOWNERS GROVE"), with offices at 801 Burlington Avenue, Downers Grove, Illinois 60515, the VILLAGE OF WESTMONT, ILLINOIS, a municipal community (hereinafter referred to as "WESTMONT"), with offices at 31 West Quincy Street, Westmont, Illinois 60559, and the COUNTY OF DUPAGE, a body politic and corporate (hereinafter referred to as the "COUNTY") with offices at 421 North County Farm Road, Wheaton, Illinois 60187.

RECITALS

WHEREAS, the VILLAGES and the COUNTY are public agencies within the meaning of the Illinois Intergovernmental Cooperation Act, ("Act") as specified at 5 ILCS 220/1, et seq., and are authorized by Article 7 Section 10 of the Constitution of the State of Illinois to cooperate for public purposes; and

WHEREAS, the purpose of the Act and Article 7 of the Constitution of the State of Illinois includes fostering cooperation among governmental bodies; and

WHEREAS, pursuant to authority granted at 55 ILCS 5/5-1062, and 5/5-15001, et seq., the COUNTY is authorized to take action to control flooding, manage stormwater and to enter into agreements for the purposes of stormwater management and flood control; and

WHEREAS, pursuant to their respective municipal codes, and home-rule authority, the VILLAGES are authorized to take action to control flooding, manage stormwater and to enter into agreements for the purposes of stormwater management and flood control; and

WHEREAS, pursuant to the statutory authority at 55 ILCS 5/5-1062, and 5/5-15001, et seq., the COUNTY intends to enter into a separate Intergovernmental Agreement with the WESTMONT SURFACE WATER PROTECTION DISTRICT (hereinafter referred to as the "DISTRICT") to provide for the transfer of the DISTRICT'S property, assets, liabilities and drainage functions (the "DISTRICT'S SYSTEM") to the COUNTY in the event of the DISTRICT'S dissolution; and

WHEREAS, the COUNTY and VILLAGES (collectively the "PARTIES" and individually "PARTY") have determined that the DISTRICT'S SYSTEM can best be operated and maintained by dividing ownership, use and operation of the DISTRICT'S SYSTEM amongst the PARTIES, with each PARTY assuming responsibility for a portion of the DISTRICT'S SYSTEM as provided for in this Intergovernmental Agreement; and

WHEREAS, the COUNTY and VILLAGES are municipalities as defined in Section 1(c) of the Local Government Property Transfer Act, 50 ILCS 605/1 (hereinafter the "Transfer Act"); and

WHEREAS, Section 2 of the Transfer Act, 50 ILCS 605/2, empowers the COUNTY, pursuant to a two-thirds (2/3) vote, to transfer all of its rights, title and interest in real estate to another governmental entity for any public purpose upon such terms and conditions as may be agreed to by the corporate authorities of each governmental entity; and

WHEREAS, the COUNTY and VILLAGES have undertaken, or will undertake, all acts necessary for the COUNTY to transfer the identified elements of the DISTRICT'S SYSTEM from the COUNTY to the VILLAGES, as set forth in this Intergovernmental Agreement, and in accord with the Transfer Act; and

WHEREAS, pursuant to this Intergovernmental Agreement, each PARTY shall accept ownership of, and perpetually maintain, those elements of the DISTRICT'S SYSTEM transferred to it subject to the terms of this Intergovernmental Agreement.

NOW, THEREFORE, for and in consideration of the benefits hereafter described, the sufficiency of which is hereby acknowledged, the PARTIES hereto agree to the following terms and conditions:

1.0 INCORPORATION AND CONSTRUCTION

- 1.1 The recitals set forth above are incorporated herein by reference and made a part thereof, the same constituting the factual basis for this transaction.
- 1.2 The map depicting the approximate boundary of the District's System and the approximate division of said system amongst the Parties is attached hereto as Exhibit "A" and incorporated into this Intergovernmental Agreement. Attached thereto are three separate lists identifying by Parcel Identification Number (PIN) the allocation of parcels to each Party; County parcels (A-1), Village of Downers Grove parcels (A-2), and Village of Westmont parcels (A-3).

- 1.3 The Intergovernmental Agreement between the County and District is attached hereto as Exhibit "B" and incorporated into this Intergovernmental Agreement.
- 1.4 Closing documents in substantially the same form to be used by the Parties are attached hereto as Group Exhibit "C," which group exhibit shall consist of a Bill of Sale (C-1), Assignment of Easement and Access Rights (C-2) and Quit Claim Deed (C-3).

2.0 CONTINGENCIES

- 2.1 The Parties acknowledge and agree that this Agreement shall be contingent upon the dissolution of the District. In the event the dissolution of the District has not occurred within two years of the effective date of this Agreement, this Agreement shall be null, void and without further effect.
- 2.2 The Parties further acknowledge and agree that the County's obligations with regard to any contemplated transfer and, or, assignment to the Villages hereunder shall be limited by, and contingent upon, the District's full performance under the terms of the Intergovernmental Agreement attached hereto as Exhibit B. In the event the County and District do not execute the Intergovernmental Agreement attached hereto as Exhibit B, or in the event said Intergovernmental Agreement is terminated or otherwise deemed to be null and void, for any reason, and the District effectuates its dissolution, the Parties agree to the allocation of District property, assets, liabilities, obligations and maintenance responsibilities as set forth hereafter and shall perform under this Agreement to the fullest extent possible in the absence of Exhibit B.

3.0 RESPONSIBILITIES OF THE COUNTY

- 3.1 The County shall accept, receive and hold title to the District's System from the District, albeit temporarily, in accordance with the terms of the Intergovernmental Agreement attached hereto as Exhibit B.
- 3.2 Promptly after accepting title to the District's System, the County shall thereafter convey and transfer title to the District's System's components to the Villages as hereafter specified. Such conveyance, transfer and, or, assignment shall be "as is" and with no warranties, guaranties, or representations as to the condition(s) thereof, or suitability thereof, and shall be consummated by the County's execution and delivery of the closing documents attached as Group Exhibit C. All real property transferred from the County to the Villages shall be by quit claim deed in substantially the form attached hereto as Exhibit C-3.

- 3.2.a. The County shall convey, transfer and assign to the Village of Downers Grove the District's System components, easements, access rights thereto located on the parcels identified in Exhibit A-2, and in the adjoining road right-of-ways.
- 3.2.b. The County shall transfer title to the following real property (including any improvements and personal property located thereon) to the Village of Westmont: 09-04-204-001; 09-04-206-014; and 09-04-216-015. Additionally, the County shall convey, transfer and assign to the Village of Westmont the District's System components, easements, access rights thereto located on the parcels identified in Exhibit A-3, and in the adjoining road right-of-ways.
- 3.2.c. The County shall retain title and responsibility of the District's System components, easements, access rights located on the parcels identified in Exhibit A-1, and in the adjoining road right-of-ways, subject to the terms of Paragraph 3.4, below. Specifically, the County shall retain ownership of, and assume maintenance responsibility for, parcels 09-04-204-001 and 09-04-210-007 and the lift stations located thereon.

3.3 The County shall allow the Villages to review, during normal business hours, and to copy, at their own respective expense, any materials or documents provided to the County by the District, including all documents produced in accordance with Paragraph 2.1 of the Intergovernmental Agreement attached hereto as Exhibit B. Further, the County shall provide the Villages with copies of any inspection reports, studies, surveys, maps, images, test results or analysis of the District's System performed by the County, or its consultants or contractors, in accordance with Paragraph 2.3 of the Intergovernmental Agreement attached hereto as Exhibit B.

3.4 The County shall retain ownership, possession and control over certain components of the District's System components located on or serving the individual parcels identified in Exhibit A-1, as long as each such parcel remains unincorporated. In the event any parcel listed on Exhibit A-1 is annexed by either of the Villages, the County shall, upon notice from the annexing Village, convey, transfer and, or, assign any District System components located on or serving the annexed parcel to the annexing Village in the same manner specified in Paragraph 3.2 above.

4.0 RESPONSIBILITIES OF THE VILLAGES

4.1 Each Village shall accept, receive and hold title to certain components of the District's System, as identified herein, from the County. Each Village shall retain ownership, possession and control over such components of the

District's System and shall thereafter assume responsibility for the maintenance and operation of said components.

- 4.2 After the County's conveyance, transfer and, or, assignment of District System components to the Villages, each Village may, thereafter, by separate agreement and without amending this Agreement, exchange, donate, convey, transfer and, or, assign its received components to any other governmental agency having the authority to own, operate and maintain such component(s).
- 4.3 Each Village shall inform the County and other Village, and make available for copying, any inspection reports, studies, surveys, maps, images, test results or analysis of the District's System that each Village may have in its possession.

5.0 MISCELLANEOUS

- 5.1 This Agreement may be modified or amended only by written instrument duly authorized and signed by both the County and both Villages.
- 5.2 This Agreement contains the entire understanding of the Villages and the County with respect to the subject matter hereof and supersedes all prior negotiations, agreements and understandings with respect to such subject matter.
- 5.3 There are no other covenants, warranties, representations, promises, conditions or understandings, either oral or written, other than those contained herein. The Parties expressly acknowledge that each is accepting their respective component part of the District's System "as is" and without regard to the condition(s) thereof, or its suitability for its designed and, or, intended purpose.
- 5.4 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instruments.
- 5.5 This Agreement shall become effective from the date fully executed by the Parties.
- 5.6 Any required notice shall be sent to the following addresses and Parties:

If to the County:

County of DuPage
Department of Public Works
421 N. County Farm Road
Wheaton, IL 60187
ATTN: Public Works Superintendent

If to the Village of Downers Grove:

Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515
ATTN: Village Manager

If to the Village of Westmont:

Village of Westmont
Village Hall
31 W. Quincy St.
Westmont, IL 60559
ATTN: Ron Searl, Village Manager
Tx #: 630-981-6210
E-Mail: rsearl@westmont.il.gov

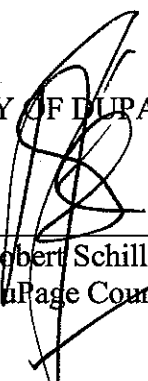
- 5.7 All notices required to be given under the terms of this Agreement shall be in writing and either (a) served personally during regular business hours; (b) served by facsimile transmission during regular business hours; or (c) served by certified or registered mail, return receipt requested, properly addressed with postage prepaid. Notices served personally or by facsimile transmission shall be effective upon receipt, and notices served by mail shall be effective upon receipt as verified by the United States Postal Service. Each Party may designate a new location for service of notices by serving notice thereof in accordance with the requirements of this Paragraph, and without compliance to the amendment procedures set forth in Paragraph 5.1, above.
- 5.8 This Agreement shall be governed by the laws of the State of Illinois both as to interpretation and performance. 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.

- 5.9 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.
- 5.10 In the event any Party believes that one or both of the other Parties has, in any way, breached the terms of this Agreement, that Party shall give the other Party (or Parties) notice specifying the nature of the alleged breach. A Party alleged to be in breach of this Agreement shall have thirty (30) days to cure such breach without being in default of this Agreement.
- 5.11 In the event, any provision of this Agreement is held to be unenforceable or invalid for any reason, by any court or administrative agency having jurisdiction over the Parties and subject matter, within thirty (30) days of such determination either: a) the Parties may elect to construe the remainder of this Agreement as if not containing the particular provision and agree that the Agreement shall continue in full force, effect, and enforceability, in accordance with its terms; or b) the Parties may amend the Agreement to remedy the particular defect and agree that the Agreement shall thereafter continue in full force, effect, and enforceability, in accordance with its amended terms; or c) either Party may give notice of that Party's intent to terminate the Agreement.
- 5.12 Whenever the review, consent or approval of any Party is required under this Agreement, such review, consent or approval of such Party shall not be unreasonably withheld, delayed, conditioned or denied.

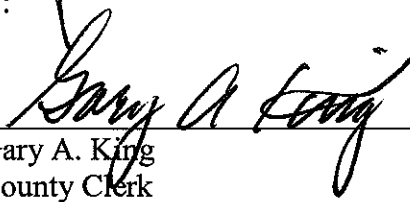
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COUNTY OF DUPAGE

VILLAGE OF DOWNERS GROVE

By: 
Robert Schillerstrom, Chairman
DuPage County Board

By: _____
Ronald Sandack
Mayor

ATTEST:
By: 
Gary A. King
County Clerk

ATTEST:
By: _____
April Holden
Village Clerk

VILLAGE OF WESTMONT

By: _____
Bill Rahn
Mayor

ATTEST:
By: _____
Virginia Szymski
Village Clerk

RESOLUTION

DR-0002-10

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF DUPAGE,
VILLAGE OF DOWNERS GROVE, ILLINOIS
AND VILLAGE OF WESTMONT, ILLINOIS FOR THE
TRANSFER OF PROPERTY AND MAINTENANCE
RESPONSIBILITY FOR DRAINAGE SYSTEM COMPONENTS

WHEREAS, the VILLAGES and the COUNTY are public agencies within the meaning of the Illinois Intergovernmental Cooperation Act, ("Act") as specified at 5 ILCS 220/1, et seq., and are authorized by Article 7 Section 10 of the Constitution of the State of Illinois to cooperate for public purposes; and

WHEREAS, the purpose of the Act and Article 7 of the Constitution of the State of Illinois includes fostering cooperation among governmental bodies; and

WHEREAS, pursuant to authority granted at 55 ILCS 5/5-1062, and 5/5-15001, et seq., the COUNTY is authorized to take action to control flooding, manage stormwater and to enter into agreements for the purposes of stormwater management and flood control; and

WHEREAS, pursuant to their respective municipal codes, and home-rule authority, the VILLAGES are authorized to take action to control flooding, manage stormwater and to enter into agreements for the purposes of stormwater management and flood control; and

WHEREAS, pursuant to the statutory authority at 55 ILCS 5/5-1062, and 5/5-15001, et seq., the COUNTY intends to enter into a separate Intergovernmental Agreement with the WESTMONT SURFACE WATER PROTECTION DISTRICT (hereinafter referred to as the "DISTRICT") to provide for the transfer of the DISTRICT'S property, assets, liabilities and drainage functions (the "DISTRICT'S SYSTEM") to the COUNTY in the event of the DISTRICT'S dissolution; and

WHEREAS, the COUNTY and VILLAGES (collectively the "PARTIES" and individually "PARTY") have determined that the DISTRICT'S SYSTEM can best be operated and maintained by dividing ownership, use and operation of the DISTRICT'S SYSTEM amongst the PARTIES, with each PARTY assuming responsibility for a portion of the DISTRICT'S SYSTEM as provided for in the Intergovernmental Agreement attached hereto ; and

WHEREAS, the COUNTY and VILLAGES are municipalities as defined in Section 1(c) of the Local Government Property Transfer Act, 50 ILCS 605/1 (hereinafter the "Transfer Act"); and

WHEREAS, Section 2 of the Transfer Act, 50 ILCS 605/2, empowers the COUNTY, pursuant to a two-thirds (2/3) vote, to transfer all of its rights, title and interest in real estate to another governmental entity for any public purpose upon such terms and conditions as may be agreed to by the corporate authorities of each governmental entity; and

WHEREAS, the COUNTY and VILLAGES have undertaken, or will undertake, all acts necessary for the COUNTY to transfer the identified elements of the DISTRICT'S SYSTEM from the COUNTY to the VILLAGES, as set forth in this Intergovernmental Agreement, and in accord with the Transfer Act; and

WHEREAS, pursuant to this Intergovernmental Agreement, each PARTY shall accept ownership of, and perpetually maintain, those elements of the DISTRICT'S SYSTEM transferred to it subject to the terms of this Intergovernmental Agreement.

WHEREAS, the Public Works Committee of the DuPage County Board has reviewed and recommends approval of the attached Intergovernmental Agreement for the described purposes.

NOW, THEREFORE, BE IT RESOLVED by the DuPage County Board that the attached Intergovernmental Agreement is hereby accepted and approved, and the Chairman of the County Board, or his designee, is hereby authorized and directed to execute the Intergovernmental Agreement on behalf of the County of DuPage, together with any additional instruments necessary to undertake this Agreement; and

BE IT FURTHER RESOLVED that the County Clerk is hereby directed to transmit certified copies of this Intergovernmental Agreement to the Village of Downers Grove, 801 Burlington Avenue, Downers Grove, Illinois 60515; and the Village of Westmont, 31 West Quincy Street, Westmont, Illinois 60559; Anthony Hayman, State's Attorney's Office; Allison Stutts, 7900 S. Route 53, Woodridge, IL 60517

Enacted and approved this 9th day of March, 2010 at Wheaton, Illinois

By: 
Robert J. Schillerstrom, Chairman
DuPage County Board

Ayes: 17
Absent: 1

Attest:

By: 
Gary A. King, County Clerk

Ayes: 17
Absent: 1