

**VILLAGE OF DOWNERS GROVE**  
**REPORT FOR THE VILLAGE COUNCIL WORKSHOP**  
**NOVEMBER 9, 2010 AGENDA**

<b>SUBJECT:</b>	<b>TYPE:</b>	<b>SUBMITTED BY:</b>
Intergovernmental Agreement with DuPage County for Implementation of the Illicit Discharge Detection and Elimination Program	✓ Resolution Ordinance Motion Discussion Only	Michael D. Millette, P.E. Village Engineer

**SYNOPSIS**

A resolution is requested authorizing execution of an intergovernmental agreement with DuPage County for Implementation of the Illicit Discharge Detection and Elimination (IDDE) Program.

**STRATEGIC PLAN ALIGNMENT**

The 2010 Strategic Plan identified *Financial and Environmental Sustainability*.

**FISCAL IMPACT**

None

**RECOMMENDATION**

Approval on the November 9, 2010 consent agenda.

**BACKGROUND**

The subject IGA will complete the establishment of the Village's permit requirements under the Amended Federal Clean Water Act. The County will undertake the monitoring and tracing of illicit discharges to the creeks which drain through the Village and the Village will pursue enforcement action against the polluters. The pollutants of concern consist of substances such as gasoline, paint and trichloroethylene, as well as high concentrations of silt or phosphorous. The County has the staff, equipment and expertise to perform the tracing work and the Village has the legal authority to prosecute the offenders.

This is the final step of the six required minimum control measures which must be implemented by every operator of a Municipal Separate Storm Sewer Systems (MS4s) as part of the National Pollution Discharge Elimination System (NPDES). The control measures are:

- 1) Public Education and Outreach;
- 2) Public Participation/Involvement;
- 3) Construction Site Runoff Control;
- 4) Post-Construction Runoff Control;
- 5) Pollution Prevention/Good Housekeeping; and
- 6) Illicit Discharge Detection and Elimination.

At the State level, the Illinois Environmental Protection Agency (IEPA) has been tasked with administering the program. In 2003, IEPA began requiring compliance for operators of MS4s with a population under 100,000. The Village partnered with DuPage County to submit a combined permit whereby the first two components of the program were to be jointly implemented by both agencies and the following three were left to the Village. The final measure, IDDE, was discussed as another possible task

for joint implementation. As noted above, the subject IGA will complete the establishment of the permit requirements.

**ATTACHMENTS**

Resolution

Intergovernmental Agreement with DuPage County

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND THE COUNTY OF DUPAGE, ILLINOIS FOR THE IMPLEMENTATION OF THE ILLCIT DISCHARGE DETECTION AND ELIMINATION PROGRAM**

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 “Municipality”) and the County of DuPage (the “County ”), for Implementation of the Illicit Discharge Detection and Elimination Program, 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

**AN INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE VILLAGE OF DOWNERS GROVE  
AND THE COUNTY OF DUPAGE, ILLINOIS  
FOR THE IMPLEMENTATION OF THE  
ILLCIT DISCHARGE DETECTION AND ELIMINATION PROGRAM**

THIS INTERGOVERNMENTAL AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between the Village of Downers Grove of DuPage County (hereinafter referred to as the "MUNICIPALITY") a body corporate and politic, with offices at 801 Burlington Avenue, Downers Grove, Illinois 60515-4778 and the County of DuPage, Illinois (hereinafter referred to as the "COUNTY") a body corporate and politic, with offices at 421 North County Farm Road, Wheaton, Illinois 60187-3978.

**RECITALS**

WHEREAS, the MUNICIPALITY and COUNTY are public agencies within the meaning of the Illinois "Intergovernmental Cooperation Act", as specified in Illinois Statute, 5 ILCS 220/1 *et. seq.*, 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 governmental bodies; and

WHEREAS, General National Pollutant Discharge Elimination System ("NPDES") Permit No. ILR40 authorizes discharges from Small Municipal Separate Storm Sewer Systems (MS4s); and

WHEREAS, MS4s are defined in 40 CFR 122.26(b)(16) as designated for permit authorization pursuant to 40 CFR 122.32; and

WHEREAS, the COUNTY and MUNICIPALITY each submitted an Illinois MS4 Notice of Intent ("NOI") to the Illinois Environmental Protection Agency ("IEPA") for coverage under ILR40; and

WHEREAS, the COUNTY and MUNICIPALITY noted on their respective NOI that they intend to act as cooperating permit holders to fulfill the requirements of ILR40's Illicit Discharge Detection and Elimination (IDDE) minimum control measure; and

WHEREAS, the General NPDES Permit No. ILR40 requires development, implementation, and enforcement of a storm water management program designed to reduce the discharge of pollutants from small municipal storm sewer systems to the maximum extent practicable to protect water quality, and to satisfy the appropriate water quality requirements of the Illinois Pollution Control Board Rules and Regulations (35 III. Adm. Code, Subtitle C, Chapter 1) and the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*); and

WHEREAS, the storm water management program must include the minimum control measures described in the General NPDES Permit No. ILR 40, Part IV, Section B; and

WHEREAS, the General NPDES Permit No. ILR40 Part IV, Section D authorizes Sharing Responsibility; and

WHEREAS, the COUNTY agrees to develop and implement a program to monitor and trace illicit discharges into small MS4s on behalf of the MUNICIPALITY as one of the minimum control measures for its stormwater management program; and

WHEREAS, the COUNTY and the MUNICIPALITY recognize that additional benefits of illicit discharge detection and elimination include increased water quality, reduction in pollutant loads in waterways, improved wildlife habitat, and public education opportunities; and

WHEREAS, the COUNTY has adopted the DuPage County Illicit Discharge Detection and Elimination Ordinance (ORDINANCE) to ensure the health, safety, and general welfare of the citizens of DuPage County, and protect and enhance water quality in a manner pursuant to and consistent with the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*) through the regulation of non-storm water discharges to the storm drainage system; and

WHEREAS, the MUNICIPALITY has adopted the Stormwater and Flood Plain Ordinance, as amended; and

WHEREAS, the COUNTY and the MUNICIPALITY have determined that it is in their best interest to cooperate in the enforcement and implementation of their respective ordinances; and

WHEREAS, the COUNTY and the MUNICIPALITY have determined that it is reasonable, necessary, and in the public interest and welfare for the COUNTY to conduct monitoring and tracing responsibilities associated with illicit discharge detection and elimination subject to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing preambles and the promises, terms and conditions set forth herein, and in the spirit of intergovernmental cooperation, the parties agree as follows:

**1.0 RECITALS INCORPORATED.**

1.1 The foregoing recitals are hereby incorporated as though fully set forth herein.

**2.0 COUNTY RIGHTS AND RESPONSIBILITIES.**

2.1 The COUNTY agrees to undertake the monitoring of outfalls and tracing of illicit discharges within the municipal limits of the MUNICIPALITY utilizing COUNTY personnel and equipment.

2.2 The COUNTY agrees to prepare, at its sole expense, plans, processes, and procedures for the program meeting the requirements of the NPDES permit to monitor and trace illicit discharges into the MS4 on behalf of the MUNICIPALITY.

2.3 The COUNTY agrees to obtain copies of the Notice of Intent (NOI) for each facility within the jurisdiction of the COUNTY and the MUNICIPALITY having an individual NPDES permit to discharge storm water associated with industrial activity through the IEPA for the purposes of fair and accurate monitoring and tracing.

2.4 The COUNTY agrees to monitor MS4 outfalls within the jurisdiction of the MUNICIPALITY, and to the extent it is so authorized, trace all discharges determined to be illicit with the objective of identifying the source of such illicit discharge.

2.5 The COUNTY agrees to notify the MUNICIPALITY within a reasonable time prior to the COUNTY conducting dye testing as part of tracing procedures.

2.6 The COUNTY agrees to notify the MUNICIPALITY within twenty four (24) hours of detecting an illicit discharge within the municipal limits of the MUNICIPALITY.

Promptly upon completion of the COUNTY'S investigation, the COUNTY shall inform the MUNICIPALITY of the location of the illicit discharge, the time(s) and date(s) of the discharge, and any additional information that would be necessary or prudent for the MUNICIPALITY to have in order to carry out enforcement proceedings.

- 2.7 The COUNTY agrees to provide the MUNICIPALITY with any information required for enforcement action and prosecution by the MUNICIPALITY and produce County personnel in court, as necessary and upon adequate notice.
- 2.8 The COUNTY agrees to create and manage a countywide hotline for reporting illicit discharges.
- 2.9 The COUNTY agrees to prepare the Illicit Discharge Detection and Elimination section of the annual report on behalf of the MUNICIPALITY. The annual report is required by the IEPA and is due by June 1<sup>st</sup> of each year in accordance with General NPDES Permit No. ILR40. The COUNTY will submit a copy of the Illicit Discharge Detection and Elimination section annual report to both the IEPA and the MUNICIPALITY.

### **3.0 MUNICIPALITY RIGHTS AND RESPONSIBILITIES**

- 3.1 The MUNICIPALITY agrees to provide the COUNTY with a current storm sewer atlas. If a storm sewer atlas is not available, the MUNICIPALITY will work to provide a storm sewer atlas to the COUNTY within two years.
- 3.2 The MUNICIPALITY agrees to provide annual updates of the storm sewer atlas to the COUNTY.
- 3.3 The MUNICIPALITY agrees to assign to the COUNTY any rights of access to the storm drainage system under the jurisdiction of the MUNICIPALITY as the COUNTY deems necessary.
- 3.4 The MUNICIPALITY agrees to provide timely prosecution of any person found to be in violation of their ordinance that fail to come into compliance in accordance with the ordinance, provided that the MUNICIPALITY receives timely notification from the COUNTY that a violation exists. Further, the COUNTY agrees to provide prosecution witnesses required without cost to the MUNICIPALITY.
- 3.5 The MUNICIPALITY shall provide the COUNTY with documentation of any enforcement action and prosecution from the previous one (1) year for inclusion in the annual report.

### **4.0 GOVERNMENT REGULATION.**

- 4.1 The COUNTY and the MUNICIPALITY shall each comply with the applicable requirements of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to the performance of this Agreement, with the most stringent standards governing.

### **5.0 MISCELLANEOUS TERMS.**

- 5.1 This Agreement shall be approved by Ordinance/Resolution and executed for and on behalf of the COUNTY and MUNICIPALITY.

- 5.2 Certified copies of each party's respective adopting ordinance or resolution shall be attached hereto and made a part hereof as evidence of the authority exercised by the undersigned officers of the COUNTY and MUNICIPALITY.
- 5.3 This Agreement shall become effective upon the date set forth above, and continue in full force and effect unless terminated in accord with Paragraph 5.5, below.
- 5.4 This Agreement may be amended or modified only by written instrument duly approved and signed by both parties to the Agreement.
- 5.5 Either party may give notice of its intent to terminate this Agreement in accord with Paragraphs 8.1 and 8.2 below. .
- 5.6 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.
- 5.7 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.

**6.0 ENTIRE AGREEMENT.**

- 6.1 This Agreement represents the entire agreement between the COUNTY and MUNICIPALITY with respect to the Illicit Discharge Detection and Elimination Program and supersedes all prior negotiations, representations or agreements, either written or oral.

**7.0 NOTICES REQUIRED UNDER THIS AGREEMENT.**

- 7.1 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 upon the MUNICIPALITY shall be directed to:

Village of Downers Grove  
Attn: Stormwater Administrator  
801 Burlington Avenue  
Downers Grove, IL 60515-4776  
Fax: 630-434-6873

Notices served upon the COUNTY shall be directed to:

DuPage County Stormwater Management Division  
Attn: Director, Stormwater Management  
421 N. County Farm Road  
Wheaton, IL 60187-3978  
Fax: 630-407-6701  
E-mail: [Water.Quality@dupageco.org](mailto:Water.Quality@dupageco.org)

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.

**8.0 TERM OF AGREEMENT**

- 8.1 As will be used for staff and budget requirements, the COUNTY and the MUNICIPALITY agree to not change enforcement status within the term of this Agreement.
- 8.2 This agreement will expire on the 31<sup>st</sup> of March, 2013. This agreement can be extended for additional NPDES permit cycles at the mutual agreement of both parties. The permit cycle is defined for a five (5) year period beginning one (1) year before the expiration date of the current NPDES permit for the MUNICIPALITY and continues until one (1) year before the expiration of the subsequent NPDES five (5) year permit.

**9.0 SEVERABILITY**

- 9.1 In the event any provision of this Agreement shall be held to be unenforceable or void, such provision shall be deleted and all other provisions shall remain in full force and effect to the fullest extent allowed by law and equity.

**10.0 GOVERNING LAW**

- 10.1 This Agreement will be governed by the laws of the State of Illinois as to both interpretation and performance. The forum for resolving disputes concerning the party's respective performance, or failure to perform, under this Agreement, will be the judicial circuit court for DuPage County.

IN WITNESS WHEREOF, the parties to this Agreement set their hands and seals as of the date first written above.

BY: \_\_\_\_\_  
RONALD SANDACK  
MAYOR  
VILLAGE OF DOWNERS GROVE

BY: \_\_\_\_\_  
ROBERT J. SCHILLERSTROM  
CHAIRMAN  
DUPAGE COUNTY BOARD

ATTEST: \_\_\_\_\_  
APRIL L. HOLDEN  
VILLAGE CLERK

ATTEST: \_\_\_\_\_  
GARY A. KING  
COUNTY CLERK