

VILLAGE OF DOWNERS GROVE
Report for the Village
10/16/2018

SUBJECT:	SUBMITTED BY:
IGA with Sanitary District, Assignment of Easements, Assignment of road leases to the Sanitary District relating to sanitary sewer facilities	Enza Petrarca Village Attorney

SYNOPSIS

Resolutions have been prepared to authorize execution of the following:

- Intergovernmental Agreement with the Downers Grove Sanitary District for the conveyance of the Northwest Territory and South Service Area sanitary sewer systems;
- Assignment of Easements to the Sanitary District for sanitary sewer purposes;
- Consent of ComEd to Assignment of Road Lease by the Village to the Sanitary District;
- Assignment of University of Illinois Agreement by the Village to the Sanitary District.

STRATEGIC PLAN ALIGNMENT

The goals for 2017-2019 identify *Steward of Financial, Environmental and Neighborhood Sustainability* and *Top Quality Infrastructure*.

FISCAL IMPACT

The Village currently pays approximately \$133.00 per year to ComEd for the use of its road to access the Northwest Territory lift station. Upon conveyance of the systems to the Sanitary District, the Village will no longer have this expense.

RECOMMENDATION

Approval on the October 16, 2018 consent agenda.

BACKGROUND

In the 1960's, the Village agreed to construct sanitary sewers and lift stations on property generally north of I-88 and west of Finley Road (the Northwest Territory) and generally south of 63rd Street, east of I-355, north of 75th Street and west of Main Street (South Service Area) to facilitate development and annexation. The Village financed the cost of the improvements in the Northwest Territory through the issuance of revenue bonds. As a condition of these bonds it was necessary that the Village retain ownership of all the financed improvements. The Village financed the South Service Area improvements with available funds, but still retained ownership of these facilities. Although owned by the Village, the Sanitary District agreed to maintain and operate the facilities in both areas.

As part of the extension of facilities in the Northwest Territory, a lift station was constructed on property which was purchased by the Village. The Village owns this lift station. This property lacked access to a

public road. To gain access, the Village entered into lease agreements with both the University of Illinois and Commonwealth Edison, intervening property owners, for a gravel access road.

All expenses have been recouped and bonds have been paid off. The Sanitary District is requesting to have the property, lift station and all sanitary sewer facilities conveyed to it. It is unnecessary for the Village to retain ownership of any sanitary sewer facilities as the District currently operates and maintains the facilities. Additionally, the Village will assign its interests in the road access agreements to the Sanitary District. The University of Illinois agreement has language allowing this assignment, but a Consent of Landlord needs to be executed for the ComEd agreement.

ATTACHMENTS

Resolutions

Intergovernmental Agreement

Assignment of Easements

Consent of ComEd to Assignment

Assignment of University of Illinois agreement

RESOLUTION NO. _____**A RESOLUTION AUTHORIZING EXECUTION OF A CONSENT OF LANDLORD TO ASSIGNMENT AMONG THE DOWNERS GROVE SANITARY DISTRICT, VILLAGE OF DOWNERS GROVE AND COMMONWEALTH EDISON**

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 Consent of Landlord to Assignment Agreement (the "Agreement"), among Commonwealth Edison (the "Landlord"), the Village of Downers Grove (the "Tenant") and the Downers Grove Sanitary District (the "New Tenant"), for the assignment by the Village to the Sanitary District of a certain Roadway License Agreement for an access road to a sanitary sewer lift station near Warrenville Road and Finley Road, 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 Mayor 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

CONSENT OF LANDLORD TO ASSIGNMENT

THIS CONSENT (the "Consent") is made as of the _____, 2018 by and among COMMONWEALTH EDISON COMPANY, an Illinois corporation ("Landlord"), VILLAGE OF DOWNERS GROVE, a Municipal corporation (the "Tenant"), and DOWNERS GROVE SANITARY DISTRICT, a unit of local government of DuPage County, IL.(the "New Tenant"). Landlord is the landlord under that certain Roadway License Agreement dated as of September 7, 1984, [as amended, modified or supplemented by that/those certain Lease dated September 7, 1984, which lease was supplemented by supplements dated December 12, 1998, September 18, 1995, February 22, 2009 and June 13, 2013] (collectively, the "Lease") for certain premises located near Warrenville Road and Finley Road, in the Village of Downers Grove, County of DuPage and State of Illinois. Tenant is the tenant under the Lease.

Tenant desires to enter into an assignment and assumption agreement (the "Assignment"), attached hereto and made a part hereof as Exhibit A, with the New Tenant for New Tenant's assumption of Tenant's rights and obligations under the Lease. Tenant and New Tenant seek to obtain Landlord's consent to the Assignment.

NOW, THEREFORE, in consideration of the conditions, covenants and agreements contained herein, the parties hereby agree as follows:

1. The recitals set forth herein above are incorporated in this Consent by reference.
2. Landlord hereby consents to the execution by the Tenant and New Tenant of the Assignment upon the terms, covenants, and conditions contained herein to which all parties hereto agree to be bound.
3. New Tenant agrees to observe, perform and be bound by each and all of the duties, obligations, requirements and liabilities of the lessee under the Lease. New Tenant shall be liable for all duties, obligations and liabilities under the Lease.
4. The notice address and contact information for New Tenant shall be attached hereto and made a part hereof as Exhibit B.
5. Nothing in the Assignment shall supersede any of the terms, covenants or conditions of the Lease; in the event of any conflict between the Lease and the Assignment, the Lease shall control, and nothing herein shall be deemed a waiver of any of the obligations and terms of the Lease.
6. The Lease may not be further assigned or amended without the consent of the Landlord, to the extent such consent is required under the Lease.
7. Nothing in this Consent shall supersede any of the terms, covenants or conditions of the Lease; in the event of any conflict between the Lease and the Consent, the Lease shall control, and nothing herein shall be deemed a waiver of any of the obligations and terms of the Lease.
8. The terms and provisions of this Consent shall be governed by and construed in accordance with the laws of the State of Illinois. With respect to any suit, action or proceeding relating to this Consent (each a "Proceeding"), the parties hereto each irrevocably: (a) agree that any such Proceeding shall be commenced, brought, tried, litigation and consummated in the courts of the State of Illinois located in the County of DuPage or (as applicable) the United States District Court for the Northern District of Illinois, (b) submit to the exclusive jurisdiction of the courts of

the State of Illinois located in the County of DuPage and the United States District Court for the Northern District of Illinois, and (c) waive any objection which they may have at any time to the laying of venue of any Proceeding brought in any such court has been brought in an inconvenient forum, and further waive the right to object, with respect to such Proceeding, that any such court does not have jurisdiction over such party.

9. This Consent may be executed by the parties in counterparts. Each such counterpart shall be deemed an original and all such counterparts, taken together, shall constitute one and the same agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Consent on the first date written above.

LANDLORD:

TENANT:

COMMONWEALTH EDISON COMPANY,
an Illinois corporation

Village of Downers Grove
a Municipal Corporation

By: _____
Name: Kendall Hodge
Title: Director of Real Estate & Facilities

By: _____
Name: _____
Title: _____

NEW TENANT:

Downers Grove Sanitary District
a unit of local government of DuPage County,
Illinois

By: _____
Name: _____
Title: _____

EXHIBIT A

Assignment

[to be attached]

**ASSIGNMENT AND ASSUMPTION AGREEMENT BETWEEN THE
DOWNERS GROVE SANITARY DISTRICT
AND THE VILLAGE OF DOWNERS GROVE
RELATING TO A COMMONWEALTH EDISON ROAD LEASE**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT, made this ____ day of _____, 2018, is entered into by and between the DOWNERS GROVE SANITARY DISTRICT, a sanitary district created and existing under the laws of the State of Illinois, (hereinafter referred to as the "Sanitary District"), and the VILLAGE OF DOWNERS GROVE, an Illinois municipal corporation, (hereinafter referred to as the "Village").

WHEREAS, the Village and the District entered into an Agreement dated March 19, 1968, superseded by an Agreement dated August 1, 1973, which was amended by an Agreement dated January 15, 1980, to provide for construction and maintenance of a sanitary sewer system in what is described as the Northwest Territory; and

WHEREAS, in order to access the lift station in the Northwest Territory, use of a road owned by Commonwealth Edison ("ComEd") was necessary; and therefore, the Village and ComEd entered into a Roadway License Agreement dated September 7, 1984, as amended, modified or supplemented by Leases dated September 18, 1995, December 12, 1998, February 22, 2009, and June 13, 2013 (hereinafter collectively referred to as "the Lease"); and

WHEREAS, with the transfer of the Northwest Territory sanitary sewer system from the Village to the Sanitary District, the Village desires to assign its rights, obligations and liabilities, and the Sanitary District desires to accept and assume all of the Village's rights, obligations and liabilities under the Lease;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. The Village ("Assignor") hereby assigns, transfers and sets over to the Sanitary District all rights, obligations and liabilities under the Lease.
2. The Sanitary District ("Assignee") hereby accepts and assumes all of the rights, obligations and liabilities of the Village arising under the Lease beginning on the date of last approval by either Party. The Sanitary District hereby expressly agrees to observe, perform and

be bound by the terms and conditions of the Lease to the same extent and as fully as if it was originally named as a party thereto.

3. This Agreement shall be binding upon and inure to the benefits of the parties hereto, their successors and assigns.

Downers Grove Sanitary District (Assignee)

By: _____
General Manager

Attest: _____
Assistant Clerk

Village of Downers Grove (Assignor)

By: _____
Martin Tully, Mayor

Attest: _____
Village Clerk

EXHIBIT B

New Tenant's Notice Address and Contact Information

Downers Grove Sanitary District
c/o General Manager Nick Menninga
2710 Curtis St.
Downers Grove, IL 60515

630-969-0664
nmenninga@dgsd.org