

## COUNCIL WORKSHOP ITEM

**ITEM:** A Resolution Authorizing an Intergovernmental Agreement between the Village of Downers Grove and the DuPage Water Commission  
**DATE:** April 2, 2003  
**PREPARED BY:** Rick Ginex, Village Manager  
**PURPOSE:** An agreement concerning the implementation of water service to the Downers Grove service area in DuPage County

### DISCUSSION:

This agreement establishes the loan arrangement between the Village and the DuPage Water Commission. As you know, the Water Commission has agreed to loan the Village the money to construct water mains, B-boxes and all the necessary appurtenances to provide water service to the unincorporated areas of Downers Grove. The Water Commission has agreed to loan the Village up to \$4,788,000.00 to cover all expenses. The loan shall be a twenty-year loan at the rate of 2%. However, for the first six years we are only required to pay back the interest on the loan. The Village will be able to draw on the loan monthly, so that we can coordinate payment of our contractors accordingly. Finally, the agreement stipulates that the Village will commence construction of the improvements within 210 days following the County's adoption of an ordinance requiring connection to the public water supply or within 90 days following the installation of the Improvements necessary to provide water service, whichever is later.

### ATTACHMENT:

An Intergovernmental Agreement between the Village of Downers Grove and the DuPage Water Commission

### RECOMMENDATION:

Place on active agenda – approve by resolution

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

**A RESOLUTION AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND THE DUPAGE WATER COMMISSION**

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 “Village”) and the DuPage Water Commission (the “Commission”), for implementation of water service to the Downers Grove “Service Area” , 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 CONCERNING THE  
IMPLEMENTATION OF WATER SERVICE TO THE  
DOWNERS GROVE SERVICE AREA IN DuPAGE COUNTY

THIS AGREEMENT, made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2003 (“Effective Date”), by and between the DuPAGE WATER COMMISSION, a county water commission created and existing under the laws of the State of Illinois (the “Commission”), and the VILLAGE OF DOWNERS GROVE, a municipal corporation created and existing under the laws of the State of Illinois (the “Charter Customer”),

WITNESSETH:

WHEREAS, the Commission was formed and exists pursuant to the Water Commission Act of 1985, 70 ILCS 3720/1 *et seq.*, and Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.*, for the purpose of securing an adequate source and supply of water for its customers; and

WHEREAS, the Commission operates a water system supplying a number of municipalities and other customers in DuPage County with water drawn from Lake Michigan; and

WHEREAS, the Charter Customer owns and operates a water distribution system (the “Charter Customer Water System”), which system is supplied with water by the Commission pursuant to the terms of that certain Water Purchase and Sale Contract dated as of June 11, 1986, with the Commission (the “Charter Customer Contract”); and

WHEREAS, close to fifty percent (50%) of the wells sampled in the area depicted on the map attached hereto and by this reference incorporated herein and made a part hereof as Exhibit A (the “Service Area”) have levels of Trichloroethylene (“TCE”) that exceed the maximum contaminant level for that regulated chemical as determined by

the National Primary Drinking Water Regulations, 40 C.F.R. § 141.1 *et seq.*, of the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, and/or the regulations related to the Illinois Pollution Control Board in 35 Ill. Admin. Code 620.105 *et seq.*; and

WHEREAS, the construction of certain improvements to the Charter Customer Water System will enable the Charter Customer to serve properties within the Service Area that currently cannot be served by the existing Charter Customer Water System (the “Improvements”); and

WHEREAS, to carry out their duties and responsibilities, and desiring to create a method of providing an adequate supply of Lake Michigan water to areas of DuPage County affected by contaminated well water, the Commission, the County of DuPage (the “County”), and the Charter Customer entered into an Intergovernmental Agreement for the Provision of Lake Michigan Water to Areas of DuPage County Affected By Contamination, effective as of October 11, 2002, and attached hereto and by this reference incorporated herein and made a part hereof as Exhibit B (the “Enabling Agreement”); and

WHEREAS, the Commission, the County, and the Charter Customer have jointly determined that a significant life, safety, and health risk related to human consumption of water is likely to be posed in the Service Area in the future and, thus, have jointly determined that the Service Area should be, and is hereby, designated as a “Primary Service Area” pursuant to the Enabling Agreement; and

WHEREAS, it is in the best interests of the Commission and the Charter Customer to coordinate and implement the supply of Lake Michigan water to the Service Area in accordance with the Enabling Agreement; and

WHEREAS, the Commission and the Charter Customer desire to set forth their understanding regarding such coordination and implementation in this Agreement; and

WHEREAS, the matters set forth in this Agreement will serve the public interest and assure that the significant public health and safety threat posed by the contaminated well water supply in the Service Area is minimized to the greatest extent possible; and

WHEREAS, pursuant to Section 10 of Article VII of the Illinois Constitution of 1970, the provisions of the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, and other applicable authority, the Commission and the Charter Customer are authorized to enter into this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the Commission and the Charter Customer hereby agree as follows:

## **SECTION 1. PREAMBLES**

The foregoing recitals are by this reference incorporated herein and made a part hereof as if fully set forth herein.

## **SECTION 2. CONSTRUCTION OF IMPROVEMENTS; EXTENSION OF SERVICE**

A. Description of the Improvements. For purposes of this Agreement, the “Improvements” shall include the construction of approximately 3,000 linear feet of 8 inch water main and approximately 1,200 linear feet of 12 inch water main with all necessary appurtenances to serve those portions of the Service Area for which no Existing Mains (as defined in the Enabling Agreement) of the Charter Customer exist and, in those portions of the Service Area for which Existing Mains of the Charter

Customer do exist, the necessary number of B-boxes and all necessary appurtenances to serve those Customers (as defined in the Enabling Agreement).

B. Design of the Improvements. The Charter Customer shall be the contracting party with the design engineer and shall administer the design contract for the benefit of both the County and the Charter Customer. The Charter Customer shall keep the County advised as to the progress of the design work.

C. Condition Precedent to Construction. The Charter Customer shall begin construction upon the adoption by the County of an enforceable ordinance requiring each Potential Customer (as defined in the Enabling Agreement) within the Service Area to connect to a public water supply (i) within 210 days following the adoption of the ordinance or (ii) within 90 days following the installation of the Improvements necessary to serve that Potential Customer, whichever is later (the "Condition Precedent to Service"). If the Condition Precedent to Service fails to occur, then, notwithstanding any requirement of the Enabling Agreement to the contrary, the Charter Customer shall have no obligation under this Agreement or the Enabling Agreement to extend water service to the Service Area. Notwithstanding the foregoing, the Charter Customer hereby reserves the right to waive satisfaction of the Condition Precedent to Service at its sole discretion.

D. Construction and Acceptance of the Improvements. Subject to satisfaction or waiver of the Condition Precedent to Service, the Charter Customer shall solicit bids or otherwise enter into agreement(s) for the construction of the Improvements. The Charter Customer agrees to award and administer all contracts for the project in the best interest of both the County and the Charter Customer and to keep advised County officials regarding the progress of the work and any problems

encountered or changes recommended. The Charter Customer shall enter into a construction contract(s) with the selected contractor(s), and shall administer such construction contract(s) in conformance with this Agreement. Any change order, as well as final acceptance and approval of the completed Improvements, shall be subject to the final approval of the Charter Customer. The Charter Customer shall not be required to approve or accept any portion of the Improvements until all portions of the Improvements, including all punch list items, have been fully and properly completed.

E. Cost of Design and Construction. Subject to satisfaction or waiver of the Condition Precedent to Service, the Improvements shall be designed and constructed at the sole cost of the Charter Customer. The Commission shall loan the Charter Customer all or a portion of the funds needed for the design and construction of the Improvements in accordance with Section 3 of this Agreement.

F. Extension of Service.

1. If Existing Mains can be used to provide service to any Customer in the Service Area, and subject to satisfaction or waiver of the Condition Precedent to Service, the Charter Customer shall a) within ninety (90) days after a Customer decides to receive water service from the Charter Customer through an Existing Main, enter into any necessary water service agreement and/or water loan agreement with that Customer; and b) within one hundred twenty (120) days after that Customer and the Charter Customer enter into the necessary water service agreement and/or water loan agreement, begin to extend and offer service through the Existing Mains to the property line (B-box) of that Customer.

2. In those portions of the Service Area for which no Existing Mains of the Charter Customer exist, the Charter Customer shall complete construction of the New Mains (as defined in the Enabling Agreement) within two hundred seventy (270) days after satisfaction or waiver of the Condition Precedent to Service. Thereafter, within ninety (90) days after a Customer has entered into any necessary water service agreement and/or water loan agreement for water service by the Charter Customer through a New Main, the Charter Customer shall begin to extend and offer service to that Customer's property line (B-box).

### **SECTION 3. COMMISSION FINANCING**

A. Service Costs and Retail Customer Base. Service Costs (as defined in the Enabling Agreement) for the supply of Lake Michigan water to the Service Area are hereby established in the amount of \$4,788,000, which Service Costs are detailed in Exhibit C attached hereto and by this reference incorporated herein and made a part hereof. The number of Potential Customers (as defined in the Enabling Agreement) in the Service Area is hereby established at 800.

B. Loan. The Commission shall, after the execution and delivery of this Agreement, loan to the Charter Customer an amount not to exceed \$4,788,000 (the "Commitment") in the form of a revolving line of credit in order to provide funds to finance in whole or in part the Service Costs (the "Loan"). Draws on the Loan shall be limited as set forth in Section 3.E of this Agreement.

C. Loan Repayment.

1. The Charter Customer shall repay the principal balance of the Loan in 13 annual installments, commencing in 2010 on the 15<sup>th</sup> day of the month in which the Charter Customer made its first draw on the Loan (an "Annual Payment Date"), and continuing in successive annual installments on each Annual Payment Date in each year thereafter to and including the 2022 Annual Payment Date, with the final payment of any principal, if not sooner paid, on the 2023 Annual Payment Date. Each of the 13 annual installments of principal on the Loan shall be determined as of the last day of the month preceding the Annual Payment Date in any given year during the term of the Loan (a "Determination Date") and shall be determined by dividing the unpaid principal balance of the Loan as of the applicable Determination Date by the number of annual installments of principal remaining to be paid during the term of the Loan.
2. Interest on the unpaid principal balance of the Loan, at the rate of two percent (2%) per annum, calculated on the basis of a calendar year consisting of 360 days of twelve 30-day months, shall be paid commencing on the 2004 Annual Payment Date, and continuing on the Annual Payment Date each year thereafter until the principal balance of the Loan has been paid in full.
3. Notwithstanding the annual payment requirements of Sections 3.C.1 and 3.C.2 of this Agreement, however, in the event the

number of Customers in the Service Area is less than the number of Potential Customers in the Service Area, determined as of the Determination Date in any given year during the term of the Loan, then the Charter Customer shall only be required to pay to the Commission the total amount of interest and principal that would otherwise be due on the Loan for that year multiplied by the number of Customers in the Service Area divided by the number of Potential Customers in the Service Area.

4. If, at maturity, there remains any unpaid principal balance or interest on the Loan, the Commission shall extend the terms of the Loan for a commercially reasonable period provided the Charter Customer is not in default under this Agreement or the Enabling Agreement.

D. Tender of Loan Payments. Payments of principal and interest shall be made in lawful money of the United States of America in federal or other immediately available funds.

E. Procedure for Borrowing. The Charter Customer may draw on the Loan no more than once per month, on the 15<sup>th</sup> day of the month, provided that the Charter Customer shall give the Commission irrevocable notice (which notice must be received by the Commission prior to 10:00 a.m., local time, 15 days prior to the requested borrowing date), specifying the amount to be borrowed and the requested borrowing date. Each borrowing pursuant to this Agreement shall be in an aggregate principal amount of the lesser of (i) \$10,000 or a whole multiple thereof and (ii) the Available Commitment. For purposes of this Section 3.E, the Available Commitment at a

particular time is an amount equal to the difference between the Commitment and the aggregate principal balance of the Loan then outstanding.

F. Optional Prepayments. Subject to the limitations of this Section 3.F, the Charter Customer may, no more frequently than once in any given year, prepay, in whole or in part, the Loan, without premium or penalty, upon at least one business day's irrevocable notice to the Commission, specifying the date and amount of prepayment. The amount of any such optional prepayment shall be in increments of \$50,000. If such notice is given, the Charter Customer shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. The proceeds of any such prepayment shall be applied by the Commission first, to the payment of accrued and unpaid interest, if any, on the Loan and second, to the payment of the unpaid principal balance of the Loan. The Charter Customer shall not be entitled to, nor receive any credit for, interest on any such prepayment.

G. Mandatory Prepayments. Except for the Illinois Environmental Protection Agency grant previously awarded to the Charter Customer in the amount of \$711,948.00, the proceeds of which will be used by the Charter Customer to pay direct costs incurred in connection with the design and construction of the Improvements, the Charter Customer shall have, and hereby accepts, the obligation to prepay the Loan, in whole or in part, on any date within 60 days after the receipt by the Charter Customer of any other grant or any settlement funds from any source to the extent such grant or settlement funds are attributable to the Service Costs identified in Exhibit C attached hereto. The proceeds of any such prepayment shall be applied by the Commission first, to the payment of accrued and unpaid interest, if any, on the Loan and second, to the

payment of the unpaid principal balance of the Loan. The Charter Customer shall not be entitled to, nor receive any credit for, interest on any such prepayment.

H. Application of Loan Proceeds. The proceeds of the Loan shall be devoted to and used with due diligence for the purpose of paying the Service Costs identified in Exhibit C attached hereto in connection with the supply of Lake Michigan water to the Service Area; provided, however, that where an unexpended balance remains in any one or more of the various cost components of the Service Costs detailed in Exhibit C attached hereto, such balance may be transferred and expended, in whole or in part, to and for any other cost component of the Service Costs detailed in Exhibit C attached hereto.

#### **SECTION 4. DEFAULTS AND REMEDIES**

A. Commission Defaults. The occurrence of the following shall constitute a default by the Commission under this Agreement: The failure by the Commission to observe and/or perform any covenant, condition, and/or agreement on its part to be observed and/or performed under this Agreement, and the continuation of said failure for thirty (30) days after the Commission's receipt of written notice thereof from the Charter Customer. However, if said failure cannot be remedied by the Commission within said thirty (30) day period, and the Commission shall have diligently pursued resolution of the failure during said thirty (30) days, the period shall be extended by such additional time as may be reasonably required by the Commission to cure or correct said failure. In the event of a default by the Commission under this Agreement, the Charter Customer shall have the same remedies as are provided for, and only the remedies provided for, in the Enabling Agreement for a default by the Commission.

B. Charter Customer Defaults. The occurrence of the following shall constitute a default by the Charter Customer under this Agreement: The failure by the Charter Customer to observe and/or perform any covenant, condition, and/or agreement on its part to be observed and/or performed under this Agreement, and the continuation of said failure for thirty (30) days after the Charter Customer's receipt of written notice thereof from the Commission. However, if said failure cannot be remedied by the Charter Customer within said thirty (30) day period, and the Charter Customer shall have diligently pursued resolution of the failure during said thirty (30) days, the period shall be extended by such additional time as may be reasonably required by the Charter Customer to cure or correct said failure. In the event of a default by the Charter Customer under this Agreement, the Commission shall have the same remedies as are provided for, and only the remedies provided for, in the Enabling Agreement for a default by the Charter Customer.

C. Force Majeure. In case by reason of force majeure any party hereto shall be rendered unable wholly or in part to carry out its obligation under this Agreement, then if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure" as employed in this Agreement shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States, of the State of Illinois, or of any civil or military authority, insurrections, riots, terrorism, acts of

terror, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or tunnels, partial or entire failure of water supply, and inability on the part of the Commission or of the Charter Customer to deliver Lake Michigan water, or of the Charter Customer to receive Lake Michigan water, on account of any other causes not reasonably within the control of the party claiming such inability. The settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and the above requirement that any "Force Majeure" shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty. The Task Force (as defined in the Enabling Agreement) shall make a recommendation to the Commission, which shall determine if force majeure which renders any of the parties unable to perform under this Agreement shall relieve the Charter Customer of its obligations to make payments to the Commission that may be required under Section 3 of this Agreement.

## **SECTION 5. LEGAL RELATIONSHIPS AND REQUIREMENTS**

A. Supplemental Agreement. This Agreement shall be deemed to supplement the Enabling Agreement in connection with the supply of Lake Michigan water to the Service Area; provided, however, that any requirement in the Enabling Agreement obligating the Charter Customer to extend water service to the Service Area, or take any other action in furtherance thereof, in the event the Condition Precedent to Service has failed to occur shall be, and they hereby are, waived. If there is any other conflict or inconsistency between the terms of this Agreement and the terms of the

Enabling Agreement, then the terms of this Agreement shall control. The Charter Customer shall at all times comply with all terms and conditions of the Enabling Agreement except as otherwise provided in this Agreement.

B. Term of Agreement. This Agreement shall continue in full force and effect from the Effective Date until the end of the term of the Enabling Agreement. The Commission and the Charter Customer agree to begin consideration of whether an extension of this Agreement is necessary not later than three (3) years prior to the end of the term of this Agreement.

C. Cooperation and Further Agreements. The Commission and the Charter Customer agree to meet and cooperate in good faith throughout the term of this Agreement to implement the letter and spirit of the provisions set forth in this Agreement. The Commission and the Charter Customer agree and acknowledge that further details regarding the Service Costs, and the financing of the Service Costs, in connection with the supply of Lake Michigan water to the Service Area may be subject to a future agreement.

D. Assignment. This Agreement may not be assigned by any party, in whole or in part, without the prior written consent of the other party.

E. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed received by the addressee thereof when delivered in person on a business day at the address set forth below or on the third business day after being deposited in any main or branch United States post office, for delivery at the address set forth below by properly addressed, postage prepaid, certified or registered mail, return receipt requested.

Notices and communications to the Commission shall be addressed to, and delivered at, the following address:

DuPage Water Commission  
600 East Butterfield Road  
Elmhurst, Illinois 60126-4642  
Attention: General Manager

Notices and communications to the Charter Customer shall be addressed to, and delivered at, the following address:

Village of Downers Grove  
801 Burlington Avenue  
Downers Grove, Illinois 60515-4776  
Attention: Village Manager

The foregoing shall not be deemed to preclude the use of other non-oral means of notification or to invalidate any notice properly given by any such other non-oral means.

By notice complying with the requirements of this Section 5.E, the Commission and the Charter Customer each shall have the right to change the address or addressee or both for all future notices to it, but no notice of a change of address shall be effective until actually received.

F. Entire Agreement. This Agreement sets forth the entire agreement of the Commission and the Charter Customer with respect to the coordination and implementation of the supply of Lake Michigan water to the Service Area in accordance with the Enabling Agreement, and there are no other understandings or agreements, oral or written, by or between the Commission and the Charter Customer with respect thereto, nor was the making and execution of this Agreement induced by any representation, statement, warranty, agreement, or action other than those expressed or explicitly referenced in this Agreement.

G. No Waiver. No course of dealing or failure of the Commission or the Charter Customer to enforce strictly any term, right, or condition of this Agreement shall

be construed as a waiver of such term, right, or condition. No express waiver of any term, right, or condition of this Agreement shall operate as a waiver of any other term, right, or condition.

H. No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement, or to acknowledge, establish, or impose any legal duty to any third party.

I. Governing Law. This Agreement shall be governed by and construed exclusively under the applicable laws of the State of Illinois, without regard to conflicts of law principles.

J. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. Any such counterpart may be signed by one of the parties hereto so long as each of the parties hereto has signed one or more of such counterparts.

IN WITNESS WHEREOF, the Commission and the Charter Customer have caused this Agreement to be executed by their duly authorized officers, pursuant to proper authorization of their respective governing bodies, as of the date first stated above.

ATTEST:

DuPAGE WATER COMMISSION

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

VILLAGE OF DOWNERS GROVE

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

CHI1 #194225 v5

Downers Grove, Illinois  
TCE Impacted Area  
Estimate of Cost for Connections

	Estimated units	800
Local share of North Belmont Park (Excludes IEPA Grant)		\$ 300,000
Fees for Village Connection		
Tap fee	\$ 200	\$ 160,000
Capacity fee	\$ 600	\$ 480,000
Meter fee	\$ 250	\$ 200,000
Inspection	\$ 60	\$ 48,000
	\$ 1,110	\$ 888,000
B-Box Connections	\$ 1,500	\$ 1,200,000
		\$ 1,200,000
Service Line Connections		
Service Line Connections	\$ 3,000	\$ 2,400,000
		\$ 2,400,000
Total Cost for the Downers Grove TCE Area		\$ 4,788,000

**EXHIBIT C**

# UNINCORPORATED DOWNERS GROVE SERVICE BY DOWNERS GROVE

