

**VILLAGE OF DOWNERS GROVE  
COUNCIL ACTION SUMMARY**

**INITIATED:** Village Attorney **DATE:** October 21, 2003  
(Name)

**RECOMMENDATION FROM:** \_\_\_\_\_ **FILE REF:** \_\_\_\_\_  
(Board or Department)

**NATURE OF ACTION:**

- Ordinance
- Resolution
- Motion
- Other

**STEPS NEEDED TO IMPLEMENT ACTION:**

Motion to Adopt "A RESOLUTION AUTHORIZING EXECUTION OF A TIERED APPROACH TO CORRECTIVE ACTION OBJECTIVE AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND AUTOMOTIVE SERVICES, INC.", as presented.



**SUMMARY OF ITEM:**

Adoption of the attached resolution will authorize the execution of a tiered approach to corrective action objective agreement between the Village of Downers Grove and Automotive Services, Inc. in relation to the contamination of soil and groundwater at the property located at 844 Warren Avenue.

**RECORD OF ACTION TAKEN:**

---

---

---

RESOLUTION NO. \_\_\_\_

**A RESOLUTION AUTHORIZING EXECUTION OF A TIERED APPROACH TO  
CORRECTIVE ACTION OBJECTIVE AGREEMENT BETWEEN THE  
VILLAGE OF DOWNERS GROVE AND AUTOMOTIVE SERVICES, INC.**

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 Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and Automotive Services, Inc. (the "Owner"), for certain corrective action and remediation objectives with regard to the contamination of soil and groundwater, 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 That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.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

Site PIN: 09-08-125-004**TIERED APPROACH TO CORRECTIVE ACTION RIGHT-OF-WAY AGREEMENT**

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ pursuant to the Environmental Protection Act ("Act"), 35 IL Admin. Code Section 742.1020 by and between Automotive Services, Inc. ("Owner") and Automotive Services, Inc. ("Operator"), together referred to herein as "Owner/Operator," and the Village of Downers Grove ("Village"), as follows:

1. This Agreement is not binding on the Village until it is executed by a duly authorized representative of the Village, and prior to execution, this Agreement constitutes an offer by Owner/Operator. The duly authorized representatives of Owner and Operator have signed this Agreement, and this Agreement is binding upon them, their successors and assigns.
2. Owner/Operator stipulates:
  - a. Owner/Operator is pursuing corrective action at a Site and in the right-of-way adjacent to the Site located at 844 Warren Avenue, Downers Grove, Illinois 60515 ("Site"). Site is legally described in Attachment A.
  - b. The right-of-way adjacent to the Site, described in Attachment B, is subject to this Agreement and is possibly impacted with contaminants from a release at the Site.
  - c. Attached as Attachment C is a site map showing the known and probable area(s) of contaminant impacted soil and groundwater in the right-of-way where, at the time of this Agreement, contaminants exceed the Tier 1 residential remediation objectives under the Act and 35 Ill. Admin. Code Section 742. Also attached as Attachment D is a table showing the concentration of contaminants in soil and/or groundwater within the area described in Attachment B and showing the applicable Tier 1 soil and groundwater remediation objectives for residential property that are exceeded.
  - d. The corrective action is for a confirmed release of petroleum from an underground storage tank at the Site.
  - e. The Illinois Emergency Management Agency has assigned incident number 930155 to the Site.
  - f. Owner/Operator has requested risk-based, site-specific soil and/or groundwater remediation objectives from the Illinois Environmental Protection Agency ("Illinois EPA") under the Act and 35 Ill. Admin. Code Section 742.



does it guarantee that the right-of-way will continue as a roadway or that the right-of-way will always be maintained as an engineered barrier.

- b. This agreement does not in any way limit the Village's authority to construct, reconstruct, repair or maintain and operate a right-of-way upon the property identified in Attachment B or to allow others to do the same. To that extent, the Village reserves the right to identify, investigate, and remove contaminated soil and/or groundwater above Tier 1 residential remediation objectives from the right-of-way identified in Attachment B and to dispose of them as it deems appropriate in accordance with applicable environmental regulations so as to avoid causing a further release of the contaminants and to protect human health and the environment. The Owner/Operator shall reimburse the actual costs incurred by the Village or others in so identifying, investigating, removing, storing, handling or disposing of contaminated soil and/or groundwater, and it shall not be a defense for Owner/Operator that those costs were not consistent with or required by Board or United States Environmental Protection Agency regulations, guidelines or policies. Prior to incurring any such costs, and unless there is an urgent reason otherwise, the Village shall first give Owner/Operator thirty days notice and an opportunity to remove or dispose of contaminated soil and/or groundwater, at Owner/Operator's cost, to the extent necessary for the Village's work. Such removal and disposal shall be in accordance with all applicable laws and regulations. Failure to give this opportunity to Owner/Operator shall not be a defense to a claim for reimbursement or that the work should not have been done. There is a rebuttable presumption that the contamination found in the right-of-way described in Attachment B arose from the release of contaminants at the Site. Should Owner/Operator not reimburse the costs identified here, this Agreement shall be null and void in addition to such other remedies as may be available to the Village by law.
6. The Owner/Operator agrees to indemnify and hold harmless the Village, its agents and employees, and other entities using the right-of-way by a permit issued by the Village, for all obligations asserted against or costs incurred by them associated with the release of contaminants of concern as described in Attachments C and D.
7. Violation of the terms of this Agreement by Owner/Operator, or its successor(s) in interest, may be grounds for voidance of this Agreement as a Highway Authority Agreement.
8. No violation of a permit by a third party shall constitute a breach of this Agreement by the Village. Owner/Operator also agrees that its personnel, if any, at the Site will exercise due diligence in notifying those accessing contaminated soil in the right-of-way of their rights and responsibilities under this Agreement.

9. Should the Village breach this Agreement, Owner/Operator's sole remedy is for an action for damages in the Circuit Court of DuPage County. Any and all claims for damages against the Village, its agents, contractors, employees or its successors in interest or others under permit from the Village arising at any time are limited to an aggregate maximum of \$20,000.00. No other breach by the Village, its successors in interest or others under permit, of a provision of this Agreement is actionable in either law or equity by Owner/Operator against the Village or them and Owner/Operator hereby releases the Village, its agents, contractors, employees and its successors in interest, or others under permit from the Village for any cause of action it may have against them, other than as allowed in this paragraph, arising under this Agreement or environmental laws, regulations or common law governing the contaminated soil or groundwater in the right-of-way. Should the Village convey, vacate or transfer jurisdiction of that right-of-way, Owner/Operator may pursue an action under this Agreement against the successors in interest, other than the Village, or any of its departments, or State agency, in a Court of Law.
10. This Agreement is entered into by the Village in recognition of laws passed by the General Assembly and regulations adopted by the Board which encourage a tiered-approach to remediating environmental contamination. This Agreement is entered into by the Village in the spirit of those laws. Should any provision of this Agreement be determined to exceed the authority of the Village, however, this Agreement shall be null and void.
11. This Agreement (including attachments, addendums, and amendments) shall run with the land and be binding upon all assigns and successors in interest to the Owner/Operator of the Site.
12. The Village will limit access to the Site and rights-of-way as follows:
  1. Normal Access: The Village will limit access to the Site and rights-of-way via the Village Transportation Department or its successor agency, by which persons seeking authorization to perform subsurface work in a Village right-of-way will be informed of the nature and extent of the contamination, and will be informed that they should take appropriate steps to ensure the health and safety of people working at the Site and rights-of-way.
  2. Emergency Access: The Public Works Department, the Village Building Department, and the Downers Grove Fire Department or their successor agencies will be notified of the contamination at this Site and adjacent rights-of-way and will be provided with all available environmental data regarding the Site and adjacent rights-of-way. Such information will be provided to utilities in the area.
13. This Agreement shall continue in effect from the date of the Agreement until contaminant concentrations in the soil and groundwater are subsequently reduced through active remediation or through natural attenuation to Tier 1 residential levels as approved by the

Illinois EPA and Board regulations, such that the right-of-way identified in Attachment B is demonstrated to be suitable for unrestricted use and there is no longer a need for this Agreement, and the Illinois EPA has, upon written request to the Illinois EPA and notice to the Village, amended the "No Further Remediation" determination for the Site to reflect unencumbered future use of that right-of-way.

- 14. Written notice and other communications relating to this agreement directed to the Village shall be sent to:

Riccardo Ginex, Village Manager  
Village of Downers Grove  
801 Burlington Ave.  
Downers Grove, IL 60515

- 15. Written notice and other communications relating to this agreement directed to Owner/Operator shall be sent to:

Mr. Roger Andreen  
844 Warren Avenue  
Downers Grove, IL 60515

IN WITNESS WHEREOF, the Village of Downers Grove has caused this Agreement to be signed by its duly authorized representative:

BY: \_\_\_\_\_ Date: \_\_\_\_\_

IN WITNESS WHEREOF, Owner, \_\_\_\_\_ has caused this Agreement to be signed by its duly authorized representative:

BY: Roger J. Andreen Date: Sept. 12. 2003

ATTACHMENT A

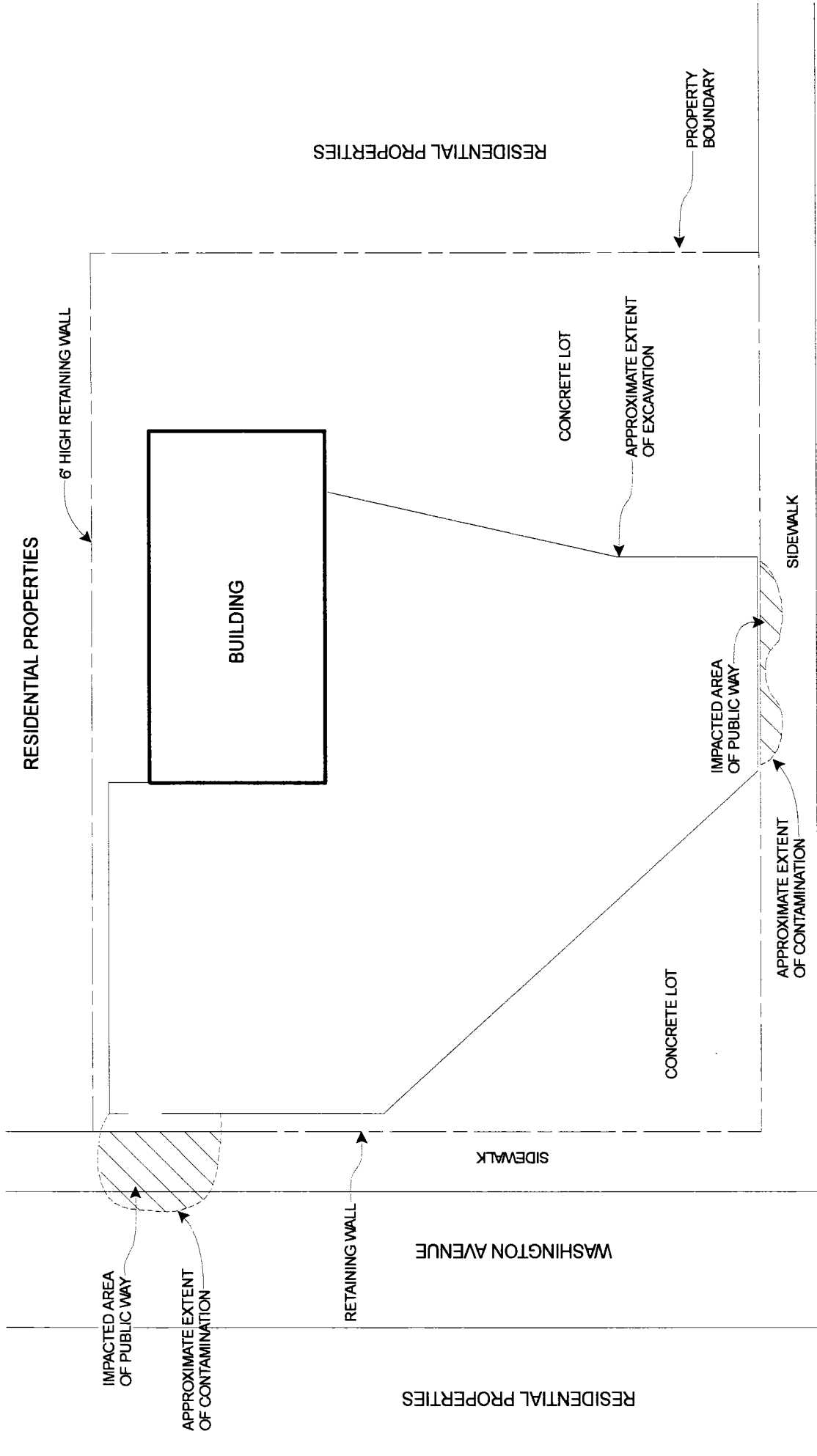
ATTACHMENT A

Legal Description  
Automotive Services, Inc.  
844 Warren Avenue  
Downers Grove, Illinois

The South 100.0 feet of Lot 6 in Beardsley's addition to the Town of Downers Grove, being a subdivision in the northeast quarter of Section 8, Township 38 North, Range 11 East of the Third Principal Meridian, according to plat recorded June 16, 1868 in DuPage County.

PIN Number: 09-08-125-004

ATTACHMENT B



**INTEGRITY**  
ENVIRONMENTAL SERVICES, INC.

PROJECT: AUTO SERVICES  
844 WARREN AVENUE  
DOWNERS GROVE, ILLINOIS  
IES No. 507-35

CLIENT: AMERICAN TANK, INC.  
5255 NORTH CENTRAL AVENUE  
CHICAGO, ILLINOIS

DRAWN BY: TN  
DATE: 8/11/03  
REV: 1

SCALE: 1"=20'-0"

SCALE IN FEET

0 5 10 20



IMPACTED AREAS OF  
THE PUBLIC WAY

ATTACHMENT C



ATTACHMENT D

ATTACHMENT D

Soil Sample Results  
Automotive Services, Inc.  
844 Warren Avenue  
Downers Grove, Illinois

Sample Number	Benzene (ug/kg)
B-6	71.3
B-7	49.5
SWW-1	715
SWE-1	549
Remediation Objective	30

Groundwater is not believed to have been impacted.

Remediation Objective taken from Tier 1 Soil Remediation Objectives for Residential Properties