

VILLAGE OF DOWNERS GROVE
Report for the Village
9/14/2021

SUBJECT:	SUBMITTED BY:
IGA with Downers Grove Sanitary District – Mutual Contracting	Andy Sikich Public Works Director

SYNOPSIS

A resolution has been prepared to approve an Intergovernmental Agreement (IGA) between the Village and the Downers Grove Sanitary District facilitating the use of mutual contracts for repair and maintenance of public infrastructure.

STRATEGIC PLAN ALIGNMENT

The goals for 2019 – 2021 include *Steward of Financial, Environmental and Neighborhood Sustainability* and *Exceptional Municipal Services*.

FISCAL IMPACT

None

RECOMMENDATION

Approval on the September 14, 2021 consent agenda.

BACKGROUND

The Village of Downers Grove (Village) and the Downers Grove Sanitary District (District) have a long history of working together to provide exceptional, cost-effective services to our constituents. The purpose of this IGA is to provide a set of standards and conditions for combining efforts and coordinating the timing of maintenance and reconstruction activities in order to create efficiencies and reduce costs, from time to time, on a mutually agreeable basis.

Staff from both agencies believe this will be very beneficial. For example, the Village performs a large amount of sidewalk removal and replacement each year, while the District owns and maintains a small amount of sidewalk within their facilities. The District would pay a much larger amount to have repair work done if they contracted for it alone, rather than if it were combined with the larger Village project. The proposed IGA would provide the framework for the Village and the District to coordinate efforts, and take advantage of economies of scale, by joining together on certain contracts. The agreement provides for either agency to be the lead agency, so both agencies could experience savings and increased efficiency on a variety of maintenance activities. The agreement would be valid for five years, unless terminated by either party, and could be renewed for successive five-year periods upon the mutual agreement of the Village and the District.

ATTACHMENTS

Agreement

**A RESOLUTION AUTHORIZING EXECUTION OF AN
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE VILLAGE OF DOWNERS GROVE AND
THE DOWNERS GROVE SANITARY DISTRICT
FOR REPAIRS AND/OR MAINTENANCE OF PUBLIC IMPROVEMENTS**

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 Downers Grove Sanitary District (the "District"), for the construction, repair and maintenance of certain public improvements, 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

**AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE
DOWNERS GROVE SANITARY DISTRICT AND THE
VILLAGE OF DOWNERS GROVE
FOR REPAIRS AND/OR MAINTENANCE OF PUBLIC IMPROVEMENTS**

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between THE DOWNERS GROVE SANITARY DISTRICT, with offices at 2710 Curtiss Street, Downers Grove, Illinois (hereinafter referred to as “the District”), and the VILLAGE OF DOWNERS GROVE, ILLINOIS, an Illinois municipal corporation, (hereinafter referred to as the “Village”), concerning the construction, repair and maintenance of certain public improvements as described herein.

WHEREAS, Article VII, Section 10, of the Illinois Constitution of 1970 encourages and provides for units of local government to contract or otherwise associate among themselves to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law or by ordinance and may use their credit, revenues, and other resources to pay costs related to intergovernmental activities; and

WHEREAS, the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.* further authorizes intergovernmental cooperation; and

WHEREAS, the Village and the District are “units of local government” as defined by Article VII, Section 1, of the Constitution of the State of Illinois and are authorized to contract and agree with one another on matters of mutual concern; and

WHEREAS, both the Village and the District own certain properties that they desire to improve; and

WHEREAS, both the Village and the District periodically perform maintenance (sidewalk repair, pavement patching, resurfacing, crack sealing, pipe lining, etc.) of their respectfully owned public improvements; and

WHEREAS, the District and the Village desire to cooperate in an effort to coordinate the timing of their maintenance and reconstruction activities in order to create efficiencies and reduce costs, to the extent permitted by law, including the Sanitary District Act of 1917, 70 ILCS 2405/0.1 *et seq.*

NOW, THEREFORE, in consideration of the above stated preambles and the mutual covenants and promises hereinafter contained, the District and the Village formally covenant, agree, and bind themselves as follows to wit:

1. The above recitals are hereby incorporated into this Agreement as if fully set forth in this paragraph 1.

2. This Agreement is intended to govern any maintenance, repair or reconstruction of public improvement projects wherein the parties mutually agree to coordinate their efforts (hereinafter referred to as “any Project”) over the next five (5) years. As such, the term of this Agreement shall be for a period of five (5) years from the date of execution of the last party hereto and may be renewed for successive five (5) year periods upon mutual written agreement of the parties, to the extent permitted by the Sanitary District Act of 1917, 70 ILCS 2405/0.1 *et seq.*

3. For any Project, either the Village or the District shall be mutually agreed upon as the primary agency. The primary agency for each Project shall be responsible for the public advertisement for calls for bids or requests for proposals, the selection of firms/contractors and awarding of contracts (surveying, geotechnical, material testing, design or construction) in compliance with the applicable procurement requirements, and managing the contracts. All construction will be in conformance with the Project drawings and specifications, which shall be mutually agreed upon by the Village and the District. It is understood that the agency which is not the primary agency (the non-primary agency) for a given project will not be a party to any

construction contract and will have no obligation to any contractors. Notwithstanding the above, the primary agency shall not award a contract for any work to be performed on property owned by the non-primary agency without first obtaining the written consent of the non-primary agency. The primary agency shall ensure that the Project documents provide for the assignment of the contractor agreement for the portions of the work to be performed for the non-primary agency and the primary agency shall assign such portion of the contract to the non-primary agency upon written request; however, the assignment of the contract to the non-primary agency shall neither release the primary agency from its obligation to pay the contractor for such work nor release the non-primary agency from paying the primary responsible agency for such work.

4. The non-primary agency shall have the opportunity to review, provide input and approve all engineering plans, specifications, and construction contracts that pertain to work to be performed on their property. It is understood that the Village and the District do not necessarily specialize in work related to the facilities owned by the other agency, and therefore the non-primary agency's review and approval of plans, specifications and the construction contracts shall release the primary agency from any and all liability with regard to the design and construction of improvements on the non-primary agency's property or facilities. The primary agency shall provide copies of any engineering plans, specifications and contracts to the non-primary agency and the non-primary agency shall review such plans, specifications and contracts within seven (7) days of its receipt of same. If the non-primary agency fails to review such plans, specifications or contracts within this seven (7) day time frame or provide input to the primary agency in writing, such plans, specifications or contracts shall be deemed accepted by the non-primary agency.

5. In the event the non-primary agency decides to have the primary agency's engineer prepare, approve or sign engineering plans on its behalf, the non-primary agency shall waive and release any claim it may have against the engineer and the primary agency and shall indemnify and hold harmless the engineer and the primary agency from any and all liability, losses or damages as a result of claims, demands, suits, actions or proceedings of any kind or nature in any way resulting from or arising out of the engineer's preparation, review or approval of the engineering plans or any other act of the engineer performed under this Agreement or for any negligent action on the part of the non-primary agency under this Agreement.

6. The primary agency shall require all contractors and engineers to name the non-primary agency, its individual Board members, agents, officers and employees, as additional insureds on all insurance policies, except the worker's compensation policy and any professional liability policy.

7. The primary agency shall administer any Project in the best interest of both parties and to consult with, and keep advised, officials of the non-primary agency regarding the progress of the work. Notwithstanding, the non-primary agency shall have a representative on-site, as appropriate given the stage of the work during the construction phase, for its properties/improvements, and shall be solely responsible for contractor oversight for work on their property/facilities. The primary agency shall not execute any change orders relating to the non-primary agency's portion of the Project without the non-primary agency's prior written consent.

8. The non-primary agency shall reimburse the primary agency for the non-primary agency's portion of any approved work, including but not limited to surveying, geotechnical investigations, design, material testing, and construction, one hundred percent (100%) of the total

costs for work related to its improvements within thirty (30) days of receipt of an invoice (or such later date that payment is approved by the governing body of the non-primary agency). The primary agency shall provide copies of the pay applications to the non-primary agency for their approval prior to making any payments to the contractor; such approval shall not be unreasonably withheld by the non-primary agency.

9. Upon completion of any Project the primary agency shall not have any responsibility for the maintenance, upkeep and repair of the non-primary agency's property and/or improvements.

10. This Agreement represents the entire agreement between the parties. No oral changes or modifications of this Agreement shall be permitted or allowed. Changes or modifications to this Agreement shall be made only in writing and upon necessary and proper signature of the District and the Village.

11. In the event that any provisions of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereto.

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

13. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of Illinois. The forum for any legal disputes between the Village and the District shall be DuPage County, Illinois.

14. Either party may terminate this Agreement for any reason at any time upon delivery of thirty (30) days written notice to the other party, except if any Project is ongoing this Agreement may not be terminated until final completion of any such Project. Such notice shall be either personally delivered or sent by certified mail, return receipt requested.

**THE DOWNERS GROVE
SANITARY DISTRICT**

VILLAGE OF DOWNERS GROVE

By: _____
Its: Amy Underwood, General Manager

By: _____
Its: Mayor

ATTEST:

ATTEST:

Clerk

Village Clerk

Date: _____, 2021

Date: _____, 2021