

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
NOVEMBER 15, 2011 AGENDA**

Subject:	Type:	Submitted By:
CITY OF LA VISTA & SARPY COUNTY ILLICIT STORM SEWER DISCHARGE MEMORANDUM OF UNDERSTANDING	◆ RESOLUTION ORDINANCE RECEIVE/FILE	JOHN KOTTMANN CITY ENGINEER/ASSISTANT PUBLIC WORKS DIRECTOR

SYNOPSIS

A resolution has been prepared authorizing the Mayor to execute a Memorandum of Understanding with Sarpy County concerning the inspection and enforcement responsibilities related to illicit storm sewer discharges occurring in the extraterritorial jurisdiction of the City of La Vista. The proposed Memorandum of Understanding is attached.

FISCAL IMPACT

No new financial obligations will result from this Memorandum of Understanding.

RECOMMENDATION

Approval

BACKGROUND

The City and the County presently have these obligations under the terms of their current National Pollution Discharge Elimination Permits. The Nebraska Department of Environmental Quality has requested that a written agreement be prepared between the City and County so that in the event their office is notified of a discharge, they are able to contact both the City and the County and rely on a cooperative effort being undertaken in these extraterritorial areas where both agencies have levels of authority. The member cities of the Papillion Creek Watershed Partnership are each executing a similar Memorandum of Understanding with Sarpy County.

The Public Works Department and the Community Development Department of the City will continue to be responsible to perform inspections in response to complaints about illicit discharge, coordinate with other agencies as required and take enforcement actions as necessary to eliminate illicit discharges into the storm sewer system. The MOU provides for the City and the County to notify the other when discharges are observed or complaints are received for locations in the extraterritorial jurisdiction of the City and to cooperate in enforcement actions as may be necessary.

MEMORANDUM OF UNDERSTANDING
BETWEEN
CITY OF LA VISTA
AND
SARPY COUNTY, NEBRASKA

I. PURPOSE

This Memorandum of Understanding (MOU) is entered by the City of La Vista, Nebraska and Sarpy County, Nebraska for the City of La Vista's Department of Public Works, (hereinafter referred to as CITY) and Sarpy County's Department of Public Works, (hereinafter referred to as COUNTY) to coordinate their efforts to comply with their National Pollutant Discharge Elimination System (NPDES) Permits (permits):

- NPDES Permit No. NER 200005, CITY
- NPDES Permit No. NER 210007, COUNTY,

in particular to control illicit discharges into the COUNTY municipal storm sewer system in CITY extraterritorial jurisdiction (ETJ).

II. BACKGROUND

The permits issued by the Nebraska Department of Environmental Quality (NDEQ) and 40 C.F.R. § 122.26(d) (2) (i) require CITY and COUNTY to prohibit certain discharges into their storm sewer systems to ensure that certain discharges do not cause violations of their permits or state water quality standards. These discharges are "illicit discharges" for the purposes of this memorandum.

III. OBJECTIVES

- A. CITY and COUNTY want to comply with their permits.
- B. CITY and COUNTY want effective interagency cooperation.
- C. CITY and COUNTY want to be able to use in the CITY ETJ the water pollution control enforcement authority in Chapter 154, City of La Vista's Municipal Code, to the extent applicable. The City of La Vista's Municipal Code in Section 154.01(c), states; "The provisions of this Chapter shall be applicable to all that property within the City's zoning jurisdiction." COUNTY will cooperate with CITY efforts to take any necessary enforcement action on illicit discharges to its storm sewer system in the CITY ETJ.
- D. CITY and COUNTY Public Works Departments shall be the initial points of contact to investigate illicit discharges. Outside of normal working hours for such Departments, contact will be handled by the appropriate dispatcher who will in turn contact the Departments through the established procedures.

IV. RESPONSIBILITIES

A. In the CITY's ETJ the CITY shall:

- 1 Investigate and enforce against illicit discharges.
- 2 Inform COUNTY of all complaints, investigations, and reports of alleged illicit discharges.
- 3 Send to COUNTY copies of all informal notices of violation and other informal enforcement letters regarding illicit discharges.
- 4 Coordinate with COUNTY before issuing formal notices of violation and orders against illicit discharges. The COUNTY shall be responsible to pursue formal notices, orders and assessment of penalties for illicit discharges occurring in County Road right-of-ways within the City's ETJ. The CITY shall be responsible to pursue formal notices, orders and assessment of penalties for illicit discharges occurring in right-of-ways other than County Roads or State Highways within the City's ETJ.
- 5 Coordinate with COUNTY on whether the State should be requested to start a civil or criminal or other action against illicit discharges.

B. In the CITY's ETJ the COUNTY shall:

- 1 Be diligent investigating or assisting in investigating suspected illicit discharges in County Road right-of-ways in the CITY ETJ.
- 2 Send to CITY copies of all informal notices of violation and other informal enforcement letters regarding illicit discharges in CITY's ETJ.
- 3 Coordinate with CITY regarding formal notices of violation and orders against illicit discharges. See Item 4 in Paragraph A above.
- 4 Coordinate with CITY on whether the State should be requested to start a civil or criminal or other action against illicit discharges.
- 5 Provide a hearing officer as needed to hear and recommend decisions on contested cases arising from CITY administrative enforcement cases against illicit discharges.

C. In the event authority to serve notices or orders, assess penalties, or seek or take legal or other action in this Article IV or elsewhere in this Agreement is contrary to any applicable laws or regulations, then the agency or person with proper legal authority shall pursue such measures.

V. OTHER PROVISIONS

- A. This MOU does not alter the statutory or other legal authority and responsibilities or the respective permit requirements under the NPDES of the NDEQ. The intent of the MOU is to form a basis by which the aforementioned goals and objectives can be carried out by each agency in a cooperative manner.
- B. This MOU does not create any additional operation or maintenance obligations for the COUNTY and CITY.
- C. The MOU does not obligate any funds from the COUNTY and CITY.

- D. The MOU parties agree to comply with the nondiscrimination provision of Title VI of the Civil Rights Act of 1964, including Section 504 of Title IX, the Age Discrimination Act of 1975, and other applicable nondiscrimination policies.
- E. The MOU may be amended or terminated at anytime by mutual consent of the COUNTY or the CITY, or the MOU may be terminated by any agency alone by giving thirty (30) days written notice to the other agency.
- F. This MOU shall take effect upon, signing by both the City of La Vista and Sarpy County.

IN WITNESS WHEREOF, the parties hereto having lawful authority, have caused this document to be executed by the proper officials as of the dates below indicated.

EXECUTED by Sarpy County, Nebraska this _____ day of _____, 2011

ATTEST:

_____	By _____
Sarpy County Clerk	Chair, Board of Commissioners

APPROVAL AS TO FORM: _____
Deputy County Attorney

EXECUTED by the City of La Vista, Nebraska this _____ day of _____, 2011

ATTEST:

_____	By _____
Pamela A. Bueth, CMC	Douglas Kindig
City Clerk	Mayor of La Vista

APPROVAL AS TO FORM: _____
City Attorney