

March 12, 2013

MEMO

TO: THOMAS THOMAS

FROM: TED KUTSUNIS

RE: INTERGOVERNMENTAL AGREEMENT WITH ROCK ISLAND COUNTY ON
MILL CREEK FLOODING

Thomas:

Attached is the Intergovernmental Agreement that we have been working on with the County addressing the Mill Creek Flooding problem. By having both parties sign this will allow Rock Island County to join the contemplated law suit against the Corps of Engineers.

Please review this document. If it meets with your approval it can be added to next week's Agenda asking for Council approval and giving you authority to execute the Agreement.

Thank you.

Ted Kutsunis

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF ROCK ISLAND, ILLINOIS, a municipal corporation, and
THE COUNTY OF ROCK ISLAND, ILLINOIS, a body politic and corporate,
REGARDING
LITIGATION AGAINST THE ARMY CORPS OF ENGINEERS
TO ADDRESS MILL CREEK FLOODING

This agreement entered into as of the date last written below between the City of or Rock Island, Illinois, a municipal corporation, herein "City" and the County of Rock Island, Illinois, a body politic and corporate, herein "County";

WHEREAS, intergovernmental cooperation between units of local government to contract, further combine or transfer to a lawful power or function in any manner not prohibited by law or ordinance is authorized by Article VII, Section 10 of the Illinois Constitution of 1970; and

WHEREAS, the Illinois General Assembly, in order to implement Article VII, Section 10 of the Illinois Constitution of 1970, adopted the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq.; and

WHEREAS, U.S. Army Corps of Engineers, herein Corps, failure to maintain the Mill Creek South Slough has resulted in permanently raised water levels in Mill Creek, and impounded runoff that flows into the Milan sanitary sewers. Further, the Corps continuing failure to maintain Mill Creek South Slough is causing a continuous flooded condition over the Southwest Interceptor in the City. As a result of this submerged condition, it is likely there will be a break in the underwater portion of the Southwest Interceptor; and

WHEREAS, the inflow of runoff into the Milan sanitary sewers and the likelihood of a break in the Southwest Interceptor do, will continue to, and threaten to, result in the introduction of untreated wastewater and surface water into the sewer systems owed and operated by City and or Milan, interfering with or threatening to interfere with the operation and maintenance of these sewer systems and the respective wastewater treatment plants.

WHEREAS, the flooding conditions caused by the impounded runoff cover two water mains, prevent or substantially interfere with repairs to those mains and prevents City from ensuring that the public water supply will be safe in quality and adequate in quantity in the event of a water main break. These results do, will continue to, and threaten to cause water pollution in violation of numerous environmental laws including the Clean Water Act, 33 U.S.C. §1251 et seq. (1972), the Illinois Environmental Protection Act, the Illinois Pollution Control Board Water Pollution Regulations and the Safe Water Drinking Act, 42 U.S.C. § 300f et seq.; and

WHEREAS, the County wishes to support the City in its efforts to urge the U.S. Army Corp of Engineers to dredge and maintain Mill Creek South Slough.

WHEREAS the City has determined that in order to accomplish its goal of protecting the water supply in its city and to get the Corps to agree to permanently address the flooding that their failure to maintain Mill Creek has caused is to file a complaint under the Clean Water and Safe Water Drinking Acts, the U.S. Environmental Protection Act.

Now, therefore , be it resolved in consideration of the mutual covenants contained herein,

1. The County agrees to support the City's efforts to urge the U.S. Army Corps of Engineers to resume dredging of Mill Creek South Slough.
2. That the City has determined that prior to commencing litigation against the Corps, the Clean Water Act and the Safe Drinking Water Act require a 60 day notice informing the Corps of the City's intent to file a civil action on behalf of its citizens against any person who is alleged to be in violation of the protective provisions of the Clean Water Act and the Safe Drinking Water Act.
3. That the City serves as the lead governmental agency in the filing of this citizen's complaint,
4. That the County agrees to join the City as a co-plaintiff in this litigation.
5. That it is agreed that the City will indemnify and hold harmless the County for any and all costs and fees, including attorney fees and expert witness fees, incurred as a result of any threatened and resulting litigation against the Corps as it relates to violations of the Clean Water Act and the Safe Drinking Water Act related to the failure to maintain the Mill Creek South Slough whether the litigation is successful or unsuccessful. Said litigation referenced herein is captioned City of Rock Island, an Illinois municipal corporation, Village of Milan, an Illinois Municipal corporation, and County of Rock Island, Illinois, Plaintiff, v. United States of America, United States Department of the Army, Corps of Engineers, and Lt. Gen. Robert Van Antwerp, Chief of Engineers, United States Army Corps of Engineers, sued in his official capacity only, Defendants, to be filed in the United States District Court for the Central District of Illinois, Rock Island Division.
6. This agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

The parties have executed this Agreement as of the date last written below.

Rock Island County, Illinois, a body politic and corporate,

By Phil Banaszek
County Board Chairman

Dated this ____ day of _____, 2013.

Attest:

Karen Kinney, County Clerk

City of Rock Island, Illinois, a municipal corporation,

Dated this _____ day of _____, 2013.

By Thomas Thomas
City Manager

Attest:

Aleisha Patchin, City Clerk