

Sponsored By:
Mayor John Dennis

**RESOLUTION APPROVING THE INTERLOCAL AGREEMENT
FOR IMPLEMENTATION OF NPDES PHASE II STORM
WATER QUALITY MANAGEMENT PLAN**

WHEREAS, Tippecanoe County, the City of Lafayette; the City of West Lafayette; the Town of Battle Ground; the Town of Dayton; the Trustees of Purdue University; and the Trustees of Ivy Tech Community College of Indiana, have negotiated an Agreement for the implementation of NPDES Phase II Storm Water Quality Management Plan, a copy of which is attached hereto and incorporated by reference as Exhibit A; and

WHEREAS, the Mayor of West Lafayette has approved the Agreement; and,

WHEREAS, the Common Council believes said Agreement to be fair and equitable as between the parties and in the best interest of the citizens of the City of West Lafayette, Indiana.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF WEST LAFAYETTE, INDIANA, AS FOLLOWS:

That the agreement between Tippecanoe County, Indiana; the City of Lafayette, Indiana; the City of West Lafayette, Indiana; the Town of Battle Ground; the Town of Dayton; the Trustees of Purdue University; and, the Trustees of Ivy Tech Community College, providing for implementation of NPDES Phase II Storm Water Quality Management Plan be and the same is hereby ratified and approved.

INTRODUCED ON FIRST READING ON THE ____ DAY OF _____, 20__.

DULY RESOLVED, PASSED, AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF WEST LAFAYETTE, INDIANA, ON THE ____ DAY OF _____, 2009, HAVING BEEN PASSED BY A VOTE OF ____ IN FAVOR AND ____ OPPOSED, THE ROLL CALL VOTE BEING:

<u>AYE</u>		<u>NAY</u>
_____	Bunder	_____
_____	Burch	_____
_____	Dietrich	_____
_____	Hunt	_____
_____	Keen	_____
_____	Roales	_____
_____	Thomas	_____

Presiding Officer

Attest:

Judith C. Rhodes, Clerk-Treasurer

PRESENTED BY ME TO THE MAYOR OF THE CITY OF WEST LAFAYETTE, INDIANA
ON THE _____ DAY OF _____, 2009, AT THE HOUR OF
_____.

Judith C. Rhodes, Clerk-Treasurer

THIS RESOLUTION APPROVED AND SIGNED BY ME ON THE _____ DAY OF
_____, 2009, AT THE HOUR OF _____.

John R. Dennis, Mayor

Attest:

Judith C. Rhodes, Clerk-Treasurer

INTERLOCAL AGREEMENT (REVISED)

**PROVIDING FOR IMPLEMENTATION OF NPDES PHASE II
STORM WATER QUALITY MANAGEMENT PLAN**

THIS INTERLOCAL AGREEMENT (Agreement) is made and entered into as of the day of _____, 2008, by and among the following undersigned, all which are referred to collectively as the PARTIES:

TIPPECANOE COUNTY, a subdivision of the State of Indiana; CITY OF LAFAYETTE, a municipal corporation of the State of Indiana; CITY OF WEST LAFAYETTE, a municipal corporation of the State of Indiana; TOWN OF BATTLE GROUND; a municipal corporation of the State of Indiana; TOWN OF DAYTON, a municipal corporation of the State of Indiana; THE TRUSTEES OF PURDUE UNIVERSITY, a body corporate created and existing under the laws of the State of Indiana; and THE TRUSTEES OF IVY TECH COMMUNITY COLLEGE OF INDIANA, a body corporate and politic created and existing under the laws of the State of Indiana.

RECITALS

A. The National Pollutant Discharge Elimination System (NPDES) Phase II permit system authorized by the Clean Water Act as implemented pursuant to Indiana Department of Environmental Management (IDEM) Rule 13, required that the PARTIES develop a Storm Water Quality Management Plan (SWQMP) to control the discharge of pollutants from urban runoff.

B. In furtherance of their responsibility for development and continued implementation and maintenance of such NPDES Phase II SWQMP, the PARTIES have entered into this Agreement to jointly fund the cost of preparing, completing and participating in certain SWQMP elements which provide a general benefit to the PARTIES (such as monitoring, public education and outreach, SWQMP program administration, etc.), and these elements of joint responsibility among the PARTIES are termed the "General Program" as named by Exhibit A and hereby made part of this Agreement. In addition, the SWQMP contains other elements which are an individual PARTY responsibility and which provide individual benefits (such as construction site controls, catch basin cleaning, and illicit and illegal connection inspections, monitoring and enforcement, and other Illicit Discharge Detection and Elimination (IDDE) program activities, etc.). These elements are termed the "Individual Program". Individual

Program elements are hereby excluded from this Agreement unless explicitly approved by an affirmative vote as described in the articles of this Agreement. All Storm Water Utility formation and implementation activities are considered non-program activities and are specifically excluded from this Agreement.

C. The PARTIES desire to continue development, implementation and maintenance of the SWQMP and to enter into this Agreement for the purpose of ensuring continued participation, in terms of cost and administrative responsibilities.

D. This Agreement amends and supersedes any prior agreement among the PARTIES regarding the SWQMP.

E. The PARTIES are each subdivisions or agencies of the State, or bodies corporate created and existing under the laws of the State of Indiana, with authority to control the discharge of surface waters from their respective jurisdictions,

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. A Project Team consisting of one representative and one alternate from each of the PARTIES is hereby created to provide overall program direction, review and budget oversight, and to recommend an annual budget for the General Program for approval by the PARTIES, all in accordance with the SWQMP General Program elements. Project Team members and their alternates, shall be appointed by and shall serve at the pleasure of the Executive Officer(s) of the respective PARTIES. They shall be appointed within thirty (30) days of the date of this Agreement and a confirming letter sent to the President of the Board of Commissioners of Tippecanoe County, and the Project Team "MS4 Operator" designated in the Rule 13 Notice of Intent (Part A) Initial Application Certification filed November 4, 2003 or subsequent revised Rule 13 Notice of Intent (Part A) submittal.

- (a) Each of the PARTIES to this Agreement is allocated the number of votes shown in Exhibit B.
- (b) A quorum for the conduct of business by the Project Team shall be a majority of the voting PARTIES to the Agreement.
- (c) Approval of actions by the Project Team shall require a two-thirds affirmative vote of all allocated votes as shown in Exhibit B.

No action shall be taken by the MS4 Operator which requires expenditures of the PARTIES other than the MS4 Operator without prior Project Team approval as defined by this Agreement.

2. Pursuant to direction of the Project Team, the MS4 Operator shall administer and coordinate the Program, which duties include:

- (a) Enforcement and implementation of the articles of this Agreement;
- (b) Applying on behalf of the PARTIES to become co-permittees for a National Pollutant Discharge Elimination System (NPDES) SWQMP Permit;
- (c) Administering General Project Funds, including preparing draft annual budget and, periodic status reports on General Program activities and expenditures and distributing same to PARTIES quarterly, or as may be required by the SWQMP;
- (d) Consolidating and submitting reports prepared by the PARTIES required by the SWQMP, Rule 13, or the NPDES permit;
- (e) Letting and administering approved consultant contracts for General Program implementation according to the MS4 Operator's policies and procedures with and consideration given to other PARTIES' requirements. All consultant contracts will contain hold harmless and indemnity provisions and insurance requirements for the benefit of all PARTIES;
- (f) Conducting audits of General Program consultant contracts in accordance with the MS4 operator's policies and procedures;
- (g) Maintaining knowledge of and informing the PARTIES regarding current and proposed state and federal policies, regulations and programs that impact nonpoint source pollutant control programs and may potentially affect the terms or implementation of the current or future NPDES Phase II permit and advising the PARTIES in development and presentation of positions on these issues before local, State and Federal agencies;
- (h) Preparing an annual report on the implementation of the Program, in accordance with Rule 13;
- (i) Creation and maintenance of a complete list and current contact information of appointed Project Team members and respective alternates and distribute such initial or revised list within ten (10) business days to each Project Team member and Executive Officer(s) of the Parties following an initial or replacement appointment;

- (j) Prepare and distribute Project Team meeting agendas at least five (5) business days prior to all Project Team meetings;
- (k) Prepare and distribute Project Team meeting minutes to all Project Team members within ten (10) business days of all Project Team meetings;
- (l) Prepare and submit quarterly invoices for General Program activities charges to each Project Team member or designated representative;
- (m) Provide copies of all correspondence to and from State and Federal agencies pertaining to NPDES SWQMP General Program activities to Project Team members at the team meeting immediately following the date of such correspondence. This includes both written and email correspondence;
- (n) Facilitate the development and complete annual budgets for General Program activities ninety (90) days prior to the end of each calendar year; and
- (o) Formally advising the appropriate State and Federal agencies of termination or amendment of this Agreement.

3. The PARTIES each individually accept and agree to perform the following duties:

- (a) Implement the articles of this Agreement;
- (b) Authorize and maintain a representative to serve as the NPDES SWQMP Permit co-permitees with the other PARTIES;
- (c) Fully comply with the NPDES SWQMP Permit conditions applicable to its Individual Program elements and its identified portion of the General Program elements;
- (d) Select a representative and an alternate to participate in Project Team meetings and other required meetings of the PARTIES. Each will make replacements of said representatives and alternates consistent with the articles of appointment stipulated within this Agreement as not to allow a member vacancy to exist on the Project Team;
- (e) Issue payment for quarterly invoices no later than sixty (60) days following the receipt of a correct and appropriate quarterly invoice;
- (f) Fund, implement and maintain its Individual Program, and fund and implement elements of the General Program; and

(g) Provide reports (certified under penalty of perjury) to the MS4 Operator in compliance with applicable provisions of the NPDES Phase II permit and program implementation.

4. The MS4 Operator shall prepare a proper accounting of funds and reports of all invoices and receipts. In the event one or more of the PARTIES terminates this Agreement, any uninvoiced portion of its share of cost for completed General Program activities shall be invoiced within forty-five (45) business days of said termination.

5. Annual budgets for General Program activities shall be approved by the PARTIES and shall be based on an analysis of past budgets and current and future program needs and NPDES Phase II permit requirements.

6. By approval of the PARTIES, budget allocations for the General Program shall be made according to attached Exhibit C. The attached Exhibit D provides a copy of the formulas which are used to allocate costs. Each PARTY'S allocation of the General Program's annual costs for each fiscal year will be according to the percentages provided in Exhibit C, as it may be amended according to the articles of this Agreement. Cost allocations and associated formulas shall be examined and recalculated with necessary updates as specified by this Agreement. The budget allocation for the Individual Programs shall be made directly by the individual responsible for respective PARTY.

7. This Agreement shall have an initial term beginning as of the date of this Agreement and continuing through December 31, 2012 and may be subject to renewal for a five (5) year period by a two-thirds affirmative vote of all allocated votes. Such vote shall be made during a period extending not more than one hundred-eighty (180) days prior to the expiration of the Agreement and following a review by the Project Team within said period of the articles of the Agreement.

8. The participation of any PARTY to this Agreement may be terminated by a two-thirds affirmative vote of all allocated votes upon thirty (30) days priors written notice in the event that such PARTY fails to perform its obligations hereunder or the funds necessary for its continued involvement are not appropriated by its legislative body.

9. This Agreement shall be reviewed on an annual basis or as requested by the Project Team beginning in January 2009 and may be amended to reflect requested and required

updates by an affirmative vote of the PARTIES representing two-thirds or more of all allocated votes as shown in Exhibit B.

10. Participation in this Agreement may be terminated by any of the PARTIES for any reason after the terminating PARTY complies with the conditions of termination. The conditions of termination include the following: the terminating PARTY shall notify the MS4 Operator sixty (60) days prior to its termination of participation in the Agreement, the terminating PARTY shall obtain its own NPDES Phase II Rule 13 permit for urban runoff, and the terminating PARTY shall have its name deleted as a co-permittee of the PARTIES' NPDES Phase II permit. Expenses associated with the conditions of termination include filing for and obtaining the individual NPDES Phase II permit and the amendment of the PARTIES' NPDES Phase II permit and are limited to the submission and revisions of the 'Notice of Intent' requirements, 'SWQMP-Part B: baseline characterization and report', and 'SWQMP-Part C: program implementation'. Such termination expenses will be solely the responsibility of the terminating PARTY unless determined otherwise by the Project Team and a two-thirds affirmative vote of all allocated votes.

11. It is understood and agreed that, each of the PARTIES ("indemnitors") shall, to the extent permitted by law, defend, indemnify and save harmless every other PARTY, and its officers and employees from all claims, suits or actions of every name, kind and description resulting from indemnitor's performance of this Agreement, excluding any personal injuries, death, or property damage resulting from the negligence or willful misconduct of the other PARTIES, or their officers or employees.

12. The PARTIES delegate to the Tippecanoe County Treasurer the duties to receive, disburse and account for all monies on behalf of the Project Team in accordance with IC 36-1-7-4.

13. This Agreement shall be effective upon approval by the fiscal body of each PARTY that is an Indiana political subdivision in accordance with IC 36-1-7-4(a)(2).

14. Prior to taking effect, this Agreement will be recorded with the Tippecanoe County Recorder, and within sixty (60) days after it takes effect, this Agreement will be filed with the State Board of Accounts in accordance with IC 36-1-7-6.

BOARD OF COMMISSIONERS OF
TIPPECANOE COUNTY

By: _____
Ruth E. Shedd, President

ATTEST:

By: _____
Jennifer Weston, Auditor of Tippecanoe County

CITY OF LAFAYETTE

By: Tony Roswarski
Tony M. Roswarski, Mayor

ATTEST:

By: Cindy Murray
Cindy L. Murray, City Clerk

CITY OF WEST LAFAYETTE

By: _____
John R. Dennis, Mayor

ATTEST:

By: _____
Judith Rhodes, City Clerk-Treasurer

TOWN OF BATTLE GROUND

By: _____
Name: _____

ATTEST:

By: _____
Phyllis Hall, Clerk -Treasurer

BATTLE GROUND TOWN COUNCIL

By: _____
Council President

ATTEST:

By: _____
Phyllis Hall, Clerk -Treasurer

TOWN OF DAYTON

By: _____

ATTEST:

By: _____
Ron Koehler, Clerk-Treasurer

DAYTON TOWN COUNCIL

By: _____
Mike Harris, Council President

ATTEST:

By: _____
Ron Koehler, Clerk-Treasurer

THE TRUSTEES OF PURDUE
UNIVERSITY

By: _____
James S. Almond, Asst. Treasurer

THE TRUSTEES OF IVY TECH
COMMUNITY COLLEGE OF INDIANA

By: _____
Thomas J. Snyder, President

LAFAYETTE BOARD OF WORKS

By: Cindy Murray
Cindy Murray, President

ATTEST:

By: Mindy Miller
Mindy Miller, 1st Deputy Clerk

WEST LAFAYETTE BOARD OF WORKS

By: _____
President

ATTEST:

By: _____
Judith Rhodes, City Clerk-Treasurer

TIPPECANOE COUNTY COUNCIL

By: _____
Ruth E. Shedd, President

ATTEST:

By: _____
Jennifer Weston, Auditor of Tippecanoe County

EXHIBIT A

GENERAL PROGRAM

In the fulfillment of the terms of this Agreement “General Program” shall include tasks pertaining to the following:

1. Tasks pertaining to the renewal, administration and implementation of the NPDES Storm Water Phase II permit.
2. Tasks pertaining to Minimum Control Measure (MCM) 1: Public Education and Outreach including:
 - a. The development of program education materials for distribution at local schools;
 - b. Determination of ongoing tasks for the Tippecanoe SWCD Educator and funding for the same.
3. Tasks pertaining to Minimum Control Measure (MCM) 2: Public Participation and Involvement including:
 - a. The development and implementation of a public survey to assess the public awareness of storm water program activities.
4. Tasks pertaining to Minimum Control Measure (MCM) 6: Good Housekeeping and Pollution Prevention (GHPP) including:
 - a. The development and implementation of educational materials that increase awareness of pollution prevention in daily activities.
 - b. Continued GHPP annual training for employees of all entities.
5. The review and update of the “Storm Water Technical Standards” and “Storm Water Ordinance” to address changing industry standards and emerging storm water quality technologies.
6. The development and implementation of training as approved by the Project Team specific to programmatic needs.
7. Other tasks pertaining to the NPDES, Phase II permit as agreed upon by the project team.

EXHIBIT B

TIPPECANOE SWQMP PROJECT TEAM VOTING ALLOCATION

	<u>Votes</u>
• Tippecanoe County	1
• City of Lafayette	1
• City of West Lafayette	1
• Town of Battle Ground	1
• Town of Dayton	1
• Purdue University	1
• Ivy Tech Community College of Indiana	1

EXHIBIT C

TIPPECANOE SWQMP PROJECT TEAM

EXAMPLE

Total General Program Budget for Fiscal Year 2009: \$100,000.00

EXAMPLE General Program Cost Allocations:

<u>ENTITY</u>	<u>PERCENT</u>	<u>SHARE</u>
City of Lafayette	\$5,000 + 38.1593% (\$65,000)	\$29,803.55
Tippecanoe County	\$5,000 + 38.15893% (\$65,000)	\$29,803.55
City of West Lafayette	\$5,000 + 14.90215% (\$65,000)	\$14,686.40
Purdue University	\$5,000 + 6.8347% (\$65,000)	\$9,442.56
Town of Dayton	\$5,000 + 0.9015% (\$65,000)	\$5,585.98
Town of Battle Ground	\$5,000 + 0.9369% (\$65,000)	\$5,608.99
Ivy Tech Community College of Indiana	\$5,000 + 0.10615% (\$65,000)	\$5,069.00

EXHIBIT D

GENERAL PROGRAM COST ALLOCATION FORMULA:

$$\text{Base Cost} + \frac{(\text{Population Density \%} \times 50\%) + (\text{Land Area \%} \times 50\%)}{100}$$

Population Land Area

<u>Lafayette</u>	$\$5,000.00 + \frac{(46.1432\% \times 50.0\%) + (26.1571\% \times 50.0\%)}{100} = \$5,000.00 + \frac{(38.1593\% \times \text{Remaining Balance})}{100}$ *
<u>County</u>	$\$5,000.00 + \frac{(19.6534\% \times 50.0\%) + (60.6901\% \times 50.0\%)}{100} = \$5,000.00 + \frac{(38.1593\% \times \text{Remaining Balance})}{100}$ *
<u>W. Lafayette</u>	$\$5,000.00 + \frac{(22.3824\% \times 50.0\%) + (7.4243\% \times 50.0\%)}{100} = \$5,000.00 + \frac{(14.90215\% \times \text{Remaining Balance})}{100}$
<u>Purdue</u>	$\$5,000.00 + \frac{(10.0172\% \times 50.0\%) + (3.6494\% \times 50.0\%)}{100} = \$5,000.00 + \frac{(6.8347\% \times \text{Remaining Balance})}{100}$
<u>Dayton</u>	$\$5,000.00 + \frac{(0.8270\% \times 50.0\%) + (0.9730\% \times 50.0\%)}{100} = \$5,000.00 + \frac{(0.9015\% \times \text{Remaining Balance})}{100}$
<u>Battle Ground</u>	$\$5,000.00 + \frac{(0.9768\% \times 50.0\%) + (0.8938\% \times 50.0\%)}{100} = \$5,000.00 + \frac{(0.9369\% \times \text{Remaining Balance})}{100}$
<u>Ivy Tech Community College</u>	$\$5,000.00 + \frac{(0.00\% \times 50.0\%) + (0.2123\% \times 50.0\%)}{100} = \$5,000.00 + \frac{(0.10615\% \times \text{Remaining Balance})}{100}$

* Per this agreement the City of Lafayette and Tippecanoe County agree to share equally the total sum of their calculated percentage of cost allocation as illustrated above. Each Party remains responsible to contribute in full the base payment of \$5,000 as shown in the above cost allocation formula. The agreed equal percentage of cost allocation shall be as calculated below.

Calculated individual percentage of cost allocation - City of Lafayette	36.14855%
Calculated individual percentage of cost allocation - Tippecanoe County	<u>40.17005%</u>
Total sum of percentage of cost allocation (to be shared equally)	76.3186%
Agreed equal share of total percentage of cost share allocation (76.3186% ÷ 2)	38.1593%

The City of Lafayette and Tippecanoe County shall each be responsible for a cost allocation percentage of 38.1593%.

EXHIBIT D CONTINUED

AREA

MS4 AREA		63202.042 Acres	= 100%
Lafayette	2004	16118.58 Acres	= 25.50%
	2008	16531.82 Acres	= 26.1558%
County	2004	40077.80 Acres	= 63.41%
	2008	38357.38 Acres	= 60.6901%
W. Lafayette	2004	3519.30 Acres	= 5.57%
	2008	4692.30 Acres	= 7.4243%
Purdue	2004	2306.50 Acres	= 3.6494%
	2008	No Change	= No Change
Dayton	2004	614.98 Acres	= 0.9730%
	2008	No Change	= No Change
Battle Ground	2004	564.88 Acres	= 0.8938%
	2008	No Change	= No Change
Ivy Tech Community College of Indiana	2008	134.18 Acres	= 0.2123%