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ORDINANCE NO. 2006 - 033

**AN ORDINANCE ESTABLISHING STORM
WATER UTILITY RATES**

WHEREAS, the institution of a rate schedule for financing projects in the work of the Department of Storm Water Management for Delaware County, Indiana, is necessary due to government mandate; and

WHEREAS, Delaware County, Indiana, by and through its County Executive has created a Department of Storm Water Management in Ordinance No. 2006-_____, to provide for the requirements of the Indiana Municipal Separate Storm Sewer System (MS4) – NPDES Permitting Program 327 IAC 15-13; in Delaware County, Indiana, and

WHEREAS, the Department of Storm Water Management has conducted investigations into the needs of Delaware County, Indiana per the requirements of the Indiana Municipal Separate Storm Sewer System (MS4) – NPDES Permitting Program 327 IAC 15-13; and has:

1. Determined that the MS4 Area Designation Criteria identifies Delaware County as an MS4 entity.
2. Issued a Notice of Intent (NOI) letter to the Indiana Department of Environmental Management (IDEM).
3. Made all proper submittals as required under said regulations.
4. Has received all proper approvals from the regulating agency.

Now endeavors to maintain and improve the handling of storm water quality and quantity and address the requirements of the NPDES Permitting Program 327 IAC 15-13 within Delaware County, Indiana; and has drafted policies and procedures therefore; and

WHEREAS, it has been determined that the work to be performed will require income to properly address and maintain the requirements of a MS4 entity on a perpetual basis for programs of:

1. General Administration

2. Public Education and Outreach
3. Public Participation and Involvement
4. Illicit Discharge Detection and Elimination
5. Construction Site Runoff Control
6. Post-Construction Site Runoff Control
7. Pollution Prevention and Good Housekeeping
8. Tracking & monitoring Storm Water Quantity into the Sanitary Storm Sewer System and into Delaware County Legal Drains.

and that upon establishment of the rate by recommendation of the rate schedule by the Storm Water Management Board, substantial capital expenditures may be required to complete special drainage projects which will include funds to be generated by the Department of Storm Water Management as well as grants and other sources of revenue, and

WHEREAS, due to government mandates, the County Executive finds it necessary to charge a service fee to collect monies to pursue the implementation of the MS4 program for possible stormwater drainage projects and to conduct a rate study for the implementation of proper financing for the rates to be charged to the citizens of Delaware, Indiana, and

NOW THEREFORE, BE IT ORDAINED, by the Delaware County Commissioners that:

1. The defined schedule of rates, and the rate structures set forth in "Exhibit A and B", attached hereto and incorporated herein by reference, are hereby adopted, and
2. That, pursuant to I.C. 8-1.5-5-6 and other appropriate sections, the Auditor of Delaware County, Indiana, shall account for all funds collected and expended for the Department of Storm Water Management, and
3. That the following accounts are hereby established for the deposit of funds.
 - A. Operation and Maintenance Account, and
 - B. Depreciation Account, and
 - C. Bond and Interest Redemption Account, and
 - D. Any other accounts established by state statute or administrative agency for the operation of municipal government agencies, and
4. That this Ordinance shall be in full force and effect from and after its adoption and approval.

EXHIBIT A

PURPOSE AND OBJECTIVE

The mission of the Department of Stormwater Management shall be to develop, implement, operate and adequately and equitably fund the acquisition, construction, operation, maintenance and regulation of stormwater collection and drainage systems and activities in the County including without limitation, stormwater quality, separate storm sewers, neighborhood drainage, flood control, flood pumping, stormwater conveyance, sewer separation, and other improvements to the existing and future storm sewers and to the existing combined sewers of the Muncie Sanitary District.

The Department of Stormwater Management shall safely and efficiently control stormwater runoff, insure compliance with the National Pollutant Discharge Elimination System Stormwater Discharge permit, enhance public health and safety, protect lives and property, facilitate mobility and enable access to homes and businesses throughout the county during storms, compliment and support the Muncie Sanitary District programs and objectives, control the discharge of pollutants in stormwater to receiving waters and enhance the natural resources of the county.

DEFINITIONS

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

COUNTY: Territory within the corporate boundaries of Delaware County that is not located in a municipality or is excluded under MS4 – NPDES Permitting Program 327 IAC 15-13.

COMBINED SEWER: Pipe or conduit primarily used to convey sanitary sewage and secondarily intended to convey stormwater.

CUSTOMER (OR USER): Shall mean a property owner benefiting from the stormwater system.

DEPARTMENT: The Stormwater Management Department.

DEVELOPED: The condition of real property altered from its natural state by the addition to or construction on such property of impervious surfaces or physical improvements such that the hydrology of the property or a portion thereof is affected.

DETENTION: The temporary storage of storm runoff in a basin, pond or other structural or non-structural device to control the peak discharge rates by holding the stormwater for a lengthened period of time and which provides gravity-settling of pollutants.

RETENTION: The holding of stormwater runoff in a constructed basin or pond or in a natural body of water with a controlled release rate.

DITCH-OPEN: A relatively deep drainage channel which may have a continuous water flow. Open ditches are outlets for both surface, subsurface, or storm sewer drainage systems.

DITCH-LEGAL: Any drainage system under the jurisdiction of the Delaware County Drainage Board.

DRAIN: Relative to stormwater drainage, any sewer, tile, ditch, stream or other stormwater runoff conveyance channel or conduit.

DRAINAGE EASEMENT: The land required for the installation of stormwater sewers or drainage ditches, or required along a natural stream or water course for preserving the channel and providing for the flow of water therein to safeguard the public against flood damage.

DRAINAGE FACILITIES: All ditches, channels, conduits, retention-detention systems, tiles, drainage swales, sewers, and other natural or artificial means of draining stormwater from land.

DRAINAGE REQUIREMENTS: (1) minimum drainage standards as established by Delaware County Ordinance; (2) regulations promulgated by the Board of Sanitary Commissioners; (3) obligations and requirements relating to drainage established under the Subdivision Control Ordinances of the City and Delaware County; (4) requirements contained in the Zoning Ordinances of Delaware County, including floodway zoning requirements; (5) obligations and requirements relating to drainage established under the Drainage Board of Delaware County, Indiana; and (6) conditions relating to drainage attached to a grant of variance by the Board of Zoning Appeals.

DRAINAGE-SUBSURFACE: A system of pipes, tile, conduit, or tubing installed beneath the ground used to collect underground water from individual parcels, lots, building footings, or pavements.

DRAINAGE-SURFACE: A system by which the stormwater runoff is conducted to an outlet. This would include the proper grading of parking lots, streets, driveways and yards so that storm runoff is removed without ponding and flows to a drainage swale, open ditch, or a storm sewer.

DRAINAGE-SWALE: A natural or constructed waterway, usually broad and shallow, covered with erosion-resistant grasses, used to conduct surface water from a field, diversion, or other site feature.

DRAINAGE-SYSTEM: Any combination of surface and/or subsurface drainage components fulfilling all applicable drainage requirements.

EASEMENT: A grant by the property owner of the use of a strip of land by the public, a corporation or other legal entity for specified purposes.

ENGINEER: The Delaware County Engineer.

ERU: Equivalent Residential Unit, equal to the average amount of impervious area found on a typical single-family residential parcel which is 2500 square feet. Therefore, one ERU equals 2500 square feet of impervious area.

IMPERVIOUS AREA: Area within developed land that prevents or significantly impedes the infiltration of stormwater into the soil. Included in this definition are areas that have been paved and/or covered with buildings and materials which include, but are not limited to, concrete, asphalt, rooftop and blacktop, such that the infiltration of water into the soil is prevented. Excluded from this definition are undisturbed land, lawns and fields.

INFILTRATION: A complex process of allowing runoff to penetrate the ground surface and flow through the upper soil surface.

LAND ALTERATION: Any action taken relative to land which either: (1) changes the contour; or (2) increases the runoff rate; or (3) changes the elevation; or (4) decreases the rate of which water is absorbed; or (5) changes the drainage pattern; or (6) creates or changes a drainage facility; or (7) involves construction, enlargement or location of any building on a permanent foundation; or (8) creates an impoundment. Land alteration includes (by way of example and not of limitation) terracing, grading, excavating, constructing earthwork, draining, installing drainage tile, filling and paving.

MAINTENANCE: Cleaning out of, spraying, removing obstructions from and making minor repairs in a drainage facility so that it will perform the function for which it was designed and constructed.

NPDES: The National Pollutant Discharge Elimination System, the EPA program initiated to reduce and eliminate pollutants reaching water bodies of all types.

NPDES PERMIT: Stormwater management permit required of municipalities and certain industries by the EPA pursuant to Section 402 of the Clean Water Act.

PEAK DISCHARGE: The maximum rate of flow of water passing a given point during or after a rainfall event, sometimes called peak flow.

PRIVATE STORMWATER FACILITIES: Various stormwater and drainage works not under the control or ownership of the City, Muncie Sanitary District, Delaware County, the State of Indiana, or the federal government which may include inlets, conduits, pipes, pumping stations, manholes, structures, channels, outlets, retention or detention basins, other structural components and equipment designed to transport, move or regulate stormwater.

PROPERTY OWNER: The individual, partnership, corporation or other legal entity holding the deed or record title to real property.

PUBLIC DRAINAGE SYSTEM: Various storm water and drainage works under the control and/or ownership of the City, Muncie Sanitary District, Delaware County, the State of Indiana, or the federal government which may include inlets, conduits, pipes, pumping stations, manholes, structures, channels, outlets, retention or detention basins, other structural components and equipment designed to transport, move or regulate storm water.

OTHER PROPERTY: All properties not encompassed within the definition of Residential Property, including but not limited to: commercial, industrial, retail, multi-family, governmental, institutional, schools and churches.

RESIDENTIAL PROPERTY: A lot or parcel of real estate encompassing State Land Use Codes 101 and 500 through 599 on which a building or house trailer is situated which building or house trailer contains a group of rooms forming an inhabitable dwelling unit with facilities which are used or are intended to be used primarily for living, sleeping, cooking and eating.

RIGHT-OF-WAY: Any highway, street, avenue, boulevard, road, lane or alley and includes the entire right-of-way for public use thereof and all surface and subsurface improvements thereon including, without limitation, sidewalks, curbs, shoulders, utility lines and mains.

SEWER SEPARATION: A project intended to reduce the amount or rate of stormwater entering the wastewater treatment plant. Sewer separation projects include, but are not limited to, new sanitary sewer construction with conversion of combined sewer to storm sewer; new storm sewer construction with conversion of combined sewer to sanitary sewer, combined sewage holding tanks; and equalization tanks at the treatment plant.

STATE LAND USE CODES: The classification system used by Indiana Counties for purposes of classification of the assessment of real property.

STORM SEWER: A sewer designed or intended to convey only stormwater, surface runoff, street wash waters and drainage, and not intended for sanitary sewage and industrial wastes. A storm sewer begins at the grating or opening where water enters said sewer, through the sewer and any other conduits to the outlet structure where water enters a channel, natural watercourse or combined sewer.

STORMWATER SERVICE CHARGE: A charge imposed on users of the stormwater system.

STORMWATER SYSTEM: All constructed facilities, including separate storm sewers and conveyances, combined sewers, structures and natural watercourses owned by or under the jurisdiction of the Muncie Sanitary District, Delaware County, the State of Indiana or the Federal Government used for collecting and conducting stormwater to, through and from drainage areas to the point of final outlet, including, but not limited to, any and all of the following: inlets, conduits and appurtenant features, creeks, channels, catch basins, ditches, streams, culverts, retention or detention basins and pumping stations.

STORMWATER CONVEYANCES: Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

STORMWATER SERVICE CHARGE

A stormwater service charge shall be imposed on each and every lot and parcel of land within the County which directly or indirectly contributes to the stormwater system of the County, which charge shall be assessed against the property owner thereof, who shall be considered the user for the purposes of this chapter. This charge is deemed reasonable and is necessary to pay for the repair, replacement, extension, planning, improvement, operation, regulation and maintenance of the existing and future stormwater system.

STORMWATER SERVICE CHARGE ESTABLISHMENT PROCEDURES

(A) Stormwater Service Charge Per ERU: The Stormwater Service Charge shall be \$ 0.95 per ERU per month. For the purpose of this chapter, a month shall be considered 25 through 35 days. Any billings for stormwater service outside this time shall be on a per diem basis.

(B) Basis for Charge: The stormwater service charge is designed to recover the cost of rendering stormwater service to the users of the stormwater system, and shall be the basis for assessment of the stormwater service charge. This service charge is established so as to maintain adequate fund reserves to provide for reasonably expected variations in the cost of providing services, as well as variations in the demand for services.

SERVICE CHARGE STRUCTURE AND CALCULATION

(A) Generally: There is hereby assessed a stormwater service charge for each property owner owning land situated within the County that contributes directly or indirectly to the stormwater system of the County, in an amount as determined below.

(B) Impervious Area: For any such property, lot, parcel of land, building or premises which contribute directly or indirectly to the stormwater system of the County, such charge shall be based upon the quantity of impervious area situated thereon as measured on the records of the Delaware County Assessor. Impervious area of public rights-of-way and railroad lines (which shall not be deemed to include adjacent property, such as a railyard, operated by a railroad), will not be included in the determination of a stormwater service charge. In addition, the Department shall establish policies and procedures to make determinations whether commonly-owned, adjoining properties with separate plat or legal descriptions should be treated as a single parcel of land for purposes of calculating the stormwater service fees to be charged for such properties.

(C) Classification of Property: All properties within the County will be assessed a Stormwater Service Charge based on Equivalent Residential Unit (ERU), or a multiple thereof, with all properties having impervious area assigned at least one ERU (except as otherwise provided in Section (E) herein), as follows:

(1) A monthly flat-rate charge for stormwater service rendered to Residential Properties shall be assessed to each Residential Property's parcel within the County. All Residential Properties are hereby assigned one ERU and a Stormwater Service Charge as shown on Exhibit B .

(2) Other Properties: A monthly flat-rate charge for stormwater service shall be rendered to properties with impervious area other than Residential Properties based on the total amount of impervious area on the property (measured in square feet) within classes as shown on Exhibit B.

(D) Land Alterations: The issuance of any building permit or other action which results in a land alteration of a property other than Residential Properties or a property that

currently only contains Residential Properties but will be no longer used for such purpose shall be cause for an adjustment of the stormwater service charge determined under this section. The property owner shall have the obligation of informing the Department of any such changes.

(E) Exceptions/Exemptions: Agricultral properties with an impervious area under State Land Use Code 100-199, with the exception of those properties that qualify as Residential Properties, shall be exempt from the assessment of stormwater service charges. Except for public rights-of-ways and railroad lines, and agricultural properties as defined herein, there shall be no exceptions or exemptions from the assignment of gross stormwater ERUs for any property with impervious area except that properties other than single-family residential parcels with impervious area of less than five hundred (500) square feet shall be exempted from the assignment of an ERU.

(F) Contractual Billing and Collection: The Department of Stormwater Management may delegate the billings to the County Treasurer to be forwarded to customers semi-annually.

BILLINGS; TERMS OF PAYMENT

(A) Billings: All stormwater service bills shall be rendered on a semi-annual basis unless additional or prorated billing is required to reflect customer changes, initial billings or is otherwise required to adjust billing cycles. Charges for miscellaneous services or work performed on behalf of a stormwater customer by the Department shall be assessed at the time the work is completed and shall be included in the customer's next stormwater service bill. Stormwater billing for a new property shall commence with the date the property is assessed for purposes of property taxes, or date of occupancy, whichever shall first occur. Additional stormwater charges for an established service address necessitated by a change in the amount of impervious area at the property shall commence on the date the new certificate of occupancy or compliance is issued. Billing adjustments required to correct impervious area measurements shall be applied retroactively to the date of the customer's initial protest.

(B) Rights and Responsibilities of Property Owner: Charges for stormwater service shall remain the ultimate responsibility of the property owner, including all penalties, recording fees, attorney's fees, interest and court costs. Other than the property owner, no other person shall be permitted to inspect, examine or otherwise obtain confidential information including the social security number of the property owner obtained by the Department for the sole purpose of billing for stormwater system service. Stormwater service charges attach to the property.

(C) Terms of Payment: The stormwater service charges shall be due on the payment date set out on the bill. It shall be a violation of this chapter to fail to pay a stormwater service bill when due. All bills for stormwater services not paid on or before the due date shall be subject to a collection or deferred payment charge of 10% on the outstanding balance. Moving from one location to another in no way absolves the customer from responsibility for any unpaid charges incurred at a previous location.

(D) Collection: Delinquent stormwater service charges may be collected in a civil action along with reasonable attorney fees and court costs.

APPEALS OF ERU DETERMINATION

If, in the opinion of any single-family residential property owner, the ERU multiple assigned to the property of such owner is inaccurate in light of the amount of impervious area contained on said property, such property owner shall have the right to contest such ERU determination. The Department shall develop and promulgate policies and procedures to resolve any such contests, including, as determined necessary, the conducting of hearings and the making of determinations with respect to the measurement of impervious area contained on any property.

STORMWATER REVENUE FUND

All revenues earned and fees collected for stormwater service, including but not limited to, drainage service charges, permit and inspection fees, direct charges and interest earnings on any unused funds shall be deposited pursuant to this Ordinance. Disbursements from this account shall be authorized by the Department. Such disbursements shall be used exclusively for the operation, maintenance and improvement of the County's stormwater system.

DELINQUENT FEES AND PENALTIES AS LIENS; DUPLICATES; COLLECTION

Delinquent charges for stormwater services, and applied penalties, recording fees and service charges constitute a lien upon the property and may be collected in accordance with the provisions of I.C. 36-9-25-11.

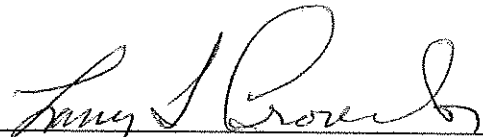
VIOLATIONS AND ENFORCEMENT

Failure to pay a stormwater service charge when due shall constitute a violation of this Ordinance, which shall be enforced by the Department and such agents as the Department may appoint for such purposes.

If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby superceded, and this Ordinance shall be in full force and effect from and upon compliance with all procedures required by law.

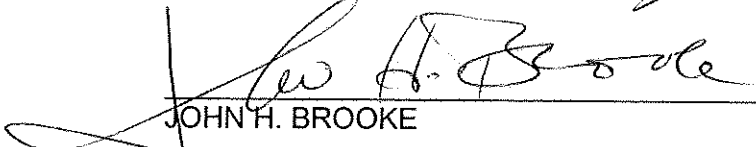
PASSED AND ADOPTED by the DELAWARE COUNTY COMMISSIONERS this 20
day of December, 2006.



LARRY L. CROUCH



TOM L. BENNINGTON



JOHN H. BROOKE

ATTEST:



Jane Lasater, Delaware County Auditor

EXHIBIT B

PROPOSED STORMWATER MANAGEMENT RATE SCHEDULE

CLASSIFICATION	DESCRIPTION	MULTIPLIER	RATE PER MONTH	SEMIANNUAL RATE	ANNUAL RATE
R	Residential	1	\$0.95	\$5.70	\$11.40
1	Other ≤ 5,000 SF	1	\$0.95	\$5.70	\$11.40
2	Other 5,001 – 11,000 SF	3	\$2.85	\$17.10	\$34.20
3	Other 11,001 – 22,000 SF	6	\$5.70	\$34.20	\$68.40
4	Other 22,001 – 34,000 SF	11	\$10.45	\$62.70	\$125.40
5	Other 34,001 – 56,000 SF	17	\$16.15	\$96.90	\$193.80
6	Other 56,001 – 94,000 SF	28	\$26.60	\$159.60	\$319.20
7	Other 94,001 – 147,000 SF	47	\$44.65	\$267.90	\$535.80
8	Other 147,001 – 235,000 SF	75	\$71.25	\$427.50	\$855.00
9	Other 235,001 – 500,000 SF	133	\$126.35	\$758.10	\$1,516.20
10	Other > 500,000 SF	200	\$190.00	\$1,140.00	\$2,280.00