

R E S O L U T I O N

SM-0010-09

INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY OF DUPAGE,
ILLINOIS AND VILLAGE OF LOMBARD, ILLINOIS FOR THE IMPLEMENTATION
OF THE ILLICIT DISCHARGE DETECTION AND ELIMINATION PROGRAM

WHEREAS, the Village of Lombard, Illinois ("VILLAGE") and the County of DuPage, Illinois ("COUNTY") are public agencies within the meaning of the Illinois "Intergovernmental Cooperation Act" and as authorized by Article 7, Section 10 of the Constitution of the State of Illinois; and

WHEREAS, the purposes of the "Intergovernmental Cooperation Act" and Article 7 of the Constitution of the State of Illinois include fostering cooperation among government bodies; and

WHEREAS, the United States Congress has adopted the Clean Water Act and, thereafter, the Water Quality Act to combat water pollution; and

WHEREAS, the aforesaid Federal legislation authorized the establishment of the National Pollution Discharge Elimination System ("NPDES") permitting program, under which permitting is, generally, administered by the states; and

WHEREAS, the Illinois Environmental Protection Agency ("IEPA") has issued a General National Pollution Discharge Elimination System Permit for Discharges from Small Municipal Separate Storm Sewer Systems ("Phase II") to the COUNTY and several DuPage County municipalities; and

WHEREAS, NPDES Permits require permittees to develop, implement, and adequately fund a plan to detect and address non-storm water discharges, including illegal dumping, to the storm sewer systems of the permittees; and

WHEREAS, the Illinois General Assembly has authorized the COUNTY to prevent the pollution of any stream or any body of water within the COUNTY by 55 ILCS 5/5-15015; and

WHEREAS, illicit discharges of pollutants into storm sewer systems is a significant source of water pollution to DuPage County streams and waterbodies; and

WHEREAS, the COUNTY has adopted the DuPage County

Stormwater Management Plan ("PLAN"), pursuant to 55 ILCS 5/5-1062, which PLAN recognizes that improved water quality is an integral part of the proper management of storm and flood waters; and

WHEREAS, the DuPage County Stormwater Management Division has worked closely with the municipal engineers of the co-permittee municipalities to develop a program to detect, prohibit and eliminate illicit discharges into the storm sewer systems of the COUNTY and co-permittees in order to prevent water pollution, and in particular, to comply with the requirements of their General NPDES Phase II permit; and

WHEREAS, the DuPage County Stormwater Management Division and the municipal engineers of the co-permittee municipalities have developed a program that includes public education, monitoring and tracing of illicit discharges; and

WHEREAS, the IEPA encourages partnership between permittees to develop and implement aspects of the storm water management program so that redundant expenses and efforts are eliminated; and

WHEREAS, the attached AGREEMENT is intended to reduce or eliminate redundant NPDES Phase II permit program expenses and efforts by and between the COUNTY and VILLAGE; and

WHEREAS, the attached AGREEMENT is also intended to reduce and, or, prevent the pollution of any stream or any body of water within the COUNTY and VILLAGE, and to reduce and, or, prevent pollutants from entering the Waters of the United States; and

WHEREAS, improving water quality in the COUNTY and VILLAGE, and reducing or eliminating the public's exposure to water-borne pollutants is in the best interests of the COUNTY, the VILLAGE, and their residents; and

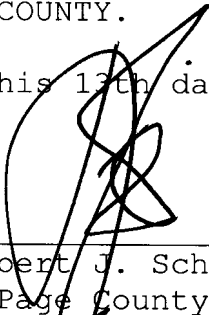
WHEREAS, the Stormwater Management Planning Committee of the DuPage County Board has reviewed and recommends approval of the attached AGREEMENT; and

NOW, THEREFORE, BE IT RESOLVED by the DuPage County Board that the attached AGREEMENT between the COUNTY and the VILLAGE is hereby accepted and approved; and

BE IT FURTHER RESOLVED that the Chairman of the DuPage

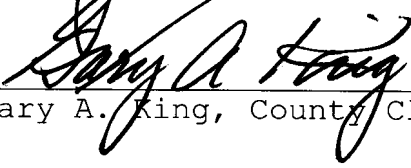
County Board is hereby authorized and directed to execute the AGREEMENT on behalf of the COUNTY.

Enacted and approved this 13th day of October, 2009 at Wheaton, Illinois.



Robert J. Schillerstrom, Chairman
DuPage County Board

ATTEST:



Gary A. King, County Clerk

Ayes: 15
Absent: 3

AN INTERGOVERNMENTAL AGREEMENT BETWEEN
THE VILLAGE OF LOMBARD
AND THE COUNTY OF DUPAGE, ILLINOIS
FOR THE IMPLEMENTATION OF THE
ILLCIT DICHARGE DETECTION AND ELIMINATION PROGRAM

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is entered into this 17th of September, 2009 between the Village of Lombard of DuPage County (hereinafter referred to as the "MUNICIPALITY") an Illinois municipal corporation, with offices at 255 E. Wilson Avenue, Lombard, Illinois 60148-1048 and the County of DuPage, Illinois (hereinafter referred to as the "COUNTY") a body corporate and politic, with offices at 421 North County Farm Road, Wheaton, Illinois 60187-3978 (the MUNICIPALITY and the COUNTY being sometimes referred to herein as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, the MUNICIPALITY and COUNTY are public agencies within the meaning of the Illinois "Intergovernmental Cooperation Act", as specified in 5 ILCS 220/1 *et. seq.*, and as authorized by Article 7, Section 10 of the Constitution of the State of Illinois; and

WHEREAS, the purposes of the "Intergovernmental Cooperation Act" and Article 7, Section 10 of the Constitution of the State of Illinois include fostering cooperation among governmental bodies; and

WHEREAS, General National Pollutant Discharge Elimination System ("NPDES") Permit No. ILR40 authorizes discharges from Small Municipal Separate Storm Sewer Systems ("MS4s"); and

WHEREAS, MS4s are defined in 40 CFR 122.26(b)(16) as designated for permit authorization pursuant to 40 CFR 122.32; and

WHEREAS, the COUNTY and MUNICIPALITY each submitted an Illinois MS4 Notice of Intent ("NOI") to the Illinois Environmental Protection Agency ("IEPA") for coverage under ILR40; and

WHEREAS, the COUNTY and MUNICIPALITY noted on their respective NOI that they intend to act as cooperating permit holders to fulfill the requirements of ILR40's Illicit Discharge Detection and Elimination (IDDE) minimum control measure; and

WHEREAS, the General NPDES Permit No. ILR40 requires development, implementation, and enforcement of a storm water management program designed to reduce the discharge of pollutants from MS4s to the maximum extent practicable to protect water quality, and to satisfy the appropriate water quality requirements of the Illinois Pollution Control Board Rules and Regulations (35 Ill. Adm. Code, Subtitle C, Chapter 1) and the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*); and

WHEREAS, the storm water management program must include the minimum control measures described in the General NPDES Permit No. ILR 40, Part IV, Section B; and

WHEREAS, the General NPDES Permit No. ILR40 Part IV, Section D authorizes Sharing Responsibility; and

WHEREAS, the COUNTY agrees to develop and implement a program to monitor and trace illicit discharges into MS4s on behalf of the MUNICIPALITY as one of the minimum control measures for its stormwater management program; and

WHEREAS, the COUNTY and the MUNICIPALITY recognize that additional benefits of illicit discharge detection and elimination include increased water quality, reduction in pollutant loads in waterways, improved wildlife habitat, and public education opportunities; and

WHEREAS, the COUNTY has adopted the DuPage County Illicit Discharge Detection and Elimination Ordinance (“the ORDINANCE”) to ensure the health, safety, and general welfare of the citizens of DuPage County, and protect and enhance water quality in a manner pursuant to and consistent with the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*) through the regulation of non-storm water discharges to the storm drainage system; and

WHEREAS, the MUNICIPALITY has adopted an Illicit Discharge Detection and Elimination Ordinance pursuant to Sections 50.036, 92.01 and 92.50 of the Lombard Village Code (“the CODE PROVISIONS”); and

WHEREAS, the COUNTY and the MUNICIPALITY have determined that it is in their best interest to cooperate in the enforcement and implementation of their respective ordinances; and

WHEREAS, the COUNTY and the MUNICIPALITY have determined that it is reasonable, necessary, and in the public interest and welfare for the COUNTY to conduct monitoring and tracing responsibilities associated with illicit discharge detection and elimination subject to the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the foregoing preambles and the promises, the terms and conditions set forth herein, and in the spirit of intergovernmental cooperation, the Parties agree as follows:

1.0 RECITALS INCORPORATED.

1.1 The foregoing recitals are hereby incorporated as though fully set forth herein.

2.0 COUNTY RIGHTS AND RESPONSIBILITIES.

2.1 The COUNTY agrees to undertake the monitoring of outfalls and tracing of illicit

discharges within the corporate limits of the MUNICIPALITY, utilizing COUNTY personnel and equipment.

- 2.2 The COUNTY agrees to prepare, at its sole expense, plans, processes, and procedures for the program meeting the requirements of NPDES Permit No. ILR40, to monitor and trace illicit discharges into the MS4 on behalf of the MUNICIPALITY.
- 2.3 The COUNTY agrees to obtain copies of the NOI for each facility within the jurisdiction of the COUNTY and the MUNICIPALITY having an individual NPDES permit to discharge storm water associated with industrial activity through the IEPA for the purposes of fair and accurate monitoring and tracing.
- 2.4 The COUNTY agrees to monitor MS4 outfalls within the jurisdiction of the MUNICIPALITY, and to the extent it is so authorized, trace all discharges determined to be illicit with the objective of identifying the source of such illicit discharges.
- 2.5 The COUNTY agrees to notify the MUNICIPALITY within a reasonable time prior to the COUNTY conducting dye testing as part of tracing procedures within the corporate limits of the MUNICIPALITY.
- 2.6 The COUNTY agrees to notify the MUNICIPALITY within twenty-four (24) hours of detecting an illicit discharge within the corporate limits of the MUNICIPALITY. Promptly, upon completion of the COUNTY'S investigation, the COUNTY shall inform the MUNICIPALITY of the location of the illicit discharge, the time(s) and date(s) of the discharge, and any additional information that would be necessary or prudent for the MUNICIPALITY to have in order to carry out enforcement proceedings.
- 2.7 The COUNTY agrees to promptly inform the MUNICIPALITY of any subsequently developed information that would be pertinent for enforcement action and prosecution by the MUNICIPALITY and to produce COUNTY personnel for any resulting legal or administrative proceeding, as necessary and upon adequate notice.
- 2.8 The COUNTY agrees to create and manage a countywide hotline for reporting illicit discharges within the corporate limits of the MUNICIPALITY.
- 2.9 The COUNTY agrees to prepare the Illicit Discharge Detection and Elimination section of the annual report on behalf of the MUNICIPALITY. The annual report is required by the IEPA and is due by June 1st of each year in accordance with General NPDES Permit No. ILR40. The COUNTY will submit a copy of the

Illicit Discharge Detection and Elimination section annual report to both the IEPA and the MUNICIPALITY.

3.0 MUNICIPALITY RIGHTS AND RESPONSIBILITIES

- 3.1 The MUNICIPALITY agrees to provide the COUNTY with a current storm sewer atlas.
- 3.2 The MUNICIPALITY agrees to provide annual updates of the storm sewer atlas to the COUNTY.
- 3.3 The MUNICIPALITY agrees to assign to the COUNTY any rights of access to the storm drainage system under the jurisdiction of the MUNICIPALITY as the COUNTY deems necessary.
- 3.4 The MUNICIPALITY agrees to provide timely prosecution of any person found to be in violation of the CODE PROVISIONS that fail to come into compliance in accordance with the CODE PROVISIONS, provided that the MUNICIPALITY receives timely notification from the COUNTY that a violation exists. Further, the COUNTY agrees to provide prosecution witnesses required without cost to the MUNICIPALITY.
- 3.5 The MUNICIPALITY shall provide the COUNTY with documentation of any enforcement action and prosecution from the previous one (1) year for inclusion in the annual report.

4.0 GOVERNMENT REGULATION.

- 4.1 The COUNTY and the MUNICIPALITY shall each comply with the applicable requirements of all county, municipal, state, federal and other applicable governmental authorities, now in force, or which may hereafter be in force, pertaining to the performance of this Agreement, with the most stringent standards governing.

5.0 MISCELLANEOUS TERMS.

- 5.1 This Agreement shall be approved by Ordinance and executed for and on behalf of the COUNTY and MUNICIPALITY.
- 5.2 Certified copies of each Party's respective adopting ordinance or resolution shall be attached hereto and made a part hereof as evidence of the authority exercised by the undersigned officers of the COUNTY and MUNICIPALITY.
- 5.3 This Agreement shall become effective upon the date set forth above, and

continue in full force and effect unless terminated in accord with Paragraph 5.5, below.

- 5.4 This Agreement may be amended or modified only by written instrument duly approved and signed by both Parties to the Agreement.
- 5.5 Either Party may give notice of its intent to terminate this Agreement in accordance with Paragraphs 7.1, 8.1 and 8.2 below.
- 5.6 This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.
- 5.7 The headings of the paragraphs and subparagraphs of this Agreement are inserted for convenience of reference only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.

6.0 ENTIRE AGREEMENT.

- 6.1 This Agreement represents the entire agreement between the COUNTY and MUNICIPALITY with respect to the Illicit Discharge Detection and Elimination Program and supersedes all prior negotiations, representations or agreements, either written or oral.

7.0 NOTICES REQUIRED UNDER THIS AGREEMENT.

- 7.1 All notices required to be given under the terms of this Agreement shall be in writing and either (a) served personally during regular business hours; (b) served by facsimile transmission and e-mail during regular business hours; or (c) served by certified or registered mail, return receipt requested, properly addressed with postage prepaid.

Notices served upon the MUNICIPALITY shall be directed to:

Village of Lombard
Attn: Stormwater Administrator
255 E. Wilson Avenue
Lombard, IL 60148-1048
Fax: 630-620-5982
E-mail: publicworks@villageoflombard.org

Notices served upon the COUNTY shall be directed to:

DuPage County Stormwater Management Division
Attn: Director, Stormwater Management
421 N. County Farm Road
Wheaton, IL 60187-3978
Fax: 630-407-6701
E-mail: Water.Quality@dupageco.org

Notices served personally or by facsimile transmission and e-mail shall be effective upon receipt, and notices served by mail shall be effective upon receipt as verified by the United States Postal Service. Each Party may designate a new location for service of notices by serving notice thereof in accordance with the requirements of this Paragraph 7.1.

8.0 TERM OF AGREEMENT

- 8.1 The COUNTY and the MUNICIPALITY agree to not change enforcement status within the term of this Agreement.
- 8.2 This Agreement will expire on the 31st of March, 2013. This Agreement can be extended for additional NPDES permit cycles at the mutual agreement of both Parties. The permit cycle is defined for a five (5) year period beginning one (1) year before the expiration date of the current NPDES permit for the MUNICIPALITY and continues until one (1) year before the expiration of the subsequent NPDES five (5) year permit.


9.0 SEVERABILITY

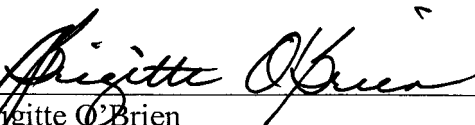
- 9.1 In the event any provision of this Agreement shall be held to be unenforceable or void, such provision shall be deleted and all other provisions shall remain in full force and effect to the fullest extent allowed by law and equity.

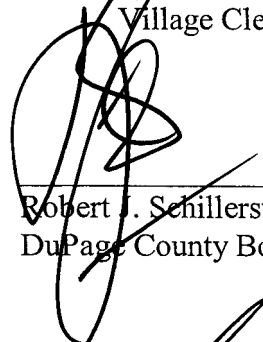
10.0 GOVERNING LAW

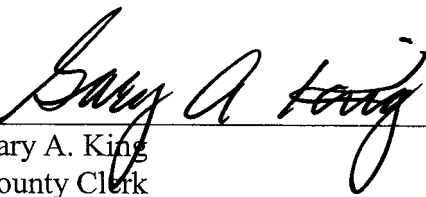
- 10.1 This Agreement will be governed by the laws of the State of Illinois as to both interpretation and performance. The forum for resolving disputes concerning the Parties' respective performance, or failure to perform, under this Agreement, will be the judicial circuit court for DuPage County.

IN WITNESS WHEREOF, the Parties to this Agreement set their hands and seals as of the date first written above.

BY: 
William J. Mueller
Village President

ATTEST BY: 
Brigitte O'Brien
Village Clerk

BY: 
Robert J. Schillerstrom
DuPage County Board Chairman

ATTEST BY: 
Gary A. King
County Clerk