

090071
DISTRICT ALL

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

_____ Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
 X Recommendations of Boards, Commissions & Committees (Green)
_____ Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: David A. Hulseberg, Village Manager *Dah*

DATE: September 8, 2009 (B of T) Date: September 17, 2009

TITLE: Illicit Discharge Detection and Elimination Ordinance and IGA

SUBMITTED BY: Carl S. Goldsmith, Director of Public Works *Cg*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Public Works transmits for your consideration a recommendation for approval from the Public Works Committee regarding the above-referenced item.

Fiscal Impact/Funding Source:
There will be no fiscal impact.

Review (as necessary):

Village Attorney X _____	Date _____
Finance Director X _____	Date _____
Village Manager X <i>David A. Hulseberg</i>	Date <u>9/8/09</u>

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



MEMORANDUM

TO: David A. Hulseberg, AICP, Village Manager

THROUGH: Carl S. Goldsmith, Director of Public Works *CS*

FROM: Nick Hatfield, PE, Development Engineer *NH*

DATE: September 2, 2009

SUBJECT: **Illicit Discharge Detection and Elimination Ordinance and IGA**

The attached Ordinance would amend Village Code §50.036 in order to comply with the requirements of the National Pollution Discharge Elimination System (NPDES) Phase II. Specifically, the NPDES II program requires that all owners of a small municipal separate storm sewer system (MS4) have a program that addresses Illicit Discharge Detection and Elimination (IDDE). The existing Village Code must be amended to specifically address “illicit discharges”, which are any discharges into a watercourse from the storm sewer system that are not composed completely of storm water (rain or snowmelt). The attached Intergovernmental Agreement (IGA) with DuPage County accompanies this Ordinance, as explain further below. Please present the Ordinance and IGA to the Board of Trustees at their September 17th meeting.

Background:

The underlying purpose of this Ordinance is to ensure the health, safety and general welfare of Lombard’s citizens. Further, the Ordinance provides a means for the Village to 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-stormwater discharges to the storm drainage system. In general, the Ordinance will prohibit illicit connections and discharges to the natural waterways within the Village via the MS4 and the storm drainage system.

There are 25 excluded discharges listed in the Ordinance:

- (1) Discharges caused by governmental public works and stormwater management units as part of their standard operations in compliance with all applicable regulations.
- (2) Water line flushing and street wash water.
- (3) Discharges required by law or authorized by permit, including any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the USEPA and, or, IEPA.
- (4) Landscape irrigation water.
- (5) Rising ground waters.
- (6) Ground water infiltration.
- (7) Pumped ground water.
- (8) Discharges from potable water sources.
- (9) Foundation drains.

- (10) Air conditioning condensate.
- (11) Irrigation water (except for wastewater irrigation).
- (12) Springs.
- (13) Water from crawl space pumps.
- (14) Footing drains.
- (15) Storm sewer cleaning water.
- (16) Water from any outdoor residential, charitable, or automobile dealership premise car wash.
- (17) Routine external building washdown which does not use detergents.
- (18) Flows from riparian habitats and wetlands.
- (19) Dechlorinated pH neutral swimming pool discharges.
- (20) Residual street wash water.
- (21) Discharges or flows from fire fighting activities.
- (22) Dechlorinated water reservoir discharges.
- (23) Pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed).
- (24) Discharges associated with dye testing of water line, sanitary sewers, storm sewers, private drains or septic systems; however, this activity shall not take place until the discharger, or tester, has provided notification to the Department at least two (2) full business days prior to the test date, unless an emergency situation does not allow time for such notification.
- (25) Other discharges approved by the Director as being substantially like any of the discharge types enumerated above.

As with the NPDES permit, Village staff has worked closely with the staff of DuPage County and other DuPage County municipalities in developing this Code, using a model code from the USEPA as the framework. All municipalities that have an NPDES Phase II permit are required to pass a version of this code.

An IEPA official had verbally expressed its displeasure to DuPage County staff in May that car washes had been exempted by the County Board in its version of the ordinance (same as #16 above). However, the IEPA has not yet provided any indication in writing that the County's Ordinance does not comply with the requirements of the NPDES II with that exemption. The County Stormwater Committee and County Board had inserted that exemption and Village staff has also included it in the proposed Ordinance.

IGA with DuPage County:

DuPage County has passed their version of this IDDE Code, which has a unique provision included where the County will perform the monitoring and tracing activities required to determine the location of an illicit discharge within the Village's boundaries. This investigative work would be done by the County provided that the Village enters into the attached (IGA). The County has committed to cover all costs associated with monitoring and tracing up to any enforcement action. The Village is responsible to share information with the County, to assist during monitoring and tracing, and to prosecute anyone that fails to correct an identified illicit

discharge. The Village is already responsible for such enforcement. Enforcement actions under this Code are applicable for Administrative Adjudication.

Recommendation:

The Public Works Committee has reviewed the proposed Ordinance and recommended approval. The Ordinance and IGA have also been reviewed by the Village Attorney. Staff recommends that the Board of Trustees vote to approve both the Ordinance and the IGA.

NH:nh H:\PW\Stormwater\IDDE\BOT Memo.doc

attachments: proposed IDDE Ordinance and IGA

cc: William J. Heniff, Director of Community Development

Carl S. Goldsmith, Director of Public Works

David P. Gorman, PE, Asst. Dir. of Public Works

Angela Podesta, Utilities Superintendent

ORDINANCE NO. _____

**AN ORDINANCE AMENDING TITLE 5, CHAPTER 50
OF THE LOMBARD VILLAGE CODE IN REGARD TO
ILLCIT DISCHARGE DETECTION AND ELIMINATION
RELATIVE TO THE STORMWATER SYSTEM**

BE IT ORDAINED by the President and Board of Trustees of the Village of Lombard,
DuPage County, Illinois, as follows:

SECTION 1: That Title 5, Chapter 50, Section 50.036 of the Lombard Village Code is
amended to read in its entirety as follows:

“ §50.036 ILLICIT DISCHARGE DETECTION AND ELIMINATION
RULES/REGULATIONS/REQUIREMENTS

- (A) No person shall place, drain, or otherwise discharge, cause, or allow others under their control to place, drain, or otherwise discharge into the storm drainage system or MS4 any pollutants or waters containing any pollutants, other than normal storm water unless specifically exempted in Section 50.036(C) of this Code.
- (B) The following discharges into the MS4 or the storm drainage system shall be prohibited: discharges that are not a direct result of precipitation and or snow melt within the drainage area of the MS4; and, discharges from an illicit connection.
- (C) The following discharges are exempt from discharge prohibitions established herein provided the Director determines they do not cause an adverse effect on water quality:
 - (1) Discharges caused by governmental public works and stormwater management units as part of their standard operations in compliance with all applicable regulations.
 - (2) Water line flushing and street wash water.
 - (3) Discharges required by law or authorized by permit, including any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the USEPA and, or, IEPA.
 - (4) Landscape irrigation water.
 - (5) Rising ground waters.
 - (6) Ground water infiltration.
 - (7) Pumped ground water.
 - (8) Discharges from potable water sources.
 - (9) Foundation drains.
 - (10) Air conditioning condensate.
 - (11) Irrigation water (except for wastewater irrigation).

- (12) Springs.
 - (13) Water from crawl space pumps.
 - (14) Footing drains.
 - (15) Storm sewer cleaning water.
 - (16) Water from any outdoor residential, charitable, or automobile dealership premise car wash.
 - (17) Routine external building washdown which does not use detergents.
 - (18) Flows from riparian habitats and wetlands.
 - (19) Dechlorinated pH neutral swimming pool discharges.
 - (20) Residual street wash water.
 - (21) Discharges or flows from fire fighting activities.
 - (22) Dechlorinated water reservoir discharges.
 - (23) Pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed).
 - (24) Discharges associated with dye testing of water line, sanitary sewers, storm sewers, private drains or septic systems; however, this activity shall not take place until the discharger, or tester, has provided notification to the Department at least two (2) full business days prior to the test date, unless an emergency situation does not allow time for such notification.
 - (25) Other discharges approved by the Director as being substantially like any of the discharge types enumerated above.
- (D) The construction, use, maintenance, or continued existence of illicit connections to the storm drainage system or MS4 is prohibited. Illicit connections made in the past are expressly prohibited, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
 - (E) Connections in violation of this Code must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the Director.
 - (F) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system or MS4, shall be located by the owner or occupant of that property upon receipt of written notice of violation from the Director requiring that such locating be completed. Such notice shall specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, MS4, sanitary sewer system, or other discharge point be identified. Results of these investigations are to be documented and provided to the Director.
 - (G) Any person operating a facility subject to an industrial activity NPDES stormwater discharge permit shall submit a copy of the Notice of Intent (NOI) to the Director at the same time the operator submits the original

Notice of Intent to the IEPA as applicable. A person commits an offense if the person operates a facility that is discharging storm water associated with industrial activity without having submitted a copy of the Notice of Intent to do so to the Director.

- (H) Notwithstanding other requirements of law, as soon as any person owning, leasing or exercising control over a property, or responsible for emergency response for a property, has information of any known or suspected release of materials which are resulting or may result in illicit discharges or pollutants discharging into the MS4 or the storm drainage system, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such spill.
 - (1) In the event of such spill, said person shall immediately notify local emergency dispatch services and act in accordance with Illinois Emergency Management Agency (IEMA) and IEPA regulations.
 - (2) Said person shall notify the Department of the spill in person or by phone, facsimile, or email no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Department within three (3) business days of the phone notice. If the spill emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the spill and the actions taken to prevent its recurrence. Such records shall be retained for at least five (5) years.
- (I) Failure to provide notification of a release as provided above is a violation of this Code. Proper notice, including containment and cleanup shall exempt the notifying parties from applicable fines; notwithstanding that a party causing a spill that contaminates or harms a storm sewer system shall not be relieved of liability for damages resulting from such act.
- (J) A violation of this Code includes when a person: performs any act expressly prohibited by any provision of this Code; or disobeys, neglects, or fails to carry out or comply with any provision of this Code or of any order or notice issued by the Director; or allows any condition or act that violates any provision of this Code to continue unabated on property owned, leased, managed, or under the control of such person; or directs, orders, permits, or allows a second person to do any act expressly prohibited by any provision of this Code, or to maintain or continue unabated any condition or act that violates any provision of this Code on property owned, leased, managed or under the control of the first person.
- (K) The Director may issue a notice of violation ordering a person to take action to achieve compliance with the provisions of this Code and, or to cease and desist from any action conducted in violation of this Code. Failure to comply with the terms and conditions of a notice of violation and order to comply shall constitute a violation of this Code.
 - (1) The Director shall set forth the form and content of any notices issued under this Code.

- (2) The Director may issue a Warning of Violation ordering a person to take action to achieve compliance with the provisions of this Code. If a person fails to comply with the terms and conditions of a warning, the Director may, thereafter, issue a notice of violation.
 - (3) The Director may issue a Warning of Violation and disburse educational materials outlining appropriate measures to minimize the discharge of pollutants.
- (L) If a person fails to comply with an order issued under this Code, the Director may direct the appropriate legal counsel to commence legal proceeding authorized by this Code, under the law or equity, necessary to enforce any provision of this Code and, or, to protect public health and safety.
- (M) When the Director finds that any person has violated, or continues to violate, any provision of this Code, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4, storm drainage system, and an imminent threat of violation is present, the Director may issue an emergency order to the violator directing the violator to:
 - (1) Immediately cease and desist all such violations and comply with all Code requirements; and
 - (2) Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.
- (N) Any person notified of an emergency order under this Code shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, the Department may take such steps as deemed necessary to prevent or minimize harm to the MS4, storm drainage system, or Waters of the United States, and, or, endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. The Department may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the Department that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger under this Code. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the Department within fifteen (15) days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.
- (O) Any condition caused or permitted to exist in violation of any provision of this Code shall constitute a threat to public health and safety and is declared and deemed a public nuisance.

- (P) Any person violating any provision of this Code shall be fined not less than one hundred and no/100 dollars (\$100.00) nor more than seven hundred fifty and no/100 dollars (\$750.00) for each day, or portion of a day, during which such violation is committed, continued or permitted, with each day, or portion of a day, that said violation is committed, continued or permitted constituting a separate and distinct offense.
- (Q) In emergency situations involving an immediate threat to public health and safety, the Director may direct legal counsel to immediately commence any legal equitable proceeding necessary to restrain, abate and/or remedy said situation. The Director may take such action without having to first issue a Notice of Violation to the person(s) having control of, or acting as agent for, such premise where the nuisance is located, or, waiting for such person(s) to abate or remove such nuisance as previously ordered by the Director. Further, the Department may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge, which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4, storm drainage system, or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the Department may take such steps as deemed necessary to prevent or minimize damage to the MS4, storm drainage system, or Waters of the United States, or to minimize danger to public health and safety.
- (R) The Department shall obtain an emergency court order authorizing such termination.
- (S) In all other cases the Director may notify, in writing, the person(s) having control of, or acting as agent for, such premise where the nuisance is located and directing such person(s) to abate or remove such nuisance within such time as is stated on the notice. Upon the failure or refusal of such person(s) to comply with the notice, the Director may direct that appropriate proceeding commence to compel the abatement, or removal, of such a nuisance in any manner allowed by law, equity, or this Code and, or, authorizing the Department to act to abate, or remove, such nuisance. The person(s) having control of such premises, in addition to the other remedies provided by this Code, shall be liable to the Department for any costs incurred by the Department to effect such abatement, or removal, including reasonable attorney's fees and other costs of enforcement, to be recovered by a court of competent jurisdiction.
- (T) Where the conditions imposed by any provision of this Code are either more restrictive or less restrictive than comparable conditions imposed by any other applicable statute, law, code, regulation, or rule, the provision that is most restrictive or imposes the higher standards or requirements shall apply. The provisions of this Code shall be interpreted to be cumulative of, and to impose limitations in addition to, all other laws, codes, and regulations, in existence or which may be passed governing any subject matter of this chapter. To the greatest extent possible, the

provisions of this Code shall be construed to be consistent with, and not in conflict with, the provisions of such other laws, codes, and regulations, and with each other, to the end that all such provisions may be given their fullest application.

- (U) The Village is a willing participant in DuPage County's Illicit Discharge Detection and Elimination Program, subject to an annual intergovernmental agreement.
- (V) Any person aggrieved by any decision, ruling, or determination by the Director, or by any interpretation or application of any provision of this Code may appeal such matter. A written appeal of any decision made by the Director shall be made within seven (7) days of the decision contested, excepting an appeal involving the assessment charge or calculation of any fine or penalty in which cases which an appeal shall be brought before said amount becomes thirty (30) days past due. Upon receipt of such Notice of Appeal, the Director shall set a date for a hearing. Such hearing shall take place no fewer than fourteen (14) days nor more than thirty (30) days from the date that the Director receives such Notice of Appeal unless the Director and party requesting the hearing agree to a different schedule. The Director shall notify the person making the appeal of the date of such hearing. At the hearing the person making the appeal may appear in person or represented by counsel, or submit his case in writing. The decision concerning the appeal shall be in writing shall be communicated to the person making the appeal, and shall state a finding upon which the decision is based. The Village Board of Trustees shall have the authority to reverse, modify, or affirm any decision, ruling, or determination by the Director."

SECTION 2: That Title 5, Chapter 50, Section 50.001 of the Lombard Village Code is amended by adding the following definitions thereto:

"BUILDING. A structure that is constructed or erected partially or wholly above ground and is enclosed by walls and a roof. The term "building" includes manufactured homes and includes both the above-ground and the below-ground portions of the structure.

CLEAN WATER ACT (CWA). The Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), and any subsequent amendments thereto.

COMMITTEE. The Public Works Committee of the Village of Lombard.

DIRECTOR. The Village of Lombard Director of Public Works.

DRAIN. Piping and appurtenances for conveying a fluid.

FACILITY. Something that is built, installed, or established to serve a particular

purpose.

HAZARDOUS MATERIALS. Any material which may cause, or significantly contribute to, a substantial hazard to human health, safety, property, or the environment.

ILLICIT CONNECTIONS. An illicit connection is defined as either of the following: (1) Any drain or conveyance, whether on the surface or subsurface that allows an illicit discharge to enter the storm drainage system including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drainage system and any connections to the storm drainage system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the Village or, (2) Any drain or conveyance connected from a commercial or industrial land use to the storm drainage system that has not been documented in plans, maps, or equivalent records and approved by the Village.

ILLICIT DISCHARGE. Any direct or indirect non-storm water discharge to the storm drainage system, except as exempted in 50.036(c).

INDUSTRIAL ACTIVITY. Activities subject to an industrial NPDES storm water permit as defined in 40 CFR, Code 122.26 (b)(14).

LINE. A hollow conduit through which fluids are transported between two or more points.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4). A conveyance or system of conveyances (including but not limited to sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm sewers) owned or operated by a governmental entity and designed or used for collecting or conveying stormwater, and that is not used for collecting or conveying sewage.

NON-STORMWATER DISCHARGE. Any discharge to the storm drainage system that is not the direct result of precipitation and or snowmelt in the tributary drainage basin.

NOTICE OF INTENT (NOI). Illinois Environmental Protection Agency Notice of Intent to participate in coverage under the General Permit to Discharge Storm Water Associated with Industrial Activity.

PARCEL. Contiguous land under single ownership or control.

pH NEUTRAL. pH value between 6.5 and 9.0 Standard Units.

PREMISES. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

RUNOFF. The waters derived from precipitation and or melting snow within a tributary drainage basin that exceeds the infiltration capacity of that basin.

SEWER. An artificial conduit to carry off sewage and/ or surface water (as from rainfall), including sanitation, stormwater, and/or combined sewers.

SEWERAGE. A system of sewers and appurtenances for the collection, transportation, pumping, and treatment of sewage.

STORM DRAINAGE SYSTEM. A facility by which stormwater 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.

STRUCTURE. Anything that is erected or constructed. The term "structure" includes, without limitation: buildings, manufactured homes, tanks, dams, sewers, constructed channels, outfalls, parking lots, driveways, roads, sidewalks, and concrete patios.

WATERS OF THE UNITED STATES. As defined in the CWA, "waters of the United States" applies only to surface waters, rivers, lakes, estuaries, coastal waters, and wetlands. Not all surface waters are legally "waters of the United States." Generally, those waters include the following: all interstate waters; Intrastate waters used in interstate and/or foreign commerce; Tributaries of the above; Territorial seas at the cyclical high tide mark; and Wetlands adjacent to all the above."

SECTION 3: That Title 5, Chapter 50, Section 50.001 of the Lombard Village Code is amended by revising the definitions of POLLUTANT, SEWAGE and STORMWATER, as contained therein, to read in their entirety as follows:

"POLLUTANT. Anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, wastewater, dredged spoil, solid waste, incinerator residue, sewage garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, or

industrial, municipal and agricultural waste or any other contaminant exhibiting certain characteristics of wastewater (e.g. pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor), fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

SEWAGE. Polluted stormwater, wastewater, or other refuse liquids usually conveyed by sewers.

STORMWATER. Any flow, runoff, and drainage from any form of natural precipitation, and resulting from such precipitation.”

SECTION 7: That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this _____ day of _____, 2009.

First reading waived by action of the Board of Trustees this ____ day of _____, 2009.

Passed on second reading this _____ day of _____, 2009.

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this _____ day of _____, 2009.

William J. Mueller, Village President

ATTEST:

Brigitte O'Brien, Village Clerk

Published by me in pamphlet form this _____ day of _____, 2009.

Brigitte O'Brien, Village Clerk

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