

RESOLUTION NO. R-44-10

**A RESOLUTION APPROVING THE EXECUTION OF
AN INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF WHEATON
AND THE COUNTY OF DUPAGE, ILLINOIS
FOR THE IMPLEMENTATION OF THE
ILLICIT DISCHARGE DETECTION AND ELIMINATION PROGRAM**

WHEREAS, the City of Wheaton and County of DuPage, Illinois are public agencies within the meaning of the Illinois "Intergovernmental Cooperation Act", as specified in Illinois Statute, 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 of the Constitution of the State of Illinois include fostering cooperation among governmental bodies; and

WHEREAS, the City and the County are desirous of entering into an intergovernmental agreement for the implementation of the Illicit Discharge Detection and Elimination Program as co-permit holders of a General National Pollutant Discharge Elimination System permit issued by the Illinois EPA.

NOW THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, that the Mayor is authorized to execute an intergovernmental agreement between the City of Wheaton and the County of DuPage for the implementation of the Illicit Discharge Detection and Elimination Program.

IT IS FURTHER RESOLVED that the City Clerk is authorized and directed to attest to the signature of the Mayor and attach a certified copy of this resolution to the intergovernmental agreement for the implementation of the Illicit Discharge Detection and Elimination Program.

ADOPTED this 16th day of August, 2010.



Michael J. Jones
Mayor

ATTEST:



Emily M. Mouhelis
City Clerk

Ayes:



ROLL CALL VOTE
Councilman Levine
Councilman Mouhelis

Mayor Gresk
Councilman Prendiville
Councilman Scalzo
Councilman Suess
Councilwoman Corry

Nays: None
Absent: None

Motion Carried Unanimously

AN INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF WHEATON
AND THE COUNTY OF DUPAGE, ILLINOIS
FOR THE IMPLEMENTATION OF THE
ILLICIT DISCHARGE DETECTION AND ELIMINATION PROGRAM

THIS INTERGOVERNMENTAL AGREEMENT is entered into this 16th of August, 2010 between the City of Wheaton of DuPage County (hereinafter referred to as the "MUNICIPALITY") a body corporate and politic, with offices at 303 W. Wesley Street, Wheaton, Illinois 60187 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.

RECITALS

WHEREAS, the MUNICIPALITY and COUNTY are public agencies within the meaning of the Illinois "Intergovernmental Cooperation Act", as specified in Illinois Statute, 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 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 small municipal storm sewer systems 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 small 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 (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 will adopt an Illicit Discharge Detection and Elimination Ordinance pursuant to its Home Rule powers in a form similar to Exhibit 1 attached hereto subject to organizing the Ordinance so that it is consistent with the chaptering and numbering of the MUNICIPALITY's City Code; 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, 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 municipal 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 the NPDES permit to monitor and trace illicit discharges into the MS4 on behalf of the MUNICIPALITY.
- 2.3 The COUNTY agrees to obtain copies of the Notice of Intent (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 discharge.
- 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.
- 2.6 The COUNTY agrees to notify the MUNICIPALITY within twenty four (24) hours of detecting an illicit discharge within the municipal 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 provide the MUNICIPALITY with any information required for enforcement action and prosecution by the MUNICIPALITY and produce County personnel in court, as necessary and upon adequate notice.
- 2.8 The COUNTY agrees to create and manage a countywide hotline for reporting illicit discharges.
- 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 their ordinance that fail to come into compliance in accordance with the ordinance, 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 accord with Paragraphs 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:

City of Wheaton Engineering Department
Attn: Stormwater Engineer
303 W. Wesley Street
PO Box 727
Wheaton, IL 60187
Fax: 630-260-2195

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.

8.0 TERM OF AGREEMENT

- 8.1 As will be used for staff and budget requirements, 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 party's 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:


MICHAEL J. GRESK
MAYOR

ATTEST BY:


EMILY M. CONSOLAZIO
CITY CLERK

BY:

ROBERT J. SCHILLERSTROM
CHAIRMAN
DUPAGE COUNTY BOARD

ATTEST BY:


GARY A. KING
COUNTY CLERK

EXHIBIT 1

The DuPage County Illicit Discharge Detection and Elimination Ordinance, Chapter 16 of the DuPage County Code, adopted by the DuPage County Board on May 26, 2009.

This document is hereby attached by reference. A copy of which is available in the offices of the Director of Engineering, City of Wheaton, 303 W. Wesley Street, Wheaton, Illinois or online at [http://www.dupageco.org/emplibrary/Signed%20IDDE%20Ordinance\[1\].pdf](http://www.dupageco.org/emplibrary/Signed%20IDDE%20Ordinance[1].pdf) .