

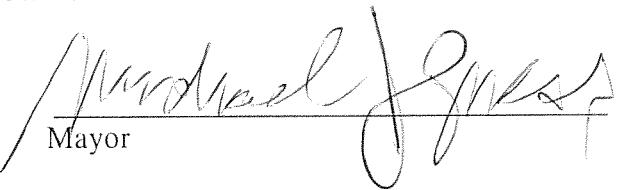
RESOLUTION R-91-17

A RESOLUTION AUTHORIZING THE EXECUTION OF AN
INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE WHEATON
MOSQUITO ABATEMENT DISTRICT AND THE CITY OF WHEATON, ILLINOIS

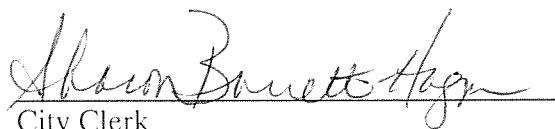
WHEREAS, the Mayor and City Council has determined that it is in the best interest of the City to execute an Intergovernmental Agreement with the Wheaton Mosquito Abatement District for mutual assistance as attached hereto as Exhibit "A," and by this reference incorporated herein.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and the City Council of the City of Wheaton, DuPage County, Illinois, in the exercise of its home rule powers, that the Mayor is hereby authorized to sign and the City Clerk is hereby directed to attest, to that Intergovernmental Agreement attached hereto and incorporated herein as fully set forth as Exhibit A.

ADOPTED this 5th day of September 2017.


Mayor

ATTEST:


Aaron Bennett Hagan
City Clerk

Ayes:

Roll Call Vote:

Councilwoman Fitch
Councilman Prendiville
Mayor Gresk
Councilman Rutledge
Councilman Scalzo
Councilman Suess
Councilman Barbier

Nays:

None

Absent:

None

Motion Carried Unanimously

INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT, made and entered into this 5th day of September 2017 by and between the WHEATON MOSQUITO ABATEMENT DISTRICT, a body politic and corporate of the State of Illinois (the “District”) and the CITY OF WHEATON (the “City”), the District and the City each known individually as a “Party” and collectively as the “Parties.”

W I T N E S S E T H

WHEREAS, the Parties are authorized to contract with each other in any manner not prohibited by law or ordinance, to exercise, combine or transfer any power or function in any manner not prohibited by law, pursuant to Article VII, Section 10 of the Constitution of the State of Illinois and the Intergovernmental Cooperation Act (5 ILCS 220/1, *et seq.*); and,

WHEREAS, pursuant to the Mosquito Abatement District Act, 70 ILCS 1005/0.01 (the “Mosquito District Act”), the District has the authority to take all necessary or proper steps for the extermination of mosquitoes, flies or other insects within its boundaries, and, subject to the authority of the municipal authorities, to abate as nuisances all stagnant pools of water and other breeding places for mosquitoes, flies or other insects within its boundaries; and

WHEREAS, pursuant to 65 ILCS 5/11-20-8 (the “Municipal Code Provision”), the City has the authority to provide pest-control activities on any parcel of private property within its boundaries if, after reasonable notice, the owners of that parcel refuse or neglect to prevent the ingress of pests to their property or to exterminate pests on their property, including the authority to collect the reasonable removal cost from the owners of the property; and

WHEREAS, the emergence of West Nile Virus and other diseases spread by mosquitos is a significant public health, safety, and welfare concern; and

WHEREAS, programs focused on the control of mosquitos by preventing them from breeding are an effective tool to abate and control mosquito population.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

Section 1. Preambles. The preambles set forth hereinabove are incorporated herein as substantive provisions of this Agreement as if fully set out in this Section 1.

Section 2. Mutual Assistance. Each Party is hereby authorized to act jointly and/or individually to exercise the powers granted by the Mosquito Abatement District Act and the Municipal Code Provision. Each Party hereby assigns its statutory powers and authority to the other Party for the purpose of exercising such powers and effectuating the provisions of this Agreement. The degree to which a Party exercises the assigned powers and authorities under this Agreement shall be within the sole discretion of the Party. The District, in exercising the Municipal Code provisions on private property, shall be limited to abating and controlling an identified location where some objective evidence reasonably establishes that there is an imminent public health risk of disease or pathogens carried by insects or insect larvae. This judgment will be within the discretion of the District.

The Parties may do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in furthering the objectives of this Agreement and the intent of the Parties as reflected by the terms of this Agreement, including without limitation, the enactment by the Parties of such resolutions and ordinances, the execution of such permits, applications and agreements and the taking of such other actions as may be necessary to enable the Parties to exercise their discretion within the terms and provisions of this Agreement.

Section 3. Indemnification. To the fullest extent permitted by law, each Party (the "Indemnifying Party") hereby agrees to defend, indemnify and hold harmless the other Party (the "Indemnified Party"), its officials, agents and employees, against all injuries, deaths, loss, damages, claims, suits, liabilities, judgments, costs and expenses, brought by third persons, which may in any way accrue against the Indemnified Party, its officials, agents and employees, arising in whole or in part or in consequence of activities performed pursuant to the provisions of this Agreement by the Indemnifying Party, its employees, agents or contractors, or which may in anyway result therefore, except that arising out of the sole legal cause of the Indemnified Party, its agents or employees, and the Indemnifying Party shall, at its own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising therefore or incurred in connection therewith, and, if any judgment shall be rendered against the Indemnified Party, its officials, agents and employees, in any such action, the Indemnifying Party shall, at its own expense, satisfy and discharge the same. Each party fully reserves to the greatest extent allowed by law, and does not waive in any manner, any and all common law and statutory privileges and immunities provided by law.

Any agreement that the District enters into with Clarke Environmental Mosquito Management, Inc., or other contractor regarding mosquito control activities, that includes indemnification provisions shall also include indemnification of the City. The District shall further require its mosquito control contractors to name the City as an additional insured on those contractor's liability insurance policies to the same extent the District requires for itself.

Section 4. Notices. All notices hereunder shall be in writing and must be served either personally or by registered or certified mail to:

A. The District at:

Wheaton Mosquito Abatement District
P. O. Box 933
Wheaton, Illinois 60189
Attn: President

B. The City at:

City of Wheaton
303 W. Wesley Street
Wheaton, Illinois 60187
Attn: City Manager

Section 5. No Third Party Rights. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the Parties hereto and their respective permitted successors and assigns, nor is anything in this Agreement intended to incur or discharge the obligation or liability of any third person to any Party to this Agreement, nor shall any provision give any third person any right of subrogation or

action over or against any Party to this Agreement. There are no third party beneficiaries of this agreement.

Section 6. Integration. This Agreement represents the entire understanding between the Parties and may be modified only by a written document signed by both Parties.

Section 7. Assignment. Neither of the Parties may assign its rights and privileges or its duties and obligations under this Agreement without the written consent of the other Party. This Agreement shall inure to the benefit of each Party and their respective successors and assigns.

Section 8. Governing Law and Remedies. This Agreement and the application of the terms contained herein shall be governed by the laws of the State of Illinois. Other than the requirements set forth in Section 3, the parties' sole remedy under this Agreement shall be specific performance.

Section 9. Non-Waiver. Any failure or delay by any Party in instituting or prosecuting any actions or proceedings or in otherwise exercising its rights hereunder shall not operate as a waiver of any such rights or to deprive it of or limit such rights in any way. No waiver in fact made by a Party with respect to any specific default by the other Party shall be considered or treated as a waiver of the rights of the waiving Party with respect to any other defaults by the defaulting Party or with respect to the particular default except to the extent specifically waived in writing.

Section 10. Headings. The headings contained in this Agreement are for convenience of reference only and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

Section 11. Invalidity. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision of this Agreement shall be held to be invalid or prohibited hereunder, such provision shall be ineffective to the extent of the prohibition or invalidation, but shall not invalidate the remainder of such provision or the remaining provisions of this Agreement.

Section 12. Counterparts. This Agreement may be executed in multiple, identical counterparts and all said counterparts shall, taken together, constitute this integrated agreement.

Section 13. Termination. This Agreement may be terminated by either party, in their sole discretion, upon thirty (30) days' written notice.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day and year first above written.

WHEATON MOSQUITO ABATEMENT
DISTRICT
By: Alan Bolds
President

ATTEST:

Kathy Gerner
Secretary

CITY OF WHEATON

By Michael J. Miks
Mayor

ATTEST:

Sharon Bennett
City Clerk