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**INTERGOVERNMENTAL DELEGATION AGREEMENT**

**BETWEEN THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY  
AND LAKE COUNTY**

**A JOINT AND COOPERATIVE SOLID WASTE MANAGEMENT SITE INSPECTION,  
INVESTIGATION AND ENFORCEMENT PROGRAM**

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This Intergovernmental Delegation Agreement (“Agreement” or “Delegation Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, between the County of Lake, Illinois (the “County”) and the Illinois Environmental Protection Agency (“Illinois EPA” or the “Agency”) (collectively, the “Parties”).

**I. AUTHORITY**

The Illinois EPA is an agency established in the executive branch of State government, having the duty and authority, *inter alia*, to conduct a program of continuing surveillance and of regular or periodic inspection of refuse disposal sites and to investigate violations of the Illinois Environmental Protection Act (415 ILCS 5/1, *et seq.*) (“Act”), and regulations adopted thereunder (“regulations”).

The County is a unit of local government organized and existing under the laws of Illinois. The Lake County Health Department and Community Health Center (the “Department”), a department or agency established within or in addition to the County government, shall implement this Delegation Agreement for and on behalf of the County.

Article VII, Section 10, Constitution of Illinois, 1970, provides in part:

“Units of local government . . . may contract. . . with the State . . . to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or ordinance. . . “.

Section 5 of the Intergovernmental Cooperation Act (5 ILCS 220/5) provides:

“Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking or to combine, transfer, or exercise any powers, functions, privileges, or authority which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be approved by the governing bodies of each party to the contract and except where specifically and expressly prohibited by law. Such contract shall set forth

fully the purposes, powers, rights, objectives and responsibilities of the contracting parties.”

Section 2 of the Intergovernmental Cooperation Act (5 ILCS 220/2) defines “public agency” to include any unit of local government as defined in the Illinois Constitution of 1970, the State of Illinois and any agency of the State. The County is a unit of local government as defined in the Illinois Constitution of 1970, and Illinois EPA is an agency of the State.

Section 4(r) of the Illinois Environmental Protection Act (415 ILCS 5/4(r)) provides:

“The Agency may enter into written delegation agreements with any unit of local government under which it may delegate all or portions of its inspecting, investigating and enforcement functions. Such delegation agreements shall require that work performed thereunder be in accordance with Agency criteria and subject to Agency review.”

Section 22.15(h) of the Act (415 ILCS 5/22.15(h)) provides that the Agency is authorized to provide financial assistance to units of local government for the performance of inspecting, investigating and enforcement activities pursuant to Section 4(r) at nonhazardous solid waste disposal sites.”

Section 55.6(c) of the Act (415 ILCS 5/55.6(c)) provides, in part, that the Agency is authorized to provide financial assistance to units of local government for the performance of inspection, investigation, and enforcement activities pursuant to Section 4(r) of the Act at used and waste tire sites.

The Illinois EPA hereby delegates its solid waste management site inspection, investigation and enforcement authority, pursuant to the terms and conditions of this Delegation Agreement, to the County. All inspecting, investigating and enforcement functions, not specifically delegated in this Delegation Agreement, are retained by the Illinois EPA. Other than to the Department, the County shall not sub-delegate the functions and duties delegated herein to any other local government agency or political subdivision without the prior written approval of the Illinois EPA. Solid waste management site(s) owned or operated, in whole or in part, by the County, or any political subdivision of the County, are expressly excluded from the delegation of authority in this Delegation Agreement.

## **II. PURPOSE**

The purpose of this Delegation Agreement is to satisfactorily act on public concerns for human health and the environment and agree upon a mutually cooperative program for inspecting solid waste management sites in the County, for sharing information obtained regarding solid waste disposal in the County, and for follow-up activity in situations where violations of environmental laws are detected.

## **III. DEFINITIONS**

As used herein, the term “remedial action” includes, but is not limited to, those actions consistent with any technical remedy or clean-up undertaken at a solid waste management site. Remedial actions include, but are not limited to, storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, clean-up of released contaminants, recycling or re-use, diversion, destruction, segregation of reactive wastes, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, monitoring, closure and post-closure activity, and any action involving Illinois EPA permits or approvals.

As used herein, the term “solid waste management site(s)” or “site(s)” means permitted sanitary landfills, permit exempt landfills, open dumps, and other types of solid waste storage, transfer, treatment or disposal sites including, but not limited to, used and waste tire sites, including but not limited to tire retailers, compost sites, deep wells, pits, ponds, lagoons, impoundments, uncontaminated soil fill operations, and clean construction or demolition debris sites or fill operations. This term does not refer to solid waste management sites or those portions of a solid waste management site that manage “hazardous waste,” as defined under state and federal law or site(s) owned or operated, in whole or in part, by the County or any political subdivision of the County.

As used herein, the term “inspection” and “investigation” includes, but is not limited to, physical inspection, collection and analysis of air, soil, water, and waste samples, photographing or videotaping sites, facilities or activity, review and reproduction of any documents, photographs, videotape or other record keeping, and any other information gathering activity.

#### **IV. RESPONSIBILITIES OF THE COUNTY**

##### **A. INSPECTION AND INVESTIGATION**

Pursuant to this Delegation Agreement, the County through the Department shall have certain authority to act on behalf of the Illinois EPA, as specified herein, to make inspections and conduct investigations of solid waste management sites under the Act and regulations adopted thereunder. The County shall inspect and investigate solid waste management sites as well as enforce applicable provisions of the Act and regulations in accordance with the Enforcement Management System (“EMS”) that is provided to the County by Illinois EPA. The County understands that any reports, other pertinent data and any other written material submitted to the Illinois EPA or received by the County from the Illinois EPA or others pursuant to the EMS may be subject to public access, inspection and photocopying pursuant to the Illinois EPA's responsibilities under Section 7 of the Act (415 ILCS 5/7) and the Freedom of Information Act (5 ILCS 140/1 *et seq.*) as set forth in Section VII below in more detail.

The County shall conduct its inspection, investigation and enforcement program in accordance with the EMS. The EMS requires, in addition to other program operations, various time constraints applicable to program operations, along with forms and written formats to be utilized. The parties recognize that the Illinois EPA may, from time to time, change the EMS and forward the revised EMS to the County.

Before any employee of the County inspects or investigates a solid waste management site pursuant to this Delegation Agreement, such employee must be certified by the Illinois EPA as to his or her qualifications for the purposes of conducting inspections and investigations. The County's employee certification shall be accomplished by such employee taking a training course given by Illinois EPA personnel designed to educate its first County employee or employee(s) as to all aspects of proper inspection and investigation, sample collection, and an understanding of the applicable statutes and regulations. The County employee(s) shall demonstrate competency for certification within forty-five (45) days following the successful completion of such training course. A certified inspector may offer a similar training course, approved by the Illinois EPA, to other County employee(s) so that they may obtain certification through the County. The Illinois EPA shall certify the other County employee(s) as an inspector within forty-five (45) days following the successful completion of such training course after demonstrating competency to the Regional Manager.

## **B. ENFORCEMENT**

The Illinois EPA recognizes that the State's Attorney in the County has certain independent enforcement authority pursuant to Title XII of the Act. This Delegation Agreement is not intended to affect or alter such independent enforcement authority. Accordingly, the Illinois EPA and County agree that the State's Attorney may bring actions for violations of any section of the Act in the name of the people of the State of Illinois. However, in electing to enter into this Delegation Agreement the County agrees that it will conduct all non-hazardous solid waste management site inspection, investigation and enforcement pursuant to the terms and conditions of the Delegation Agreement. Further, the County agrees to utilize the EMS, to the degree applicable, when by reason of this Delegation Agreement, a case is developed by the certified inspector and results in the issuance of Administrative Citation or referral for formal enforcement. When the County refers a matter for formal enforcement pursuant to the Delegation Agreement and EMS, the case will be prosecuted either through the available channels utilized by the Illinois EPA for cases developed by Illinois EPA personnel or through the State's Attorney's Office.

The Illinois EPA reserves, and shall have sole authority over and responsibility for, review and approval of any remedial action settled upon through negotiation or as presented to a court or the Illinois Pollution Control Board except for remedial actions involving the removal and proper disposal of open-dumped or open-burned solid waste requiring only incidental soil, groundwater or surface water removal or disturbance. The purpose and intent of utilizing the expertise of the Illinois EPA for remedial actions is to utilize, to the fullest extent possible, the technical expertise of the Illinois EPA and to maintain the legislative intent set forth in the Act to establish a unified, statewide program to restore, protect and enhance the quality of the environment.

The County agrees to notify the Illinois EPA of any formal enforcement action it initiates outside the format of the Delegation Agreement and EMS, the purpose being to avoid duplication of efforts and to avoid independent or mutually inconsistent formal enforcement proceedings. Additionally, the County and the Illinois EPA agree that, upon request, each will provide the other with information regarding any and all enforcement action(s) concerning sites within the County. The County and Illinois EPA will make their best efforts to cooperate with one another with any enforcement actions brought by either party pursuant to the Act and/or

regulations. The County and the Illinois EPA shall cooperate in enforcement matters including the matter of regularly scheduled Enforcement Decision Group (“EDG”) meetings. The Parties will make their best efforts to hold these EDG meetings when a referral for formal enforcement is considered; when considering issuance of an Administrative Citation (in agreement); when the facility fails to respond to a Violation Notice or Notice of Intent to Pursue Legal Action (in agreement); and when a Compliance Commitment Agreement is considered for rejection.

The County agrees that its employee(s) shall cooperate fully and completely with the Illinois EPA, including, but not limited to, offering testimony in any enforcement matter instituted against a solid waste management site in the County.

**V. RESPONSIBILITIES OF THE ILLINOIS EPA**

In order to promote the operational aspects of this Delegation Agreement, personnel from the Illinois EPA may accompany inspectors on joint inspections of solid waste management sites in the County. Such joint inspections may also serve to provide County personnel with additional background information and inspection skills with respect to such sites.

If the Illinois EPA initiates a formal enforcement action outside the format of the Delegation Agreement and EMS, the Illinois EPA agrees to notify the County of any such action, with the purpose being to avoid duplication of efforts and to avoid independent or mutually inconsistent formal enforcement proceedings.

The Illinois EPA agrees that its employee(s) shall cooperate fully and completely with the County, including, but not limited to, review all reports and provide guidance and recommendations for improved quality, responding to questions, offering testimony in any enforcement matter instituted against a solid waste management site in the County. Nothing in this Delegation Agreement shall limit the Illinois EPA from exercising its statutory and regulatory discretion regarding inspection, investigation or enforcement matters.

**VI. BUREAU OF LAND PERMITS, VARIANCES AND ADJUSTED STANDARDS**

The Illinois EPA shall, consistent with Section 7 of the Act (415 ILCS 5/7), forward to the County copies of all applications for solid waste management site permits and/or supplemental permits, variances and adjusted standards as they are received for solid waste management sites in the County. The Illinois EPA shall also forward to the County copies of each permit application approval and denial. The issuance of solid waste management site permits, variances and adjusted standards required by the Act and regulations shall remain the sole discretion and responsibility of the Illinois EPA. The County shall forward any written statements regarding any applications for solid waste management site permits and/or supplemental permits to the Illinois EPA, Manager - Permits Section, Bureau of Land.

**VII. RECORDS AND AUDITS**

A. The County shall ensure that all books, records, documents, reports and other evidentiary material are maintained using accounting procedures and practices that conform to generally accepted accounting principles to account properly for the receipt and disposition of all financial assistance received hereunder. The County shall ensure that records are preserved and made available for inspection and auditing as provided in paragraph D below:

- 1) For a minimum of three years following the County's receipt of final payment of financial assistance from the Agency hereunder;
- 2) For records relating to disputes and/or appeals, litigation or the settlement of claims arising out of the services or activities provided by the County hereunder, or costs and expenses of services for which exception has been taken by the Agency or any of its duly authorized representatives, until three years after disposition of such appeals, litigation, claims or exceptions or for the three years specified in paragraph 1 above, whichever is longer; and
- 3) For such longer period required by applicable statute or regulation, including but not limited to the Local Records Act (50 ILCS 205/1 *et seq.*).

- B. The Parties acknowledge and agree that this Delegation Agreement, the payment of financial assistance, requests for payments and supporting documentation, and all other records, reports, data and/or other written material (including but not limited to electronic data, records and communications) relative thereto that have been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of the Agency or the County may be subject to inspection and copying pursuant to the Freedom of Information Act (5 ILCS 140/1 *et seq.*). Such records, data, and files of the Agency may also be subject to inspection and copying pursuant to Section 7 of the Act (415 ILCS 5/7).
- C. The Parties shall comply with the provisions of Sections 7 and 7.1 of the Act, 2 Ill. Adm. Code 1828.202, and other applicable law relating to the non-disclosure of any confidential information under this Delegation Agreement. In addition, the Parties shall comply with Part 130 of the Illinois Pollution Control Board regulations (35 Ill. Adm. Code Part 130) and other applicable law regarding trade secret information hereunder.
- D. The Agency, the Auditor General, the Executive Inspector General, the Attorney General, and their respective officers, officials, employees, authorized representatives and agents shall have the right to inspect and audit any books, records or papers relating to the financial assistance provided hereunder and the expenditure of said funds.

## **VIII. HOLD HARMLESS, INDEMNIFICATION AND INSURANCE**

### **A. HOLD HARMLESS AND INDEMNIFICATION**

To the fullest extent permitted by law, i) the County hereby agrees to assume the risk, responsibility and liability for any and all loss or damage to property owned by the County, the Agency or third persons, any injury to or death of any persons (including employees of the County) caused by, arising out of, or occurring in connection with the execution of any services or other work, contract or subcontract arising out of this Agreement, and ii) the County shall indemnify, save harmless and defend the State of Illinois and the Agency, and their respective officials, officers, employees and authorized representatives from all claims for any such loss,



damage, injury or death, except to the extent such claim, loss, damage, injury or death is attributable to the negligent or willful and wanton conduct of an official, officer, employee or authorized representative of the State of Illinois or the Agency. The County shall also require that any and all contractors, subcontractors, consultants and other parties engaged by the County shall agree in writing that they shall look solely to the County for performance of such contract or satisfaction of any and all claims arising thereunder.

## **B. INSURANCE**

1. Throughout the duration of this Agreement and any extensions thereof, the County shall maintain the types of insurance coverages in not less than the amounts of coverages set forth below:

i) Commercial general liability (CGL) insurance with a limit of not less than \$1,000,000 each occurrence (combined single limit bodily injury and property damage). If the CGL insurance contains an aggregate limit, it shall be not less than \$2,000,000 or shall be endorsed to apply separately to this project. The State and the Agency shall be named as an additional insured under the CGL insurance, any commercial umbrella/excess liability insurance, and business auto liability coverages of the County. The County's CGL insurance, commercial umbrella/excess liability insurance (if any), and business auto liability coverages shall apply as primary insurance with respect to any other insurance or self-insurance afforded to the State or the Agency and shall not require exhaustion of any other coverage or tender of any claim or action to any other insurer providing coverage to the State or the Agency. Any insurance or self-insurance maintained by the State or the Agency shall be in excess of the County's insurance and shall not contribute with it.

ii) Business auto liability insurance, with a combined single limit of not less than \$1,000,000 per accident, for bodily injury and property damage. Such insurance shall cover liability arising out of any auto, including owned, hired and non-owned autos.

iii) Workers compensation insurance, as required by law.

2. The County shall cause each subcontractor and consultant, employed by or acting on behalf of the County hereunder, to maintain insurance of the types and not less than the amounts of coverages specified above. When requested by the Agency, the County shall furnish copies of certificates of insurance evidencing the types and amounts of coverages for the County and each of its subcontractors and consultants.

**IX. CONTINGENCY REGARDING AVAILABILITY OF SUFFICIENT FUNDS**

Notwithstanding any provision herein to the contrary, the financial assistance provided for hereunder is expressly contingent upon and subject to the availability of sufficient funds appropriated for this Agreement and the inspection, investigation and enforcement activities performed hereunder. The Agency may terminate or suspend this Agreement, in whole or in part, without penalty or further payment being required, if i) sufficient State funds have not been appropriated to the Agency, ii) the Governor or the Agency reserves appropriated funds, iii) the Governor or the Agency determines that appropriated funds may not be available for payment, or iv) the Agency determines that there are otherwise insufficient funds available. The Agency shall provide notice, in writing, to the County of any such funding failure and its election to terminate or suspend this Agreement as soon as practicable. Any suspension or termination pursuant to this Section will be effective upon the County's receipt of said notice.

**X. FINANCIAL ASSISTANCE**

A. Subject to the availability of sufficient funds as provided in Section IX above and the terms and conditions of this Agreement, the Agency will provide financial assistance to the County in the form of reimbursement to the County as herein provided. The financial assistance amount shall be seventy percent (70%) of the County's total allowable costs approved by the Agency, not to exceed the maximum amount of financial assistance approved by the Agency (the "Maximum Annual Financial Assistance Amount") in any fiscal year (i.e., July 1 through June 30) during the term of this Agreement for the County's inspection, investigation and enforcement activities performed hereunder. The Maximum Annual Financial Assistance Amount is subject to adjustment by the Agency in any fiscal year based on the budget and any Amended Fact Sheet approved by the Agency, and the availability of sufficient funds for the inspection, investigation and enforcement activities performed hereunder. In the event that this Agreement is terminated

prior to June 30 in any such fiscal year during the term of this Agreement, then the Maximum Annual Financial Assistance Amount shall be prorated based on the number of days that the Agreement is in effect during said fiscal year subject to the availability of sufficient funds as herein provided.

B. Allowable costs are those costs that i) the Agency determines to be reasonable and necessary for the County to perform its inspection, investigation and enforcement activities required hereunder and as set forth in the Fact Sheet attached hereto as Exhibit A and incorporated herein (the "Fact Sheet"), or as set forth in an amended fact sheet ("Amended Fact Sheet") approved by the Agency, and include costs of salaries and benefits, professional and consultant services, project feasibility and engineering reports, and materials acquired, consumed or expended specifically for said activities; ii) exclude Unallowable Costs set forth in Section X, paragraph C below; iii) shall not exceed the amounts set forth in the Agency approved budget for the fiscal year in which the expenses were incurred during the term of this Agreement; and iv) shall not exceed the Maximum Annual Financial Assistance Amount determined by the Agency. The proposed budget for the fiscal year beginning July 1, 2016 and ending June 30, 2017 is attached hereto as Exhibit B and is incorporated herein (the "FY 2017 Budget"). For the 2018 fiscal year (i.e. July 1, 2017 through June 30, 2018) (the "FY 2018") and each fiscal year thereafter during the term of this Agreement, not less than 90 days prior to the beginning of the respective fiscal year, the County shall submit an Amended Fact Sheet, if applicable, and a proposed budget to the Agency for the Agency's approval. The Agency shall provide the County with written notice of its decision regarding the County's proposed budget and Fact Sheet or Amended Fact Sheet.

C. Costs excluded from reimbursement include i) costs incurred in violation of any term or condition of this Agreement or any applicable federal, state, or local law, ii) costs incurred prior to or after the term of this Agreement; and iii) the unallowable costs set forth in Exhibit C, attached hereto and incorporated herein (collectively, "Unallowable Costs").

D. The County shall submit financial assistance requests on a quarterly basis with supporting documentation together with progress reports on forms provided by the Agency. The

County shall submit its final financial assistance request for each fiscal year not more than 30 days following the end of said fiscal year. The supporting documents shall identify the activities performed and provide a breakdown of the costs, sufficient to demonstrate that the costs for which financial assistance is sought were necessary and reasonable and otherwise allowable costs as defined herein. Financial assistance request documents shall include, but are not limited to, the following:

- 1) An identification of the time period for which the activities/services were performed and the costs were incurred;
- 2) A brief description of the work performed;
- 3) A breakdown of the activities/services performed cross-referenced to tasks set forth in the Fact Sheet or Amended Fact Sheet;
- 4) The names and titles of individuals performing activities/services and the dates and hours worked;
- 5) Copies of invoices;
- 6) A list of expenses and/or costs incurred in connection with the activities/services performed; and
- 7) Such other documentation requested by the Agency to determine whether an expense for which financial assistance is requested is an allowable cost as defined herein.

E. The County shall submit its final request for financial assistance hereunder no later than 30 days following the expiration of the term of this Agreement.

F. The County's failure to submit financial assistance requests, supporting documentation, or quarterly reports in a timely manner may result in delay or denial of financial assistance payments by the Agency.

G. At any time or times prior to final payment under this Agreement, the Agency may cause any request(s) for payment to be reviewed or audited by the Agency or as otherwise herein provided. Each subsequent payment shall be subject to reduction for amounts included in the related request for payment which are found, on the basis of such review or audit, not to constitute allowable costs. Any payment will be reduced for overpayments or increased for underpayments on preceding requests for payment.

#### **XI. SUBCONTRACTS AND CONSULTANTS**

The County will ensure that all contracts and subcontracts that it enters relative to the activities and services provided under this Agreement, and the award of such contracts, shall be subject to the following conditions and limitations:

- a) The County will comply with all applicable procurement laws and regulations;
- b) The County will allow only fair and reasonable profits to be earned by contractors and subcontractors. Factors to be considered in determining a fair and reasonable profit shall include project-related material acquisition costs, labor costs, management costs, contract risks, capital investments, degree of independent development, and cost control and record keeping efforts. The determination of a fair and reasonable profit shall not be based upon the application of a predetermined percentage factor;
- c) The County assumes responsibility for the administration and successful accomplishment of all the services required hereunder. The County also assumes responsibility for the settlement and satisfaction of all contractual and administrative issues arising out of contracts and subcontracts for such work. This responsibility includes, but is not limited to, requests for proposals, selection

of contractors, award of contracts, protest of award, claims, disputes and other procurement matters;

- d) The County will ensure that all such contracts and subcontracts provide the Agency, the Auditor General, the Executive Inspector General, the Attorney General, and their respective officers, officials, employees, authorized representatives and agents the right to inspect and audit any books, papers or other records relating to any financial assistance or services provided hereunder and the expenditure of such funds;
- e) The Parties agree that neither the Agency nor the State of Illinois will be a party to any contract or subcontract, solicitation, or request for proposals; and
- f) The County shall ensure that all contracts and subcontracts are awarded to persons or organizations that:
  - 1) Have adequate financial resources, experience, organization, technical qualification, and facilities for performance of the contract or subcontract, or a firm commitment or arrangement to obtain such;
  - 2) Have staffing sufficient to comply with the completion schedule for the services provided hereunder;
  - 3) Have a demonstrated record of integrity, good judgment, and performance, including any prior performance under contracts with the federal, state, and/or local governments;
  - 4) Have an established financial management system and audit procedure; and

- 5) Conform to civil rights laws, equal employment opportunity laws, and labor law requirements, as well as all other applicable federal and state laws and regulations.

## **XII. INSPECTIONS AND INVESTIGATIONS**

The County shall maintain a formalized record of all inspections, compliance, formal enforcement and Administrative Citation activities. The information recorded shall include: (1) relevant dates; (2) number of inspections; (3) facilities inspected; (4) volume in cubic yards of refuse or waste remediated at open dump sites; (5) the status of all compliance and enforcement activities; and (6) the amount of any penalties, interest or restitution collected or due and owing. The Administrative Citation payment process works in this way. The violator will make out two separate checks: one to the Illinois EPA, Environmental Protection Trust Fund for half of the amount of the fine and one to the delegated partner for the other half of the fine. This will make it possible for each creditor to directly take collection action for a portion due to it. This information shall be made available to the Illinois EPA upon request.

### **A. INSPECTION REPORT FORMS**

Each time an Inspector conducts an inspection or investigation of a solid waste management site, the Inspector shall utilize and complete an inspection report that consists of: (1) an inspection checklist; (2) a narrative; (3) a site sketch or map; (4) photographs documenting site conditions; and (5) any appropriate supporting documents. While conducting inspections and investigations, the Inspector shall take field notes and may utilize a draft inspection checklist in conjunction with field notes. After completing the inspection or investigation, the Inspector shall complete the inspection report within thirty (30) days after the date of the inspection. The Inspector shall possess and carry a camera for the purpose of taking pictures to document site conditions during inspections or investigations.

The original completed report shall be maintained by the Department; one copy shall be forwarded to the Regional Manager; one copy to the owner and one copy to the operator; and one copy shall be forwarded to the Illinois EPA, Bureau of Land, Field Operation Section.<sup>1</sup> Copies of the inspection report shall be forwarded to the Illinois EPA and the owner and operator

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<sup>1</sup> 1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276.

no later than thirty-five (35) days after the date of the inspection or investigation. Inspection report forms and/or inspection checklists shall be supplied to the County by the Illinois EPA. If at any time in the future the Illinois EPA changes an inspection report form, the County shall begin using the new inspection report form immediately upon receiving copies from Illinois EPA.

## **B. INSPECTION SCHEDULE**

Before conducting any independent inspections or investigations pursuant to the Delegation Agreement, the Inspector must first be certified by Illinois EPA in accordance with Section IV.A above. Before conducting an inspection or investigation of an Illinois EPA permitted site, the Inspector shall review and become familiar with applicable statutes, regulations, variances, adjusted standards and Illinois EPA permits in order to become aware of permit conditions, obligations and exceptions that may apply to the site.

The County is responsible for inspecting the sites within its jurisdiction on a schedule under its scope of work in the Fact Sheet or Amended Facts Sheet. The County and Illinois EPA understand that it will be necessary for the County to conduct impromptu inspections or investigations of Illinois EPA permitted sites without having had time to notify the Illinois EPA prior to such inspection or investigations, but this is to be the exception rather than the usual course of operation. Inspections and investigations of open dump sites will be on an as-needed basis. Additionally, the County shall conduct inspections and investigations of any site subject to the Delegation Agreement and EMS upon the request of Illinois EPA and upon citizen complaints alleging violations of the Act and regulations.

The County shall forward to Illinois EPA copies of all written communications the County issues or receives pursuant to activities engaged in by reason of the Delegation Agreement or EMS.

From time to time, Illinois EPA engages in inspections and investigations with a view toward possible criminal enforcement actions. It is understood and agreed to by the County that any facts, data, documents, photographs, reports or other information pertaining to such inspections and investigations are outside the scope of the Delegation Agreement and EMS. Nothing herein shall limit Illinois EPA's legal authority to work with, and cooperate with, the



State's Attorney and law enforcement agencies in the County regarding any inspections or investigations pursuant to possible criminal actions.

Unless otherwise specified, the Regional Manager<sup>2</sup>, Field Operations Section, Bureau of Land, shall be Illinois EPA's representative for the operational aspects of the Delegation Agreement and EMS, and the Director of the Department shall be the County's representative.

### **XIII. EFFECTIVE DATE - TERMINATION - AMENDMENT – RENEWAL**

A. The Delegation Agreement shall commence on July 1, 2016 and shall remain in effect until **June 30, 2021** unless terminated earlier by either party giving thirty (30) days prior written notice of termination to the other party. The Delegation Agreement and EMS may be so terminated with or without cause. Illinois EPA may, from time to time, review and comment on the County's inspection and enforcement program. Amendment of the Delegation Agreement and EMS may be made at the sole discretion of Illinois EPA upon written notice to the County.

B. The Parties may renew the Delegation Agreement for additional five year terms by mutual written consent.

### **XIV. RECOVERY OF FUNDS AND OTHER REMEDIES**

In the event this Agreement is breached by the County, the Agency may, in addition to any other remedies provided in law and/or equity, revoke this Agreement and take such other action as the Agency is authorized to take. If the Agency determines funds are being misspent or improperly held by the County, then the Agency or the Illinois Attorney General may recover those funds and take any other action authorized by law. These remedies shall not be construed as limiting the Agency's right to terminate this Agreement with or without cause as provided in Section XIII above.

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<sup>2</sup> The Illinois EPA, Bureau of Land, has divided the State of Illinois into seven regions for administrative purposes. The Illinois EPA has a regional office in each region. The Bureau of Land has designated a Regional Manager for each regional office. The responsibilities of the Regional Manager include providing advice and assistance to delegated counties. .

**XV. NOTICES**

Any notice required under this Agreement shall be in writing and shall be deemed properly given when personally delivered, mailed by certified mail, return receipt requested, or sent by first class regular mail, to the addresses below. Notice of termination of the Agreement shall be sent by certified mail, return receipt requested, or by personal delivery, to the address below. Either party may change its address for receiving notices by giving notice of such change in compliance with the terms of this Section. Notice as provided herein does not waive service of summons.

**For the Agency:**

Manager, Division of Land Pollution Control  
Bureau of Land #24  
Illinois Environmental Protection Agency  
1021 N. Grand Ave. East  
Springfield, Illinois 62794-9276

**For the County:**

Lake County Health Department and Community Health Center  
Solid Waste Unit/Environmental Engineering Section  
Attention: Mr. Michael Kuhn, Solid Waste Unit Coordinator  
500 W. Winchester Road, Suite 102  
Libertyville, IL 60048

**XVI. NO THIRD PARTY BENEFICIARIES**

Notwithstanding any provision herein to the contrary, this Agreement is entered into solely for the benefit of the contracting Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement or to acknowledge, establish, or impose and legal duty to any third party.

**XVII. COMPLIANCE WITH APPLICABLE LAWS**

The Parties shall at all times observe and comply with all applicable federal and state laws, regulations and codes which may in any manner affect the performance of this Agreement.

**XVIII. DISCLAIMER OF RELATIONSHIP**

A. Nothing contained in this Agreement, nor any act of the Agency or the County, shall be deemed or construed by the other party or by any third party, to create any relationship of a principal, agent, limited or general partnership, joint venture, or any association or relationship involving the Agency and the County.

B. The employees of the County and the Department shall remain employees of the County, and are therefore not entitled to any benefits provided to employees of the State by virtue of this Agreement and/or any services or work performed under this Agreement.

**XIX. MISCELLANEOUS**

A. This Agreement sets forth the entire understanding of the Parties relative to the subject matter hereof and supersedes all prior agreements, express or implied, oral or written.

B. Titles and headings to sections herein are inserted for reference only and are not intended to be a part of, or affect the meaning or interpretation of, this Agreement.

C. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Any dispute arising out of this Agreement shall be adjudicated in the Illinois Court of Claims and shall be governed by the Court of Claims Act (705 ILCS 505/1 *et seq.*).

D. If any provision of this Delegation Agreement shall be held unconstitutional or otherwise void by a court of proper venue and jurisdiction, all other provisions of this Delegation Agreement shall remain in full force and effect.

E. If a party waives a breach of any provision of this Agreement by the other party, that waiver shall not operate or be construed as a waiver of any subsequent breach by said party or prevent the non-breaching party from enforcing such provisions.

F. This Agreement may be executed in several counterparts each of which shall be an original and all of which shall constitute one and the same instrument.

G. The Parties acknowledge that this Agreement was freely negotiated by each of the Parties hereto, each of whom was represented by separate counsel; accordingly, this Agreement shall be construed according to the fair meaning of its terms, and not against any Party.

H. Each of the undersigned signing as an officer, representative, or agent on behalf of the respective Party to this Agreement warrants that he or she holds such capacity as is specified beneath his or her name and further warrants that he or she is authorized to execute and effectuate this Agreement, and to bind the Party on whose behalf he or she is signing this Agreement to the terms and conditions herein, and that he or she does so voluntarily and in his or her official capacity.

SIGNATURE PAGE TO FOLLOW

THE TERMS AND CONDITIONS OF THIS DELEGATION AGREEMENT ARE HEREBY  
ACCEPTED AND AGREED TO:

**ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY**

**LAKE COUNTY**

By: \_\_\_\_\_  
Lisa Bonnett, Director

By: \_\_\_\_\_  
Signature

Date: \_\_\_\_\_

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Signature

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ER