

INTERGOVERNMENTAL AGREEMENT
between the
LAKE COUNTY STORMWATER MANAGEMENT COMMISSION
and the
COUNTY of McHENRY

This Agreement is made and entered into between the LAKE COUNTY STORMWATER MANAGEMENT COMMISSION, hereinafter referred to as "SMC", and the COUNTY OF McHENRY, Illinois, by and through its Department of Planning and Development, hereinafter referred to as "DEPARTMENT".

WHEREAS, the County of Lake has enacted a Watershed Development Ordinance ("WDO") which is administered and enforced by the SMC, and the County of McHenry has enacted the Stormwater Management Ordinance ("SMO") which is administered and enforced by the DEPARTMENT, all pursuant to statutory authorization in the Counties Code at 55 ILCS 5/5-1062; and

WHEREAS, said ordinances each provide the minimum stormwater management development regulations and standards applicable within the boundaries of the respective Illinois counties; and

WHEREAS, along the common border between the County of Lake and the County of McHenry, certain communities have corporate territory which lies within Lake County, and is subject to the Lake County WDO and SMC jurisdiction, and other corporate territory which lies within McHenry County, and is subject to the McHenry County SMO and DEPARTMENT jurisdiction ("split jurisdiction communities"). That split jurisdiction situation creates inconsistencies within those communities' corporate boundaries; and

WHEREAS, Section 17.60.100.B.1.c. of the McHenry County Stormwater Management Ordinance provides that municipalities located in multiple counties bordering the County of Lake may adopt and enforce the Lake County Watershed Development Ordinance, as amended from time to time; and

WHEREAS, the WDO contains provisions relating to real property defined as "isolated wetlands", and a certification process for municipal government(s) that elect to administer and enforce the WDO and/or the WDO "isolated wetlands" provisions, using municipal representatives; and

WHEREAS, the WDO contains provisions for municipal government(s) to petition to elect to administer its provisions and become a "Certified Community", as that term is used in the WDO; and

WHEREAS, the municipal government(s) that elect to administer and enforce the WDO, including the isolated wetlands provisions are considered a "fully Certified Community" and municipal government(s) that elect to administer and enforce the WDO excluding the isolated wetlands provisions are considered a "partially Certified Community"; and

WHEREAS, the DEPARTMENT has determined that, given the similarity of the county ordinances involved, providing a mechanism for consistent administration and enforcement of stormwater regulations within those split jurisdiction communities in McHenry County is desirable and appropriate; and

WHEREAS, the SMC and the DEPARTMENT are governmental agencies of the State of Illinois vested with the responsibility and authority to enforce and uphold stormwater and related site development ordinances and codes in their respective jurisdictions; and

WHEREAS, the SMC and the DEPARTMENT are authorized by the terms and provisions of the Intergovernmental Cooperation Act, 5 ILCS 220/5, to enter into intergovernmental agreements, ventures

and undertakings to perform jointly any governmental purpose or undertaking either of them could do singularly; and

WHEREAS, the DEPARTMENT is desirous of entering an Intergovernmental Agreement with the SMC to provide the following agreed levels of Lake County WDO administration and enforcement within the subject communities within the boundaries of the County of McHenry, and the SMC can provide said services and has determined that any increased workload resulting from this Agreement represents a minor amount of effort and can be accommodated within SMC's regulatory services program.

NOW, THEREFORE, in consideration of the foregoing clauses, which are fully incorporated herein as if set for the below, and the covenants contained herein, the parties hereby agree and covenant as follows:

1. Fully Certified Communities. For the split jurisdiction communities which are identified in Exhibit A, attached hereto and incorporated herein by this reference, and which are a fully Certified Community and those split jurisdiction communities which may hereafter become a fully Certified Community:
 - A. The County of McHenry, by and through its DEPARTMENT, agrees, that the provisions of the Lake County WDO, as amended October 13, 2020 and as may hereafter be lawfully amended from time to time, shall apply, govern, and be in full force and effect as the minimum stormwater regulations, pursuant to 55 ILCS 5/5-1062, in the McHenry County territory of said fully Certified Community.
 - B. That all court enforcement proceedings shall be prosecuted, when necessary, by that community's attorney or corporation counsel.
 - C. The SMC agrees to provide technical assistance to the said split jurisdiction community authorities to implement and interpret the WDO, and to provide fee-based (Army Corps) Jurisdictional Determinations under the then current SMC fee schedule, and such other or different fee-based assistance or services as may be prescribed by the WDO or requested by an authorized community officer or agent.
2. Partially Certified Communities. For the split jurisdiction communities which are identified in Exhibit A and which are a partially Certified Community and those split jurisdiction communities which may hereafter become a partially Certified Community:
 - A. The County of McHenry, by and through its DEPARTMENT, agrees, that the provisions of the Lake County WDO, as amended October 13, 2020 and as may hereafter be lawfully amended from time to time, shall apply, govern, and be in full force and effect as the minimum stormwater regulations, pursuant to 55 ILCS 5/5-1062, in the McHenry County territory of said partially Certified Community.
 - B. The County of McHenry, by and through its DEPARTMENT agrees that, and hereby grants authorization to, SMC personnel to inspect real property as allowed by law, and otherwise administer the Lake County WDO (including, but not limited to, the isolated wetlands provisions and non-delegated provisions) in the McHenry County territory of said partially Certified Community.
 - C. That all court enforcement proceedings for matters which the community is certified shall be prosecuted, when necessary, by that community's attorney or corporation counsel. That all court enforcement proceedings for matters which the community is not certified (including, but not limited to, the isolated wetlands provisions and non-delegated

provisions) shall be prosecuted, when necessary by SMC, as coordinated and agreed with and through the prosecutor having jurisdiction.

- D. In the McHenry County territory of partially Certified Communities, the SMC agrees to provide full wetland office and field services, (based out of the SMC offices in Libertyville), to be responsible for processing, issuance, inspection(s), and other services, relating to isolated wetland permitting or determinations under the then current SMC fee schedule. Said SMC wetland services include, but are not limited to, (Army Corps) Jurisdictional Determinations, Letter(s) of No Impact (LONI), boundary verifications, impact determinations, and related office and field services.
- E. For all services referenced in subparagraph 2.D. above, the SMC agrees to provide a monthly report to the DEPARTMENT (and the subject community), which includes permits issued, inspections conducted, revenues received, and such other data or information as the parties mutually agree be provided.

3. **Non-Certified Communities.** For the split jurisdiction communities which are identified in Exhibit A and which are not a Certified Community or are a Non-Certified Community, and those split jurisdiction communities which may lose their Certified Community status:

- A. The parties agree that, in the Lake County territory of said Non-Certified Community, the Lake County WDO is, and will continue to be, applicable, and be administered and enforced by the SMC.
- B. The parties agree that, in the McHenry County territory of said Non-Certified Community, the McHenry County SMO is, and will continue to be, applicable, and be administered and enforced by the DEPARTMENT.
- C. Should a Certified Community's status change, all active permits and violations will be coordinated between McHenry and Lake counties to determine which entity will have jurisdiction.

4. **Condition Precedent.** Implementation of Paragraphs 1 and 2 of this Agreement in any such fully Certified Community or partially Certified Community is contingent upon the corporate authorities of the subject said community lawfully adopting by reference or enacting the Lake County WDO within that said jurisdiction.

5. **Notices.** The Chief Engineer of the SMC, at the SMC offices in Libertyville, shall be the contact person for receiving notices, inquiries, complaints, or other communications under this Agreement. The Director of the DEPARTMENT, at the DEPARTMENT's offices in Woodstock, shall be the contact person for receiving notices, inquiries, complaints, or other communications under this Agreement.

6. **Indemnification and Hold Harmless.** The SMC and the County of McHenry, by and through its DEPARTMENT, agree to indemnify, hold harmless, and defend the other against any and all claims arising out of, in connection with, or as a result of the acts or omissions of itself, or its authorized agents, employees, or officers under this Agreement as allowed by law.

7. **Term and Termination.** This Agreement shall commence upon the date of execution by the parties hereto for a period of one (1) year. From the anniversary date hereof, this Agreement shall automatically renew thereafter and remain in full force and effect for nine (9) successive one (1) year term(s), without further action by either party, until terminated by either party by written notice as hereafter provided. This Agreement may be terminated by either party, with

or without cause, upon thirty (30) days written notice to the other party. In the event of termination of this Agreement, any outstanding fees owed for services provided during the term of this Agreement shall remain payable to SMC.

8. Copies. A copy of this fully executed Agreement shall be provided to the corporate authority of each community identified in Exhibit A hereto.
9. Counterparts. This Agreement may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute one and the same Agreement. This Agreement shall be in full force and effect from the date of execution by the parties hereto.
10. Non-Appropriation of Funds. This Agreement is made subject to available budgetary appropriations and shall not create any obligation on behalf of the County of McHenry in excess of such appropriations. In the event that no funds or insufficient funds are appropriated and budgeted, this Agreement shall terminate without penalty or expense to the County of McHenry of any kind whatsoever thirty (30) days after written notification of termination from the County of McHenry. In any circumstance where appropriated funds have been exhausted, where funds are not appropriated, but McHenry County has not terminated this IGA as herein provided, SMC may, at SMC's sole discretion, discontinue or suspend any further SMC services provided hereunder during such period of funds unavailability.

IN WITNESS WHEREOF the Lake County Stormwater Management Commission, by approval of the Board of Commissioners, caused this Agreement to be signed by its Chairman and attested by its Executive Director, and the County of McHenry, by a resolution/ordinance duly adopted by its County Board, caused this Agreement to be signed by its Chairman and attested to by its County Clerk, all on the day and year hereinafter written.

Dated this _____ day of _____, 2022.

LAKE COUNTY STORMWATER
MANAGEMENT COMMISSION

By: _____
Chairman

Attest:

Executive Director

COUNTY OF McHENRY

By: _____
Chairman

Attest:

County Clerk

Exhibit A

Joint Lake and McHenry County Communities

Village of Barrington Hills
Village of Fox Lake
Village of Fox River Grove
Village of Island Lake
Village of Lakemoor
Village of Port Barrington