

**INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE VILLAGE OF
ORLAND PARK AND THE METROPOLITAN WATER RECLAMATION DISTRICT
OF GREATER CHICAGO FOR AUTHORIZATION TO ADMINISTER THE
WATERSHED MANAGEMENT ORDINANCE**

THIS INTERGOVERNMENTAL AGREEMENT (hereinafter the “Agreement”) is entered into this April 21, 2014, by and between the Metropolitan Water Reclamation District of Greater Chicago, a municipal corporation, organized and existing under the laws of the State of Illinois (hereinafter the “District”) and the Village of Orland Park, a municipal corporation and home rule unit of government organized and existing under Article VII, Section (6 for home rule / 7 for non-home rule) of the 1970 Constitution of the State of Illinois (hereinafter the “Municipality”).

WITNESSETH:

WHEREAS, on November 17, 2004, the Illinois General Assembly passed Public Act 093-1049 (hereinafter the “Act”); and

WHEREAS, the Act declares that stormwater management in Cook County shall be under the general supervision of the District; and

WHEREAS, the Act specifically authorizes the District to prescribe by ordinance reasonable rules and regulations for floodplain and stormwater management and for governing the location, width, course, and release rate of all stormwater runoff channels, streams, and basins in Cook County; and

WHEREAS, the Watershed Management Ordinance (hereinafter the “WMO”), attached hereto as Exhibit 1, was adopted by the District’s Board of Commissioners on October 3, 2013 and became effective on May 1, 2014; and

WHEREAS, the Municipality is located in its entirety or partially within the boundaries of Cook County; and

WHEREAS, pursuant to Article 14 of the WMO, the District may authorize municipalities to locally administer certain provisions of the WMO; and

WHEREAS, on April 21, 2014, the Municipality submitted a letter of intent to the District in which the Municipality expressed its desire to administer the WMO within the Municipality’s corporate limits as an authorized municipality in conformance with the provisions of the WMO; and

WHEREAS, pursuant to the Illinois Municipal Code, 65 ILCS 5/1 *et seq.*, the Municipality has the authority to adopt the WMO by reference; and

WHEREAS, on April 21, 2014, the Municipality's Board of Trustees adopted the WMO by reference; and

WHEREAS, the WMO may be administered more effectively with the Municipality and District cooperating and using their joint efforts and resources most efficiently; and

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, and Section 10 of Article VII of the Illinois Constitution, allow and encourage intergovernmental cooperation; and

WHEREAS, on _____, the District's Board of Commissioners authorized the District to enter into an intergovernmental agreement with the Municipality; and

WHEREAS, on April 21, 2014, the Municipality's Board of Trustees authorized the Municipality to enter into an intergovernmental agreement with the District; and

NOW THEREFORE, in consideration of the matters set forth, the mutual covenants and agreements contained in this agreement and other good and valuable consideration, the Municipality and District hereby agree as follows:

Article 1. Incorporation of Recitals. The recitals set forth above are incorporated herein by reference and made a part hereof.

Article 2. General Responsibilities.

1. The Municipality shall administer the WMO within its corporate limits in conformance with the provisions of the WMO.
2. The District shall provide oversight of the Municipality's administration of the WMO.
3. Both the Municipality and the District shall comply with the provisions of the WMO.
4. The Municipality shall participate actively in the regular phase of the National Flood Insurance Program. The Municipality shall notify the District promptly if the Municipality is not in full compliance with the National Flood Insurance Program.
5. The Municipality shall appoint an Enforcement Officer (hereinafter "Enforcement Officer") and provide the District with the name, address, telephone number, and email address of the appointed Enforcement Officer. The Municipality shall promptly notify the

District in any change of Enforcement Officer by the manner provided in Article 25 below.

6. The Municipality shall either employ or retain adequate staff for all of the following positions:
 - a. An Enforcement Officer;
 - b. Professional Engineer(s) licensed by the State of Illinois (hereinafter "Professional Engineer"); and
 - c. Wetland Specialist(s).
7. The District shall promptly notify the Municipality of any amendments to the WMO by the manner provided in Article 25 below. The Municipality shall adopt all amendments to the WMO by reference.

Article 3. Watershed Management Permits.

1. The Municipality shall review watershed management permit applications for development activities enumerated in Section 201.1 of the WMO, which are proposed within the Municipality's corporate limits. The Municipality shall use the watershed management permit applications, forms, numbering conventions, and schedules supplied by the District. The Municipality shall contact the District's Permit Unit to obtain a permit number for all new permits.
2. The Municipality shall not review a watershed management permit application for any development activity enumerated in Section 201.2 of the WMO. The Municipality shall forward any watershed management permit applications containing a proposed development activity enumerated in Section 201.2 to the District for the District's review and approval.
3. The Municipality shall not issue a watershed management permit for development activities within a combined sewer area as delineated on Exhibit 2.
4. The Municipality shall not issue a watershed management permit to itself. The Municipality shall obtain a watershed management permit from the District for any of its own projects that involve development activities enumerated in Sections 201.1 and 201.2 of the WMO.
5. The Municipality may establish a schedule of permit fees for watershed management permits in accordance with the provisions of the WMO, which may be amended from time

to time. The Municipality shall notify the District promptly by letter of any change in established permit fees.

6. The Municipality shall timely review all watershed management permit applications and respond within:
 - a. Fifteen working days of an initial submittal for developments not involving flood protection areas;
 - b. Thirty working days of an initial submittal for developments involving flood protection areas; and
 - c. Ten working days of a resubmittal.
7. The Municipality shall issue watershed management permits for development activities enumerated in Section 201.1 of the WMO proposed within the District's corporate limits, which are in conformance with the terms and conditions of the WMO.
8. The Municipality shall have a Professional Engineer review all engineering information and plans prepared for the development by a Professional Engineer.
9. The Municipality shall conduct a pre-application meeting at the request of an applicant for a watershed management permit. For any unresolved questions from the pre-application meeting, the District shall make its best efforts to be available for an additional joint meeting to resolve such questions.
10. The Municipality shall not issue watershed management permits for proposed developments that do not comply with the provisions of the WMO.
11. The Municipality shall not issue any variance to the WMO. All petitions for variance shall be submitted to the District in accordance with the requirements of the WMO.
12. The Municipality shall not hear any appeals. All petitions for appeal shall be submitted to the District in accordance with the requirements of the WMO.
13. Upon request, the Municipality shall reasonably cooperate with the District on administrative proceedings related to variances, appeals, and violations of the WMO. The Municipality's reasonable cooperation shall include assistance in the form of supporting documents, information, and, if necessary, testimony.

Article 4. Records.

1. The Municipality shall maintain all of the following records electronically for developments within the Municipality's corporate limits:
 - a. Watershed management permits issued within the Municipality;

- b. Record drawings;
 - c. Structure improvement data;
 - d. Wetland mitigation bank credits;
 - e. Elevation certificates;
 - f. Floodproofing certificates;
 - g. Base flood data and base flood maps; and
 - h. Letters of Map Changes, including but not limited to, Conditional Letters of Map Revision, Letters of Map Revision, and Letters of Map Amendment.
2. The Municipality shall transmit a copy of all records specified in Article 4, Section 1 of this Agreement to the Permit Unit of the District within ten business days of receipt by the Municipality.
3. The District may conduct inspections to verify that the Municipality is properly maintaining records as required by this Article.

Article 5. Inspections.

1. The Municipality shall inspect construction related to any development activity within the Municipality that requires a watershed management permit. The Municipality shall ensure that any development within its corporate limits is constructed in conformance with the requirements of both the WMO and any issued watershed management permit.
2. The District may inspect any development subject to a watershed management permit within the Municipality to ensure compliance with both the watershed management permit and the WMO.
3. Any inspections performed pursuant to this Agreement shall be conducted in accordance with the WMO and all other applicable local, state, and federal laws.

Article 6. Training. The Municipality shall participate in training as conducted by the District or its designee.

Article 7. Stop-Work Orders.

1. The Municipality is authorized to issue an order requiring the suspension of construction of a development that is subject to the WMO.
2. A stop-work order shall:
 - a. Be in writing;

- b. Indicate the reason for its issuance; and
 - c. Order the action, if any, necessary to resolve the circumstances requiring the stop-work order.
3. One copy of the stop-work order shall be posted on the property in a conspicuous location and one copy shall be delivered by Registered Mail, Return Receipt Requested, or personal delivery to the permittee/co-permittee, and/or to the property owner or his/her agent. Additionally, one copy of the stop-work order shall be provided to the District within 24 hours of its issuance pursuant to the notice procedures set forth in Article 26 below.
4. The stop-work order shall state the conditions under which the construction of the subject development may be resumed.
5. The Municipality shall issue a stop-work order if:
 - a. A development is proceeding in a manner which creates imminent hazard of severe harm to persons, property, or the environment on or off the site;
 - b. A development is occurring in violation of a requirement of the WMO, or of a watershed management permit, and the Municipality has determined it is necessary to halt ongoing development activity to avoid continuing or additional violations and where significant costs and effort would be incurred should the offending development activity be allowed to continue; or
 - c. A development for which a watershed management permit is required is proceeding without issuance of a watershed management permit. In such instance, the stop-work order shall state that the order terminates when the required watershed management permit is properly obtained.
6. The Municipality shall not hear any appeals of its stop-work orders. Such appeals may only be heard by the District in accordance with the provisions of the WMO.

Article 8. Violations.

1. The Municipality shall investigate complaints of violation of either the WMO or a watershed management permit.
2. The Municipality shall notify the District within 72 hours of any suspected violation of either the WMO or a watershed management permit within the Municipality.
3. The District shall solely conduct all administrative proceedings to remedy violations.

Article 9. Audits; Deficiencies and Cure.

1. The District may audit the Municipality periodically to ensure proper administration of the WMO. During an audit, the District may:
 - a. Inspect and copy records kept by the Municipality related to the Municipality's administration of the WMO;
 - b. Inspect and copy watershed management permits issued by the Municipality;
 - c. Meet with staff of the Municipality, which may include the Enforcement Officer, Professional Engineer, and Wetland Specialist;
 - d. Conduct field inspections of developments permitted by the Municipality;
 - e. Request and copy financial records of the Municipality related to the Municipality's administration of the WMO;
 - f. Verify that the Municipality complies with all requirements listed in Article 14, Section 1402.2 of the WMO;
 - g. Verify that the Municipality does not violate any provision listed in Article 14, Section 1402.3 of the WMO; and
 - h. Verify compliance with this Agreement.
2. The District shall promptly notify the Municipality in writing of any deficiency with respect to any provision of this Agreement or the WMO, which the Municipality must remedy within thirty (30) calendar days. In cases where a deficiency cannot be remedied within thirty (30) calendar days, the District may grant a time extension to the Municipality.
3. If the Municipality does not remedy the deficiency as required by Article 9, Section 2 of this Agreement, the District may either terminate or suspend this Agreement in accordance with Article 11 of this Agreement.

Article 10. Termination by the Municipality. The Municipality may, at its option, and upon giving a sixty (60) day written notice to the District in the manner provided in Article 26 below, terminate this Agreement.

Article 11. Suspension or Termination by the District.

1. The District may terminate this agreement, after providing written notice of any deficiency and a thirty (30) calendar day opportunity to cure in accordance with Article 9, Section 2 of this Agreement, for any of the following reasons:
 - a. Failure to comply with any provision of Section 1402.2 of the WMO;

- b. Violation of any provision of Section 1402.3 of the WMO; or
 - c. Breach of this Agreement;
2. The District may also terminate this Agreement if the District's legal authority to delegate the administration of the WMO is revoked by statute, ordinance, or court order;
3. The District shall provide written notice to the Municipality if the Municipality does not meet all requirements of either this Agreement or the WMO, to enable the Municipality to correct such deficiencies within thirty (30) calendar days. The District may terminate this Agreement and the Municipality's status as an Authorized Municipality if the Municipality does not cure such deficiencies within thirty (30) calendar days.
4. If the Municipality does not meet all requirements of either this Agreement or the WMO, then, at the discretion of the District, the District may at any time suspend the Municipality's status as an Authorized Municipality, including its authority to issue watershed management permits. Such suspension shall specify all deficiencies necessary to be remedied.
5. If the Municipality's status as an Authorized Municipality is either suspended or terminated, the Municipality may petition the District's Director of Engineering in the manner prescribed by the WMO for reauthorization after all deficiencies are remedied.
6. Except as provided in Article 15, suspension or termination of the Municipality's status as an Authorized Municipality is the District's sole remedy against the Municipality if the Municipality does not meet all of the requirements of this Agreement or the WMO.

Article 12. Duration. This Agreement becomes effective on the date that the last signature is affixed hereto, which shall be the date inserted on the first page hereof. Subject to the terms and conditions of Articles 10 and 11 above, this Agreement shall remain in full force and effect for perpetuity.

Article 13. Non-Assignment. Neither party may assign its rights hereunder without the written consent of the other party.

Article 14. Waiver of Personal Liability. No official, employee, or agent of either party to this Agreement shall be charged personally by the other party with any liability or expenses of defense incurred as a result of the exercise of any rights, privileges, or authority granted herein, nor shall he or she be held personally liable under any term or provision of this Agreement, or because of a party's execution or attempted execution of this Agreement, or because of any breach of this Agreement.

Article 15. Indemnification. The Municipality shall defend, indemnify, and hold harmless the District, its commissioners, officers, employees, and other agents (“District Party”) from liabilities of every kind, including losses, damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys’ fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which are asserted by any individual, private entity, or public entity against the District Party and arise out of, or are in any way related to any authority, duty, or obligation bestowed on the Municipality pursuant to this Agreement and/or the WMO; provided, however, that this indemnity is not, and will not be construed to be, a waiver by the Municipality of any immunity from tort liability to which the Municipality is entitled by law.

Article 16. Covenants, Representations, and Warranties of the Municipality. The Municipality covenants, represents, and warrants as follows:

- (1) The Municipality participates in the regular phase of the National Flood Insurance Program and is in full compliance with the program;
- (2) The Municipality has legal authority to perform all responsibilities of an authorized municipality required by the WMO and this Agreement;
- (3) The Municipality has legal authority to adopt the WMO and has adopted the WMO, including all amendments, by reference;
- (4) The Municipality has full authority to execute, deliver, and perform or cause to be performed this Agreement;
- (5) The individuals signing this Agreement and all other documents executed on behalf of the Municipality are duly authorized to sign same on behalf of and to bind the Municipality;
- (6) No conflict of interest exists for any engineer employed or retained by the Municipality to perform work or provide services related to, or arising out of, the Municipality’s administration of the WMO.
- (7) The execution and delivery of this Agreement, consummation of the transactions provided for herein, and the fulfillment of the terms hereof will not result in any breach of any of the terms or provisions of or constitute a default under any agreement of the Municipality or any instrument to which the Municipality is bound or any judgment, decree, or order of any court or governmental body or any applicable law, rule, or regulation.

Article 17. Covenants, Representations, and Warranties of the District. The District covenants, represents, and warrants as follows:

- (1) The District has full authority to execute, deliver, and perform or cause to be performed this Agreement;
- (2) The individuals signing this Agreement and all other documents executed on behalf of the District are duly authorized to sign same on behalf of and to bind the District;
- (3) The execution and delivery of this Agreement, consummation of the transactions provided for herein, and the fulfillment of the terms hereof will not result in any breach of any of the terms or provisions of or constitute a default under any agreement of the District or any instrument to which the District is bound or any judgment, decree, or order of any court or governmental body or any applicable law, rule, or regulation.

Article 18. Disclaimers. This Agreement is not intended, nor shall it be construed, to confer any rights, privileges, or authority not permitted by Illinois law. This Agreement is solely for the benefit of the District and the Municipality. Nothing in this Agreement shall be construed to establish a contractual relationship between either the District or the Municipality and any other party. No claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against the District or the Municipality.

Article 19. Waivers. Whenever a party to this Agreement by proper authority waives the other party's performance in any respect or waives a requirement or condition to performance, the waiver so granted, whether express or implied, shall only apply to the particular instance and shall not be deemed a waiver for subsequent instances of the performance, requirement, or condition. No such waiver shall be construed as a modification of this Agreement regardless of the number of times the performance, requirement, or condition may have been waived.

Article 20. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other provisions of this Agreement, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision has never been contained herein. The remaining provisions will remain in full force and will not be affected by the invalid, illegal, or unenforceable provision or by its severance. In lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as part of this Agreement a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

Article 21. Deemed Inclusion. Provisions required (as of the effective date) by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon

application by either party, this Agreement will be amended to make the insertions. However, in no event will the failure to insert such provisions before or after this Agreement is signed prevent its enforcement.

Article 22. Entire Agreement. This Agreement, and any exhibits or riders attached hereto, shall constitute the entire agreement between the parties. No other warranties, inducements, considerations, promises, or interpretations shall be implied or impressed upon this Agreement that are not expressly set forth herein.

Article 23. Amendments. This Agreement shall not be amended unless it is done so in writing and signed by the authorized representatives of both parties.

Article 24. References to Documents. All references in this Agreement to any exhibit or document shall be deemed to include all supplements and/or authorized amendments to any such exhibits or documents to which both parties hereto are privy.

Article 25. Judicial and Administrative Remedies. The parties agree that this Agreement and any subsequent Amendment shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois in all respects, including matters of construction, validity, and performance. The parties further agree that the proper venue to resolve any dispute which may arise out of this Agreement is the appropriate Court of competent jurisdiction located in Cook County, Illinois.

This Agreement shall not be construed against a party by reason of who prepared it. Each party agrees to provide a certified copy of the ordinance, bylaw, or other authority to evidence the reasonable satisfaction of the other party that the person signing this Agreement for such party is authorized to do so and that this Agreement is a valid and binding obligation of such party.

The rights and remedies of the District or the Municipality shall be cumulative, and election by the District or the Municipality of any single remedy shall not constitute a waiver of any other remedy that such party may pursue under this Agreement.

Article 26. Notices. Unless otherwise stated in this Agreement, any and all notices given in connection with this Agreement shall be deemed adequately given only if in writing and addressed to the party for whom such notices are intended at the address set forth below. All notices shall be sent by personal delivery, UPS, Fed Ex or other overnight messenger service, first class registered or certified mail, postage prepaid, return receipt requested, or by

facsimile. A written notice shall be deemed to have been given to the recipient party on the earlier of (a) the date it is hand-delivered to the address required by this Agreement; (b) with respect to notices sent by mail, two days (excluding Sundays and federal holidays) following the date it is properly addressed and placed in the U.S. Mail, with proper postage prepaid; or (c) with respect to notices sent by facsimile, on the date sent, if sent to the facsimile number(s) set forth below and upon proof of delivery as evidenced by the sending fax machine. The name of this Agreement i.e., "INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE VILLAGE OF ORLAND PARK AND THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO FOR AUTHORIZATION TO ADMINISTER THE WATERSHED MANAGEMENT ORDINANCE" must be prominently featured in the heading of all notices sent hereunder.

Any and all notices referred to in this Agreement, or that either party desires to give to the other, shall be addressed as set forth in Article 27, unless otherwise specified and agreed to by the parties:

Article 27. Representatives. Immediately upon execution of this Agreement, the following individuals will represent the parties as a primary contact and receive notice in all matters under this Agreement.

For the District:

Director of Engineering
Metropolitan Water Reclamation District
of Greater Chicago
100 East Erie Street
Chicago, Illinois 60611
Phone: (312) 751-3169
FAX: (312) 751-5681

For the Municipality:

Kurt Corrigan
14700 Ravinia Avenue
Orland Park, Illinois 60462
Phone: (708) 403-5300
FAX: (708) 403-6124

Each party agrees to promptly notify the other party of any change in its designated representative, which notice shall include the name, address, telephone number and fax number of the representative for such party for the purpose hereof.

IN WITNESS WHEREOF, the Metropolitan Water Reclamation District of Greater Chicago and the Village of Orland Park, the parties hereto, have each caused this Agreement to be executed as of the date first above written by their duly authorized officers, duly attested and their seals hereunto affixed.

IN WITNESS WHEREOF, the Municipality has executed this Agreement on the 21st day of April , 2014.

VILLAGE OF ORLAND PARK

BY: _____
Daniel J. McLaughlin, Village President

ATTEST:

John C. Mehalek, Village Clerk

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

Chairman of the Committee on Stormwater Management

Executive Director

ATTEST:

Clerk

Date

APPROVED AS TO ENGINEERING, OPERATIONS, AND TECHNICAL MATTERS:

Engineer of Stormwater Management

Date

Assistant Director of Engineering

Date

Director of Engineering

Date

Director of Maintenance and Operations

Date

Director of Monitoring and Research

Date

APPROVED AS TO FORM AND LEGALITY:

Head Assistant Attorney

Date

General Counsel

Date