

INTERGOVERNMENTAL AGREEMENT BETWEEN
THE VILLAGE OF LAKE BARRINGTON, THE VILLAGE OF WAUCONDA
AND THE TOWNSHIP OF CUBA RELATIVE TO FIDDLE CREEK

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement"), made and entered into this 17th day of December, 2004, pursuant to authority of the Illinois Constitution and State Statutes, by and between the Village of Wauconda, an Illinois Municipal Corporation (hereinafter referred to as "Wauconda"), the Village of Lake Barrington, an Illinois Municipal Corporation (hereinafter referred to as "Lake Barrington"), and the Township of Cuba (hereinafter referred to as the "Township"):

WITNESSETH:

WHEREAS, Article VII, Section 10, of the Constitution of the State of Illinois of 1970, provides that units of local government may contract or otherwise associate among themselves to exercise, combine, or transfer any power or function in any manner not prohibited by law or by ordinance and may use their credit, revenues, and other resources to pay costs related to intergovernmental activities and 5 ILCS 220/1 et seq. (1997) further authorizes Intergovernmental Cooperation; and

WHEREAS, the Village of Wauconda was issued on August 23, 2004 a National Pollutant Discharge Elimination System (hereinafter "NPDES") permit (the "Expansion NPDES permit") with the Illinois Environmental Protection Agency (hereinafter "IEPA") for the Wauconda Waste Water Treatment Plant (hereinafter "the Facility" or "the Wauconda WWTP") to discharge effluent into waters of the State of Illinois and to allow an increase in effluent volume to be discharged from the Facility into a heavily channelized drainage-way commonly known as Fiddle Creek (hereinafter "Fiddle Creek"), an intermittent receiving stream which is tributary to the Fox River; and

WHEREAS, Wauconda currently discharges to Fiddle Creek pursuant to NPDES Permit IL0020109, which allows it to discharge into Fiddle Creek at Anderson Road within Lake Barrington; and

WHEREAS, Fiddle Creek passes along the Northern corporate limits of and adjacent to residential areas within Lake Barrington and within the Township and is accessible to the Lakeland Estates and Twin Pond Farm residential subdivisions within Lake Barrington as well as Lake County Forest Preserve District property; and

WHEREAS, Wauconda, Lake Barrington, the Township and its residents are concerned that the discharge from the Facility be carefully treated, monitored and controlled so as to not adversely affect the health, sanitation, and welfare of the residents of Wauconda, Lake Barrington, the Township; and

WHEREAS, while there is disagreement among the parties as to the environmental impact this increase in pollutant loading and flow will have, Wauconda, Lake Barrington, and the Township have common goals of protecting and preserving the environment as well as being good neighbors; and

WHEREAS, Wauconda, Lake Barrington, and the Township also share the common goal that the Facility be improved, operated, and maintained in such a manner that its sewage treatment operations will represent a model for protection of environmentally sensitive areas; and

WHEREAS, the Parties hereto understand and agree that in order to make it feasible to provide certain additional water purification objectives and related improvements, funds for the design and construction thereof must be obtained from sources other than the general or special funds and accounts of the Parties; and

WHEREAS, it has been determined by the respective governing boards and/or corporate authorities of Wauconda, Lake Barrington, and the Township that this Agreement is in the best interests of each of said units of local government; and

WHEREAS, Wauconda, Lake Barrington, and the Township have by appropriate action of their respective governing boards and/or corporate authorities, authorized the execution and delivery of this Agreement.

NOW, THEREFORE, upon the consideration of the mutual promises contained herein and upon the recitals hereinabove set forth, it is hereby agreed among Wauconda, Lake Barrington, and the Township as follows:

1. Recitals. The parties hereto find that the recitals to this Agreement are true and correct and that each of the foregoing recitals is hereby incorporated herein the same as if each had been set forth in its entirety in the body of this Agreement.

2. Reports. From and after the effective date of this Agreement, copies of discharge monitoring reports ("DMRs") and other periodic reports required to be filed by Wauconda with any county, state or federal agency relating to the Facility, its operation, and NPDES permit Number IL0020109 shall be forwarded at the time of submission of such reports to such agencies, to the Village Clerk of Lake Barrington for a period beginning on January 1, 2005, and ending on December 31, 2014. Thereafter, such reports will be forwarded by Wauconda to the Village Clerk of Lake Barrington annually for all subsequent annual periods ending December 31. The initial and amended construction schedules, when available, for the Phase I and Phase II WWTP expansion shall also be provided to Lake Barrington.

3. In consideration for the undertakings by Wauconda as herein set forth and as set forth below, Lake Barrington and the Township agree to cooperate with Wauconda and withdraw their prior objections to and appeals relative to Phase I and Phase II of Wauconda's Expansion NPDES Permit(s), to wit:

- A. Wauconda agrees that as part of its Phase I treatment plant expansion to a design average flow of 1.9 MGD, and provided that the NPDES Permit remains otherwise valid and substantially unmodified by the present proceedings before the Pollution Control Board, to wit: IPCB docket nos. 05-55; 05-58 and 05-59 (hereinafter referred to as the "present IPCB proceedings"), except as agreed to by Wauconda in this Agreement and/or by stipulation approved by Wauconda in said present IPCB proceedings, Wauconda shall install, maintain, and keep in operation such equipment and other Facility improvements as necessary to provide loading limits on Fiddle Creek of 117 lbs/day for CBOD5, and 140 lbs/day for suspended solids based on annual averages, and achieve a 1 mg/L phosphorus level based on a monthly average, and shall request and accept an NPDES permit incorporating such limits for the Phase I operations. The Parties recognize that the August 23, 2004 NPDES permit allows for the discharge of almost double the load of 117 lbs/day for CBOD5, and 140 lbs/day for suspended solids and requires that the effluent achieve a 1 mg/L phosphorus level, all based on monthly averages. Wauconda shall use its best efforts to achieve the lower, designed discharge limits on an annual average. Wauconda agrees that it shall make these design capabilities part of the IEPA construction permit for the Phase I and Phase II treatment plant expansions and Wauconda shall operate these facilities as efficiently as practicable. The standards established under this Paragraph A shall be carried forward to the Phase II design, improvements, and operations. To the extent that unanticipated costs are required to be incurred by Wauconda in order to carry forward the loading limits as stated in this Paragraph A to Phase II, Wauconda and Lake Barrington will cooperate and utilize their respective best efforts in attempting to secure grant funding for such unanticipated costs, but Wauconda's obligations under this Paragraph A shall not be contingent on the success of such efforts.
- B. Wauconda has already designed and it shall install as part of Phase I, effluent disinfection capabilities to meet the NPDES fecal coliform limits, and Wauconda's Facility shall, beginning with the date of operation of the Phase I improvement, meet these fecal coliform limits in accordance with its NPDES permit. Until that time, Wauconda shall remain in conformity with its current NPDES permit limitations on fecal coliform. These effluent disinfection capabilities to meet the NPDES fecal coliform limits shall be carried forward to the Phase II improvements and operations and the related NPDES permit.
- C. Wauconda has developed an industrial discharge and pretreatment monitoring program and Wauconda has secured approval of this program from the appropriate regulatory agencies. Wauconda agrees to maintain the operation of this program and comply with the regulations of the applicable regulatory authorities pertaining thereto.

- D. Wauconda has designed, and has obtained NPDES permit approval for, and shall install, as part of Phase 1, sufficient aeration capabilities to maintain 6 mg/L dissolved oxygen at the point the effluent enters Fiddle Creek. These aeration capabilities shall be carried forward to the Phase II improvements and operations and the related NPDES permit.
- E. Wauconda, Lake Barrington, and Cuba Township agree that, within the next year following the execution of this Agreement, they shall jointly cooperate with each other and take such separate and/or collective action as reasonably necessary to jointly locate, install, operate, and maintain, at Wauconda's expense, four (4) monitoring wells at mutually agreed upon locations, and Wauconda shall, at Wauconda's expense, periodically test both the Wauconda WWTP effluent and the water quality of said monitoring wells as described below:
- (1) Within the initial year following the execution of this Agreement, Wauconda shall quarterly test the effluent from the Wauconda WWTP for Priority Pollutants plus Tentatively Identified Compounds (including but not limited to MTBE), Endocrine Disrupters, Fecal Coliform, E-Coli Bacteria, and Nitrates. The availability of commercial laboratory testing for endocrine disrupters is evolving and will expand from year to year. Initially, at a minimum, testing shall include USEPA Method 525.2 for semi-volatile synthetic organic compounds.
 - (2) After the installation of the above-described monitoring wells, and upon completion of the quarterly effluent testing described in Subparagraph E(1), the monitoring wells shall be tested quarterly for one year by Wauconda for those compounds or substances listed in Subparagraph E(1) above which were determined to be present in the Wauconda WWTP's effluent based on the initial year of quarterly testing of Wauconda's WWTP effluent, and for any chlorinated solvents detected, the known products of degradation.
 - (3) After the first year of operation of the monitoring wells, the effluent from the Wauconda WWTP shall be tested by Wauconda annually for Priority Pollutants plus Tentatively Identified Compounds (including but not limited to MTBE), Endocrine Disrupters, Fecal Coliform, E-Coli Bacteria, and Nitrates, and all such testing shall occur during the Wauconda WWTP's low flow period.
 - (4) The water in each of the monitoring wells, after the initial year of quarterly testing described in Subparagraph E(2) above, shall be tested annually by Wauconda for any Priority Pollutants plus Tentatively Identified Compounds (including but not limited to MTBE), Endocrine Disrupters, Fecal Coliform, E-Coli Bacteria, and Nitrates detected during the effluent testing for that year, and for any chlorinated solvents detected, the known products of degradation.

Lake Barrington shall have the right to be present for the collection of all effluent and monitoring well water samples which are collected for the testing contemplated by this Paragraph (E), as well as for the testing of such samples, and for these purposes, Wauconda shall provide Lake Barrington with reasonable notice thereof. Lake Barrington shall also have the right to collect and test its own samples from said monitoring wells at the same time, at its own expense. All information gathered through such effluent and monitoring well testing shall not be considered the proprietary information of any parties, and, upon receipt by Wauconda in written form, such information shall be promptly shared with the other parties to this Agreement and such information shall be considered part of the permanent public records of the Village of Wauconda.

- F. Wauconda shall, at its expense, upon the effective date of this Agreement, design nitrate removal capabilities for the Phase I and Phase II expansion of its treatment plant. The Phase II expansion of the treatment plant to 2.4 MGD design average flow by Wauconda shall include nitrate removal capabilities, provided that Wauconda receives complete grant funding through state or federal sources for the design, equipment and facilities necessary to achieve such nitrate removal, and, in such event, Wauconda shall not delay the operation of the nitrate removal facilities beyond the later of January 1, 2007 or the commencement of the Phase II expansion and shall operate such nitrate removal facilities to assure no net increase over existing nitrate loading. For the purposes of this Paragraph F, "full" or "complete" grant of funding shall not include design costs incurred prior to the approval of a grant agreement, provided, however, such design costs may be applied for within the facilities grant application, or by way of a separate grant application, but the receipt of grant funding for reimbursement of said design costs, from whatever source, shall not be a condition to Wauconda's obligations as provided in this Paragraph F. Wauconda agrees that in the event full funding is obtained for the said nitrate removal facilities, then Wauconda shall make these design capabilities part of the IEPA construction permit for the Phase II treatment plant expansion. In the event full funding is obtained for nitrate removal within a time frame which is reasonably timely in order to make these design capabilities part of the IEPA construction permit for the Phase I treatment plant expansion, then Wauconda shall include such nitrate removal capabilities as part of the Phase I expansion. Wauconda shall also request and accept an NPDES permit modification incorporating such limits for its Phase II operations, and at the same time as said NPDES permit modification, Wauconda shall also request and accept a Special Condition to the modified NPDES permit requiring Wauconda to monitor TKN and Nitrate-N one day per week in both its influent and effluent. In addition, during the initial year after this Agreement becomes effective, Wauconda shall monitor TKN and Nitrate one day per month in both its influent and

effluent to establish base line data for this provision. For the purposes of this Agreement, the term "no net increase" shall mean as measured on an annual average basis, no increase in nitrate loading over the quantity of nitrates currently contained in the effluent from the Wauconda WWTP".

- G. Additionally, Wauconda, Lake Barrington, and the Township agree to cooperate to jointly attempt to secure grant funds for the following purposes and to apply such grant funds so obtained according to the following hierarchy of priorities to the greatest extent permitted by applicable authorities:
- (1) to reimburse Wauconda for the cost of design, acquisition and installation of such equipment necessary and other Facility improvements so as to effect nitrate removal from the Facility's effluent, as stated in Paragraph 3(F);
 - (2) to provide funds for planning, flow restoration and natural resource management of the Fiddle Creek wetland complex and Slocum Drainage Ditch in consultation with relevant environmental groups, including but not limited to, Citizens for Conservation, Inc.

Similarly, to the extent that grant resources are available from time to time, Lake Barrington, Wauconda and the Township agree to undertake in a cooperative effort with the Slocum Drainage District, or its successor, the efforts described in (2) above.

4. The Parties agree that in the future, as circumstances change and develop, they each will continue to be engaged in matters related to the environmental protection of Fiddle Creek, the Fox River and associated waters, including, but not limited to proceedings before the Illinois Environmental Protection Agency and the Illinois Pollution Control Board. Nothing in this Agreement shall be construed as a bar to such activity by either party or as an admission by either party with respect to any matter, except that this Agreement shall constitute a complete resolution and settlement of the present PCB proceedings as between the Parties hereto, and a stipulation reflecting all or a portion of the terms of this Agreement may be entered of record in the present PCB proceedings if requested by Wauconda.

5. Remedies. It is agreed that a breach of this Agreement by one party may cause irreparable injury to the other party and that, in the event of a breach, a party so injured shall be entitled, without limiting its rights, to seek injunctive relief against said breach in the Circuit Court of Lake County. Further, each party hereto shall have all rights and remedies available at law or in equity in any litigation or administrative proceeding in connection with their respective obligations under this Agreement. Nothing herein shall be construed to require one party to pay any costs, charges, and expenses, including attorneys' fees, related to any litigation, administrative proceeding, negotiation, or transaction that results from the unlawful, or negligent or willful act or omission to act of

the other party(ies) or their respective officers, agents or employees in connection with carrying out such obligations of other parties under this Agreement.

6. Notices. All notices, requests, demands, and other communications (collectively, "Notices") hereunder shall be in writing and given by (i) established express delivery service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested, to the parties at the following addresses, or at such other address as the parties may designate by Notice in the above manner:

To Wauconda:

Village of Wauconda
101 N. Main Street
Wauconda, IL 60084
Attn: Village President

To Lake Barrington:

Village of Lake Barrington
23860 Old Barrington Road
Lake Barrington, IL 60010
Attn: Village President

To Township of Cuba:

Cuba Township
28000 W. Cuba Road
Barrington, IL 60010
Attn: Township
Supervisor

Notices may also be given by fax, provided the Notice is concurrently given by one of the above methods. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or impossible because of failure to provide a reasonable means for accomplishing delivery.

7. Miscellaneous:

- A. Paragraph titles are descriptive only and do not define or in any other way limit the contents of each paragraph. Words of the masculine gender shall be read to include the feminine and neuter genders, and the singular shall include the plural.
- B. If any provision of this Agreement shall be declared invalid for any reason, such invalidation shall not affect any other provisions of this Agreement which can be given effect without the invalid provision and to that extent, the provisions of this Agreement are severable.
- C. This Agreement shall be governed by the applicable laws of the State of Illinois.
- D. This Agreement shall be binding on all parties and may not be modified or amended orally, but only in writing signed by all parties hereto.
- E. The parties agree to reasonably cooperate in a good faith effort to implement this Agreement, including but not limited to, the joint filing of such stipulations and/or other pleadings as appropriate for that purpose.

- F. In the event the Wauconda NPDES Permit as currently written is affected by a *force majeure* or is substantially modified (except as agreed to by Wauconda in this Agreement and/or by a stipulation and/or settlement agreement approved by Wauconda) in the present IPCB proceedings (IPCB Docket No. 05-55, 05-58 and 05-59), then the parties hereto will meet and attempt to renegotiate in good faith this Agreement in its entirety in order to endeavor, to the extent that it still may be possible, to effect the goals and purposes of this Agreement.
- G. This Agreement shall become effective only upon approval and execution hereof by all the parties hereto on or before December 21, 2004 and upon the execution by Wauconda and all the appellants in IPCB Docket No. 05-55 of a stipulation and/or settlement agreement in the present IPCB appeal providing for the withdrawal forthwith of said appeal and the objections contained therein, which stipulation and/or settlement agreement shall include, among other things, the right of all of said appellants in IPCB Docket No. 05-55 to enforce this Agreement. Anything in this Agreement to the contrary notwithstanding, if all administrative and/or trial and appellate court appeals on the subject NPDES permit are not exhausted within ten (10) months of the date of this agreement, then, at the sole option of Wauconda, Paragraph 3(F) and 3(G) of this Agreement shall be considered null and void and of no effect.
- H. This Agreement may be executed in one or more identical counterparts, which counterparts when affixed together, shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have, pursuant to the authority of the respective Boards and/or Corporate Authorities, caused this Agreement to be executed, attested and delivered by its duly authorized officers as of the date first mentioned above.

VILLAGE OF WAUCONDA,
a municipal corporation,

VILLAGE OF LAKE BARRINGTON
a municipal corporation,

By: _____
Its Village President

By: _____
Its Village President

ATTEST:

ATTEST:

Its Village Clerk

Its Village Clerk

TOWNSHIP OF CUBA

By: _____
Its Supervisor

ATTEST:

Its Clerk