

APPENDIX A

**DOCUMENTATION OF LEGAL AGREEMENTS
FOR SHARING PROGRAM RESPONSIBILITIES**

2006 FEB 22 P 3: 24

COPY

INTERLOCAL AGREEMENT

This Agreement is made and entered into this 8th day of October, 2005, by and between City of Elkhart (hereinafter referred to as "Elkhart"), City of Goshen (hereinafter referred to as "Goshen"), Town of Bristol (hereinafter referred to as "Bristol") and County of Elkhart (hereinafter referred to as "County").

Whereas, the Indiana Department of Environmental Management (hereinafter referred to as "IDEM"), has designated Elkhart, Goshen, Bristol, and County as Municipal Separate Storm Sewer System (MS4) entities (collectively hereinafter referred to as the "Greater Elkhart County MS4") under 327 IAC 15-13 or Rule 13; and

Whereas, IDEM encourages regulated communities and other urban areas to coordinate their MS4 activities; and

Whereas, the parties believe it is in their individual and collective best interest to pursue a coordinated approach to address and satisfy the requirements of the MS4 regulations.

Now, therefore, it is agreed by the parties as follows:

MS4 Operator

County was designated as the MS4 operator for Elkhart, Goshen, Bristol and County by IDEM. The County was designated as the point of contact in the Rule 13 Notice of Intent Letter making Elkhart County responsible for the oversight of the MS4 program and permitting process for all four jurisdictions.

MS4 Operator's Responsibilities

The MS4 operator shall assume or has assumed the following responsibilities:

1. Prepare and submit a Rule 13 Notice of Intent Letter for the Greater Elkhart County MS4 to IDEM. The notice shall meet the requirements of MS4 regulations.

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MS4 Operator's Responsibilities

The MS4 operator shall assume or has assumed the following responsibilities:

1. Prepare and submit a Rule 13 Notice of Intent Letter for the Greater Elkhart County MS4 to IDEM. The notice shall meet the requirements of MS4 regulations.

2. Prepare and submit a Baseline Characterization Report for the Greater Elkhart County MS4 to IDEM that meets the requirements of MS4 regulations.
3. Prepare and submit a Program Implementation Plan for the Greater Elkhart County MS4 to IDEM that meets the requirements of MS4 regulations. The governing bodies of each of the parties to this Agreement shall approve, by resolution, the portion of the Program Implementation Plan that directly affects the area within the parties' geographical boundaries prior to any submission of the plan to IDEM.
4. Develop and implement a Public Participation and Involvement Program that meets or exceeds the minimum MS4 regulation requirements for each of the parties to this Agreement.
5. Develop and implement a countywide Public Education and Outreach Program that meets or exceeds the minimum MS4 regulation requirements for each of the parties to this Agreement.
6. Develop a Construction Site Storm Water Run-Off Control Program and a proposed ordinance for each party's governing body to enact to allow for the implementation and enforcement of the Construction Site Storm Water Run-Off Control Program.
7. Implement the Construction Site Storm Water Run-Off Control Program once the parties' governing bodies have enacted an ordinance authorizing the implementation of the Construction Site Storm Water Run-Off Control Program. This obligation does not include enforcement of the ordinance.
8. Administer the issuance of Construction Site Storm Water Run-Off Control permits for the Greater Elkhart County MS4 area.
9. Establish and maintain an Equivalent Residential Unit (ERU) for each parcel of real estate used for non-residential purposes in the Greater Elkhart County MS4 area.
10. Collect information from participating entities and submit to IDEM all monthly and annual reports required to comply with Rule 13.
11. Prepare and submit to the multi-jurisdictional Advisory Board for approval annual budget estimates for implementing the MS4 operator responsibilities listed above.

Parties' Responsibilities

Each party shall be responsible for the following within each party's geographical boundaries. Unless expressly stated otherwise, no party shall be responsible to provide any information or service for areas outside the party's geographical boundary.

1. Provide information to enable the MS4 operator to submit monthly and annual reports.

2. Develop a schedule for and perform the ongoing evaluation of Best Management Practices and the ongoing water quality characterization of the receiving waters in each party's own geographic boundaries.
3. Provide annual budget estimates to the multi-jurisdictional Advisory Board for implementing the program elements for which each party is responsible under the terms of this Agreement.
4. Develop and implement within each party's own geographic area an Illicit Discharge and Detection and Elimination Program meeting or exceeding the requirements of the Rule 13 regulations.
5. Develop and implement within each party's own geographic area a Post-Construction Storm Run-Off Control Program meeting or exceeding the requirements of the Rule 13 regulations.
6. Develop and implement within each party's own geographic area a Pollution Prevention Plan, meeting or exceeding the requirements of the Rule 13 regulations.
7. Enforce violations of the Construction Site Storm Water Run-Off Control Program.

Governance

1. Each party to this Agreement shall assume the powers and duties necessary to install, maintain and operate a storm water collection and disposal system within its own jurisdiction and to assume the responsibilities described for each party under the terms of this Agreement.
2. Each party shall choose and establish a form of governance for its jurisdiction from the forms of governance permitted by the laws of the State of Indiana for a storm water collection and disposal system.
3. The parties agree to establish a multi-jurisdictional Advisory Board. Each party to this Agreement shall appoint one (1) member to a multi-jurisdiction Advisory Board.
4. The multi-jurisdiction Advisory Board shall do the following:
 - a. Establish a schedule of rates, charges, and assessments to be enacted by the local governance boards.
 - b. Establish an efficient and uniform method of billing the rates and charges.
 - c. Establish the amount the County will charge each party for the cost of billing, collecting and distributing the rates and charges.
 - d. Establish the amount to be charged to each party by County or the County's designee for providing a Program Implementation Plan, a Public Participation and

Involvement Program, Public Education and Outreach Program, and implementation of the Construction Site Storm Water Run-Off Control Program.

- e. Establish the amount to be charged to each party by County to reimburse County for the cost of administering compliance with the MS4 permit, establishing and maintaining ERUs for each parcel of real estate used for non-residential purposes in the Greater Elkhart County MS4 area, and maintaining records and data including necessary software to permit billing rates, charges or assessments established by this Agreement for each residential and non-residential parcel of real estate.
 - f. Investigate the accuracy of the ERUs established in this Agreement using random samples of residential units within Elkhart County on or before December 31, 2009. Review and modify, if warranted, the assumptions and data upon which the ERUs are established for multi-unit residential uses, commercial, and industrial real estate. After initial review, revise assumptions and data as the Board deems appropriate, but at least once every five (5) years.
 - g. Establish an appeal process for any real estate owner who believes the assessment of their real estate is not properly calculated. Each jurisdiction shall establish the appeal process in the ordinance setting the assessment rate or by other ordinance.
 - h. Review and approve a budget for the MS4 operator subject to further approval by each jurisdiction.
5. The uniform fees, charges, and assessments established by Advisory Board must be in an amount that each party subject to this Agreement has sufficient funds from these fees, charges, and assessments to meet all of that party's obligations under this Agreement and Rule 13.

Financial Responsibilities

1. The fees, charges and assessments established by the Advisory Board and adopted by each party's governing body will be a combination of specific user charges and fees uniformly assessed against the real estate within each party's jurisdiction.
2. The costs necessary to operate the Construction Site Storm Water Run-Off Control Program will be partially funded from the cost of obtaining a construction permit. It is a goal that this Construction Site Storm Water Run-Off Control Program will be fully funded from permit revenue and enforcement revenues. However, any remaining costs of this Construction Site Storm Water Run-Off Control Program will be paid from the general assessment on real estate within each jurisdiction covered by this Agreement.
3. A portion of the cost of operating the Illicit Discharge and Detection and Elimination Program will be paid for by those who violate the standards established by such programs. The funds generated from enforcement of this program shall be collected and retained by each party within each party's jurisdiction.

4. County will pay for all costs connected with the MS4 operator and all costs to fulfill the obligations of the MS4 operator, including compiling and submitting all reports and meeting the compliance requirements for IDEM within the Greater Elkhart County MS4 area.
5. County will pay all costs connected with the Construction Site Storm Water Run-Off Control Program except the costs of enforcement of violations. Each party agrees to impose permit fees in a uniform amount designed to offset County's cost for the implementation and administration of the Construction Site Run-Off Program. Such fees will be collected as part of the construction permit process. Each party agrees to remit the fees collected to County or allow County to collect and retain the permit fee.
6. County will pay for all costs connected with the development and implementation of the Public Participation and Involvement Program and all costs connected with the development and implementation of the Education and Outreach Program.
7. Each party to this Agreement shall pay to County from each party's share of the fees and assessments, an amount established by the Advisory Board to offset County expenses for providing services within that party's jurisdiction. These services include providing a Program Implementation Plan, a Public Participation and Involvement Program, a Public Education and Outreach Program, a Construction Site Storm Sewer Run-Off Control Program, the administration of the compliance with the MS4 permit, establishing and maintaining ERUs for each parcel of real estate, and the cost of billing, collecting and distributing the charges and assessments.
8. Each party to this Agreement shall pay all costs for obtaining, compiling and transmitting information to the MS4 operator for the parties' geographic area to enable the MS4 operator to submit all required monthly and annual reports.
9. Each party to this Agreement shall pay all costs connected with the ongoing evaluation of Best Management Practices and ongoing water quality characterization of the receiving waters in their respective geographic areas, and the development and implementation of the Illicit Discharge and Detection and Elimination Program, Post-Construction Storm Run-Off Control Program, and Pollution Prevention Plan in their respective geographic areas.
10. The multi-jurisdiction Advisory Board will establish a uniform schedule of rates, charges, and assessments which will be submitted for approval to the respective governing boards.
11. The rates, charges and assessments will include an assessment for each Equivalent Residential Unit (ERU). Until the Advisory Board conducts its review contemplated under the Governance section, paragraph 4, item f, an ERU will be two thousand eight hundred (2,800) square feet or less of impervious area. A single family residential lot shall be one ERU. All duplexes shall be two (2) ERUs. All other residential uses containing more than two (2) units will be two (2) ERUs plus an additional three-fourths (.75) ERU for each additional unit in excess of two (2). The County will establish the ERUs for all lots or parcels for non-residential uses based on two thousand eight hundred (2,800) square feet per ERU. The assessment per ERU will be the same in all jurisdictions. The assessment per ERU will be set in an amount that will produce revenues sufficient to allow the jurisdiction

incurring the most cost per ERU to implement all the responsibilities set forth in this Agreement and to comply with Rule 13. This includes the jurisdiction's portion for the services provided on a countywide basis and the services provided by the each party within their individual jurisdiction.

12. The assessment will be billed as a part of the real estate taxes billed by the County or such other method as determined by the multi-jurisdictional Advisory Board.
13. All revenues collected by the County as part of the Greater Elkhart County MS4 program shall be distributed by County to each jurisdiction in an amount equal to the assessment collected from the real estate within the jurisdiction receiving the distribution less the amounts payable by that jurisdiction to County pursuant to paragraph 7 of Financial Responsibilities above.
14. Each jurisdiction shall use the amount of the assessment to offset the cost of implementing its MS4 programs and providing services to comply with Rule 13.
15. In the event revenues from ERU assessments, permit fees, and other revenue sources are insufficient to cover a jurisdiction's obligations under this Agreement, the jurisdiction agrees to commit other funds to meet the jurisdiction's obligations under this Agreement.

Termination of Agreement

This Agreement shall remain in full force and effect until one or more of the parties gives written notice of their intent to withdraw from this Agreement. The notice shall be given by September 1 of any year to take effect the following January 1st. In addition, any withdrawing party must have established a separate MS4 operator approved by the State of Indiana prior to the effective date of withdrawal.

Binding Effect

This Agreement shall be binding upon and inure to the benefit of the respective successors in interest of the parties. No assignment of this Agreement shall be permitted.

Real Estate and Personal Property

No real estate will be acquired by any of the parties as a result of this Agreement or as a necessary consequence of carrying out the duties and responsibilities established by this Agreement. All personal property shall be owned and retained by the party paying for the personal property.

Recording

After the execution of this Agreement, the parties agree that copies may be filed with the Elkhart County Recorder's Office, Elkhart City Clerk's Office, Bristol Clerk-Treasurer's Office, the Goshen City Clerk-Treasurer's Office, the Elkhart County Auditor's Office, and any and all agencies of the State of Indiana required by law. Each party shall be responsible for the recordings in its respective offices, with County being responsible for any state recordings or filings.

Fiscal Agent

The Elkhart County Treasurer is the fiscal agent for receiving, disbursing and accounting for all monies of the shared activities of the parties.

IN WITNESS WHEREOF, the parties have entered into this Agreement the date and year first above written.