

**INTERGOVERNMENTAL COOPERATION AGREEMENT
FOR MUTUAL ASSISTANCE IN RESPONSE TO
INFORMATION TECHNOLOGY EMERGENCIES
IN UNITS OF GOVERNMENT IN DU PAGE COUNTY**

Recitals

WHEREAS, the Units of Local Government herein made parties to this Intergovernmental Agreement may lawfully exercise the powers conferred upon them pursuant to the Illinois Counties Code (55 ILCS 5/1 *et seq.*), Illinois Municipal Code (65 ILCS 5/1-1-1 *et seq.*) and Article VII, Section 6 of the Constitution of the State of Illinois; and

WHEREAS, the Parties, as units of local government, are authorized to contract and otherwise associate amongst themselves and to obtain or share services and to exercise, combine or transfer any power or function that either unit of local government may have in any manner not prohibited by law or ordinance under the authority of Article VII, Section 10 of the Constitution of the State of Illinois; and

WHEREAS, the Parties are "public agencies" within the meaning of the Intergovernmental Cooperation Act (5 ILCS 220/1, *et seq.*) and are further authorized to enter into this Agreement pursuant to the Intergovernmental Cooperation Act; and

WHEREAS, cyber and information technology (IT) emergencies are occurring with increasing frequency in Units of Government throughout the United States;

WHEREAS, Units of Government within DuPage County have experienced IT emergencies;

WHEREAS, various Units of Government recognize it is in the best interest of those they serve that they join together to plan for such occurrences and be prepared to assist each other during catastrophic events which exceed the capacity of an individual Unit of Government to respond effectively on its own;

WHEREAS, the assistance to be provided under this Intergovernmental Cooperation Agreement (“Agreement”) includes personnel, equipment and staging facilities appropriate to the nature of the catastrophic event;

WHEREAS, the foregoing purposes are best accomplished through this Agreement, with participating Units of Government making good faith efforts to provide assistance during catastrophic events when called upon pursuant to the terms of this Agreement, but without incurring liability if, in their sole discretion, they are unable or unwilling to do so;

WHEREAS, several Units of Government have, or will develop, emergency assistance contracts and agreements with private sector IT service providers and other governmental entities and nothing in this Agreement is intended to replace, supersede or take precedence over such contracts and agreements; and

WHEREAS, the program to accomplish the foregoing will be called the DuPage County Mutual Aid Technical Team (“DuMATT”).

NOW THEREFORE, the undersigned public agency does hereby enter into this Agreement with each and every other public agency which signs a counterpart copy of this Agreement and contracts as follows:

- 1. Parties.** The parties to this Agreement are:
 - a. the DuPage County Board;
 - b. the governing entities of DuPage County which are listed on the attached Exhibit 1 and have approved this Agreement in accordance with paragraph 6 or 8 below.Collectively the foregoing are the “Parties” to, or the “Participants” in, this Agreement.

2. Legal Authority and Purpose.

a. This Agreement is made in the exercise of the Parties' rights and powers granted under Article VII, Section 10 of the Constitution of the State of Illinois, the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 and all other rights and powers vested in the Parties by their respective governing statutes.

b. The purpose of this Agreement is to develop and implement programs (the "Programs") designed to provide mutual aid in crises, primarily arising out of disaster including, but not limited to, cyber incidents in DuPage County Units of Government. The Programs are also designed to provide training and professional development to prepare member personnel for response and recovery activities. Under no circumstances will an employee of a Party act under this Agreement in a capacity as a first responder by performing emergency rescue or response services ordinarily performed by police, fire or other governmental emergency service providers.

3. Administration.

a. This Agreement shall be administered jointly by the DuPage County Information Technology Department and the DuPage County Office of Homeland Security and Emergency Management, with the advice of the DuPage County Municipal IT Roundtable.

b. Meetings for the purpose of administering the Agreement may be called as needed, and any changes to the Agreement will be brought to the DuPage County Municipal IT Roundtable for review and comment.

c. Participants and their employees who may be assisting another Party, by entering into this Agreement, acknowledge that confidentiality and trust are expected and

required when providing mutual aid to another Unit of Government. The Parties acknowledge and agree that they shall treat the confidentiality, integrity, and availability of other Parties' data and systems as they would their own.

d. Only the affected Participant, or their designee, shall release information regarding an incident. Parties rendering mutual aid shall refer all inquiries regarding the incident to the affected Participant's representative.

4. Fiscal Matters.

a. The Programs and services of this Agreement shall be made available to the Units of Government without cost.

b. At no cost to the Units of Government, the State's Attorney shall provide the services of its personnel and resources in development and maintenance of this Agreement. Nothing in this Agreement shall be construed as requiring or enabling the DuPage County State's Attorney to act as, or provide, legal counsel for any participant in this agreement where such legal counsel is not expressly authorized by state law.

c. Each Participant is responsible for any benefits, compensation, liability insurance and Workers' Compensation insurance for its personnel that are providing authorized mutual aid to another Participant.

d. Each Participant providing facilities, materials and/or equipment to another Participant under the auspices of this agreement shall not charge for such facilities, materials or equipment and for the cost of loss or damage to the facilities, materials and/or equipment.

e. Nothing in this agreement shall operate to bar any recovery of funds from any third party, state, or federal agency under existing statutes, or other authority.

5. Insurance and Liability.

a. Each Party is responsible for obtaining insurance coverage for its participation under this Agreement, which shall be primary, and which shall waive subrogation against all other Parties. Each Party shall be responsible for Workers' Compensation insurance coverage of, and liability for, the Party's employees who participate in the Programs.

b. A Party shall not be liable to another Party:

1) for the acts or omissions of its employees providing assistance to another Party when requested under this Agreement;

2) for a Party's declination to provide assistance when requested by another Party under this Agreement.

For purposes of this paragraph 5.b., "liability" means liabilities, losses, damages, claims, demands, judgments, causes of action, costs, expenses, and reasonable attorneys' fees. Notwithstanding anything to the contrary, nothing in this Agreement voids or limits any liability protection established by law or any existing insurance coverage of the Party. Nothing in this Agreement, the actions of the Advisory Panel, or the development and implementation of the Programs shall create a duty or liability to any person or entity which is not a party to this Agreement or diminish any liability protection for the benefit of the Parties as established by law or afforded any Party's insurance coverage.

6. New Parties and Withdrawal, Suspension and Expulsion of a Party.

a. After the effective date provided in paragraph 8 below, a Unit of Government shall become a Party to this Agreement when (A) the Party's Chief Governing

Official signs the Agreement, and (B) the Agreement is received by DuMatt@DuPageCounty.gov.

b. A Party may withdraw from this Agreement by giving at least 30 days' written notice of withdrawal to DuMatt@DuPageCounty.gov.

c. By a vote of at least two-thirds of the members of the DuPage County Municipal IT Roundtable, a Party may be suspended or expelled as a Party to this Agreement, and denied participation in any of the programs, for good cause, which includes, but is not limited to, failure to meet the requirements of this Agreement or of the programs. Before expulsion or suspension, the Party shall be given a written notice summarizing the reasons for the proposed action and an opportunity to respond to the DuPage County Municipal IT Roundtable.

7. Amendment and Termination.

a. This Agreement may be amended or terminated by the affirmative vote of a majority of the Parties.

8. No Third-Party Beneficiaries

a. The Parties expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement, including, but not limited to, subcontractors, subconsultants, and suppliers. The Parties expressly intend that any person other than the Parties who receives services or benefits under this Agreement shall be deemed to be an incidental beneficiary only

9. Authority to Bind

a. Each Party represents that it holds the authority to enter into this Agreement and undertake the duties and obligations contemplated by this Agreement and that it has taken or caused to be taken all necessary action to authorize the execution and delivery of this Agreement.

10. No Waiver of Immunities

a. Nothing in this Agreement shall constitute a waiver by any Party of any right, privilege, immunities, or defenses, either may have, under statutory or common law, including, but not limited to, the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101, *et seq.*

11. Severability

a. If any section, paragraph, clause, phrase or portion of this Agreement is for any reason determined by a court of competent jurisdiction to be invalid and unenforceable, such portion shall be deemed separate, distinct and an independent provision, and the court's determination shall not affect the validity or enforceability of the remaining portions of this agreement.

12. Effective Date and Dissolution. This Agreement shall become effective upon approval of the agreement by the DuPage County Board and its attendant subcommittees, and signature by the DuPage County Board Chair, provided at least ten of the Participants listed on the attached Exhibit 1 return Agreements signed by their Chief Governing Official to DuMatt@DuPageCounty.gov.

13. By:

Chair, DuPage County Board

Printed Name

Date: _____

Authorized Signatory, Agency

Printed Name

Date: _____

Exhibit 1 - Participant List

Any DuPage County Unit of Government may participate in the DuMATT program.

| | <i>Unit of Government Name</i> | <i>Point-of-Contact</i> |
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