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## Memorandum

Date: June 19, 2013

To: County of Lake  
Village of Lake Villa  
Village of Lindenhurst

Cc: William R. Balling

From: Barbara A. Adams

Re: North Lake County Water Working Group—Issues in Connection with Central Lake County Joint Action Water Agency Membership

As you know, the County of Lake, the Village of Lake Villa and the Village of Lindenhurst are working jointly to discuss the terms of membership in the Central Lake County Joint Action Water Agency (“CLCJAWA”) for the two Villages and for the County as to the Grandwood Park and Fox Lake Hills service areas (collectively, the “North Group”). While there have been informal, conceptual discussions between the North Group and CLCJAWA since the fall of 2012, the recent receipt of an initial draft of a proposed “Admissions Agreement” prepared by counsel to CLCJAWA has helped clarify issues to be discussed and resolved in connection with membership. The North Group is in the process of discussing those issues with CLCJAWA. We have prepared this memo at the request of the Technical Working Group to highlight the key governing documents and principles of CLCJAWA and describe some of the key issues to be addressed in the various agreements.

## I. BACKGROUND ON CLCJAWA

A. Key Documents. CLCJAWA is a form of government known as a “joint action water agency,” and it is referred to in state law as both a municipal corporation and a public body politic and corporate. The manner in which it is created, its powers and duties, and governance structure are all controlled by Section 3.1 of the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/3.1 (“Act”). The Act is supplemented by several key documents, as follows:

- **The Central Lake County Joint Action Water Agency Agreement:** This Agency Agreement was originally approved by the original member governments by ordinance in 1986. That approval by the original members created the Agency and is the primary agreement among the member governments. It has been amended four times over the last 27 years.
- **Water Purchase and Sale Agreement:** This WPSA is between CLCJAWA and its members. It is the document that establishes the obligation of CLCJAWA to provide Lake Michigan water to the members as well as the members’ obligation to take the water and pay the established amounts for the water.

- **By-Laws:** CLCJAWA has adopted bylaws to govern various aspects of its operation and governance. Based on the documents we have received, the current By-Laws were adopted in 1992 and amended in 2011.

Modifications are likely to be needed to the Agency Agreement and the WPSA to accommodate the North Group as new members. CLCJAWA is also considering recommending some updates to both documents and the By-Laws concurrent with the North Group's agreements.

B. Agency Overview. CLCJAWA members can include municipal corporations (such as cities and villages), counties, townships (in counties with population under 700,000), public water districts, and State universities. New members of CLCJAWA may be added upon the consents, conditions, and approvals of the CLCJAWA Board and governing bodies of the existing members. The Agency Agreement provides that new members must be unanimously approved by all members as well as the CLCJAWA Board. Members may withdraw only in the manner provided in the Agency Agreement.

A JAWA has two governing bodies. The Board of Directors consists of one Director for each member municipality, public water district, township, State university and county. In general, Directors are elected officials (e.g., Mayor/President/elected trustee or alderman, County Board Chair or County Board member). Each Director has one vote and serves a two-year term, which is established in the Agency Agreement. The Board of Directors has the authority to elect its own officers and adopt bylaws.

The Executive Committee consists of the municipal manager or another elected or appointed official of each member; appointment is designated by ordinance or other official action of that member's corporate authorities. The Executive Committee has the powers and duties established in the Agency Agreement.

C. Water Supply and Water Systems. CLCJAWA has power to purchase water supply on a take or pay basis for a term not greater than 50 years. If one member defaults on its share under the contract with the supplier, one or more of the remaining purchasers shall be required to pay for all or a portion of the amount on which there is default. However, CLCJAWA treats Lake Michigan water for its customers. CLCJAWA may plan, construct, improve, extend, acquire, finance, operate, maintain and contract for a joint waterworks or water supply system, including facilities for receiving, storing and transmitting water from any source to supply members and county service areas and other public agencies, persons, or corporations.

CLCJAWA has power to sell water to any person, corporation or public agency in contracts with terms not exceeding 50 years. The Act does not authorize provision of water service by a JAWA within a municipality or within 1 mile or less of corporate limits of a municipality that operates a public water supply without written consent of that municipality.

Water supply contracts may provide that payments by public agencies to JAWA are solely from waterworks or waterworks/sewerage system revenues of that agency. The obligations to pay under those contracts are not an "indebtedness of public agency" for purpose of any statutory or constitutional limitation. JAWA may establish fees and charges for purchase of water from it or use of its facilities.

D. Financing. CLCJAWA may issue General Obligation Bonds/Notes for corporate purposes, in an amount not to exceed 5.75% of aggregate value of taxable property within participating municipalities, public water districts, townships, and county service areas within a

member county; the maximum term of the bonds is 40 years. To issue such bonds, there must be a referendum of voters in the entire participating Service Area of the JAWA. CLCJAWA may also issue Revenue Bonds/Notes for: Costs of constructing, acquiring, improving or extending a joint waterworks or water supply system; and a variety of related expenditures, as well as refunding or redeeming JAWA bonds and notes.

## II. ISSUES FOR DISCUSSION WITH CLCJAWA

In review of the proposed Admissions Agreement from CLCJAWA, the North Group has identified the following areas for discussion with CLCJAWA.

A. Unified Approvals. In order to become full members in CLCJAWA, the North Group has recommended that the Admissions Agreement should include any necessary amendments to the Agency Agreement and WPSA. With this process, a single vote can be taken by the CLCJAWA Board and the governing boards of each member for all of the items to be approved. As noted above, these actions will require unanimity of the members and the CLCJAWA Board.

B. Duration and Term. CLCJAWA has indicated that it is looking at extending the duration and term of the various agreements. These should be extended for a sufficient time to support the initial investment of the North Group.

C. Most Favored Members. CLCJAWA is also engaged in discussions with the Villages of Volo and Wauconda as possible new members. While there may be differences in approach and financing methods between the two groups, the North Group will want to be sure there is not any difference in treatment of these groups.

D. Technical Committee/Advisory Board. CLCJAWA proposes to form a technical committee that will allow members of the North Group and the West Group to engage in discussion of various design and operations issues that will be affected by decisions during the layout and design of the new system facilities that will serve those Groups.

E. Participant Status. The Agency Agreement currently provides for a status called "participant." If the North Group members receive this status, they will be allowed to attend and participate in Board and Executive Committee meetings, as well as the technical working group. Participant status does not include the right to vote.

F. Decision Making Process. Because the facilities to be constructed are to be part of the CLCJAWA system when complete, CLCJAWA's draft provides that its Board of Directors will make all final decisions. However, the draft does address the ability to have "full information, input and participation" in the process. Particular topics of concern should be added to these provisions to ensure that there is a good understanding and agreement on those issues.

G. Preliminary Costs. The Admissions Agreement draft proposes that the North Group will deposit funds with CLCJAWA to cover various preliminary costs (pre-construction). A budget should be developed and included to outline in detail the categories and amounts involved; a process to modify the budget should also be included to allow adjustment for unforeseen circumstances.

H. Design and Construction Costs. The Admissions Agreement draft proposes deposit of funds for design or construction contracts before award is made by CLCJAWA. There should be an agreed upon process for how to address bids that come in substantially over estimate. A budget and a process to modify the budget should be included for these cost areas as well. Land acquisition costs may also need to be addressed in certain instances.

I. Managing of Escrows and Payments. The manner in which these cost deposits are to be held and managed should be outlined in the agreement. The North Group should have the opportunity to review invoices for all costs paid out of any deposits, prior to payment by CLCJAWA.

J. Division of Costs Among North Group Members. The costs are proposed to be allocated based on Equalized Assessed Valuation figures for 2013: Lake Villa is 27%, Lindenhurst is 47% and the County is 26%.

K. Timing of Membership. The timing of when the North Group will be considered official members should be established. This will affect a variety of issues from voting rights to the time of imposition of the property tax levy for the general obligation bonds issued by CLCJAWA some years ago to pay for the original system.

L. Connection Fees. The method for financing the payment of CLCJAWA's required connection fees will be provided for in the Admissions Agreement. The West Group is likely to take a different approach from the North Group. CLCJAWA has indicated its willingness to allow these fees to be financed through revenue bonds that will be paid by the North Group through the water rate.

M. Water Supply Levels. Language should be included in the WPSA to establish the amounts of water to be delivered to the North Group members.

N. Future Connections and Customers. Provision should be made for future connections to the facilities being constructed. If future water customers later join CLCJAWA and use portions of the facilities paid for by the North Group, language should be included for possible recovery of a share of capital costs to construct the new facilities

O. Improvement of CLCJAWA System. Language should be included in one of the agreements to document the commitments by CLCJAWA to complete certain necessary system improvements that will enable the North Group to receive water service.

P. Withdrawal of Group Members. If one of the North Group elects to withdraw before becoming a full member, CLCJAWA is willing to work with those that wish to continue. However, there may be practicalities that would limit the ability for a subset of the North Group to successfully continue.

Please let me or Bill Balling know if you have any comments, questions or suggestions about these or other issues pertaining to CLCJAWA membership.