



# Lake County Illinois

**Signature Copy**

**resolution: 10-0905**

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**File Number: 10-0905**

Joint resolution authorizing the execution of a Regional I/I Facilities Intergovernmental Agreement with the Round Lake Sanitary District.

## **RESOLUTION**

**WHEREAS**, the County of Lake (County) and the Round Lake Sanitary District (District) entered into an agreement in 1977, in which the District agreed to lease the District's property located at Hawthorne Drive and Sunset Drive in Round Lake Beach (Property) to the County; and

**WHEREAS**, since 1977, the County has operated and maintained the Property as storage lagoons for excess inflow and infiltration; and

**WHEREAS**, the 1977 agreement has expired and both the County and the District desire that the County continue to operate and maintain the storage lagoons; and

**WHEREAS**, the 1977 Agreement has expired, and the County and District wish to enter into a new agreement; and

**WHEREAS**, execution of an Intergovernmental Agreement must be authorized by Resolution of this County Board; and

**NOW, THEREFORE, BE IT RESOLVED**, by this County Board of Lake County, Illinois that the Chair of the County Board and the Clerk of said County be and they are hereby authorized and directed to execute the Regional I/I Facilities Intergovernmental Agreement with the Round Lake Sanitary District in substantially the form attached.

**DATED** at Waukegan, Lake County, Illinois, on this 16th day of November, A.D., 2010.

At a meeting of the Lake County Board on 11/16/2010, a motion was made by David Stolman, seconded by Susan Gravenhorst, that this resolution be adopted. The motion passed.

Approved by

  
Suzi Schmidt

Date

11-19-10

Attest by Willard R. Helander  
Willard R. Helander

Date NOV 22 2010

Certified by Willard R. Helander  
Willard R. Helander

Date NOV 22 2010

**REGIONAL I/I FACILITIES INTERGOVERNMENTAL AGREEMENT**

**THIS INTERGOVERNMENTAL AGREEMENT** is entered into this 16th day of November, 2010 (the "**Agreement**"), by and between the **ROUND LAKE SANITARY DISTRICT**, an Illinois sanitary district established under the Sanitary District Act of 1917 (the "**District**"), and the **COUNTY OF LAKE**, an Illinois unit of local government (the "**County**") (collectively, the District and the County shall hereinafter be referred to as the "**Parties**").

IN CONSIDERATION OF the mutual promises, representations, and undertakings of the Parties as hereinafter set forth, the Parties agree as follows:

**SECTION 1: Recitals.**

A. Prior to the 1980s, the District operated a sewage treatment plant that provided sewage transmission and treatment primarily to the Villages of Hainesville, Round Lake, Round Lake Heights, Round Lake Park, and Round Lake Beach (the "**District Communities**"). The District's treatment plant was located at a site it owned near the intersection of Hawthorne Drive and Sunset Drive in Round Lake Beach and legally described in **Exhibit A** attached hereto (the "**Property**").

B. In 1977, the District and the County entered a sewage disposal agreement, in which the District agreed, among other terms, to lease the Property to the County (the "**1977 Agreement**").

C. Since the effective date of the 1977 Agreement, the County has operated the Property for use as storage lagoons for excess inflow and infiltration ("**Regional I/I Facilities**") in the Northwest Facilities Planning Area ("**Northwest FPA**")

D. While the 1977 Agreement expired in 2007, the County has operated and continues to operate the Property under the terms of the 1977 Agreement.

E. In early 2010, the District, under a former board of trustees, purported to have transferred the Property (the "**Property Transfers**") as well as all of the general funds of the District (the "**District's Funds**") to others. The purported Property Transfers and the transfer of the District's Funds are the subject of litigation, including a *quo warranto* action commonly known as *People ex rel. Michael J. Waller, Lake County State's Attorney v. Round Lake Sanitary District*, Case No. 10 MR 327 (19<sup>th</sup> Judicial Circuit, Lake County, Illinois)(consolidated for certain purposes with Case No. 10 MR 70) (the "**Litigation**").

F. The District and the County now contend that the Property Transfers and the transfer of the District's Funds had no legal effect, and that the District is still the lawful owner of the Property and the District's Funds.

G. While the Property Transfers and the transfer of the District's Funds are being challenged through the Litigation, the District is still required to continue its regular operations, but has no immediately available assets for doing so.

H. The District desires to have the County operate the Regional I/I Facilities on the Property, and the County is willing to operate the Regional I/I Facilities on the Property for the District, subject to the terms and conditions of this Agreement and pending the outcome of the Litigation.

I. The Board of Trustees of the District and the County Board have each determined that entering into this Agreement is in the best interests of their respective governmental bodies and their respective constituents.

**SECTION 2: Term; User Fee.** The term of this Agreement is for a period of thirty years beginning on November 16, 2010 (the "*Effective Date*") and extending to the 30th anniversary of the Effective Date (the "*Term*"), or such lesser term as may be established by judicial decree pursuant to the requirements of applicable law. The County shall pay to the District a "*Base User Fee*" of \$1.00 for the Term. In addition to the Base User Fee, the County shall, as additional consideration, advance funds not to exceed \$24,000 to the District throughout the 12 months following the Effective Date (the "*Advancements*") to fund certain services in order to allow the District to continue to operate (the "*Eligible Services*"). The District may use the Advancements solely to fund Eligible Services, which include, and are limited to, (i) payment of Trustees' salaries and expenses, and (ii) payment of fees to attorneys, consultants, or administrative personnel, which firms or individuals shall have first received pre-approval by the County. Absent written approval by the County, any consultant services or expenditures shall not be deemed Eligible Services, and the Advancements may not be used as a source of funding for such services. If the District's Funds (or a portion thereof) are recovered by the District through the Litigation, the District will reimburse the County for any Advancements made to the District; except that, should the District recover less than the amount of the Advancements, only the recovered amount of the District's Funds shall be reimbursed to the County. If the District's Funds are not recovered through the Litigation, the District is under no obligation to reimburse the County for any Advancements made to the District.

**SECTION 3: Condition of the Property; Maintenance.** The County acknowledges that it has inspected the Property and that it accepts the Property under this Agreement in an "as is" condition as of the Effective Date, subject to all applicable laws, ordinances, regulations, covenants and restrictions; provided, however, that nothing in this Agreement shall release or otherwise limit any liability or responsibility that the District might have under applicable law as of the date of this Agreement. The County, at its sole expense, shall maintain and operate the Property to serve as Regional I/I Facilities. The District represents that no agreements, leases, licenses, or encumbrances, other than the Property Transfers (whose validity is in question and the subject of the Litigation) and those recorded with the Lake County Recorder, are currently in effect with relation to the Property.

**SECTION 4: Obligations.** County will use the Property in a careful, safe and proper manner and will not commit waste, allow any damage to the Property (ordinary wear and tear excepted),

or subject the Property to use that would damage the Property. The County may, in its sole discretion, determine that improvements to the Property are necessary to allow the Property to continue to serve or enhance its function as Regional I/I Facilities (including without limitation landscaping and buffering elements in consultation with the Village of Round Lake Beach)("Regional Improvements"). The County may make such Regional Improvements for the benefit of the Northwest FPA without further approvals from the District. The District shall grant all necessary or convenient easements to the County in connection with such Regional Improvements. The County shall ensure that the Regional I/I Facilities, any Regional Improvements, and the use and operation of the Property comply with applicable public health and safety regulations, and the County shall further ensure that any Regional Improvements are designed and installed in a manner that will not diminish the effectiveness of the current local sewage collection systems of the District Communities. The County covenants to operate the Regional I/I Facilities (including any Regional Improvements) in a non-discriminatory manner for the benefit of all the residents and users of the Northwest FPA.

**SECTION 5: Utilities.** County shall pay for all water, electricity, refuse and trash collection, and other utilities and services used on the Property, all maintenance charges for utilities, and any storm sewer charges or other similar charges for utilities imposed by any governmental entity or utility provider, together with any taxes, penalties, surcharges or the like pertaining to County's use of the Property. The Parties will cooperate to effect such services at the lowest possible costs, but the District shall not be required to expend any moneys in connection with such cooperation.

**SECTION 6. Taxes.** District represents that it is a governmental body whose real property is ordinarily exempt from real estate taxes ("*Taxes*"). To the extent that the Property become subject to Taxes in whole or in part because of County's use or operation of the Property, County will be required to pay the Taxes to District monthly in estimated installments or upon demand, at the option of District, as an additional user charge.

**SECTION 7. Insurance.** County, at its expense, shall maintain during the Term: all risk property insurance covering the full replacement cost of all property and improvements installed or placed in the Property by County at County's expense; worker's compensation insurance with no less than the minimum limits required by law; employer's liability insurance with such limits as required by law; comprehensive general liability insurance, with a minimum limit of \$1,000,000 per occurrence and a minimum umbrella limit of \$ 1,000,000, for a total minimum combined general liability and umbrella limit of \$2,000,000 for property damage, personal injuries, or deaths of persons occurring in or about the Property. The comprehensive general liability policies shall name District as an additional insured, insure on an occurrence and not a claims-made basis, be issued by insurance companies which are reasonably acceptable to District, not be cancelable unless 30 days prior written notice shall have been given to District, contain a contractual liability endorsement and provide primary coverage to District (any policy issued to District providing duplicate or similar coverage shall be deemed excess over County's policies). Such policies or certificates thereof shall, upon request, be delivered to District by County upon commencement of the Term and upon each renewal of said insurance. In addition, to the extent that the County maintains other types of insurance coverages with respect to other

County-owned or operated sewerage facilities comparable to those facilities on the Property, the County shall maintain such coverages for the Regional I/I Facilities and the Property

**SECTION 8: Indemnification.** Except for the actions of District, its agents, employees or contractors for which each may become liable under the laws of the State of Illinois, and to the extent permitted by law, County agrees to indemnify, defend and hold harmless District, and District's officers, officials, agents attorneys, employees, representatives, and contractors, from and against any and all losses, liabilities, damages, costs and expenses (including attorneys' fees) resulting from claims by third parties for injuries to any person and damage to or theft or misappropriation or loss of property occurring in or about the Property and arising from the use and operation of the Property or from any activity, work, or thing done, permitted or suffered by County in or about the Property or due to any other act or omission of County, its assignees, invitees, employees, contractors and agents under this Agreement or resulting from any breach of this Agreement caused by or which is allowed to be suffered by County. The furnishing of insurance required hereunder shall not be deemed to limit County's obligations under this Section 8. Notwithstanding anything to the contrary in this Agreement, County shall not indemnify the District or its officers, officials, agents attorneys, employees, representatives, and contractors, from and against any liability that they may have as a result of any violations, acts, or omissions pursuant to any federal or State environmental laws and regulations; provided, however, that, in the event that County undertakes any Regional Improvements to the Property pursuant to this Agreement, County will address any matters of environmental compliance relating to the Property as part of such Regional Improvements.

**SECTION 9: Right to Use and Operate.** County shall, subject to the terms of this Agreement, at all times during the Term, have the right to use and operate the Property without interruption or interference from or by District or any person claiming by, through or under District.

**SECTION 10: Surrender.** Upon termination of the Term or earlier termination of County's right to use and operate the Regional I/I Facilities and the Property, County shall surrender the Property, the Regional I/I Facilities, and any Regional Improvements to District in the same condition as received, ordinary wear, tear, and use as provided in this Agreement excepted.

**SECTION 11: Continued Use and Operation.** The County shall have no right to extend, renew, or continue its use and operation of the Property under this Agreement. If County retains possession of the Property, the Regional I/I Facilities, or any Regional Improvements after the termination of the Term, unless otherwise agreed in writing, such use and operation shall be subject, at the District's discretion, to a month-to-month extension or to immediate termination by District at any time. County shall be liable for all direct or consequential damages incurred by District as a result of such post-term use and operation, including any attorneys' fees arising from enforcement of this Agreement. No post-term use and operation by County, whether with or without consent of District, shall operate to extend this Agreement except as otherwise expressly provided, and this Section shall not be construed as consent for County to continue to use or operate the Property.

**SECTION 12: Assignment; Right of First Refusal.** The County shall have no right to assign this Agreement or its rights to use and operate the Property, the Regional I/I Facilities, or any Regional Improvements without the prior written consent of the District, which consent shall not

be unreasonably withheld or delayed. Nothing in this Agreement shall limit the County's right to authorize third parties to use the Property without the prior consent of the District, provided that (a) such use is not exclusive and full-time, and (b) the County remains fully responsible to the District for the terms of this Agreement. Unless the Parties mutually agree, the Property must be used for sanitary sewer purposes. In the event that the District ever ceases to operate as a sanitary district and seeks to lawfully dispose of the Property, the County shall have the option to require the District to convey its property interests in the Property to the County at no additional cost to the County for sanitary sewer purposes; further, in the event that the County declines to accept such conveyance within 120 days after notice from the District, the District shall extend the same option to the Village of Round Lake Beach, which option shall be exclusive for not less than 120 days after the District notifies the Village of Round Lake Beach of such option.

**SECTION 13: Mechanic's Liens.** County has no express or implied authority to create or place any lien or encumbrance of any kind upon, or in any manner to diminish the interest of District.

**SECTION 14: Remedies.** The Parties shall be entitled to pursue any remedy authorized under law; provided that the County shall have no right to seek monetary damages from the District.

**SECTION 15: Notice.** Any notice or communication required to be given to or served upon either party hereto shall be given or served by personal service, express overnight delivery or by mailing the same, postage prepaid, by United States registered or certified mail, return receipt requested, to the following addresses:

To County:

Mr. Barry Burton  
County Administrator  
18 N. County Street  
Waukegan, Illinois 60085

To District:

Round Lake Sanitary District  
P.O. Box 247  
Round Lake Beach, IL 60073  
Attn: John Gutknecht

By notice complying with the foregoing requirements of this Section 15, each party shall have the right to change the addressees or addresses or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

**SECTION 16: Entire Agreement.** This Agreement constitutes the complete agreement of District and County with respect to the subject matter hereof. No representations, inducements, promises or agreements, oral or written, have been made by District and County, or anyone acting on behalf of District and County, which are not contained herein, and any prior agreements, promises, negotiations, or representations are superseded by this Agreement. This

Agreement may not be amended except by an instrument in writing signed by both parties hereto.

**SECTION 17: Third Party Beneficiaries.** Nothing in this Agreement shall create, or be construed or interpreted to create, any third party beneficiary rights, except as expressly provided herein with respect to the Village of Round Lake Beach.

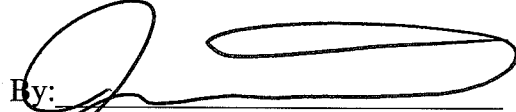
**SECTION 18: Effective Date.** This Agreement shall take effect as of the Effective Date as defined in Section 2; provided, however, that, in the event it is finally determined in the Litigation that the District had transferred the Property pursuant to the Property Transfers (or any of them), then this Agreement shall be of no force or effect and be deemed void *ab initio*.

*[Signature page to follow.]*




IN WITNESS WHEREOF, the District and the County have caused (or shall be deemed to have caused) their duly authorized representatives to execute this Agreement as of the Effective Date.

**ROUND LAKE SANITARY DISTRICT**

By:   
District President

ATTEST:

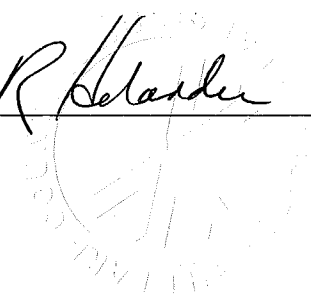
  
District Attorney

**COUNTY OF LAKE**

By:   
County Board Chair

ATTEST:

  
County Clerk



**EXHIBIT A**

**Legal Description of Property**

Parcel 1: Lagoon Real Estate:

THAT PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 20, TOWNSHIP 45 NORTH RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING NORTH OF THE NORTHERLY RIGHT OF WAY OF THE PUBLIC SERVICE COMPANY OF NORTHERN ILLINOIS (NOW KNOWN AS COMMONWEALTH EDISON COMPANY); (EXCEPT THE EAST 30.0 FEET OF SAID WEST HALF DEDICATED FOR PUBLIC ROADWAY BY DOCUMENT 3090016; ALSO EXCEPT THE WEST 630 FEET OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER LYING NORTH OF THE SOUTH 300 FEET THEREOF; ALSO EXCEPT THAT PART OF SAID QUARTER QUARTER SECTION DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE WEST LINE OF SAID QUARTER QUARTER SECTION, 300 FEET NORTH OF THE SOUTHWEST CORNER THEREOF; THENCE SOUTH 89°00'49" EAST ALONG A LINE 300 FEET NORTH OF AN PARALLEL WITH THE SOUTH LINE OF SAID QUARTER QUARTER SECTION, 555.00 FEET; THENCE SOUTH 28°23'36" WEST 90.11 FEET; THENCE NORTH 89°00'49" WEST 512.00 FEET TO A POINT ON THE WEST LINE OF SAID QUARTER QUARTER SECTION; THENCE NORTH 00°06'07" WEST ALONG SAID WEST LINE 80.01 FEET TO THE POINT OF BEGINNING), IN LAKE COUNTY, ILLINOIS

PIN NUMBER: PART OF 0620100002

Parcel 2: Midland Lift Station Real Estate:

THE NORTH 33 FEET OF THE WEST 295 FEET OF THE EAST 573 FEET OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 45 NORTH, RANGE 10 EAST OF THE THIRD P.M., IN LAKE COUNTY ILLINOIS AND THE SOUTH 50 FEET OF THE NORTH 83 FEET OF THE WEST 50 FEET OF THE EAST 328 FEET OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 45 NORTH, RANGE 10 EAST OF THE THIRD P.M., IN LAKE COUNTY ILLINOIS

PIN NUMBER: PART OF: 0629200002