

**NORTHERN LAKE COUNTY LAKE MICHIGAN
WATER PLANNING GROUP
FIRST AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING**

This **FIRST AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING** is made as of the date of its execution (this "**Memorandum**"), by and among The County of Lake, Illinois, a body politic and corporate (the "**County**"); the Lake County Public Water District, an Illinois unit of local government (the "**District**"); the Village of Antioch, an Illinois municipal corporation ("**Antioch**"); the Village of Fox Lake, an Illinois municipal corporation ("**Fox Lake**"); the Village of Lake Villa, an Illinois municipal corporation ("**Lake Villa**"); the Village of Lindenhurst, an Illinois municipal corporation ("**Lindenhurst**"); the Village of Wauconda, an Illinois municipal corporation ("**Wauconda**"); the Village of Lake Zurich, an Illinois municipal corporation ("**Lake Zurich**"); the Village of Volo, an Illinois municipal corporation ("**Volo**"); the Village of Hawthorn Woods, an Illinois municipal corporation ("**Hawthorn Woods**"); and the Village of Old Mill Creek, an Illinois municipal corporation ("**Old Mill Creek**") (individually, "**Party**" and collectively, the "**Parties**").

1. **Recitals.**

- A. The Parties have authority to enter into this intergovernmental agreement pursuant to the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, Article VII, Section 10 of the 1970 Constitution of the State of Illinois, and other applicable law.
- B. Except for the County and the District, the Parties are all municipal corporations in Lake County, Illinois (the "**Municipal Parties**").
- C. The County and the Municipal Parties (the "**JA Parties**") have been considering the creation of a new water entity (the "**Entity**") to provide a supply of potable water from Lake Michigan ("**Water Service**") for the Municipal Parties for parcels within their respective corporate limits, as modified from time to time; and for the County, which seeks to provide Water Service for certain service areas within the County commonly known as "**Grandwood Park**" and the "**County Northwest Region**" (which includes the Petite Lake, Fox Lake Hills, and Stanton Bay areas) and generally described in the Lake Michigan Water Feasibility Study, prepared for the Northern Lake County Lake Michigan Water Planning Group by Applied Technologies, Inc. dated November, 2007.
- D. The District owns and operates Lake Michigan water intake and treatment facilities (the "**District Facilities**") and currently provides the Water Service requirements of the City of Zion, the Village of Winthrop Harbor, and the State of Illinois Adeline Jay Geo-Karis Illinois Beach State Park on a non-profit basis.
- E. The JA Parties and the District intend to explore opportunities for various intergovernmental transactions and possible joint intergovernmental operations involving the District and the Entity, as more fully described in Exhibit A

attached to and made a part of the Memorandum by this reference (the "**Entity-District Principles**"), which if successful will lead to one or more intergovernmental agreements between the Entity and the District (the "**Entity-District Agreements**"). However, the Parties agree that such Agreements are not yet a certainty.

- F. The JA Parties have previously taken a number of actions to advance their ability to provide Water Service through an Entity, including: (i) convening meetings and exchanging information regarding the formation of an Entity; (ii) engaging the engineering firm of Applied Technologies, Inc. to prepare a "Lake Michigan Water Feasibility Study" to determine preliminarily if an Entity could provide cost-effective Water Service on behalf of the Parties; (iii) undertaking coordinated efforts to secure allocations of Lake Michigan water to provide Water Service; (iv) evaluating the financing aspects of developing a joint system to provide Water Service; and (v) collectively funding the foregoing activities and efforts in an amount exceeding \$355,000.00 (as of December 2009). The District has also participated in many of the meetings and exchanges of information.
- G. At meetings on 11 December 2008 and 15 January 2009, representatives of the JA Parties met to review and confirm the general organizational approach for the Entity and to identify additional steps necessary for creation of the Entity.
- H. The County has engaged legal counsel to provide information regarding legal issues involved with, and to prepare documentation for, the formation of the Entity (the "**Preliminary Legal Work**").
- I. In consideration of the County's engagement of legal counsel for the Preliminary Legal Work, each of the Municipal Parties has agreed to contribute an equal proportion of the costs associated with the Preliminary Legal Work, which contribution shares shall not exceed \$5,000.00 per Municipal Party and \$10,000.00 for the County (based on \$5,000 for each of the two noted service areas).
- J. In 2009, the Parties, other than Hawthorn Woods and Old Mill Creek, previously entered into the "Northern Lake County Lake Michigan Water Planning Group Memorandum of Understanding" (the "**Original Memorandum**"). The Parties, including Hawthorn Woods and Old Mill Creek, now intend to enter into this Memorandum as their first amended and restated version of the Original Memorandum.
- K. Subsequent to the execution of the Original Memorandum, the JA Parties have continued to take voluntary actions to advance their ability to provide Water Service through the creation of the Entity, including (i) convening additional meetings and exchanging information regarding formation of the Entity; (ii) engaging legal counsel to prepare a draft intergovernmental agreement to form the Entity as a joint action water agency; (iii) all of the Parties, other than the District, Hawthorn Woods and Old Mill Creek, have completed their applications for new

Lake Michigan water allocations and have completed the required hearings, evidence and testimony in connection with those applications; and (iv) further evaluating the financing aspects of developing a joint system to provide Water Service. The District has also voluntarily participated in many of the meetings and exchanges of information.

- L. On 14 January 2011, the Illinois Department of Natural Resources approved ten decisions issuing Lake Michigan Water Allocation Permits to the County for the Grandwood Park and County Northwest Regions and to the Municipal Parties (other than Hawthorn Woods and Old Mill Creek) for the allocation years 2015 to 2030.
- M. At meetings on 14 April 2010, 19 May 2010, 17 June 2010, 22 July 2010, 16 December 2010, and 3 February 2011, representatives of the Parties met to discuss the next steps in creation of the Entity to provide Water Service as well as the proposed project schedule.
- N. Following consultation with and consent of the Working Groups described in this Memorandum and subject to the terms of this Memorandum, the County will engage legal, engineering (including assessments of alternative sources of Lake Michigan water), management, financial advisory, and public education services in furtherance of the JA Parties' efforts to create the Entity to provide Water Service (the "**Phase 2 Work**").
- O. Based on the assessment of alternative sources of Lake Michigan water as part of the Phase 2 Work, the Phase 2 Work may also include negotiation of the Entity-District Agreements.
- P. In consideration of the County's engagement of legal, engineering, management, financial advisory, and public information services for the Phase 2 Work pursuant to the terms of this Memorandum, (i) each of the JA Parties and the County have agreed to contribute an equal proportion of the costs associated with the Phase 2 Work, which contribution shares shall be in the amount of \$50,000.00 per Municipal Party and \$50,000.00 by the County; and (ii) the District has agreed to enter into discussions with the JA Parties (and the Entity, when formed) pursuant to the Entity-District Principles which, if successful, will lead to one or more Entity-District Agreements. The Entity-District Agreements will be entered into at a mutually agreed time consistent with the Entity-District Principles, provided that negotiations on the Entity-District Agreements are successful.
- Q. In order to better ensure that the JA Parties enjoy relative parity with respect to undertaking formation of the Entity, this Memorandum has been prepared in order to delineate the JA Parties' cost-sharing obligations with respect to the Preliminary Legal Work and the Phase 2 Work.

2. **Preliminary Legal Work and Phase 2 Work Cost Sharing.**

- A. **Preliminary Legal Work; Phase 2 Work.** The Municipal Parties acknowledge and agree that: (i) the County will formally engage counsel to perform the Preliminary Legal Work and, following consultation with and the consent of the Working Groups, the County will formally engage counsel and engineering, management, financial advisory, and public information services professionals to perform the Phase 2 Work; (ii) the results of the Preliminary Legal Work and the Phase 2 Work will be of common and mutual interest among the JA Parties, and such Preliminary Legal Work and Phase 2 Work will be undertaken to advance the common interest of the JA Parties and not in a manner adverse to any of the JA Parties; and (iii) the County will share with, and seek input from, the Municipal Parties and (to the extent appropriate) the District in connection with the Preliminary Legal Work relating to the development of legal documentation for the Entity and in connection with the Phase 2 Work relating to furtherance of the JA Parties' consideration of creation of the Entity to provide Water Service.
- B. **Payment.** Subject to the terms of this Memorandum, the County will pay all costs relating to the Preliminary Legal Work and to the Phase 2 Work.
- C. **Sharing of Cost Responsibilities; Reimbursements.**

- (1) **Preliminary Legal Work:** The JA Parties agree that they will share equally the costs associated with the Preliminary Legal Work. To that end, each Municipal Party will deliver \$5,000.00 and the County will deliver \$10,000.00 (the "***Reimbursement Contribution***") to the County to be held in trust (the "***Reimbursement Fund***") for purposes of reimbursing the County for any costs actually incurred for the Preliminary Legal Work. Such Reimbursement Contributions shall be delivered to the County on or before 31 March 2009. The County may withdraw funds from the Reimbursement Fund at any time after it incurs costs for the Preliminary Legal Work.
- (2) **Phase 2 Work:** The JA Parties agree that they will share equally the costs associated with the Phase 2 Work. To that end, each such Party will deliver \$50,000.00 (the "***Phase 2 Contribution***") to the County to be held in trust (the "***Phase 2 Fund***") for purposes of making payments for costs actually incurred for the Phase 2 Work. Such Phase 2 Contributions shall be delivered to the County for deposit in the Phase 2 Fund in three installments, as follows:

<u>Installment</u>	<u>Amount</u>	<u>Payment Date</u>
1	\$25,000.00	Within 15 days after the Party approves this Memorandum
2	\$12,500.00	31 July 2011
3	\$12,500.00	30 September 2011

The amount of the Phase 2 Contribution for the each of the JA Parties shall not exceed \$50,000.00 without an amendment of this Memorandum by the JA Parties. Following review of, and consultation with the Coordinating Working Group regarding, invoices received, the County will release funds from the Phase 2 Fund for payment of costs incurred for the Phase 2 Work.

D. Accounting.

- (1) Preliminary Legal Work: The County will provide to the JA Parties (i) a quarterly notification of the balance of the Reimbursement Fund including a running total of amounts paid for the Preliminary Legal Work, (ii) periodic statements of costs incurred for Preliminary Legal Work, and (iii) a statement of the total costs of the Preliminary Legal Work after such work is completed.
- (2) Phase 2 Work: The County will provide to the JA Parties (i) a monthly notification of the balance of the Phase 2 Fund including a running total of amounts paid for the Phase 2 Work, and (ii) periodic statements of costs incurred for the Phase 2 Work. In addition, in connection with the presentation for approval by the Coordinating Working Group as set forth in Subsection 2.H.1, the County will provide statements or invoices for the Phase 2 Work that are to be considered for payment.

E. Reimbursement.

- (1) Preliminary Legal Work: If the actual cost of the Preliminary Legal Work totals less than the total amount of Reimbursement Contributions delivered to the Reimbursement Fund by the Municipal Parties and the County, then the County shall refund to each such Party that made a Reimbursement Contribution an equal proportion of any amounts remaining in the Reimbursement Fund.
- (2) Phase 2 Work: If the actual cost of the Phase 2 Work totals less than the total amount of Phase 2 Contributions delivered to the Phase 2 Fund by the Municipal Parties and the County, then the County shall refund to each Municipal Party that made a Phase 2 Contribution and to itself an equal proportion of any amounts remaining in the Phase 2 Fund. Provided, however, that any Party that withdraws from this Memorandum pursuant to Section 6 will not receive a reimbursement pursuant to this Paragraph.

- F. Understandings Between the Entity and the District. The District understands that part of the Phase 2 Work includes discussions pursuant to the Entity-District Principles and potential negotiation of the terms of one or more Entity-District Agreements, and intends to participate in these discussions and negotiations with the other Parties (and the Entity, when formed) on the basis of the Entity-District

Principles set forth in Exhibit A. If mutually acceptable terms are reached, the Entity-District Agreements will be entered into at a mutually agreed time consistent with the Entity-District Principles. The Parties acknowledge and agree that there is no certainty that any Entity-District Agreements will be entered into.

- G. No Liability of the County. The County will not be liable to the other Parties for any claim or damage of any kind whatsoever relating to the Preliminary Legal Work or the Phase 2 Work.
- H. Coordination of the Phase 2 Work. The Parties agree that in order to effectively coordinate the various elements of the Phase 2 Work, certain elements of that Work should be allocated to various informal working groups consisting of officials or personnel, as the case may be, of various Parties, including the following working groups. Each Party shall notify the County in writing of its designees and representatives for each working group and of any changes in such personnel from time to time:
- (1) Coordinating Working Group: An advisory group comprised of the Policy Advisory Working Group and convened only for the following purposes: Review of periodic reports provided by the County pursuant to Subsection 2.D of this Memorandum; establishment of budget guidance for the provision of services that are part of the Phase 2 Work; and approval or ratification of expenditures for such services out of the Phase 2 Fund.
 - (2) Policy Advisory Working Group: An advisory group comprised of one representative from each of the Parties, as follows: (i) Municipal Parties: Village President or Mayor, or his or her designee; (ii) The County: County Board Chairman, or his or her designee; and (iii) The District: Chairman, or his or her designee. Designees shall be members of the corporate authorities. The Policy Advisory Working Group is established for the purposes of communication and coordination on matters of mutual concern, and to provide policy direction, regarding the creation of an Entity to provide Water Service to the Municipal Parties and the County, including input on operational and cost effectiveness matters relating to local systems, transport, and treatment activities, throughout the proposed territory of the Entity.
 - (3) Technical Advisory Working Group: An advisory body comprised of one representative from each of the Parties, as follows: (i) Municipal Parties: A designee of the Village President or Mayor; (ii) The County: A designee of the County Board Chairman; and (iii) The District: A designee of the Chairman. Each Party may designate an alternative representative to this Working Group. Representatives and alternate representatives shall be either engineers or full-time employees of the Municipal Parties, the County, or the District with responsibilities relating to the Party's water system. Each Party may send additional

staff members or consultants to the sessions of this Working Group as necessary for the topics under discussion. This Working Group shall be responsible for consideration of all aspects of the proposed Water Service and the creation, operation, and cost-effectiveness of the proposed Entity, and shall report on a periodic basis to the Policy Advisory Working Group.

- (4) Role of the District: The Parties recognize that each of the Working Groups will, from time to time, consider matters pertaining to the potential future relationship between the Entity and the District. Accordingly, there are certain sessions (or portions thereof) at which the Parties other than the District will need to discuss such matters without representatives of the District present. The District agrees not to attend such sessions (or those portions of sessions) when such matters are discussed by any Working Group. Notwithstanding the foregoing, a Working Group and the District may engage in discussions or negotiations at such sessions involving such matters, by mutual agreement.
3. **Enforceability and Enforcement.** Each of the Parties represents that the persons executing this Memorandum on behalf of such Party is duly authorized to do so. Any Party shall have the right to enforce this Memorandum pursuant to an action filed in the Illinois Circuit Court for the Nineteenth Judicial Circuit in Lake County, Illinois; provided, however, that the Parties agree that no Party shall have the right to enforce this Memorandum to compel the District or any other Party or the Entity to enter into any Entity-District Agreement that is not mutually acceptable. The Parties agree to meet and confer to discuss any disputes over the terms of this Memorandum prior to filing any such action for enforcement of this Memorandum.
4. **Entire Understanding; Amendment.** This Memorandum contains the entire understanding of the Municipal Parties and the County regarding cost-sharing obligations with respect to the Preliminary Legal Work and the Phase 2 Work, and all other agreements, understandings, representations, and statements, if any, whether oral or written, are merged herein. This Memorandum may be amended only by written instrument executed by the Parties; provided, however, that the Municipal Parties and the County may, without the consent of the District, amend by written instrument any portion of the Memorandum that solely applies to Parties other than the District.
5. **Term; Renewal; Execution.** The term of this Memorandum shall be through and including 31 July 2012 (the "***Term***"), commencing on the date that this Memorandum is executed. Prior to the end of the Term, a renewal term may be negotiated by the Parties upon terms and conditions as may be mutually acceptable. This Memorandum may be executed in counterparts.

6. **Withdrawal; Replenishment.**

- A. **Notice and Effect.** Any Party may withdraw from this Memorandum by providing written notice to all Parties. Withdrawal is effective upon delivery of such notice to the last Party, after which point the Party that withdraws pursuant to this Section 6 ("***Withdrawing Party***") shall have no further rights under this Memorandum. If the County withdraws pursuant to this Subsection, the remaining Parties will promptly select a Party to assume the role and responsibilities of the County as set forth in this Memorandum.
- B. **Responsibility for Costs.** A Withdrawing Party (other than the District) is responsible for an equal share of the cost of all Phase 2 Work incurred up to ten (10) days after the date of notice of withdrawal ("***Withdrawing Party Incurred Costs***"). The Phase 2 Contribution made by a Withdrawing Party will be used to reimburse the County for the Withdrawing Party Incurred Costs.
- C. **Return of Remaining Funds.** To the extent that any funds remain after the Withdrawing Party Incurred Costs are deducted from the amount of the Withdrawing Party's Phase 2 Contribution, the Withdrawing Party is entitled to reimbursement of such remaining funds. The County shall deliver such remaining funds to the Withdrawing Party within 60 days after the Withdrawing Party's notice of withdrawal pursuant to Subsection 6A.
- D. **Replenishment by Remaining Parties.** Upon withdrawal of a Withdrawing Party (other than the District) pursuant to this Section, the County is authorized to modify, to the extent necessary, the scope of the Phase 2 Work in order to ensure that the amount of Phase 2 Funds remaining after reimbursement of the Withdrawing Party (other than the District) is sufficient to pay for the Phase 2 Work.
- E. **District Withdrawal.** The Parties acknowledge that the District: (i) will not be making a Phase 2 Contribution; (ii) will not be subject to any Withdrawing Party Incurred Cost in the event of its withdrawal from this Memorandum; and (iii) will not be entitled to any return of funds in the event of its withdrawal from this Memorandum.

[SIGNATURES ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, pursuant to proper authority duly granted, the Parties have set their hands and seals hereto on or before the date first stated above.

ATTEST:

The County of Lake, an Illinois body politic and corporate

By: _____
Its: _____

By: _____
Its: _____

Contact Party for The County of Lake:

Name: _____
Address: _____

Telephone: _____
Facsimile: _____
Email: _____

ATTEST:

Village of Antioch, an Illinois municipal corporation

By: _____
Its: _____

By: _____
Its: _____

Contact Party for the Village of Antioch:

Name: _____
Address: _____

Telephone: _____
Facsimile: _____
Email: _____

ATTEST:

Village of Fox Lake, an Illinois
municipal corporation

By: _____
Its: _____

By: _____
Its: _____

**Contact Party for the Village of Fox
Lake:**

Name: _____
Address: _____

Telephone: _____
Facsimile: _____
Email: _____

ATTEST:

Lake County Public Water District, an
Illinois unit of local government

By: _____
Its: _____

By: _____
Its: _____

**Contact Party for the Lake County
Public Water District:**

Name: _____
Address: _____

Telephone: _____
Facsimile: _____
Email: _____

ATTEST:

Village of Lake Villa, an Illinois
municipal corporation

By: _____
Its: _____

By: _____
Its: _____

**Contact Party for the Village of Lake
Villa:**

Name: _____
Address: _____

Telephone: _____
Facsimile: _____
Email: _____

ATTEST:

Village of Lindenhurst, an Illinois
municipal corporation

By: _____
Its: _____

By: _____
Its: _____

**Contact Party for the Village of
Lindenhurst:**

Name: _____
Address: _____

Telephone: _____
Facsimile: _____
Email: _____

ATTEST:

Village of Wauconda, an Illinois
municipal corporation

By: _____
Its: _____

By: _____
Its: _____

**Contact Party for the Village of
Wauconda:**

Name: _____
Address: _____

Telephone: _____
Facsimile: _____
Email: _____

ATTEST:

Village of Lake Zurich, an Illinois
municipal corporation

By: _____
Its: _____

By: _____
Its: _____

**Contact Party for the Village of Lake
Zurich:**

Name: _____
Address: _____

Telephone: _____
Facsimile: _____
Email: _____

ATTEST:

Village of Volo, an Illinois municipal corporation

By: _____
Its: _____

By: _____
Its: _____

Contact Party for the Village of Volo:

Name: _____
Address: _____

Telephone: _____
Facsimile: _____
Email: _____

ATTEST:

Village of Hawthorn Woods, an Illinois municipal corporation

By: _____
Its: _____

By: _____
Its: _____

Contact Party for the Village of Hawthorn Woods:

Name: _____
Address: _____

Telephone: _____
Facsimile: _____
Email: _____

ATTEST:

Village of Old Mill Creek, an Illinois
municipal corporation

By: _____
Its: _____

By: _____
Its: _____

**Contact Party for the Village of Old
Mill Creek:**

Name: _____
Address: _____

Telephone: _____
Facsimile: _____
Email: _____

EXHIBIT A

ENTITY-DISTRICT PRINCIPLES

It has been proposed that the Entity will construct and own a new Lake Michigan water treatment facility and new distribution facilities to provide a Lake Michigan water supply to members of the Entity. The JA Parties and the District understand that there may be mutually beneficial opportunities for both the District and the new Entity if the Parties can mutually agree to locate the Entity's new treatment facility at a location on the property currently owned by the District and proximate to the District Facilities.

- (1) The JA Parties will evaluate the property on which the District Facilities are located in Zion, Illinois ("*District Site*") and the capacity of the District Facilities.
- (2) It is the intent of the District to consider a request intended to be made by the JA Parties to sell a portion of the District Site not needed by the District to the Entity for the new treatment facility proposed for the Entity.
- (3) Depending on the location and amount of land intended to be requested for the Entity's proposed treatment facility, and whether such portion of land may not be needed by the District, it is the intent of the District to enter into negotiations for the possible sale of such portion of District Site to the Entity under mutually acceptable terms and conditions.
- (4) It is the intent of the District to consider a request intended to be made by the JA Parties for the use by the Entity of a portion of the capacity of the District's intake facility which may not be needed by the District for the new treatment facility proposed for the Entity.
- (5) Depending upon the amount of capacity available in the District's intake facility, the amount of capacity needed by the District and the amount of capacity requested for use by the Entity, the District intends to enter into negotiations for a possible contract under which certain capacity in the District's intake would be made available to the Entity under mutually acceptable rates, terms and conditions.
- (6) It is the intent of the District to consider any proposal by the Entity for District staff to operate the new treatment facility proposed for the Entity.