

Item #12:

Village Trustee Acuna

Northwest Lake Michigan Water Planning Group Meeting

**NORTH - WEST LAKE COUNTY LAKE MICHIGAN
WATER PLANNING GROUP**

LAKE COUNTY PUBLIC WORKS OFFICE

MEETING AGENDA

May 19, 2010, 10:00 AM

1. Review of previous meeting minutes – April 14, 2010
2. Water District – Lake County meeting update
3. Draft revised MOU
4. Pros and cons of GO funding vs. SSA funding
5. Allocation update
6. Schedule
7. Discussion with Bill Balling
8. Other
9. Next meeting date

NORTH WEST LAKE COUNTY JOINT ACTION WATER AGENCY
LAKE MICHIGAN WATER PLANNING GROUP

PROJECT SCHEDULE

April 26, 2010

- March 11 & 12, 2010 – IDNR Official Water Allocation Hearings
- May 2010 – IDNR Decision on Allocation Requests
- June 2010 – Communities Execute Memorandum of Understanding for Interim Project Funding and Coordination of Activities
- July 8, 2010 – Review SSA or Referendum Funding Options with Elected Officials of Member Communities
- August 2010 – Communities Execute NWLCJAWA Agreements and form Joint Action Water Agency; Enter into Agreement with Lake County Public Water District
- October 2010 – March 2011 - Hold Public Meetings, Execute Public Education Campaign
- April 5, 2011 – Referendum Question Before Voters or SSA Establishment

TO: Mr. Peter Kolb, Director of Public Works for Lake County
FROM: William Balling

SUBJECT: Supporting information for Project Management Services for the
North and West Lake County Group

DATE: May 13, 2010

Dear Peter,

I am looking forward to meeting with the North-West Lake County Lake Michigan Water Planning Group on May 19 to discuss opportunities for me to serve as your Project Manager to assist and manage the efforts of the members to complete a successful Lake Michigan water procurement program. My previous communications to you of February 5, 2010 and March 10, 2010 provided some background on my firm and experiences that relate to your needs. In preparation of our meeting I have reviewed the information you have provided me on the project and would like to suggest three additional areas of effort which will assist the group.

First I believe there is merit as a part of the preliminary design and route study to include a final review of alternative water supply options for members. The success of this program will be a result of identifying the optimal water supplier for the communities by the most economic means. The success of this program will rely on the members sticking together to establish a viable delivery system, but there may be options including the possibility of a dual source of water supply, which should receive a final review before the launch of the final design. Second conversion of our efforts from a systems development initiative ie financing and building the system to an operating entity will require a seamless transition. My management services will include recommendations on the right sizing and organizational structure, including staffing recommendations so you can efficiently deliver Lake Water to your members. My support can include the recruitment of your permanent operating manager timed for the start up of your system. Third, promoting your core strategy from a public support standpoint should include seeking broad regional endorsements of the group's efforts and positioning your work as complimentary to the regional environmental agenda. Let me offer you a few additional highlights of my work experiences which I believe supports these additional items.

Northwest Water Commission: Serving as the Chairman of the Commission for over two decades I was involved in every phase of the development of this regional system including the mobilization of participating members, the negotiation of service and supply contracts, the oversight of all construction contract elements, the launch of the system and the uninterrupted service performance from 1984 through 2006 at the lowest wholesale rate in our region. I personally recruited and on behalf of the Commission four Executive Directors during that period and dealt with all operational aspects from a policy and leadership perspective, including the development of our Executive Directors over that period.

Solid Waste Agency of Northern Cook County: I chaired the Executive Committee of this Joint Action Agency and was responsible to our Board of Directors for developing strategies and vetting ideas and concepts to advance our agenda. This agency by its size, 23 municipal members, and performance, acquiring then disposing of assets and restructuring financing required from a change in mission demonstrate my abilities to work with a large group successfully. The career metric highlight for me was the orchestration of a successful decision from the United States Supreme Court (SWANCC v US Army Corps of Engineers) which allowed us to protect the economic value of our assets.

Village of Buffalo Grove. The conversion of our public well water supply to a Lake Michigan Water supply during a high growth period with a 100% service performance record at the second lowest Lake water rate in our region required a focused effort of many individuals. I am most proud of the accomplishments of this team and their delivery success.

Southwest Suburban Water Supply due diligence review and contract development. This current work effort on behalf of Tinley Park, Orland Park, New Lenox, Mokena, and Oak Forest to identify optimal improvements to their water supplier's system and the development of a new water purchase agreement are already demonstrating favorable cost reduction results. The due diligence review has eliminated assigned costs to my members from unnecessary redundant improvements and has right sized the improvements for our needs. Also new routing paths have been identified which will further reduce costs estimated at this point to be over 45% of the initial system expansion proposal.

Seeking broad regional endorsements. I am uniquely positioned with two entities focused on regional environmental issues. This first is my work with the Lake County Administrator's office to provide Administrative Support for the newly formed Lake County Water Supply Advisory Committee whose purpose is to promote and endorse strategic water management strategies for the County. No initiative is more important to Lake County than the success of your initiative. I also serve as the Co-Chair of the CMAP Citizens Advisory Committee and as such, review all staff planning initiatives before vetting to the CMAP Board. I have been successful in promoting collaborative efforts on water resource management within that group as the 2040 Regional Plan is being drafted.

I hope these additional metrics and highlights clarify my skills and capabilities to serve the group as your Project Manager.

Sincerely,

William R. Balling
Managing Director,
WRB, LLC Consulting and Services.

**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 ~~Long Grove~~ Lake Zurich, an Illinois municipal corporation ("**Long Grove** Lake Zurich"); the Village of ~~Lake Zurich~~ Volo, an Illinois municipal corporation ("**Lake Zurich** Volo"); the Village of Hawthorn Woods, an Illinois municipal corporation ("**Hawthorn Woods**"); and the Village of ~~Volo~~ Old Mill Creek, an Illinois municipal corporation ("**Volo**") (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 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 member municipalities for parcels within their respective corporate limits; 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).
- 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 District has agreed to negotiate with the Parties the terms of an agreement into which both the District and the Entity will enter (the "**Entity-District Agreement**"), by which the District and the Entity will engage in various intergovernmental transactions and possible joint intergovernmental operations, containing at least the commitments contained in Exhibit A

attached to and made a part of the Memorandum by this reference (the "District Commitments").

E. ~~E.~~—The 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.

G. ~~F.~~—At meetings on 11 December 2008 and 15 January 2009, representatives of the 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. ~~G.~~—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. ~~H.~~—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 Creed, 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 Parties have continued to take 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 [Note: perhaps modify to reflect that allocations have been granted if done by the time of adoption?]; (iv) further evaluating the financing

aspects of developing a joint system to provide Water Service; and (vi) [anything else?].

L. At meetings on 14 April 2010 and May 2010, 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.

M. The County will engage legal, engineering, management, and public education services in furtherance of the Parties' efforts to create the Entity to provide Water Service (the "Phase 2 Work").

N. The Phase 2 Work will also include negotiation of the Entity-District Agreement.

O. In consideration of the County's engagement of legal, engineering, management, and public education services for the Phase 2 Work, (i) each of the Municipal 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 Party; and (ii) the District has agreed to negotiate with the Parties over the terms of the Entity-District Agreement and commits to enter into such an Agreement once negotiations are complete.

P. In order to better ensure that the Parties enjoy relative parity with respect to undertaking formation of the Entity, this Memorandum has been prepared in order to delineate the 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 Parties acknowledge and agree that: (i) the Preliminary Legal Work and the Phase 2 Work will be done for and on behalf of the County exclusively; (ii) the results of the Preliminary Legal Work and the Phase 2 Work will be of common and mutual interest among the Parties, but such Preliminary Legal Work and the Phase 2 Work is neither done on behalf of nor undertaken in a manner adverse to any of the Municipal Parties or the District; and (iii) the County will share with, and seek input from, the other Parties 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 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 County and the Municipal 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: Option 1: The County and the Municipal Parties agree that they will share equally the costs associated with the Phase 2 Work. To that end, each 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 reimbursing the County for costs actually incurred for the Phase 2 Work. Such Phase 2 Contributions shall be delivered to the County on or before / _____ / . The County may withdraw funds from the Phase 2 Fund at any time after it incurs costs for the Phase 2 Work.

Option 2: The County and the Municipal Parties agree that they will share equally the costs associated with the Phase 2 Work. To that end, each 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 reimbursing the County for costs actually incurred for the Phase 2 Work. Such Phase 2 Contributions shall be paid in two equal installments, with the first installment delivered to the County on or before / _____ / and the second installment delivered to the County on or before / _____ / . The County may withdraw funds from the Phase 2 Fund at any time after it incurs costs for the Phase 2 Work.

Option 3: The County and the Municipal Parties agree that they will share equally the costs associated with the Phase 2 Work. To that end, each 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 reimbursing the County for costs actually incurred for the Phase 2 Work. Such Phase 2 Contributions shall be delivered to the County in three installments, as follows: the first installment shall be in the amount of 50% of the Phase 2 Contribution and shall be delivered to the County on or before / _____ /; the second installment shall be in the amount of 25% of the Phase 2 Contribution and shall be delivered to the County on or before / _____ /; and the third installment shall be in the

amount of 25% of the Phase 2 Contribution and shall be delivered to the County on or before / _____ /. The County may withdraw funds from the Phase 2 Fund at any time after it incurs costs for the Phase 2 Work.

D. Accounting. The County will provide to the Parties (i) a quarterly notification of the balance of the Reimbursement Fund and the Phase 2 Fund including a running total of amounts paid for the Preliminary Legal Work and for the Phase 2 Work, (ii) periodic statements of costs incurred for Preliminary Legal Work and for the Phase 2 Work, and (iii) a statement of the total costs of the Preliminary Legal Work and of the Phase 2 Work after such work is completed.

E. Reimbursement.

(1) 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 Parties, then the County shall refund to each Party that made a Reimbursement Contribution an equal proportion of any amounts remaining in the Reimbursement Fund.

(2) 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 Parties, then the County shall refund to each Party that made a Phase 2 Contribution 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. Agreement Between the Entity and the District. The District acknowledges and agrees that part of the Phase 2 Work includes negotiation of the terms of the proposed Entity-District Agreement, and agrees to participate in these negotiations with the Parties on the basis of the District Commitments set forth in Exhibit A and commits to approve such an Agreement when negotiations are complete and authorize its execution upon creation of the new Entity.

G. ~~F.~~ 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.

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. 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 Parties 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.
5. **Term; Renewal; Execution.** The term of this Memorandum shall be through and including ~~March~~ May 31, 2010~~2011~~ (the "*Term*"), commencing on the date that this Memorandum of Understanding 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 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. Option 1:** Upon withdrawal of a Withdrawing Party (other than the District) pursuant to this Section, the remaining Parties will be responsible for reimbursing the County in equal shares the amount of funds delivered to the Withdrawing Party pursuant to Subsection 6C. Within five (5) days after delivery of remaining funds to the Withdrawing Party, the County will notify Parties of the amount due pursuant to this Subsection 6D. Each Party must deliver to the County its share of such funds within 30 days after the date on which the County notifies the Party of the amount due pursuant to this Subsection 6D.

Option 2: Upon withdrawal of a Withdrawing Party 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 is sufficient to pay for the Phase 2 Work.

[SIGNATURES ON THE FOLLOWING PAGES]

Comparison of May 13, 2010 Draft to 2009 Executed Version

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: _____

Comparison of May 13, 2010 Draft to 2009 Executed Version

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: _____

Comparison of May 13, 2010 Draft to 2009 Executed Version

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: _____

Comparison of May 13, 2010 Draft to 2009 Executed Version

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 ~~Long Grove~~ Lake Zurich, an
Illinois municipal corporation**

By: _____
Its: _____

By: _____
Its: _____

**Contact Party for the Village of ~~Long
Grove~~ Lake Zurich:**

Name: _____
Address: _____

Telephone: _____
Facsimile: _____
Email: _____

ATTEST:

**Village of ~~Lake Zurich~~Volo, an Illinois
municipal corporation**

By: _____
Its: _____

By: _____
Its: _____

Contact Party for the Village of ~~Lake Zurich~~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: _____

EXHIBIT A

DISTRICT COMMITMENTS

The District agrees to negotiate, promptly and in good faith, with the Parties to reach an Entity-District Agreement and to approve such an Agreement and authorize its execution upon creation of the new Entity. The Agreement shall include at least the following components:

- (1) The District will sell to the Entity a portion of the property on which the District Facilities are located in Zion, Illinois (the "Sale Parcel"), which Sale Parcel is anticipated to be comprised of approximately 4-5 acres and the size and location of which are to be determined, based upon the further design, engineering and permitting analysis to be performed as a part of the Phase 2 Work.
- (2) The District will sell to the Entity the right to use a portion of the capacity of the District's Lake Michigan water intake facilities, as well as all easements and rights of access necessary for the Entity to use those facilities, based upon the further design, engineering and permitting analysis to be performed as a part of the Phase 2 Work.
- (3) The potential for certain joint operations of the facilities of the Entity and the District, as the potential for the future sale of water by the Entity to the District.

9467787_v1

9467787_v1

Comparison of May 13, 2010 Draft to 2009 Executed Version

Document comparison by Workshare Professional on Thursday, May 13, 2010 2:29:01 PM

Input:	
Document 1 ID	interwovenSite://HKDMS/Active/9462837/1
Description	#9462837v1<Active> - Lake County: First Amended and Restated Water Entity MOU re Cost Sharing
Document 2 ID	interwovenSite://FRMDMS/Active/9462837/3
Description	#9462837v3<Active> - Lake County: First Amended and Restated Water Entity MOU re Cost Sharing
Rendering set	baa standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved-deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	97
Deletions	23
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	120