

## David Lothspeich

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**From:** Betsy.Gates@hklaw.com  
**Sent:** Friday, May 20, 2011 2:08 PM  
**To:** PKolb@lakecountyil.gov; David Lothspeich  
**Cc:** PPerna@lakecountyil.gov; DJasica@lakecountyil.gov; victor.filippini@hklaw.com  
**Subject:** RE: Lake Co - LG - Water - Joint Representation Letter.DOCX;LG: Intergovernmental Agreement with Lake Co. re: Heron's Landing water system.DOCX  
**Attachments:** LG\_ Intergovernmental Agreement with Lake Co. re\_ Heron\_s Landing water system.DOCX; LG-Lake Co. IGA\_Redline Comparison.pdf

All,

Attached for your review are clean and red-line versions of a revised draft intergovernmental agreement (the "**IGA**") for the design, construction, installation, and operation of the water system to serve the Heron's Landing Subdivision in Long Grove. The red-line version indicates the changes made since the draft circulated by Vic on May 6.

I would like to call your attention to a few specific changes:

- Sections 3.A and 4.C: On Wednesday we discussed the County's desire to simplify the process for disbursement of SSA bond proceeds, such that bond proceeds would be provided directly to the County rather than being disbursed through a bond trustee. Although we have some concerns that a bond purchaser may require use of a bond trustee, we have revised the IGA to clarify that nothing in this agreement precludes the County from acting as the bond trustee. Also, we have made clear that the Village is obligated to apply the bond proceeds to project costs and expenses. Ultimately, the bond ordinance will govern the specific process for disbursing bond proceeds.
- Section 4.C: Once passed, the SSA Establishing Ordinance will authorize the Village to issue bonds totaling up to \$3 million (consistent with the terms of the proposing ordinance). This amount does not have to be reduced by the amount of any prepayments. But, depending on the amount of prepayments received, the Village could elect to issue less than \$3 million in bonds. Accordingly, the IGA is revised to provide that "The amounts of the Bonds as set forth in this subsection ~~shall~~may be adjusted to reflect any Prepayment Commitments."
- Section 4.D: The prior draft IGA provided that the County would begin engineering following the establishment of the SSA and the issuance of the Tax Exempt and Taxable Bonds, based on the phasing schedule we received from the County. However, from our conversation Wednesday we understand that the County would like the ability to start work on the engineering as soon as the SSA is established, rather than waiting until bonds are issued. We have revised Section 4.D to reflect this.
- Section 4.E: Because the streets in Herons Landing are apparently privately owned, we have added Section 4.E to provide that the Village will make good faith efforts to obtain the necessary utility easements, and the County will cooperate in identifying the necessary location, scope, and size of such easements.
- Sections 4.F and 4.G: This Section provides that, if project costs exceed the amount of the net bond proceeds plus the prepayments, the County and the Village will confer to determine

whether the project should go forward (and, if so, how to secure necessary funding and/or reduce costs). Although there is no maximum cost threshold, at which the project would be automatically terminated, the Village and County are given the discretion to decide how to handle any cost overruns. In exercising this discretion, the Village and County are free to (but not required to) confer with the HOA and residents in resolving this policy matter. We have slightly revised the IGA language to make clear that, if the Village and County do not agree on a way to secure funding for cost overruns and/or reduce costs, the water system project can be terminated. Section 4.G was added to clarify that, in the event the Village receives money from the HOA (such as proceeds of assessments collected from residents, which are separate from the SSA taxes assessed by the Village), that money will be applied to project costs.

- Section 6.C: We have revised this section to more accurately reflect the service termination procedures used by the County. This Section also gives the County the ability to terminate service for failing/refusing an inspection or violating conservation regulations, because of the special nature of the Herons Landing system (namely, the continued use of private wells for limited purposes). The IGA gives the County this termination authority with respect to the Herons Landing system, in addition to the County's general authority under its ordinances to terminate service for nonpayment.
- Section 6.D: At the request of the County, and with agreement from the Village, we have removed the provision that would obligate the County to cooperate with the Village in enforcing its conservation regulations, if those regulations are stricter than the County's.
- Section 7.C: At the County's request, we have removed the section authorizing the County to install protective and monitoring devices or prevention of cross-connections.

Please call Vic or me if you have any questions.

Thanks,

**Betsy Gates | Holland & Knight**

Associate

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**From:** Kolb, Peter [mailto:PKolb@lakecountyil.gov]

**Sent:** Monday, May 16, 2011 10:40 AM

**To:** kmccanna@speerfinancial.com; David Lothspeich (lothsd@longgrove.net); Gates, Betsy L (CHI - X65749)

**Cc:** Perna, Philip M.; Jasica, Daniel L.

**Subject:** FW: Lake Co - LG - Water - Joint Representation Letter.DOCX;LG: Intergovernmental Agreement with Lake Co. re: Heron's Landing water system.DOCX

Kevin attached for your use are the most recent draft documents relating to the Herons Landing SSA. I have included copies of the exhibits and a project schedule also. Have fun reading and see you on Wednesday at my office 8:30am to discuss with Dave.

Betsy if you are available to join us, teleconference(?), for this discussion at 8:30am that would be useful.

Thanks

**Peter E. Kolb, P.E.**

*Director Lake County Public Works*

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Libertyville, Illinois 60048

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**From:** victor.filippini@hklaw.com [mailto:victor.filippini@hklaw.com]

**Sent:** Friday, May 06, 2011 7:16 PM

**To:** Kolb, Peter; dlothspeich@longgrove.net

**Cc:** Betsy.Gates@hklaw.com

**Subject:** Lake Co - LG - Water - Joint Representation Letter.DOCX;LG: Intergovernmental Agreement with Lake Co. re: Heron's Landing water system.DOCX

Dear Dave and Peter,

I am attaching for your review a draft intergovernmental agreement (the "**IGA**") for the design, construction, installation, and operation of the water system to serve the Heron's Landing Subdivision in Long Grove. My apologies for the delay in circulating this; I've hit some rough spots recently that have complicated my ability to complete my review of the IGA.

The IGA attempts to follow the Project Schedule that Peter sent us on 3/25/11, as well as various other matters that were discussed during conference calls and e-mails with you both. In addition, we have tried to incorporate terms that will allow the parties a means to resolve any difficulties that might arise in the design or financing of the project.

One potential difficulty that we identified in the course of preparing the attached draft is the estimated costs of the project versus the Village's authority under the SSA. Specifically, the Villages' proposing ordinance only authorizes the sale of \$3.0M in bonds, which was the estimate in place at the time of the proposing ordinance (see attached project cost summary). That cost summary was updated and sent to us on 3/25/11, and the estimated costs were then \$3.25M. Although this is a problem, there may be a way of resolving this by making us the difference through the annual SSA Taxes (which are authorized to \$2500/residence/year, about \$400 more per year than needed based on the debt payment schedule in the 3/25/11 cost estimate). I can discuss this with you further, but this approach might be preferred to amending the SSA, and the IGA includes provisions to use this additional SSA Tax authority to close the gap between the bond authorization and the estimated project cost.

One other potential problem that we noted relates to the bond interest rate. Assuming that the 6.5% rate is attainable for the tax-exempt bonds, query whether that rate can be secured for the taxable bonds. Again, we are limited by the terms in the SSA Proposing Ordinance (which terms were derived from the attached cost estimate that was circulated last fall). Again, there may be ways of addressing this, but we'll need to work with Speer to see how this might be negotiated.

Please review the draft agreement and let me or Betsy gates know of any questions, concerns, or changes that you may have. As this was undertaken as a joint representation project, I ask that any e-mail comments be circulated to all on this e-mail.

With respect to the joint representation aspect of our involvement, I have included a letter that summarizes our oral discussions of the work, and formally sets forth the nature of our joint representation. I ask that you review the attached letter, sign it in the place noted, and return your signed copy to me.

Thank you for your patience with me in getting this out. With a solid working draft of the IGA in place, we should be able to address any changes without delay. Enjoy your weekend.

Vic

Victor P. Filippini, Jr. | Holland & Knight  
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**NOTE FURTHER:** To ensure compliance with Treasury Regulations (31 CFR Part 10, §10.35), we inform you that any tax advice contained in this correspondence was not intended or written by us to be used, and cannot be used by you or anyone else, for the purpose of avoiding penalties imposed by the Internal Revenue Code.

**INTERGOVERNMENTAL AGREEMENT RELATING TO DELIVERY OF WATER  
SERVICE TO ~~HERON'S~~HERONS LANDING SUBDIVISION**

**THIS INTERGOVERNMENTAL AGREEMENT** is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011, and is by and between the **VILLAGE OF LONG GROVE**, an Illinois municipal corporation ("**Village**"), and the **COUNTY OF LAKE**, a body politic and corporate ("**County**") (collectively, the "**Parties**").

For and in consideration of the mutual covenants and promises hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Section 1: Recitals.**

A. Article VII, Section 10 of the 1970 Constitution of the State of Illinois authorizes units of local government to contract or otherwise associate among themselves "to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance" as well as to use their revenues, credit and other resources for intergovernmental activities.

B. The Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, also authorizes the joint use and enjoyment of the powers, privileges, functions, and authority of local governments.

C. Division 15-5 of the Counties Code, 55 ILCS 5/5-15001 *et seq.*, authorizes the County to, *inter alia*, construct, operate, improve, and extend a waterworks system to provide water service to individuals or municipalities and to impose and collect charges for water service.

D. Division 129 of the Illinois Municipal Code, 65 ILCS 5/11-129, authorizes the Village to construct and operate waterworks and water supply systems within and without the corporate boundaries of the Village.

E. The Parties have authority to enter into this Agreement pursuant to the Article VII, Section 10 of the 1970 Constitution of the State of Illinois, the Intergovernmental Cooperation Act, and other applicable law.

F. The Parties desire to enter into this Agreement to provide an adequate water supply to the ~~Heron's~~Herons Landing Subdivision ("~~Heron's~~Herons Landing"), which is located within the corporate limits of the Village.

G. Approximately 118 Lots in ~~Heron's~~Herons Landing are currently developed and used for detached single-family residential purposes. These Lots are legally described in Exhibit A attached hereto, and depicted in Exhibit B attached to this Agreement.

H. ~~Heron's~~Herons Landing currently obtains water service from individual private shallow wells and has experienced water quality and reliability concerns regarding its water supply.

I. The Village has enacted an Ordinance No. 2010-O-34 (“**SSA Proposing Ordinance**”) proposing the establishment of a special service area (“**SSA**”) for the construction of water distribution facilities serving **Heron'sHerons** Landing (“**Heron'sHerons Landing Water SSA**”).

J. The Village and the County, through the Lake County Public Works Department (“**LCPWD**”), desire to construct a local water distribution system (“**Water System**”) capable of providing water service to **Heron'sHerons** Landing through connection of the Water System to the County’s existing water distribution system.

K. The Water System shall provide Lake Michigan water service to **Heron'sHerons** Landing, which requires a Lake Michigan water allocation from the Illinois Department of Natural Resources (“**IDNR**”).

L. The County has an existing Lake Michigan water allocation (“**County Water Allocation**”) that is sufficient to provide for water service to **Heron'sHerons** Landing, and the Village has been issued a Lake Michigan Water Allocation Permit (“**Village Water Allocation**”) by IDNR that will allow the Village to begin using Lake Michigan water in 2015.

M. The Parties desire to enter into this Agreement to set forth their respective rights and responsibilities regarding the funding, design, construction, and installation of the Water System (the “**Project**”), as well as the future ownership, operation, and maintenance of the Water System.

N. In order to protect the integrity of the Water System, to protect the public health and safety, and otherwise to ensure that no improper cross-connections are made from the existing private wells to the new Water System, the Parties will require that, as part of the Project, initial connections of individual Lots to the Water System be undertaken and overseen by the County in accordance with this Agreement.

O. The Parties, through their corporate authorities, have approved this Agreement in order to advance the health, safety, and welfare of the public and particularly the residents of **Heron'sHerons** Landing.

**Section 2: Definitions.**

Whenever used in this Agreement, the following terms shall have the following meanings unless a different meaning is required by the context:

**Bonds:** Any bonds, notes, indentures, or other debt instruments issued by the Village and payable exclusively through the SSA Taxes generated pursuant to the **Heron'sHerons** Landing Water SSA. The terms and rights ~~appertaining~~pertaining to any Bonds will be set forth in a Bond Ordinance. Bonds may be issued in separate series, and different series of bonds may or may not be on par with other series of Bonds as provided in the Bond Ordinances. The term “Bonds” includes both the Taxable Bonds and the Tax-Exempt Bonds.

**Bond Ordinance:** Collectively, one or more ordinances that may be enacted by the Village authorizing the issuance of Bonds, from time to time, in one or more series and in

accordance with this Agreement and on such other terms as are acceptable to the Village, in its sole direction.

Bond Trustee: Any person or entity designated by the Village to manage and distribute the proceeds of the Bonds, in accordance with this Agreement and the Bond Ordinance.

Buffalo Box: The equipment used to control the movement of water from a public water main of the Water System into the private water lines on a Lot.

Corporate Authorities: The President and Board of Trustees of the Village.

County Authorities: [The Chairman and Board of Lake County.](#)

Effective Date: The date on which both Parties execute this Agreement.

Lot: A lot of record (as defined in the Village Zoning Code) located in ~~Heron's~~[Heron's](#) Landing, except Lots 30, 120, 121, and 122.

Owner: The record owner of any Lot ~~located in Heron's Landing.~~

Project: The design, bidding, construction, and installation of the Water System, including all Public Improvements and Private Improvements.

Public Improvements: The design, construction, and installation of all water mains and associated water distribution and storage facilities, metering facilities or equipment, and other related facilities or equipment necessary to extend water service from the terminus of the existing County water system into and throughout ~~Heron's~~[Heron's](#) Landing, extending to and including the Buffalo Box for each individual Lot.

Private Improvements: The design, construction, and installation of all water lines, meters, and other facilities or equipment necessary to connect each individual Lot to the Buffalo Box, and all work necessary to adapt or convert the existing interior plumbing and related facilities or equipment on each Lot to accommodate the connection to and operation of the Water System.

SSA Tax: Taxes levied by the Village pursuant to the ~~Heron's~~[Heron's](#) Landing Water SSA.

Taxable Bonds: Those Bonds that may be issued in connection with the ~~Heron's~~[Heron's](#) Landing Water SSA, the interest from which is not anticipated to be exempt from federal taxation. The proceeds from the Taxable Bonds are intended to pay for the Private Improvements.

Tax-Exempt Bonds: Those Bonds that may be issued in connection with the ~~Heron's~~[Heron's](#) Landing Water SSA, the interest from which is anticipated to be exempt from federal taxation. The proceeds from the Tax-Exempt Bonds are intended to pay for the Public Improvements.

### **Section 3: Obligations of the Parties; In General.**

A. Village Obligations. As more fully set forth in and subject to this Agreement, the Village shall be responsible for: establishing the [Heron's Herons](#) Landing Water SSA; issuing Bonds for the Project; applying the proceeds of the Bonds to the costs and expenses relating to the Project; levying SSA Taxes; conveying the Water System to the County upon completion of the Project; and otherwise performing such obligations as set forth in this Agreement.

B. County Obligations. As more fully set forth in and subject to this Agreement, the County shall be responsible for: the design, bidding, construction, and installation of the Public Improvements and Private Improvements; acceptance of the conveyance of the Water System from the Village; and the operation and maintenance of the Water System following such conveyance, as well as performing such obligations as set forth in this Agreement. In conjunction with its responsibilities for the Project, the County shall:

1. complete the Project in a good and workmanlike manner and in compliance with all applicable federal, State, and local statutes, ordinances, regulations, codes, and rules. All Project-related work shall be performed with due dispatch once commenced.
2. be responsible for obtaining and complying with all necessary federal, State, and local permits and approvals and for procuring all necessary contractor services. In addition, all engineering review and approvals (including construction engineering inspectional services) shall be provided by and under the control of the County. Notwithstanding the foregoing, all road restoration work undertaken in connection with the Water System shall be subject to inspection and approval by the Village Engineer.

**Section 4: Phasing.** The Parties acknowledge that pursuit of the Project has been based on certain assumptions regarding the cost for completing the Project. The Parties further acknowledge that the actual costs for the Project cannot be ascertained until certain activities have been undertaken and completed, and that such activities will require the incurrence of costs and expenses by each of the Parties. The Parties also acknowledge and agree that, in the event that the actual costs of the Project materially exceed the cost assumptions, the commencement of construction and installation of the Project may not be feasible. Accordingly, the Parties agree that their respective obligations under this Agreement shall be sequenced as follows:

A. SSA Establishment. Pursuant to the SSA Proposing Ordinance, the Village has initiated proceedings for establishment of the [Heron's Herons](#) Landing Water SSA. Prior to the County undertaking any activities in furtherance of the Project, the Village shall adopt and record an "**SSA Establishing Ordinance**," formally establishing the [Heron's Herons](#) Landing Water SSA. If the Village does not establish the [Heron's Herons](#) Landing Water SSA within 35 days after the Effective Date of this Agreement, the County may terminate this Agreement by notifying the Village of such termination, which termination shall be effective seven days after such notice unless the Village shall have adopted and recorded the SSA Establishing Ordinance prior to the effective date of such termination.

B. Prepayment Option. Within ~~[seven]~~7 days after the adoption and recordation of the SSA Establishing Ordinance, the Village will notify all Owners of their opportunity to prepay their share of the SSA Taxes based on the ~~"Project Cost Estimate"~~Engineer's Preliminary Opinion of Probable Cost ("Probable Cost Opinion"), set forth in Exhibit C attached to this Agreement (the "**Prepayment Amount**"). The Village will provide for a period of not more than ~~35~~30 days during which any Owner can unconditionally commit to prepay SSA Taxes, subject to a determination to proceed with the Project in accordance with Section 4.E of this Agreement ("**Prepayment Commitments**"). Any Prepayment Commitment shall be secured by a deposit paid to the Village in the amount of ~~45~~25% of the Prepayment Amount (the "**Prepayment Deposit**").

C. Issuance of Bonds. The Village shall adopt any and all appropriate ordinances, and undertake all such other actions necessary to permit the Village to issue: (i) the Tax-Exempt Bonds in an amount of not less than \$ \_\_\_\_\_, which the Parties estimate to be sufficient to fund the design, construction, and installation of the Public Improvements; and (ii) the Taxable Bonds in an amount of not less than \$ \_\_\_\_\_, which the Parties estimate to be sufficient to fund the design, construction, and installation of the Private Improvements. The Bonds will have terms that are consistent with the SSA Establishing Ordinance and acceptable to the Village. The Village shall not issue the Taxable Bonds unless the Tax-Exempt Bonds have previously been issued or will be issued concurrently with the Taxable Bonds. The amounts of the Bonds as set forth in this subsection ~~shall~~may be adjusted to reflect any Prepayment Commitments, and such amounts may be further adjusted by mutual written agreement of the Parties. If within ~~[90]~~180 days after the Effective Date of this Agreement the Village does not issue the Bonds as provided in this Section 4.C, the County may terminate this Agreement by notifying the Village of such termination, which termination shall be effective seven days after such notice unless the Village shall have issued the Bonds in accordance with this Section 4.C prior to the effective date of such termination. The proceeds of the sale of the Bonds after payment of all Bond issuance costs [including without limitations attorney's fees and other expenses associated with the Herons Landing Water SSA and the issuance and sale of the Bonds (including without limitation capitalized interest and reserve amounts, if any)](the "**Net Bond Proceeds**") shall be deposited with the Bond Trustee to be used for the payment of Project costs as provided in this Agreement. Nothing in this Agreement shall preclude the County from serving as the Bond Trustee, and in the event the County does serve as Bond Trustee, the County agrees to do so without compensation for such trustee services. The Bond Trustee shall separately account for the Net Bond Proceeds attributable to the Tax-Exempt Bonds (the "**Tax-Exempt Account**") and the Net Bond Proceeds attributable to the Taxable Bonds (the "**Taxable Account**"). Disbursements from the Net Bond Proceeds related to the Public Improvements shall be recorded against the Tax-Exempt Account, and disbursements related to the Private Improvements shall be recorded against the Taxable Account.

D. Project Engineering. Following the establishment of the ~~Heron's~~Herons Landing Water SSA ~~and issuance of both the Taxable and Tax-Exempt Bonds~~, the County shall undertake the design of the Water System in accordance with this Agreement, which design work shall include the bidding for the Project. The County shall bear the cost for such engineering expenses, subject to being reimbursed by the Village pursuant to Section 5 and proportionately from the Net Bond Proceeds and Prepayment Deposits. Whenever seeking reimbursement for engineering expenses related to the Project, the

County shall set forth that amount attributable to the Public Improvements and the amount attributable to the Private Improvements.

E. Easement Acquisition. Following the establishment of the Herons Landing Water SSA and prior to Project bidding, the Village shall make good faith efforts to secure necessary utility easements for the Water System. The Village and County shall cooperate for purposes of ascertaining the location, scope, and size of such easements. In the event that the Village is unable to secure such easements, the Village shall notify the County and thereupon cancel or terminate this Agreement, subject to reimbursement to the County of all of costs incurred by the County in accordance with this Agreement.

F. Project Bidding. Upon the opening of bids for the Project, the County shall identify the lowest responsible bidder (the "**Project Bid**") and present the Project Bid to the Village for review. The Parties shall evaluate the cost of the Project Bid in light of the Net Bond Proceeds and thereupon determine whether to proceed with the Project.

1. In the event that the cost of the Project Bid together with such other costs associated with proceeding with the Project (including without limitation Project engineering costs, permit costs, connection fees, and inspection expenses)(the "**Project Costs**") are less than the remainder of the Net Bond Proceeds plus the amount of Prepayment Commitments, the County shall proceed with the Project construction and installation activities as hereinafter provided.
2. In the event that the Project Costs exceed the remainder of the Net Bond Proceeds plus the amount of Prepayment Commitments, the Parties shall confer about alternative approaches for either reducing Project Costs or seeking additional moneys to finance the Project (including without limitation seeking authorization for additional Bonds issued by the ~~Heron's~~Herons Landing Water SSA).
  - a. If the Parties mutually agree upon an approach to pay for the entire Project Costs (as the Project Costs may be modified pursuant to this Section 4.E.2), the County shall proceed with the Project construction and installation activities as hereinafter provided.
  - b. If the Parties cannot mutually ~~determine that it is not in their best interests to proceed with the Project~~agree as provided in Section 4.F.2.a, then, after paying any outstanding costs and expenses incurred as part of the Project engineering activities under Section 4.D of this Agreement and any other expenses incurred by the Parties in connection with this Section 4.E proportionately from the Net Bond Proceeds and the Prepayment Deposits, the Village shall cause the remainder of the Net Bond Proceeds to be applied to the payment of outstanding Bonds and shall discharge the Prepayment Commitments as follows:
    - i. To the extent that the Prepayment Deposits are insufficient to cover the proportionate costs of the Project engineering under Section 4.D and expenses incurred in evaluating the Project Bids under this Section 4.E, then the Village shall

require the Owners who made a Prepayment Commitment to supplement their Prepayment Deposits to cover such proportionate costs. Upon receipt of such supplemental Prepayment Deposits, the Village shall discharge and release the Prepayment Commitments of such Owners.

- ii. To the extent that the Prepayment Deposits are sufficient to cover the proportionate costs of the Project engineering under Section 4.D and expenses incurred in evaluating the Project Bids under this Section 4.E, then the Village shall return any excess amounts of the Prepayment Deposits to the Owners who made such deposits and discharge and release the Prepayment Commitments of such Owners.

G. Other Revenue Sources. In the event that the Owners of the Lots, individually or collectively, provide to the Village other funding with respect to the Project, the Village agrees to make such other funding available to pay Project Costs. The Parties acknowledge that it is desirable that any such other funding be first used to pay Village costs and to defray costs that would otherwise be chargeable to the Taxable Account, but any such funds shall ultimately be used pursuant to the agreement of the Parties.

F.H. Collection of Prepayment Amounts. Upon a determination of the Parties to accept the Project Bid and proceed with the construction and installation phases of the Project pursuant to Section 4.E (the "**Determination to Proceed**"), the Village shall cause those Owners who made Prepayment Commitments to deliver the full Prepayment Amounts (less any Prepayment Deposits). The Prepayment Amounts shall be delivered to the Bond Trustee, who shall allocate the Prepayment Amounts to the Taxable Account and the Tax-Exempt Account as directed by the Village. The Prepayment Amounts so delivered to the Bond Trustee shall thereafter be used in the same manner as the Net Bond Proceeds.

G.I. License Agreements for Private Improvements. Following the Determination to Proceed, the Village shall seek from the Owners of each Lot the execution of a license agreement in substantially the form attached as Exhibit D to this Agreement (the "**License Agreement**") for purposes of allowing the County to construct and install the Private Improvements on such Lot. The receipt and delivery of a License Agreement for a Lot is a pre-condition to the County pursuing the Private Improvements upon such Lot. In the event that an Owner of a Lot fails to deliver a License Agreement to the Village within **[60]** days after the Determination to Proceed, the Parties shall have the right to treat such failure as a determination not to connect immediately to the Water System and a waiver of any reimbursement of costs otherwise associated with such connection. In addition, any future connection of such Lot to the Water System shall be done in accordance with such reasonable rules that the County may impose and shall be subject to a charge in the amount of: (i) 125% of the per-unit cost of connecting a Lot to the Water System during the construction and installation phase of the Project, or (ii) the actual cost of connecting the Lot to the Water System, whichever is greater.

H.J. Project Construction and Installation. Following the Determination to Proceed, the County shall promptly cause the construction and installation of the Project to commence and thereafter proceed continuously to completion. The County shall bear the cost for such Project construction and installation expenses, subject to being

reimbursed by the Village pursuant to Section 5 and proportionately from the Net Bond Proceeds and Prepayment Deposits.

K. Project Completion and Certification; Conveyance. Following the completion of the Project construction and installation activities, the County shall certify to the Village that the Project has been completed. Within 60 days after the Village receives the certification of completion from the County, the Village shall take all actions necessary and appropriate to convey the Water System to the County by bill of sale and any appurtenant easement or related rights by quitclaim deed for ~~\$10.00~~ 10.00, subject to the terms of this Agreement (the "**Conveyance Documents**"). Within 60 days after the delivery of the Conveyance Documents, the County shall accept such Conveyance Documents and the ownership of the Water System. Upon such conveyance, the County shall exercise all ownership and control over the Water System, subject to the terms of this Agreement.

**Section 5: Payment of Project Expenses.**

A. Disbursements of Net Bond Proceeds and Prepayment Amounts. Upon delivery of a proper request from the County for reimbursement of the Project Costs or a portion thereof, the Village shall direct the Bond Trustee to reimburse the County from the Taxable Account or the Tax-Exempt Account, as appropriate, incurred by the County, upon submission of a certification of such Project Costs to the Bond Trustee, with a copy to the Village. The County must separately certify the costs payable from the Tax-Exempt Account and the costs payable from the Taxable Account.

B. Cost Overruns; Additional SSA Taxes. In the event that the Project Costs exceed the Net Bond Proceeds and Prepayment Amounts (the "**Excess Project Costs**"), and to the extent that the Village has not exhausted its taxing authority under the SSA Establishing Ordinance, the Village will levy "**Additional SSA Taxes**" to reimburse the County for the Excess Project Costs. The amount of such Additional SSA Tax annual levy will be the lesser of: (i) an amount sufficient to reimburse the County's Excess Project Costs over a 3-year period, or (ii) the maximum annual tax levy authorized by the SSA Establishing Ordinance, until the Additional SSA Taxes equal the Excess Project Costs. Upon receipt of payment of the Additional SSA Taxes, the Village shall deliver such Additional SSA Taxes to the County.

C. Cost Overruns; User Fee Surcharge. In the event that the Village has exhausted its taxing authority under the SSA Establishing Ordinance and cannot generate Additional SSA Taxes to cover the full amount of Excess Project Costs, the County shall assess, and the Village hereby authorizes the County to assess, a special "**Capital Cost Surcharge**" on the water bills of customers of the Water System that will yield a sum sufficient to reimburse the County for any outstanding Excess Project Costs, plus interest at a rate of 6%, ~~over a 7-year period~~ but such Capital Cost Surcharge shall not exceed \$20.00 per customer per month.

**Section 6: Water System Operation and Maintenance.**

A. In General. ~~The~~ Except as otherwise provided in this Agreement, the County shall operate and maintain the Water System consistent with the County's operation of water systems in other similarly situated service areas.

B. User Fees: Consistent with the County's standard practices, each Lot will be metered separately, and invoices for water service will be regularly issued to the person in whose name the water service account is maintained ("**Account Holder**") by the County. The County will establish a fee schedule for water service that provides for the following charges:

1. A base rate for water usage, plus standard fees or surcharges, comparable to the rates and fees or surcharges charged to customers in similarly situated service areas;
2. A fee or surcharge sufficient to cover the reasonable costs of Water System inspections performed by the County, as provided in Section 7;
3. To the extent the County provides direct services, including data collection and reporting, to the Village in connection with administration of the Village Water Allocation as provided in Section 8 of this Agreement, a surcharge sufficient to cover the County's reasonable expenses for such services; and
4. Any Capital Cost Surcharge as authorized pursuant to Section 5.C of this Agreement.

C. Service Termination: The County may terminate service to any Lot for: (i) non-payment of user fees, (ii) violation of any law, ordinance, rule, or regulation governing use of the Water System (including conservation regulations as provided in Section 6.D of this Agreement), or (iii) failure to permit any inspection authorized by Section 7. Prior to terminating water service to any Lot, the County shall:

1. Provide a first written notice stating the basis for service termination ~~to the Account Holder by certified mail at least 30 days prior to terminating water service.~~ In the event that service is being terminated for non-payment of user fees, the first notice shall be sent 5 days following the date on which such payment was due;
2. Provide a second written notice stating the basis for service termination to the Account Holder by ~~certified~~first-class mail at least ~~45~~14 days prior to terminating water service; and
3. Post a notice stating the basis for service termination in a conspicuous location on the Lot at least ~~45 days~~1 day prior to terminating water service.

D. Water Conservation Regulations. Prior to the completion of the Project construction and installation, both Parties agree to establish by ordinance water conservation regulations that are consistent with 17 Ill. Adm. Code 3730.307. The Village shall establish water conservation regulations that are no less stringent than those established by the County, as set forth in Exhibit E to this Agreement. In the event that the County amends its water conservation regulations during the term of this Agreement to make it more stringent, the Village agrees to adopt a comparable amendment to its water conservation regulations within 90 days after notice from the County. Nothing in this Agreement shall be construed to prevent the Village from establishing more stringent conservation regulations than those of the County. ~~The County agrees to fully cooperate~~

~~with the Village in the enforcement of all Village water conservation regulations, including the termination of water service of any Account Holder who violates the Village's water conservation regulations, subject to proper notice as provide in Section 6.C.~~ If either Party fails to adopt water conservation policies as required by this Subsection prior to the issuance of Public or Taxable Bonds, this Agreement shall terminate.

**Section 7: Continued Use of Private Wells; Interconnection Prohibited; Water System Inspections.**

A. In General. The Parties acknowledge that the residents of ~~Heron's~~Heron's Landing currently obtain water from private shallow wells and ~~may~~shall have the right to continue to use water drawn from such private wells only for irrigation and fire suppression purposes after connecting to the Water System, subject to the terms of this Agreement. The Parties further acknowledge that, to avoid contamination of the Water System, interconnection between the Water System and any portion of a private well system (or associated water distribution or storage facilities and equipment) shall be prohibited. To ensure the ongoing protection of the public health, safety, and welfare, and to preserve the integrity of the Water System, inspections shall be undertaken in accordance with Section 7.E for the benefit of the public and not for the benefit of any Lot or the Owner or occupant thereof.

B. Interconnection Regulations. Prior to the completion of the Project construction and installation activities, the Parties shall mutually prepare and each shall adopt regulations (i) prohibiting interconnections between the Water System and private well systems, and (ii) requiring periodic inspections of the Lot and its water connections and plumbing to ensure that no interconnection exists between the Water System and any private well or other water source. Such regulations shall provide for fines of ~~not less than \$500.00~~up to \$750 per violation per day.

~~C. Protective and Monitoring Devices. The County may, as part of the Project, install devices on or in the Water System, including portions of the Water System located on private Lots, for the purpose of preventing or detecting prohibited interconnections. In the event any such devices on a Lot malfunctions or otherwise requires repair or replacement, the County shall have the right to require the Owner of such Lot to effect such repair or replacement. In the event that the Owner fails to effect such repair or replacement after reasonable notice from the County, the County may terminate service from the Water System to such Lot pursuant to the procedures set forth in Section 6.C of this Agreement.~~

~~D. Detection of Interconnection Violations. If either Party determines that an interconnection exists between the Water System and any portion of a private well system on any Lot, that Party may impose any penalties provided by its interconnection regulations. In addition, such Party shall notify the other Party of any such violation.~~

~~E.~~ D. Inspections. Following the connection of any Lot to the Water System, the County shall conduct regular inspections of the Water System and all interior or exterior plumbing located on the Lot to ensure that no interconnections exist between the Water System and any private well or other water source. The County shall provide ~~a minimum~~[2 days] prior ~~written~~ notice to any Owner before conducting an inspection on such Lot. The County shall be entitled to impose a reasonable charge to recover the costs of such inspections as provided in Section 6.B.2 of this Agreement. An Owner's refusal to allow

the County to conduct any such inspection shall be grounds for termination of service from the Water System in accordance with Section 6.C of this Agreement.

**Section 8: Lake Michigan Water Allocation.**

A. In General. The Parties acknowledge that the water to be provided to Heron's Herons Landing by the Water System will be Lake Michigan water, and that such use of Lake Michigan water requires an IDNR allocation. Water for service to Heron's Herons Landing shall be drawn first from the Village Water Allocation, to the extent that it is available. To the extent that the Village Water Allocation is unavailable or insufficient, water for service to Heron's Herons Landing shall be drawn from the County Water Allocation.

B. County Water Allocation Compliance. To the extent that water is drawn under the County Water Allocation, the County shall be responsible for ensuring compliance with all terms and conditions of use of such water, including any reporting requirements. The Village shall not unreasonably interfere with the County's ability to comply with any such term or condition.

C. Village Water Allocation Compliance. To the extent that water is drawn under the Village Water Allocation, the County shall be responsible for ensuring compliance with all data collection and reporting required in connection with the use and administration of any water drawn under the Village Water Allocation, including but not limited to the requirements of 17 Ill. Adm. Code 3730.309. The County may incorporate the reasonable costs of any such reporting and administrative activities in the fees charged to Water System users, as provided in Section 6.B.3 of this Agreement. If the County fails to timely and properly prepare or submit any required report, the Village may prepare and submit the report, or otherwise provide for the report to be prepared and submitted. In that event, the County shall reimburse the Village from the revenues collected pursuant to Section 6.B of this Agreement for all costs and expenses incurred as a result of the County's failure to prepare and submit such report, including staff time and third-party consultant fees.

**Section 9: Term and Termination.**

Except as otherwise provided in Section 10 of this Agreement, this Agreement shall remain in full force and effect from the Effective Date for a term of **[40 years]**. Notwithstanding any expiration or termination, each Party remains obligated to pay any costs due to the other Party under this Agreement as of the date of expiration or termination.

**Section 10: Breach; Enforcement.** In the event of a material breach by either party of any term of this Agreement, the non-breaching party shall notify the breaching party of the nature of such breach in accordance with Section 11 of this Agreement. In the event that the breaching party shall not have cured such breach within 30 days (or, if such breach is not capable of reasonably being cured within such 30-day period, such longer period of time not to exceed 90 days, provided that the breaching party immediately commences and diligently pursues such cure to completion), then the non-breaching party may:

- a. terminate this Agreement upon a further written notice in accordance with Section 11 hereof; or
- b. file an action in any court of competent jurisdiction, whether at law or in equity (including actions for mandamus), to secure the specific performance of the covenants and agreements herein contained and/or to be awarded damages for failure of performance; or
- c. both.

No action taken by any party hereto pursuant to the provisions of this Section 10 or pursuant to any other provisions of this Agreement shall be deemed to constitute an election of remedies, and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any party at law or in equity.

**Section 11: Notices.**

Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i), personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, (iv) by facsimile, or (v) by electronic internet mail ("**e-mail**"). Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three business days thereafter at the appropriate address set forth below. E-mail notices shall be deemed valid and received by the addressee thereof when delivered by e-mail and (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; or (b) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) three (3) business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the Village shall be addressed to, and delivered at, the following address:

Village of Long Grove  
3110 ~~RFD~~Old McHenry Road  
Long Grove, Illinois 60047  
Attention: Village Manager David A. Lothspeich

Notices and communications to the County shall be addressed to, and delivered at, the following address:

County of Lake  
18 North County Street

Waukegan, Illinois 60065  
Attn: County Administrator Barry Burton

and

Lake County Department of Public Works  
650 West Winchester Road  
Libertyville, Illinois ~~60046~~60048  
Attn: Director of Public Works Peter J.E. Kolb, P.E.

**Section 12: Compliance with Laws.**

Each Party agrees to observe and comply with all applicable federal, State, and local laws, statutes, codes, regulations, and ordinances.

**Section 13: Mutual Indemnification.**

A. The County agrees to, and does hereby, hold harmless and indemnify the Village, the Village's Corporate Authorities, and all Village elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims that may be asserted at any time against any of such parties in connection with ~~(i) the County's development, construction, operation, maintenance, or use of any portion of the Water System or related improvements; and (ii)~~ the performance by the County of its obligations under this Agreement, except as may be caused by the Village's gross negligence or willful misconduct.

B. The Village agrees to, and does hereby, hold harmless and indemnify the County, LCPWD, and all County elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims that may be asserted at any time against any of such parties in connection with the performance by the Village of its obligations under this Agreement, except as may be caused by the County's gross negligence or willful misconduct.

**Section 14: General Provisions.**

A. Time of the Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

B. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other such rights, remedies and benefits allowed by law.

C. Non-Waiver. Neither Party shall be under any obligation to exercise any of the rights granted to it in this Agreement. The failure of any Party to exercise at any time any such right shall not be deemed or construed to be a waiver thereof, nor shall such failure void or affect that Party's right to enforce such right or any other right.

D. Consents. Whenever the consent or approval of any Party hereto is required in this Agreement such consent or approval shall be in writing and shall not be unreasonably withheld or delayed.

E. Governing Law. This Agreement shall be governed by, and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

F. Severability. It is hereby expressed to be the intent of the Parties that should any provision, covenant, agreement, or portion of this Agreement or its application to any person, entity, or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any person, entity, or property shall not be impaired thereby, but such remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law. Notwithstanding the foregoing, to the extent that any provision of this Agreement is held to be invalid so as to prevent the issuance of the Bonds, this Agreement shall be deemed void and terminated.

G. Entire Agreement; Counterparts. This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this Agreement. This Agreement may be signed in counterparts, and such counterparts shall collectively constitute the entire Agreement.

H. Grammatical Usage and Construction. In construing this Agreement, feminine or neuter pronouns shall be substituted for those masculine in form and vice versa, and plural terms shall be substituted for singular and singular for plural, in any place in which the context so requires.

I. Interpretation. This Agreement shall be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though both Parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

J. Headings. The table of contents, heading, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

K. Exhibits. Exhibits A through E attached to this Agreement are, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.

L. Amendments and Modifications. No amendment or modification to this Agreement shall be effective unless and until it is reduced to writing and approved and executed by both Parties in accordance with all applicable statutory procedures.

M. Changes in Laws. Unless otherwise explicitly provided in this Agreement, any reference to any Requirements of Law shall be deemed to include any modifications

of, or amendments to such Requirements of Law as may, from time to time, hereinafter occur.

N. Calendar Days and Time. Any reference herein to "day" or "days" shall mean calendar and not business days. If the date for giving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday or Federal holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday or Federal holiday.

O. No Third Party Beneficiaries. No claim as a third party beneficiary under this Agreement by any person, firm or corporation shall be made, or be valid, against the Village or the County.

[SIGNATURES ON FOLLOWING PAGE]

**ATTEST:**

\_\_\_\_\_  
Village Clerk

**VILLAGE OF LONG GROVE**

By: \_\_\_\_\_  
President

**COUNTY OF LAKE**

By: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT A

Legal Description of ~~Heron's~~ Herons Landing

EXHIBIT B

Depiction of Heron's Herons Landing

EXHIBIT C

Project Cost Estimate Engineer's Preliminary Opinion of Probable Cost

**EXHIBIT D**

**License Agreement Form**

**EXHIBIT E**

**County Water Conservation Ordinance**

Document comparison by Workshare Professional on Friday, May 20, 2011  
8:29:00 AM

Input:	
Document 1 ID	interwovenSite://HKDMS/Active/10233404/3
Description	#10233404v3<Active> - LG: Intergovernmental Agreement with Lake Co. re: Heron's Landing water system
Document 2 ID	interwovenSite://HKDMS/Active/10233404/5
Description	#10233404v5<Active> - LG: Intergovernmental Agreement with Lake Co. re: Heron's Landing water system
Rendering set	standard

Legend:	
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Moved to	
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Deletions	64
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Moved to	0
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Format changed	0
Total changes	143