

RESOLUTION

WHEREAS, the Village of Wauconda (Village) owns and operates a municipal water supply system both within and without its municipal boundaries; and

WHEREAS, a need has arisen for a source and distribution of a fresh, potable water system in certain unincorporated territory adjacent to, and near, the Wauconda municipal boundaries and no similar services are available to fulfill the need; and

WHEREAS, the County does not now have available an immediate source of supply of potable water, or a distribution system to service the area; and

WHEREAS, in order to most effectively and efficiently provide a public, potable water supply to the area in a reasonably prompt period of time, the Village is undertaking to extend their public water system to the unincorporated area; and

WHEREAS, an Intergovernmental Agreement has been prepared that sets forth the rights, responsibilities and obligations of each party; and

WHEREAS, execution of an Intergovernmental Agreement must be authorized by Resolution of the County Board.

NOW, THEREFORE, BE IT RESOLVED, by this County Board of Lake County, Illinois, that the Chair of the County Board and the Clerk of said County be and they are hereby authorized and directed to execute the attached Intergovernmental Agreement, in the form substantially contained therein, with the Village of Grayslake regarding the Central Range Area of the Heartland Property.

DATED at WAUKEGAN, LAKE COUNTY, ILLINOIS, on this 8th day of March, A.D., 2005.

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF
WAUCONDA AND THE COUNTY OF LAKE, ILLINOIS RELATIVE TO
PROVIDING WATER TO CERTAIN UNINCORPORATED TERRITORY**

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement"), made and entered into this ____ day of _____, 2005, pursuant to the authority of the Illinois Constitution of 1970 and The Intergovernmental Cooperation Act, by and between the Village of Wauconda, an Illinois Municipal Corporation (hereinafter referred to as "Wauconda") and the County of Lake, Illinois (hereinafter referred to as the "County"):

WITNESSETH:

WHEREAS, Article VII, Section 10, of the Constitution of the State of Illinois of 1970, provides that units of local government may contract or otherwise associate among themselves to exercise, combine, or transfer any power or function in any manner not prohibited by law or by ordinance and may use their credit, revenues, and other resources to pay costs related to intergovernmental activities and 5 ILCS 220/1 et seq. further authorizes Intergovernmental Cooperation; and

WHEREAS, the Village of Wauconda owns and operates a municipal water supply system both within and without its municipal boundaries as part of its combined Waterworks and Sewage System as authorized by law under Division 139 of the Illinois Municipal Code (65 ILCS 7/11-139-1 et seq.); said system being subject to the environmental laws and regulations of the State of Illinois; and

WHEREAS, a need has arisen for a source and distribution of a fresh, potable water system in certain unincorporated territory (hereinafter the "Subject Territory") adjacent to, and near, the Wauconda municipal boundaries and no similar services are available to fulfill the need; the Subject Territory being more particularly described below; and

WHEREAS, the County is authorized by law to provide a source and distribution system for potable water and regulate the use thereof under the provisions of Division 5-15 of the Illinois Counties Code (55 ILCS 5/5-1501 et seq.); and

WHEREAS, the County does not now have available an immediate source of supply of potable water, or a distribution system for the Subject Territory; and

WHEREAS, in order to most effectively and efficiently provide a public potable water supply to the Subject Territory in a reasonably prompt period of time Wauconda is undertaking to make available an adequate source of supply of water for residential consumption to the existing residents of and, under the conditions below, to new

residential customers within the Subject Territory connecting to Wauconda's distribution mains within the Subject Territory; and

WHEREAS, Under 65 ILCS 5/11-139-8 Wauconda may make and enforce all needful rules and regulations for, among other things, the construction, extension management and maintenance of its combined waterworks and sewerage systems and the County, under 55 ILCS 5/5-15021, may establish rules and regulations governing the maintenance and operation of its waterworks properties; and

WHEREAS, the Parties hereto understand and agree that in order to make it feasible to provide a water supply, distribution system, certain additional water quality monitoring objectives and related improvements, funds for the design and construction thereof must be obtained from sources other than the general or special funds and accounts of the Parties; and

WHEREAS, it has been determined by the respective governing boards and/or corporate authorities of Wauconda and the County that this Agreement is in the best interests of each of said governmental units; and

WHEREAS, Wauconda and the County have by appropriate action of their respective governing boards and/or corporate authorities, taken all preliminary and lawful action necessary to authorize the execution and delivery of this Agreement.

NOW, THEREFORE, upon the consideration of the mutual promises contained herein and upon the recitals hereinabove set forth, it is hereby agreed among Wauconda, and the County as follows:

ARTICLE I
RECITALS INCORPORATED

1.01. The parties hereto find that the recitals to this Agreement are true and correct and that each of the foregoing recitals is hereby incorporated herein the same as if each had been set forth in its entirety in the body of this Agreement.

ARTICLE II
UNINCORPORATED TERRITORY TO BE SERVED

2.01 The Subject Territory is described as follows:
[Here describe the area to be served, e.g. by subdivision plat description, or engineering plans reference]

ARTICLE III
SCOPE OF WATER SUPPLY PROJECT AND SERVICE

3.01. Subject to the terms and conditions hereinafter set forth, and for the duration of this agreement, Wauconda will (at no cost to the County) exclusively construct, or cause to be constructed, own, operate, manage and maintain a system of potable water to the residential lots and tracts within the Subject Territory through a system of municipal wells, mains, pumps, storage tanks and other appurtenances; install or cause to be installed private service lines (including the water meters) from the mains to the residential structures; seal or cause to be sealed the private wells to be abandoned within the Subject Territory and within the Village (the "subject project"), in substantial compliance with the relevant portions of the engineering plans consisting of ___ sheets, last revised on _____, 2005 and prepared by Devery Engineering, Inc. (the "Plans" and the "Facilities"). A copy of the final engineering drawings shall be provided to the County for review and comment at 90% completion of such plans. The potable water system shall be designed in such a manner as to allow ready connection to an alternate water source should such a source become necessary and available. As used in this Paragraph 3.01 the term "necessary" shall mean the inability of Wauconda to supply potable water to the Subject Territory of a quality consistent with, or better than, the quality of water presently being supplied to Wauconda residents. It is understood the scope of the Village's potable water system will include areas in addition to the Subject Territory and which are within the Village of Wauconda (the "Entire Project") and that the powers, duties, rights and obligations of the parties under this Agreement shall apply only to the subject unincorporated territory. The Entire Project consisting of the Subject Territory and certain incorporated areas of Wauconda is being planned, designed, financed and constructed together all as part of as a single potable water system project.

3.02 It is agreed that the Plans may be modified as the Village deems necessary for the implementation of the Subject Project so long as the scope of the Subject Territory ~~area~~ to be served is not expanded, reduced or modified without the express written consent of the County and so long as such changes are reasonably necessary to effectuate the timely construction and delivery of the system as contemplated by this Agreement. Any modifications that require the consent of the County, including any expansion or modification of the Subject Territory, shall be reviewed by the County in a timely and expeditious manner. Upon completion of the Entire Project, the Subject Territory may be expanded upon the written consent of both parties. Any written request for the expansion or modification of the Subject Territory by either party shall be reviewed by the other party in a timely and expeditious manner.

- 3.03** The Facilities to be installed shall be in or upon permanent easements, right-of-way and/or real property obtained by and granted to Wauconda for such purposes as will allow for the construction, operation, maintenance, replacement and expansion of the installed Facilities. The County agrees that if County highway right-of-way is available and needed for any aspect of said installations it will grant the necessary permits for the necessary installations in accordance with the Lake County "Highway Utility and Facility Placement Ordinance" as amended or any successor document or documents enacted in its stead. For any Facilities to be placed in the right-of-way of any street or road under the jurisdiction of a Township Road District, Wauconda shall be responsible for obtaining the written permission of the Township Highway Commissioner prior to the installation of said Facilities. Wauconda shall have the responsibility to resolve to the satisfaction of the Township Highway Commissioner any issues pertaining to conflicting utilities and restoration of damaged vegetation and existing improvements within or upon any such Road District right-of-way. For any facilities to be placed within easements on private property, Wauconda shall be responsible for the restoration of the private property to its original condition.
- 3.04** Except as provided below, no occupied or existing residential structure, and/or the occupants and owners thereof shall be required by Wauconda and the County to pay any portion of the costs for the installation of the Facilities, installation of the private water service lines, required water meters, abandonment of the private wells, impact fees and the connection charges of Wauconda. Anything to the contrary herein notwithstanding, this paragraph shall not prohibit or limit Wauconda from obtaining such costs, or any portion thereof, from persons or entities other than the persons described above. Furthermore, any new construction of residences on unimproved lots, parcels or tracts within the Subject Territory shall pay to Wauconda the costs, fees and charges for said residential water meters, impact fees and the connection charges of Wauconda as are prevailing by an ordinance or resolution at the time of such new construction provided that any costs, fees and charges are the same as those charged the residents of Wauconda. The installation and cost of private service lines to the new construction shall be paid by the person or entity causing the new construction.
- 3.05** Wauconda agrees that it shall not require annexation to Wauconda of any portion of the Subject Territory as a condition to providing the water service contemplated by this Agreement. Nothing herein shall prevent a property owner within the Subject Territory from voluntarily seeking, and Wauconda granting, annexation to Wauconda in accordance with the Illinois Municipal Code. Furthermore, nothing herein shall be construed to limit the lawful authority of Wauconda to extend any portion of the Facilities to other areas now within or later annexed to Wauconda after the date of this Agreement pursuant to the Illinois Municipal Code.

- 3.06 Before commencing construction of the subject project, Wauconda shall obtain all required Illinois Environmental Protection Agency (IEPA) permits to construct and operate the water system to be constructed pursuant to the Plans and shall obtain all other governmental permits required for the subject project. The County shall not be obligated under this Agreement to incur any cost for said permits. Provided, however, the County agrees to cooperate with Wauconda in Wauconda's efforts to obtain said permits where the County is required to execute any portion of the application for the permits under this Paragraph. Such cooperation shall not be considered a "cost" for purposes of this paragraph.
- 3.07 The County agrees to waive, or cause to be waived all permit and inspection fees for the closing and sealing of the private well systems to be abandoned within the Subject Territory.

ARTICLE IV
WATER QUALITY, TESTING AND QUANTITY

- 4.01 The quality of the potable water to be provided under this Agreement shall, at all times, meet or exceed the minimum water quality standards for public water supplies required by the United States Environmental Protection Agency and the Illinois Environmental Protection Agency (the "Agencies"). Wauconda shall own, operate and maintain the Facilities it installed in the Subject Territory pursuant to the Plans in the same manner as it operates and maintains its similar Facilities within the Village boundaries.
- 4.02 Wauconda shall provide to the County a copy of the results of all water quality testing performed according to the testing protocols and frequency required of public water supplies as established from time to time by the United States Environmental Protection Agency and the Illinois Environmental Protection Agency. In addition to said required frequency of testing, Wauconda shall test the subject project's water supply, no less than quarterly, for the presence of volatile organic compounds ("VOCs"). If VOCs are detected, confirmation sampling shall also be conducted. The results of this additional testing shall also be provided to the County. Wauconda and the County shall engage in split sample testing as follows. For the first year of this agreement and for any one year period thereafter whenever VOCs are detected by any sample, the Lake County Health Department shall also test for the presence of VOCs on a quarterly basis, with the Health Department tests compared to the Village tests on a split sample basis. For years two through five of this agreement, Wauconda and the Lake County Health Department shall engage in split sample testing in this manner on an annual basis. After the fifth year of the agreement, the Lake County Health Department may collect split samples on an as needed basis. The County shall pay for its portion of the split sample testing. The County shall provide to Wauconda all its test results in either paper or electronic

format, shall be provided within five (5) business days of receipt thereof by the County and shall be sent or transmitted to Wauconda at the same address as is provided in Paragraph 9.05.

The test results to be provided by Wauconda to the County shall be in either paper or electronic format, shall be provided within five (5) business days of receipt thereof by Wauconda and shall be sent or transmitted to the County at:

~~The test results to be provided to the County shall be in either paper or electronic format, shall be provided within five (5) business days of receipt thereof by Wauconda and shall be sent or transmitted to the County at:~~

Director, Lake County Department of Public Works
650 West Winchester Road
Libertyville, IL 60048

With a copy to:
Director, Environmental Health Services
Lake County Health Department
3010 Grand Avenur
Waukegan, IL 60085

- 4.03** The County shall not permit any connections to the Facilities within the Subject Territory. All connections thereto shall be under the exclusive jurisdiction of Wauconda. There shall be no cross-connections allowed between a private water supply and the Facilities.
- 4.04** When completed, tested and approved by Wauconda for operation, the subject Facilities shall provide potable water to the residential structures within the Subject Territory at such sufficient quantities and pressures as other similar residential areas within the Wauconda potable water system. If fire flows are part of the final Wauconda-approved design plans, then such Facilities, quantities and pressures as are prevalent throughout the Village shall be provided and maintained at no cost to the County.
- 4.05** The Parties agree to prevent excessive and wasteful use of the water supplied to the Subject Territory by Wauconda and to, at all times, comply with applicable State regulations pertaining to the use and conservation of public water supplies. In addition to the required compliance with State Regulations, when there is a clear and present need to conserve water requiring conservation measures in addition to those which may be required by the State, Lake County agrees that Wauconda may enact and enforce such additional or other water conservation measures to be applicable within the Subject Territory as may be reasonably required from time to time, but in no such case shall these measures and the enforcement thereof be any

more severe than those simultaneously enacted and enforced by Wauconda upon its residents.

- 4.06 The Parties agree that in cases of bona fide emergencies, the providing of water may be temporarily diminished or interrupted. In such cases Wauconda shall use its best efforts to reestablish the required levels of quantity and pressure as soon as practicable.
- 4.07 The County shall not permit the installation of any new private wells within the Subject Territory if there is an available watermain within 300 feet of the property proposed to be served by the private well. In such case the County shall require the applicant, at applicant's sole cost and expense, to extend the watermain to the property to be served as a condition to any building permit. Such extension shall require a permit therefor to be obtained from the Village of Wauconda prior to construction and such permit shall require the applicant to comply with the Wauconda rules and regulations for such installations.

ARTICLE V
WATER RATES, REVENUES AND SYSTEM REGULATIONS

- 5.01 For the duration of this Agreement Wauconda agrees that it will charge the residential consumers of the water provided to the Subject Territory a rate of not more than one hundred percent (100%) (or one hundred twenty-five percent (125%), if fire protection improvements are included) of the minimum or actual rate per 1,000 gallons of water withdrawn from the system that Wauconda charges its residential water consumers living within its municipal boundaries (the "domestic rate"). If Wauconda changes its domestic rate, the rate for the consumers in the Subject Territory shall be similarly and simultaneously adjusted to maintain the percentage differential stated above. When the subject improvements are incorporated into the combined system of Wauconda, the stream of revenue generated from the system operations within the Subject Territory may be pledged by the Village as security for the financing of improvements to the Village's combined water and sewerage system as provided under Division 139 of the Illinois Municipal Code.
- 5.02 Pursuant to Article VII, Section 10, of the 1970 Constitution of the State of Illinois and the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) the County hereby transfers to Wauconda its powers and authority under 55 ILCS 5/5-1507 to promulgate rules and regulations governing the maintenance and operation of the subject Facilities within the Subject Territory including, but not limited to, the making of rates and charges (within the limitations of this Agreement), the

collection thereof, the imposition of penalties and liens for the nonpayment thereof, and the discontinuance of service for nonpayment. It is agreed by Wauconda that any action it shall take under the powers and authority transferred hereunder shall be exercised consistent with the rules and regulations in effect from time to time for residential water consumers within the limits of the Village. Except as specifically limited in this Agreement as to rates, charges, connection, and impact fees, this paragraph shall not be a limitation on the powers and authority of Wauconda to promulgate all needful additional rules and regulations under 65 ILCS 5/11-139-1 et seq. It is agreed that the County authorizes Wauconda to pass or adopt all ordinances or resolutions necessary to require all private wells in the Subject Territory be abandoned and lawfully closed so that no further use can be made thereof, to require existing or new residences within the Subject Territory within 300 feet of an available watermain to connect to the Wauconda Facilities, and to enforce all such ordinances and resolutions within the Subject Territory. Provided, however, all such ordinances, resolutions, rules and regulations shall be generally applicable to residential water consumers in both the Subject Territory and throughout the incorporated areas of the Village.

ARTICLE VI
CONDITIONS PRECEDENT TO AGREEMENT

6.01 Each of the following conditions shall be precedent to Wauconda's obligations under this Agreement unless Wauconda waives, in writing any one or more of such conditions precedent or any part or provision thereof:

- A. Obtaining all necessary permits from other regulating authorities for the Entire Project; and
- B. Wauconda receiving a loan from the Illinois Environmental Protection Agency for the full amount of the estimated costs of construction for the Entire Project; and
- C. Wauconda receiving adequate security from the Wauconda Task Group or similar association of entities for the repayment of the IEPA loan on at least a par to the schedule of debt service required in the loan agreement. Adequate security shall be in the form of (such form shall be acceptable to Wauconda) an unconditional standby letter of credit issued by a commercial bank with offices in the Chicago Metropolitan Area or a fully paid annuity issued by a company authorized to issue such annuities in the State of Illinois and having an A. M. Bests rating of at least "A-10", or any combination thereof; and
- D. Wauconda receiving acceptable bids for the construction of the Entire Project; and
- E. The Entire Project is accepted as being compliant with the Unilateral Administrative Order last issued by the United States Environmental

Protection Agency in the matter of the Wauconda Superfund Site.

ARTICLE VII
TERM OF AGREEMENT

- 7.01** The term of this Agreement shall be for a period of 30 years from and after the date of this Agreement.
- 7.02** At the option of Wauconda, this Agreement may be extended for two (2) additional terms of 30 years each. To exercise any option term hereunder, Wauconda shall give the County no less than 360 days written notice prior to the expiration of the previous term.

ARTICLE VIII
AMENDMENTS

- 8.01** No officer, official or agent of Lake County or Wauconda has the power to amend, modify or alter this Agreement or waive any of its conditions or to bind Lake County or Wauconda by making any promise or representation not contained herein, without the mutual written consent of the parties hereto, and in the manner set forth in 8.02 below.
- 8.02** Any amendment of this contract may be accomplished from time to time by the mutual consent of the Parties hereto; provided, however, that no such amendment shall be effective unless reduced to writing, duly authorized by the corporate authorities of the respective Parties, and signed by the authorized representatives of the Parties.

ARTICLE IX
GENERAL PROVISIONS

- 9.01** No officer, official or agent of Lake County or Wauconda has the power to amend, modify or alter this Agreement or waive any of its conditions or to bind Lake County or Wauconda by making any promise or representation not contained herein, without the mutual written consent of the parties hereto, and in the manner set forth in 9.02 above.

- 9.02** Captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and shall not be used in the construction of this Agreement.
- 9.03** No failure of any party to exercise any power given to either party hereunder or to insist upon strict compliance by either party with its obligations hereunder, and no custom or practice of the parties a variance with the terms hereof, shall constitute a waiver of any other party's right to demand strict compliance with the terms hereof.
- 9.04** This contract may be executed in several duplicate original copies hereof and each duplicate may be used for any purpose for which the original may be used.
- 9.05** All notices, requests, demands, and other communications (collectively, "Notices") hereunder shall be in writing and given by (i) established express delivery service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested, to the parties at the following addresses, or at such other address as the parties may designate by Notice in the above manner:

To Wauconda:
Village of Wauconda
Wauconda, IL 60084
101 N. Main Street
Attn: Village Administrator

To Lake County:
Director, Lake County Department of Public Works
650 West Winchester Road
Libertyville, IL 60048

With a copy to:
Lake County Administrator
18 N. County Street, 9th Floor
Waukegan, IL 60085

Notices may also be given by fax, provided the Notice is concurrently given by one of the above methods. Notices are effective upon receipt or upon attempted delivery if delivery is refused or impossible because of failure to provide a reasonable means for accomplishing delivery.

- 9.06** If any provision of this Agreement shall be declared invalid for any reason, such invalidation shall not affect any other provisions of this Agreement which can be

given effect without the invalid provision and to that extent, the provisions of this Agreement are severable.

- 9.07 This Agreement shall be governed by the applicable laws of the State of Illinois.
- 9.08 This Agreement shall be binding on all parties and may not be modified or amended orally, but only in writing signed by all parties hereto.
- 9.09 The Parties agree to reasonably cooperate in a good faith effort to implement this Agreement.
- 9.10 Nothing in this Agreement shall create, or be construed or interpreted to create any third party beneficiary rights.
- 9.11 Nothing in this Agreement is to be construed as requiring the County to pay any costs associated with the design and construction of any portion of the Entire Project.

ARTICLE X
BINDING ARBITRATION

- 10.01 In the event that the Parties are unable to agree upon any matters arising under this Agreement, the Parties agree to submit any such issue to binding arbitration before a member of the American Arbitration Association (AAA), Commercial Arbitration Division (and AAA rules pertaining thereto), selected by mutual agreement of the Parties at that time. If the Parties are unable to agree upon the Arbitrator, then an Arbitrator shall be selected from a panel of Arbitrators pursuant to the rules of the Association.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective corporate officials, official authority therefor having first been provided.

VILLAGE OF WAUCONDA,
a municipal corporation,

COUNTY OF LAKE, ILLINOIS
a body politic,

By: _____
Its Village President

By: _____
Its Board Chairman

ATTEST:

ATTEST:

Its Village Clerk

Its County Clerk

This Agreement is made and executed pursuant to an ordinance of the President and Board of Trustees of the Village of Wauconda, Illinois, passed on the ____ day of _____ 2005, authorizing the execution of the same, and pursuant to a like ordinance or resolution of the Lake County Board, passed on the ____ day of _____ 2005.