

**FIRST AMENDMENT TO THE PRELIMINARY AGREEMENT
REGARDING FORMATION OF A REGIONAL WATER COMMISSION**

THIS FIRST AMENDMENT TO THE PRELIMINARY AGREEMENT REGARDING FORMATION OF A REGIONAL WATER COMMISSION ("First Amendment") is made and entered into by and among VILLAGE OF CHANNAHON, an Illinois municipal corporation, the CITY OF CREST HILL, an Illinois municipal corporation, the CITY OF JOLIET, an Illinois municipal corporation, the VILLAGE OF MINOOKA, an Illinois municipal corporation, the VILLAGE OF ROMEOVILLE, an Illinois municipal corporation, and the VILLAGE OF SHOREWOOD, an Illinois municipal corporation (each a "Party" and collectively, "Parties").

RECITALS

WHEREAS, the Parties entered into that certain "Preliminary Agreement Regarding Formation of a Regional Water Commission" dated as of February 22, 2022 ("Preliminary Agreement"); and

WHEREAS, the Preliminary Agreement establishes key principles upon which the Parties agree with respect to the formation of a regional water commission and the terms pursuant to which they would agree to become a member of the regional water commission, as stated in the Preliminary Agreement; and

WHEREAS, the Parties had established April 30, 2023 as the date by which they would enter into the necessary intergovernmental agreement ("IGA") and ordinance to become a member of the regional water commission, unless the Parties agreed to a different date; and

WHEREAS, the Parties have been in continuing discussions with each other over the detailed terms in the IGA and complying with prerequisites to approving the IGA and ordinance, including obtaining Lake Michigan water allocation permits as required by Section 3.8 of the Preliminary Agreement; and

WHEREAS, the four Parties that did not have a Lake Michigan water allocation permit as of the Effective Date of the Preliminary Agreement have each applied to the Illinois Department of Natural Resources for such a permit; and

WHEREAS, the proceedings before the Illinois Department of Natural Resources for each of the allocation applications have required, and are expected to continue to require, substantially longer periods of time than was originally anticipated by the Parties, based on the duration of previous allocation permit proceedings before the Illinois Department of Natural Resources; and

WHEREAS, the Parties have determined that neither the allocation proceedings before the Illinois Department of Natural Resources nor the issuance of allocation permits are anticipated to be completed prior to April 30, 2023; and

WHEREAS, the Parties have determined that it would be in their respective best interests to agree to a different date for entering into the IGA and approving the ordinance in order to allow additional time for the affected Parties to complete the process of obtaining allocation permits from the Illinois Department of Natural Resources in order to comply with the prerequisites for approving the IGA and ordinance; and

WHEREAS, due to the delays in the allocation permit process at the Illinois Department

of Natural Resources, the Parties have determined that certain additional changes to the Preliminary Agreement will be required in order to allow the Program to continue to move forward and undertake next steps in connection with the Project Facilities in order to obtain Lake Michigan water by the Targeted Water Delivery Date; and

WHEREAS, the Parties have determined that it will be beneficial to allow consideration of revised locations for a Member's Primary Delivery Point, as included in the Basis of Design, under certain circumstances; and

WHEREAS, the Parties mutually agree that it is necessary and desirable to amend the Preliminary Agreement in the manner described in this First Amendment;

NOW THEREFORE, the Parties, in consideration of the premises and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby agree as follows:

AGREEMENT

SECTION 1. INCORPORATION OF RECITALS.

The recitals set forth above are incorporated in and made a part of this First Amendment by this reference.

SECTION 2. DEFINITIONS; RULES OF CONSTRUCTION.

A. Definitions. The words and phrases used in this First Amendment shall have the meanings ascribed to them in the Preliminary Agreement, unless specifically provided otherwise in this First Amendment.

B. Rules of Construction; Effect of First Amendment. Except as expressly modified or amended by this First Amendment, all terms, conditions, and provisions of the Preliminary Agreement shall remain in full force and effect; provided, however, that any other provisions of the Preliminary Agreement shall be deemed modified as necessary to give practical effect to the provisions of this First Amendment. To the extent that the terms and provisions of the First Amendment conflict with the Preliminary Agreement, the terms and provisions of this First Amendment shall control.

SECTION 3. AMENDMENTS TO AGREEMENT. The Preliminary Agreement shall be, and is hereby, amended as follows:

A. Section 3.4 of the Preliminary Agreement shall be amended to be and read as follows: [added text **bolded and double underlined**; deleted text ~~struck through~~]

Deadline for IGA. Each Party acknowledges and agrees that, subject to completion of negotiations and obtaining all requisite authority for execution, said Party intends to adopt the necessary ordinance and enter into the IGA no later than ~~April 30, 2023~~**June 30, 2024**, unless the Parties mutually agree to a different date, and that each Party will work in good faith to achieve such result.

B. Section 3.10.B of the Preliminary Agreement shall be amended to be and read as follows: [added text **bolded and double underlined**; deleted text ~~struck through~~]

~~If the IGA to form the Water Commission is not approved and in effect by April 1, 2023, each~~ **Each** Party agrees to make ~~an additional payments of \$110,000 not later than July 1, 2023~~ **in the amounts and by the dates shown below** to continue to fund ongoing Water Commission formation administrative costs-;

<u>Additional Payment Amount</u>	<u>Payment Due Date</u>
<u>\$110,000</u>	<u>July 1, 2023</u>
<u>\$110,000</u>	<u>July 1, 2024</u>

C. Section 3.11.A of the Preliminary Agreement shall be amended to be and read as follows: [added text **bolded and double underlined**; deleted text ~~struck through~~]

A. Parties will submit their financial plans and supporting documentation by June 15, 2022 **and continue to provide updated financial plans and supporting documentation as necessary to support the funding strategy and funding sources for the Water Commission and the Program.**

D. A new Section 3.12 shall be added to the Preliminary Agreement and shall read as follows:

3.12 **Interim Actions to Advance the Program and Project Facilities.** Due to the delays in the allocation permit process at the Illinois Department of Natural Resources, the Parties have determined that certain activities will need to be performed prior to the formation of the Water Commission in order to allow the Program to continue, and undertake next steps in connection with the Project Facilities, in order to be able to receive Lake Michigan water by the Targeted Water Delivery Date.

A. Contracts will be bid and awarded pursuant to one of the methods authorized by the RWC Act, and in compliance with all state and federal funding requirements. As project manager, Joliet will provide information to the MMAWG about available contracting methods and present a recommendation as to which method would be in the best interest of the Parties in order to obtain delivery of water by the Targeted Water Delivery Date.

B. The MMAWG will review and discuss pending elements of the Project Facilities, bidding conditions, contracting strategies and methods for awarding the

contract for cost and schedule implications prior to issuance of any construction bid packages or requests for qualifications or proposals related to alternate delivery methods.

C. Because the Commission will not yet be formed, the Parties agree that Joliet, as program manager, will request the MMAWG's approval that Joliet enter into a contract on behalf of the Parties, which approval must be by not less than a majority vote of the Parties. Joliet may elect to enter into such a contract, subject to the agreement of the Parties that upon formation of the Commission, the Board of Commissioners will accept assignment of such contract and the payment obligations under that contract. The Parties agree that the IGA will provide that the Board of Commissioners must accept the assignment and the payment obligations under that contract, and that the costs expended by Joliet pursuant to such a contract will be considered part of advanced funds for construction and that the Commission will reimburse Joliet for these advanced funds in the same manner as reimbursement of development costs, as provided in Section 2.I of Exhibit A.

D. If the MMAWG does not grant approval that Joliet may enter into either a contract with the lowest responsible, qualified bidder meeting the requirements of the RWC Act, or a contract for an alternate delivery method that is authorized by the RWC Act, and the lack of approval could delay the completion of the Project Facilities to a date later than the Targeted Water Delivery Date, then the MMAWG must concurrently approve the establishment of a new Targeted Water Delivery Date that is later than the then-current Targeted Water Delivery Date by the same vote as would be required of the Board of Commissioners in Section 2.F.iii of Exhibit A. Any newly established Targeted Water Delivery Date must be of a duration to allow the work under the contract to be completed by that new Targeted Water Delivery Date. It is recognized that a short-term delay in the contracting process may occur due to unfavorable bidding conditions, receipt of bids or proposals substantially exceeding the engineer's estimate, or matters related to land acquisition, where the delay does not extend the start-up of the Project Facilities beyond the Targeted Water Delivery Date.

E. Joliet, as program manager, is authorized to commence applying for such permits and other approvals as may be necessary for the design and construction of Project Facilities. Joliet will advise the MMAWG of such actions.

E. Section 4.3.B of the Preliminary Agreement shall be amended to be and read as follows: [added text **bolded and double underlined**; deleted text ~~struck through~~]

~~Termination—No IGA.~~ This Agreement shall automatically terminate in the event that the Parties do not enter into an IGA by ~~October 1, 2023~~ **October 31, 2024**, unless the Parties agree to a different date.

SECTION 4. AMENDMENTS TO EXHIBIT A: KEY PRINCIPLES. Exhibit A of the Preliminary Agreement, entitled “Regional Water Commission Key Principles for Water Commission Formation”, shall be, and is hereby, amended as follows:

A. Sections 3.C and 3.D of Exhibit A shall be amended to be and read as follows: [added text **bolded and double underlined**; deleted text ~~struck through~~]

C. Contracts will be bid and awarded pursuant to **one of** the ~~process established in~~ **methods authorized by** the RWC Act, and in compliance with all state and federal funding requirements, the applicable voting requirements established in the IGA, and internal rules adopted by the Board, if any. The Board of Commissioners will review and discuss pending elements of the Project Facilities, bidding conditions, contracting strategies and methods for awarding the contract for cost and schedule implications prior to issuance of any construction bid packages.

D. If the Board of Commissioners does not approve **either** a contract with the lowest responsible, qualified bidder meeting the requirements of the RWC Act; **or a contract for an alternate delivery method that is authorized by the RWC Act.** and the lack of approval could delay the completion of the Project Facilities to a date later than the Targeted Water Delivery Date, then the Board of Commissioners must concurrently approve the establishment of a new Targeted Water Delivery Date that is later than the then-current Targeted Water Delivery Date by the vote required in Section 2.F.iii. Any newly established Targeted Water Delivery Date must be of a duration to allow the work under the contract to be completed by that new Targeted Water Delivery Date. It is recognized that a short-term delay in the contracting process may occur due to unfavorable bidding conditions, receipt of bids **or proposals** substantially exceeding the engineer’s estimate, or matters related to land acquisition, where the delay does not extend the start-up of the Project Facilities beyond the Targeted Water Delivery Date.

B. Section 3.K of Exhibit A shall be amended to be and read as follows: [added text **bolded and double underlined**; deleted text ~~struck through~~]

- K. The Water Commission will design, construct, own, operate and maintain the metering stations at all Members' delivery/metering points (primary and additional).
- i. A single delivery/metering point will be constructed to deliver water to each Member at a location identified by the Member and included in the Basis of Design.
 - ii. Additional delivery/metering points can be added to the Water Commission Project Facilities to serve a Member at the requesting Member's expense. The locations of all additional delivery/metering points will be included in the Basis of Design. Piping leading to additional delivery/metering points from the Water Commission transmission main will be paid for by the Member but designed, constructed, owned and operated by the Water Commission. Member expense for adding one or more additional water delivery/metering points will be determined based on (a) a proportionate share of the Project Facilities design and construction engineering costs to be determined based on a ratio of the additional delivery/metering point actual construction costs divided by total Project Facilities actual construction costs, and (b) construction and land acquisition costs based on actual final costs for each delivery/metering point.
 - iii. Each Member will provide a site sufficient for each of its delivery/metering points. Each Member will convey to the Commission such permanent and temporary easements in each of its sites as necessary to allow the Commission to meet its obligations pertaining to the delivery/metering point, including to construct, operate, maintain, repair and replace the delivery/metering point.
 - iv. All delivery/metering points identified by Members as part of the Basis of Design will be confirmed as part of the Water Supply Agreement.
 - v. A process for requesting and reviewing future delivery/metering points in addition to those included in the Program and initial construction of the Project Facilities will be included in the Water Supply Agreement.

vi. If a Member revises its Primary Delivery Point as identified in the Basis of Design and it:

- a. results in increased capital costs to the Member,
- b. reduces capital costs to the Commission, and
- c. will not increase capital costs of another Member,

then the Board of Commissioners may consider approving a credit to the Member proposing such a revision to its Primary Delivery Point, which approval must be by not less than a majority vote of the Members unless Section 2.F.ii requires a unanimous vote.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date written below.

Village of Channahon, an Illinois municipal corporation

City of Crest Hill, an Illinois municipal corporation

By: _____

Its: _____

Date: _____

ATTEST:

By: _____

Its: _____

Date: _____

ATTEST:

By: _____

Its: _____

Contact Party for the Village of Channahon:

Name: _____

Address: _____

Telephone: _____

Email: _____

By: _____

Its: _____

Contact Party for the City of Crest Hill:

Name: _____

Address: _____

Telephone: _____

Email: _____

City of Joliet, an Illinois municipal corporation

Village of Minooka, an Illinois municipal corporation

By: _____

Its: _____

Date: _____

ATTEST:

By: _____

Its: _____

Date: _____

ATTEST:

By: _____

Its: _____

Contact Party for the City of Joliet:

Name: _____

Address: _____

Telephone: _____

Email: _____

By: _____

Its: _____

Contact Party for the Village of Minooka:

Name: _____

Address: _____

Telephone: _____

Email: _____

Village of Romeoville, an Illinois municipal corporation

Village of Shorewood, an Illinois municipal corporation

By: _____

Its: _____

Date: _____

ATTEST:

By: _____

Its: _____

Date: _____

ATTEST:

By: _____

Its: _____

Contact Party for the Village of Romeoville:

Name: _____

Address: _____

Telephone: _____

Email: _____

By: _____

Its: _____

Contact Party for the Village of Shorewood:

Name: _____

Address: _____

Telephone: _____

Email: _____