

**RESOLUTION
R 17-23**

**A RESOLUTION AUTHORIZING SIGNATURE OF
PRESIDENT AND CLERK ON AN AGREEMENT**

WHEREAS, the Corporate Authorities of the Village of Lombard have received an Intergovernmental Agreement between the Village of Lombard and the Village of Glen Ellyn regarding the Glenbard Wastewater Authority.

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

SECTION 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said agreement as attached hereto.

SECTION 2: That the Village Clerk be and hereby is authorized to attest said agreement as attached hereto.

Adopted this 20th day of April, 2023.

Ayes: Trustee LaVaque, Puccio, Dudek, Honig, and Bachner

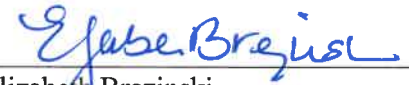
Nays: None

Absent: Trustee Militello

Approved by me this 20th day of April, 2023.


Keith T. Giagnorio
Village President

ATTEST:


Elizabeth Brezinski
Village Clerk

AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGES OF GLEN ELLYN AND LOMBARD IN REGARD TO THE GLENBARD WASTEWATER AUTHORITY

Amended and Restated May 4, 2023

This Intergovernmental Agreement Between the Villages of Glen Ellyn and Lombard in Regard to the Glenbard Wastewater Authority (hereinafter referred to as the “Agreement”) is amended and restated as of this ____ day of _____, 2023 by and between the Village of Lombard, DuPage County, (hereinafter referred to as “LOMBARD”), an Illinois municipal corporation, and the Village of Glen Ellyn, DuPage County, (hereinafter referred to as “GLEN ELLYN”), an Illinois municipal corporation, and is intended to provide for the joint and cooperative establishment and operation of a wastewater treatment system under, and pursuant to the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.). (LOMBARD and GLEN ELLYN are sometimes referred to herein individually as a “Member” and collectively as the “Members”).

WITNESSETH:

WHEREAS, the Members hereto have been jointly involved in wastewater treatment under the terms and conditions of an agreement dated April 1, 1968, and amendments thereto; and

WHEREAS the Federal (EPA) and Illinois Environmental Protection Agencies (IEPA) have adopted certain wastewater collection and treatment standards requiring the Operation and Maintenance of the Glenbard Treatment Plant (as defined below), two interceptor trunk lines transporting wastewater from the Members (as defined below), the St. Charles Road Lift Station and the Valley View Lift Station (as defined below), and the LOMBARD Stormwater Plant (as defined below); and

WHEREAS, units of local government have had conferred upon them the following powers by Article VII, Section 10 of the Constitution of the State of Illinois:

“Units of local government and school districts may contract or otherwise associate among themselves, with the State, with other states and their units of local government and school districts, and with the United States 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. Units of local government and school districts may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities”;

and

WHEREAS, the Illinois Intergovernmental Cooperation Act, 5 Illinois Compiled Statutes 220/1 et seq., formerly Chapter 127, Illinois Revised Statutes, Sections 741 et sequitur, provides as follows:

“Section 220/3. Intergovernmental Agreements

Any power of powers, privileges or authority exercised or which may be exercised by a public agency of this State may be exercised and enjoyed jointly with any other public agency of this State and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States do not prohibit joint exercise of enjoyment.

Section 220/5. Intergovernmental Contracts

Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each Member to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties”;

and

WHEREAS, the Members hereto have authorized the execution of this Agreement, as an exercise of their respective governmental authority, and as an exercise of their Intergovernmental Cooperation authority under the Constitution and laws of the State of Illinois; and their purposes, powers, rights, objectives, and responsibilities hereunder are fully set forth herein;

NOW, THEREFORE, in consideration of the foregoing, the mutual agreements contained herein and other good and valuable considerations, the receipt and sufficiency of which is acknowledged by the Members hereto, it is hereby agreed by, between and among the Members hereto, as follows:

I. DEFINITIONS

- A. “Member” or “Members” means LOMBARD and/or GLEN ELLYN.
- B. “Authority” means the Glenbard Wastewater Authority.
- C. “Board” means the Board of Directors of the Glenbard Wastewater Authority, as provided for in Section II.A. of this Agreement.
- D. “Budget” means the Annual Operating Budget and Capital Improvements Plan for the Glenbard Wastewater Authority.
- E. “Executive Director” means the employee hired in accordance with Section IV. of this Agreement with principal responsibilities for the general management of the Authority.
- F. “Executive Oversight Committee” means the executive oversight committee of the Glenbard Wastewater Authority, as provided for in Section II. C. of this Agreement.
- G. “Wastewater Treatment Facilities” means:

- i. Glenbard Treatment Plant – Main operating facility for all wastewater flows located at 21W551 Bemis Road, Glen Ellyn, Illinois 60137;
- ii. Stormwater Plant – Combined sewerage treatment facility utilized to treat excess flow during high flow events located at 625 West Glen Oak Drive, Lombard, Illinois 60148;
- iii. Hill Avenue Lift Station – Utilized to convey excess combined sewer flow to the Stormwater Plant during high flow events;
- iv. North Regional Interceptor (NRI) – Trunk sewer pipe that conveys flow beginning at the St. Charles Road Lift Station to the Glenbard Treatment Plant;
- v. South Regional Interceptor (SRI) – Trunk sewer pipe that conveys wastewater beginning at the Valley View Lift Station to the Glenbard Treatment Plant;
- vi. St. Charles Road Lift Station – Pumping station responsible for conveying flow from Glen Ellyn Heights Subdivision and Northern Glen Ellyn to the NRI;
- vii. Valley View Lift Station – Pumping station responsible for conveying flows from the Valley View Subdivision to the SRI;
- viii. SRI Lift Station – Pumping station built to provide a level of protection for the SRI during high flow conditions;
- ix. Sunnyside Lift Station – Pumping station responsible for conveying flow from the homes on Sunnybrook Drive to the Glenbard Treatment Plant;
- x. Appurtenances - Any other facilities which convey or are necessary to contribute to the conveyance of the sewer flow from the termination of the sewer collection system of each of the Members to the facilities owned and operated by the Authority.

The term “Wastewater Treatment Facilities” shall not include the sewer collection system of each of the Members.

- H. “Operating Agency” means GLEN ELLYN. The authority of the Operating Agency shall be only as defined or detailed herein, subject to the restrictions and limitation of applicable Federal, State, and local laws or regulations. In general, the Operating Agency shall provide the Authority with support services, including accounts receivable, accounts payable, payroll, bookkeeping and accounting services, human resources services and overall management supervision to oversee the day-to-day operations of the Wastewater Treatment Facilities in accordance with the general direction and policy as provided by the Executive Oversight Committee. The Operating Agency shall be paid an Overhead Fee (as defined below) as compensation for these services.

At such time, as a Member accounts for sixty percent (60%) of the annual flow, as measured at the Glenbard Treatment Plant for four (4) consecutive years, that Member shall have the right, but not the obligation, to serve as the Operating Agency. The Member must make notice of its intent to assume the responsibilities of Operating Agency through notice to the presiding officer of the Executive Oversight Committee within thirty (30) days of the determination of the annual flows for the four (4) consecutive years. If said notice is given, said Member shall take over as the Operating Agency at the end of the Authority's current operating/Budget year, so that the current Operating Agency may serve in such capacity for the remainder of the operating/Budget year in which the notice is given.

- I. "Participating Agency" shall be defined as public agencies, other than the Members, contributing wastewater to the Glenbard Treatment Plant for treatment.
- J. "Overhead Fees" are those costs for personnel, services and materials incurred by the Operating Agency relative to the Authority and not directly charged to the Authority. The Overhead Fees charged by the Operating Agency to the Authority shall be annually determined and incorporated into the approved Budget.

The determination of the Overhead Fees shall be based upon the sum of:

- i. An allocation of costs from the Operating Agency's administrative and public works staff, representative of that portion of time spent and costs incurred by the Operating Agency's administrative and public works staff for Authority related functions, plus
 - ii. An allocation of all the direct costs incurred by the Operating Agency for items relating solely to Authority matters, including costs of generating accounts payable checks, payroll checks, supplies, prorated maintenance, postage, computer programming fees, telephone charges and similar items.
- K. "Operation & Maintenance and Capital Expenses" shall be defined as follows:
 - i. Operation and Maintenance Expenses are those costs associated with the day-to-day operations of the Wastewater Treatment Facilities.
 - ii. Capital Expenses are those costs associated with more significant improvements to the Wastewater Treatment Facilities operated by the Authority. Capital Expenses are subject to the purchasing policies established by the Operating Agency.
 - L. "Control Mechanisms" shall be defined as the legal control techniques used to obtain compliance from industrial dischargers through permit, contract, order, or other similar means

II. GLENBARD WASTEWATER AUTHORITY; ESTABLISHMENT, DUTIES

A. The Authority is hereby created and established for the purpose of jointly treating and processing wastewater for the Members. The Board of the Authority shall consist of the following:

- i. The Village President and six (6) Trustees from GLEN ELLYN; and
- ii. The Village President and six (6) Trustees from LOMBARD.

The presiding officer of the Board shall alternate each calendar year beginning with CY2015. The alternation shall be between the Village President of LOMBARD and the Village President of GLEN ELLYN, with the Village President of LOMBARD being the presiding officer in even-numbered calendar years and the Village President of GLEN ELLYN being the presiding officer in odd-numbered calendar years, unless the Village Presidents agree otherwise. The location of the meetings of the Board shall be the Village Hall of the presiding officer's municipality unless the Village Presidents agree otherwise.

The Board shall meet at the call of the presiding officer or any four (4) members of the Board. All meetings of the Board shall comply with the requirements of the Illinois Open Meetings Act. A quorum to conduct business shall occur when there are at least four (4) members from each Village Board present at a legally posted meeting of the Authority,

B. The Authority, by action of its Board, shall have, and is hereby delegated full power and authority to:

- i. Operate and maintain the Wastewater Treatment Facilities in accord with applicable Federal, State, and local laws, ordinances and regulations;
- ii. Secure and provide necessary personnel, equipment, and improvements, either directly or through the Members;
- iii. Establish a system of revenue through direct payments by Members, a Participating Agency and/or other private or public bodies;
- iv. Enter into agreements with any other unit of government, or private utility company, for the treatment of wastewater generated from within the Authority's Facility Planning Area;
- v. Perform such other acts as may be necessary or desirable for the establishment, maintenance, and operation of the Wastewater Treatment Facilities, including, but not limited to, designating a Member to exercise its condemnation authority in the acquisition of sites for additional wastewater treatment facilities; and
- vi. Review and approve an annual Budget.
- vii. Execute Elements of the Approved Pretreatment Program listed in the National Pollutant Discharge Elimination System Permit IL0021547 as follows:

- (a) Sewer Use Ordinances – The Members agree to adopt a pretreatment sewer use ordinance that is no less stringent than the ordinance the Authority is required to uphold per EPA requirements, as may be amended from time to time.
- (b) Local Limits – The Members agree to adopt local limits for industrial discharges into its collection system that are at least as stringent as the ordinances the Authority is required to uphold per EPA requirements, as may be amended from time to time.
- (c) Control Mechanism – The Authority shall be responsible for issuing control mechanisms to industrial users located within the Members jurisdictions.
- (d) Transfer of Records – The Members agree to provide the Authority access to all records compiled as part of the Members activities that may affect the Authority’s pretreatment program. The Members shall provide notice to the Authority of key activities, such as enforcement actions, permit issuances, etc.
- (e) Right of Entry/Inspection and Sampling – The Members shall grant the Authority the power to enter into the facilities of industrial users as allowable by applicable laws to periodically verify compliance with applicable pretreatment standards and requirements.
 - (1) The Authority acts as an agent of the contributing Member jurisdictions, for the purposes of implementation and enforcement of Member’s sewer use ordinance against industrial users located in the Authority’s service area. The Authority may take any action under the Member jurisdiction’s sewer use ordinance that could have been taken by a Member , including the enforcement of the sewer use ordinance in a court of law.
 - (2) The Authority, on behalf of and as an agent for Member, will perform technical and administrative duties necessary to implement and enforce the sewer use ordinance. The Authority will:
 - (1) update the industrial waste survey;
 - (2) issue industrial discharge permits to all industrial users required to obtain a permit;
 - (3) conduct inspections, enforcement action as outlined in sampling, and analysis;
 - (4) take all appropriate actions within the enforcement response plan and provided for in Member’s sewer use ordinances; and
 - (5) perform any other technical or administrative duties the Parties deem appropriate.
- (f) In addition, Authority may, as agent of Member take emergency action to stop or prevent any discharge which presents or may present an imminent danger to the health, or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, pass through, or sludge contamination.

(g)

Enforcement – The Authority has the primary responsibility for issuing enforcement through the Members code enforcement departments.

C. There is hereby created an Executive Oversight Committee (EOC), which shall consist of the following:

- i. the Village President of GLEN ELLYN or the Member’s designee;
- ii. one (1) elected official from GLEN ELLYN other than the Village President;

- iii. the Village Manager of GLEN ELLYN or a designee;
- iv. the Public Works Director from GLEN ELLYN or a designee;
- v. the Village President of LOMBARD or the Member's designee;
- vi. one (1) elected official from LOMBARD other than the Village President;
- vii. the Village Manager of LOMBARD or a designee; and
- viii. the Public Works Director from LOMBARD or a designee.

Each Member shall communicate, to the Executive Director, changes to the EOC representation in advance of any meetings.

The presiding officer of the Executive Oversight Committee shall be the presiding officer of the Board. In the event of the absence of the presiding officer, the elected official from the presiding officer's municipality shall serve as presiding officer pro term for that meeting. In the event of the absence of the presiding officer and the presiding officer pro term, the non-presiding Village President shall assume the role and duties of the presiding officer for that meeting at which the presiding officer and presiding officer pro term are absent. If the presiding officer, presiding officer pro term and the non-presiding officer Village President are absent, the elected official from the non-presiding officer Member shall serve as presiding officer pro term for that meeting.

The location of the meetings of the Executive Oversight Committee shall be the Glenbard Treatment Plant, 21W551 Bemis Road, Glen Ellyn, Illinois 60137, unless otherwise specified by the then presiding officer by reasonable notice to the other members of the Executive Oversight Committee. The duties and powers of the Executive Oversight Committee shall include the following:

- i. To make policy recommendations regarding, but not limited to restructuring of the Authority, sale or transfer of the assets of the Authority, long-term planning and capital improvements;
- ii. To review and recommend an annual Budget to the Board;
- iii. To review the annual audit;
- iv. To periodically review the Wastewater Treatment Facilities operations;
- v. To sell equipment which the Executive Oversight Committee determines to be obsolete and no longer necessary for the operation of the Authority,
- vi. To approve expenditures which are specifically provided for within the annual Budget or which are necessary in order to implement matters more generally provided for within the annual Budget;
- vii. To review and approve contracts or expenditures of money in excess of the current maximum limit over which competitive bidding is required by 65 ILCS 5/8-9-1 of the Illinois Municipal Code, or to such higher amount as the legislature may from

time to time amend such section, provided monies have been previously budgeted in a Budget approved by the Board;

- viii. To review and make recommendations to the Board or to the corporate authorities of the respective Members sitting independently, concerning facilities planning area (FPA) boundary changes, with final endorsement of any FPA boundary change requiring the concurrence of the corporate authorities of both of the Members;
- ix. To approve debt or loan obligations related to the operation of the Authority, provided that the Executive Oversight Committee must give no less than thirty (30) days' notice to the corporate authorities of GLEN ELLYN and LOMBARD after taking any such action. If the corporate authorities of either Member pass an ordinance removing the power from the Executive Oversight Committee to take the action so taken, then the Executive Oversight Committee shall thereafter lose the power to take such action.
- x. To take such additional action as the Executive Oversight Committee determines is necessary and proper for the operation of the Authority by a 4/5^{ths} (four-fifths) vote of the Executive Oversight Committee members present and voting; provided, however, that any such vote shall be of no force and effect until the Executive Oversight Committee has given no less than thirty (30) days' notice to the corporate authorities of GLEN ELLYN and LOMBARD after taking any such action. If the corporate authorities of either Member pass an ordinance removing the power exercised from the Executive Oversight Committee, within said thirty (30) day period, then the Executive Oversight Committee shall thereafter lose the power to take such action, and the action taken shall be null and void.

The Executive Oversight Committee shall meet at the call of the presiding officer or at the call of any two (2) members of the Executive Oversight Committee. A simple majority, (i.e., five (5) members of the Executive Oversight Committee), shall constitute a quorum to transact business.

Nothing shall preclude the Village Managers, or their designees, from meeting to discuss matters related to the operation of the Glenbard Wastewater Authority, provided that a report of that meeting is provided to the Executive Oversight Committee at the next meeting of the Executive Oversight Committee.

III. BUDGET ADOPTION, AUDIT

- A. Adoption of the annual operating Budget shall require the affirmative vote of four (4) members of the Board from each Member. The fiscal year of the Authority shall be the same as the fiscal year of the Operating Agency (January 1st to December 31st).
- B. The Authority Budget shall be prepared and maintained as a separate document and shall not be intermingled or made a part of the regular budget of the Operating Agency.

- C. The annual audit shall be executed by an auditing firm selected by the Operating Agency, subject to the advice and consent of a majority of the members of the Executive Oversight Committee.

IV. PERSONNEL

- A. All appointments, evaluations and discipline of personnel for the Authority shall be made by the Operating Agency.
- B. Members of the Executive Oversight Committee shall have the right to submit information and comments to the Village Manager of the Operating Agency, relative to the performance of the Executive Director, no less than thirty (30) days prior to the Executive Director of the Authority's performance review. The Operating Agency shall provide the Executive Oversight Committee with no less than sixty (60) days prior written notice of the scheduled date of the Executive Director of the Authority's performance review. Information submitted to the Operating Agency shall be included in the Executive Director of the Authority's personnel file in accordance with the personnel policies of the Operating Agency.
- C. All appointments shall be made only on the basis of merit and fitness, as determined by the Operating Agency.
- D. All persons directly employed in the operation of the Authority shall be considered to be employees of the Operating Agency, subject to the supervision of the Operating Agency in the performance of its duties.
- E. Employees of the Authority meeting the eligibility requirements for pension benefits shall be sponsored by the Operating Agency for participation in the Illinois Municipal Retirement Fund.
- F. The Operating Agency shall provide employee benefits and health insurance to the Authority personnel, subject to the benefit levels established within the personnel rules and policies as adopted by the Operating Agency. Such benefits and insurance shall be the cost of the Authority.

V. LEGAL COUNSEL

The Authority shall retain independent legal counsel to assist the Authority on all legal matters. Unless approved by the Board, legal counsel shall not work with, or for, either Member. Legal counsel shall be selected by a subcommittee of the Executive Oversight Committee, with approval of the appointment made by the Executive Oversight Committee. The subcommittee shall consist of the Executive Director of the Authority, a representative from LOMBARD and a representative from GLEN ELLYN. The Executive Director of the Authority shall serve as chairperson of the subcommittee.

VI. AUTHORITY INSURANCE

The Operating Agency shall first attempt to utilize its insurance provider to extend coverage to the Authority for liability, workers compensation, property and other coverage deemed to be necessary, consistent with the coverage limits maintained by the Operating Agency. Such insurance shall be the cost of the Authority.

VII. WASTEWATER TREATMENT FACILITIES OPERATIONS & FINANCES

A. Financing of Operations.

The Operating Agency has responsibility for oversight of the Wastewater Treatment Facilities as agreed upon by the Members. The Village Manager of the Operating Agency shall have purchasing authority up to the limit established for the Executive Oversight Committee as referenced in Section II.C.vii of this Agreement.

The Operating Agency shall maintain separate funds or accounts as necessary to ensure that the billing and financing of the Authority's operations and capital replacements are apportioned to each Member as detailed in Section VII.C of this Agreement.

B. Billing Procedure

Each Member will transfer into such fund or account, and in the manner, including electronic transfer, as the Authority may direct, a set amount on the last day of the month for which service is rendered as a preliminary payment for that service. This monthly amount is established as 1/12th (one-twelfth) of that fiscal year's Budget apportioned to each Member as determined by Section VII.C of this Agreement.

Not later than the twentieth (20th) calendar day of each month, the Authority shall send a monthly flow bill to each Member for the treatment of wastewater based on respective metered flows for the prior month. The amount due from each Member may be adjusted, if applicable, twice a year based on the monthly flow bills issued from January through June and July through December. After the issuance of the June and December flow bills, the Members will remit any balance due, or the Authority will return any overpayment, within sixty (60) days. Any other revenue or audit adjustment will be handled as a separate invoice/credit transaction, and not deducted or added to the flow bills.

The Operating Agency will also make available to each Member, upon request, a monthly Budget statement, said statement detailing, by line item, expenditures for the previous month, end of the month encumbrances, and unencumbered Budget balances.

Each Member shall include in its annual appropriation or budget ordinance an appropriation of adequate funds for the aforementioned payments.

C. Rate Determination.

The Authority shall maintain proper flow metering equipment to ensure that sufficient monitoring exists to support the Members' contributions.

The monthly Member contributions shall be based upon the following formulas:

LOMBARD

$$\frac{(\text{Current Year Operating Budget}) \times (\text{Previous 5 Year Average \% of Total Flow})}{12}$$

GLEN ELLYN

$$\frac{(\text{Current Year Operating Budget}) \times (\text{Previous 5 Year Average \% of Total Flow})}{12}$$

The Authority shall maintain a system of tracking and reporting the allocation of personnel and resources to each of the Wastewater Treatment Facilities as defined in Section I.F. of this Agreement.

D. Capital Expenses

As part of the annual Budget process, the Executive Oversight Committee will recommend the annual contribution to the Board as part of the annual Budget based off of the most recently approved ten (10) year capital plan including all debt service. Every five (5) years, the Authority shall conduct a review of the capital plan; said review shall be performed by an outside consultant and be known as the facilities plan. The result shall be used as the basis for updating the Authority's ten (10) year capital plan.

The Capital Equipment Replacement Fund shall be funded through a mechanism that uses a fixed cost split of fifty percent (50%) of the annual capital contributions funded by each Member. The remaining fifty percent (50%) of the Capital Equipment Replacement Fund shall be split based upon the average of the previous five (5) year percent of total area flow.

The Members' annual contribution rate for the Capital Equipment Replacement Fund shall be based upon the following formula:

LOMBARD

$$(\text{Fiscal Year Capital Expenses} \times .25) = \text{fixed contribution}$$

$$(\text{Fiscal Year Capital Expenses} \times .50) \times (\text{LOMBARD's average percent of the total area flow for the previous five (5) years}) = \text{variable contribution}$$

GLEN ELLYN

$$(\text{Fiscal Year Capital Expenses} \times .25) = \text{fixed contribution}$$

$$(\text{Fiscal Year Capital Expenses} \times .50) \times (\text{GLEN ELLYN's average percent of the total area flow for the previous five (5) years}) = \text{variable contribution}$$

E. Rate Adjustment

The audit shall be completed within six (6) months of completion of the fiscal year of the Operating Agency. The audit report shall include, but not be limited to the following information:

- i. Total measured flows billed per Member;
- ii. Total revenues billed and received per Member;
- iii. An expenditure analysis, including operating expenses by category;
- iv. An analysis of each Member's expense allocation determined by the product of the percentage of measured flow for each Member to total flow applied to total expense; and
- v. An amount payable or receivable by each Member based on an adjusted rate as determined by dividing total expenses by total flow.
- vi. Based on the audit report, the Operating Agency shall either remit or bill the amount due to, or from, each Member, except for that cash fund balance which shall be maintained by the Authority, as further defined in subsection I. below, entitled "Cash Balance." Payment by either the Authority or any Member shall be due within sixty (60) days of the billing.

F. Method of Metering

The metering of the wastewater into the Glenbard Treatment Plant shall be such that the flow contributed by each Member can be accurately measured. Estimated flows may be used as a substitute in the case of meter failure. Such estimates, however, shall require the mutual approval of the Operating Agency and the affected Member. Where a dispute should occur, the Members shall consider using prior year's flows for the same period.

For the purposes of this Agreement, total area flow shall be determined through readings taken from the sixteen (16) flow meters and two (2) rain gauges operated by the Authority.

G. Control of Permits

All Member permits requiring EPA or IEPA approval shall be processed through the staff of the Authority. Copies of any permits involving fifteen (15) persons equivalent, or less, additions to the sewer system flowing to the Glenbard Treatment Plant shall be filed with the Authority staff.

H. Punitive Action

Any responsibility for punitive action taken by the EPA or IEPA against the Operating Agency must be assumed by the allegedly offending Member, including any and all legal costs and any resultant fines levied by court action or the Illinois Pollution Control Board, unless the fine is a result of negligence on the part of the Authority. In such case, the Authority shall be responsible for the punitive actions.

I. Cash Balance

A working cash fund shall be maintained in an amount approximately equal to twenty-five percent (25%) of the previous Budget year's expenditures for operation and maintenance, as determined by the audit, exclusive of depreciation and equipment reserves. Working cash shall be calculated as the total of the general ledger cash and short-term investment balances. This calculation shall be done only for the operation and maintenance fund and not on a combined fund basis.

VIII. FUTURE CAPITAL IMPROVEMENTS

If, at some future date, it becomes necessary or advisable to enlarge, improve, or expand the Wastewater Treatment Facilities, the same may be accomplished with the approval and concurrence of each Member and the Board under such terms as may be agreed to by the Members.

IX. REVENUE BOND RESTRICTIONS

Sections XII and XIII of this Agreement shall be subject to restrictions contained in present and/or future Revenue Bond Ordinances of LOMBARD and GLEN ELLYN, which provide funding for Wastewater Treatment Facilities and/or sanitary sewer facilities.

X. USE OF AUTHORITY PROPERTY

Land and facilities owned by the Authority are intended for the sole use of the Authority. Any request to utilize land, office space, storage space, garage space or other property shall be subject to the prior approval of the Executive Oversight Committee.

All revenues derived from the use of the land and Wastewater Treatment Facilities operated by the Authority shall be deposited in the Capital Equipment Replacement Fund.

XI. COMPENSATION OF OPERATING AGENCY - OVERHEAD FEES

The initial Overhead Fees adopted as part of this Agreement are attached as Exhibit A and made part thereof. The Operating Agency shall use the percentage increase equivalent to the most recent calendar year consumer price index (CPI-U for the Chicago Metropolitan Area) as a guide for the annual adjustment to the Overhead Fees.

- A. The Operating Agency shall be entitled to compensation for services rendered to the Authority, with the amount of compensation being the "Overhead Fees" defined in Section I.J. above. The amount of Overhead Fees payable to the Operating Agency

shall be mutually determined by the Members and included in the annual operating Budget. In the event the Members fail to agree upon the compensation payable to the Operating Agency, then the amount of compensation contained in the most current, approved operating Budget shall be carried forward into the subsequent year's annual operating Budget, provided, however, that the use of the preceding year's budgeted amount to determine the Operating Agency's compensation shall not be employed in two (2) consecutive years.

- B. If any extraordinary costs are incurred by the Operating Agency in excess of this adopted fee schedule, such extraordinary costs shall be subject to the approval of the Executive Oversight Committee prior to the reimbursement of the Operating Agency therefor.
- C. The components of the indirect costs of the Overhead Fees shall be reviewed every three (3) years by the Executive Oversight Committee beginning in CY 2017. The Executive Oversight Committee shall have the authority to make revisions to Exhibit A without amendment to this Agreement.

XII. SINGLE VILLAGE OWNERSHIP

Should it become necessary for either the GLEN ELLYN or LOMBARD to own part or all of the Wastewater Treatment Facilities in its/their entirety at any time, it may do so upon approval of the sale, and conditions of the sale, from each of the Village Boards of LOMBARD and GLEN ELLYN. The purchase price shall be the seller's proportionate share of the appraisal value of that part of the Wastewater Treatment Facilities at the time of the sale, determined by the respective contributions of the Members as provided for herein, multiplied by the then appraised value of the portion of the Wastewater Treatment Facilities that is being sold. The purchase shall be either as a lump sum payment or may be amortized over a period not to exceed twenty (20) years at a rate of interest equal to the interest rate of the outstanding bonds of the selling Member and deducted from the sewage treatment service charges if agreeable to both Members. Upon payment of the full purchase price, the selling Member shall have the right to continue to use that part of the Wastewater Treatment Facilities at such rate as will allow the purchasing Member a reasonable return of its total investment above operating costs.

XIII. SALE TO A THIRD PARTY

If it becomes necessary or desirable to sell part or all of the Wastewater Treatment Facilities to a third party, that may be done upon the mutual consent and agreement of each of the Village Boards of GLEN ELLYN and LOMBARD. The proceeds of such sale shall be distributed in proportion to the amounts each Member contributed to the total cost of that part of the Wastewater Treatment Facilities, less any Federal contribution. However, in no event shall the share distributed to either Member be less than is required to satisfy in full the outstanding bonded indebtedness incurred by either Member of the portion of the Wastewater Treatment Facilities that is being sold, and the system connected therewith.

XIV. CONFLICT RESOLUTION

A. Definition

A "Grievance" is defined as a difference of opinion raised by a Member against the Authority, the Authority against a Member or a Member against a Member regarding an alleged violation, misapplication or misinterpretation of an express provision of this Agreement.

B. Procedure

The aggrieved Member shall submit the Grievance in writing, within thirty (30) days of the alleged violation, to the Village President, or his designee, of the other Member, specifically indicating that the matter is a Grievance under this Agreement. The Grievance shall contain a complete statement of the complaint, the provision, or provisions, of this Agreement which are alleged to have been violated, and the relief requested. All Grievances must be presented no later than thirty (30) business days from the date of the occurrence of the matter giving rise to the Grievance or the aggrieved Member's discovery of such matter using reasonable diligence, whichever is later. The Member served with the written notice of Grievance shall provide a written response within seven (7) business days from receipt of the notice.

C. Arbitration

Arbitration shall proceed in the following manner:

- i. The Authority and the Member or Members shall confer and attempt to reach agreement on the selection of an arbitrator. In the event that Members are unable to agree upon the arbitrator within ten (10) days, they shall obtain a list of recognized arbitrators from the Federal Mediation and Conciliation Service. Upon receipt of such list, the Authority and/or each Member, as the case may be, shall strike names from the list until there is one name remaining. The remaining individual shall be the arbitrator. The Member, or the Authority, requesting the arbitration shall strike first.
- ii. The arbitrator shall promptly review the Grievance and shall hold a hearing, and the scope of the hearing shall be defined by the Grievance and this Agreement. The hearing shall only be open to the Authority and Member(s) in interest. The Member and/or the Authority may request that a written transcript of the hearing be made, to be paid for by each Member and/or the Authority.
- iii. The decision of the arbitrator shall be in writing and shall set forth the findings of fact, reasoning and conclusion of the issues submitted.

- iv. The decision of the arbitrator shall be binding upon the Authority and the Member(s) to the Grievance.
- v. The cost of the arbitrator's fees and expense and the cost of a court reporter shall be borne equally by the Parties to the Grievance. Each Member and the Authority shall be responsible for its own costs.
- vi. The arbitrator shall have full authority to decide all substantive and procedural issues; however, the Members and Authority shall not be prejudiced from challenging the arbitrator's determinations on subsequent review in judicial and quasi-judicial proceedings.

XV. NOTICE

Notice, or other writings which either Member is required to, or may wish to, serve upon the other Member in connection with this Agreement shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

If to the Village of Lombard:

Village Manager
Village of Lombard
255 E. Wilson Avenue
Lombard, Illinois 60148

If to the Village of Glen Ellyn:

Village Manager
Village of Glen Ellyn
535 Duane Street
Glen Ellyn, Illinois 60137

If to the Authority

Executive Director
Glenbard Wastewater Authority
21W551 Bemis Road
Glen Ellyn, Illinois 60137

XVI. WASTEWATER SERVICE AGREEMENTS

- A. The Members acknowledge that GLEN ELLYN currently has agreements with the County of DuPage and the Illinois American Water Company of Illinois, which allow sewage from

certain portions of the unincorporated areas of DuPage County, served with sanitary sewer service by said entities. The Members agree that said agreements can continue to exist, provided the flows as a result thereof count as sewage flows from GLEN ELLYN, for purposes of sewage flow calculations under this Agreement.” These agreements are hereby referred to as Intergovernmental Agreements with the following names

- (i) Agreement Between the County of DuPage and Glen Ellyn
- (ii) Citizens Utility – VGE Agreement Valley View Lift Station

B. The Members acknowledge that LOMBARD currently has an agreement with County of DuPage, which allows sewage from the unincorporated residential area of DuPage County known as the Flowerfield Subdivision, served with sanitary sewer by DuPage County. The members agree that the said agreement can continue to exist, provided the flows as a result thereof count as sewage flows from LOMBARD, for the purposes of sewage flow calculations under this Agreement. This agreement is hereby referred to as the Intergovernmental Agreement with the following name

- (i) IGA for Flowerfield Subdivision

XVII. PREVIOUS AGREEMENT

The agreement between GLEN ELLYN and LOMBARD dated the 17th day of April, 2014, and all amendments thereto, are hereby rendered void as of the effective date of this Agreement. Said effective date being that date on which both Members have authorized and executed this Agreement, which date shall be inserted in the opening paragraph hereof.

EXECUTED this _____ day of _____, 2023, by the Village of Glen Ellyn.

VILLAGE OF GLEN ELLYN

By _____
Village President

ATTEST:

Village Clerk

EXECUTED this _____ day of _____, 2023, by the Village of Lombard.

VILLAGE OF LOMBARD

By _____
Village President

ATTEST:

Village Clerk

EXHIBIT A

**Glenbard Wastewater Authority
Schedule of Operating Agency Overhead Fees
CY2023**

CY23 Operating Agency Charges	\$145,503
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