



ORDINANCE NO. 2073-21

AN ORDINANCE AUTHORIZING THE EXECUTION OF THE SECOND STORAGE LAGOON CONSTRUCTION AND ESCROW AGREEMENT BETWEEN THE VILLAGE OF HAWTHORN WOODS AND AQUA ILLINOIS, INC.

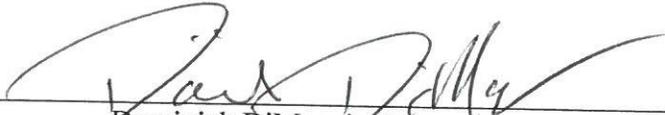
BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Hawthorn Woods, Illinois, that the Mayor and be, and the same, is hereby authorized and directed to execute the Second Storage Lagoon Construction and Escrow Agreement with Aqua Illinois, Inc., in substantially the form attached hereto as Exhibit "A", and, by this reference, made a part hereof. The agreement is subject to final review, modification and approval by the Village Attorney.

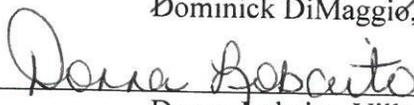
The foregoing Ordinance was adopted on February 22, 2021 by a roll call vote as follows:

AYES: Kaiser, Kosik, Riess, David, McCartney, Regalio

NAYS: 0

ABSENT AND NOT VOTING: 0

APPROVED: 
Dominick DiMaggio, Mayor

ATTEST: 
Donna Lobaito, Village Clerk

ADOPTED: February 22, 2021

APPROVED: March 8, 2021

Second Storage Lagoon Construction and Escrow Agreement

This Second Storage Lagoon and Escrow Agreement ("Agreement") is entered into this 8th day of March, 2021 by and between **Aqua Illinois, Inc.** ("Aqua") and the **Village of Hawthorn Woods**, an Illinois Municipal Corporation ("Village"), and made in consideration of the mutual promises and undertakings hereinafter set forth and in furtherance of that certain Settlement Agreement and Release by and between Toll IL HWCC, L.P. ("Toll"), the Village and Aqua dated March 8, 2021 (the "Settlement Agreement").

WITNESSETH:

WHEREAS, the Village, Aqua and Toll in the Settlement Agreement have resolved certain disputes between them and by this Agreement the Village and Aqua desire to set forth certain understandings related to the phased construction of the Second Storage Lagoon which shall be constructed as part of Aqua's Wastewater Reuse and Reclamation System in Hawthorn Woods and the terms of the escrow account to be established for the funding of construction of the Second Storage Lagoon; and,

WHEREAS, the Settlement Agreement requires Toll to deposit \$625,000 into an escrow account to be established by the Village upon execution of the Settlement Agreement and requires the deposit of another \$625,000 upon the later of presentation to Toll of (i) a permit from the Village to Aqua or its contractor for the hauling away of peat spoils from the area where the Second Storage Lagoon will be constructed, AND (ii) an affidavit from Aqua attesting that Aqua has commenced the hauling away of the peat spoils from the area where the Second Storage Lagoon will be constructed (hereinafter the "Initial Payments"); and,

WHEREAS, pursuant to the Settlement Agreement Toll shall assign its existing rights to sewer recapture as established by that certain Recapture Agreement between the Village and Toll dated December 20, 2004 and recorded as Lake County Document No. 5715676 ("Recapture Agreement") as Amended by that certain Amendment to Wastewater Reclamation and Reuse System Recapture Agreement between the Village and Toll dated January 20, 2009 and recorded as Lake County Document No. 6539047 ("First Amendment") and that certain Second Amendment to Wastewater Reclamation and Reuse System Recapture Agreement dated March 8, 2021 ("Second Amendment") (hereinafter collectively referred to as the "Recapture Payments"); and,

WHEREAS, the Village and Aqua wish to establish herein the terms and conditions for the escrow account for receipt of the Initial Payments and the Recapture Payments or connection fees ("Escrow Account") which shall be used to finance the construction by Aqua of the Second Storage Lagoon for the Hawthorn Woods Wastewater Reclamation and Reuse System in Hawthorn Woods, Illinois ("Second Storage Lagoon") in up to five (5) phases as described herein upon the timing triggers set forth herein; and,

WHEREAS, Aqua shall construct, operate and own the Second Storage Lagoon and the capacity in the existing and Second Storage Lagoon shall be available for ongoing growth and development in the Village; and,

WHEREAS, it is the intention of the Parties herein that all design engineering, bidding, construction observation, inspection, legal and permitting fees related to the construction of the Second Storage Lagoon and Aqua's overhead costs ("Administrative Costs") shall be paid out of the Escrow Account and that the Parties shall at all times cooperate with each other on the Second Storage Lagoon construction.

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

1. Preamble. The recitals contained in the Preamble above shall become a part of this Agreement as if fully set forth herein.

2. Escrow Account. The Village shall establish a segregated Escrow Account for the sole purpose of funding construction of the Second Storage Lagoon and payment of the Administrative Costs. The Escrow Account shall receive the Initial Payments and all Recapture Payments and any specifically designated connection fees which may be established by the Village for wastewater treatment by the Hawthorn Woods WWPR System (hereinafter Recapture Payments and connection fees are referred to as "Escrow Deposits"), which shall be no less than \$7,000 per single family home, and which shall be collected by the Village from home builders and developers at the earlier of (a) approval of a Final Plat, or (b) approval of Final Engineering Plans. In addition, the Village shall be able to draw from the Escrow Account to pay for its Administrative Costs. The Escrow Account shall be interest bearing and the Village shall provide Aqua with quarterly statements showing the balance in the escrow account and detailing any amounts received or paid from the Escrow Account. Aqua shall have audit rights relative to the Escrow Account. No payments can be made from the Escrow Account to third parties unless Aqua is first provided with written notice of the pay request and sufficient documentation in support of the pay request. Aqua shall be given fourteen (14) days to respond in writing with its approval or rejection of the pay request with any rejection being supported by specific reasons in support thereof. The Parties shall resolve any disputes related to third-party payments from the Escrow Agreement using the dispute resolution procedure in Paragraph 9.

3. Construction Phasing. The Village and Aqua agree to the five (5) phased construction of the Second Storage Lagoon to the maximum capacity of up to 86,000,000 gallons as set forth on **Group Exhibit A**. Aqua may in its sole discretion after consultation with the Village determine that a phase or phases of the construction should be advanced or combined and in that event the Parties will thereafter agree upon terms for Aqua's construction costs to be reimbursed from the Escrow Account as Escrow Deposits are made.

4. Phase 1 Timing. Within three (3) months from execution of this Agreement, Aqua shall submit its Phase 1 Peat Stockpile Removal plans and permit request for removal of the existing stockpiled peat soils from the area depicted in **Group Exhibit A** for Phase 1. The Village shall have thirty (30) days to approve or deny the permit request and in the event of a denial the Village shall include the specific reasons for the denial and the Parties shall resolve any disputes using the dispute resolution procedure set forth Paragraph 9 below. Upon approval and issuance of the permit, Aqua or its contractor shall use the Haul Route(s) included in the attached **Exhibit B**. The Phase 1 Work shall be substantially completed within six (6) months of commencement of the Phase 1 Work. Aqua shall be entitled to submit Payment Requests from the Escrow Account for the Phase 1 Work in accordance with the procedures set forth in Paragraph 10 below.

5. WWRR Capacity. Aqua and the Village agree that the current WWRR has the capacity to serve an additional 255 homes using an agreed upon population equivalent per home of 2.75 and that 2.75 p.e. shall be used in evaluating capacity for the Second Storage Lagoon. (Population equivalent (p.e.) shall have the same meaning as set forth in the IEPA wastewater regulations and codes.) Aqua and the Village further agree that the current WWRR storage lagoon and the Second Storage Lagoon shall accommodate 150 days of storage capacity or such higher value as may be required by the IEPA.

6. Phases 2-5 Construction Timing. The Village and Aqua agree to the Phasing Triggers and the construction cost estimates set forth in **Exhibit C** attached hereto and incorporated herein. The foregoing notwithstanding, the Parties recognize that the phasing, cost estimates and construction triggers are based on current and available information and the actual costs may exceed the estimates due to market conditions, applicable regulations and future conditions and it is the intention of the Parties that the funds in the Escrow Account shall be sufficient to cover the actual costs of construction and actual Administrative Costs for each phase of the construction. Aqua shall have no obligation or duty to begin construction of a phase or phases until there are sufficient funds in the Escrow Account. In the event of insufficient funds in the Escrow Account to cover the actual construction costs of a respective Phase and Administrative Costs, the Parties shall cooperate to establish updated triggers, and to revise **Exhibit C** accordingly.

A. Permitting. Upon the Village's receipt of Escrow Deposits for the number of homes set forth as the Design Trigger in **Exhibit C**, Aqua shall commence the design of the subsequent Phase of the Storage Lagoon in the location and size as set forth in **Group Exhibit A**. Aqua shall include a preliminary plan for the ultimate buildout of the Second Storage Lagoon with Aqua's Phase 2 engineering which shall include proposals for permanent berming generally consistent with the temporary berming specifications in par. 7 subject to Village review and approval. The preliminary plan will address drainage for the entire site. Aqua shall complete its design and submit a permit request and engineer's estimate of construction costs to the Village for the respective Phase Work within three (3) months of receiving notice the Design Trigger Deposit. Upon receipt of a completed permit request and engineer's estimate the Village shall then have

thirty (30) days to approve or deny the permit request and Engineer's estimate, and in the event of a denial the Village shall include the specific reasons for the denial and the Parties shall resolve any disputes using the dispute resolution procedure set forth in Paragraph 9 below. Upon receipt of the Village's permit, Aqua shall submit its construction Permit Application to the Illinois Environmental Protection Agency ("IEPA") for the respective Phase of the Second Storage Lagoon.

B. Construction. Subject to Aqua's receipt of an IEPA Construction Permit approval and the Village's receipt of the Escrow Deposits for the number of homes set forth as the Construction Trigger in **Exhibit C**, Aqua shall commence construction of the respective Phase of the Storage Lagoon and construction shall be substantially completed within six (6) months thereafter.

7. Berming Plan and Temporary Stockpiling of Soil. The Village approves Aqua's berming plan set forth in **Exhibit D**. The Village agrees that as part of its Phase 2-5 construction, Aqua may construct the berms in the locations depicted in **Exhibit D** from suitable materials excavated during Second Storage Cell construction. The Village further agrees that as a cost savings measure and as part of its permit request(s) for Phases 2-5, Aqua may propose temporary stockpiling of soils in the Proposed Temporary Berm locations depicted in **Exhibit D**, provided that Aqua shall present a plan for removal of the stockpiles with its permit request(s). The temporary berms shall not exceed five (5) feet in height with a maximum 4:1 slope on the sides and will be vegetated with turf.

8. Village Fees/Bonds for Second Storage Lagoon Permits. The Village shall not charge separate fees for permits related to the phased construction of the Second Storage Lagoon. Aqua shall not be required to post a payment or construction bond related to the Second Storage Lagoon but upon request of the Village, the Village and Aqua shall agree on the amounts of a bond or bonds to insure repairs or restoration to all haul roads used by Aqua during the Second Storage Lagoon construction. All costs associated with any road bonds required by the Village shall be included as Administrative Costs.

9. Dispute Resolution. In the event a dispute arises between the Parties, the Parties shall endeavor to resolve any dispute through consultations between them. Such consultations shall commence upon the written notification that a dispute exists by one party to the other party. In the event an engineering dispute cannot be resolved by the Parties, such dispute shall be resolved by both Parties' selection of a neutral third-party engineer who shall within fourteen (14) days from selection and presentation of the Parties' respective positions on the disputed matter render a final decision which shall be binding on the Parties. If the Parties cannot agree on the neutral engineer, each party shall select a third-party engineer and thirty-party engineers shall select the neutral engineer.

10. Aqua Payment Requests. Aqua shall be entitled to payment from the Escrow Account for all Administrative Costs and construction costs for the phased construction of the Second Storage Lagoon. Aqua may submit no more frequently than

once each calendar month, using a cut-off date of the last day of the prior month and a submission date of the tenth (10th) day of the month a written Request for Payment in the Form attached hereto as **Exhibit E**. The Request for Payment shall be signed by Aqua's consulting or in-house engineer recommending payment. The Request for Payment shall include Aqua's draw request containing Aqua's Administrative Costs (overhead, engineering, legal and management services). The Village Engineer shall within ten (10) days from receipt of the Request for Payment issue its recommendation for approval or denial (in whole or in part) of the Request for Payment. The Village Board shall within forty-five (45) days from receipt of Aqua's Request for Payment the Village shall pay the recommended portion of the bill to Aqua. For any disapproved portion of a bill, within forty-five (45) days the Village shall notify Aqua as to the reasons for the disapproval and Aqua can either resubmit the portion that was disapproved or the parties shall follow the dispute resolution procedure set forth in Paragraph 9 above.

11. Default. If either Party defaults in the full and timely performance of any of its obligations hereunder, the non-breaching Party, after first providing written notice to the breaching Party of the event of default and providing thirty (30) days to cure the same, shall be entitled to invoke its legal rights and remedies as a result thereof, including, but not limited to, its equitable remedy of specific performance. All amounts not paid when due shall accrue interest at ten percent (10%) per annum. If after a determination has been made by a neutral third-party that Aqua has failed to either submit a permit request and engineer's estimate, submit the IEPA permit or commence construction and after the cure period set forth herein, the Village shall have the right engage in self-help to undertake the construction of the respective phase(s) with reimbursement from the Escrow Account. THE FOREGOING NOTWITHSTANDING, NO PARTY SHALL BE LIABLE TO ANOTHER PARTY OR ANY OF ITS AFFILIATES, AGENTS EMPLOYEES OR CONTRACTORS FOR SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES.

12. No Third Party Beneficiaries. No provision of this Construction and Escrow Agreement is intended to benefit, nor shall any provision of this Construction and Escrow Agreement be construed to benefit any party, individual, owner, entity or developer or their respective successors or assigns.

13. Force Majeure. Neither the Village nor Aqua shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended, if the Party's performance of an obligation is delayed as a result of an event of force majeure, which is hereby defined to include, but not be limited to, damage or destruction by fire or casualty; strike; lockout; civil disorder; war; lack of issuance of any permits and/or legal authorization by the governmental entity necessary for Aqua to proceed with construction of the work or any portion thereof; delay in commencement or completion of any and all work to be performed by others which affects Aqua's ability to commence or complete the work; shortage or delay in shipment of material or fuel; acts of God; disaster or emergency declarations from municipal, state or federal authorities; unusually adverse weather or wet soil conditions; or other like causes beyond the Parties' reasonable control, including, but not limited to, any litigation, court order or judgment resulting from any litigation challenging or affecting the validity

of: (a) the Wastewater Reclamation and Reuse System Recapture Agreement dated December 20, 2004, recorded as Lake County Recorder's Document No. 51576 as amended by the Hawthorn Woods Country Club First Amendment to Wastewater Reclamation and Reuse System Recapture Agreement dated January 20, 2009, recorded as Lake County Document No. 6539047 and the Hawthorn Woods Country Club Second Amendment to Wastewater Reclamation and Reuse System Recapture Agreement signed contemporaneously herewith; or (b) this Agreement; provided the Party claiming the benefits of this Paragraph 13 notifies the other Party in writing within thirty (30) days of the commencement of such claimed event of force majeure; and further provided that such event of force majeure shall not be deemed to exist as to any matter initiated or sustained by either Party to this Agreement in bad faith, and shall not include economic hardship; unavailability of materials (except as described above); strikes or labor disputes caused by the acts of the Aqua; or a failure of performance by a contractor (except as caused by events described above).

14. Recapture Indemnification. The Village and Aqua agree that the Indemnification provision in Paragraph 7 of the Hawthorn Woods Country Club Wastewater Reclamation and Reuse System Recapture Agreement dated December 20, 2004 ("Original Recapture Agreement") does not apply to Aqua. The Village and Aqua shall fully cooperate in the future to the extent necessary in order to effectuate the intentions of this Agreement concerning the funding of an escrow for the construction of the Second Storage Lagoon.

15. Notices. Any notices under this Agreement shall be personally delivered, delivered by the deposit thereof in the U. S. Postal Service, postage prepaid, registered, or certified, return receipt requested, or by overnight courier service to the party at the address listed below or at another address hereafter designated by notice or by facsimile or email transmission. Any such notice shall be deemed to have been delivered and given upon personal delivery or delivery by a nationally recognized overnight courier service, or deposit with the United States Postal Service or upon receipt of written confirmation that facsimile or email transmission has been successfully completed:

If to Hawthorn Woods: Village Clerk
Village of Hawthorn Woods
2 Lagoon Drive
Hawthorn Woods, IL 60047

With a copy to: Patrick T. Brankin
Schain, Banks, Kenny & Schwartz, Ltd.
70 W. Madison Street, Suite 5300
Chicago, IL 60602
pbrankin@schainbanks.com

If to Aqua: Craig L. Blanchette, President
Aqua Illinois, Inc.
1000 South Schuyler Avenue
Kankakee, Illinois 60901

With a copy to:

Christian G. Spesia
Spesia & Taylor
1415 Black Road
Joliet, Illinois 60435
cspesia@spesia-taylor.com

16. Miscellaneous.

A. Except as provided herein, neither Party shall assign this Agreement or any right or privilege any Party may have under this Agreement without the prior written consent of all Parties hereto. In the event a written consent is obtained, the assignee shall agree in a written notice to all Parties to carry out and observe each applicable Party's agreement hereunder ("Undertaking"). The terms and conditions herein contained shall, subject to the prior sentence, apply to and bind the successors of the Parties hereto. The foregoing notwithstanding, Aqua may assign, without Village's consent, but upon seven (7) days' prior written notice, its rights and obligations hereunder to any entity owned or controlled by it or any of its shareholders, directors or officers, or trusts owned or controlled by them, provided that any such assignee agrees to the Undertaking. Upon any such assignment by Aqua, Aqua shall be released from its duties and obligations hereunder and Village shall solely look to such Assignee for the performance of any of Aqua's obligations hereunder.

B. This Agreement shall be governed by the internal laws of the State of Illinois.

C. The person(s) executing this Agreement on behalf of the Parties hereto warrant that: (i) such party is duly organized and existing; (ii) the individual signing is duly authorized to execute and deliver this Agreement on behalf of said Party; (iii) by so executing this Agreement, such Party is formally bound to the provisions and conditions contained in this Agreement; and (iv) the entering into this Agreement by a Party does not violate any provision of any other agreement to which said Party is bound.

D. The Parties acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to complete the objectives and requirements that are set forth in this Agreement. The Parties hereby agree to cooperate with each other by executing such other documents or taking such other actions as may be reasonably necessary to complete the objectives and requirements set forth herein in accordance with the intent of the Parties as evidenced by this Agreement.

E. Aqua and Village shall defend, indemnify and hold the other harmless from and against any claims, losses, costs, liabilities, damages and expenses (including reasonable attorneys' fees and costs) arising out of, or resulting from, any breach of any provision of this Agreement, any violation of any

law, code, regulation or ordinance or any negligent or willful act or omission, by the other or its or their respective agents, employees, contractors or invitees. Nothing herein shall be construed to waive any immunities that may be asserted in response to or defense of any such claims.

F. This Agreement is the entire agreement between the Parties regarding its subject matter and may not be changed or amended except pursuant to a written instrument signed by all Parties.

G. The Exhibits attached to this Agreement are a part of this Agreement and are fully incorporated into this Agreement by reference.

H. Time is of the essence with regard to this Agreement.

I. This Agreement may be executed in any number of identical counterparts each of which shall be considered an original but which together shall constitute one and the same Agreement.

(signature page follows)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers duly authorized to execute same, the day and year first above written.

AQUA ILLINOIS, INC.

By: *C Blanchett*
Its: *President*

Attest:

By: *Jessie Portek*
Its: *Executive Assistant*

VILLAGE OF HAWTHORN WOODS,
an Illinois Municipal Corporation

By: *[Signature]*
Its: *Mayor*

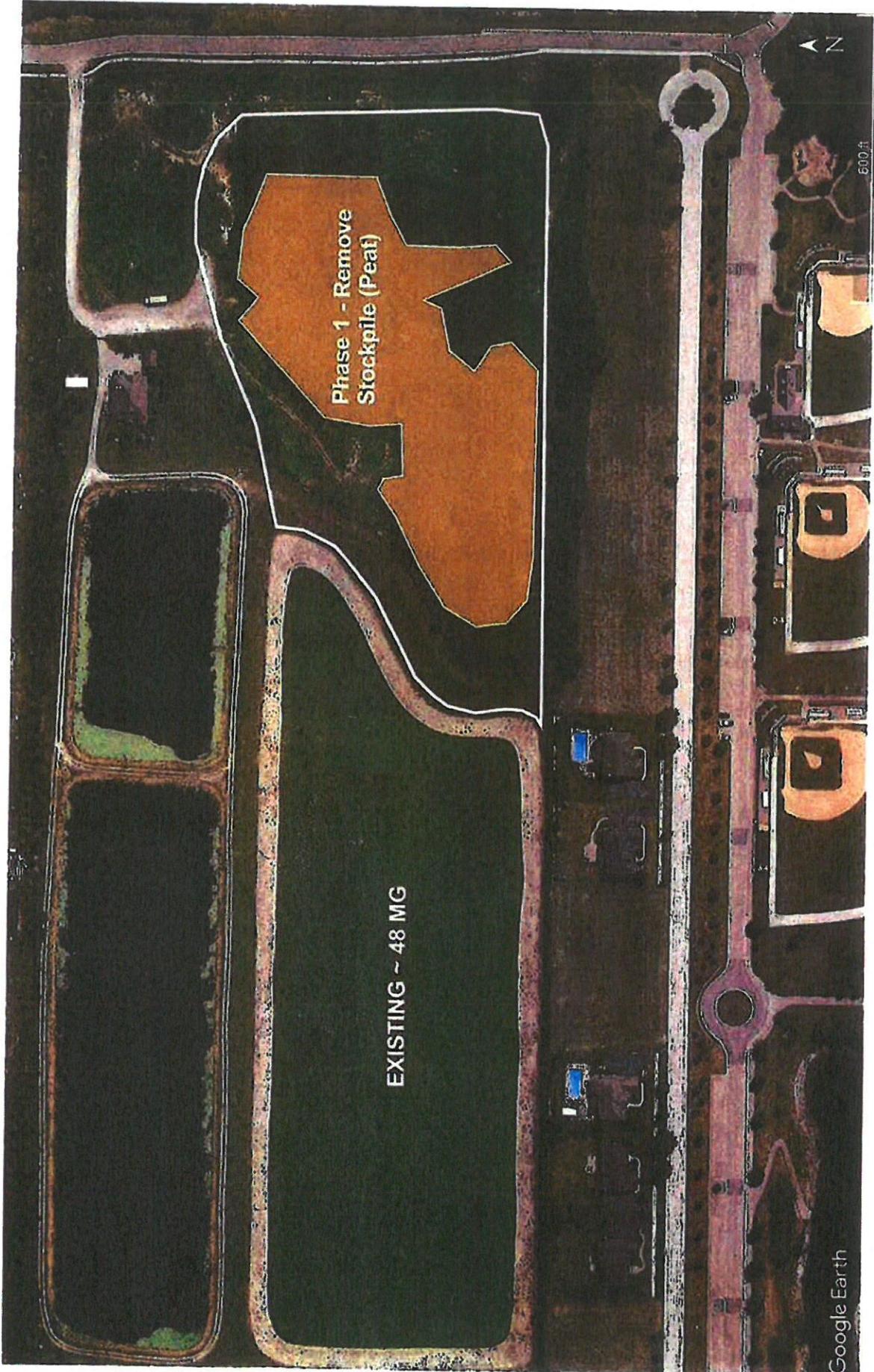
Attest: *Donna Lobarto*
By: *Donna Lobarto*
Its: *Village Clerk*

LIST OF EXHIBITS

- Group Exhibit A** - **Construction Phasing**
- Exhibit B** - **Haul Route(s)**
- Exhibit C** - **Phasing Triggers/Design Trigger/Construction Triggers**
- Exhibit D** - **Berming Plan**
- Exhibit E** - **Request for Payment Form**

GROUP EXHIBIT A

Construction Phasing



Phase 1 - Remove
Stockpile (Peat)

EXISTING ~ 48 MG



600.71

Google Earth



Phase 2
Add 8 MG

TOTAL ALL
PHASES
56 MG

EXISTING ~ 48 MG

Google Earth

600 ft







TOTAL ALL
PHASES
72 MG

EXISTING ~ 48 MG

Phase 4
Add 3 MG

Phase 4
Add 3 MG



TOTAL ALL PHASES up to 86 MG

Phase 5 Add up to 14 MG

EXISTING ~ 48 MG

EXHIBIT B

Haul Route(s)

EXHIBIT B

Truck Route

All construction vehicles, trucks, equipment etc. being used for the Aqua/Hawthorn Woods Second Storage Lagoon shall utilize West Kruckenberg Road to Midlothian Road. Construction traffic cannot utilize Heritage Oaks Park Road/parking lot, any private roadways within the Hawthorn Woods Country Club and any roadways within the Hawthorn Hills and Legend Knolls Subdivisions. Any necessary permits for the truck traffic will need to be obtained by Aqua Illinois.

EXHIBIT C

Phasing Triggers/Design Trigger/Construction Triggers

1. **Phase 1 – Remove Peat**
 - a. **Design Trigger per Second Lagoon Construction and Escrow Agreement**
 - b. **Construction Trigger per Second Lagoon Construction and Escrow Agreement**
 - c. Cost: \$1,250,000*
 - d. Escrow: \$1,250,000
 - e. Cash Flow: Zero

2. **Phase 2- Increase Lagoon by 8 MG**
 - a. **Design Trigger 175th deposit**
 - b. **Construction Trigger 225th deposit**
 - c. Cost: \$1,415,000*
 - d. Escrow: \$1,575,000
 - e. Cash Flow: \$ 160,000

3. **Phase 3- Increase Lagoon by 8 MG**
 - a. **Design Trigger 380th deposit**
 - b. **Construction Trigger 430th deposit**
 - c. Cost: \$1,415,000*
 - d. Escrow: \$1,435,000
 - e. Cash Flow: \$ 180,000

4. **Phase 4- Increase Lagoon by 8 MG**
 - a. **Design Trigger 580th deposit**
 - b. **Construction Trigger 630th deposit**
 - c. Cost: \$1,415,000*
 - d. Escrow: \$1,400,000
 - e. Cash Flow: \$ 165,000

5. **Phase 5- Increase Lagoon by up to 16 MG**
 - a. **Design Trigger 808th deposit**
 - b. **Construction Trigger 858th deposit**
 - c. Cost: \$1,761,000**
 - d. Escrow: \$1,575,000
 - e. Cash Flow: \$ 0

* Costs shall be updated per preliminary design, final design, and bid experience

** This cost is expected to achieve about 10 MG of additional storage for a total of 170 days of storage

EXHIBIT D

Berming Plan

EXHIBIT E

Request for Payment Form



Contractor's Application for Payment No. _____

To (Owner)	Application Period: From (Contractor)	Application Date: Via (Engineer):
Project:	Contract:	
Owner's Contract No.:	Contractor's Project No.:	Engineer's Project No.:

Application For Payment
Change Order Summary

Approved Change Orders				
Number	Additions	Deductions		
			1. ORIGINAL CONTRACT PRICE.....	\$ _____
			2. Net change by Change Orders.....	\$ _____
			3. Current Contract Price (Line 1 + 2).....	\$ _____
			4. TOTAL COMPLETED AND STORED TO DATE (Column F on Progress Estimate).....	\$ _____
			5. RETAINAGE:	
			a. <input checked="" type="checkbox"/> Work Completed.....	\$ _____
			b. <input checked="" type="checkbox"/> Stored Material.....	\$ _____
			c. Total Retainage (Line 5a + Line 5b).....	\$ _____
			6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5c).....	\$ _____
			7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application).....	\$ _____
			8. AMOUNT DUE THIS APPLICATION.....	\$ _____
			9. BALANCE TO FINISH, PLUS RETAINAGE (Column G on Progress Estimate + Line 5 above).....	\$ _____
TOTALS				
NET CHANGE BY CHANGE ORDERS				

Contractor's Certification

The undersigned Contractor certifies that to the best of its knowledge: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all liens, security interests and encumbrances (except such as are covered by a bond acceptable to Owner indemnifying Owner against any such liens, security interests or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

By: _____ Date: _____

Payment of: \$ _____
(Line 8 or other - attach explanation of the other amount)

is recommended by: _____
(Engineer) (Date)

Payment of: \$ _____
(Line 8 or other - attach explanation of the other amount)

is approved by: _____
(Owner) (Date)

Approved by: _____
Pending Agency (if applicable) (Date)