IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MACOUPIN COUNTY, CARLINVILLE, ILLINOIS

CAMILLE MAYFIELD COOPER BROTZE, and WAYNE BROTZE, husband and wife,	)	
Plaintiffs,	)	
v.	)	No. 2019MR92
CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation,	)	
Defendant.	)	

SECOND AMENDED COMPLAINT
(Mandamus)

Now come the Plaintiffs, CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE, husband and wife, by and through JACOB N. SMALLHORN of SMALLHORN LAW LLC, their attorneys, and in support of their SECOND AMENDED COMPLAINT for a Writ of Mandamus to be issued against the Defendant, CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation, allege as follows:

1. Plaintiffs, CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE (collectively the "Brotzes"), husband and wife, are individuals whom reside in the City of Carlinville, Macoupin County, Illinois.

2. Defendant, CITY OF CARLINVILLE, ILLINOIS ("Carlinville"), is a non-home rule, Municipal Corporation organized and existing under the Laws of the State of Illinois, situated in Macoupin County, Illinois.

3. The Brotzes' residence is connected to, and the Brotzes regularly use Carlinville's municipal water supply.

4. On or about January 26, 2016, Carlinville applied for a grant from the United States Department of Agriculture's ("USDA") Water and Waste System Grant Program for preliminary engineering on options for developing a viable water supply, treatment, and transmission system to serve a "Regional Water Commission" in the Greene, Jersey, and Macoupin Counties in Central Illinois. See p. 2 of the Grant Application which is attached as Exhibit A.

5. On March 8, 2016, the USDA entered into a Grant Agreement with Carlinville ("Grant Agreement"), awarding Carlinville $30,000 for project development costs associated with the project detailed in the grant application (Exhibit A). A copy of the fully executed Grant Agreement is attached as Exhibit B.

6. Upon information and belief, at some point after March 8, 2016, representatives of Carlinville City Government had discussions with representatives of the Village of Dorchester, Illinois, Jersey County Rural Water Company, Inc., and other local municipalities and entities regarding the formation of a private, not-for-profit corporation to service the region's water supply.

7. On November 3, 2017, representatives of the Carlinville City Government, Jersey County Rural Water Company, Inc., and the Village of Dorchester created Bylaws for a private, not-for-profit corporation known as Illinois Alluvial Regional Water Company, Inc. ("Illinois Alluvial"), which provides that Illinois Alluvial's governing board will consist of one person from each municipality or other entity that opts into the private company. The Bylaws for Illinois Alluvial are attached as Exhibit C.

8. On December 5, 2017, representatives of the Carlinville City Government, Jersey County Rural Water Company, Inc., and the Village of Dorchester filed with the Illinois

Secretary of State Articles of Incorporation for Illinois Alluvial. The Articles of Incorporation for Illinois Alluvial are attached as Exhibit D.

9. On October 2, 2017, before Illinois Alluvial was incorporated or Bylaws were adopted, at a regularly held meeting of the Carlinville City Council, the Aldermen voted to grant "Alderman Campbell the power to act and appropriate funds as representative of Carlinville" to Illinois Alluvial. A copy of the October 2, 2017 Carlinville City Council Meeting Minutes is attached hereto as Exhibit E.

10. Illinois Alluvial is not a "Public Water District" under the Public Water District Act, 70 ILCS 3705/0.01 *et seq*.; it is not authorized under the Water Authorities Act, 70 ILCS 3715/0.01 *et seq.*; it is not a "Water Commission" as that term is identified in the Water Commission Act of 1985, 70 ILCS 3720/0.001 *et seq*.; it is not a "Municipal Joint Action Water Agency" as that term is described in the Intergovernmental Cooperation Act, 5 ILCS 220/3.1; nor is the association of Carlinville and another municipality with private companies (Jersey Rural and Illinois Alluvial) authorized by any of the provisions of the Illinois Municipal Code relating to Water Supply and Sewage Systems, 65 ILCS 5/11-124-1 *et seq.*

11. As residents of Carlinville, the Brotzes have a right to expect that their local government will conduct itself with transparency and in accordance with the provisions of the Illinois Open Meetings Act, 5 ILCS 120/1 *et seq.*, among other accountability laws.

12. The Illinois Open Meetings Act, 5/120/3(a), includes a private right to initiate a cause of action against a municipality for violations of the Act.

13. It is a well settled principle of Illinois Law that non-home rule municipal corporations are limited in their authority to contract to those areas in which specific statutory authority is given or can reasonably be inferred, *Eastern Illinois State Normal School v. City of*

Charleston, 271 Ill. 602, 111 N.E. 573 (1916), and intergovernmental agreements are likewise constitutionally limited to matters which are "not prohibited by law or by ordinance." Illinois Constitution, Art. VII, Sec. 10.

14. The Illinois Municipal Code and other applicable statutes expressly identify the ways in which non-home rule municipalities like Carlinville may create a joint venture to solve their water supply problems. See the Statutes cited in allegation 10 hereinabove.

15. None of the statutorily prescribed methods described above in allegation 10 authorizes Carlinville to enter into a joint venture with another municipality and a private company to create another private company to solve its water problems.

16. Carlinville has no constitutional, statutory, or other legal authority to participate in the incorporation or funding of Illinois Alluvial; a private company purportedly owned and operated by two municipal corporations and a private company.

17. Illinois Alluvial claims that because it is a "private corporation," it is exempt from the provisions of the Open Meetings Act. See the Notice of Criminal Trespass which Illinois Alluvial's counsel sent to the Carlinville City Council on December 14, 2017, a copy of which is attached as Exhibit F.

18. By agreeing to participate in the formation, funding and operation of Illinois Alluvial in the way that they chose to do so, the Carlinville City Aldermen are not being transparent about their conduct of business and have circumvented the Brotzes right to know what decisions are being made about their water supply.

19. The Brotzes' have a clear, affirmative right to expect their local government to conduct itself with transparency which is protectable pursuant to Illinois accountability statutes like the Open Meetings Act and the common law.

20. The Carlinville City Aldermen have a duty to act in accordance with Illinois Law, specifically within the strictures for non-home rule municipalities.

21. The Carlinville City Aldermen have the absolute authority to rescind their participation in Illinois Alluvial and chose another course of action to solve Carlinville's water needs which does not violate Illinois Law.

22. Without the issuance of a Writ of Mandamus, the Brotzes would have no other mechanism to challenge Carlinville's abuse of authority regarding Carlinville's participation in the creation, funding, and operation of Illinois Alluvial.

WHEREFORE, Plaintiffs, CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE, request that this Court issue a Writ of Mandamus compelling the Carlinville Aldermen and Alderwomen, in their official capacities, to take the actions necessary to withdraw from and cease any further participation in the creation, funding, or operation of Illinois Alluvial, and for any such further relief the Court deems equitable and just.

Respectfully submitted this 22nd day of July, 2019.

Plaintiffs, CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE, husband and wife,

By: /s/ Jacob N. Smallhorn
Plaintiffs' Attorney

Jacob N. Smallhorn
Smallhorn Law LLC
609 Monroe Avenue
Charleston, Illinois 61920
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F: 217-348-5258
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Bar Number: 6307031

STATE OF CALIFORNIA)
) SS.
COUNTY OF Alameda)

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters that they certify as aforesaid that they verily believe the same to be true.

Camille Mayfield Cooper Brotze
CAMILLE MAYFIELD COOPER BROTZE

Wayne Brotze
WAYNE BROTZE

Subscribed and Sworn to before me this

10th day of July, 2019.

Notary Public

CARMEN GALINDO
Notary Public - California
Alameda County
Commission # 2244165
My Comm. Expires May 27, 2022

BATES #6

JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Alameda

Subscribed and sworn to (or affirmed) before me on this 10th day of July,

2019 by Camille Mayfield Cooper Brotze, and Wayne Brotze,

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature (Seal)

CARMEN GALINDO
Notary Public - California
Alameda County
Commission # 2244165
My Comm. Expires May 27, 2022

OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Second Amend
(Title or description of attached document)

Compaint
(Title or description of attached document continued)

Number of Pages 4 Document Date 7/10/19

Additional information

INSTRUCTIONS

The wording of all Jurats completed in California after January 1, 2015 must be in the form as set forth within this Jurat. There are no exceptions. If a Jurat to be completed does not follow this form, the notary must correct the verbiage by using a jurat stamp containing the correct wording or attaching a separate jurat form such as this one with does contain the proper wording. In addition, the notary must require an oath or affirmation from the document signer regarding the truthfulness of the contents of the document. The document must be signed AFTER the oath or affirmation. If the document was previously signed, it must be re-signed in front of the notary public during the jurat process.

- State and county information must be the state and county where the document signer(s) personally appeared before the notary public.
- Date of notarization must be the date the signer(s) personally appeared which must also be the same date the jurat process is completed.
- Print the name(s) of the document signer(s) who personally appear at the time of notarization.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different jurat form.
  - Additional information is not required but could help to ensure this jurat is not misused or attached to a different document.
  - Indicate title or type of attached document, number of pages and date.
- Securely attach this document to the signed document with a staple.

APPLICATION FOR FEDERAL ASSISTANCE — Version 7/03

		2. DATE SUBMITTED	Applicant Identifier (b) (4)
1. TYPE OF SUBMISSION: Application ☐ Construction ☑ Non-Construction	Pre-application ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY JAN 25 2016	Federal Identifier

5. APPLICANT INFORMATION

Legal Name: City of Carlinville	Organizational Unit: Department:
Organizational DUNS: (b) (4)	Division:
Address: Street: 550 N. Broad Street	Name and telephone number of person to be contacted on matters involving this application (give area code) Prefix: Mr. First Name: Tim
City: Carlinville	Middle Name
County: Macoupin	Last Name: Hasara
State: IL Zip Code: 62626	Suffix:
Country: USA	Email: thasara@cityofcarlinville.com
6. EMPLOYER IDENTIFICATION NUMBER (EIN): (b) (4)	Phone Number (give area code): 217-854-4752 Fax Number (give area code): 217-854-4398

8. TYPE OF APPLICATION: ☑ New ☐ Continuation ☐ Revision. If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐ Other (specify)	7. TYPE OF APPLICANT: (See back of form for Application Types) C. Municipal. Other (specify)
	9. NAME OF FEDERAL AGENCY: U.S. Department of Agriculture - Rural Development
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 10-760. TITLE (Name of Program): Water and Waste Disposal Systems for Rural Communities	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: Central Illinois Regional Water Supply - See attached project description
12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.): City of Carlinville, portions of Macoupin, Jersey and Greene Counties	
13. PROPOSED PROJECT: Start Date: February 2016 Ending Date: July 2016	14. CONGRESSIONAL DISTRICTS OF: a. Applicant City of Carlinville b. Project Regional Water System.

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal Predevelopment Plan Grant	$ 30,000	a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE:
b. Applicant	$ 10,000	
c. State	$	b. No. ☑ PROGRAM IS NOT COVERED BY E. O. 12372
d. Local	$	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
e. Other	$	
f. Program Income	$	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
g. TOTAL	$ 40,000	☐ Yes If "Yes" attach an explanation. ☑ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative

Prefix: Mrs.	First Name: Deanna	Middle Name
Last Name: Demuzio		Suffix
b. Title: Mayor		c. Telephone Number (give area code): 217-854-4076
d. Signature of Authorized Representative: [signature]		e. Date Signed: 12-22-2015

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Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

Exhibit A

BATES #8

Attachment for SF 424 Application Form, Item #11 (Descriptive Title of Applicant's Project):

A Preliminary Engineering Report to evaluate options to develop a viable water supply, treatment and transmission system to serve a Regional Water Commission in the Greene, Jersey and Macoupin Counties area of Central Illinois. The City of Carlinville is the lead entity until a water commission can be formed. Based on the collaboration with the City of Carlinville, City of Jerseyville, Jersey County Rural Water Company and Fosterburg Water District, the PER shall address a water system that will benefit the identified potential regional partners.

Water and Waste System Grant Agreement

United States Department of Agriculture

Rural Utilities Service

THIS AGREEMENT dated 3-8-2016, between

City of Carlinville

a public corporation organized and operating under

65 ILCS 5/2-1

(Authorizing Statute)

herein called ``Grantee,'' and the United States of America acting through the Rural Utilities Service, Department of Agriculture, herein called ``Grantor,'' WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (waste) system to serve the area under its jurisdiction at an estimated cost of $ 40,000.00 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than $ 10,000.00 of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of $ 10,000.00 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed $ 30,000.00 or 75.00 percent of said project development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the Conditions of the grant.

As a condition of this grant agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated into this agreement by reference, and such other statutory provisions as are specifically set forth herein.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306(a) of The Consolidated Farm and Rural Development Act for the purpose only of defraying a part not to exceed 75.00 percent of the project development costs, as defined by applicable Rural Utilities Service instructions.

Grantee Agrees That Grantee Will:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.

D. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges, whether for one or more classes of service, adopted by resolution dated 3-8-2016, as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

E. Adjust its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

F. Expand its system from time to time to meet reasonably anticipated growth or service requirements in the area within its jurisdiction.

G. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

H. To execute any agreements required by Grantor which Grantee is legally authorized to execute. If any such agreement has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another agreement of the same type need not be executed in connection with this grant.

I. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated herein above with the interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

J. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

K. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency. When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.
[Revision 1, 04/17/1998]

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

NONE

L. Abide by the following conditions pertaining to equipment which is furnished by the Grantor or acquired wholly or in part with grant funds. Equipment means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.
[Revision 1, 04/17/1998]

1. Use of equipment.

(a) The Grantee shall use the equipment in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the equipment in connection with its other Federally sponsored activities, if any, in the following order of priority:

1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

(b) During the time that equipment is held for use on the property for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the equipment was originally acquired. First preference for such other use shall be given to Grantor sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of equipment. When the Grantee no longer needs the equipment as provided in paragraph (a) above, the equipment may be used for other activities in accordance with the following standards:

(a) Equipment with a current per unit fair market value of less than $5,000. The Grantee may use the equipment for other activities without reimbursement to the Federal Government or sell the equipment and retain the proceeds.

(b) Equipment with a current per unit fair market value of $5,000 or more. The Grantee may retain the equipment for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value or proceeds from sale of the equipment. If the Grantee has no need for the equipment and the equipment has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the equipment exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee requests and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the equipment and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share ten percent of the proceeds for Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the equipment elsewhere the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the equipment, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for equipment shall also include:

(a) Records which accurately provide for: a description of the equipment; manufacturer's serial number or other identification number; acquisition date and cost; source of the equipment; percentage (at the end of budget year) of Federal participation in the cost of the project for which the equipment was acquired; location, use and condition of the equipment and the date the information was reported; and ultimate disposition data including sales price or the method used todetermine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years to verify the existence, current utilization, and continued need for the equipment.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Proper sales procedures shall be established for unneeded equipment which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described equipment(use continuation sheets as necessary).

NONE

M. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

4. Accounting records supported by source documentation.

N. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

O. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

P. Provide an audit report prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

Q. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentality's of states shall not be held accountable for interest earned on grant funds pending their disbursement.

R. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item K above.

S. To include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

T. To include in all contracts in excess of $100,000 a provision that the contractor agrees to comply with all the requirements of the Clean Air Act (42 U.S.C. §7414) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. In so doing the Contractor further agrees:
[Revision 1, 11/20/1997]

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR Part 32 as of the date of contract award.
[Revision 1, 11/20/1997]

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

Grantor Agrees That It:

A. Will make available to Grantee for the purpose of this Agreement not to exceed $__30,000.00__ which it will advance to Grantee to meet not to exceed __75.00__ percent of the project development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans for sewer and water and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

Mayor

attested and its corporate seal affixed by its duly authorized

Clerk

Attest:

By Carla Brockmeier
CARLA BROCKMEIER
(Title) **Clerk**

By
DEANNA DEMUZIO
(Title) **Mayor**

UNITED STATES OF AMERICA

RURAL UTILITIES SERVICE

By Bobett Dunphy Area Specialist
BOBETT DUNPHY (Title)
Area Specialist

BY-LAWS

of

ILLINOIS ALLUVIAL REGIONAL WATER COMPANY

ARTICLE I

General Powers

The Corporation shall have and may exercise the powers set forth in its Articles of Incorporation together with any such other powers as are authorized by the statutes of the State of Illinois, including but not limited to the General Not for Profit Corporation Act of 1986, 805 ILCS 105/101.01 *et. seq*. as it now exists or may be hereafter amended.

ARTICLE II

Name and Location

Section 1. The name of the Corporation is:

ILLINOIS ALLUVIAL REGIONAL WATER COMPANY

Section 2. The principal office of this Corporation shall be:

1009 State Highway 16
Jerseyville, IL 62052

ARTICLE III

Seal

Section 1. The Corporation shall have a seal on which shall be inscribed thereon the name of the Corporation.

Section 2. The Secretary of the Corporation shall have custody of the seal.

ARTICLE IV

Fiscal Year

The fiscal year of the Corporation shall begin the first day of October of each year.

Exhibit C

BATES #17

Purpose

The primary purpose of the Corporation is to provide potable water to its members on a co-operative basis.

ARTICLE V

Membership

Section 1. Subject to acceptance and approval of at least two-thirds (2/3rds) majority of the Board of Directors, and the execution of a Water Supply Agreement, membership in the Corporation may be available to any Not-For-Profit Water Company, Village, Town, City, Water District, or other Municipality that distributes potable water to its residents, members and/or customers in the area served by the Corporation. The primary area to be served by the Corporation includes, but is not limited to the Illinois Counties of: Jersey, Macoupin, Green and Madison.

The following rules apply to members of the Corporation. A member may produce water for its own usage and for distribution to its residents, members and/or customers, who are end users. A member may also resell water it purchases from the Corporation to another distributor with the approval of the Board of Directors of the Corporation. However, a member may not treat, produce and supply potable water to other distributors, without the approval of a least two-thirds (2/3rds) of the Board of Directors of the Corporation. Such consent is not necessary for those agreements or relationships which predated the operation of the Corporation's water treatment plant, or the first delivery of water to said member, whichever is later.

Section 2. In no event shall a For-Profit Water Company or Corporation become a member of the Corporation. However, the Corporation may elect to sell water to a For-Profit Corporation or Company, on a bulk basis, if excess capacity exists and the Board of Directors approves it. The bulk rate charged to such a For-Profit Customer may exceed the rate charged to members or to Not-For-Profit Customers, which are not members of the corporation. Said rate shall be determined by the Board of Directors on a case by case basis.

Section 3. A Member may resign its membership at any time by written notice to the Corporation; provided however, that no such resignation shall affect any accrued liabilities of the resigning member to the Corporation, nor shall it affect any continuing contractual obligations of each party to the other, except that the rate charged by the Corporation to the resigned member shall thereafter be the same rate which it charges to non-member customers.

Section 4. Each member may have only one (1) membership.

Section 5. Membership shall not be transferable, provided however that the Water Supply Agreement between a member and the Corporation may be assigned in accordance with the terms thereof.

Section 6. Membership in the Corporation shall terminate by operation of law, without further notice or hearing, in the event the member ceases to exist, dissolves or merges with another entity which is not a member. Membership shall also terminate automatically, without further notice or hearing if a member files for bankruptcy, is placed in receivership, permanently ceases to be a distributor of potable water to retail customers, or resigns.

Membership may also be terminated for cause, with notice, in accordance with Section 9 of this Article.

Water Supply Agreements between the Corporation and its members are assignable, but membership is not. In the event a member dissolves, its assets are sold, it is taken over by, and/or merges with another entity which is not a member, said entity assumes the rights and duties of the Water Supply Agreement, but does not become a member of the Corporation and is not entitled to representation on the Board of Directors. Rather, the assignee or transferee of the Water Supply Agreement would be a non-member customer of the Corporation which may, but is not required to apply for membership in the Corporation. In order to be admitted as a member, the applicant must meet the qualifications and receive the approval of a majority of at least two thirds (2/3rds) of the Board of Directors in accordance with Section 1 of Article V.

Section 7. In the discretion of the Board of Directors, a person or entity need not be a member of the Corporation to become a customer of the Corporation's water system. However, such customers will not have the right to representation on the Board of Directors, will not be entitled to vote on any matter which comes before the Board and may be charged a water rate which exceeds the rate charged to members. Said rate shall be determined by the Board of Directors.

Section 8. Members shall have the right to participate in the affairs of the Corporation, as herein provided and a preferential right to the use and enjoyment of the water and the water system, upon payment of the charges, fees and assessments fixed and determined by the Board of Directors as necessary to the operation, care and maintenance of the water system.

Section 9. Membership may be terminated by majority vote of at least two-thirds (2/3rds) the Board of Directors for cause, including but not necessarily limited to: 1) The failure to promptly pay obligations to the Corporation; 2) The entry into a contract to purchase water from another supplier, other than an approved Emergency Interconnection Agreement or the continuation of a purchase agreement or arrangement that predated the entry into the initial Water Supply Agreement with the Corporation; or 3) For any other action deemed detrimental to the best interest of the Corporation; provided however, that a statement of the cause for termination shall be delivered by certified mail, return receipt requested, by hand or other forms of delivery, to the last recorded address of the member, at least 28 days before final action is taken. The statement shall be accompanied by a notice of the time and place of the meeting of the Board of Directors at which the termination of the member's membership shall be considered, and the member shall have the opportunity to appear, through its duly appointed representative, and to be heard on the matter, before final action is taken.

No such termination shall affect any accrued liabilities of the terminated member to the Corporation, nor shall it affect any continuing contractual obligations of each party to each other, except that the rate charged by the Corporation to the terminated member shall thereafter be the same rate which it charges to non-member customers.

Section 10. Any claim or dispute arising from or related to these By-Laws shall be settled by mediation, in accordance with the Illinois Uniform Mediation Act, 710 ILCS 35/1 *et. seq.* or by legally binding arbitration in accordance with the rules of the American Arbitration Association. Judgment may be entered upon a mediation agreement or an arbitration decision by any court otherwise having jurisdiction over the parties. These methods shall be the sole and exclusive remedy for any controversy or claim arising out of these By-Laws. The parties hereby waive all rights to a jury trial or to institute litigation with a court of competent jurisdiction to resolve any disputes concerning membership, membership rights, the termination of membership or the construction of these By-Laws.

ARTICLE VI

Meeting of the Members

Section 1. The annual meeting of the members of this Corporation shall be held at ILLINOIS ALLUVIAL REGIONAL WATER COMPANY, 1009 State Highway 16, Jerseyville, Illinois, at 5:00 o'clock P.M., on the 30th day in November of each year, provided that if said day be a legal holiday, then on the next secular day. The place, day, and time of the annual meeting may be changed to any other convenient place, day, and time by the Board of Directors giving notice thereof to each member not less than ten (10) days in advance thereof.

Section 2. Special meetings of the members may be called at any time by the President or by the Board of Directors and such meetings must be called whenever a petition requesting such meeting is signed, by at least two (2) members, and presented to the Secretary or to the Board of Directors. The purpose of every special meeting shall be stated in the notice thereof, and no business shall be transacted thereat, except such as is specified in the notice.

Section 3. Notice of meetings of members of the Corporation shall be given not less than ten (10) nor more than forty (40) days prior to the meeting. Unless otherwise agreed, notice of a special meeting shall be mailed, postage prepaid, to each member of record at the address shown upon the books of the company and shall state the date, time, place, and purpose of the meeting. Alternatively, notice of a special meeting may be provided by E-Mail and or telephone to each member which consents in writing and provides the Secretary with an E-mail address and or phone number, at which such notice may be given.

Section 4 A majority of members present by their Authorized Representatives, shall constitute a quorum at any meeting, provided that failing a quorum the members present may adjourn the meeting to a time and place certain, without further notice of the meeting.

Section 5. From the enactment of these By-Laws, each member present at an annual or special meeting shall have one (1) vote on all questions coming before the Membership. No election of Directors shall be required, as each member may adopt its own rules for appointing a Regular and or Alternate Representative to the Illinois Alluvial Regional Water Company Board of Directors. An Alternate Representative may only vote in the event the member's regular Representative is unable to attend.

Section 6. The order of business at the annual meeting of members and so far as possible, at all other meetings shall be:

1. Call to order and proof of quorum.
2. Proof of notice of meeting.
3. Reading and action on any unapproved minutes.
4. Members' Concerns.
5. Auditor's Report.
6. Old Business.
7. New Business.
8. Adjournment.

ARTICLE VII

Directors and Officers

Section 1. It is the intent of the Corporation that each member be represented on the Board of Directors, until such time as the number of members increases to the point that it is in the Board's opinion, impractical to continue to do so. Until such event, the meetings of the Board of Directors are in essence meetings of the members and thus, any business which requires membership approval may be conducted at a regular or special meeting of the Board of Directors.

Section 2. The Corporation shall be managed by a Board of Directors consisting of three (3) or more persons, including one (1) Director appointed by each member. Each Director shall serve a three (3) year term. The Directors' terms shall be staggered, with at least one (1) Directors' terms ending each year. Each member shall appoint a Director to be its Regular Representative on the Board of Directors, but may also appoint an Alternate Representative to serve on the Board of Directors in the Regular Representative's absence. Each Director and Alternate Representative shall at all times, be an officer, director, trustee, special appointee, or employee of a member, in order to be eligible to serve as a Director of the Corporation. A member may not appoint a representative to the Corporation's Board who is an employee of a water company that is not a member, which also

produces water and or is in competition with the Corporation. There shall be no limit as to the number of times a person may serve as a Director or Alternate Representative. The Secretary of the Corporation shall keep a schedule of the Director's and Alternate Representative's identities, addresses and terms. Each member shall promptly provide the Secretary with a certified copy of the minutes of the meeting where official action was taken by the member to appoint its representative to the Corporation's Board.

Section 3. Upon the resignation, removal, retirement, death or disability of a Director, the member shall be entitled to select a Successor Director immediately to serve for the remainder of the unexpired term. The Successor Director shall be an officer, director, trustee, special appointee, or employee of the member. The Alternate Representative may serve on the Board of Directors until such time as a Successor Director is chosen. The Alternate Representative may be appointed as the Successor Director, in which event the member may appoint a successor, Alternate Representative.

ARTICLE VIII

Meetings of Directors

Section 1. The Board shall meet at least annually, at such times and places as may be determined by resolution of the Board, but if there is no resolution to the contrary, the annual meeting of the Board shall be at the Corporation's principal place of business, immediately following the annual meeting of the members. The Board will normally meet monthly on the last Wednesday of each month at the Corporation's principal place of business, unless the Secretary notifies the Directors otherwise; No notice of the regularly scheduled meeting is required to be given.

Section 2. At said annual meeting of its Board of Directors, it shall elect a President and Vice President from the Directors and also elect a Secretary and Treasurer who may or may not be a Director, each of whom shall hold office until the next annual meeting of Directors, at which time the election and qualifications of the officer's successor have been verified, unless sooner removed by death, resignation, or for cause. An Alternate Representative may not serve as President or Vice President of the Board, but may serve as Secretary or Treasurer and may be appointed to serve on Committees formed by the Board.

Section 3. A majority of the Board of Directors present by the member's Regular or Alternate Representatives shall constitute a quorum at any annual, regular or special meeting of the Board. The affirmation vote of a majority of the Directors, at any meeting at which a quorum is present, shall be the act of the Board. An Alternate Representative shall be considered a Director for purposes of the By-laws, at all meetings where the Alternate Representative is counted towards the quorum and is entitled to vote. An Alternate Representative may not be counted towards a quorum or entitled to vote, if the Regular representative of that particular member is also present at a meeting.

Section 4. Compensation of officers may be fixed at any regular or special meeting of the Board. Directors shall receive no compensation for their services as such, but may receive a fixed sum for attending meetings and may be reimbursed for expenses.

Section 5. The Board may establish such Committees as it deems necessary or expedient, provided however that no committee shall have more than two individuals who are representatives of the same member. An Alternate Representative may serve on a committee if the Board specifically authorizes same.

Section 6. Special meetings of the Directors may be called at any time by the President, or by the Board of Directors and such meetings must be called whenever a petition requesting such meeting is signed by at least two (2) Directors and presented to the Secretary or to the President of the Board of Directors. The purpose of every special meeting shall be stated in the notice thereof, and no business shall be transacted thereat, except such as is specified in the notice.

Section 7. No notice of regular meetings of Directors of the Corporation shall be given unless, the meeting is held at a time other than the regularly scheduled time, in which event notice shall be given, not less than seven (7) days prior to the meeting. Notice of special meetings of Directors of the Corporation shall be given not less than forty-eight (48) hours prior to the meeting. Notice of a special meeting, or rescheduled regular meeting may be mailed, postage prepaid, to each Director of record at the address shown upon the books of the company and shall state the date, time, place, and purpose of the meeting. In lieu of the foregoing, notice of a special meeting may be provide by E-Mail, and or by telephone to each director who consents in writing and provides the Secretary with an E-mail address and or phone number at which such notice may be given. Notice may, but need not be given to any Alternate Representative.

Section 8. Failing a quorum, the Directors present may adjourn the meeting to a time and place certain, without further formal notice of the meeting.

Section 9. Each Director present at an annual, regular or special meeting shall have one (1) vote on all questions coming before the Board of Directors. An Alternate Representative is welcome to attend all meetings, but is only entitled to vote in the event the member's Regular Representative is unable to attend.

Section 10. The order of business at the regular meetings of Directors shall generally be as follows:

1. Call to order and proof of quorum.
2. Proof of notice of meeting.
3. Reading and action on any unapproved minutes.
4. Action on bills and payrolls.
5. Reports of officers and committees.
6. Reports of Engineers, Attorneys, Auditors or Professionals.

7. Old business.

8. New business.

9. Adjournment.

ARTICLE IX

Duties of Directors

Section 1. The Board of Directors, subject to restrictions of law, the Articles of Incorporation, and these By-Laws, shall exercise all of the powers of the Corporation, and, without prejudice to, or limitation upon their general powers, have full power and authority in respect to the matters hereinafter set forth, to be exercised by resolution or motion duly adopted by the Board:

A. 1. To enter into such contracts as are reasonably necessary or convenient to obtain raw water for treatment and distribution;

2. To enter into contracts with its members or other parties, to supply potable water on such terms as the Board deems reasonable and appropriate;

3. To construct, maintain and operate such facilities and systems as are necessary to supply potable water to its members or customers at a delivery point specified in the water supply contract; and

4. To enter into any contracts which are authorized by law and reasonably related to the Corporation's purpose.

B. To approve membership applications and cause to be issued appropriate certificates of membership. The Board may make binding commitments to issue membership certificates and to permit connection to the system in the future, in cases involving proposed construction, or may issue such certificates prior to the commencement of the proposed construction.

C. To select and appoint all officers, agents or employees of the Corporation, remove such agents or employees of the Corporation, fix their compensation, pay for such services and prescribe such duties and designate such powers as may not be inconsistent with these By-Laws.

D. To borrow from any source, money, goods or services; to make and issue notes and other negotiable or non-negotiable instruments evidencing indebtedness of the Corporation; to make and issue mortgages, deeds of trust, pledges of revenue, trust agreements, security agreements and financing statements, and other instruments,

evidencing a security interest in the assets of the Corporation and to do every act and thing necessary to effectuate the same.

E. To prescribe, adopt, and amend, from time to time such equitable uniform rules and regulations as, in its discretion, may be deemed essential or convenient for the conduct of the business and affairs of the Corporation and the guidelines and control of its officers, employees and agents, and to prescribe adequate penalties for the breach thereof.

F. To order, at least once each fiscal year, an audit of the books and accounts of the Corporation by a certified public accountant. The audit report shall be submitted to the members of the Corporation at their annual meeting. A proposed annual budget shall be submitted to the Board of Directors at the first regular meeting, immediately preceding the end of the Corporation's fiscal year.

G. To fix and alter the charges to be paid for water, including connection fees and the method of billing, time of payment, manner of connection, and penalties for late or nonpayment. The Board may establish one or more classes of users, including but not limited to "Members", "Not-For-Profit Customers" and "For-Profit Customers". All charges shall be uniform and nondiscriminatory in amount, within each of the fist two classes of users. However, rates may be different between those two classes and need not be the same for all "For-Profit Customers".

"Members" may be charged a different water rate than either "Not-For-Profit Customers" or "For-Profit Customers". "Not-For-Profit Customers", such as Not-For Profit Corporations, Municipal Corporations and Water Districts, may be charged a different rate than "For-Profit Customers". The rates charged to "For-Profit Customers", need not be uniform, but shall be determined by the Board of Directors, on a case by case basis.

H. To require all officers, agents and employees charged with responsibility for the custody of the funds of the Corporation to give bonds in the amount determined by the Board of Directors, the cost thereof to be paid by the Corporation.

I. To select one or more banks to act as the depository of the funds of the Corporation and to determine the manner of receiving, depositing, and disbursing the funds of the Corporation and the form of checks and the person or persons by whom the same shall be signed, with the power to change such banks and the person or persons signing such checks and the form thereof at will.

J. To levy assessments against the members of the Corporation in such manner and upon such proportionate basis as the Directors deem equitable, and to enforce collection of such assessments by the suspension of water service or other legal methods. The Board of Directors shall have the option to suspend service to any member who has not paid such assessment within thirty (30) days from the date the

assessment was due, provided the Corporation must give the member at least fifteen (15) days written notice, at the address of the member on the books of the Corporation, of its intention to suspend such service if the assessment is not paid. Upon payment of such assessment and penalties applicable thereto and a re-connection charge, if one is in effect, service will be promptly restored to such member.

K. To delegate, by resolution or motion, to its various Officers or Committees, such duties and authority as the Board may deem necessary or appropriate. Any action taken by an Officer or a Committee within the authority delegated by the Board shall be the lawful action of the Corporation.

ARTICLE X

Duties of Officers

Section 1. **Duties of President**: The President shall preside over all meetings of the Corporation and the Board of Directors, call special meetings of the Board of Directors, perform all acts and duties usually performed by an executive and presiding officer, and sign all membership certificates and such other papers of the Corporation, as the President may be authorized or directed to sign by the Board of Directors, provided the Board of Directors may authorize any person to sign any or all checks, contracts and other instruments in writing on behalf of the Corporation. The President shall perform such other duties as may be prescribed by the Board of Directors.

Section 2. **Duties of Vice-President:** In the temporary absence or disability of the President, the Vice President shall perform the duties of the President, provided, however, that in the case of death, resignation or disability of the President, the Board of Directors may declare the office vacant and elect a successor.

Section 3. **Duties of the Secretary:** The Secretary shall keep a complete record of all meetings of the Corporation and of the Board of Directors and shall have general charge and supervision of the books and records of the Corporation. The Secretary shall attest the President's signature on all membership certificates and other papers pertaining to the Corporation unless otherwise directed by the Board of Directors. The Secretary shall serve, mail, or deliver all notices required by law and by these By-Laws and shall make a full report of all matters and business pertaining to the office, to the members at the annual meeting or at such other time or times as the Board of Directors may require. The Secretary shall keep the corporate seal and membership certificate records of the Corporation, complete and attest all certificates issued and affix said corporate seal to all papers requiring seal. The Secretary shall keep a proper membership certificate record, showing the name of each member of the Corporation and date of issuance, surrender, transfer, termination, cancellation or forfeiture. The Secretary shall keep a record of the identity and terms of each Director and alternate representative. The Secretary shall make all reports required by law and shall perform such other duties as may be required by the Board of Directors. Upon election of a successor, the Secretary shall turn over to the successor all books and other property belonging to the Corporation.

Section 4. **Duties of the Treasurer:** The Treasurer shall perform such duties with respect to the finances of the Corporation as may be prescribed by the Board of Directors and shall present the auditor's report to the members at the annual meeting of members and shall present the proposed budget to the Board of Directors at the first regular meeting immediately preceding the end of the fiscal year.

ARTICLE XI

Benefits and Duties of Members

Section 1. The Corporation, if sufficient members and adequate financing can be secured, will construct, operate and maintain, a raw water Source with the exact location to be determined, a Raw Water Main, from the source of the water supply to the Treatment Plant located at a location to be determined, Illinois and a finished Water Distribution System, from the Treatment Plant, to certain designated points of delivery to its members. The Corporation also may purchase and install a cutoff valve in the line serving each member. Said cutoff valve shall be owned and maintained by the Corporation and shall be installed on some portion of the water line owned by the Corporation. The Corporation shall have the sole and exclusive right to the use of such cutoff valve. However, the provisions of this section shall not be construed to require the acquisition or installation of meters or cutoff valves where the Directors determine that the use of either or both of such devices is impractical or unnecessary to protect the system or the rights of the members and/or that it is not economically feasible.

Section 2. Each member or customer shall enter into a water supply contract which shall embody the principles set forth in the provisions of these By-Laws and which agreements shall be satisfactory in form and content to any financier of the Corporation's system. Each member shall purchase from the Corporation, pursuant to such agreement, a substantial portion of the water needed by it, to supply potable water to its retail customers subject however, to the provisions of these By-Laws, to such rules and regulations as may be prescribed by the Board of Directors, and to the availability of water. The Board of Directors may consider the amount or percentage of a proposed member's usage in its decision as to whether to grant an application of membership. Water loss on the lines operated and maintained by the Corporation shall be born by the Corporation.

Section 3. In the event the total water supply shall be insufficient to meet all of the needs of the members or in the event there is a shortage of water, the Corporation shall pro-rate the water available among the various users on such basis as is deemed equitable by the Board of Directors.

Section 4. The Board of Directors may, and shall if required as a part of the system financing obligation, prior to the beginning of each fiscal year, determine a minimum rate to be charged each member during the following fiscal year for a specified quantity of water. The failure to pay water charges duly imposed shall result in the imposition of such penalties as the Board may determine by resolution.

ARTICLE XII

Distribution of Surplus Funds

It is not anticipated that there will be any surplus funds or net income to the Corporation at the end of the fiscal year after provisions are made for the payment of the expenses of operation and maintenance and the funding of the various reserves for depreciations, debt retirement, and other purposes, including but not limited to, those required by the terms of any borrowing transaction. In the event that there should exist such surplus funds or net income, they may be placed in an existing or new reserve account to be used for the early retirement of any outstanding indebtedness or to be used for the improvement and/or extension of the corporate facilities as the Board of Directors may determine to be in the best interest of the Corporation and to the extent not otherwise provided for by any contractual arrangement. The occurrence in subsequent fiscal years of surplus funds or net income above the requirements of the Corporation as above mentioned, including, if any, a reserve for improvements and extension of the facilities shall be taken into consideration by the Board of Directors in determining the water rates to be charged the members.

ARTICLE XIII

Contractual Obligations

Notwithstanding anything herein to the contrary, the membership status of any entity shall not affect the validity or enforceability of any contract entered into between the Corporation and its member or former member, except that the water rate charged to a non-member, after resignation or termination may exceed the rate charged to a member.

ARTICLE XIV

Interconnections

The Corporation recognizes the mutual benefits of emergency interconnections between and amongst potable water systems and encourages its members to do so, provided it would not have a potentially serious, adverse impact on the Corporation's system or its ability to serve its members. As such, members may enter into interconnection agreements with each other without the approval of the Corporation's Board of Directors. The Board of Directors is aware of and hereby approves all interconnection agreements which any of its members currently has with other members and entities. However, henceforth the Corporation's Board of Directors must approve any or all interconnection agreements which a member proposes to enter into with an entity which is not a member of the Corporation. Likewise, the Corporation's Board of Directors must also approve any and all proposed interconnections of the Corporation's system, with an entity which is not a member of the Corporation.

ARTICLE XV

Amendments

These By-Laws may be repealed or amended by a vote of a majority of the Directors present at any regular meeting of the Board of Directors of the Corporation, or at any special meeting of the Board of Directors called for that purpose, except that no such amendment or repeal shall contravene any rule or regulation of any relevant regulatory agency or any financier of the Corporation, including but not limited to the United States Department of Agriculture Rural Development Agency, nor affect the rights of any bondholder, nor shall any such amendment or repeal affect the Federal tax status of any evidence of debt issued by the Corporation.

These By-Laws adopted at a Regular meeting of the members held Nov. 30, 2017 at Jersey ville, Illinois.

Sue Campbell

Sue Campbell, Secretary

FORM **NFP 102.10**
ARTICLES OF INCORPORATION
General Not For Profit Corporation Act
File # 71591573
Filing Fee: $50
Approved By: MAJ

FILED
DEC 05 2017
Jesse White
Secretary of State

Article 1.
Corporate Name: ILLINOIS ALLUVIAL REGIONAL WATER COMPANY, INC.

Article 2.
Registered Agent: SUE CAMPBELL

Registered Office: 1009 STATE HIGHWAY 16

JERSEYVILLE IL 62052-2839 JERSEY COUNTY

Article 3.
The first Board of Directors shall be 3 in number, their Names and Addresses being as follows

C. ALLEN DAVENPORT 27897 STATE HWY 3, GODFREY, IL 62035

CINDY CAMPBELL 323 COLLEGE AVE., CARLINVILLE, IL 62626

SUE CAMPBELL 402 E. GARRISON ST., DORCHESTER, IL 62033

Article 4. Purpose(s) for which the Corporation is organized:
Ownership and operation of water supply facilities for drinking and general domestic use on a mutual or cooperative basis.

Is this Corporation a Condominium Association as established under the Condominium Property Act? ☐ Yes ☑ No
Is this a Cooperative Housing Corporation as defined in Section 216 of the Internal Revenue Code of 1954? ☐ Yes ☑ No
Is this Corporation a Homeowner's Association, which administers a common-interest community as defined in subsection (c) of Section 9-102 of the code of Civil Procedure? ☐ Yes ☑ No

Article 5. Name & Address of Incorporator
The undersigned incorporator hereby declares, under penalties of perjury, that the statements made in the foregoing Articles of Incorporation are true.

C. ALLEN DAVENPORT
Name

Dated DECEMBER 05 , 2017
Month & Day

27897 STATE HWY 3
Street

GODFREY, IL 62035
City, State, ZIP

Exhibit D

Article 4.(continued)
Is this Corporation a Condominium Association as established under the Condominium Property Act? (check one)
☐ Yes ☐ No

Is this Corporation a Cooperative Housing Corporation as defined in Section 216 of the Internal Revenue Code of 1954? (check one)
☐ Yes ☐ No

Is this Corporation a Homeowner's Association, which administers a common-interest community as defined in subsection (c) of Section 9-102 of the code of Civil Procedure? (check one)
☐ Yes ☐ No

Article 5.
Other provisions (**For more space, attach additional sheets of this size.**):

Article 6.
Names & Addresses of Incorporators
The undersigned incorporator(s) hereby declare(s), under penalties of perjury, that the statements made in the foregoing Articles of Incorporation are true.

Dated _____ , ____
Month Day Year

Signatures and Names	Post Office Address
1. C Allen Davenport Signature C ALLEN DAVENPORT Name (print)	1. 27897 STATE Hwy 3 Street GODFREY IL. 62035 City, State, ZIP
2. Cindy Campbell Signature Cindy Campbell Name (print)	2. 323 College Ave Street Cardinville IL 62607 City, State, ZIP
3. Sue Campbell Signature Sue Campbell Name (print)	3. 402 E. Garrison St. Street Dorchester, IL 62033 City, State, ZIP

Signatures must be in BLACK INK on the original document.
Carbon copies, photocopies or rubber stamped signatures may only be used on the duplicate copy.

- If a corporation acts as incorporator, the name of the corporation and the state of incorporation shall be shown and the execution shall be by a duly authorized corporate officer. Please print name and title beneath the officer's signature.
- The registered agent cannot be the corporation itself.
- The registered agent may be an individual, resident in Illinois, or a domestic or foreign corporation, authorized to act as a registered agent.
- The registered office may be, but need not be, the same as its principal office.
- A corporation that is to function as a club, as defined in Section 1-3.24 of the "Liquor Control Act" of 1934, must insert in its purpose clause a statement that it **will comply with the State and local laws and ordinances relating to alcoholic liquors.**

Return to:

_____ Firm Name
_____ Attention
_____ Mailing address
_____ City, State, ZIP

BATES #31

STATE OF ILLINOIS

MACOUPIN COUNTY October 2, 2017

CITY COUNCIL MEETING

PRESENT: Alderman Bilbruck, Alderman Brockmeier, Alderman Campbell, Alderman Direso, Alderman Downey, Alderman Oswald, Alderman Toon, Mayor Deanna Demuzio, City Attorney Rick Bertinetti, City Clerk Carla Brockmeier, Treasurer Jody Reichmann, Police Chief Haley, Zoning Administrator Steve Parr, PWD Tim Hasara Absent: Alderman Heigert

Approval of Previous Minutes - Motion was made by Alderman Downey to approve minutes, seconded by Direso, motion passed unanimously.

Approval of Bills/Approval of Lake Bills/Lake Adhoc Bills/Lake Watershed - Motion made to approve all listed by Alderman Direso, seconded by Campbell, motion passed unanimously.

Correspondence

SS Mary and Joseph Church - Approval for a fireworks demonstration on October 7, 2017 at the SS Mary and Joseph Church Fall Festival was given after a motion was made by Alderman Toon, seconded by Direso, motion passed unanimously.

M & M Shrine

Deanne Berrey

Ameren Illinois

Macoupin Co. CEO Class

Motion to approve all of the above listed correspondence and place on file was made by Alderman Direso, seconded by Downey, motion passed unanimously.

Public Comment

Mayor asked public to be cautious during burn day the first 7 days of the month due to drought conditions.

Matt Turley addressed the council making counter points to water entity and Alderman Campbell's comments regarding the Regional Water Concept.

Old Business

Ordinance Granting Variance 502 West First South - Motion was made by Alderman Downey, seconded by Toon to suspend the rules and pass the ordinance, motion passed unanimously.

Motion was made by Alderman Downey, seconded by Toon to pass Ordinance Granting Variance at 502 West First South, motion passed unanimously.

New Business

Enterprise Property Addition - Mary Beth Bellm representing the Macoupin County Enterprise Zone addressed the council regarding an ordinance amending the Macoupin County Enterprise Zone and the Intergovernmental Agreement by cities of Gillespie, Carlinville and Macoupin County for the address of 18804 Route 4, Carlinville, IL. Motion was made to suspend the rules by Alderman Bilbruck, seconded by Downey, motion passed unanimously. Motion was made to approve the addition pending purchase of 2.48 acres and adding to the enterprise zone by Alderman Downey, seconded by Direso, motion passed unanimously.

Water Entity Update - Alderman Campbell gave an update on the August and September meetings of the IL Alluvial Regional Water Company. Discussion took place with questions answered. Campbell also explained her position and support of the regional water concept.

Clarification of Water Representative Powers to Act and Responsibilities - Continuing the discussion above Alderman Campbell wanted to explain her reasoning for abstaining from voting at the last regional water meeting and wanted clarification of her duties as the representative, and a motion to clarify those duties. Alderman Toon made a motion to give Campbell the authority to vote, but not to spend any funds without council approval. Alderman Toon then later rescinded the motion, with Alderman Oswald then making a motion that Alderman Campbell have the power to act and appropriate funds as representative of Carlinville to the IL Alluvial Regional Water Company, seconded by Direso, motion carried with Brockmeier, Direso, Downey, Oswald, Mayor voting aye, Toon, Bilbruck, voting nay, Campbell abstaining.

Unsafe Property - 224 W. 1st South / Chief Haley has inspected property at 224 W. 1st South and deemed unsafe, he asked council to deem an unsafe property, so proceedings could begin to have the property secured. Motion was made by Alderman Direso, seconded by Downey to deem unsafe, motion passed unanimously.

Resolution Carlinville (CRV) PIDS Agreement - motion was made to approve resolution between IDOT, Amtrak and the City of Carlinville for the PIDS System at the train station by Alderman Downey, seconded by Direso, motion passed unanimously.

Bank Loan Bids - Treasurer Reichmann contacted the four local banks regarding financing for a new backhoe. Financing from Cat was not available due to an insurance conflict. UCB had the best rate at 2.45% for 4 yrs., Bank and Trust 2.61% 4 yrs., and CNB at 3.48% for 5 yrs. Motion was made to approve UCB at 2.45% by Alderman Downey, seconded by Direso, motion passed unanimously.

Motion to adjourn was made by Alderman Downey at 8:25 p.m., seconded by Direso, motion passed unanimously.

Deanna Demuzio, Mayor

Attest: Carla Brockmeier, City Clerk

Foreman & Kessler, Ltd.
Attorneys at Law

Main Office
204 E. Main
Salem, IL 62881
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Fax: 618-548-9844

Conference Room
221 E. Broadway, Ste 106
Centralia, IL 62801
(By Appointment Only)

December 14, 2017

Mr. Daniel O'Brien
Attorney, City of Carlinville
331 E. 1st St. South
Carlinville, IL 62626
via e-mail only
dan_obrien@mac.com

RE: *Notice of Criminal Trespass*
Illinois Alluvial Regional Water Company, Inc.

Dear Dan,

Please be advised that I represent Illinois Alluvial Regional Water Company, Inc. I am writing to explain the nature of the organization and perhaps more importantly to point out the distinction between it and its constituent municipal members as regards the Open Meetings Act and the right to prohibit uninvited persons from attending and/or attempting to disrupt our meetings.

Illinois Alluvial Regional Water Company, Inc. is an Illinois Not for Profit Corporation. It currently consist of three (3) members: The City of Carlinville, the Village of Dorchester and Jersey County Rural Water Company. The City of Carlinville is a municipal corporation as is the Village of Dorchester. Jersey County Rural Water Company is a private, Not for Profit Corporation. The City of Carlinville and the Village of Dorchester are units of local government. Jersey County Rural Water Company is not.

Municipalities are subject to the Open Meetings Act. Private Not for Profit Corporations such as Illinois Alluvial Regional Water Company, Inc. and Jersey County Rural Water Company are not. **Article VII, Section 10** of the ***Illinois Constitution*** allows municipalities to join together and associate with private corporations in any manner not expressly prohibited by law. More specifically, the second sentence of subparagraph (a) of said Section in pertinent part provides:

> "Units of local government may contract and otherwise associate with individuals, associations and *corporations* in any manner not prohibited by law or by ordinance". **(Emphasis Supplied)**

Exhibit F

BATES #35

An "association" is, *inter alia*, defined as an organization or partnership of persons or entities having a common purpose or goal. Likewise, to "associate" is to unite, combine or join together to pursue a common interest or purpose.

805 ILCS 105/103.05, *The Illinois Not For Profit Business Corporations Act*, expressly states that Not for Profit Corporations may be organized for the purpose of owning and operating water supply facilities for drinking and general domestic use on a mutual cooperative basis.

Illinois Alluvial Regional Water Company, Inc. is an "association" amongst two (2) units of local government and a private, not for profit corporation, united for a common purpose, namely the provision of potable water to its members on a mutual cooperative basis and is thus expressly authorized by the Illinois Constitution and the Illinois Not for Profit Business Corporations Act.

Article VII, Section 10, of the Illinois Constitution eliminated the effect of what is commonly referred to as "Dillon's Rule" with respect to intergovernmental agreements and municipal associations with private corporations. Dillon's Rule is a common law rule which limits the powers of municipal corporations to those expressly granted or incident to powers expressly granted by the General Assembly. The rule resolved any doubt as to the existence of a power against the municipality. **(*Elsenau v. City of Chicago* (1929), 334 Ill. 78, 165 N.E. 129.)**

Article VII, Section 10 of the Illinois Constitution was intended to encourage cooperation among units of local government and corporations so as to remove the necessity of express or implied statutory authorization for these types of cooperative ventures, because they are believed to be in the public's best interest. **(*Village of Elmwood Park v. Forest Preserve of Cook County* (1974), 21 Ill.App.3d 597, 316 N.E.2d 140.)**

The drafters of the State Constitution recognized that Dillon's Rule operated against, rather than in favor of, the public health, safety and welfare in this particular context. It essentially handcuffed local governmental units and prevented them from going forward with many worthwhile projects. Article VII, Section 10, abrogated Dillon's Rule of strictly construing legislative grants of authority to local government units. It reversed Dillon's Rule as a matter of public policy in recognition of the public benefit which results from such cooperation. ***Connelly v. County of Clark* (1973), 16 Ill.App.3d 947, 307 N.E.2d 128 and *Village of Sherman v. Village of Williamsville*, 106 Ill.App.3d 174 (1982).**

In ***Village of Sherman v. Village of Williamsville*, 106 Ill.App.3d 174 (1982)**, the Court found, the municipalities were authorized to enter into the disputed water supply contract, despite absence of the actual express statutory grant of authority to do so. Although the ***Village of Sherman, supra*** involved the right of two (2) municipalities to contract with a water commission pursuant to the first sentence of Subparagraph (a) of Article VII, Section 10, the ruling applies with equal force to the second sentence as well.

In so holding, the Court relied upon the following excerpts from the Constitutional Convention which explains the advantages of allowing these types of intergovernmental agreements, combination of powers and associations. in pertinent part stating:

"It permits smaller units of local government, by combining to perform specific services or functions, to develop economies of scale with resultant cost reductions.

We think, in the long run, that vigorous intergovernmental cooperation will reduce the need for special districts and will permit the provision of services which no single unit can provide. "4 Record of Proceedings, Sixth Illinois Constitutional Convention 3421 (hereinafter cited as Proceedings).

"You will notice that the language of the intergovernmental cooperation article is based upon an affirmative grant of self-executing power *** which, in essence, means that it's there unless it's prohibited by the General Assembly-by general law. So it's a provision that says, 'You can do it unless the General Assembly says you can't." 4 Proceedings 3426. **(Emphasis Supplied)**

This is precisely the reason why these three (3) entities decided to associate with one another to form Illinois Alluvial Regional Water Company, Inc. To achieve an economy of scale with respect to the provision of water services that any one acting alone could not accomplish.

Any suggestion that the municipality does not have the authority to join this organization is simply wrong and if necessary, will be demonstrated in a court of law. I would strongly recommend the City not take legal advice from uneducated, lay persons and "watchdog groups" who misapprehend the law and simply do not know what they are talking about.

Illinois Alluvial Regional Water Company, Inc., being a private Not for Profit Corporation, is not subject to the Open Meetings Act, notwithstanding the fact that two (2) of its members are. Likewise, the fact that those constituent members contribute money to Illinois Alluvial Regional Water Company, Inc. does not alter the result. **See *Hopf v Top Corp, Inc.*, 256 Ill. App. 3d 887, (1st Dist 1993) and *Rockford Newspapers Inc. v Northern Illinois Council on Alcoholism and Drug Dependence*, 64 Ill. App. 3d 94 (2nd Dist. 1978).**

In the past, certain members of the Carlinville City Council have violated the Open Meetings Act in furtherance of an ill-fated attempt to obstruct my client's business. My purpose in writing is to notify you that I am hereby putting a stop to that interference. Please be advised that henceforth, no members of your city council, other than your appointed representative, will be permitted to attend our meetings. I will not permit uninvited members of your City Council from conducting an unauthorized, *sua sponte* meeting within our meeting.

To illustrate, the Open Meetings Act applies anytime a majority of a quorum of a public body is present and public business of that municipality is being discussed. The Carlinville City Council consist of eight (8) members. Hence, five (5) or more members of the municipal board constitutes a quorum. Three (3) members constitutes a majority of a quorum. As a result, if three (3) or more City Council members are present at any location and begin discussing the municipality's own business, as distinguished from Illinois Alluvial Regional Water Company, Inc.'s business, then a meeting of the City of Carlinville is taking place and the City must comply with the Open Meetings Act.

This was recently the case when three (3) members of Carlinville City Council, (not counting the appointed representative) showed up at our meeting and began debating whether it was a good idea for Carlinville to participate in Illinois Alluvial Regional Water Company, Inc. or seek other, alternative potable water sources. On that occasion a meeting of the City of Carlinville erupted within a meeting of the Illinois Alluvial Regional Water Company, Inc., which meeting is otherwise not a public meeting.

This disrupts the normal order of business and creates problems for both Illinois Alluvial Regional Water Company, Inc. and the City of Carlinville. Illinois Alluvial Regional Water Company, Inc. meetings are not the time or place for the City of Carlinville to discuss its internal business. The issue of whether the City of Carlinville should be a member or not is an issue that should be discussed in an open meeting of the City of Carlinville, not a private meeting of Illinois Alluvial Regional Water Company, Inc.

Having appointed a representative to Illinois Alluvial Regional Water Company, Inc., that decision appears to have already been made. The motive of those second guessing of that decision escapes me. Nevertheless, the point remains that our meetings are not the appropriate forum for these people to discuss that issue.

Simply put, I as the legal representative for Illinois Alluvial Regional Water Company, Inc. will not permit our meeting to be hijacked by certain members of your City Council to divert attention onto a tangent issue which is relevant only to a disgruntled faction of your board. Those matters must be vented in house, not at our meetings. Our meetings are to discuss the business of Illinois Alluvial Regional Water Company, Inc.

Consequently, please be advised that henceforth all members of your City Council, other than your appointed representative are prohibited from attending our meetings. Please consider this correspondence as Notice pursuant to **720 ILCS 5/21-1** ***et seq.*** that said persons, including but not limited to, Randy Bilbruck, Kim Heigert and Beth Toon, shall not enter the premises where the meetings of Illinois Alluvial Regional Water Company, Inc. are taking place.

To that end, Jersey County Rural Water Company will post a Notice at the entrance to the building where said meetings will be held to notify said persons that they may not enter. Any attempted violation of this Notice will be reported to local law enforcement as a criminal trespass and will be enforced and prosecuted as such. It is unfortunate that a small group of mis-informed individuals with personal agendas seeks to stand in the way of the entire community's lawful attempts to seek a safe, stable source of potable water for many years in the future, but such is the nature of our recent political environment. I hope you can appreciate my reason for having to take such a firm stance on this issue. Thanking you, I remain,

Sincerely yours,
FOREMAN & KESSLER, LTD.

David M. Foreman

DMF/mi

IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT
MACOUPIN COUNTY, ILLINOIS

CAMILLE MAYFIELD COOPER BROTZE, and WAYNE BROTZE, husband and wife,	)	
Plaintiffs,	)	
v.	)	No. 2019-MR-000092
CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation,	)	
Defendant.	)	

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON AFFIRMATIVE DEFENSES

NOW COMES Defendant, the CITY OF CARLINVILLE, a Municipal Corporation, by and through its attorneys, Dan O'Brien and John Gabala appearing of record, and for its Motion for Summary Judgment on Affirmative Defenses, hereby states as follows:

1. On February 23, 2018, Plaintiffs filed their original complaint for declaratory judgment and injunctive relief in then Macoupin County Case No. 2018-L-5 against the current Defendant, the City of Carlinville, as well as the former defendants, the Village of Dorchester, Jersey County Rural Water Company Inc. ("Jersey County"), and Illinois Alluvial Regional Water Company, Inc. ("Alluvial"), seeking, *inter alia*, to prevent the defendants from participating in the funding and operations of Alluvial.

2. On May 4, 2018, Alluvial filed its motion for summary judgment as well as its memorandum in support thereof.

3. On May 8, 2018, Defendant filed its motion to dismiss Plaintiffs' complaint for lack of standing.

4. On January 2, 2019, the trial court issued its written order dismissing defendants, the Village of Dorchester and Jersey County, for lack of standing. The court also *sua sponte* dismissed Alluvial for lack of standing and did not take up its pending motion for summary judgment. Instead, the court found that motion moot in light of its ruling dismissing Alluvial for lack of standing. The trial court denied Defendant's motion to dismiss and gave Plaintiffs 30 days to file an amended complaint.

5. On May 2, 2019, Plaintiffs filed their first amended complaint for declaratory and injunctive relief against Defendant in then Macoupin County Case No. 2018-L-5.

6. On May 16, 2019, Defendant filed its motion to dismiss Plaintiffs' first amended complaint. Defendant also filed a motion for sanctions pursuant to Illinois Supreme Court Rule 137, arguing, *inter alia*, certain allegations made by Plaintiffs were patently false and a reasonable FOIA inquiry or review of the city council meeting agenda and/or minutes would show the falsity of Plaintiffs' claims.

7. On July 22, 2019, Plaintiffs filed a second amended complaint (in Macoupin County Case No. 2018-L-5) abandoning their declaratory and injunctive causes of actions and instead alleging a single-count mandamus cause of action.

8. In a July 23, 2019 docket entry, the trial court acknowledged receipt of Plaintiffs' second amended complaint (filed in Macoupin County Case No. 18-L-5) and noted that it had previously instructed Plaintiffs to refile their cause of action as an MR case (19-MR-92). The court ordered that, for consistency in rulings, it was consolidating the 18-L-5 matter with the 19-MR-92 matter and again instructed that all future filings should be made using the 19-MR-92 case number.

9. Following an August 2, 2019 hearing, the trial court granted Defendant's motion to dismiss Plaintiffs' first amended complaint and directed the Clerk to strike Plaintiffs' Second Amended Complaint but with leave to allow Plaintiffs 14 days to file a second amended complaint.

10. On August 7, 2019, Plaintiffs filed their Second Amended Complaint (in Macoupin County Case No. 19-MR-92), in which they abandoned their declaratory and injunctive causes of actions and instead alleged a single-count mandamus cause of action.

11. Plaintiffs' Second Amended Complaint alleges Plaintiffs "have no other mechanism to challenge [Defendant's] abuse of authority regarding [its] participation in the creation, funding, or operation of Illinois Alluvial."

12. Plaintiffs' Second Amended Complaint requests that the trial court "issue a Writ of Mandamus compelling the Carlinville Aldermen and Alderwomen, in their official capacities, to take the actions necessary to withdraw from and cease any further participation in the creation, funding, or operation of Illinois Alluvial".

13. On September 4, 2019, Defendant filed three section 2-615 motions to dismiss Plaintiffs' Second Amended Complaint for their failure to state a claim for (i) mandamus relief, (ii) a violation of the Open Meetings Act ("OMA"), or (iii) a violation of the Freedom of Information Act ("FOIA").

14. Following an October 17, 2020 hearing, the trial court denied Defendant's motions to dismiss.

15. On November 21, 2019, Plaintiffs filed their "Application for Leave to Appeal (Pursuant to Illinois Supreme Court Rule 308)" with the Fourth District Appellate Court.

16. On November 26, 2019, the trial court granted Defendant's motion to stay the trial court proceedings pending the resolution of the Rule 308 appeal.

17. On December 11, 2019, Defendant filed its Answer in Opposition to Plaintiffs' Supreme Court Rule 308 Application.

18. On December 19, 2019, the Appellate Court issued its order denying Plaintiffs' Application for Leave to Appeal Pursuant to Illinois Supreme Court Rule 308.

19. On December 26, 2019, the trial court granted Defendant's motion to lift the stay in the proceedings.

20. On January 24, 2020, Defendant filed its Answer and Affirmative Defenses to Plaintiffs' Second Amended Complaint.

21. Plaintiffs did not file any response to Defendant's affirmative defenses.

22. As Plaintiffs noted in their "Application for Leave to Appeal (Pursuant to Illinois Supreme Court Rule 308)" with the Fourth District Appellate Court, the relevant facts underlying the instant dispute are not at issue.

23. Summary judgment is proper when "the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c).

24. On January 24, 2020, Defendant filed its Answer and the following Affirmative Defenses: (i) standing; (ii) laches; and (iii) an other affirmative matter which defeats Plaintiffs' claim for mandamus relief.

25. Plaintiffs' response was due 21 days later. Ill. S. Ct. R. 182(a) (eff. Jan. 1, 1967); 735 ILCS 5/2-602.

26. Plaintiffs made no response to Defendant's affirmative defenses within the time for doing so.

27. It is well-recognized that the failure to reply to an affirmative defense constitutes an admission of the allegations contained therein. *Filliung v. Adams*, 387 Ill. App. 3d 40, 56 (2008); *State Farm Mutual Automobile Insurance Co. v. Haskins*, 215 Ill. App. 3d 242, 246, (1991), citing *Lundberg v. Gage*, 22 Ill. 2d 249, 251 (1961) ("No reply was made to the allegations setting up the affirmative defense and they are therefore admitted.").

28. This Motion for Summary Judgment on Affirmative Defenses followed.

29. For the following reasons, Plaintiffs' complaint for mandamus relief is barred by Defendant's affirmative defenses.

A. Plaintiffs' Mandamus Claim Raised in Their Second Amended Complaint is Barred by the Affirmative Defense of Standing.

30. Defendant incorporates and realleges the allegations set forth in Paragraphs 1 through 23 above as though fully set forth herein.

31. Plaintiffs' claim for mandamus relief contained in Plaintiffs' Second Amended Complaint is barred by Plaintiffs' lack of standing to assert such a claim.

32. Standing is available as a defense to a mandamus action. *Bocock v. O'Leary*, 2015 IL App (3d) 150096, ¶ 9; *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 494 (1988) (holding that lack of standing is an "affirmative" defense).

33. Standing in Illinois requires an injury in fact to a legally cognizable interest. *Board of Trustees of Community College District No. 502 v. Department of Professional Regulation*, 363 Ill. App. 3d 190, 197 (2nd Dist. 2006).

34. For standing, the claimed injury, whether actual or threatened, must be: (1) distinct and palpable; (2) fairly traceable to the defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief. *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 492-92 (1988).

35. Plaintiffs' Second Amended Complaint pleads no specific facts or allegations to show they have been adversely affected by any action of Defendants.

36. In *Bowes v City of Chicago*, 3 Ill. 2d 175, 178 (1954), the plaintiffs sought to enjoin the defendant from constructing a water filtration plant with a private corporation. Our Illinois supreme court found that the plaintiffs who had brought the action solely as water users had no standing to sue where the plaintiffs (i) had not been required to pay higher water fees as a consequence of the defendant's allegedly illegal conduct and (ii) they were merely asserting a general public interest. *Bowes*, 3 Ill. 2d at 182-83.

37. Like the plaintiffs in *Bowes,* Plaintiffs here assert no direct or substantial economic injury.

38. To the contrary, Defendant's actions to locate and secure a safe source of potable water for its users are a benefit to Plaintiffs.

39. Like the plaintiffs in *Bowes,* Plaintiffs here are merely asserting a general interest in having Defendant act in accordance with what they characterize is Illinois law.

40. A plaintiff "cannot gain standing merely through a self-proclaimed concern about an issue, no matter how sincere". *Landmarks Preservation Council v. City of Chicago*, 125 Ill. 2d 164, 175 (1988).

41. Plaintiffs have failed to identify any clear right they have to bar Defendant from associating with a not-for profit corporation to supply potable water to the region.

42. While Plaintiffs allege generally that they have "a clear, affirmative right to expect their local government to conduct itself with transparency", it is undisputed fact that Plaintiffs do not allege any violation of the Freedom of Information Act (FOIA) or the Open Meetings Act (OMA) in their Second Amended Complaint.

43. In denying Defendant's Motion to Dismiss Plaintiffs' Second Amended Complaint, this Court stated that "A careful review of Plaintiffs' Second Amended Complaint shows that Plaintiffs did not attempt to state a cause of action based on a violation of the Open Meetings Act".

44. This Court also found in that same order that Plaintiffs also "did not attempt to state a cause of action for a FOIA violation because the facts do not support it".

45. Plaintiffs' Second Amended Complaint is clearly bereft of any legally cognizable interest requiring relief.

46. Instead, Plaintiffs' Second Amended Complaint is merely asserting a general interest.

47. It is well-established Illinois law that such general and unspecific allegations are insufficient to establish standing. *Glisson*, 188 Ill. 2d at 221; *Landmarks Preservation Council*, 125 Ill. 2d at 175; *Castleman v. Civil Service Commission of the City of Springfield, Illinois*, 58 Ill. App. 2d 25, 32 (4th Dist. 1965)

48. The mandamus relief sought in Plaintiffs' Second Amended Complaint should be denied because the affirmative defense of standing bars such relief.

49. Defendant's Motion for Summary Judgment should thus be granted as to Defendant's affirmative defense of standing.

B. Plaintiffs' Mandamus Claim Raised in Their Second Amended Complaint is Barred by the Affirmative Defense of Laches.

50. Defendant incorporates and realleges the allegations set forth in Paragraphs 1 through 23 above as though fully set forth herein.

51. Plaintiffs' claim for mandamus relief contained in their Second Amended Complaint is barred by Defendant's affirmative defense of laches.

52. Laches is an equitable claim where there exists: (1) lack of due diligence by the party asserting a claim; and (2) prejudice to the party asserting laches. *Lippert v. Property Tax Appeal Board*, 273 Ill. App. 3d 150, 155 (4th Dist. 1995).

53. The defense of laches may apply in a case where a party is seeking mandamus relief. *Ashley v. Pierson*, 339 Ill. App. 3d 733, 739 (4th Dist. 2003).

54. "A complaint for mandamus must be brought within six months unless there is a reasonable explanation for delay." *IP Plaza, LLC v. Bean*, 2011 IL App (4th) 110244, ¶ 44.

55. Plaintiffs have not responded to Defendant's laches affirmative defense or offered any explanation for the delay.

56. "Sound public policy demands that those who claim a right against a governmental body should press their claims with diligence." *Neal v. Bd. of Educ., Sch. Dist. No. 189*, 93 Ill. App. 3d 386, 389 (5th Dist. 1981).

57. A plaintiff's lack of due diligence is established by a showing of a lapse of more than six months from the accrual of the cause of action and the filing of the mandamus complaint, unless the plaintiff offers a reasonable excuse for the delay. *Ashley*, 339 Ill. App. 3d at 739.

58. On February 23, 2018, Plaintiffs filed their original complaint.

59. Plaintiffs' original complaint did not raise a mandamus cause of action.

60. All of the facts giving rise to Plaintiffs' Second Amended Complaint requesting mandamus relief for the first time, were known to Plaintiffs in February 2018 when they filed their original complaint.

61. Nothing prevented Plaintiffs from promptly filing a mandamus action at the time they filed the original complaint.

62. On May 2, 2019, Plaintiffs filed their first amended complaint for declaratory and injunctive relief.

63. Like Plaintiffs' first amended complaint, Plaintiffs' Second Amended Complaint did not raise a mandamus cause of action.

64. All of the facts giving rise to Plaintiffs' Second Amended Complaint requesting mandamus relief for the first time, were known to Plaintiffs in May 2019 when their first amended complaint was filed.

65. Nothing prevented Plaintiffs from filing a mandamus action at the time they filed their first amended complaint.

66. Plaintiffs, however, waited until July 22, 2019, *i.e.*, almost a year and a half after the original complaint was filed, to plead their single-count mandamus claim in their Second Amended Complaint. (Defendant notes that Plaintiffs' mandamus complaint was not successfully pleaded until August 7, 2019 as Plaintiffs' July 22 filing was subsequently struck by the trial court on August 2, 2019 for Plaintiffs' failure to obtain leave prior to filing.)

67. The Second Amended Complaint at issue herein was filed August 7, 2019.

68. Plaintiffs' delay in waiting to plead their single-count complaint for mandamus relief was not reasonable and reflected a lack of due diligence on the part of Plaintiffs.

69. Plaintiffs have not responded to Defendant's laches affirmative defense or offered any explanation for the delay.

70. Plaintiffs' delay in bringing the mandamus claim raised in Plaintiffs' Second Amended Complaint has caused prejudice to Defendant.

71. It is well-established that prejudice is inherent in cases where an inconvenience or detriment to the public will occur as a result of the delay. *Ashley*, 339 Ill. App. 3d at 739.

72. Plaintiffs' relief requests the issuance of "a Writ of mandamus compelling the Carlinville Aldermen and Alderwomen, in their official capacities, to take action necessary to withdraw from and cease any further participation in the creation, funding, or operation of Illinois Alluvial".

73. Had Plaintiffs promptly brought their mandamus claim in February 2018, Defendant would not have:

(a) retained and paid $11,350.00 to Attorney Mike Southworth as Bond Counsel for the City of Carlinville (See Exhibit A, attached hereto, and Affidavit of City Clerk Carla Brockmeier, attached hereto as Exhibit D); or

(b) entered into a Revolving Credit Promissory Note agreement for $2,500,000.00 with COBANK, ACB (See Exhibit B, attached hereto, and Affidavit of City Clerk Carla Brockmeier, attached hereto as Exhibit D); or

(c) contracted with MECO-Heneghan L.L.C. in the amount of $1,500,000.00 for engineering and surveying services (See Exhibit C, attached hereto, and Affidavit of City Clerk Carla Brockmeier, attached hereto as Exhibit D); or

(d) expended staff and public works resources to the extent to which it now has.

74. Plaintiffs' delay in filing their mandamus action will result in significant inconvenience and detriment to the public in that the abandonment of the association with Illinois Alluvial will be more disruptive to the financial position of the city, interfere with contractual obligations, and jeopardize the safety of the city water supply.

75. The mandamus relief sought in Plaintiffs' Second Amended Complaint should be denied because the affirmative defense of laches bars such relief.

76. Defendant's Motion for Summary Judgment should thus be granted as to its affirmative defense of laches.

C. Plaintiffs' Mandamus Claim Raised in Their Second Amended Complaint is also Barred by An Other Affirmative Matter.

77. Defendant incorporates and realleges the allegations set forth in Paragraphs 1 through 23 above as though fully set forth herein.

78. Plaintiffs' claim for mandamus relief contained in Plaintiffs' Second Amended Complaint is barred by an other affirmative matter, namely that (i) the Illinois Constitution explicitly permits Defendant to associate with Illinois Alluvial and (ii) Plaintiffs are unable to point to a statute or ordinance prohibiting Defendant from such association.

79. There is no genuine dispute of material fact with respect to that issue. It is purely a question of law for the court to decide. The premise of Plaintiffs' request for mandamus relief contained in their Second Amended Complaint is false. Defendant is entitled to summary judgment in its favor as a matter of law as a result.

80. Plaintiffs made no response to Defendant's other affirmative matter defense.

81. Defendant is a non-home rule unit of local government.

82. Home rule and non-home rule units of local government are subject to different standards.

83. Article VII, section 10(a) of the Illinois Constitution of 1970 explicitly permits a municipality to "contract and otherwise associate" with corporations "in any manner not prohibited by law or ordinance". Ill. Const. 1970, art. VII, § 10(a).

84. Plaintiffs' contention that Defendant needs to show specific statutory authority to associate with Illinois Alluvial is wrongly premised on the opposite legal presumption.

85. Prior to the ratification of the 1970 Constitution, local governments could not operate with other local governments or corporations in the exercise of their municipal powers unless and until the General Assembly provided express statutory permission to do so. *Village of Wauconda v. Hutton*, 291 Ill. App. 3d 1058, 1060 (2nd Dist. 1997); *T & S Signs*, 261 Ill. App. 3d at 1990.

86. Had this case presented prior to the ratification of the 1970 Constitution, Plaintiffs' argument might have some merit.

87. However, following the ratification of the 1970 Constitution, Plaintiffs' argument that Defendant needs to show specific statutory authority to associate with Illinois Alluvial must necessarily fail.

88. In fact, it is Plaintiffs who must show a statute or ordinance which prohibits Defendant's association with Illinois Alluvial.

89. As the Fourth District Appellate Court correctly acknowledged:

> "Article VII, section 10, eliminated the effect of 'Dillon's Rule' in construing intergovernmental agreements. This rule limited the powers of a municipal corporation to those expressly granted or incident to powers expressly granted by the General Assembly. The rule resolved any doubt of the existence of a power against the municipality. The various divisions of our court have determined that article VII was intended to encourage cooperation among units of government and to remove the necessity of obtaining statutory authorization for cooperative ventures. Furthermore, this court has stated that article VII, section 10, has abrogated Dillon's Rule of strictly construing legislative grants of authority to local governmental units (internal citations omitted.)". *Village of Sherman v. Village of Williamsville*, 106 Ill. App. 3d 174, 179 (4th Dist. 1982).

90. Article VII, section 10(a) of the Illinois Constitution of 1970 is an affirmative grant of power to a non-home rule municipality, which in the clearest of terms means, that "[y]ou can do it unless the General Assembly says you can't". *Village of Sherman*, 106 Ill. App. 3d at 179.

91. Plaintiffs' Second Amended Complaint does not allege Defendant's violation of any statute or ordinance prohibiting Defendant from associating with Illinois Alluvial.

92. Defendant's association with Illinois Alluvial is for the purpose of locating and securing a safe source of potable water for its users.

93. Indeed, Plaintiffs cannot affirmatively demonstrate Defendant's violation of a statute or ordinance prohibiting Defendant's association with Illinois Alluvial.

94. Article VII, section 10(a) of the Illinois Constitution of 1970 explicitly permits a municipality to "contract and otherwise associate" with corporations "in any manner not prohibited by law or ordinance." Ill. Const. 1970, art. VII, § 10(a).

95. It is a well-established principle of law that "[w]ords used in the constitution are to be taken in their ordinary acceptance." *Village of Elmwood Park v. Forest Preserve*, 21 Ill. App. 3d 597, 600 (1st Dist. 1974) (quoting *Locust Grove Cemetery Ass'n. v. Rose*, 16 Ill. 2d 132, 139 (1959) (citing *International College of Surgeons v. Brenza*, 8 Ill. 2d 141, 145 (1956) and *People ex rel. McCullough v. Deutsche Gemeinde*, 249 Ill. 132, 136 (1911)).

96. "Associate" is defined ordinarily as "to join (things) together or connect (one thing) with another: COMBINE," "to join or connect in any of various intangible or unspecified ways (as in general mental, legendary, or historical relationship, in unspecified causal relationship, or in unspecified professional or scholarly relationship)," and "to combine or join with another or others as component parts: UNITE." *Doctors Direct Insurance, Inc. v. Bochenek*, 2015 IL App (1st) 142919, ¶ 27 (quoting Webster's Third New International Dictionary 132 (1993)).

97. The mandamus relief sought in Plaintiffs' Second Amended Complaint should be denied because (i) the Illinois Constitution explicitly permits Defendant to associate with Illinois

Alluvial and (ii) Plaintiffs are unable to point to a statute or ordinance prohibiting Defendant from such association.

98. Any argument that there must be a specific statute authorizing a municipal association with a specific corporation reads section 10(a) of the Illinois Constitution far too narrowly and would render it completely meaningless.

99. Defendant is entitled to summary judgment in its favor on the other affirmative matter presented as a matter of law.

100. Defendant's Motion for Summary Judgment should be granted as to Defendant's other asserted affirmative matter as a result.

101. Defendant incorporates its Memorandum in Support of its Motion for Summary Judgment on Affirmative Defenses as if set forth fully herein.

WHEREFORE, Defendant, the CITY OF CARLINVILLE, requests that its Motion for Summary Judgment on Affirmative Defenses be granted, and the mandamus relief sought in Plaintiffs' Second Amended Complaint be denied because of the affirmative defenses set forth herein and for such other relief this Court deems equitable and just.

Respectfully submitted,

CITY OF CARLINVILLE, ILLINOIS,
A Municipal Corporation, Defendant

BY: /s/ John M. Gabala
One of Its Attorneys

Dan O'Brien, ARDC No. 6207572
Dan_obrien@mac.com
124 E. Side Square
P.O. Box 671
Carlinville, Illinois 62626
(217) 854-4775

John M. Gabala, ARDC No. 6288162
jgabala@GiffinWinning.com
GIFFIN, WINNING, COHEN & BODEWES, P.C.
One West Old State Capitol Plaza
Myers Building, Suite 600
Springfield, Illinois 62701
(217) 525-1571

BATES #53

CERTIFICATE OF FILING AND PROOF OF SERVICE

I certify that on April 3, 2020, I submitted the foregoing document for electronic filing with the Clerk of the Court of the Seventh Judicial Circuit, Macoupin County, Illinois by using the Odyssey eFileIL system.

I further certify that I served the following by transmitting a copy via email on the above date to:

Jacob N. Smallhorn
Smallhorn Law LLC
609 Monroe
Charleston, IL 61920
jsmallhorn@smallhornlaw.com

Dan O'Brien
O'Brien Law Office
331 E. 1st Street
Carlinville, IL 62626
dan_obrien@mac.com

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge.

/s/ John M. Gabala

John M. Gabala, ARDC #6288162
Giffin, Winning, Cohen & Bodewes, P.C.
One West Old State Capitol Plaza
Myers Building – Suite 600
Springfield, IL 62701
(217) 525-1571

EXHIBIT A

Letter dated November 2, 2019 from Bond Counsel Mike Southworth

(see attached)

Hart, Southworth & Witsman
Attorneys at Law

Suite 501
One North Old State Capitol Plaza
Springfield, Illinois 62701-1323
(217) 753-0055
(217) 753-1056 – Fax

Richard E. Hart
Mike Southworth
Samuel J. Witsman
Timothy J. Rigby
Kristina B. Mucinskas

msouthworth@hswnet.com

November 2, 2019

City of Carlinville, Illinois
550 North Broad
Carlinville, Illinois 62626

Re: City of Carlinville, Macoupin County, Illinois
$2,500,000 Revolving Credit Promissory Note

FOR PROFESSIONAL SERVICES RENDERED:

Fees and expenses for representation as bond counsel with regard to the above referenced Promissory Note issued to CoBank, ACB. Research; Conferences with City attorney and CoBank's attorney; Correspondence; Review and provide revisions to draft loan documents; Prepare and circulate drafts of authorizing ordinance, opinion and closing certificate; Closing and delivery of opinion.

FEES AND EXPENSES: $11,350.00

EXHIBIT B

An ordinance of the City of Carlinville, Macoupin County Illinois, authorizing and providing for a $2,500,000 Revolving Credit Promissory Note for the purpose of paying costs incurred by the City for engineering study and legal work including easements for the installation of a waterline interconnect to Jersey County Rural Water Company Inc. for the City, authorizing a related Credit Agreement prescribing the details of the Agreement and Note and providing for the security for and means of payment of the Note.

(see attached)

ORDINANCE NUMBER 1813

AN ORDINANCE of the City of Carlinville, Macoupin County, Illinois, authorizing and providing for a $2,500,000 Revolving Credit Promissory Note for the purpose of paying costs incurred by the City for engineering study and legal work including easements for the installation of a water line interconnect to Jersey County Rural Water Company, Inc. for the City, authorizing a related Credit Agreement, prescribing the details of the Agreement and Note, and providing for the security for and means of payment of the Note

Published in Pamphlet Form by Authority of the City Council on October 21st, 2019.

ORDINANCE NUMBER 1813

AN ORDINANCE of the City of Carlinville, Macoupin County, Illinois, authorizing and providing for a $2,500,000 Revolving Credit Promissory Note for the purpose of paying costs incurred by the City for engineering study and legal work including easements for the installation of a water line interconnect to Jersey County Rural Water Company, Inc. for the City, authorizing a related Credit Agreement, prescribing the details of the Agreement and Note, and providing for the security for and means of payment of the Note.

PREAMBLES

WHEREAS, the City of Carlinville, Macoupin County, Illinois (the "*City*"), is a municipality and unit of local government of the State of Illinois (the "*State*") operating, inter alia, under and pursuant to the Illinois Municipal Code (the "*Code*"), the Local Government Debt Reform Act of the State of Illinois (the "*Debt Reform Act*"), and all other Omnibus Bond Acts of the State, in each case, as supplemented and amended (collectively, "*Applicable Law*"); and

WHEREAS, the City acting through its Mayor and City Council (the "*Corporate Authorities*") has considered the needs of the City and, in so doing, the Corporate Authorities have deemed and do now deem it advisable, necessary and for the best interests of the City in order to promote and protect the public health, welfare, safety and convenience of the residents of the City to make provision for the payment of ordinary and necessary expenditures of the City in connection with the initial funding of costs incurred by the City for engineering study and legal work including easements for the installation of a water line interconnect to Jersey County Rural Water Company, Inc. for the City as the same are due in anticipation of receipts from taxes and other revenues (the "*Temporary Funding*"); and

WHEREAS, the Corporate Authorities have determined the total amount which may be required for the Temporary Funding to be $2,500,000; and

WHEREAS, it is necessary to borrow money for such Temporary Funding purpose to the amount not to exceed at any one time the sum of $2,500,000 pursuant to a line of credit arrangement which will permit, for a certain term to maturity, advances and repayments, from time to time, as funds are needed; and

WHEREAS, pursuant to Section 8-1-3.1 of the Code as supplemented by other provisions of Applicable Law, the City may borrow money from a bank or other financial institution, evidenced by a promissory note, for any of its lawful corporate purposes, provided such borrowing (the note) be repaid within ten years from the time the money is borrowed; and

WHEREAS, the Corporate Authorities find that it is desirable and in the best interests of the City to avail of the provisions of said Section 8-1-3.1 to provide for the Temporary Funding; and

WHEREAS, for convenience of reference only, this Ordinance is divided into numbered sections with headings, which shall not define or limit the provisions hereof, as follows:

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NOW THEREFORE Be It Ordained by the City Council of the City of Carlinville, Macoupin County, Illinois, as follows:

Section 1. Definitions.

Terms defined in the preambles to this Ordinance shall have the meanings thereunto assigned to them, unless otherwise defined below. In addition, the following words and terms used in this Ordinance shall have the following meanings unless the context or use clearly indicates that another or different meaning is intended:

"Agreement" means the "Credit Agreement" with the Bank in substantially the form attached hereto as *Exhibit A* evidencing certain terms relating to advances on the Note and on the Note itself.

"Bank" means COBANK, ACB, a federally chartered instrumentality of the United States.

"Note" means the $2,500,000 Revolving Credit Promissory Note, authorized to be issued by this Ordinance in substantially the form attached hereto as *Exhibit B*.

"Ordinance" means this Ordinance.

Section 2. Incorporation of Preambles.

The Corporate Authorities hereby find that the recitals contained in the preambles to this Ordinance are true, correct and complete and do incorporate them into this Ordinance by this reference.

Section 3. Determination to Authorize and Enter into Agreement and to Issue Note.

It is necessary and advisable for the public health, safety, welfare and convenience of residents of the City to provide for the Temporary Funding and to borrow money and, in evidence thereof and for the purpose of financing same, enter into the Agreement and, further, to provide for the issuance and delivery of the Note evidencing the indebtedness incurred under the Agreement.

Section 4. Note a General Obligation; Annual Appropriation.

The City hereby represents, warrants and agrees that the obligation to make the payments due under the Note and Agreement shall be a lawful direct general obligation of the City payable

from the corporate funds of the City and such other sources of payment as are otherwise lawfully available. The City represents and warrants that the total amount due upon the Note or otherwise under the Agreement to be outstanding at any time, together with all other indebtedness of the City, is and shall be within all statutory and constitutional debt limitations. The City agrees to appropriate funds of the City annually and in a timely manner so as to provide for the making of all payments when due pursuant to the Agreement and the Note.

Section 5. Execution and Filing of the Agreement.

From and after the effective date of this Ordinance, the Mayor and City Clerk be and they are hereby authorized and directed to execute and attest, respectively, the Agreement, in substantially the form thereof set forth in *Exhibit A* of this Ordinance which is incorporated herein as if set forth in full, and to do all things necessary and essential to effectuate the provisions of the Agreement, including the execution of any documents and the Note incidental thereto or necessary to carry out the provisions thereof. Upon full execution, an original of the Agreement shall be filed with the City Clerk and retained in the City records. Subject to such discretion of the officers signatory to the document as described in the foregoing text, the Agreement shall be in substantially the form thereof set forth in *Exhibit A*.

Section 6. Note Details; Form of Note.

A. For the purpose of providing for the Temporary Funding, there shall be issued and sold a single Note in the principal amount of $2,500,000. The Note shall be designated *"Revolving Credit Promissory Note"* and be dated the date of issuance thereof (the *"Dated Date"*).

B. The Note shall be in substantially the form set forth in *Exhibit B* to this Ordinance which is incorporated herein as if set forth in full and shall be in the maximum principal amount (the *"Face Amount"*) of $2,500,000. The Note shall become due on October 25, 2021 and shall bear interest at such rate as provided in the Note and the Agreement as shall not exceed the maximum rate authorized by law (the *"Maximum Rate"*).

C. The Note shall be drawn down in advance increments, is subject to repayment, and subject to further advances as set forth in the Note and the Agreement:

(1) The City shall request and Bank shall make available pursuant to the Agreement advances in cash (the *"Advances"*).

(2) The City may at any time repay principal of the Note (*"Interim Note Payments"*).

(3) The aggregate amount of the Advances less the Interim Note Payments shall be the *"Outstanding Principal Amount"* of the Note at any time.

(4) The Outstanding Principal Amount shall be increased by Advances and reduced by Interim Note Payments, but shall never exceed the Face Amount.

(5) The Outstanding Principal Amount shall bear interest as provided in the Note, at such rate or rates as shall not exceed the Maximum Rate.

Section 7. Execution.

The Note shall be executed on behalf of the City by the manual signature of its Mayor and attested by the manual signature of its City Clerk, and shall have impressed or imprinted thereon the corporate seal or facsimile thereof of the City. In case any such officer whose signature shall appear on the Note shall cease to be such officer before the delivery of such Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

Section 8. Optional Payment.

The Note is subject to the Interim Note Payments at the prepayment price of par and accrued interest to the date of prepayment plus any broken funding surcharge payable under the Agreement, if and to the extent applicable.

Section 9. Sale and Delivery of the Note.

The Note shall be executed as in this Ordinance provided as soon after the passage hereof as may be, shall be deposited with the Treasurer of the City, and shall thereupon be delivered to the Bank at the time of the initial Advance. Each Advance shall be for receipt of cash (or immediately available federal funds) to be exactly in the amount shown for such Advance. Each Advance shall be in such amount as the City shall determine from time to time as necessary or advisable to provide for the Temporary Funding. The contract for the sale of the Note to the Bank, as evidenced by the Agreement, is hereby in all respects approved and confirmed, and the officer(s) of the City designated in the Agreement are authorized and directed to execute the Agreement on behalf of the City, it being hereby declared that, to the best of the knowledge and belief of the members of the Corporate Authorities, after due inquiry, no person holding any office of the City, either by election or appointment, is in any manner financially interested, either directly in his or her own name or indirectly in the name of any other person, association, trust or corporation, in the sale of the Note to the Bank.

Section 10. Use of Funds, Payment of the Note; Appropriations.

All receipts on the Note shall be credited to the Corporate Fund of the City, thereupon to be expended from such fund or advanced to such other fund as may be needed. Interim Note Payments shall be made from time to time as moneys are available, and shall be made from the Corporate Fund and such other funds lawfully available to make such payment, at such times and in such amounts as, in the discretion of the City, moneys are available to reduce the Outstanding Principal Amount. The Corporate Authorities acknowledge that the Outstanding Principal Amount of the Note, as limited to the Face Amount, will fluctuate up and down during the term of the Note, including down to zero, but such reduction shall not serve to cancel the Note or the validity of such Outstanding Principal Amount as shall occur at any time.

The City shall provide for the payment of all interest on and principal of the Note and also all additional amounts when due under the Agreement. This Ordinance constitutes an appropriation of funds received from the Advances for the Temporary Funding and further constitutes an appropriation of Corporate Fund moneys when and as needed to pay all said amounts on the Note and under the Agreement when due.

Section 11. Provisions in a Contract.

The provisions of this Ordinance shall constitute a contract between the City and the registered owner of the Note; and no changes, additions, or alterations of any kind shall be made hereto, except as herein provided, so long as the Note has not been cancelled.

Section 12. Superseder.

All ordinances, resolutions, and orders, or parts thereof, in conflict herewith, are to the extent of such conflict hereby superseded.

Section 13. Publication and Effective Date.

This Ordinance shall be effective immediately.

Adopted by the Corporate Authorities on October 21st, 2019.

APPROVED: October 21st, 2019.

Mayor

AYES: Brockmeier, Howard, Koller, Link, McClain, Ober

NAYS: None

ABSENT: Downey, Oswald

PUBLISHED in pamphlet form by authority of the City Council on October 21st, 2019.

RECORDED in the City Records on October 21st, 2019.

ATTEST:

City Clerk

[SEAL]

EXHIBIT C

An ordinance authorizing and providing for the City of Carlinville, Illinois to execute and enter into a contract with MECO-Heneghan Engineers, LLC for engineering and surveying services for an interconnect to Jersey County Rural Water Company.

(see attached)

ORDINANCE NO. 1806

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE CITY OF CARLINVILLE, ILLINOIS TO EXECUTE AND ENTER INTO A CONTRACT WITH MECO-HENEGHAN ENGINEERS, LLC FOR ENGINEERING AND SURVEYING SERVICES FOR AN INTERCONNECT TO JERSEY COUNTY RURAL WATER COMPANY

WHEREAS, the City Council of the City of Carlinville, Illinois finds that it's source of potable water, Lake Carlinville and Lake If are compromised by siltation, aging water plant infrastructure and recurring high levels of manganese and other water issues; and

WHEREAS, the City Council of the City of Carlinville, Illinois finds that the current and future health of its citizens and economic stability of the City directly depends upon a reliable source of potable water; and

WHEREAS, the scope of the contract would be to provide engineering and surveying services for extending approximately 27 miles of 10-inch through 30-inch water main to provide an interconnect to Jersey County Rural Water Company; and

WHEREAS, Meco-Heneghan Engineers, LLC, have successfully completed water projects for the City of Carlinville; and

WHEREAS, the City Council of the City of Carlinville, Illinois finds that it is in the best interest of the City of Carlinville to enter into a contract with Meco-Heneghan Engineers, LLC, to construct an interconnect to Jersey County Rural Water Company.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF CARLINVILLE, MACOUPIN COUNTY, ILLINOIS, AS FOLLOWS:

1. That the Mayor is hereby authorized and directed to execute and enter into a contract with Meco-Heneghan Engineers, LLC to provide engineering and surveying services for extending approximately 27 miles of 10-inch through 30-inch water main to provide an interconnect to Jersey County Rural Water Company.

2. That the findings here in above stated are hereby incorporated by reference and made a part of this Ordinance.

3. This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Illinois.

4. The facts and statements contained in the preamble to this Ordinance are found to be true and correct and are hereby incorporated as part of this Ordinance.

5. This Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

VOTING AYE:

Alderman McClain, Ober, Oswald, Koller, Campbell, Link and Brockmeier

VOTING NAY:

Alderman Downey

PASSED this 3 day of June, 2019.

Carla Brockmeier

CITY CLERK

APPROVED by the Mayor of the City of Carlinville, Illinois, this 3 day of June, 2019.

Mayor of the City of Carlinville, Illinois

ATTEST:

Carla Brockmeier

CITY CLERK

MECO-HENEGHAN ENGINEERS, LLC
CIVIL / STRUCTURAL / ELECTRICAL / MECHANICAL ENGINEERS
400 North Fifth Street | Suite 107 | St. Charles, MO 63301 | P: 636-395-7055

City of Carlinville
550 N. Broad Street
Carlinville, IL 62626

Attn: Ms. Deanna Demuzio, Mayor

Re: Cost Estimate for Engineering Services for the Interconnect to Jersey County Rural Water Company
for the City of Carlinville
MHE Project No. 101-002

Dear Ms. Demuzio:

As requested, MECO-Heneghan Engineers, LLC (MHE) is pleased to provide the City of Carlinville with an estimate of fees for professional civil engineering and surveying services for the above-referenced project. The project consists of extending approximately 27 miles of 10-inch through 30-inch water main to provide an interconnect to Jersey County Rural Water Company (JCRWC) as shown in the attached aerial sheet. The project is anticipated to be funded utilizing Local Funds. The proposed Scope of Work and breakdown of associated fees for the requested services for this project are listed below. Upon your review and approval of this proposal, we will execute the MHE Work Order (attached). Our work will be invoiced monthly based upon an actual time-and-material basis for any estimated service item(s).

Total Project

MHE Basic Services:

Topographical Survey (estimated time-and-material)	$ 150,000.00
Right-of Way Determination (estimated time-and-material)	$ 30,000.00
Design Engineering, Plans/Specifications, IEPA Permitting (*estimated time-and material*)	$920,000.00

MHE Additional Services:

Environmental Assistance (*estimated time-and-material*)	$ 20,000.00
Roadway/Railroad Permits (*estimated time-and-material*)	$ 60,000.00
Easement/Land Assist. (mapping, negotiations, meetings, etc.). (*estimated time-and-material*)	$ 140,000.00
Preliminary Design/Cost Estimates/Coordination (*estimated time-and-material*)	$ 100,000.00
Funding Assistance (*estimated time-and-material*)	$ 80,000.00

Estimated Total for all MHE Services	$ 1,500,000.00
Estimated Total for non-MHE Services (legal/permitting/land/Geotech/interest/ect.)	$ 1,000,000.00

P.03/03 636-395-7055

BATES #67

The following is a description of the various services included in the fees listed above. It also lists the qualifications, assumptions, and exclusions used in developing these fee amounts. The Scope of Work for this project has been finalized over the course of recent project/scope meetings and is currently understood as specified below.

1. The topographical survey includes research and surveying in the field as necessary to obtain information required for design, permitting, and construction of this project. Topographical surveying is required to establish existing grades, field conditions, and marked utilities to determine the best location to install the proposed water main. All survey work will be done in state plane coordinates. These services will be provided on a time-and-material basis, with an estimate of total fees for this task as shown in the "Topographical Survey" amount shown above.

2. The Right-of-Way (ROW) determination includes searching for ROW points in the field, records research at the Courthouse or other locations to obtain available ROW information. These services will be provided on a time-and-material basis, with an estimate of total fees for this task as shown in the "Right-of-Way Determination" amount shown above.

3. The design services include final design of the water main extension project, including hydraulic calculations, final plan sheet preparation (1" = 100' horizontal scale and 1" = 10' vertical scale in Autodesk Civil 3D 2018, format) including detail sheets for water main connection details and various appurtenances, and including technical specifications for IEPA submittal. The permitting service for the water main improvements include completing the IEPA construction permitting process. Final design-phase services also include coordination with the City of Carlinville as required to develop the final plans and specifications and obtain the IEPA permit. These services will be provided on a time-and-material basis, with an estimate of total fees for this task as shown in the "Design Engineering, Plans/Specifications, IEPA Permitting" amount shown above.

4. Additional engineering services include any services required to advance the project to the Bidding Phase that are not included in the Basic Services listed above. These services include, but are not limited to, Environmental Assistance, Roadway/Railroad Permitting, Easement Assistance, Preliminary Design, and Funding Assistance. These services will be provided on a time-and-material basis, with an estimate of total fees for this task as shown in the respective "Additional Services" items amount shown above.

5. The following services are not included in the fixed-fee or other estimated amounts listed above, but may eventually be required as part of the project, and can be provided as an additional service if we receive an executed Change in Scope of Services form (copy attached) by the City of Carlinville, to be paid for on an actual manhour/expense basis according to our Rates for Professional Services in effect at the time of the accrued manhour/expense (current rate sheet attached).
   A. Property/boundary surveying.
   B. Topographical surveying and/or aerial topography beyond that described above.
   C. Easement/ROW exhibits/document development and/or acquisition services and/or recording fees except for those services described above.
   D. Title work, researching the existence of any existing easements or staking any existing easements.
   E. Bidding Assistance
   F. Construction Administration Assistance
   G. Construction staking
   H. Resident Project Representative Services during construction.
   I. Coordination/review of contractor quantities/pay requests.

J. Record Drawing measurements taken in the field.
K. GPS field data collection and/or GIS office mapping work.
L. Storm sewer/drainage pipe relocation design/permitting.
M. Sanitary sewer main relocation design/IEPA permitting.
N. On-site sewage disposal system design/permitting and/or coordination with County Health Department and/or IDPH, sewage plat, soil suitability survey, etc.
O. Utility company coordination (gas, electric, telephone, cable/fiber, etc.).
P. Sidewalk/ramp design meeting ADA regulations (assumed any impacted sidewalks will be replaced "as-is", as a maintenance item secondary to the primary project purpose of a utility improvement project).
Q. Roadway/alley design (assume any impacted drive surfaces will be replaced "as-is", as a maintenance item secondary to the primary project purpose of a utility improvement project).
R. Attendance at Board meetings.
S. IEPA NPDES SWPPP permitting, monitoring, and/or reporting.
T. Any necessary sub-consultant fees for soil borings/geotechnical consultant to determine rock extent/depth or soils classification, Phase I archaeological consultant, etc. (assumed that these will be paid by the City of Carlinville).
U. Any necessary permit fees and/or newspaper advertisement fees (assumed that these will be paid by the City of Carlinville).
V. Fire flow testing and/or coordination with the local fire department regarding required flow rates.

We are very grateful for the opportunity to be of service to the City of Carlinville and we trust that this fee proposal will meet your needs and budgets. We look forward to working with the City of Carlinville on this project and we are prepared to begin preliminary engineering and surveying services immediately upon your acceptance of this proposal. An estimated project/task schedule can be provided upon request. If you need any further information or if you have any questions, please do not hesitate to call.

Sincerely,
MECO-HENEGHAN ENGINEERS, LLC

Ronnie M. Paul, P.E.
Co-Manager

c. MHE File 102-001

EXHIBIT D

Affidavit of Carla Brockmeier, City Clerk for the City of Carlinville.

(see attached)

IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MACOUPIN COUNTY, CARLINVILLE, ILLINOIS

CAMILLE MAYFIELD COOPER BROTZE, And WAYNE BROTZE, husband and wife,	)	
Plaintiffs,	)	
v.	)	No. 2019-MR-000092
CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation,	)	
Defendant.	)	

AFFIDAVIT IN SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
ON AFFIRMATIVE DEFENSES

STATE OF ILLINOIS)
) ss.
COUNTY OF MACOUPIN)

Carla Brockmeier on oath deposes and says:

1. That I am the duly qualified and acting City Clerk of the City of Carlinville.

2. That I am the keeper of records for the City of Carlinville.

3. That I do further certify that the attached:

a) Letter dated November 2, 2019 from Bond Counsel Mike Southworth.

b) An ordinance of the City of Carlinville, Macoupin County Illinois, authorizing and providing for a $2,500,000 Revolving Credit Promissory Note for the purpose of paying costs incurred by the City for engineering study and legal work including easements for the installation of a waterline interconnect to Jersey County Rural Water Company Inc. for the City, authorizing a related Credit Agreement prescribing the details of the Agreement and Note and providing for the security for and means of payment of the Note

(c) An ordinance authorizing and providing for the City of Carlinville, Illinois to execute and enter into a contract with MECO-Heneghan Engineers, LLC for engineering and surveying services for an interconnect to Jersey County Rural Water Company

Are all governmental records created and maintained in the normal course of business except for (a) which is a letter received and maintained in the normal course of business.

Carla Brockmeier

Carla Brockmeier, City Clerk

SUBSCRIBED AND SWORN to before me this 3 day of April, 2020.

Jan O'Brien

Notary Public

DANIEL W L OBRIEN
"OFFICIAL SEAL"
My Commission Expires
February 20, 2021

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
MACOUPIN COUNTY, ILLINOIS

CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE, husband and wife,	)	
Plaintiffs,	)	
v.	)	Case No. 2019-MR-000092
CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation,	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON AFFIRMATIVE DEFENSES

NOW COMES Defendant, the CITY OF CARLINVILLE, a Municipal Corporation, by and through its attorneys, Dan O'Brien and John Gabala, and in support of its Motion for Summary Judgment on Affirmative Defenses, states as follows:

I. SUMMARY OF THE CASE

On February 23, 2018, Plaintiffs filed their original complaint for declaratory judgment and injunctive relief in then Macoupin County Case No. 2018-L-5 against the current Defendant, City of Carlinville, as well as the Village of Dorchester, Jersey County Rural Water Company Inc. ("Jersey County"), and Illinois Alluvial Regional Water Company, Inc. ("Alluvial"), seeking, *inter alia*, to prevent the defendants from participating in the funding and operations of Alluvial.

On May 4, 2018, Alluvial filed its motion for summary judgment as well as its memorandum in support thereof.

On May 8, 2018, Defendant filed its motion to dismiss Plaintiffs' complaint for lack of standing.

On or about December 27, 2018, the parties each filed supplemental argument on the application of Dillon's Rule in response to a request from the trial court.

On August 2, 2018, the parties argued the motions to dismiss and the motion for summary judgment before the trial court.

On January 2, 2019, the trial court issued its written order dismissing the Village of Dorchester and Jersey County for lack of standing. The court also *sua sponte* dismissed Alluvial for lack of standing and did not take up its pending motion for summary judgment. Instead, the court found that motion moot in light of its ruling dismissing Alluvia for lack of standing. The court denied Defendant's motion to dismiss and gave Plaintiffs 30 days to file an amended complaint.

On May 2, 2019, Plaintiffs filed their first amended complaint for declaratory and injunctive relief against Defendant.

On May 16, 2019, Defendant filed its motion to dismiss Plaintiffs' first amended complaint. Defendant also filed a motion for sanctions pursuant to Illinois Supreme Court Rule 137, arguing, *inter alia*, certain allegations made by Plaintiffs were patently false and a reasonable FOIA inquiry or review of the city council meeting agenda and/or minutes would show the falsity of Plaintiffs' claims.

On July 22, 2019, Plaintiffs filed a second amended complaint (in Macoupin County Case No. 2018-L-5) abandoning their declaratory and injunctive causes of actions and instead alleging a single-count mandamus cause of action.

In a July 23, 2019 docket entry, the trial court acknowledged receipt of Plaintiffs' second amended complaint (filed in Macoupin County Case No. 18-L-5) and noted that it had previously instructed Plaintiffs to refile their cause of action as an MR case (19-MR-92). The court ordered

that, for consistency in rulings, it was consolidating the 18-L-5 matter with the 19-MR-92 matter and again instructed that all future filings should be made using the 19-MR-92 case number.

Following an August 2, 2019 hearing, the trial court granted Defendant's motion to dismiss Plaintiffs' first amended complaint and directed the Clerk to strike Plaintiffs' second amended complaint but with leave to allow Plaintiffs 14 days to refile a second amended complaint. The court also denied Defendant's Rule 137 motion for sanctions.

On August 7, 2019, Plaintiffs filed a Second Amended Complaint (in Macoupin County Case No. 19-MR-92) alleging a single count for mandamus relief. According to Plaintiffs' Second Amended Complaint, they "have no other mechanism to challenge [Defendant's] abuse of authority regarding [its] participation in the creation, funding, or operation of Illinois Alluvial." Plaintiffs' pleading requests the Court to "issue a Writ of Mandamus compelling the Carlinville Aldermen and Alderwomen, in their official capacities, to take the actions necessary to withdraw from and cease any further participation in the creation, funding, or operation of Illinois Alluvial".

On September 4, 2019, Defendant filed three section 2-615 motions to dismiss Plaintiffs' complaint for their failure to state a claim for (i) mandamus relief, (ii) a violation of the Open Meetings Act ("OMA"), or (iii) a violation of the Freedom of Information Act ("FOIA"). Defendant's motions targeted Plaintiffs' unspecific inferences in their complaint that Defendant was violating OMA and FOIA, which Defendant maintained Plaintiffs were using to buttress the insufficiency of their factual pleadings.

On September 30, 2019, Plaintiffs filed their response to Defendant's motions to dismiss arguing they had pleaded adequate facts for mandamus and that the trial court "has previously determined in this case and recited in its prior Orders that Plaintiffs have a right to expect that their local government will conduct itself with transparency and comply with applicable laws."

Plaintiffs' response also contained a request that the trial court find "pursuant to Illinois Supreme Court Rule 308 that any Order the Court renders regarding Defendant's Motion to Dismiss involves a question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate termination of the litigation." Plaintiff then articulated the question of law before the court as follows: "Does [Defendant], a non-home rule municipality, have authority under Article VII of the Illinois Constitution to join with other municipalities and one or more private, not-for-profit corporations to create, manage and fund an Illinois not-for-profit corporation, where there is no statute which expressly authorizes the creation of such a corporation?"

On October 17, 2019, the trial court held a hearing on Defendant's motions to dismiss.

In its October 21, 2019, written order, the trial court denied Defendant's motion to dismiss Plaintiffs' complaint, finding that "a Writ of Mandamus can be used to compel the undoing of an act not authorized by law or to require public entities and/or officials to comply with State law. Plaintiffs have raised a valid argument, and this Court will not deprive them of the opportunity to litigate their [mandamus] cause of action." The court denied Defendant's motions to dismiss relating to OMA and FOIA violations, finding Plaintiffs did not attempt to state a cause of action based on OMA or FOIA because the facts did not support either cause of action. The court granted Plaintiffs' request to present a certified question subject to a review of Defendant's opposition and a refinement of the question.

On October 24, 2019, Defendant filed an alternative certified question for the trial court's consideration.

On October 25, 2019, Plaintiffs filed their revised proposed certified question.

On November 1, 2019, the trial court issued its order finding "[a] question of law exists as to which there is a substantial ground for difference of opinion, and an appeal from the

Court's October 21, 2019 Order denying Defendant's Motions to Dismiss may materially advance the ultimate termination of the litigation." The court then issued the following certified questions for appeal:

> (a) Whether a non-home rule municipality has authority under Article VII of the Illinois Constitution to join with another non-home rule municipality/village and a private, not for-profit corporation for purposes of creating a brand-new not for-profit corporation that is intended to supply potable water to the region where there is no statute that expressly authorizes the creation of such a corporation? And if the answer is in the negative,
>
> (b) May the Court then issue a writ of mandamus and order the non-home rule municipality to withdraw as a member of the newly created, private not-for-profit regional water corporation because it was formed without express statutory authority?

On November 21, 2019, Plaintiffs filed their "Application for Leave to Appeal (Pursuant to Illinois Supreme Court Rule 308)" with the Fourth District Appellate Court.

On November 26, 2019, the trial court granted Defendant's motion to stay the trial court proceedings pending the resolution of the Rule 308 appeal.

On December 11, 2019, Defendant filed its Answer in Opposition to Plaintiffs' Supreme Court Rule 308 Application.

On December 19, 2019, the Appellate Court issued its order denying Plaintiffs' Application for Leave to Appeal Pursuant to Illinois Supreme Court Rule 308.

On December 26, 2019, the trial court granted Defendant's motion to lift the stay in the proceedings.

On January 24, 2020, Defendant filed its Answer and Affirmative Defenses to Plaintiffs' Second Amended Complaint. Plaintiffs filed no response to Defendant's affirmative defenses.

As Plaintiffs noted in their Rule 308 Application to the Appellate Court, the relevant fact underlying the instant dispute are not at issue.

Defendant's Motion for Summary Judgment on Affirmative Defenses and this memorandum in support thereof follows.

II. STANDARD FOR SUMMARY JUDGMENT

Summary Judgment is proper when "the pleadings, depositions, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c). Here, because no issues of material facts exist, Defendant is entitled to summary judgment on its affirmative defenses.

III. ARGUMENT

Defendant has raised the following three affirmative defenses: (i) standing; (ii) laches; and (iii) an other affirmative matter which defeats Plaintiffs' claim for mandamus relief, namely that the Illinois Constitution explicitly permits Defendant to associate with Illinois Alluvial and no statute or ordinance exists prohibiting Defendant from such association. Those affirmative defenses were filed on January 24, 2020. A plaintiff may file a reply to defendant's answer within 21 days after the last day allowed for the answer to be filed. Ill. S. Ct. R. 182(a) (eff. Jan. 1, 1967) ("Replies to answers shall be filed within 21 days after the last day allowed for the filing of the answer."). However, if the answer contains affirmative defenses, the plaintiff must file a reply, or the affirmative defenses are deemed admitted. 735 ILCS 5/2-602. Here, Plaintiffs did not file a reply to Defendants' affirmative defenses. It is well-recognized that the failure to reply to an affirmative defense constitutes an admission of the allegations contained therein. *Filliung v. Adams*, 387 Ill. App. 3d 40, 56 (2008); *State Farm Mutual Automobile Insurance Co. v. Haskins*, 215 Ill. App. 3d 242, 246, (1991) (citing *Lundberg v. Gage*, 22 Ill. 2d 249, 251 (1961) ("No reply was made to the allegations setting up the affirmative defense and they are therefore admitted.")). Thus, for purposes of the instant Motion for Summary Judgment,

Plaintiffs are considered to have admitted the allegations underlying Defendant's Affirmative Defenses.

Plaintiffs' claim for mandamus relief contained in its Second Amended Complaint requests this Court "issue a Writ of Mandamus compelling the Carlinville Aldermen and Alderwomen, in their official capacities, to take the actions necessary to withdraw from and cease any further participation in the creation, funding, or operation of Illinois Alluvial".

For the following reasons, however, each of Defendant's affirmative defenses defeat Plaintiffs' claim for mandamus relief.

A. Plaintiffs' Mandamus Claim Raised in Their Second Amended Complaint is Barred by the Affirmative Defense of Standing.

For its First Affirmative Defense, Defendant argues the mandamus relief sought is barred by Plaintiffs' lack of standing to bring such a claim.

Standing is available as a defense to a mandamus action. *Bocock v. O'Leary*, 2015 IL App (3d) 150096, ¶ 9; *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 494 (1988) (holding that lack of standing is an "affirmative" defense). Standing in Illinois requires an injury in fact to a legally cognizable interest. *Board of Trustees of Community College District No. 502 v. Department of Professional Regulation*, 363 Ill. App. 3d 190, 197 (2nd Dist. 2006). For standing, the claimed injury, whether actual or threatened, must be: (1) distinct and palpable; (2) fairly traceable to the defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief. *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 492-92 (1988).

In the Illinois supreme court case of *Bowes v City of Chicago*, 3 Ill. 2d 175, 178 (1954), the plaintiffs sought to enjoin the defendant from constructing a water filtration plant with a private corporation. Our Illinois supreme court found that the plaintiffs who had brought the

action solely as water users had no standing to sue where the plaintiffs (i) had not been required to pay higher water fees as a consequence of the defendant's allegedly illegal conduct and (ii) they were merely asserting a general public interest. *Bowes*, 3 Ill. 2d at 182-83.

A review of Plaintiffs' Second Amended Complaint reveals that Plaintiffs have not pleaded any specific facts or allegations to show they have been adversely affected by any action of Defendants. Like the plaintiffs in *Bowes,* Plaintiffs here assert no direct or substantial economic injury. In reality, Defendant's actions to locate and secure a safe source of potable water for its users are a benefit to Plaintiffs. Like the plaintiffs in *Bowes,* Plaintiffs here are merely asserting a general interest in having Defendant act in accordance with what they mischaracterize as Illinois law (see Section C *infra*). Plaintiffs have also failed to identify any clear right they have to bar Defendant from associating with a not-for profit corporation to supply potable water to the region. While Plaintiffs allege generally that they have "a clear, affirmative right to expect their local government to conduct itself with transparency", it is undisputed fact that Plaintiffs do not allege any violation of the Freedom of Information Act (FOIA) or the Open Meetings Act (OMA) in their Second Amended Complaint. In denying Defendant's Motion to Dismiss Plaintiffs' Second Amended Complaint, this Court stated that "A careful review of Plaintiffs' Second Amended Complaint shows that Plaintiffs did not attempt to state a cause of action based on a violation of the Open Meetings Act". This Court also found in that same order that Plaintiffs also "did not attempt to state a cause of action for a FOIA violation because the facts do no support it".

Here, Plaintiffs' Second Amended Complaint is clearly lacking any legally cognizable interest requiring relief. Instead, Plaintiffs' Second Amended Complaint is merely asserting a general interest. However, it is well-established Illinois law that standing requires some injury in fact to a legally cognizable interest and that that such general and unspecific allegations are

insufficient to establish standing. *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999) ("This court has held that a party cannot gain standing merely through a self-proclaimed interest or concern about an issue, no matter how sincere.") (citing *Landmarks Preservation Council v. City of Chicago*, 125 Ill. 2d 164, 175 (1988)); *Castleman v. Civil Service Commission of the City of Springfield, Illinois*, 58 Ill. App. 2d 25, 32 (4th Dist. 1965) (finding no standing to sue where the plaintiff's complaint contained no specific allegations showing that his personal rights, duties or privileges were affected). As such, Defendant's Motion for Summary Judgment should thus be granted as to Defendant's affirmative defense of standing. The mandamus relief sought in Plaintiffs' Second Amended Complaint should be denied because the affirmative defense of standing bars such relief.

B. Plaintiffs' Mandamus Claim Raised in Their Second Amended Complaint is Barred by the Affirmative Defense of Laches.

For its Second Affirmative Defense, Defendant argues that the mandamus relief sought in Plaintiffs' Second Amended Complaint is barred by the affirmative defense of laches.

The doctrine of laches is defined as "the neglect or omission to assert a right which, taken in conjunction with a lapse of time and circumstances causing prejudice to the opposite party will operate as a bar to a suit." *Bill v. Board of Education of Cicero School District 99*, 351 Ill. App. 3d 47, 54 (2004) (internal quotations omitted). Laches is an equitable claim where there exists: (1) lack of due diligence by the party asserting a claim; and (2) prejudice to the party asserting laches. *Lippert v. Property Tax Appeal Board*, 273 Ill. App. 3d 150, 155 (4th Dist. 1995). A laches defense is applicable where a party is seeking mandamus relief. *Ashley v. Pierson*, 339 Ill. App. 3d 733, 739 (4th Dist. 2003). "A complaint for mandamus must be brought within six months unless there is a reasonable explanation for delay." *IP Plaza, LLC v. Bean*, 2011 IL App (4th) 110244, ¶ 44. "Sound public policy demands that those who claim a

right against a governmental body should press their claims with diligence." *Neal v. Bd. of Educ., Sch. Dist. No. 189*, 93 Ill. App. 3d 386, 389 (5th Dist. 1981). A plaintiff's lack of due diligence is established by a showing of a lapse of more than six months from the accrual of the cause of action and the filing of the mandamus complaint, unless the plaintiff offers a reasonable excuse for the delay. *Ashley*, 339 Ill. App. 3d at 739.

In this case, Plaintiffs filed their original complaint on February 23, 2018. Plaintiffs' original complaint did not raise a mandamus cause of action. All of the facts giving rise to Plaintiffs' Second Amended Complaint requesting, for the first time, mandamus relief, were known to Plaintiff in February 2018 when Plaintiffs filed their original complaint. Nothing prevented Plaintiffs from promptly filing a mandamus action at the time they filed that original complaint. The fact that Plaintiffs did not discover what they now characterize in their Second Amended Complaint as their only mechanism to challenge Defendant until some 18 months after filing their initial complaint is immaterial for purposes of laches as all the information needed to bring the mandamus action was available to Plaintiffs at the time the original complaint was filed.

Moreover, that same information was available when Plaintiffs subsequently, and on multiple occasions, amended their complaint. For example, Plaintiffs filed their First Amended Complaint for declaratory and injunctive relief on May 2, 2019 but did not include a mandamus count in that pleading. As was the case with the original complaint, all of the facts giving rise to Plaintiffs' Second Amended Complaint requesting, for the first time, mandamus relief, were also known to Plaintiff in May 2019 when Plaintiffs filed their First Amended Complaint. Put another way, there was nothing to prevent Plaintiffs from filing a mandamus action at the time they filed their First Amended Complaint.

Plaintiffs' delay in waiting to plead their single-count mandamus complaint was not reasonable and reflected a lack of due diligence on the part of Plaintiffs. More importantly, Plaintiffs' delay in bringing their mandamus cause of action has and will cause prejudice to Defendant. In the context of a laches affirmative defense, prejudice is inherent in cases where an inconvenience or detriment to the public will occur as a result of the delay. *Ashley*, 339 Ill. App. 3d at 739. Here, Plaintiffs' relief requests the issuance of "a Writ of mandamus compelling the Carlinville Aldermen and Alderwomen, in their official capacities, to take action necessary to withdraw from and cease any further participation in the creation, funding, or operation of Illinois Alluvial". Had Plaintiffs promptly brought their mandamus claim in February 2018, and prevailed, Defendant would not have:

> (i) retained and paid $11,350.00 to Attorney Mike Southworth as Bond Counsel for the City of Carlinville (See Exhibit A, attached hereto; City Clerk Carla Brockmeier Affidavit, attached hereto as Exhibit D); or
>
> (ii) entered into a Revolving Credit Promissory Note agreement for $2,500,000.00 with COBANK, ACB (See Exhibit B, attached hereto; City Clerk Carla Brockmeier Affidavit, attached hereto as Exhibit D); or
>
> (iii) contracted with MECO-Heneghan L.L.C. in the amount of $1,500,000.00 for engineering and surveying services (See Exhibit C, attached hereto; City Clerk Carla Brockmeier Affidavit, attached hereto as Exhibit D); or
>
> (iv) expended staff and public works resources to the extent to which it now has.

Indeed, Plaintiffs' delay in filing their mandamus action will result in significant inconvenience and detriment to the public in that the abandonment of the association with

Illinois Alluvial will be more disruptive to the financial position of the city, interfere with contractual obligations, and jeopardize the safety of the city water supply. Plaintiffs' delay in filing is precisely the type of issue laches is intended to remedy.

As previously stated because Plaintiffs did not filed a response to Defendant's laches affirmative defense, the facts underly that defense, *i.e.*, that Plaintiffs had all the facts necessary to plead a mandamus count at the time they filed their original complaint and that Defendant has been prejudiced by Plaintiffs' delay are deemed admitted. Plaintiffs' lack of response also cuts against its obligation to provide any reasonable excuse for the delay. See *Ashley*, 339 Ill. App. 3d at 739.

For the reasons stated, Defendant is entitled to summary judgment on its laches affirmative defense. Defendant's Motion for Summary Judgment should be granted as a result.

C. Plaintiffs' Mandamus Claim Raised in Their Second Amended Complaint is also Barred by An Other Affirmative Matter.

For its Third Affirmative Defense, Defendant, raised the affirmative defense to Plaintiffs' Second Amended Complaint that the relief sought is barred by an other affirmative matter, namely that the Illinois Constitution explicitly **permits** Defendant to associate with Illinois Alluvial and Plaintiffs are unable to point to a statute or ordinance prohibiting Defendant from such association. The issue is purely a question of law. There are no relevant facts in dispute with regard to that pivotal issue. As such, Defendant is entitled to summary judgment on its affirmative defense as a matter of law.

It is undisputed fact in this case that Defendant is a non-home-rule unit of local government. Home rule and non-home-rule units of local government are subject to slightly different standards. Under article VII, section 6, of the Illinois Constitution of 1970, home rule units of local government may enact regulations when the state has not specifically declared its

exercise to be exclusive. Ill. Const. 1970, art. VII, § 6; *T & S Signs, Inc. v. Village of Wadsworth*, 261 Ill. App. 3d 1080, 1090 (2nd Dist. 1994). Non-home-rule units of local government are governed by Dillon's Rule. *T & S Signs*, 261 Ill. App. 3d at 1090. Under Dillon's Rule, non-home-rule units possess only those powers that are specifically conveyed by the Constitution or by statute. *Commonwealth Edison Co. v. City of Warrenville*, 288 Ill. App. 3d 373, 380 (2nd Dist. 1997).

In this case, the Illinois Constitution itself provides all the authority necessary to reach a resolution in this case. Article VII, section 10(a) of the Illinois Constitution of 1970 states the following:

> "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." (Emphasis added.) Ill. Const. 1970, art. VII, § 10(a)."

Article VII, section 10(a) of the Illinois Constitution of 1970 therefore explicitly permits a municipality to "contract and otherwise associate" with corporations "in any manner not prohibited by law or ordinance." Ill. Const. 1970, art. VII, § 10(a). The intergovernmental cooperation provision of the Illinois Constitution of 1970 was intended to encourage cooperation among units of government and remove the necessity of obtaining statutory authorization for such cooperative ventures by units of local government. *Village of Elmwood Park v. Forest Preserve Dist. of Cook County*, 21 Ill. App. 3d 597, 600-01 (1st Dist. 1974).

It is a well-established principle of law that "[w]ords used in the constitution are to be taken in their ordinary acceptance." *Village of Elmwood Park*, 21 Ill. App. 3d at 600 (quoting

Locust Grove Cemetery Ass'n. v. Rose, 16 Ill. 2d 132, 139 (1959) (citing *International College of Surgeons v. Brenza*, 8 Ill. 2d 141, 145 (1956) and *People ex rel. McCullough v. Deutsche Gemeinde*, 249 Ill. 132, 136 (1911)). The term "associate" is undefined in the 1970 Constitution. Where a term is not defined, that term is afforded its plain, ordinary, and popular meaning, *i.e.*, its dictionary definition. *Gaudina v. State Farm Mutual Automobile Insurance Co.*, 2014 IL App (1st) 131264, ¶ 18. "Associate" is ordinary defined as "to join (things) together or connect (one thing) with another: COMBINE," "to join or connect in any of various intangible or unspecified ways (as in general mental, legendary, or historical relationship, in unspecified causal relationship, or in unspecified professional or scholarly relationship)," and "to combine or join with another or others as component parts: UNITE." *Doctors Direct Insurance, Inc. v. Bochenek*, 2015 IL App (1st) 142919, ¶ 27 (quoting Webster's Third New International Dictionary 132 (1993)).

It is undisputed fact that no statute or ordinance exists to prohibit Defendant from associating with Alluvial, a private not-for-profit corporation, in the manner it did. To the contrary, the Illinois General Not for Profit Corporation Act of 1986 provides that a not-for-profit corporation may be organized for the purpose of "ownership and operation of water supply facilities for drinking and general domestic use on a mutual or cooperative basis." 805 ILCS 105/103.05(a)(23). Section 11-124-1 of the Illinois Municipal Code further provides several broad grants of municipal authority over public water supplies. See 65 ILCS 5/11-124-1. Importantly, nowhere in section 11-124-1 does the General Assembly put a limitation on a non-home rule municipality's authority in that regard. In the absence of any statutory prohibition, article VII, section 10(a) explicitly permits Defendant's association with a private not-for-profit corporation.

If there is any remaining doubt as to the meaning of the plain language of section 10(a) of the Illinois Constitution of 1970, our supreme court has placed a great deal of weight on the Record of Proceedings of the Constitutional Convention. *Village of Sherman v. Village of Williamsville*, 106 Ill. App. 3d 174, 178 (4th Dist. 1982) (citing *Board of Education v. Bakalis*, 54 Ill. 2d 448 (1973)). "In construing a constitutional provision, a court's primary objective is to ascertain and give effect to the common understanding of the voters who adopted it, and courts look first to the common meaning of the words used." *Gregg v. Rauner*, 2018 IL 122802, ¶ 23. "It is also proper to consider constitutional language in light of the history and condition of the times, the objective to be attained, and the evil to be remedied." *Rauner*, 2018 IL 122802, ¶ 23.

Accordingly, it would be appropriate to ascertain the meaning that the delegates attached to those provisions because it is only with the consent of the convention that such provisions were submitted to the voters in the first place. *League of Women Voters v. County of Peoria*, 121 Ill. 2d 236, 244 (1987). "The meaning of a constitutional provision depends on the common understanding of the citizens who, by ratifying the Constitution, gave it life." *League of Women Voters*, 121 Ill. 2d at 244. Indeed, the record of the proceedings of the Constitutional Convention clearly reveals the intended purpose and effect of article VII, section 10 as follows:

> " 'It permits smaller units of local government, by combining to perform specific services of functions, to develop economies of scale with resultant c[o]st reductions.
>
> We think, in the long run, that vigorous intergovernmental cooperation will reduce the need for special districts and will permit the provision of services which no single unit can provide.' " *Village of Sherman*, 106 Ill. App. 3d at 178 (quoting 4 Record of Proceedings, Sixth Illinois Constitutional Convention 3421).

In dispelling any misconception that Defendant must have explicit statutory authority to associate with a private not-for-profit corporation, the record of the proceedings of the Constitutional Convention also provides the following guidance:

> "You will notice that the language of the intergovernmental cooperation article is based upon an affirmative grant of self-executing power *** which, in essence, means that it's there unless it's prohibited by the General Assembly-by general law. So it's a provision that says, 'You can do it unless the General Assembly says you can't.' " *Village of Sherman*, 106 Ill. App. 3d at 178-79 (quoting 4 Record of Proceedings, Sixth Illinois Constitutional Convention 3426).

Prior to the ratification of the 1970 Constitution, local governments could not operate with other local governments or corporations in the exercise of their municipal powers unless and until the General Assembly provided express statutory permission to do so. *Village of Wauconda v. Hutton*, 291 Ill. App. 3d 1058, 1060 (2nd Dist. 1997); *T & S Signs*, 261 Ill. App. 3d at 1990. While a potentially valid contention prior to the ratification of the 1970 Constitution, following that ratification, Plaintiffs' argument must necessarily fail. As previously acknowledged by the Fourth District Appellate Court:

> "Article VII, section 10, eliminated the effect of 'Dillon's Rule' in construing intergovernmental agreements. This rule limited the powers of a municipal corporation to those expressly granted or incident to powers expressly granted by the General Assembly. The rule resolved any doubt of the existence of a power against the municipality. The various divisions of our court have determined that article VII was intended to encourage cooperation among units of government and to remove the necessity of obtaining statutory authorization for cooperative ventures. Furthermore, this court has stated that article VII, section 10, has abrogated Dillon's Rule of strictly construing legislative grants of authority to local governmental units (internal citations omitted.)". *Village of Sherman*, 106 Ill. App. 3d at 179.

Any interpretation of section 10(a) of the Illinois Constitution that finds there must be a specific statute authorizing a municipal association with a specific corporation necessarily reads section 10(a) too narrowly and renders it completely meaningless. Such an interpretation would be contrary to the well-established Illinois rule that the constitution must be read to give meaning to each word and phrase. See *Hirschfield v. Barrett*, 40 Ill. 2d 224, 230 (1968) ("the fundamental rule that each word, clause or sentence must, if possible, be given some reasonable meaning [(citations omitted)] is especially apropos to constitutional interpretation").

In sum, article VII, section 10(a) of the Illinois Constitution of 1970 is affirmative grant of power to Defendant as a non-home rule municipality, which in the clearest of terms means, "[y]ou can do it unless the General Assembly says you can't." *Village of Sherman*, 106 Ill. App. 3d at 179. No statute or ordinance exists to prohibit Defendant's association with Alluvial, a private not-for-profit corporation. Any argument that Defendant needs to show any such specific statutory authority is simply incorrect and premised on the opposite legal presumption. Accordingly, Defendant is entitled to summary judgment in its favor on the other affirmative matter presented as a matter of law. Defendant's Motion for Summary Judgment should be granted as to Defendant's other asserted affirmative matter as a result.

IV. CONCLUSION

WHEREFORE, Defendant, the CITY OF CARLINVILLE, prays that this Court enter a final order:

A. Granting Defendant's Motion for Summary Judgment on Affirmative Defenses;

B. Denying the mandamus relief sought in Plaintiffs' Second Amended Complaint; and

C. Providing for such other legal and equitable relief as the Court deems just.

Respectfully submitted,

CITY OF CARLINVILLE, ILLINOIS,
A Municipal Corporation, Defendant

BY: /s/ John M. Gabala
One of Its Attorneys

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Springfield, Illinois 62701
(217) 525-1571

CERTIFICATE OF FILING AND PROOF OF SERVICE

I certify that on April 3, 2020, I submitted the foregoing document for electronic filing with the Clerk of the Court of the Seventh Judicial Circuit, Macoupin County, Illinois by using the Odyssey eFileIL system.

I further certify that I served the following by transmitting a copy via email on the above date to:

Jacob N. Smallhorn
Smallhorn Law LLC
609 Monroe
Charleston, IL 61920
jsmallhorn@smallhornlaw.com

Dan O'Brien
O'Brien Law Office
331 E. 1st Street
Carlinville, IL 62626
dan_obrien@mac.com

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge.

/s/ John M. Gabala
John M. Gabala, ARDC #6288162
Giffin, Winning, Cohen & Bodewes, P.C.
One West Old State Capitol Plaza
Myers Building – Suite 600
Springfield, IL 62701
(217) 525-1571

EXHIBIT A

Letter dated November 2, 2019 from Bond Counsel Mike Southworth

(see attached)

Hart, Southworth & Witsman
Attorneys at Law

Suite 501
One North Old State Capitol Plaza
Springfield, Illinois 62701-1323
(217) 753-0055
(217) 753-1056 – Fax

Richard E. Hart
Mike Southworth
Samuel J. Witsman
Timothy J. Rigby
Kristina B. Mucinskas

msouthworth@hswnet.com

November 2, 2019

City of Carlinville, Illinois
550 North Broad
Carlinville, Illinois 62626

Re: City of Carlinville, Macoupin County, Illinois
$2,500,000 Revolving Credit Promissory Note

FOR PROFESSIONAL SERVICES RENDERED:

Fees and expenses for representation as bond counsel with regard to the above referenced Promissory Note issued to CoBank, ACB. Research; Conferences with City attorney and CoBank's attorney; Correspondence; Review and provide revisions to draft loan documents; Prepare and circulate drafts of authorizing ordinance, opinion and closing certificate; Closing and delivery of opinion.

FEES AND EXPENSES: $11,350.00

EXHIBIT B

An ordinance of the City of Carlinville, Macoupin County Illinois, authorizing and providing for a $2,500,000 Revolving Credit Promissory Note for the purpose of paying costs incurred by the City for engineering study and legal work including easements for the installation of a waterline interconnect to Jersey County Rural Water Company Inc. for the City, authorizing a related Credit Agreement prescribing the details of the Agreement and Note and providing for the security for and means of payment of the Note.

(see attached)

ORDINANCE NUMBER 1813

AN ORDINANCE of the City of Carlinville, Macoupin County, Illinois, authorizing and providing for a $2,500,000 Revolving Credit Promissory Note for the purpose of paying costs incurred by the City for engineering study and legal work including easements for the installation of a water line interconnect to Jersey County Rural Water Company, Inc. for the City, authorizing a related Credit Agreement, prescribing the details of the Agreement and Note, and providing for the security for and means of payment of the Note

Published in Pamphlet Form by Authority of the City Council on October 21st, 2019.

ORDINANCE NUMBER 1813

AN ORDINANCE of the City of Carlinville, Macoupin County, Illinois, authorizing and providing for a $2,500,000 Revolving Credit Promissory Note for the purpose of paying costs incurred by the City for engineering study and legal work including easements for the installation of a water line interconnect to Jersey County Rural Water Company, Inc. for the City, authorizing a related Credit Agreement, prescribing the details of the Agreement and Note, and providing for the security for and means of payment of the Note.

PREAMBLES

WHEREAS, the City of Carlinville, Macoupin County, Illinois (the "*City*"), is a municipality and unit of local government of the State of Illinois (the "*State*") operating, inter alia, under and pursuant to the Illinois Municipal Code (the "*Code*"), the Local Government Debt Reform Act of the State of Illinois (the "*Debt Reform Act*"), and all other Omnibus Bond Acts of the State, in each case, as supplemented and amended (collectively, "*Applicable Law*"); and

WHEREAS, the City acting through its Mayor and City Council (the "*Corporate Authorities*") has considered the needs of the City and, in so doing, the Corporate Authorities have deemed and do now deem it advisable, necessary and for the best interests of the City in order to promote and protect the public health, welfare, safety and convenience of the residents of the City to make provision for the payment of ordinary and necessary expenditures of the City in connection with the initial funding of costs incurred by the City for engineering study and legal work including easements for the installation of a water line interconnect to Jersey County Rural Water Company, Inc. for the City as the same are due in anticipation of receipts from taxes and other revenues (the "*Temporary Funding*"); and

WHEREAS, the Corporate Authorities have determined the total amount which may be required for the Temporary Funding to be $2,500,000; and

WHEREAS, it is necessary to borrow money for such Temporary Funding purpose to the amount not to exceed at any one time the sum of $2,500,000 pursuant to a line of credit arrangement which will permit, for a certain term to maturity, advances and repayments, from time to time, as funds are needed; and

WHEREAS, pursuant to Section 8-1-3.1 of the Code as supplemented by other provisions of Applicable Law, the City may borrow money from a bank or other financial institution, evidenced by a promissory note, for any of its lawful corporate purposes, provided such borrowing (the note) be repaid within ten years from the time the money is borrowed; and

WHEREAS, the Corporate Authorities find that it is desirable and in the best interests of the City to avail of the provisions of said Section 8-1-3.1 to provide for the Temporary Funding; and

WHEREAS, for convenience of reference only, this Ordinance is divided into numbered sections with headings, which shall not define or limit the provisions hereof, as follows:

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NOW THEREFORE Be It Ordained by the City Council of the City of Carlinville, Macoupin County, Illinois, as follows:

Section 1. Definitions.

Terms defined in the preambles to this Ordinance shall have the meanings thereunto assigned to them, unless otherwise defined below. In addition, the following words and terms used in this Ordinance shall have the following meanings unless the context or use clearly indicates that another or different meaning is intended:

"Agreement" means the "Credit Agreement" with the Bank in substantially the form attached hereto as *Exhibit A* evidencing certain terms relating to advances on the Note and on the Note itself.

"Bank" means COBANK, ACB, a federally chartered instrumentality of the United States.

"Note" means the $2,500,000 Revolving Credit Promissory Note, authorized to be issued by this Ordinance in substantially the form attached hereto as *Exhibit B*.

"Ordinance" means this Ordinance.

Section 2. Incorporation of Preambles.

The Corporate Authorities hereby find that the recitals contained in the preambles to this Ordinance are true, correct and complete and do incorporate them into this Ordinance by this reference.

Section 3. Determination to Authorize and Enter into Agreement and to Issue Note.

It is necessary and advisable for the public health, safety, welfare and convenience of residents of the City to provide for the Temporary Funding and to borrow money and, in evidence thereof and for the purpose of financing same, enter into the Agreement and, further, to provide for the issuance and delivery of the Note evidencing the indebtedness incurred under the Agreement.

Section 4. Note a General Obligation; Annual Appropriation.

The City hereby represents, warrants and agrees that the obligation to make the payments due under the Note and Agreement shall be a lawful direct general obligation of the City payable

from the corporate funds of the City and such other sources of payment as are otherwise lawfully available. The City represents and warrants that the total amount due upon the Note or otherwise under the Agreement to be outstanding at any time, together with all other indebtedness of the City, is and shall be within all statutory and constitutional debt limitations. The City agrees to appropriate funds of the City annually and in a timely manner so as to provide for the making of all payments when due pursuant to the Agreement and the Note.

Section 5. Execution and Filing of the Agreement.

From and after the effective date of this Ordinance, the Mayor and City Clerk be and they are hereby authorized and directed to execute and attest, respectively, the Agreement, in substantially the form thereof set forth in *Exhibit A* of this Ordinance which is incorporated herein as if set forth in full, and to do all things necessary and essential to effectuate the provisions of the Agreement, including the execution of any documents and the Note incidental thereto or necessary to carry out the provisions thereof. Upon full execution, an original of the Agreement shall be filed with the City Clerk and retained in the City records. Subject to such discretion of the officers signatory to the document as described in the foregoing text, the Agreement shall be in substantially the form thereof set forth in *Exhibit A*.

Section 6. Note Details; Form of Note.

A. For the purpose of providing for the Temporary Funding, there shall be issued and sold a single Note in the principal amount of $2,500,000. The Note shall be designated *"Revolving Credit Promissory Note"* and be dated the date of issuance thereof (the *"Dated Date"*).

B. The Note shall be in substantially the form set forth in *Exhibit B* to this Ordinance which is incorporated herein as if set forth in full and shall be in the maximum principal amount (the *"Face Amount"*) of $2,500,000. The Note shall become due on October 25, 2021 and shall bear interest at such rate as provided in the Note and the Agreement as shall not exceed the maximum rate authorized by law (the *"Maximum Rate"*).

C. The Note shall be drawn down in advance increments, is subject to repayment, and subject to further advances as set forth in the Note and the Agreement;

(1) The City shall request and Bank shall make available pursuant to the Agreement advances in cash (the *"Advances"*).

(2) The City may at any time repay principal of the Note (*"Interim Note Payments"*).

(3) The aggregate amount of the Advances less the Interim Note Payments shall be the *"Outstanding Principal Amount"* of the Note at any time.

(4) The Outstanding Principal Amount shall be increased by Advances and reduced by Interim Note Payments, but shall never exceed the Face Amount.

(5) The Outstanding Principal Amount shall bear interest as provided in the Note, at such rate or rates as shall not exceed the Maximum Rate.

Section 7. Execution.

The Note shall be executed on behalf of the City by the manual signature of its Mayor and attested by the manual signature of its City Clerk, and shall have impressed or imprinted thereon the corporate seal or facsimile thereof of the City. In case any such officer whose signature shall appear on the Note shall cease to be such officer before the delivery of such Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

Section 8. Optional Payment.

The Note is subject to the Interim Note Payments at the prepayment price of par and accrued interest to the date of prepayment plus any broken funding surcharge payable under the Agreement, if and to the extent applicable.

Section 9. Sale and Delivery of the Note.

The Note shall be executed as in this Ordinance provided as soon after the passage hereof as may be, shall be deposited with the Treasurer of the City, and shall thereupon be delivered to the Bank at the time of the initial Advance. Each Advance shall be for receipt of cash (or immediately available federal funds) to be exactly in the amount shown for such Advance. Each Advance shall be in such amount as the City shall determine from time to time as necessary or advisable to provide for the Temporary Funding. The contract for the sale of the Note to the Bank, as evidenced by the Agreement, is hereby in all respects approved and confirmed, and the officer(s) of the City designated in the Agreement are authorized and directed to execute the Agreement on behalf of the City, it being hereby declared that, to the best of the knowledge and belief of the members of the Corporate Authorities, after due inquiry, no person holding any office of the City, either by election or appointment, is in any manner financially interested, either directly in his or her own name or indirectly in the name of any other person, association, trust or corporation, in the sale of the Note to the Bank.

Section 10. Use of Funds, Payment of the Note; Appropriations.

All receipts on the Note shall be credited to the Corporate Fund of the City, thereupon to be expended from such fund or advanced to such other fund as may be needed. Interim Note Payments shall be made from time to time as moneys are available, and shall be made from the Corporate Fund and such other funds lawfully available to make such payment, at such times and in such amounts as, in the discretion of the City, moneys are available to reduce the Outstanding Principal Amount. The Corporate Authorities acknowledge that the Outstanding Principal Amount of the Note, as limited to the Face Amount, will fluctuate up and down during the term of the Note, including down to zero, but such reduction shall not serve to cancel the Note or the validity of such Outstanding Principal Amount as shall occur at any time.

The City shall provide for the payment of all interest on and principal of the Note and also all additional amounts when due under the Agreement. This Ordinance constitutes an appropriation of funds received from the Advances for the Temporary Funding and further constitutes an appropriation of Corporate Fund moneys when and as needed to pay all said amounts on the Note and under the Agreement when due.

Section 11. Provisions in a Contract.

The provisions of this Ordinance shall constitute a contract between the City and the registered owner of the Note; and no changes, additions, or alterations of any kind shall be made hereto, except as herein provided, so long as the Note has not been cancelled.

Section 12. Superseder.

All ordinances, resolutions, and orders, or parts thereof, in conflict herewith, are to the extent of such conflict hereby superseded.

Section 13. Publication and Effective Date.

This Ordinance shall be effective immediately.

Adopted by the Corporate Authorities on October 21st, 2019.

APPROVED: October 21st, 2019.

Mayor

AYES: Brockmeier, Howard, Koller, Link, McClain, Ober

NAYS: None

ABSENT: Downey, Oswald

PUBLISHED in pamphlet form by authority of the City Council on October 21st, 2019.

RECORDED in the City Records on October 21st, 2019.

ATTEST:

City Clerk

[SEAL]

EXHIBIT C

An ordinance authorizing and providing for the City of Carlinville, Illinois to execute and enter into a contract with MECO-Heneghan Engineers, LLC for engineering and surveying services for an interconnect to Jersey County Rural Water Company.

(see attached)

ORDINANCE NO. 1806

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE CITY OF CARLINVILLE, ILLINOIS TO EXECUTE AND ENTER INTO A CONTRACT WITH MECO-HENEGHAN ENGINEERS, LLC FOR ENGINEERING AND SURVEYING SERVICES FOR AN INTERCONNECT TO JERSEY COUNTY RURAL WATER COMPANY

WHEREAS, the City Council of the City of Carlinville, Illinois finds that it's source of potable water, Lake Carlinville and Lake II are compromised by siltation, aging water plant infrastructure and recurring high levels of manganese and other water issues; and

WHEREAS, the City Council of the City of Carlinville, Illinois finds that the current and future health of its citizens and economic stability of the City directly depends upon a reliable source of potable water; and

WHEREAS, the scope of the contract would be to provide engineering and surveying services for extending approximately 27 miles of 10-inch through 30-inch water main to provide an interconnect to Jersey County Rural Water Company; and

WHEREAS, Meco-Heneghan Engineers, LLC, have successfully completed water projects for the City of Carlinville; and

WHEREAS, the City Council of the City of Carlinville, Illinois finds that it is in the best interest of the City of Carlinville to enter into a contract with Meco-Heneghan Engineers, LLC, to construct an interconnect to Jersey County Rural Water Company.

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF CARLINVILLE, MACOUPIN COUNTY, ILLINOIS, AS FOLLOWS:

1. That the Mayor is hereby authorized and directed to execute and enter into a contract with Meco-Heneghan Engineers, LLC to provide engineering and surveying services for extending approximately 27 miles of 10-inch through 30-inch water main to provide an interconnect to Jersey County Rural Water Company.

2. That the findings here in above stated are hereby incorporated by reference and made a part of this Ordinance.

3. This Ordinance shall be governed exclusively by and construed in accordance with the applicable laws of the State of Illinois.

4. The facts and statements contained in the preamble to this Ordinance are found to be true and correct and are hereby incorporated as part of this Ordinance.

5. This Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

VOTING AYE:

Alderman McClain, Ober, Oswald, Koller, Campbell, Link and Brockmeier

VOTING NAY:

Alderman Downey

PASSED this 3 day of June, 2019.

Carla Brockmeier

CITY CLERK

APPROVED by the Mayor of the City of Carlinville, Illinois, this 3 day of June, 2019.

Mayor of the City of Carlinville, Illinois

ATTEST:

Carla Brockmeier

CITY CLERK

MECO-HENEGHAN ENGINEERS, LLC
CIVIL / STRUCTURAL / ELECTRICAL / MECHANICAL ENGINEERS
400 North Fifth Street | Suite 107 | St. Charles, MO 63301 | P: 636-395-7055

City of Carlinville
550 N. Broad Street
Carlinville, IL 62626

Attn: Ms. Deanna Demuzio, Mayor

Re: Cost Estimate for Engineering Services for the Interconnect to Jersey County Rural Water Company
for the City of Carlinville
MHE Project No. 101-002

Dear Ms. Demuzio:

As requested, MECO-Heneghan Engineers, LLC (MHE) is pleased to provide the City of Carlinville with an estimate of fees for professional civil engineering and surveying services for the above-referenced project. The project consists of extending approximately 27 miles of 10-inch through 30-inch water main to provide an interconnect to Jersey County Rural Water Company (JCRWC) as shown in the attached aerial sheet. The project is anticipated to be funded utilizing Local Funds. The proposed Scope of Work and breakdown of associated fees for the requested services for this project are listed below. Upon your review and approval of this proposal, we will execute the MHE Work Order (attached). Our work will be invoiced monthly based upon an actual time-and-material basis for any estimated service item(s).

Total Project

MHE Basic Services:

Topographical Survey (estimated time-and-material)	$ 150,000.00
Right-of Way Determination (estimated time-and-material)	$ 30,000.00
Design Engineering, Plans/Specifications, IEPA Permitting (*estimated time-and material*)	$920,000.00

MHE Additional Services:

Environmental Assistance (*estimated time-and-material*)	$ 20,000.00
Roadway/Railroad Permits (*estimated time-and-material*)	$ 60,000.00
Easement/Land Assist. (mapping, negotiations, meetings, etc.). (*estimated time-and-material*)	$ 140,000.00
Preliminary Design/Cost Estimates/Coordination (*estimated time-and-material*)	$ 100,000.00
Funding Assistance (*estimated time-and-material*)	$ 80,000.00

Estimated Total for all MHE Services	$ 1,500,000.00
Estimated Total for non-MHE Services (legal/permitting/land/Geotech/interest/ect.)	$ 1,000,000.00

P:636-395-7055

BATES #103

The following is a description of the various services included in the fees listed above. It also lists the qualifications, assumptions, and exclusions used in developing these fee amounts. The Scope of Work for this project has been finalized over the course of recent project/scope meetings and is currently understood as specified below.

1. The topographical survey includes research and surveying in the field as necessary to obtain information required for design, permitting, and construction of this project. Topographical surveying is required to establish existing grades, field conditions, and marked utilities to determine the best location to install the proposed water main. All survey work will be done in state plane coordinates. These services will be provided on a time-and-material basis, with an estimate of total fees for this task as shown in the "Topographical Survey" amount shown above.

2. The Right-of-Way (ROW) determination includes searching for ROW points in the field, records research at the Courthouse or other locations to obtain available ROW information. These services will be provided on a time-and-material basis, with an estimate of total fees for this task as shown in the "Right-of-Way Determination" amount shown above.

3. The design services include final design of the water main extension project, including hydraulic calculations, final plan sheet preparation (1" = 100' horizontal scale and 1" = 10' vertical scale in Autodesk Civil 3D 2018, format) including detail sheets for water main connection details and various appurtenances, and including technical specifications for IEPA submittal. The permitting service for the water main improvements include completing the IEPA construction permitting process. Final design-phase services also include coordination with the City of Carlinville as required to develop the final plans and specifications and obtain the IEPA permit. These services will be provided on a time-and-material basis, with an estimate of total fees for this task as shown in the "Design Engineering, Plans/Specifications, IEPA Permitting" amount shown above.

4. Additional engineering services include any services required to advance the project to the Bidding Phase that are not included in the Basic Services listed above. These services include, but are not limited to, Environmental Assistance, Roadway/Railroad Permitting, Easement Assistance, Preliminary Design, and Funding Assistance. These services will be provided on a time-and-material basis, with an estimate of total fees for this task as shown in the respective "Additional Services" items amount shown above.

5. The following services are not included in the fixed-fee or other estimated amounts listed above, but may eventually be required as part of the project, and can be provided as an additional service if we receive an executed Change in Scope of Services form (copy attached) by the City of Carlinville, to be paid for on an actual manhour/expense basis according to our Rates for Professional Services in effect at the time of the accrued manhour/expense (current rate sheet attached).
   A. Property/boundary surveying.
   B. Topographical surveying and/or aerial topography beyond that described above.
   C. Easement/ROW exhibits/document development and/or acquisition services and/or recording fees except for those services described above.
   D. Title work, researching the existence of any existing easements or staking any existing easements.
   E. Bidding Assistance
   F. Construction Administration Assistance
   G. Construction staking
   H. Resident Project Representative Services during construction.
   I. Coordination/review of contractor quantities/pay requests.

J. Record Drawing measurements taken in the field.
K. GPS field data collection and/or GIS office mapping work.
L. Storm sewer/drainage pipe relocation design/permitting.
M. Sanitary sewer main relocation design/IEPA permitting.
N. On-site sewage disposal system design/permitting and/or coordination with County Health Department and/or IDPH, sewage plat, soil suitability survey, etc.
O. Utility company coordination (gas, electric, telephone, cable/fiber, etc.).
P. Sidewalk/ramp design meeting ADA regulations (assumed any impacted sidewalks will be replaced "as-is", as a maintenance item secondary to the primary project purpose of a utility improvement project).
Q. Roadway/alley design (assume any impacted drive surfaces will be replaced "as-is", as a maintenance item secondary to the primary project purpose of a utility improvement project).
R. Attendance at Board meetings.
S. IEPA NPDES SWPPP permitting, monitoring, and/or reporting.
T. Any necessary sub-consultant fees for soil borings/geotechnical consultant to determine rock extent/depth or soils classification, Phase I archaeological consultant, etc. (assumed that these will be paid by the City of Carlinville).
U. Any necessary permit fees and/or newspaper advertisement fees (assumed that these will be paid by the City of Carlinville).
V. Fire flow testing and/or coordination with the local fire department regarding required flow rates.

We are very grateful for the opportunity to be of service to the City of Carlinville and we trust that this fee proposal will meet your needs and budgets. We look forward to working with the City of Carlinville on this project and we are prepared to begin preliminary engineering and surveying services immediately upon your acceptance of this proposal. An estimated project/task schedule can be provided upon request. If you need any further information or if you have any questions, please do not hesitate to call.

Sincerely,
MECO-HENEGHAN ENGINEERS, LLC

Ronnie M. Paul, P.E.
Co-Manager

c. MHE File 102-001

EXHIBIT D

Affidavit of Carla Brockmeier, City Clerk for the City of Carlinville.

(see attached)

IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MACOUPIN COUNTY, CARLINVILLE, ILLINOIS

CAMILLE MAYFIELD COOPER BROTZE, And WAYNE BROTZE, husband and wife,	)	
Plaintiffs,	)	
v.	)	No. 2019-MR-000092
CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation,	)	
Defendant.	)	

AFFIDAVIT IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON AFFIRMATIVE DEFENSES

STATE OF ILLINOIS)
) ss.
COUNTY OF MACOUPIN)

Carla Brockmeier on oath deposes and says:

1. That I am the duly qualified and acting City Clerk of the City of Carlinville.

2. That I am the keeper of records for the City of Carlinville.

3. That I do further certify that the attached:

a) Letter dated November 2, 2019 from Bond Counsel Mike Southworth.

b) An ordinance of the City of Carlinville, Macoupin County Illinois, authorizing and providing for a $2,500,000 Revolving Credit Promissory Note for the purpose of paying costs incurred by the City for engineering study and legal work including easements for the installation of a waterline interconnect to Jersey County Rural Water Company Inc. for the City, authorizing a related Credit Agreement prescribing the details of the Agreement and Note and providing for the security for and means of payment of the Note

(c) An ordinance authorizing and providing for the City of Carlinville, Illinois to execute and enter into a contract with MECO-Heneghan Engineers, LLC for engineering and surveying services for an interconnect to Jersey County Rural Water Company

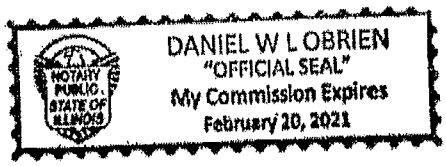
Are all governmental records created and maintained in the normal course of business except for (a) which is a letter received and maintained in the normal course of business.

Carla Brockmeier

Carla Brockmeier, City Clerk

SUBSCRIBED AND SWORN to before me this 3 day of April, 2020.

Notary Public



FILED
4/27/2020 3:53 PM
LEE ROSS
CLERK OF THE CIRCUIT COURT
MACOUPIN COUNTY, ILLINOIS

IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MACOUPIN COUNTY, CARLINVILLE, ILLINOIS

CAMILLE MAYFIELD COOPER BROTZE, and WAYNE BROTZE, husband and wife,	)	
Plaintiffs,	)	
v.	)	No. 2019-MR-92
CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation,	)	
Defendant.	)	

RESPONSE TO MOTION FOR SUMMARY JUDGMENT

NOW COME the Plaintiffs, CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE, husband and wife, by and through JACOB N. SMALLHORN of SMALLHORN LAW LLC, their attorneys, and in response to the Motion for Summary Judgment filed by Defendant, CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation, state as follows:

1. On August 7, 2019, Plaintiffs filed their Second Amended Complaint in this Cause.

2. On September 4, 2019, Defendant filed three separate motions to dismiss the Second Amended Complaint pursuant to 735 ILCS 5/2-615.

3. Defendant's first motion to dismiss is entitled "Motion to Dismiss Complaint for Mandamus with Prejudice for Failure to State a Cause of Action Pursuant to 735 ILCS 5/2-615," and essentially alleges that Plaintiffs did not plead sufficient facts to support a mandamus claim.

4. Defendant's second motion to dismiss is entitled "Motion to Dismiss Complaint for Mandamus and Violation of Freedom of Information Act with Prejudice Pursuant to 735

ILCS 5/2-615," and argues that Plaintiffs did not plead that Carlinville or Illinois Alluvial violated the Freedom of Information Act, 5 ILCS 140/1, *et seq.*

5. Defendant's third motion to dismiss is entitled "Motion to Dismiss Complaint for Mandamus and Violation of Open Meetings Act with Prejudice Pursuant to 735 ILCS 5/2-615," and argues that Plaintiffs failed to file their Complaint within the statute of limitation for an Open Meetings Act violation claim.

6. After the parties briefed the issues, the Court held a hearing on the motions to dismiss on October 17, 2019.

7. The Court entered a written Order on October 21, 2019, specifically finding that "Plaintiffs have raised a valid argument [for mandamus], and this Court will not deprive them of the opportunity to litigate their cause of action;" denying all three of Defendant's motions to dismiss; and granting Plaintiffs' request that the matter be submitted to the Appellate Court as a certified question.

8. On December 19, 2019, the Fourth District Appellate Court entered an Order denying Plaintiffs' Application for Leave to Appeal.

9. On January 24, 2020, Defendant filed an Answer and Affirmative Defenses to Plaintiffs' Second Amended Complaint, asserting the affirmative defenses of standing, laches, and another affirmative matter regarding the ability of Defendant to contract with Illinois Alluvial.

10. On April 3, 2020, Defendants filed a Motion for Summary Judgment on Affirmative Defenses ("MSJ") and Supporting Memorandum ("Memo").

Defendants Affirmative Defenses Allege No New Material Facts and Required No Answer from Plaintiffs

11. Plaintiffs' three affirmative defenses do not allege any new material facts, and constitute nothing more than mere conclusions of law which have already been argued and dismissed by this Court.

12. It is a well settled principle of Illinois law that mere legal conclusions in an answer are not admitted by a failure to reply specifically thereto, *Reinhardt v. Security Ins. Co. of New Haven, Conn.*, 312 Ill. App. 1, 38 N.E.2d 310 (4th Dist. 1941), and thus, it is not necessary for the plaintiff to file a reply to an affirmative defense raising only a question of law, *Broncata v. Timbercrest Estates, Inc.*, 100 Ill. App. 2d 49, 241 N.E.2d 569 (1st Dist. 1968).

13. Similarly, allegations in an answer which are merely argumentative do not require a reply. *In re Marriage of Sreenan*, 81 Ill. App. 3d 1025, 37 Ill. Dec. 458, 402 N.E.2d 348 (2d Dist. 1980); *Korleski v. Needham*, 77 Ill. App. 2d 328, 222 N.E.2d 334 (2d Dist. 1966).

14. Where an answer does not plead any new matter whatever or constitute an affirmative defense, no reply to the answer is necessary. *Beaver v. Owens*, 20 Ill. App. 3d 573, 315 N.E.2d 53 (1st Dist. 1974); *Greenberg v. A & D Motor Sales*, 341 Ill. App. 85, 93 N.E.2d 90 (1st Dist. 1950) (in action to recover on a check where plaintiff alleged that defendant had issued a check to a certain person purporting to be a named party, and that subsequent to its delivery, plaintiff had become holder in due course of said check, and defendant answered by admitting issuance of check, but denied that plaintiff had become a holder in due course, it stood admitted that person to whom defendant issued check, which was later cashed by plaintiff, was an imposter, and therefore it was not necessary for plaintiff to reply to answer).

15. Also, where an answer merely denies the allegations of the complaint, *Allwood v. Cahill*, 382 Ill. 511, 47 N.E.2d 698 (1943), or amounts merely to a plea of the general issue,

Scales v. Mitchell, 406 Ill. 130, 92 N.E.2d 665 (1950), a reply thereto is unnecessary and the failure of the plaintiff to reply to such an answer does not constitute an admission of its allegations.

16. Finally, where the complaint meets and negates the matters set up in the answer, no reply to the answer is necessary, *Filliung v. Adams*, 387 Ill. App. 3d 40, 326 Ill. Dec. 268, 899 N.E.2d 485 (1st Dist. 2008); *Adams v. Zayre Corp.*, 148 Ill. App. 3d 704, 102 Ill. Dec. 121, 499 N.E.2d 678 (2d Dist. 1986); *Shive v. Shive*, 57 Ill. App. 3d 754, 15 Ill. Dec. 211, 373 N.E.2d 557 (5th Dist. 1978); *Nitrin, Inc. v. American Motorists Ins. Co.*, 94 Ill. App. 2d 197, 236 N.E.2d 737 (3d Dist. 1968); *Pope v. Kaleta*, 90 Ill. App. 2d 61, 234 N.E.2d 109 (1st Dist. 1967); *Riddle v. La Salle Nat. Bank*, 34 Ill. App. 2d 116, 180 N.E.2d 719 (1st Dist. 1962); *Lester v. Monica Elevator Co.*, 1 Ill. App. 2d 225, 117 N.E.2d 409 (2d Dist. 1954), since in such a case a reply denying such allegations would be superfluous, *City of Flora, for Use of Liberty Mut. Ins. Co. v. Bryden*, 300 Ill. App. 1, 21 N.E.2d 323 (4th Dist. 1938).

17. The failure to reply to an answer admits only that the new matter alleged therein is true, *First Trust Joint Stock Land Bank of Chicago v. Cutler*, 293 Ill. App. 354, 12 N.E.2d 705 (3d Dist. 1938); it does not admit that such matter constitutes a valid defense, *Id.,* and in no way ratifies the legal conclusion drawn by the pleader, *Hall v. Humphrey-Lake Corp.*, 29 Ill. App. 3d 956, 331 N.E.2d 365 (1st Dist. 1975); *Farley v. Security Ins. Co. of New Haven, Conn.*, 331 Ill. App. 448, 73 N.E.2d 662 (1st Dist. 1947); *Shapiro v. Kartsonis*, 330 Ill. App. 299, 71 N.E.2d 356 (1st Dist. 1947).

18. Defendant's first affirmative defense of standing in its Answer sets forth no new material facts to either be admitted or denied, and merely recites general case law concerning

standing in Illinois and the legal conclusion that Plaintiffs lack standing to bring a mandamus suit.

19. Likewise, Defendant's second affirmative defense in its' Answer sets forth the legal requirements for laches, recites the timeline of this litigation already in the Court's record, and makes the legal conclusion that the Court should apply the doctrine of laches in this case.

20. Defendant's last affirmative defense in its Answer is not even an affirmative defense, but an attempt to negate the allegations of Plaintiff's Second Amended Complaint.

21. There are no new, material factual allegations in any of Defendant's three affirmative defenses which require an answer, and therefore no prejudice to Plaintiffs for their not answering affirmative defenses containing legal conclusions that have already been litigated in this matter.

The Court has Already Determined that Plaintiffs Have Standing to Proceed on Their Mandamus Claim.

22. The underlying factual claims, and lack of certain information relating to the formation of Illinois Alluvial, have not changed since the inception of this litigation.

23. Defendant argues in its Motion for Summary Judgment that Plaintiffs have not shown a "direct or substantial economic injury," MSJ, p.6, par. 37; Plaintiffs did not assert a claim of a FOIA or Open Meetings Act violation, p. 7, pars.42-44; and that Plaintiffs' Second Amended Complaint is "bereft of any legally cognizable interest requiring relief," p. 7, par. 45.

24. In the Court's January 2, 2019 Order on Standing, the Court found that "Plaintiffs have pled sufficient facts to support their allegation that these Defendants have deprived them, as Citizens of Carlinville, the right to vote on whether or not they want to participate in this form of potable water supply." January 2, 2019 Order, p. 3.

25. The Court's October 21, 2019 Order specifically finds that "Plaintiffs Second Amended Complaint pleads sufficient facts to state a cause of action and denies the Motion to Dismiss." October 21, 2019 Order, p. 3.

26. The Court has already considered the threshold issue of standing and has already concluded that Plaintiffs have pled sufficient facts to proceed on their claim.

Plaintiffs Have Standing to Sue in this Cause

27. Plaintiffs have demonstrated sufficient facts in this case over and over again to establish standing to sue on a writ of mandamus against Carlinville.

28. To establish standing in a suit seeking a writ of mandamus, the complaining party must establish that there is a "sufficiently protectable interest pursuant to statute or common law which is alleged to be injured." *Hill v. Butler*, 107 Ill. App. 3d 721, 725, 63 Ill.Dec. 385, 437 N.E.2d 1307, 1311 (1982)(upholding trial court's decision to issue writ of mandamus compelling Township to submit sale of township property to voters before selling it); see also *Cedarhurst of Bethalto Real Estate, LLC v. Village of Bethalto,* 2018 IL App (5th) 170309, 116 N.E.3d 377, 388, 426 Ill.Dec. 528, 539 (5th Dist. 2018)(finding nursing home lacked standing in mandamus action to challenge village's comprehensive plan because comprehensive plan was advisory and had not been adopted by Village Board).

29. Members of the public have standing to bring a mandamus action regarding a local government body's failure to follow Illinois law because members of the public "have a protectable interest in ensuring that public officials follow the requirements of public statutes." *Lombard Historical Comm'n v. Village of Lombard*, 366 Ill.App.3d 715, 718, 852 N.E.2d 916, 920, 304 Ill.Dec. 460, 464 (2nd Dist. 2006); citing *American Federation of State, County, &*

Municipal Employees, Council 31 v. Ryan, 332 Ill.App.3d 866, 876, 266 Ill.Dec. 4, 773 N.E.2d 739 (4th Dist. 2002).

30. Defendant's standing argument confuses the issue of standing with the issue of damages, a matter the parties previously litigated in this matter.

31. Defendant's assertion is that Plaintiffs assert no direct or substantial economic injury.

32. Illinois law does not require a plaintiff to demonstrate economic injury to pursue a claim for issuance of a writ of mandamus, but only that the plaintiff establish an injury in fact to a legally cognizable interest. *Greer v. Illinois Housing Development Authority,* 122 Ill. 2d 462, 494 (1988).

33. The Court has already identified that Plaintiffs have pled a sufficiently cognizable interest in this cause (the right to expect your government to follow state law), as well as an injury thereto (Carlinville's complete disregard of the statutes which empower them to work with other entities and municipalities to solve the regional water problem), and therefore has pled sufficient facts to overcome an argument of lack of standing.

Defendant's Reliance on *Bowes* and *Landmarks Preservation Council* is Misplaced.

34. Defendant asks the Court in its Memo to consider *Bowes v. City of Chicago,* 3 Ill. 2d 175 (1954) and *Landmarks Preservation Council v. City of Chicago*, 125 Ill. 2d 164 (1988) in support of their standing argument.

35. *Bowes* concerns a taxpayer lawsuit asking for an injunction against the City of Chicago regarding the construction of a water filtration plant. *Bowes,* 3 Ill. 2d at 178.

36. Likewise, *Landmarks Preservation Council* concerns a lawsuit seeking to enjoin the City of Chicago from rescinding a landmarks designation on a building slated for demolition. *Landmarks Preservation Council,* 125 Ill. 2d at 166.

37. The Illinois Supreme Court decided *Bowes* and *Landmarks Preservation Council* on the merits of the underlying statutory interpretation argument, and not simply on a standing argument. *Bowes,* 3 Ill. 2d at 205; *Landmarks Preservation Council,* 125 Ill. 2d at 179.

38. The case at bar is distinguishable from *Bowes* and *Landmarks Preservation Council* in that both *Bowes* and *Landmarks Preservation Council* concerned injunction claims where injury to an economic interest is an element of the claim, and the present case concerns a mandamus claim premised on injury to a legally cognizable interest.

Defendant's Laches Argument is Without Merit.

39. Defendant's second affirmative defense is laches.

40. The essence of Defendant's second affirmative defense is that a mandamus claim must be filed within six months of the accrual of the cause of action, unless the plaintiffs offer a reasonable excuse for the delay. *Ashley v. Pierson,* 399 Ill. App. 3d 733, 739 (4th Dist. 2003), and that Plaintiff's original Complaint and First Amended Complaint did not allege causes of actions for laches.

41. Plaintiff's original Complaint was filed on February 23, 2018.

42. The underlying factual allegations, which have not materially changed in any of the pleadings in this case, concern actions of the City of Carlinville in October and December of 2017, Complaint, pp. 4 and 5, pars. 14 and 22.

43. Plaintiffs filed their original Complaint within 6 months of when their cause of action could reasonably be construed as having accrued.

44. Plaintiffs' original Complaint, and their First Amended Complaint contain all the allegations necessary to ask for issuance of a writ of mandamus; they simply mislabel the causes of action and otherwise ask for relief that might not be just under the circumstances.

45. Defendants have been on notice the entire duration of this litigation of the underlying factual allegations which gave rise to this litigation, and the relief requested by Plaintiffs is not materially different from in the original Complaint (except that Plaintiffs are not asking for monetary damages in their Second Amended Complaint).

46. Defendants assert that there were several actions they took in 2018 that they would not have if Plaintiffs had filed a mandamus action in February 2018. See Defendant's MSJ, p. 10, par. 73.

47. Plaintiff's Complaint was already on file when the above actions were taken by Carlinville, meaning that they were already aware of the underlying facts which gave rise to this cause of action when they decided to plow forward with their illegal project.

48. Defendants have not demonstrated any prejudice which has resulted from Plaintiffs being granted additional time to replead and pursue their claims in this cause.

Defendant's Third Affirmative Defense is Not an Affirmative Defense, But Merely Attempts to Negate Plaintiff's Underlying Claim.

49. Defendants third affirmative defense is that the Illinois Constitution "explicitly permits" Carlinville to "associate with Illinois Alluvial," and that Plaintiffs are unable to "point to a statute or ordinance prohibiting Defendant from such association." Memo, p. 12.

50. Defendant's affirmative defense does not raise any new, affirmative matter that defeats Plaintiff's claim, but simply implies that Plaintiff's claim is not supported by the law. It is not an affirmative defense.

51. Defendant's third affirmative defense fails to address the central issue in this cause; i.e. what to make of all the statutes that provide non-home rule municipalities with different ways to associate with private businesses, other municipalities, and other governmental entities to solve their water needs. Complaint, p. 2, par. 6; First Amended Complaint, p. 3, par. 15; Second Amended Complaint, p. 3, par. 10.

52. Contrary to Defendant's assertions, Plaintiffs have repeatedly pointed to the statutorily authorized methods by which Carlinville may associate with Illinois Alluvial and other entities to solve its water needs.

Defendant's Reliance on Village of Sherman v. Village of Williamsville is Misplaced.

53. Defendant's interpretation of the Illinois Constitution would lead to an absurd result where every act of the municipality would be valid so long as there is no specific prohibition, even where the Illinois Legislature has taken care to specifically prescribe several different methods for accomplishing the goal of the municipality.

54. Defendant argues that *Village of Sherman v. Village of Williamsville*, 106 Ill. App. 3d 174 (4th Dist. 1982) allows a non-home rule municipality to do whatever it wants so long as it is not expressly prohibited by statute.

55. What is important in the *Village of Sherman* case, and what is notably lacking in the present case, is that the *Village of Sherman* court recognized that the parties were not in dispute regarding the ability of them to contract with each other, and that their intent was to act within the confines of the Illinois Municipal Code and Illinois Intergovernmental Agreement Act. 106 Ill. App. 3d at 179.

56. *Village of Sherman* says that Dillon's Rule might not apply to Intergovernmental Agreements so long as those IGA's do not expressly violate another statute or provision of the Illinois Constitution; not that Article VII(10)(a) somehow abrogates Dillon's Rule in its entirety.

57. This case does not concern an intergovernmental agreement or even a contract of any kind.

58. Defendant's characterization of its relationship with Illinois Alluvial as contractual and an association distorts the facts of what actually happened in this case.

59. The Court has noted several times in its various rulings in this case that Carlinville's October 2017 vote occurred before the Articles of Incorporation or Bylaws of Illinois Alluvial were ever formalized.

60. There was no entity for Carlinville to associate with or contract with when the Board took its vote to participate in and fund Illinois Alluvial in October 2017.

61. The Court should deny Defendant's Motion for Summary Judgment premised on its Third Affirmative Defense, as the claim is not an actual affirmative defense, it distorts the underlying facts of this litigation, and if the Court were to adopt Defendant's interpretation of the interplay between the different provisions of Article VII of the Constitution it would lead to an absurd result where the City could take virtually any action it wanted.

WHEREFORE, Plaintiffs, CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE, pray that the Court enter an Order denying the Motion for Summary Judgment on Affirmative Defenses filed by Defendant, CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation, and for any such further relief the Court deems equitable and just under the circumstances.

Dated this 27th day of April, 2020.

CAMILLE MAYFIELD COOPER BROTZE and
WAYNE BROZE, Plaintiffs,

By: /s/ Jacob N. Smallhorn
Jacob N. Smallhorn
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CERTIFICATE OF SERVICE

The undersigned, being first duly sworn on oath, deposes and says that he electronically filed the above document with the Clerk at the https://illinois.tylerhost.net/ofsweb e-filing system and sent true copies thereof via email, on the 27th day of April, 2020.

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LEE ROSS
CLERK OF THE CIRCUIT COURT
MACOUPIN COUNTY, ILLINOIS

IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT
MACOUPIN COUNTY, ILLINOIS

CAMILLE MAYFIELD COOPER BROTZE, and WAYNE BROTZE, husband and wife,	)	
Plaintiffs,	)	
v.	)	No. 2019-MR-000092
CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation,	)	
Defendant.	)	

REPLY TO PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON AFFIRMATIVE DEFENSES

NOW COMES Defendant, the CITY OF CARLINVILLE, a Municipal Corporation, by and through its attorneys, Dan O'Brien and John Gabala appearing of record, and for its Reply to Plaintiffs' Response to Defendant's Motion for Summary Judgment on Affirmative Defenses, hereby states as follows [1]:

Defendant, the Village of Dorchester (another non-home rule municipality), and Jersey Rural Water Company, Inc., ("Jersey Rural Water Co.") associated with one another to form Illinois Alluvial Regional Water Company ("Alluvial") to construct, own, and operate a regional water treatment facility and distribution system to supply potable water to them on a cooperative basis. These facts are not in dispute. Plaintiffs claim that Defendant is without legal authority to join such a not-for-profit corporation or to participate in the incorporation, funding or operation of it. Plaintiffs' contentions are incorrect. Defendant and the Village of Dorchester have statutory

[1] Defendant's failure to address any particular point made by Plaintiffs in its responsive pleading does not constitute an acquiescence to Plaintiffs' point but simply means Defendant relies on its argument in its initial pleading on that point.

authority under the Municipal Code to enter into contracts to purchase potable water from private companies. They further have the authority to construct, own, and operate their own public potable water treatment facilities and distribution systems. Section 10(a) of the 1970 Constitution expressly allows municipalities to exercise that authority of public water supply through an association with other local governmental units and private corporations without the need for separate statutory authority. Alluvial is the chosen means of association of Defendant, the Village of Dorchester, and Jersey Rural Water Co. to pursue the common goal of providing a safe and reliable potable drinking water supply to the public. This Court should grant summary judgment in favor of Defendant as a result.

I. Defendant's Laches Affirmative Defense

Generally, a party asserting the defense of laches must prove (1) the lack of due diligence by the party asserting the claim, and (2) prejudice to the party asserting the defense. *Ashley v. Pierson*, 339 Ill. App. 3d 733, 739 (4th Dist. 2003). A plaintiff's lack of due diligence is established by a showing of a lapse of more than six months from the accrual of the cause of action and the filing of the mandamus petition, unless the plaintiff offers a reasonable excuse for the delay. *Ashley*, 339 Ill. App. 3d at 739. As to the prejudice prong, "in cases 'where a detriment or inconvenience to the public will result,' prejudice is inherent." *Ashley*, 339 Ill. App. 3d at 739 (quoting *City of Chicago v. Condell*, 224 Ill. 595, 598-99 (1906)).

"A complaint for mandamus must be brought within six months unless there is a reasonable explanation for delay." *Caruth v. Quinley*, 333 Ill. App. 3d 94, 99 (4th Dist. 2002). Here, Plaintiffs waited more than six months before bringing their mandamus action. A party asserting the defense of laches must prove a lack of due diligence by the party asserting the claim. Plaintiffs have not offered a reasonable excuse for their lack of diligence, responding only that they "simply

mislabeled the causes of action". Plaintiffs' Response, par. 9. The party asserting the defense of laches must also prove it was prejudiced by the delay. Defendant argued it was prejudiced by the delay in that it entered into contracts, procured loans, and expended staff and public resources to a greater extent over a longer period of time than it otherwise would have had Plaintiffs brought their mandamus cause of action two years ago. Plaintiffs respond that there is no prejudice because Defendant has been on notice the entire time the case has been pending and that mandamus is not materially different than the injunctive relief or declaratory judgment brought in their original complaint. Plaintiffs' Response, par. 45.

Contrary to Plaintiffs' view, mandamus is a much more powerful remedy, indeed an extraordinary one, carrying with it serious ramifications and unfavorable consequences not otherwise found in a simple declaratory judgment or injunctive relief action. See *Thomas v. Village of Westchester*, 132 Ill. App.3 d 190, 196 (1st Dist. 1985) (a court may refuse to issue a writ of mandamus because of the serious or unfavorable consequences which result from its issuance); *Lee v. Findley*, 359 Ill. App. 3d 1130, 1133 (2005) ("Mandamus is an extraordinary civil remedy that will be granted to enforce, as a matter of right, the performance of official nondiscretionary duties by a public officer."). Indeed, Plaintiffs' delay in filing their mandamus action will result in significant inconvenience and detriment to the public in that the abandonment of the ongoing association with Alluvial will be more disruptive to the financial position of the city, interfere with contractual obligations, and jeopardize the safety of the city water supply.

Plaintiffs' original action was filed in February 2018, more than two years ago. Had Plaintiffs brought their mandamus cause of action then, this matter would presumably been resolved much sooner than it currently will be. It has been more than two years since Plaintiffs filed their original complaint. Plaintiffs waited until August 2019 to raise for the first time their

mandamus claim. The parties are now at the summary judgment stage, *i.e.*, within a year of the mandamus claim being filed. Put simply, Plaintiffs' lack of diligence in filing its mandamus complaint has directly caused Defendant to continue its actions for much longer than it would otherwise would have had Plaintiffs filed the mandamus cause in February 2018.

The idea that Defendant could or should have simply stopped all action in the face of Plaintiffs' original filing fundamentally misunderstands the gravity and sheer scope of Defendant's undertaking to provide clean water to the public. The fact that Plaintiffs now essentially concede the original causes of action were not the correct ones itself justifies Defendant's reasoning not to stop everything at the time of Plaintiff' original filing. If Plaintiffs did not take their original claims seriously enough to continue pursuing them, why should Defendant be expected to cease all its actions when faced with the erroneous claims.

In sum, Plaintiffs should have brought their mandamus claim in February 2018 when they filed their original complaint. Plaintiffs' failure to do so has unnecessarily prolonged this case and caused Defendant, out of necessity, to further continue its efforts to provide clean and safe potable water to the public. As a result, a clear detriment and inconvenience to the public has resulted. "[I]n cases 'where a detriment or inconvenience to the public will result,' prejudice is inherent." *Ashley*, 339 Ill. App. 3d at 739 (quoting *City of Chicago v. Condell*, 224 Ill. 595, 598-99 (1906)). Because prejudice to Defendant is inherent under the circumstances presented by this case, Plaintiffs' mandamus complaint should be barred by the affirmative defense of laches.

II. Defendant's Third Affirmative Defense

Contrary to Plaintiffs' argument, Defendant's Third Affirmative Defense, *i.e.*, that Plaintiffs' claim for writ of mandamus is barred by another affirmative matter, is valid because it would defeat Plaintiffs' claim. See 735 ILCS 5/2-613(d) (an affirmative defense "seeks to avoid

the legal effect of or defeat the cause of action set forth in the complaint"). For the reasons that follow, this Court should grant Defendant summary judgment.

A. The Statutes Cited by Plaintiff Do Not Support Granting a Writ of Mandamus

Plaintiffs argue that mandamus is appropriate because (i) Alluvial was not created as a Public Water District under the Public Water District Act (70 ILCS 3705/0.01); (ii) Alluvial does not comply with the Water Authorities Act (70 ILCS 3715/0.01); (iii) Alluvial is not a "water commission" per the Water Commission Act of 1985 (70 ILCS 3720/0.001); (iv) Alluvial is not a Municipal Joint Action Water Agency as defined by the Intergovernmental Cooperation Act (5 ILCS 220/3.1); and (v) the association of Defendant with Village of Dorchester and Jersey Rural Water Co. to provide a public water supply is not authorized by any provisions of the Municipal Code relating to Water Supply and Sewage Systems (65 ILCs 5/11-124-1 *et seq.*).

However, "[m]andamus will issue only where the plaintiff has fulfilled his burden (see *Mason v. Snyder*, 332 Ill. App. 3d 834, 840 *** ([4th Dist.] 2002)) to set forth every material fact needed to demonstrate that (1) he has a clear right to the relief requested, (2) there is a clear duty on the part of the defendant to act, and (3) clear authority exists in the defendant to comply with an order granting mandamus relief." *Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶ 22.

The issue with the statutes cited by Plaintiffs is that none of them require Defendant to utilize them, *i.e.*, their use is not mandatory. As such, Defendant is not required to avail itself of any one of them. The purpose of mandamus is to compel public officials to comply with a mandatory statute. *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 193 (2009). While mandamus is an appropriate remedy to compel compliance with mandatory legal standards, relief will not be granted when the act in question involves the exercise of discretion. *Konetski*, 233 Ill. at 193. "Discretion in the manner of the performance of an act arises when the act may be

performed in one of two or more ways, either of which would be lawful, and where it is left to the will or judgment of the performer to determine in which way it shall be performed." *Y-Not Project, Ltd. v. Fox Waterway Agency*, 2016 IL App (2d) 150502, ¶ 35 (internal quotation marks omitted).

The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature. *People v. Cordell*, 223 Ill. 2d 380, 389 (2006). The best evidence of legislative intent is the statutory language, given its plain and ordinary meaning. *People v. Wooddell*, 219 Ill. 2d 166, 170-71 (2006). The legislature's use of the word "shall" in a statute indicates an intent to impose a mandatory obligation. *People v. Ramirez,* 214 Ill. 2d 176, 182 (2005) ("It is well established that, by employing the word "shall," the legislature evinces a clear intent to impose a mandatory obligation."). Where a statute does not detail a consequence for the failure to comply, however, even use of the term "shall" does not indicate mandatory intent. *People v. Porter*, 122 Ill. 2d 64, 84 (1988) ("mandatory intent is indicated where a statute prescribes the result that will occur if the specified procedure is not followed"). " '[S]tatutes are mandatory if the intent of the legislature dictates a particular consequence for failure to comply with the provision.' " *Cebertowicz v. Madigan*, 2016 IL App (4th) 140917, ¶ 17 (quoting *People v. Delvillar*, 235 Ill. 2d 507, 514 (2009)). However, in the absence of such intent, no particular consequence flows from noncompliance. See *Id*; *Porter*, 122 Ill. 2d at 84 ("mandatory intent is indicated where a statute prescribes the result that will occur if the specified procedure is not followed"). The use of the word "may" in a statute, however, connotes discretion. *Krautsack v. Anderson*, 223 Ill. 2d 541, 554 (2006). With the foregoing in mind, Defendant will address each of the statutes cited by Plaintiffs.

The Public Water District Act, cited by Plaintiffs, states the following: "Any contiguous area in this State having a population of not more than 500,000 inhabitants, which is so situated

that the construction or acquisition by purchase or otherwise and the maintenance, operation, management and extension of waterworks properties within such area will be conducive to the preservation of public health, comfort and convenience of such area may be created into a public water district under and in the manner provided by this Act." 70 ILCS 3705/1 (emphasis added). Note the use of the word "may".

Similarly, section 3715/1 of the Water Authorities Act states that "Any area of contiguous territory may be incorporated as a water authority in the following manner ***". 70 ILCS 3715/1 (emphasis added). Once again, that section employs the term "may".

Further, the provisions of The Water Commission Act of 1985 only apply to a water commission constituted pursuant to Division 135 of the Illinois Municipal Code. 70 ILCS 3720/2(b). In turn, section 135-1 of the Municipal Code provides that "Any 2 or more municipalities, except cities of 500,000 or more inhabitants, may acquire either by purchase or construction a waterworks system or a common source of supply of water, or both, and may operate jointly a waterworks system or a common source of supply of water, or both, and improve and extend the same, as provided in this Division 135. 65 ILCS 5/11-135-1 (emphases added). Again, that section employs the term "may" not "shall". Moreover, that section also states that "The corporate authorities of the specified municipalities desiring to avail themselves of the provisions of this Division 135 shall adopt a resolution or ordinance determining and electing to acquire and operate jointly a waterworks system or a common source of supply of water or both, as the case may be." 65 ILCS 5/11-135-1 (emphasis added). Clearly the phrase "desiring to avail themselves of the provisions of this Division 135" indicates discretion as to whether or not to avail itself of the statute by organizing its water supply thereunder. Because Defendant exercised its discretion in choosing not to organize its water supply in that manner, the provisions of the Water

Commission Act of 1985 do not apply here.

Section 220/3.1 of the Intergovernmental Cooperation Act, provides that "Any municipality or municipalities of this State, any county or counties of this State, any township in a county with a population under 700,000 of this State, any public water district or districts of this State, State university, or any combination thereof may, by intergovernmental agreement, establish a Municipal Joint Action Water Agency to provide adequate supplies of water on an economical and efficient basis for member municipalities, public water districts and other incorporated and unincorporated areas within such counties". 5 ILCS 220.3.1 (emphasis added). Again, this section states that a municipality "may", not "must" or "shall", establish a Municipal Joint Action Water Agency by intergovernmental agreement. Once again, Defendant was under no such statutory obligation. Finally, section 11-124-1(a) of the Municipal Code explicitly provides that "The corporate authorities of each municipality may contract with any person, corporation, municipal corporation, political subdivision, public water district or any other agency for a supply of water." 65 ILCS 5/11-124-1(a).

Each statute that Plaintiffs cite only applies if the municipality decides to avail itself of that statute and organizes its water supply thereunder. None of the statutes require the municipality to organize its water supply in any given way. This is evidenced by use of the word "may" in reference to their utilization. None of the statutes cited by Plaintiffs use the phrase "shall" to impose an obligation of utilization on a municipality. Mandamus relief requires that the actor exercise no discretion. *Whirl v. Clague*, 2015 IL App (3d) 140853, ¶ 14. As evidenced by the many statutes Plaintiffs cite, there are apparently multiple ways for a municipality to provide a public water supply. Inherent in the existence of multiple options is the implication that discretion on the part of the municipality exists to make a choice. See *Fox Waterway*, 2016 IL App (2d)

150502, ¶ 35 ("Because there are countless ways to implement and enforce "necessary and reasonable" ordinances and rules to improve and maintain the waterway, the [Act's] duties are discretionary, not mandatory."). Such discretion is not the proper subject of a mandamus claim. See *Moore v. Grafton Board of Trustees*, 2011 IL App (2d) 110499, ¶ 7 (the court should not interfere with the discretion given by the legislature to a unit of local government).

Accordingly, Plaintiffs have failed to cite to the mandatory statute that Defendant must avail itself of. The question of whether a municipality can act as a member of a corporation for the public water supply rather than just contracting with a private water supply is not one that is fit for mandamus because there is no duty or requirement that a municipality "shall" or "must" organize its water supply in any one given way. As a result, Plaintiffs have failed to meet their burden of proof to show clear entitlement to the extraordinary remedy of mandamus. See *Hardy*, 2011 IL App (4th) 100351, ¶ 22 ("Mandamus will issue only where the plaintiff has fulfilled his burden"). This Court would be justified in granting Defendant's motion for summary judgement on this basis alone.

B. Defendant Has Fulfilled Its Duty to Follow the Law

Plaintiffs cite Article VII, section 7 of the 1970 Constitution and argue that non-home rule municipalities are constrained to only those powers granted to them by law or the constitution and that Defendant has violated the law by associating with Village of Dorchester and Jersey Rural Water Co. to form Alluvial. Plaintiffs, however, cannot point what specific law Defendant is violating, despite Plaintiffs' clear burden to do so. As discussed in Section A, *supra*, none of the statutes cited by Plaintiffs are mandatory in nature or require their utilization. Plaintiffs' arguments pertaining to section 7 ignore Defendant's broad grant of authority over the public water supply contained in the Municipal Code. Specifically, section 11-124-1 of the Municipal Code expressly

provides that "[t]he corporate authorities of each municipality may contract with any person, corporation, municipal corporation, political subdivision, public water district or any other agency for a supply of water." 65 ILCS 5/11-124-1(a).

Thus, the Municipal Code grants municipalities express authority over the means and methods by which they may procure a public water supply, construct water procurement, treatment, and distribution facilities, and do so in association with other local governmental units (*e.g.*, the Village of Dorchester) and private corporations (*e.g.*, Jersey Rural Water Co.). See 65 ILCS 5/11-124-1 *et seq.*

C. Defendant's Exercise of its Statutory Power Via Section 10(a) is Proper

Article VII, section 10(a) of the Illinois Constitution of 1970, in turn, serves to extend Defendant's statutory authority by allowing municipalities to exercise their power over the public water supply in association with local government and private corporations. Specifically, section 10(a) provides the following:

> "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." (Emphasis added.) Ill. Const. 1970, art. VII, § 10(a).

To clarify Defendant's position, section 10(a) did not reverse Dillon's Rule with respect to the types of activities that a municipality may lawfully undertake but did so instead with regards to the way that power may be exercised. Section 10(a) does not grant municipalities power over new subject matters. What section 10(a) does is to expand the means by which municipalities may

exercise their existing powers by allowing them to do so in combination with other municipalities or private corporations. Such contracts and associations, however, are limited to subject matters over which the municipality has been granted authority. See *Village of Lisle v. Lisle of Woodridge*, 192 Ill. App. 3d 568, 577 (2nd Dist. 1989); *People ex rel. Devine v. Suburban Cook County Tuberculosis Sanitarium District*, 349 Ill. App. 3d 790, 800 (1st Dist. 2004).

The second sentence of section 10(a) changed the law to expand a municipality's right of association to include private corporations. Following that change, municipalities are no longer required to seek legislative approval to "contract or otherwise associate" with private entities. Instead, municipalities may contract or associate with a private entity as they wish so long as that contract or association is not prohibited by statute or ordinance. See *Village of Sherman v. Village of Williamsville*, 106 Ill. App. 3d 174, 179 (4th Dist. 1982) ("Article VII, section 10, eliminated the effect of 'Dillon's Rule' in construing intergovernmental agreements. This rule limited the powers of a municipal corporation to those expressly granted or incident to powers expressly granted by the General Assembly. The rule resolved any doubt of the existence of a power against the municipality. The various divisions of our court have determined that article VII was intended to encourage cooperation among units of government and to remove the necessity of obtaining statutory authorization for cooperative ventures. Furthermore, this court has stated that article VII, section 10, has abrogated Dillon's Rule of strictly construing legislative grants of authority to local governmental units [(internal citations omitted)]".

The term "associate" is undefined in the 1970 Constitution. Where a term is not defined, this Court affords that term its plain, ordinary, and popular meaning, *i.e.*, its dictionary definition. *Gaudina v. State Farm Mutual Automobile Insurance Co.*, 2014 IL App (1st) 131264, ¶ 18. "Associate" is defined as "to join (things) together or connect (one thing) with another:

COMBINE," "to join or connect in any of various intangible or unspecified ways" and "to combine or join with another or others as component parts: UNITE." *Doctors Direct Insurance, Inc. v. Bochenek*, 2015 IL App (1st) 142919, ¶ 27 (quoting Webster's Third New International Dictionary 132 (1993)). Defendant joining together with the Village of Dorchester and Jersey Rural Water Co. to form Alluvial is an association for purposes of section 10(a). Such association is not prohibited by any statute or ordinance.

In this case, when one combines the grants of authority in the Municipal Code and section 10(a) of the 1970 Constitution, you arrive at the necessary conclusion that non home-rule units have the authority to exercise their power over public water supply in association with other local governmental units and private corporations in any way not prohibited by law.

To the extent Plaintiffs argue that the "grant of association" with another local government or private corporation must be expressly found in the Municipal Code, Plaintiffs ignore the import of section 10(a) and misread the phrase "in any manner **not** prohibited by law" (emphasis added). The term "any" in this context obviously instructs that Defendant was free to associate with the Village of Dorchester and Jersey Rural Water Co. in any manner it chose fit unless that manner of association was expressly prohibited by statute or ordinance. See *Village of Sherman*, 106 Ill. App. 3d at 178-79 (quoting 4 Record of Proceedings, Sixth Illinois Constitutional Convention 3426) ("You will notice that the language of the intergovernmental cooperation article is based upon an affirmative grant of self-executing power *** which, in essence, means that it's there unless it's prohibited by the General Assembly-by general law. So it's a provision that says, 'You can do it unless the General Assembly says you can't.' ").

Here, Plaintiffs have not, and indeed cannot, meet their burden to cite a statute or ordinance that prohibits Defendants from engaging in the manner of association undertaken in this case (*i.e.*,

nothing exists prohibiting non-home rule municipalities from associating with a private not-for-profit corporation). To the contrary, section 103.05(a)(23) of The General Not for Profit Business Corporations Act specifically provides that not-for-profit corporations may be organized for the purpose of owning and operating water supply facilities for drinking and general domestic use on a mutual cooperative basis. See 805 ILCS 105/103.05(a)(23). This is precisely what Defendant did when it associated with the Village of Dorchester and Jersey Rural Water Co. in forming Alluvial. While Plaintiffs maintain that "there was no entity for [Defendant] to associate with or contract with when the Board took its vote to participate in and fund Illinois Alluvial in October 2017" (Plaintiffs' Response, par. 60), there were in fact both Village of Dorchester and Jersey Rural Water Co. for Defendant to associate with and with whom Defendant did associate with in its formation of Alluvial.

In sum, Defendant was granted broad power over the public water supply by the Municipal Code. Defendant was also granted explicit authority by section 10(a) of the 1970 Constitution to choose how it wished to associate with the Village of Dorchester and Jersey Rural Water Co. Defendant chose the formation of Alluvial as its preferred means of association. It is undisputed that no statute or ordinance exists to prohibit such association. Accordingly, Defendant is entitled to judgment as a matter of law.

III. Conclusion

Defendant and the Village of Dorchester have statutory authority under the Municipal Code to enter into contracts to purchase potable water from private companies. They further have the authority to construct, own, and operate their own public potable water treatment facilities and distribution systems. Section 10(a) of the 1970 Constitution expressly allows municipalities to exercise that authority of public water supply through an association with other local governmental

units and private corporations without the need for separate statutory authority. Alluvial is the chosen means of association of Defendant, the Village of Dorchester, and Jersey Rural Water Co. to pursue the common goal of providing a safe and reliable potable drinking water supply to the public. This Court's application of the law to the undisputed facts of this case should yield the undeniable conclusion that Alluvial is a constitutionally permitted association among and between two local units of local governments and a private not-for-profit corporation to construct, own, and operate a water distribution system to provide potable water to the public, all of which are powers granted Defendant by the Municipal Code. As such, Defendant is entitled to summary judgment as a matter of law.

WHEREFORE, Defendant, the CITY OF CARLINVILLE, requests that Plaintiffs' Motion for Summary Judgment be denied, and Defendant's Motion for Summary Judgment be granted, and for such other relief this Court deems equitable and just.

Respectfully submitted,

CITY OF CARLINVILLE, ILLINOIS,
A Municipal Corporation, Defendant

BY: /s/ John Gabala
One of Its Attorneys

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(217) 525-1571

CERTIFICATE OF FILING AND PROOF OF SERVICE

I certify that on May 11, 2020, I submitted the foregoing document for electronic filing with the Clerk of the Court of the Seventh Judicial Circuit, Macoupin County, Illinois by using the Odyssey eFileIL system.

I further certify that I served the following by transmitting a copy via email on the above date to:

Jacob N. Smallhorn
Smallhorn Law LLC
609 Monroe
Charleston, IL 61920
jsmallhorn@smallhornlaw.com

Dan O'Brien
O'Brien Law Office
331 E. 1st Street
Carlinville, IL 62626
dan_obrien@mac.com

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge.

/s/ John M. Gabala
John M. Gabala, ARDC #6288162
Giffin, Winning, Cohen & Bodewes, P.C.
One West Old State Capitol Plaza
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FILED
4/27/2020 3:53 PM
LEE ROSS
CLERK OF THE CIRCUIT COURT
MACOUPIN COUNTY, ILLINOIS

IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MACOUPIN COUNTY, CARLINVILLE, ILLINOIS

CAMILLE MAYFIELD COOPER BROTZE, and WAYNE BROTZE, husband and wife,	)	
Plaintiffs,	)	
v.	)	No. 2019-MR-92
CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation,	)	
Defendant.	)	

MOTION FOR SUMMARY JUDGMENT
(735 ILCS 5/2-1005)

NOW COME the Plaintiffs, CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE, husband and wife, by and through JACOB N. SMALLHORN of SMALLHORN LAW LLC, their attorneys, and in support of their Motion for Summary Judgment against Defendant, CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation, state as follows:

1. On August 7, 2019, Plaintiffs filed their Second Amended Complaint for issuance of a writ of mandamus in this Cause.

2. On January 24, 2020, Defendant filed its Verified Answer and Affirmative Defenses in response to Plaintiffs' Second Amended Complaint.

3. By comparing Plaintiff's Second Amended Complaint with Defendant's Answer, it is clear the parties are in agreement regarding the majority of the central facts of this case, which are as follows:

   a. Plaintiffs, CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE (collectively the "Brotzes"), husband and wife, are individuals who own a residence in the City of Carlinville, Macoupin County, Illinois.

b. Defendant, CITY OF CARLINVILLE, ILLINOIS ("Carlinville"), is a non-home rule, Municipal Corporation organized and existing under the Laws of the State of Illinois, situated in Macoupin County, Illinois.

c. The Brotzes' residence is connected to, and the Brotzes regularly use, Carlinville's municipal water supply.

d. On or about January 26, 2016, Carlinville applied for a grant from the United States Department of Agriculture's ("USDA") Water and Waste System Grant Program for preliminary engineering on options for developing a viable water supply, treatment, and transmission system to serve a "Regional Water Commission" in the Greene, Jersey, and Macoupin Counties in Central Illinois. See p. 2 of the Grant Application which is attached as **Exhibit A**.

e. On March 8, 2016, the USDA entered into a Grant Agreement with Carlinville ("Grant Agreement"), awarding Carlinville $30,000 for project development costs associated with the project detailed in the grant application (**Exhibit A**). A copy of the fully executed Grant Agreement is attached as **Exhibit B**.

f. Representatives of Carlinville City Government had discussions with representatives of the Village of Dorchester, Illinois, Jersey County Rural Water Company, Inc., and other local municipalities and entities regarding how to solve the region's potable water supply problems.

g. On November 30, 2017, representatives of the Carlinville City Government, Jersey County Rural Water Company, Inc., and the Village of Dorchester created Bylaws for a private, not-for-profit corporation known as Illinois Alluvial Regional Water Company, Inc. ("Illinois Alluvial"), which provides that Illinois

Alluvial's governing board will consist of one person from each municipality or other entity that opts into the private company. The Bylaws for Illinois Alluvial are attached as **Exhibit C**.

h. On December 5, 2017, representatives of the Carlinville City Government, Jersey County Rural Water Company, Inc., and the Village of Dorchester filed with the Illinois Secretary of State Articles of Incorporation for Illinois Alluvial. The Articles of Incorporation for Illinois Alluvial are attached as **Exhibit D**.

i. On October 2, 2017, before Illinois Alluvial was incorporated or Bylaws were adopted, at a regularly held meeting of the Carlinville City Council, the Aldermen voted to grant "Alderman Campbell the power to act and appropriate funds as representative of Carlinville" to Illinois Alluvial. A copy of the October 2, 2017 Carlinville City Council Meeting Minutes is attached hereto as **Exhibit E**.

4. Illinois Alluvial was not created as a "Public Water District" under the Public Water District Act, 70 ILCS 3705/0.01 *et seq.*; it does not comply with the provisions of the Water Authorities Act, 70 ILCS 3715/0.01 *et seq.*; nor it is not a "Water Commission" as that term is identified in the Water Commission Act of 1985, 70 ILCS 3720/0.001 *et seq.*; nor it is not a "Municipal Joint Action Water Agency" as that term is described in the Intergovernmental Cooperation Act, 5 ILCS 220/3.1; nor is the association of Carlinville and another municipality with private companies (Jersey Rural and Illinois Alluvial) authorized by any of the provisions of the Illinois Municipal Code relating to Water Supply and Sewage Systems, 65 ILCS 5/11-124-1 *et seq.*

Legal Standard for a Motion for Summary Judgment

5. Section 2-1005 of the Illinois Code of Civil Procedure provides that a plaintiff "may, any time after the opposite party has appeared …, move with or without supporting affidavits for a Summary Judgment in his or her favor for all or any part of the relief sought." 735 ILCS 5/2-1005(a).

6. The trial court should grant a motion for summary judgment "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c).

7. In ruling on a motion for summary judgment, the trial court must determine whether a genuine issue of material fact exists, not try a question of fact. *Dohrmann v. Swaney*, 2014 IL App (1st) 131524 ¶21 (2014) (citing *Williams v. Manchester*, 228 Ill. 2d 404 (2008)).

8. A party opposing a motion for summary judgment "must present a factual basis which would arguably entitle him to a judgment." *Id.* (quoting *Allgro Services, Ltd. v. Metropolitan Pier & Exposition Authority*, 172 Ill. 2d 1246 (1996)).

9. Although summary judgment is a drastic measure, when a moving party's right is clear and free from doubt, summary judgment should be encouraged in the interest of prompt disposition of lawsuits. *Id.* (citing *Pyne v. Witmer*, 129 Ill. 2d 351 (1989)).

Burden of Proof in a Petition for Issuance of a Writ of Mandamus

10. In order to be entitled to issuance of a Writ of Mandamus, Plaintiffs' must demonstrate that 1) they have a clear right to the relief requested, 2) there is a clear duty on the part of the Defendant to act, and 3) clear authority exists in the Defendant to comply with an order granting mandamus relief. *Quinn v. Board of Election Commissioners for City of Chicago*

Electoral Board, 2019 Ill.App. (1st) 190189 ¶42 (1st Dist. 2019).

11. Mandamus is an extraordinary remedy that may be used to enforce the performance of official duties by a public officer only where the petitioner is entitled to the performance of the duty as a matter of right and only where no exercise of discretion on the part of the officer is involved. *Pate v. Wiseman*, 2019 Ill.App. (1st) 190449 ¶25, 2019 WL 2588736.

Argument

12. The issue before the Court is purely legal in nature, and has previously been identified by this Court in its November 1, 2019 Order certifying a question for appeal as follows:

a. Whether a non-home rule municipality has authority under Article VII of the Illinois Constitution to join with another non-home rule municipality/village and a private, not-for-profit corporation for purposes of creating a brand-new not-for-profit corporation that is intended to supply potable water to the region where there is no statute that expressly authorizes the creation of such a corporation?

And if the answer is in the negative,

b. May the Court then issue a writ of mandamus and order the non-home rule municipality withdraw as a member of the newly created, private not-for-profit regional water corporation because it was formed without express statutory authority?

13. Illinois Law clearly and unambiguously bars Defendants from taking the actions it did in the formation of Illinois Alluvial, Plaintiffs are entitled to summary judgment as a matter

of law, and the Court should grant Plaintiffs' requested relief in their Second Amended Complaint.

Plaintiffs Have a Clear Right to Expect that Their Local Government Will Act in Accordance with Illinois Law When Conducting City Business.

14. It is a well settled principle of Illinois Law that members of the public "have a protectable interest in ensuring that public officials follow the requirements of public statutes." *Lombard Historical Comm'n v. Village of Lombard*, 366 Ill.App.3d 715, 718, 852 N.E.2d 916, 920, 304 Ill.Dec. 460, 464 (2nd Dist. 2006); citing *American Federation of State, County, & Municipal Employees, Council 31 v. Ryan*, 332 Ill.App.3d 866, 876, 266 Ill.Dec. 4, 773 N.E.2d 739 (4th Dist. 2002).

15. The Court has noted in its previous rulings in this cause that Plaintiffs have a protected right to expect that their government will act in accordance with the Illinois Constitution and applicable statutes. See the Court's January 2, 2019 Order, p. 3, wherein the Court stated that "Plaintiffs have pled sufficient facts to support their allegation that these Defendants have deprived them, as Citizens of Carlinville, the right to vote on whether or not they want to participate in this form of potable water supply."

16. Moreover, Plaintiffs rights are sufficiently protectable under the law, as the rights claimed to be infringed concern Plaintiffs' right to know what their local government is doing with their water supply.

17. Much has been made in this case concerning Plaintiffs' claims that Defendant's actions have deprived Plaintiffs their right to know what their government is doing under laws like the Freedom of Information Act ("FOIA"), 5 ILCS 140/1 *et seq.*, and the Open Meetings Act, 5 ILCS 120 *et seq.*

18. Plaintiffs have raised the claim in this case that the way Carlinville went about participating in the creation of Illinois Alluvial has prevented the Brotzes from knowing what the nature of Carlinville's association with Illinois Alluvial is, what the obligations of the City and Illinois Alluvial are, what the decision-making process has been, and how tax dollars are being spent.

19. The Brotzes have not raised an Open Meetings Act or FOIA claim in this case, because the process Carlinville and the other incorporators used to create Illinois Alluvial was intended, and in fact did shut them out from knowing what was happening. See the letter attached as **Exhibit F** hereto from Illinois Alluvial's attorney telling the Carlinville City Council that members of the public, and even other Carlinville City Council members not on the Illinois Alluvial Board were barred Illinois Alluvial Board meetings.

20. What is clear from the uncontroverted allegations in this case is that Plaintiffs had a right to expect that their government would be transparent and follow the law, and Carlinville's participation in Illinois Alluvial has been obtuse and obstructive to their rights.

The Defendants Also Have a Duty to Follow Illinois Law in This Case

21. The major point of contention amongst the parties is whether Carlinville's actions actually violated the law.

22. Section 10(a) of Article VII of the Illinois Constitution of 1970 provides that "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." Ill. Const. art. VII, § 10(a).

23. However, Article VII, Section 7 of the Constitution constrains non-home rule counties and municipalities to "only powers granted to them by law" or constitutional grant. Ill. Const. art. VII, § 7.

Dillon's Rule Still Applies to Non-Home Rule Municipalities

24. Non-home rule municipalities are governed by the limitation on authority known as Dillon's Rule. "Under Dillon's Rule, a non-home-rule municipality may exercise only those powers specifically granted to it by the Constitution or by statute." *T & S Signs, Inc. v. Vill. of Wadsworth*, 261 Ill. App. 3d 1080, 1086, 634 N.E.2d 306, 310 (1994), citing Ill. Const. art. VII, § 7. See also *Raintree Homes, Inc. v. Village of Long Grove*, 389 Ill.App.3d 836, 906 N.E.2d 751, 329 Ill.Dec. 553 (2d Dist. 2009); and *Hawthorne v. Vill. of Olympia Fields*, 328 Ill. App. 3d 301, 306–07, 765 N.E.2d 475, 480 (2002), aff'd, 204 Ill. 2d 243, 790 N.E.2d 832 (2003).

25. Under Dillon's Rule, when a statute does grant certain powers to a municipality, the statute is to be strictly construed. *Father Basil's Lodge, Inc. v. City of Chicago*, 393 Ill. 246, 65 N.E.2d 805 (1946).

26. Any fair or reasonable doubt with respect to the existence of a claimed power must be construed against the municipality. *Id.*

27. Even where powers are expressly authorized by law or constitutional grant, Illinois courts have consistently ruled that the exercise of those powers cannot extend to related functions that are themselves not expressly authorized by statute. See *Connelly v. Clark Cty.*, 16 Ill. App. 3d 947, 307 N.E.2d 128 (1973) (holding that, though a county had the authority under Article VII, Section 10 of the Illinois Constitution of 1970 to operate a gravel pit for highway repair, it did not have the legal authority to sell excess gravel to other government entities); *Lutheran Soc. Servs. of Illinois v. Henry Cty.*, 124 Ill. App. 3d 753, 755, 464 N.E.2d 811, 813

(1984) (holding that state laws providing for majority voting in city council meetings and for zoning regulations did not authorize a city council to require a three-fourths vote for granting special zoning permits); *City of Peoria v. Johnson*, 167 Ill. App. 3d 592, 594, 521 N.E.2d 576, 577 (1988) (holding that counties were not specifically authorized to license bartenders under State Law, despite general laws authorizing counties to license liquor sales); and *Bruer v. Livingston Cty. Bd. of Zoning Appeals*, 66 Ill. App. 3d 938, 383 N.E.2d 1016 (1978) (holding that non-home rule counties did not have the authority to mandate costs for administrative review of zoning decisions, despite laws permitting non-home rule counties to regulate costs for proceedings before the zoning board).

28. More recent rulings have similarly concluded that non-home rule municipalities cannot circumvent constitutional or statutory limitations on their power. See *Rajterowski v. City of Sycamore*, 405 Ill. App. 3d 1086, 1119, 940 N.E.2d 682, 709 (2010).

29. Neither Article VII, Section Ten of the Illinois Constitution of 1970, nor Section Five of the Intergovernmental Cooperation Act, 5 ILCS 200/5, can confer upon a municipality the power to grant itself rights not expressly granted by law. *Vill. of Lisle v. Vill. of Woodridge*, 192 Ill. App. 3d 568, 577, 548 N.E.2d 1337, 1343 (1989).

30. As was described hereinabove in Paragraph 4 of this Motion, Illinois Law expressly provides several different ways that a municipality can join with other governmental and non-governmental entities to solve regional water supply needs.

31. While *Village of Sherman v. Village of Williamsville*, 106 Ill. App. 3d 174 (4th Dist. 1982) might give non-home rule municipalities a broad grant of power concerning intergovernmental agreements; it does not give them carte blanche to violate other provisions of the law.

32. By its own admission, Carlinville has chosen to sidestep the numerous statutorily authorized ways it can join with other entitles to create a water supply solution, and instead has decided to rest solely on the "power to contract" and "power to associate" to participate in the creation of a not-for-profit corporation. See generally Defendant's third affirmative defense, and argument in its Motion for Summary Judgment on Affirmative Defenses.

33. The Illinois Legislature has taken great pains to prescribe numerous different ways by which Carlinville can solve its problems, by implication this means that Carlinville cannot simply disregard the tools the legislature gave them and choose another method that has no basis in the law.

Clear Authority Exists for Carlinville to Follow a Ruling of This Court and Cease Its Association with Illinois Alluvial

34. Plaintiffs' Second Amended Complaint asks for the following relief:

> WHEREFORE, Plaintiffs, CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE, request that this Court issue a Writ of Mandamus compelling the Carlinville Aldermen and Alderwomen, in their official capacities, to take the actions necessary to withdraw from and cease any further participation in the creation, funding, or operation of Illinois Alluvial, and for any such further relief the Court deems equitable and just.

35. Carlinville voluntarily took the actions to begin association with Illinois Alluvial; and there is no allegation in this case that they lack authority to cease their relationship with Illinois Alluvial.

36. The Court has already noted, and Defendant has never disputed that "a Writ of Mandamus can be used to compel the undoing of an act not authorized by law of to require public entities and/or officials to comply with State law." October 21, 2019 Order.

37. If the Court agrees with Plaintiff's analysis of Illinois law regarding Defendant's obligation to use a statutorily authorized method to solve its water supply needs, there is no

reason why the Court cannot compel Defendant to cease its relationship with Illinois Alluvial unless or until it comes into compliance with the law.

WHEREFORE, Plaintiffs, CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE, pray that the Court enter an Order granting their Motion for Summary Judgment, granting Plaintiffs the relief requested in their Second Amended Complaint, and for any such further relief the Court deems equitable and just under the circumstances.

Dated this 27th day of April, 2020.

CAMILLE MAYFIELD COOPER BROTZE and
WAYNE BROZE, Plaintiffs,

By: /s/ Jacob N. Smallhorn
Jacob N. Smallhorn
Their Attorney

Jacob N. Smallhorn
Smallhorn Law LLC
600 Jackson Avenue
Charleston, Illinois 61920
T: 217-348-5253
E: jsmallhorn@smallhornlaw.com

CERTIFICATE OF SERVICE

The undersigned, being first duly sworn on oath, deposes and says that he electronically filed the above document with the Clerk at the https://illinois.tylerhost.net/ofsweb e-filing system and sent true copies thereof via email, on the 27th day of April, 2020.

TO:

Dan O'Brien
PO Box 671
Carlinville, IL 62626
Dan_obrien@mac.com

John M. Gabala
Giffin, Winning, Cohen & Bodewes, P.C.
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/s/ Jacob N. Smallhorn

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APPLICATION FOR FEDERAL ASSISTANCE — Version 7/03

1. TYPE OF SUBMISSION: Application ☐ Construction ☑ Non-Construction	Pre-application ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier (b) (4)
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY JAN 25 2016	Federal Identifier

5. APPLICANT INFORMATION

Legal Name: City of Carlinville	Organizational Unit: Department:
Organizational DUNS: (b) (4)	Division:
Address: Street: 550 N. Broad Street	Name and telephone number of person to be contacted on matters involving this application (give area code) Prefix: Mr. First Name: Tim
City: Carlinville	Middle Name
County: Macoupin	Last Name: Hasara
State: IL Zip Code: 62626	Suffix:
Country: USA	Email: thasara@cityofcarlinville.com
6. EMPLOYER IDENTIFICATION NUMBER (EIN): (b) (4)	Phone Number (give area code): 217-854-4752 Fax Number (give area code): 217-854-4396

8. TYPE OF APPLICATION: ☑ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐

Other (specify)

7. TYPE OF APPLICANT: (See back of form for Application Types)

C. Municipal

Other (specify)

9. NAME OF FEDERAL AGENCY: U.S. Department of Agriculture - Rural Development

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 10-780

TITLE (Name of Program): Water and Waste Disposal Systems for Rural Communities

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: Central Illinois Regional Water Supply - See attached project description

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.): City of Carlinville, portions of Macoupin, Jersey and Greene Counties

13. PROPOSED PROJECT

Start Date: February 2016 — Ending Date: July 2016

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant: City of Carlinville — b. Project: Regional Water System

15. ESTIMATED FUNDING:

a. Federal Predevelopment Plan Grant	$ 30,000.00
b. Applicant	$ 10,000.00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 40,000.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE:

b. No. ☑ PROGRAM IS NOT COVERED BY E. O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes" attach an explanation. ☑ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative

Prefix: Mrs.	First Name: Deanna	Middle Name
Last Name: Demuzio		Suffix
b. Title: Mayor		c. Telephone Number (give area code): 217-854-4076
d. Signature of Authorized Representative		e. Date Signed: 12-22-2015

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Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

Exhibit A

BATES #149

Attachment for SF 424 Application Form, Item #11 (Descriptive Title of Applicant's Project):

A Preliminary Engineering Report to evaluate options to develop a viable water supply, treatment and transmission system to serve a Regional Water Commission in the Greene, Jersey and Macoupin Counties area of Central Illinois. The City of Carlinville is the lead entity until a water commission can be formed. Based on the collaboration with the City of Carlinville, City of Jerseyville, Jersey County Rural Water Company and Fosterburg Water District, the PER shall address a water system that will benefit the identified potential regional partners.

Water and Waste System Grant Agreement

United States Department of Agriculture

Rural Utilities Service

THIS AGREEMENT dated 13-8-2016, between

City of Carlinville

a public corporation organized and operating under

65 ILCS 5/2-1

(Authorizing Statute)

herein called ``Grantee," and the United States of America acting through the Rural Utilities Service, Department of Agriculture, herein called ``Grantor," WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water) (waste) system to serve the area under its jurisdiction at an estimated cost of $ 40,000.00 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than $ 10,000.00 of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of $ 10,000.00 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed $ 30,000.00 or 75.00 percent of said project development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the Conditions of the grant.

As a condition of this grant agreement, the Grantee assures and certifies that it is in compliance with and will comply in the course of the agreement with all applicable laws, regulations, Executive orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated into this agreement by reference, and such other statutory provisions as are specifically set forth herein.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306(a) of The Consolidated Farm and Rural Development Act for the purpose only of defraying a part not to exceed 75.00 percent of the project development costs, as defined by applicable Rural Utilities Service instructions.

Grantee Agrees That Grantee Will:

A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.

B. Permit periodic inspection of the construction by a representative of Grantor during construction.

C. Manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.

D. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges, whether for one or more classes of service, adopted by resolution dated 3-8-2016, as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

E. Adjust its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

F. Expand its system from time to time to meet reasonably anticipated growth or service requirements in the area within its jurisdiction.

G. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

H. To execute any agreements required by Grantor which Grantee is legally authorized to execute. If any such agreement has been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this grant, another agreement of the same type need not be executed in connection with this grant.

I. Upon any default under its representations or agreements set forth in this instrument, Grantee, at the option and demand of Grantor, will repay to Grantor forthwith the original principal amount of the grant stated herein above with the interest at the rate of 5 percentum per annum from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

J. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

K. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantee may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency. When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.
[Revision 1, 04/17/1998]

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

This Grant Agreement covers the following described real property (use continuation sheets as necessary).

NONE

L. Abide by the following conditions pertaining to equipment which is furnished by the Grantor or acquired wholly or in part with grant funds. Equipment means tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.
[Revision 1, 04/17/1998]

1. Use of equipment.

(a) The Grantee shall use the equipment in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the equipment in connection with its other Federally sponsored activities, if any, in the following order of priority:

1) Activities sponsored by the Grantor.

(2) Activities sponsored by other Federal agencies.

(b) During the time that equipment is held for use on the property for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the equipment was originally acquired. First preference for such other use shall be given to Grantor sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of equipment. When the Grantee no longer needs the equipment as provided in paragraph (a) above, the equipment may be used for other activities in accordance with the following standards:

(a) Equipment with a current per unit fair market value of less than $5,000. The Grantee may use the equipment for other activities without reimbursement to the Federal Government or sell the equipment and retain the proceeds.

(b) Equipment with a current per unit fair market value of $5,000 or more. The Grantee may retain the equipment for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value or proceeds from sale of the equipment. If the Grantee has no need for the equipment and the equipment has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the equipment exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee requests and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the equipment and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share ten percent of the proceeds for Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the equipment elsewhere the Grantee shall be reimbursed by the benefiting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the equipment, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for equipment shall also include:

(a) Records which accurately provide for: a description of the equipment; manufacturer's serial number or other identification number; acquisition date and cost; source of the equipment; percentage (at the end of budget year) of Federal participation in the cost of the project for which the equipment was acquired; location, use and condition of the equipment and the date the information was reported; and ultimate disposition data including sales price or the method used todetermine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years to verify the existence, current utilization, and continued need for the equipment.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Proper sales procedures shall be established for unneeded equipment which would provide for competition to the extent practicable and result in the highest possible return.

This Grant Agreement covers the following described equipment(use continuation sheets as necessary).

NONE

M. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

4. Accounting records supported by source documentation.

N. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photo copies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

O. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

P. Provide an audit report prepared in accordance with Grantor regulations to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

Q. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentality's of states shall not be held accountable for interest earned on grant funds pending their disbursement.

R. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in item K above.

S. To include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

T. To include in all contracts in excess of $100,000 a provision that the contractor agrees to comply with all the requirements of the Clean Air Act (42 U.S.C. §7414) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. In so doing the Contractor further agrees:
[Revision 1, 11/20/1997]

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR Part 32 as of the date of contract award.
[Revision 1, 11/20/1997]

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

Grantor Agrees That It:

A. Will make available to Grantee for the purpose of this Agreement not to exceed $ 30,000.00 which it will advance to Grantee to meet not to exceed 75.00 percent of the project development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans for sewer and water and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Termination of This Agreement

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

In witness whereof Grantee on the date first above written has caused these presence to be executed by its duly authorized

Mayor

attested and its corporate seal affixed by its duly authorized

Clerk

Attest:

By Carla Brockmeier
CARLA BROCKMEIER
(Title) Clerk

By
DEANNA DEMUZIO
(Title) Mayor

UNITED STATES OF AMERICA

RURAL UTILITIES SERVICE

By Bobett Dunphy Area Specialist
BOBETT DUNPHY (Title)
Area Specialist

BY-LAWS

of

ILLINOIS ALLUVIAL REGIONAL WATER COMPANY

ARTICLE I

General Powers

The Corporation shall have and may exercise the powers set forth in its Articles of Incorporation together with any such other powers as are authorized by the statutes of the State of Illinois, including but not limited to the General Not for Profit Corporation Act of 1986, 805 ILCS 105/101.01 *et. seq*. as it now exists or may be hereafter amended.

ARTICLE II

Name and Location

Section 1. The name of the Corporation is:

ILLINOIS ALLUVIAL REGIONAL WATER COMPANY

Section 2. The principal office of this Corporation shall be:

1009 State Highway 16
Jerseyville, IL 62052

ARTICLE III

Seal

Section 1. The Corporation shall have a seal on which shall be inscribed thereon the name of the Corporation.

Section 2. The Secretary of the Corporation shall have custody of the seal.

ARTICLE IV

Fiscal Year

The fiscal year of the Corporation shall begin the first day of October of each year.

Exhibit C

Purpose

The primary purpose of the Corporation is to provide potable water to its members on a co-operative basis.

ARTICLE V

Membership

Section 1. Subject to acceptance and approval of at least two-thirds (2/3rds) majority of the Board of Directors, and the execution of a Water Supply Agreement, membership in the Corporation may be available to any Not-For-Profit Water Company, Village, Town, City, Water District, or other Municipality that distributes potable water to its residents, members and/or customers in the area served by the Corporation. The primary area to be served by the Corporation includes, but is not limited to the Illinois Counties of: Jersey, Macoupin, Green and Madison.

The following rules apply to members of the Corporation. A member may produce water for its own usage and for distribution to its residents, members and/or customers, who are end users. A member may also resell water it purchases from the Corporation to another distributor with the approval of the Board of Directors of the Corporation. However, a member may not treat, produce and supply potable water to other distributors, without the approval of a least two-thirds (2/3rds) of the Board of Directors of the Corporation. Such consent is not necessary for those agreements or relationships which predated the operation of the Corporation's water treatment plant, or the first delivery of water to said member, whichever is later.

Section 2. In no event shall a For-Profit Water Company or Corporation become a member of the Corporation. However, the Corporation may elect to sell water to a For-Profit Corporation or Company, on a bulk basis, if excess capacity exists and the Board of Directors approves it. The bulk rate charged to such a For-Profit Customer may exceed the rate charged to members or to Not-For-Profit Customers, which are not members of the corporation. Said rate shall be determined by the Board of Directors on a case by case basis.

Section 3. A Member may resign its membership at any time by written notice to the Corporation; provided however, that no such resignation shall affect any accrued liabilities of the resigning member to the Corporation, nor shall it affect any continuing contractual obligations of each party to the other, except that the rate charged by the Corporation to the resigned member shall thereafter be the same rate which it charges to non-member customers.

Section 4. Each member may have only one (1) membership.

Section 5. Membership shall not be transferable, provided however that the Water Supply Agreement between a member and the Corporation may be assigned in accordance with the terms thereof.

Section 6. Membership in the Corporation shall terminate by operation of law, without further notice or hearing, in the event the member ceases to exist, dissolves or merges with another entity which is not a member. Membership shall also terminate automatically, without further notice or hearing if a member files for bankruptcy, is placed in receivership, permanently ceases to be a distributor of potable water to retail customers, or resigns.

Membership may also be terminated for cause, with notice, in accordance with Section 9 of this Article.

Water Supply Agreements between the Corporation and its members are assignable, but membership is not. In the event a member dissolves, its assets are sold, it is taken over by, and/or merges with another entity which is not a member, said entity assumes the rights and duties of the Water Supply Agreement, but does not become a member of the Corporation and is not entitled to representation on the Board of Directors. Rather, the assignee or transferee of the Water Supply Agreement would be a non-member customer of the Corporation which may, but is not required to apply for membership in the Corporation. In order to be admitted as a member, the applicant must meet the qualifications and receive the approval of a majority of at least two thirds (2/3rds) of the Board of Directors in accordance with Section 1 of Article V.

Section 7. In the discretion of the Board of Directors, a person or entity need not be a member of the Corporation to become a customer of the Corporation's water system. However, such customers will not have the right to representation on the Board of Directors, will not be entitled to vote on any matter which comes before the Board and may be charged a water rate which exceeds the rate charged to members. Said rate shall be determined by the Board of Directors.

Section 8. Members shall have the right to participate in the affairs of the Corporation, as herein provided and a preferential right to the use and enjoyment of the water and the water system, upon payment of the charges, fees and assessments fixed and determined by the Board of Directors as necessary to the operation, care and maintenance of the water system.

Section 9. Membership may be terminated by majority vote of at least two-thirds (2/3rds) the Board of Directors for cause, including but not necessarily limited to: 1) The failure to promptly pay obligations to the Corporation; 2) The entry into a contract to purchase water from another supplier, other than an approved Emergency Interconnection Agreement or the continuation of a purchase agreement or arrangement that predated the entry into the initial Water Supply Agreement with the Corporation; or 3) For any other action deemed detrimental to the best interest of the Corporation; provided however, that a statement of the cause for termination shall be delivered by certified mail, return receipt requested, by hand or other forms of delivery, to the last recorded address of the member, at least 28 days before final action is taken. The statement shall be accompanied by a notice of the time and place of the meeting of the Board of Directors at which the termination of the member's membership shall be considered, and the member shall have the opportunity to appear, through its duly appointed representative, and to be heard on the matter, before final action is taken.

No such termination shall affect any accrued liabilities of the terminated member to the Corporation, nor shall it affect any continuing contractual obligations of each party to each other, except that the rate charged by the Corporation to the terminated member shall thereafter be the same rate which it charges to non-member customers.

Section 10. Any claim or dispute arising from or related to these By-Laws shall be settled by mediation, in accordance with the Illinois Uniform Mediation Act, 710 ILCS 35/1 *et. seq.* or by legally binding arbitration in accordance with the rules of the American Arbitration Association. Judgment may be entered upon a mediation agreement or an arbitration decision by any court otherwise having jurisdiction over the parties. These methods shall be the sole and exclusive remedy for any controversy or claim arising out of these By-Laws. The parties hereby waive all rights to a jury trial or to institute litigation with a court of competent jurisdiction to resolve any disputes concerning membership, membership rights, the termination of membership or the construction of these By-Laws.

ARTICLE VI

Meeting of the Members

Section 1. The annual meeting of the members of this Corporation shall be held at ILLINOIS ALLUVIAL REGIONAL WATER COMPANY, 1009 State Highway 16, Jerseyville, Illinois, at 5:00 o'clock P.M., on the 30th day in November of each year, provided that if said day be a legal holiday, then on the next secular day. The place, day, and time of the annual meeting may be changed to any other convenient place, day, and time by the Board of Directors giving notice thereof to each member not less than ten (10) days in advance thereof.

Section 2. Special meetings of the members may be called at any time by the President or by the Board of Directors and such meetings must be called whenever a petition requesting such meeting is signed, by at least two (2) members, and presented to the Secretary or to the Board of Directors. The purpose of every special meeting shall be stated in the notice thereof, and no business shall be transacted thereat, except such as is specified in the notice.

Section 3. Notice of meetings of members of the Corporation shall be given not less than ten (10) nor more than forty (40) days prior to the meeting. Unless otherwise agreed, notice of a special meeting shall be mailed, postage prepaid, to each member of record at the address shown upon the books of the company and shall state the date, time, place, and purpose of the meeting. Alternatively, notice of a special meeting may be provided by E-Mail and or telephone to each member which consents in writing and provides the Secretary with an E-mail address and or phone number, at which such notice may be given.

Section 4 A majority of members present by their Authorized Representatives, shall constitute a quorum at any meeting, provided that failing a quorum the members present may adjourn the meeting to a time and place certain, without further notice of the meeting.

Section 5. From the enactment of these By-Laws, each member present at an annual or special meeting shall have one (1) vote on all questions coming before the Membership. No election of Directors shall be required, as each member may adopt its own rules for appointing a Regular and or Alternate Representative to the Illinois Alluvial Regional Water Company Board of Directors. An Alternate Representative may only vote in the event the member's regular Representative is unable to attend.

Section 6. The order of business at the annual meeting of members and so far as possible, at all other meetings shall be:

1. Call to order and proof of quorum.
2. Proof of notice of meeting.
3. Reading and action on any unapproved minutes.
4. Members' Concerns.
5. Auditor's Report.
6. Old Business.
7. New Business.
8. Adjournment.

ARTICLE VII

Directors and Officers

Section 1. It is the intent of the Corporation that each member be represented on the Board of Directors, until such time as the number of members increases to the point that it is in the Board's opinion, impractical to continue to do so. Until such event, the meetings of the Board of Directors are in essence meetings of the members and thus, any business which requires membership approval may be conducted at a regular or special meeting of the Board of Directors.

Section 2. The Corporation shall be managed by a Board of Directors consisting of three (3) or more persons, including one (1) Director appointed by each member. Each Director shall serve a three (3) year term. The Directors' terms shall be staggered, with at least one (1) Directors' terms ending each year. Each member shall appoint a Director to be its Regular Representative on the Board of Directors, but may also appoint an Alternate Representative to serve on the Board of Directors in the Regular Representative's absence. Each Director and Alternate Representative shall at all times, be an officer, director, trustee, special appointee, or employee of a member, in order to be eligible to serve as a Director of the Corporation. A member may not appoint a representative to the Corporation's Board who is an employee of a water company that is not a member, which also

produces water and or is in competition with the Corporation. There shall be no limit as to the number of times a person may serve as a Director or Alternate Representative. The Secretary of the Corporation shall keep a schedule of the Director's and Alternate Representative's identities, addresses and terms. Each member shall promptly provide the Secretary with a certified copy of the minutes of the meeting where official action was taken by the member to appoint its representative to the Corporation's Board.

Section 3. Upon the resignation, removal, retirement, death or disability of a Director, the member shall be entitled to select a Successor Director immediately to serve for the remainder of the unexpired term. The Successor Director shall be an officer, director, trustee, special appointee, or employee of the member. The Alternate Representative may serve on the Board of Directors until such time as a Successor Director is chosen. The Alternate Representative may be appointed as the Successor Director, in which event the member may appoint a successor, Alternate Representative.

ARTICLE VIII

Meetings of Directors

Section 1. The Board shall meet at least annually, at such times and places as may be determined by resolution of the Board, but if there is no resolution to the contrary, the annual meeting of the Board shall be at the Corporation's principal place of business, immediately following the annual meeting of the members. The Board will normally meet monthly on the last Wednesday of each month at the Corporation's principal place of business, unless the Secretary notifies the Directors otherwise; No notice of the regularly scheduled meeting is required to be given.

Section 2. At said annual meeting of its Board of Directors, it shall elect a President and Vice President from the Directors and also elect a Secretary and Treasurer who may or may not be a Director, each of whom shall hold office until the next annual meeting of Directors, at which time the election and qualifications of the officer's successor have been verified, unless sooner removed by death, resignation, or for cause. An Alternate Representative may not serve as President or Vice President of the Board, but may serve as Secretary or Treasurer and may be appointed to serve on Committees formed by the Board.

Section 3. A majority of the Board of Directors present by the member's Regular or Alternate Representatives shall constitute a quorum at any annual, regular or special meeting of the Board. The affirmation vote of a majority of the Directors, at any meeting at which a quorum is present, shall be the act of the Board. An Alternate Representative shall be considered a Director for purposes of the By-laws, at all meetings where the Alternate Representative is counted towards the quorum and is entitled to vote. An Alternate Representative may not be counted towards a quorum or entitled to vote, if the Regular representative of that particular member is also present at a meeting.

Section 4. Compensation of officers may be fixed at any regular or special meeting of the Board. Directors shall receive no compensation for their services as such, but may receive a fixed sum for attending meetings and may be reimbursed for expenses.

Section 5. The Board may establish such Committees as it deems necessary or expedient, provided however that no committee shall have more than two individuals who are representatives of the same member. An Alternate Representative may serve on a committee if the Board specifically authorizes same.

Section 6. Special meetings of the Directors may be called at any time by the President, or by the Board of Directors and such meetings must be called whenever a petition requesting such meeting is signed by at least two (2) Directors and presented to the Secretary or to the President of the Board of Directors. The purpose of every special meeting shall be stated in the notice thereof, and no business shall be transacted thereat, except such as is specified in the notice.

Section 7. No notice of regular meetings of Directors of the Corporation shall be given unless, the meeting is held at a time other than the regularly scheduled time, in which event notice shall be given, not less than seven (7) days prior to the meeting. Notice of special meetings of Directors of the Corporation shall be given not less than forty-eight (48) hours prior to the meeting. Notice of a special meeting, or rescheduled regular meeting may be mailed, postage prepaid, to each Director of record at the address shown upon the books of the company and shall state the date, time, place, and purpose of the meeting. In lieu of the foregoing, notice of a special meeting may be provide by E-Mail, and or by telephone to each director who consents in writing and provides the Secretary with an E-mail address and or phone number at which such notice may be given. Notice may, but need not be given to any Alternate Representative.

Section 8. Failing a quorum, the Directors present may adjourn the meeting to a time and place certain, without further formal notice of the meeting.

Section 9. Each Director present at an annual, regular or special meeting shall have one (1) vote on all questions coming before the Board of Directors. An Alternate Representative is welcome to attend all meetings, but is only entitled to vote in the event the member's Regular Representative is unable to attend.

Section 10. The order of business at the regular meetings of Directors shall generally be as follows:

1. Call to order and proof of quorum.
2. Proof of notice of meeting.
3. Reading and action on any unapproved minutes.
4. Action on bills and payrolls.
5. Reports of officers and committees.
6. Reports of Engineers, Attorneys, Auditors or Professionals.

7. Old business.

8. New business.

9. Adjournment.

ARTICLE IX

Duties of Directors

Section 1. The Board of Directors, subject to restrictions of law, the Articles of Incorporation, and these By-Laws, shall exercise all of the powers of the Corporation, and, without prejudice to, or limitation upon their general powers, have full power and authority in respect to the matters hereinafter set forth, to be exercised by resolution or motion duly adopted by the Board:

A. 1. To enter into such contracts as are reasonably necessary or convenient to obtain raw water for treatment and distribution;

2. To enter into contracts with its members or other parties, to supply potable water on such terms as the Board deems reasonable and appropriate;

3. To construct, maintain and operate such facilities and systems as are necessary to supply potable water to its members or customers at a delivery point specified in the water supply contract; and

4. To enter into any contracts which are authorized by law and reasonably related to the Corporation's purpose.

B. To approve membership applications and cause to be issued appropriate certificates of membership. The Board may make binding commitments to issue membership certificates and to permit connection to the system in the future, in cases involving proposed construction, or may issue such certificates prior to the commencement of the proposed construction.

C. To select and appoint all officers, agents or employees of the Corporation, remove such agents or employees of the Corporation, fix their compensation, pay for such services and prescribe such duties and designate such powers as may not be inconsistent with these By-Laws.

D. To borrow from any source, money, goods or services; to make and issue notes and other negotiable or non-negotiable instruments evidencing indebtedness of the Corporation; to make and issue mortgages, deeds of trust, pledges of revenue, trust agreements, security agreements and financing statements, and other instruments,

evidencing a security interest in the assets of the Corporation and to do every act and thing necessary to effectuate the same.

E. To prescribe, adopt, and amend, from time to time such equitable uniform rules and regulations as, in its discretion, may be deemed essential or convenient for the conduct of the business and affairs of the Corporation and the guidelines and control of its officers, employees and agents, and to prescribe adequate penalties for the breach thereof.

F. To order, at least once each fiscal year, an audit of the books and accounts of the Corporation by a certified public accountant. The audit report shall be submitted to the members of the Corporation at their annual meeting. A proposed annual budget shall be submitted to the Board of Directors at the first regular meeting, immediately preceding the end of the Corporation's fiscal year.

G. To fix and alter the charges to be paid for water, including connection fees and the method of billing, time of payment, manner of connection, and penalties for late or nonpayment. The Board may establish one or more classes of users, including but not limited to "Members", "Not-For-Profit Customers" and "For-Profit Customers". All charges shall be uniform and nondiscriminatory in amount, within each of the fist two classes of users. However, rates may be different between those two classes and need not be the same for all "For-Profit Customers".

"Members" may be charged a different water rate than either "Not-For-Profit Customers" or "For-Profit Customers". "Not-For-Profit Customers", such as Not-For Profit Corporations, Municipal Corporations and Water Districts, may be charged a different rate than "For-Profit Customers". The rates charged to "For-Profit Customers", need not be uniform, but shall be determined by the Board of Directors, on a case by case basis.

H. To require all officers, agents and employees charged with responsibility for the custody of the funds of the Corporation to give bonds in the amount determined by the Board of Directors, the cost thereof to be paid by the Corporation.

I. To select one or more banks to act as the depository of the funds of the Corporation and to determine the manner of receiving, depositing, and disbursing the funds of the Corporation and the form of checks and the person or persons by whom the same shall be signed, with the power to change such banks and the person or persons signing such checks and the form thereof at will.

J. To levy assessments against the members of the Corporation in such manner and upon such proportionate basis as the Directors deem equitable, and to enforce collection of such assessments by the suspension of water service or other legal methods. The Board of Directors shall have the option to suspend service to any member who has not paid such assessment within thirty (30) days from the date the

assessment was due, provided the Corporation must give the member at least fifteen (15) days written notice, at the address of the member on the books of the Corporation, of its intention to suspend such service if the assessment is not paid. Upon payment of such assessment and penalties applicable thereto and a re-connection charge, if one is in effect, service will be promptly restored to such member.

K. To delegate, by resolution or motion, to its various Officers or Committees, such duties and authority as the Board may deem necessary or appropriate. Any action taken by an Officer or a Committee within the authority delegated by the Board shall be the lawful action of the Corporation.

ARTICLE X

Duties of Officers

Section 1. **Duties of President:** The President shall preside over all meetings of the Corporation and the Board of Directors, call special meetings of the Board of Directors, perform all acts and duties usually performed by an executive and presiding officer, and sign all membership certificates and such other papers of the Corporation, as the President may be authorized or directed to sign by the Board of Directors, provided the Board of Directors may authorize any person to sign any or all checks, contracts and other instruments in writing on behalf of the Corporation. The President shall perform such other duties as may be prescribed by the Board of Directors.

Section 2. **Duties of Vice-President:** In the temporary absence or disability of the President, the Vice President shall perform the duties of the President, provided, however, that in the case of death, resignation or disability of the President, the Board of Directors may declare the office vacant and elect a successor.

Section 3. **Duties of the Secretary:** The Secretary shall keep a complete record of all meetings of the Corporation and of the Board of Directors and shall have general charge and supervision of the books and records of the Corporation. The Secretary shall attest the President's signature on all membership certificates and other papers pertaining to the Corporation unless otherwise directed by the Board of Directors. The Secretary shall serve, mail, or deliver all notices required by law and by these By-Laws and shall make a full report of all matters and business pertaining to the office, to the members at the annual meeting or at such other time or times as the Board of Directors may require. The Secretary shall keep the corporate seal and membership certificate records of the Corporation, complete and attest all certificates issued and affix said corporate seal to all papers requiring seal. The Secretary shall keep a proper membership certificate record, showing the name of each member of the Corporation and date of issuance, surrender, transfer, termination, cancellation or forfeiture. The Secretary shall keep a record of the identity and terms of each Director and alternate representative. The Secretary shall make all reports required by law and shall perform such other duties as may be required by the Board of Directors. Upon election of a successor, the Secretary shall turn over to the successor all books and other property belonging to the Corporation.

Section 4. **Duties of the Treasurer:** The Treasurer shall perform such duties with respect to the finances of the Corporation as may be prescribed by the Board of Directors and shall present the auditor's report to the members at the annual meeting of members and shall present the proposed budget to the Board of Directors at the first regular meeting immediately preceding the end of the fiscal year.

ARTICLE XI

Benefits and Duties of Members

Section 1. The Corporation, if sufficient members and adequate financing can be secured, will construct, operate and maintain, a raw water Source with the exact location to be determined, a Raw Water Main, from the source of the water supply to the Treatment Plant located at a location to be determined, Illinois and a finished Water Distribution System, from the Treatment Plant, to certain designated points of delivery to its members. The Corporation also may purchase and install a cutoff valve in the line serving each member. Said cutoff valve shall be owned and maintained by the Corporation and shall be installed on some portion of the water line owned by the Corporation. The Corporation shall have the sole and exclusive right to the use of such cutoff valve. However, the provisions of this section shall not be construed to require the acquisition or installation of meters or cutoff valves where the Directors determine that the use of either or both of such devices is impractical or unnecessary to protect the system or the rights of the members and/or that it is not economically feasible.

Section 2. Each member or customer shall enter into a water supply contract which shall embody the principles set forth in the provisions of these By-Laws and which agreements shall be satisfactory in form and content to any financier of the Corporation's system. Each member shall purchase from the Corporation, pursuant to such agreement, a substantial portion of the water needed by it, to supply potable water to its retail customers subject however, to the provisions of these By-Laws, to such rules and regulations as may be prescribed by the Board of Directors, and to the availability of water. The Board of Directors may consider the amount or percentage of a proposed member's usage in its decision as to whether to grant an application of membership. Water loss on the lines operated and maintained by the Corporation shall be born by the Corporation.

Section 3. In the event the total water supply shall be insufficient to meet all of the needs of the members or in the event there is a shortage of water, the Corporation shall pro-rate the water available among the various users on such basis as is deemed equitable by the Board of Directors.

Section 4. The Board of Directors may, and shall if required as a part of the system financing obligation, prior to the beginning of each fiscal year, determine a minimum rate to be charged each member during the following fiscal year for a specified quantity of water. The failure to pay water charges duly imposed shall result in the imposition of such penalties as the Board may determine by resolution.

ARTICLE XII

Distribution of Surplus Funds

It is not anticipated that there will be any surplus funds or net income to the Corporation at the end of the fiscal year after provisions are made for the payment of the expenses of operation and maintenance and the funding of the various reserves for depreciations, debt retirement, and other purposes, including but not limited to, those required by the terms of any borrowing transaction. In the event that there should exist such surplus funds or net income, they may be placed in an existing or new reserve account to be used for the early retirement of any outstanding indebtedness or to be used for the improvement and/or extension of the corporate facilities as the Board of Directors may determine to be in the best interest of the Corporation and to the extent not otherwise provided for by any contractual arrangement. The occurrence in subsequent fiscal years of surplus funds or net income above the requirements of the Corporation as above mentioned, including, if any, a reserve for improvements and extension of the facilities shall be taken into consideration by the Board of Directors in determining the water rates to be charged the members.

ARTICLE XIII

Contractual Obligations

Notwithstanding anything herein to the contrary, the membership status of any entity shall not affect the validity or enforceability of any contract entered into between the Corporation and its member or former member, except that the water rate charged to a non-member, after resignation or termination may exceed the rate charged to a member.

ARTICLE XIV

Interconnections

The Corporation recognizes the mutual benefits of emergency interconnections between and amongst potable water systems and encourages its members to do so, provided it would not have a potentially serious, adverse impact on the Corporation's system or its ability to serve its members. As such, members may enter into interconnection agreements with each other without the approval of the Corporation's Board of Directors. The Board of Directors is aware of and hereby approves all interconnection agreements which any of its members currently has with other members and entities. However, henceforth the Corporation's Board of Directors must approve any or all interconnection agreements which a member proposes to enter into with an entity which is not a member of the Corporation. Likewise, the Corporation's Board of Directors must also approve any and all proposed interconnections of the Corporation's system, with an entity which is not a member of the Corporation.

ARTICLE XV

Amendments

These By-Laws may be repealed or amended by a vote of a majority of the Directors present at any regular meeting of the Board of Directors of the Corporation, or at any special meeting of the Board of Directors called for that purpose, except that no such amendment or repeal shall contravene any rule or regulation of any relevant regulatory agency or any financier of the Corporation, including but not limited to the United States Department of Agriculture Rural Development Agency, nor affect the rights of any bondholder, nor shall any such amendment or repeal affect the Federal tax status of any evidence of debt issued by the Corporation.

These By-Laws adopted at a Regular meeting of the members held Nov. 30, 2017 at Jerseyville, Illinois.

Sue Campbell

Sue Campbell, Secretary

FORM NFP 102.10
ARTICLES OF INCORPORATION
General Not For Profit Corporation Act
File # 71591573
Filing Fee: $50
Approved By: MAJ

FILED
DEC 05 2017
Jesse White
Secretary of State

Article 1.
Corporate Name: ILLINOIS ALLUVIAL REGIONAL WATER COMPANY, INC.

Article 2.
Registered Agent: SUE CAMPBELL

Registered Office: 1009 STATE HIGHWAY 16

JERSEYVILLE IL 62052-2839 JERSEY COUNTY

Article 3.
The first Board of Directors shall be 3 in number, their Names and Addresses being as follows

C. ALLEN DAVENPORT 27897 STATE HWY 3, GODFREY, IL 62035

CINDY CAMPBELL 323 COLLEGE AVE., CARLINVILLE, IL 62626

SUE CAMPBELL 402 E. GARRISON ST., DORCHESTER, IL 62033

Article 4. Purpose(s) for which the Corporation is organized:
Ownership and operation of water supply facilities for drinking and general domestic use on a mutual or cooperative basis.

Is this Corporation a Condominium Association as established under the Condominium Property Act? ☐ Yes ☑ No
Is this a Cooperative Housing Corporation as defined in Section 216 of the Internal Revenue Code of 1954? ☐ Yes ☑ No
Is this Corporation a Homeowner's Association, which administers a common-interest community as defined in subsection (c) of Section 9-102 of the code of Civil Procedure? ☐ Yes ☑ No

Article 5. Name & Address of Incorporator
The undersigned incorporator hereby declares, under penalties of perjury, that the statements made in the foregoing Articles of Incorporation are true.

C. ALLEN DAVENPORT
Name

Dated DECEMBER 05 , 2017
Month & Day

27897 STATE HWY 3
Street

GODFREY, IL 62035
City, State, ZIP

Exhibit D

Article 4.(continued)
Is this Corporation a Condominium Association as established under the Condominium Property Act? (check one)
☐ Yes ☐ No

Is this Corporation a Cooperative Housing Corporation as defined in Section 216 of the Internal Revenue Code of 1954? (check one)
☐ Yes ☐ No

Is this Corporation a Homeowner's Association, which administers a common-interest community as defined in subsection (c) of Section 9-102 of the code of Civil Procedure? (check one)
☐ Yes ☐ No

Article 5.
Other provisions (For more space, attach additional sheets of this size.):

Article 6.
Names & Addresses of Incorporators
The undersigned incorporator(s) hereby declare(s), under penalties of perjury, that the statements made in the foregoing Articles of Incorporation are true.

Dated _____ , _____
Month Day Year

Signatures and Names	Post Office Address
1. C Allen Davenport Signature C ALLEN DAVENPORT Name (print)	1. 27897 STATE Hwy 3 Street GODFREY IL, 62035 City, State, ZIP
2. Cindy Campbell Signature Cindy Campbell Name (print)	2. 323 College Ave Street Carlinville IL 62626 City, State, ZIP
3. Sue Campbell Signature Sue Campbell Name (print)	3. 402 E. Garrison St. Street Dorchester, IL 62033 City, State, ZIP

Signatures must be in BLACK INK on the original document.
Carbon copies, photocopies or rubber stamped signatures may only be used on the duplicate copy.

- If a corporation acts as incorporator, the name of the corporation and the state of incorporation shall be shown and the execution shall be by a duly authorized corporate officer. Please print name and title beneath the officer's signature.
- The registered agent cannot be the corporation itself.
- The registered agent may be an individual, resident in Illinois, or a domestic or foreign corporation, authorized to act as a registered agent.
- The registered office may be, but need not be, the same as its principal office.
- A corporation that is to function as a club, as defined in Section 1-3.24 of the "Liquor Control Act" of 1934, must insert in its purpose clause a statement that it **will comply with the State and local laws and ordinances relating to alcoholic liquors.**

Return to:

_____ Firm Name
_____ Attention
_____ Mailing address
_____ City, State, ZIP

STATE OF ILLINOIS

MACOUPIN COUNTY October 2, 2017

CITY COUNCIL MEETING

PRESENT: Alderman Bilbruck, Alderman Brockmeier, Alderman Campbell, Alderman Direso, Alderman Downey, Alderman Oswald, Alderman Toon, Mayor Deanna Demuzio, City Attorney Rick Bertinetti, City Clerk Carla Brockmeier, Treasurer Jody Reichmann, Police Chief Haley, Zoning Administrator Steve Parr, PWD Tim Hasara Absent: Alderman Heigert

Approval of Previous Minutes - Motion was made by Alderman Downey to approve minutes, seconded by Direso, motion passed unanimously.

Approval of Bills/Approval of Lake Bills/Lake Adhoc Bills/Lake Watershed - Motion made to approve all listed by Alderman Direso, seconded by Campbell, motion passed unanimously.

Correspondence

SS Mary and Joseph Church - Approval for a fireworks demonstration on October 7, 2017 at the SS Mary and Joseph Church Fall Festival was given after a motion was made by Alderman Toon, seconded by Direso, motion passed unanimously.

M & M Shrine

Deanne Berrey

Ameren Illinois

Macoupin Co. CEO Class

Motion to approve all of the above listed correspondence and place on file was made by Alderman Direso, seconded by Downey, motion passed unanimously.

Public Comment

Mayor asked public to be cautious during burn day the first 7 days of the month due to drought conditions.

Matt Turley addressed the council making counter points to water entity and Alderman Campbell's comments regarding the Regional Water Concept.

Exhibit E

Old Business

Ordinance Granting Variance 502 West First South - Motion was made by Alderman Downey, seconded by Toon to suspend the rules and pass the ordinance, motion passed unanimously.

Motion was made by Alderman Downey, seconded by Toon to pass Ordinance Granting Variance at 502 West First South, motion passed unanimously.

New Business

Enterprise Property Addition - Mary Beth Bellm representing the Macoupin County Enterprise Zone addressed the council regarding an ordinance amending the Macoupin County Enterprise Zone and the Intergovernmental Agreement by cities of Gillespie, Carlinville and Macoupin County for the address of 18804 Route 4, Carlinville, IL. Motion was made to suspend the rules by Alderman Bilbruck, seconded by Downey, motion passed unanimously. Motion was made to approve the addition pending purchase of 2.48 acres and adding to the enterprise zone by Alderman Downey, seconded by Direso, motion passed unanimously.

Water Entity Update - Alderman Campbell gave an update on the August and September meetings of the IL Alluvial Regional Water Company. Discussion took place with questions answered. Campbell also explained her position and support of the regional water concept.

Clarification of Water Representative Powers to Act and Responsibilities - Continuing the discussion above Alderman Campbell wanted to explain her reasoning for abstaining from voting at the last regional water meeting and wanted clarification of her duties as the representative, and a motion to clarify those duties. Alderman Toon made a motion to give Campbell the authority to vote, but not to spend any funds without council approval. Alderman Toon then later rescinded the motion, with Alderman Oswald then making a motion that Alderman Campbell have the power to act and appropriate funds as representative of Carlinville to the IL Alluvial Regional Water Company, seconded by Direso, motion carried with Brockmeier, Direso, Downey, Oswald, Mayor voting aye, Toon, Bilbruck, voting nay, Campbell abstaining.

Unsafe Property - 224 W. 1st South / Chief Haley has inspected property at 224 W. 1st South and deemed unsafe, he asked council to deem an unsafe property, so proceedings could begin to have the property secured. Motion was made by Alderman Direso, seconded by Downey to deem unsafe, motion passed unanimously.

Resolution Carlinville (CRV) PIDS Agreement - motion was made to approve resolution between IDOT, Amtrak and the City of Carlinville for the PIDS System at the train station by Alderman Downey, seconded by Direso, motion passed unanimously.

Bank Loan Bids - Treasurer Reichmann contacted the four local banks regarding financing for a new backhoe. Financing from Cat was not available due to an insurance conflict. UCB had the best rate at 2.45% for 4 yrs., Bank and Trust 2.61% 4 yrs., and CNB at 3.48% for 5 yrs. Motion was made to approve UCB at 2.45% by Alderman Downey, seconded by Direso, motion passed unanimously.

Motion to adjourn was made by Alderman Downey at 8:25 p.m., seconded by Direso, motion passed unanimously.

Deanna Demuzio, Mayor

Attest: Carla Brockmeier, City Clerk

Foreman & Kessler, Ltd.
Attorneys at Law

Main Office
204 E. Main
Salem, IL 62881
Tel: 618-548-8900
Fax: 618-548-9844

Conference Room
221 E. Broadway, Ste 106
Centralia, IL 62801
(By Appointment Only)

December 14, 2017

Mr. Daniel O'Brien
Attorney, City of Carlinville
331 E. 1st St. South
Carlinville, IL 62626
via e-mail only
dan_obrien@mac.com

RE: ***Notice of Criminal Trespass***
Illinois Alluvial Regional Water Company, Inc.

Dear Dan,

Please be advised that I represent Illinois Alluvial Regional Water Company, Inc. I am writing to explain the nature of the organization and perhaps more importantly to point out the distinction between it and its constituent municipal members as regards the Open Meetings Act and the right to prohibit uninvited persons from attending and/or attempting to disrupt our meetings.

Illinois Alluvial Regional Water Company, Inc. is an Illinois Not for Profit Corporation. It currently consist of three (3) members: The City of Carlinville, the Village of Dorchester and Jersey County Rural Water Company. The City of Carlinville is a municipal corporation as is the Village of Dorchester. Jersey County Rural Water Company is a private, Not for Profit Corporation. The City of Carlinville and the Village of Dorchester are units of local government. Jersey County Rural Water Company is not.

Municipalities are subject to the Open Meetings Act. Private Not for Profit Corporations such as Illinois Alluvial Regional Water Company, Inc. and Jersey County Rural Water Company are not. **Article VII, Section 10** of the ***Illinois Constitution*** allows municipalities to join together and associate with private corporations in any manner not expressly prohibited by law. More specifically, the second sentence of subparagraph (a) of said Section in pertinent part provides:

> "Units of local government may contract and otherwise associate with individuals, associations and *corporations* in any manner not prohibited by law or by ordinance". **(Emphasis Supplied)**

Exhibit F

An "association" is, *inter alia*, defined as an organization or partnership of persons or entities having a common purpose or goal. Likewise, to "associate" is to unite, combine or join together to pursue a common interest or purpose.

805 ILCS 105/103.05, ***The Illinois Not For Profit Business Corporations Act***, expressly states that Not for Profit Corporations may be organized for the purpose of owning and operating water supply facilities for drinking and general domestic use on a mutual cooperative basis.

Illinois Alluvial Regional Water Company, Inc. is an "association" amongst two (2) units of local government and a private, not for profit corporation, united for a common purpose, namely the provision of potable water to its members on a mutual cooperative basis and is thus expressly authorized by the Illinois Constitution and the Illinois Not for Profit Business Corporations Act.

Article VII, Section 10, of the Illinois Constitution eliminated the effect of what is commonly referred to as "Dillon's Rule" with respect to intergovernmental agreements and municipal associations with private corporations. Dillon's Rule is a common law rule which limits the powers of municipal corporations to those expressly granted or incident to powers expressly granted by the General Assembly. The rule resolved any doubt as to the existence of a power against the municipality. **(*Elsenau v. City of Chicago* (1929), 334 Ill. 78, 165 N.E. 129.)**

Article VII, Section 10 of the Illinois Constitution was intended to encourage cooperation among units of local government and corporations so as to remove the necessity of express or implied statutory authorization for these types of cooperative ventures, because they are believed to be in the public's best interest. **(*Village of Elmwood Park v. Forest Preserve of Cook County* (1974), 21 Ill.App.3d 597, 316 N.E.2d 140.)**

The drafters of the State Constitution recognized that Dillon's Rule operated against, rather than in favor of, the public health, safety and welfare in this particular context. It essentially handcuffed local governmental units and prevented them from going forward with many worthwhile projects. Article VII, Section 10, abrogated Dillon's Rule of strictly construing legislative grants of authority to local government units. It reversed Dillon's Rule as a matter of public policy in recognition of the public benefit which results from such cooperation. ***Connelly v. County of Clark*** **(1973), 16 Ill.App.3d 947, 307 N.E.2d 128 and *Village of Sherman v. Village of Williamsville*, 106 Ill.App.3d 174 (1982).**

In ***Village of Sherman v. Village of Williamsville*, 106 Ill.App.3d 174 (1982)**, the Court found, the municipalities were authorized to enter into the disputed water supply contract, despite absence of the actual express statutory grant of authority to do so. Although the ***Village of Sherman, supra*** involved the right of two (2) municipalities to contract with a water commission pursuant to the first sentence of Subparagraph (a) of Article VII, Section 10, the ruling applies with equal force to the second sentence as well.

In so holding, the Court relied upon the following excerpts from the Constitutional Convention which explains the advantages of allowing these types of intergovernmental agreements, combination of powers and associations. in pertinent part stating:

"It permits smaller units of local government, by combining to perform specific services or functions, to develop economies of scale with resultant cost reductions.

We think, in the long run, that vigorous intergovernmental cooperation will reduce the need for special districts and will permit the provision of services which no single unit can provide. "4 Record of Proceedings, Sixth Illinois Constitutional Convention 3421 (hereinafter cited as Proceedings).

"You will notice that the language of the intergovernmental cooperation article is based upon an affirmative grant of self-executing power *** which, in essence, means that it's there unless it's prohibited by the General Assembly-by general law. So it's a provision that says, 'You can do it unless the General Assembly says you can't.'" 4 Proceedings 3426. **(Emphasis Supplied)**

This is precisely the reason why these three (3) entities decided to associate with one another to form Illinois Alluvial Regional Water Company, Inc. To achieve an economy of scale with respect to the provision of water services that any one acting alone could not accomplish.

Any suggestion that the municipality does not have the authority to join this organization is simply wrong and if necessary, will be demonstrated in a court of law. I would strongly recommend the City not take legal advice from uneducated, lay persons and "watchdog groups" who misapprehend the law and simply do not know what they are talking about.

Illinois Alluvial Regional Water Company, Inc., being a private Not for Profit Corporation, is not subject to the Open Meetings Act, notwithstanding the fact that two (2) of its members are. Likewise, the fact that those constituent members contribute money to Illinois Alluvial Regional Water Company, Inc. does not alter the result. **See *Hopf v Top Corp, Inc.*, 256 Ill. App. 3d 887, (1st Dist 1993) and *Rockford Newspapers Inc. v Northern Illinois Council on Alcoholism and Drug Dependence*, 64 Ill. App. 3d 94 (2nd Dist. 1978).**

In the past, certain members of the Carlinville City Council have violated the Open Meetings Act in furtherance of an ill-fated attempt to obstruct my client's business. My purpose in writing is to notify you that I am hereby putting a stop to that interference. Please be advised that henceforth, no members of your city council, other than your appointed representative, will be permitted to attend our meetings. I will not permit uninvited members of your City Council from conducting an unauthorized, *sua sponte* meeting within our meeting.

To illustrate, the Open Meetings Act applies anytime a majority of a quorum of a public body is present and public business of that municipality is being discussed. The Carlinville City Council consist of eight (8) members. Hence, five (5) or more members of the municipal board constitutes a quorum. Three (3) members constitutes a majority of a quorum. As a result, if three (3) or more City Council members are present at any location and begin discussing the municipality's own business, as distinguished from Illinois Alluvial Regional Water Company, Inc.'s business, then a meeting of the City of Carlinville is taking place and the City must comply with the Open Meetings Act.

This was recently the case when three (3) members of Carlinville City Council, (not counting the appointed representative) showed up at our meeting and began debating whether it was a good idea for Carlinville to participate in Illinois Alluvial Regional Water Company, Inc. or seek other, alternative potable water sources. On that occasion a meeting of the City of Carlinville erupted within a meeting of the Illinois Alluvial Regional Water Company, Inc., which meeting is otherwise not a public meeting.

This disrupts the normal order of business and creates problems for both Illinois Alluvial Regional Water Company, Inc. and the City of Carlinville. Illinois Alluvial Regional Water Company, Inc. meetings are not the time or place for the City of Carlinville to discuss its internal business. The issue of whether the City of Carlinville should be a member or not is an issue that should be discussed in an open meeting of the City of Carlinville, not a private meeting of Illinois Alluvial Regional Water Company, Inc.

Having appointed a representative to Illinois Alluvial Regional Water Company, Inc., that decision appears to have already been made. The motive of those second guessing of that decision escapes me. Nevertheless, the point remains that our meetings are not the appropriate forum for these people to discuss that issue.

Simply put, I as the legal representative for Illinois Alluvial Regional Water Company, Inc. will not permit our meeting to be hijacked by certain members of your City Council to divert attention onto a tangent issue which is relevant only to a disgruntled faction of your board. Those matters must be vented in house, not at our meetings. Our meetings are to discuss the business of Illinois Alluvial Regional Water Company, Inc.

Consequently, please be advised that henceforth all members of your City Council, other than your appointed representative are prohibited from attending our meetings. Please consider this correspondence as Notice pursuant to **720 ILCS 5/21-1 *et seq.*** that said persons, including but not limited to, Randy Bilbruck, Kim Heigert and Beth Toon, shall not enter the premises where the meetings of Illinois Alluvial Regional Water Company, Inc. are taking place.

To that end, Jersey County Rural Water Company will post a Notice at the entrance to the building where said meetings will be held to notify said persons that they may not enter. Any attempted violation of this Notice will be reported to local law enforcement as a criminal trespass and will be enforced and prosecuted as such. It is unfortunate that a small group of mis-informed individuals with personal agendas seeks to stand in the way of the entire community's lawful attempts to seek a safe, stable source of potable water for many years in the future, but such is the nature of our recent political environment. I hope you can appreciate my reason for having to take such a firm stance on this issue. Thanking you, I remain,

Sincerely yours,
FOREMAN & KESSLER, LTD.

David M. Foreman

DMF/mi

FILED
5/11/2020 5:34 PM
LEE ROSS
CLERK OF THE CIRCUIT COURT
MACOUPIN COUNTY, ILLINOIS

IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT
MACOUPIN COUNTY, ILLINOIS

CAMILLE MAYFIELD COOPER BROTZE, and WAYNE BROTZE, husband and wife,	)	
Plaintiffs,	)	
v.	)	No. 2019-MR-000092
CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation,	)	
Defendant.	)	

DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

NOW COMES Defendant, the CITY OF CARLINVILLE, a Municipal Corporation, by and through its attorneys, Dan O'Brien and John Gabala appearing of record, and for its Response to Plaintiffs' Motion for Summary Judgment, hereby states as follows:

Defendant, the Village of Dorchester (another non-home rule municipality), and Jersey Rural Water Company, Inc., ("Jersey Rural Water Co.") associated with one another to form Illinois Alluvial Regional Water Company ("Alluvial") to construct, own, and operate a regional water treatment facility and distribution system to supply potable water to them on a cooperative basis. These facts are not in dispute. Plaintiffs claim that Defendant is without legal authority to join such a not-for-profit corporation or to participate in the incorporation, funding or operation of it. Plaintiffs' contentions are incorrect. Defendant and the Village of Dorchester have statutory authority under the Municipal Code to enter into contracts to purchase potable water from private companies. They further have the authority to construct, own, and operate their own public potable water treatment facilities and distribution systems. Section 10(a) of the 1970 Constitution expressly allows municipalities to exercise that authority of public water supply through an

association with other local governmental units and private corporations without the need for separate statutory authority. Alluvial is the chosen means of association of Defendant, the Village of Dorchester, and Jersey Rural Water Co. to pursue the common goal of providing a safe and reliable potable drinking water supply to the public. This Court should deny Plaintiffs' motion for summary judgment and grant summary judgment in favor of Defendant as a result.

A. Plaintiffs Have Failed to Meet Their Burden of Proof for Issuance of a Writ of Mandamus

"Mandamus will issue only where the plaintiff has fulfilled his burden (see *Mason v. Snyder*, 332 Ill. App. 3d 834, 840 *** ([4th Dist.] 2002)) to set forth every material fact needed to demonstrate that (1) he has a clear right to the relief requested, (2) there is a clear duty on the part of the defendant to act, and (3) clear authority exists in the defendant to comply with an order granting mandamus relief." *Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶ 22. Plaintiffs argue that mandamus is appropriate because (i) Alluvial was not created as a Public Water District under the Public Water District Act (70 ILCS 3705/0.01); (ii) Alluvial does not comply with the Water Authorities Act (70 ILCS 3715/0.01); (iii) Alluvial is not a "water commission" per the Water Commission Act of 1985 (70 ILCS 3720/0.001); (iv) Alluvial is not a Municipal Joint Action Water Agency as defined by the Intergovernmental Cooperation Act (5 ILCS 220/3.1); and (v) the association of Defendant with Village of Dorchester and Jersey Rural Water Co. to provide a public water supply is not authorized by any provisions of the Municipal Code relating to Water Supply and Sewage Systems (65 ILCs 5/11-124-1 *et seq.*).

The issue with the statutes cited by Plaintiffs is that none of them require Defendant to utilize them, *i.e.*, their use is not mandatory. Instead, their use is entirely optional. Defendant is not required to avail itself of any one of them. The purpose of mandamus is to compel public officials to comply with a mandatory statute. *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185,

193 (2009). While mandamus is an appropriate remedy to compel compliance with mandatory legal standards, relief will not be granted when the act in question involves the exercise of discretion. *Konetski*, 233 Ill. at 193. "Discretion in the manner of the performance of an act arises when the act may be performed in one of two or more ways, either of which would be lawful, and where it is left to the will or judgment of the performer to determine in which way it shall be performed." *Y-Not Project, Ltd. v. Fox Waterway Agency*, 2016 IL App (2d) 150502, ¶ 35 (internal quotation marks omitted).

The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature. *People v. Cordell*, 223 Ill. 2d 380, 389 (2006). The best evidence of legislative intent is the statutory language, given its plain and ordinary meaning. *People v. Wooddell*, 219 Ill. 2d 166, 170-71 (2006). The legislature's use of the word "shall" in a statute indicates an intent to impose a mandatory obligation. *People v. Ramirez,* 214 Ill. 2d 176, 182 (2005) ("It is well established that, by employing the word "shall," the legislature evinces a clear intent to impose a mandatory obligation."). Where a statute does not detail a consequence for the failure to comply, however, even use of the term "shall" does not indicate mandatory intent. *People v. Porter*, 122 Ill. 2d 64, 84 (1988) ("mandatory intent is indicated where a statute prescribes the result that will occur if the specified procedure is not followed"). " '[S]tatutes are mandatory if the intent of the legislature dictates a particular consequence for failure to comply with the provision.' " *Cebertowicz v. Madigan*, 2016 IL App (4th) 140917, ¶ 17 (quoting *People v. Delvillar*, 235 Ill. 2d 507, 514 (2009)). However, in the absence of such intent, no particular consequence flows from noncompliance. See *Id*; *Porter*, 122 Ill. 2d at 84 ("mandatory intent is indicated where a statute prescribes the result that will occur if the specified procedure is not followed"). The use of the

word "may" in a statute connotes discretion. *Krautsack v. Anderson*, 223 Ill. 2d 541, 554 (2006). With the foregoing in mind, Defendant will address each of the statutes cited by Plaintiffs.

The Public Water District Act, cited by Plaintiffs, states the following: "Any contiguous area in this State having a population of not more than 500,000 inhabitants, which is so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, management and extension of waterworks properties within such area will be conducive to the preservation of public health, comfort and convenience of such area may be created into a public water district under and in the manner provided by this Act." 70 ILCS 3705/1 (emphasis added). Note the use of the word "may".

Similarly, section 3715/1 of the Water Authorities Act states that "Any area of contiguous territory may be incorporated as a water authority in the following manner ***". 70 ILCS 3715/1 (emphasis added). Once again, that section employs the term "may".

Further, the provisions of The Water Commission Act of 1985 only apply to a water commission constituted pursuant to Division 135 of the Illinois Municipal Code. 70 ILCS 3720/2(b). In turn, section 135-1 of the Municipal Code states that "Any 2 or more municipalities, except cities of 500,000 or more inhabitants, may acquire either by purchase or construction a waterworks system or a common source of supply of water, or both, and may operate jointly a waterworks system or a common source of supply of water, or both, and improve and extend the same, as provided in this Division 135. 65 ILCS 5/11-135-1 (emphases added). Again, that section employs the term "may" not "shall". Moreover, that section also states that "The corporate authorities of the specified municipalities desiring to avail themselves of the provisions of this Division 135 shall adopt a resolution or ordinance determining and electing to acquire and operate jointly a waterworks system or a common source of supply of water or both, as the case may be."

65 ILCS 5/11-135-1 (emphasis added). Clearly the phrase "desiring to avail themselves of the provisions of this Division 135" indicates discretion as to whether or not to avail itself of the statute by organizing its water supply thereunder. Because Defendant exercised its discretion in choosing not to organize its water supply in that manner, the provisions of the Water Commission Act of 1985 do not apply here.

Section 220/3.1 of the Intergovernmental Cooperation Act, provides that "Any municipality or municipalities of this State, any county or counties of this State, any township in a county with a population under 700,000 of this State, any public water district or districts of this State, State university, or any combination thereof may, by intergovernmental agreement, establish a Municipal Joint Action Water Agency to provide adequate supplies of water on an economical and efficient basis for member municipalities, public water districts and other incorporated and unincorporated areas within such counties". 5 ILCS 220.3.1 (emphasis added). Again, this section states that a municipality "may", not "must" or "shall", establish a Municipal Joint Action Water Agency by intergovernmental agreement. Once again, Defendant was under no statutory obligation to do so. Finally, Section 11-124-1 of the Municipal Code explicitly provides that "The corporate authorities of each municipality may contract with any person, corporation, municipal corporation, political subdivision, public water district or any other agency for a supply of water." 65 ILCS 5/11-124-1.

Each statute that Plaintiffs cite apply only if the municipality decides to avail itself of that statute and organize its water supply thereunder. None of the statutes cited by Plaintiffs require the municipality to organize its water supply in any given way. This is evidenced by use of the word "may" in reference to their utilization. None of the statutes cited by Plaintiffs use the phrase "shall" to impose an obligation of utilization on a municipality. Mandamus relief requires that the

actor exercise no discretion. *Whirl v. Clague*, 2015 IL App (3d) 140853, ¶ 14. As evidenced by the many statutes Plaintiffs cite, there are apparently multiple ways for a municipality to provide a public water supply. Inherent in the existence of multiple options is the implication that discretion on the part of the municipality exists to make a choice. See *Fox Waterway*, 2016 IL App (2d) 150502, ¶ 35 ("Because there are countless ways to implement and enforce "necessary and reasonable" ordinances and rules to improve and maintain the waterway, the [Act's] duties are discretionary, not mandatory."). Such discretion is not the proper subject of a mandamus claim. See *Moore v. Grafton Board of Trustees*, 2011 IL App (2d) 110499, ¶ 7 (the court should not interfere with the discretion given by the legislature to a unit of local government).

Accordingly, Plaintiffs have failed to cite to the mandatory statute that Defendant must avail itself of. The question of whether a municipality can act as a member of a corporation for a public water supply rather than just contracting with a private water supply is not one that is fit for mandamus because there is no duty or requirement that a municipality "shall" or "must" organize its water supply in any one given way. As a result, Plaintiffs have failed to meet their burden of proof to show clear entitlement to the extraordinary remedy of mandamus. See *Hardy*, 2011 IL App (4th) 100351, ¶ 22 ("Mandamus will issue only where the plaintiff has fulfilled his burden"). Accordingly, Plaintiffs' motion for summary judgment should be denied.

B. <u>Defendant's Duty to Follow the Law has been Abided</u>

Citing Article VII, section 7 of the Illinois Constitution, Plaintiffs argue that non-home rule municipalities are constrained to only those powers granted to them by law or the constitution and that Defendant has violated the law by associating with Village of Dorchester and Jersey Rural Water Co. to form Alluvial. Curiously, however, Plaintiffs cannot point to what specific law Defendant is violating, despite Plaintiffs' clear burden to do so. As discussed in Section A, *supra*,

none of the statutes cited by Plaintiffs are mandatory in nature or require their utilization. Indeed, Defendant is not required to avail itself of any one of them. Plaintiffs' motion for summary judgment also argues that, pursuant to Article VII, section 7, non-home rule municipalities are constrained to only those powers granted to them by law or the constitution. Plaintiff's argument pertaining to section 7 ignores Defendant's broad grant of authority over the public water supply contained in the Municipal Code. See 65 ILCS 5/11-124-1(a) ("The corporate authorities of each municipality may contract with any person, corporation, municipal corporation, political subdivision, public water district or any other agency for a supply of water.").

To summarize, the Municipal Code grants municipalities express authority over the means and methods by which they may procure a public water supply, construct water procurement, treatment, and distribution facilities, and do so in association with other local governmental units (*e.g.*, the Village of Dorchester) and private corporations (*e.g.*, Jersey Rural Water Co.). See 65 ILCS 5/11-124-1 *et seq.*

C. The Exercise of Defendant's Statutory Power via Article VII, section 10(a) of the 1970 Constitution is Proper

Article VII, section 10(a) of the Illinois Constitution of 1970 serves to extend Defendant's statutory authority by allowing municipalities to exercise their power over the public water supply in association with local government and private corporations. Specifically, section 10(a) provides the following:

> "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." (Emphasis added.) Ill. Const. 1970, art. VII, § 10(a).

To clarify Defendant's position, section 10(a) did not reverse Dillon's Rule with respect to the types of activities that a municipality may lawfully undertake but did so instead with regards to the way that power may be exercised. Section 10(a) does not grant municipalities power over new subject matters. What section 10(a) does is to expand the means by which municipalities may exercise their existing powers by allowing them to do so in combination with other municipalities or private corporations. Such contracts and associations, however, are limited to subject matters over which the municipality has been granted authority. See *Village of Lisle v. Lisle of Woodridge*, 192 Ill. App. 3d 568, 577 (2nd Dist. 1989); *People ex rel. Devine v. Suburban Cook County Tuberculosis Sanitarium District*, 349 Ill. App. 3d 790, 800 (1st Dist. 2004).

The second sentence of section 10(a) changed the law to expand a municipality's right of association to include private corporations. Following that change, municipalities are no longer required to seek legislative approval to "contract or otherwise associate" with private entities. Instead, municipalities may contract or associate with a private entity as they wish so long as that contract or association is not prohibited by statute or ordinance. See *Village of Sherman v. Village of Williamsville*, 106 Ill. App. 3d 174, 179 (4th Dist. 1982) ("Article VII, section 10, eliminated the effect of 'Dillon's Rule' in construing intergovernmental agreements. This rule limited the powers of a municipal corporation to those expressly granted or incident to powers expressly granted by the General Assembly. The rule resolved any doubt of the existence of a power against the municipality. The various divisions of our court have determined that article VII was intended to encourage cooperation among units of government and to remove the necessity of obtaining statutory authorization for cooperative ventures. Furthermore, this court has stated that article VII,

section 10, has abrogated Dillon's Rule of strictly construing legislative grants of authority to local governmental units [(internal citations omitted)]".

The term "associate" is undefined in the 1970 Constitution. Where a term is not defined, this Court affords that term its plain, ordinary, and popular meaning, *i.e.*, its dictionary definition. *Gaudina v. State Farm Mutual Automobile Insurance Co.*, 2014 IL App (1st) 131264, ¶ 18. "Associate" is defined as "to join (things) together or connect (one thing) with another: COMBINE," "to join or connect in any of various intangible or unspecified ways" and "to combine or join with another or others as component parts: UNITE." *Doctors Direct Insurance, Inc. v. Bochenek*, 2015 IL App (1st) 142919, ¶ 27 (quoting Webster's Third New International Dictionary 132 (1993)). Defendant joining together with the Village of Dorchester and Jersey Rural Water Co. to form Alluvial is an association for purposes of section 10(a). Such association is not prohibited by any statute or ordinance. Instead, when one combines the grants of authority in the Municipal Code and section 10(a) of the 1970 Constitution, you arrive at the necessary conclusion that non home-rule units have the authority to exercise their power over public water supply in association with other local governmental units and private corporations in any way not prohibited by law.

To the extent Plaintiffs claim that the "grant of association" with another local government or private corporation must be expressly found in the Municipal Code, Plaintiffs ignore the import of section 10(a) and misread the phrase "in any manner **not** prohibited by law" (emphasis added). The term "any" in this context obviously instructs that Defendant was free to associate with the Village of Dorchester and Jersey Rural Water Co. in any manner it chose fit unless that manner of association was expressly prohibited by statute or ordinance. See *Village of Sherman*, 106 Ill. App. 3d at 178-79 (quoting 4 Record of Proceedings, Sixth Illinois Constitutional Convention

3426) ("You will notice that the language of the intergovernmental cooperation article is based upon an affirmative grant of self-executing power *** which, in essence, means that it's there unless it's prohibited by the General Assembly-by general law. So it's a provision that says, 'You can do it unless the General Assembly says you can't.' ").

In sum, Plaintiffs have not, and indeed cannot, meet their burden to cite a statute or ordinance that prohibits Defendants from engaging in the manner of association undertaken in this case (*i.e.*, nothing exists prohibiting non-home rule municipalities from associating with a private not-for-profit corporation). To the contrary, section 103.05(a)(23) of The General Not for Profit Business Corporations Act specifically provides that not-for-profit corporations may be organized for the purpose of owning and operating water supply facilities for drinking and general domestic use on a mutual cooperative basis. See 805 ILCS 105/103.05(a)(23). This is precisely what Defendant did when it associated with the Village of Dorchester and Jersey Rural Water Co. in forming Alluvial.

In sum, Defendant was granted broad power over the public water supply by the Municipal Code. Defendant was also granted explicit authority by section 10(a) of the 1970 Constitution to choose how it wished to associate with the Village of Dorchester and Jersey Rural Water Co. Defendant chose the formation of Alluvial as its preferred means of association. It is undisputed that no statute or ordinance exists to prohibit such association. Accordingly, Defendant is entitled to judgment as a matter of law.

D. <u>Plaintiffs' Interpretation Renders Section 10(a) Meaningless</u>

Plaintiffs' argument that municipalities cannot associate with a private corporation misapprehends how the Constitution acts in conjunction with the Municipal Code to reverse Dillon's Rule, not with respect to the municipalities' authority over the subject matter involved,

but with respect to its authority to contract and associate with private corporation in exercising authority over those issues.

Plaintiffs' theory requires reading section 10(a) of the Illinois Constitution far too narrowly. Such a reading would render section 10(a) completely meaningless. Interpreting section 10(a) to render it meaningless would be contrary to the well-established rule that statutes must be read to give meaning to each word and phrase. See *Hirschfield v. Barrett*, 40 Ill. 2d 224, 230 (1968) ("the fundamental rule that each word, clause or sentence must, if possible, be given some reasonable meaning [(citations omitted)] is especially apropos to constitutional interpretation"). As such, Plaintiffs' interpretation of section 10(a) should not be countenanced.

E. Plaintiffs' Argument They Have a Clear Right to Expect Their Local Government to Act in Accordance with Illinois Law When Conducting City Business Misleads

Plaintiffs motion for summary judgment recites that "[i]t is a well settled principle of Illinois law that members of the public 'have a protectable interest in ensuring that public officials follow the requirements of public statutes.'" Plaintiffs' MSJ, par. 14. The issue, however, is Plaintiffs have not cited to the particular public statute that Defendant is violating in this context. It cannot be any of the ones discussed in Section A, *supra*, as they are all discretionary in nature. This Court has already found Plaintiffs are not alleging a Freedom of Information Act ("FOIA") violation occurred. Similarly, this Court has also found Plaintiffs are not alleging an Open Meetings Act ("OMA") violation. Beyond that, Plaintiffs have not cited to the transparency statute that Defendant has purportedly violated. It is Plaintiffs' burden to identify the specific statute that they maintain Defendant is violating. See *Hardy*, 2011 IL App (4th) 100351, ¶ 22 ("Mandamus will issue only where the plaintiff has fulfilled his burden"). The transparency vehicles in Illinois are FOIA and the OMA. Those are indisputably not at issue in this case. Without a specific

allegation or identifying a specific citation to a transparency statute that Defendant is violating by its association with the Village of Dorchester and Jersey Rural Water Co., Plaintiffs' bald general allegations involving Defendant's purported lack of transparency are insufficient to support summary judgment in their favor.

F. Plaintiffs' Relief is not Available Under the Circumstances Presented

In paragraph Nos. 34-37 of Plaintiffs' motion for summary judgment, Plaintiffs argue, without any citation to authority, that clear authority exists for this Court to order Defendant to cease its association with Alluvial. Once again, it is Plaintiffs' burden of proof to cite to legal authority in support of their positions. That issue aside, there are a number of additional problems with Plaintiffs' position in this regard. First, Plaintiffs contend that the Court's authority is premised on its own "ruling". Plaintiffs' tone softens in the following sentence somewhat, stating instead that this Court has noted that Defendant "has not disputed that a Writ of Mandamus can be used to compel the undoing of an act not authorized by law of (*sic*) to require public entities and/or officials to comply with State law." Plaintiffs' MSJ, par. 36. Defendant would emphasize that its Answer to Plaintiffs' Second Amended Complaint had not even been filed in October 2019. As such, it is a stretch for Plaintiffs to conclude that a pronouncement of Defendant's position prior to it answering the complaint can be somehow reasonably construed as law of the case.

Plaintiffs also state that "there is no allegation in this case that [Defendant] lack[s] authority to cease [its] relationship with Illinois Alluvial." Plaintiffs' MSJ, par. 35. To be clear, Defendant is under no obligation to make any such allegation as the burden of proof in this case rests squarely with Plaintiffs. It is Plaintiffs' burden, as it has been throughout this case, to advance such authority. "Mandamus will issue only where the plaintiff has fulfilled his burden". *Hardy*, 2011 IL App (4th) 100351, ¶ 22.

Moreover, mandamus is not proper to undo an act where, as is the case here, the actor is able to exercise discretion. The issue, however, is Plaintiffs have not cited to the particular statute that is mandatory and which Defendant is violating or failing to avail itself of. It cannot be the Public Water District Act; the Water Authorities Act; the Water Commission Act of 1985; the Intergovernmental Cooperation Act; or the provisions of the Municipal Code relating to Water Supply and Sewage Systems because, as discussed in Section A, *supra*, absolutely none of those statutes cited by Plaintiffs in support of their arguments are mandatory or require Defendant's utilization. As a result, the mandamus relief Plaintiffs seek, *i.e.*, an order to compel the undoing of an act, is unavailable to them under the circumstance presented by the case.

G. Conclusion

In sum, Defendant and the Village of Dorchester have statutory authority under the Municipal Code to enter into contracts to purchase potable water from private companies. They further have the authority to construct, own, and operate their own public potable water treatment facilities and distribution systems. Section 10(a) of the 1970 Constitution expressly allows municipalities to exercise that authority of public water supply through an association with other local governmental units and private corporations (in this case, Jersey Rural Water Co.) without the need for separate statutory authority. Alluvial is the chosen means of association of Defendant, the Village of Dorchester, and Jersey Rural Water Co. to pursue the common goal of providing a safe and reliable potable drinking water supply to the public. This Court's application of the law to the undisputed facts of this case yields the undeniable conclusion that Alluvial is a constitutionally permitted association among and between two local units of local governments and a private not-for-profit corporation to construct, own, and operate a water distribution system

to provide potable water to the public, all of which are powers expressly granted Defendant by the Municipal Code. As such, Defendant is entitled to summary judgment as a matter of law.

WHEREFORE, Defendant, the CITY OF CARLINVILLE, requests that Plaintiffs' Motion for Summary Judgment be denied, and Defendant's Motion for Summary Judgment on Affirmative Defenses be granted, and for such other relief this Court deems equitable and just.

Respectfully submitted,

CITY OF CARLINVILLE, ILLINOIS,
A Municipal Corporation, Defendant

BY: /s/ John Gabala
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CERTIFICATE OF FILING AND PROOF OF SERVICE

I certify that on May 11, 2020, I submitted the foregoing document for electronic filing with the Clerk of the Court of the Seventh Judicial Circuit, Macoupin County, Illinois by using the Odyssey eFileIL system.

I further certify that I served the following by transmitting a copy via email on the above date to:

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Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge.

/s/ John M. Gabala
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FILED
5/18/2020 3:08 PM
LEE ROSS
CLERK OF THE CIRCUIT COURT
MACOUPIN COUNTY, ILLINOIS

IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MACOUPIN COUNTY, CARLINVILLE, ILLINOIS

CAMILLE MAYFIELD COOPER BROTZE, and WAYNE BROTZE, husband and wife,	)	
Plaintiffs,	)	
v.	)	No. 2019-MR-92
CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation,	)	
Defendant.	)	

REPLY TO RESPONSE TO MOTION FOR SUMMARY JUDGMENT

NOW COME the Plaintiffs, CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE, husband and wife, by and through JACOB N. SMALLHORN of SMALLHORN LAW LLC, their attorneys, and in reply to the Response to Plaintiff's Motion for Summary Judgment filed by Defendant, CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation, state as follows:

There is no dispute of the material facts underlying this cause of action. Defendant, CITY OF CARLINVILLE, a Municipal Corporation, joined with another non-home rule municipality and a private, not-for-profit corporation to form a new not-for-profit corporation known as Illinois Alluvial Regional Water Company ("Alluvial"). The purpose of Alluvial is to construct and operate a regional water treatment facility and distribution system. The parties are in agreement that there are several different statutes which permit Defendant to act in concert with other entities to solve its water needs, and that Defendant chose not to avail itself of any of the statutorily authorized methods of creating a joint water treatment facility. Instead, Defendant admits that it chose to create a private, not-for-profit company based on Defendant's ability to

"associate" under Article VII(10)(a) of the Illinois Constitution. Defendant argues that Article VII(10)(a) of the Constitution gives it the power to take any action it wants so long as its action pertains to a subject matter Defendant has authority over and there is no law affirmatively barring Defendant from taking such action. Plaintiff asserts that there are several laws in effect which allow Defendant to take action to solve its water problems; that by including several different ways Carlinville could solve its water problems, the Illinois General Assembly intended to exclude Defendant from taking an action which was not amongst the list of statutorily authorized methods; and that by doing so Defendant acted outside the scope of its statutory authority. The Court should not reward Defendant's behavior in attempting to use its ability to "associate" as a method of circumventing the numerous laws which the Illinois General Assembly has created to circumscribe and limit Defendant's power in creating a joint water treatment and distribution system. The Court should deny Defendant's Motion to Dismiss the Second Amended Complaint and grant Plaintiff's Motion for Summary Judgment.

The heart of the issue in this case is the interpretation of Article VII(10)(a) of the Illinois Constitution. Section 10(a) of Article VII of the Illinois Constitution of 1970 provides that "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." Ill. Const. art. VII, § 10(a). Article VII, Section 7 of the Constitution constrains non-home rule counties and municipalities to "only powers granted to them by law" or Constitutional grant. Ill. Const. Art. VII, § 7. The parties are in agreement that there are numerous statutes which authorize a municipality to take actions to join with other entities to solve its water problems, and that there is no statute which explicitly bars Defendant from taking the actions that it did

regarding the formation of Alluvial. This matter comes down to principles of statutory construction.

In interpreting a statute, the court's primary goal is to give effect to the legislature's intent. *People v. Schmidt*, 392 Ill.App.3d 689, 698, 338 Ill.Dec. 472, 924 N.E.2d 998 (1st Dist. 2009). Such intent is best ascertained by examining the statute's language. *Id.* The Court must examine a statute as a whole, considering all relevant provisions together. *People v. Moody*, 2015 IL App (1st) 130071, ¶ 50. The Court must presume that the legislature did not intend inconvenient, absurd or unjust results. Moody, 2015 IL App (1st) 130071, ¶ 50.

The maxim of statutory construction most applicable to this case is *expressio unius est exclusio alterius.* The *expressio unius* maxim is shorthand for the common sense idea that the expression of one thing implies the exclusion of others. It is the idea that if my daughter asks me if she can have an apple and I tell her that she may have an apple, my permission for an apple impliedly precludes her from having a cookie from the jar next to the apple on the counter. This means that where a statute lists items to which it refers, an inference exists that all omissions must be understood as exclusions. *People v. Douglas*, 381 Ill.App.3d 1067, 1074, 320 Ill.Dec. 163, 886 N.E.2d 1232 (2d Dist. 2008).

In this case, the apple is the Public Water District Act, 70 ILCS 3705/0.01 *et seq.*; Water Authorities Act, 70 ILCS 3715/0.01 *et seq.*; Water Commission Act of 1985, 70 ILCS 3720/0.001 *et seq.*; Intergovernmental Cooperation Act, 5 ILCS 220/3.1; and the Illinois Municipal Code, 65 ILCS 5/11-124-1 *et seq*. The Illinois General Assembly has created no less than five different ways for Defendant to associate with other entities to solve its water problems. What was the point of the General Assembly in coming up with five different ways for a

municipality to create a joint water treatment and distribution scheme if the General Assembly also thought that Defendant could choose any other method it saw fit?

Defendant wants the cookie, i.e. the ability to do whatever it wants in regards to how it goes about crafting a solution to its water problem. The problem with Defendant's desire is not in the end it is seeking, but in the way it went about getting what it wants. Defendant concedes that *Dillon's Rule* still applies today, but it now only pertains to the exercise of power "over new subject matter." Defendant's Response to Plaintiff's Motion for Summary Judgment ("Response to MSJ"), p. 8. In support of its argument, Defendant cites *Village of Sherman v. Village of Williamsville,* 106 Ill. App. 3d 174, 179 (4th Dist. 1982), for the proposition that Article VII, Section 10 eliminates the effect of *Dillon's Rule* in construing intergovernmental agreements. Response to MSJ, p. 8-9. The difference between *Sherman* and this case is that there is no intergovernmental agreement between Defendant, any of the other entities, or Alluvial. Defendant has chosen to participate in the creation of a not-for-profit corporation, which is not the creation of an agreement but a creation by statute (the Illinois Not-For-Profit Corporation Act, 805 ILCS 105/101.01 *et seq.*). Defendant is trying to analogize apples to cookies when the analogy does not fit.

The Fourth District's opinion in *Connelly v. Clark County.*, 16 Ill. App. 3d 947, 307 N.E.2d 128 (4th Dist. 1973) sheds more light on the issues relevant to this case than *Sherman.* Decided after the General Assembly ratified the 1970 Constitution, C*onnelly* concerns the sale of gravel from a county gravel pit to other local governmental entities on an as-needed basis, without any written governmental agreement delineating the rights of the parties. *Id.* The *Connelly* court noted that "it is a well-established rule that the powers of the multifarious units of local government in our State, including counties, are not to be enlarged by liberally construing

the statutory grant, but, quite to the contrary, are to be strictly construed against the governmental entity (internal citation omitted)." *Id.* The Fourth District Appellate Court ultimately held that the County could not sell gravel on a case-by-case basis, but instead needed an intergovernmental agreement with the other governmental entities it was selling to which delineated the rights and responsibilities of the parties. *Id.*

The facts of this case are closely analogous to the facts of *Connelly.* Just like Clark County in *Connelly,* Defendant has attempted to sell a product to other governments (gravel in *Connelly* and potable water in this case) without any written agreements in place. Just like in *Connelly,* there are laws which give Defendant options regarding how to conduct such business (the Highway Code in *Connelly* and the five different laws granting municipalities the ability to form joint ventures to solve their water needs in this case). What is markedly different from *Connelly* is the inference Defendant wishes the court to draw from the facts.

Defendant wants the Court to completely dismiss the numerous solutions the General Assembly has provided Defendant to solve its water problems. Instead, Defendant seeks permission to undertake a course of action which circumvents the public's right to know what their government is doing, and which would result in the expenditure of funds Defendant procured through Federal grants with almost no public disclosure as to how those funds would be used and a process which has been very secretive to say the least.

Defendant frames this matter as one concerning its right to "associate" with other governmental and corporate entities. The Court must determine whether or not the Constitution's creation of a municipality's right to "associate" encompasses the possibility that a non-home rule municipality can participate in the creation of a not-for-profit corporation to sell a product.

The plain, unambiguous, and intuitive answer to this question is no. The Illinois General Assembly could not have intended such a result when they created several different ways for Defendant to accomplish its goal. By including so many different ways to create a joint water treatment facility, common sense and the maxim of statutory construction *expressio unius* dictate that the General Assembly did not mean to allow non-home rule municipalities to do whatever they wanted when creating a joint water facility.

WHEREFORE, Plaintiffs, CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE, pray that the Court enter an Order granting their Motion for Summary Judgment, granting Plaintiffs the relief requested in their Second Amended Complaint, and for any such further relief the Court deems equitable and just under the circumstances.

Dated this 18th day of May, 2020.

CAMILLE MAYFIELD COOPER BROTZE and
WAYNE BROZE, Plaintiffs,

By: /s/ Jacob N. Smallhorn
Jacob N. Smallhorn
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CERTIFICATE OF SERVICE

The undersigned, being first duly sworn on oath, deposes and says that he electronically filed the above document with the Clerk at the https://illinois.tylerhost.net/ofsweb e-filing system and sent true copies thereof via email, on the 18th day of May, 2020.

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State of Illinois

In the Circuit Court of Judicial Circuit #7

Macoupin County

Mandamus
BROTZE, CAMILLE MAYFIELD COOPER P 001
VS.
CITY OF CARLINVILLE, ILLINOIS D 001

Case number: 2019-MR-000092

Notice to:

O'BRIEN, DANIEL W
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Take notice that the following entries were made on the above-titled case:

06/09/2020 AGT/bls- Case called for hearing on the parties' pending Motions for Summary Judgment. All parties appear via Zoom video-conferencing, along with their attorneys. Arguments heard. Court verbally issues partial ruling regarding Defendant's arguments of 1) Plaintiffs' failure to file formal answer to affirmative defenses, 2) standing, and 3) laches. Court denies Defendant's Motion for Summary Judgment as to those arguments. The Court took the final issue under of advisement of whether the Illinois Constitution grants the City of Carlinville the authority to associate with another non-home rule municipality and a not-for-profit corporation for purposes of creating and developing a brand new not-for-profit corporation. Parties granted 14 days to submit proposed Orders, which may analyze the issue of constitutional construction in the context of the language " may contract or" versus the language " may contract and" as found in Article VII, Section 10(a). The proposed Orders should also incorporate a section regarding each party's interpretation of " in any manner not prohibited by law or by ordinance." Written decision to follow receipt of the proposed Orders. Clerk to forward a copy of this docket entry to the attorneys of record. AGT

/s/LEE ROSS, Circuit Clerk (EDF)

Circuit Clerk, LEE ROSS

This notice mailed on Wednesday, June 10, 2020.

Deputy

GABALA, JOHN
ONE W OLD STATE CAPITOL PLZ
SUITE #600
SPRINGFIELD, IL 62701-0000

EDF

IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT
MACOUPIN COUNTY, ILLINOIS

CAMILLE MAYFIELD COOPER BROTZE, and WAYNE BROTZE, husband and wife,	)	
Plaintiffs,	)	
v.	)	No. 2019-MR-000092
CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation,	)	
Defendant.	)	

NOTICE OF FILING

PLEASE TAKE NOTICE that on June 23, 2020, Defendant, City of Carlinville, Illinois, filed its proposed Order via electronic filing with the Clerk of the Court of the Seventh Judicial Circuit, Macoupin County, Illinois by using the Odyssey eFileIL system.

Respectfully submitted,

CITY OF CARLINVILLE, ILLINOIS,
a Municipal Corporation, Defendant

By: /s/ John M. Gabala
One of its Attorneys

John M. Gabala, ARDC #6288162
Giffin, Winning, Cohen & Bodewes, P.C.
One West Old State Capitol Plaza
Myers Building – Suite 600
Springfield, IL 62701
(217) 525-1571

PROOF OF SERVICE

I certify that on June 23, 2020, I served the following by transmitting a copy via email on the above date to:

Jacob N. Smallhorn
Smallhorn Law LLC
609 Monroe
Charleston, IL 61920
jsmallhorn@smallhornlaw.com

Dan O'Brien
O'Brien Law Office
331 E. 1st Street
Carlinville, IL 62626
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Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge.

/s/ John M. Gabala

John M. Gabala, ARDC #6288162
Giffin, Winning, Cohen & Bodewes, P.C.
One West Old State Capitol Plaza
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IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
MACOUPIN COUNTY, ILLINOIS

CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE, husband and wife,	)	
Plaintiffs,	)	
v.	)	Case No. 2019-MR-000092
CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation,	)	
Defendant.	)	

DEFENDANT'S PROPOSED ORDER

NOW COMES Defendant, the CITY OF CARLINVILLE, a Municipal Corporation, by and through its attorneys, Dan O'Brien and John Gabala, for its Proposed Order following the June 9, 2020 hearing on the parties' respective motions for summary judgment, and in support thereof states the following:

ORDER

This cause coming to be heard on the parties' respective motions for summary judgement on the Plaintiffs' Second Amended Complaint seeking mandamus relief, the Court, being fully advised in the premises, having reviewed the pleadings, the motion and the legal memorandums submitted and having considered the oral arguments, legislative history and legal authority presented, hereby denies Plaintiffs' motion for summary judgment and grants summary judgment in favor of Defendant on Plaintiffs' Second Amended Complaint, finding as follows:

A. Undisputed Facts

The Plaintiffs, husband and wife, own a residence in Carlinville Illinois which is connected to the City's potable water distribution system. Defendant is a non-home rule

municipal corporation. The Village of Dorchester is also a non-home rule municipality. Jersey County Rural Water Company Inc. ("Jersey Rural Water Co.") is an Illinois private, not-for-profit corporation. All three entities are seeking a new source of potable water. Pursuant to The General Not for Profit Corporations Act of 1986 (805 ILCS 105/101.01 *et seq.*), representatives of the City of Carlinville, the Village of Dorchester and Jersey Rural Water Co., associated with one another to form a not-for-profit corporation, known as Illinois Alluvial Regional Water Company, Inc. ("Alluvial") for the purposes of designing, constructing and thereafter operating a regional water treatment facility and distribution system to supply potable water to them on a mutual or cooperative basis. Membership in Alluvial is restricted to municipalities and not-for-profit rural water companies. For profit corporations are not permitted to become members. The principal benefits of membership in Alluvial is the right to purchase potable water from the company and to participate in its management, including rate setting. Alluvial is a not-for-profit co-operative mutual company. It is owned and operated by its members and does not have any shareholders. See 805 ILCS 105/106.5.

Plaintiffs claim that Defendant is without legal authority to participate in the incorporation, funding, or operation of Alluvial. Defendant argues the Municipal Code provides broad authority to enter into contracts to purchase potable water from private companies as well as construct, own, and operate their own public potable water treatment facilities and distribution systems. Defendant also contends that Article VII, Section 10(a) of the 1970 Illinois Constitution expressly allows municipalities to exercise their authority over the public water supply through an association with other municipalities and private corporations without the need for separate statutory authority. Defendant maintains its association with the Village of Dorchester, and Jersey Rural Water Co. to form Alluvial is therefore proper.

B. Procedural History

On February 23, 2018, Plaintiffs filed their original complaint for declaratory judgment and injunctive relief in then Macoupin County Case No. 2018-L-5 against the current Defendant, City of Carlinville, as well as the Village of Dorchester, Jersey Rural Water Co., and Alluvial, seeking, *inter alia*, to prevent the defendants from participating in the funding and operations of Alluvial.

On May 4, 2018, Alluvial filed its motion for summary judgment as well as its memorandum in support thereof.

On May 8, 2018, Defendant filed its motion to dismiss Plaintiffs' complaint for lack of standing.

On August 2, 2018, the parties argued the motions to dismiss and the motion for summary judgment before the trial court.

On or about December 27, 2018, the parties each filed supplemental argument on the application of Dillon's Rule in response to a request from the trial court.

On January 2, 2019, the trial court issued its written order dismissing the Village of Dorchester and Jersey County for lack of standing. The court also *sua sponte* dismissed Alluvial for lack of standing and did not take up its pending motion for summary judgment. Instead, the court found that motion moot in light of its ruling dismissing Alluvia for lack of standing. The court denied Defendant's motion to dismiss and gave Plaintiffs 30 days to file an amended complaint.

On May 2, 2019, Plaintiffs filed their first amended complaint for declaratory relief against Defendant.

On May 16, 2019, Defendant filed its motion to dismiss Plaintiffs' first amended complaint. Defendant also filed a motion for sanctions pursuant to Illinois Supreme Court Rule

137, arguing, *inter alia*, certain allegations made by Plaintiffs were patently false and a reasonable FOIA inquiry or review of the city council meeting agenda and/or minutes would show the falsity of Plaintiffs' claims.

On July 22, 2019, Plaintiffs filed a second amended complaint (in Macoupin County Case No. 2018-L-5) abandoning their declaratory and injunctive causes of actions and instead alleging a single-count mandamus cause of action.

In a July 23, 2019 docket entry, the trial court acknowledged receipt of Plaintiffs' second amended complaint (filed in Macoupin County Case No. 18-L-5) and noted that it had previously instructed Plaintiffs to refile their cause of action as an MR case (19-MR-92). The court ordered that, for consistency in rulings, it was consolidating the 18-L-5 matter with the 19-MR-92 matter and again, instructed that all future filings should be made using the 19-MR-92 case number.

Following an August 2, 2019 hearing, the trial court granted Defendant's motion to dismiss Plaintiffs' first amended complaint and directed the Clerk to strike Plaintiffs' second amended complaint but with leave to allow Plaintiffs 14 days to refile a second amended complaint. The court also denied Defendant's Rule 137 motion for sanctions.

On August 7, 2019, Plaintiffs filed a Second Amended Complaint (in Macoupin County Case No. 19-MR-92) alleging a single count for mandamus relief. According to Plaintiffs' Second Amended Complaint, they "have no other mechanism to challenge [Defendant's] abuse of authority regarding [its] participation in the creation, funding, or operation of Illinois Alluvial." Plaintiffs' pleading requests the Court to "issue a Writ of Mandamus compelling the Carlinville Aldermen and Alderwomen, in their official capacities, to take the actions necessary to withdraw from and cease any further participation in the creation, funding, or operation of Illinois Alluvial".

On September 4, 2019, Defendant filed three section 2-615 motions to dismiss Plaintiffs' complaint for their failure to state a claim for (i) mandamus relief, (ii) a violation of the Open Meetings Act ("OMA"), or (iii) a violation of the Freedom of Information Act ("FOIA"). Defendant's motions targeted Plaintiffs' unspecific inferences in their complaint that Defendant was violating OMA and FOIA, which Defendant maintained Plaintiffs were using to buttress the insufficiency of their factual pleadings.

On September 30, 2019, Plaintiffs filed their response to Defendant's motions to dismiss arguing they had pleaded adequate facts for mandamus and that the trial court "has previously determined in this case and recited in its prior Orders that Plaintiffs have a right to expect that their local government will conduct itself with transparency and comply with applicable laws."

Plaintiffs' response also contained a request that the trial court find "pursuant to Illinois Supreme Court Rule 308 that any Order the Court renders regarding Defendant's Motion to Dismiss involves a question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate termination of the litigation." Plaintiff then articulated the question of law before the court as follows: "Does [Defendant], a non-home rule municipality, have authority under Article VII of the Illinois Constitution to join with other municipalities and one or more private, not-for-profit corporations to create, manage and fund an Illinois not-for-profit corporation, where there is no statute which expressly authorizes the creation of such a corporation?"

On October 17, 2019, the trial court held a hearing on Defendant's motions to dismiss. In its October 21, 2019, written order, the trial court denied Defendant's motion to dismiss Plaintiffs' complaint, finding that "a Writ of Mandamus can be used to compel the undoing of an act not authorized by law or to require public entities and/or officials to comply with State law. Plaintiffs have raised a valid argument, and this Court will not deprive them of the opportunity to

litigate their [mandamus] cause of action." The court denied Defendant's motions to dismiss relating to OMA and FOIA violations, finding Plaintiffs did not attempt to state a cause of action based on OMA or FOIA because the facts did not support either cause of action. The court granted Plaintiffs' request to present a certified question subject to a review of Defendant's opposition and a refinement of the question.

On October 24, 2019, Defendant filed an alternative certified question for the trial court's consideration. On October 25, 2019, Plaintiffs filed their revised proposed certified question.

On November 1, 2019, the trial court issued its order finding "[a] question of law exists as to which there is a substantial ground for difference of opinion, and an appeal from the Court's October 21, 2019 Order denying Defendant's Motions to Dismiss may materially advance the ultimate termination of the litigation." The court then issued the following certified questions for appeal:

> (a) Whether a non-home rule municipality has authority under Article VII of the Illinois Constitution to join with another non-home rule municipality/village and a private, not for-profit corporation for purposes of creating a brand-new not for profit corporation that is intended to supply potable water to the region where there is no statute that expressly authorizes the creation of such a corporation? And if the answer is in the negative,
>
> (b) May the Court then issue a writ of mandamus and order the non-home rule municipality to withdraw as a member of the newly created, private not-for-profit regional water corporation because it was formed without express statutory authority?

On November 21, 2019, Plaintiffs filed their "Application for Leave to Appeal (Pursuant to Illinois Supreme Court Rule 308)" with the Fourth District Appellate Court.

On November 26, 2019, the trial court granted Defendant's motion to stay the trial court proceedings pending the resolution of the Rule 308 appeal.

On December 11, 2019, Defendant filed its Answer in Opposition to Plaintiffs' Supreme Court Rule 308 Application.

On December 19, 2019, the Fourth District Appellate Court issued its order denying Plaintiffs' Application for Leave to Appeal Pursuant to Illinois Supreme Court Rule 308.

On December 26, 2019, the trial court granted Defendant's motion to lift the stay in the proceedings.

On January 24, 2020, Defendant filed its Answer and Affirmative Defenses to Plaintiffs' Second Amended Complaint. Plaintiffs did not file any response to Defendant's affirmative defenses. On April 3, 2020, Defendant filed its motion for summary judgment.

On April 27, 2020, Plaintiffs' filed their motion for summary judgment.

On June 9, 2020, this Court held a hearing on the parties' pending motions for summary judgment. The parties agreed the relevant facts underlying the instant dispute are not at issue.

This Order followed.

C. Standard for Summary Judgment

"Summary judgment is proper when 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' " *Stevens v. McGuireWoods LLP*, 2015 IL 118652, ¶ 11 (quoting 735 ILCS 5/2-1005(c). "Where the parties file cross-motions for summary judgment, as they did in this case, they concede the absence of a genuine issue of material fact, agree that only questions of law are involved, and invite the court to decide the issues based on the record." *McGuireWoods LLP*, 2015 IL 118652, ¶ 11.

D. Plaintiffs' Burden of Proof for Mandamus Relief

Plaintiffs' Second Amended Complaint requests mandamus relief. "Mandamus is an extraordinary remedy to enforce, as a matter of right, 'the performance of official duties by a public officer where no exercise of discretion on his part is involved.' " *Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 229 (1999) (quoting *Madden v. Cronson*, 114 Ill. 2d 504, 514 (1986)). A court

will award a writ of mandamus "only if a plaintiff establishes a clear, affirmative right to relief, a clear duty of the public official to act, and a clear authority in the public official to comply with the writ." *People ex rel. Ryan v. Roe*, 201 Ill. 2d 552, 555 (2002). A plaintiff must set forth every material fact necessary to show he or she is entitled to a writ of mandamus, and the plaintiff bears the burden to establish a clear, legal right to it. *Chicago Ass'n of Commerce & Industry v. Regional Transportation Authority*, 86 Ill. 2d 179, 185 (1981). "Mandamus will issue only where the plaintiff has fulfilled his burden". *Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶ 22.

E. The Parties' Arguments

Citing Article VII, section 7 of the Illinois Constitution, Plaintiffs argue that non-home rule municipalities are constrained to only those powers granted to them by law and that Defendant has violated the law by associating with Village of Dorchester and Jersey Rural Water Co. to form Alluvial.

Defendant argues that Plaintiffs' contention ignores the fact that one of the laws this Court should consider is the Constitution itself. Defendant maintains the Municipal Code along with sections 7 and 10(a) of Article VII of the 1970 Illinois Constitution provides it with all the authority necessary. Defendant contends that Plaintiffs' section 7 argument ignores Defendant's broad grant of authority over the public water supply contained in the Municipal Code. Defendant also maintains that section 10(a) of the Constitution operates to extend Defendant's statutory authority by authorizing non-home rule municipalities to exercise their power over the public water supply in association with other non-home rule municipalities and private corporations.

F. Interpretation of the 1970 Illinois Constitution

1. Article VII, Section 7

While this matter involves the apparent tension of Article VII, section 7 and Article VII, section 10(a), Defendant argues those sections can in fact be read in concert. Article VII, section 7, entitled, Counties and Municipalities Other Than Home Rule Units, does not state that a non-home rule municipality has only those powers enumerated in section 7. Instead, the first sentence plainly provides that non-home rule municipalities have the powers granted to them by law (*i.e.*, the Municipal Code and the Constitution), along with those enumerated in section 7. See Ill. Const. 1970, art. VII, § 7. As Defendant points out, the Municipal Code grants municipalities broad express authority over the means and methods by which they may procure a public water supply, construct water treatment and distribution facilities, and whether they may do so in association with other local governmental units and private corporations. See 65 ILCS 5/11-124-1 *et seq.* Where, as was done here, two municipalities partner together, the statutory grant of power they operate under is to be construed broadly. See *Wabash v. Partee*, 241 Ill. App. 3d 59, 66-67 (5th Dist. 1993) (citing *Connelly v. Clark*, 16 Ill. App. 3d 947, 951 (4th Dist. 1973) (when local governments cooperate in a partnership or joint venture courts are not to strictly construe the statutory grants of authority under which they act). Having found the Municipal Code grants Defendant broad authority over the public water supply, the analysis turns to the proper interpretation of Article VII, Section 10(a) of the Constitution.

2. Article VII, Section 10(a)

Defendant also argues Plaintiffs argument misinterprets the effect of Article VII, Section 10(a) of the Illinois Constitution of 1970 on this case. According to Defendant, section 10 grants units of local government the authority to "contract and otherwise associate" with other local governmental units and private corporations.

a. Section 10(a)'s use of "and" versus "or"

Section 10(a), entitled "Intergovernmental Cooperation", provides the following:

> "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." Ill. Const. 1970, art. VII, § 10(a).

During the hearing on the parties' motions for summary judgment, the question of whether the use of the word "and" in the second sentence of section 10(a) as opposed to the use of the word "or" in the first sentence would make it mandatory under the second sentence for a municipality to both contract and associate with a corporation was raised for the first time.

b. Tools of Interpretation

The meaning of a constitutional provision depends on the common understanding of the citizens who, by ratifying the constitution, gave it life. *League of Women Voters v. County of Peoria,* 121 Ill. 2d 236, 243 (1987); *Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483, 492 (1984). This understanding is best determined by referring to the common meaning of the words used. *League of Women Voters*, 121 Ill. 2d at 243; *Kalodimos*, 103 Ill. 2d at 492-93. Where the language is unambiguous, it will be given effect without resort to other aids for construction. *Baker v. Miller*, 159 Ill. 2d 249, 257 (1994). However, if after consulting the language of a provision, doubt remains as to its meaning, it is appropriate to consult the debates of the delegates to the constitutional convention to ascertain the meaning they attached to the provision. *League of Women Voters*, 121 Ill. 2d at 243-44; *Kalodimos*, 103 Ill. 2d at 493.

c. Interpretation of the First Sentence of Section 10(a)

Breaking out the first sentence of section 10(a) give us the following:

> "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." (Emphasis added.) Ill. Const. 1970, art. VII, § 10(a).

Reviewing the plain language of the first sentence, *i.e.*, that a municipality may contract or otherwise associate among themselves, instructs a clear intention that a municipality can, but is not required, to either contract or otherwise associate among themselves. Broken down further, non-home rule municipalities may contract with each other, but they are not required to. *Maddux v. Blagojevich*, 233 Ill. 2d 508, 523 (2009); see also *In re Marriage of Freeman*, 106 Ill. 2d 290, 298 (1985) (stating that, except in unusual circumstances, the use of "may" connotes permissiveness); *People v. Siler*, 85 Ill. App. 3d 304, 310 (4th Dist. 1980) (noting use of "may" in the constitution denotes discretion). In contrast, the use of the word "shall" indicates an intent to impose a mandatory obligation. *People v. Ramirez*, 214 Ill. 2d 176, 182 (2005) (employing the word "shall" evinces a clear intent to impose a mandatory obligation). The use of "may" indicates the drafter's choice to make the provision permissive instead of mandatory. *Canel v. Topinka*, 212 Ill. 2d 311, 326 (2004).

Thus, the most natural reading of the first sentence demonstrates the drafter's clear intent that it be disjunctive, *i.e.*, a municipality may do X or Y. This affirms that Defendant was able to associate with Dorchester in a manner other than by contract to provide a potable water supply. Defendant's preferred means of association with Dorchester to provide such water supply was to form Alluvial. Plaintiff has not provided a law or ordinance prohibiting that association.

d. Interpretation of the Second Sentence of Section 10(a)

The next issue is whether Defendant was specifically required by the second sentence of section 10(a) to have a contract with Jersey Rural Water Co., a corporation. For the following reasons, an interpretation requiring a municipality to both contract and otherwise associate with a corporation under section 10(a) is unworkable.

The second sentence of section 10(a) states the following:

> "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." (emphases added.) Ill. Const. 1970, art. VII, § 10(a).

As with the first sentence of section 10(a), the identical use of the word "may" leading into the second sentence also connotes discretion. Equally critical in interpreting the second sentence is the use of the phrase "otherwise". The word "otherwise" means "in a different way or manner". *Merriam-Webster Online*, available at: https://www.merriam-webster.com/dictionary/otherwise (last visited June 19, 2020); see also *Swank v. Department of Revenue*, 336 Ill. App. 3d 851, 857 (2nd Dist. 2003) ("otherwise" means "[i]n a different manner; in another way, or in other ways"). While ordinarily a list in a sentence would indicate an intent that all the conditions be satisfied, here the use of "may" combined with "otherwise" strongly indicates that the phrase "may contract and otherwise associate" was intended by the drafters to be disjunctive. As such, the most natural reading of the statute is to construe "may" as permissive and "otherwise" as different than contracting so as to conclude that both contracting and associating are not required to satisfy the second sentence of section 10(a).

e. Absurd Results Must be Avoided

Moreover, under the interpretation urged by Plaintiffs, neither a unit of local government nor a school district could act without the other because the word "and" was used instead of "or"

in the "Units of local government and school districts" portion of the sentence. Such an absurd result could not have been contemplated by the drafters. Where the language to be interpreted admits of two constructions, one of which would make the provision absurd and illogical, while the other renders it reasonable and sensible, the construction which leads to an absurd result must be avoided. *Mulligan v. Joliet Regional Port District*, 123 Ill. 2d 303, 312-13 (1988) (citing *Illinois National Bank v. Chegin*, 35 Ill. 2d 375, 378 (1966), and 2A A. Sutherland, Statutory Construction § 45.12 (4th ed. 1984)). Such consideration further reinforces this Court's finding that the correct interpretation of "may" as used in section 10(a) is permissive and not mandatory.

f. Articles of Incorporation and Corporate Bylaws Constitute Contracts in Illinois

Even assuming, *arguendo*, that either sentence of section 10(a) could be interpreted to require both a contract as well as an association, it is well-established that a corporation's bylaws constitute an enforceable contract between the corporation and its shareholders. See *Norris v. South Shore Chamber of Commerce*, 98 Ill. App. 3d 32, 34 (1st Dist. 1981) (citing *Teschner v Chicago Title and Trust Co.*, 59 Ill. 2d 452, 457-58 (1974)). It is also well-understood that the "articles of incorporation of an Illinois corporation is a contract". *Chicago Title and Trust Co.*, 59 Ill. 2d at 457-58 (the articles of incorporation create rights and duties as between the corporation and its shareholders, as well as between the shareholders themselves).

It is undisputed fact that, through their respective representatives, Defendant, the Village of Dorchester, and Jersey Rural Water Co. entered into articles of incorporation and by-laws as part of the formation of Alluvial. Thus, even if the first or second sentence of section 10(a) could be interpreted to require a contract, any such requirement is satisfied by Defendant with respect to both the Village of Dorchester as well as Jersey Rural Water Co. through Alluvial's articles of incorporation and corporate bylaws.

g. An Intergovernmental Agreement was not Required

Plaintiffs maintain that an intergovernmental agreement was required here. However, section 10(a), entitled "Intergovernmental Cooperation", cannot be read to require a specific intergovernmental agreement as the specific term "contract" is used, not "intergovernmental agreement" or even the term "agreement". To be sure, a municipality would **not** enter into an intergovernmental agreement with a corporation. Instead, it would enter into a contact. A statute must be read in the way in which it was written and exceptions, limitations, or conditions that are not already there must not be read into it. *Ultsch v. Illinois Municipal Retirement Fund*, 226 Ill. 2d 169, 190 (2007). Moreover, as discussed in subsection c, *supra*, the use of the term "or" in the first sentence of section 10(a) makes it optional for Defendant to have a contract with the Village of Dorchester. Accordingly, Defendant was permitted to "otherwise associate" with the Village of Dorchester without any need for a contract. Defendant's preferred method of association was to join with the Village of Dorchester to form Alluvial, which section 10(a) allows any manner not prohibited by law or by ordinance.

3. Interpretation of the "in any manner not prohibited by law or by ordinance" Provision

The second sentence of section 10(a) provides that municipalities may contract or associate with an entity so long as that contract or association is not prohibited by statute or ordinance. To the extent Plaintiffs claim that the "grant of association" with another local government or private corporation must be expressly found in the Municipal Code, Plaintiffs misread the limiting phrase contained in both sentences of section 10(a). Both the first and second sentences of section 10(a) provide that a municipality's respective contracting or associating may be done in "any manner not prohibited by law or by ordinance." Ill. Const. 1970, art. VII, § 10(a).

Defendant contends that term "any" in the phrase "in any manner not prohibited by law" clearly instructs that Defendant was free to associate with the Village of Dorchester and Jersey Rural Water Co. in any manner it chose unless that manner of association was expressly prohibited by statute or ordinance. Plaintiffs argue this reading is too open ended and cannot be what the drafter intended.

To the extent that this phrase, as used in either sentence of section 10(a), could be considered unclear, it is appropriate to consult the debates of the delegates to the constitutional convention to ascertain the meaning they attached to the provision. *League of Women Voters*, 121 Ill. 2d at 243-44 ("meaning of a constitutional provision depends on the common understanding of the citizens who, by ratifying the constitution, gave it life"). A review of the relevant Constitution Convention proceedings as set forth by Justice Craven in *Connelly*, 16 Ill. App. 3d at 954-958, is therefore instructive:

> Delegate Stahl and [D]elegate Wenum shepherded section 10 throughout the debates. ***.
>
> * * *
>
> Mr. Parkhurst, a member of the local government committee, summarized the basic theory of operation that section 10 was predicated upon when he stated:
>
> > '*** You will notice that the language of the intergovernmental cooperation article is based upon an Affirmative grant of self-executing power, as Delegates Stahl and Wenum have repeatedly pointed out, which, in essence, means that it's there unless it's prohibited by the General Assembly—by general law. So it's a provision that says, 'You can do it unless the General Assembly says you can't." [(emphases added.)] (Vol. IV, p. 3426).
>
> In summing up before the section was submitted to the committee as a whole for vote and prior to the voting on an amendment to said section that Mr. Stahl opposed, [Mr. Parkhurst] stated:
>
> > '*** This is voluntary; this is permissive; nothing happens without the consent of each unit of local government in an intergovernmental cooperation. I would submit to you that

Rockford must work with Beloit or both will lose their identity.' (Vol. IV, p. 3430).

***

Later on in the debates, Mr. Parkhurst again referred to the section in question when he stated:

> 'Well, the point that Delegate Stahl raises—I hadn't thought about it before, but I think it was clearly our intent that the intergovernmental cooperation section would have a distinction between units of government dealing among themselves by contract, which would be granted as a self-executing power unless prohibited by law—to distinguish between that sort of situation and dealing with private corporations or individuals, which would have to be authorized by law.' (Vol. V, p. 4253).

Certain delegates expressed fear that section 10 would in effect give local government units a blank check; that this open-endedness of section 10 would result in an unfettered and unbridled discretion on the part of these units of government. The sponsors of this section assured the constitutional convention that this would not be the case. It was pointed out time and again[, however,] that the state legislature could regulate the activity of these units of government via legislation. ***.

* * *

The Mathias-Martin amendment referred to by Stahl and his own amendment was succinctly explicated upon by Mr. Mathias. Mathias stated:

> 'Thank you. The proposal is that we strike the words 'when authorized by law' and begin the sentence with 'Units of local government,' and then that we add, at the end of the sentence, the words 'in any manner not prohibited by law or by ordinance.'
>
> 'In other words, these units of local government and school districts could contract and otherwise associate with individuals, corporations—or associations and corporations—when not—in any manner not prohibited by law or by ordinance. This is the same authority that they have with respect to intergovernmental cooperation.
>
> 'As it is now, they have to get prior legislative authority before they may do it. The amendment would permit them to go ahead on this cooperation in the private sector unless the legislature had prohibited them from doing it or unless it was prohibited by ordinance.

'I think this makes it consistent. It gives these non-home rule units powers consistent with those of the home rule units, back under section 6. They can go ahead unless it is prohibited by the legislature.

'I want to point out that from time to time you have different organizations, foundations, and others that make proposals to some of these non-home rule units, and they cannot go ahead unless they go back to the legislature and get authorization. They want to make certain improvements, and someone is going to share the cost; they cannot do it unless they have first gotten prior legislative authority.

'Now I think we will have general legislative authority in certain areas; but there are many special areas that come up, and this would permit those nonhome rule units to go ahead and make a contract, unless it was in an area that has been prohibited by legislative action. For that reason, we are proposing this amendment.' (Vol. V, p. 4444).

In support of the proposed amendment, Mr. Mathias, later on in the debates on said amendment, stated:

'I might give you just an instance or two of some things I have run into in my own experience. For instance, I had a city that was building a water line going some forty miles away, bringing in water from another area, and in coming through the certain farm lands as they have to, these individuals wanted to get water off of that line. The bond authorities raised the question as to whether or not the city had the right to furnish water to somebody out twenty miles away. What we had to do was write into the easements a provision that whereby as the part of the consideration for the easement, they would furnish water to that individual.

'And we all know of situations in which foundations wanted to make some agreement with some agency, and it isn't uncommon for someone to want police protection outside the agency or that sort of thing. They will furnish a fire truck, they will pay for the policeman, and that sort of thing. This would permit the non-home rule unit to go ahead and make that sort of an agreement, and unless the legislature has prohibited or has regulated it, they could go ahead and do it.' (Vol. V, p. 4445.)

The proposed Mathias-Martin amendment was subsequently adopted and is found incorporated in section 10 of article VII. *Connelly*, 16 Ill. App. 3d at 954-958.

As the formative debates on section 10(a) clearly demonstrate, the intention was to allow the power to associate to be self-executing, *i.e.*, "You can do it unless the General Assembly says you can't." 4 Record of Proceedings, Sixth Illinois Constitutional Convention 3426, Verbatim Transcript of July 31, 1970. Plaintiffs, therefore, have it backwards, *i.e.*, that municipalities cannot associate with a private corporation unless there is a statute that specifically provides for it. Plaintiffs' argument misunderstands how section 10(a) affects the application of Dillon's Rule, not with respect to a municipality's authority over the subject matter involved, but with respect to its authority to associate with municipalities and corporations in exercising authority over those issues.

As a result, the burden is not on Defendant to show it has authority to act. Instead, pursuant to section 10(a), the burden is on Plaintiffs to show that the challenged activity is prohibited by law. Plaintiffs have not met that burden. Plaintiffs have not cited a statute or ordinance that prohibits Defendant from engaging in the manner of association undertaken in this case (*i.e.*, nothing exists prohibiting non-home rule municipalities from associating with a private not-for-profit corporation). Further, none of the statutes that Plaintiffs argue Defendant should use are mandatory. See Section G *infra*. Not only is Defendant's conduct not specifically prohibited by law or ordinance, the Municipal Code provides Defendant broad authority over the public water supply. See *Wabash*, 241 Ill. App. 3d at 66-67 (citing *Connelly*, 16 Ill. App. 3d at 951) (when local governments cooperate in a partnership or joint venture courts are not to strictly construe the statutory grants of authority under which they act).

Moreover, section 103.05(a)(23) of The General Not for Profit Business Corporations Act specifically provides that not-for-profit corporations may be organized for the purpose of owning and operating water supply facilities for drinking and general domestic use on a mutual cooperative basis. 805 ILCS 105/103.05(a)(23). This is precisely what Defendant did when it

associated with the Village of Dorchester and Jersey Rural Water Co. in forming Alluvial. Such association is not prohibited by any statute or ordinance. After examining the grants of authority found in the Municipal Code as well as section 10(a) of the 1970 Constitution, this Court concludes that Defendant had the authority to exercise its power over public water supply in association with the Village of Dorchester and Jersey Rural Water Co. to form Alluvial. Summary judgment in favor of Defendant and against Plaintiffs is therefore proper.

G. Regardless of the Parties' Section 10(a) Interpretation, Plaintiffs Have Failed to Meet Their Burden of Proof for Issuance of Mandamus Relief

Plaintiffs argue that mandamus is appropriate because (i) Alluvial was not created as a Public Water District under the Public Water District Act (70 ILCS 3705/0.01); (ii) Alluvial does not comply with the Water Authorities Act (70 ILCS 3715/0.01); (iii) Alluvial is not a "water commission" per the Water Commission Act of 1985 (70 ILCS 3720/0.001); (iv) Alluvial is not a Municipal Joint Action Water Agency as defined by the Intergovernmental Cooperation Act (5 ILCS 220/3.1); and (v) the association of Defendant with Village of Dorchester and Jersey Rural Water Co. to provide a public water supply is not authorized by any provisions of the Municipal Code relating to Water Supply and Sewage Systems (65 ILCs 5/11-124-1 *et seq.*).

"Mandamus will issue only where the plaintiff has fulfilled his burden (see *Mason v. Snyder*, 332 Ill. App. 3d 834, 840 *** ([4th Dist.] 2002)) to set forth every material fact needed to demonstrate that (1) he has a clear right to the relief requested, (2) there is a clear duty on the part of the defendant to act, and (3) clear authority exists in the defendant to comply with an order granting mandamus relief." *Hardy*, 2011 IL App (4th) 100351, ¶ 22.

The legislature's use of the word "shall" in a statute indicates an intent to impose a mandatory obligation. *People v. Ramirez*, 214 Ill. 2d 176, 182 (2005) ("It is well established that, by employing the word "shall," the legislature evinces a clear intent to impose a mandatory

obligation."). Where a statute does not detail a consequence for the failure to comply, however, even use of the term "shall" does not indicate mandatory intent. *People v. Porter*, 122 Ill. 2d 64, 84 (1988) ("mandatory intent is indicated where a statute prescribes the result that will occur if the specified procedure is not followed"). " '[S]tatutes are mandatory if the intent of the legislature dictates a particular consequence for failure to comply with the provision.' " *Cebertowicz v. Madigan*, 2016 IL App (4th) 140917, ¶ 17 (quoting *People v. Delvillar*, 235 Ill. 2d 507, 514 (2009)). However, in the absence of such intent, no particular consequence flows from noncompliance. See *Id*; *Porter*, 122 Ill. 2d at 84 ("mandatory intent is indicated where a statute prescribes the result that will occur if the specified procedure is not followed"). The use of the word "may" in a statute connotes discretion. *Krautsack v. Anderson*, 223 Ill. 2d 541, 554 (2006).

Defendant argues that none of the statues cited by Plaintiffs either require Defendant's use or prohibit Defendant's conduct. In support of it position, Defendant notes that each of the statutes employ the word "may" instead of "shall" in reference to their use. According to Defendant, mandamus relief is inappropriate where discretion exists. *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 193 (2009) (the purpose of mandamus is to compel public officials to comply with a mandatory statute).

Plaintiffs have not argued otherwise except to suggest that the fact the General Assembly provided multiple options shows that it intended Defendant avail itself of one of them. The problem with that contention is that it ignores Defendant's ability to exercise discretion in making a choice of how to organize its public water supply. Inherent in the existence of multiple options is discretion on the part of the municipality exists to make a choice. See *Y-Not Project, Ltd. v. Fox Waterway Agency*, 2016 IL App (2d) 150502, ¶ 35 ("Because there are countless ways to implement and enforce 'necessary and reasonable' ordinances and rules to improve and

maintain the waterway, the [Act's] duties are discretionary, not mandatory."). However, such discretion is not the proper subject of a mandamus claim. *Whirl v. Clague*, 2015 IL App (3d) 140853, ¶ 14 (mandamus relief requires that the actor exercise no discretion).

While mandamus is an appropriate remedy to compel compliance with mandatory legal standards, relief will not be granted when the act in question involves the exercise of discretion. *Konetski*, 233 Ill. at 193. "Discretion in the manner of the performance of an act arises when the act may be performed in one of two or more ways, either of which would be lawful, and where it is left to the will or judgment of the performer to determine in which way it shall be performed." *Fox Waterway*, 2016 IL App (2d) 150502, ¶ 35 (internal quotation marks omitted).

In this case, none of the statutes cited by Plaintiffs require or even obligate a municipality to organize its water supply in any given way. This is evidenced by use of the word "may" in reference to their utilization. None of the statutes cited by Plaintiffs use the phrase "shall" to impose an obligation of utilization on a municipality. Moreover, none of the statues cited by Plaintiffs show that Defendant's chosen method of association to form Alluvial is "prohibited by law or by ordinance." It is not Defendant's burden to show its conduct is authorized. Instead, pursuant to Article VII, section 10(a) of the 1970 Illinois Constitution, it is Plaintiffs' burden to show Defendant's conduct is expressly prohibited. See Section F, *supra*. Further, mandamus is not proper to undo an act where, as is the case here, the actor is able to exercise discretion. Again, Plaintiffs have failed to cite any specific statute mandating a particular legal course of action or prohibiting the course of action taken by Defendant. As discussed *supra*, the Public Water District Act; the Water Authorities Act; the Water Commission Act of 1985; the Intergovernmental Cooperation Act; as well as the provisions of the Municipal Code relating to Water Supply and Sewage Systems are not mandatory. As a result, the mandamus relief Plaintiffs seek is unavailable under the circumstance presented by this case.

JUDGMENT

THE COURT FINDS there is no genuine disputed issues of material fact. The issues presented herein are purely questions of law and the parties have invited the Court to resolve those issues as such by filing cross-motions for summary judgment.

THE COURT FINDS Plaintiffs have failed to cite to a single mandatory statute that Defendant must avail itself of. Mandamus will issue only where the plaintiff has fulfilled his burden. The question of whether a municipality can act as a member of a corporation for a public water supply rather than contracting with a private water supply is not one that is fit for mandamus because there is no requirement that a municipality "shall" or "must" organize its water supply in any one given way. Pursuant to pursuant to Article VII, Section 10(a) of the Illinois Constitution of 1970, the burden is also on Plaintiffs to show that the challenged activity is prohibited by law or ordinance. Plaintiffs have failed to cite to a law or ordinance prohibiting Defendant's conduct. As a result, Plaintiffs have failed to meet their burden of proof to show clear entitlement to the extraordinary remedy of mandamus.

THE COURT FINDS that Defendant has the authority, pursuant to Article VII, Section 10(a) of the Illinois Constitution of 1970 and the Illinois Municipal Code (65 ILCS 5/11-124-1 *et seq.*) to join with another non-home rule municipality (the Village of Dorchester) and associate with a private not-for-profit corporation (Jersey Rural Water Co.) to form another not-for-profit corporation (Alluvial) to design, construct, and thereafter operate a regional water treatment facility and distribution system to supply potable water to them on a mutual or cooperative basis. Alluvial is Defendant's chosen means of association to pursue the common goal of providing a safe and reliable potable drinking water supply to the public. This Court's application of the law to the undisputed facts of this case compels the conclusion that Alluvial is a constitutionally permitted association among and between two local units of local governments and a private not-

for-profit corporation to construct, own, and operate a water distribution system for the purpose of providing potable water to the public.

THE COURT FINDS Defendant is entitled to summary judgment in its favor on Plaintiffs' Second Amended Complaint for mandamus relief as a matter of law. Defendant's motion for summary judgment is therefore GRANTED. Plaintiffs' motion for summary judgment is DENIED.

THE COURT FURTHER FINDS pursuant to Illinois Supreme Court Rule 304(a) that there is no just reason for delay of either enforcement or appeal of this Order.

WHEREFORE SUMMARY JUDGMENT IS HEREBY ENTERED, in favor of the Defendant on Plaintiffs' Second Amended Complaint.

Dated: _____ Judge: _____

Respectfully submitted,

CITY OF CARLINVILLE, ILLINOIS,
A Municipal Corporation, Defendant

BY: /s/ John M. Gabala
One of Its Attorneys

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IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MACOUPIN COUNTY, CARLINVILLE, ILLINOIS

CAMILLE MAYFIELD COOPER BROTZE, and WAYNE BROTZE, husband and wife,	)	
Plaintiffs,	)	
v.	)	No. 2019-MR-92
CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation,	)	
Defendant.	)	

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

THIS CAUSE coming before the Court for hearing on the Defendant's Motion for Summary Judgment on Affirmative Defenses and the Plaintiffs' Motion for Summary Judgment pursuant to 735 ILCS 5/2-1005, Plaintiffs appearing personally and by and through their attorney, Jacob N. Smallhorn of Smallhorn Law LLC, Defendant appearing by and through attorneys Dan O'Brien and John M. Gabala of Giffin, Winning, Cohen & Bodewes, P.C., the Court having heard the argument of counsel and having reviewed the common law record in these proceedings, and otherwise being advised in the premises, hereby FINDS:

1. The Court has jurisdiction of the parties and the subject matter of this litigation.

2. On August 7, 2019, Plaintiffs filed their Second Amended Complaint which asserts a single count for issuance of a writ of mandamus against Defendant.

3. On April 3, 2020, Defendants filed a Motion for Summary Judgment on Affirmative Defenses, asserting lack of standing, laches, and that Section 10(a) of the Illinois Constitution grants Defendant the authority to take the action which is the subject of Plaintiffs'

Second Amended Complaint for Mandamus.

4. On April 27, 2020, Plaintiffs filed a Motion for Summary Judgment pursuant to 735 ILCS 5/2-1005 asserting that there are no disputed issues of material fact and that Plaintiff is entitled to judgment as a matter of law.

5. The uncontested facts of this case are as follows:

a. Plaintiffs are husband and wife who own a residence in the City of Carlinville, Macoupin County, Illinois.

b. Defendant is a non-home rule, Municipal Corporation organized and existing under the Laws of the State of Illinois, situated in Macoupin County, Illinois.

c. Plaintiffs' residence is connected to, and Plaintiffs regularly use, Defendant's municipal water supply.

d. On or about January 26, 2016, Defendant applied for a grant with the United States Department of Agriculture's ("USDA") Water and Waste System Grant Program for preliminary engineering on options for developing a viable water supply, treatment, and transmission system to serve a "Regional Water Commission" in Greene, Jersey, and Macoupin Counties.

e. On March 8, 2016, the USDA entered into a Grant Agreement with Defendant, awarding Defendant $30,000 for project development costs.

f. On November 30, 2017, representatives of Defendant, Jersey County Rural Water Company, Inc., and the Village of Dorchester created Bylaws for a private, not-for-profit corporation known as Illinois Alluvial Regional Water Company, Inc. ("Illinois Alluvial"), which provides that Illinois Alluvial's governing board will consist of one person from each municipality or other

entity that opts into the private company.

g. On December 5, 2017, representatives of Defendant, Jersey County Rural Water Company, Inc., and the Village of Dorchester filed with the Illinois Secretary of State Articles of Incorporation for Illinois Alluvial.

h. On October 2, 2017, before Illinois Alluvial was incorporated or Bylaws were adopted, at a regularly held meeting of the Carlinville City Council, the Alderpersons voted to grant "Alderman Campbell the power to act and appropriate funds as representative of Carlinville" to Illinois Alluvial.

i. Illinois Alluvial was not created as a "Public Water District" under the Public Water District Act, 70 ILCS 3705/0.01 et seq.; it does not comply with the provisions of the Water Authorities Act, 70 ILCS 3715/0.01 et seq.; nor is it a "Water Commission" as that term is identified in the Water Commission Act of 1985, 70 ILCS 3720/0.001 et seq.; nor it is not a "Municipal Joint Action Water Agency" as that term is described in the Intergovernmental Cooperation Act, 5 ILCS 220/3.1; nor is the association of Carlinville and another municipality with private companies (Jersey Rural and Illinois Alluvial) authorized by any of the provisions of the Illinois Municipal Code relating to Water Supply and Sewage Systems, 65 ILCS 5/11-124-1 et seq.

j. Defendant has never entered into any written contract with Illinois Alluvial, the Village of Dorchester, Jersey County Rural Water Company, Inc., regarding any of the matters which are the subject of this litigation.

6. The Court finds that Defendant's laches and standing affirmative defenses lack merit, and therefore denied summary judgment on those defenses during argument on

Defendant's Motion for Summary Judgment on Affirmative Defenses.

7. The only issue remaining before the Court is whether or not Defendant had Constitutional authority to join with another non-home rule municipality and a not-for-profit corporation to form and operate Illinois Alluvial.

8. Defendant's only justification for its participation in the creation and operation of Illinois Alluvial is that Article VII, Section 10(a) of the Illinois Constitution of 1970 ("Constitution") grants Defendant the right to "associate" with private corporations, and that its relationship with Dorchester, Jersey County Rural Water Company, and Illinois Alluvial is such a permitted association.

9. Article VII, Section 10(a) of the Constitution further provides as follows:

> 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.

Underlining supplied. West 2020.

10. When a court interprets the constitution, each word, clause, and sentence must be given a reasonable construction if possible and should not be rendered superfluous. *Rottman v. Ill. State Officers Electoral Board*, IL App (1st) 180234, ¶ 15, 102 N.E.3d 819, 825 (1st Dist. 2018).

11. When the legislature uses certain words in one instance and different words in another, different results are intended. *Id.*

12. Article VII, Section 10(a) of the Constitution uses the conjunction "or" when granting units of local government the right to contract or otherwise associate amongst themselves; meaning that units of local government may choose between a contract and another form of association when dealing with other units of local government.

13. Conversely, Article VII, Section 10(a) of the Constitution uses the conjunction "and" when describing the ability of a unit of local government to contract and associate with a private corporation; meaning that there must be both a contract and an association for the Constitutional requirement to be fulfilled.

14. Defendant does not have any contract in place with Illinois Alluvial, the Village of Dorchester, Jersey County Rural Water Company, Inc. or any other entity regarding the funding and operation of Illinois Alluvial, meaning that it has not fulfilled its Constitutional obligations under Article VII, Section 10(a).

15. Additionally, as was stated above in Paragraph 5(i) above, the General Assembly has provided entities such as Defendant with five different methods by which Defendant could enter into agreements and otherwise associate with others to solve its water problem.

16. Article VII, Section 7 of the Constitution provides that "counties and municipalities which are not home rule units shall have only powers granted to them by law," among others. There are six enumerated additional powers in Article VII, Section 7, but the parties and the Court agree that none of the enumerated exceptions apply to the facts of this case. West 2020.

17. Defendant has admitted in Court that the course of action it took to participate in the funding and operation of Illinois Alluvial does not conform to any of the statutorily authorized means by which it could do so.

18. As a non-home rule municipality, Article VII, Section 7 of the Constitution requires that Defendant may only undertake actions which are granted to it by law.

19. Defendant has failed to provide any Constitutional or statutory authority for the actions it undertook in the formation and operation of Illinois Alluvial.

The Court therefore ORDERS, ADJUDGES, AND DECREES THAT:

A. Defendant's Motion for Summary Judgment on Affirmative Defenses is denied, with prejudice.

B. Plaintiff's Motion for Summary Judgment is granted.

C. The Court hereby issues a Writ of Mandamus to Defendant, CITY OF CARLINVILLE, ILLINOIS, a municipal corporation, compelling the Alderpersons of the City, acting in their official capacities, to immediately withdraw from and cease any further participation in the creation, funding, or operation if Illinois Alluvial Regional Water Company, Inc.

DATED THIS _____ DAY OF _____, 2020.

ENTER: _____
JUDGE

Drafted By:

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IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT
CARLINVILLE, MACOUPIN COUNTY, ILLINOIS

CAMILLE MAYFIELD COOPER BROTZE, And WAYNE BROTZE, husband and wife,	)	
Plaintiffs,	)	
vs	)	No. 2019 MR 92
	)	*(formerly filed as 18 L 5)*
CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation,	)	
Defendant.	)	

ORDER
Re: Plaintiffs' and Defendant's Motions for Summary Judgment
Pursuant to 735 ILCS 5/2-1005

Case called for hearing via Zoom Videoconferencing on Defendant's Motion for Summary Judgment and Plaintiffs' Motion for Summary Judgment. Plaintiffs appear in person, along with Attorney Smallhorn. Defendant appears in person, along with Attorney Gabala and Attorney O'Brien. Arguments heard.

I.
Introduction

Plaintiffs' Second Amended Complaint for a Writ of Mandamus argues that the Defendant City of Carlinville (Carlinville) and its elected officials owed them a duty to follow Illinois law and that it exceeded its constitutional and statutory authority when it, as a non-home-rule municipality, entered into an agreement[1] with another non-home-rule municipality and a private not-for-profit corporation, wherein the three entities verbally agreed to create and manage a brand

[1] All parties admit no written contract exists between Carlinville and Dorchester or Carlinville and Jersey County Rural Water Company regarding the formation of Illinois Alluvial.

new not-for-profit corporation that would supply potable water to them and surrounding residents. Plaintiffs argue they have a right to expect their elected officials (the City Council, collectively) will follow the law in creating solutions for providing them and the residents with potable water, and that had their elected officials not exceeded their constitutional and statutory authority, then they would have been allowed to know pertinent information as to how the potable water was going to be created and supplied, etc., but that because Carlinville's City Council arguably exceeded its authority, they and the residents of Carlinville have been denied transparency regarding governmental decisions.

In other words, Plaintiffs have argued that they and other similarly situated citizens have a right to expect their elected officials will not exceed or abuse their statutory and constitutional authority, that their elected officials will ensure their water is lawfully supplied to them, and had the City of Carlinville attempted to solve its potable water supply issue by creating or partnering with any of the following statutory entities for non-home-rule municipalities: a "Public Water District, " a "Water Commission, " or a "Municipal Joint Action Water Agency," then Plaintiffs would have had the right to know what decisions were being made regarding potable water and lack of transparency would no longer be an issue.

Plaintiffs' Complaint for Mandamus asks this Court to require the City of Carlinville comply with its constitutional and statutory obligations and withdraw from and cease any further participation in the creation, funding, or operation of Illinois Alluvial Rural Water Company (Illinois Alluvial). Plaintiffs, in essence, are asking this Court to declare Illinois Alluvial is not a legal entity because it was created by two non-home-rule municipalities (in conjunction with a

private not-for-profit corporation) that did not have express constitutional and/or statutory authority in violation of Dillon's Rule.

Both parties acknowledge that in almost approximately 50 years (since the 1970 Illinois Constitution adopted the intergovernmental cooperation provision found in Article 10(a)), not one other "non-home-rule municipality" in the State of Illinois has done what the City of Carlinville did in this case. Both parties also agree that there is no case directly on point, and thus, this is a case of first impression.

II.
Procedural History

On February 23, 2018, Plaintiffs filed their original complaint for declaratory Judgment and injunctive relief in then Macoupin County Case No. 2018-L-5 against the current Defendant, City of Carlinville, as well as the Village of Dorchester, Jersey Rural Water Co., and Illinois Alluvial, seeking, *inter alia*, to prevent the Defendants from participating in the funding and operations of Illinois Alluvial.

On May 4, 2018, Illinois Alluvial filed a Motion for Summary Judgment as well as its Memorandum in support thereof.

On May 8, 2018, Defendant Carlinville filed its Motion to Dismiss Plaintiffs' complaint for lack of standing.

On August 2, 2018, the parties argued the Motions to Dismiss and the Motion for Summary Judgment before the Court.

On or about December 27, 2018, the parties each filed supplemental argument on the application of Dillon's Rule in response to a request from the Court.

On January 2, 2019, the Court issued its written order dismissing the Village of Dorchester and Jersey County Rural Water Company, Inc. for lack of standing. The Court also *sua sponte* dismissed Illinois Alluvial for lack of standing and did not take up its pending Motion for Summary Judgment. Instead, the Court found that motion moot in light of its ruling dismissing Illinois Alluvial for lack of standing. The Court denied Defendant's Motion to Dismiss and gave Plaintiffs 30 days to file an amended complaint.

On May 2, 2019, Plaintiffs filed their First Amended Complaint for declaratory relief against Defendant Carlinville.

On May 16, 2019, Defendant filed its Motion to Dismiss Plaintiffs' First Amended Complaint. Defendant also filed a Motion for Sanctions pursuant to Illinois Supreme Court Rule 137.

On July 22, 2019, Plaintiffs (prematurely) filed a Second Amended Complaint (in Macoupin County Case No. 2018-L-5) abandoning their declaratory and injunctive causes of actions and instead alleging a single-count for a Writ of Mandamus.

In a July 23, 2019 docket entry, the Court acknowledged receipt of Plaintiffs' Second Amended Complaint (filed in Macoupin County Case No. 18-L-5) and noted that it had previously instructed Plaintiffs to refile their cause of action as an MR case (19-MR-92). The Court ordered that, for consistency in rulings, it was consolidating the 18-L-5 matter with the 19-MR-92 matter and again, instructed that all future filings should be made using the 19-MR-92 case number.

Following an August 2, 2019 hearing, the Court granted Defendant's Motion to Dismiss Plaintiffs' First Amended Complaint and directed the Clerk to strike Plaintiffs' Second Amended Complaint but with leave to allow Plaintiffs 14 days to refile a Second Amended Complaint. The court also denied Defendant's Rule 137 Motion for Sanctions.

On August 7, 2019, Plaintiffs filed a Second Amended Complaint (in Macoupin County Case No. 19-MR-92) alleging a single count for mandamus relief. According to Plaintiffs' Second Amended Complaint, they "have no other mechanism to challenge [Defendant's] abuse of authority regarding [its] participation in the creation, funding, or operation of Illinois Alluvial." Plaintiffs' pleading requests the Court to "issue a Writ of Mandamus compelling the Carlinville Aldermen and Alderwomen, in their official capacities, to take the actions necessary to withdraw from and cease any further participation in the creation, funding, or operation of Illinois Alluvial."

On September 4, 2019, Defendant filed three Section 2-615 Motions to Dismiss Plaintiffs' complaint for their failure to state a claim for (i) mandamus relief, (ii) a violation of the Open Meetings Act ("OMA"), or (iii) a violation of the Freedom of Information Act ("FOIA").

On September 30, 2019, Plaintiffs filed their response to Defendant's Motions to Dismiss arguing they had plead adequate facts for mandamus and that the Court "has previously determined in this case and recited in its prior Orders that Plaintiffs have a right to expect that their local government will conduct itself with transparency and comply with applicable laws."

Plaintiffs' response also contained a request that the Court find "pursuant to Illinois Supreme Court Rule 308 that any Order the Court renders regarding Defendant's Motion to Dismiss involves a question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the Order may materially advance the ultimate termination of the litigation." Plaintiffs then articulated the question of law before the Court as follows: "Does [Defendant], a non-home rule municipality, have authority under Article VII of the Illinois Constitution to join with other municipalities and one or more private, not-for-profit corporations to create, manage and fund an Illinois not-for-profit corporation, where there is no statute which expressly authorizes the creation of such a corporation?"

On October 17, 2019, the trial court held a hearing on Defendant's Motions to Dismiss. In its October 21, 2019, written order, the Court denied Defendant's Motion to Dismiss Plaintiffs' complaint, finding that "a Writ of Mandamus can be used to compel the undoing of an act not authorized by law or to require public entities and/or officials to comply with State law. Plaintiffs have raised a valid argument, and this Court will not deprive them of the opportunity to litigate their [mandamus] cause of action." The Court denied Defendant's Motions to Dismiss relating to OMA and FOIA violations, finding Plaintiffs did not attempt to state a cause of action based on OMA or FOIA because the facts as pled did not support either cause of action. The Court granted Plaintiffs' request to present a certified question subject to a review of Defendant's opposition and a refinement of the question.

On October 24, 2019, Defendant filed an alternative certified question for the Court's consideration. On October 25, 2019, Plaintiffs filed their revised proposed certified question.

On November 1, 2019, the Court issued its order finding "[a] question of law exists as to which there is a substantial ground for difference of opinion, and an appeal from the Court's October 21, 2019 Order denying Defendant's Motions to Dismiss may materially advance the ultimate termination of the litigation." The Court then issued the following certified questions for appeal:

> (a) Whether a non-home rule municipality has authority under Article VII of the Illinois Constitution to join with another non-home rule municipality/village and a private, not for-profit corporation for purposes of creating a brand-new not for profit corporation that is intended to supply potable water to the region where there is no statute that expressly authorizes the creation of such a corporation? And if the answer is in the negative,
>
> (b) May the Court then issue a writ of mandamus and order the non-home rule municipality to withdraw as a member of the newly created, private not-for-profit regional water corporation because it was formed without express statutory authority?

On November 21, 2019, Plaintiffs filed their "Application for Leave to Appeal (Pursuant to Illinois Supreme Court Rule 308)" with the Fourth District Appellate Court.

On November 26, 2019, the Court granted Defendant's Motion to Stay the trial court proceedings pending the resolution of the Rule 308 appeal.

On December 11, 2019, Defendant filed its Answer in Opposition to Plaintiffs' Supreme Court Rule 308 Application.

On December 19, 2019, the Fourth District Appellate Court issued its order denying Plaintiffs' Application for Leave to Appeal Pursuant to Illinois Supreme Court Rule 308.

On December 26, 2019, the Court granted Defendant's Motion to lift the stay in the proceedings.

On January 24, 2020, Defendant filed its Answer and Affirmative Defenses to Plaintiffs' Second Amended Complaint. Plaintiffs did not file any response to Defendant's affirmative defenses.

On April 3, 2020, Defendant filed its Motion for Summary Judgment.

On April 27, 2020, Plaintiffs filed their Motion for Summary Judgment.

On June 9, 2020, this Court held a hearing on the parties' pending Motions for Summary Judgment. The parties were granted leave to submit proposed orders.

The parties agreed the relevant facts underlying the instant dispute are not at issue.

III.
Statement of Undisputed Facts

1) The Plaintiffs, husband and wife, own a residence in Carlinville, Illinois which is connected to the City's potable water distribution system. Defendant City of Carlinville is a non-home rule municipal corporation. The Village of Dorchester is also a non-home rule municipality. Jersey County Rural Water Company, Inc. ("Jersey County Rural Water Co.") is an Illinois private, not-for-profit corporation. All three entities are seeking a new source of potable water.

2) On or about December 22, 2015, the City of Carlinville submitted an Application for Federal Assistance, wherein the City of Carlinville informed the Federal Government that the Project was for a Regional Water System for purposes of developing a *Regional Water Commission* by partnering with Jerseyville, Jersey County Rural Water Company, and Fosterburg Water District. The application further stated, "The City of Carlinville is the lead entity *until a water commission* can be formed." (Emphasis added. "Water Commission" is found in 70 ILCS 3720/0.001 *et seq.*)

3) On March 8, 2016, the City of Carlinville entered into a Grant Agreement with the United States Department of Agriculture (USDA), wherein the City of Carlinville was awarded $30,000.00 in federal grant money for purposes of developing a Regional Water Commission.

4) On October 2, 2017, Carlinville City Council voted to grant Alderwoman Campbell power to appropriate funds to Illinois Alluvial Regional Water Company, Inc. (Illinois Alluvial) on behalf of Carlinville, without the need to seek prior Council approval. At the time this vote was made, Illinois Alluvial was not a legal entity, did not have By-Laws, and had not yet been incorporated.

5) On November 30, 2017, representatives of Defendant, Jersey County Rural Water Co. and the Village of Dorchester adopted the By-Laws for Illinois Alluvial.

6) At no time prior to November 30, 2017 or thereafter did Defendant City of Carlinville, a non-home rule municipality, enter into a contract or intergovernmental agreement with the Village of Dorchester and/or Jersey County Rural Water Co., regarding its intentions of joining with another non-home rule municipality and a not-for-profit water corporation for purposes of creating a new non-for-profit corporation to address its water supply needs.

7) On December 5, 2017, Illinois Alluvial was incorporated as a non-for-profit Corporation with the Illinois Secretary of State for an unlimited duration. The Board of Directors consist of three members: a representative from the City of Carlinville, a representative from the Village of Dorchester, and a representative from Jersey County Rural Water Co. Membership in Illinois Alluvial is restricted to municipalities and not-for-profit rural water companies. For-profit corporations are not permitted to become members. Illinois Alluvial does not have any shareholders.

8) On December 14, 2017, Counsel for Illinois Alluvial sent Counsel for City of Carlinville a "Notice of Criminal Trespass," wherein counsel stated under no circumstances would uninvited members of Carlinville City Council be allowed to attend Illinois Alluvial's meetings because Illinois Alluvial is a private entity and not subject to the Open Meetings Act. The letter further stated that any attempt to attend its meetings would be reported to local law enforcement as criminal trespass and

prosecuted. Illinois Alluvial further stated "[i]t is unfortunate that a small group of mis-informed individuals with personal agendas seeks to stand in the way of the entire community's lawful attempts to seek a safe, stable source of potable water for many years in the future, but such is the nature of our recent political environment." (See Exh. F attached to Plaintiffs' Response to Motion for Summary Judgment)

9) Illinois Alluvial was not created as a "Public Water District" under the Public Water District Act, 70 ILCS 3705/0.01 et seq.; it does not comply with the provisions of the Water Authorities Act, 70 ILCS 3715/0.01 et seq.; nor is it a "Water Commission" as that term is identified in the Water Commission Act of 1985, 70 ILCS 3720/0.001 et seq.; nor it is not a "Municipal Joint Action Water Agency" as that term is described in the Intergovernmental Cooperation Act, 5 ILCS 220/3.1; nor is the association of Carlinville and another municipality with private companies (Jersey Rural and Illinois Alluvial) authorized by any of the provisions of the Illinois Municipal Code relating to Water Supply and Sewage Systems, 65 ILCS 5/11-124-1 et seq.

10) Plaintiffs claim that Defendant City of Carlinville is without constitutional and statutory authority to participate in the incorporation, funding, or operation of Illinois Alluvial. Plaintiffs further argue the residents of the City of Carlinville have the right to expect their elected official will comply with the law while maintaining transparency.

11) Defendant argues the Municipal Code provides broad authority to enter into contracts to purchase potable water from private companies as well as construct, own, and operate their own public potable water treatment facilities and distribution systems.

12) Defendant also contends that Article VII, Section 10(a) of the 1970 Illinois Constitution expressly allows municipalities to exercise their authority over the public water supply through an association with other municipalities and private corporations without the need for separate statutory authority.

13) Defendant maintains its association with the Village of Dorchester and Jersey Rural Water Co. to form Illinois Alluvial is therefore proper.

IV.
Analysis

"Summary judgment is proper when 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a Judgment as a matter of law.' " *Stevens v. McGuireWoods LLP*, 2015 IL 118652, ¶ 11 (quoting 735 ILCS 5/2-1005(c). "Where the parties file cross-Motions

for Summary Judgment, as they did in this case, they concede the absence of a genuine issue of material fact, agree that only questions of law are involved, and invite the court to decide the issues based on the record." *McGuireWoods LLP*, 2015 IL 118652, ¶ 11.

The only issue pending before the Court is whether Defendant Carlinville had constitutional and statutory authority to join with another non-home rule municipality and a not-for-profit corporation to form and operate Illinois Alluvial, a private not-for-profit organization. To address this issue, this Court considers Article VII of the Illinois Constitution of 1970 ("Constitution") as a whole, with a special focus on Sections 6, 7, and 10.

Defendant argues that Article VII, Section 10(a) of the Illinois Constitution grants Defendant the right to "associate" with private corporations, and that its relationship with Dorchester, Jersey County Rural Water Company, and Illinois Alluvial is such a permitted association.

Article VII, Section 10(a) of the Constitution specifically states as follows:

> 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.

Il. Const., Art. VII, Sec. 10(a), West 2020 (emphasis added).

Read literally, the City of Carlinville may contract ***or*** otherwise associate with Village of Dorchester to obtain or share services and to exercise, combine, or transfer any power or function, *in any manner not prohibited by law or ordinance.* In addition, the City of Carlinville may contract ***and*** otherwise associate with Jersey County Rural Water, Co

in any matter not prohibited by law or by ordinance.

Since the inception of this case, Defendant City of Carlinville has argued it could "associate" in any manner it chose to so long as there was no law to the contrary. When a court interprets the Constitution, however, each word, clause, and sentence must be given a reasonable construction if possible and should not be rendered superfluous. See *Bettis v. Marsaglia*, 2014 IL 117050, ¶13, 23 N.E.3d 351 (2014), *Rottman v. Ill. State Officers Electoral Board*, 2018 IL App (1st) 180234, ¶ 15, 102 N.E.3d 819, 825 (1st Dist. 2018). When the legislature uses certain words in one instance and different words in another, different results are intended. *Id.*

> Citizens cannot pick and choose which statutes apply to them. Statutes are read together and construed in a harmonious fashion. *Schaumburg State Bank v. Bank of Wheaton*, 197 Ill. App. 3d 713, 720, ... 555 N.E.2d 48, 52 (1990); *Knolls Condominium Ass'n v. Harms*, 202 Ill. 2d 450, 458–59, ... 781 N.E.2d 261, 267 (2002) ('A court presumes that the legislature intended that two or more statutes which relate to the same subject are to be read harmoniously so that no provisions are rendered inoperative.'). Furthermore, it is presumed that the General Assembly acts rationally and with full knowledge of all previous enactments and will not enact a law which contradicts a prior statute unless it expressly repeals the prior language. *State of Illinois v. Mikusch*, 138 Ill. 2d 242, 247–48, ... 562 N.E.2d 168, 170 (1990). In the unlikely event, however, that a general statute and specific statute on the same subject are conflicting, the specific language will control. *Mikusch*, 138 Ill. 2d at 254, ... 562 N.E.2d at 173.

Fischetti v. Village of Schaumburg, 2012 IL App (1st) 111008, ¶6 (emphasis added).

Article VII, Section 10(a) of the Constitution uses the conjunction "or" when granting units of local government the right to contract or otherwise associate *amongst themselves*; meaning that units of local government may choose between a contract or another form of association when dealing with other units of local government. Conversely, Article VII, Section 10(a) of the Constitution uses the conjunction "and" when describing the ability of a unit of local government *to contract and associate* with a *private corporation*; meaning that there must be both a contract

and a type of association for the constitutional requirement to be fulfilled. Defendant's focus on the word "may" in its proposed Order is misplaced, but the Court's analysis does not stop there.

The Court now turns to Defendant's argument that the City of Carlinville's actions were permitted because they were not specifically prohibited by law or ordinance. In *Rajterowski v. City of Sycamore,* 405 Ill. App. 3d 1086, 1119, 940 N.E.2d 682, 709 (2d Dist. 2010), the Court analyzed school districts/non-home-rule entities' powers under Article VII, Section 10(a) and the authority they may exercise via intergovernmental agreements. *Rajterowski* held

> [t]he constitution provides that school districts 'shall have only powers granted by law.' Ill. Const.1970, art. VII, § 8. This provision preserves the concept of 'Dillon's Rule.' Under 'Dillon's Rule,' non-home-rule units possess only those powers that are specifically conveyed by the constitution or by statute or that are necessarily implicit from the express authority. *Commonwealth Edison Co. v. City of Warrenville*, 288 Ill. App. 3d 373, 380, .. 680 N.E.2d 465 (1997); *Fischer v. Brombolich*, 207 Ill. App. 3d 1053, 1059 ... 566 N.E.2d 785 (1991). Because a non-home-rule entity derives its powers only from 'an express grant from the legislature, the statutes granting this power are strictly construed, and any doubt concerning an asserted power is resolved against the [non-home-rule entity].' *Fischer*, 207 Ill.App.3d at 1059, ... 566 N.E.2d 785.

Rajterwoski, at 1119 (emphasis added).

Thus, when analyzing Section 7 of Article VII in the context of "Counties and Municipalities Other than Home Rule," this Court must reach the same conclusion[2]. Just as the Court in *Rajterowski* read Article VII as a whole and found Section 8 limits school districts' powers to what is specifically granted by law, Section 7 limits non-home-rule municipalities' powers to those that are granted to them by law and the powers

> (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government

[2] The Court in *Rajterowski* made this finding even with consideration of the language contained in Section 10(a), which states "... *[S]chool 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. ... *[S]chool districts* may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance. (Emphasis added).

> having that power on the effective date of this Constitution unless that power is subsequently denied by law to any such other units of local government; (2) by referendum, to adopt, alter or repeal their forms of government provided by law; (3) in the case of municipalities, to provide by referendum for their officers, manner of selection and terms of office; (4) in the case of counties, to provide for their officers, manner of selection and terms of office as provided in Section 4 of this Article; (5) to incur debt except as limited by law and except that debt payable from ad valorem property tax receipts shall mature within 40 years from the time it is incurred; and (6) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.

See Article VII, Sec. 7 of the Illinois Constitution; *see also, Fischetti,* (where "it is presumed that the General Assembly acts rationally and with full knowledge of all previous enactments and will not enact a law which contradicts a prior statute unless it expressly repeals the prior language [and] in the unlikely event ... that a general statute and specific statute on the same subject are conflicting, the specific language will control", citing *Mikusch*, 138 Ill. 2d at 254). Defendant has cited no reason why this Court should not follow the same holding in *Rajterowski.* The Court finds *Village of Sherman v. Village of Williamsville* 106 Ill. App. 3d 174 (4th Dist. 1982) distinguishable to the facts of this case because in that case, the two municipalities entered into an intergovernmental agreement, which is clearly permitted.

Further, although not required, the fact remains that Defendant City of Carlinville did not have any contract (or intergovernmental agreement) in place with the Village of Dorchester regarding the formation of Illinois Alluvial. This fact is important because Defendant has asked the Court numerous times to rely on the transcripts from the debates from the 1970 Constitutional Convention in analyzing Section 10(a). When the Court looks at those transcripts, it cannot ignore the fact that the legislative representatives also stated, for instance, "... there are many special areas that come up, and this would permit those nonhome rule units to go ahead and make a contract, unless it was in an area that has been prohibited by legislative action." It is undisputed

that the City of Carlinville also did not enter into a contract with Jersey County Rural Water Company, Inc. or any other entity regarding the formation, funding, and operation of Illinois Alluvial. Even if the City of Carlinville contracted with Jersey County Rural Water Company (which it did not) and associated with the Village of Dorchester to create Illinois Alluvial, the Court finds the City of Carlinville exceeded its authority and did not fulfil its constitutional obligations under Article VII, Sections 7 and 10(a). The General Assembly provided entities such as Defendant with five different methods by which Defendant could enter into agreements and otherwise associate with others to solve its water problem. Creating a brand-new private entity that is not subject to transparency and public input was not one of them. Furthermore, one must ask... if the Court adopts Defendant's argument (as found on p. 11 of Defendant's proposed Order) that the City of Carlinville could merely associate with the Village of Dorchester and the two of those non-home-rule municipalities could then just decide to create and form Illinois Alluvial, a not-for-profit corporation, then why hasn't any other non-home-rule municipality done this in almost 50 years since the 1970 Constitutional Convention? If it is not prohibited by any law or regulation, then why is this the first non-home-rule municipality to ever conduct itself in this manner?

Defendant also relies on 65 ILCS 5/11-124-1 of the Municipal Code and *Wabash v. Partee*, 241 Ill. App. 3d 59, 66-67 (5th Dist. 1993) to argue it and its elected officials had authority to act in the manner they did. However, a careful reading of that statute shows how Defendant did not comply with its terms either. According to that statute, "[t]he corporate authorities of each municipality may contract with any person, *corporation*, *municipal corporation*, political subdivision, public water district *or any other agency* for a supply of water." (Emphasis added). It does not state the corporate authorities "may otherwise associate in any manner" with these entities. Similarly, *Wabash* states "...section 10 of article VII of the 1970 Constitution provides

that *units of local government may contract with each other* and with the State to obtain or share services and to exercise, combine or transfer any power or function if not otherwise prohibited by law. Ill. Const. 1970, art. VII, section 10. The constitutional grant to local governments of the *authority to contract with each other* is supported by the Intergovernmental Cooperation Act." *Wabash*, 241 Ill. App. 3d at 66 (emphasis added).

Defendant attempts to argue the By-laws and Articles of Incorporation by their definition are a contract. The Court does not accept this argument. But assuming *arguendo* this to be true, the terms of the "contract" do not conform with the requirements set forth in this section of the Municipal Code pertaining to water supply, and that argument must fail.

In this case, the Court agrees that the City of Carlinville could have *associated* with the Village of Dorchester and contracted with Jersey Country Rural Water Company for purposes of creating a potable water supply, but for these three entities to create a brand new, private not-for-profit corporation for purposes of ultimately selling water without public input is inconsistent with the Illinois Constitution, the statutory authority and case law cited herein, and was an attempt to circumvent the Illinois General Assembly's grant of authority in solving Defendant Carlinville's water problem. If the Legislature intended for Defendant Carlinville, a non-home-rule municipality, to have free reign of authority and power and to do whatever it saw fit without a contract and/or input from its residents, then why would the Legislature have created five different ways a non-home-rule municipality could create a joint water treatment and distribution scheme?

Defendant's final argument that "Plaintiffs' delay in filing their mandamus action will result in significant inconvenience and detriment to the public in that the abandonment of the ongoing association with [Illinois] Alluvial will be more disruptive to the financial position of the city, interfere with contractual obligations, and jeopardize the safety of the city water supply" is

also misplaced. Defendant was put on notice in February 2018 (within 6 months of learning of Defendant's conduct) that Plaintiffs were asking this Court to find Defendant exceeded its authority and that Illinois Alluvial is, therefore, a void corporation.

Here, both parties' pleading defects contributed to additional delays. Moreover, it would have been improper for this Court to Dismiss Plaintiffs' Complaint with prejudice when it was clear from the facts as alleged that they had a viable cause of action. It was simply pled incorrectly. In addition, Defendant also contributed to delays by filing premature Motions that had to be stricken and motions to dismiss that pertained to issues that were not even pled. Other delays were attributable to unexpected health issues that further impacted and complicated scheduling. At the end of the day, no one forced the City of Carlinville to continue moving forward with its participation in and creation of Illinois Alluvial after being put on notice. Defendant voluntarily took that risk and gambled with how this Court would ultimately rule.

V.
Conclusion

As stated in this Court's previous Order,

> The Court recognizes water supply is an issue for the residents of Carlinville. The Court recognizes that the City has tried to take steps to rectify the issue. And while the Court is sympathetic to the needs of the residents with regard to clean, potable water, the Court cannot allow sympathy and compassion to enter into its analysis; nor can the Court consider what developments may or may not be occurring right now or how much money has since been invested because those facts are not before the Court.

The Court finds Plaintiffs "have a protectable interest in ensuring that public officials follow the requirements of public statutes." See *Lombard Historical Comm'n v. Village of Lombard*, 366 Ill. App. 3d 715, 718, 852 N.E.2d 916, 920, (2d Dist. 2006), citing *American Federation of State, County, & Municipal Employees, Council 31 v. Ryan*, 332 Ill. App. 3d 866, 876, 773 N.E.2d 739 (4th Dist. 2002). Defendant City of Carlinville has admitted in Court that

the course of action it took to participate in the funding and operation of Illinois Alluvial does not conform to any of the statutorily authorized means by which it could do so. It also did not have express authority under Section 7, Article VII of the Illinois Constitution to do what it did, and as a non-home-rule municipality, Article VII, Section 7 of the Constitution requires that Defendant may only undertake actions which are granted to it by law[3].

"Because a non-home-rule entity derives its powers only from 'an express grant from the legislature, the statutes granting this power are strictly construed, and any doubt concerning an asserted power is resolved against the [non-home-rule entity].'" *Fischer*, 207 Ill. App. 3d at 1059, 566 N.E.2d 785; *cf.* Article VII, Sec.6, Par.(m) (where powers granted to Home Rule Municipalities are to be "construed liberally"). Defendant has failed to provide any constitutional or statutory authority for the actions it undertook in the formation and operation of Illinois Alluvial.

WHEREFORE, THE COURT FINDS:

Defendant's Motion for Summary Judgement is DENIED, including its laches and standing arguments. The Court also incorporates its findings and rulings made in open court regarding Defendant's affirmative defenses. Plaintiffs' Motion for Summary Judgment is GRANTED, and Judgment is entered in favor of Plaintiffs on their Second Amended Complaint.

The Court issues a Writ of Mandamus to compel the undoing of an act not authorized by law and to require public entities, such as the City of Carlinville and its officials, to comply with State law.

THE COURT FURTHER FINDS that based on the City of Carlinville's unauthorized actions, Illinois Alluvial was created in violation of the law and is a void corporation.

[3] See case law cited by Plaintiffs on pp. 8 and 9 in their Motion for Summary Judgment, filed April 27, 2020.

FINALLY, pursuant to Illinois Supreme Court Rule 304(a), there is no just reason for delay of either enforcement or appeal of this Order.

Entered: July 7, 2020

By: _____
April G. Troemper
Circuit Court Judge, 7th Judicial Circuit

BATES #251

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
MACOUPIN COUNTY, ILLINOIS

CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE, husband and wife,	)	
Plaintiffs,	)	
v.	)	Case No. 2019-MR-000092
CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation,	)	
Defendant.	)	

DEFENDANT'S MOTION TO STAY PENDING APPEAL

NOW COMES Defendant, the CITY OF CARLINVILLE, a Municipal Corporation, by and through its attorneys, Giffin, Winning, Cohen & Bodewes, P.C., and Dan O'Brien appearing of record, pursuant to Supreme Court Rule 305(b), request that this Honorable Court stay its July 7, 2020 Order granting Plaintiffs' motion for summary judgment on their Second Amended Complaint and issuing a Writ of Mandamus to compel Defendant to withdraw from and cease any further participation, funding, or operation of Illinois Alluvial Rural Water Company Alluvial ("Alluvial") and finding "Alluvial was created in violation of the law and is a void corporation."

1. On August 7, 2019, Plaintiffs filed a Second Amended Complaint alleging a single count for mandamus relief. According to Plaintiffs' Second Amended Complaint, they "have no other mechanism to challenge [Defendant's] abuse of authority regarding [its] participation in the creation, funding, or operation of Illinois Alluvial [Rural Water Company]." Plaintiffs' pleading requested the Court "issue a Writ of Mandamus compelling the Carlinville Aldermen and Alderwomen, in their official capacities, to take the actions necessary to withdraw

from and cease any further participation in the creation, funding, or operation of Illinois Alluvial".

2. Thereafter, the parties filed their respective motions for summary judgment.

3. On June 9, 2020, this Court held a hearing on the parties' motions for summary judgment.

4. In its July 7, 2020 written Order, this Court granted Plaintiffs' motion for summary judgment on their Second Amended Complaint, denied Defendant's motion for summary judgment, and issued a Writ of Mandamus to compel Defendant to withdraw from and cease any further participation in, funding of, or operation of Alluvial. The Court further found "Alluvial was created in violation of the law and is a void corporation." Circuit Court's July 7, 2020 Order, at 17.

5. Defendant will file a timely notice of appeal following the filing of this Motion to Stay Pending Appeal.

6. Illinois Supreme Court Rule 305(b) allows a party to seek a stay of enforcement of any judgment, other than a money judgment. Such stay shall be conditioned upon just terms.

7. Pursuant to Illinois Supreme Court Rule 305(i), when the appeal is prosecuted by a governmental body, such as Defendant, the circuit court may stay the judgment pending appeal without requiring that any bond or any other form of security be given.

8. A stay is appropriate in this case because it will (a) reduce the uncertainty of Defendant's ability to participate in Alluvial, (b) allow Alluvial to continue as a valid Illinois Corporation, and (c) avoid and prevent unnecessary and unfortunate (i) disruption to the financial position of Defendant, (ii) interference with Defendant's contractual obligations, (iii) risk to the

safety of the public water supply, and (iv) disruption to Defendant's two-thousand nine-hundred and twenty-six (2,926) customers while the appeal is pending.

WHEREFORE, Defendant, the CITY OF CARLINVILLE, hereby respectfully requests this Court to stay the enforcement, without the requirement that bond or any other form of security be given, of its Order entered July 7, 2020, pending appeal, and for such other relief the Court deems just and proper.

Respectfully submitted,

CITY OF CARLINVILLE, ILLINOIS,
A Municipal Corporation, Defendant

BY: /s/ John M. Gabala

One of Its Attorneys

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CERTIFICATE OF FILING AND PROOF OF SERVICE

I certify that on July 16, 2020, I submitted the foregoing document for electronic filing with the Clerk of the Court of the Seventh Judicial Circuit, Macoupin County, Illinois by using the Odyssey eFileIL system.

I further certify that I served the following by transmitting a copy via email on the above date to:

Jacob N. Smallhorn
Smallhorn Law LLC
609 Monroe
Charleston, IL 61920
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Dan O'Brien
O'Brien Law Office
331 E. 1st Street
Carlinville, IL 62626
dan_obrien@mac.com

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge.

/s/ John M. Gabala
John M. Gabala, ARDC #6288162
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IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT OF ILLINOIS
MACOUPIN COUNTY, CARLINVILLE, ILLINOIS

CAMILLE MAYFIELD COOPER BROTZE, and WAYNE BROTZE, husband and wife,	)	
Plaintiffs,	)	
v.	)	No. 2019-MR-92
CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation,	)	
Defendant.	)	

RESPONSE TO DEFENDANT'S MOTION FOR STAY PENDING APPEAL

NOW COME Petitioners, CAMILLE MAYFIELD COOPER BROTZE and WAYNE BROTZE, husband and wife, by and through their attorney, Jacob N. Smallhorn of Smallhorn Law LLC, and in support of their response to Defendant's Motion for Stay Pending Appeal, state as follows:

I. Introduction

1. On July 7, 2020, the Court entered an Order (the "Order") denying Defendant's Motion for Summary Judgment, granting Plaintiff's Motion for Summary Judgment, issuing a Writ of Mandamus against Carlinville to comply with State law, finding that "based on the City of Carlinville's unauthorized actions, Illinois Alluvial was created in violation of the law and is a void corporation," and finding that pursuant to Illinois Supreme Court Rule 304(a), there is no just reason for delay of either enforcement or appeal of the Court's Order.

2. On July 16, 2020, Defendant filed Defendant's Motion for Stay Pending Appeal ("Motion for Stay"), citing the need for a stay because it will:

a. "Reduce the uncertainty of Defendant's ability to participate in Alluvial;"

b. "Allow Alluvial to continue as a valid Illinois Corporation;" and

c. "Avoid and prevent unnecessary and unfortunate:

i. Disruption to the financial position of Defendant,

ii. Interference with Defendant's contractual obligations,

iii. Risk to the safety of the public water supply, and

iv. Disruption to Defendant's two-thousand nine-hundred and twenty-six (2,926) customers while the appeal is pending."

Motion for Stay, Par. 8.

3. Defendant's Motion for Stay does not have any exhibits attached to it, nor does the Motion for Stay provide any additional information to flesh out the reasons why a stay is necessary under the circumstances.

II. Illinois Supreme Court Rule 305(b)

4. Illinois Supreme Court Rule 305(b) provides that:

> . . . [O]n notice and motion, and an opportunity for opposing parties to be heard, the court may also stay the enforcement of any judgment, other than a judgment, or portion of a judgment, for money, or the enforcement, force and effect of appealable interlocutory orders or any other appealable judicial or administrative order. The stay shall be conditioned upon such terms as are just. A bond or other form of security may be required in any case, and shall be required to protect an appellee's interest in property.

Illinois Supreme Court Rule 305(b) (West 2020).

5. In making a determination on a stay pursuant to Rule 305(b), there is no specific set of factors that a court must consider. *Tirio v. Dalton,* 144 N.E. 3d 1261, 37 Ill.Dec 671 (2nd Dist. 2019), citing *Stacke v. Bates*, 138 Ill. 2d 295, 304-05, 149 Ill.Dec. 728, 562 N.E.2d 192 (1990).

6. Nevertheless, the Illinois Supreme Court has stated that to prevail on a motion for a stay, the movant must "present a substantial case on the merits and show that the balance of the equitable factors weighs in favor of granting the stay." *Id.* at 309, 149 Ill.Dec. 728, 562 N.E.2d 192.

7. The equitable factors to consider include "whether a stay is necessary to secure the fruits of the appeal in the event the movant is successful" and whether hardship on other parties would be imposed. *Id.* at 305-09, 149 Ill.Dec. 728, 562 N.E.2d 192.

8. If the balance of the equitable factors does not strongly favor the movant, then there must be a more substantial showing of a likelihood of success on the merits. *Id.* at 309, 149 Ill.Dec. 728, 562 N.E.2d 192.

9. Nowhere in its Motion for Stay has Defendant made any allegation that it has a likelihood of success on appeal.

10. Defendant's Motion for Stay is premised entirely on the Court's balancing of equitable factors; i.e. whether the stay is necessary to secure the fruits of the appeal in the event the movant is successful and whether hardship on other parties will result if a stay is not granted.

11. Defendant's Motion for Stay provides the Court with absolutely no information helpful to the Court in determining whether or not a hardship will result to third parties if a stay is not granted.

III. Reduction of Defendant's Uncertainty in its Ability to Participate in Alluvial is Not a Valid Basis for a Stay Pending Appeal

12. Defendant's first argument for a stay is that it will "reduce the uncertainty of Defendant's ability to participate in Alluvial."

13. Defendant should have some uncertainty regarding its ability to participate in Alluvial, seeing that the Court found that Carlinville could not participate in Alluvial and that Alluvial is a void corporation.

14. However, Defendant's uncertainty is not a factor the Court should consider when deciding whether or not to grant a stay, as it does not in any way relate to the two equitable factors described by the Illinois Supreme Court in *Stacke*.

IV. Alluvial's Continued Operation as a Corporation is Not a Concern of the Court

15. The second basis Defendant provides as its justification for a stay is that it will "allow Alluvial to continue as a valid corporation."

16. Defendant provides no explanation regarding how the Court's Order would affect Alluvial's ability to continue its operations.

17. One can only assume by the pleadings which have been filed in this case that the underlying problem is Alluvial's ability to continue spending Defendant's grant money to continue its operations.

18. This is exactly the type of harm the Court's Order is intended to prevent, the waste of taxpayer funds on a void entity that was illegally created.

19. A stay would provide a benefit to Alluvial in its continued expenditure of money from Defendant's grants, and at the expense of the public who should not be subjected to the continued expense of taxpayer funds on a void corporation.

20. If the Court grants a stay, it would likely work a hardship on the Plaintiffs and other similarly situated members of the public.

V. Defendant has Not Provided the Court with Any Facts to Support Its Claim that the Order Will Create an Interference and Disruption to Its Water Supply, Contracts, or Customers.

21. Defendant's third basis for a stay is essentially that a stay will protect third party interests.

22. The problem with Defendant's third basis for a stay is that Defendant has not provided the Court with any facts to support its claim, and in certain instances its claims appear to be directly contracted by the facts in evidence herein.

A. Defendant Provided No Information to Explain How a Stay will Prevent Financial Disruption to the Position of Defendant.

23. Defendant argues that it will suffer financial disruption if a stay is not granted.

24. For the reasons described above, harm to the financial position of Defendant is not a basis for a stay during an appeal.

25. The only logical way that not granting a stay appears to cause a further financial hardship to Defendant is if Defendant continues to spend money in violation of Illinois law.

26. Defendant should not be allowed to continue spending funds when the Court determined that it was doing so in violation of Illinois law.

B. Defendant's Argument about Interference with Contractual Obligations is Perplexing

27. Defendant's second "interference" argument is that proceeding without a stay will cause interference with its contractual obligations.

28. Noticeably silent in Defendant's argument is what "contractual obligations" Defendant is talking about.

29. Defendant admitted at hearing that it did not have any contract or other agreement with Alluvial or any of the members of Illinois Alluvial.

30. It is Plaintiffs' understanding that Alluvial is not actually providing any customers with water, as it is still an entity in the planning stages.

31. If Defendant is talking about its contractual obligations regarding its grants with the USDA, and or other entities it has entered into grant agreements with, Defendant can protect itself by ceasing any further expenditures on behalf of Alluvial until this litigation is finished. Defendant has the power to protect itself by not spending any more money.

32. Defendant's contractual obligations should not serve as a basis for enacting a stay.

C. Defendant Cannot Explain How the Order Would Impose a Risk to the Water Supply

33. Defendant's next basis for a stay is that if the Order were allowed to take effect it would cause a "risk to the water supply."

34. Again, it is Plaintiffs' understanding that Carlinville is currently providing water to its citizens, and Alluvial is not providing water to anyone.

35. Defendant has not provided any facts, or even conjecture, as to how the Court's Order, if imposed, might cause harm to the Carlinville water supply.

36. The Court's Order compels Carlinville to follow the law regarding how it will solve its water supply problems.

37. Nothing prevents Carlinville from continuing to work on fixing its water supply issues by any of the statutorily authorized methods.

D. The Court's Order Has No Effect on Carlinville's Current Water Customers.

38. The last basis Defendant provides for a stay is that the Order will disrupt Carlinville's water customers.

39. Again, Defendant provides no information on how the Order will provide such a disruption.

40. The Order has absolutely no effect on Carlinville's current water supply; it merely has an effect on the project Carlinville illegally undertook to fix its future water supply problems.

41. The Court should disregard this basis for a stay.

VI. Conclusion

42. Defendant has neglected to provide any facts upon which the Court can use as a basis for determining whether or not a stay is appropriate under the circumstances, and for that reason alone, Defendant's Motion for Stay should be denied.

43. Defendant has not provided the Court with any basis to find that it will have a high likelihood of success on appeal.

44. Furthermore, the balancing of the equities demonstrates that if the Court were to grant a stay, Carlinville would likely continue to spend funds on a project this Court has already deemed contrary to the laws of the State of Illinois.

45. To the extent the Court considers granting a stay for Defendant, the Court should impose a bond in the amount of any further expenditures Defendant makes on behalf of Alluvial.

WHEREFORE, Plaintiffs pray that the Court enter an Order denying Defendant's Motion for Stay, or alternatively, if the Court determines that a stay pending appeal is appropriate, that the Court impose a bond on Defendant equal to any further amounts Defendant expends from any funds available to it on behalf of Alluvial.

Dated this 20th day of July, 2020.

CAMILLE MAYFIELD COOPER BROTZE and
WAYNE BROZE, Plaintiffs,

By: /s/ Jacob N. Smallhorn
Jacob N. Smallhorn
Their Attorney

Jacob N. Smallhorn
Smallhorn Law LLC
600 Jackson Avenue
Charleston, Illinois 61920
T: 217-348-5253
E: jsmallhorn@smallhornlaw.com

CERTIFICATE OF SERVICE

The undersigned, being first duly sworn on oath, deposes and says that he electronically filed the above document with the Clerk at the https://illinois.tylerhost.net/ofsweb e-filing system and sent true copies thereof via email, on the 20th day of July, 2020.

TO:

Dan O'Brien
PO Box 671
Carlinville, IL 62626
Dan_obrien@mac.com

John M. Gabala
Giffin, Winning, Cohen & Bodewes, P.C.
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/s/ Jacob N. Smallhorn

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State of Illinois

In the Circuit Court of Judicial Circuit #7

Macoupin County

Mandamus
BROTZE, CAMILLE MAYFIELD COOPER P 001
VS.
CITY OF CARLINVILLE, ILLINOIS D 001

Case number: 2019-MR-000092

Notice to:

O'BRIEN, DANIEL W
124 EAST SIDE SQUARE P O BOX 671 CARLINVILLE, IL 62626-0000

GABALA, JOHN
ONE W OLD STATE CAPITOL PLZ SUITE #600 SPRINGFIELD, IL 62701-0000

SMALLHORN, JACOB N
609 MONROE AVE CHARLESTON, IL 61920-0627

Take notice that the following entries were made on the above-titled case:

07/07/2020 AGT- Pending before the Court are the parties' Motions for Summary Judgment. The Court having now considered the parties' written and oral arguments, proposed orders and the applicable constitutional, statutory, and legal authority hereby issues its written decision granting Plaintiffs' Motion for Summary Judgment, denying Defendant's Motion for Summary Judgment and issuing a Writ of Mandamus. Clerk directed to send a copy of this docket entry and Order to the attorneys of record. AGT

/s/LEE ROSS, Circuit Clerk (JKH)

Circuit Clerk, LEE ROSS

This notice mailed on Tuesday, July 7, 2020.

Deputy

GABALA, JOHN
ONE W OLD STATE CAPITOL PLZ
SUITE #600
SPRINGFIELD, IL 62701-0000

JKH

COPY

IN THE CIRCUIT COURT
FOR THE SEVENTH JUDICIAL CIRCUIT
CARLINVILLE, MACOUPIN COUNTY, ILLINOIS

FILED
AUG 03 2020
Clerk of the Circuit Court
Macoupin County, Illinois

CAMILLE MAYFIELD COOPER BROTZE, And WAYNE BROTZE, husband and wife,

Plaintiffs,

vs

CITY OF CARLINVILLE, ILLINOIS, a Municipal Corporation,

Defendant.

No. 2019 MR 92
(formerly filed as 18 L 5)

ORDER
Re: Defendant City of Carlinville's Motion to Stay Pending Appeal

Case called for consideration of Defendant's Motion to Stay Pending Appeal and waiver of bond pursuant to Illinois Supreme Court Rule 305(b) and (i), Plaintiffs' response, and the parties' supplemental legal authority. Based on the foregoing, the Court finds as follows:

1) A trial court may stay a judgment pending appeal. If a stay is granted, it shall be conditioned upon just terms.

2) Here, as part of the Motion to Stay, Defendant asks this Court to declare Illinois Alluvial a valid Illinois Corporation. The Court finds this request inappropriate. This Court found the City of Carlinville, as a non-home-rule municipality, exceeded and circumvented its constitutional and statutory authority when it participated in the creation of Illinois Alluvial, a non-for-profit corporation, which deprived Plaintiffs and the Citizens of Carlinville the right to an open and transparent government (as illustrated in the notice of criminal trespass issued by Illinois Alluvial). The Court further found that since the City of Carlinville had no authority to act in the manner it did, Illinois Alluvial, by default, is a void corporation. Keep in mind, Illinois Alluvial was not a corporation already in existence, and the City of Carlinville and the Village of Dorchester did not enter into a written inter-governmental/cooperative agreement or enter into a contract with Jersey County Rural Water Company for purposes of creating Illinois Alluvial. It would be improper and not just for this Court to now declare Illinois Alluvial a valid corporation while this case is on appeal. As such, the Court denies that portion of Defendant's request.

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3) Next, the City of Carlinville argues that the Court's order will interfere with Defendant's contractual obligations and cause disruption to Carlinville's 2,926 water customers. No evidence was presented by way of affidavits as to any contractual obligations or the number of current water customers or how this Court's ruling will disrupt their current water supply; and in fact, the City of Carlinville stated on the record, no contract existed. Thus, it would be improper and not just for this Court to now consider evidence and arguments that were not presented and fully briefed during the summary judgment stage. *See generally, Vantage Hosp. Group, Inc. v. Q Ill Development, LLC.*, 2016 IL App (4th) 160271, 71 N.E.3d 1 and *Gardner v. Navistar Intern. Transp., Corp.*, 213 Ill. App. 3d 242, 571 N.E.2d 1107 (4th Dist. 1991). As pointed out during oral arguments on the Motion to Stay, the City of Carlinville could have presented alternative arguments (such as the arguments raised in the Motion to Stay Pending Appeal) for the Court's consideration as to why a *writ of mandamus* should not be issued even if the Court found the City exceeded its legal authority, but no additional arguments were raised, and the Court finds it improper to consider new evidence and new arguments following a final Order to justify a stay.

4) The Court agrees with Defendant's argument that a stay would eliminate the City of Carlinville's uncertainty as to whether it can still participate as a water customer of Illinois Alluvial. However, this uncertainty has existed since Plaintiffs filed their original Complaint in February 2018 when Plaintiffs raised the validity of that corporation and questioned the City of Carlinville's actions in creating that separate entity.

5) As pointed out in Plaintiffs' response, Defendant must establish that the stay is necessary to secure the fruits of the appeal if the appellant is successful and/or also must establish third parties will suffer a hardship if the stay is not granted.

6) Here, the Court has viewed this issue through a very careful lens. On one hand, the Court recognizes that if the Appellate Court were to reverse this Court's decision and find the City of Carlinville acted within its constitutional and statutory authority and this Court did not issue the stay, then the City's efforts at obtaining a potable water supply for its citizens will have been delayed. Yet on the other hand, if the Appellate Court affirms this Court's decision and finds the City, as a non-home-rule municipality, circumvented and exceeded its legal authority, then the City of Carlinville will be years away from creating a viable water source for its citizens that conforms with the options the Legislature specifically carved out because it chose to stay the course and tread into a territory that has never been done before (according to the City of Carlinville's attorney). Either way, the Citizens of Carlinville will suffer, but they do and always have deserved to know what decisions are being made by their elected officials. That is the purpose of open government, yet they have been deprived transparency because the Open Meetings Act does not apply to non-for-profit corporations, such as Illinois Alluvial, and various citizens have been threatened with being charged with criminal trespass for appearing at Illinois Alluvial's meetings.

7) What this Court did learn, though, is that the City of Carlinville took out a loan during the pendency of this case to secure an emergency back-up water supply source depending upon the outcome of this case, and Illinois Alluvial is not providing water to Carlinville's

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customers because it is still in the planning stages. These points weigh in favor of denying the stay.

8) The Court understands the City of Carlinville's desperate need to find a potable water supply for its citizens. The Court's Order merely instructs the City to go about it the right way. The manner it chose does not comply with the Constitution or the statutory options available, and Courts around this State must ensure non-home-rule municipalities do not exceed their authority; otherwise, a staggering precedent will be set for generations to come. (If certain non-home-rule municipalities wish to have more leeway and fewer restrictions, they can take appropriate steps to become home-rule.)

9) As such, the Court denies the City of Carlinville's Motion to Stay Pending Appeal.

10) The Court's July 7, 2020 Order remains final and appealable and there is no just reason to delay its enforcement or appeal.

Entered: August 3, 2020

By: April G. Troemper

April G. Troemper
Circuit Court Judge, 7th Judicial Circuit

Macoupin County, IL

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2019MR92 BROTZE, CAMILLE MAYFIELD COOPER Last Search | Information | Dispositions | **History** | Payments | Fines & Fees

Date	Entry	Judge
Entered Under: BROTZE, CAMILLE MAYFIELD COOPER		
08/12/2020	Notice of Appeal filed by FOREMAN, DAVID.	UNASSIGNED
08/10/2020	Notice of Appeal submitted to Appellate Court via E-File. Notice of Appeal accepted by the Appellate Court. Correspondence received from the Appellate Court regarding the docketing statement and fee.	UNASSIGNED
08/07/2020	AGT - the Court is in receipt of a letter from the Office of Secretary of State, dated August 3, 2020, informing the Court that there is no record of a corporation by the name of "Illinois Alluvial Rural Water Company" as referenced on page 2 of the Court's July 7, 2020 Order and therefore the "void action contained in the last paragraph on page 17 cannot be implemented by this office." (See letter) The Court has now reviewed its Order and notes the reference on page 2 was a scrivener's error, and the appropriate entity should be referenced as "Illinois Alluvial Regional Water Company, Inc." (See p. 8 of 18). Clerk to send a copy of this docket entry to the attorneys of record, along with a copy of the letter from the Secretary of State.	AGT
08/06/2020	Correspondence received from Secretary of State/Dept. of Business Services filed.	UNASSIGNED
08/05/2020	Notice of Appeal filed by GABALA, JOHN.	UNASSIGNED
08/04/2020	Payment of $36.00 posted on 08/04/2020.	UNASSIGNED
08/03/2020	Pending before the Court is Defendant's Motion to Stay Pending Appeal. Motion denied. See Order. Clerk to forward a copy of this docket entry and Order to the attorneys of record	AGT
07/24/2020	Supplemental Research - Defendant filed by GABALA, JOHN.	UNASSIGNED
07/21/2020	Case called for hearing on Defendant's Motion to Stay Pending Appeal via zoom teleconferencing. Plaintiffs appear through Attorney Smallhorn. Defendant appears through Attorney O'Brien. Arguments presented. Court grants both parties an additional 5 days to submit any additional legal authority regarding a stay of a writ of mandamus pending appeal. Matter taken under advisement. Clerk to forward a copy of this docket entry to the attorneys of record.	AGT
07/20/2020	Response To Defendant's Motion For Stay Pending Appeal filed by SMALLHORN, JACOB.	UNASSIGNED
07/16/2020	Defendant's Motion to Stay Pending Appeal filed by GABALA, JOHN File taken to AGT.	UNASSIGNED
07/09/2020	Payment of $20.00 posted on 07/10/2020. Payment of $6.00 posted on 07/10/2020.	UNASSIGNED
07/08/2020	Payment of $20.00 posted on 07/09/2020.	UNASSIGNED
07/07/2020	Pending before the Court are the parties' Motions for Summary Judgment. The Court having now considered the parties' written and oral arguments, proposed orders and the applicable constitutional, statutory, and legal authority hereby issues its written decision granting Plaintiffs' Motion for Summary Judgment, denying Defendant's Motion for Summary Judgment and issuing a Writ of Mandamus. Clerk directed to send a copy of this docket entry and Order to the attorneys of record.	AGT
06/23/2020	Proposed Order on Motions for Summary Judgment filed by SMALLHORN, JACOB. Notice of Filing filed by GABALA, JOHN. Defendant's Proposed Order re Summary Judgment filed by GABALA, JOHN.	UNASSIGNED
06/09/2020	AGT/bls- Case called for hearing on the parties' pending Motions for Summary Judgment. All parties appear via Zoom video-conferencing, along with their attorneys. Arguments heard. Court verbally issues partial ruling regarding Defendant's arguments of 1) Plaintiffs' failure to file formal answer to affirmative defenses, 2) standing, and 3) laches. Court denies Defendant's Motion for Summary Judgment as to those arguments. The Court took the final issue under of advisement of whether the Illinois Constitution grants the City of Carlinville the authority to associate with another non-home rule municipality and a not-for-profit corporation for purposes of creating and developing a brand new not-for-profit corporation. Parties granted 14 days to submit proposed Orders, which may analyze the issue of constitutional construction in the context of the language " may contract or" versus the language " may contract and" as found in Article VII, Section 10(a). The proposed Orders should also incorporate a section regarding each party's interpretation of " in any manner not prohibited by law or by ordinance." Written decision to follow receipt of the proposed Orders. Clerk to forward a copy of this docket entry to the attorneys of record.	AGT
05/18/2020	Reply to Response to Motion for Summary Judgment filed by SMALLHORN, JACOB.	UNASSIGNED
05/11/2020	Reply To Plaintiff's Response To Motion For Summary Judgment filed by GABALA, JOHN. Response To Plaintiff's Motion For Summary Judgment filed by GABALA, JOHN.	UNASSIGNED
04/27/2020	Response to Motion for Summary Judgment filed by SMALLHORN, JACOB. Motion for Summary Judgment filed by SMALLHORN, JACOB.	UNASSIGNED

BATES #268

04/07/2020	Notice of Hearing for 6/9/2020 filed.Hearing set for June 9, 2020 at 1:30 p.m.	UNASSIGNED
04/06/2020	AGT - Case called for status hearing. Attorneys Smallhorn, O'Brien, and Gabala appear telephonically. Update provided. The Court enters the following scheduling Order: Plaintiffs to file Response to Defendant's Motion for Summary Judgment and any Cross-Motion for Summary Judgment (if they so choose) within 21 days (by April 27, 2020); Defendants granted 14 days to file Reply to Defendant's Response and to file Response to Plaintiffs' Cross-Motion for Summary Judgment (by May 11, 2020); and Plaintiffs granted 7 days to file Reply to Defendant's Response to Cross-Motion for Summary Judgment (by May 18, 2020). This case will proceed to hearing on June 9, 2020 at 1:30-3:00 p.m. on the pending Motions for Summary Judgment. Counsel to send formal Notice of Hearing. If the Courts are still under an Administrative Order limiting in-person hearings, the Court will schedule a telephone conference mid-May to select a forum so that the hearing can still proceed via videoconferencing. Regarding Attorney Smallhorn's statement that he intends to file an Answer to Defendant's Affirmative Defenses and Attorney Gabala's objection based on being time-barred, Attorney Smallhorn will have to file a proper Motion and set for hearing before filing an Answer. Clerk to send a copy of this docket entry to the attorneys of record.	AGT
04/06/2020	Motion/sumry jdgmt set for 06/09/2020 at 1:30 in courtroom B.	UNASSIGNED
04/03/2020	Motion for Summary Judgment on Affirmative Defenses filed by GABALA, JOHN. Memorandum in Support of Motion for Summary Judgment on Affirmative Defenses filed by GABALA, JOHN.	UNASSIGNED
03/24/2020	AGT - This case is currently set for status on April 6, 2020 at 11:00 a.m. Based on Local Administrative Order 20-AO-02, the Court converts the status hearing to a telephone conference. Counsel to arrange conference call. Clerk directed to send a copy of this docket entry to the attorneys of record.	AGT
03/09/2020	AGT - Court sets this matter for a case management conference April 6, 2020 at 11:00. Alternatively, counsel may submit an agreed proposed Case Management Order for the Court's consideration within 21 days. Clerk to forward a copy of this docket entry to the attorneys of record.	AGT
03/09/2020	Case mgt conf set for 04/06/2020 at 11:00 in courtroom B.	UNASSIGNED
01/24/2020	Defendant's Answer & Affirmative Defenses To Second Amended Complaint filed by O'BRIEN, DANIEL. Proof Of Service filed by O'BRIEN, DANIEL.	UNASSIGNED
12/26/2019	Court is in receipt of a Modified Motion to Lift Stay in Proceedings in the Trial Court and for Leave to File Answer and Affirmative Defenses. Given Plaintiffs have no objection to Court entering Order ex parte, Court enters the proposed Order, as modified (reflecting the proper party Defendant). Clerk to forward a copy of this docket entry and Order to the Attorneys of record.	AGT
12/23/2019	AGT - Court is in receipt of Defendant's Motion to Lift Stay and for Leave to File Answer and Affirmative Defenses and proposed Order. Clerk to strike the Village of Dorchester, Jersey County Rural Water Company, Inc., and Illinois Alluvial Regional Water Company, Inc. from the captions in that they are not parties to this current case (19 MR 92). Court is unable to enter the proposed Order in its current form because paragraph 4 of Defendant's Motion does not indicate whether Plaintiffs' Counsel objects to the Order being entered ex parte. If Plaintiffs' Counsel has no objection, the Court will enter said Order (but would request Attorney O'Brien forward a revised proposed Order with the current caption); otherwise, Defense Counsel will need to contact Court's assistant for a hearing date. Clerk to forward copy of docket entry to the attorneys of record.	AGT
12/23/2019	Motion to Lift Stay filed by O'BRIEN, DANIEL. Proposed Order filed by O'BRIEN, DANIEL.	UNASSIGNED
12/20/2019	Motion to lift stay filed by O'BRIEN, DANIEL. Proposed Order filed by O'BRIEN, DANIEL. File taken to AGT	UNASSIGNED
12/19/2019	Appellate Court Order received and entered. The Application for Leave to Appeal is denied. Copy given to Judge Troemper.	UNASSIGNED
11/26/2019	Entry of Appearance on behalf of City of Carlinville filed by GABALA, JOHN.	UNASSIGNED
11/26/2019	19 bls/AGT - Motion to Stay Proceedings in the Trial Court Pending Resolution of 308 Interlocutory Appeal reviewed by the Court. Court advised attorney Smallhorn has no objection to the Motion to Stay. Order entered and filed. Clerk to forward copy of Order and docket entry to attorney O'Brien, attorney Smallhorn and to attorney John Gabala.	AGT
11/25/2019	Motion To Stay Proceedings Pending Resolution Of 308 Interlocutory Appeal filed by O'BRIEN, DANIEL.	UNASSIGNED
11/14/2019	Correspondence received from Taylor Law Office. File e-mailed. Pd. $48.25	UNASSIGNED
11/12/2019	AGT/bls - Case called for hearing on City of Carlinville's Motion for Preparation of Transcripts with Costs Shared and Entire Rule 328 Supporting Record. Plaintiffs appear through Attorney Smallhorn, telephonically. Defendant appears through Attorney O'Brien. Discussion held. Court summarizes Rule 308 and clarifies that the Appellant has 30 days from the date of the Court's Order (entered October 21, 2019) to file an application with the Appellate Court, which " shall be accompanied by an original supporting record (Rule 328), containing the order appealed from and other parts of the trial court record necessary for the determination of the application for permission to appeal. Within 21 days after the due date of the application, an adverse party may file an answer in opposition, together with an original of a supplementary supporting record containing any additional parts of the record the adverse party desires to have considered by the Appellate Court." Attorney Smallhorn states he only intends to rely upon the transcript from the October 17, 2019 hearing	AGT

	Attorney O'Brien states he intends to rely upon the transcript from the August 10, 2018 hearing in 18 L 5, in addition to various other transcripts. Each party will be responsible for paying their/its own fees relating to their chosen supporting records. The Court notes that during the hearing, it stated Plaintiffs would have to file the application since they are the parties who requested the Court certify the question for appeal. Technically, however, the Court's October 21, 2019 Order was adverse to the Defendant in that it denied Defendant's Motions to Dismiss, so the Court will allow the parties to resolve the issue of who will be appellant and appellee for purposes of the Rule 308 appeal and application. With regard to Defendant's request that Plaintiffs share the cost of the original transcript from the August 10, 2018 hearing, the parties are encouraged to discuss this issue and come up with an equitable and fair resolution, without Court intervention. No other issues are currently pending before the Court. Clerk to forward a copy of this docket entry to the attorneys of record.	
11/08/2019	Notice of Hearing filed by O'BRIEN, DANIEL. Motion For Preparation of Transcripts / Record filed by O'BRIEN, DANIEL.	UNASSIGNED
11/07/2019	Motion hearing set for 11/12/2019 at 2:00 in courtroom B.	UNASSIGNED
11/01/2019	AGT - Court has considered the parties' proposed certified questions for interlocutory appeal and issues its ruling. See Order. Clerk to forward a copy of this docket entry and Order to Attorney Smallhorn and Attorney O'Brien.	AGT
10/25/2019	Proposed Certified Question filed by SMALLHORN, JACOB.	UNASSIGNED
10/25/2019	AGT - The Court is in receipt of the parties' proposed certified questions for appeal pursuant to Supreme Court Rule 308. The Court requests that Attorney Smallhorn, on behalf of the Plaintiffs, inform the Court and Counsel within 5 days as to whether Plaintiffs have any objections and/or proposed revisions to Defendant's version. Court will then issue the final version for appeal. Clerk to forward a copy of this docket entry to the attorneys of record.	AGT
10/24/2019	Alternative Certified Question filed by O'BRIEN, DANIEL.	UNASSIGNED
10/21/2019	AGT - The Court issues its written decision denying Defendant's Motions to Dismiss and finding an interlocutory appeal pursuant to Supreme Court rule 308(a) is appropriate, but that the Court has deferred certifying the precise question to allow defense counsel an opportunity to submit any legal authority in opposition and/or an alternative certified question for the Court's consideration. See Written Order. Once the parties have submitted their proposed certified questions, the Court will issue a separate ruling, making the necessary findings for the record. (Based on the Court's written Order, Attorney Smallhorn does not need to draft an Order consistent with the Court's October 17, 2019 findings, but should still draft a proposed Order with the required Rule 308(a) language.) Clerk to forward a copy of this docket entry and Order to Attorneys Smallhorn and O'Brien.	AGT
10/17/2019	AGT/bls - Case called for hearing on Defendant's Motions to Dismiss pursuant to 735 ILCS 5/2-615. Plaintiffs appear in person, along with Attorney Smallhorn. Defendant's representative, Mayor Demuzio, appears along with Attorney O'Brien. Arguments heard. Based on the applicable legal and statutory authority, the Court denies Defendant's Motions to Dismiss. Plaintiff requests the Court certify a legal question for appeal. Defense counsel requests time to present a revised certified question. Both parties granted 7 days to present proposed certified questions pursuant to Supreme Court Rule 308. Plaintiff is to draft an Order consistent with the Court's findings and submit to the Court electronically in Word format. Matter taken under advisement pending receipt of the parties' proposed certified questions. Clerk to forward a copy of this docket entry to the attorneys of record.	AGT
09/30/2019	Response to Motion to Dismiss Complaint for Mandamus and Violation of Open Meetings Act with Prejudice filed by SMALLHORN, JACOB.	UNASSIGNED
09/11/2019	Notice of Hearing and Proof of Service filed by O'BRIEN, DANIEL. Hearing set for October 17, 2019 at 1:30 p.m.	UNASSIGNED
09/10/2019	bls/AGT - At request of attorney O'Brien, Defendant's Motion to Dismiss is set for October 17, 2019 at 1:30 p.m.. Attorney O'Brien to send formal notice to the parties. Clerk directed to forward copy of docket entry to attorneys O'Brien and Smallhorn.	AGT
09/10/2019	Motion/dismiss set for 10/17/2019 at 1:30 in courtroom B.	UNASSIGNED
09/04/2019	Motion To Dismiss Complaint For Mandamus W/Prejudice For Failure To State A Cause of Action filed by O'BRIEN, DANIEL. Proof Of Service filed by O'BRIEN, DANIEL. Motion To Dismiss Complaint For Mandamus And Violation Of Open Meetings Act with Prejudice filed by O'BRIEN, DANIEL. Proof Of Service filed by O'BRIEN, DANIEL. Motion To Dismiss Complaint For Mandamus & Violation Of Freedom Of Information Act with prejudice w/proof of service filed by O'BRIEN, DANIEL. Exhibit A filed by O'BRIEN, DANIEL. Case Law filed by O'BRIEN, DANIEL. Proof Of Service For Case Law filed by O'BRIEN, DANIEL.	UNASSIGNED
08/07/2019	Second Amended Complaint filed by SMALLHORN, JACOB.	UNASSIGNED
08/02/2019	AGT/bls - Case called for hearing in 18 L 5 on Defendant's Motion for Summary Judgment, Motion for Bond; Motion to Dismiss pursuant to 735 ILCS 5/2-619; Motion for Sanctions, and Motion to Withdraw Defendant's Answer to Plaintiff's First Amended Complaint Instanter. Plaintiffs appear through Attorney Smallhorn. Defendant appears through Attorney O'Brien. Arguments heard. Defendant's Motion to Withdraw Answer is granted. Answer to First Amended Complaint is withdrawn and stricken. Court denies Defendant's Motion for Sanctions. Attorney Smallhorn concedes the pleading defects in his clients' First Amended Complaint. As such, Defendant's Motion to Dismiss is granted without prejudice. Plaintiffs granted 14 days to file Second Amended Complaint. Based on the Court's rulings	AGT

	Defendant's Motion for Bond and Motion for Summary Judgment are moot and in essence are denied. (Plaintiffs' counsel indicates his clients do not intend to file a taxpayer cause of action.) Defendant's oral Motion to Strike Plaintiff's Second Amended Complaint, as filed in 19 MR 92, is granted in accordance with the legal authority cited by counsel. Clerk to strike the Second Amended Complaint because it was filed without permission/leave of Court. Attorney Smallhorn is still granted 14 days to e-file the Second Amended Complaint in 19 MR 92. Defendant will have 28 days thereafter to file a responsive pleading. Attorney Smallhorn indicates that once the pleadings are at issue, he intends to file a request to certify a question for appeal. Case will be reset upon request. Clerk is to forward a copy of this docket entry to the attorneys of record.	
07/25/2019	Notice Of Hearing And Entry Of Appearance filed by O'BRIEN, DANIEL.	UNASSIGNED
07/23/2019	- Court is in receipt of Plaintiffs' Second Amended Complaint (Mandamus) filed July 22, 2019. The Court notes that in its April 18, 2019 Order in companion case 18 L 5, the Court instructed Plaintiffs to refile their cause of action as an MR and granted Plaintiffs leave to file a First Amended Complaint. Plaintiffs then filed their First Amended Complaint on May 2, 2019 in the original case 18 L 5, contrary to the Court's Order. The Court and counsel held a conference call on June 26, 2019 to discuss this procedural issue. The Court also pointed out that the City of Carlinville filed an Answer and then filed a Motion to Dismiss, which also was procedurally incorrect. The Court granted both parties leave to correct these procedural defects. On July 17, 2019, the City of Carlinville - in 18 L 5 - filed a Motion to Withdraw its Answer to First Amended Complaint. It appears Plaintiffs have attempted to cure their procedural defect by filing a Second Amended Complaint in 19 MR 92. The Second Amended Complaint, however, is not identical to the First Amended Complaint and, therefore, was technically filed without leave of Court and before the Court had an opportunity to hear and rule on Defendant's Motion to Dismiss. (Counsel will recall the Court explained it could rule on the pending motion to dismiss without a formal hearing once the City of Carlinville cured its procedural defect in order to expedite this matter. The Court will arrange another telephone conference to address this issue in an effort to keep this case moving forward.) Also, for consistency in rulings, the Court consolidates 18 L 5 with 19 MR 92. All future filings will be filed using file # 19 MR 92. Clerk to forward a copy of this docket entry to the attorneys Smallhorn and O'Brien. Clerk to place a courtesy copy in 18 L 5. Addendum - Court and counsel confer via telephone subsequent to entry of Court's most recent docket entry for purposes of scheduling. Attorney O'Brien requests his client's pending motions be set for a formal hearing on August 2, 2019 at 10:00 a.m. Attorney O'Brien to send formal notice of hearing. Attorney Smallhorn to file any responsive pleading on or before July 31, 2019. Counsel to bring courtesy copies of any legal authority they intend to rely upon. Clerk to send copy of this docket entry to the attorneys of record.	AGT
07/23/2019	Motion hearing set for 08/02/2019 at 1:00 in courtroom B.	UNASSIGNED
07/22/2019	Second Amended Complaint filed by SMALLHORN, JACOB. N.C.	UNASSIGNED

BATES #271

Macoupin County, IL

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Date	Entry	Judge
Entered Under: BROTZE, CAMILLE MAYFIED COOPER		
08/12/2020	Notice of Appeal filed by FOREMAN, DAVID.	UNASSIGNED
07/23/2019	- Court is in receipt of Plaintiffs' Second Amended Complaint (Mandamus) filed July 22, 2019. The Court notes that in its April 18, 2019 Order in companion case 18 L 5, the Court instructed Plaintiffs to refile their cause of action as an MR and granted Plaintiffs leave to file a First Amended Complaint. Plaintiffs then filed their First Amended Complaint on May 2, 2019 in the original case 18 L 5, contrary to the Court's Order. The Court and counsel held a conference call on June 26, 2019 to discuss this procedural issue. The Court also pointed out that the City of Carlinville filed an Answer and then filed a Motion to Dismiss, which also was procedurally incorrect. The Court granted both parties leave to correct these procedural defects. On July 17, 2019, the City of Carlinville - in 18 L 5 - filed a Motion to Withdraw its Answer to First Amended Complaint. It appears Plaintiffs have attempted to cure their procedural defect by filing a Second Amended Complaint in 19 MR 92. The Second Amended Complaint, however, is not identical to the First Amended Complaint and, therefore, was technically filed without leave of Court and before the Court had an opportunity to hear and rule on Defendant's Motion to Dismiss. (Counsel will recall the Court explained it could rule on the pending motion to dismiss without a formal hearing once the City of Carlinville cured its procedural defect in order to expedite this matter. The Court will arrange another telephone conference to address this issue in an effort to keep this case moving forward.) Also, for consistency in rulings, the Court consolidates 18 L 5 with 19 MR 92. All future filings will be filed using file # 19 MR 92. Clerk to forward a copy of this docket entry to the attorneys Smallhorn and O'Brien. Clerk to place a courtesy copy in 18 L 5.	AGT
07/17/2019	Motion To Withdraw Defendant's Answer to First Amended Complaint of the plaintiff filed by O'BRIEN, DANIEL.	UNASSIGNED
06/24/2019	AGT - Plaintiffs' counsel's request for a continuance of the June 26, 2019 hearing and request for additional time to respond to Defendant's pending motions is granted. Good cause shown. Defense counsel has no objection. Clerk to vacate the June 26, 2019 hearing. Plaintiff granted 21 days to file responses to Defendant's pending Motions. Court will arrange a telephone conference with counsel within the next 14 days to reschedule the substantive hearing. Clerk to forward a copy of this docket entry to Attorneys Smallhorn and O'Brien.	AGT
06/07/2019	Payment of $9.50 posted on 06/07/2019.	UNASSIGNED
05/16/2019	Answer/Response to First Amended Complaint filed by O'BRIEN, DANIEL. Motion For Summary Judgment filed by O'BRIEN, DANIEL. Motion for Bond, Motion to Dismiss, Memorandum in Support of Defendant's Motion to Dismiss, Motion for Sanctions Under Supreme Court Rule 137 filed by Atty. O'Brien.	UNASSIGNED
05/02/2019	First Amended Complaint filed by SMALLHORN, JACOB.	UNASSIGNED
04/18/2019	AGT/bls - Cause called for hearing on Plaintiffs' Motion to Reconsider the Court's Order as it pertains to striking Plaintiffs' taxpayer allegations. Plaintiffs appear in person, along with Attorney Smallhorn. Defendant, City of Carlinville, appears through its representative, Mayor Demuzio, along with Attorney O'Brien. Based on the written submissions, the oral arguments, and the applicable legal and statutory authority, the Court finds as follows: Plaintiffs' Motion to Reconsider is granted, in part. The Court strikes its reference to 735 ILCS 5/11-303 from its January 2, 2019 Order, but still finds Plaintiffs failed to plead sufficient facts to establish standing as taxpayers. Over Defendant's objection, Plaintiffs granted leave to file amended complaint. See written Order. Case continued to June 26, 2019 at 1:30 for hearing on dispositive motions. Clerk to forward copy of this docket entry and Order to Attorneys Smallhorn and O'Brien.	AGT
04/18/2019	Motion hearing set for 06/26/2019 at 1:30 in courtroom B.	UNASSIGNED
03/28/2019	Defendant's Reply to Plaintiff's Motion to Reconsider filed by O'BRIEN, DANIEL. Proof Of Service filed by O'BRIEN, DANIEL.	UNASSIGNED
03/26/2019	On Court's own motion, the Motion to Reconsider set for April 9, 2019 at 2:30 p.m. is cancelled. Court suggested the case be heard at 11:00 a.m. on April 9, 2019, but attorney Smallhorn's secretary indicated that he would be unavailable at that time. Motion to Reconsider reset for April 18, 2019 at 11:00 a.m.. Clerk to forward copy of docket entry to attorneys Smallhorn and O'Brien.	AGT
03/26/2019	Motion/reconsider set for 04/18/2019 at 11:00 in courtroom B.	UNASSIGNED
03/21/2019	Motion to Reconsider Court's January 2, 2019 Order filed by SMALLHORN, JACOB.	UNASSIGNED
03/07/2019	Motion to Oppose Motion for Leave to File Amended Complaint,Affidavits, Public meeting minutes, Exhibits, proof of service filed by O'BRIEN, DANIEL. Attachment filed by O'BRIEN, DANIEL. Attachment filed by O'BRIEN, DANIEL.	UNASSIGNED
03/07/2019	Case called for hearing on Plaintiffs' Motion for Leave to file Amended Complaint and Re-designate Case as "MR" Cause of Action. Plaintiffs appear through Attorney Smallhorn, telephonically. Defendant City of Carlinville appears through	AGT

	Attorney O'Brien, in chambers. Discussion held. The Court finds various arguments raised in Defendant's Motion to Oppose Motion for Leave to File Amended Complaint to be premature and are more appropriate as Motions to Dismiss pursuant to 735 ILCS 5/2-615 and 2-619 after an Amended Complaint is on file. Defendant's Motion to Oppose, however, points out that Plaintiffs' Motion for Leave to file Amended Complaint in essence seeks to refile allegations that this Court previously struck. The Court agrees and finds that if Plaintiffs wish to refile allegations regarding misappropriation of taxpayer funds, then Plaintiffs should file a Motion to Reconsider identifying the basis for the Motion to Reconsider and citations to the applicable legal and statutory authority. Plaintiffs granted 14 days to file proper Motion to Reconsider. Defendant granted 7 days thereafter to file any response to the Motion to Reconsider. Court sets matter for hearing on April 9, 2019 at 2:30-3:30. Counsel to provide the Court with courtesy copies of any filings at least 5 days in advance of the scheduled hearing. Court reserves ruling on Plaintiffs' Motion for Leave to Amend. Clerk to send a copy of this docket entry to Attorneys Smallhorn and O'Brien.	
03/07/2019	Hearing set for 04/09/2019 at 2:30 in courtroom B.	UNASSIGNED
02/22/2019	Court is in receipt of Plaintiff's Motion for Leave to Amend Complaint to add allegations regarding misappropriation of taxpayer funds and to refile lawsuit as an MR case. In order to expedite this matter, the Court sets Plaintiff's Motion for Leave for a teleconference hearing on March 7, 2019 at 1:15. Attorney Smallhorn to initiate conference call and send formal notice of hearing to Attorney O'Brien. Clerk to forward a copy of this docket entry to the attorneys of record.	AGT
02/22/2019	Conference call set for 03/07/2019 at 1:15 in courtroom B.	UNASSIGNED
02/14/2019	Motion for Leave to File Amended Complaint and Redesignate Case as an MR Cause of Action filed by SMALLHORN, JACOB.	UNASSIGNED
02/05/2019	Case called for hearing on Plaintiffs' Motion for Extension of Time to File Amended Complaint. Plaintiffs appear through Attorney Smallhorn, telephonically. Defendant, City of Carlinville, appears through Attorney O'Brien, in chambers. Arguments heard. Motion for Extension of Time granted over objection. See Order. Clerk to update its service list and address for Plaintiffs' counsel - in accordance with the Court's October 16, 2018 Order. Plaintiffs to file Amended Complaint on or before February 14, 2019. City of Carlinville granted 21 days thereafter to file an answer or responsive pleading. Matter will be reset upon request. Clerk to forward copy of this docket entry and Order to Attorneys Smallhorn and O'Brien. (All other parties have previously been dismissed.)	AGT
02/04/2019	Motion in Opposition to Motion for Extension of Time, proof of service filed by O'BRIEN, DANIEL.	UNASSIGNED
02/01/2019	Motion for Extension of Time to File Amended Complaint filed by SMALLHORN, JACOB. Proposed Order re Motion for Extension of Time to File Amended Complaint filed by SMALLHORN, JACOB.	UNASSIGNED
01/02/2019	Pending before the Court is Plaintiffs' Complaint for Declaratory Judgment, Defendants' Carlinville, Dorchester, and Jersey County Rural Water Company's Motions to Dismiss, and Illinois Alluvial Regional Water Company's Motion for Summary Judgment. The Court finds Plaintiffs lack standing to sue Defendants Village of Dorchester, Jersey County Rural Water Company, and Illinois Alluvial Regional Water Company, and therefore dismisses these parties from the case with prejudice. The Court denies City of Carlinville's Motion to Dismiss based on standing, as argued. The Court points out other issues in its written Order. (See Order) Plaintiffs' granted 30 days to file an Amended Complaint. City of Carlinville has 21 days thereafter to file any answer or dispositive motion. Remaining issues will be addressed at that time. Clerk to forward a copy of this docket entry and Order regarding standing to the attorneys of record.	AGT
12/28/2018	Supplemental Argument filed by SMALLHORN, JACOB.	UNASSIGNED
12/27/2018	Supplemental Argument filed by FOREMAN, DAVID. Supplemental Argument filed by O'BRIEN, DANIEL. Case Law filed by O'BRIEN, DANIEL. Proof Of Service filed by O'BRIEN, DANIEL. Recent Case Law On Standing filed by O'BRIEN, DANIEL. Case Law filed by O'BRIEN, DANIEL.	UNASSIGNED
12/12/2018	The Court has thoroughly reviewed the parties' proposed Orders and the legal authority cited therein; however, none of the parties cited to the Fourth District case of Englum v. City of Charleston, 2017 IL App (4th) 160747, 80 N.E.3d 61, 59-66 (which was decided after Village of Sherman v. Village of Williamsville, 435 N.E.2d 548, 106 Ill. App. 3d 174 (4th Dist. 1982), and the two Illinois Supreme Court cases of Scadron v. City of Des Plains, 153 Ill. 2d 164, 174, 606 N.E.2d 1154, 1158 (1992), and Pesticide Public Policy Foundation v. Village of Wauconda, 117 Ill. 2d 107, 111-112, 510 N.E.2d 858, 860-861 (1987), which the Court found through its own research. Thus, since the parties have not had the opportunity to analyze these cases in the context of whether the "Dillon Rule" applies to non-home-rule units of government, the Court grants the parties (through their attorneys - as officers of the Court) an additional 14 days to modify, supplement, and/or withdraw any arguments previously made based on the law the parties and this Court are required to follow. The Court is certain that the holdings in these cases will add clarity to the arguments previously advanced. Counsel is to send a courtesy copy of any supplemental arguments to the Court via e-mail. Written Order will then follow. Clerk to forward a copy of this docket entry to the attorneys of record.	AGT
12/04/2018	Clerk to file E-Mail correspondence from Atty. Schultz regarding FOIA requests.	AGT

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12/03/2018	Proposed Draft Order One And Two filed by O'BRIEN, DANIEL. Response To Request For If The Parties Have Receive Advisory Opinion filed by O'BRIEN, DANIEL. Proposed Summary Judgment filed by FOREMAN, DAVID. Proposed Order filed by SMALLHORN, JACOB. Response to Request for If the Parties have Recieve Advisory Opinion filed by THOMAS, NICOLE.	UNASSIGNED
11/29/2018	Jersey County Rural Water's proposed order filed by SCHULTZ, SCOTT. Proposed Court Order filed by THOMAS, NICOLE.	UNASSIGNED
11/19/2018	Notice of Receipt of Transcript filed by Atty. O'Brien.	UNASSIGNED
11/05/2018	Motion to Continue reviewed by the Court. Motion to Continue granted. Agreed Order entered and filed. Clerk to forward copy of docket entry and Agreed Order to attorneys of record.	AGT
11/02/2018	Motion to Continue/Proposed Order filed by Atty. O'Brien.	UNASSIGNED
10/23/2018	The Court recognizes this matter has been under advisement and notes the following: When the pending motions in this case were heard, this Court was still presiding over a number of cases involving families and children, namely paternity(family), dissolutions of marriage, guardianships of minors and adults, and adoptions. The Court had set a number of those matters for bench trials and evidentiary hearings in the months of July, August, and part of September in an effort to resolve as many as this Court could before the judicial case reassignments took effect September 1, 2018. Due to the Court's congested docket, a number of those bench trials carried over into September, despite the case reassignments. Following the evidentiary hearings and bench trials, the Court was then required to draft very detailed, lengthy written opinions regarding the best interest of these children. The law required this Court to place a priority on the cases involving children- even those that were heard subsequent to the hearing in this case. The Court has since concluded all its opinions and orders related to children, allowing the Court to turn its attention to the pending issues in this case. After reading a voluminous amount of case law, statutes and other persuasive legal documents, the Court is prepared to render its decisions; however, due to lack of clerical staff and the Court's ongoing case load, the Court requests counsel for all parties submit individual draft orders (with citations to case law) to the Court within 14 days in order to expedite a written decision. The Court will then either adopt a party's draft order in its entirety if it is consistent with the Court's analysis or it will modify portions thereof. As such, counsel should send a courtesy copy to the Court via e-mail in Word format. Finally, if the parties have received an advisory opinion from the Attorney General's office regarding the issue of whether the open meetings act was arguably violated when two non-home rule units of local government contracted with a private, non-for-profit organization, to form a separate, private non-for-profit corporation, for purposes of providing a water supply to various communities, they should supplement the record and forward a copy to the Court for review and consideration. Clerk to forward a copy of this docket entry to the parties of record.	AGT
10/16/2018	Motion for Substitution of Counsel presented and reviewed by the Court. For good cause shown, Motion for Substitution of Counsel is granted. Order entered and filed. See Order. Clerk to forward copy of Order and docket entry to parties and attorneys of record.	AGT
10/11/2018	Motion for Substitution of Counsel/Proposed Order filed by Atty. Smallhorn & Wawrzynek.	UNASSIGNED
08/10/2018	Case called for hearing on Defendants' City of Carlinville, Village of Dorchester, and Jersey County Rural Water District's, Motions to Dismiss and Illinois Alluvial Regional Water Company, Inc.'s ("Alluvial's") Motion for Summary Judgment. Attorney Smallhorn appears on behalf of the Plaintiff. Attorney O'Brien appears on behalf of City of Carlinville, Attorney Thomas appears on behalf of the Village of Dorchester, Attorney Schultz appears on behalf of Jersey County Rural Water District, and Attorney Foreman appears on behalf of Alluvial. Arguments heard. Court takes matter under advisement for purposes of reviewing and analyzing legal authority submitted by the parties in open court. Written order to follow. Clerk to forward a copy of this docket entry to the attorneys of record.	AGT
07/13/2018	Case called for hearing on all pending Motions. Plaintiffs appear through Attorney Smallhorn. Village of Dorchester appears through Attorney Thomas. Jersey Country Rural Water Co appears through Attorney Schultz. Illinois Alluvial Regional Water Company appears through Attorney Foreman. City of Carlinville appears through Attorney O'Brien. Due to the parties' request for a court reporter shortly before the hearing was to begin and none being available at the time of their request, the parties all agree that this case should be continued. Case is continued to 10:00 a.m. on August 10, 2018. The Court has allotted 3 hours for all pending motions. The Court has received the parties' advance request for a court reporter at the next hearing and is making arrangements to have one available. If none is available, the Court will notify the parties in advance so they have time to retain a free-lance court reporter. Clerk is to send a copy of this docket entry to the attorneys of record.	AGT
07/13/2018	Motion hearing set for 08/10/2018 at 10:00 in courtroom B.	UNASSIGNED
07/06/2018	Judge review set for 07/09/2018 at 7:00 in courtroom B. Motion hearing set for 07/13/2018 at 10:00 in courtroom B. Illinois Alluvial Regional Water Company Inc.'s Reply to Plaintiffs' Response to Motion for Summary Judgment filed by Atty. Foreman. Response to Plaintiff's Response to Defendant's Motion to Dismiss for Lack of Standing Pursuant to 735 ILCS 5/2-619 filed by Atty. O'Brien	UNASSIGNED
06/15/2018	Response to IL Alluvial Regional Water Co. Motion for Summary Judgment, Response to City of Carlinville Motion to Dismiss Temporary Restraining Order and Injunction and Response to city of Carlinville' Motion to Dismiss for Lake of Standing filed by Atty. Smallhorn.	UNASSIGNED
06/13/2018	Case called for case management teleconference. Plaintiffs appear through Attorney Smallhorn. Defendant Illinois Alluvial Regional Water Co., Inc appears through Attorney Foreman. Defendant Village of Dorchester appears through Attorney Thomas. Defendant City of Carlinville appears through Attorney O'Brien. Jersey County Rural Water Co., Inc and Attorney Schultz do not appear. No cause given. Plaintiffs' request for extension of time	AGT

	to file responses to Alluvial Regional Water Co.'s and City of Carlinville's Motions is granted without objection. Responses due by June 15, 2018. All defendants will then have 21 days thereafter to file any replies. Case to proceed to hearing on July 13, 2018 at 10:00-12:00. Counsel to send out formal notice of hearing. Clerk to forward copy of this docket entry to the attorneys of record.	
06/13/2018	Notice of Hearing filed by Atty. O'Brien. Motion hearing set for 07/13/2018 at 10:00 in courtroom A. Judge review set for 07/09/2018 at 7:00 in courtroom A.	UNASSIGNED
05/29/2018	Conference call set for 06/13/2018 at 1:15 in courtroom A. Notice of Hearing filed by Atty. O'Brien. Hearing set for June 13, 2018 at 1:15 p.m.	UNASSIGNED
05/24/2018	Motion for Extension of Time to File Response to Motion for Summary Judgment and Motion to Dismiss reviewed by the Court. For good cause shown, Motion granted. Order on Motion for Extension of Time to File Response to Motion for Summary Judgment and Motion to Dismiss entered and filed. Clerk directed to forward copy of docket entry and Order to attorneys of record.	AGT
05/23/2018	Motion for Extension of Time to File Response to Motion for Summary Judgment and Motion to Dismiss w/proposed order presented to the court by Atty. Smallhorn. File taken to AGT	UNASSIGNED
05/17/2018	Court is in receipt of the Proposed Order for Extension of Time that was filed on 5/4/18. Counsel to contact court for setting, (217) 854-3181 ext. 263. Clerk to forward docket entry to attorneys of record.	AGT
05/10/2018	Response to Village of Dorchester's Motion to Dismiss, Response to Jersey County Rural Water Company, Inc's Motion to Dismiss filed by Atty. Smallhorn.	UNASSIGNED
05/08/2018	Answer, Motion to Dismiss for Lack of Standing, Memorandum in Support of Defendant's Motion to Dismiss for Lack of Standing, Motion to Dismiss Temporary Restraining Order and Injunction, Memorandum in Support of Motion to Dismiss Complaint for Temporary Restraining Order and Injunction filed by Atty. O'Brien.	UNASSIGNED
05/04/2018	Answer, Motion for Extension of Time, Proposed Order, Motion for Summary Judgment, Proposed Summary Judgment, Memorandum of Law filed by Atty. Foreman.	UNASSIGNED
04/19/2018	Entry of appearance and Motion to Dismiss Pursuant to 735 ILCS 5/2-619 filed by SCHULTZ, SCOTT W for defendant/respondent JERSEY COUNTY RURAL WATER CO, INC. N.C.	UNASSIGNED
04/18/2018	Entry of appearance and Motion to Dismiss Pursuant to 735 ILCS 5/2-619 filed by Atty. THOMAS for defendant/respondent VILLAGE OF DORCHESTER, IL. N.C.	UNASSIGNED
04/17/2018	There being no objection by counsel, Motion for Leave for Time in which to Repond is allowed. Said leave is extended to May 8, 2018. See written Order. Clerk directed to forward copy of docket entry and Order to attorneys Foreman, O'Brien and Smallhorn.	AGT
04/16/2018	KRD-Court recuses. Cause is assigned to Judge Troemper. Clerk to send copy of docket entry to attorneys of record and to Judge Troemper.	KRD
04/11/2018	Summons returned on Sue Campbell c/o Staunton Comm Hosp. "served" 4/10/18.	UNASSIGNED
04/10/2018	Entry of appearance for counsel O'BRIEN, DANIEL W for defendant/respondent CITY OF CARLINVILLE. Motion For Leave For Time in Which to Respond w/proposed order filed by Atty. O'Brien.	UNASSIGNED
04/09/2018	Entry of Appearance filed by Atty. Foreman on behalf of IL Alluvail Reg. Water Co. Pd $112.00	UNASSIGNED
04/05/2018	Summons "served" on Jersey County Rural Water 3/13/18 Summons "not served" IL Alluvial Reg Water Co. Alias summons issued on IL Alluvial Regional Water Co. and returned electronically. Payment of $5.00 posted on 04/05/2018.	UNASSIGNED
03/21/2018	Summons "Served" on Village of dorchester, Charles Knoche 3/20/18	UNASSIGNED
03/13/2018	Summons returned on Deanna Demuzio "served" 3/12/18.	UNASSIGNED
03/08/2018	Summons issued on all defendants and returned electronically.	UNASSIGNED
02/26/2018	Complaint filed by Atty. Smallhorn. Payment of $221.00 posted on 02/26/2018.	UNASSIGNED

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