

**EMERGENCY MANAGER OF THE CITY OF LINCOLN PARK**

**ORDER NO. 35**

**ORDER OF THE EMERGENCY MANAGER OF THE CITY OF LINCOLN PARK**

**JOIN DOWNRIVER UTILITY WASTEWATER AUTHORITY (“DUWA”)**

BY THE AUTHORITY VESTED IN THE EMERGENCY MANAGER FOR THE CITY OF LINCOLN PARK  
PURSUANT TO MICHIGAN’S PUBLIC ACT 436 OF 2012  
BRAD COULTER, THE EMERGENCY MANAGER, ISSUES THE FOLLOWING ORDER:

WHEREAS, under the Local Financial Stability and Choice Act, Act 436, Public Acts of Michigan, 2012 (“Act 436”), Brad Coulter has been appointed as the Emergency Manager (the “EM”) of the City of Lincoln Park, County of Wayne, Michigan (the “City”); and

WHEREAS, pursuant to Section 9(2) of Act 436, the EM “shall act for and in the place and stead of” the Mayor, the City Manager, as the Chief Administrative Officer, and of the City Council, as the governing body of the City; and

WHEREAS, Section 9(2) of Act 436 also grants the EM “broad powers in receivership to rectify the financial emergency and to assure the fiscal accountability of the [City] and the [City’s] capacity to provide or cause to be provided necessary governmental services essential to the public health, safety and welfare;” and

WHEREAS, Section 9(2) of Act 436 prohibits, during the pendency of receivership, the Mayor and the Council from exercising “any powers of those offices except as may be specifically authorized in writing by the [EM] or as otherwise provided by [Act 436] and are subject to any conditions required by the [EM];” and

WHEREAS, Section 12(1)(dd) of Act 436 authorizes the EM, “notwithstanding any charter provision to the contrary,” to “[e]xercise solely, for and on behalf of the local government, all other authority and responsibilities of the chief administrative officer and governing body concerning the adoption, amendment, and enforcement of ordinances or resolutions of the local government” as provided in the Michigan Home Rule City Act, Act 279, Public Acts of Michigan 1909 (the “Home Rule Act”); and

WHEREAS, Section 12(1)(ee) of Act 436 authorizes the EM, “notwithstanding any charter provision to the contrary,” to “[t]ake any other action or exercise any power or authority of any officer, employee, department, board, commission, or other similar entity of the local government, whether elected or appointed, relating to the operation of the local government.

The power of the [EM] shall be superior to and supersede the power of any of the foregoing officers or entities;" and

WHEREAS, pursuant to Section 12(2) of Act 436, "during the pendency of the receivership, the authority of the chief administrative officer and governing body to exercise power for and on behalf of the local government under law, charter, and ordinance shall be suspended and vested in the [EM];" and

WHEREAS, the Downriver Sewage Disposal System (hereinafter referred to as "the System") provides sewage treatment and a conveyance for wastewater generated by this Community and twelve other Communities located in the Charter County of Wayne (hereinafter referred to as "the County"); and

WHEREAS, by the Downriver Utility Wastewater Authority ("DUWA") was formed in 2010 by 12 of the 13 downriver customer communities to coordinate interaction with Wayne County on the System; and

WHEREAS, Lincoln Park is the third largest user in the downriver system but is not a member of DUWA and has no say in DUWA operations or negotiations with Wayne County; and

WHEREAS, Wayne County has expressed an interest in transferring ownership of the System to either the 13 downriver communities or to a third party investor. The County is conducting all discussions through DUWA; and

WHEREAS, all 12 DUWA members have approved modification of the Articles of Incorporation to include Lincoln Park as the 13<sup>th</sup> member;

**NOW, THEREFORE, BE IT RESOLVED;**

The City of Lincoln Park hereby approves and adopts the attached Amended Articles of Incorporation for the Downriver Utility Wastewater Authority and agrees to pay the \$3,000 organizational fee.

The Primary representative will be the Emergency Manager or the City Manager with the alternative representative being the Mayor of Lincoln Park.

**SO ORDERED** this 7<sup>th</sup> day of August, 2015.

By:   
BRAD COULTER  
Emergency Manager  
City of Lincoln Park

cc: State of Michigan Department of Treasury  
Mayor Thomas E. Karnes  
Members of the Lincoln Park City Council

**AMENDED  
ARTICLES OF INCORPORATION  
OF THE  
DOWNRIVER UTILITY WASTEWATER AUTHORITY**

These Articles of Incorporation are adopted by the incorporating municipal corporations for the purpose of creating and governing an Authority under the provisions of Act 233, Public Acts of Michigan, 1955, as amended.

**ARTICLE I**

The name of this Authority is “Downriver Utility Wastewater Authority.” The principal office of the Authority will be located at 25605 Northline, Taylor, MI, Wayne County, Michigan 48180.

**ARTICLE II**

The names of the municipal corporations creating this Authority are: The City of Allen Park, The City of Belleville, The Charter Township of Brownstown, The City of Dearborn Heights, The City of Ecorse, The City of Lincoln Park, The City of River Rouge, The City of Riverview, The City of Romulus, The City of Southgate, The City of Taylor, The Charter Township of Van Buren and the City of Wyandotte, which are hereby designated as the constituent municipalities. Lincoln Park was added as a constituent municipality in June of 2015 by the adoption of these amended Articles of Incorporation.

### ARTICLE III

The purpose of this Authority will be to acquire, construct, finance, purchase, manage, administer, own, improve, enlarge, extend and operate or negotiate an agreement with Wayne County or a private entity for the operation of a sewage disposal system, particularly the Downriver Wastewater Treatment System (the "System") in accordance with the authorization of Act 233, Public Acts of Michigan, 1955, as amended, and in addition to all other powers granted by any charter or other statute. Further, that it is the foremost purpose of this Authority to serve residents of the Townships and Cities efficiently, economically, and to reduce costs where reasonably possible, with a good quality and uniform system for wastewater collection and treatment that will adequately serve their needs.

### ARTICLE IV

This Authority is a body corporate with power to sue or to be sued in any court of this State. It shall be comprised of the territory embraced within the corporate boundaries of its constituent municipalities as set forth in Exhibit 2. It shall possess all of the powers granted by statute now in effect or hereafter adopted or amended, and by these Articles, and those incident thereto. The enumeration of any powers herein shall not be construed as a limitation upon its general powers unless the context shall clearly indicate otherwise. It shall have a corporate seal.

## ARTICLE V

This Authority shall continue in existence perpetually or until dissolved by act of the parties or by law: Provided, however, that it shall not be dissolved if such dissolution would or could operate as an impairment of its bonds or of any of its contracts.

## ARTICLE VI

The fiscal year of the Authority shall commence on the 1<sup>st</sup> day of January in each year and end on the 31<sup>st</sup> day of December of that same year.

## ARTICLE VII

The governing body of the Authority shall be a Commission consisting of thirteen (13) members, which shall be made up of the Mayors or Supervisors of each constituent municipality or their designees. Each constituent municipality shall also designate a member of its legislative body or other designee as an alternate Commissioner, who shall exercise all powers of that municipality's Commissioner in his or her absence or disability. Provided, however, that any designee must be either an elected official or municipal employee for the community to be represented. Each Commissioner shall qualify by taking the constitutional oath of office and filing it with his or her respective City or Township Clerk. The alternate Commissioner shall be designated by the legislative bodies of the constituent municipalities at the time of the adoption of these Articles of

Incorporation and shall thereafter also take the constitutional oath of office. Successor alternate Commissioners shall be designated by the legislative bodies of the respective constituent municipalities before the first day of January after the election of the legislative body.

Each Commissioner shall qualify by taking the constitutional oath of office. and shall meet for the annual organizational meeting held on the first business day of January of each year or as otherwise set by the Commission. At such organizational meeting the Commission shall select a Chair and Vice Chair, who shall be members of the Commission, and a Secretary and a Treasurer, who may but need not be members of the Commission. Such officers shall serve until the organizational meeting of the following year, or until their respective successors shall be selected and qualify. No appointment to the Commission and no selection of an officer of the Commission shall be deemed to be invalid because it was not made within or at the time specified in these Articles. The Commissioners shall serve without compensation.

## ARTICLE VIII

In the case of temporary absence or disability of any Commissioner, the alternate Commissioner from that municipality shall act in his or her stead. In the event of a vacancy in any office of the Commission, such vacancy shall be filled by the Commission for the unexpired term. In case of the temporary absence or disability of any officer, the Commission may appoint some person temporarily to

act in his or her stead except that in the event of the temporary absence or disability of the Chair, the Vice Chair shall so act.

#### ARTICLE IX

Meetings of the Commission shall be held at such time and place as shall be prescribed by resolution of the Commission and shall be open to the public. Special meetings of the Commission may be called by the Chair or any two Commissioners, by serving written notice of the time, place and purpose thereof, upon each Commissioner, personally, by e-mail or by leaving it at his or her place of residence, at least twenty-four hours prior to the time of such meeting, or by depositing same in a United States Post Office or mail box within the geographic limits of the Authority, at least seventy-two hours prior to the time of such meeting, enclosed in a sealed envelope properly addressed to him or her at his or her home or office address, with postage fully prepaid. Special meetings of the Commission at which all members are present, or which all absent members receive notice, shall be deemed to be valid even though no written notice thereof may be given as above specified.

#### ARTICLE X

A majority of the Commission (seven (7) members) shall be required for a quorum. The Commission shall act by motion, resolution or ordinance. The Commission shall, whenever possible, arrive at a consensus position on any matter coming before it, without the need for a formal vote. Each Commissioner

shall be entitled to one (1) vote on all matters coming before the Authority except as provided below and provided further that in the event a constituent Municipality fails to timely pay its allocated share of any financial obligation owed to the Authority or Wayne County (a “default”), the Commissioner representing that constituent municipality shall lose the right to vote on any issue coming before the Authority until the default is cured by payment in full of the financial obligation. Provided, however, that if the constituent municipality has a good faith dispute as to the amount of its financial obligation, has paid the undisputed amount and has initiated the dispute resolution process adopted by the Authority, as to the disputed amount, then it shall continue to be entitled to vote during the proceeding of the dispute resolution process. Each matter coming before the Commission shall be decided by a majority vote of the Commissioners except as provided below.

The following issues shall require a vote of at least sixty-six (66%) percent of the weighted vote as set forth in the attached Exhibit 1:

- a. Amendment of the Bylaws or Rules and Regulations of the Authority.
- b. Retention of independent contractors, management personnel, consultants, and/or professionals, including accountants, attorneys and engineers.
- c. Issuance of bonds.
- d. Approval of services to non-constituent municipalities.
- e. Execution of any contract wherein contractual payments are to be pledged as security for bonds.
- f. Assumption of any financial obligations of any constituent municipality.

- g. Approval of any contract for construction or repair which exceeds Five Hundred Thousand (\$500,000) Dollars.

Amendment of the Articles of Incorporation of the Authority shall require a unanimous vote.

## ARTICLE XI

The Commission shall have the right to adopt rules and regulations for the use of any facility used by it, adopt bylaws for the regulation of its affairs and the conduct of its business which are not in conflict with the terms of any statute or of these Articles. The Commission shall keep a journal of its proceedings. The Commission shall also adopt an alternative dispute resolution procedure. The journal of its proceedings shall be signed by the Chair. All votes shall be “yeas” and “nays”, except that where the vote is unanimous it shall only be necessary to so state. Each member shall be required to vote on all matters unless he or she shall be disqualified therefrom. No member may vote on any matters in which he or she has a personal or financial interest.

## ARTICLE XII

The Chair of the Commission shall be the presiding officer thereof. Except as herein otherwise provided, he or she shall not have any executive or administrative functions other than as a member of said Commission. In the absence or disability of the Chair, the Vice Chair shall perform the duties of the Chair. The Secretary shall be the recording officer of the Commission. The

Treasurer shall be custodian of the funds, if any, of the Authority and shall give to it a bond conditioned upon the faithful performance of the duties of his or her office. The cost of said bond shall be paid by the Authority. All monies shall be deposited in a bank or banks, to be designated by the Commission, and all checks or other forms of withdrawal therefrom shall be signed by the Treasurer and either the Chair or Vice-Chair of the Authority. The officers of the Commission shall have such other powers and duties as may be conferred upon them by the Commission.

In the event the Authority assumes exclusive control over management, administration, ownership and operation of the System, the Commission shall prepare, adopt, and submit to each commissioner of the constituent municipalities an annual budget covering the proposed expenditures to be made for the organizing and operation of the Authority, and for the next fiscal year beginning January 1<sup>st</sup>, such budget to be submitted on or before December 1<sup>st</sup> of the preceding fiscal year.

### ARTICLE XIII

The Authority shall possess all the powers necessary to carry out the purposes thereof and those incident thereto. It may acquire property by purchase, construction, lease, gift, devise or condemnation, either within or without its corporate limits, and may hold, manage, control, sell, exchange or lease such property. For the purpose of condemnation it may proceed under the

provisions of Act 149, Public Acts of Michigan, 1911, as now or hereinafter amended, or any other appropriate statute.

#### ARTICLE XIV

The Authority and/or its constituent municipalities may enter into a contract or contracts providing for the acquisition, purchase, construction, improvement, enlargement, extension, operation, management, administration and financing of a sewage disposal system as authorized and provided in Act 233, Public Acts of Michigan, 1955, as amended. The Authority may enter into contracts with any non-constituent municipality, as authorized and provided in said Act, for the furnishing of sewer service from any facilities owned or operated by the Authority, which contract shall provide for reasonable charges or rates for such service furnished. No contracts shall be for a period exceeding forty (40) years.

#### ARTICLE XV

For the purpose of obtaining funds for the acquisition, construction, improving, enlarging or extending of a sewage disposal system, the Authority and/or its constituent municipalities may, upon ordinance or resolution duly adopted by it, issue its negotiable bonds, secured by the contractual full faith and credit pledges of each contracting municipality, in accordance with and subject to the provisions of Act 233, Public Acts of Michigan, 1955, as amended.

## ARTICLE XVI

The Authority may issue self-liquidating revenue bonds in accordance with the provisions of Act 94, Public Acts of Michigan, 1933, as amended, being Sections 141.101 to 141.139, inclusive, of the Compiled Laws of 1948, or any other act providing for the issuance of revenue bonds, which bonds shall be payable solely from the revenues of the sewage disposal. The charges specified in any contract or contracts securing said bonds shall be subject to increase by the Authority at any time if necessary in order to provide funds to meet its obligations. Any contract authorized herein shall be for a period of not exceeding forty (40) years.

## ARTICLE XVII

The Authority may employ such personnel and employees as it may consider desirable, and may retain from time to time the services of accountants, attorneys and engineers, and fix the compensation therefore.

## ARTICLE XVIII

The Authority shall cause an annual audit to be made of its financial transactions by a certified public accountant and shall furnish at least seven (7) copies thereof to each constituent municipality.

## ARTICLE XIX

These Articles shall be published once in the following newspapers: The Eagle, The Sunday Press and Guide and The News Herald, which newspapers have general circulation within the limits of the Authority. One printed copy of such Articles of Incorporation, certified as a true copy thereof, with the date and place of publication shall be filed with both the Secretary of State and the County Clerk of the County of Wayne within thirty (30) days after the execution thereof has been completed.

The Commission Secretary is hereby designated as the person to cause these Articles to be published, certified and filed as aforesaid. In the event he shall be unable to act or shall neglect to act, then the Attorney for the Commission shall act in his stead.

## ARTICLE XX

This Authority, its Articles of Incorporation and any Amendment to the Articles of Incorporation shall become effective upon the filing of certified copies of these documents, as provided in the preceding Article.

## ARTICLE XXI

These Articles of Incorporation may be amended at any time so as to permit any other municipality to become a constituent municipality of this Authority, if such amendment to and the Articles of Incorporation are adopted by the legislative body of such other municipality, and if such amendment is adopted

by the unanimous vote of the municipalities of which the Authority is composed. Other amendments may be made to these Articles of Incorporation at any time if adopted by the unanimous vote of the legislative bodies of the constituent municipalities of which the Authority is composed. Any such amendment shall be endorsed, published, and certified, and printed copies thereof filed in the same manner as the original Articles of Incorporation, except that the filed and printed copies shall be certified by the recording officer of the Authority.

These Articles have been adopted by the several incorporating municipalities, as hereinafter set forth in the following endorsements, and in witness whereof the Mayor and Clerk in the respective Cities and the Supervisor and Clerk in the respective Townships, have endorsed thereon this statement of such adoption.