

Bayside Municipal Water Project #1, U. A.

May 2014

Dear Bayside Homeowner,

The Private Well Project is entering the next phase. The **Bayside Municipal Water Project #1, U.A.** a Wisconsin Unincorporated Nonprofit Association has been formed. This association and its members will have the ability to enter into contracts, collect, and distribute funds to facilitate the voluntary municipal water project.

The next step in this process is to collect a \$300.00 deposit from each homeowner interested in bringing municipal water to their home. Part of this deposit will be used to pay for the preliminary engineering fees needed to determine the viability and potential routes of the water main.

If it is determined that water cannot be brought to your area, your deposit minus expenses incurred and cost per home for the engineering fees will be refunded.

To join the association for municipal water and become a member, please follow the steps listed below.

1. Complete the **Contact Information Sheet**.
2. Sign, date, and notarize the enclosed contract. This can be done at the Bayside Village Hall for no notary fee. **Due date: July 1, 2014.**
3. Payment of \$300.00 **check payable to Bayside Municipal Water Project #1, U.A.**

Bring these 3 items (contact info sheet, contract, deposit check) to the **Bayside Village Hall** 9075 N. Regent Road **by July 1, 2014.**

If you have any questions, please contact us by email or phone:

Email: privatewellproject@gmail.com

Phone: 414-331-5040

Contact Information Sheet

Full Name: _____
Last First M.I.

Bayside Address: _____
Street Address

Bayside, WI 53217
City State Zip Code

If your mailing address is different than the Bayside address above, please provide the information below.

Mailing Address: _____
Street Address

City State Zip Code

Phone Number: _____

Email Address: _____

Member Agreement

For

Bayside Municipal Water Project #1, U.A.

A Wisconsin Unincorporated Nonprofit Association

Section I

Formation of the Association

1.1 FORMATION. The Members hereby form an Unincorporated Nonprofit Association (“Association”) subject to the provisions of the Wisconsin Uniform Unincorporated Nonprofit Association Act, Chapter 184, Wis. Stats., as currently in effect as of this date. The Association shall have all of the benefits and protections afforded to it and its Members by law, including but not limited to the ability to enter into various contracts, collect and distribute funds, and be free from certain liabilities that may arise in connection with the undertaking of Association activities. The Members form this Association and enter into this Member Agreement (“Agreement”) for the purposes set forth in Section 1.5 below.. Members are residents of the Village of Bayside. Each Member is currently serviced by private wells, community wells or “other than municipal” water systems.

1.2 NAME. The name of the Association shall be: Bayside Municipal Water Project #1, U.A.

1.3 REGISTERED AGENT. The name and location of the registered agent of the Association shall be:

Penny (Pearl) R. Goldman

8995 N. Rexleigh Dr.

Bayside, Wisconsin 53217

Notification of the appointed registered agent will be filed with the Wisconsin Department of Financial Institutions.

1.4 TERM. The Association shall continue for a period of ten (10) years, unless any of the following shall occur:

- (a)** If after completing construction of, and fully financing, the municipal water supply system to Member residences, and after all Members have access to said system, 51% or more of members vote for dissolution; or

- (b) Any event which makes it unlawful for the purpose of the Association to be carried on by the Members; or
- (c) The Association agrees to extend the term of this Agreement by a majority (51% or more) vote of the Members.

1.5 PURPOSE. The Members form this Association and enter into this Agreement for the express purpose of negotiating collectively and in a unified manner with the Village of Bayside and the City of Mequon, located in Milwaukee County, Wisconsin, for and with respect to the siting and location, installation and construction, financing, cost assessment and maintenance of certain municipal water services for access by, and intended to supply the homes of, Members. Members are residents of the Village of Bayside. Each Member is currently serviced by private wells, community wells or "other than municipal" water systems. Some of these systems are nearing the end of their useful lives. As an incentive to Members entering into this Agreement, it is expected, although not guaranteed, that due to the Association's size, Members will be able to negotiate more favorable timing and financing for the development of the municipal water system than they would otherwise be able to obtain individually should they later decide to connect to the municipal water system.

1.6 THE MEMBERS. The Members shall be the households listed on Exhibit 2 to this Agreement, and their respective heirs, representatives and assigns. Each household shall constitute one Member and be represented by a resident of such household designated as such to the Association. As a condition of membership in the Association, each Member agrees to execute a copy of this Agreement and be bound by the terms of this Agreement. Each Member understands that participation in the Association does not in itself guarantee favorable timing or financing for the development of the municipal water system.

1.7 MAIN LINE CONNECTIONS. All Members shall be individually responsible for connecting their respective residences, at their expense, to the Main Line via laterals and private plumbing. All Members shall connect to the Main Line as required by applicable law, health and safety ordinances, and the City of Mequon Water Utility. Any work performed in connecting Members residences to the Main Line shall be performed by a licensed contractor.

The Bayside Municipal Water Project #1, U.A. will provide the names of three private licensed plumbing contractors. Individual members are responsible for choosing their own licensed private contractor to connect their private residence to the Main Line. Individual members are not bound to use any of the three licensed private plumbing contractors and are free to privately contract with a different licensed private plumbing contractor. The work performed by these private plumbing contractors is not in any way affiliated with the Bayside Municipal Water Project #1, U.A., The Bayside Municipal Water Project #1, U.A is not responsible for any of the work completed by the private plumbing contractors hired by the individual members.

1.8 ADMISSION OF ADDITIONAL MEMBERS. Except as otherwise expressly provided in this Agreement, no additional members may be admitted to the Association without prior written

consent of 51% or more of the Directors. As new Members are admitted to the Association, each new Member shall be assessed an amount to be determined from time to time by the Directors which shall reflect, and serve to reimburse, the then current Members' respective contributions made to the Association in furtherance of establishing the Association and/or obtaining municipal water, except that in no event shall this amount exceed each of the then current Member's total contributions, nor represent a disproportionate share of the Association's past expenses vis a vis other Members. Member accounts shall be adjusted accordingly and the adjustment recorded by the Director or his/her representative in charge of bookkeeping. Such records shall be kept in accordance with accounting standards as the Directors shall select. Notwithstanding the foregoing, no new members shall be admitted after such time as the Association has finalized negotiations with the City of Mequon and the Village of Bayside to receive and finance municipal water to Members, unless a majority (51% or more) of the Directors agree otherwise.

- 1.9 REMOVAL OF MEMBERS.** Any Member that has joined the Association, entered into this Agreement, and paid an initial assessment or made financial contributions to the Association as outlined herein, may petition the Directors to be removed from the Association and refunded said contributions if the final location of the Main Line does not allow for them to reasonably connect via a lateral pipe to their residence. Upon receipt of such petition, the Directors shall vote to authorize the removal of the Member and return of said contributions, which authorization shall not be unreasonably denied. Unless the Member shall affirmatively elect to remain a Member of the Association by notifying the Directors, membership shall automatically cease when the underlying residence is sold or otherwise transferred by the Member or the Member's estate, executors, heirs, representatives or assigns. Any new owner of the residence shall not become a member of the Association unless otherwise admitted under Section 1.8.
- 1.10 AMENDMENT.** This Agreement may be amended from time to time in writing by a majority (51% or more) vote of Members at a meeting called for such purpose.
- 1.11 SEVERABILITY.** If any portion of this Agreement shall be adjudged by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, the remainder of the Agreement shall remain in full force and effect.
- 1.12 COUNTERPART SIGNATURES.** This Agreement may be executed by the Members in counterparts, each of which when so executed and delivered shall be an original hereof, and it shall not be necessary in making proof of this Agreement to produce or account for all counterparts.

Section II

Initial Assessments

- 2.1 INITIAL ASSESSMENTS.** Each Member shall be responsible for making contributions or payment of assessments, as established by the Directors, in equal amounts, in a lump-sum payment or according to financing approved by the Directors, to the Association to cover construction of the municipal water system's main public infrastructure (the "Main Line"). Each Member shall contribute an initial assessment to the Association in the amount of \$300. Assessment shall be held in a trust or bank account administered by the Directors, or the Directors' designee, and distributed by the Directors as needed to cover the reasonable expenses of the Association. Such expenses shall include but not be limited to attorneys' fees and filing fees incurred in formation of the Association, preliminary engineering costs for construction and installation of the Main Line, and communications between the Association's counsel, the Village of Bayside and the City of Mequon municipal authorities to further the purpose specified in Section 1.5. Payment of the initial assessment shall be due no later than 30 days after the Member's receipt of notification by the Association.
- 2.2 ADDITIONAL ASSESSMENTS.** From time to time the Association, as needed and at the request of the Directors, may collect additional assessments from the Members that shall be used to cover reasonable Association expenses associated with accomplishing the purpose outlined in Section 1.5. Any additional assessments during the 10 year term of the association will not exceed \$300. The reasonableness of any Association expense may be challenged on a petition of ten (10) or more of the Members, which petition shall be submitted to the Directors for consideration and voted upon for final payment by a majority (51% or more) of Members. Payment of any additional assessment shall be due no later than 30 days after the Member's receipt of notification by the Association. The additional assessments may be paid in reasonable installments approved by the Directors. No Members shall be entitled to vote in Association matters unless their assessments have been paid or are on schedule to be paid through reasonable installments approved by the Directors. The right to collect and enforce the collection of assessments is hereby delegated exclusively to the Association. The Members shall be personally obligated to pay such assessments upon the residences owned by them. Consistent with Section 1.6 of this Agreement, all assessments levied by the Association which are unpaid when due shall incur a late fee equal to 5% of the amount of the assessment for each month the Member fails to pay in full. The Association shall have the exclusive and sole right and power to collect and enforce the collection of assessments, and, acting through the Directors, to bring any and all actions and proceedings for the collection thereof, and there shall be added to the amount due costs of suit and interest, together with reasonable attorneys' fees. Failure of the Association to enforce any provision contained herein shall not be deemed a waiver of the Association's right to enforce these provisions in the event of subsequent default.

Section III

Directors and Operations

- 3.1 DIRECTORS.** The name and place of residence of each Director is attached as Exhibit 1 to the Agreement. By a majority vote of the Members (51% or more), the Members shall elect between three (3) and nine (9) Directors, with one Director elected by the Members as Executive Director. The Directors shall serve staggered two (2) year terms, with the initial Directors serving for slightly longer periods (no longer than five (5) years) to create a rotation that will allow for continuity in Association activities. Directors may serve multiple or successive terms. The Directors shall be elected on or about the first day of November in any year in which a Director's term shall expire in the following manner: The then acting Executive Director shall give thirty (30) days notice to Members of the election of a new Director. Such election shall be held at a location and time of the Executive Director's choosing, reasonably accessible for all Members, or, upon the decision of the Executive Director, the election shall be conducted electronically. Each Member household shall be entitled to cast one (1) vote. A Director shall be elected by a majority (51% or more) of the votes cast, with twenty-five (25) (or 33%, whichever is greater) votes constituting a quorum. Upon election, the Director shall receive from the retiring Director all Association books and records, together with access to all Association funds, and the new Director shall have the management rights and obligations set forth herein for the ensuing two (2) year term, or until his/her successor is duly appointed and qualified. Until the first election takes place, Penny Goldman, Marne Stuck and Rebecca Wahlberg shall be the initial Directors. In the event of the death or resignation of a Director, an election shall be called for by the remaining Directors. Said election shall be conducted upon the same rules as set forth above. The successor Director shall serve until the next regular election for that position. A Director may be removed by an affirmative vote of two-thirds of Members, for any cause, via a meeting of Members called for that purpose. Said meeting may be called by any ten (10) Members upon written notice to the Executive Director who shall call for a meeting of Members to be held upon thirty (30) days notice. If, at any time, a majority of the Directors (51% or more) determine that another Director is needed to serve, then an election shall be called for by the Directors for such purpose and shall be conducted upon the same rules as set forth above.
- 3.2 MEMBER ACTIONS.** The liability of the Members and Directors shall be limited to the fullest extent and as provided by applicable law, including but not limited to the protections of Chapter 184, Wis. Stats. Members that are not Directors shall take no part in the control, management, direction or operation of the Association's affairs and shall have no power to bind the Association. The Directors may from time to time seek advice and input from the Members on critical decisions, but they need not accept such advice, and at all times the Directors shall have the exclusive right to exercise reasonable control and management over the Association. No

Member shall be an agent of any other Member of the Association solely by reason of being a Member.

- 3.3 POWERS OF DIRECTORS; ACTIONS.** The Directors are authorized to make all decisions on the Association's behalf as to (a) the management of the Association; (b) the management and disposition of the Association's trust funds consistent with the purposes set forth in Section 1.5; (d) the negotiations with the Village of Bayside and the City of Mequon regarding financing, development, and access to the municipal water system; (e) the compromise or release of an Association claims, debts or liabilities; and (f) the hiring of persons, firms or corporations in furtherance of the Association's stated purpose, as set forth in Section 1.5. Any contracts, such as that between the Association and the Village of Bayside or the City of Mequon, shall be approved by a majority (51% or more) vote of the Members. The Directors shall select one Director to serve as treasurer of the Association, who shall, along with the Executive Director, be authorized to sign checks on behalf of the Association.
- 3.4 EXECUTIVE DIRECTOR.** The Executive Director shall have primary responsibility for managing the operations of the Association and for effectuating the decisions of the Directors. The Executive Director is authorized, after notice and consultation with the other Directors and when the Directors deem appropriate, with notice to Members, to execute and deliver (a) all contracts, conveyances, assignments, leases, sub-leases, maintenance contracts covering of affecting the Association's interests or assets; (b) all checks, drafts and other orders for the payment of the Association's funds; and (c) all other instruments of any other kind relating to the Association's affairs, whether like or unlike the foregoing. The initial Executive Director shall be Penny {Pearl} Goldman.
- 3.5 COMPANY INFORMATION.** Upon request, the Directors shall supply to any Member information regarding the Association or its activities. Each Member or his or her authorized representative shall have access to and may inspect and copy all books, records and materials in the Directors' possession regarding the Association or its activities. The exercise of the rights contained in this Section 3.5 shall be at the requesting Member's expense.
- 3.6 EXCULPATION.** Any act or omission of the Directors, the effect of which may cause or result in loss or damage to the Association or the Members if done in good faith to achieve the purposes of the Association as set forth in Section 1.5, shall not subject the Directors to any liability to the Members.
- 3.7 DEFENSE AND INDEMNIFICATION.** The Association shall defend, indemnify, protect, and hold any person who was or is a party defendant or is threatened to be made a party defendant in a pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he/she is or was a Member of the Association, a Director, employee or agent of the Association, or is or was serving at the request of the Association, harmless from and against all liability, loss, cost or instant expenses (including attorney's fees), judgments, fines, and amounts

paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding, or arising out of or related to Association activities, whether caused by or contributed to by the Member, Director, or other party indemnified herein, unless caused by the sole negligence of the Member, Director or other party indemnified herein. Any Member, Director, or other party indemnified herein shall give notice to the Association of any matter covered by the indemnification provided herein promptly upon learning of the existence of such matter provided, however, that the Member, Director, or other indemnified party's failure to promptly (within thirty (30) days of actual knowledge of such matter) give notice of such matter to the Association shall relieve the Association of its indemnification responsibilities herein. Upon receipt and acceptance of timely notice, the Association shall assume and control the defense of the Member, Director, or other indemnified party and conduct the defense with due diligence and in good faith with counsel selected by the Association that is reasonably acceptable to the indemnified party; provided, however, that the indemnified party shall have the right, in its discretion, to participate in the defense at its sole cost and expense.

3.8 RECORDS. The Directors shall cause the Association to keep at one of the then Director's residences, the following:

- (a) a current list of the full name and address of each Member;
- (b) a copy of this Agreement and any amendments;
- (c) a copy of the Appointment of Agent form on file with the Wisconsin Department of Financial Institutions;
- (d) copies of any and all financial statements and bank account statements for the Association for the three most recent years; and
- (e) agreements and information regarding the extension of municipal water to Member residences, meeting minutes, and notes.

Section IV

Compensation

4.1 DIRECTOR FEE. Any Director rendering services to the Association shall be entitled to compensation commensurate with the value of such services. Such compensation is initially determined to be \$300 per year for the Executive Director, and \$150 per year for each other Director. The Director fees shall be paid to the Directors only to the extent sufficient Association funds are available to do so. Upon a majority (51% or more) vote of the Members, the Director fees set forth herein may be adjusted from time to time.

4.2 REIMBURSEMENT. The Association shall reimburse Directors and the Executive Director for all direct out-of-pocket and expenses reasonably incurred by them in managing the Association or in fulfilling the purposes of the Association as set forth in Section 1.5.

Section V

Bookkeeping

5.1 BOOKS. The Directors, or their chosen representative, shall maintain complete and accurate books of account of the Association's affairs at one of the Director's residences as set forth in Section 3.8 above. Such books shall be kept on such method of accounting as the Directors shall select. The Association's accounting period shall be the calendar year.

5.2 MEMBER'S ACCOUNTS. The Directors, or their chosen representative, shall maintain records of each Member's assessment (capital) account and distribution account. Each Member's records shall consist of his or her assessments increased by:

- (a) Any additional assessments or contributions made by him/her;
- (b) Credit balances transferred from his/her distribution account to his/her capital account ;
- (c) The collection of funds from the City of Mequon Water Utility in connection with the addition of new residential hook-ups to the Main Line, distributed on a proportionate basis;

and decreased by

- (a) Distributions to him/her in reduction of any Association capital; and
- (b) The Member's share of Association expenses and losses if charged to his/her capital account.

If a Member sells or otherwise transfers his/her residence before this Agreement terminates, has contributed money to the Association and has a positive balance in his/her account, that Member shall be entitled to receive the balance due to him/her on his/her account until such time as this Agreement terminates. If a Member sells or otherwise transfers his/her residence before this Agreement terminates and has not fully paid the expenses allocated to him/her in implementing municipal water to his/her residence, the Association shall assess the Member, and the Member hereby agrees to pay, an amount equal to the balance due at the time of sale or transfer. Each member, or the estate of each Member, shall be responsible for notifying the Directors of any change in the Member's legal status, location, mailing address, and/or the ownership status of the Member residence. Failure to so advise the Directors may result in forfeiture of any monies due to the Member, or the Member's estate, under this Agreement.

Upon termination of this Agreement, any balance remaining in the Member accounts shall be distributed to the Members.

- 5.3 REPORTS.** The Directors shall close the books of account after the close of each calendar year, and shall prepare and send to each member a statement of such Member's distributive share of the Association's expenses.

Section VI

Liability

- 6.0 LIABILITY.** Bayside Municipal Water Project #1, U.A. will not be liable for any work conducted by a third party contractor relative to individual Member's connecting their respective residences to the Main Line via laterals and private plumbing, including but not limited to, digging, pipe laying, and/or any other work associated with connecting respective residences to the Main Line. All Members are individually responsible for connecting their respective residences, at their expense, to the Main Line via lateral and private plumbing. The Bayside Municipal Water Project #1, U.A. will not indemnify, defend, or hold harmless any Member or third party contractor against and from any and all lawsuits, claims, actions, expenses, damages, obligations, fines, penalties, corrective action costs, liabilities, and liens arising out of or related to (1) the acts, omissions, negligence or willful misconduct of third party contractor, its employees, agents, representatives, suppliers or subcontractors in connection with any work conducted by third party contractor relative to connecting Member's respective residences to the Main Line. The Village of Bayside will only inspect the work performed and is in no other way associated with the project. The provisions of this paragraph shall survive cancellation, termination, or expiration of this Agreement and until all matters are fully and finally barred by applicable law.

Certificate of Formation

This Member Agreement is entered into and shall become effective this ____ day of July, 2014 by and among the Association and the persons executing this Agreement as Members. It is the Members express intention to create an unincorporated nonprofit association in accordance with applicable law, as currently written or subsequently amended or redrafted.

The undersigned hereby agree, acknowledge, and certify that the foregoing Agreement is adopted and approved by each Member, the Agreement consisting of seven (7) pages, together with Exhibit 1 and Exhibit 2 and this Certificate of Formation.

Member:

Signature

Printed Name: _____

Date: _____

STATE OF WISCONSIN)
SS.)
MILWAUKEE COUNTY)

Personally came before me the above named _____, to me known to be the person who executed the foregoing instrument.

Subscribed and sworn to before me

this ____ day of _____, 2014.

Notary Public, State of Wisconsin

My Commission Expires _____.

Exhibit 1

List of Directors

- 1. Penny (Pearl) Goldman (Executive Director)**
- 2. Marne Stuck**
- 3. Rebecca Wahlberg**

Exhibit 2

List of Members