

Item #6:
Resolution Authorizing Agreement With NWWC LM Water

David Lothspeich

From: John DuRocher [JDurocher@NorthWestWater.org]
Sent: Friday, April 05, 2013 9:44 AM
To: David Lothspeich
Subject: FW: Final Report

Dave,

This is the final comments from our engineer.

John

From: Winegard, Mike [mailto:Mike.Winegard@aecom.com]
Sent: Monday, April 01, 2013 3:44 PM
To: John DuRocher
Cc: St. Aubyn, Paul
Subject: RE: Final Report

John,

We have read the comments below and our answers are in blue. In general, it is our understanding that it is not the size of the water main that is important, rather it is the volume of water which will be delivered to Long Grove. Per the meeting held in your offices on December 14, 2012 with Long Grove, it was my understanding that if the volume of water is going to increase in the future, that Long Grove will have to approach the Commission for an increased volume. This is because the Commission could not furnish the ultimate amount of water requested by Long Grove at this proposed location. The volume that we are currently discussing is doable but any amount over that is questionable without major improvements.

Please review these comments and revise accordingly as we believe a lot of these are policy decisions.

The bottom line is that a 12-inch diameter water main is sufficient for the flows that we are currently discussing.

Please let us know if you have any other questions.

Thanks,

Mike

Michael H. Winegard, P.E.

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From: John DuRocher [mailto:JDurocher@NorthWestWater.org]
Sent: Friday, March 22, 2013 3:22 PM
To: Winegard, Mike
Subject: FW: Final Report

From: David Lothspeich [mailto:lothsd@longgrove.net]
Sent: Thursday, March 21, 2013 12:52 PM
To: John DuRocher
Subject: RE: Final Report

John,

As a follow-up, our village engineer had some questions on the details of the report which would impact the size of the watermain filling the reservoir and water demands for fire protection purposes. I've copied his comments below. I don't think that this makes a difference to your system and would like to proceed with pursuing the formal approvals/agreement with NWWC for connection and being a customer.

Please let me know how you would recommend we proceed.

Thanks again,

Dave

While reviewing the AECOM draft report, there are a few things that I found. Some make the water demands higher and some reduce it. Below is a list of items.

1. From the demands ESI used in 2007, Briarcrest had an average daily demand of 17.51 gpm (23,214 gpd) compared to 49,766 used in the report. - The numbers we utilized were given to us by Long Grove in e-mails dated January 7, 2013 and January 15, 2013.
2. For the Village of Long Grove, ESI had a demand of 9.27 gpm (13,349 gpd) for the downtown businesses only. This number does not include any demands for the subdivisions along the route to the downtown area. – In the meeting of December 14, 2012, we were directed to only include demands for " Briarcrest, Village of Long Grove, Properties along Rt. 83, and a few dozen single family homes." We believe that this is what we have done. If not, we are asking Long Grove for direction.
3. Per Title 35 Subtitle F, Chapter II, Part 653 Section 653.105, IEPA uses a ratio of 1.5 to determine the max daily demand (MDD) from the average daily demand (ADD). ESI used the 1.5 ratio to determine the MDD. The AECOM report uses a ratio of 1.8. - The 1.8 ratio is in line with what the Commission's customers are experiencing and thus in our opinion, is more realistic.
4. It appears that AECOM incorrectly incorporated the fire flow into the MDD calculation for the Properties along Route 83. From the table found in Exhibit 3 of Ordinance 2008-O-15, the maximum water use is 58,292 **gpd** based on the 1.5 ratio previously stated. The fire flow is given as 3,936 **gpm**, however AECOM added these numbers together to arrive at 62,328 gpd in their table. This is inaccurate as the units are significantly different. The report should have used a separate calculation to determine the fire flow. LGFPD required a flow of 1,500 gpm for 2 hours (180,000 gallons). The existing reservoir at the treatment plant has a capacity of 140,000 gallons. Depending on the elevation difference in the tank before NWC will open the valve to provide more water, the actual water remaining to use for fire protection and ADD use by others during the fire could be significant. For the current system, ESI had calculated that both 350 gpm pumps would be required to supplement the water in the reservoir to meet the required demands. For a fire this would be 700 gpm or 84,000 gallons for the 2-hour time frame. I would suggest that confirmation be provided from AECOM or NWC that during a fire, the interim system can supplement with a minimum of 700 gpm through the water main, independent of the time of day or time of the year. As during a fire condition, the water use may be such that it exceeds the Village's allotment, the contract should be reviewed so that the onetime occurrence does not trigger an additional allotment be charged to the Village from that time going forward. – It is intended that fire flow be supplied out of storage by Long Grove, not the Northwest Water Commission. That being said, the Commission may be willing to supply fire flows if the volume of water is available. Using the 84,000 gallons of water for a fire flow as they are suggesting, would result in a maximum day plus fire flow of 271,046 gallons which is still doable.

Water Rate Example
This is for Illustration Purposes Only

The Village of Baily Park wishes to obtain water from the Northwest Water Commission. They have an IDOT allocation of 3 MGD. They wish to start receiving water on May 1.

Through previous agreements, Baily Park agreed to reimburse the Commission for all consultant fees associated with them obtaining water from the Northwest Water Commission.

The current Member rate is \$1.115 per thousand gallons. This includes all debt service and capital expenses.

There are two parts to the bill- a capacity charge and a quantity charge.

CAPACITY CHARGE

The capacity charge essentially buys system capacity. It is a fee designed to take into account the Members' creation of the system.

Since the established capacity charge is 60 cents per thousand gallons, the annual capacity fee paid to the Commission will be \$657,000.00. This will be paid in quarterly installments based on the following schedule: May 1 and August 1(30%, \$197,100 respectively), and November 1 and February 1 20% (\$131,400) respectively.

The capacity charge is based on the IDOT allocation. Any changes to the IDOT allocation will result in a change in the capacity charge. Such changes shall be assessed prorated from the date such allocation is amended.

This fee is not subject to any adjustment for water use. It is only changed in conjunction with an IDOT allocation change.

QUANTITY CHARGE

3 MGD = 1,095,000,000 gallons per year.

The budgeted fee will be \$1,220,925. This will be paid in quarterly installments based on the following schedule: May 1 and August 1(30%, \$366,277.50 respectively), and November 1 and February 1 20% (\$244,185) respectively.

The total fees paid to the Northwest Water Commission will be:

May 1	\$563,377.50
August 1	\$563,377.50
November 1	\$375,585.00
February 1	\$375,585.00

Total \$1,877,925.00

After the end of the fiscal year, typically in November after the Commission receives its audit and the audit of the City of Evanston, the Commission will calculate a true up for all customers.

An example of a true up calculation follows:

		%
Gallons estimated to be pumped	Northwest Water Commission	8,550,000,000
during the fiscal year	Baily Park	1,095,000,000
	total	9,645,000,000

budgeted amount \$ 10,754,175

Payment

Northwest Water Commission \$9,533,250 88.65%

Baily Park \$1,220,925 11.35%

Total \$10,754,175 100.00%

Actual Spent \$ 9,800,000

Baily Park Budgeted
(paid) \$1,220,925

Baily Park
Final \$1,112,597

true up amount \$108,328
Paid less Final

Another example

Baily Park uses more than budgeted

Pumped

Northwest Water Commission	8,550,000,000	87.69%
Baily Park	1,200,000,000	12.31%

	Total	9,750,000,000
Budgeted	\$ 10,000,000	
Actual Spent	\$ 10,000,000	

Baily Park Budgeted (paid)	\$ 1,135,303	\$10,000,000* 11.35%
Baily Park Final	\$ 1,230,769	\$10,000,000*12.31%

true up amount \$ 95,466
Paid less Final
Baily Park Owes Commission

NORTHWEST WATER COMMISSION

WATER PURCHASE AND SALE CONTRACT

BY AND BETWEEN

THE NORTHWEST WATER COMMISSION AND

[NAME OF CUSTOMER]

Dated: _____, 20__

TABLE OF CONTENTS

<u>SECTION 1</u>	<u>BACKGROUND</u>	4
<u>SECTION 2</u>	<u>DEFINITIONS</u>	5
<u>SECTION 3</u>	<u>WATER SUPPLY</u>	9
A.	<u>Agreement to Sell and Purchase</u>	9
B.	<u>Beginning of Obligations to Deliver and Receive Potable Water</u>	9
C.	<u>Limits on Supply</u>	10
D.	<u>Additional Subsequent Contract Customers</u>	10
E.	<u>Emergency or Maintenance Stoppage</u>	10
F.	<u>Curtailment: Emergency Use of Other Sources</u>	11
G.	<u>Limits on Use</u>	11
<u>SECTION 4</u>	<u>QUALITY; DELIVERY; STORAGE; DISTRIBUTION; CONSERVATION</u>	12
A.	<u>Water Quality</u>	12
B.	<u>Maintenance of System: Water Quality; Prevention of Waste</u>	12
C.	<u>Wells and Well Water</u>	12
i.	<u>Deep Wells</u>	12
ii.	<u>Shallow Wells</u>	12
iii.	<u>Mixing Prohibited</u>	13
iv.	<u>Well Water</u>	13
v.	<u>No Other Wells</u>	13
D.	<u>Surges and Back-Flows</u>	13
E.	<u>Village/City System Pressures</u>	13
F.	<u>Connection to Transmission Mains</u>	13
G.	<u>Village/City System Connection Facilities</u>	14
i.	<u>Village/City Obligation</u>	14
<u>SECTION 5</u>	<u>MEASURING EQUIPMENT</u>	14
A.	<u>Metering Stations</u>	14
i.	<u>Construction of Metering Stations</u>	14
ii.	<u>Site of Point of Delivery Metering Station</u>	15
iii.	<u>Access by Village/City</u>	15
iv.	<u>Meter Reading</u>	15
B.	<u>Records</u>	15
C.	<u>Calibration</u>	15
D.	<u>Check Meters</u>	16
E.	<u>Meter Malfunctions</u>	16
F.	<u>Removal of Metering Stations</u>	17
G.	<u>Removal of Transmission Mains</u>	17
H.	<u>Meters for Village/City Customers</u>	18
I.	<u>Right of Inspection</u>	18
<u>SECTION 6</u>	<u>UNIT OF MEASUREMENT</u>	18
<u>SECTION 7</u>	<u>RATES AND TERMS OF PAYMENT</u>	19
A.	<u>Rate</u>	19
B.	<u>Adjustments to Rate</u>	19
C.	<u>Reserved</u>	19
D.	<u>Reserved</u>	19
E.	<u>"Take-or-Pay" Obligation</u>	19

F.	<u>Make-Up Payment</u>	19
G.	<u>Bills and Due Date</u>	20
H.	<u>Disputed Payments</u>	20
I.	<u>Overdue Payments</u>	20
i.	<u>Interest</u>	21
ii.	<u>Reduction or Discontinuance of Delivery</u>	21
iii.	<u>Security Deposit</u>	21
J.	<u>Beginning of Obligation to Pay</u>	22
K.	<u>Rate Agreed to be Reasonable</u>	22
L.	<u>Commission Charges and Rates Covenant</u>	23
M.	<u>Village/City Charges and Rates Covenant</u>	23
N.	<u>Character of Payment Obligations as Water Revenue Obligations</u>	24
O.	<u>Character of Payment Obligations as Operating Expenses</u>	24
	<u>SECTION 8 SPECIAL CONDITIONS AND COVENANTS</u>	25
A.	<u>No Liability for Unintentional Delay</u>	25
B.	<u>Title to Potable Water</u>	25
C.	<u>Other Supply; Emergency Supply</u>	25
D.	<u>Covenants to Be Set Out in Bond Ordinances</u>	26
E.	<u>Other Financial Obligations of Village/City System</u>	26
i.	<u>Payment Obligations</u>	26
ii.	<u>Future Village/City Debt</u>	26
F.	<u>Maintenance of Village/City's Existence</u>	26
G.	<u>Village/City Jurisdiction</u>	27
H.	<u>Maintenance and Operation of Village/City System</u>	27
I.	<u>Regulations Equivalent to Village Regulations</u>	28
J.	<u>Accounting and Audit</u>	28
K.	<u>Maintain Ownership of Village/City Waterworks System</u>	28
L.	<u>No Sale of Water System</u>	28
M.	<u>Obtain and Maintain Water Allocation</u>	28
N.	<u>Release and Indemnification</u>	29
O.	<u>Assignment of Litigation</u>	30
P.	<u>Rate of Withdrawal</u>	30
Q.	<u>Status as Customer</u>	30
	<u>SECTION 9 SCHEDULE FOR COMPLETION OF VARIOUS FACILITIES</u>	30
A.	<u>Plans and Specifications for Village/City System Connection Facilities</u>	30
B.	<u>IEPA and Other Approvals For Village/City System Connection Facilities</u>	31
C.	<u>Commencement of Construction of Village/City System Connection Facilities</u>	31
D.	<u>Transfer of Property Rights</u>	31
i.	<u>Conveyance of Village/City Easement</u>	31
ii.	<u>Acquisition of Property</u>	31
E.	<u>Commencement of Construction of Commission Connection Facilities</u>	31
	<u>SECTION 10 ASSIGNABILITY</u>	32
A.	<u>Assignment by Village/City</u>	32
B.	<u>Assignment by the Commission</u>	32
	<u>SECTION 11 FORCE MAJEURE</u>	32
	<u>SECTION 12 COMMISSION DEFAULTS</u>	33

<u>SECTION 13 VILLAGE/CITY OBLIGATION UNCONDITIONAL</u>	33
<u>SECTION 14. TAX COVENANTS</u>	34
<u>SECTION 15 COOPERATION IN ISSUANCE OF OBLIGATIONS</u>	34
<u>SECTION 16 REGULATORY BODIES</u>	35
<u>SECTION 17 OTHER WATER SUPPLIERS</u>	35
<u>SECTION 18 EFFECTIVE DATE: TERM</u>	36
A. <u>Effective Date</u>	36
B. <u>Term</u>	36
C. <u>Renewal</u>	36
<u>SECTION 19 TERMINATION</u>	36
A. <u>By Commission</u>	36
<u>SECTION 20 GENERAL</u>	37
A. <u>Governing Law</u>	37
B. <u>Notices</u>	37
C. <u>Calendar Days and Time</u>	38
D. <u>Entire Agreement</u>	38
E. <u>Amendments</u>	38
F. <u>Further Action</u>	38
G. <u>Captions</u>	38
H. <u>Exhibits</u>	39
I. <u>Changes in Laws</u>	39
J. <u>Time is of the Essence</u>	39
K. <u>Pending Lawsuits</u>	39
L. <u>Responsible Party</u>	39
M. <u>Commission Exemptions</u>	39
N. <u>Severability</u>	39

**NORTHWEST WATER COMMISSION
WATER PURCHASE AND SALE CONTRACT WITH
[NAME OF CUSTOMER]**

THIS WATER PURCHASE AND SALE CONTRACT is made and entered into as of **[DATE]**, by and between the **NORTHWEST WATER COMMISSION**, an Illinois water commission and public corporation organized and existing under the Illinois Constitution of 1970 and Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.* (2010) ("**Commission**"), and **[NAME OF CUSTOMER]**, a municipal corporation organized and existing under the Illinois Constitution of 1970 and the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.* (2010) ("**Village/City**") for and in consideration of the mutual covenants and agreements herein contained.

SECTION 1 BACKGROUND

A. The Commission owns and operates the Commission Waterworks System for the receipt of Potable Water and for the delivery of Potable Water to its Member Municipalities and other Customers¹.

B. The Commission has issued and sold, and further proposes to issue and sell, Bonds from time to time during the term of this Contract in sufficient amounts for the payment of the costs of acquiring, designing, constructing, and maintaining its Waterworks System.

C. The Village/City owns and operates the Village/City Waterworks System for the delivery of Potable Water to its customers.

D. The Village/City has received an allocation from the State of Illinois Department of Natural Resources to divert water from Lake Michigan for the Village/City Waterworks System.

¹ All capitalized words and phrases throughout this Contract shall have the meanings set forth in Section 2 hereof.

E. The Village/City desires to purchase Potable Water from the Commission and the Commission desires to sell Potable Water to the Village/City, solely for the purposes set forth in, and in strict accordance with the provisions of, this Contract.

F. Pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.* (2012), the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.* (2012), and Article VII, Sections 3 and 10 of the Illinois Constitution of 1970, the Commission and the Village/City are authorized to enter into this Contract.

G. The Village/City recognizes that the Commission may use this Contract as the basis, in part, for obtaining loans from time to time to be evidenced by the issuance of its Bonds; and for payment of the principal of and the premium, if any, and interest on such Bonds; and as the means for the payment of its maintenance and operating expenses; and for such purposes as may be authorized by applicable statutes or required in any Bond Ordinance adopted by the Commission authorizing issuance of Bonds.

SECTION 2 DEFINITIONS

The following words and phrases shall have the following meanings when used in this Contract.

"Bond Ordinances" means all of the respective bond ordinances and resolutions under which the Parties have or will authorize the issuance of, or issue, Bonds.

"Bonds" means Commission Revenue Bonds and Village/City Bonds.

"Commission" means the Northwest Water Commission.

"Commission Connection Facilities" means the portions of the Commission Waterworks System to be constructed pursuant to this Contract by the Commission to connect the Village/City Waterworks System to the existing Commission Waterworks System, which facilities are depicted in the preliminary plans to be approved by both parties and attached as Exhibit B to this Contract. The Commission Connection Facilities include, among other items,

the metering station and SCADA facilities described in Subsection 5A of this Contract and pipelines and equipment appurtenant thereto.

"Commission Revenue Bonds" means all of the Commission's debt obligations, whether in the form of bonds, notes, or other evidences of indebtedness, in whatever original principal amount, together with any such revenue obligations authorized by law to be issued by the Commission from time to time and refunding revenue obligations issued to refund other such obligations.

"Commission Waterworks System" means all of the Commission's facilities, including land; easements; rights-of-way over lands and waters; pumping facilities, treatment facilities, storage facilities, metering stations, and other facilities; mains; and pipelines acquired and used for the purposes of transmitting Potable Water to the Commission's Member Municipalities and Customers. The Commission Waterworks System includes the metering station and all meters and other equipment located therein constructed as part of the Commission Connection Facilities.

"Connection Area" means an area to be located within street right of way or utility easement areas located generally at **[LOCATION OF CONNECTION AREA]**, or as otherwise may be agreed upon by the Parties.

"Connection Facilities" means the Commission Connection Facilities and the Village/City Connection Facilities.

"Contract" means this Contract.

"Customer" means any person or entity to whom the Commission sells Potable Water.

"Day" means any 24-hour continuous period commencing at 12:00 a.m. (midnight) local time.

"Effective Date" means the date established in Section 18 of this Contract.

"Fiscal Year" means the fiscal year of the Commission.

"Force Majeure" means acts of God; strikes, lockouts, or other industrial disturbances; acts of a public enemy; orders of any kind of the Government of the United States, of the State of Illinois, or of any civil or military authority; insurrections; riots; acts of terrorism; epidemics; pandemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraints of government and people; civil disturbances; explosions, breakage, or accidents to machinery, pipelines, plants, canals, or tunnels; partial or entire failure of water supply; and inability on the part of the Commission to deliver Potable Water hereunder, or of the Village/City to receive Potable Water hereunder, on account of any other causes not reasonably within the control or ability to cure of the party claiming such inability.

"Full Water Requirements" means, as it applies to the Village/City for the Village/City System, the amount of water necessary from time to time to meet the treated water requirements of all then current customers served by the Village/City System but in no event to exceed the following annualized averages, based on the allocation year, in million gallons per day (MGD):

<u>Year</u>	<u>MGD</u>
[YEAR]	[AMOUNT]
[YEAR]	[AMOUNT]

This definition includes municipal use system leakage and metering losses. The Village/City's Full Water Requirements amounts as stated in this definition shall remain the same notwithstanding any change in the Village/City's Water Allocation.

"Maximum Water Supply Amount" means the maximum amount of Potable Water that the Commission shall be obligated to deliver to the Village/City, and that the Village/City shall be authorized to purchase from the Commission, pursuant to this Contract, which amount shall be **[AMOUNT]** gallons per Day, unless otherwise agreed in writing from time to time by the Executive Director of the Commission and the Village/City Manager/Administrator or their designees.

"Member Municipalities" means the Villages of Arlington Heights, Buffalo Grove, Palatine and Wheeling.

"Party" or **"Parties"** means either the Village/City, the Commission or both, as appropriate.

"Point of Delivery" means the first valve immediately downstream from the metering station at which the Potable Water delivered to the Village/City pursuant to this Contract leaves the Commission Waterworks System and enters the Village/City Waterworks System.

"Potable Water" means treated, filtered water drawn from Lake Michigan provided to the Commission.

"Rate" means the customary and applicable rate for delivery of Potable Water established by the Commission in a particular fiscal year.

"Trustee" means a trustee provided in a Bond Ordinance.

"Village/City" means the **[NAME OF CUSTOMER]**.

"Village/City Bonds" means the debt obligations, whether in the form of bonds, notes, or other evidences of indebtedness, to be issued by the Village/City in an amount sufficient to pay the expected costs to complete all of the Village/City's obligations under this Contract, including, without limitation, costs of construction and professional services.

"Village/City System Connection Facilities" means those portions of the Village/City System, lying downstream from the Point of Delivery, that connect the existing Village/City Waterworks System to the Commission Waterworks System, which facilities are depicted in the preliminary plans to be approved by both parties and attached as Exhibit B to this Contract. The Village/City System Connection Facilities include, among other items, the valves [and pressure adjusting station] described in this Contract and pipeline and equipment appurtenant thereto.

"Village/City Waterworks System" means all of the Village/City's facilities, including land; easements; rights-of-way over lands and waters; pumping facilities, wells, treatment facilities, storage facilities, metering stations, and other facilities; mains; and pipelines acquired

and used for the purposes of transmitting and providing Potable Water to the Village/City's customers, as depicted in Exhibit A.

"Water Allocation" means the sum of the Village/City's allocations and allowable excesses from time to time of Potable Water for the Village/City Waterworks System pursuant to the Level of Lake Michigan Act, 615 ILCS 50/1 *et seq.* (2010), as amended from time to time; the Illinois Department of Natural Resources Rules and Regulations for the Allocation of Water from Lake Michigan, 92 Ill. Admin. Code Part 730, as amended from time to time; the Illinois Department of Natural Resources Decision in Matter No. LMO **[order number]**, as amended from time to time; and such other amounts of Potable Water as the Village/City may lawfully take for the Village/City Waterworks System.

"Well Water" means either treated, filtered water or untreated, unfiltered water drawn from wells owned and, operated by the Village/City.

SECTION 3 WATER SUPPLY

A. **Agreement to Sell and Purchase.** Subject to all provisions of this Contract, the Commission shall sell and deliver to the Village/City, and the Village/City shall purchase and receive from the Commission, an amount of Potable Water necessary from time to time to serve the Village/City System's Full Water Requirements. This amount includes municipal use, system leakage and metering losses located beyond the Point of Delivery. The Commission's obligation to the Village/City to deliver Potable Water hereunder shall be limited, however, to the Maximum Water Supply Amount or the Village/City's Water Allocation, whichever is less and provided further that the maximum quantity of water that the Commission shall be required to deliver to Village/City in any one day shall be equal to 1.8 times the Village/City's average daily water allocation table as set forth in the Full Water Requirements definition in Section 2 of this Contract.

B. **Beginning of Obligations to Deliver and Receive Potable Water.** The Commission shall be obligated to deliver Potable Water to the Village/City System, and the Village/City shall

be obligated to receive at the Village/City System, Potable Water delivered by the Commission immediately after the Parties execute this Contract and completion of construction of the Point of Delivery and any other Village/City Connection Facilities and any Commission Connection Facilities and inspection and approval for operation thereof by the Commission and any other regulatory agency. This paragraph includes any water used to test or prepare the Village/City system.

C. Limits on Supply. The Commission shall use its best efforts to furnish Potable Water to the Village/City as hereinabove provided, but the Village/City acknowledges and agrees that the Commission's obligation hereunder is limited by:

- i. The amount of Potable Water available to the Commission from time to time;
- ii. The capacity of, and any risk of harm to, the Commission Waterworks System due to the furnishing of Potable Water;
- iii. Ordinary transmission loss, including standard metering error, between the Commission's source of supply and/or the Point of Delivery to the Village/City Waterworks System;
- iv. The provisions of this Contract; and
- v. Force Majeure.

D. Additional Subsequent Customers. The Village/City acknowledges that the Commission may enter into contracts for the sale by the Commission of Potable Water to Customers other than the Village/City. The parties acknowledge that the rates for the sale of Potable Water in such contracts may affect the rates charged to the Village/City pursuant to Section 7 of this Contract.

E. Emergency or Maintenance Stoppage or Flow Reduction. The Commission undertakes to use reasonable care and diligence to provide a constant supply of Potable Water as herein provided, but reserves the right at any time to cease or reduce the flow of Potable

Water in its mains for emergency and maintenance purposes. The Commission shall give notice not less than 48 hours in advance of any stoppage for scheduled maintenance purposes and it shall give such notice as is reasonable under the particular circumstances of any cessation of flow for emergency purposes. The Commission shall provide as much notice as practical where the flow of water is expected to be reduced temporarily.

F. Curtailment: Emergency Use of Other Sources. Subject to the rights of the Member Municipalities, if it becomes necessary for the Commission to limit its delivery of Potable Water to its Customers for any reason, the Village/City shall be entitled, to the extent possible after taking into account all factors including but limited to the rights of the Member Municipalities, to receive during such period of curtailment a pro rata share of available Potable Water as determined by the ratio of the Village/City Waterworks System's total Potable Water use during the prior Fiscal Year to the sum of Potable Water use during the prior Fiscal Year of all of the Commission's Customers entitled to Potable Water during such period of curtailment. The Village/City, in cases of emergency or when the Commission for whatever reason is unable to meet the Village/City Waterworks System's Full Water Requirements, may serve its customers from any source; provided, however, that Well Water from wells described in this Contract may only be used in cases of emergency. It is expressly understood and agreed that Village/City nevertheless be deemed to be taking its respective Full Water Requirements during any such period of curtailment or emergency for the purpose of determining payments due to the Commission and no such curtailment or emergency shall in any way affect or relieve the Village/City's payment obligations hereunder. (By way of example, if in Calendar Year 2012, Village/City uses 13% of water, then Village shall receive that same percentage of the curtailment share of water.)

G. Limits on Use. Potable Water delivered by the Commission to the Village/City pursuant to this Contract shall be used solely for the purpose of resale by Village/City for use on land within the jurisdiction of the Village/City. No customer of the Village/City shall sell or resell

Potable Water to anyone outside the jurisdiction, or for use outside of the jurisdiction, of the Village/City, without the written approval of the Commission.

SECTION 4 QUALITY; DELIVERY; STORAGE; DISTRIBUTION; CONSERVATION

A. Water Quality. The Commission shall supply the Village/City with Potable Water of a quality commensurate to that furnished to the Commission's other Customers. The Commission bears no responsibility for the contamination of Potable Water or deterioration of water quality occurring beyond the Point of Delivery to the Village/City System.

B. Maintenance of System; Water Quality; Prevention of Waste. The Village/City shall operate the Village/City Waterworks Systems in such a manner as at no time to place the Commission, or the Commission Waterworks System, in jeopardy of failing to meet (i) the regulations of any federal, State of Illinois, or local agency or governmental authority having jurisdiction over the operation of the Commission's Waterworks System or (ii) the commitments the Commission has to its Members, other customers and to its water suppliers. The Village/City shall notify the Commission immediately of all emergency and other conditions that may directly or indirectly affect quantity or the quality of the water to be received under this Contract or the Commission Waterworks System or water supply. The Village/City further agrees to take reasonable measures to conserve water.

C. Wells and Well Water.

i. Deep Wells. As of the date of this Contract, the Village/City operates ***[describe existing wells]***. Upon commencement of the delivery of Potable Water to Village/City pursuant to this Contract and thereafter, the Village/City shall not use ***[describe wells]*** to pump Well Water except in cases caused by the Commission's inability to deliver Potable Water pursuant to Subsections 3C, 3E and 3F of this Contract.

ii. Shallow Wells. As of the date of this Contract, the Village/City operates ***[describe existing wells]***. Upon commencement of the delivery of Potable Water to the Village/City pursuant to this Contract and thereafter, the Village/City shall not use ***[describe***

existing wells] except in cases caused by the Commission's inability to deliver Potable Water pursuant to Subsections 3C, 3E and 3F of this Contract.

iii. Mixing Prohibited. The Village/City shall do all things necessary to ensure that any Well Water will not enter the Commission Waterworks System.

iv. Well Water. Well Water pumped by the Village/City shall be used solely in the case of emergencies as described in this Subsection C and solely for the purpose of resale by the Village/City for use on land within the jurisdiction of the Village/City. Neither the Village/City nor any customer of the Village/City shall sell or resell Well Water to anyone outside the jurisdiction, or for use outside of the jurisdiction, of the Village/City.

v. No Other Wells. The Village/City warrants and represents that it does not own or operate any other wells than those described in this Subsection C, and that it will not own or operate any other wells than those described in this Subsection C, and that it will not own or operate any other wells during the term of this Contract without the consent of the Commission.

D. Surges and Back-Flows. The Village/City's operation of the Village/City System, including, without limitation, its pressure adjusting stations, shall not cause (i) surges or back-flows into the Commission Waterworks System or (ii) the Commission Waterworks System pressure to drop below 20 pounds per square inch. The Commission shall not be responsible for any damage to the Village/City System caused by the design, operation, or maintenance of the Village/City System.

E. Village/City System Pressures. The Village/City shall be solely responsible for delivering Potable Water to its customers at pressures required or necessary to make such delivery.

F. Connection to Transmission Mains. The Village/City shall not construct or install, nor permit to be constructed or installed, any taps from or connections to the Commission Waterworks System. Such prohibited taps and connections shall include, without limitation,

distribution mains, valves, fire hydrants and service lines. Nor shall Village/City construct taps on the Village/City System at or near the Point of Delivery, without written consent of the Commission.

G. Village/City System Connection Facilities.

i. Village/City Obligation. The Village/City, at its own expense and pursuant to the schedule established in Section 9 of this Contract, shall site, design, construct, operate, maintain, and when necessary replace the Village/City System Connection Facilities, including any valves and/or pressure adjusting stations as may be required, immediately downstream from the Point(s) of Delivery. Initial design and construction plans and specifications for the Village/City System Connection Facilities, and any future modifications thereof, shall be submitted in advance of construction or modification to the Commission for review and approval and the Village/City shall be responsible for reimbursement of the Commission's review fees and costs.

SECTION 5 MEASURING EQUIPMENT

A. Metering Stations.

i. Construction of Metering Stations. The Commission shall, pursuant to the schedule established in Section 9 of this Contract, furnish and install metering stations containing the necessary equipment and devices of a type meeting the standards of the American Water Works Association, and as determined in the sole discretion of the Commission, for measuring properly the quantity of Potable Water delivered under this Contract, including all structures as the Commission shall deem necessary to house such equipment and devices. Such furnishing and installing of the metering stations shall be done in substantial conformance with the preliminary plans therefor attached as Exhibit B to this Contract, as such preliminary plans may be revised by mutual agreement of the Commission and the Village/City. The Commission shall own, operate, maintain, and replace such metering stations and all equipment and structures related thereto.

ii. Site of Point of Delivery Metering Station. The metering station for the Point of Delivery shall be located on the site of the Commission's **[DESCRIBE SITE]** at a location determined by the Commission. Water shall be delivered at atmospheric pressure such that an air gap exists between the Commission Waterworks System and the Village/City's System Connection Facilities.

iii. Access by Village/City. The Village/City shall have access to the metering stations for examination and inspection in a manner to be mutually agreed by the Parties. The reading of the meters for billing purposes, and the calibration and adjustment of the meters and other equipment in the metering stations, shall be done only by the employees or agents of the Commission at the cost of the Customer.

iv. Meter Reading. The Commission intends to read the meters in the metering station on the first day of each month.

B. Records. For the purpose of this Contract, the official record of readings of each meter at the metering station shall be the handwritten journal or other handwritten record book of the Commission in its office in which the records of the employees or agents of the Commission who take the readings are or may be transcribed. Upon written request of the Village/City, the Commission will give the Village/City a copy of such handwritten journal or handwritten record book, or permit the Village/City to have access thereto in the office of the Commission during regular business hours.

C. Calibration. The Commission shall calibrate its meters at least once in each Fiscal Year measuring the Potable Water delivered to the Village/City Waterworks System. If requested in writing by the Village/City to do so, said calibration shall be in the presence of a representative of the Village/City, and the Commission and the Village/City shall jointly observe any adjustments that are made to the meters in case any adjustments shall be necessary. If any check meters have been installed, then such check meters shall be calibrated by the Village/City, if requested in writing by the Commission to do so, at least once in each Fiscal

Year in the presence of a representative of the Commission, and the Commission and the Village/City shall jointly observe any adjustments that are made to the meters in case any adjustments shall be necessary.

D. Check Meters. The Village/City, at its option and its own expense, may install and operate a check meter to check each meter installed by the Commission. Notwithstanding the foregoing, the measurement of Potable Water for purposes of this Contract shall be solely by the Commission's meters, except in the cases hereinafter specifically provided to the contrary. All check meters shall be of standard make and shall be subject to inspection and examination by any employee or agent of the Commission at all reasonable times. The calibration and adjustment of check meters shall be made only by the Village/City, except during any period when a check meter may be used under the provisions hereunder for measuring the amount of Potable Water delivered to the Village/City, in which case the calibration and adjustment of such check meter shall be made by the Commission with like effects as if such check meter had been furnished and installed by the Commission.

E. Meter Malfunctions. If the Commission or the Village/City at any time observe a variation between a meter and a check meter or any evidence of meter malfunction, such party shall promptly notify the other party and the Commission and the Village/City shall then cooperate to procure an immediate calibration test and such adjustment, replacement, or other work necessary to return such meter to accuracy. The Party who discovers such variation or malfunction shall give the other Party notice not less than 72 hours prior to the time of any test of any meter (which tests shall be conducted, if practical, during normal working hours) so that the other Party may conveniently have a representative present. If such representative is not present after the required notification at the time set in such notice, calibration and adjustment may proceed in the absence of said representative notwithstanding any other provision of this Subsection. If the percentage of inaccuracy of any meter is found to be in excess of two percent between the check meter and the Commission meter, registration thereof shall be corrected by

agreement of the Commission and Village/City based upon the best data available, for a period extending back to the time when such inaccuracy began if such time is ascertainable, or for a period extending back one-half of the time elapsed since the last date of calibration (but in no event further back than a period of six months) if such time is not ascertainable.

If for any reason any meter is out of service or in disrepair so that the amount of Potable Water delivered cannot be ascertained or computed from the reading thereof, then the Potable Water delivered during the period such meter is out of service or in disrepair shall be deemed to be the registration of the check meter if one has been installed and is registering accurately, or, in the event that no check meter has been installed or the check meter is registering inaccurately, shall be estimated:

i. By correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculations; or

ii. If the error is not ascertainable by calibration tests or mathematical calculation, by estimating the quantity of delivery by considering deliveries during preceding periods under similar conditions when the meter or meters were registering accurately. During any period of such disagreement, the Commission's estimate of water delivered shall be used for the purpose of computing payments due under Section 7 of this Contract, and any adjustments based upon later resolution of such disagreement shall be made by appropriate adjustments to the Village/City's future payments pursuant to Section 7.

F. Removal of Metering Stations. Within **[90]** days after the termination of this Contract without renewal, the Commission, at its own expense and in its discretion, may remove the metering stations, including equipment, and any SCADA antennas and appurtenant facilities and release any perpetual easements therefor.

G. Removal of Transmission Mains. Within **[90]** days after the termination of this Contract without renewal, the Village/City, at its own expense, shall remove or abandon in place any the Village/City transmission mains and other equipment and appurtenances owned by the

Village/City that are located on Commission property or within the Commission service area. Any proposal by the Village/City to abandon in place shall be subject to the prior review and approval by the Commission. The Village/City shall be solely responsible for completing all restoration work necessary as a result of the removal of the same.

H. Meters for Village/City Customers. The Commission shall have no responsibility for ensuring that the Village/City customers have operable water meters meeting the standards of the American Water Works Association.

I. Right of Inspection. The Commission reserves the right to inspect the property of the Village/City to ensure that the Waterworks System is being operated consistent with the terms of this Contract, including but not limited to inspections to ensure there are no cross connections that threaten potential contamination to the Waterworks System and to ensure that the Waterworks System is otherwise fully in accordance with state and federal law. If the inspection discloses any code violations or threats to the Waterworks System, the Commission shall deliver the Village/City a notice at the address listed in Section 20 hereof of the Commission's intention to shut off the supply of water to the Village/City at the expiration of 48 hours after giving such notice unless within the 48 hour period the Village/City shall cure said violations or threats to the Waterworks System. The foregoing notwithstanding, in the event such code violations or threats to the Waterworks System constitute an emergency, the notice required of the Commission shall be no more than is reasonable under the circumstances.

SECTION 6 UNIT OF MEASUREMENT

The unit of measurement for Potable Water delivered hereunder shall be gallons of water, U.S. Standard Liquid Measure, and all measuring devices shall be so calibrated unless the Commission and the Village/City agree otherwise in writing. Should it become necessary or desirable to use other units of measurement, the basis of conversion shall be that 7.48 gallons is equivalent to one cubic foot.

SECTION 7 RATES AND TERMS OF PAYMENT

A. Rate. For the first year of this Agreement, the rate to be charged shall be a minimum of \$1.71/1,000 gallons. This rate is based on a 1) capital charge based on current capacity which is presently \$0.60/1000 gallons; 2) operation and maintenance costs of the Commission based upon actual usage which is presently \$1.11/1000 gallons; and 3) pass through costs for the costs of providing water pursuant to the Commission's contract with the City of Evanston ("Rate Formula").

B. Adjustments to Rate. Rates will be examined by the Commission and shall be subject to annual adjustment by the Commission pursuant to the formula set forth above.

C. Reserved.

D. Reserved.

E. Payment Obligation. Notwithstanding any other provision of this Contract, if at any time any Village/City shall fail to take from the Commission its Full Water Requirements for whatever reason, that Village/City shall nevertheless be deemed to be taking such Full Water Requirements from the Commission for purposes of determining payments due to the Commission for the purposes of elements 1 and 3 of the Rate Formula. The Village/City hereby acknowledges its unconditional obligation to make all payments coming due under this Contract on the basis of its Full Water Requirements regardless of whether all or any portion of its Full Water Requirements are or are not received from or delivered by the Commission, regardless of the reason for any failure to receive or deliver such Full Water Requirements.

F. True-Up. As to elements 2 and 3 of the Rate as set forth in Section 7(A) of this Contract, within 60 days prior to the end of the next fiscal year, the Commission shall determine any payment shortfall or overpayment by the Village/City for gallonage that was or was not purchased by the Village/City nor excused by *Force Majeure* and shall notify the Village/City of the amount due under this Contract for such shortfall for the preceding fiscal year. Any shortfall

amount shall be due and payable, and must be received at the offices of the Commission on or before the 10th day of the month following the month of the Commission's notification to the Village/City or within 28 days after the date of notification, whichever is later. In the event that Village/City is determined to have overpaid any amount, Village/City will receive a credit to be applied on its next following bill.

G. Bills and Due Date. The Commission shall notify the Village/City of the total amount due under this Contract for each quarter on the following basis: 30% (May 1); 30% (August 1); 20% (Nov 1); 20% (Feb 1). The Village/City's costs for each quarter shall be due and payable, and must be received at the offices of the Commission on or before May 1, August 1, November 1 and February 1, respectively.

H. Disputed Payments. If the Village/City desires to dispute any payment, or part thereof, due or claimed to be due under this Contract, the Village/City shall nevertheless pay the full amount of any such payment when claimed by the Commission to be due and shall provide written notification to the Commission that charges are disputed, the grounds for dispute, and the amount in dispute, not later than the due date of such payment. No adjustment or relief on account of any disputed charges shall be made unless disputed charges are the subject of such notice within the time herein specified, or within a reasonable period from the time the Village/City knew or should have known of the facts giving rise to the dispute. It is expressly understood and agreed that no dispute over payments due or claimed to be due under this Contract shall be referred to arbitration for review or settlement. Upon receipt of a notification of dispute, representatives of the Commission shall meet with representatives of the Village/City to resolve such dispute. In the event the dispute is resolved in favor of the Village/City, a credit will be made on the next bill of the Village/City.

I. Overdue Payments. If the Village/City shall fail to make any payment required under this Contract on or before its due date, and after notice and an opportunity to cure as set

forth herein has been exhausted, the Commission shall have the right to exercise any or all of the following three remedies:

i. Interest. The Commission, at its option and in its discretion may collect from the Village/City, and the Village/City shall pay to the Commission, interest on the amount of such payment, at the maximum legal rate payable, not to exceed the higher of:

a. the highest coupon rate of interest payable on all series of Commission Revenue Bonds any of which are then outstanding, plus 2%; or

b. 75% of the prime rate of interest from time to time established by the largest commercial bank, measured in terms of total assets, located and doing banking business in the State of Illinois. Such interest shall accrue and shall be compounded on a monthly basis from the date such payment becomes due until paid in full with interest as herein specified.

ii. Reduction or Discontinuance of Delivery. If such payment is not made by the Village/City within 30 days after the date such payment becomes due, then the Commission, at its option and in its discretion, and whether or not such payment is disputed, may reduce or discontinue delivery of Potable Water to the Village/City Waterworks System until the amount due the Commission is paid in full with interest as herein specified. The Commission shall give notice to the Village/City not less than 10 days prior to the event of its intention to reduce or discontinue delivery of Potable Water in accordance with this Subsection and shall provide the Village/City an opportunity for a hearing prior to any reduction or discontinuance. If the Commission reduces or discontinues the delivery of water under such circumstances, the Village/City shall continue to be liable to make all payments hereunder as if it were taking its Full Water Requirements.

iii. Security Deposit.

a. Purpose. If the Village/City is at any time in default on any payment due under this Contract and the default is not cured within 60 days after the due date

of the defaulted payment, then the Commission, at its option and in its discretion, may require Village/City, as a further obligation under this Contract, to deposit in a separate interest bearing account in the Commission's name, with authorized signatories as designated by the Commission's Executive Director, a sum of money in a reasonable amount determined by the Commission, as security for the payment of the Village/City's obligations hereunder. The Village/City's compliance with the Commission's demand for such a security deposit shall be a condition precedent to the curing of such Village/City's default and the restoration of the Potable Water service to the Village/City System, if such Potable Water service has been reduced or discontinued by reason of such default

b. Use; Restoration. The security deposit or any part thereof may be applied, at the Commission's option and in its discretion, to any subsequent default by the Village/City in any payments due under this Contract. If so applied, the Village/City shall provide funds immediately to restore the security deposit to the amount required by the Commission.

c. Return. At the earliest of the end of the term of this Contract, or a term of two years after the curing of the most recent default by the Village/City, or such earlier time that the Commission at its option and in its discretion may determine, any security deposit with all accrued interest shall be returned to the Village/City if the Village/City has performed all its obligations under this Contract.

J. Beginning of Obligation to Pay. Notwithstanding any other provision of this Contract, the Village/City's obligation to make any and all payments under this Contract shall begin with the issuance by the Commission of the first bill issued after the first delivery of water to the Village/City Waterworks System or any portion thereof. This obligation includes, but it not limited to, any water used to test or prepare the Village/City System.

K. Rate Agreed to be Reasonable. The Village/City agrees that it has had an opportunity to conduct its own studies and evaluation of the rates to be charged under this Contract. The Village/City recognizes and acknowledges that as a customer it has not incurred

the same risks nor undertaken the same financial obligations with regard to the Commission Waterworks System as the Member Municipalities. The Village/City further unconditionally agrees that the rates in this Contract are reasonable and non-discriminatory and hereby expressly waives any and all claims challenging the rates in any way.

L. Commission Charges and Rates Covenant. The Commission hereby covenants to establish such charges and rates for water supplied to the Village/City as will be sufficient at all times (1) to pay the costs of operation and maintenance of the Commission Waterworks System; (2) to provide an adequate depreciation fund for the Commission Waterworks System as determined by the Commission on the basis of its statutory duties and its obligations under the Bonds and ordinance or ordinances authorizing the issuance of the Bonds; (3) to pay the principal of, at maturity or pursuant to mandatory redemption requirements, premium, if any, and interest on the Bonds; (4) to comply with the covenants of the ordinance or ordinances authorizing the issuance of the Bonds; and (5) to carry out its corporate purposes and powers.

For purposes of this Paragraph L, a "sufficient" amount shall mean an amount adequate, when taken together with any and all other amounts available, in the sole discretion of the Commission, to enable the Commission to meet its obligations and responsibilities as they come due, including without limitation the making of all deposits required to be made under the ordinance or ordinances authorizing the issuances of the Bonds and for maintenance of a reserve fund.

M. Village/City Charges and Rates Covenant. Village/City hereby covenants to establish such charges and rates for water supplied by the Village/City to consumers as will be sufficient at all times (a) to pay the costs of operation and maintenance of the Village/City Waterworks System, (b) to provide an adequate depreciation fund therefor, (c) to pay the principal of and interest on all revenue bonds of the Village/City payable from the revenues of the Village/City Waterworks System, (d) to pay the charges and rates established by the Commission for the sale of water by the Commission to the Village/City. The Village/City agrees

to approve initial rates sufficient to satisfy this rate covenant not later than 30 days after execution of this Contract.

N. Character of Payment Obligations as Water Revenue Obligations. This Contract shall not be construed to constitute an indebtedness of the Village/City within the meaning of any statutory or constitutional limitation. It is expressly understood and agreed that all payments to be made hereunder by the Village/City may be required to be made only from revenues to be derived from the operation of its Village/City Waterworks System, and this Contract shall be a continuing, valid and binding obligation of the Village/City payable from such revenues throughout the term hereof. Without in any manner limiting the foregoing provisions of this Paragraph N, it is also expressly understood and agreed that the aforesaid revenues from the operation of the said Village/City Waterworks System shall remain available for payments due or claimed to be due under this Contract without regard to any designation of such revenues by the Village/City from time to time as operating revenue, retained earnings, reserves, surplus or otherwise. Nothing in this Paragraph N or this Contract shall, however, prohibit any Village/City from using any other legally available funds for payments due hereunder.

O. Character of Payment Obligations as Operating Expenses. Inasmuch as obtaining water is an essential item of expense of a waterworks system, Village/City hereby represents and covenants that all payments required to be made by it pursuant to the provisions of this Contract shall constitute operating expenses of its Village/City Waterworks System and that such payments will constitute operation expenses as to any and all revenue bonds of that Village/City which are supported in whole or in part by a pledge of the revenues of its Village/City Waterworks System, with the effect that such Village/City's obligation to make payment from its water revenues under this Contract has priority over its obligation to make payments of the principal of any interest on any such bonds which are or will be supported in whole or in part by a pledge of that Village/City's Waterworks System revenues. Consistent with this Paragraph O, Village/City hereby covenants and agrees that from and after the date of this

Contract, any ordinance or resolution to be passed by it authorizing the issuance of Village/City obligations to be paid from the revenues of its Village/City Waterworks System shall expressly provide that the revenues of the Village/City Waterworks System may be used to pay the principal of and interest on such obligations only to the extent that those revenues exceed amounts require to pay the operating expenses of the Village/City Waterworks System, including all payments to be made by it under this Contract regardless of whether water is being delivered or is ever delivered to the Village/City hereunder. Without in any manner limiting the foregoing provisions of this Paragraph O, it is also expressly understood and agreed that the obligation of the Village/City under this Contract shall be enforceable against and collectable from any monies from time to time available in any of the various accounts and funds, including reserve and surplus accounts, maintained by the Village/City in connection with the Village/City Waterworks System.

SECTION 8 SPECIAL CONDITIONS AND COVENANTS

A. No Liability for Unintentional Delay. The Village/City acknowledges and agrees that the Commission shall not be liable to the Village/City nor any of the Village/City's customers for any damages occasioned by or in any way related to delay or failure in the delivery of Potable Water to the Village/City System.

B. Title to Potable Water. Title to all Potable Water supplied hereunder shall remain in the Commission to the Point of Delivery and thereupon shall pass to the Village/City.

C. Other Supply; Emergency Supply. The Village/City may not contract with any other unit of local government or any other entity for purchase of Potable Water; provided, however, that the Village/City may, subject to Commission review and approval, contract for a temporary supply of water in case of an emergency from any unit of local government or any other entity. The Village/City shall notify the Commission and shall promptly provide the Commission with copies of all such contracts.

D. Covenants to Be Set Out in Bond Ordinances. The Village/City acknowledges the existence, and its understanding of the provisions, of certain Bond Ordinances pursuant to which the Commission has previously issued its Bonds, including, without limitation; **[LIST OF ORDINANCES]**. The Village/City further acknowledges and agrees that the Bond Ordinances and future Bond Ordinances grant to bondholders certain rights and duties of the Commission, and that such bondholder rights may be included in any subsequent Bond Ordinances.

E. Other Financial Obligations of Village/City System.

i. Payment Obligations. The Village/City shall make all budgetary, emergency, and other provisions and appropriations necessary to provide for and authorize the prompt payment to the Commission of all amounts under this Contract.

ii. Future Village/City Debt. In any revenue bond, indenture, or other evidence of indebtedness hereafter issued by the Village/City, the obligation for payment established pursuant to this Contract shall be expressly provided and set forth in the ordinances or resolutions providing for the issuance of such bonds, indentures, or other evidence of indebtedness.

F. Maintenance of Village/City's Existence. The Village/City's corporate authorities agree that, during the term of this Contract, the Village/City will maintain its existence as a municipal corporation, it will continue to be a municipal corporation in good standing in the State of Illinois, it will not voluntarily dissolve or otherwise dispose of all or substantially all of its assets, and, unless the Village/City shall be the surviving entity, it will not consolidate with or merge into any other legal entity or permit any other legal entity to consolidate with or merge into it; provided, however, that the Village/City may consolidate with or merge into another legal entity, or permit one or more legal entities to consolidate with or merge into it, or sell or otherwise transfer to another legal entity all or substantially all of its assets as an entirety and thereafter dissolve, if, but only if, the Village/City first provides the Commission with (i) a transferee assumption agreement, in form and substance conforming with Exhibit E attached, in

which the new entity agrees to accept all the rights, duties, and obligations of the Village/City under this Contract; (ii) evidence that the surviving, resulting, or transferee legal entity, as the case may be, is a legal entity organized and existing under the laws of one of the states of the United States of America or the District of Columbia, is qualified to do business in the State of Illinois, and has a consolidated net worth immediately subsequent to such acquisition, consolidation, or merger at least equal to that of the Village/City immediately prior to such acquisition, consolidate, or merger; (iii) evidence that such consolidation, merger, sale, or transfer will not affect the tax exempt status of the interest on any Bonds of the Commission; and (iv) certificates from the chief financial officer and the general counsel of the Village/City that in the opinion of each such officer none of the covenants, agreements, or obligations contained in this Contract will be violated as a result of such consolidation, merger, sale, or transfer.

G. Village/City Jurisdiction. The Village/City shall not expand the territory within its jurisdiction and boundaries to include all or any part of any of the properties identified on Exhibit [] or serve any customers outside of its Municipal boundaries without the express prior written agreement of both Parties to this Contract.

H. Maintenance and Operation of Village/City System. The Village/City shall own and maintain the Village/City Waterworks System, and all improvements and extensions of said System, in good repair and working order, shall operate said System efficiently, shall take all steps reasonably necessary so that said System may at all times be operated properly and advantageously, and shall punctually perform all duties with respect to said System as may be required by this Contract, and by the Constitution and laws of the United States of America and the State of Illinois and all other applicable laws. In addition, Village/City shall carry insurance or other risk management protection on its Village/City Waterworks System of the kinds and in the amounts which are customarily carried by parties operating similar facilities.

I. Regulations Equivalent to Village Regulations. The Village/City shall enact regulatory measures regarding the supply and use of Potable Water within the Village/City, including, without limitation, lawn sprinkling, that are at least as restrictive as the strictest among those adopted by the Commission, or any other entities with jurisdiction.

J. Accounting and Audit. The Village/City shall, within six months after the close of each of its fiscal years occurring during the term of this Contract, provide to the Commission complete annual audited financial statements of the Village/City, which may be on a consolidated basis, duly certified by the Village/City's independent certified public accountants.

K. Maintain Ownership of Village/City Waterworks System. Subject to the proper exercise by a governmental authority of its powers of eminent domain including its power to acquire property in lieu of obtaining judgment in an eminent domain action, the Village/City shall continue to own and possess the Village/City Waterworks System and, within the exercise of reasonable business judgment and in a manner so as not to cause a default hereunder, shall dispose of property which is part of said System only to the extent that such property is no longer useful or profitable in the operations of said System and with approval of the Commission, which approval shall not be unreasonably withheld.

L. No Sale of Water System. The Village/City shall not sell or otherwise convey the Village/City Waterworks System or any portion thereof, or enter into an agreement for the sale of the Village/City Waterworks System or any portion thereof, unless such sale or conveyance is to the Commission.

M. Obtain and Maintain Water Allocation. Unless otherwise agreed upon and approved by the Commission, the Village/City shall use its best efforts to obtain or retain, from time to time, a Water Allocation for the Village/City System less than or equal to, but not in excess of, the Village/City System's Full Water Requirements from time to time. In the event that the Illinois Department of Natural Resources, at any time before or during the term of this Contract, enters an order granting to the Village/City an allocation of water from Lake Michigan

in excess of the Village/City's Full Water Requirements as established by this Contract, the Village/City shall, within 30 days after entry of such an order, apply for a reduction in the Village/City's Water Allocation to a level that shall not exceed the Village/City's Full Water Requirements under this Contract. The Village/City shall promptly respond to all inquiries from, and comply with all requirements of, the Illinois Department of Natural Resources in connection with its Water Allocation. The Village/City shall promptly notify the Commission of all actions taken pursuant to this Subsection.

N. Release and Indemnification. The Village/City hereby releases the Commission from, agrees that the Commission shall not be liable for, and agrees to indemnify and hold the Commission harmless from: (1) any liabilities for any loss or damage to property or any injury to, or death of, any person that may be occasioned by or related to any cause whatsoever pertaining to the provision of water under this Contract, construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Village/City Waterworks System or the Connection Facilities or (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of the Village/City to comply with its covenants or obligations contained in this Contract, including, in each such case, any attorneys' fees. The Village/City agrees to indemnify and hold the Commission and the Commissioners individually harmless to the fullest extent permitted by law from any losses, costs, charges, expenses (including attorneys' fees), judgments, and liabilities incurred by the Commission in connection with any action, suit, or proceeding instituted or threatened by any third party in connection with this Contract. If any such claim is asserted, the Commission shall give prompt notice to the Village/City, and the Village/City, if requested by the Commission, shall assume the defense thereof, it being understood, however, that the Village/City shall not settle or consent to the settlement of any such claim without the written consent of the Commission and that the Commission shall be entitled to choose the counsel for any such defense. This

paragraph shall in no way be construed to be nor shall it be a waiver of any immunity that the Commission and/or Village/City may assert to any such claims.

O. Assignment of Litigation. The Village/City shall promptly notify the Commission of any litigation or administrative or other proceeding concerning this Contract or which may in any way limit any Party's ability to perform any of the obligations of this Contract. Upon request of the Commission, the Village/City shall promptly assign to the Commission the right to prosecute, defend or intervene in any litigation or administrative or other proceeding, to which the Village/City is a party or in which the Village/City is involved, that involves or arises out of the limitation of the party's obligation as set forth in this Contract. Upon assignment, the Commission shall be responsible for all costs and expenses of the litigation or administrative or other proceeding.

P. Rate of Withdrawal. The Village/City will take Potable Water at the most uniform and continuous rate of withdrawal practicable.

Q. Status as Customer. The Village/City recognizes that it is a customer and not a member of the Commission. The Village/City understands and agrees that it has no claim to any assets of the Commission or its Members.

SECTION 9 SCHEDULE FOR COMPLETION OF VARIOUS FACILITIES

A. Plans and Specifications for Village/City System Connection Facilities. The Village/City shall prepare, and submit to the Commission for its review and approval, complete detailed plans, specifications, and construction contract documents for the Village/City System Connection Facilities not later than **[90]** days after the date on which the Village/City closes on the issuance of the Village/City Bonds. The Commission shall provide its comments and revisions to the Village/City within **[30]** days after receipt of such documents. The Village/City shall make all required changes to such documents to ensure compliance with this Contract within **[30]** days after receipt of the Commission's comments and revisions.

B. IEPA and Other Approvals For Village/City System Connection Facilities. The Village/City shall, within **[40]** days after receipt of the Commission's comments and revisions pursuant to Subsection 9A above, submit such finally revised documents for approval and permitting to the Illinois Environmental Protection Agency (the "IEPA") and every other federal, state, or local governmental body having jurisdiction over any element of the Village/City System Connection Facilities, and shall diligently pursue each such approval and permit until it is secured.

C. Commencement of Construction of Village/City System Connection Facilities. The Village/City shall cause construction of the Village/City System Connection Facilities to be commenced within **[90]** days after the date on which the Village/City closes on the issuance of the Village/City Bonds and receipt of the last approval from any governmental body required as a condition precedent to construction of the Village/City System Connection Facilities. The Village/City shall cause construction to be substantially completed within **[240]** days after commencement.

D. Transfer of Property Rights.

i. Conveyance of Village/City Easement. The Village/City shall grant to the Commission all necessary easements for the Commission metering stations and other facilities to be constructed pursuant to this Contract.

ii. Acquisition of Property. The Village/City shall commence all actions necessary to acquire all property rights not already owned by it necessary to fulfill the requirements of this Contract.

E. Commencement of Construction of Commission Connection Facilities. The Commission shall cause design of the Commission Connection Facilities to be commenced within **[30]** days after receipt from the Village/City of the final plans, specifications, and construction contract documents for the Village/City System Connection Facilities or **[30]** days after acquisition of all rights-of-way and other property required for the installation of the

Commission Connection Facilities, whichever is later. The Commission shall cause construction to be completed within **[540]** days after commencement of design as herein required or **[360]** days after receipt of the last approval from any governmental body required as a condition precedent to construction of the Commission Connection Facilities, whichever is later.

SECTION 10 ASSIGNABILITY

A. Assignment by Village/City. The Village/City shall not assign or transfer this Contract or any rights or interests herein without the advance written consent of the Commission.

B. Assignment by the Commission. The right to receive all payments that are required to be made by the Village/City to the Commission in accordance with the provisions of this Contract may be assigned by the Commission to any Trustee as provided in any Bond Ordinance to secure the payment of the principal of and the premium, if any, and interest on the Bonds as those amounts come due, subject to the application of those payments as may be provided in any Bond Ordinance. The Village/City, upon notice of assignment to any such Trustee, shall make all payments directly to such Trustee. Further, the rights of the Commission to enforce the provisions of this Contract may be assigned to any such Trustee and, in such event, such Trustee shall have the right to enforce this Contract at law or in equity with or without the further consent or participation of the Commission. The Commission also may retain the right to enforce this Contract.

SECTION 11 FORCE MAJEURE

If by reason, of *Force Majeure*, either Party to this Contract shall be rendered unable wholly or in part to carry out its obligation under this Contract, then if such Party shall give notice and full particulars of such *Force Majeure* in writing to the other Party within a reasonable time after occurrence of the event or cause relied on, the obligation of the Party giving such notice, so far as it is affected by such *Force Majeure*, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such Party shall

endeavor to remove or overcome such inability with all reasonable dispatch. The settlement of strikes and lockouts shall be entirely within the discretion of the Party having the difficulty and the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing Party or Parties when such settlement is unfavorable to it in the judgment of the Party having the difficulty.

SECTION 12 COMMISSION DEFAULTS

Failure by the Commission to deliver Potable Water to the Village/City as required by this Contract for a period of seven days after written notice from the Village/City to the Commission of such failure, or a failure of the Commission to perform any other obligation under this Contract for a period of 60 days after written notice from the Village/City to the Commission of such failure, shall be a default of the Commission under this Contract, unless any such failure is excused or exercised pursuant to this Contract. If the Commission defaults under this Contract, then the Village/City may bring any action against the Commission allowed by law.

SECTION 13 VILLAGE/CITY OBLIGATION UNCONDITIONAL

The Village/City shall have no right to terminate, cancel, or rescind this Contract, except for the right of termination in the event the Commission is unable to provide water to the Village/City for a period of sixty (60) days after the commencement of water service; no right to withhold from the Commission or any Trustee who is an assignee of the Commission pursuant to this Contract payments due or to become due under this Contract; no right to recover from the Commission or any such Commissioner amounts previously paid under this Contract unless paid in error or contrary to the provisions of this Contract or law; no right of reduction or set-off against the amounts due or to become due under this Contract to the Commission; and no lien on any amounts in any fund established by the Commission for any reason or on account of the existence or occurrence of any event, condition, or contingency, whether foreseen or

unforeseen or foreseeable or unforeseeable by the Village/City or the Commission or any other person. It is the intent hereof that the Village/City shall be absolutely and unconditionally obligated to make all payments under this Contract except as otherwise expressly provided in this Contract. The Commission may issue its Bonds in specific reliance on the limitations set forth in this Section with respect to the rights of the Village/City.

SECTION 14 TAX COVENANTS

At no time shall the Village/City permit use of the Village/City System, as a result of (i) ownership, (ii) actual or beneficial use pursuant to a lease or a management, service, incentive payment or output contract, or (iii) any other similar arrangement, agreement or understanding, whether written or oral, so that such use would prevent the Commission from issuing Bonds as "governmental use" bonds within the meaning of Section 141 of the Internal Revenue Code of 1986. Furthermore, the Village/City shall not take any action, or omit to take any action lawful and within its power to take, which action or omission would cause interest on any of the Commission's Bonds to become subject to federal income taxes in addition to federal income taxes to which interest on such Bond is subject on the date of original issuance thereof. Additionally, the Village/City shall use its best efforts to ensure that none of its debt obligations, including, without limitation, the Village/City Bonds, ever become "private activity bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986.

SECTION 15 COOPERATION IN ISSUANCE OF OBLIGATIONS

The Village/City and the Commission shall cooperate with each other in the issuance of their respective debt obligations. Each shall comply with all reasonable requests of the other and shall, upon reasonable request of the other

- A. Make available general and financial information about itself; and
- B. Consent to publication and distribution of its financial information; and
- C. Certify that general and financial information about it is accurate, does not contain an untrue statement of a material fact, and does not omit to state a material fact

necessary in order to make the statements in that information, in light of the circumstances under which they were made, not misleading; and

D. Make available certified copies of official proceedings; and

E. Provide reasonable certifications to be used in a transcript of closing documents; and

F. Provide and pay for reasonably requested opinions of counsel of its choice as to the validity of its actions taken with respect to and the binding effect of this Contract, title to the applicable system, pending or threatened litigation which could materially affect its performance hereunder, and other reasonably related opinions. The first such opinion that is requested by each party shall be at opposite party's sole cost and expense. Subsequent opinions shall be at the sole cost and expense of the requesting party.

The provisions of Subsection A of this Section shall be deemed satisfied by delivery of a complete set of the annual audited financial statements for the most recently completed fiscal year, duly certified by independent certified public accountants.

SECTION 16 REGULATORY BODIES

The Commission and the Village/City through this Contract seek to exercise and maintain all sovereign rights granted to them under and through the Constitution and laws of the State of Illinois. This Contract shall be subject to all valid rules, regulations, and laws applicable hereto passed or promulgated by the United States of America, the State of Illinois, any governmental body or agency having lawful jurisdiction, and any authorized representative or agent of any of them; provided, however, that this clause shall not be construed as waiving the right of either party to challenge the validity of such rule, regulation, or law on any basis, including the impairment of this Contract.

SECTION 17 OTHER WATER SUPPLIERS

Notwithstanding any of the provisions of this Contract, the Commission is not prohibited by this Contract from entering into cooperative arrangements with other suppliers or users of

Potable Water to provide Potable Water to each other to meet each other's water needs, provided that these arrangements do not interfere, except in emergencies, with the delivery of Potable Water to the Village/City System.

SECTION 18 EFFECTIVE DATE: TERM

A. Effective Date. Except for the provisions of Section 9 of this Contract relating to the commencement of certain work following execution of this Contract, as to which provisions this Contract shall be effective immediately after authorization and execution by both parties hereto.

B. Term. This Contract shall continue in force and effect for a period of 40 years from the Effective Date.

C. Renewal. This Contract may be renewed by mutual agreement of the parties for additional five (5) year terms; provided that the party desiring renewal notifies the other party of its desire to renew the Contract not less than 18 months or more than 19 months prior to the termination of the original or any renewal term.

SECTION 19 TERMINATION

A. By Commission. Notwithstanding any other provision of this Contract, upon the occurrence of any of the following events, the Commission, in its sole discretion, may terminate this Contract at any time during its term, in which event the Commission shall give notice to the Village/City not less than ninety (90) days prior to the event of its intention to terminate this Contract and discontinue the delivery of Potable Water and shall provide the Village/City an opportunity for a hearing before the Commission prior to the effective date of such termination and discontinuance and, upon conclusion of the hearing, this Contract may be of no further force or effect:

i. If the Illinois Department of Natural Resources grants an allocation of water from Lake Michigan to supply the Village/City System that is in excess of the Village/City's Full Water Requirements and the Village/City fails to apply for a reduction in such water

allocation as required, in Subsection 8N of this Contract unless the Commission has consented to the increased allocation; or

ii. If the Village/City fails to make any payment required under this Contract on or before its due date; or

iii. Termination of the Commission; or

iv. Threat to the Commission Waterworks System; or

v. Threat to the Village/City Waterworks System.

SECTION 20 GENERAL

A. Governing Law. This Contract and the rights of the parties hereunder shall be interpreted and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

B. Notices. Unless expressly provided otherwise herein, all notices and other communications in connection with this Contract shall be in writing, and shall be deemed delivered to the addressee thereof when delivered in person at the address set forth below, or three business days after deposit thereof in any main or branch United States post office, overnight express delivery, or mailed by United States registered mail or certified mail, postage prepaid, properly addressed to the parties, respectively, as follows:

For notices and communications to the Commission:

Northwest Water Commission
1525 N Wolf Road Des Plaines,
IL 60016-1181 Attention:
Executive Director

For notices and communications to Village/City:

[ADDRESS OF CUSTOMER]

By notice complying with the foregoing requirements of this Subsection, each party shall have the right to change the address or addressee, or both, for all future notices and

communications to such party, but no notice of a change of address shall be effective until actually received.

C. Calendar Days and Time. Any reference herein to "day" or "days" shall mean calendar and not business days. If the date for giving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday or federal holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday or federal holiday. Any reference herein to time of day shall refer to local time for Des Plaines, Illinois.

D. Entire Agreement. This Contract, including the exhibits hereto, contains the entire agreement between the Parties hereto with respect to the transactions contemplated by this Contract and matters related thereto, and does hereby supersede and render null and void and of no further force or effect any and all prior agreements, drafts of agreements and understandings between the Parties.

E. Amendments. This Contract may not be modified or amended except by a written instrument executed by each of the parties hereto. No such modification or amendment shall materially impair or adversely affect the ability or obligation of the Village/City to make payments to the Commission to meet the Commission's obligations under the Bond Ordinances.

F. Further Action. Each of the Parties hereto agree from time to time to execute and deliver such further instruments, and to take such further action not inconsistent with the provisions of this Contract, as may reasonably be necessary in order to fully perform and carry out the terms and intent hereof.

G. Captions. The headings, titles or captions contained in this Contract have been inserted only as a matter of convenience and for reference, and such captions in no way define, limit, extend or describe the scope of this Contract or the intent of any provision hereof.

H. Exhibits. Exhibits A through [] attached hereto are, by this reference, incorporated herein. In case of any conflict between an Exhibit to the Contract and the text of this Contract, the text of this Contract shall control. The Parties recognize that Exhibits [] are not in final form as of the date of execution of this Contract. When such exhibits are in final and approved by both Parties, they shall be deemed to be incorporated into this Contract.

I. Changes in Laws. Unless otherwise explicitly provided in this Contract, any reference to laws, ordinances, rules, or regulations shall include such laws, ordinances, rules, or regulations as they may be amended or modified from time to time hereafter.

J. Time is of the Essence. Time is of the essence in the performance of all terms and provisions of this Contract.

K. Pending Lawsuits. There are no agreements in effect and no lawsuits pending or, to the best of either Parties' knowledge, threatened, that would materially and adversely affect the ability of either Party to fulfill the terms of this Contract.

L. Responsible Party. The Village/City shall notify and keep the Commission informed of the responsible individual(s) in charge of water operations for the Village/City. This individual shall be available 24 hours, 7 days per week in the case of an emergency. Initially, the Village/City designates _____ and _____ as said responsible individual(s) until such time as notice is given to the Commission as provided in Section 20 hereof.

M. Commission Exemptions. Village/City recognizes the Commission as a municipal corporation. Accordingly, the parties agree that the Commission shall be exempt from the zoning and permitting authority of the Village/City. Further, for any projects performed in furtherance of this Contract, the Commission shall not be charged any fees/or costs.

N. Severability. In the event any part or portion of this Contract, or any provision, clause, wording or designation contained within this Contract, is held to be invalid by a court of competent jurisdiction, such part, portion, provision, clause, wording or designation shall be

deemed to be excised from this Contract and the invalidity thereof shall not affect the remainder of this Contract.

IN WITNESS WHEREOF, the Parties hereto have caused their respective corporate names to be subscribed hereto and their respective corporate seals to be affixed hereto and attested by their duly authorized officers, all on the date first shown above.

NORTHWEST WATER COMMISSION

By: _____

(SEAL)

ATTEST:

CLERK

[NAME OF CUSTOMER]

By: _____
[TITLE]

(SEAL)

ATTEST:

CLERK

LIST OF EXHIBITS

- Exhibit A: Village/City System
- Exhibit B: Preliminary Plan for the Commission Connection Facilities, Village Connection Facilities, and the Point of Delivery
- Exhibit C: Form of Transmission Main Easement Agreement
- Exhibit D: Form of Metering Station Easement Agreement
- Exhibit E: Form of Transferee Assumption Agreement

EXHIBIT A

VILLAGE/CITY SYSTEM

[TO BE INSERTED WHEN FINALIZED AND APPROVED BY BOTH PARTIES]

EXHIBIT B

**PRELIMINARY PLAN FOR THE
COMMISSION CONNECTION FACILITIES,
VILLAGE CONNECTION FACILITIES, AND THE POINT OF DELIVERY**

[TO BE INSERTED WHEN FINALIZED AND APPROVED BY BOTH PARTIES]

EXHIBIT C

**FORM OF
TRANSMISSION MAIN EASEMENT AGREEMENT**

[IF NECESSARY]

EXHIBIT D

**FORM OF
MERGING STATION EASEMENT AGREEMENT**

[IF NECESSARY]

EXHIBIT E

FORM OF
TRANSFeree ASSUMPTION AGREEMENT

THIS AGREEMENT is dated as of this ___ day of _____, 201___, and is made and entered into by, between and among the **NORTHWEST WATER COMMISSION**, an Illinois water commission and public corporation organized and existing under the Illinois Constitution of 1970 and Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135/1 *et seq.* (2010) ("**Commission**"), and [**NAME OF CUSTOMER**], a municipal corporation organized and existing under the Illinois Constitution of 1970 and the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.* (2010) ("**Village/City**") and [**NAME AND DESCRIPTION OF ASSUMING ENTITY**].

1. **BACKGROUND.**

A. The Commission and the Village/City have entered into a certain Water Purchase and Sale Contract dated _____, 20__ (the "Contract").

B. Subsection 8F of the Contract provides that the Village/City may consolidate with or merge into any other legal entity, or permit any other legal entity to consolidate with or merge into it, or sell or otherwise transfer to another legal entity all or substantially all of its assets as an entirety and thereafter dissolve, only upon the performance of certain obligations and compliance with certain requirements, including, without limitation, providing to the Commission a transferee assumption agreement in which the new entity agrees to accept all the rights, duties, and obligation of the Village/City under the Contract.

C. The Village/City has proposed to [**describe proposal**] and has provided this Transferee Assumption to the Commission pursuant to the Contract.

D. The Commission has reviewed the materials provided by the Village/City [**and the assuming entity**] pursuant to the Contract and has concluded that the Village/City

[and the assuming entity] have met the obligations and requirements of the Contract in connection with the proposed **[describe proposal]**.

2. **ASSUMPTION OF OBLIGATIONS. [NAME OF ASSUMING ENTITY]**, on its behalf and on behalf of its successors, assigns, heirs, executors and administrators, hereby agree, at their sole cost and expense, to comply with all of the terms, requirements and obligations of the Contract, including all amendments and exhibits thereto.

3. **ACKNOWLEDGEMENT AND RELEASE OF VILLAGE/CITY.** The Commission hereby acknowledges its agreement to the assumption of the obligation to comply with the terms, requirements and obligations set forth in the Contract, including all amendments, and exhibits thereto.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the date first above written.

ATTEST:

NORTHWEST WATER COMMISSION

By: _____

ATTEST:

[NAME OF CUSTOMER]

By: _____

ATTEST:

[NAME OF ASSUMING ENTITY]

By: _____

ACKNOWLEDGEMENTS

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

This instrument was acknowledged before me on _____, 20__, by _____, the Chairman of the **NORTHWEST WATER COMMISSION**, an Illinois water commission and body politic and corporate, and by _____, the Clerk of said Commission.

Signature of Notary

SEAL

My Commission expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

This instrument was acknowledged before me on _____, 20__, by _____, President of the [**NAME OF CUSTOMER**], an Illinois municipal corporation, and by _____, Secretary of said municipal corporation.

Signature of Notary

SEAL

My Commission expires: _____

[Acknowledgment for Assuming Entity]