



AGENDA – Administration Committee

Thursday, February 15, 2024

5:45 PM

- I. Roll Call
- II. Approval of the January 18, 2024 Administration Committee Minutes

RECOMMENDED MOTION: To approve the Minutes of January 18, 2024 Administration Committee Meeting of the DuPage Water Commission.

- III. Ordinance O-1-24: Recommendation to Approve the Amended and Restated DuPage Water Commission By-laws
- IV. Resolution No. R-11-24: A Resolution notifying Chicago of the 17-year renewal of the Water Purchase Contract between the DuPage Water Commission and the City of Chicago
- V. Resolution No. R-16-24: A Resolution Authorizing the Approval of an Addendum to the Water Purchase and Sales Agreement with Aqua Illinois, Inc.
- VI. Resolution No. R-17-24: A Resolution Authorizing the Approval and execution of Wheeling Agreements between Illinois American Water Company, the DuPage Water Commission, and six Contract Customers.
- VII. Old Business
- VIII. New Business
- IX. Other
- X. Adjournment

Minutes of a Meeting
of the

ADMINISTRATION COMMITTEE

DuPage Water Commission
600 E. Butterfield Road, Elmhurst, Illinois

January 18, 2024

- I. Commissioner Rush called the meeting to order at 6:17 PM.

Commissioners in attendance: N. Cuzzone, K. Rush, D. Van Vooren, J. Zay

Commissioners absent: J. Healy

Also in attendance: P. May, D. Mundall

- II. Commissioner Cuzzone moved to approve the Minutes of the November 16, 2023, Administration Committee Meeting, seconded by Commissioner Van Vooren, unanimously approved by a voice vote. All aye, motion carried.
- III. Commissioner Van Vooren made a motion to approve a Request for Board Action, Professional Development Travel and Expenses, to Approve/Ratify the Estimated Expenditures as listed in the approved FY-23/24 Management Budget and as listed, seconded by Commissioner Cuzzone. All aye, motion carried.
- IV. Commissioner Cuzzone made a motion to a Request for Board Action Recommendation to Receive and perform First Reading of the Amended and Restated DuPage Water Commission By-laws, seconded by Commissioner Van Vooren. Unanimously approved by a voice vote, all aye, motion carried.
- V. Commissioner Van Vooren made a motion to approve R-3-24, A Resolution Suspending the Purchasing Procedures and Authorizing the Execution of a Consulting Agreement with IT Savvy LLC for IT Network Managed Services, in the amount of \$ 70,206. Seconded by Commissioner Cuzzone unanimously approved by a voice vote. All aye, motion carried.
- VI. Commissioner Cuzzone made a motion to approve R-8-24, A Resolution Approving Water Purchase and Sale Contract with Contract Customers, for a Term Expiring on February 24, 2064. Seconded by Commissioner Van Vooren. Unanimously approved by a voice vote, all aye, motion carried.
- VII. Commissioner Cuzzone made a motion to approve R-9-24, the First Amendment to DuPage Water Commission Emergency Interconnection Agreement with the Village of

Schaumburg. Seconded by Commissioner Van Vooren, unanimously approved by a voice vote, all aye, motion carried.

VIII. Commissioner Van Vooren made a motion to approve R-10-24, an Addendum to Water Purchase and Sale Contract with UChicago Argonne, LLC. Seconded by Commissioner Cuzzone, unanimously approved by a voice vote, all aye, motion carried.

IX. Old Business

General Manager May updated the Committee on the Source Water Project and the Contract Customer's legislative response. The February agenda will have the Wheeling agreements for approval, second reading of bylaws and Committee of the Whole to review the budget. The Chicago contract will also be presented for approval.

X. New Business

No New Business was offered.

XI. Other

XII. Adjournment

Commissioner Van Vooren moved to adjourn the meeting at 6:24 PM, seconded by Commissioner Cuzzone, unanimously approved by a voice vote. All aye, motion carried. Meeting adjourned.



Ordinance #: O-01-24

Account: N/A

Approvals: *Author / Manager / Finance / Admin*

PDM - CAP PDM

REQUEST FOR BOARD ACTION

Date: 2/6/2024

Description: Recommendation to approve Ordinance O-01-24; Amended and Restated DuPage Water Commission By-laws

Agenda Section: Administration Committee

Originating Department: Administration

Concurrently with the approval of the new Water Purchase and Sale Contract, staff recommend updating the Commission By-laws to retain continuity with the new contract and current Commission practices.

DWC staff and legal counsel have reviewed the current bylaws including any previous amendments and have made updates which are illustrated in the attached red-line and clean documents. While the Bylaws remain very similar to the previous document, some changes have been proposed for the purposes of clarity, to better document current Commission practices/procedures, and to maintain continuity with the new Water Purchase and Sale contract.

In accordance with Article XII, Section 2 of the current By-Laws, an amended document is hereby submitted with a recommendation for approval. The document presented herewith is identical to the document presented to the Administration Committee on 1/18/22, with the exception of minor typographical, clarification, and grammatical changes.

Recommended Motion:

Approve the Amended and Restated DuPage Water Commission By-laws.

DUPAGE WATER COMMISSION

ORDINANCE NO. O-1-24

AN ORDINANCE APPROVING AMENDMENTS TO THE DUPAGE WATER COMMISSION BYLAWS

WHEREAS, the DuPage Water Commission (the “Commission”) was formed and exists pursuant to the Water Commission Act of 1985, 70 ILCS 3720/0.01 et seq., and Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 et seq., for the purpose of securing an adequate source and supply of water for its customers; and

WHEREAS, the Commission previously adopted Bylaws for the management and operation of the Commission, which Bylaws have been amended from time to time;

WHEREAS, the Commission has determined that the Bylaws should be amended;

WHEREAS, the Commission conducted a first reading of the amended Bylaws on January 18, 2024; and

WHEREAS, the Commission deems it to be in the best interests of the Commission to approve the amended and restated Bylaws.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the DuPage Water Commission as follows:

SECTION ONE: The foregoing recitals are hereby incorporated herein and made a part hereof as findings of the Board of Commissioners of the DuPage Water Commission.

SECTION TWO: The Amended and Restated Bylaws of the DuPage Water Commission attached hereto and by this reference incorporated herein and made a part hereof as Exhibit 1, shall be and hereby are approved and ratified.

SECTION THREE: This Ordinance shall be in full force and effect from and after its adoption.

	Aye	Nay	Absent	Abstain
Bouckaert, D.				
Cuzzone, N.				
Fennell, J.				
Healy, J.				
Novotny, D.				
Pruyn, J.				
Romano, K.				
Rush, K.				
Russo, D.				
Saverino, F.				
Suess, P.				
Van Vooren, D.				
Zay, J.				

ADOPTED THIS _____ DAY OF _____, 2024.

James Zay, Chairman

ATTEST:

Danna Mundall, Clerk
Board/Ordinances/20240-01-24

EXHIBIT 1

DuPage Water Commission

By-Laws

AMENDED AND
RESTATED BY-LAWS OF
THE DuPAGE WATER COMMISSION

ARTICLE I

GENERAL PROVISIONS

Section 1: General Purpose. The general purpose of the Commission is to provide a sufficient and economic source and supply of water to the DuPage County area by various means, including the development and operation of a water supply system to acquire and distribute water from Lake Michigan to its ~~Charter-Contract~~ Customers and other customers having an allocation pursuant to the Level of Lake Michigan Act, as amended from time to time, and orders of the State of Illinois Department of Natural Resources, Office of Water Resources, ~~the successor to the responsibilities of the State of Illinois Department of Transportation, Division of Water Resources~~. The general purpose of these By-Laws is to establish the rules of proceeding of the Commission.

Section 2: Corporate Authority. The Board of Commissioners shall be the corporate authority of the Commission and shall have the power to pass and enforce all necessary ordinances, resolutions, rules, regulations and administrative orders for the conduct of business and management of property of the Commission.

ARTICLE II

COMMISSION AND COMMISSIONERS

Section 1: Composition. The corporate authority of the Commission shall consist of a Board of Commissioners, ~~who shall~~ ~~to~~ be appointed in compliance with Water Commission Act of 1985, 70 ILCS 3720/0.001 et seq. (hereinafter referred to as the "Act"), as follows:

~~One Commissioner, who shall serve as Chairman, shall be appointed by the Chairman of the DuPage County Board with the advice and consent of the DuPage County Board and with the advice and consent of the Board of Commissioners.~~

~~One Commissioner from each county board district of DuPage County shall be appointed by the Chairman of the DuPage County Board with the advice and consent of the DuPage County Board.~~

~~One Commissioner from each county board district of DuPage County shall be appointed by the majority vote of the mayors of the municipalities within said district which constitute "included" units as defined in the Act, which have the majority of their residents within said district, and which have not switched their status from being an included unit to an excluded unit as provided in the Act.~~

Section 2: Duties. The Commissioners shall perform those duties prescribed by the ~~Water Commission Act of 1985, 70 ILCS 3720/0.001 et seq. (hereinafter referred to as the "Act"),~~ and Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 et seq. (hereinafter referred to as the "Water Commission Statute") and such other duties as may from time to time be provided for by law or by the Commission.

Section 3: Length of Term. ~~Except for the terms of the Commissioners initially appointed and qualified under the Act after its amendment by Public Act 96-1389,~~ Commissioners shall serve for a term of six years, unless a different term is required under the Act, or until their successors have been appointed and have qualified in the same manner as the original appointment was made. ~~The terms of the Commissioners initially appointed and qualified under the Act after its amendment by Public Act 96-1389 shall be set and staggered in accordance with the Act without the possibility of holding over.~~ A Commissioner shall be eligible for reappointment upon the expiration of a term. A

Commissioner may be a member of the governing board or an officer or employee of DuPage County or any unit of local government within DuPage County.

Section 4: Vacancy. A vacancy in the office of a Commissioner shall be filled for the balance of the unexpired term by appointment and qualification as to residency in the same manner as the original appointment was made.

Section 5: Removal. Any Commissioner may be removed by the appointing authority for any cause for which any other county or municipal officer may be removed. Removal shall be effected in the same manner as the initial appointment of the Commissioner in question.

Section 6: Bond. Each Commissioner shall furnish such bonds as may be required by law for the faithful performance of that Commissioner's official duties. The cost of such bonds shall be paid by the Commission.

Section 7: Compensation. Each Commissioner who is not a member of the governing board or an officer or employee of a unit of local government within DuPage County shall receive the maximum amount provided for in the Act as compensation for his or her services as a Commissioner. In addition, each Commissioner may be reimbursed for actual expenses incurred in connection with Commission business.

ARTICLE III

OFFICERS OF THE COMMISSION

Section 1: Generally. The Officers of the Commission shall be the Chairman, the Vice-Chairman, the Chairman Pro-Tem, the Treasurer, the Clerk, the General Manager and the Financial Administrator.

Section 2: Chairman.

- a. Appointment. The Chairman shall be appointed by the Chairman of the DuPage County Board with the advice and consent of the DuPage County Board and with the advice ~~and consent~~ of the Board of Commissioners.
- b. Powers and Duties. The Chairman shall:
- (i) perform those duties prescribed by law or by the Commission, and all duties incident to the office of Chairman of the Commission;
 - (ii) preside at all meetings of the Commission;
 - (iii) appoint the Treasurer with the advice and consent of the DuPage County Board and with the advice and consent of the other Commissioners by a majority affirmative vote ~~as set forth in Section 5.a. of this Article, which majority must contain the votes of at least one third (1/3) of the Commissioners appointed by the Chairman of the DuPage County Board and at least forty percent (40%) of the Commissioners appointed by the DuPage County mayors as provided in the Act;~~
 - (iv) appoint the Clerk pursuant to the recommendation of the General Manager and with the advice and consent of the other Commissioners;

- (v) appoint all committees, committee chairman and task force members with the advice and consent of the other Commissioners;
- (vi) sign all ordinances, resolutions and other documents duly authorized to be signed on behalf of the Commission and required to be signed by the Chairman of the Commission;
- (vii) assign duties to officers, committees and task forces of the Commission with the advice and consent of the other Commissioners; and
- (viii) Have the power to vote in the same manner as the other Commissioners.

The Chairman's vote and presence shall be, and be counted as, that of a Commissioner for all purposes under these By-Laws.

Section 3: Vice-Chairman. The Vice-Chairman shall be one of the Commissioners appointed by the DuPage County mayors as provided in the Act, and shall be appointed to such office by a majority vote of all of the Commissioners appointed by the DuPage County mayors as provided in the Act. The Vice-Chairman shall serve until the end of his or her term ~~the second fiscal year after appointment~~ or until a successor is appointed. The Vice-Chairman shall be eligible for reappointment upon the expiration of a term. The Vice-Chairman shall be assigned such duties as the Chairman deems appropriate. In the event of the Chairman's absence or inability to act, the Vice-Chairman shall, during such absence or inability to act, or until such time as a new Chairman is appointed by the Chairman of the DuPage County Board with the advice and consent of the DuPage County Board and the

Board of Commissioners, perform all duties and exercise all powers within the normal purview of the Chairman, including execution of ordinances, resolutions and other documents.

Section 4: Chairman Pro-Tem. In the event of the temporary absence or inability of both the Chairman and the Vice-Chairman to perform the duties of Chairman at a Commission meeting, the Commissioners shall elect from their number in attendance a Chairman Pro-Tem to serve as Chairman of said meeting and to perform the duties and exercise the powers of Chairman at the meeting, including execution of ordinances, resolutions and other documents approved or authorized by the Commission at said meeting.

Section 5: Treasurer.

- a. Appointment. The Treasurer shall be appointed by the Chairman with the advice and consent of the DuPage County Board and with the advice and consent of the other Commissioners by a majority affirmative vote, which majority must contain the votes of at least one-third (1/3) of the Commissioners appointed by the Chairman of the DuPage County Board and at least forty percent (40%) of the Commissioners appointed by the DuPage County mayors as provided in the Act. The Treasurer shall be appointed solely on the basis of demonstrated financial background and experience to monitor and report on Commission financial matters and budgeting with special weight given to actual experience in or knowledge of acceptable practice relating to the duties of the position as hereinafter set forth. The Treasurer need not be a Commissioner. The Treasurer shall serve

at the pleasure of the Commission, and may be removed without cause by the Chairman with the advice and consent of the other Commissioners. The Treasurer, if not a Commissioner, shall be given notice of all meetings of the Commission and shall have the right to take part in the discussion of matters before the Commission.

b. Duties. The Treasurer shall:

- (i) perform or cause to be performed those duties prescribed by law or by the Commission;
- (ii) have principal responsibility for the oversight of and advise the Finance Committee and the Board of Commissioners regarding:
 - (a) the receipt, deposit and disbursement of monies;
 - (b) the Commission's investment practices, paying particular attention to safety of principal and compliance with existing bond ordinances;
 - (c) the Commission's accounting and control systems and whether or not they are consistent with generally accepted accounting principles;
 - (d) relationships with the financial community; and
 - (e) overall treasury and cash management objectives of the Commission;
- (iii) review financial procedures and practices employed by the Financial Administrator and the General Manager, including the deposit of funds, the making of

disbursements, the maintenance of a check register, the reconciliation of bank statements, the segregation of financial duties, the restriction of access to the established accounting and general ledger systems and the overseeing of the annual audit, and advise the Finance Committee and the Board of Commissioners on the efficiency of such procedures and practices;

- (iv) require the Financial Administrator and the General Manager to document and comply with standard accounting policies, procedures and controls to ensure accurate reporting to the Finance Committee and the Board of Commissioners and to identify improper or unnecessary expenditures, budgetary errors or accounting irregularities;
- (v) review and approve the Financial Administrator's review and approval of manual journal entries and supporting documentation;
- (vi) review and approve monthly bank reconciliations and general account reconciliations;
- (vii) report to the Finance Committee and the Board of Commissioners any improper or unnecessary expenditures, budgetary errors or accounting irregularities;

- (viii) require the Financial Administrator and the General Manager to provide to the Finance Committee and the Board of Commissioners monthly reports regarding the Commission's cash and investment position, including whether the Commission has sufficient cash and investments to pay its debt service, operating expenses, and capital expenditures and to maintain required reserve levels, the required funding levels for restricted funds, the unrestricted cash and investment balances with comparisons to unrestricted reserves, and the type and performance of the Commission's investments and whether those investments are in compliance with the Commission's investment policies;
- (ix) require the Financial Administrator and the General Manager to provide to the Finance Committee and the Board of Commissioners detailed information concerning the Commission's operating performance, including the budgeted and actual monthly amounts for water sales, water costs and other operating expenses;
- (x) require the Financial Administrator and the General Manager to closely monitor and provide to the Finance Committee and the Board of Commissioners detailed information concerning the progress of construction and

other capital projects, including whether the percentage of completion and costs incurred are timely;

- (xi) require the Financial Administrator and the General Manager to provide monthly to the Finance Committee monthly bank reconciliations and general account reconciliations and to provide full and timely reports documenting any GAAP analysis or communications with GASB;
- (xii) require such other reports or information from the Financial Administrator or General Manager as may be necessary to perform the duties hereinabove set forth; and
- (xiii) furnish such bonds as may be required by law or the Commission for the faithful performance of the Treasurer's official duties. The cost of such bonds shall be paid by the Commission.

Section 6: Clerk.

- a. Appointment. The General Manager shall recommend to the Board of Commissioners persons, who need not be Commissioners, for appointment to the office of Clerk. The Clerk shall be appointed by the Chairman with the advice and consent of the other Commissioners. The Clerk shall serve at the pleasure of the Commission, and may be removed without cause by the Chairman with the advice and consent of the other Commissioners.

- b. Duties. The Clerk shall:
- (i) perform or cause to be performed those duties prescribed by law or by the Commission;
 - (ii) attest the validity of each ordinance, resolution, contract or other document adopted, entered into or maintained as a record by the Commission;
 - (iii) have principal responsibility for the oversight of and advise the Board of Commissioners regarding:
 - (a) compliance with the Illinois Open Meetings Act (5 ILCS 120/1 *et seq.*); and
 - (b) Compliance with the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*);
 - (iv) review the recordkeeping procedures employed by the General Manager to assure that the vote of each Commissioner on each ordinance, resolution, motion or other proposition brought to a vote is duly recorded and that a permanent record of the minutes of each Commission meeting is recorded, approved and maintained;
 - (v) require such reports or other information from the Administrative Staff as may be necessary to perform the duties hereinabove set forth; and
 - (vi) furnish such bonds as may be required by law or the Commission for the faithful performance of the Clerk's

official duties. The cost of such bonds shall be paid by the Commission.

Section 7: General Manager.

- a. Appointment: The General Manager shall be appointed by a majority affirmative vote of all the Commissioners, which majority must contain the votes of at least one-third (1/3) of the Commissioners appointed by the Chairman of the DuPage County Board and at least forty percent (40%) of the Commissioners appointed by the DuPage County mayors as provided in the Act, and with the advice and consent of the DuPage County Board. The General Manager shall be appointed for an indefinite term and solely on the basis of demonstrated executive and administrative qualifications with special weight given to actual experience in or knowledge of acceptable practice relating to the duties of the position as hereinafter set forth. No Commissioner shall receive an appointment as General Manager during their term of appointment as Commissioner or within one year after the expiration of such term. The General Manager shall serve at the pleasure of the Commission, and may be removed without cause by the Chairman with the advice and consent of the other Commissioners. The General Manager may demand a written statement of the reasons for any such removal, which shall be furnished within twenty days after the filing of such request. The action of the Chairman in removing the General Manager shall be final.

b. Duties. The General Manager shall be the chief administrative officer of the Commission and shall be responsible for the efficient administration and management of Commission affairs. The duties of the General Manager shall include, but are not necessarily limited to, the following:

- (i) administrative responsibility for the organization, acquisition, construction, operation and maintenance of the water supply system of the Commission;
- (ii) enforcing the ordinances of the Commission;
- (iii) supervising all ~~employees~~Administrative Staff and consultants of the Commission;
- (iv) hiring and discharging all personnel to fill positions or vacancies on the Commission's Administrative Staff, including professional staff as employees of the Commission (other than those positions appointed by the Chairman and/or the Commissioners~~Legal Counsel~~), and discharging or retiring such employees in accordance with administrative rules and procedures established by the Commission;
- (v) preparing an agenda for each Commission meeting in advance for general distribution;
- (vi) attending all Commission meetings unless excused therefrom;

- (vii) attending any Commission committee meeting at which his or her attendance has been requested;
- (viii) attending relevant meetings of the Commission's ~~Charter~~Contract Customers when so requested;
- (ix) recommending policies, plans and procedures for the organization, construction, acquisition, operation and maintenance of the water supply system of the Commission;
- (x) purchasing materials and services and approving change orders according to administrative rules and procedures established in Article VIII hereof;
- (xi) overseeing the preparation of all checks and requiring and overseeing the maintenance of a check register;
- (xii) requiring and overseeing the preparation of a monthly statement of receipts and disbursements;
- (xiii) requiring and overseeing the reconciliation of bank statements on a monthly basis;
- (xiv) overseeing the preparation of an annual audit;
- (xv) preparing an annual budget;
- (xvi) requiring and overseeing the maintenance of a central file of all correspondence and other documents and materials pertaining to the affairs of the Commission;
- (xvii) preparing and presenting to the Commission for consideration and approval such administrative rules,

procedures and orders as may be deemed necessary and appropriate;

(xviii) representing the Commission before conferences, professional associations or relevant public hearings ~~when requested by the Commission to do so;~~

(xix) executing all contracts and other agreements and documents duly authorized to be signed on behalf of the Commission, except such contracts and other agreements and documents as may be required to be signed by the Chairman or some other officer of the Commission; and

(xx) assigning such duties as may properly be delegated to the Financial Administrator or other Administrative Staff.

Section 8: Financial Administrator.

a. Appointment. The Financial Administrator shall be appointed by a majority affirmative vote of all the Commissioners, which majority must contain the votes of at least one-third (1/3) of the Commissioners appointed by the Chairman of the DuPage County Board and at least forty percent (40%) of the Commissioners appointed by the DuPage County mayors as provided in the Act, and with the advice and consent of the DuPage County Board. The Financial Administrator shall be appointed for an indefinite term and solely on the basis of demonstrated financial background and experience to monitor and report on Commission financial matters and budgeting with special weight given

to actual experience in or knowledge of acceptable practice relating to the duties of the position as hereinafter set forth. The Financial Administrator shall be hired by and report to the General Manager. The Financial Administrator shall serve at the pleasure of the Commission, and may be removed without cause by the General Manager. The action of the General Manager in removing the Financial Administrator shall be final.

b. Duties. The Financial Administrator shall be the Finance Director referred to in the Act and the chief administrative financial officer of the Commission. The Financial Administrator shall be responsible for the efficient administration of the Commission's financial activities including, without limitation, financial reporting, investments, budgeting, insurance, purchasing, and human resources. The Financial Administrator shall:

- (i) perform or cause to be performed those duties prescribed by law or by the Commission including, without limitation, those duties prescribed by the Act to be performed by the Finance Director;
- (ii) perform or cause to be performed those duties assigned by the General Manager;
- (iii) establish and then comply with the established financial procedures and practices, including the deposit of funds, the making of disbursements, the maintenance of a check register, the reconciliation of bank statements, the

segregation of financial duties, the restriction of access to the established accounting and general ledger systems and the management of the annual audit;

- (iv) document and comply with standard accounting policies, procedures and controls to ensure accurate reporting to the Finance Committee and the Board of Commissioners and to identify improper or unnecessary expenditures, budgetary errors or accounting irregularities;
- (v) review and approve manual journal entries and supporting documentation;
- (vi) review and approve monthly bank reconciliations and general account reconciliations;
- (vii) report to the General Manager, the Treasurer, the Finance Committee and the Board of Commissioners any improper or unnecessary expenditures, budgetary errors or accounting irregularities;
- (viii) provide to the Finance Committee and the Board of Commissioners monthly reports regarding the Commission's cash and investment position, including whether the Commission has sufficient cash and investments to pay its debt service, operating expenses and capital expenditures and to maintain required reserve levels, the required funding levels for restricted funds, the unrestricted cash and investment balances with

comparisons to unrestricted reserves, and the type and performance of the Commission's investments and whether those investments are in compliance with the Commission's investment policies;

- (ix) provide to the Finance Committee and the Board of Commissioners detailed information concerning the Commission's operating performance, including the budgeted and actual monthly amounts for water sales, water costs and other operating expenses;
- (x) closely monitor and provide to the Finance Committee and the Board of Commissioners detailed information concerning the progress of construction and other capital projects, including whether the percentage of completion and costs incurred are timely;
- (xi) provide monthly to the Treasurer and the Finance Committee monthly bank reconciliations and general account reconciliations and provide full and timely reports documenting any GAAP analysis or communications with GASB;
- (xii) restrict access to established accounting systems and general ledger systems and segregate the financial duties performed by Administrative Staff so that no single person has sole access and control over the accounting system or the general ledger system;

- (xiii) monitor and facilitate the acquisition of fidelity bonds, liability and property insurance and group health coverage;
- (xiv) report, and monitor processing of, liability claims;
- (xv) verify that requisitions, purchase orders and payment requests are in line with budget and contract approvals; and
- (xvi) administer Commission personnel programs and practices particularly as they relate to labor relations, employee benefits, retirement plan administration and pension and insurance benefits.

Section 9: Vacancy. In the event of a vacancy in office, for whatever reason, such vacancy shall be filled according to the same procedure used for the initial election or appointment.

ARTICLE IV

ADMINISTRATIVE STAFF OF THE COMMISSION

Section 1: Administrative Staff. The Administrative Staff shall consist of the General Manager, the Financial Administrator and such other supervisory, professional, administrative and operating personnel as may from time to time be employed or retained by the Commission. The Administrative Staff shall be under the direction of the General Manager.

Section 2: Absence or Inability; Incapacity. In the event of the General Manager's temporary absence or inability to act, he or she may designate such Commission officers or employees as shall be authorized to act on his or her behalf. In the event that the Chairman

determines that the General Manager is incapable of performing his or her duties, the Chairman may, with the advice and consent of the other Commissioners, appoint a qualified person on a temporary basis to perform the duties of the General Manager during such incapacity.

ARTICLE V

LEGAL COUNSEL

Section 1: Appointment or Engagement. Legal counsel shall be appointed or engaged by a majority affirmative vote of all the Commissioners, which majority must contain the votes of at least one-third (1/3) of the Commissioners appointed by the Chairman of the DuPage County Board and at least forty percent (40%) of the Commissioners appointed by the DuPage County mayors as provided in the Act. Legal counsel shall be appointed or engaged for an indefinite term and solely on the basis of his or her professional qualifications with special weight given to actual experience in or knowledge of acceptable practice relating to the duties of the position or assignment. Legal counsel shall serve at the pleasure of the Commission, and may be removed without cause by the Chairman or by the General Manager with the advice and consent of the ~~other~~ Commissioners ~~or by the General Manager~~.

Section 2: Duties. Legal Counsel, ~~if an outside legal firm is appointed to perform such duties, or the Staff Attorney, if an employee of the Commission is on staff to perform such duties,~~ shall be the chief legal advisor to the Board of Commissioners and the General Manager. The duties of the chief legal advisor shall include, but are not necessarily limited to, the following:

- a. performing those duties prescribed by law or by the Commission;

- b. providing advice to the Board of Commissioners and the Administrative Staff in connection with administration of water supply and water purchase and sale contracts, construction of the water supply system, property and right-of-way acquisition, insurance, litigation and other legal matters;
- c. preparing and drafting ordinances, resolutions, ~~construction~~ contracts and other legal documents, and rendering legal opinions when requested by the Chairman, the Board of Commissioners or the General Manager on all matters concerning the interests of the Commission;
- d. attending all Commission meetings, and any committee or other meeting when required;
- e. making reports from time to time and otherwise performing such other duties or special services which the Board of Commissioners or General Manager may require; and
- f. directing litigation and representing the Commission in all legal matters or, if requested or approved by the Commission, recommending the retention of Special Counsel to represent the Commission or assist the Legal Counsel ~~or Staff Attorney~~ in certain matters. The Legal Counsel ~~or Staff Attorney~~ shall oversee and remain responsible for matters handled by Special Counsel.

ARTICLE VI

MEETINGS

Section 1: Regular Meetings. Regular meeting dates of the Commission shall be established in accordance with the provisions of the Illinois Open Meetings Act, 5 ILCS 120/1 *et seq.* Commissioners may participate, in whole or in part, in regular meetings of the Board of Commissioners by audio or video conference, and shall be counted for purposes of voting for so long as they participate and vote, subject to the following terms and conditions:

- a. All Commissioners participating in a meeting by audio or video conference shall be able to hear concurrently the substance of the meeting, and those Commissioners physically present at the designated meeting site, as well as the media and public in attendance at the designated meeting site, shall be able to hear concurrently the Commissioners participating by audio or video conference.
- b. A quorum of the Board of Commissioners shall be physically present at the designated meeting site and not more than one Commissioner shall participate in a meeting by audio or video conference from the same remote location.
- c. The Chairman or the Vice-Chairman shall be physically present at the designated meeting site or, if neither the Chairman nor the Vice-Chairman is participating in the meeting, then the Chairman Pro-Tem shall be physically present at the designated meeting site. If the Chairman is participating in the meeting by audio or video conference, then the Chairman shall vacate the chair and the Vice-Chairman shall perform the duties of the Chairman at the meeting.

- d. Any Commissioner participating in a meeting by audio or video conference shall be unable to physically attend the meeting because of (i) personal illness or disability; (ii) a family or other emergency; or (iii) employment purposes or Commission business.
- e. Any Commissioner participating in a meeting by audio or video conference shall have notified the ~~recording secretary or~~ Clerk of his or her intention to participate by audio or video conference in advance of the meeting unless advance notice is impractical.
- f. Any Commissioner participating in a meeting by audio or video conference shall announce his or her name, and shall be recognized by the presiding officer, before speaking.
- g. Any voice vote that includes Commissioners participating by audio or video conference and in which a “no” or “nay” vote is cast shall be ineffective, and the official vote on the passage of the action under consideration shall be taken by a roll call vote.

Section 2: Order of Business at Regular Meeting. The Order of Business at all Regular Meetings shall be as follows:

- a. Roll Call
- b. Public Comments
- c. Approval of Minutes
- d. Treasurer’s Report
- e. Committee Reports and Action Items
- f. ~~Chairman’s Report~~Accounts Payable
- g. ~~Old Business~~Chairman’s Report

- h. ~~New~~Old Business
- i. ~~Accounts Payable~~New Business
- j. Executive Session
- k. Adjournment

The Chairman may for good cause suspend or revise said order at any particular Commission meeting. Business conducted at any regular meeting may, with the consent of a majority of the Commissioners present, include the discussion of items not specified in the agenda except as otherwise prohibited by applicable law provided, however, that no final action may be taken on any item not on the agenda. ~~Public comments shall be limited to a period of 30 minutes and to three minutes per person. Persons shall be recognized in order of sign in on the Public Comment Sign In Sheet at the meeting or, if none, in the order determined by the Chairman or other presiding officer.~~ An additional matter may be added to the agenda of any regular meeting upon the written request of four or more Commissioners which, in each case, shall consist of not less than two Commissioners appointed by the Chairman of the DuPage County Board and at least two Commissioners appointed by the groups of mayors as provided by the Act. The written request shall be delivered to the General Manager not less than 7 business days prior to the regularly scheduled meeting at which the requesting Commissioners wish to have the specified matter added to the agenda. ~~(amended on November 15, 2012 by Ordinance No. O-12-12)~~

Section 3: Special Meetings. Special meetings may be called by the Chairman or the General Manager upon his or her own initiative and shall be called at the request of any four Commissioners. Notice of any special meeting shall be given in accordance with the provisions of the Illinois Open Meetings Act. Commissioners may participate, in whole or in part, in special meetings of the Board of Commissioners by audio or video conference, and

shall be counted for purposes of voting for so long as they participate and vote, subject to the same terms and conditions as are set forth in Section 1 above for regular meetings.

Section 4: Order of Business at Special Meetings. The Order of Business at all special meetings shall be as follows:

- a. Roll Call
- b. Items for Consideration Set Forth in Notice of Special Meeting
- c. Adjournment

Section 5: Emergency Meetings. Emergency meetings may be called by the Chairman upon his or her own initiative or at the request of any Commissioner or the General Manager in the event of a bona fide emergency~~yies~~. Notice of an emergency meeting shall be given in accordance with the provisions of the Illinois Open Meetings Act. Business at an emergency meeting may be conducted without reference to a prepared agenda. Commissioners may participate, in whole or in part, in emergency meetings of the Board of Commissioners by audio or video conference, and shall be counted for purposes of voting for so long as they participate and vote, subject to the same terms and conditions as are set forth in Section 1 above for regular meetings.

Section 6: Quorum. A quorum shall consist of a majority of the Commissioners in office.

Section 7: Vote Requirements.

- a. Generally. Subject to the requirements set forth in Subsection 7.~~(b)~~ below and any other provision of these By-Laws that states a more specific vote requirement, the concurrence of a majority of the appointed Commissioners shall be necessary for the passage of any ordinance or the incurring of any debt or financial obligation or the

approval of any payment. All other action of the Commission shall require the concurrence of a majority of those Commissioners present, provided there is a quorum. Every Commissioner who shall be present when a question is stated from the Chair shall vote thereon unless excused by the Chair or unless he or she is directly interested in the question. Votes of “abstain,” “pass,” or “present,” or a refusal to vote when present, shall be counted as concurring in the vote of the majority of those who did vote on the question. If there is vote of the majority, the votes of “abstain,” “pass,” or “present,” or a refusal to vote when present, shall not be considered.

- b. Specific Vote Required. A majority affirmative vote of all the Commissioners, which majority must contain the votes of at least one-third (1/3) of the Commissioners appointed by the Chairman of the DuPage County Board and at least forty percent (40%) of the Commissioners appointed by the groups of mayors as provided for in the Act, shall be necessary for the adoption of any motion, resolution or ordinance regarding the following items:
- (i) approval of individual contracts, or a series of contracts related to a single Project (as that term is defined in the Water Purchase and Sale Contract between the Commission and its ~~CharterContract~~ Customers), in an amount in excess of \$100,000.00;
 - (ii) setting of rates for the sale of Lake Michigan water to the Commission’s ~~CharterContract~~ Customers;

- (iii) borrowing of funds;
- (iv) exercise of eminent domain powers;
- (v) employment of ~~managerial and professional personnel,~~
General Manager, Financial Administrator, and Legal Counsel or third-party managerial or professional either as employees or consultants who are not employees of the Commission;
- (vi) amendment of the Chicago Water Supply Contract; ~~and~~
~~(vii)~~ amendment of this Ordinance made these By-laws in accordance with Section 2 of Article XII herein; and
~~(vii)(viii)~~ the approval and addition of new customers to whom the Commission will supply water after approval of the Customer Contract (“Subsequent Customers”).

c. Omnibus Vote. At any meeting, the Commissioners may by unanimous consent take a single vote by yeas and nays on the several questions of passage of any two or more designated ordinances, orders, resolutions or motions placed together for voting purposes in a single group, which single vote shall be entered separately in the minutes under the designation “omnibus vote,” and in such event the clerk may enter the words “omnibus vote” in the minutes in each case in lieu of entering the names of the members of the Board of Commissioners voting “yea” and those voting “nay” on the passage of each of the designated ordinances, orders, resolutions and motions included in such omnibus group. The taking of such single or omnibus

vote and such entries of the words “omnibus vote” in the minutes shall be considered of like effect as if the vote in each case had been taken separately on the question of the passage of each ordinance, order, resolution and motion included in such omnibus group, and separately recorded in the minutes.

Section 8: Rules of Order. The rules of parliamentary procedure contained in Robert’s Rules of Order, as revised from time to time, shall govern all Commission meetings to the extent that they are applicable and not inconsistent with these By-Laws or other special rules, if any, of the Commission.

Section 9: Public Comment. Public comments shall be limited to a period of 30 minutes and to three minutes per person. Persons shall be recognized in order of sign in on the Public Comment Sign In Sheet at the meeting or, if none, in the order determined by the Chairman or other presiding officer.

Section 10: Closed Session Minutes and Verbatim Record. The “Closed Session Minutes and Verbatim Record Policy” attached to these By-Laws as Exhibit A govern the creation, maintenance, storage, release and destruction of closed meeting minutes and verbatim records of all public bodies of the Commission that are subject to the Illinois Open Meetings Act.

ARTICLE VII

COMMITTEES AND TASK FORCES

Section 1: Purpose of Committees. The Board of Commissioners has determined that the committee structure may in many situations be the most efficient and productive way for the Commissioners to carry out their responsibilities. The primary responsibilities of all committees shall be suggesting policy, reviewing and investigating Commission matters,

and making recommendations to the Board of Commissioners. The committee structure is established so that more thought and time may be given to Commission matters by delegating review and investigative functions to a portion of its members. Committees, therefore, are not legislative bodies but reviewing and investigative bodies; committee actions shall constitute only suggestions or recommendations to the Board of Commissioners rather than instructions to either the Board of Commissioners or Administrative Staff.

Section 2: Committees. The Commission has established an Administration Committee which is responsible for reviewing and investigating, and suggesting policy and making recommendations concerning, organizational matters, purchase of service agreements and internal affairs of the Commission, including personnel and legal affairs; an Engineering and Construction Committee which is responsible for reviewing and investigating, and suggesting policy and making recommendations concerning, the design, construction, operation and improvement of Commission facilities; and a Finance Committee which is responsible for supervising the Administrative Staff's handling of, reviewing and investigating, and suggesting policy and making recommendations concerning, the Commission's financial affairs and budgeting. The Commission may establish other standing or special committees as it may deem necessary, the duties of which shall be those specified at the time such other standing or special committee is established. The Chairman shall appoint all committees and committee chairmen with the advice and consent of the other Commissioners. Committee members may participate, in whole or in part, in regular, special and emergency committee meetings by audio or video conference, and shall be counted for purposes of voting for so long as they participate and vote, subject to the same terms and conditions as are set forth in Section 1 of Article VI

above for regular meetings, or Section 3 of Article VI above for special meetings, or Section 5 of Article VI above for emergency meetings of the Board of Commissioners, as the case may be. The Commission may consolidate, abolish or change the duties of any one or more of its committees so long as at all times required by the Act there exists a Finance Committee performing those duties prescribed by law, including conducting monthly meetings to supervise the handling of financial matters and budgeting by Administrative Staff.

Section 3: Chairman as Committee Member. The Chairman shall be an ex-officio member of all committees and shall be entitled to vote on committee matters. [The Chairman shall not be counted as a committee member for purposes of determining a quorum unless the Chairman is present at the committee meeting.](#)

Section 4: Purpose of Task Forces. A task force structure may in some situations be the most efficient and productive way for the Commission to carry out its responsibilities. The task force structure is especially suited to the review and investigation of matters falling outside the expertise of the Commissioners individually and collectively, and requiring more intensive study than the Commissioners can devote to them along with other matters.

Section 5: Task Forces. The Commission may establish such task forces as it may deem necessary. The Chairman shall appoint all task force members with the advice and consent of the other Commissioners. Task force membership may include, but need not be limited to, Commissioners. Task force members may participate, in whole or in part, in regular, special and emergency task force meetings by audio or video conference, and shall be counted for purposes of voting for so long as they participate and vote, subject to the same terms and conditions as are set forth in Section 1 of Article VI above for regular meetings, or Section 3 of Article VI above for special meetings, or Section 5 of Article VI above for emergency meetings of the Board of Commissioners, as the case may be.

ARTICLE VIII

PURCHASING PROCEDURES

Section 1: Coverage. These procedures shall cover all contracts for supplies, material or work being purchased by the Commission except as herein set forth.

Section 2: Definitions. For the purpose of these procedures, “supplies, material or work” shall mean and include, except as hereinafter limited, all work, labor or services; other contracts for services; supplies, equipment or other materials; and the rental, repair or maintenance of equipment, machinery and other personal property. The term “work” shall not include ~~personal services or~~ services rendered in a professional capacity such as accounting, engineering or legal services.

Section 3: Minor Purchases. The General Manager shall have the authority to purchase on behalf of the Commission supplies, material or work requiring an expenditure of the sum provided for in 65 ILCS 5/8-9-1 or less pursuant to such procedures as he or she deems calculated to insure the best interests of the Commission, without a specific solicitation of quotations or advertisement for bids; ~~provided, however, that this Section 3 shall not apply to contracts for construction of the Commission’s water supply system, which shall be governed by Section 5 below.~~

Section 4: Purchases Requiring Quotations. All purchases of supplies, material or work included in the Annual Management Budget and requiring expenditure in excess of the sum provided for in 65 ILCS 5/8-9-1 shall be made only after the solicitation of at least two written quotations. All such quotations shall be submitted sealed to the Commission and shall be opened in public at a date and time set by the General Manager. A tabulation of all quotations received shall be presented to the Board of Commissioners. In cases where only one quotation is received, there is only a single source for the supplies, materials or work or

the purchase was not included in the Annual Management Budget, the expenditure may only be authorized by the Board of Commissioners. ~~This Section 4 shall not apply to contracts for construction of the Commission's water supply system, which shall be governed by Section 5 below.~~ The General Manager shall keep a record of all such purchases and the quotations submitted pursuant to the solicitation therefor.

Section 5: Other Water Supply System Contracts. All contracts, ~~except those provided for in Section 3 and Section 4 of this Article VIII for the construction of the Commission's water supply system~~ shall be entered into only after advertising for bids in the manner required by the Water Commission Statute.

Section 6: Bid Deposits. When deemed necessary by the General Manager or Board of Commissioners, bid deposits shall be required.

Section 7: Specifications. The following shall apply to specifications.

- a. Specifications shall be available to all bidders;
- b. Specifications shall be general in nature and not so specific as to limit a bidder to a specific brand; and
- c. The Commission shall reserve the right to make clarifications, corrections or changes in specifications at any time prior to the time bids are opened so long as all bidders or prospective bidders are informed of said clarifications, corrections or changes in the specifications.

Section 8: Bid Opening Procedure.

- a. Sealed. Bids shall be submitted sealed to the Commission and shall be identified as bids on the envelopes. The date and time the bid was received shall be recorded on the envelope of the bid.

- b. Opening. Bids shall be opened in public at the time and place stated in the public notices.
- c. Tabulation. A tabulation of all bids received shall be ~~posted~~ available for public inspection.

Section 9: Acceptance or Rejection of Bids. Except when expressly and specifically limited by the terms of a particular bid solicitation, the Commission shall have the authority to accept the bid which, in its judgment, is the best bid and most favorable to the interests of the Commission and the public; to reject the low bid; to award to other than the lowest bidder; to accept any item of any bid; to reject any and all bids; to accept and incorporate corrections or clarifications following bid opening when to do so would not, in the Commission's opinion, prejudice the bidding process or create any improper advantage to bidders; and to waive irregularities and informalities in any bid submitted or in the bidding process.

Section 10: Bidders in Default to Commission. The Commission shall not accept the bid of a contractor who is or has been in default on a contract with the Commission or in the payment of monies due to the Commission.

Section 11: Award of Contract.

- a. Authority in Board of Commissioners. The Board of Commissioners shall have the authority to award all contracts for the construction of the Commission's water supply system.
- b. Awards. Contracts shall be awarded to the bidder whose proposal is found to be in the best interests of the Commission. In determining the bidder who is to receive the award, the Commission shall consider the following factors in addition to price:

- (i) The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- (ii) Whether the bidder has the requisite facilities, plant, organization and staffing to enable the bidder to perform the contract or provide the service successfully and promptly, within the time specified, without delay or interference;
- (iii) The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- (iv) The quality of the bidder's performance of previous contracts or services;
- (v) The previous and existing compliance by the bidder with the laws and ordinances relating to the contract or services;
- (vi) The sufficiency of the financial resources and ability of the bidder to perform the contract or to provide the services;
- (vii) The quality, availability, adaptability and capabilities of the supplies, material or work to the particular use required;
- (viii) The ability of the bidder to provide future maintenance and service for the subject of the contract, if applicable;
- (ix) Any other factor that the Commission may legally consider in determining the proposal that is in the best interests of the Commission;

(x) If the contract is for “public works” as that term is defined in the Illinois Prevailing Wage Act (820 ILCS 130/0.01 et seq.), the following factors shall also be considered:

a. The ability of the bidder to provide future maintenance and service for the subject of the contract, if applicable;

b. The bidder and its subcontractors must comply with all provisions of the Illinois Prevailing Wage Act, (820 ILCS 130/0.01 et seq.), including wages, medical and hospitalization insurance and retirement for those trades covered under the Act; and

~~c.~~ The bidder and all bidder’s subcontractors must participate in active apprenticeship and training programs approved and registered with the United State Department of Labor’s Office of Apprenticeship for each of the trades of work contemplated under the contract.

c. Subsequent Awards. Contracts awarded to a bidder who fails to comply with all conditions precedent to formal execution of the contract agreement may be annulled. Upon annulment of an award, the Commission may award the contract to any other bidder whose proposal is found to be in the best interests of the Commission in

accordance with Subsection 11(b) above, or the Commission may advertise anew for bids.

Section 12: Single Bids. The Board of Commissioners desires competitive bids; however, where there is only one bid, that fact alone shall not prevent the Commission from accepting that bid.

Section 13: Performance and Payment Bonds. The Commission may require a performance bond before entering a contract in such amount as it shall find reasonably necessary to protect the best interests of the Commission. The Commission shall require a payment bond in such amount as it shall find reasonably necessary to secure payment for material used and labor performed in connection with a public work.

Section 14: Change Orders. All contract change orders shall be considered and approved or disapproved by the Commission during the regular course of its conduct of business except in the following circumstances.

- a. By General Manager. The General Manager shall have the authority to approve any contract change order:
 - (i) based entirely upon approved unit prices; or
 - (ii) In an amount not in excess of \$100,000 when in the judgment of the General Manager and the Commission's consulting engineer such change order requires immediate approval to avoid significant impacts to the project schedule or the incurring of unnecessary and excessive costs by the Commission.

A full written description and explanation of any change order so approved by the General Manager shall be distributed to the Board of Commissioners as soon as possible following its approval.

- b. By Commission at Special or Emergency Meeting. When in the judgment of the General Manager a change order in an amount in excess of \$100,000 requires a more immediate approval than the Commission's regular meeting schedule would permit in order to avoid the incurring of significant impacts to the project schedule or unnecessary and excessive costs by the Commission, or when, in any other case, in the judgment of the General Manager a change order requires the immediate attention of the Commission, the General Manager may call a special or emergency meeting of the Commission for the consideration of such change order.

Section 15: Prohibition Against Subdivision. No contract or change order shall be subdivided to avoid the requirements of these By-Laws. This prohibition shall not prevent the repetitive purchase of supplies, material or work which is purchased over a period of time as needed.

Section 16: Emergencies. In case of an apparent emergency which requires immediate purchase of supplies, material or work to protect persons or property, the General Manager shall be authorized to secure any supplies, material or work necessary to address such emergency by whatever means deemed necessary without regard to the procedures otherwise required under these By-Laws. A full written description and explanation of any such emergency purchase shall be distributed to the Board of Commissioners as soon as possible following the emergency.

Section 17: Bid Item Must Be Budgeted. Contracts or purchase orders cannot be executed and are invalid and void unless the amounts due there under have been budgeted by the Board of Commissioners.

Section 18: Cooperative Purchasing Arrangements. Nothing in this Article VIII shall be interpreted to prohibit the Commission from participating with other public bodies, associations or agencies, or with other units of government, in any cooperative purchasing arrangements subject to bidding or other processes that assure the protection of the best interests of the Commission. Supplies, materials or work purchased through such arrangement shall be exempted from the requirements of this Article.

ARTICLE IX

DISBURSEMENTS

Section 1: No Disbursement Without Authority. No funds, monies or other things of value in the hands of the Commission shall be paid out, disbursed or delivered except upon warrant, draft or order approved and signed as herein provided.

Section 2: Authorization. All disbursements in excess of \$20,000.00 shall be approved in advance by the Board of Commissioners except in the following circumstances: (i) the General Manager is authorized to pay all payroll disbursements and disbursements for payroll-related taxes, contributions and payments, and (ii) in the case of an emergency or in cases where the Commission is unable to meet or establish a quorum, the General Manager is hereby authorized, with the concurrence of the Chairman, to make all disbursements which have previously been budgeted and/or expenditures for which the Commission has previously contracted. All disbursements made under subsection (ii) shall be placed on the agenda for the next regular meeting of the Commission for purposes of ratification. ~~that, in the case of emergencies or in cases where the Commission is unable to~~

~~meet or establish a quorum, the General Manager is hereby authorized, with the concurrence of the Commission's Chairman, to make all disbursements which have been previously budgeted and/or expenditures for which the Commission has previously contracted. All disbursements made under this authorization shall be placed on the agenda for the next regular meeting of the Commission for the purpose of ratification. The General Manager is authorized to incur and pay contingency expenditures up to and including \$20,000.00 without the prior approval of the Board of Commissioners. (amended October 17, 2013 by Ordinance No. O-6-13)~~

Section 3: Required Signatures. All checks shall be manually or electronically signed by any two of the following: the Chairman, the Treasurer, the Finance Committee Chairman, the General Manager, or the Financial Administrator ~~or the Staff Attorney.~~

Section 4: Designation of Fund and Payee. For each check issued by the Commission, a record shall be kept which specifies the particular fund or appropriation to which it is chargeable and the person or other entity to whom it is payable.

Section 5: Credit Card Policy. It is the policy of the Commission to permit use of corporate credit cards by employees designated by the General Manager and approved by the Board of Commissioners for charging legitimate company expenses. Eligible employees are those who are or will be regularly incurring legitimate business expenses in which this procurement process is more efficient and expeditious. The Commission shall, from time to time, by Resolution adopt specific policies regulating the use of Commission credit cards (the "Credit Card Policy"). Employees made eligible to have and use Commission credit cards, as herein provided, shall first read the Commission's Credit Card Policy and then acknowledge that they have read and understand the Policy and will be bound by, and will adhere to, same. Said acknowledgement shall be evidenced by the eligible employee's

signature on the addendum attached to the Commission's Credit Card Policy. The eligible employee shall deliver the executed addendum to the Credit Card Administrator who shall be that person designated by the Commissioners in the Resolution adopting the Credit Card Policy.

ARTICLE X

BUDGET AND AUDIT

Section 1: Fiscal Year. The fiscal year of the Commission shall begin May 1 and shall end April 30 of the following year.

Section 2: Tentative Management Budget. In accordance with the Commission's obligations under any Bond Ordinances and/or the Water Purchase and Sale Contract ~~dated as of June 11, 1986~~ between the Commission and Charter Contract Customers (the "Customer Contract") ~~and the budget covenant contained in Ordinance No. O 1-87 entitled an Ordinance of the DuPage Water Commission, Counties of DuPage, Cook and Will, Illinois, Authorizing the Issuance and Sale of Water Revenue Bonds and Providing The Terms of and Security for Repayment (the "Revenue Bond Ordinance")~~, the General Manager and Administrative Staff shall prepare and submit to the Board of Commissioners and the Commission's Charter Contract Customers a tentative Management Budget not less than 60 days prior to the beginning of the fiscal year. The tentative Management Budget shall contain in reasonable detail an estimate of (i) revenues of the Waterworks System and any other funds to be deposited in the accounts of the Commission Water Fund (as defined in the Revenue Bond Ordinance), (ii) Fixed Costs (as defined in the Customer Contract) to be payable by each Charter Contract Customer in a stated aggregate dollar amount per month for each, and (iii) Operations and Maintenance Costs (as defined in the Customer Contract) in a stated price per 1000 gallons of water. The tentative Management Budget

shall include estimated amounts to be deposited in each month of the fiscal year into the Water Fund and each of the accounts thereof and the requirements, if any, for the amounts estimated to be expended from such accounts. The tentative Management Budget shall also set forth sufficient detail with respect to such revenues, other funds, Operation and Maintenance Costs and other expenditures and such deposits as shall be necessary or appropriate ~~so as~~ to comply with the Water Supply Contract entered into ~~as of the 19th day of March 1984~~ by and between the City of Chicago and the DuPage Water Commission, or any future water supply contract authorized by the Board of Commissioners. The Board of Commissioners shall hold at least one hearing on the tentative Management Budget ordinance prior to final action thereon, at which hearing the ~~Charter-Contract~~ Customers may be heard. The Commission shall give its ~~Charter-Contract~~ Customers not less than 21 days' notice of such hearing.

Section 3: Adoption of Management Budget. The Board of Commissioners shall approve and adopt the annual Management Budget on or before April 30 each year.

Section 4: Preliminary Combined Annual Budget and Appropriation Ordinance In Accordance with the Illinois Municipal Budget Law Act. The General Manager and Administrative Staff shall prepare and submit to the Board of Commissioners a preliminary Combined Annual Budget and Appropriation Ordinance before or within the first quarter of each fiscal year. The preliminary Combined Annual Budget and Appropriation Ordinance shall contain a statement of cash on hand at the beginning of the fiscal year, an estimate of cash expected to be received during such fiscal year from all sources, an estimate of expenditures contemplated for such fiscal year, and a statement of estimated cash expected to be on hand at the end of such year. The Board of Commissioners shall hold at least one public hearing on the preliminary Combined Annual Budget and Appropriation Ordinance

prior to final action thereon, in compliance with the Illinois Municipal Budget Law, 50 ILCS 330/1 *et seq.*

Section 5: Adoption of Combined Annual Budget and Appropriation Ordinance Pursuant to the Illinois Municipal Budget Law Act. The Board of Commissioners shall approve and adopt the Combined Annual Budget and Appropriation Ordinance on or before July 31 each year.

Section 6: Audit. The Board of Commissioners shall provide for an annual audit to be made by an independent certified public accountant in accordance with the Illinois Governmental Account Audit Act, 50 ILCS 310/0.01 *et seq.* The Commission's Finance Committee shall from time to time interview and recommend to the Board of Commissioners independent certified public accountants to perform the annual audit.

ARTICLE XI

CONDUCT OF THE COMMISSIONERS, OFFICERS AND EMPLOYEES OF THE COMMISSION

Section 1: Purpose. It is the purpose of the Commission to guarantee fair, efficient, and honest governance of the DuPage Water Commission and to ensure the integrity and objectivity of its Chairman, Commissioners, officers and employees. The fundamental principle underlying all policies of the Commission is that all activities of the Commission's officials, officers and employees must meet appropriate ethical and legal standards. While no one policy can comprehensively address all aspects of appropriate business behavior, the Commission believes that these goals may best be secured through adoption and incorporation of the provisions of Ordinance OFI-0013A-12 of the County of DuPage, commonly referred to as the County Ethics Ordinance (the "Ethics Ordinance"). By the adoption of the Ordinance approving these By-Laws, the Commission expressly adopts and incorporates the provisions in the Ethics Ordinance in the form attached hereto and

incorporated herein as Exhibit “B”. The version of the Ethics Ordinance incorporated herein is exactly the same as the ordinance enacted and approved by the County Board of DuPage County, Illinois, on August 27, 2013. In applying the Ethics Ordinance to the Commission, as the context may require, where the Chairman of the County Board is to act, the Chairman of the Water Commission, as the presiding officer of the Water Commission shall act, and where the County Board is to act, the Water Commission’s Board of Commissioners functioning as the corporate authorities of the Water Commission shall act. Provisions of the Ethics Ordinance which set forth the duties of elected officers, appointees, and employees of DuPage County, including any prohibitions applicable to them, shall apply to all officers, appointees and employees of the Water Commission.

Any amendment to County Ordinance No. OFI-0013A-12 which would apply to the conduct of the Commission’s Commissioners, officers and employees and which the Commission could lawfully adopt based upon its own lawful authority and which becomes effective after the effective date of the Commission Ordinance ~~No. O-7-13- amending and restating these Bylaws~~ shall be incorporated into these By-Laws by this reference as of the effective date of the County’s amendatory ordinance and Exhibit “B” attached hereto shall be deemed to be amended to conform with the content of the County’s ordinance amending Ordinance No. OFI-0013A-12 without further action of the Commission. ~~(amended on December 13, 2013 by Ordinance No. O-7-13)~~

Section 2: Conflict of Interest. In conformance with The Water Commission Act of 1985 (70 ILCS 3720/2), no Commissioner or employee of the Commission shall be interested directly or indirectly in any contract or job of work or materials, or the profits thereof, or services or services to be performed for or by the Commission. In addition to any other sanction which may be provided within these By-laws or any penalty otherwise

provided by law, said statute provides that a violation of the restriction set forth herein is a Class C misdemeanor. A conviction is cause for removal of a Commissioner from his/her office or a person from his/her employment.

ARTICLE XII

MISCELLANEOUS

Section 1: Conflict. In the event of any conflict between these By-laws and any other ordinance, resolution, rule, regulation or order of the Commission, these By-laws shall control.

Section 2: Amendment. In adopting these By-laws, the Board of Commissioners ~~of the DuPage Water Commission~~ recognizes that the organizational guidelines and rules herein set forth may require revision and adjustment as experience will dictate. Amendments may be proposed by any Commissioner. Any proposal to amend these By-laws shall be submitted in writing to each Commissioner for consideration at a regular Commission meeting. No such proposal shall be passed at the same meeting at which it is initially considered. Any amendment to these By-laws shall be effected by ordinance, which ordinance may take effect immediately upon its passage and approval as set forth in Section 7.b(vii) of Article VI, unless the terms of such ordinance provide otherwise.

Section 3: Suspension of the Rules. The Commission may, by a two-thirds majority vote of the Commissioners present, determine to suspend any of the Rules contained in Article VI through XII hereof; provided, however, that no such suspension shall be construed to suspend the Commission's obligations under applicable state statutes or the "Water Purchase and Sale Contract Between the DuPage Water Commission and Charter-Contract Customers" ~~dated approved on January 18, 2024~~ June 11, 1986.

EXHIBIT A

DuPAGE WATER COMMISSION

CLOSED SESSION MINUTES AND VERBATIM RECORDS POLICY

- I. BACKGROUND AND PURPOSE. The Open Meetings Act requires all public bodies to keep minutes of their meetings, whether opened or closed. With the adoption of amendments to Section 2.06 of that Act, 5 ILCS 120/2.06, public bodies also must maintain a verbatim record of all closed meetings in the form of an audio or video recording. This Policy sets forth specific procedures to ensure that the Board of Commissioners of the DuPage Water Commission—and all committees of the Board of Commissioners and other bodies of the Commission that are subject to the Open Meetings Act (“Subsidiary Bodies”)—comply with the requirements for closed sessions.

- II. CLOSED MEETING MINUTES. Minutes of a closed meeting shall comply with the same requirements applicable to minutes for an open meeting. They shall include, at a minimum, the date, time and place of the meeting; the members of the public body that are present and those that are absent; a summary of discussion on all matters proposed, deliberated or decided; and a record of any votes taken. The Open Meetings Act exemption or exemptions applicable to the closed session should be identified in the minutes of the closed session. Minutes of closed meetings shall not be released for public inspection to the extent that there is a need to preserve confidentiality of matters stated in those minutes.

- III. CLOSED MEETING VERBATIM RECORDS. A verbatim record of each closed meeting is required and shall be subject to the following requirements:
 - A. Recordings. Verbatim records shall be made by audio or video recording. Each recording shall be labeled with the name of the meeting body and the date, time and place of the meeting. A statement identifying each participant and the purposes for the closed meeting should be made at the beginning of the closed meeting.

 - B. Confidentiality. All verbatim records of closed meetings are hereby declared to be confidential and not subject to release except pursuant to this Policy or as required by law.

 - C. Duties of Clerk or Designee. The Clerk, or his or her designee, shall be responsible for creating the verbatim record. After a closed meeting, the verbatim record shall be delivered immediately to the Clerk for storage in a secure location within the DuPage Pumping Station. The Clerk shall be responsible for maintaining, storing and restricting access to all verbatim records.

 - D. Access to Verbatim Records. No individual, nor the Board of Commissioners, nor any Subsidiary Body shall have access to any verbatim record of any closed session unless approved by one of the following specific methods:

1. Individual Access. Unless otherwise required by law, no individual, including any member of the Board of Commissioners or any Subsidiary Body, shall have access to any verbatim record unless specifically approved by an affirmative majority vote of Board of Commissioners taken at an open meeting. An individual who is granted the right to access a verbatim record shall do so only at DuPage Pumping Station and in the presence of the Clerk or his or her designee. No verbatim record shall be copied or taken out of the DuPage Pumping Station except as specifically allowed in this Policy or as otherwise required by law.
 2. Subsidiary Body Review. A Subsidiary Body may access a verbatim record of one of its closed meetings only by an affirmative majority vote, taken at an open meeting, of all members of that Subsidiary Body then holding office. A Subsidiary Body shall review a verbatim record only at a duly noticed closed meeting of that Subsidiary Body.
 3. Board of Commissioners Review. The Board of Commissioners may access a verbatim record of one of its closed meetings or of a closed meeting of any Subsidiary Body only by an affirmative majority vote of the Board of Commissioners taken at an open meeting. The Board of Commissioners shall review a verbatim record only at a duly noticed closed meeting of the Board.
 4. Clerk. The Clerk shall have access at all times to all verbatim records for purpose of ensuring their proper care and protection. The Clerk may review a verbatim record, however, only if authorized to do so by an affirmative majority vote of the Board of Commissioners taken at an open meeting.
 5. Court. If the Commission is directed by a court order issued in accordance with Section 2.06 of the Open Meetings Act, 5 ILCS 120/2.06, to deliver a verbatim record, then the Clerk or his or her designee shall deliver the relevant verbatim record to the court, after that record has been reviewed by the Commission's General Counsel or ~~staff attorney~~.
- E. Verbatim Record Not Official Record. A verbatim record shall not be part of the official public record of any meeting. Rather, the approved minutes are to be deemed the official record of the meeting.
- F. Notification of Destruction of Verbatim Record. On a regular basis, the Clerk shall provide a written notice listing all verbatim records that are scheduled for destruction (the "Notice of Destruction"). The Notice shall be in a form substantially the same as the form attached as Exhibit 1 to this Policy. The Notice shall be given to (1) the members of the Board of Commissioners, (2) the members of the Subsidiary Body (if the verbatim record was created at a closed meeting of that Subsidiary Body), (3) the

General Manager, and (4) the Commission's General Counsel ~~or staff attorney~~. The Notice shall include a copy of the approved minutes for each verbatim record scheduled for destruction.

G. Objection to Destruction.

1. Deadline for Objection. A written objection to the destruction of a verbatim record shall be filed with the Clerk within seven days after the date of a Notice of Destruction, or at least three days before the destruction date set forth in that Notice, whichever is later.
2. Who May Object: The Chairman or any Commissioner may object to the destruction of any verbatim record of a closed session of the Board of Commissioners or of any Subsidiary Body. A member of a Subsidiary Body may object to destruction of a verbatim record only of a closed session of that Subsidiary Body.

H. Destruction of Verbatim Record if No Objection. Unless a timely written objection to the destruction of a verbatim record is filed with the Clerk in accordance with Section III.G of this Policy, the Clerk shall erase or otherwise destroy each verbatim record listed in the Notice of Destruction on the date set forth in the Notice. No verbatim record shall be erased or otherwise destroyed unless the Clerk certifies that (1) the verbatim record was created at a closed meeting that was concluded at least 18 months prior to the date of destruction and (2) there exists approved minutes of that closed meeting.

I. Procedure When Objection. The following procedure shall apply when a timely objection to destruction is received by the Clerk:

1. Notice of Objection. The Clerk shall promptly send notice of the objection to all parties who received the Notice of Destruction.
2. Deliberation on Objection. At a closed session of the Board of Commissioners or Subsidiary Body scheduled promptly after receipt of an objection, the Board of Commissioners or Subsidiary Body shall determine whether destruction of the verbatim record should be delayed. That decision shall require the vote set forth in the next Section III.I.3 of this Policy. If the required vote to delay destruction is not obtained, then the verbatim record shall be destroyed immediately by the Clerk in accordance with Section III.H of this Policy; provided, however, that no verbatim record of a Subsidiary Body shall be destroyed if either the Subsidiary Body or the Board of Commissioners votes to delay its destruction.
3. Required Vote to Delay Destruction. The destruction of a verbatim record shall be delayed only if: (i) the Board of Commissioners, by an affirmative majority vote, or (ii) the Subsidiary Body, by an

affirmative vote of three-fourths of the members of the Subsidiary Body then holding office, authorizes delay of that destruction.

- J. Procedure When Destruction Delayed. If the destruction of a verbatim record has been delayed pursuant to Section III.I of this Policy, then the Board of Commissioners and/or the Subsidiary Body, if any, that voted to delay destruction shall review the verbatim record in closed session. After that review, the reviewing body shall determine either: (1) that the verbatim record should be destroyed, or (2) that the verbatim record may be released pursuant to Section IV of this Policy, or (3) that the destruction of the verbatim record ought to be delayed to a date certain.

No verbatim record shall be destroyed if the Board of Commissioners or the Subsidiary Body, if any, determines that destruction should be delayed or released pursuant to Section IV of this Policy.

If destruction of a verbatim record is delayed to a date certain, then the Clerk shall provide a new Notice of Destruction for that verbatim record in accordance with Section III.F of this Policy.

IV. Review and Release of Closed Meeting Minutes and Verbatim Records.

- A. Review of Minutes. Not less than twice each year, the Board of Commissioners and each Subsidiary Body shall review its closed meeting minutes to determine if they are eligible for release to the public. In its review, the Board of Commissioners or Subsidiary Body shall determine if the minutes contain information that continues to require confidential treatment. Only portions of written minutes that no longer require confidential treatment shall be released. Written minutes shall not be released unless approved by an affirmative majority vote of the Board of Commissioners or Subsidiary Body taken in public session.
- B. Review of Verbatim Records. Pursuant to Section III.B of this Policy, verbatim records always are *per se* confidential. The Board of Commissioners or the relevant Subsidiary Body may undertake a review of a verbatim record, but only in accordance with Section III.D of this Policy. After review of the verbatim record, the Board of Commissioners or the Subsidiary Body shall require that the verbatim record remain confidential unless, after reviewing the verbatim record in its entirety, the verbatim record is approved for release by an affirmative majority vote of the Board of Commissioners or, for a verbatim record of a Subsidiary Body, by an affirmative vote of three-fourths of the members of that Subsidiary Body then holding office. All such votes shall be taken in open session. (Last amended on October 12, 2006 by Ordinance No. O-11-06).

EXHIBIT 1

NOTICE OF PENDING DESTRUCTION OF VERBATIM RECORDS

[DATE]

To: Board of Commissioners
[Relevant Subsidiary Body]
General Manager
General Counsel ~~or Staff Attorney~~

Subject: Notice of Impending Destruction of Verbatim Records

CONFIDENTIAL/PRIVILEGED

As required by the Illinois Open Meetings Act, the Office of the Clerk has been charged with the safekeeping of all verbatim records of all closed meetings of the Board of Commissioners and other bodies of the Commission subject to the Illinois Open Meetings Act.

Pursuant to the Open Meetings Act and to the "Closed Session Minutes and Verbatim Records Policy" of the Commission (the "Policy"), the confidential verbatim records listed below are eligible for destruction.

<u>Public Body</u>	<u>Date of Meeting</u>	<u>Proposed Destruction Date</u>

I hereby certify that (1) the relevant public bodies have previously approved written minutes of the closed meetings to which the verbatim records listed in this Notice were prepared and that those minutes are attached, and (2) the closed meetings to which the verbatim records listed in this Notice relate were concluded at least 18 months prior to the Proposed Destruction Date for those verbatim records.

The Office of the Clerk shall destroy the verbatim records listed in this Notice in accordance with the Policy, unless a written objection is filed with the Office of the Clerk within seven days after the date of this notice or not less than three days prior to the Proposed Destruction Date set forth above, whichever is later.

Clerk



DuPage Water Commission

By-Laws

February 15, 2024

AMENDED AND
RESTATED BY-LAWS OF
THE DuPAGE WATER COMMISSION

ARTICLE I

GENERAL PROVISIONS

Section 1: General Purpose. The general purpose of the Commission is to provide a sufficient and economic source and supply of water to the DuPage County area by various means, including the development and operation of a water supply system to acquire and distribute water from Lake Michigan to its Contract Customers and other customers having an allocation pursuant to the Level of Lake Michigan Act, as amended from time to time, and orders of the State of Illinois Department of Natural Resources, Office of Water Resources. The general purpose of these By-Laws is to establish the rules of proceeding of the Commission.

Section 2: Corporate Authority. The Board of Commissioners shall be the corporate authority of the Commission and shall have the power to pass and enforce all necessary ordinances, resolutions, rules, regulations and administrative orders for the conduct of business and management of property of the Commission.

ARTICLE II

COMMISSION AND COMMISSIONERS

Section 1: Composition. The corporate authority of the Commission shall consist of a Board of Commissioners, who shall be appointed in compliance with Water Commission Act of 1985, 70 ILCS 3720/0.001 *et seq.* (hereinafter referred to as the "Act").

Section 2: Duties. The Commissioners shall perform those duties prescribed by the Act and Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.* (hereinafter

referred to as the “Water Commission Statute”) and such other duties as may from time to time be provided for by law or by the Commission.

Section 3: Length of Term. Commissioners shall serve for a term of six years, unless a different term is required under the Act, or until their successors have been appointed and have qualified in the same manner as the original appointment was made. A Commissioner shall be eligible for reappointment upon the expiration of a term. A Commissioner may be a member of the governing board or an officer or employee of DuPage County or any unit of local government within DuPage County.

Section 4: Vacancy. A vacancy in the office of a Commissioner shall be filled for the balance of the unexpired term by appointment and qualification as to residency in the same manner as the original appointment was made.

Section 5: Removal. Any Commissioner may be removed by the appointing authority for any cause for which any other county or municipal officer may be removed. Removal shall be effected in the same manner as the initial appointment of the Commissioner in question.

Section 6: Bond. Each Commissioner shall furnish such bonds as may be required by law for the faithful performance of that Commissioner’s official duties. The cost of such bonds shall be paid by the Commission.

Section 7: Compensation. Each Commissioner who is not a member of the governing board or an officer or employee of a unit of local government within DuPage County shall receive the maximum amount provided for in the Act as compensation for his or her services as a Commissioner. In addition, each Commissioner may be reimbursed for actual expenses incurred in connection with Commission business.

ARTICLE III

OFFICERS OF THE COMMISSION

Section 1: Generally. The Officers of the Commission shall be the Chairman, the Vice-Chairman, the Chairman Pro-Tem, the Treasurer, the Clerk, the General Manager and the Financial Administrator.

Section 2: Chairman.

- a. Appointment. The Chairman shall be appointed by the Chairman of the DuPage County Board with the advice and consent of the DuPage County Board and with the advice of the Board of Commissioners.
- b. Powers and Duties. The Chairman shall:
 - (i) perform those duties prescribed by law or by the Commission, and all duties incident to the office of Chairman of the Commission;
 - (ii) preside at all meetings of the Commission;
 - (iii) appoint the Treasurer with the advice and consent of the DuPage County Board and with the advice and consent of the other Commissioners by a majority affirmative vote as set forth in Section 5.a. of this Article;
 - (iv) appoint the Clerk pursuant to the recommendation of the General Manager and with the advice and consent of the other Commissioners;

- (v) appoint all committees, committee chairman and task force members with the advice and consent of the other Commissioners;
- (vi) sign all ordinances, resolutions and other documents duly authorized to be signed on behalf of the Commission and required to be signed by the Chairman of the Commission;
- (vii) assign duties to officers, committees and task forces of the Commission with the advice and consent of the other Commissioners; and
- (viii) Have the power to vote in the same manner as the other Commissioners.

The Chairman's vote and presence shall be, and be counted as, that of a Commissioner for all purposes under these By-Laws.

Section 3: Vice-Chairman. The Vice-Chairman shall be one of the Commissioners appointed by the DuPage County mayors as provided in the Act, and shall be appointed to such office by a majority vote of all of the Commissioners appointed by the DuPage County mayors as provided in the Act. The Vice-Chairman shall serve until the end of his or her term or until a successor is appointed. The Vice-Chairman shall be eligible for reappointment upon the expiration of a term. The Vice-Chairman shall be assigned such duties as the Chairman deems appropriate. In the event of the Chairman's absence or inability to act, the Vice-Chairman shall, during such absence or inability to act, or until such time as a new Chairman is appointed by the Chairman of the DuPage County Board with the advice and consent of the DuPage County Board and the Board of

Commissioners, perform all duties and exercise all powers within the normal purview of the Chairman, including execution of ordinances, resolutions and other documents.

Section 4: Chairman Pro-Tem. In the event of the temporary absence or inability of both the Chairman and the Vice-Chairman to perform the duties of Chairman at a Commission meeting, the Commissioners shall elect from their number in attendance a Chairman Pro-Tem to serve as Chairman of said meeting and to perform the duties and exercise the powers of Chairman at the meeting, including execution of ordinances, resolutions and other documents approved or authorized by the Commission at said meeting.

Section 5: Treasurer.

- a. Appointment. The Treasurer shall be appointed by the Chairman with the advice and consent of the DuPage County Board and with the advice and consent of the other Commissioners by a majority affirmative vote, which majority must contain the votes of at least one-third (1/3) of the Commissioners appointed by the Chairman of the DuPage County Board and at least forty percent (40%) of the Commissioners appointed by the DuPage County mayors as provided in the Act. The Treasurer shall be appointed solely on the basis of demonstrated financial background and experience to monitor and report on Commission financial matters and budgeting with special weight given to actual experience in or knowledge of acceptable practice relating to the duties of the position as hereinafter set forth. The Treasurer need not be a Commissioner. The Treasurer shall serve at the pleasure of the Commission, and may be removed without cause by the Chairman with the advice and consent of the other Commissioners. The

Treasurer, if not a Commissioner, shall be given notice of all meetings of the Commission and shall have the right to take part in the discussion of matters before the Commission.

b. Duties. The Treasurer shall:

- (i) perform or cause to be performed those duties prescribed by law or by the Commission;
- (ii) have principal responsibility for the oversight of and advise the Finance Committee and the Board of Commissioners regarding:
 - (a) the receipt, deposit and disbursement of monies;
 - (b) the Commission's investment practices, paying particular attention to safety of principal and compliance with existing bond ordinances;
 - (c) the Commission's accounting and control systems and whether or not they are consistent with generally accepted accounting principles;
 - (d) relationships with the financial community; and
 - (e) overall treasury and cash management objectives of the Commission;
- (iii) review financial procedures and practices employed by the Financial Administrator and the General Manager, including the deposit of funds, the making of disbursements, the maintenance of a check register, the reconciliation of bank

statements, the segregation of financial duties, the restriction of access to the established accounting and general ledger systems and the overseeing of the annual audit, and advise the Finance Committee and the Board of Commissioners on the efficiency of such procedures and practices;

- (iv) require the Financial Administrator and the General Manager to document and comply with standard accounting policies, procedures and controls to ensure accurate reporting to the Finance Committee and the Board of Commissioners and to identify improper or unnecessary expenditures, budgetary errors or accounting irregularities;
- (v) review and approve the Financial Administrator's review and approval of manual journal entries and supporting documentation;
- (vi) review and approve monthly bank reconciliations and general account reconciliations;
- (vii) report to the Finance Committee and the Board of Commissioners any improper or unnecessary expenditures, budgetary errors or accounting irregularities;
- (viii) require the Financial Administrator and the General Manager to provide to the Finance Committee and the Board of Commissioners monthly reports regarding the Commission's cash and investment position, including whether the

Commission has sufficient cash and investments to pay its debt service, operating expenses, and capital expenditures and to maintain required reserve levels, the required funding levels for restricted funds, the unrestricted cash and investment balances with comparisons to unrestricted reserves, and the type and performance of the Commission's investments and whether those investments are in compliance with the Commission's investment policies;

- (ix) require the Financial Administrator and the General Manager to provide to the Finance Committee and the Board of Commissioners detailed information concerning the Commission's operating performance, including the budgeted and actual monthly amounts for water sales, water costs and other operating expenses;
- (x) require the Financial Administrator and the General Manager to closely monitor and provide to the Finance Committee and the Board of Commissioners detailed information concerning the progress of construction and other capital projects, including whether the percentage of completion and costs incurred are timely;
- (xi) require the Financial Administrator and the General Manager to provide monthly to the Finance Committee monthly bank reconciliations and general account reconciliations and to

provide full and timely reports documenting any GAAP analysis or communications with GASB;

- (xii) require such other reports or information from the Financial Administrator or General Manager as may be necessary to perform the duties hereinabove set forth; and
- (xiii) furnish such bonds as may be required by law or the Commission for the faithful performance of the Treasurer's official duties. The cost of such bonds shall be paid by the Commission.

Section 6: Clerk.

- a. Appointment. The General Manager shall recommend to the Board of Commissioners persons, who need not be Commissioners, for appointment to the office of Clerk. The Clerk shall be appointed by the Chairman with the advice and consent of the other Commissioners. The Clerk shall serve at the pleasure of the Commission, and may be removed without cause by the Chairman with the advice and consent of the other Commissioners.
- b. Duties. The Clerk shall:
 - (i) perform or cause to be performed those duties prescribed by law or by the Commission;
 - (ii) attest the validity of each ordinance, resolution, contract or other document adopted, entered into or maintained as a record by the Commission;

- (iii) have principal responsibility for the oversight of and advise the Board of Commissioners regarding:
 - (a) compliance with the Illinois Open Meetings Act (5 ILCS 120/1 *et seq.*); and
 - (b) Compliance with the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*);
- (iv) review the recordkeeping procedures employed by the General Manager to assure that the vote of each Commissioner on each ordinance, resolution, motion or other proposition brought to a vote is duly recorded and that a permanent record of the minutes of each Commission meeting is recorded, approved and maintained;
- (v) require such reports or other information from the Administrative Staff as may be necessary to perform the duties hereinabove set forth; and
- (vi) furnish such bonds as may be required by law or the Commission for the faithful performance of the Clerk's official duties. The cost of such bonds shall be paid by the Commission.

Section 7: General Manager.

- a. Appointment: The General Manager shall be appointed by a majority affirmative vote of all the Commissioners, which majority must contain the

votes of at least one-third (1/3) of the Commissioners appointed by the Chairman of the DuPage County Board and at least forty percent (40%) of the Commissioners appointed by the DuPage County mayors as provided in the Act, and with the advice and consent of the DuPage County Board. The General Manager shall be appointed for an indefinite term and solely on the basis of demonstrated executive and administrative qualifications with special weight given to actual experience in or knowledge of acceptable practice relating to the duties of the position as hereinafter set forth. No Commissioner shall receive an appointment as General Manager during their term of appointment as Commissioner or within one year after the expiration of such term. The General Manager shall serve at the pleasure of the Commission, and may be removed without cause by the Chairman with the advice and consent of the other Commissioners. The General Manager may demand a written statement of the reasons for any such removal, which shall be furnished within twenty days after the filing of such request. The action of the Chairman in removing the General Manager shall be final.

b. Duties. The General Manager shall be the chief administrative officer of the Commission and shall be responsible for the efficient administration and management of Commission affairs. The duties of the General Manager shall include, but are not necessarily limited to, the following:

- (i) administrative responsibility for the organization, acquisition, construction, operation and maintenance of the water supply system of the Commission;

- (ii) enforcing the ordinances of the Commission;
- (iii) supervising all employees and consultants of the Commission;
- (iv) hiring and discharging all employees of the Commission (other than those positions appointed by the Chairman and/or the Commissioners), in accordance with administrative rules and procedures established by the Commission;
- (v) preparing an agenda for each Commission meeting in advance for general distribution;
- (vi) attending all Commission meetings unless excused therefrom;
- (vii) attending any Commission committee meeting at which his or her attendance has been requested;
- (viii) attending relevant meetings of the Commission's Contract Customers when so requested;
- (ix) recommending policies, plans and procedures for the organization, construction, acquisition, operation and maintenance of the water supply system of the Commission;
- (x) purchasing materials and services and approving change orders according to administrative rules and procedures established in Article VIII hereof;
- (xi) overseeing the preparation of all checks and requiring and overseeing the maintenance of a check register;
- (xii) requiring and overseeing the preparation of a monthly statement of receipts and disbursements;

- (xiii) requiring and overseeing the reconciliation of bank statements on a monthly basis;
- (xiv) overseeing the preparation of an annual audit;
- (xv) preparing an annual budget;
- (xvi) requiring and overseeing the maintenance of a central file of all correspondence and other documents and materials pertaining to the affairs of the Commission;
- (xvii) preparing and presenting to the Commission for consideration and approval such administrative rules, procedures and orders as may be deemed necessary and appropriate;
- (xviii) representing the Commission before conferences, professional associations or relevant public hearings;
- (xix) executing all contracts and other agreements and documents duly authorized to be signed on behalf of the Commission, except such contracts and other agreements and documents as may be required to be signed by the Chairman or some other officer of the Commission; and
- (xx) assigning such duties as may properly be delegated to the Financial Administrator or other Administrative Staff.

Section 8: Financial Administrator.

- a. Appointment. The Financial Administrator shall be appointed by a majority affirmative vote of all the Commissioners, which majority must contain the votes of at least one-third (1/3) of the Commissioners appointed by the

Chairman of the DuPage County Board and at least forty percent (40%) of the Commissioners appointed by the DuPage County mayors as provided in the Act, and with the advice and consent of the DuPage County Board. The Financial Administrator shall be appointed for an indefinite term and solely on the basis of demonstrated financial background and experience to monitor and report on Commission financial matters and budgeting with special weight given to actual experience in or knowledge of acceptable practice relating to the duties of the position as hereinafter set forth. The Financial Administrator shall be hired by and report to the General Manager. The Financial Administrator shall serve at the pleasure of the Commission, and may be removed without cause by the General Manager. The action of the General Manager in removing the Financial Administrator shall be final.

- b. Duties. The Financial Administrator shall be the Finance Director referred to in the Act and the chief administrative financial officer of the Commission. The Financial Administrator shall be responsible for the efficient administration of the Commission's financial activities including, without limitation, financial reporting, investments, budgeting, insurance, purchasing, and human resources. The Financial Administrator shall:
 - (i) perform or cause to be performed those duties prescribed by law or by the Commission including, without limitation, those duties prescribed by the Act to be performed by the Finance Director;

- (ii) perform or cause to be performed those duties assigned by the General Manager;
- (iii) establish and then comply with the established financial procedures and practices, including the deposit of funds, the making of disbursements, the maintenance of a check register, the reconciliation of bank statements, the segregation of financial duties, the restriction of access to the established accounting and general ledger systems and the management of the annual audit;
- (iv) document and comply with standard accounting policies, procedures and controls to ensure accurate reporting to the Finance Committee and the Board of Commissioners and to identify improper or unnecessary expenditures, budgetary errors or accounting irregularities;
- (v) review and approve manual journal entries and supporting documentation;
- (vi) review and approve monthly bank reconciliations and general account reconciliations;
- (vii) report to the General Manager, the Treasurer, the Finance Committee and the Board of Commissioners any improper or unnecessary expenditures, budgetary errors or accounting irregularities;

- (viii) provide to the Finance Committee and the Board of Commissioners monthly reports regarding the Commission's cash and investment position, including whether the Commission has sufficient cash and investments to pay its debt service, operating expenses and capital expenditures and to maintain required reserve levels, the required funding levels for restricted funds, the unrestricted cash and investment balances with comparisons to unrestricted reserves, and the type and performance of the Commission's investments and whether those investments are in compliance with the Commission's investment policies;
- (ix) provide to the Finance Committee and the Board of Commissioners detailed information concerning the Commission's operating performance, including the budgeted and actual monthly amounts for water sales, water costs and other operating expenses;
- (x) closely monitor and provide to the Finance Committee and the Board of Commissioners detailed information concerning the progress of construction and other capital projects, including whether the percentage of completion and costs incurred are timely;
- (xi) provide monthly to the Treasurer and the Finance Committee monthly bank reconciliations and general account

reconciliations and provide full and timely reports documenting any GAAP analysis or communications with GASB;

- (xii) restrict access to established accounting systems and general ledger systems and segregate the financial duties performed by Administrative Staff so that no single person has sole access and control over the accounting system or the general ledger system;
- (xiii) monitor and facilitate the acquisition of fidelity bonds, liability and property insurance and group health coverage;
- (xiv) report, and monitor processing of, liability claims;
- (xv) verify that requisitions, purchase orders and payment requests are in line with budget and contract approvals; and
- (xvi) administer Commission personnel programs and practices particularly as they relate to labor relations, employee benefits, retirement plan administration and pension and insurance benefits.

Section 9: Vacancy. In the event of a vacancy in office, for whatever reason, such vacancy shall be filled according to the same procedure used for the initial election or appointment.

ARTICLE IV

ADMINISTRATIVE STAFF OF THE COMMISSION

Section 1: Administrative Staff. The Administrative Staff shall consist of the General Manager, the Financial Administrator and such other supervisory, professional, administrative and

operating personnel as may from time to time be employed or retained by the Commission. The Administrative Staff shall be under the direction of the General Manager.

Section 2: Absence or Inability; Incapacity. In the event of the General Manager's temporary absence or inability to act, he or she may designate such Commission officers or employees as shall be authorized to act on his or her behalf. In the event that the Chairman determines that the General Manager is incapable of performing his or her duties, the Chairman may, with the advice and consent of the other Commissioners, appoint a qualified person on a temporary basis to perform the duties of the General Manager during such incapacity.

ARTICLE V

LEGAL COUNSEL

Section 1: Appointment or Engagement. Legal counsel shall be appointed or engaged by a majority affirmative vote of all the Commissioners, which majority must contain the votes of at least one-third (1/3) of the Commissioners appointed by the Chairman of the DuPage County Board and at least forty percent (40%) of the Commissioners appointed by the DuPage County mayors as provided in the Act. Legal counsel shall be appointed or engaged for an indefinite term and solely on the basis of his or her professional qualifications with special weight given to actual experience in or knowledge of acceptable practice relating to the duties of the position or assignment. Legal counsel shall serve at the pleasure of the Commission and may be removed without cause by the Chairman or by the General Manager with the advice and consent of the Commissioners.

Section 2: Duties. Legal Counsel shall be the chief legal advisor to the Board of Commissioners and the General Manager. The duties of the chief legal advisor shall include, but are not necessarily limited to, the following:

- a. performing those duties prescribed by law or by the Commission;

- b. providing advice to the Board of Commissioners and the Administrative Staff in connection with administration of water supply and water purchase and sale contracts, construction of the water supply system, property and right-of-way acquisition, insurance, litigation and other legal matters;
- c. preparing and drafting ordinances, resolutions, contracts and other legal documents, and rendering legal opinions when requested by the Chairman, the Board of Commissioners or the General Manager on all matters concerning the interests of the Commission;
- d. attending all Commission meetings, and any committee or other meeting when required;
- e. making reports from time to time and otherwise performing such other duties or special services which the Board of Commissioners or General Manager may require; and
- f. directing litigation and representing the Commission in all legal matters or, if requested or approved by the Commission, recommending the retention of Special Counsel to represent the Commission or assist the Legal Counsel in certain matters. The Legal Counsel shall oversee and remain responsible for matters handled by Special Counsel.

ARTICLE VI

MEETINGS

Section 1: Regular Meetings. Regular meeting dates of the Commission shall be established in accordance with the provisions of the Illinois Open Meetings Act, 5 ILCS 120/1 *et seq.* Commissioners may participate, in whole or in part, in regular meetings of the Board of Commissioners by audio or video conference, and shall be counted for purposes of voting for so long as they participate and vote, subject to the following terms and conditions:

- a. All Commissioners participating in a meeting by audio or video conference shall be able to hear concurrently the substance of the meeting, and those Commissioners physically present at the designated meeting site, as well as the media and public in attendance at the designated meeting site, shall be able to hear concurrently the Commissioners participating by audio or video conference.
- b. A quorum of the Board of Commissioners shall be physically present at the designated meeting site and not more than one Commissioner shall participate in a meeting by audio or video conference from the same remote location.
- c. The Chairman or the Vice-Chairman shall be physically present at the designated meeting site or, if neither the Chairman nor the Vice-Chairman is participating in the meeting, then the Chairman Pro-Tem shall be physically present at the designated meeting site. If the Chairman is participating in the meeting by audio or video conference, then the Chairman shall vacate the

chair and the Vice-Chairman shall perform the duties of the Chairman at the meeting.

- d. Any Commissioner participating in a meeting by audio or video conference shall be unable to physically attend the meeting because of (i) personal illness or disability; (ii) a family or other emergency; or (iii) employment purposes or Commission business.
- e. Any Commissioner participating in a meeting by audio or video conference shall have notified the Clerk of his or her intention to participate by audio or video conference in advance of the meeting unless advance notice is impractical.
- f. Any Commissioner participating in a meeting by audio or video conference shall announce his or her name, and shall be recognized by the presiding officer, before speaking.
- g. Any voice vote that includes Commissioners participating by audio or video conference and in which a “no” or “nay” vote is cast shall be ineffective, and the official vote on the passage of the action under consideration shall be taken by a roll call vote.

Section 2: Order of Business at Regular Meeting. The Order of Business at all Regular

Meetings shall be as follows:

- a. Roll Call
- b. Public Comments
- c. Approval of Minutes
- d. Treasurer’s Report

- e. Committee Reports and Action Items
- f. Accounts Payable
- g. Chairman's Report
- h. Old Business
- i. New Business
- j. Executive Session
- k. Adjournment

The Chairman may for good cause suspend or revise said order at any particular Commission meeting. Business conducted at any regular meeting may, with the consent of a majority of the Commissioners present, include the discussion of items not specified in the agenda except as otherwise prohibited by applicable law provided, however, that no final action may be taken on any item not on the agenda. An additional matter may be added to the agenda of any regular meeting upon the written request of four or more Commissioners which, in each case, shall consist of not less than two Commissioners appointed by the Chairman of the DuPage County Board and at least two Commissioners appointed by the groups of mayors as provided by the Act. The written request shall be delivered to the General Manager not less than 7 business days prior to the regularly scheduled meeting at which the requesting Commissioners wish to have the specified matter added to the agenda.

Section 3: Special Meetings. Special meetings may be called by the Chairman or the General Manager upon his or her own initiative and shall be called at the request of any four Commissioners. Notice of any special meeting shall be given in accordance with the provisions of the Illinois Open Meetings Act. Commissioners may participate, in whole or in part, in special meetings of the Board of Commissioners by audio or video conference, and shall be counted for purposes of voting for so

long as they participate and vote, subject to the same terms and conditions as are set forth in Section 1 above for regular meetings.

Section 4: Order of Business at Special Meetings. The Order of Business at all special meetings shall be as follows:

- a. Roll Call
- b. Items for Consideration Set Forth in Notice of Special Meeting
- c. Adjournment

Section 5: Emergency Meetings. Emergency meetings may be called by the Chairman upon his or her own initiative or at the request of any Commissioner or the General Manager in the event of a bona fide emergency. Notice of an emergency meeting shall be given in accordance with the provisions of the Illinois Open Meetings Act. Business at an emergency meeting may be conducted without reference to a prepared agenda. Commissioners may participate, in whole or in part, in emergency meetings of the Board of Commissioners by audio or video conference, and shall be counted for purposes of voting for so long as they participate and vote, subject to the same terms and conditions as are set forth in Section 1 above for regular meetings.

Section 6: Quorum. A quorum shall consist of a majority of the Commissioners in office.

Section 7: Vote Requirements.

- a. Generally. Subject to the requirements set forth in Subsection 7.b below and any other provision of these By-Laws that states a more specific vote requirement, the concurrence of a majority of the appointed Commissioners shall be necessary for the passage of any ordinance or the incurring of any debt or financial obligation or the approval of any payment. All other action of the Commission shall require the concurrence of a majority of those

Commissioners present, provided there is a quorum. Every Commissioner who shall be present when a question is stated from the Chair shall vote thereon unless excused by the Chair or unless he or she is directly interested in the question. Votes of “abstain,” “pass,” or “present,” or a refusal to vote when present, shall be counted as concurring in the vote of the majority of those who did vote on the question. If there is vote of the majority, the votes of “abstain,” “pass,” or “present,” or a refusal to vote when present, shall not be considered.

- b. Specific Vote Required. A majority affirmative vote of all the Commissioners, which majority must contain the votes of at least one-third (1/3) of the Commissioners appointed by the Chairman of the DuPage County Board and at least forty percent (40%) of the Commissioners appointed by the groups of mayors as provided for in the Act, shall be necessary for the adoption of any motion, resolution or ordinance regarding the following items:
 - (i) approval of individual contracts, or a series of contracts related to a single Project (as that term is defined in the Water Purchase and Sale Contract between the Commission and its Contract Customers), in an amount in excess of \$100,000.00;
 - (ii) setting of rates for the sale of Lake Michigan water to the Commission’s Contract Customers;
 - (iii) borrowing of funds;
 - (iv) exercise of eminent domain powers;

- (v) employment of General Manager, Financial Administrator, and Legal Counsel or third-party managerial or professional consultants who are not employees of the Commission;
 - (vi) amendment of the Chicago Water Supply Contract;
 - (vii) amendment of these By-laws in accordance with Section 2 of Article XII herein; and
 - (viii) the approval and addition of new customers to whom the Commission will supply water after approval of the Customer Contract (“Subsequent Customers”).
- c. Omnibus Vote. At any meeting, the Commissioners may by unanimous consent take a single vote by yeas and nays on the several questions of passage of any two or more designated ordinances, orders, resolutions or motions placed together for voting purposes in a single group, which single vote shall be entered separately in the minutes under the designation “omnibus vote,” and in such event the clerk may enter the words “omnibus vote” in the minutes in each case in lieu of entering the names of the members of the Board of Commissioners voting “yea” and those voting “nay” on the passage of each of the designated ordinances, orders, resolutions and motions included in such omnibus group. The taking of such single or omnibus vote and such entries of the words “omnibus vote” in the minutes shall be considered of like effect as if the vote in each case had been taken separately on the question of the passage of each ordinance, order,

resolution and motion included in such omnibus group, and separately recorded in the minutes.

Section 8: Rules of Order. The rules of parliamentary procedure contained in *Robert's Rules of Order*, as revised from time to time, shall govern all Commission meetings to the extent that they are applicable and not inconsistent with these By-Laws or other special rules, if any, of the Commission.

Section 9: Public Comment. Public comments shall be limited to a period of 30 minutes and to three minutes per person. Persons shall be recognized in order of sign in on the Public Comment Sign In Sheet at the meeting or, if none, in the order determined by the Chairman or other presiding officer.

Section 10: Closed Session Minutes and Verbatim Record. The "Closed Session Minutes and Verbatim Record Policy" attached to these By-Laws as Exhibit A govern the creation, maintenance, storage, release and destruction of closed meeting minutes and verbatim records of all public bodies of the Commission that are subject to the Illinois Open Meetings Act.

ARTICLE VII

COMMITTEES AND TASK FORCES

Section 1: Purpose of Committees. The Board of Commissioners has determined that the committee structure may in many situations be the most efficient and productive way for the Commissioners to carry out their responsibilities. The primary responsibilities of all committees shall be suggesting policy, reviewing and investigating Commission matters, and making recommendations to the Board of Commissioners. The committee structure is established so that more thought and time may be given to Commission matters by delegating review and investigative functions to a portion of its members. Committees, therefore, are not legislative bodies but

reviewing and investigative bodies; committee actions shall constitute only suggestions or recommendations to the Board of Commissioners rather than instructions to either the Board of Commissioners or Administrative Staff.

Section 2: Committees. The Commission has established an Administration Committee which is responsible for reviewing and investigating, and suggesting policy and making recommendations concerning, organizational matters, purchase of service agreements and internal affairs of the Commission, including personnel and legal affairs; an Engineering and Construction Committee which is responsible for reviewing and investigating, and suggesting policy and making recommendations concerning, the design, construction, operation and improvement of Commission facilities; and a Finance Committee which is responsible for supervising the Administrative Staff's handling of, reviewing and investigating, and suggesting policy and making recommendations concerning, the Commission's financial affairs and budgeting. The Commission may establish other standing or special committees as it may deem necessary, the duties of which shall be those specified at the time such other standing or special committee is established. The Chairman shall appoint all committees and committee chairmen with the advice and consent of the other Commissioners. Committee members may participate, in whole or in part, in regular, special and emergency committee meetings by audio or video conference, and shall be counted for purposes of voting for so long as they participate and vote, subject to the same terms and conditions as are set forth in Section 1 of Article VI above for regular meetings, or Section 3 of Article VI above for special meetings, or Section 5 of Article VI above for emergency meetings of the Board of Commissioners, as the case may be. The Commission may consolidate, abolish or change the duties of any one or more of its committees so long as at all times required by the Act there exists a Finance

Committee performing those duties prescribed by law, including conducting monthly meetings to supervise the handling of financial matters and budgeting by Administrative Staff.

Section 3: Chairman as Committee Member. The Chairman shall be an ex-officio member of all committees and shall be entitled to vote on committee matters. The Chairman shall not be counted as a committee member for purposes of determining a quorum unless the Chairman is present at the committee meeting.

Section 4: Purpose of Task Forces. A task force structure may in some situations be the most efficient and productive way for the Commission to carry out its responsibilities. The task force structure is especially suited to the review and investigation of matters falling outside the expertise of the Commissioners individually and collectively, and requiring more intensive study than the Commissioners can devote to them along with other matters.

Section 5: Task Forces. The Commission may establish such task forces as it may deem necessary. The Chairman shall appoint all task force members with the advice and consent of the other Commissioners. Task force membership may include, but need not be limited to, Commissioners. Task force members may participate, in whole or in part, in regular, special and emergency task force meetings by audio or video conference, and shall be counted for purposes of voting for so long as they participate and vote, subject to the same terms and conditions as are set forth in Section 1 of Article VI above for regular meetings, or Section 3 of Article VI above for special meetings, or Section 5 of Article VI above for emergency meetings of the Board of Commissioners, as the case may be.

ARTICLE VIII

PURCHASING PROCEDURES

Section 1: Coverage. These procedures shall cover all contracts for supplies, material or work being purchased by the Commission except as herein set forth.

Section 2: Definitions. For the purpose of these procedures, “supplies, material or work” shall mean and include, except as hereinafter limited, all work, labor or services; other contracts for services; supplies, equipment or other materials; and the rental, repair or maintenance of equipment, machinery and other personal property. The term “work” shall not include services rendered in a professional capacity such as accounting, engineering or legal services.

Section 3: Minor Purchases. The General Manager shall have the authority to purchase on behalf of the Commission supplies, material or work requiring an expenditure of the sum provided for in 65 ILCS 5/8-9-1 or less pursuant to such procedures as he or she deems calculated to insure the best interests of the Commission, without a specific solicitation of quotations or advertisement for bids.

Section 4: Purchases Requiring Quotations. All purchases of supplies, material or work included in the Annual Management Budget and requiring expenditure in excess of the sum provided for in 65 ILCS 5/8-9-1 shall be made only after the solicitation of at least two written quotations. All such quotations shall be submitted sealed to the Commission and shall be opened in public at a date and time set by the General Manager. A tabulation of all quotations received shall be presented to the Board of Commissioners. In cases where only one quotation is received, there is only a single source for the supplies, materials or work or the purchase was not included in the Annual Management Budget, the expenditure may only be authorized by the Board of

Commissioners. The General Manager shall keep a record of all such purchases and the quotations submitted pursuant to the solicitation therefor.

Section 5: Other Contracts. All contracts, except those provided for in Section 3 and Section 4 of this Article VIII shall be entered into only after advertising for bids in the manner required by the Water Commission Statute.

Section 6: Bid Deposits. When deemed necessary by the General Manager or Board of Commissioners, bid deposits shall be required.

Section 7: Specifications. The following shall apply to specifications.

- a. Specifications shall be available to all bidders;
- b. Specifications shall be general in nature and not so specific as to limit a bidder to a specific brand; and
- c. The Commission shall reserve the right to make clarifications, corrections or changes in specifications at any time prior to the time bids are opened so long as all bidders or prospective bidders are informed of said clarifications, corrections or changes in the specifications.

Section 8: Bid Opening Procedure.

- a. Sealed. Bids shall be submitted sealed to the Commission and shall be identified as bids on the envelopes. The date and time the bid was received shall be recorded on the envelope of the bid.
- b. Opening. Bids shall be opened in public at the time and place stated in the public notices.
- c. Tabulation. A tabulation of all bids received shall be available for public inspection.

Section 9: Acceptance or Rejection of Bids. Except when expressly and specifically limited by the terms of a particular bid solicitation, the Commission shall have the authority to accept the bid which, in its judgment, is the best bid and most favorable to the interests of the Commission and the public; to reject the low bid; to award to other than the lowest bidder; to accept any item of any bid; to reject any and all bids; to accept and incorporate corrections or clarifications following bid opening when to do so would not, in the Commission's opinion, prejudice the bidding process or create any improper advantage to bidders; and to waive irregularities and informalities in any bid submitted or in the bidding process.

Section 10: Bidders in Default to Commission. The Commission shall not accept the bid of a contractor who is or has been in default on a contract with the Commission or in the payment of monies due to the Commission.

Section 11: Award of Contract.

- a. Authority in Board of Commissioners. The Board of Commissioners shall have the authority to award all contracts for the construction of the Commission's water supply system.
- b. Awards. Contracts shall be awarded to the bidder whose proposal is found to be in the best interests of the Commission. In determining the bidder who is to receive the award, the Commission shall consider the following factors in addition to price:
 - (i) The ability, capacity and skill of the bidder to perform the contract or provide the service required;
 - (ii) Whether the bidder has the requisite facilities, plant, organization and staffing to enable the bidder to perform the

contract or provide the service successfully and promptly,
within the time specified, without delay or interference;

- (iii) The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- (iv) The quality of the bidder's performance of previous contracts or services;
- (v) The previous and existing compliance by the bidder with the laws and ordinances relating to the contract or services;
- (vi) The sufficiency of the financial resources and ability of the bidder to perform the contract or to provide the services;
- (vii) The quality, availability, adaptability and capabilities of the supplies, material or work to the particular use required;
- (viii) The ability of the bidder to provide future maintenance and service for the subject of the contract, if applicable;
- (ix) Any other factor that the Commission may legally consider in determining the proposal that is in the best interests of the Commission;
- (x) If the contract is for "public works" as that term is defined in the Illinois Prevailing Wage Act (820 ILCS 130/0.01 *et seq.*), the following factors shall also be considered:
 - a. The ability of the bidder to provide future maintenance and service for the subject of the contract, if applicable;

- b. The bidder and its subcontractors must comply with all provisions of the Illinois Prevailing Wage Act, (820 ILCS 130/0.01 *et seq.*), including wages, medical and hospitalization insurance and retirement for those trades covered under the Act; and
 - c. The bidder and all bidder's subcontractors must participate in active apprenticeship and training programs approved and registered with the United State Department of Labor's Office of Apprenticeship for each of the trades of work contemplated under the contract.
- c. Subsequent Awards. Contracts awarded to a bidder who fails to comply with all conditions precedent to formal execution of the contract agreement may be annulled. Upon annulment of an award, the Commission may award the contract to any other bidder whose proposal is found to be in the best interests of the Commission in accordance with Subsection 11(b) above, or the Commission may advertise anew for bids.

Section 12: Single Bids. The Board of Commissioners desires competitive bids; however, where there is only one bid, that fact alone shall not prevent the Commission from accepting that bid.

Section 13: Performance and Payment Bonds. The Commission may require a performance bond before entering a contract in such amount as it shall find reasonably necessary to protect the best interests of the Commission. The Commission shall require a payment bond in such amount as

it shall find reasonably necessary to secure payment for material used and labor performed in connection with a public work.

Section 14: Change Orders. All contract change orders shall be considered and approved or disapproved by the Commission during the regular course of its conduct of business except in the following circumstances.

- a. By General Manager. The General Manager shall have the authority to approve any contract change order:
 - (i) based entirely upon approved unit prices; or
 - (ii) In an amount not in excess of \$100,000 when in the judgment of the General Manager and the Commission's consulting engineer such change order requires immediate approval to avoid significant impacts to the project schedule or the incurring of unnecessary and excessive costs by the Commission.

A full written description and explanation of any change order so approved by the General Manager shall be distributed to the Board of Commissioners as soon as possible following its approval.

- b. By Commission at Special or Emergency Meeting. When in the judgment of the General Manager a change order in an amount in excess of \$100,000 requires a more immediate approval than the Commission's regular meeting schedule would permit in order to avoid the incurring of significant impacts to the project schedule or unnecessary and excessive costs by the Commission, or when, in any other case, in the judgment of the General

Manager a change order requires the immediate attention of the Commission, the General Manager may call a special or emergency meeting of the Commission for the consideration of such change order.

Section 15: Prohibition Against Subdivision. No contract or change order shall be subdivided to avoid the requirements of these By-Laws. This prohibition shall not prevent the repetitive purchase of supplies, material or work which is purchased over a period of time as needed.

Section 16: Emergencies. In case of an apparent emergency which requires immediate purchase of supplies, material or work to protect persons or property, the General Manager shall be authorized to secure any supplies, material or work necessary to address such emergency by whatever means deemed necessary without regard to the procedures otherwise required under these By-Laws. A full written description and explanation of any such emergency purchase shall be distributed to the Board of Commissioners as soon as possible following the emergency.

Section 17: Bid Item Must Be Budgeted. Contracts or purchase orders cannot be executed and are invalid and void unless the amounts due there under have been budgeted by the Board of Commissioners.

Section 18: Cooperative Purchasing Arrangements. Nothing in this Article VIII shall be interpreted to prohibit the Commission from participating with other public bodies, associations or agencies, or with other units of government, in any cooperative purchasing arrangements subject to bidding or other processes that assure the protection of the best interests of the Commission. Supplies, materials or work purchased through such arrangement shall be exempted from the requirements of this Article.

ARTICLE IX

DISBURSEMENTS

Section 1: No Disbursement Without Authority. No funds, monies or other things of value in the hands of the Commission shall be paid out, disbursed or delivered except upon warrant, draft or order approved and signed as herein provided.

Section 2: Authorization. All disbursements in excess of \$20,000.00 shall be approved in advance by the Board of Commissioners except in the following circumstances: (i) the General Manager is authorized to pay all payroll disbursements and disbursements for payroll-related taxes, contributions and payments, and (ii) in the case of an emergency or in cases where the Commission is unable to meet or establish a quorum, the General Manager is hereby authorized, with the concurrence of the Chairman, to make all disbursements which have previously been budgeted and/or expenditures for which the Commission has previously contracted. All disbursements made under subsection (ii) shall be placed on the agenda for the next regular meeting of the Commission for purposes of ratification.

Section 3: Required Signatures. All checks shall be manually or electronically signed by any two of the following: the Chairman, the Treasurer, the Finance Committee Chairman, the General Manager or the Financial Administrator.

Section 4: Designation of Fund and Payee. For each check issued by the Commission, a record shall be kept which specifies the particular fund or appropriation to which it is chargeable and the person or other entity to whom it is payable.

Section 5: Credit Card Policy. It is the policy of the Commission to permit use of corporate credit cards by employees designated by the General Manager and approved by the Board of Commissioners for charging legitimate company expenses. Eligible employees are those who are

or will be regularly incurring legitimate business expenses in which this procurement process is more efficient and expeditious. The Commission shall, from time to time, by Resolution adopt specific policies regulating the use of Commission credit cards (the "Credit Card Policy"). Employees made eligible to have and use Commission credit cards, as herein provided, shall first read the Commission's Credit Card Policy and then acknowledge that they have read and understand the Policy and will be bound by, and will adhere to, same. Said acknowledgement shall be evidenced by the eligible employee's signature on the addendum attached to the Commission's Credit Card Policy. The eligible employee shall deliver the executed addendum to the Credit Card Administrator who shall be that person designated by the Commissioners in the Resolution adopting the Credit Card Policy.

ARTICLE X

BUDGET AND AUDIT

Section 1: Fiscal Year. The fiscal year of the Commission shall begin May 1 and shall end April 30 of the following year.

Section 2: Tentative Management Budget. In accordance with the Commission's obligations under any Bond Ordinances and/or the Water Purchase and Sale Contract between the Commission and Contract Customers (the "Customer Contract"), the General Manager and Administrative Staff shall prepare and submit to the Board of Commissioners and the Commission's Contract Customers a tentative Management Budget not less than 60 days prior to the beginning of the fiscal year. The tentative Management Budget shall contain in reasonable detail an estimate of (i) revenues of the Waterworks System and any other funds to be deposited in the accounts of the Commission, (ii) Fixed Costs (as defined in the Customer Contract) to be payable by each Contract Customer in a stated aggregate dollar amount per month for each, and (iii) Operations and Maintenance Costs (as

defined in the Customer Contract) in a stated price per 1000 gallons of water. The tentative Management Budget shall include estimated amounts to be deposited in each month of the fiscal year into the Water Fund and each of the accounts thereof and the requirements, if any, for the amounts estimated to be expended from such accounts. The tentative Management Budget shall also set forth sufficient detail with respect to such revenues, other funds, Operation and Maintenance Costs and other expenditures and such deposits as shall be necessary or appropriate to comply with the Water Supply Contract entered into by and between the City of Chicago and the DuPage Water Commission, or any future water supply contract authorized by the Board of Commissioners. The Board of Commissioners shall hold at least one hearing on the tentative Management Budget ordinance prior to final action thereon, at which hearing the Contract Customers may be heard. The Commission shall give its Contract Customers not less than 21 days' notice of such hearing.

Section 3: Adoption of Management Budget. The Board of Commissioners shall approve and adopt the annual Management Budget on or before April 30 each year.

Section 4: Preliminary Combined Annual Budget and Appropriation Ordinance In Accordance with the Illinois Municipal Budget Law Act. The General Manager and Administrative Staff shall prepare and submit to the Board of Commissioners a preliminary Combined Annual Budget and Appropriation Ordinance before or within the first quarter of each fiscal year. The preliminary Combined Annual Budget and Appropriation Ordinance shall contain a statement of cash on hand at the beginning of the fiscal year, an estimate of cash expected to be received during such fiscal year from all sources, an estimate of expenditures contemplated for such fiscal year, and a statement of estimated cash expected to be on hand at the end of such year. The Board of Commissioners shall hold at least one public hearing on the preliminary Combined Annual Budget

and Appropriation Ordinance prior to final action thereon, in compliance with the Illinois Municipal Budget Law, 50 ILCS 330/1 *et seq.*

Section 5: Adoption of Combined Annual Budget and Appropriation Ordinance Pursuant to the Illinois Municipal Budget Law Act. The Board of Commissioners shall approve and adopt the Combined Annual Budget and Appropriation Ordinance on or before July 31 each year.

Section 6: Audit. The Board of Commissioners shall provide for an annual audit to be made by an independent certified public accountant in accordance with the Illinois Governmental Account Audit Act, 50 ILCS 310/0.01 *et seq.* The Commission's Finance Committee shall from time to time interview and recommend to the Board of Commissioners independent certified public accountants to perform the annual audit.

ARTICLE XI

CONDUCT OF THE COMMISSIONERS, OFFICERS AND EMPLOYEES OF THE COMMISSION

Section 1: Purpose. It is the purpose of the Commission to guarantee fair, efficient, and honest governance of the DuPage Water Commission and to ensure the integrity and objectivity of its Chairman, Commissioners, officers and employees. The fundamental principle underlying all policies of the Commission is that all activities of the Commission's officials, officers and employees must meet appropriate ethical and legal standards. While no one policy can comprehensively address all aspects of appropriate business behavior, the Commission believes that these goals may best be secured through adoption and incorporation of the provisions of Ordinance OFI-0013A-12 of the County of DuPage, commonly referred to as the County Ethics Ordinance (the "Ethics Ordinance"). By the adoption of the Ordinance approving these By-Laws, the Commission expressly adopts and incorporates the provisions in the Ethics Ordinance in the form attached hereto and

incorporated herein as Exhibit "B". The version of the Ethics Ordinance incorporated herein is exactly the same as the ordinance enacted and approved by the County Board of DuPage County, Illinois, on August 27, 2013. In applying the Ethics Ordinance to the Commission, as the context may require, where the Chairman of the County Board is to act, the Chairman of the Water Commission, as the presiding officer of the Water Commission shall act, and where the County Board is to act, the Water Commission's Board of Commissioners functioning as the corporate authorities of the Water Commission shall act. Provisions of the Ethics Ordinance which set forth the duties of elected officers, appointees, and employees of DuPage County, including any prohibitions applicable to them, shall apply to all officers, appointees and employees of the Water Commission.

Any amendment to County Ordinance No. OFI-0013A-12 which would apply to the conduct of the Commission's Commissioners, officers and employees and which the Commission could lawfully adopt based upon its own lawful authority and which becomes effective after the effective date of the Commission Ordinance amending and restating these Bylaws shall be incorporated into these By-Laws by this reference as of the effective date of the County's amendatory ordinance and Exhibit "B" attached hereto shall be deemed to be amended to conform with the content of the County's ordinance amending Ordinance No. OFI-0013A-12 without further action of the Commission.

Section 2: Conflict of Interest. In conformance with The Water Commission Act of 1985 (70 ILCS 3720/2), no Commissioner or employee of the Commission shall be interested directly or indirectly in any contract or job of work or materials, or the profits thereof, or services or services to be performed for or by the Commission. In addition to any other sanction which may be provided within these By-laws or any penalty otherwise provided by law, said statute provides that a violation

of the restriction set forth herein is a Class C misdemeanor. A conviction is cause for removal of a Commissioner from his/her office or a person from his/her employment.

ARTICLE XII

MISCELLANEOUS

Section 1: Conflict. In the event of any conflict between these By-laws and any other ordinance, resolution, rule, regulation or order of the Commission, these By-laws shall control.

Section 2: Amendment. In adopting these By-laws, the Board of Commissioners recognizes that the organizational guidelines and rules herein set forth may require revision and adjustment as experience will dictate. Amendments may be proposed by any Commissioner. Any proposal to amend these By-laws shall be submitted in writing to each Commissioner for consideration at a regular Commission meeting. No such proposal shall be passed at the same meeting at which it is initially considered. Any amendment to these By-laws shall be effected by ordinance, which ordinance may take effect immediately upon its passage and approval as set forth in Section 7.b(vii) of Article VI, unless the terms of such ordinance provide otherwise.

Section 3: Suspension of the Rules. The Commission may, by a two-thirds majority vote of the Commissioners present, determine to suspend any of the Rules contained in Article VI through XII hereof; provided, however, that no such suspension shall be construed to suspend the Commission's obligations under applicable state statutes or the "Water Purchase and Sale Contract Between the DuPage Water Commission and Contract Customers" approved on January 18, 2024.

EXHIBIT A

DuPAGE WATER COMMISSION CLOSED SESSION MINUTES AND VERBATIM RECORDS POLICY

- I. BACKGROUND AND PURPOSE. The Open Meetings Act requires all public bodies to keep minutes of their meetings, whether opened or closed. With the adoption of amendments to Section 2.06 of that Act, 5 ILCS 120/2.06, public bodies also must maintain a verbatim record of all closed meetings in the form of an audio or video recording. This Policy sets forth specific procedures to ensure that the Board of Commissioners of the DuPage Water Commission—and all committees of the Board of Commissioners and other bodies of the Commission that are subject to the Open Meetings Act (“Subsidiary Bodies”)—comply with the requirements for closed sessions.
- II. CLOSED MEETING MINUTES. Minutes of a closed meeting shall comply with the same requirements applicable to minutes for an open meeting. They shall include, at a minimum, the date, time and place of the meeting; the members of the public body that are present and those that are absent; a summary of discussion on all matters proposed, deliberated or decided; and a record of any votes taken. The Open Meetings Act exemption or exemptions applicable to the closed session should be identified in the minutes of the closed session. Minutes of closed meetings shall not be released for public inspection to the extent that there is a need to preserve confidentiality of matters stated in those minutes.
- III. CLOSED MEETING VERBATIM RECORDS. A verbatim record of each closed meeting is required and shall be subject to the following requirements:
 - A. Recordings. Verbatim records shall be made by audio or video recording. Each recording shall be labeled with the name of the meeting body and the date, time and place of the meeting. A statement identifying each participant and the purposes for the closed meeting should be made at the beginning of the closed meeting.
 - B. Confidentiality. All verbatim records of closed meetings are hereby declared to be confidential and not subject to release except pursuant to this Policy or as required by law.
 - C. Duties of Clerk or Designee. The Clerk, or his or her designee, shall be responsible for creating the verbatim record. After a closed meeting, the verbatim record shall be delivered immediately to the Clerk for storage in a secure location within the DuPage Pumping Station. The Clerk shall be responsible for maintaining, storing and restricting access to all verbatim records.
 - D. Access to Verbatim Records. No individual, nor the Board of Commissioners, nor any Subsidiary Body shall have access to any verbatim record of any closed session unless approved by one of the following specific methods:

1. Individual Access. Unless otherwise required by law, no individual, including any member of the Board of Commissioners or any Subsidiary Body, shall have access to any verbatim record unless specifically approved by an affirmative majority vote of Board of Commissioners taken at an open meeting. An individual who is granted the right to access a verbatim record shall do so only at DuPage Pumping Station and in the presence of the Clerk or his or her designee. No verbatim record shall be copied or taken out of the DuPage Pumping Station except as specifically allowed in this Policy or as otherwise required by law.
 2. Subsidiary Body Review. A Subsidiary Body may access a verbatim record of one of its closed meetings only by an affirmative majority vote, taken at an open meeting, of all members of that Subsidiary Body then holding office. A Subsidiary Body shall review a verbatim record only at a duly noticed closed meeting of that Subsidiary Body.
 3. Board of Commissioners Review. The Board of Commissioners may access a verbatim record of one of its closed meetings or of a closed meeting of any Subsidiary Body only by an affirmative majority vote of the Board of Commissioners taken at an open meeting. The Board of Commissioners shall review a verbatim record only at a duly noticed closed meeting of the Board.
 4. Clerk. The Clerk shall have access at all times to all verbatim records for purpose of ensuring their proper care and protection. The Clerk may review a verbatim record, however, only if authorized to do so by an affirmative majority vote of the Board of Commissioners taken at an open meeting.
 5. Court. If the Commission is directed by a court order issued in accordance with Section 2.06 of the Open Meetings Act, 5 ILCS 120/2.06, to deliver a verbatim record, then the Clerk or his or her designee shall deliver the relevant verbatim record to the court, after that record has been reviewed by the Commission's General Counsel or.
- E. Verbatim Record Not Official Record. A verbatim record shall not be part of the official public record of any meeting. Rather, the approved minutes are to be deemed the official record of the meeting.
- F. Notification of Destruction of Verbatim Record. On a regular basis, the Clerk shall provide a written notice listing all verbatim records that are scheduled for destruction (the "Notice of Destruction"). The Notice shall be in a form substantially the same as the form attached as Exhibit 1 to this Policy. The Notice shall be given to (1) the members of the Board of Commissioners, (2) the members of the Subsidiary Body (if the verbatim record was created at a closed meeting of that Subsidiary Body), (3) the General Manager, and (4) the

Commission's General Counsel. The Notice shall include a copy of the approved minutes for each verbatim record scheduled for destruction.

G. Objection to Destruction.

1. Deadline for Objection. A written objection to the destruction of a verbatim record shall be filed with the Clerk within seven days after the date of a Notice of Destruction, or at least three days before the destruction date set forth in that Notice, whichever is later.
2. Who May Object: The Chairman or any Commissioner may object to the destruction of any verbatim record of a closed session of the Board of Commissioners or of any Subsidiary Body. A member of a Subsidiary Body may object to destruction of a verbatim record only of a closed session of that Subsidiary Body.

H. Destruction of Verbatim Record if No Objection. Unless a timely written objection to the destruction of a verbatim record is filed with the Clerk in accordance with Section III.G of this Policy, the Clerk shall erase or otherwise destroy each verbatim record listed in the Notice of Destruction on the date set forth in the Notice. No verbatim record shall be erased or otherwise destroyed unless the Clerk certifies that (1) the verbatim record was created at a closed meeting that was concluded at least 18 months prior to the date of destruction and (2) there exists approved minutes of that closed meeting.

I. Procedure When Objection. The following procedure shall apply when a timely objection to destruction is received by the Clerk:

1. Notice of Objection. The Clerk shall promptly send notice of the objection to all parties who received the Notice of Destruction.
2. Deliberation on Objection. At a closed session of the Board of Commissioners or Subsidiary Body scheduled promptly after receipt of an objection, the Board of Commissioners or Subsidiary Body shall determine whether destruction of the verbatim record should be delayed. That decision shall require the vote set forth in the next Section III.I.3 of this Policy. If the required vote to delay destruction is not obtained, then the verbatim record shall be destroyed immediately by the Clerk in accordance with Section III.H of this Policy; provided, however, that no verbatim record of a Subsidiary Body shall be destroyed if either the Subsidiary Body or the Board of Commissioners votes to delay its destruction.
3. Required Vote to Delay Destruction. The destruction of a verbatim record shall be delayed only if: (i) the Board of Commissioners, by an affirmative majority vote, or (ii) the Subsidiary Body, by an affirmative

vote of three-fourths of the members of the Subsidiary Body then holding office, authorizes delay of that destruction.

- J. Procedure When Destruction Delayed. If the destruction of a verbatim record has been delayed pursuant to Section III.I of this Policy, then the Board of Commissioners and/or the Subsidiary Body, if any, that voted to delay destruction shall review the verbatim record in closed session. After that review, the reviewing body shall determine either: (1) that the verbatim record should be destroyed, or (2) that the verbatim record may be released pursuant to Section IV of this Policy, or (3) that the destruction of the verbatim record ought to be delayed to a date certain.

No verbatim record shall be destroyed if the Board of Commissioners or the Subsidiary Body, if any, determines that destruction should be delayed or released pursuant to Section IV of this Policy.

If destruction of a verbatim record is delayed to a date certain, then the Clerk shall provide a new Notice of Destruction for that verbatim record in accordance with Section III.F of this Policy.

IV. Review and Release of Closed Meeting Minutes and Verbatim Records.

- A. Review of Minutes. Not less than twice each year, the Board of Commissioners and each Subsidiary Body shall review its closed meeting minutes to determine if they are eligible for release to the public. In its review, the Board of Commissioners or Subsidiary Body shall determine if the minutes contain information that continues to require confidential treatment. Only portions of written minutes that no longer require confidential treatment shall be released. Written minutes shall not be released unless approved by an affirmative majority vote of the Board of Commissioners or Subsidiary Body taken in public session.
- B. Review of Verbatim Records. Pursuant to Section III.B of this Policy, verbatim records always are *per se* confidential. The Board of Commissioners or the relevant Subsidiary Body may undertake a review of a verbatim record, but only in accordance with Section III.D of this Policy. After review of the verbatim record, the Board of Commissioners or the Subsidiary Body shall require that the verbatim record remain confidential unless, after reviewing the verbatim record in its entirety, the verbatim record is approved for release by an affirmative majority vote of the Board of Commissioners or, for a verbatim record of a Subsidiary Body, by an affirmative vote of three-fourths of the members of that Subsidiary Body then holding office. All such votes shall be taken in open session. (Last amended on October 12, 2006 by Ordinance No. O-11-06).

EXHIBIT 1

NOTICE OF PENDING DESTRUCTION OF VERBATIM RECORDS

[DATE]

To: Board of Commissioners
[Relevant Subsidiary Body]
General Manager
General Counsel

Subject: Notice of Impending Destruction of Verbatim Records

CONFIDENTIAL/PRIVILEGED

As required by the Illinois Open Meetings Act, the Office of the Clerk has been charged with the safekeeping of all verbatim records of all closed meetings of the Board of Commissioners and other bodies of the Commission subject to the Illinois Open Meetings Act.

Pursuant to the Open Meetings Act and to the "Closed Session Minutes and Verbatim Records Policy" of the Commission (the "Policy"), the confidential verbatim records listed below are eligible for destruction.

<u>Public Body</u>	<u>Date of Meeting</u>	<u>Proposed Destruction Date</u>

I hereby certify that (1) the relevant public bodies have previously approved written minutes of the closed meetings to which the verbatim records listed in this Notice were prepared and that those minutes are attached, and (2) the closed meetings to which the verbatim records listed in this Notice relate were concluded at least 18 months prior to the Proposed Destruction Date for those verbatim records.

The Office of the Clerk shall destroy the verbatim records listed in this Notice in accordance with the Policy, unless a written objection is filed with the Office of the Clerk within seven days after the date of this notice or not less than three days prior to the Proposed Destruction Date set forth above, whichever is later.

Clerk _____



Resolution #: R-11-24

Account: 01-60-661101

Approvals: *Author / Manager / Finance / Admin*

PDM - - PDM

REQUEST FOR BOARD ACTION

Date: 2/7/2024

Description: Recommendation to Renew Chicago Water Contract 17 years

Agenda Section: Administration Committee

Originating Department: Administration

The DuPage Water Commission/City of Chicago Water Supply Contract will expire on March 19, 2024. Prior to that date, it is necessary for the DWC to take action to either 1) extend the current contract or 2) execute a new contract with the City of Chicago.

DWC has been earnestly attempting to engage the City of Chicago in meaningful negotiations for several years, but very little progress was made with the former Chicago administration. While the new administration has been more involved, it has become clear that a favorable contract will not be formalized prior to the expiration date of the current contract. To date, all contract positions taken by the City of Chicago are less favorable than the terms of the current contract.

Therefore, DWC recommends renewal of the current contract according to Section I.1 of the current contract. This section affords DWC the right to unilaterally extend the contract for no less than 10 years and no more than 40 years. Exercising this right will retain the current "favored nations" clause which would be applied in the event that another water purchaser receives water at a lower rate during the extension term and would retain other conditions more favorable in the current contract. DWC intends to continue to engage the City of Chicago in contract negotiations during the renewal period, in an effort to develop a favorable long-term contract.

That said, the length of the Chicago contract extension should be established to facilitate construction of a new source water system should that alternative remain most favorable. DWC previously received a study which indicates that construction of a new Alternative Source Water Project to access Lake Michigan water directly is technically feasible and financially viable. Secondary analysis indicated that engagement with other regional partners, including but not limited to the Northwest Suburban Municipal Joint Action Water Agency (NSMJAWA) and the Northwest Water Commission (NWC) improves the financial viability of the project. DWC continues to engage with these parties and others to advance a regional alternative to suburban source water supply.

Following refinement of the Carollo report for the joint “North” route with NSMJAWA and NWC, DWC engaged the engineering firm of Burns & McDonnell to perform a peer review to validate the conclusions and to engage in an analysis to confirm that assumptions and parameters are appropriate for this level of evaluation; both summary memoranda are attached for reference. This activity was effective in providing additional context for the project and provided in-depth analysis of the primary cost and schedule components of the project. It should be noted that this analysis included participatory flow data from the Northwest Water Commission, which has elected not to further participate in the project; therefore, the study will be revised one more time - which will impact proposed design capacity, as well as the scale and cost for the project. Cost data is included in the summary memos and will be further refined in the following study.

Of primary importance to the decision regarding the Chicago contract, however, is concurrence regarding the time of construction – as this data will inform the appropriate length of the Chicago contract extension. This project will be regional in scope and logistically complex, so it is of paramount importance to apply a time extension that can reasonably accommodate design, construction, and commissioning of the new source water system. In this regard, both consultants concur that the project could reasonably be expected to be completed within 17 years, with Carollo indicating “...an estimated project completion date of January 2039” and Burns & McDonnell noting “...approximately 16.5 years from August 1, 2022 to January 26, 2039 – is reasonable but leans toward optimistic.” Staff concurs that the project can be expected to be completed within 17 years and notes that the commencement of the project is tied to the 2022 beginning of the study. In recognition of these factors and the complexity of non-engineering elements, staff recommends an extension of the Chicago contract for a period of 17 years, to the date of March 19, 2041.

Recommended Motion:

It is recommended that Resolution R-11-24 be approved, authorizing a 17-year renewal of the current DWC-Chicago Water Supply Contract (# 28492) under current terms to the date of March 19, 2041; and authorizing DWC Chairman Zay to execute the notice of extension and direct Special Legal Counsel Mara Georges to deliver the notice to the City of Chicago by hand-delivery and mail.

DUPAGE WATER COMMISSION

RESOLUTION NO. R-11-24

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF A NOTICE OF EXERCISE OF OPTION TO RENEW WATER SUPPLY CONTRACT WITH THE CITY OF CHICAGO

WHEREAS, the DuPage Water Commission (the “Commission”) was formed and exists pursuant to the Water Commission Act of 1985, 70 ILCS 3720/0.01 et seq., and Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 et seq., for the purpose of securing an adequate source and supply of water for its customers; and

WHEREAS, the Commission previously entered into a Water Purchase and Sale Contract (the “Contract”) with the City of Chicago (the “City”), which will expire on March 19, 2024;

WHEREAS, the Contract grants the Commission the option to renew or extend the Contract on the same terms and conditions by providing written notice of such renewal or extension to the City;

WHEREAS, by agreement of the City, the Commission must provide the written notice to renew or extend the Contract not later than March 19, 2024;

WHEREAS, the Commission deems it to be in the best interests of the Commission to renew the Contract on its same terms and conditions for a renewal term of seventeen 17 years, until March 19, 2041.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the DuPage Water Commission as follows:

SECTION ONE: The foregoing recitals are hereby incorporated herein and made a part hereof as findings of the Board of Commissioners of the DuPage Water Commission.

SECTION TWO: The Commission hereby approves renewal of the Contract on its same terms and conditions for a renewal term of seventeen (17) years, until March 19, 2041, and further approves and authorizes the Notice of Option to Renew Water Supply Contract No. 28492 (the “Notice”) attached hereto and by this reference incorporated herein and made a part hereof as Exhibit 1. The Commission’s

Chairman or General Manager are authorized to execute the Notice on behalf of the Commission and to send/deliver, or cause to be sent/delivered, the Notice to the City.

SECTION THREE: This Resolution shall be in full force and effect from and after its adoption.

	Aye	Nay	Absent	Abstain
Bouckaert, D.				
Cuzzone, N.				
Fennell, J.				
Healy, J.				
Novotny, D.				
Pruyn, J.				
Romano, K.				
Rush, K.				
Russo, D.				
Saverino, F.				
Suess, P.				
Van Vooren, D.				
Zay, J.				

ADOPTED THIS ____ DAY OF _____, 2024.

James Zay, Chairman

ATTEST:

Danna Mundall, Clerk
Board/Resolutions/2024/R-11-24

EXHIBIT 1



February 16, 2024

VIA HAND DELIVERY and E-MAIL TRANSMISSION

The Honorable Randy Conner
Acting Commissioner
City of Chicago, Department of Water Management
Jardine Water Purification Plant
1000 East Ohio
Chicago, IL 60611

**Re: Notice of Option to Renew Water Supply Contract No. 28492
Between City of Chicago and DuPage Water Commission
Entered Into March 19, 1984**

Dear Commissioner Conner:

As the transition team has likely made you aware, the City of Chicago (the “City”) and the DuPage Water Commission (the “Commission”) agreed that a timely renewal notice for Water Supply Contract No. 28492 between the City and the Commission may be provided by the Commission to the City by no later than March 19, 2024. See Letter from Former-Commissioner Andrea R.H. Cheng, dated August 9, 2023, attached hereto.

Therefore, please accept this correspondence as timely notice by the Commission of the exercise of its option to renew Water Supply Contract No. 28492 with the City for a term of seventeen (17) years from its expiration on March 19, 2024.

Thus, the parties will continue to operate under Water Supply Contract No. 28492 to and including March 19, 2041, unless otherwise agreed to.

Sincerely,

James F. Zay
Chairman, DuPage Water Commission

*Cc: John Roberson, COO, City of Chicago
Jill Jaworski, CFO, City of Chicago
James McDonald, Esq., City of Chicago*



CITY OF CHICAGO



DEPARTMENT OF WATER MANAGEMENT

August 9, 2023

James F. Zay
Chairman
DuPage Water Commission
600 East Butterfield Road
Elmhurst, Illinois 60126-4642

Re: Waiver of the Renewal Notice Deadline Date under the DuPage Water Supply Contract

Dear Chairman Zay:

The City of Chicago ("Chicago") and the DuPage Water Commission (the "Commission") entered into that certain Water Supply Contract Between the City of Chicago and the DuPage Water Commission on March 19, 1984 ("Original Water Contract"), which was subsequently supplemented by the Intergovernmental Agreement Concerning the Construction, Operation, and Maintenance of Electrical Generation Facilities and Other Capital Improvements at the Lexington Pumping Station dated January 22, 2007. The term of the Original Water Contract is forty (40) years and will expire on March 19, 2024 (the "Expiration Date"), unless cancelled at an earlier date or renewed as per the provisions of Paragraph I, Section (1) of the Original Water Contract.

Paragraph I, Section (1) of the Original Water Contract provides that the Commission has the option to renew the Original Water Contract for a "...like term or lesser term of not less than ten (10) years", upon submitting written notice to Chicago, "...no less than six (6) months prior to the expiration of the then active Contract...". Consequently, the Original Water Contract requires the Commission to provide Chicago with a renewal notice by no later than September 19, 2023 (the "Original Renewal Notice Deadline Date").

Chicago and the Commission are currently negotiating the terms for the renewal of the Original Water Contract. Both parties agree that additional time is needed to negotiate and enter into the renewal of the Original Water Contract. Therefore, both parties desire to extend the Original Renewal Notice Deadline Date to make it the same date as the Expiration Date.

For purposes of engaging in negotiations regarding the renewal of the Original Water Contract, the City hereby agrees to waive the requirement in Paragraph I, Section (1) of the Original Water Contract that a renewal notice be provided by the Commission to the City by no later than September 19, 2023. The City hereby agrees that a renewal notice may be provided by the Commission to the City by no later than March 19, 2024.





CITY OF CHICAGO



DEPARTMENT OF WATER MANAGEMENT



All other terms and conditions in the Original Water Contract not affected by this letter shall remain unchanged and continue in full force and effect. Please sign where indicated below and return a fully executed copy. Your signature below indicates the acknowledgement of the Commission regarding the waiver by the City described above.

CITY OF CHICAGO,
an Illinois home rule municipal corporation

By:  
Andrea R.H. Cheng, Ph.D., P.E.
Commissioner of Water Management

ACKNOWLEDGED:

DUPAGE WATER COMMISSION,
a Public Municipal Corporation

By:  
James F. Zay
Chairman



January 29, 2024

Paul D. May, P.E.
General Manager
DuPage Water Commission
600 E Butterfield Rd
Elmhurst, IL 60126

Re: Review of Alternative Water Supply Study Report

Dear Mr. May:

Burns & McDonnell Engineering Co., Inc. (Burns & McDonnell) was retained by the DuPage Water Commission (DPWC) to support its efforts to evaluate the reasonableness of the *Alternative Water Supply Study Report* developed by Carollo Engineers, Inc. (Carollo). This letter provides the background of the report, the methodology and focus of our review, and a summary of key comments. See Attachment 1 for a full disposition of comments.

Background

In July 2022, the DuPage Water Commission (DPWC) engaged Carollo to evaluate the potential of developing an alternative water supply system (AWSS) to replace its current purchase agreement with the Chicago Department of Water Management (Chicago). Carollo completed a series of evaluations summarized in the *Alternative Water Supply Study Report* that was presented to DPWC's commissioners in April 2023. The study established the design criteria, conceptual design, project schedule, project cost, and water unit cost forecasts for the AWSS. The report concluded that multiple cost-effective alternative locations and conveyance routes could feasibly provide water at a lower unit cost than the forecasted rates resulting from the continued purchase of water from Chicago under the current rate-setting methodology.

Since the presentation of the *Alternative Water Supply Study Report*, DPWC has been discussing the potential of expanding the AWSS to include other neighboring agencies and communities. To support these discussions, DPWC requested that Carollo update the report to evaluate the increased scale (e.g., water treatment plant, tunnels, flow conditions, etc.) of the AWSS based on a three-way joint partnership involving DPWC, the Northwest Suburban Municipal Joint Action Water Agency (NSMJAWA) and the Northwest Water Commission (NWC).

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Methodology

Burns & McDonnell led this review with specialty technical support from Mott MacDonald, LLC on tunnel-related items. The team's approach to this review was to become generally familiar with the project goals and proposed elements of the AWSS in the context of our experience with similar mega-projects in the industry at an equivalent stage of maturity. Through the sampling of key documents and discussion with potential project participants, the focus was to identify potential evaluation gaps and positive elements that can be further leveraged as the AWSS progresses. Comments have been provided regarding the reasonableness of the proposed plan, including the identification of potential risks or opportunities. Additionally, comments have been provided regarding the reasonableness of the conceptual capital cost estimates with respect to the scope and schedule.

The partnership implementation scenario involves the selection of a North Route conveyance alternative due to proximity constraints associated with connection to the NSMJAWA and NWC transmission systems. Accordingly, Burns & McDonnell's review focused on the North Route and water treatment plant associated with the partnership alternative described in the updated report completed by Carollo. Comments specific to the North Route, Central Route, and South Route for the DPWC-only alternatives, if any, are minimal and were not the focus of this review.

Information and Documents Provided For Review

The following information and documents provided by Carollo were the main items reviewed to support the development of comments. Dates listed indicate the version provided for review. Some items were updated by Carollo in December 2023 or January 2024 following meetings to discuss the original review comments.

- Alternative Water Supply Study Report, April 2023 (Draft)
- Technical Memorandum 8 Expanded Alternative Water Supply System, August 2023 (Draft)
 - Updated Project Schedule, December 11, 2023
 - Updated Table 8.7, January 2024
 - Updated Appendix C, January 2024
- Preliminary Estimate of Probable Maximum Cost, July 2023
- Expanded Alternative Water Supply Conceptual Route (Google Earth)

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Review Meetings

Review meetings involving representatives from DPWC, NSMJAWA, NWC, Carollo, and Burns & McDonnell in October, November, and December 2023. The purpose of these meetings was to discuss this report, review major findings, and confirm suggested actions. Carollo updated the *Alternative Water Supply Study Report* as a result of the discussions.

Summary of Comments

A full disposition of comments identified during the review is presented in Attachment 1. Comments were categorized as Tier 1 (significant), Tier 2 (moderate), and Tier 3 (minor). A summary of our major comments is provided below.

- The technical basis of the *Alternative Water Supply Study Report* by Carollo was developed through a conceptual planning effort using a methodology that follows typical practice for a feasibility study. The document provides a solid basis for considering the implementation of the AWSS at this juncture. The goals, objectives, parameters, and constraints of the project are clearly identified and organized.
- The project parameters and design criteria identified are reasonable and suitable for the current level of project definition. That said, we do believe that certain parameters and assumptions are likely conservative, and that opportunities exist for confirming key criteria or assumptions during future evaluations. For example, further evaluation to confirm the basis for the development of projected water demands and system capacity, as well as the likelihood that projected demands will be realized, is recommended. We also suggest further evaluation of the water treatment approach. See Attachment 2 for a more complete list of suggested items for further evaluation.
- The project elements identified in the report are reasonable and technically feasible. The infrastructure contemplated has been successfully implemented by others—in the Chicago region and elsewhere—and the technologies proposed are conventional and proven.
- Many of the technical, financial, legal, and political tasks and resources necessary for successful program implementation have been identified in the report and

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organized into a project schedule. The structure and framework of the schedule is reasonable and sufficiently detailed for a conceptual feasibility analysis. Consideration of the type and magnitude of support needed from a variety of professional disciplines to successfully deliver a program of this magnitude is appropriate.

- We believe that the anticipated overall duration of the project schedule—approximately 16.5 years from August 1, 2022 to January 26, 2039—is reasonable but leans toward optimistic considering our experience with and knowledge of similar programs elsewhere. For example,
 - Commissioning, startup and testing, and transition of the water source from the City of Chicago to the AWSS will be a complex undertaking. The tunnels will need to be completed in advance of the water treatment plant to provide water for these activities. The schedule in the Carollo report assumes that the completion date of the tunnels and the water treatment plant will be the same day. As a result, we believe this complexity and potential schedule impact is underappreciated in the current schedule.
 - The AWSS also contemplates what could be the largest water treatment plant constructed in North America in recent history. The schedule for design and construction of the proposed project seems optimistic based on our knowledge of other large projects. A 120 MGD water treatment plant (one-third of the proposed capacity) has a 5-year design and construction schedule (60% of what is proposed in the Carollo report). We are also aware of a 320 MGD water treatment plant currently under construction with a reported design and construction schedule that is one year longer than the 8.25-years proposed in the Carollo report. As a result, we believe that completing a 360 MGD water treatment plant in the period contemplated is unlikely.

However, we acknowledge that opportunities exist to mitigate the potential schedule impacts associated with the above items. For example, Carollo has identified the need to develop a plan for startup, commissioning, and water source transition during future phases of project planning. Additionally, the water treatment plant is no longer on the critical path, so construction could begin earlier if future project planning confirms our opinion that additional time will be

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required for that element of the program. We also believe that opportunities may exist to accelerate certain tasks under Phase 1A and Phase 1B to allow design under Phase 2 to begin more quickly—perhaps 1 to 2 years earlier—than contemplated in the Carollo report.

- We believe that the estimated capital costs identified in the Carollo report—\$3.5 billion to \$4.9 billion—are too low and suggest that a more reasonable range is \$4.8 billion to \$8.3 billion.^{1,2} However, we believe that opportunities exist to eliminate or defer some capital costs through optimized sizing and phasing of certain project elements. For example, the capacities of certain critical infrastructure—including the tunnel and WTP—may be further refined through additional evaluation of water demands, which would result in more favorable costs. Carollo has identified additional refinement of the cost estimate as an activity to be performed during future phases of project planning.
- We also believe that identification of potential risks, and discussion of their potential impact on the project, is currently limited in the Carollo report. Significant cost and schedule impacts can be realized if technical or non-technical assumptions materialize differently than anticipated. We suggest that an exercise to develop a preliminary list of risks and their potential impact to the project be initiated to support consideration of project feasibility. We also recommend that DPWC and its partners include a sensitivity analysis of less optimistic cost and schedule scenarios to support consideration of project feasibility and validation.

Focus of this Review

Burns & McDonnell’s comments provided herein have been completed based on review of information provided to Burns & McDonnell by the DPWC, its partners, and

¹ Estimated capital costs at this level of project definition should consider the expected range of accuracy associated with a Class 5 estimate. For water treatment and pump station facilities, this is generally between -30 percent and +50 percent. For tunnels, this is generally between -50 percent and +100 percent.

² Carollo costs are presented in 2022 dollars while Burns & McDonnell costs are presented in 2023 dollars. The comparison would be \$3.5 billion to \$4.9 billion (Carollo) vs. \$4.7 billion to \$8.1 billion (Burns & McDonnell) if Burns & McDonnell costs are expressed in 2022 dollars.

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Carollo. Burns & McDonnell has relied on the information provided by others in the performance of its services and applied engineering judgement based on experience. However, an exhaustive review of the project data or technical basis of the AWSS was not performed, as Burns & McDonnell's services are not for the purpose of performing quality assurance and/or quality control of deliverables provided by others. Burns & McDonnell is assisting the DPWC and partner organizations in efforts to implement the AWSS, but its services are not intended to, and cannot, eliminate all risk or guarantee an efficient or best value program and/or projects. Rather, the services provided by Burns & McDonnell are for the purpose of assisting with efforts to evaluate the reasonableness of the AWSS by providing additional professional perspective for DPWC and its partners' consideration and action.

Estimates, schedules, forecasts, and projections, if any, prepared by Burns & McDonnell are opinions based on Burns & McDonnell's experience, qualifications, and judgment as a professional. Since Burns & McDonnell has no control over weather conditions, costs and availability of labor, material and equipment, fuel or other utilities, labor productivity, construction contractor's procedures and methods, unforeseen conditions, unavoidable delays, construction contractor's methods of determining prices, economic conditions, government regulations and laws (including the interpretation thereof), competitive bidding or market conditions, and other factors affecting such estimates or projections, Burns & McDonnell does not guarantee that actual rates, costs, quantities, performance, schedules, etc., will not vary significantly from estimates and projections prepared by Burns & McDonnell.

Burns & McDonnell appreciates the opportunity to support the DPWC and its partners as part of this important undertaking. Please contact me if you have any questions or would like to discuss our comments further.

Sincerely,

Burns & McDonnell Engineering Company, Inc.

A handwritten signature in black ink that reads "Joseph M. Darlington".

Joseph M. Darlington, P.E.
Program Manager



PROJECT MEMORANDUM

DUPAGE WATER COMMISSION

Alternative Water Supply Study

Date: January 25th, 2024
Prepared By: Matt Sokolowski, Len Rago, Mike Morris
Subject: Technical Memoranda Peer Review Updates

1.1 Purpose

The purpose of this document is to summarize final responses to the peer review comments received from Burns & McDonnell on September 27th, 2023, and to provide updates to the original peer review comment response memorandum prepared by Carollo, dated October 13th, 2023. The comment disposition log with updated draft responses is attached as **Exhibit A**.

This comment disposition log was reviewed and discussed during peer review coordination meetings held on the following dates:

- November 2nd, 2023
- November 28th, 2023
- December 19th, 2023

Updates to the project schedule and cost are included in this project memorandum based on these discussions and represent Carollo's current opinion of the probable schedule and cost for the alternative water supply project.

1.2 Schedule

The project schedule has been updated based on discussions held during the peer review coordination meetings and based on evaluations of additional reference projects. The updated schedule is attached as **Exhibit B**. The updates to the schedule result in an overall project duration extension of two years, with an updated projected final completion date of January 2039. Modifications to the original schedule have been highlighted in yellow and are summarized below:

- Item 23 and 24 (Project Off Ramp in Phase 0 and approval to proceed with Phase 1) have been accelerated to finish concurrently with the other Phase 0 tasks. This would result in Phase 1A starting in Late January 2024.

- Items 38-42 (engage other Phase 1 consultants) have been accelerated to occur simultaneously with the formation of the project advisory team. This is still likely conservative as many of these are already underway.
- Items 44-47 (project financing and budget items) were accelerated based on the funding evaluations and financial models occurring concurrently and being accelerated to 3 months instead of 6.
- Item 57 (Project development report) was shifted up to finish at the same time as the financial models.
- Item 60 (Early Engagement with Other Utilities) was adjusted back to the beginning of Phase 1A as this task is already currently underway.
- Items 61-63 (PR plans and final identification of members) were adjusted to occur concurrently.
- Items 68-71 were identified as potentially being able to be shortened as the acquisition discussions have already begun, however we agreed to leave them as is for conservative assumption.
- Items 77, 78, and 80 (Basis of Design/Geotechnical borings, Peer Review) were adjusted so that peer review began midway through development of the CIP and Basis of Design report and finished concurrently with project validation.
- Items 95-96 (referendum and project off ramp) were accelerated to end concurrently with the program management plan for Phase 2 as these may not be required.
- Items 106-135 (raw and treated water transmission tunnels) were modified from the original presentation of a single raw water transmission tunnel and single treated water transmission tunnel activity. This change results from our team's further evaluation of the national tunneling bid market and suitable contractors that could execute this work. We acknowledge that the large scale of tunneling work will likely result in multiple contracts, which have been presented in a manner to stagger boring work to allow for more competitive bidding and to allow a single contractor to mobilize between construction phases. The design and construction durations have also been updated based on conservative assumptions of tunneling methodology. Note that by eliminating this stagger between contracts and having multiple contractors perform the work simultaneously, the overall program schedule duration can be reduced to fit within the original January 2037 completion date. These modifications to the tunneling activities result in tunnel design and construction as the critical path of Phase 2 construction activities.

1.3 Cost

A summary of updated estimated project capital costs is presented in Table 1. Updates to the estimated project capital cost are summarized below:

- Carollo reviewed the schedule of values for the ongoing Northeast WTP Expansion currently in construction in Houston, Texas. Carollo is serving as the Program Manager for this project, which involves a 320 mgd expansion of an existing 80 mgd facility. Carollo added relevant unit process references from the project to the cost estimate spreadsheet originally presented in Appendix C of TM 8. These unit process references were adjusted for facility size (360 mgd vs. 320 mgd for Houston) and RS Means location factors (118.6 vs. 85.8 for Houston). No adjustment was made for time escalation as midpoint of construction for the project is estimated to have occurred in late 2022, which is in line with the time of the original cost estimate prepared for the Alternative Water Supply Study. The addition of these unit process data points results in an increase in the mid value cost estimate of

approximately 5%. Note that there were several unit processes with the Northeast WTP Expansion that would not be relevant to this project due to the higher quality source water occurring in Lake Michigan. Carollo's program managers also identified additional factors that drive higher cost in the Northeast WTP Expansion including more conservative structural design for hurricane resistance, increased yard piping costs resulting from conservative redundancy for interconnects between unit process trains throughout the plant, and general more conservative operating parameters based on poorer source water quality. These factors all resulted in Carollo's decision to present costs from the Northeast WTP Expansion as an individual data point to be incorporated into the overall cost estimate, rather than to compare the project's original estimated costs to the Northeast WTP Expansion alone.

- Cost estimates for the raw and finished water tunnels were re-evaluated with unit cost updates based on additional reference projects and additional consultation with ongoing tunnel project resources. These updates result in a 58% increase in the estimated cost of finished water tunnels and a 35% increase in the estimated cost of raw water tunnels. Many of these costs are the result of recent increases in labor and materials, specifically for tunnel lining.
- Construction contingency was updated to 30% for high, mid, and low value estimates for the Water Treatment Plant, NSMJAWA Connection/Pump Station/Storage, and NWC Connection/Transmission Pipeline. Note that a contingency factor of +30% for the high value estimate and -15% of the low value estimate of the transmission tunnels was used based on a detailed takeoff approach for generation of the mid value estimate of the tunnel costs. This is unchanged from the original methodology presented in TM 8 for the tunnels.

The updates to the estimated mid value project capital costs result in an approximately 32% increase from the estimated project capital costs presented in TM 8. A comparison of the updated estimates provided by the Carollo/Brierley team and the estimates provided by Burns & McDonnell/Mott MacDonald is attached as **Exhibit C**. While a difference of opinion on costs of certain project components remains, Carollo is comfortable with the updates to the costs presented in Table 1 based on the reference projects and data points used to generate these estimates and recommends that these costs be used in an update to TM 8 to estimate water unit costs based on these updates. During Phase 1A, additional refinement of the cost estimate will be performed based on additional available information and more detailed project definition beyond the current scope of the Alternative Water Supply Study.

Table 1 Updated Overall Capital Cost Summary – Expanded Alternative Water Supply System

Component	Low Value	Mid Value	High Value
WTP ⁽¹⁾	\$1,326,000,000	\$1,517,000,000	\$1,621,000,000
WTP Site Acquisition	\$43,560,000	\$103,460,000	\$163,350,000
Raw Water Tunnel/Intake ⁽¹⁾	\$505,032,000	\$594,155,000	\$772,402,000
Raw Water Tunnel Easements	\$8,889,000	\$8,889,000	\$8,889,000
Finished Water Tunnel ⁽¹⁾	\$852,473,000	\$1,002,909,000	\$1,303,782,000
Finished Water Tunnel Easements	\$20,245,000	\$20,245,000	\$20,245,000
NSMJAWA Connection, Pump Station, and 20 MG Storage ⁽¹⁾	\$64,571,000	\$74,152,000	\$84,643,000
NWC Connection and Transmission Pipeline ⁽¹⁾	\$16,673,000	\$19,614,000	\$25,500,000
Capital Construction Cost	\$2,837,443,000	\$3,340,424,000	\$3,999,811,000
Engineering ⁽²⁾	\$552,950,000	\$641,586,000	\$761,485,000
Program Management ⁽³⁾	\$110,590,000	\$128,317,000	\$152,297,000
Total Capital Cost	\$3,500,983,000	\$4,110,327,000	\$4,913,593,000

Notes:

(1) These capital costs include contingency (30%)

(2) Engineering assumed at 20 percent of Capital Construction Cost (Non land acquisition/easements).

(3) Program Management assumed at 4 percent of Capital Construction Cost (Non land acquisition/easements).

1.4 Other Risks

Other risks identified during the peer review include comments on detailed design criteria, alternative project delivery methods, and further risk assessment of funding sources and regulatory coordination. Carollo acknowledges these comments and has provided responses that these considerations will be addressed in Phase 1A during more detailed evaluations beyond the current scope of the Alternative Water Supply Study.

1.5 Conclusions

The updates to the project schedule and cost estimate are based on the peer review comments provided by Burns & McDonnell and Mott MacDonald. These comments have been thoroughly reviewed through peer review coordination meetings with DuPage Water Commission. This schedule and capital cost estimate will be incorporated into an updated version of TM 8 to provide DuPage Water Commission and its partners with additional information to make an informed decision on how to proceed with the Alternative Water Supply Study.



Resolution #: R-16-24

Account: N/A

Approvals: *Author / Manager / Finance / Admin*

PDM - CAP PDM

REQUEST FOR BOARD ACTION

Date: 2/6/2024

Description: Recommendation to approve Addendum to Water Purchase and Sale Contract with Aqua Illinois, Inc

Agenda Section: Administration Committee

Originating Department: Administration

At the January 18, 2024 Board of Commissioners meeting, the DWC-Customer contract was approved, providing a contract for service between the DuPage Water Commission and 30 public and private customers for the next 40 year period. The DuPage Water Commission services our 30 customers through 84 delivery stations, the majority of which are directly connected to the DWC water transmission main system.

Aqua Illinois was the last “subsequent customer” added under the previous contract (10/2022). As such, there exists an interim delivery agreement between the Village of Oak Brook, Aqua Illinois, and DWC which prescribes the method of delivery during the interim period, and defines a timeframe for the construction of ancillary infrastructure improvements necessary for contract compliance and permanent construction of permanent metering facilities. This temporary arrangement is similar to the wheeling agreements for the Illinois American accounts, with the exception that Oak Brook facilities are utilized for pass-through billing until the permanent metering facilities are constructed. The attached addendum recognizes and memorializes the same.

Recommended Motion:

It is recommended that Resolution R-16-24 be approved, authorizing the execution of the addendum to the Water Purchase and Sale agreement between the DuPage Water Commission and Aqua Illinois, Inc.

DUPAGE WATER COMMISSION

RESOLUTION NO. R-16-24

A RESOLUTION APPROVING AN ADDENDUM TO WATER PURCHASE AND SALE CONTRACT BETWEEN DUPAGE WATER COMMISSION AND AQUA ILLINOIS, INC.

WHEREAS, the DuPage Water Commission (the “Commission”) was formed and exists pursuant to the Water Commission Act of 1985, 70 ILCS 3720/0.01 et seq., and Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 et seq., for the purpose of securing an adequate source and supply of water for its customers; and

WHEREAS, the Commission and Aqua Illinois, Inc., (“Aqua”) previously entered into a Water Purchase and Sale Contract (the “Contract”) whereby the Commission agreed to sell water to Aqua;

WHEREAS, Aqua and the Village of Oak Brook previously entered into an Interim Delivery Agreement which provides for water obtained from the Commission to be delivered to Aqua on an interim basis through the Village water system;

WHEREAS, the Commission and Aqua desire and intend to enter into an Addendum to the Water Purchase and Sale Contract (the “Addendum”) (attached hereto as Exhibit 1 and incorporated as if fully set forth herein); and

WHEREAS, Aqua has approved and executed the Addendum;

WHEREAS, the Commission deems it to be in the best interests of the Commission to approve and enter into the Addendum.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the DuPage Water Commission as follows:

SECTION ONE: The foregoing recitals are hereby incorporated herein and made a part hereof as findings of the Board of Commissioners of the DuPage Water Commission.

SECTION TWO: The Addendum to Water Purchase and Sale Contract attached hereto and by this reference incorporated herein and made a part hereof as Exhibit 1, shall be and hereby is approved and ratified. The Chairman is authorized to execute the Addendum on behalf of the Commission.

SECTION THREE: This Resolution shall be in full force and effect from and after its adoption.

	Aye	Nay	Absent	Abstain
Bouckaert, D.				
Cuzzone, N.				
Fennell, J.				
Healy, J.				
Novotny, D.				
Pruyn, J.				
Romano, K.				
Rush, K.				
Russo, D.				
Saverino, F.				
Suess, P.				
Van Vooren, D.				
Zay, J.				

ADOPTED THIS _____ DAY OF _____, 2024.

James Zay, Chairman

ATTEST:

Danna Mundall, Clerk

EXHIBIT 1

ADDENDUM TO WATER PURCHASE AND SALE CONTRACT

This Addendum to Water Purchase and Sale Contract (“Addendum”) is dated as of _____, by and between the DuPage Water Commission, Counties of DuPage, Cook and Will, Illinois (the "Commission") and Aqua Illinois, Inc. (“Aqua”).

WHEREAS, the Commission and Aqua are parties to that certain *Water Purchase and Sale Contract* (“Agreement”), dated as of January 18, 2024.

WHEREAS, the Agreement, aside from the Commission and Aqua, includes other parties (“Contract Customers”).

WHEREAS, there are terms and conditions needed specific to the Aqua Oak Brook System that are not applicable to the other Contract Customers.

WHEREAS, the Village of Oak Brook, an Illinois municipal corporation (“Village”) and Aqua are parties to that certain *Interim Delivery Agreement Among the Village of Oak Brook and Aqua Illinois, Inc.*, dated November 29, 2022 (“Interim Delivery Agreement”), to which the Commission is a signatory approving the form as an intended third-party beneficiary.

WHEREAS, the Interim Delivery Agreement provides for the purchase of Commission supplied Lake Water by Aqua for its Oak Brook System directly from the Village and delivered through the Village water system on an interim basis.

WHEREAS, among other things, Aqua and the Commission have previously agreed on terms and conditions for Permanent Connection Facilities (as defined herein) for delivery of Commission supplied Lake Water subsequent to an interim basis.

WHEREAS, Aqua has paid to the Commission a cash deposit of two million one hundred and four thousand four hundred and thirty-eight dollars (\$2,104,438.00) (“Cash Deposit”).

WHEREAS, the Commission and Aqua intend to address the terms and conditions of such Permanent Connection Facilities (as defined herein) for the Aqua Oak Brook System (a map of the Aqua Oak Brook System service Area is attached hereto and incorporated herein as Exhibit A-2) and other matters herein.

WHEFORE, the Commission and Aqua hereby supplement and amend the Agreement as set forth herein.

1. Interim Water Deliveries.

- a. Until such time as the Permanent Connection Facilities, as defined in section two (2) of this Addendum, become operational, via connection to the Aqua Oak Brook System to the Commission Facilities (the "Direct Connection Facilities") or any

wheeling arrangement with another Contract Customer, Interim Water Deliveries pursuant to the Interim Delivery Agreement shall be treated as water purchased by Aqua from the Village pursuant to the Interim Delivery Agreement which shall serve as an Alternate Delivery on an interim basis, provided however that unless otherwise agreed in writing by the Commission, Aqua shall within three (3) years of the date of this Addendum have in place Direct Connection Facilities pursuant to Subsection 2A or a permanent arrangement for Alternate Delivery pursuant to Subsection 2B.

- b. Notwithstanding any requirement of the Addendum to the contrary, the Commission shall bear no responsibility for the contamination of such water or deterioration of water quality occurring beyond the Commission's point of delivery to the Village System, and title to all such water supplied by the Commission shall remain in the Commission to the point of delivery to the Village System and thereupon shall pass to the Village and/or Aqua.
2. Permanent Connection Facilities. The Permanent Connection Facilities shall be either one of Direct Connection Facilities or Alternate Delivery Facilities as described herein.
- a. Direct Connection Facilities. Aqua, at its own expense and pursuant to the schedule established herein shall site, design, construct, operate, and maintain the Direct Connection Facilities as described herein, including a pressure adjusting station immediately downstream from the Point of Delivery. Initial design and construction plans and specifications for the Direct Connection Facilities to the Aqua-Oak Brook System (and any future modifications thereof) shall be submitted in advance of construction (or modification) to the Commission for review and approval, which approval shall not be unreasonably withheld.
 - i. Plans and Specifications. Aqua shall prepare and submit to the Commission for its review and approval, complete detailed plans, specifications, and construction contract documents for the Direct Connection Facilities not later than 36 weeks after the execution of this Addendum, unless otherwise agreed by the Commission in writing. The Commission shall endeavor to provide its comments and revisions, to Aqua within 28 days after receipt of such documents. Aqua shall incorporate all required changes to such documents within 28 days after receipt of the Commission's comments and revisions. (Preliminary Plans for the Aqua-Oak Brook System Service Area metering station locations are attached hereto and incorporated herein as Exhibit B-1)
 - ii. IEPA and Other Approvals for Aqua-Oak Brook System Connection Facilities. Aqua shall, within 28 days after receipt of the Commission's comments and revisions pursuant to Subsection 2.a.i. 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 Direct Connection Facilities, and shall diligently pursue each such approval and permit until it is secured.

- iii. Commencement of Construction of Direct Connection Facilities. Aqua shall cause construction of the Direct Connection Facilities to be commenced within 28 days after receipt of the last approval from any governmental body required as a condition precedent to construction of the Direct Connection Facilities, whichever is later. Aqua shall cause construction to be completed within three years of the effective date of this Addendum.
- b. Alternate Delivery Facilities. The Commission and Aqua acknowledge that Aqua may negotiate, within one year of the date of this Addendum or longer if agreed in writing by the Commission, with one or more Contract Customers for delivery of Lake Water purchased from the Commission through facilities owned by such Contract Customer to the Aqua-Oak Brook System ("Alternate Delivery") in which case the provision of Subsection 2.a shall no longer apply. Aqua shall not enter into any agreement for Alternate Delivery, and no such agreement shall affect the terms of this Addendum, except after such agreement has been approved in writing by the Commission.
 - i. Such Alternate Delivery of Lake Water, should it become feasible for Aqua through its negotiations with Contract Customers, may affect Aqua's obligations under this Addendum to provide a site for the points of delivery and metering station pursuant to Sections 3 and 4 of the Agreement and Commission Connection Facilities pursuant to Section 2.c. of this Addendum among other possible effects. The Commission and Aqua agree that, if Aqua reaches an agreement with a Contract Customer in a form acceptable to and approved by the Commission for Alternate Delivery of Lake Water consistent with Commission Resolution No. R-13-90, entitled "A Resolution Expressing the Policy of the DuPage Water Commission Regarding Subsequent Customers," as clarified by Commission Resolution No. R-29-95, entitled "A Resolution Clarifying Resolution No. R-13-90, being "A Resolution Expressing the Policy of the DuPage Water Commission Regarding Subsequent Customers," as it may, from time to time, be amended ("Resolution No. R-13-90"), then the Commission and Aqua, by separate written contract, which may include amendments to the Agreement and this Addendum, shall establish mutually agreeable terms between them for such Alternate Delivery of Lake Water.

c. Commission Connection Facilities.

- i. Commission Connection Facilities are those portions of the Commission's Waterworks System constructed by the Commission to connect to the Aqua-Oak Brook System to the Commission Waterworks System. The Commission Connection Facilities are depicted in Exhibit B-2 to this Addendum (as such facilities may be relocated, replaced, extended, or improved from time to time). The Commission Connection Facilities include, among other items, a metering station, including pipelines and equipment appurtenant thereto, and SCADA System facilities attributable to the Aqua-Oak Brook System, including equipment appurtenant thereto.
- ii. The Commission shall cause design of the Commission Connection Facilities to be commenced within 28 days of receipt of Aqua's design of the Direct Connection Facilities or 28 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 148 weeks after commencement of design as herein required or 28 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. Aqua acknowledges and agrees, however, that the Commission may, in the exercise of its sole and absolute discretion, accelerate commencement of the design and construction of the Commission Connection Facilities, or completion of construction thereof, without in any way affecting the obligations of Aqua under this Addendum, including without limitation Aqua's payment obligations.
- iii. Transfer of Property Rights. Aqua shall grant to the Commission all necessary and insured easements or other property rights for the Commission Connection Facilities. Aqua shall within 12 weeks after execution of this Addendum, commence all actions necessary to acquire all property rights not already owned by it necessary to fulfill the requirements of this Section.
- iv. Payment of Costs. Aqua shall pay to the Commission all attorneys', engineering, and administrative fees, costs, and expenses incurred by the Commission for any work related to, or participation in, any regulatory proceeding which shall be required or requested of the Commission by the Illinois Department of Department of Natural Resources, Office of Water Resources, or by Aqua as a result of, or a occasioned by the costs of the design and construction of the Commission Connection Facilities. The Commission shall be entitled to reimburse itself out of the Case Deposit for the full actual

cost incurred by the Commission in connection with: (i) the design, bidding, contracting, managing, and actual construction, installation, removal, relocation, replacement, extension, or improvement of the Commission Connection Facilities, including without limitation equipment required for the operation of the Commission Connection Facilities and all administrative, financing, supervisory, inspection, engineering, surveying, and legal fees, costs, and expenses associated therewith; (ii) the acquisition and divestment of lands, easements, and rights of way over lands and waters necessary for the construction, installation, removal, relocation, replacement, extension, or improvement of the Commission Connection Facilities, and all administrative, title, surveying, and legal fees, costs, and expenses associated therewith; and (iii) the review and processing of plans and agreements for the construction, installation, removal, relocation, replacement, extension, or improvement of the Commission Connection Facilities, including without limitation all legal, engineering, consulting, and administrative fees, costs, and any other expenses associated therewith or related thereto.

iv.

v. Connection Facilities Cost Payment. Aqua shall reimburse the Commission for the full actual cost incurred by the Commission in connection with the building, planning, siting and equipment for the Commission Connection Facilities (the " Commission Connection Facilities Cost").

1. Prior to the award of any construction contracts for the construction of the Commission Connection Facilities, the Cash Deposit shall be adjusted to an amount equal to 125% of the amount of the price or prices bid by the successful bidder for the Connection Facilities, as separately identified in the Schedule of Prices contained in the construction contract documents for the Commission Connection Facilities.
2. The Commission may draw upon the Cash Deposit, without the Aqua's consent, but may only employ the proceeds to pay for the Commission Connection Facilities Cost invoiced to, or otherwise documented by the Commission and the Commission shall promptly notify Aqua of any such withdrawals.
3. Aqua shall not be entitled to interest on the Cash Deposit. If at any time the Commission reasonably determines that the funds remaining in the Cash Deposit are not, or may not be, sufficient to pay in full the remaining unpaid Commission Connection Facilities

Cost, then, within 10 days following a demand by the Commission, Aqua shall increase the amount of the Cash Deposit to an amount reasonably determined by the Commission to be sufficient to pay in full the remaining unpaid Connection Facilities Cost. Failure to so increase the amount of the Cash Deposit shall be grounds for the Commission to retain a possessory lien upon any remaining balance of the Cash Deposit (as damages security) and terminate this Addendum. Upon final payment of all amounts due under all executed contracts for the design, construction, and inspection of the Commission Connection Facilities, the Commission shall release to Aqua any amounts remaining in the Cash Deposit. Aqua's obligation to make the Connection Facilities Cost payments as required hereunder is unconditional and irrevocable, payable without setoff or counterclaim, and irrespective of whether Lake Water is ever furnished, made available, or delivered to Aqua, or whether the Commission Connection Facilities are completed, operable, or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the supply of Lake Water.

4. If Aqua is able to negotiate a permanent Alternate Delivery through Alternative Delivery Facilities approved by the Commission, Aqua shall propose alternative costs estimate subject to the Commission's approval, and the Commission may provide an adjustment in the Cash Deposit in accordance with such estimates.
 5. Upon completion of the Commission Connection Facilities, the Commission shall pay over any remaining balance of the Cash Deposit to Aqua.
- vi. Illustrative Schedule of Events. An "Illustrative Schedule of Events" depicting, on the basis of assumptions concerning the length of time that will be required to secure various governmental approvals, the sequence of work pursuant to this Section is attached to this Addendum as Exhibit G and shall commence upon execution.
- d. Commission Remedies. In the event that Aqua does not construct the Permanent Connection Facilities in the time periods required by this Section 2, and subject to events of Force Majeure, the Commission shall have the right but not the obligation to draw on the Cash Deposit upon fourteen (14) days written notice and proceed to complete the work necessary to complete the Direct Connection Facilities with two direct connections to the Waterworks System at no cost to the Commission. To the fullest extent permitted by law, Aqua shall indemnify and

hold the Commission harmless for any claims, causes of action or third-party injuries incurred due to the Commission constructing the Direct Connection Facilities or any portion thereof. To the extent the Cash Deposit is not sufficient to cover the costs to construct the Direct Connection Facilities as set forth herein, and any other costs incurred by the Commission, including but not limited to attorneys' fees, engineering costs and land acquisition costs, Aqua shall pay the Commission within thirty (30) days of receipt of any invoice(s) the costs incurred by the Commission in excess of the remaining Cash Deposit. Further, the parties agree that the Commission shall be irreparably harmed and shall be without an adequate remedy at law if Aqua does not comply with the provisions of this Section 2 above; therefore, if the Commission so desires, it shall be entitled to a mandatory injunction requiring that Aqua complete the Direct Connection Facilities in a timely manner at Aqua's sole cost and expense. Further, Aqua shall pay the Commission any attorneys' fees and any other costs incurred by the Commission to either obtain an injunction or collect on any costs unpaid by Aqua pursuant to its failure to comply with this Section 2.

3. Storage. Prior to establishing water service from the Commission through the Permanent Connection Facilities, Aqua shall provide or cause to be provided sufficient storage capacity within the Aqua-Oak Brook System to store not less than two times the annual average daily water demand of each of the non-contiguous zones of the Aqua-Oak Brook System; provided, however, that said requirement shall be reduced by (i) an amount equal to the storage capacity maintained by the Commission in its Waterworks System multiplied by a fraction, the numerator of which is the annual average daily water demand of the Aqua-Oak Brook System zone and the denominator of which is the total annual average daily water demands of all Contract Customers. The calculation of said water storage capacity requirement for the Aqua-Oak Brook System zone is provided in Exhibit D attached to this Contract. In accordance with said requirement, Aqua, at its own expense and pursuant to the schedule established in Section 10 of this Contract, shall construct for each of the non-contiguous Aqua-Oak Brook System zones at least the amount of water storage capacity shown on Exhibit D to this Contract as the "Minimum Additional Required Storage." Such water storage capacity shall be in addition to the amount of water storage capacity shown on Exhibit D to this Contract as the "Existing Storage" in the Aqua-Oak Brook System. Aqua shall properly maintain all such water storage capacity, in a good and serviceable condition. If at any time Aqua's water storage capacity in any of the non-contiguous zones of the Aqua-Oak Brook System, including Commission storage

capacity as provided above, falls below 1.9 times the annual average daily water demand of an Aqua-Oak Brook System zone, then Aqua, within 24 months after such level of deficiency is reached, shall construct additional water storage capacity within the Aqua-Oak Brook System zone of sufficient quantity to restore the total storage capacity of the Aqua-Oak Brook System zone, including its allowances Commission storage capacity as provided above, to not less than two times the annual average daily water demand of the Aqua-Oak Brook System zone.

e. Schedule for Storage

- i. Plans and Specifications for Water Storage Facilities. Aqua shall prepare and submit to the Commission for its review and approval, complete detailed plans, specifications, and construction contract documents for the water storage facilities required to be built by Aqua within 88 weeks after execution of this Addendum. The Commission shall endeavor to provide its comments and revisions to Aqua within 28 days after receipt of such documents. Aqua shall incorporate all required changes to such documents within 28 days after receipt of the Commission's comments and revisions. The timetable established herein is subject to reasonable extension mutually agreeable to Aqua and the Commission.
 - ii. IEPA and Other Approvals for Water Storage Facilities. Aqua shall, within 28 days after receipt of the Commission's comments and revisions submit such finally revised documents for approval and permitting to the IEPA and every other federal, state, or local governmental body having jurisdiction over any element of the water storage facilities, and shall diligently pursue each such approval and permit until it is secured.
 - iii. Commencement of Construction of Water Storage Facilities. Aqua shall cause construction of the water storage facilities to be commenced within 28 days after receipt of the last approval from any governmental body required as a condition precedent to construction of the water storage facilities. Aqua shall cause construction to be completed within three (3) years of the effective date of this Addendum.
3. Beginning of Obligations to Deliver and Receive Lake Water. The Commission shall be obligated to deliver Lake Water to the Aqua-Oak Brook System and Aqua shall be obligated to receive and pay for Lake Water delivered by the Commission immediately after completion of the Permanent Connection Facilities and the water storage capacity required pursuant to Section 3 of this Addendum; provided however that Aqua shall have the right to receive Lake Water pursuant to this Addendum prior to the completion of

construction of the aforesaid water storage capacity if (i) Aqua has entered into , and the Commission has approved, a valid and binding contract for the construction of such required water storage capacity; and (ii) actual construction of such required water storage capacity pursuant to such contract has begun and is proceeding in the regular course to completion.

4. This Addendum shall not alter, modify or change in any other respect the Agreement except as modified herein, all of the terms and provisions of the Agreement are expressly ratified and confirmed and shall remain in full force and effect.
5. The Parties agree that wherever there is any conflict between this Addendum and the Agreement, the provisions of this Addendum will control and the Agreement will be construed accordingly.

Date: _____

DUPAGE WATER COMMISSION

By: _____

Its: _____

ATTEST: _____

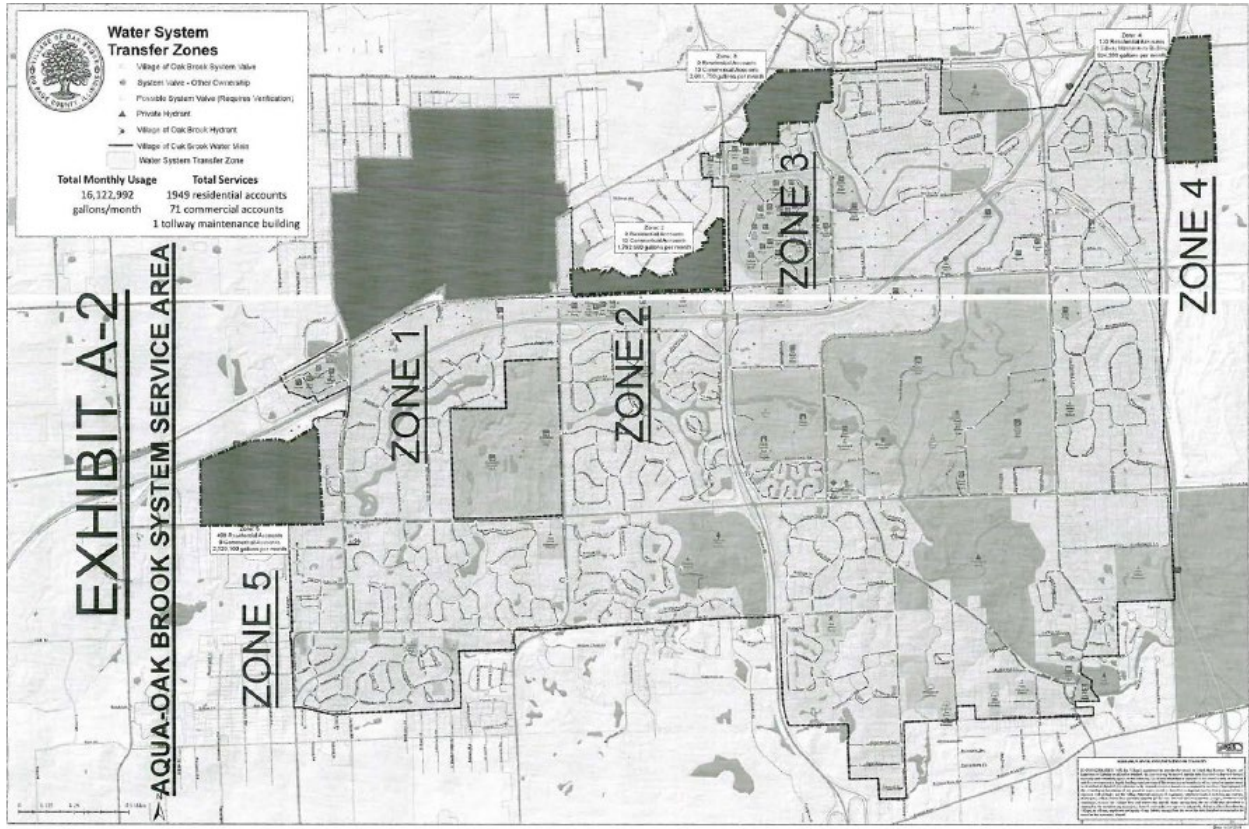
Date: _____

Aqua Illinois, Inc.

By: _____

Its: _____

ATTEST: _____



**EXHIBIT G
ILLUSTRATIVE SCHEDULE OF EVENTS**

CONTRACT MILESTONES IN BOLD FONT <small>(TARGET CONTRACT MILESTONES UNLESS OTHERWISE APPROVED)</small>		WEEKS									
		0	4	8	12	16	20	24	28	32	
CUSTOMER CONTRACT APPROVED (EFFECTIVE DATE)											
AQUA ILLINOIS DUTIES											
ICC APPROVAL											
ACQUIRE ALL PROPERTY INTERESTS FOR AQUA AND DWIC											
DESIGN INTERIM AQUA-OAK BROOK CONNECTION FACILITIES											
IEPA APPROVALS											
CONSTRUCT INTERIM AQUA-OAK BROOK CONNECTION FACILITIES											
IEPA APPROVALS											
OPERATE INTERIM AQUA-OAK BROOK CONNECTION FACILITIES (120 DAYS AFTER INTERIM AGREEMENT SIGNED)											
10.A - DESIGN PERMANENT AQUA CONNECTION FACILITIES											
10.B - IEPA APPROVALS											
10.C - CONSTRUCT PERMANENT AQUA CONNECTION FACILITIES											
IEPA APPROVALS											
10.D - DESIGN WATER STORAGE FACILITIES											
10.E - IEPA APPROVALS											
10.F - CONSTRUCT WATER STORAGE FACILITIES											
IEPA APPROVALS											
DWIC APPROVALS											
DWC DUTIES											
10.G - APPROVE OF PROPERTY INTERESTS											
DESIGN COMMISSION CONNECTION FACILITIES											
IEPA APPROVALS											
10.H - CONSTRUCT COMMISSION CONNECTION FACILITIES											
IEPA APPROVALS											
OTHER EVENTS											
PAYMENT OF CAPITAL RISK RECOVERY CHARGES (BUY-IN)											
DELIVERY OF WATER THROUGH PERMANENT CONNECTIONS											
PAYMENT OF COSTS OR FIRST WATER BILLING CYCLE											

CONTRACT MILESTONES IN BOLD FONT
(TARGET CONTRACT MILESTONES UNLESS OTHERWISE APPROVED)

EXHIBIT G
ILLUSTRATIVE SCHEDULE OF EVENTS
WEEKS

	36	40	44	48	52	56	60	64	68
CUSTOMER CONTRACT APPROVED (EFFECTIVE DATE)									
AQUA ILLINOIS DUTIES									
ICC APPROVAL									
ACQUIRE ALL PROPERTY INTERESTS FOR AQUA AND DWC									
DESIGN INTERIM AQUA-OAK BROOK CONNECTION FACILITIES									
IEPA APPROVALS									
CONSTRUCT INTERIM AQUA-OAK BROOK CONNECTION FACILITIES									
IEPA APPROVALS									
OPERATE INTERIM AQUA-OAK BROOK CONNECTION FACILITIES (120 DAYS AFTER INTERIM AGREEMENT SIGNED)									
10.A - DESIGN PERMANENT AQUA CONNECTION FACILITIES									
10.B - IEPA APPROVALS									
10.C - CONSTRUCT PERMANENT AQUA CONNECTION FACILITIES									
IEPA APPROVALS									
10.D - DESIGN WATER STORAGE FACILITIES									
10.E - IEPA APPROVALS									
10.F - CONSTRUCT WATER STORAGE FACILITIES									
IEPA APPROVALS									
DWC APPROVALS									
DWC DUTIES									
10.G - APPROVE OF PROPERTY INTERESTS									
DESIGN COMMISSION CONNECTION FACILITIES									
IEPA APPROVALS									
10.H - CONSTRUCT COMMISSION CONNECTION FACILITIES									
IEPA APPROVALS									
OTHER EVENTS									
PAYMENT OF CAPITAL RISK RECOVERY CHARGES (BUY-IN)									
DELIVERY OF WATER THROUGH PERMANENT CONNECTIONS									
PAYMENT OF COSTS OR FIRST WATER BILLING CYCLE									

CONTRACT MILESTONES IN BOLD FONT (TARGET CONTRACT MILESTONES UNLESS OTHERWISE APPROVED)		EXHIBIT G ILLUSTRATIVE SCHEDULE OF EVENTS WEEKS								
		72	76	80	84	88	92	96	100	104
CUSTOMER CONTRACT APPROVED (EFFECTIVE DATE)										
AQUA/ILLINOIS DUTIES										
ICC APPROVAL										
ACQUIRE ALL PROPERTY INTERESTS FOR AQUA AND DWC										
DESIGN INTERIM AQUA-OAK BROOK CONNECTION FACILITIES										
IEPA APPROVALS										
CONSTRUCT INTERIM AQUA-OAK BROOK CONNECTION FACILITIES										
IEPA APPROVALS										
OPERATE INTERIM AQUA-OAK BROOK CONNECTION FACILITIES (120 DAYS AFTER INTERIM AGREEMENT SIGNING)										
10.A - DESIGN PERMANENT AQUA CONNECTION FACILITIES										
10.B - IEPA APPROVALS										
10.C - CONSTRUCT PERMANENT AQUA CONNECTION FACILITIES										
IEPA APPROVALS										
10.D - DESIGN WATER STORAGE FACILITIES										
10.E - IEPA APPROVALS										
10.F - CONSTRUCT WATER STORAGE FACILITIES										
IEPA APPROVALS										
DWC APPROVALS										
DWC DUTIES										
10.G - APPROVE OF PROPERTY INTERESTS										
DESIGN COMMISSION CONNECTION FACILITIES										
IEPA APPROVALS										
10.H - CONSTRUCT COMMISSION CONNECTION FACILITIES										
IEPA APPROVALS										
OTHER EVENTS										
PAYMENT OF CAPITAL RISK RECOVERY CHARGES (BUY-IN)										
DELIVERY OF WATER THROUGH PERMANENT CONNECTIONS										
PAYMENT OF COSTS OR FIRST WATER BILLING CYCLE										

CONTRACT MILESTONES IN BOLD FONT
 (TARGET CONTRACT MILESTONES UNLESS OTHERWISE APPROVED)

EXHIBIT G
 ILLUSTRATIVE SCHEDULE OF EVENTS
 WEEKS

	108	112	116	120	124	128	132	136	140
CUSTOMER CONTRACT APPROVED (EFFECTIVE DATE)									
AQUA ILLINOIS DUTIES									
ICC APPROVAL									
ACQUIRE ALL PROPERTY INTERESTS FOR AQUA AND DWC									
DESIGN INTERIM AQUA-OAK BROOK CONNECTION FACILITIES									
IEPA APPROVALS									
CONSTRUCT INTERIM AQUA-OAK BROOK CONNECTION FACILITIES									
IEPA APPROVALS									
OPERATE INTERIM AQUA-OAK BROOK CONNECTION FACILITIES (320 DAYS AFTER INTERIM AGREEMENT SIGNED)									
10.A - DESIGN PERMANENT AQUA CONNECTION FACILITIES									
10.B - IEPA APPROVALS									
10.C - CONSTRUCT PERMANENT AQUA CONNECTION FACILITIES									
IEPA APPROVALS									
10.D - DESIGN WATER STORAGE FACILITIES									
10.E - IEPA APPROVALS									
10.F - CONSTRUCT WATER STORAGE FACILITIES									
IEPA APPROVALS									
DWC APPROVALS									
DWC DUTIES									
10.G - APPROVE OF PROPERTY INTERESTS									
DESIGN COMMISSION CONNECTION FACILITIES									
IEPA APPROVALS									
10.H - CONSTRUCT COMMISSION CONNECTION FACILITIES									
IEPA APPROVALS									
OTHER EVENTS									
PAYMENT OF CAPITAL RISK RECOVERY CHARGES (BUY-IN)									
DELIVERY OF WATER THROUGH PERMANENT CONNECTIONS									
PAYMENT OF COSTS OR FIRST WATER BILLING CYCLE									

CONTRACT MILESTONES IN BOLD FONT
 (TARGET CONTRACT MILESTONES UNLESS OTHERWISE APPROVED)

EXHIBIT G
 ILLUSTRATIVE SCHEDULE OF EVENTS
 WEEKS

	144	148	152	156	160
CUSTOMER CONTRACT APPROVED (EFFECTIVE DATE)					
AQUA ILLINOIS DUTIES					
ICC APPROVAL					
ACQUIRE ALL PROPERTY INTERESTS FOR AQUA AND DWC					
DESIGN INTERIM AQUA-OAK BROOK CONNECTION FACILITIES					
IEPA APPROVALS					
CONSTRUCT INTERIM AQUA-OAK BROOK CONNECTION FACILITIES					
IEPA APPROVALS					
OPERATE INTERIM AQUA-OAK BROOK CONNECTION FACILITIES (135 DAYS AFTER INTERIM AGREEMENT SIGNED)					
10.A - DESIGN PERMANENT AQUA CONNECTION FACILITIES					
10.B - IEPA APPROVALS					
10.C - CONSTRUCT PERMANENT AQUA CONNECTION FACILITIES					
IEPA APPROVALS					
10.D - DESIGN WATER STORAGE FACILITIES					
10.E - IEPA APPROVALS					
10.F - CONSTRUCT WATER STORAGE FACILITIES					
IEPA APPROVALS					
DWC APPROVALS					
DWC DUTIES					
10.G - APPROVE OF PROPERTY INTERESTS					
DESIGN COMMISSION CONNECTION FACILITIES					
IEPA APPROVALS					
10.H - CONSTRUCT COMMISSION CONNECTION FACILITIES					
IEPA APPROVALS					
OTHER EVENTS					
PAYMENT OF CAPITAL RISK RECOVERY CHARGES (BUY-IN)					
DELIVERY OF WATER THROUGH PERMANENT CONNECTIONS					
PAYMENT OF COSTS OR FIRST WATER BILLING CYCLE					FIRST BILLING OR EARLIER IF EARLIER COMPLETION OF CONSTRUCTION



Resolution #: R-17-24

Account: N/A

Approvals: *Author / Manager / Finance / Admin*

PDM - CAP PDM

REQUEST FOR BOARD ACTION

Date: 2/6/2024

Description: Recommendation to approve Wheeling Agreements

Agenda Section: Administration Committee

Originating Department: Administration

At the January 18, 2024 Board of Commissioners meeting, the DWC-Customer contract was approved, providing a contract for service between the DuPage Water Commission and 30 public and private customers for the next 40 year period. The DuPage Water Commission services our 30 customers through 84 delivery stations, the majority of which are directly connected to the DWC water transmission main system.

However, there are six locations in which properties served by the Illinois-American Water Company utilize existing municipal systems to transport water from the DWC system to the private Illinois-American system, a process known as “wheeling”. While DWC owns and controls the metering station/facility, the linkage watermain infrastructure is provided by the municipal systems. In these cases, there is a separate contract between the municipality and Illinois-American Water Company, with DWC as a third-party signatory.

DWC legal counsel has engaged with Illinois-American legal staff and municipal officials to review and prepare the updated wheeling contracts between the Illinois-American and the six wheeling communities: Elmhurst, Glen Ellyn, Lisle, Lombard, Wheaton, and Winfield. These documents have now been approved by Illinois-American Water Company as well as the six municipalities and are recommended for approval by DWC at this time.

Recommended Motion:

It is recommended that Resolution R-17-24 be approved, authorizing the approval of the wheeling agreements between the DuPage Water Commission, Illinois American Water Company, and the municipalities of Elmhurst, Glen Ellyn, Lisle, Lombard, Wheaton, and Winfield.

DUPAGE WATER COMMISSION

RESOLUTION NO. R-17-24

A RESOLUTION APPROVING WATER TRANSMISSION AND DELIVERY AGREEMENTS BETWEEN CERTAIN CONTRACT CUSTOMERS, ILLINOIS-AMERICAN WATER COMPANY AND THE DUPAGE WATER COMMISSION

WHEREAS, the DuPage Water Commission (the “Commission”) was formed and exists pursuant to the Water Commission Act of 1985, 70 ILCS 3720/0.01 et seq., and Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 et seq., for the purpose of securing an adequate source and supply of water for its customers;

WHEREAS, Illinois-American Water Company (“Illinois-American”) has agreements to receive water from the following Contract Customers of the Commission: City of Elmhurst, Village of Glen Ellyn, Village of Lisle, Village of Lombard, City of Wheaton, Village of Winfield (the “Contract Customers”);

WHEREAS, the Contract Customers receive water from the Commission pursuant to a Water Purchase and Sale Contract;

WHEREAS, the Illinois-American distributes water to its customers that it receives from the Contract Customers;

WHEREAS, pursuant to the Contract Customers’ obligations under the Water Purchase and Sale Agreement between the DuPage Water Commission and Contract Customers, any wholesale distribution of water must be approved by the Commission;

WHEREAS, pursuant to the Water Transmission and Delivery Agreements (“Delivery Agreements”), attached hereto as Exhibits 1 - 6, the Contract Customers agree to deliver water received from the Commission to Illinois-American;

WHEREAS, the Commission deems it to be in the best interests of the Commission to approve the Delivery Agreements attached hereto as Exhibits 1-6.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the DuPage Water Commission as follows:

SECTION ONE: The foregoing recitals are hereby incorporated herein and made a part hereof as findings of the Board of Commissioners of the DuPage Water Commission.

SECTION TWO: The Delivery Agreements between the Contract Customers, Illinois-American Water Company and the DuPage Water Commission attached hereto and by this reference incorporated herein and made a part hereof as Exhibits 1-6, shall be and hereby are approved and ratified.

SECTION THREE: This Resolution shall be in full force and effect from and after its adoption.

	Aye	Nay	Absent	Abstain
Bouckaert, D.				
Cuzzone, N.				
Fennell, J.				
Healy, J.				
Novotny, D.				
Pruyn, J.				
Romano, K.				
Rush, K.				
Russo, D.				
Saverino, F.				
Suess, P.				
Van Vooren, D.				
Zay, J.				

ADOPTED THIS _____ DAY OF _____, 2024.

James Zay, Chairman

ATTEST:

Danna Mundall, Clerk
Board/Resolutions/2024/R-17-24

EXHIBIT 1

Resolution Authorizing the City of Elmhurst to Accept and Execute a “Water Transmission and Delivery Agreement Among the City of Elmhurst, Illinois-American Water Company and the DuPage Water Commission” and the Increase the Water Wheeling Rate to Illinois American Water Company Pursuant to Section 5 C of the “Water Transmission and Delivery Agreement Among the City of Elmhurst, Citizens Utilities Company of Illinois Now Known as Illinois American Water Company and the DuPage Water Commission” Dated August 15, 1994

WHEREAS, the City of Elmhurst ("City") is a home rule unit of local government under the provisions of Article VII, Section 6 of the Illinois Constitution; and

WHEREAS, the City and Illinois-American Water Company, an Illinois public utility company (“IAWC”), and the DuPage Water Commission (“Commission”) have negotiated a new “Water Transmission and Delivery Agreement Among the City of Elmhurst, Illinois-American Water Company and the DuPage Water Commission,” (the “Agreement”; a true and correct copy of the Agreement is attached hereto as Exhibit A) that will supersede and replace a previously approved “Water Transmission and Delivery Agreement Among the City of Elmhurst, Citizens Utilities Company of Illinois, now known as Illinois American Water Company, and the DuPage Water Commission” dated August 15, 1994 (the “1994 Agreement”); and

WHEREAS, under Section 5 C of the 1994 Agreement, the City has recently provided notice to IAWC regarding a proposed increase to the wheeling rate charged by the City to IAWC for the amount of water metered by the County Club System Meters according to the terms of the 1994 Agreement; and

WHEREAS, the City Council deems it to be in the best interest of the City to increase the wheeling rate charged by the City to IAWC to the amount of \$1.1550 per thousand gallons of water, or fraction thereof, metered by the County Club System Meters according to Section 5 C of the Agreement; and

WHEREAS, the City Council deems it to be in the best interest of the City to accept the new Agreement and authorize the Mayor to execute the new Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Elmhurst, DuPage and Cook Counties, Illinois, as follows:

Section 1. The facts and statements set forth in the preamble clauses to this Resolution are found to be true and correct and are hereby incorporated as part of this Resolution.

Section 2. That the City authorizes the new Agreement to be accepted and executed on behalf of the City by the Mayor.

Section 3. That certain increase to the wheeling rate charged by the City to IAWC under the Agreement is approved and the wheeling rate is hereby increased to the amount of \$1.1550 per thousand gallons of water, or fraction thereof, metered by the County Club System Meters according to Section 5 C of the Agreement.

Section 3. This Resolution shall be in full force and effect upon its passage and approval in accordance with law and the new wheeling rate is effective as of February 5, 2024.

PASSED this _____ day of _____, 2024.

AYES: _____

NAYS: _____

ABSENT: _____

ABSTENTION: _____

APPROVED by me this _____ day of _____, 2024.

Scott M. Levin, Mayor of the City of
Elmhurst, DuPage and Cook Counties, Illinois

ATTESTED and filed in my office,
this _____ day of _____, 2024.

Jackie Haddad-Tamer, Clerk of the City of Elmhurst,
DuPage and Cook Counties, Illinois

!

COUNCIL ACTION SUMMARY

SUBJECT: Resolution authorizing the acceptance and execution of a new “Water Transmission and Deliver Agreement Among the City of Elmhurst, Illinois-American Water Company and the DuPage Water Commission,” that authorizes the wheeling rate charged by the City to Illinois American Water Company (“IAWC”) to the amount of \$1.550 per thousand gallons of water, or fraction thereof, metered by the County Club System Meters according to Section 5 C of the new Agreement.

ORIGINATOR: City Attorney

DESCRIPTION OF SUBJECT MATTER: The Finance, Council Affairs and Administrative Services Committee recommends the City authorize and execute a new “Water Transmission and Deliver Agreement Among the City of Elmhurst, Illinois-American Water Company and the DuPage Water Commission,” increase the wheeling rate charged by the City to IAWC to the amount of \$1.550 per thousand gallons of water, or fraction thereof, metered by the County Club System Meters according to Section 5 C of the Water Transmission and Delivery Agreement.

This resolution authorizes the Mayor to execute the “Water Transmission and Deliver Agreement Among the City of Elmhurst, Illinois-American Water Company and the DuPage Water Commission,” on behalf of the City and to increase the wheeling rate charged by the City to IAWC to the amount of \$1.550 per thousand gallons of water, or fraction thereof, metered by the County Club System Meters according to Section 5 C of the Water Transmission and Delivery Agreement.

EXHIBIT "A"
"WATER TRANSMISSION AND DELIVERY AGREEMENT
AMONG THE CITY OF ELMHURST, ILLINOIS-AMERICAN WATER COMPANY
AND THE DUPAGE WATER COMMISSION"

**WATER TRANSMISSION AND DELIVERY AGREEMENT
AMONG THE CITY OF ELMHURST, ILLINOIS-AMERICAN WATER COMPANY
AND THE DUPAGE WATER COMMISSION**

This Water Transmission and Delivery Agreement, dated as of _____, ____, 2024, is by and between the **City of Elmhurst**, a municipal corporation of the State of Illinois (the “City”), **Illinois-American Water Company**, an Illinois public utility corporation (“Illinois-American”), and the **DuPage Water Commission**, Counties of DuPage, Cook and Will, Illinois (the "Commission"), a county water commission and public corporation. organized under Division 135 of Article II of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.* and the Water Commission Act of 1985, 70 ILCS 3720/1 *et seq.* (collectively, the “Acts”),

WITNESSETH

WHEREAS, Illinois-American owns and operates a water distribution system for the supply of domestic drinking water to approximately 393 customer connections located in the City (“Illinois-American System”);

WHEREAS, the City owns and operates a water distribution system (the “City System”) which is interconnected to the Illinois-American System;

WHEREAS, Illinois-American, by and through its predecessor in interest, Citizens Utility Company of Illinois, and the City have entered into a Water Purchase and Sale Contract dated August 15, 1994 (“Water Purchase Agreement”) with the Commission for the sale by the Commission of water to Illinois-American its Illinois-American System and the City to serve the City System;

WHEREAS, pursuant to this Water Transmission and Delivery Agreement (“Delivery Agreement”), the City agrees to deliver the water purchased by Illinois-American from the Commission to the Illinois-American System;

WHEREAS, the Commission has reviewed and approved this Delivery Agreement and the Commission provides its consent for the City to deliver such water to the Illinois-American System;

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and agreements herein contained, the City, Illinois-American, and the Commission agree as follows:

Section 1. Water Supply.

(a) Agreement to Deliver. Subject to the provisions of this Delivery Agreement, the City agrees to transmit and deliver water purchased by Illinois-American from the Commission through the City System to the Illinois-American System, subject to availability of such water from

the Commission. The City's availability of such water hereunder, shall be limited to a maximum annual amount equivalent to the Illinois-American System's then current water allocation, and provided further that the maximum rate of water that the City shall be required to deliver to the Illinois-American System in any one hour shall be in an amount equal to 1.7 times the Illinois-American System's water allocation as determined on an hourly basis.

(b) Interconnection. The City will deliver water to the Illinois-American System through the interconnection between the City System and the Illinois-American System ("Point of Delivery"). The Commission shall own, operate and maintain, at its own expense, a meter station at the Point of Delivery for purposes of measuring the water delivered through the Point of Delivery. Illinois-American shall own, operate, maintain and be responsible for a pressure adjusting or rate control station at the Point of Delivery. Illinois-American shall operate the rate control station to adjust and control the flow of water from the City System into the Illinois-American System. Said deliveries shall be at a pressure not to exceed 85 pounds per square inch and the City shall use its best efforts to maintain pressure not to be less than 30 pounds per square inch, measured at the Illinois-American System Metering Station.

(c) Title to Water. Title to all water delivered pursuant to this Delivery Agreement shall remain in the Commission to the lesser of the points ten feet (10 ft) downstream from the Commission's metering station or a common dividing wall between the Commission's metering station and the City's pressure adjusting control station for its City System. At the Commission's Metering Station, title to the water delivered shall pass from the City to Illinois-American at the point the lesser of ten feet (10 ft) downstream from the Commission's metering station or a common dividing wall between the Commission's metering station and Illinois-American's pressure adjusting control station.

(d) Water Quality. The City undertakes to provide that all water delivered to Illinois-American shall be of such quality, at the point of delivery as to meet the requirements of any Federal, State or local agency as shall have jurisdiction from time to time for the operation of public water supplies. The City shall bear no responsibility for the contamination of such water or deterioration of water quality occurring beyond the City's Point of Delivery to the Illinois-American System. The Commission shall bear no responsibility for the contamination of such water or deterioration of water quality occurring beyond the Commission's point of delivery to the City System.

(e) Storage. The City and Illinois-American shall each for its own system, construct and maintain, during the life of the term of this Delivery Agreement and any renewal or extension of it, effective water storage capacity equal to the water storage capacity required by the Water Purchase Agreement. Such water storage capacity shall be constructed, maintained, and expanded as necessary in accordance with the terms of the Water Purchase Agreement.

Section 2. Measuring Equipment.

(a) Commission to Supply Equipment, Official Record. The Commission has furnished and installed, and will continue to own, operate, maintain, repair and replace, at its own expense, at the Point of Delivery the necessary equipment and devices for measuring

properly the quantity of water delivered under this Delivery Agreement, together with such above-ground structures as the Commission shall deem necessary to house such equipment and devices. Such meter or meters and other equipment so installed and structures so constructed shall remain the property of the Commission. The Commission shall provide Illinois-American and the City access to such structures and equipment for examination and inspection at reasonable times, but the reading for billing purposes, calibration and adjustment thereof shall be done only by the employees or agents of the Commission. For the purpose of this Delivery Agreement, the official record of readings of the meter or meters shall be the journal or other 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 Illinois-American, the Commission will give Illinois-American a copy of such journal or record book, or permit Illinois-American to have access thereto in the office of the Commission during regular business hours.

(b) Check Meters. Illinois-American may, at its option and its own expense, install and operate a check meter to check each meter installed by the Commission, but the measurement of water for the purpose of this Delivery Agreement shall be solely by the Commission's meters, except in the cases hereinafter specifically provided to the contrary. All such check meters shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of the Commission, but the calibration and adjustment thereof shall be made only by Illinois-American, except during any period when a check meter may be used under the provisions hereunder for measuring the amount of water delivered, in which case the calibration and adjustment thereof shall be made by the Commission with like effects as if such check meter or meters had been furnished and installed by the Commission.

(c) Meter Readings. The Commission shall read the meters at the Illinois-American System Metering Station ("Illinois-American System Meter") and the Commission meters installed or maintained pursuant to the Water Purchase Agreement to serve the City System ("City System Meter") as close to simultaneously as possible.

Section 3. Unit of Measurement. The unit of measurement for water delivered hereunder shall be gallons of water, U.S. Standard Liquid Measure, and all measuring devices shall, unless the parties otherwise agree, to be so calibrated.

Section 4. Limitations on Supply of Water.

(a) Curtailment. If at any time it becomes necessary for the Commission to limit generally its delivery of water to its customers for any reason, then the City and Illinois-American Water together shall take all reasonable and appropriate actions to provide that such water as is delivered by the Commission is shared by the City and Illinois-American Water on a pro rata basis.

(b) Limitation on Supply to City. If at any time it becomes necessary for the Commission to limit its delivery of water to the City System (but not to the Illinois-American System) for any reason pursuant to the Water Purchase Agreement and specifically related to the

City, then the City shall take all reasonable and appropriate actions, including without limitation the imposition of water use limitations on customers of the City System, to limit the use of water in the City System so that the Illinois-American System's pro rata share of water is delivered by the City to the Illinois-American System.

(c) Limitation on Supply to Illinois-American. If at any time it becomes necessary for the Commission to limit its delivery of water to the Illinois-American System (but not to the City System) for any reason specifically related to Illinois-American, then Illinois-American shall take all reasonable and appropriate actions, including without limitation the imposition of water use limitations on customers of the Illinois-American System, and the City shall, and shall be entitled to, make all necessary and appropriate adjustments to the City System, to assure that the appropriate amount of water to which the City System is entitled is delivered to the City System during such period of curtailment to Illinois-American.

(d) Emergency Use of Other Sources. Illinois-American may contract for a temporary supply of water in case of an emergency from any other unit of local government or any entity. Nothing in this Delivery Agreement shall be construed to prohibit Illinois-American or the City from serving its customers in cases of emergency, or when the Commission for whatever reason is unable to meet such water requirements of the City or Illinois-American, from any source including wells owned by Illinois-American or the City and maintained for emergency use.

(e) No Liability of Commission. Illinois-American and the City each hereby acknowledge and agree that the Commission shall not be liable either to Illinois-American or to the City for any damages occasioned by or in any way related to any limitation on, or delay in, the delivery of water to them or to either one of them.

(f) No Liability of City. Illinois-American acknowledges and agrees that the City shall not be liable to Illinois-American for any damages occasioned by or in any way related to any limitation on, or delay in, the delivery of water to Illinois-American.

(g) Expansion of the Illinois-American System Service Area. The current service area of the Illinois-American System is designated on the map attached hereto as Exhibit A. Illinois-American shall obtain written approval from the City prior to expanding the current service area of the Illinois-American System and such consent shall not unreasonably be withheld by the City. If the proposed service area expansion of the Illinois-American System affects property serviceable by the City System, the City reserves the right of first refusal to annex the affected property and require its connections to the City System. Notwithstanding any requirements of the Water Purchase Agreement to the contrary, and subject to all of the provisions of the Water Purchase Agreement, the Commission shall only be required to sell and deliver to Illinois-American an amount of water necessary from time to time to serve the water requirements of the Illinois-American System's current service area designated on Exhibit A attached hereto.

Section 5. Prices and Terms of Payment.

(a) Illinois-American's Payments to the Commission. Illinois-American shall make

all required payments to the Commission in accordance with the Water Purchase Agreement. To the extent that such payments depend upon the amount of water delivered to the Illinois-American System, Illinois-American payments to the Commission pursuant to the Water Purchase Agreement shall be based on readings taken by the Commission of the Illinois-American System Meter.

(b) City's Payments to the Commission. The City shall make all required payments to the Commission in accordance with the terms of the Water Purchase Agreement. To the extent that such payments depend on the amount of water delivered to the City System, the City's payments to the Commission pursuant to the Water Purchase Agreement shall be based on the difference between the readings taken by the Commission of the City System Meter and the readings taken by the Commission of the Illinois-American System Meter. If, for any billing period, the measurement of the amount of water delivered through the Illinois-American System Meter exceeds the measurement of the amount of water delivered through the City System Meter, then the difference between such readings shall be deemed zero.

(c) Illinois-American's Payments to the City. Illinois-American shall pay to the City, for the water transmission and delivery services under this Delivery Agreement, the amount of \$1.1550 per thousand gallons of water, or fraction thereof, metered by the Illinois-American System Meter (the "wheeling rate"). The City shall invoice Illinois-American monthly for such services, and payment shall be due within 30 days of invoicing by the City. The City and Illinois-American will review the variable components of the operational and maintenance expense to determine if any adjustments are required to the wheeling rate. Illinois-American agrees that the wheeling rate may be adjusted in the same proportion that the City's water rate to its customer base increases or decreases. The City agrees to give Illinois-American sixty (60) days written notice prior to any rate change going into effect, but any change in rates can go into effect only upon Illinois-American receiving approval from the Illinois Commerce Commission, if necessary.

Section 6. Special Covenants and Conditions.

(a) City to Continue to Serve. City will use its best efforts to continue to serve Illinois-American with water.

(b) City to Maintain and Operate City System Properly. The City shall take all reasonable steps to maintain and operate the City System properly and in good condition and to continue to serve the customers in the City System.

(c) Illinois-American to Maintain and Operate System Properly. Illinois-American shall take all reasonable steps to maintain and operate the Illinois-American System properly and in good condition and to continue to serve the customers in the Illinois-American System.

(d) Accounting and Audit. The Commission, the City and Illinois-American will make and keep proper books and accounts in which complete entries shall be made of all transactions relating to its system.

(e) Insurance. The City and Illinois-American will carry insurance or maintain self-

insurance with respect to its system of the kinds and in the amounts which are customarily carried or maintained by parties operating similar properties, including, without limiting the generality of the foregoing, fire and other casualty and public liability insurance or protection. All moneys received for loss under the insurance policies or on deposit as self-insurance reserves shall be used in making good the loss or damage in respect of which they were paid except to the extent that the property damaged or lost would be permitted to be disposed, whether by repairing the property damaged or replacing the property destroyed, and provisions for making good such loss or damage or replacing the property destroyed shall be made within a reasonable time from date of loss. The proceeds derived from any and all policies or available from self-insurance reserves for public liability losses shall be used in paying or reimbursing any accounts from which payments, settlements, judgments or expenses were advanced.

Section 7. Force Majeure. In case by reason of force majeure event occurs as to the obligations of the City or Illinois-American under this Delivery Agreement and the City and/or Illinois-American shall be rendered unable wholly or in part to carry out its obligation under this Delivery Agreement, then if such party shall give notice and full particulars of such force majeure event in writing to the other parties within seven (7) days after the 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 event 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 term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of 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, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or tunnels, partial or entire failure of water supply, and inability on the part of the Commission or the City to deliver water hereunder, or of any party to receive water hereunder, on account of any other causes not reasonably within the control of the party claiming such inability. The settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any force majeure events 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 settlements are unfavorable to it in the judgment of the party having the difficulty. No force majeure event which renders any of the parties unable to perform under this Delivery Agreement shall relieve a party of its obligation to make payments pursuant to the terms of this Delivery Agreement.

Section 8. Releases and Indemnification.

(a) Indemnification of the Commission by Illinois-American. To the fullest extent permitted by law, Illinois-American hereby releases the Commission, and its respective officers, agents and employees, from and agrees that the Commission, and its respective officers, agents and employees, shall not be liable for, and agree to indemnify and hold the Commission, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Illinois-American System, (2) any

liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of Illinois-American to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

(b) Indemnification of the Commission by the City. To the fullest extent permitted by law, the City hereby releases the Commission, and its respective officers, agents and employees, from and agrees that the Commission, and its respective officers, agents and employees, shall not be liable for, and agrees to indemnify and hold the Commission, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the City System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of the City to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

(c) Indemnification of the Commission by the City and Illinois-American for Third-Party Claims. To the fullest extent permitted by law, Illinois-American and the City agree to indemnify and hold harmless the Commission, and its respective officers, agents and employees, from any losses, costs, charges, expenses (including attorneys' fees), judgments, and liabilities incurred by the Commission, and its respective officers, agents and employees, in connection with any action, suit, or proceeding instituted or threatened by any third party in connection with this Delivery Agreement.

(d) Indemnification Claims Made by the Commission. If any such claim provided for in subsections (a), (b) or (c), is asserted, the Commission shall give prompt notice to Illinois-American or the City or both, as applicable, and Illinois-American or the City or both, as applicable, if requested by the Commission, shall assume the defense thereof, it being understood, however, that neither Illinois-American nor the City shall settle or consent to the settlement of any such claim without the written consent of the Commission. In connection with any such claims, litigation or liabilities, the Commission and its respective officers, agents, employees, representatives and assigns shall have the right to defense counsel of their choice. Illinois-American and the City, as applicable, shall be solely liable for all reasonable costs of such defense and for all reasonable expenses, fees, judgments, settlements and all reasonable other costs arising out of such claims, litigation, or liabilities. Illinois-American and the City, as applicable, shall have the right to participate in the defense of any such claim, or litigation and, upon the request of the Commission as stated above, shall assume the defense of the Commission, and its respective officers, agents and employees.

(e) Indemnification of Illinois-American by the City. To the fullest extent permitted by law, the City hereby releases Illinois-American, and its respective officers, agents and employees, from and agrees that Illinois-American, and its respective officers, agents and employees, shall not be liable for, and agrees to indemnify and hold Illinois-American, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement,

extension, improvement, maintenance, or operation of the City System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of the City to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

(f) Indemnification of the City by Illinois American. To the fullest extent permitted by law, Illinois-American hereby releases the City, and its respective officers, agents and employees, from and agrees that the City, and its respective officers, agents and employees, shall not be liable for, and agrees to indemnify and hold the City, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Illinois-American System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of Illinois-American to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply,

Section 9. Interpretation; Compliance with Existing Contracts. This Delivery Agreement shall be deemed to be a separate written contract between the Commission, the City and Illinois-American in Compliance with the Water Purchase Agreement. Except where expressly provided in this Delivery Agreement, nothing in this Delivery Agreement shall be construed to be, or applied in any manner, inconsistent with the terms of this Water Purchase Agreement, and if there is any conflict or inconsistency between the terms of this Delivery Agreement and the terms of the Water Purchase Agreement, then the terms of the Water Purchase Agreement shall apply.

The City shall at all times comply with all terms and conditions of the Water Purchase Agreement, and Illinois-American shall at all times comply with all terms and conditions of the Water Purchase Agreement, including without limitation the making of all payments due thereunder promptly to the Commission. Under no circumstances shall any dispute of any nature under this Delivery Agreement, or Illinois-American's inability to receive water through the Point of Delivery provided by this Delivery Agreement, excuse, delay, or in any way other way affect the City's or Illinois-American's performance under the Water Purchase Agreement.

Section 10. Termination. Illinois-American may terminate this Delivery Agreement upon twelve (12) months advance written notice to the City as long as Illinois-American continues to purchase water from the Commission pursuant to the Water Purchase Agreement.

Section 11. ICC Approval. This Delivery Agreement may be subject to the approval of the Illinois Commerce Commission, and the City agree to cooperate with Illinois-American in support of Illinois-American's application seeking said approval, if necessary. If the Illinois Commerce Commission approves some but not all of the provisions of this Delivery Agreement, then the parties to this Delivery Agreement may, each in the exercise of their own discretion, agree by written amendment to revise the provisions of this Delivery Agreement to a form satisfactory to the Illinois Commerce Commission. In the event of such an agreed revision, this Delivery Agreement shall take effect as revised. Nothing in this Delivery Agreement shall be construed to require any party to agree to any revision to this Delivery Agreement as a result of any action by the Illinois Commerce Commission.

Section 12. Effective Date and Term. This Delivery Agreement shall be effective when all the parties have executed it (the "Effective Date"). This Delivery Agreement shall continue in force and effect until February 24, 2064 which is the term of the Water Purchase Agreement. The parties agree to negotiate in good faith a subsequent Delivery Agreement if desired by the parties.

Section 13. Notices and Evidence of Actions. All notices or communications provided for herein shall be in writing and shall be delivered to the party affected either in person or by overnight delivery service (UPS/Fed Ex) addressed to the principal office thereof.

Any action hereunder to be taken by the parties may be evidenced by copy of official proceedings (including pertinent minutes, motions, resolutions, or ordinances) duly certified by the Clerk or Secretary of such party.

Section 14. Amendment. This Delivery Agreement shall not be modified, revised, amended or annulled in any way except in writing approved by all parties hereto.

Section 15. Severability. Should any part, term, or provision of this Delivery Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected thereby.

Section 16. Governing Law; Superseder. This Delivery Agreement shall be construed exclusively under the applicable laws of the State of Illinois. All other wheeling contracts between the City, Illinois-American and the Commission are hereby superseded and shall be null and void. The Parties agree that venue for any litigation shall only be proper in the Eighteenth Judicial Circuit, DuPage County, Illinois.

Section 17. Execution in Counterparts. This Delivery Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. Any such counterpart may be signed by one or more of the parties hereto so long as each of the parties hereto has signed one or more of such counterparts.

[SIGNATURE PAGE FOLLOWS IMMEDIATELY]

IN WITNESS WHEREOF, the City, Illinois-American, and the Commission have caused their respective corporate names to be subscribed hereto and their respective corporate seals to be hereto affixed and attested by their duly authorized officers, all on the date set opposite their respective corporate names.

CITY OF ELMHURST

By: _____
Mayor Scott M. Levin

Attest:

Jackie Haddad-Tamer, City Clerk

COMPANY

ILLINOIS-AMERICAN WATER

By: _____
President

Attest:

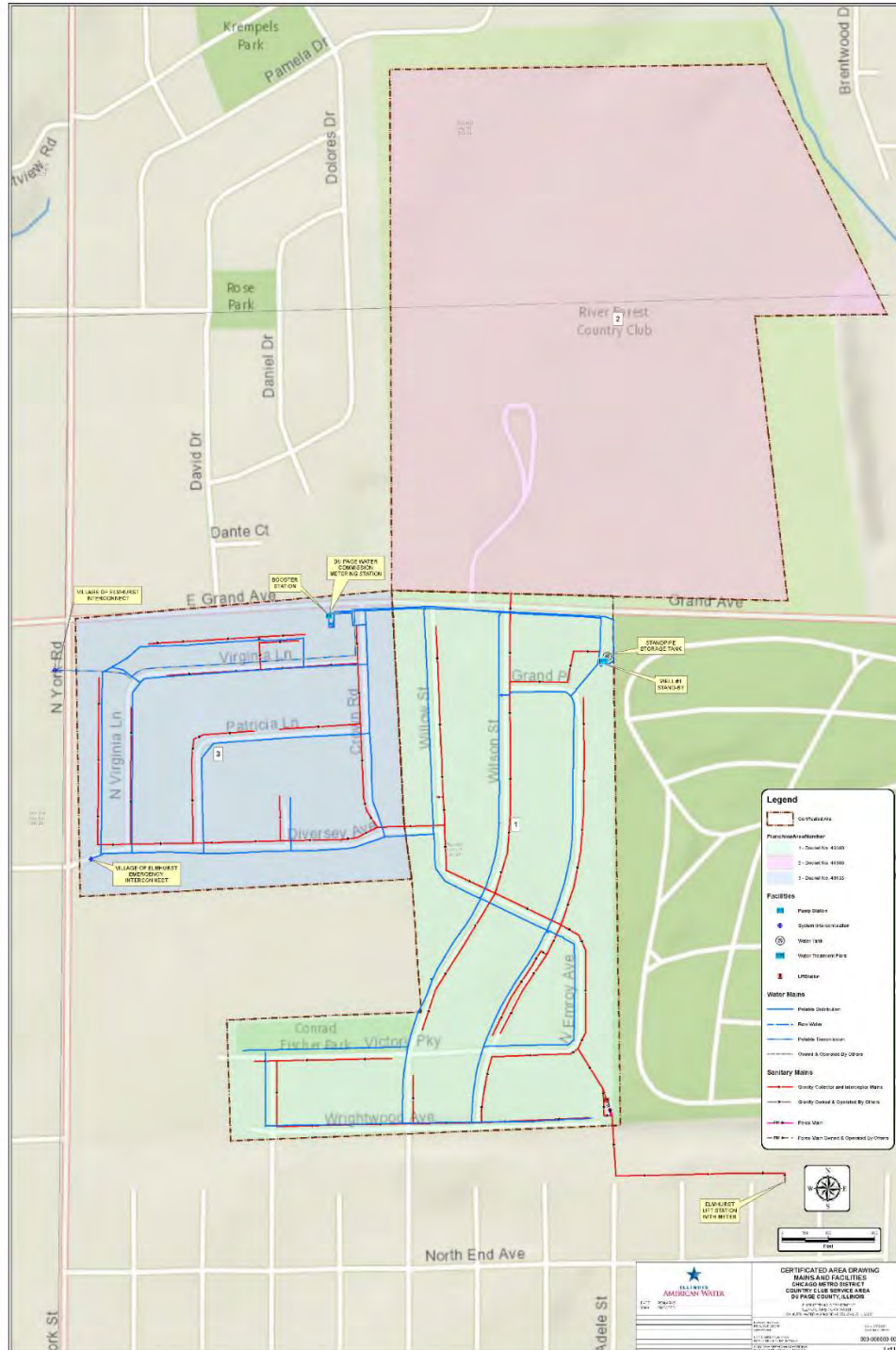
DUPAGE WATER COMMISSION

By: _____
Chairman

Attest:

“EXHIBIT A”

MAP DEPICTING CURRENT SERVICE AREA OF ILLINOIS-AMERICAN WATER COMPANY



Village Of Glen Ellyn

Resolution No. _____

**A Resolution Approving the Water Transmission and Delivery Agreement
Among the Village of Glen Ellyn, Illinois-American Water Company
And the DuPage Water Commission**

**Adopted by the
President and the Board of Trustees
of the Village of Glen Ellyn
DuPage County, Illinois
This ____ Day of _____, 20 ____.**

Published in pamphlet form by the authority of the
President and Board of Trustees of the Village of
Glen Ellyn, DuPage County, Illinois,
this _____ day of _____, 20 ____.

RESOLUTION NO. 24-_____

A RESOLUTION APPROVING THE WATER TRANSMISSION AND DELIVERY AGREEMENT AMONG THE VILLAGE OF GLEN ELLYN, ILLINOIS-AMERICAN WATER COMPANY AND THE DUPAGE WATER COMMISSION

This Water Transmission and Delivery Agreement, dated as of XX, is by and between the **Village of Glen Ellyn**, a municipal corporation of the State of Illinois (the "Village"), **Illinois-American Water Company**, an Illinois public utility corporation ("Illinois-American"), and the **DuPage Water Commission**, Counties of DuPage, Cook and Will, Illinois (the "Commission"), a county water commission and public corporation, organized under Division 135 of Article II of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.* and the Water Commission Act of 1985, 70 ILCS 3720/1 *et seq.* (collectively, the "Acts"),

WITNESSETH

Whereas, Illinois-American owns and operates a water distribution system for the supply of domestic drinking water to approximately 124 customer connections located in the Village ("Illinois-American System");

Whereas, the Village owns and operates a water distribution system (the "Village System") which is interconnected to the Illinois-American System;

Whereas, Illinois-American and the Village have entered into a Water Purchase and Sale Contract dated XX ("Water Purchase Agreement") with the Commission for the sale by the Commission of water to Illinois-American its Illinois-American System and the Village to serve the Village System;

Whereas, pursuant to this Water Transmission and Delivery Agreement ("Delivery Agreement"), the Village agrees to deliver the water purchased by Illinois-American from the Commission to the Illinois-American System;

Whereas, the Commission has reviewed and approved this Delivery Agreement and the Commission provides its consent for the Village to deliver such water to the Illinois-American System;

Now, Therefor Be It Resolved by the President and Board of Trustees of the Village of Glen Ellyn, in consideration of the foregoing recitals and of the mutual covenants and agreements herein contained, the Village, Illinois-American, and the Commission agree as follows:

Section 1. Water Supply.

(a) **Agreement to Deliver.** Subject to the provisions of this Delivery Agreement, the Village agrees to transmit and deliver water purchased by Illinois-American from the Commission through the Village System to the Illinois-American System, subject to availability of such water from the Commission. The Village's availability of such water hereunder, shall be limited to a maximum annual amount equivalent to the Illinois-American System's then current water allocation, and provided further that the maximum rate of water that the Village shall be required to deliver to the

Illinois-American System in any one hour shall be in an amount equal to 1.7 times the Illinois-American System's water allocation as determined on an hourly basis.

(b) Interconnection. The Village will deliver water to the Illinois-American System through the interconnection between the Village System and the Illinois-American System ("Point of Delivery"). The Commission shall own, operate and maintain, at its own expense, a meter station at the Point of Delivery for purposes of measuring the water delivered through the Point of Delivery. Illinois-American shall own, operate, maintain and be responsible for a pressure adjusting or rate control station at the Point of Delivery. Illinois-American shall operate the rate control station to adjust and control the flow of water from the Village System into the Illinois-American System. Said deliveries shall be at a pressure not to exceed 85 pounds per square inch and not to be less than 35 pounds per square inch, measured at the Illinois-American System Metering Station.

(c) Title to Water. Title to all water delivered pursuant to this Delivery Agreement shall remain in the Commission to the lesser of the points ten feet (10 ft) downstream from the Commission's metering station or a common dividing wall between the Commission's metering station and the Village's pressure adjusting control station for its Village System. At the Commission's Metering Station, title to the water delivered shall pass from the Village to Illinois-American at the point the lesser of ten feet (10 ft) downstream from the Commission's metering station or a common dividing wall between the Commission's metering station and Illinois-American's pressure adjusting control station.

(d) Water Quality. The Village undertakes to provide that all water delivered to Illinois-American shall be of such quality, at the point of delivery as to meet the requirements of any Federal, State or local agency as shall have jurisdiction from time to time for the operation of public water supplies. The Village shall bear no responsibility for the contamination of such water or deterioration of water quality occurring beyond the Village's Point of Delivery to the Illinois-American System. The Commission shall bear no responsibility for the contamination of such water or deterioration of water quality occurring beyond the Commission's point of delivery to the Village System.

(e) Storage. The Village and Illinois-American shall each for its own system, construct and maintain, during the life of the term of this Delivery Agreement and any renewal or extension of it, effective water storage capacity equal to the water storage capacity required by the Water Purchase Agreement. Such water storage capacity shall be constructed, maintained, and expanded as necessary in accordance with the terms of the Water Purchase Agreement.

Section 2. Measuring Equipment.

(a) Commission to Supply Equipment, Official Record. The Commission has furnished and installed, and will continue to own, operate, maintain, repair and replace, at its own expense, at the Point of Delivery the necessary equipment and devices for measuring properly the quantity of water delivered under this Delivery Agreement, together with such above-ground structures as the Commission shall deem necessary to house such equipment and devices. Such meter or meters and other equipment so installed and structures so constructed shall remain the property of the Commission. The Commission shall provide Illinois-American and the Village access to such structures and equipment for examination and inspection at reasonable times, but the reading for billing purposes, calibration and adjustment thereof shall be done only by the employees or agents of the Commission. For the purpose of this Delivery Agreement, the official record of readings of the meter or meters shall be the journal or other 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 Illinois-American, the Commission will give Illinois-American a copy of such journal or record book, or permit Illinois-American to have access thereto in the office of the Commission during regular business hours.

(b) Check Meters. Illinois-American may, at its option and its own expense, install and operate a check meter to check each meter installed by the Commission, but the measurement of water for the purpose of this Delivery Agreement shall be solely by the Commission's meters, except in the cases hereinafter specifically provided to the contrary. All such check meters shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of the Commission, but the calibration and adjustment thereof shall be made only by Illinois-American, except during any period when a check meter may be used under the provisions hereunder for measuring the amount of water delivered, in which case the calibration and adjustment thereof shall be made by the Commission with like effects as if such check meter or meters had been furnished and installed by the Commission.

(c) Meter Readings. The Commission shall read the meters at the Illinois-American System Metering Station ("Illinois-American System Meter") and the Commission meters installed or maintained pursuant to the Water Purchase Agreement to serve the Village System ("Village System Meter") as close to simultaneously as possible.

Section 3. Unit of Measurement. The unit of measurement for water delivered hereunder shall be gallons of water, U.S. Standard Liquid Measure, and all measuring devices shall, unless the parties otherwise agree, to be so calibrated.

Section 4. Limitations on Supply of Water.

(a) Curtailment. If at any time it becomes necessary for the Commission to limit generally its delivery of water to its customers for any reason, then the Village and Illinois-American Water together shall take all reasonable and appropriate actions to provide that such water as is delivered by the Commission is shared by the Village and Illinois-American Water on a pro rata basis.

(b) Limitation on Supply to Village. If at any time it becomes necessary for the Commission to limit its delivery of water to the Village System (but not to the Illinois-American System) for any reason pursuant to the Water Purchase Agreement and specifically related to the Village, then the Village shall take all reasonable and appropriate actions, including without limitation the imposition of water use limitations on customers of the Village System, to limit the use of water in the Village System so that the Illinois-American System's pro rata share of water is delivered by the Village to the Illinois-American System.

(c) Limitation on Supply to Illinois-American. If at any time it becomes necessary for the Commission to limit its delivery of water to the Illinois-American System (but not to the Village System) for any reason specifically related to Illinois-American, then Illinois-American shall take all reasonable and appropriate actions, including without limitation the imposition of water use limitations on customers of the Illinois-American System, and the Village shall, and shall be entitled to, make all necessary and appropriate adjustments to the Village System, to assure that the appropriate amount of water to which the Village System is entitled is delivered to the Village System during such period of curtailment to Illinois-American.

(d) Emergency Use of Other Sources. Illinois-American may contract for a temporary supply of water in case of an emergency from any other unit of local government or any entity. Nothing in this Delivery Agreement shall be construed to prohibit Illinois-American or the Village from serving its customers in cases of emergency, or when the Commission for whatever reason is unable to meet such water requirements of the Village or Illinois-American, from any source including wells owned by Illinois-American or the Village and maintained for emergency use.

(e) No Liability of Commission. Illinois-American and the Village each hereby acknowledge and agree that the Commission shall not be liable either to Illinois-American or to the Village for any damages occasioned by or in any way related to any limitation on, or delay in, the delivery of water to them or to either one of them.

(f) No Liability of Village. Illinois-American acknowledges and agrees that the Village shall not be liable to Illinois-American for any damages occasioned by or in any way related to any limitation on, or delay in, the delivery of water to Illinois-American.

(g) Expansion of the Illinois-American System Service Area. The current service area of the Illinois-American System is designated on the map attached hereto as Exhibit A. Illinois-American shall obtain written approval from the Village prior to expanding the current service area of the Illinois-American System and such consent shall not unreasonably be withheld by the Village. If the proposed service area expansion of the Illinois-American System affects property serviceable by the Village System, the Village reserves the right of first refusal to annex the affected property and require its connections to the Village System. Notwithstanding any requirements of the Water Purchase Agreement to the contrary, and subject to all of the provisions of the Water Purchase Agreement, the Commission shall only be required to sell and deliver to Illinois-American an amount of water necessary from time to time to serve the water requirements of the Illinois-American System's current service area designated on Exhibit A attached hereto.

Section 5. Prices and Terms of Payment.

(a) Illinois-American's Payments to the Commission. Illinois-American shall make all required payments to the Commission in accordance with the Water Purchase Agreement. To the extent that such payments depend upon the amount of water delivered to the Illinois-American System, Illinois-American payments to the Commission pursuant to the Water Purchase Agreement shall be based on readings taken by the Commission of the Illinois-American System Meter.

(b) Village's Payments to the Commission. The Village shall make all required payments to the Commission in accordance with the terms of the Water Purchase Agreement. To the extent that such payments depend on the amount of water delivered to the Village System, the Village's payments to the Commission pursuant to the Water Purchase Agreement shall be based on the difference between the readings taken by the Commission of the Village System Meter and the readings taken by the Commission of the Illinois-American System Meter. If, for any billing period, the measurement of the amount of water delivered through the Illinois-American System Meter exceeds the measurement of the amount of water delivered through the Village System Meter, then the difference between such readings shall be deemed zero.

(c) Illinois-American's Payments to the Village. Illinois-American shall pay to the Village, for the water transmission and delivery services under this Delivery Agreement, the amount of: 1) \$1.1550 per thousand gallons of water, or fraction thereof, for transportation (the "wheeling

rate”), plus 2) the rate of storage services in the amount of \$0.1060 per thousand gallons of water (the “storage rate”), or fraction thereof, both metered by the Illinois-American System Meter. The Village shall invoice Illinois-American monthly for such services, and payment shall be due within 30 days of invoicing by the Village. The Village and Illinois-American will review the variable components of the operational and maintenance expense to determine if any adjustments are required to the wheeling rate. Illinois-American agrees that the wheeling rate may be adjusted in the same proportion that the Village’s water rate to its customer base increases or decreases. The Village agrees to give Illinois-American sixty (60) days written notice prior to any rate change going into effect, but any change in rates can go into effect only upon Illinois-American receiving approval from the Illinois Commerce Commission, if necessary.

(d) **System Storage.** The Village shall maintain effective water storage capacity equal to the water storage capacity required by the Village’s Water Purchase Agreement with the Commission for the Village System plus the storage capacity required for the Illinois-American System in Illinois-American’s Water Purchase Agreement with the Commission. For purposes of calculating the water storage capacity required by the Water Purchase Agreement, the Village hereby acknowledges and agrees that the effective water storage capacity maintained by the Village in the Village System shall be reduced by the storage capacity to be provided by the Village for Illinois-American’s System pursuant to this Delivery Agreement. If at any time the Village’s effective water storage capacity is not sufficient to meet the storage requirements of both the Village’s Water Purchase Agreement with the Commission and Illinois-American’s Water Purchase Agreement with the Commission then the deficiency, up to the maximum extent requirement of the Water Purchase Agreement, shall be deemed attributable to the Illinois-American System and shall be corrected by Illinois-American, unless an amendment to this Delivery Agreement is made and the Village agrees to correct the deficiency. If at any time during the term of this Delivery Agreement the Village’s storage capacity is not sufficient to meet the storage requirements of both the Village’s Water Purchase Agreement with the Commission and Illinois-American’s Water Purchase Agreement with the Commission, then Illinois-American shall, at its sole cost and expense, promptly plan, design, permit, and construct additional storage capacity upon demand by the Village or the Commission.

Section 6. Special Covenants and Conditions.

(a) **Village to Continue to Serve.** Village will use its best efforts to continue to serve Illinois-American with water.

(b) **Village to Maintain and Operate Village System Properly.** The Village shall take all reasonable steps to maintain and operate the Village System properly and in good condition and to continue to serve the customers in the Village System.

(c) **Illinois-American to Maintain and Operate System Properly.** Illinois-American shall take all reasonable steps to maintain and operate the Illinois-American System properly and in good condition and to continue to serve the customers in the Illinois-American System.

(d) **Accounting and Audit.** The Commission, the Village and Illinois-American will make and keep proper books and accounts in which complete entries shall be made of all transactions relating to its system.

(e) **Insurance.** The Village and Illinois-American will carry insurance or maintain self-insurance with respect to its system of the kinds and in the amounts which are customarily carried or

maintained by parties operating similar properties, including, without limiting the generality of the foregoing, fire and other casualty and public liability insurance or protection. All moneys received for loss under the insurance policies or on deposit as self-insurance reserves shall be used in making good the loss or damage in respect of which they were paid except to the extent that the property damaged or lost would be permitted to be disposed, whether by repairing the property damaged or replacing the property destroyed, and provisions for making good such loss or damage or replacing the property destroyed shall be made within a reasonable time from date of loss. The proceeds derived from any and all policies or available from self-insurance reserves for public liability losses shall be used in paying or reimbursing any accounts from which payments, settlements, judgments or expenses were advanced.

Section 7. Force Majeure. In case by reason of force majeure event occurs as to the obligations of the Village or Illinois-American under this Delivery Agreement and the Village and/or Illinois-American shall be rendered unable wholly or in part to carry out its obligation under this Delivery Agreement, then if such party shall give notice and full particulars of such force majeure event in writing to the other parties within seven (7) days after the 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 event 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 term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of 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, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or tunnels, partial or entire failure of water supply, and inability on the part of the Commission or the Village to deliver water hereunder, or of any party to receive water hereunder, on account of any other causes not reasonably within the control of the party claiming such inability. The settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any force majeure events 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 settlements are unfavorable to it in the judgment of the party having the difficulty. No force majeure event which renders any of the parties unable to perform under this Delivery Agreement shall relieve a party of its obligation to make payments pursuant to the terms of this Delivery Agreement.

Section 8. Releases and Indemnification.

(a) Indemnification of the Commission by Illinois-American. To the fullest extent permitted by law, Illinois-American hereby releases the Commission, and its respective officers, agents and employees, from and agrees that the Commission, and its respective officers, agents and employees, shall not be liable for, and agree to indemnify and hold the Commission, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Illinois-American System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of Illinois-American to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

(b) Indemnification of the Commission by the Village. To the fullest extent permitted by law, the Village hereby releases the Commission, and its respective officers, agents and employees, from and agrees that the Commission, and its respective officers, agents and employees, shall not be liable for, and agrees to indemnify and hold the Commission, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Village System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of the Village to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

(c) Indemnification of the Commission by the Village and Illinois-American for Third-Party Claims. To the fullest extent permitted by law, Illinois-American and the Village agree to indemnify and hold harmless the Commission, and its respective officers, agents and employees, from any losses, costs, charges, expenses (including attorneys' fees), judgments, and liabilities incurred by the Commission, and its respective officers, agents and employees, in connection with any action, suit, or proceeding instituted or threatened by any third party in connection with this Delivery Agreement.

(d) Indemnification Claims Made by the Commission. If any such claim provided for in subsections (a), (b) or (c), is asserted, the Commission shall give prompt notice to Illinois-American or the Village or both, as applicable, and Illinois-American or the Village or both, as applicable, if requested by the Commission, shall assume the defense thereof, it being understood, however, that neither Illinois-American nor the Village shall settle or consent to the settlement of any such claim without the written consent of the Commission. In connection with any such claims, litigation or liabilities, the Commission and its respective officers, agents, employees, representatives and assigns shall have the right to defense counsel of their choice. Illinois-American and the Village, as applicable, shall be solely liable for all reasonable costs of such defense and for all reasonable expenses, fees, judgments, settlements and all reasonable other costs arising out of such claims, litigation, or liabilities. Illinois-American and the Village, as applicable, shall have the right to participate in the defense of any such claim, or litigation and, upon the request of the Commission as stated above, shall assume the defense of the Commission, and its respective officers, agents and employees.

(e) Indemnification of Illinois-American by the Village. To the fullest extent permitted by law, the Village hereby releases Illinois-American, and its respective officers, agents and employees, from and agrees that Illinois-American, and its respective officers, agents and employees, shall not be liable for, and agrees to indemnify and hold Illinois-American, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Village System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of the Village to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

(f) Indemnification of the Village by Illinois American. To the fullest extent permitted by law, Illinois-American hereby releases the Village, and its respective officers, agents and employees, from and agrees that the Village, and its respective officers, agents and employees, shall

not be liable for, and agrees to indemnify and hold the Village, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Illinois-American System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of Illinois-American to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply,

Section 9. Interpretation; Compliance with Existing Contracts. This Delivery Agreement shall be deemed to be a separate written contract between the Commission, the Village and Illinois-American in Compliance with the Water Purchase Agreement. Except where expressly provided in this Delivery Agreement, nothing in this Delivery Agreement shall be construed to be, or applied in any manner, inconsistent with the terms of this Water Purchase Agreement, and if there is any conflict or inconsistency between the terms of this Delivery Agreement and the terms of the Water Purchase Agreement, then the terms of the Water Purchase Agreement shall apply.

The Village shall at all times comply with all terms and conditions of the Water Purchase Agreement, and Illinois-American shall at all times comply with all terms and conditions of the Water Purchase Agreement, including without limitation the making of all payments due thereunder promptly to the Commission. Under no circumstances shall any dispute of any nature under this Delivery Agreement, or Illinois-American's inability to receive water through the Point of Delivery provided by this Delivery Agreement, excuse, delay, or in any way other way affect the Village's or Illinois-American's performance under the Water Purchase Agreement.

Section 10. Termination. Illinois-American may terminate this Delivery Agreement upon twelve (12) months advance written notice to the Village as long as Illinois-American continues to purchase water from the Commission pursuant to the Water Purchase Agreement.

Section 11. ICC Approval. This Delivery Agreement may be subject to the approval of the Illinois Commerce Commission, and the Village agree to cooperate with Illinois-American in support of Illinois-American's application seeking said approval, if necessary. If the Illinois Commerce Commission approves some but not all of the provisions of this Delivery Agreement, then the parties to this Delivery Agreement may, each in the exercise of their own discretion, agree by written amendment to revise the provisions of this Delivery Agreement to a form satisfactory to the Illinois Commerce Commission. In the event of such an agreed revision, this Delivery Agreement shall take effect as revised. Nothing in this Delivery Agreement shall be construed to require any party to agree to any revision to this Delivery Agreement as a result of any action by the Illinois Commerce Commission.

Section 12. Effective Date and Term. This Delivery Agreement shall be effective when all the parties have executed it (the "Effective Date"). This Delivery Agreement shall continue in force and effect until February 24, 2064 which is the term of the Water Purchase Agreement. The parties agree to negotiate in good faith a subsequent Delivery Agreement if desired by the parties.

Section 13. Notices and Evidence of Actions. All notices or communications provided for herein shall be in writing and shall be delivered to the party affected either in person or by overnight delivery service (UPS/Fed Ex) addressed to the principal office thereof.

Any action hereunder to be taken by the parties may be evidenced by copy of official proceedings (including pertinent minutes, motions, resolutions, or ordinances) duly certified by the Clerk or Secretary of such party.

Section 14. Amendment. This Delivery Agreement shall not be modified, revised, amended or annulled in any way except in writing approved by all parties hereto.

Section 15. Severability. Should any part, term, or provision of this Delivery Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected thereby.

Section 16. Governing Law; Superseder. This Delivery Agreement shall be construed exclusively under the applicable laws of the State of Illinois. All other contracts between the Village, Illinois-American and the Commission are hereby superseded and shall be null and void. The Parties agree that venue for any litigation shall only be proper in the Eighteenth Judicial Circuit, DuPage County, Illinois.

Section 17. Execution in Counterparts. This Delivery Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. Any such counterpart may be signed by one or more of the parties hereto so long as each of the parties hereto has signed one or more of such counterparts.

Passed by the President and Board of Trustees of the Village of Glen Ellyn, Illinois,

this ____ day of _____, 2023 .

	Ayes	Nays	Absent
Fasules			
Gould			
Thompson			
Kalinich			
Simon			
Christiansen			
Senak (in event of a tie)			

Approved by the Village President of the Village of Glen Ellyn, Illinois, this ____ day

of _____, 2023.

IN WITNESS WHEREOF, the Village, Illinois-American, and the Commission have caused their respective corporate names to be subscribed hereto and their respective corporate seals to be hereto affixed and attested by their duly authorized officers, all on the date set opposite their respective corporate names.

VILLAGE OF GLEN ELLYN

By: _____
Mayor

Attest:

Village Clerk

ILLINOIS-AMERICAN WATER COMPANY

By: _____
President

Attest:

DUPAGE WATER COMMISSION

By: _____
Chairman

Attest:



VILLAGE OF LISLE Village Board Agenda Item

Item Title: A Resolution Approving a Water Transmission and Delivery Agreement Among the Village of Lisle, Illinois American Water Company, and the DuPage Water Commission

Date: February 5, 2024

Submitting Department: Public Works

Contact Person: Jason Elias

Email Address: jelias@villageoflisle.org

Description of Agenda Item:

Approval of this resolution will authorize a new Water Transmission and Delivery Agreement Among the Village of Lisle, Illinois American Water Company, and the DuPage Water Commission

Background:

On December 4, 2023, the Village Board approved a renewal of the Village's water purchase agreement with the DuPage Water Commission (DWC). In addition to the contract with DWC, the Village must renew its water wheeling agreement with Illinois American Water. This agreement provides Lake Michigan water from the DWC through the Village to Illinois American Water for their customers located in the Village and adjacent unincorporated areas. The original agreement was with Citizens Utility from 1995.

The new standardized agreement provides for a rate of \$2.02 per thousand gallons versus the current rate of \$1.155. The agreement also allows the Village to increase the wheeling rate proportionate to the rate increase the Village charges its water customers.

Action/Recommendation:

Staff recommends approval of the proposed resolution authorizing a new Water Transmission and Delivery Agreement Among the Village of Lisle, Illinois American Water, and the DuPage Water Commission.

Attachments:

[A RESOLUTION APPROVING A WATER TRANSMISSION AND DELIVERY AGREEMENT AMONG THE VILLAGE OF LISLE, ILLINOIS AMERICAN WATER COMPANY AND THE DUPAGE WATER COMMISSION](#)



RESOLUTION 2024-4435

A RESOLUTION APPROVING A WATER TRANSMISSION AND DELIVERY AGREEMENT AMONG THE VILLAGE OF LISLE, ILLINOIS AMERICAN WATER COMPANY AND THE DUPAGE WATER COMMISSION

WHEREAS, Illinois American Water Company ("Illinois-American") owns and operates a water distribution system for the supply of domestic drinking water to approximately 1112 customer connections located in the Village of Lisle ("Village") ("Illinois-American System"); and

WHEREAS, the Village owns and operates a water distribution system (the "Village System") which is interconnected to the Illinois-American System; and

WHEREAS, Illinois-American and the Village have entered into a Water Purchase and Sale Contract dated January 18, 2024 ("Water Purchase Agreement") with the DuPage Water Commission (the "Commission") for the sale by the Commission of water to Illinois-American its Illinois-American System and the Village to serve the Village System; and

WHEREAS, pursuant to this Water Transmission and Delivery Agreement ("Delivery Agreement"), the Village agrees to deliver the water purchased by Illinois-American from the Commission to the Illinois-American System; and

WHEREAS, the Commission has reviewed and approved this Delivery Agreement and the Commission provides its consent for the Village to deliver such water to the Illinois-American System; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Board of Trustees of the Village of Lisle, DuPage County, Illinois as follows:

SECTION 1: The forgoing recitals are hereby incorporated herein and made a part hereof as findings of the Mayor and Board of Trustees.

SECTION 2: The Mayor and Board of Trustees hereby approves this Water Transmission and Delivery Agreement Among the Village of Lisle, Illinois-American Water Company, and the DuPage Water Commission, without further action by the Mayor and Board of Trustees.

SECTION 3: The Village Clerk is hereby authorized and directed to provide a copy of this Resolution to Illinois-American and the Commission immediately after its approval.

SECTION 4: This Resolution shall be in full force and effect immediately upon and after its adoption.

FURTHER, be it resolved that this resolution shall be entered upon the journals of the Board of Trustees of the Village of Lisle.

PASSED AND APPROVED by the Village Board of the Village of Lisle on this 5th day of February 2024.

ATTEST:

Published by the Village Clerk, in pamphlet form, by authority of the corporate authorities of the Village of Lisle on the 5 of February, 2024.

**WATER TRANSMISSION AND DELIVERY AGREEMENT
AMONG THE VILLAGE OF LISLE, ILLINOIS-AMERICAN WATER COMPANY
AND THE DUPAGE WATER COMMISSION**

This Water Transmission and Delivery Agreement, dated as of January 18, 2024, is by and between the **Village of Lisle**, a municipal corporation of the State of Illinois (the “Village”), **Illinois-American Water Company**, an Illinois public utility corporation (“Illinois-American”), and the **DuPage Water Commission**, Counties of DuPage, Cook and Will, Illinois (the “Commission”), a county water commission and public corporation. organized under Division 135 of Article II of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.* and the Water Commission Act of 1985, 70 ILCS 3720/1 *et seq.* (collectively, the “Acts”),

WITNESSETH

WHEREAS, Illinois-American owns and operates a water distribution system for the supply of domestic drinking water to approximately 1112 customer connections located in the Village (“Illinois-American System”);

WHEREAS, the Village owns and operates a water distribution system (the “Village System”) which is interconnected to the Illinois-American System;

WHEREAS, Illinois-American and the Village have entered into a Water Purchase and Sale Contract dated January 18, 2024 (“Water Purchase Agreement”) with the Commission for the sale by the Commission of water to Illinois-American its Illinois-American System and the Village to serve the Village System;

WHEREAS, pursuant to this Water Transmission and Delivery Agreement (“Delivery Agreement”), the Village agrees to deliver the water purchased by Illinois-American from the Commission to the Illinois-American System;

WHEREAS, the Commission has reviewed and approved this Delivery Agreement and the Commission provides its consent for the Village to deliver such water to the Illinois-American System;

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and agreements herein contained, the Village, Illinois-American, and the Commission agree as follows:

Section 1. Water Supply.

(a) **Agreement to Deliver.** Subject to the provisions of this Delivery Agreement, the Village agrees to transmit and deliver water purchased by Illinois-American from the Commission through the Village System to the Illinois-American System, subject to availability of such water from the Commission. The Village’s availability of such water hereunder, shall be limited to a maximum annual amount equivalent to the Illinois-American System’s then current water allocation, and provided further that the maximum rate of water that the Village shall be required to deliver to the Illinois-American System in any one hour shall be in an amount equal to 1.7 times the Illinois-American System’s water allocation as determined on an hourly basis.

(b) Interconnection. The Village will deliver water to the Illinois-American System through the interconnection between the Village System and the Illinois-American System (“Point of Delivery”). The Commission shall own, operate and maintain, at its own expense, a meter station at the Point of Delivery for purposes of measuring the water delivered through the Point of Delivery. Illinois-American shall own, operate, maintain and be responsible for a pressure adjusting or rate control station at the Point of Delivery. Illinois-American shall operate the rate control station to adjust and control the flow of water from the Village System into the Illinois-American System. Said deliveries shall be at a pressure not to exceed 85 pounds per square inch and not to be less than 35 pounds per square inch, measured at the Illinois-American System Metering Station.

(c) Title to Water. Title to all water delivered pursuant to this Delivery Agreement shall remain in the Commission to the lesser of the points ten feet (10 ft) downstream from the Commission’s metering station or a common dividing wall between the Commission’s metering station and the Village’s flow rate control station for its Village System. At the Commission’s Metering Station, title to the water delivered shall pass from the Village to Illinois-American at the point the lesser of ten feet (10 ft) downstream from the Commission’s metering station or a common dividing wall between the Commission’s metering station and Illinois-American’s pressure adjusting control station.

(d) Water Quality. The Village undertakes to provide that all water delivered to Illinois-American shall be of such quality, at the point of delivery as to meet the requirements of any Federal, State or local agency as shall have jurisdiction from time to time for the operation of public water supplies. The Village shall bear no responsibility for the contamination of such water or deterioration of water quality occurring beyond the Village’s Point of Delivery to the Illinois-American System. The Commission shall bear no responsibility for the contamination of such water or deterioration of water quality occurring beyond the Commission’s point of delivery to the Village System.

(e) Storage. The Village shall maintain effective water storage capacity equal to the water storage capacity required by the Water Purchase Agreement for the Village System plus the storage capacity required for the Illinois-American System in the Water Purchase Agreement. For purposes of calculating the water storage capacity required by the Water Purchase Agreement, the Village hereby acknowledges and agrees that the effective water storage capacity maintained by the Village in the Village System shall be reduced by the storage capacity to be provided by the Village for Illinois-American’s System pursuant to this Delivery Agreement. If at any time the Village’s effective water storage capacity is not sufficient to meet the storage requirements of the Illinois-American System in the Water Purchase Agreement then the deficiency, shall be corrected by Illinois-American, unless an amendment to this Delivery Agreement is made and the Village agrees to correct the deficiency. If at any time during the term of this Delivery Agreement the Village’s storage capacity is not sufficient to meet the storage requirements in the Water Purchase Agreement of both the Village System and the Illinois-American System, then Illinois-American shall, at its sole cost and expense, promptly plan, design, permit, and construct additional storage capacity upon demand by the Village or the Commission. Absent separate written agreement, the maximum water storage capacity the Village agrees to provide for the Illinois-American System is 710,000 gallons, and the Village has no obligation to expand its storage capacity to accommodate the Illinois-American System. At any time during the term of this Delivery Agreement, Illinois-American may in its discretion choose to construct storage for the Illinois-American System. If Illinois-American constructs this additional storage, the storage rate set forth in Section 5(c) of this Delivery Agreement shall be eliminated or reduced.

(f) **Emergency Interconnection.** The Supplemental Agreement dated February 1, 1999 entered into between the Village, the predecessor of Illinois-American, and the Commission shall remain in full force and effect for the duration of this Delivery Agreement unless amended by the parties.

Section 2. Measuring Equipment.

(a) **Commission to Supply Equipment, Official Record.** The Commission has furnished and installed, and will continue to own, operate, maintain, repair and replace, at its own expense, at the Point of Delivery the necessary equipment and devices for measuring properly the quantity of water delivered under this Delivery Agreement, together with such above-ground structures as the Commission shall deem necessary to house such equipment and devices. Such meter or meters and other equipment so installed and structures so constructed shall remain the property of the Commission. The Commission shall provide Illinois-American and the Village access to such structures and equipment for examination and inspection at reasonable times, but the reading for billing purposes, calibration and adjustment thereof shall be done only by the employees or agents of the Commission. For the purpose of this Delivery Agreement, the official record of readings of the meter or meters shall be the journal or other 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 Illinois-American, the Commission will give Illinois-American a copy of such journal or record book, or permit Illinois-American to have access thereto in the office of the Commission during regular business hours.

(b) **Check Meters.** Illinois-American may, at its option and its own expense, install and operate a check meter to check each meter installed by the Commission, but the measurement of water for the purpose of this Delivery Agreement shall be solely by the Commission's meters, except in the cases hereinafter specifically provided to the contrary. All such check meters shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of the Commission, but the calibration and adjustment thereof shall be made only by Illinois-American, except during any period when a check meter may be used under the provisions hereunder for measuring the amount of water delivered, in which case the calibration and adjustment thereof shall be made by the Commission with like effects as if such check meter or meters had been furnished and installed by the Commission.

(c) **Meter Readings.** The Commission shall read the meters at the Illinois-American System Metering Station ("Illinois-American System Meter") and the Commission meters installed or maintained pursuant to the Water Purchase Agreement to serve the Village System ("Village System Meter") as close to simultaneously as possible.

Section 3. Unit of Measurement. The unit of measurement for water delivered hereunder shall be gallons of water, U.S. Standard Liquid Measure, and all measuring devices shall, unless the parties otherwise agree, to be so calibrated.

Section 4. Limitations on Supply of Water.

(a) **Curtailment.** If at any time it becomes necessary for the Commission to limit generally its delivery of water to its customers for any reason, then the Village and Illinois-American Water

together shall take all reasonable and appropriate actions to provide that such water as is delivered by the Commission is shared by the Village and Illinois-American Water on a pro rata basis.

(b) Limitation on Supply to Village. If at any time it becomes necessary for the Commission to limit its delivery of water to the Village System (but not to the Illinois-American System) for any reason pursuant to the Water Purchase Agreement and specifically related to the Village, then the Village shall take all reasonable and appropriate actions, including without limitation the imposition of water use limitations on customers of the Village System, to limit the use of water in the Village System so that the Illinois-American System's pro rata share of water is delivered by the Village to the Illinois-American System.

(c) Limitation on Supply to Illinois-American. If at any time it becomes necessary for the Commission to limit its delivery of water to the Illinois-American System (but not to the Village System) for any reason specifically related to Illinois-American, then Illinois-American shall take all reasonable and appropriate actions, including without limitation the imposition of water use limitations on customers of the Illinois-American System, and the Village shall, and shall be entitled to, make all necessary and appropriate adjustments to the Village System, to assure that the appropriate amount of water to which the Village System is entitled is delivered to the Village System during such period of curtailment to Illinois-American.

(d) Emergency Use of Other Sources. Illinois-American may contract for a temporary supply of water in case of an emergency from any other unit of local government or any entity. Nothing in this Delivery Agreement shall be construed to prohibit Illinois-American or the Village from serving its customers in cases of emergency, or when the Commission for whatever reason is unable to meet such water requirements of the Village or Illinois-American, from any source including wells owned by Illinois-American or the Village and maintained for emergency use.

(e) No Liability of Commission. Illinois-American and the Village each hereby acknowledge and agree that the Commission shall not be liable either to Illinois-American or to the Village for any damages occasioned by or in any way related to any limitation on, or delay in, the delivery of water to them or to either one of them.

(f) No Liability of Village. Illinois-American acknowledges and agrees that the Village shall not be liable to Illinois-American for any damages occasioned by or in any way related to any limitation on, or delay in, the delivery of water to Illinois-American.

(g) Expansion of the Illinois-American System Service Area. The current service area of the Illinois-American System is designated on the map attached hereto as Exhibit A. Illinois-American shall obtain written approval from the Village prior to expanding the current service area of the Illinois-American System and such consent shall not unreasonably be withheld by the Village. It is not unreasonable for the Village to withhold consent if the Village determines that the proposed service area expansion of the Illinois-American System affects property serviceable by the Village System without a main extension, affects property that is within the Village's planning jurisdiction, affects property that could reasonably be serviceable by the Village System in the future by reason of annexation, or affects property that could be subject to an annexation agreement or pre-annexation agreement. The Village reserves the right of first refusal to annex the affected property and require its connection to the Village System. Notwithstanding any requirements of the Water Purchase Agreement to the contrary, and subject to all of the provisions of the Water Purchase Agreement, the Commission shall only be required to sell and deliver to Illinois-American an amount of water

necessary from time to time to serve the water requirements of the Illinois-American System's current service area designated on Exhibit A attached hereto.

Section 5. Prices and Terms of Payment.

(a) **Illinois-American's Payments to the Commission.** Illinois-American shall make all required payments to the Commission in accordance with the Water Purchase Agreement. To the extent that such payments depend upon the amount of water delivered to the Illinois-American System, Illinois-American payments to the Commission pursuant to the Water Purchase Agreement shall be based on readings taken by the Commission of the Illinois-American System Meter.

(b) **Village's Payments to the Commission.** The Village shall make all required payments to the Commission in accordance with the terms of the Water Purchase Agreement. To the extent that such payments depend on the amount of water delivered to the Village System, the Village's payments to the Commission pursuant to the Water Purchase Agreement shall be based on the difference between the readings taken by the Commission of the Village System Meter and the readings taken by the Commission of the Illinois-American System Meter. If, for any billing period, the measurement of the amount of water delivered through the Illinois-American System Meter exceeds the measurement of the amount of water delivered through the Village System Meter, then the difference between such readings shall be deemed zero.

(c) **Illinois-American's Payments to the Village.** Illinois-American shall pay to the Village, for the water transmission and delivery services under this Delivery Agreement, the amount of: 1) \$1.1550 per thousand gallons of water, or fraction thereof, metered by the Illinois-American System Meter (the "wheeling rate") plus 2) the rate of storage services in the amount of \$0.865 per thousand gallon of water (the "storage rate") or fraction thereof, both metered by the Illinois-American System Meter. The Village shall invoice Illinois-American monthly for such services, and payment shall be due within 30 days of invoicing by the Village. The Village and Illinois-American may review the variable components of the operational and maintenance expense and discuss if any adjustments are required to the wheeling and/or storage rate. At the option of the Village, the wheeling rate and the storage rate may be adjusted in the same proportion that the Village's water rate to its customer base increases or decreases. The Village agrees to give Illinois-American sixty (60) days written notice prior to any rate change going into effect. The ability or inability of Illinois-American to pass through the wheeling rate or the storage rate to its retail or wholesale customers in whole or in part, by reason of any law, regulation, court decision, or decision by the Illinois Commerce Commission, shall not impact the obligation of Illinois-American to pay the Village the full amount of the wheeling rate and storage rate in this Agreement.

Section 6. Special Covenants and Conditions.

(a) **Village to Continue to Serve.** Village will use its best efforts to continue to serve Illinois-American with water.

(b) **Village to Maintain and Operate Village System Properly.** The Village shall take all reasonable steps to maintain and operate the Village System properly and in good condition and to continue to serve the customers in the Village System.

(c) **Illinois-American to Maintain and Operate System Properly.** Illinois-American shall take all reasonable steps to maintain and operate the Illinois-American System properly and in

good condition and to continue to serve the customers in the Illinois-American System.

(d) **Accounting and Audit.** The Commission, the Village and Illinois-American will make and keep proper books and accounts in which complete entries shall be made of all transactions relating to its system.

(e) **Insurance.** The Village and Illinois-American will carry insurance or maintain self-insurance with respect to its system of the kinds and in the amounts which are customarily carried or maintained by parties operating similar properties, including, without limiting the generality of the foregoing, fire and other casualty and public liability insurance or protection. All moneys received for loss under the insurance policies or on deposit as self-insurance reserves shall be used in making good the loss or damage in respect of which they were paid except to the extent that the property damaged or lost would be permitted to be disposed, whether by repairing the property damaged or replacing the property destroyed, and provisions for making good such loss or damage or replacing the property destroyed shall be made within a reasonable time from date of loss. The proceeds derived from any and all policies or available from self-insurance reserves for public liability losses shall be used in paying or reimbursing any accounts from which payments, settlements, judgments or expenses were advanced.

Section 7. Force Majeure. In case by reason of force majeure event occurs as to the obligations of the Village or Illinois-American under this Delivery Agreement and the Village and/or Illinois-American shall be rendered unable wholly or in part to carry out its obligation under this Delivery Agreement, then if such party shall give notice and full particulars of such force majeure event in writing to the other parties within seven (7) days after the 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 event 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 term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of 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, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or tunnels, partial or entire failure of water supply, and inability on the part of the Commission or the Village to deliver water hereunder, or of any party to receive water hereunder, on account of any other causes not reasonably within the control of the party claiming such inability. The settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any force majeure events 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 settlements are unfavorable to it in the judgment of the party having the difficulty. No force majeure event which renders any of the parties unable to perform under this Delivery Agreement shall relieve a party of its obligation to make payments pursuant to the terms of this Delivery Agreement.

Section 8. Releases and Indemnification.

(a) **Indemnification of the Commission by Illinois-American.** To the fullest extent permitted by law, Illinois-American hereby releases the Commission, and its respective officers, agents and employees, from and agrees that the Commission, and its respective officers, agents and employees, shall not be liable for, and agree to indemnify and hold the Commission, and its respective

officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Illinois-American System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of Illinois-American to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

(b) Indemnification of the Commission by the Village. To the fullest extent permitted by law, the Village hereby releases the Commission, and its respective officers, agents and employees, from and agrees that the Commission, and its respective officers, agents and employees, shall not be liable for, and agrees to indemnify and hold the Commission, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Village System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of the Village to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

(c) Indemnification of the Commission by the Village and Illinois-American for Third-Party Claims. To the fullest extent permitted by law, Illinois-American and the Village agree to indemnify and hold harmless the Commission, and its respective officers, agents and employees, from any losses, costs, charges, expenses (including attorneys' fees), judgments, and liabilities incurred by the Commission, and its respective officers, agents and employees, in connection with any action, suit, or proceeding instituted or threatened by any third party in connection with this Delivery Agreement.

(d) Indemnification Claims Made by the Commission. If any such claim provided for in subsections (a), (b) or (c), is asserted, the Commission shall give prompt notice to Illinois-American or the Village or both, as applicable, and Illinois-American or the Village or both, as applicable, if requested by the Commission, shall assume the defense thereof, it being understood, however, that neither Illinois-American nor the Village shall settle or consent to the settlement of any such claim without the written consent of the Commission. In connection with any such claims, litigation or liabilities, the Commission and its respective officers, agents, employees, representatives and assigns shall have the right to defense counsel of their choice. Illinois-American and the Village, as applicable, shall be solely liable for all reasonable costs of such defense and for all reasonable expenses, fees, judgments, settlements and all reasonable other costs arising out of such claims, litigation, or liabilities. Illinois-American and the Village, as applicable, shall have the right to participate in the defense of any such claim, or litigation and, upon the request of the Commission as stated above, shall assume the defense of the Commission, and its respective officers, agents and employees.

(e) Indemnification of Illinois-American by the Village. To the fullest extent permitted by law, the Village hereby releases Illinois-American, and its respective officers, agents and employees, from and agrees that Illinois-American, and its respective officers, agents and employees, shall not be liable for, and agrees to indemnify and hold Illinois-American, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement,

maintenance, or operation of the Village System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of the Village to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

(f) Indemnification of the Village by Illinois American. To the fullest extent permitted by law, Illinois-American hereby releases the Village, and its respective officers, agents and employees, from and agrees that the Village, and its respective officers, agents and employees, shall not be liable for, and agrees to indemnify and hold the Village, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Illinois-American System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of Illinois-American to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

Section 9. Interpretation; Compliance with Existing Contracts. This Delivery Agreement shall be deemed to be a separate written contract between the Commission, the Village and Illinois-American in Compliance with the Water Purchase Agreement. Except where expressly provided in this Delivery Agreement, nothing in this Delivery Agreement shall be construed to be, or applied in any manner, inconsistent with the terms of this Water Purchase Agreement, and if there is any conflict or inconsistency between the terms of this Delivery Agreement and the terms of the Water Purchase Agreement, then the terms of the Water Purchase Agreement shall apply.

The Village shall at all times comply with all terms and conditions of the Water Purchase Agreement, and Illinois-American shall at all times comply with all terms and conditions of the Water Purchase Agreement, including without limitation the making of all payments due thereunder promptly to the Commission. Under no circumstances shall any dispute of any nature under this Delivery Agreement, or Illinois-American's inability to receive water through the Point of Delivery provided by this Delivery Agreement, excuse, delay, or in any way other way affect the Village's or Illinois-American's performance under the Water Purchase Agreement.

Section 10. Termination. Illinois-American may terminate this Delivery Agreement upon twelve (12) months advance written notice to the Village as long as Illinois-American continues to purchase water from the Commission pursuant to the Water Purchase Agreement.

Section 11. ICC Approval. It is the understanding of the parties that no approval of this Agreement is needed from the Illinois Commerce Commission ("ICC"). If approval is necessary by the ICC, Illinois American will notify the Village. The Village agrees to reasonably cooperate with Illinois-American in support of Illinois-American's application seeking said approval, if necessary. Illinois-American shall bear the cost of seeking approval from the ICC, if ICC approval is necessary. If the ICC approves some but not all of the provisions of this Delivery Agreement, then the parties to this Delivery Agreement may, each in the exercise of their own discretion, agree by written amendment to revise the provisions of this Delivery Agreement to a form satisfactory to the Illinois Commerce Commission. In the event of such an agreed revision, this Delivery Agreement shall take effect as revised. Nothing in this Delivery Agreement shall be construed to require any party to agree to any revision to this Delivery Agreement as a result of any action by the Illinois Commerce Commission.

Section 12. Effective Date and Term. This Delivery Agreement shall be effective when all the parties have executed it (the "Effective Date"). This Delivery Agreement shall continue in force and effect until February 24, 2064 which is the term of the Water Purchase Agreement. The parties agree to negotiate in good faith a subsequent Delivery Agreement if desired by the parties.

Section 13. Notices and Evidence of Actions. All notices or communications provided for herein shall be in writing and shall be delivered to the party affected either in person or by overnight delivery service (UPS/Fed Ex) addressed to the principal office thereof.

Any action hereunder to be taken by the parties may be evidenced by copy of official proceedings (including pertinent minutes, motions, resolutions, or ordinances) duly certified by the Clerk or Secretary of such party.

Section 14. Amendment. This Delivery Agreement shall not be modified, revised, amended or annulled in any way except in writing approved by all parties hereto.

Section 15. Severability. Should any part, term, or provision of this Delivery Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected thereby.

Section 16. Governing Law; Superseder. This Delivery Agreement shall be construed exclusively under the applicable laws of the State of Illinois. All other inconsistent contracts between the Village, Illinois-American and the Commission are hereby superseded and shall be null and void. The Parties agree that venue for any litigation shall only be proper in the Eighteenth Judicial Circuit, DuPage County, Illinois.

Section 17. Execution in Counterparts. This Delivery Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. Any such counterpart may be signed by one or more of the parties hereto so long as each of the parties hereto has signed one or more of such counterparts.

IN WITNESS WHEREOF, the Village, Illinois-American, and the Commission have caused their respective corporate names to be subscribed hereto and their respective corporate seals to be hereto affixed and attested by their duly authorized officers, all on the date set opposite their respective corporate names.

VILLAGE OF LISLE

By: _____
Mayor

Attest:

Village Clerk

ILLINOIS-AMERICAN WATER COMPANY

By: _____
President

Attest:

DUPAGE WATER COMMISSION

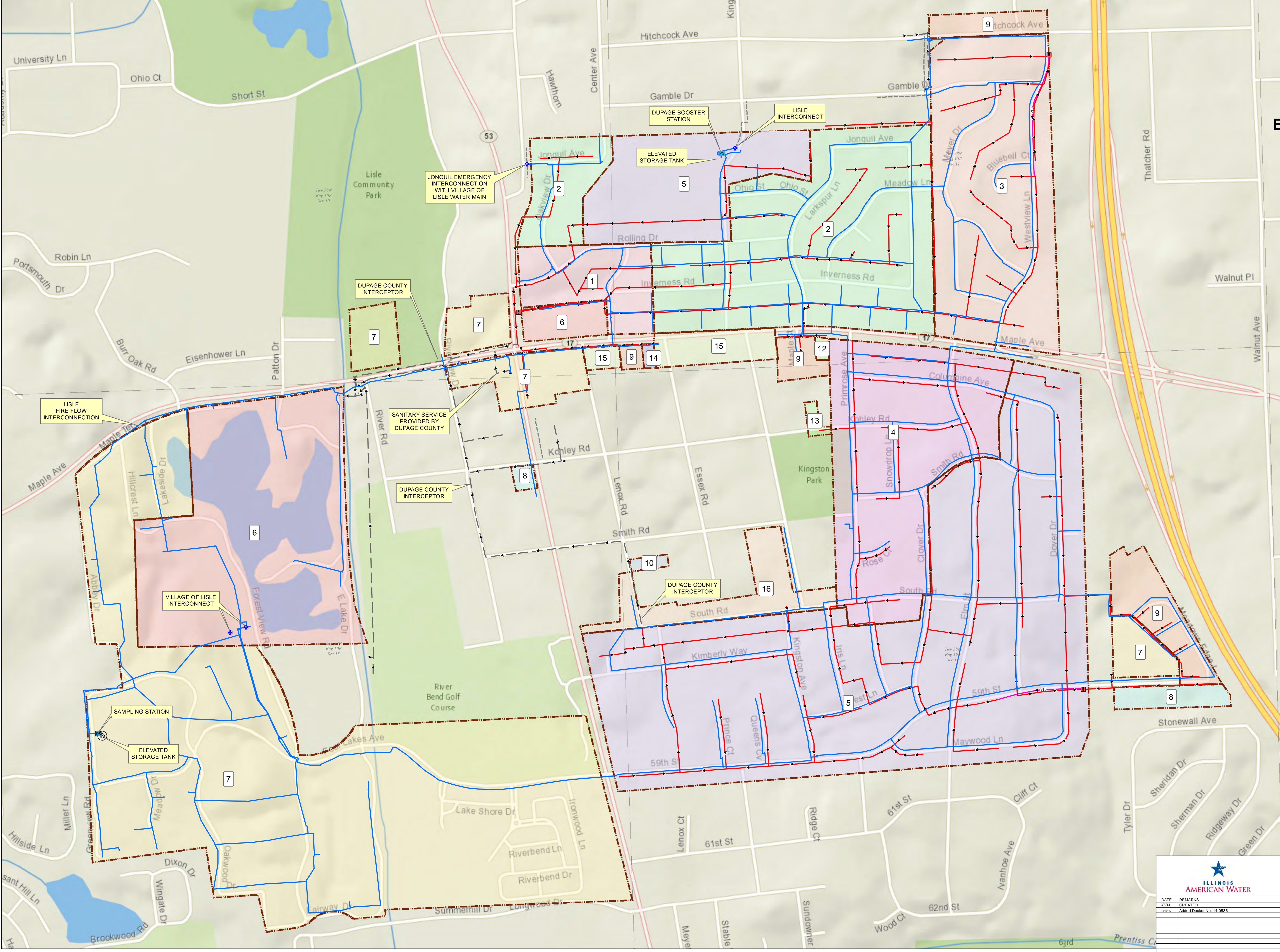
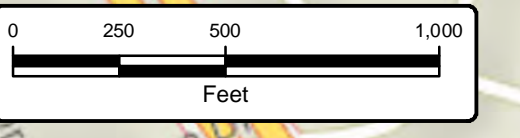
By: _____
Chairman

Attest:

EXHIBIT A

Legend

- Certificated Area
- <all other values>
- Docket Number**
- 1 - Docket No. 43516
- 2 - Docket No. 45169
- 3 - Docket No. 45910
- 4 - Docket No. 47915
- 5 - Docket No. 48193
- 6 - Docket No. 50048
- 7 - Docket No. 90-0405
- 8 - Docket No. 97-0383
- 9 - Docket No. 01-0259
- 10 - Docket No. 01-0645
- 12 - Docket No. 04-0522
- 13 - Docket No. 05-0791
- 14 - Docket No. 08-0083
- 15 - Docket No. 14-0536
- 16 - Docket No. X
- Facilities**
- Pump Station
- System Interconnection
- Water Tank
- Lift Station
- Water Mains**
- Potable Distribution
- Raw Water
- Potable Transmission
- Owned & Operated By Others
- Sanitary Mains**
- Gravity Collector and Interceptor Mains
- Gravity Owned & Operated By Others
- Force Main
- Force Main Owned & Operated By Others



CERTIFICATED AREA DRAWING MAINS AND FACILITIES CHICAGO METRO DISTRICT DU PAGE SERVICE AREA DU PAGE COUNTY, ILLINOIS	
DATE: 3/14	REMARKS: CREATED
PROJECT ENGR: 2118	APPROVER: Added Docket No. 14-0536
DRAWN BY CHS	
PROJECT ENGR	
APPROVER	
ENGINEERING DEPARTMENT ILLINOIS AMERICAN WATER 100 NORTH WATER WORKS DRIVE BELLEVILLE, IL 62223	
DATE: 2/26/23	PROJECT: 81919
SCALE: SEE NOTED SCALES	000-000000-00
ONLY USE APPROVED DRAWINGS FOR CONSTRUCTION PURPOSES	

RESOLUTION NO. 03-24

A RESOLUTION APPROVING A WATER TRANSMISSION AND DELIVERY AGREEMENT AMONG THE VILLAGE OF LOMBARD, ILLINOIS-AMERICAN WATER COMPANY AND THE DUPAGE WATER COMMISSION

WHEREAS, the Village of Lombard (“Lombard”) is a nonhome-rule municipality located in DuPage County, Illinois;

WHEREAS, since 1991, Lombard has been the contracted water service provider for an incorporated area of Lombard located on the northeast side of Lombard, which is served by the Illinois American Water Company;

WHEREAS, Lombard has had a Water Service Agreement for these areas, first with Citizens Utilities from 1991 through 2002 and now with the Illinois-American Water Company (ILAW) from 2002 to present;

WHEREAS, the corporate authorities of Lombard have discussed and considered entering into a new Water Transmission and Delivery Agreement with ILAW and the DuPage Water Commission (DWC) for a term through February 24, 2064;

WHEREAS, the corporate authorities have reviewed the negotiated Water Transmission and Delivery Agreement between Lombard, Illinois American Water Company and the DuPage Water Commission (the “Parties”) and determined that it is in the best interest of the Village to enter into the Water Transmission and Delivery Agreement with the ILAW and DWC.

NOW, THEREFORE, BE IT RESOLVED, by the President and Board of Trustees of the Village of Lombard, as follows:

SECTION 1: The Village President and Village Clerk are hereby authorized to execute a Water Transmission and Delivery Agreement between the Village of Lombard, Illinois American Water Company and the DuPage Water Commission through February 24, 2064. The Water Transmission and Delivery Agreement will become effective upon the execution of the Water Transmission and Delivery Agreement by the Parties; provided, however, that if the Water Transmission and Delivery Agreement

SECTION 2: The foregoing recitals are hereby incorporated herein and made a part hereof as findings of the Village Board of Trustees.

SECTION 3: The Clerk is hereby authorized and directed to provide a copy of this Resolution to the Commission immediately after its approval.

SECTION 4: This Resolution shall be in full force and effect immediately upon and after its adoption.


Adopted this 18th day of January 2024, pursuant to a roll call vote as follows:

Ayes: Trustee LaVaque, Dudek, Puccio, Honig, and Militello


Nays: None

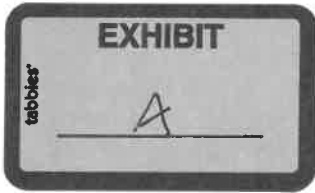
Absent: Trustee Bachner

Approved by me this 18th day of January 2024.


Keith T. Giagnorio
Village President

ATTEST:


Elizabeth Brezinski
Village Clerk



**WATER TRANSMISSION AND DELIVERY AGREEMENT
AMONG THE VILLAGE OF LOMBARD, ILLINOIS-AMERICAN WATER COMPANY
AND THE DUPAGE WATER COMMISSION**

This Water Transmission and Delivery Agreement, dated as of XX, is by and between the **Village of Lombard**, a municipal corporation of the State of Illinois (the "Village"), **Illinois-American Water Company**, an Illinois public utility corporation ("Illinois-American"), and the **DuPage Water Commission**, Counties of DuPage, Cook and Will, Illinois (the "Commission"), a county water commission and public corporation. organized under Division 135 of Article II of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.* and the Water Commission Act of 1985, 70 ILCS 3720/1 *et seq.* (collectively, the "Acts"),

WITNESSETH

WHEREAS, Illinois-American owns and operates a water distribution system for the supply of domestic drinking water to approximately 264 customer connections located in the Village ("Illinois-American System");

WHEREAS, the Village owns and operates a water distribution system (the "Village System") which is interconnected to the Illinois-American System;

WHEREAS, Illinois-American and the Village have entered into a Water Purchase and Sale Contract dated XX ("Water Purchase Agreement") with the Commission for the sale by the Commission of water to Illinois-American its Illinois-American System and the Village to serve the Village System;

WHEREAS, pursuant to this Water Transmission and Delivery Agreement ("Delivery Agreement"), the Village agrees to deliver the water purchased by Illinois-American from the Commission to the Illinois-American System;

WHEREAS, the Commission has reviewed and approved this Delivery Agreement and the Commission provides its consent for the Village to deliver such water to the Illinois-American System;

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and agreements herein contained, the Village, Illinois-American, and the Commission agree as follows:

Section 1. Water Supply.

(a) **Agreement to Deliver.** Subject to the provisions of this Delivery Agreement, the Village agrees to transmit and deliver water purchased by Illinois-American from the Commission through the Village System to the Illinois-American System, subject to availability of such water from the Commission. The Village's availability of such water hereunder, shall be limited to a maximum annual amount equivalent to the Illinois-American System's then current water allocation, and provided further that the maximum rate of water that the Village shall be required to deliver to the Illinois-American System in any one hour shall be in an amount equal to 1.7 times the Illinois-American System's water allocation as determined on an hourly basis.

(b) Interconnection. The Village will deliver water to the Illinois-American System through the interconnection between the Village System and the Illinois-American System (“Point of Delivery”). The Commission shall own, operate and maintain, at its own expense, a meter station at the Point of Delivery for purposes of measuring the water delivered through the Point of Delivery. Illinois-American shall own, operate, maintain and be responsible for a pressure adjusting or rate control station at the Point of Delivery. Illinois-American shall operate the rate control station to adjust and control the flow of water from the Village System into the Illinois-American System. Said deliveries shall be at a pressure not to exceed 85 pounds per square inch and not to be less than 35 pounds per square inch, measured at the Illinois-American System Metering Station.

(c) Title to Water. Title to all water delivered pursuant to this Delivery Agreement shall remain in the Commission to the lesser of the points ten feet (10 ft) downstream from the Commission’s metering station or a common dividing wall between the Commission’s metering station and the Village’s pressure adjusting control station for its Village System. At the Commission’s Metering Station, title to the water delivered shall pass from the Village to Illinois-American at the point the lesser of ten feet (10 ft) downstream from the Commission’s metering station or a common dividing wall between the Commission’s metering station and Illinois-American’s pressure adjusting control station.

(d) Water Quality. The Village undertakes to provide that all water delivered to Illinois-American shall be of such quality, at the point of delivery as to meet the requirements of any Federal, State or local agency as shall have jurisdiction from time to time for the operation of public water supplies. The Village shall bear no responsibility for the contamination of such water or deterioration of water quality occurring beyond the Village’s Point of Delivery to the Illinois-American System. The Commission shall bear no responsibility for the contamination of such water or deterioration of water quality occurring beyond the Commission’s point of delivery to the Village System.

(e) Storage. The Village and Illinois-American shall each for its own system, construct and maintain, during the life of the term of this Delivery Agreement and any renewal or extension of it, effective water storage capacity equal to the water storage capacity required by the Water Purchase Agreement. Such water storage capacity shall be constructed, maintained, and expanded as necessary in accordance with the terms of the Water Purchase Agreement.

Section 2. Measuring Equipment.

(a) Commission to Supply Equipment, Official Record. The Commission has furnished and installed, and will continue to own, operate, maintain, repair and replace, at its own expense, at the Point of Delivery the necessary equipment and devices for measuring properly the quantity of water delivered under this Delivery Agreement, together with such above-ground structures as the Commission shall deem necessary to house such equipment and devices. Such meter or meters and other equipment so installed and structures so constructed shall remain the property of the Commission. The Commission shall provide Illinois-American and the Village access to such structures and equipment for examination and inspection at reasonable times, but the reading for billing purposes, calibration and adjustment thereof shall be done only by the employees or agents of the Commission. For the purpose of this Delivery Agreement, the official record of readings of the meter or meters shall be the journal or other 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 Illinois-American, the

Commission will give Illinois-American a copy of such journal or record book, or permit Illinois-American to have access thereto in the office of the Commission during regular business hours.

(b) Check Meters. Illinois-American may, at its option and its own expense, install and operate a check meter to check each meter installed by the Commission, but the measurement of water for the purpose of this Delivery Agreement shall be solely by the Commission's meters, except in the cases hereinafter specifically provided to the contrary. All such check meters shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of the Commission, but the calibration and adjustment thereof shall be made only by Illinois-American, except during any period when a check meter may be used under the provisions hereunder for measuring the amount of water delivered, in which case the calibration and adjustment thereof shall be made by the Commission with like effects as if such check meter or meters had been furnished and installed by the Commission.

(c) Meter Readings. The Commission shall read the meters at the Illinois-American System Metering Station ("Illinois-American System Meter") and the Commission meters installed or maintained pursuant to the Water Purchase Agreement to serve the Village System ("Village System Meter") as close to simultaneously as possible.

Section 3. Unit of Measurement. The unit of measurement for water delivered hereunder shall be gallons of water, U.S. Standard Liquid Measure, and all measuring devices shall, unless the parties otherwise agree, to be so calibrated.

Section 4. Limitations on Supply of Water.

(a) Curtailment. If at any time it becomes necessary for the Commission to limit generally its delivery of water to its customers for any reason, then the Village and Illinois-American Water together shall take all reasonable and appropriate actions to provide that such water as is delivered by the Commission is shared by the Village and Illinois-American Water on a pro rata basis.

(b) Limitation on Supply to City. If at any time it becomes necessary for the Commission to limit its delivery of water to the Village System (but not to the Illinois-American System) for any reason pursuant to the Water Purchase Agreement and specifically related to the Village, then the Village shall take all reasonable and appropriate actions, including without limitation the imposition of water use limitations on customers of the Village System, to limit the use of water in the Village System so that the Illinois-American System's pro rata share of water is delivered by the Village to the Illinois-American System.

(c) Limitation on Supply to Illinois-American. If at any time it becomes necessary for the Commission to limit its delivery of water to the Illinois-American System (but not to the Village System) for any reason specifically related to Illinois-American, then Illinois-American shall take all reasonable and appropriate actions, including without limitation the imposition of water use limitations on customers of the Illinois-American System, and the Village shall be entitled to, make all necessary and appropriate adjustments to the Village System, to assure that the appropriate amount of water to which the Village System is entitled is delivered to the Village System during such period of curtailment to Illinois-American.

(d) Emergency Use of Other Sources. Illinois-American may contract for a temporary supply of water in case of an emergency from any other unit of local government or any entity. Nothing in this Delivery Agreement shall be construed to prohibit Illinois-American or the Village from serving its customers in cases of emergency, or when the Commission for whatever reason is unable to meet such water requirements of the Village or Illinois-American, from any source including wells owned by Illinois-American or the Village and maintained for emergency use.

(e) No Liability of Commission. Except as set forth in the Water Purchase Agreement, Illinois-American and the Village each hereby acknowledge and agree that the Commission shall not be liable either to Illinois-American or to the Village for any damages occasioned by or in any way related to any limitation on, or delay in, the delivery of water to them or to either one of them.

(f) No Liability of Village. Illinois-American acknowledges and agrees that the Village shall not be liable to Illinois-American for any damages occasioned by or in any way related to any limitation on, or delay in, the delivery of water to Illinois-American.

(g) Expansion of the Illinois-American System Service Area. The current service area of the Illinois-American System is designated on the map attached hereto as Exhibit A. Illinois-American shall obtain written approval from the Village prior to expanding the current service area of the Illinois-American System and such consent shall not unreasonably be withheld by the Village. If the proposed service area expansion of the Illinois-American System affects property serviceable by the Village System, the Village reserves the right of first refusal to annex the affected property and require its connections to the Village System. Notwithstanding any requirements of the Water Purchase Agreement to the contrary, and subject to all of the provisions of the Water Purchase Agreement, the Commission shall only be required to sell and deliver to Illinois-American an amount of water necessary from time to time to serve the water requirements of the Illinois-American System's current service area designated on Exhibit A attached hereto.

Section 5. Prices and Terms of Payment.

(a) Illinois-American's Payments to the Commission. Illinois-American shall make all required payments to the Commission in accordance with the Water Purchase Agreement. To the extent that such payments depend upon the amount of water delivered to the Illinois-American System, Illinois-American payments to the Commission pursuant to the Water Purchase Agreement shall be based on readings taken by the Commission of the Illinois-American System Meter.

(b) Village's Payments to the Commission. The Village shall make all required payments to the Commission in accordance with the terms of the Water Purchase Agreement. To the extent that such payments depend on the amount of water delivered to the Village System, the Village's payments to the Commission pursuant to the Water Purchase Agreement shall be based on the difference between the readings taken by the Commission of the Village System Meter and the readings taken by the Commission of the Illinois-American System Meter. If, for any billing period, the measurement of the amount of water delivered through the Illinois-American System Meter exceeds the measurement of the amount of water delivered through the Village System Meter, then the difference between such readings shall be deemed zero.

(c) Illinois-American's Payments to the Village. Illinois-American shall pay to the Village, for the water transmission and delivery services under this Delivery Agreement, the amount of: 1) \$1.1550 per thousand gallons of water, or fraction thereof, for transportation (the "wheeling

rate”), plus 2) the rate of storage services in the amount of \$0.1900 per thousand gallons of water (the “storage rate”), or fraction thereof, both as metered by the Illinois-American System Meter. The Village shall invoice Illinois-American monthly for such services, and payment shall be due within 30 days of invoicing by the Village. The Village and Illinois-American will review the variable components of the operational and maintenance expense to determine if any adjustments are required to the wheeling rate. Illinois-American agrees that the wheeling rate may be adjusted in the same proportion that the Village’s water rate to its customer base increases or decreases. The Village agrees to give Illinois-American sixty (60) days written notice prior to any rate change going into effect, but any change in rates can go into effect only upon Illinois-American receiving approval from the Illinois Commerce Commission, if necessary.

(d) **System Storage.** The Village shall maintain effective water storage capacity equal to the water storage capacity required by the Village’s Water Purchase Agreement with the Commission for the Village System plus the storage capacity required for the Illinois-American System in Illinois-American’s Water Purchase Agreement with the Commission. For purposes of calculating the water storage capacity required by the Water Purchase Agreement, the Village hereby acknowledges and agrees that the effective water storage capacity maintained by the Village in the Village System shall be reduced by the storage capacity to be provided by the Village for Illinois-American’s System pursuant to this Delivery Agreement. If at any time the Village’s effective water storage capacity is not sufficient to meet the storage requirements of both the Village’s Water Purchase Agreement with the Commission and Illinois-American’s Water Purchase Agreement with the Commission then the deficiency, up to the maximum extent requirement of the Water Purchase Agreement, shall be deemed attributable to the Illinois-American System and shall be corrected by Illinois-American, unless an amendment to this Delivery Agreement is made and the Village agrees to correct the deficiency. If at any time during the term of this Delivery Agreement the Village’s storage capacity is not sufficient to meet the storage requirements of both the Village’s Water Purchase Agreement with the Commission and Illinois-American’s Water Purchase Agreement with the Commission, then Illinois-American shall, at its sole cost and expense, promptly plan, design, permit, and construct additional storage capacity upon demand by the Village or the Commission.

Section 6. Special Covenants and Conditions.

(a) **Village to Continue to Serve.** Village will use its best efforts to continue to serve Illinois-American with water.

(b) **Village to Maintain and Operate Village System Properly.** The Village shall take all reasonable steps to maintain and operate the Village System properly and in good condition and to continue to serve the customers in the Village System.

(c) **Illinois-American to Maintain and Operate System Properly.** Illinois-American shall take all reasonable steps to maintain and operate the Illinois-American System properly and in good condition and to continue to serve the customers in the Illinois-American System.

(d) **Accounting and Audit.** The Commission, the Village and Illinois-American will make and keep proper books and accounts in which complete entries shall be made of all transactions relating to its system.

(e) **Insurance.** The Village and Illinois-American will carry insurance or maintain self-insurance with respect to its system of the kinds and in the amounts which are customarily carried or

maintained by parties operating similar properties, including, without limiting the generality of the foregoing, fire and other casualty and public liability insurance or protection. All moneys received for loss under the insurance policies or on deposit as self-insurance reserves shall be used in making good the loss or damage in respect of which they were paid except to the extent that the property damaged or lost would be permitted to be disposed, whether by repairing the property damaged or replacing the property destroyed, and provisions for making good such loss or damage or replacing the property destroyed shall be made within a reasonable time from date of loss. The proceeds derived from any and all policies or available from self-insurance reserves for public liability losses shall be used in paying or reimbursing any accounts from which payments, settlements, judgments or expenses were advanced.

Section 7. Force Majeure. In case by reason of force majeure event occurs as to the obligations of the Village or Illinois-American under this Delivery Agreement and the Village and/or Illinois-American shall be rendered unable wholly or in part to carry out its obligation under this Delivery Agreement, then if such party shall give notice and full particulars of such force majeure event in writing to the other parties within seven (7) days after the 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 event 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 term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of 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, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or tunnels, partial or entire failure of water supply, and inability on the part of the Commission or the Village to deliver water hereunder, or of any party to receive water hereunder, on account of any other causes not reasonably within the control of the party claiming such inability. The settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any force majeure events 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 settlements are unfavorable to it in the judgment of the party having the difficulty. No force majeure event which renders any of the parties unable to perform under this Delivery Agreement shall relieve a party of its obligation to make payments pursuant to the terms of this Delivery Agreement.

Section 8. Releases and Indemnification.

(a) **Indemnification of the Commission by Illinois-American.** To the fullest extent permitted by law, Illinois-American hereby releases the Commission, and its respective officers, agents and employees, from and agrees that the Commission, and its respective officers, agents and employees, shall not be liable for, and agree to indemnify and hold the Commission, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Illinois-American System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of Illinois-American to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

(b) Indemnification of the Commission by the Village. To the fullest extent permitted by law, the Village hereby releases the Commission, and its respective officers, agents and employees, from and agrees that the Commission, and its respective officers, agents and employees, shall not be liable for, and agrees to indemnify and hold the Commission, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Village System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of the Village to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

(c) Indemnification of the Commission by the Village and Illinois-American for Third-Party Claims. To the fullest extent permitted by law, Illinois-American and the Village agree to indemnify and hold harmless the Commission, and its respective officers, agents and employees, from any losses, costs, charges, expenses (including attorneys' fees), judgments, and liabilities incurred by the Commission, and its respective officers, agents and employees, in connection with any action, suit, or proceeding instituted or threatened by any third party in connection with this Delivery Agreement.

(d) Indemnification Claims Made by the Commission. If any such claim provided for in subsections (a), (b) or (c), is asserted, the Commission shall give prompt notice to Illinois-American or the Village or both, as applicable, and Illinois-American or the Village or both, as applicable, if requested by the Commission, shall assume the defense thereof, it being understood, however, that neither Illinois-American nor the Village shall settle or consent to the settlement of any such claim without the written consent of the Commission. In connection with any such claims, litigation or liabilities, the Commission and its respective officers, agents, employees, representatives and assigns shall have the right to defense counsel of their choice. Illinois-American and the Village, as applicable, shall be solely liable for all reasonable costs of such defense and for all reasonable expenses, fees, judgments, settlements and all reasonable other costs arising out of such claims, litigation, or liabilities. Illinois-American and the Village, as applicable, shall have the right to participate in the defense of any such claim, or litigation and, upon the request of the Commission as stated above, shall assume the defense of the Commission, and its respective officers, agents and employees.

(e) Indemnification of Illinois-American by the Village. To the fullest extent permitted by law, the Village hereby releases Illinois-American, and its respective officers, agents and employees, from and agrees that Illinois-American, and its respective officers, agents and employees, shall not be liable for, and agrees to indemnify and hold Illinois-American, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Village System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of the Village to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

(f) Indemnification of the Village by Illinois American. To the fullest extent permitted by law, Illinois-American hereby releases the Village, and its respective officers, agents and employees, from and agrees that the Village, and its respective officers, agents and employees, shall

not be liable for, and agrees to indemnify and hold the Village, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Illinois-American System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of Illinois-American to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

Section 9. Interpretation; Compliance with Existing Contracts. This Delivery Agreement shall be deemed to be a separate written contract between the Commission, the Village and Illinois-American in compliance with the Water Purchase Agreement. Except where expressly provided in this Delivery Agreement, nothing in this Delivery Agreement shall be construed to be, or applied in any manner, inconsistent with the terms of this Water Purchase Agreement, and if there is any conflict or inconsistency between the terms of this Delivery Agreement and the terms of the Water Purchase Agreement, then the terms of the Water Purchase Agreement shall apply.

The Village shall at all times comply with all terms and conditions of the Water Purchase Agreement, and Illinois-American shall at all times comply with all terms and conditions of the Water Purchase Agreement, including without limitation the making of all payments due thereunder promptly to the Commission. Under no circumstances shall any dispute of any nature under this Delivery Agreement, or Illinois-American's inability to receive water through the Point of Delivery provided by this Delivery Agreement, excuse, delay, or in any way other way affect the Village's or Illinois-American's performance under the Water Purchase Agreement.

Section 10. Termination. Illinois-American may terminate this Delivery Agreement upon twelve (12) months advance written notice to the Village as long as Illinois-American continues to purchase water from the Commission pursuant to the Water Purchase Agreement.

Section 11. ICC Approval. This Delivery Agreement may be subject to the approval of the Illinois Commerce Commission, and the Village agree to cooperate with Illinois-American in support of Illinois-American's application seeking said approval, if necessary. If the Illinois Commerce Commission approves some but not all of the provisions of this Delivery Agreement, then the parties to this Delivery Agreement may, each in the exercise of their own discretion, agree by written amendment to revise the provisions of this Delivery Agreement to a form satisfactory to the Illinois Commerce Commission. In the event of such an agreed revision, this Delivery Agreement shall take effect as revised. Nothing in this Delivery Agreement shall be construed to require any party to agree to any revision to this Delivery Agreement as a result of any action by the Illinois Commerce Commission.

Section 12. Effective Date and Term. This Delivery Agreement shall be effective when all the parties have executed it (the "Effective Date"). This Delivery Agreement shall continue in force and effect until February 24, 2064 which is the term of the Water Purchase Agreement. The parties agree to negotiate in good faith a subsequent Delivery Agreement if desired by the parties.

Section 13. Notices and Evidence of Actions. All notices or communications provided for herein shall be in writing and shall be delivered to the party affected either in person or by overnight delivery service (UPS/Fed Ex) addressed to the principal office thereof.

Any action hereunder to be taken by the parties may be evidenced by copy of official proceedings (including pertinent minutes, motions, resolutions, or ordinances) duly certified by the Clerk or Secretary of such party.

Section 14. Amendment. This Delivery Agreement shall not be modified, revised, amended or annulled in any way except in writing approved by all parties hereto.

Section 15. Severability. Should any part, term, or provision of this Delivery Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected thereby.

Section 16. Governing Law; Superseder. This Delivery Agreement shall be construed exclusively under the applicable laws of the State of Illinois. All other “wheeling contracts” between the Village, Illinois-American and the Commission, related to the Illinois-American service area seen in Exhibit A, are hereby superseded and shall be null and void. The Parties agree that venue for any litigation shall only be proper in the Eighteenth Judicial Circuit, DuPage County, Illinois.

Section 17. Execution in Counterparts. This Delivery Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. Any such counterpart may be signed by one or more of the parties hereto so long as each of the parties hereto has signed one or more of such counterparts.

IN WITNESS WHEREOF, the Village, Illinois-American, and the Commission have caused their respective corporate names to be subscribed hereto and their respective corporate seals to be hereto affixed and attested by their duly authorized officers, all on the date set opposite their respective corporate names.

VILLAGE OF LOMBARD

By: _____
Village President

Attest:

Village Clerk

ILLINOIS-AMERICAN WATER COMPANY

By: _____
President

Attest:

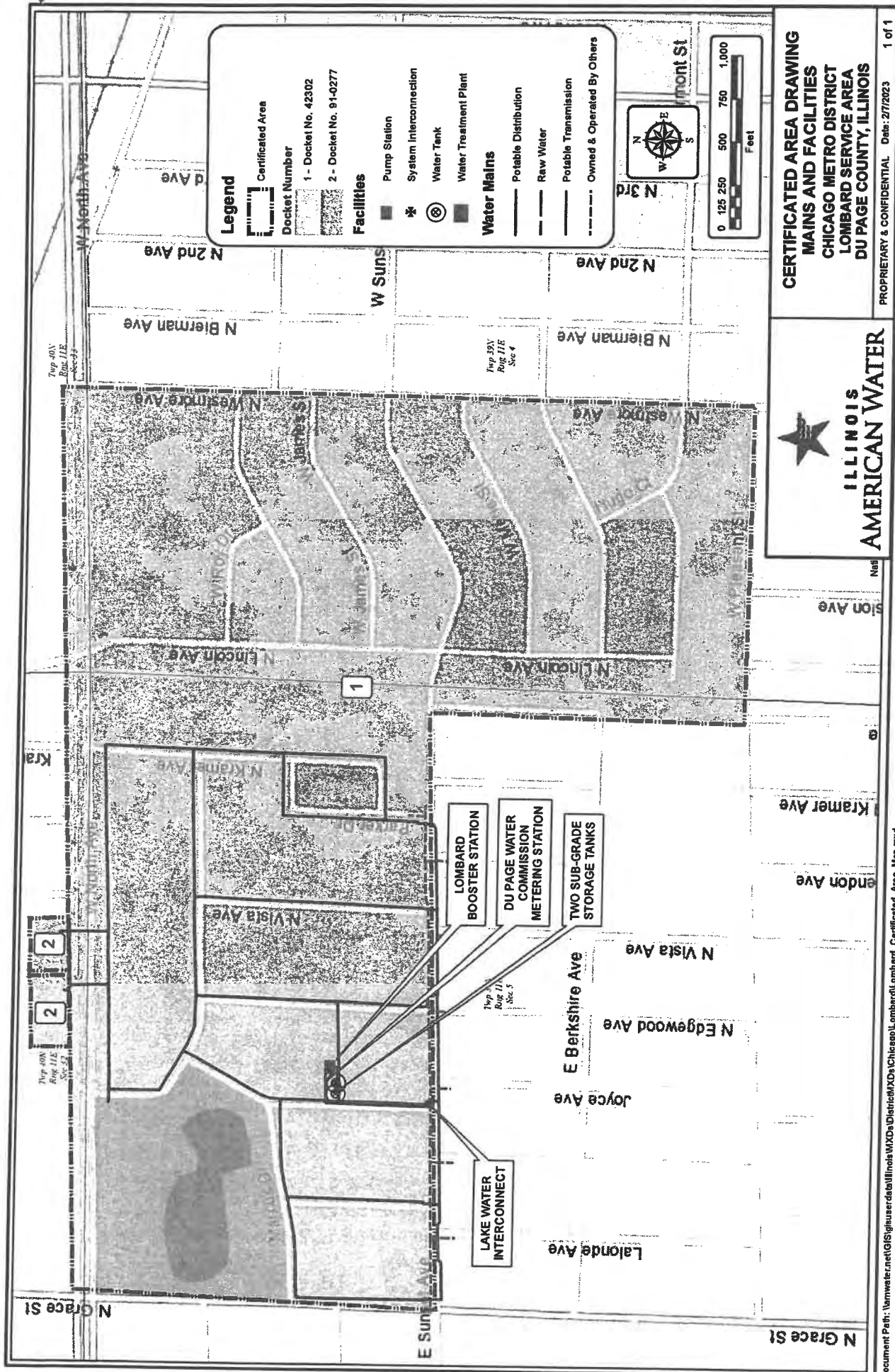
DUPAGE WATER COMMISSION

By: _____
Chairman

Attest:

Exhibit A

Illinois American Water



Legend

Certified Area
 Docket Number
 1 - Docket No. 42302
 2 - Docket No. 91-0277

Facilities

- Pump Station
- System Interconnection
- Water Tank
- Water Treatment Plant

Water Mains

- Potable Distribution
- Raw Water
- Potable Transmission
- Owned & Operated By Others

0 125 250 500 750 1,000
 Feet

North Arrow

**CERTIFICATED AREA DRAWING
 MAINS AND FACILITIES
 CHICAGO METRO DISTRICT
 LOMBARD SERVICE AREA
 DU PAGE COUNTY, ILLINOIS**



MEMORANDUM

TO: The Honorable Mayor and City Council
FROM: Michael G. Dzugan, City Manager
DATE: February 5, 2024
SUBJECT: **Wheeling Water to Illinois-American Water Company Agreement**

Request

Review the following agreement and consider the resolution authorizing execution of such:

- Water Transmission and Delivery Agreement Among the City of Wheaton, Illinois-American Water Company and the DuPage Water Commission

Background

DuPage Water Commission and Customer Contract & DuPage Water Commission Extension of the City of Chicago Contract – As you’ll recall on December 18, 2023, City Council authorized the execution of the DuPage Water Commission and Customer Contract by Ordinance O-2023-55 to purchase water from DWC to sell to residents. Additionally, Resolution R-2023-109 was adopted expressing support of an extension of the Water Supply Contract Between the DuPage Water Commission and the City of Chicago.

Wheeling Water to Illinois-American Water Company – In 1993, the City and DWC entered into a Water Transmission and Delivery Agreement with then Citizens Utilities Company of Illinois (now Illinois-American Water Company) permitting the City to “wheel” water to Illinois-American Water to service the Arrowhead subdivision. The water Illinois-American receives from DWC goes through our distribution system to a meter that is located at the end of the City’s system connecting to the Arrowhead distribution system to supply approximately 606 customer connections located in unincorporated Wheaton. Illinois-American pays DWC directly for the water consumed and the City has a service fee (“Wheeling Rate”) attached to that consumption.

Wheeling Water Agreement	Wheeling Rate*	Approximate Annual Revenue
Current – Expires 2/24/2024	\$0.20	\$10,000
Updated – Expires 2/24/2064	\$1.1550	\$58,000

**Transmission and delivery services rate per thousand gallons of water, or a fraction thereof.*

- *Illinois-American agrees that the Wheeling Rate may be adjusted in the same proportion that the City’s water rate to its customer base increases and decreases.*

Five other municipalities on the DWC system also have wheeling agreements (Elmhurst, Glen Ellyn, Lisle, Lombard, and Winfield), all of which expire in February 2024. To date, all municipalities have updated agreements through February 24, 2064, with the exception of Winfield and Lisle.



WHEATON MAYOR PHILIP J. SUESS

CITY MANAGER MICHAEL DZUGAN

CITY COUNCIL: MICHAEL BARBIER | ERICA BRAY-PARKER | SCOTT BROWN | BRADLEY CLOUSING | LYNN ROBBINS | SCOTT WELLER

Staff has completed negotiations pertaining to the terms of the wheeling agreement which is attached as Exhibit A.

Recommendation

Staff recommends adoption of the Resolution authorizing the execution of the Water Transmission and Delivery Agreement Among the City of Wheaton, Illinois-American Water Company and the DuPage Water Commission in effect until February 24, 2064, which is the term of the water purchase agreement with DWC.

RESOLUTION R-2024-xx

A RESOLUTION AUTHORIZING THE EXECUTION OF A WATER TRANSMISSION AND DELIVERY AGREEMENT AMONG THE CITY OF WHEATON, ILLINOIS-AMERICAN WATER COMPANY AND THE DUPAGE WATER COMMISSION (ARROWHEAD WATER WHEELING AGREEMENT)

WHEREAS, the City of Wheaton, Illinois, ("City") is an Illinois Home Rule Municipality pursuant to the provisions of Article VII, Section 6, of the Illinois Constitution of 1970; and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, Illinois-American Water Company ("Illinois-American") and the City have entered into a Water Purchase and Sale Contract dated January 18, 2024 ("Water Purchase Agreement"), with the DuPage Water Commission ("Commission") for the sale of water by the Commission; and

WHEREAS, since 1993, Illinois-American, formerly Citizens Utilities Company of Illinois, has operated a water distribution system for the supply of domestic drinking water to approximately 606 customer connections located in unincorporated Wheaton, Illinois ("Arrowhead System") through delivery of water by the City pursuant to the Arrowhead Water Wheeling Agreement which expires on February 24, 2024; and

WHEREAS, the City agrees to continue to deliver water purchased by Illinois-American from the Commission to Illinois-American's Arrowhead System; and

WHEREAS, the City, Illinois-American and the Commission desire to formalize the Water Transmission and Delivery Agreement ("Delivery Agreement").

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheaton, Du Page County, Illinois, pursuant to its home rule powers, as follows:

SECTION 1: The foregoing recitals are hereby incorporated herein and made a part hereof as findings of the City Council.

SECTION 2: The City Council hereby approves and consents to the Delivery Agreement, without further action by the City Council.

SECTION 3: The Mayor is hereby authorized to execute and the City Clerk is hereby directed to attest to the Water Transmission and Delivery Agreement Among the City of Wheaton, Illinois-American Water Company and the DuPage Water Commission; and that a copy of that certain Delivery Agreement is on file with the City Clerk and is incorporated herein as if fully set forth as Exhibit A.

SECTION 4: The City Clerk is hereby authorized and directed to provide a copy of this Resolution and Delivery Agreement to Illinois-American and the Commission after its approval.

ADOPTED this 5th day of February 2024.

Mayor

ATTEST:

City Clerk

Roll Call Vote:

Ayes:

Nays:

Absent:

**WATER TRANSMISSION AND DELIVERY AGREEMENT
AMONG THE CITY OF WHEATON, ILLINOIS-AMERICAN WATER COMPANY
AND THE DUPAGE WATER COMMISSION**

This Water Transmission and Delivery Agreement, dated as of January 18, 2024, is by and between the **City of Wheaton**, a municipal corporation of the State of Illinois (the “City”), **Illinois-American Water Company**, an Illinois public utility corporation (“Illinois-American”), and the **DuPage Water Commission**, Counties of DuPage, Cook, Kane and Will, Illinois (the “Commission”), a county water commission and public corporation. organized under Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.* and the Water Commission Act of 1985, 70 ILCS 3720/1 *et seq.* (collectively, the “Acts”),

WITNESSETH

WHEREAS, Illinois-American owns and operates a water distribution system for the supply of domestic drinking water to approximately 606 customer connections located in unincorporated Wheaton, Illinois (“Arrowhead System”);

WHEREAS, the City owns and operates a water distribution system (the “City System”) which is interconnected to the Arrowhead System;

WHEREAS, Illinois-American and the City have entered into a Water Purchase and Sale Contract dated January 18, 2024 (“Water Purchase Agreement”) with the Commission for the sale of water by the Commission to Illinois-American for its Arrowhead System and to the City to serve the City System;

WHEREAS, pursuant to this Water Transmission and Delivery Agreement (“Delivery Agreement”), the City agrees to deliver the water purchased by Illinois-American from the Commission to Illinois-American’s Arrowhead System;

WHEREAS, the Commission has reviewed and approved this Delivery Agreement and the Commission provides its consent for the City to deliver such water to the Arrowhead System for Illinois-American.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and agreements herein contained, the City, Illinois-American, and the Commission agree as follows:

Section 1. Water Supply.

(a) **Agreement to Deliver.** Subject to the provisions of this Delivery Agreement, the City agrees to transmit and deliver water purchased by Illinois-American from the Commission through the City System to the Arrowhead System, subject to availability of such water from the Commission. The City’s availability of such water hereunder, shall be limited to a maximum annual amount equivalent to the Arrowhead System’s then current water allocation, and provided further that the maximum rate of water that the City shall be required to deliver to the Arrowhead System in any one hour shall be in an amount equal to 1.7 times the Arrowhead System’s water allocation as determined on an hourly basis.

(b) Interconnection. The City will deliver water to the Arrowhead System through the interconnection between the City System and the Arrowhead System (“Point of Delivery”). The Commission shall own, operate and maintain, at its own expense, a meter station at the Point of Delivery for purposes of measuring the water delivered through the Point of Delivery. Illinois-American shall own, operate, maintain and be responsible for a pressure adjusting or rate control station at the Point of Delivery. Illinois-American shall operate the rate control station to adjust and control the flow of water from the City System into the Arrowhead System. Said deliveries shall be at a pressure not to exceed 85 pounds per square inch and not to be less than 35 pounds per square inch, measured at the Arrowhead System Metering Station.

(c) Title to Water. Title to all water delivered pursuant to this Delivery Agreement shall remain in the Commission to the lesser of the points ten feet (10 ft) downstream from the Commission’s Wheaton metering station or a common dividing wall between the Commission’s Wheaton metering station and Wheaton’s pressure adjusting control station for its City System. At the Commission’s Arrowhead Metering Station, title to the water delivered shall pass from the City to Illinois-American at the point the lesser of ten feet (10 ft) downstream from the Commission’s Arrowhead metering station or a common dividing wall between the Commission’s Arrowhead metering station and Illinois-American’s pressure adjusting control for the Arrowhead Station.

(d) Water Quality. The City will maintain the quality of the water delivered by the Commission to the point of delivery to Illinois-American. The City shall bear no responsibility for the contamination of such water or deterioration of water quality occurring beyond the City’s Point of Delivery to the Arrowhead System. The Commission shall bear no responsibility for the contamination of such water or deterioration of water quality occurring beyond the Commission’s point of delivery to the City System.

(e) Storage. The City and Illinois-American shall each for its own system, construct and maintain, during the life of the term of this Delivery Agreement and any renewal or extension of it, effective water storage capacity equal to the water storage capacity required by the Water Purchase Agreement. Such water storage capacity shall be constructed, maintained, and expanded as necessary in accordance with the terms of the Water Purchase Agreement.

Section 2. Measuring Equipment.

(a) Commission to Supply Equipment, Official Record. The Commission has furnished and installed, and will continue to own, operate, maintain, repair and replace, at its own expense, at the Point of Delivery the necessary equipment and devices for measuring properly the quantity of water delivered under this Delivery Agreement, together with such above-ground structures as the Commission shall deem necessary to house such equipment and devices. Such meter or meters and other equipment so installed and structures so constructed shall remain the property of the Commission. The Commission shall provide Illinois-American and the City access to such structures and equipment for examination and inspection at reasonable times, but the reading for billing purposes, calibration and adjustment thereof shall be done only by the employees or agents of the Commission. For the purpose of this Delivery Agreement, the official record of readings of the meter or meters shall be the journal or other 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 Illinois-American or the City, the Commission will give Illinois-American or the City a copy of such journal or record book, or permit Illinois-American or

the City to have access thereto in the office of the Commission during regular business hours.

(b) Check Meters. Illinois-American may, at its option and its own expense, install and operate a check meter to check each meter installed by the Commission, but the measurement of water for the purpose of this Agreement shall be solely by the Commission's meters, except in the cases hereinafter specifically provided to the contrary. All such check meters shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of the Commission, but the calibration and adjustment thereof shall be made only by Illinois-American, except during any period when a check meter may be used under the provisions hereunder for measuring the amount of water delivered, in which case the calibration and adjustment thereof shall be made by the Commission with like effects as if such check meter or meters had been furnished and installed by the Commission.

(c) Meter Readings. The Commission shall read the meters at the Arrowhead System Metering Station (“Arrowhead System Meter”) and the Commission meters installed or maintained pursuant to the Water Purchase Agreement to serve the City System (“City System Meter”) as close to simultaneously as possible.

Section 3. Unit of Measurement. The unit of measurement for water delivered hereunder shall be gallons of water, U.S. Standard Liquid Measure, and all measuring devices shall, unless the parties otherwise agree, to be so calibrated.

Section 4. Limitations on Supply of Water.

(a) Curtailment. If at any time it becomes necessary for the Commission to limit generally its delivery of water to its customers for any reason, then the City and Illinois-American together shall take all reasonable and appropriate actions to provide that such water as is delivered by the Commission is shared by the City and Illinois-American on a pro rata basis provided, however, that if as a result of such limitations of delivery of such water, the City deems it necessary to impose water use limitations on customers of the City System, then Illinois-American shall impose similar water use limitations on customers of the Arrowhead System, and shall actively enforce such limitations through all reasonable means, including shut-off of water service to offending customers. Upon written notice from the City to Illinois-American that Illinois-American has failed to actively enforce such limitations as to customers of the Arrowhead System, and the failure of Illinois-American to remedy such violation, the City shall be entitled to restrict the supply and delivery of the water to the Arrowhead System to a level consistent with the amount to be supplied if such water use limitations had been and were being enforced. In addition, the City is under no obligation to provide Illinois-American with the City’s well system water in the event the Commission limits the supply of water for any reason.

(b) Limitation on Supply to City. If at any time it becomes necessary for the Commission to limit its delivery of water to the City System (but not to the Arrowhead System) for any reason pursuant to the Water Purchase Agreement and specifically related to the City, then the City shall take all reasonable and appropriate actions, including without limitation the imposition of water use limitations on customers of the City System, to limit the use of water in the City System so that the Arrowhead System’s pro rata share of water is delivered by the City to the Arrowhead System.

(c) Limitation on Supply to Illinois-American. If at any time it becomes necessary for the Commission to limit its delivery of water to the Arrowhead System (but not to the City System) for any reason specifically related to Illinois-American, then Illinois-American shall take all reasonable and appropriate actions, including without limitation the imposition of water use limitations on customers of the Arrowhead System, and the City shall, and shall be entitled to, make all necessary and appropriate adjustments to the City System, to assure that the appropriate amount of water to which the City System is entitled is delivered to the City System during such period of curtailment to Illinois-American.

(d) Emergency Use of Other Sources. Illinois-American may contract for a temporary supply of water in case of an emergency from any other unit of local government or any entity. Nothing in this Agreement shall be construed to prohibit Illinois-American or the City from serving its customers in cases of emergency, or when the Commission for whatever reason is unable to meet such water requirements of the City or Illinois-American, from any source including wells owned by Illinois-American or the City and maintained for emergency use.

(e) No Liability of Commission. Illinois-American and the City each hereby acknowledge and agree that the Commission shall not be liable either to Illinois-American or to the City for any damages occasioned by or in any way related to any limitation on, or delay in, the delivery of water to them or to either one of them.

(f) No Liability of City. Illinois-American acknowledges and agrees that the City shall not be liable to Illinois-American for any damages occasioned by or in any way related to any limitation on, or delay in, the delivery of water to Illinois-American.

(g) Expansion of the Arrowhead System Service Area. The current service area of the Arrowhead System is designated on the map attached hereto as Exhibit A. Illinois-American shall obtain written approval from the City prior to expanding the current service area of the Arrowhead System and such consent shall not unreasonably be withheld by the City. If the proposed service area expansion of the Arrowhead System affects property serviceable by the City System, the City reserves the right of first refusal to annex the affected property and require its connections to the City System. Notwithstanding any requirements of the Water Purchase Agreement to the contrary, and subject to all of the provisions of the Water Purchase Agreement, the Commission shall only be required to sell and deliver to Illinois-American an amount of water necessary from time to time to serve the water requirements of the Arrowhead System's current service area designated on Exhibit A attached hereto.

Section 5. Prices and Terms of Payment.

(a) Illinois-American's Payments to the Commission. Illinois-American shall make all required payments to the Commission in accordance with the Water Purchase Agreement. To the extent that such payments depend upon the amount of water delivered to the Arrowhead System, Illinois-American's payments to the Commission pursuant to the Water Purchase Agreement shall be based on readings taken by the Commission of the Arrowhead System Meter.

(b) City's Payments to the Commission. The City shall make all required payments to the Commission in accordance with the terms of the Water Purchase Agreement. To the extent that such payments depend on the amount of water delivered to the City System, the City's payments to the Commission pursuant to the Water Purchase Agreement shall be based on the difference between

the readings taken by the Commission of the City System Meter and the readings taken by the Commission of the Arrowhead System Meter. If, for any billing period, the measurement of the amount of water delivered through the Arrowhead System Meter exceeds the measurement of the amount of water delivered through the City System Meter, then the difference between such readings shall be deemed zero.

(c) Illinois-American's Payments to the City. Illinois-American shall pay to the City, for the water transmission and delivery services under this Agreement, the amount of \$1.1550 per thousand gallons of water, or fraction thereof, metered by the Arrowhead System Meter (the "wheeling rate"). The City shall invoice Illinois-American monthly for such services, and payment shall be due within 30 days of invoicing by the City. The City and Illinois-American will review the variable components of the operational and maintenance expense to determine if any adjustments are required to the wheeling rate. Illinois-American agrees that the wheeling rate may be adjusted in the same proportion that the City's water rate to its customer base increases or decreases. The City agrees to give Illinois-American sixty (60) days written notice prior to any rate change going into effect, but any change in rates can go into effect only upon Illinois-American receiving approval from the Illinois Commerce Commission, if necessary.

Section 6. Special Covenants and Conditions.

(a) City to Continue to Serve. The City will use its best efforts to continue to serve Illinois-American with water.

(b) City to Maintain and Operate City System Properly. The City shall take all reasonable steps to maintain and operate the City System properly and in good condition and to continue to serve the customers in the City System.

(c) Illinois-American to Maintain and Operate Arrowhead System Properly. Illinois-American shall take all reasonable steps to maintain and operate the Arrowhead System properly and in good condition and to continue to serve the customers in the Arrowhead System.

(d) Accounting and Audit. The Commission, the City and Illinois-American will make and keep proper books and accounts in which complete entries shall be made of all transactions relating to its system.

(e) Insurance. The City and Illinois-American will carry insurance or maintain self-insurance with respect to its system of the kinds and in the amounts which are customarily carried or maintained by parties operating similar properties, including, without limiting the generality of the foregoing, fire and other casualty and public liability insurance or protection. All moneys received for loss under the insurance policies or on deposit as self-insurance reserves shall be used in making good the loss or damage in respect of which they were paid except to the extent that the property damaged or lost would be permitted to be disposed, whether by repairing the property damaged or replacing the property destroyed, and provisions for making good such loss or damage or replacing the property destroyed shall be made within a reasonable time from date of loss. The proceeds derived from any and all policies or available from self-insurance reserves for public liability losses shall be used in paying or reimbursing any accounts from which payments, settlements, judgments or expenses were advanced.

Section 7. Force Majeure. In case by reason of force majeure event occurs as to the obligations

of the City or Illinois-American under this Delivery Agreement and the City and/or Illinois-American shall be rendered unable wholly or in part to carry out its obligation under this Delivery Agreement, then if such party shall give notice and full particulars of such force majeure event in writing to the other parties within seven (7) days after the 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 event 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 term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of 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, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or tunnels, partial or entire failure of water supply, and inability on the part of the Commission or the City to deliver water hereunder, or of any party to receive water hereunder, on account of any other causes not reasonably within the control of the party claiming such inability. The settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any force majeure events 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 settlements are unfavorable to it in the judgment of the party having the difficulty. No force majeure event which renders any of the parties unable to perform under this Delivery Agreement shall relieve a party of its obligation to make payments pursuant to the terms of this Delivery Agreement.

Section 8. Releases and Indemnification.

(a) Indemnification of the Commission by Illinois-American. To the fullest extent permitted by law, Illinois-American hereby releases the Commission, and its respective officers, agents and employees, from and agrees that the Commission, and its respective officers, agents and employees, shall not be liable for, and agree to indemnify and hold the Commission, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Arrowhead System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of Illinois-American to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

(b) Indemnification of the Commission by the City. To the fullest extent permitted by law, the City hereby releases the Commission, and its respective officers, agents and employees, from and agrees that the Commission, and its respective officers, agents and employees, shall not be liable for, and agrees to indemnify and hold the Commission, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the City System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of the City to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

(c) Indemnification of the Commission by the City and Illinois-American for Third-

Party Claims. To the fullest extent permitted by law, Illinois-American and the City agree to indemnify and hold harmless the Commission, and its respective officers, agents and employees, harmless to the fullest extent permitted by law from any losses, costs, charges, expenses (including attorneys' fees), judgments, and liabilities incurred by the Commission, and its respective officers, agents and employees, in connection with any action, suit, or proceeding instituted or threatened by any third party in connection with this Delivery Agreement.

(d) Indemnification Claims Made by the Commission. If any such claim provided for in subsections (a), (b) or (c), is asserted, the Commission shall give prompt notice to Illinois-American or the City or both, as applicable, and Illinois-American or the City or both, as applicable, if requested by the Commission, shall assume the defense thereof, it being understood, however, that neither Illinois-American nor the City shall settle or consent to the settlement of any such claim without the written consent of the Commission. In connection with any such claims, litigation or liabilities, the Commission and its respective officers, agents, employees, representatives and assigns shall have the right to defense counsel of their choice. Illinois-American and the City, as applicable, shall be solely liable for all reasonable costs of such defense and for all reasonable expenses, fees, judgments, settlements and all reasonable other costs arising out of such claims, litigation, or liabilities. Illinois-American and the City, as applicable, shall have the right to participate in the defense of any such claim, or litigation and, upon the request of the Commission as stated above, shall assume the defense of the Commission, and its respective officers, agents and employees.

(e) Indemnification of Illinois-American by the City. To the fullest extent permitted by law, the City hereby releases Illinois-American, and its respective officers, agents and employees, from and agrees that Illinois-American, and its respective officers, agents and employees, shall not be liable for, and agrees to indemnify and hold Illinois-American, and its respective officers, agents and employees, harmless from 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the City System and any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of the City to comply with its covenants or obligations contained in this Agreement.

(f) Indemnification of the City by Illinois American. To the fullest extent permitted by law, Illinois-American hereby releases the City, and its respective officers, agents and employees, from and agrees that the City, and its respective officers, agents and employees, shall not be liable for, and agrees to indemnify and hold the City, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Arrowhead System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of Illinois-American to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including in each such case, any attorneys' fees.

Section 9. Interpretation; Compliance with Existing Contracts. This Delivery Agreement shall be deemed to be a separate written contract between the Commission, the City and Illinois-American in compliance with the Water Purchase Agreement. Except where expressly provided in this Agreement, nothing in this Delivery Agreement shall be construed to be, or applied in any manner, inconsistent with the terms of the Water Purchase Agreement, and if there is any conflict or

inconsistency between the terms of this Delivery Agreement and the terms of the Water Purchase Agreement, then the terms of the Water Purchase Agreement shall apply.

Both the City and Illinois-American shall at all times comply with all terms and conditions of the Water Purchase Agreement, including without limitation the making of all payments due thereunder promptly to the Commission. Under no circumstances shall any dispute of any nature under this Delivery Agreement, or Illinois-American's inability to receive water through the Point of Delivery provided by this Delivery Agreement, excuse, delay, or in any way other way affect the City's or Illinois-American's performance under the Water Purchase Agreement.

Section 10. Termination. Illinois-American may terminate this Agreement upon twelve (12) months advance written notice to the City as long as Illinois-American continues to purchase water from the Commission pursuant to the Water Purchase Agreement.

Section 11. ICC Approval. This Agreement may be subject to the approval of the Illinois Commerce Commission, and the City agrees to cooperate with Illinois-American in support of Illinois-American's application seeking said approval, if necessary. If the Illinois Commerce Commission approves some but not all of the provisions of this Agreement, then the parties to this Agreement may, each in the exercise of their own discretion, agree by written amendment to revise the provisions of this Agreement to a form satisfactory to the Illinois Commerce Commission. In the event of such an agreed revision, this Agreement shall take effect as revised. Nothing in this Agreement shall be construed to require any party to agree to any revision to this Agreement as a result of any action by the Illinois Commerce Commission.

Section 12. Effective Date and Term. This Delivery Agreement shall be effective when all the parties have executed it (the "Effective Date"). This Delivery Agreement shall continue in force and effect until February 24, 2064 which is the term of the Water Purchase Agreement. The parties agree to negotiate in good faith a subsequent Delivery Agreement if desired by the parties.

Section 13. Notices and Evidence of Actions. All notices or communications provided for herein shall be in writing and shall be delivered to the party affected either in person, by overnight delivery service (UPS/Fed Ex) or USPS first class mail, return receipt requested, addressed to the principal office thereof.

Any action hereunder to be taken by the parties may be evidenced by copy of official proceedings (including pertinent minutes, motions, resolutions, or ordinances) duly certified by the Clerk or Secretary of such party.

Section 14. Amendment. This Agreement shall not be modified, revised, amended or annulled in any way except in writing approved by all parties hereto.

Section 15. Severability. Should any part, term, or provision of this Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected thereby.

Section 16. Governing Law; Superseder. This Agreement shall be construed exclusively under the applicable laws of the State of Illinois. All other wheeling contracts between the City, Illinois-American and the Commission are hereby superseded and shall be null and void.

The Parties agree that venue for any litigation shall only be proper in the Eighteenth Judicial Circuit, DuPage County, Illinois.

Section 17. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. Any such counterpart may be signed by one or more of the parties hereto so long as each of the parties hereto has signed one or more of such counterparts.

IN WITNESS WHEREOF, the City, Illinois-American, and the Commission have caused their respective corporate names to be subscribed hereto and their respective corporate seals to be hereto affixed and attested by their duly authorized officers, all on the date set opposite their respective corporate names.


CITY OF WHEATON

By: _____
Mayor

Attest:

City Clerk

ILLINOIS-AMERICAN WATER COMPANY

By:  _____
President

Attest:



DUPAGE WATER COMMISSION

By: _____
Chairman

Attest:



cow/1

Village Board Meeting

Agenda Item Report

Subject: Water wheeling contract renewal with Illinois American Water Company		
Agenda Location: Committee of the Whole		Presenter: Village Manager
Staff/Consultant: Village Attorney		Meeting Date: February 1, 2024
FINANCIAL		
Account	Budgeted	Actual
Previous Village Board Action:		
<p>Winfield operates a wheeling agreement with unincorporated Wheaton Ridge, by which Lake Michigan water for them is stored in the Village water tank near Klein Creek Golf Course and provided to the unincorporated subdivision through a meter used for billing. Just as the Village in December 2023 renewed its agreement to receive Lake water through the DuPage Water Commission, this wheeling agreement now needs to be updated with any changes the Village may seek. With assistance of the Village Attorney, staff have conducted negotiations securing commitments to increase fees for water storage, and tie these to an annual rate adjustment based on the consumer price index. A few outstanding issues remain as staff work to complete the service agreement renewal.</p>		
Recommendation:		

**WATER TRANSMISSION AND DELIVERY AGREEMENT
AMONG THE VILLAGE OF WINFIELD, ILLINOIS-AMERICAN WATER COMPANY
AND THE DUPAGE WATER COMMISSION**

This Water Transmission and Delivery Agreement, dated as of January 18, 2024, is by and between the **Village of Winfield**, a municipal corporation of the State of Illinois (the “Village”), **Illinois-American Water Company**, an Illinois public utility corporation (“Illinois-American”), and the **DuPage Water Commission**, Counties of DuPage, Cook and Will, Illinois (the “Commission”), a county water commission and public corporation. organized under Division 135 of Article II of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.* and the Water Commission Act of 1985, 70 ILCS 3720/1 *et seq.* (collectively, the “Acts”),

WITNESSETH

WHEREAS, Illinois-American owns and operates a water distribution system for the supply of domestic drinking water to approximately 1,285 customer connections located in the Village (“Illinois-American System”);

WHEREAS, the Village owns and operates a water distribution system (the “Village System”) which is interconnected to the Illinois-American System;

WHEREAS, Illinois-American and the Village have entered into a Water Purchase and Sale Contract dated XX (“Water Purchase Agreement”) with the Commission for the sale by the Commission of water to Illinois-American its Illinois-American System and the Village to serve the Village System;

WHEREAS, pursuant to this Water Transmission and Delivery Agreement (“Delivery Agreement”), the Village agrees to deliver the water purchased by Illinois-American from the Commission to the Illinois-American System;

WHEREAS, the Commission has reviewed and approved this Delivery Agreement and the Commission provides its consent for the Village to deliver such water to the Illinois-American System;

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and agreements herein contained, the Village, Illinois-American, and the Commission agree as follows:

Section 1. Water Supply.

(a) Agreement to Deliver. Subject to the provisions of this Delivery Agreement, the Village agrees to transmit and deliver water purchased by Illinois-American from the Commission through the Village System to the Illinois-American System, subject to availability of such water from the Commission. The availability of such water hereunder, shall be limited to a maximum annual amount equivalent to the Illinois-American System’s then current water allocation, and provided further that the maximum rate of water that the Village shall be required to deliver to the Illinois-American System in any one hour shall be in an amount equal to 1.7 times the Illinois-American System’s water allocation as determined on an hourly basis.

(b) Interconnection. The Village will deliver water to the Illinois-American System through the interconnection between the Village System and the Illinois-American System (“Point of Delivery”). The Commission shall own, operate and maintain, at its own expense, a meter station at the Point of Delivery for purposes of measuring the water delivered through the Point of Delivery. Illinois-American shall own, operate, maintain and be responsible for a pressure adjusting or rate control station at the Point of Delivery. Illinois-American shall operate the rate control station to adjust and control the flow of water from the Village System into the Illinois-American System. Said deliveries shall be at a pressure not to exceed 85 pounds per square inch and not to be less than 35 pounds per square inch, measured at the Illinois-American System Metering Station.

(c) Title to Water. Title to all water delivered pursuant to this Delivery Agreement shall remain in the Commission to the lesser of the points ten feet (10 ft) downstream from the Commission’s metering station or a common dividing wall between the Commission’s metering station and the Village’s pressure adjusting control station for its Village System. At the Commission’s Metering Station, title to the water delivered shall pass from the Village to Illinois-American at the point the lesser of ten feet (10 ft) downstream from the Commission’s metering station or a common dividing wall between the Commission’s metering station and Illinois-American’s pressure adjusting control station.

(d) Water Quality. The Village undertakes to provide that all water delivered to Illinois-American shall be of such quality, at the point of delivery as to meet the requirements of any Federal, State or local agency as shall have jurisdiction from time to time for the operation of public water supplies. The Village shall bear no responsibility for the contamination of such water or deterioration of water quality occurring beyond the Village’s Point of Delivery to the Illinois-American System. The Commission shall bear no responsibility for the contamination of such water or deterioration of water quality occurring beyond the Commission’s point of delivery to the Village System.

(e) Storage. The Village shall maintain effective water storage capacity equal to the water storage capacity required by the Water Purchase Agreement for the Village System plus the storage capacity required for the Illinois-American System in the Water Purchase Agreement. For purposes of calculating the water storage capacity required by the Water Purchase Agreement, the Village hereby acknowledges and agrees that the effective water storage capacity maintained by the Village in the Village System shall be reduced by the storage capacity to be provided by the Village for Illinois-American’s System pursuant to this Delivery Agreement. If at any time the Village’s effective water storage capacity is not sufficient to meet the storage requirements of the Illinois-American System in the Water Purchase Agreement then the deficiency, shall be corrected by Illinois-American, unless an amendment to this Delivery Agreement is made and the Village agrees to correct the deficiency. If at any time during the term of this Delivery Agreement, the Village’s storage capacity is not sufficient to meet the storage requirements in the Water Purchase Agreement of both the Village System and the Illinois-American System, then Illinois-American shall, at its sole cost and expense, promptly plan, design, permit, and construct additional storage capacity upon demand by the Village or the Commission. Absent separate written agreement, the maximum water storage capacity the Village agrees to provide for the Illinois-American System is 710,000 gallons, and the Village has no obligation to expand its storage capacity to accommodate the Illinois-American System. At any time during the term of this Delivery Agreement, Illinois-American may in its discretion choose to construct storage for the Illinois-American System. If Illinois-American constructs this additional storage, the storage rate set forth in Section 5(c) of this Delivery Agreement shall be eliminated or reduced.

Section 2. Measuring Equipment.

(a) Commission to Supply Equipment, Official Record. The Commission has furnished and installed, and will continue to own, operate, maintain, repair and replace, at its own expense, at the Point of Delivery the necessary equipment and devices for measuring properly the quantity of water delivered under this Delivery Agreement, together with such above-ground structures as the Commission shall deem necessary to house such equipment and devices. Such meter or meters and other equipment so installed and structures so constructed shall remain the property of the Commission. The Commission shall provide Illinois-American and the Village access to such structures and equipment for examination and inspection at reasonable times, but the reading for billing purposes, calibration and adjustment thereof shall be done only by the employees or agents of the Commission. For the purpose of this Delivery Agreement, the official record of readings of the meter or meters shall be the journal or other 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 Illinois-American, the Commission will give Illinois-American a copy of such journal or record book, or permit Illinois-American to have access thereto in the office of the Commission during regular business hours.

(b) Check Meters. Illinois-American may, at its option and its own expense, install and operate a check meter to check each meter installed by the Commission, but the measurement of water for the purpose of this Delivery Agreement shall be solely by the Commission's meters, except in the cases hereinafter specifically provided to the contrary. All such check meters shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of the Commission, but the calibration and adjustment thereof shall be made only by Illinois-American, except during any period when a check meter may be used under the provisions hereunder for measuring the amount of water delivered, in which case the calibration and adjustment thereof shall be made by the Commission with like effects as if such check meter or meters had been furnished and installed by the Commission.

(c) Meter Readings. The Commission shall read the meters at the Illinois-American System Metering Station ("Illinois-American System Meter") and the Commission meters installed or maintained pursuant to the Water Purchase Agreement to serve the Village System ("Village System Meter") as close to simultaneously as possible.

Section 3. Unit of Measurement. The unit of measurement for water delivered hereunder shall be gallons of water, U.S. Standard Liquid Measure, and all measuring devices shall, unless the parties otherwise agree, to be so calibrated.

Section 4. Limitations on Supply of Water.

(a) Curtailment. If at any time it becomes necessary for the Commission to limit generally its delivery of water to its customers for any reason, then the Village and Illinois-American Water together shall take all reasonable and appropriate actions to provide that such water as is delivered by the Commission is shared by the Village and Illinois-American Water on a pro rata basis.

(b) Limitation on Supply to Village. If at any time it becomes necessary for the Commission to limit its delivery of water to the Village System (but not to the Illinois-American

System) for any reason pursuant to the Water Purchase Agreement and specifically related to the Village, then the Village shall take all reasonable and appropriate actions, including without limitation the imposition of water use limitations on customers of the Village System, to limit the use of water in the Village System so that the Illinois-American System's pro rata share of water is delivered by the Village to the Illinois-American System.

(c) Limitation on Supply to Illinois-American. If at any time it becomes necessary for the Commission to limit its delivery of water to the Illinois-American System (but not to the Village System) for any reason specifically related to Illinois-American, then Illinois-American shall take all reasonable and appropriate actions, including without limitation the imposition of water use limitations on customers of the Illinois-American System, and the Village shall, and shall be entitled to, make all necessary and appropriate adjustments to the Village System, to assure that the appropriate amount of water to which the Village System is entitled is delivered to the Village System during such period of curtailment to Illinois-American.

(d) Emergency Use of Other Sources. Illinois-American may contract for a temporary supply of water in case of an emergency from any other unit of local government or any entity. Nothing in this Delivery Agreement shall be construed to prohibit Illinois-American or the Village from serving its customers in cases of emergency, or when the Commission for whatever reason is unable to meet such water requirements of the Village or Illinois-American, from any source including wells owned by Illinois-American or the Village and maintained for emergency use.

(e) No Liability of Commission. Illinois-American and the Village each hereby acknowledge and agree that the Commission shall not be liable either to Illinois-American or to the Village for any damages occasioned by or in any way related to any limitation on, or delay in, the delivery of water to them or to either one of them.

(f) No Liability of Village. Illinois-American acknowledges and agrees that the Village shall not be liable to Illinois-American for any damages occasioned by or in any way related to any limitation on, or delay in, the delivery of water to Illinois-American.

(g) Expansion of the Illinois-American System Service Area. The current service area of the Illinois-American System is designated on the map attached hereto as Exhibit A. Illinois-American shall obtain written approval from the Village prior to expanding the current service area of the Illinois-American System and such consent shall not unreasonably be withheld by the Village. It is not unreasonable for the Village to withhold consent if the Village determines that proposed service area expansion of the Illinois-American System affects property serviceable by the Village System ~~without a main extension~~, affects property within the Village's planning jurisdiction, affects property that could reasonably be serviceable by the Village System ~~within three months~~ in the future by reason of annexation, or affects property that could be subject to an annexation agreement or pre-annexation agreement. The Village reserves the right of first refusal to annex the affected property and require its connection to the Village System. Notwithstanding any requirements of the Water Purchase Agreement to the contrary, and subject to all of the provisions of the Water Purchase Agreement, the Commission shall only be required to sell and deliver to Illinois-American an amount of water necessary from time to time to serve the water requirements of the Illinois-American System's current service area designated on Exhibit A attached hereto.

Section 5. Prices and Terms of Payment.

(a) Illinois-American’s Payments to the Commission. Illinois-American shall make all required payments to the Commission in accordance with the Water Purchase Agreement. To the extent that such payments depend upon the amount of water delivered to the Illinois-American System, Illinois-American payments to the Commission pursuant to the Water Purchase Agreement shall be based on readings taken by the Commission of the Illinois-American System Meter.

(b) Village’s Payments to the Commission. The Village shall make all required payments to the Commission in accordance with the terms of the Water Purchase Agreement. To the extent that such payments depend on the amount of water delivered to the Village System, the Village’s payments to the Commission pursuant to the Water Purchase Agreement shall be based on the difference between the readings taken by the Commission of the Village System Meter and the readings taken by the Commission of the Illinois-American System Meter. If, for any billing period, the measurement of the amount of water delivered through the Illinois-American System Meter exceeds the measurement of the amount of water delivered through the Village System Meter, then the difference between such readings shall be deemed zero.

(c) Illinois-American’s Payments to the Village. Illinois-American shall pay to the Village, for the water transmission and delivery services under this Delivery Agreement, the amount of 1) \$1.1550 per thousand gallons of water, or fraction thereof, for transportation (the “wheeling rate”), plus 2) the rate of storage services in the amount of \$0.865 per thousand gallons of water (the “storage rate”), or fraction thereof, both metered by the Illinois-American System Meter. The Village shall invoice Illinois-American monthly for such services, and payment shall be due within 30 days of invoicing by the Village. The Village and Illinois-American may review the variable components of the operational and maintenance expense and discuss if any adjustments are required to the wheeling rate and storage rate.

The wheeling rate and storage rate will be adjusted on May 1, 2025 by a factor obtained by the following formula using the Consumer Price Index (“CPI”) as measured by the tax cap limitation statutes:

$$\text{FACTOR} = \frac{[\text{CPI on 12/31/2024 minus CPI on 12/31/2023}] \times 66.67\%}{[\text{CPI on 12/31/2023}]}$$

The annual wheeling rate adjustment will be in effect on May 1 of each subsequent year and the factor formula referenced above shall be used with the substitution of CPI on December 31 of the two preceding years. The annual adjustment will not be less than a 0% increase.

The Village agrees to give Illinois-American sixty (60) days written notice prior to any rate change going into effect. The ability or inability of Illinois-American to pass through the wheeling rate to its retail or wholesale water customers in whole or in part, by reason of any law, regulation, court decision, or decision by the Illinois Commerce Commission, shall not impact the obligation of Illinois-American to pay the Village the full amount of the wheeling rate in this Agreement.

Section 6. Special Covenants and Conditions.

(a) Village to Continue to Serve. Village will use its best efforts to continue to serve Illinois-American with water.

(b) Village to Maintain and Operate Village System Properly. The Village shall take all

reasonable steps to maintain and operate the Village System properly and in good condition and to continue to serve the customers in the Village System.

(c) **Illinois-American to Maintain and Operate System Properly.** Illinois-American shall take all reasonable steps to maintain and operate the Illinois-American System properly and in good condition and to continue to serve the customers in the Illinois-American System.

(d) **Accounting and Audit.** The Commission, the Village and Illinois-American will make and keep proper books and accounts in which complete entries shall be made of all transactions relating to its system.

(e) **Insurance.** The Village and Illinois-American will carry insurance or maintain self-insurance with respect to its system of the kinds and in the amounts which are customarily carried or maintained by parties operating similar properties, including, without limiting the generality of the foregoing, fire and other casualty and public liability insurance or protection. All moneys received for loss under the insurance policies or on deposit as self-insurance reserves shall be used in making good the loss or damage in respect of which they were paid except to the extent that the property damaged or lost would be permitted to be disposed, whether by repairing the property damaged or replacing the property destroyed, and provisions for making good such loss or damage or replacing the property destroyed shall be made within a reasonable time from date of loss. The proceeds derived from any and all policies or available from self-insurance reserves for public liability losses shall be used in paying or reimbursing any accounts from which payments, settlements, judgments or expenses were advanced.

Section 7. Force Majeure. In case by reason of force majeure event occurs as to the obligations of the Village or Illinois-American under this Delivery Agreement and the Village and/or Illinois-American shall be rendered unable wholly or in part to carry out its obligation under this Delivery Agreement, then if such party shall give notice and full particulars of such force majeure event in writing to the other parties within seven (7) days after the 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 event 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 term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of 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, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or tunnels, partial or entire failure of water supply, and inability on the part of the Commission or the Village to deliver water hereunder, or of any party to receive water hereunder, on account of any other causes not reasonably within the control of the party claiming such inability. The settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any force majeure events 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 settlements are unfavorable to it in the judgment of the party having the difficulty. No force majeure event which renders any of the parties unable to perform under this Delivery Agreement shall relieve a party of its obligation to make payments pursuant to the terms of this Delivery Agreement.

Section 8. Releases and Indemnification.

(a) Indemnification of the Commission by Illinois-American. To the fullest extent permitted by law, Illinois-American hereby releases the Commission, and its respective officers, agents and employees, from and agrees that the Commission, and its respective officers, agents and employees, shall not be liable for, and agree to indemnify and hold the Commission, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Illinois-American System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of Illinois-American to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

(b) Indemnification of the Commission by the Village. To the fullest extent permitted by law, the Village hereby releases the Commission, and its respective officers, agents and employees, from and agrees that the Commission, and its respective officers, agents and employees, shall not be liable for, and agrees to indemnify and hold the Commission, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Village System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of the Village to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

(c) Indemnification of the Commission by the Village and Illinois-American for Third-Party Claims. To the fullest extent permitted by law, Illinois-American and the Village agree to indemnify and hold harmless the Commission, and its respective officers, agents and employees, from any losses, costs, charges, expenses (including attorneys' fees), judgments, and liabilities incurred by the Commission, and its respective officers, agents and employees, in connection with any action, suit, or proceeding instituted or threatened by any third party in connection with this Delivery Agreement.

(d) Indemnification Claims Made by the Commission. If any such claim provided for in subsections (a), (b) or (c), is asserted, the Commission shall give prompt notice to Illinois-American or the Village or both, as applicable, and Illinois-American or the Village or both, as applicable, if requested by the Commission, shall assume the defense thereof, it being understood, however, that neither Illinois-American nor the Village shall settle or consent to the settlement of any such claim without the written consent of the Commission. In connection with any such claims, litigation or liabilities, the Commission and its respective officers, agents, employees, representatives and assigns shall have the right to defense counsel of their choice. Illinois-American and the Village, as applicable, shall be solely liable for all reasonable costs of such defense and for all reasonable expenses, fees, judgments, settlements and all reasonable other costs arising out of such claims, litigation, or liabilities. Illinois-American and the Village, as applicable, shall have the right to participate in the defense of any such claim, or litigation and, upon the request of the Commission as stated above, shall assume the defense of the Commission, and its respective officers, agents and employees.

(e) Indemnification of Illinois-American by the Village. To the fullest extent permitted by law, the Village hereby releases Illinois-American, and its respective officers, agents and

employees, from and agrees that Illinois-American, and its respective officers, agents and employees, shall not be liable for, and agrees to indemnify and hold Illinois-American, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Village System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of the Village to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

(f) Indemnification of the Village by Illinois American. To the fullest extent permitted by law, Illinois-American hereby releases the Village, and its respective officers, agents and employees, from and agrees that the Village, and its respective officers, agents and employees, shall not be liable for, and agrees to indemnify and hold the Village, and its respective officers, agents and employees, 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 construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Illinois-American System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of Illinois-American to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each case, any attorneys' fees.

Section 9. Interpretation; Compliance with Existing Contracts. This Delivery Agreement shall be deemed to be a separate written contract between the Commission, the Village and Illinois-American in Compliance with the Water Purchase Agreement. Except where expressly provided in this Delivery Agreement, nothing in this Delivery Agreement shall be construed to be, or applied in any manner, inconsistent with the terms of this Water Purchase Agreement, and if there is any conflict or inconsistency between the terms of this Delivery Agreement and the terms of the Water Purchase Agreement, then the terms of the Water Purchase Agreement shall apply.

The Village shall at all times comply with all terms and conditions of the Water Purchase Agreement, and Illinois-American shall at all times comply with all terms and conditions of the Water Purchase Agreement, including without limitation the making of all payments due thereunder promptly to the Commission. Under no circumstances shall any dispute of any nature under this Delivery Agreement, or Illinois-American's inability to receive water through the Point of Delivery provided by this Delivery Agreement, excuse, delay, or in any way other way affect the Village's or Illinois-American's performance under the Water Purchase Agreement.

Section 10. Termination. Illinois-American may terminate this Delivery Agreement upon twelve (12) months advance written notice to the Village as long as Illinois-American continues to purchase water from the Commission pursuant to the Water Purchase Agreement.

Section 11. ICC Approval. ~~It is the understanding of the parties Illinois-American believes that no approval of this Agreement is needed from the Illinois Commerce Commission ("ICC"), before Illinois-American enters into this Delivery Agreement. Nonetheless if, Illinois-American determines~~ If approval is necessary by the ICC, ~~Illinois American~~ it will notify the Village. The Village agrees to reasonably cooperate with Illinois-American in support of Illinois-American's application seeking said approval, if necessary. Illinois-American shall bear the cost of seeking approval from the ICC, if ICC approval is necessary. If the ICC approves some but not all of the

provisions of this Delivery Agreement, then the parties to this Delivery Agreement may, each in the exercise of their own discretion, agree by written amendment to revise the provisions of this Delivery Agreement to a form satisfactory to the Illinois Commerce Commission. In the event of such an agreed revision, this Delivery Agreement shall take effect as revised. Nothing in this Delivery Agreement shall be construed to require any party to agree to any revision to this Delivery Agreement as a result of any action by the Illinois Commerce Commission.

Section 12. Effective Date and Term. This Delivery Agreement shall be effective when all the parties have executed it (the "Effective Date"). This Delivery Agreement shall continue in force and effect until February 24, 2064 which is the term of the Water Purchase Agreement. The parties agree to negotiate in good faith a subsequent Agreement if desired by the parties.

Section 13. Notices and Evidence of Actions. All notices or communications provided for herein shall be in writing and shall be delivered to the party affected either in person or by overnight delivery service (UPS/Fed Ex) addressed to the principal office thereof.

Any action hereunder to be taken by the parties may be evidenced by copy of official proceedings (including pertinent minutes, motions, resolutions, or ordinances) duly certified by the Clerk or Secretary of such party.

Section 14. Amendment. This Delivery Agreement shall not be modified, revised, amended or annulled in any way except in writing approved by all parties hereto.

Section 15. Severability. Should any part, term, or provision of this Delivery Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected thereby.

Section 16. Governing Law; Superseder. This Delivery Agreement shall be construed exclusively under the applicable laws of the State of Illinois. All other inconsistent wheeling contracts between the Village, Illinois-American and the Commission are hereby superseded and shall be null and void. The Parties agree that venue for any litigation shall only be proper in the Eighteenth Judicial Circuit, DuPage County, Illinois.

Section 17. Execution in Counterparts. This Delivery Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. Any such counterpart may be signed by one or more of the parties hereto so long as each of the parties hereto has signed one or more of such counterparts.

IN WITNESS WHEREOF, the Village, Illinois-American, and the Commission have caused their respective corporate names to be subscribed hereto and their respective corporate seals to be hereto affixed and attested by their duly authorized officers, all on the date set opposite their respective corporate names.

VILLAGE OF WINFIELD

By: _____
Mayor

Attest:

Village Clerk

ILLINOIS-AMERICAN WATER COMPANY

By: _____
President

Attest:

DUPAGE WATER COMMISSION

By: _____
Chairman

Attest:
