




# DuPage Water Commission

## MEMORANDUM

TO: Chairman Zay and Commissioners

FROM: John Spatz  
General Manager 

DATE: March 13, 2012

SUBJECT: Supplemental Board Package Material

Attached please find the following:

1. Revised Agenda
2. Revised Ordinance No. O-2-12
3. Revised Resolution No. R-12-12
4. Revised Items to be Paid List



# DuPage Water Commission

600 E. Butterfield Road, Elmhurst, IL 60126-4642  
(630)834-0100 Fax: (630)834-0120

## REVISED AGENDA

### DUPAGE WATER COMMISSION

THURSDAY, MARCH 15, 2012  
7:30 P.M.

600 EAST BUTTERFIELD ROAD  
ELMHURST, IL 60126

- I. Call to Order and Pledge of Allegiance
- II. Roll Call  
(Majority of the Commissioners then in Office—minimum 7)
- III. Public Comments (limited to 5 minutes per person)
- IV. Approval of Minutes  
(Concurrence of a Majority of those Commissioners Present, provided there is a quorum—minimum 4)

**RECOMMENDED MOTION: To approve the Minutes of the February 16, 2012 Special Committee of the Whole Meeting, the Minutes of the February 16, 2012 Regular Meeting and the Executive Session Minutes of the February 16, 2012 Regular Meeting of the DuPage Water Commission (Voice Vote).**

- V. Treasurer's Report – February 2012  
(Concurrence of a Majority of those Commissioners Present, provided there is a quorum—minimum 4)

**RECOMMENDED MOTION: To accept the February 2012 Treasurer's Report (Voice Vote).**

- VI. Committee Reports
  - A. Finance Committee
    1. Report of 3/15/12 Finance Committee
    2. Resolution No. R-11-12: A Resolution Amending and Restating the Investment Policy of the DuPage Water Commission  
(Concurrence of a Majority of the Appointed Commissioners—7)

All visitors must present a valid driver's license or other government-issued photo identification, sign in at the reception area and wear a visitor badge while at the DuPage Pumping Station.

3. Resolution No. R-12-12: A Resolution Approving and Authorizing the Execution of a Settlement Agreement between the County of DuPage and the DuPage Water Commission—**\$2,561,898.00**

(Affirmative Majority of the Appointed Commissioners, containing the votes of at least 1/3 of the County Appointed Commissioners and 40% of the Municipal Appointed Commissioners—3 County + 3 Muni+1=7)

**RECOMMENDED MOTION: To adopt item numbers 2 through 3 under the Finance Report section of the Agenda in a single group pursuant to the Omnibus Vote Procedures (Roll Call).**

4. Actions on Other Items Listed on 3/15/12 Finance Committee Agenda

B. Administration Committee

1. Report of 3/15/12 Administration Committee
2. Actions on Items Listed on 3/15/12 Administration Committee Agenda

C. Engineering & Construction Committee

1. Report of 3/15/12 Engineering & Construction Committee
2. Ordinance No. O-2-12: An Ordinance Requesting the Intergovernmental Transfer of Easement Rights for the DuPage County Steeple Run Metering Station MS-9C Site and Authorizing the Execution of the DuPage County Steeple Run Metering Station Easement Agreement

(Concurrence of a Majority of the Appointed Commissioners—7)

3. Ordinance No. O-3-12: An Ordinance Approving and Authorizing the Execution of an Intergovernmental Agreement between the DuPage Water Commission and the County of DuPage Concerning the Construction and Operation of a Joint Facility and Other Connection Facilities for the York Township Water Facility Service Area

(Affirmative Majority of the Appointed Commissioners, containing the votes of at least 1/3 of the County Appointed Commissioners and 40% of the Municipal Appointed Commissioners—3 County + 3 Muni+1=7)

4. Resolution No. R-7-12: A Resolution Approving and Authorizing the Execution of a Memorandum of Agreement for Geographic Information System Data Sharing with DuPage County, Illinois

(Concurrence of a Majority of the Appointed Commissioners—7)

5. Resolution No. R-8-12: A Resolution Directing Advertisement for Bids on a Contract for the Construction of DuPage County Steeple Run Meter/Pressure Adjusting Station 9C (Contract MS-19/12)

(Affirmative Majority of the Appointed Commissioners, containing the votes of at least 1/3 of the County Appointed Commissioners and 40% of the Municipal Appointed Commissioners—3 County + 3 Muni+1=7)

6. Resolution No. R-9-12: A Resolution Approving and Ratifying Certain Work Authorization Orders Under Quick Response Contract QR-9/11 at the March 15, 2012, DuPage Water Commission Meeting—**Airy's Inc. \$12,600.00 (estimated)**

(Affirmative Majority of the Appointed Commissioners, containing the votes of at least 1/3 of the County Appointed Commissioners and 40% of the Municipal Appointed Commissioners—3 County + 3 Muni+1=7)

7. Resolution No. R-10-12: A Resolution Awarding a Contract for Landscape Maintenance Services—**The T.L.C. Group, Ltd. \$50,430.00 (estimated)**

(Concurrence of a Majority of the Appointed Commissioners—7)

**RECOMMENDED MOTION: To adopt item numbers 2 through 7 under the Engineering & Construction Report section of the Agenda in a single group pursuant to the Omnibus Vote Procedures (Roll Call).**

8. Actions on Other Items Listed on 3/15/12 Engineering & Construction Committee Agenda

VII. Accounts Payable

(Affirmative Majority of the Appointed Commissioners, containing the votes of at least 1/3 of the County Appointed Commissioners and 40% of the Municipal Appointed Commissioners—3 County + 3 Muni+1=7)

**RECOMMENDED MOTION: To approve the Accounts Payable in the amount of \$4,547,662.67, subject to submission of all contractually required documentation, for invoices that have been received (Roll Call).**

**RECOMMENDED MOTION: To approve the Accounts Payable in the amount of \$1,502,037.00, subject to submission of all contractually required documentation, for invoices that have not yet been received but have been estimated (Roll Call).**

VIII. Chairman's Report

IX. Omnibus Vote Requiring Majority Vote

X. Omnibus Vote Requiring Super-Majority or Special Majority Vote

XI. Old Business

XII. New Business

XIII. Executive Session

(Concurrence of a Majority of those Commissioners Present, provided there is a quorum—minimum 4)

**RECOMMENDED MOTION: To go into Executive Session to discuss security procedures pursuant to 5 ILCS 120/2(c)(8), to discuss matters related to personnel pursuant to 5 ILCS 120/2(c)(1) and (2), to discuss acquisition of real estate pursuant to 5 ILCS 120/2(c)(5), to discuss pending, probable, or imminent litigation pursuant to 5 ILCS 120/2(c)(11), and/or to discuss minutes of closed meetings pursuant to 5 ILCS 120/2(c)(21) (Roll Call).**


**RECOMMENDED MOTION: To come out of Executive Session (Voice Vote).**

**XIV. Adjournment**

(Concurrence of a Majority of those Commissioners Present, provided there is a quorum—minimum 4)

Board/Agendas/Commission/2012/March 2012/Rcm1203.docx

## REQUEST FOR BOARD ACTION

<b>AGENDA SECTION</b>	Engineering & Construction Committee	<b>ORIGINATING DEPARTMENT</b>	Facilities Construction
<b>ITEM</b>	<p>An Ordinance Requesting the Intergovernmental Transfer of Easement Rights for the DuPage County Steeple Run Metering Station MS-9C Site and Authorizing the Execution of the DuPage County Steeple Run Metering Station Easement Agreement</p> <p>Ordinance No. O-2-12</p>	<p><b>APPROVAL</b></p> 	
<p>Pursuant to Ordinance No. O-11-11, the County of DuPage and the Commission entered into an Intergovernmental Agreement to provide for the Commission to design and construct within unimproved public right-of-way the County's Pressure Adjusting Station for the Steeple Run Service Area as a joint facility with the Commission's Metering Station for the Steeple Run Service Area (the "Steeple Run Joint Facility Agreement").</p> <p>Ordinance No. O-2-12 would approve the Easement Agreement for the location of the Commission's Steeple Run Metering Station in substantially the form attached to the Steeple Run Joint Facility Agreement subject to resolution of any title issues as required by the Steeple Run Joint Facility Agreement.</p> <p><b>The only change from the version of Ordinance No. O-2-12 distributed in the regular Board packet on March 8, 2012, is to substitute the easement agreement executed by the Road District as Exhibit A to the ordinance.</b></p>			
<p><b>MOTION:</b> To adopt Ordinance No. O-2-12.</p>			

## DuPAGE WATER COMMISSION

## ORDINANCE NO. O-2-12

AN ORDINANCE REQUESTING THE INTERGOVERNMENTAL  
TRANSFER OF EASEMENT RIGHTS FOR THE DuPAGE COUNTY STEEPLE RUN  
METERING STATION MS-9C SITE AND AUTHORIZING THE EXECUTION OF THE  
DuPAGE COUNTY STEEPLE RUN METERING STATION EASEMENT AGREEMENT

WHEREAS, the Commission was formed and exists pursuant to 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 3720/0.01 et seq., for the purposes of securing an adequate source and supply of water for its customers; and

WHEREAS, the Commission operates a water system supplying a number of municipalities and other customers in DuPage County with water drawn from Lake Michigan (the "Commission Waterworks System"); and

WHEREAS, the County of DuPage (the "County") owns and operates a waterworks system serving several discrete and non-contiguous service areas (the "DuPage County Unit System"); and

WHEREAS, the Commission and the County have entered into a certain Water Purchase and Sale Contract dated as of July 13, 2006, for the sale by the Commission of Lake Michigan water to the County to serve the various discrete and non-contiguous service areas served by the DuPage County Unit System from time to time, including the service area known as the Steeple Run Service Area (the "DuPage County Contract"); and

WHEREAS, pursuant to Ordinance No. O-11-11, adopted June 23, 2011, the County and the Commission entered into an intergovernmental agreement to provide for the Commission to design and construct within unimproved public right-of-way the

Ordinance No. O-2-12

County's Pressure Adjusting Station for the Steeple Run Service Area as a joint facility with the Commission's Metering Station for the Steeple Run Service Area (the "Steeple Run Joint Facility Agreement"); and

WHEREAS, the DuPage County Contract, as supplemented by the Steeple Run Joint Facility Agreement, provides that the Commission is to furnish, install, own, operate, maintain, and repair certain equipment and devices, together with certain structures and portions of its water distribution main, including underground feeder pipe lines and related equipment, for properly conveying and measuring the quantity of Lake Michigan water delivered by the Commission to the County at the connection point for the Steeple Run Service Area provided for under the Steeple Run Joint Facility Agreement, and all antennas, masts, and appurtenant facilities for the Commission's Supervisory Control and Data Acquisition Instrumentation System attributable to the Steeple Run Service Area, all remote telemetry units needed solely for communication between Commission facilities attributable to the Steeple Run Service Area, all electrical systems, including panels, conduits, raceways, duct banks, and utility services, needed solely for the operation of Commission facilities attributable to the Steeple Run Service Area, and all drainage systems, including drain pipes and structures, needed solely for the drainage of Commission facilities and property attributable to the Steeple Run Service Area, all as such facilities may be relocated, replaced, extended, or improved from time to time (collectively referred to as the "Steeple Run Metering Station"); and

WHEREAS, the Steeple Run Joint Facility Agreement provides that the Steeple Run Metering Station is to be located at a site selected and provided by the County, subject to review and approval by the Commission; and



Ordinance No. O-2-12

WHEREAS, the County has selected the site legally described in Exhibit 1 to Exhibit A attached hereto (the "Steeple Run Metering Station Easement Premises") for the location of the Steeple Run Metering Station; and

WHEREAS, the Steeple Run Metering Station Easement Premises are located in unimproved public right-of-way and the Lisle Township Road District, the road district of Lisle Township (the "Road District"), is the owner of the Steeple Run Metering Station Easement Premises; and

WHEREAS, the Commission has determined that it will be necessary and convenient for it to use, occupy, and improve the Steeple Run Metering Station Easement Premises for the aforesaid public purpose of acquiring and operating its Waterworks System, and, in particular, to construct, furnish, install, own, operate, maintain, test, inspect, remove, repair, and replace the Steeple Run Metering Station; and

WHEREAS, the territory of the Commission is partly within and partly without the corporate limits of the Road District; and

WHEREAS, the Road District desires to grant, convey, warrant, and dedicate to the Commission a perpetual easement for such purposes at, in, under, and upon the Steeple Run Metering Station Easement Premises, and the Commission is willing to accept such easement, pursuant to the authority conferred by the Local Government Property Transfer Act, 50 ILCS 605/0.01 et seq. and other applicable authority; and

WHEREAS, the Road District is willing to grant to the Commission a perpetual easement for such purposes in consideration of the sum of Ten Dollars (\$10.00);

Ordinance No. O-2-12

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 as findings of the Board of Commissioners of the DuPage Water Commission.

SECTION TWO: An Easement Agreement by and between the Commission and the Road District, in the form attached hereto and by this reference incorporated herein and made a part hereof as Exhibit A, shall be and it hereby is approved subject to satisfaction of the conditions precedent to execution and attestation set forth in Section Three below.

SECTION THREE: The General Manager and the Clerk of the DuPage Water Commission shall be and they hereby are authorized to execute and attest, respectively, an Easement Agreement with the Road District in the form attached hereto as Exhibit A; provided, however, that they shall neither execute nor attest the Easement Agreement on behalf of the Commission unless and until (a) the General Manager shall have been presented with copies of the Easement Agreement executed by the Road District, (b) the General Manager shall have been presented with adequate evidence of merchantable fee simple title to the Steeple Run Metering Station Easement Premises being vested in the Road District, and (c) the General Manager shall have been presented with adequate evidence that the easement rights to be granted and insured to the Commission are free and clear of all liens, claims, encumbrances, and restrictions unless otherwise approved by the General Manager.

Ordinance No. O-2-12

SECTION FOUR: Upon execution and attestation by the General Manager and the Clerk, respectively, the grant of easement for the Steeple Run Metering Station Easement Premises shall be deemed accepted by the Commission without further act.

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

AYES:

NAYS:

ABSENT:

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Clerk

Board/Ordinances/O-2-12.docx

**EXHIBIT A**

**DUPAGE WATER COMMISSION**

**METERING STATION**

**EASEMENT AGREEMENT**

**(DuPage County Steeple Run MS-9C)**

**Within the Right-of-Way of  
Meadow Lake Drive in the  
Southeast ¼ of Sec. 8 & Northeast ¼ of Sec. 17  
Township 38 North, Range 10**

**Prepared by and Mail to:**

**Maureen A. Crowley  
Staff Attorney  
DuPage Water Commission  
600 East Butterfield Road  
Elmhurst, Illinois 60126**

**METERING STATION  
EASEMENT AGREEMENT**  
(DuPage County Steeple Run MS-9C)

THIS EASEMENT AGREEMENT, made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the DUPAGE WATER COMMISSION, a county water commission created and existing under the laws of the State of Illinois (the "Commission") and the LISLE TOWNSHIP ROAD DISTRICT, the road district of LISLE TOWNSHIP, a unit of local government created and existing under the laws of the State of Illinois (the "Owner"),

**WITNESSETH:**

WHEREAS, the Commission and DuPage County, a unit of local government created and existing under the laws of the State of Illinois and a customer of the Commission (the "Customer") have entered into a certain Water Purchase and Sale Contract, dated as of July 13, 2006 (the "DuPage County Contract"), as supplemented by a certain Intergovernmental Agreement Concerning the Construction and Operation of a Joint Facility for the Steeple Run Service Area, dated as of June 14, 2011 (the "Joint Facility Agreement"); and

WHEREAS, the Joint Facility Agreement provides that the Commission is to furnish, install, own, operate, maintain, and repair certain equipment and devices, together with certain structures and portions of its water distribution main, including underground feeder pipe lines and related equipment, for properly conveying and measuring the quantity of Lake Michigan water delivered by the Commission to the Customer at the connection point for the Steeple Run Service Area provided for under the Joint Facility Agreement, and all antennas, masts, and appurtenant facilities for the Commission's Supervisory Control and Data Acquisition Instrumentation System

attributable to the Steeple Run Service Area, all remote telemetry units needed solely for communication between Commission facilities attributable to the Steeple Run Service Area, all electrical systems, including panels, conduits, raceways, duct banks, and utility services, needed solely for the operation of Commission facilities attributable to the Steeple Run Service Area, and all drainage systems, including drain pipes and structures, needed solely for the drainage of Commission facilities and property attributable to the Steeple Run Service Area, all as such facilities may be relocated, replaced, extended, or improved from time to time (collectively referred to as the "Metering Station"); and

WHEREAS, the Joint Facility Agreement provides that the Metering Station is to be located at a site selected and provided by the Customer, subject to review and approval by the Commission; and

WHEREAS, the Customer has selected the site legally described in Exhibit 1 attached hereto and by this reference incorporated herein and made a part hereof (the "Metering Station Easement Premises") for the location of the Metering Station as generally depicted in Exhibit 2 attached hereto and by this reference incorporated herein and made a part hereof; and

WHEREAS, the Commission has reviewed the Metering Station Easement Premises and approved the same for the location of the Metering Station; and

WHEREAS, the Commission has submitted to the Customer for review the drawings and specifications for the Metering Station; and

WHEREAS, the Easement Premises are located in unimproved public right-of-way and the Owner is the owner of the Easement Premises; and

WHEREAS, the Customer desires that the Commission enter into this Easement Agreement with the Owner in order to provide the Commission with a sufficient property interest in the Metering Station Easement Premises to fulfill the provisions and purpose of the DuPage County Contract, as supplemented by the Joint Facility Agreement; and

WHEREAS, the Commission has duly adopted its Ordinance No. O-2-12, being "An Ordinance Requesting the Intergovernmental Transfer of Easement Rights for the DuPage County Steeple Run Metering Station MS-9C Site and Authorizing the Execution of the DuPage County Steeple Run Metering Station Easement Agreement," pursuant to the Local Government Property Transfer Act, 50 ILCS 605/0.01 et seq.;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in the exercise of their powers and authority under the intergovernmental cooperation provisions of Article VII, Section 10 of the Illinois Constitution of 1970 and the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., and other applicable authority, the Commission and the Owner hereby agree as follows:

1. The foregoing recitals are hereby incorporated herein as substantive provisions of this Easement Agreement.

2. The Owner hereby grants, conveys, warrants, and dedicates to the Commission, its successors and assigns, a non-exclusive perpetual easement to construct, furnish, install, own, operate, maintain, test, inspect, remove, repair, and replace the Metering Station at, in, under, and upon the Metering Station Easement Premises, together with all reasonable rights of ingress and egress along or across any adjoining lands of, or under the jurisdiction and control of, the Owner.



3. The Metering Station shall be not located, constructed, or maintained in any manner not in substantial conformity with Exhibit 2 without the express consent of the Owner, which consent shall not be unreasonably withheld.

4. The Commission shall exercise the easement rights hereby granted with due care, and shall not unreasonably interfere with, damage, or harm any Owner property located upon any adjoining lands of Owner.

5. After construction of the Metering Station, the Metering Station Easement Premises shall be restored in accordance with the drawings and specifications for the Metering Station.

6. The Owner hereby reserves the right to use the Metering Station Easement Premises and its adjacent property in any manner that will not prevent or interfere in any way with the exercise by the Commission of the rights granted hereunder; provided, however, that the Owner shall not in any manner disturb, damage, destroy, injure, obstruct, or permit to be obstructed the Metering Station Easement Premises without the express prior written consent of the Commission, nor shall the Owner permanently or temporarily improve, damage, or obstruct the Metering Station Easement Premises in any manner that would impair the exercise by the Commission of the rights hereby granted.

7. The Owner agrees to indemnify and defend the Commission with respect to any and all claims or damages to persons or property which may arise directly from the negligence of the Owner, or its agents or employees, in performing any work on the Metering Station Easement Premises in conjunction with its rights pursuant to Paragraph 6 hereof, and the Commission agrees to indemnify and defend the Owner with respect to any and all claims of damages to persons or property which may arise

directly from the negligence of the Commission, or its agents or employees, in performing any work on the Metering Station Easement Premises in conjunction with its rights pursuant to Paragraphs 2 and 5 hereof. The Owner shall provide to the Commission, and the Commission shall provide to the Owner, a certificate of insurance or proof of self-insurance coverage as evidence of its continuing ability to meet the obligation established in this Paragraph, and both shall maintain such coverage at all times.

8. This Easement Agreement shall constitute and stand in the place of all Owner permits required by the Commission or its contractor to construct, furnish, install, own, operate, maintain, test, inspect, repair, remove, or replace the Metering Station at, in, under, and upon the Metering Station Easement Premises, and the Owner hereby agrees to execute any and all additional documents, approvals, waivers, or consents, if any, that may be reasonably necessary for the Commission to secure any permits required from any county, state, or federal agency for or in connection with constructing, furnishing, installing, owning, operating, maintaining, testing, inspecting, repairing, removing, or replacing the Metering Station.

9. In the event that DuPage County Contract is terminated without renewal with respect to the Customer, the Commission shall, within 90 days execute and deliver to the Owner an appropriate document evidencing the termination of this Easement Agreement and releasing the easement rights hereby granted. The Commission shall, within said 90 day period, and at the Customer's expense, remove the Metering Station from the Metering Station Easement Premises. If the Commission fails to remove the Metering Station, as aforesaid, the Owner may take title to the Metering Station.

In the event the Owner's or the Commission's legal interest in or legal authority concerning the use of the Easement Premises for the Metering Station in the manner provided in the Easement Agreement is, for any reason, terminated or deemed or interpreted to be invalid, insufficient or nonexistent, the Commission shall remove the Metering Station from the Easement Premises at the Customer's sole cost and expense.

10. All rights, title, and privileges herein granted, including all benefits and burdens, shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective grantees, successors, assigns, and legal representatives.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their proper representatives duly authorized to execute the same.

DUPAGE WATER COMMISSION

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_  
General Manager

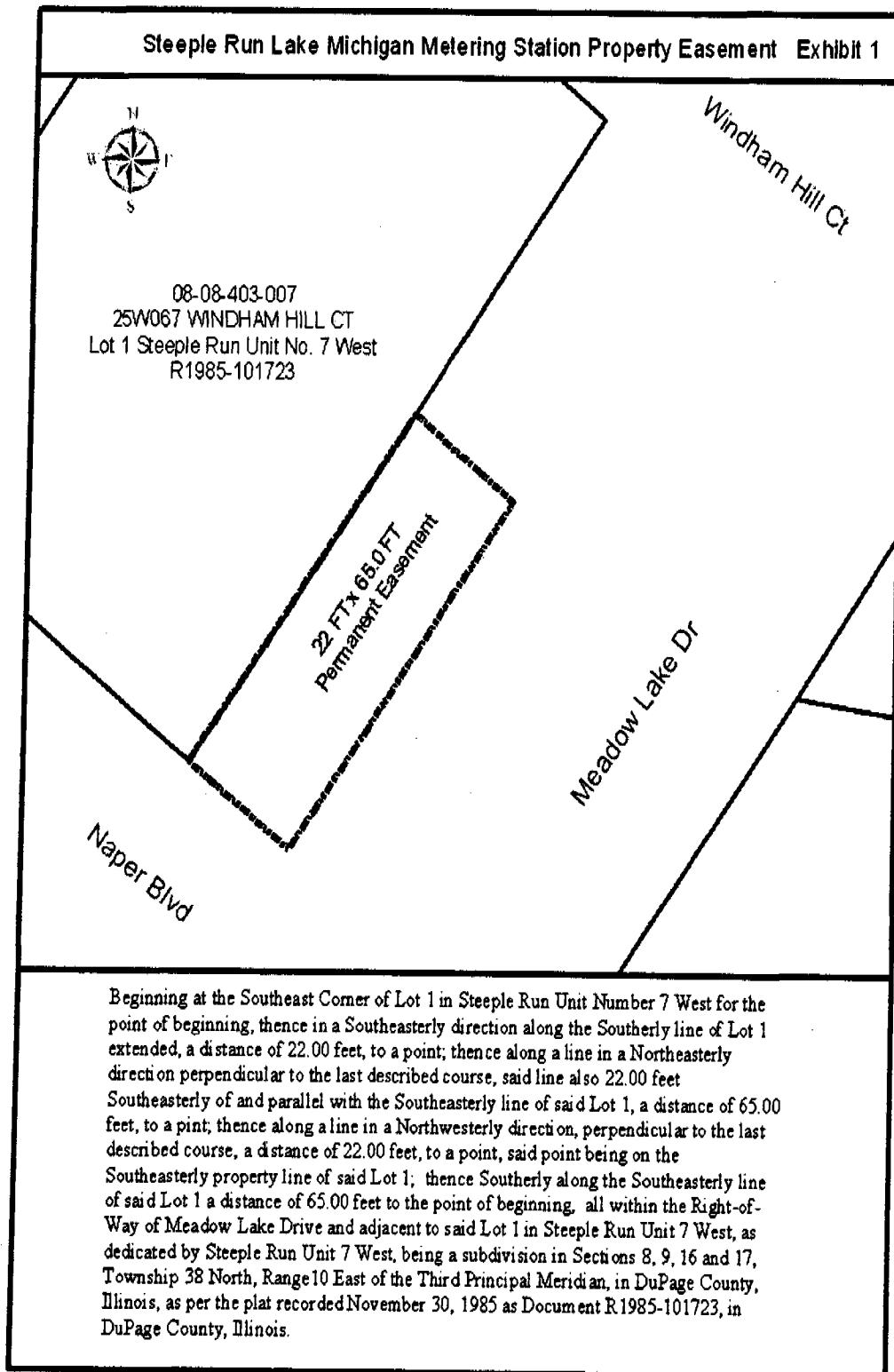
LISLE TOWNSHIP ROAD DISTRICT,  
the road district of LISLE TOWNSHIP

ATTEST:

Donna Schreiber  
Donna Schreiber

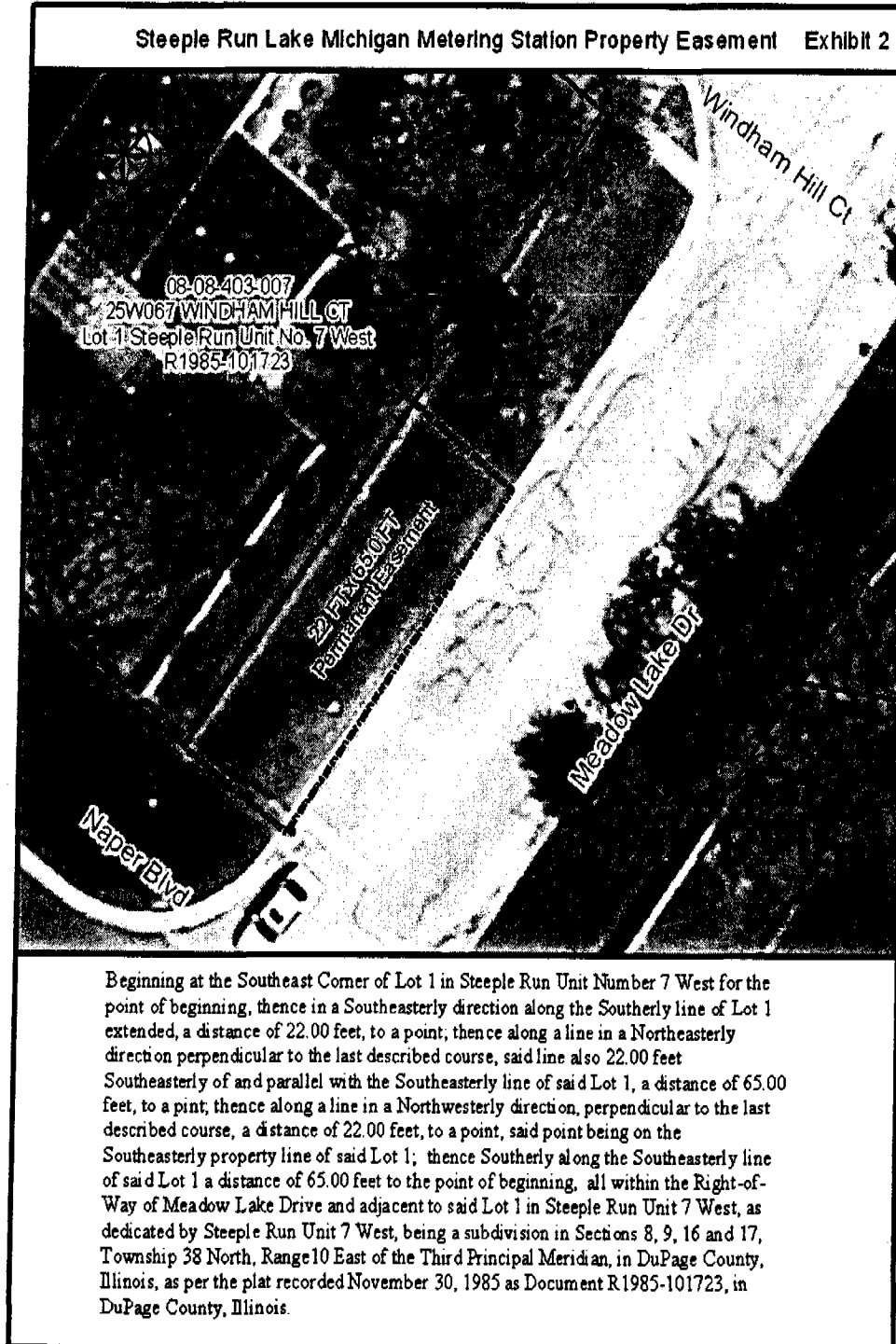
By: Wayne Perry  
[TITLE]

# EXHIBIT 1



## EXHIBIT 2

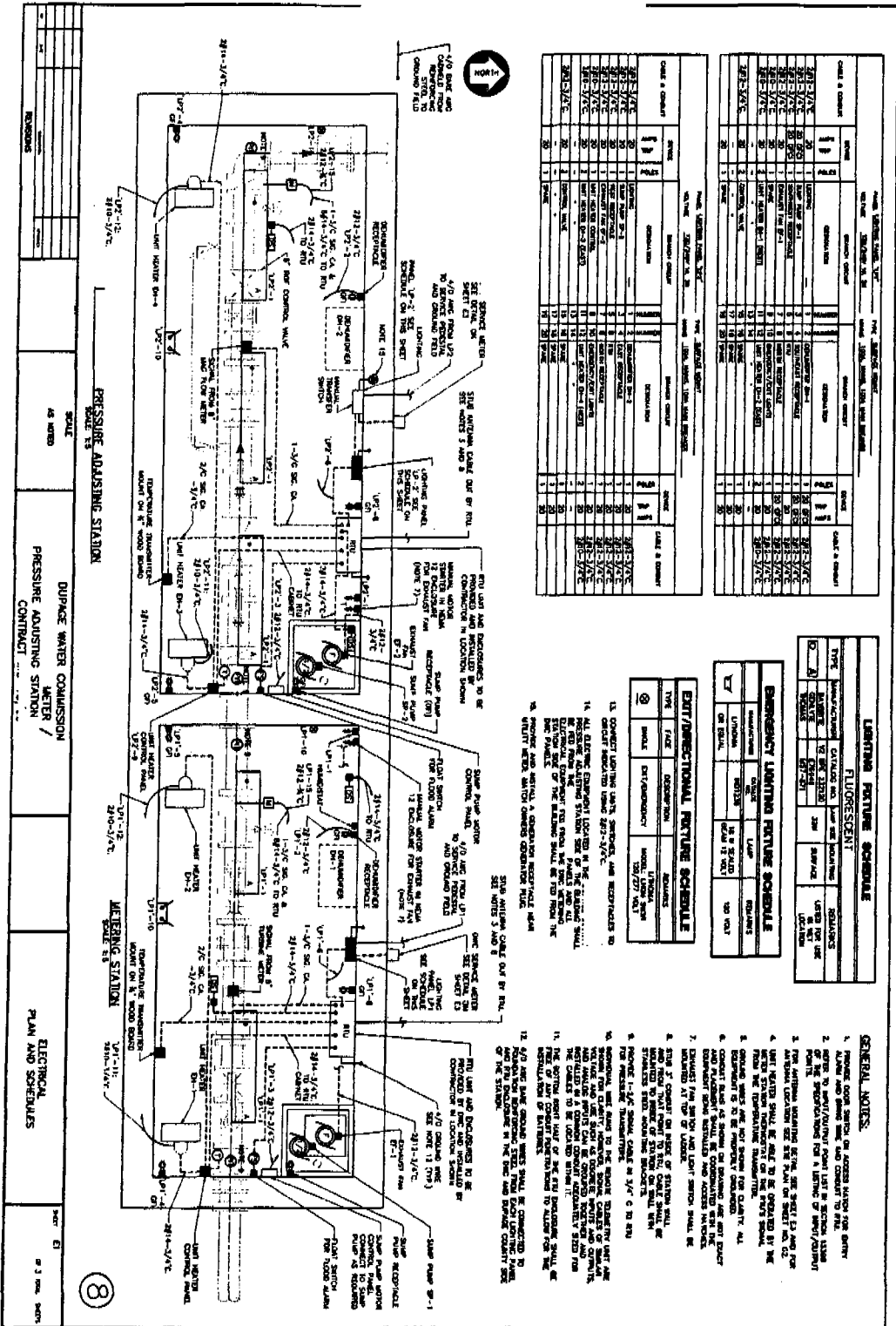
### PLANS FOR THE LOCATION OF THE METERING STATION







# EXHIBIT 2C



NO.	DESCRIPTION	QTY	UNIT	REMARKS
1	...	...	...	...
2	...	...	...	...
3	...	...	...	...
4	...	...	...	...
5	...	...	...	...
6	...	...	...	...
7	...	...	...	...
8	...	...	...	...
9	...	...	...	...
10	...	...	...	...
11	...	...	...	...
12	...	...	...	...
13	...	...	...	...
14	...	...	...	...
15	...	...	...	...
16	...	...	...	...
17	...	...	...	...
18	...	...	...	...
19	...	...	...	...
20	...	...	...	...

### FLUORESCENT

TYPE	MANUFACTURER	DATE	QTY	REMARKS
...	...	...	...	...

### EMERGENCY LIGHTING FIXTURE SCHEDULE

NO.	DESCRIPTION	QTY	UNIT	REMARKS
1	...	...	...	...

### EXIT/DIRECTIONAL FIXTURE SCHEDULE

NO.	TYPE	FACE	DESCRIPTION	REMARKS
1	...	...	...	...

- ### GENERAL NOTES:
1. PROVIDE DOOR SWITCH ON ACCESS WAY TO THE ENTRY...
  2. REFER TO MECHANICAL DRAWING FOR THE LOCATION OF THE...
  3. THE ELECTRICAL WORK SHALL BE INSTALLED IN ACCORDANCE WITH THE...
  4. THE ELECTRICAL WORK SHALL BE INSTALLED IN ACCORDANCE WITH THE...
  5. THE ELECTRICAL WORK SHALL BE INSTALLED IN ACCORDANCE WITH THE...
  6. THE ELECTRICAL WORK SHALL BE INSTALLED IN ACCORDANCE WITH THE...
  7. THE ELECTRICAL WORK SHALL BE INSTALLED IN ACCORDANCE WITH THE...
  8. THE ELECTRICAL WORK SHALL BE INSTALLED IN ACCORDANCE WITH THE...
  9. THE ELECTRICAL WORK SHALL BE INSTALLED IN ACCORDANCE WITH THE...
  10. THE ELECTRICAL WORK SHALL BE INSTALLED IN ACCORDANCE WITH THE...
  11. THE ELECTRICAL WORK SHALL BE INSTALLED IN ACCORDANCE WITH THE...
  12. THE ELECTRICAL WORK SHALL BE INSTALLED IN ACCORDANCE WITH THE...
  13. THE ELECTRICAL WORK SHALL BE INSTALLED IN ACCORDANCE WITH THE...
  14. THE ELECTRICAL WORK SHALL BE INSTALLED IN ACCORDANCE WITH THE...
  15. THE ELECTRICAL WORK SHALL BE INSTALLED IN ACCORDANCE WITH THE...
  16. THE ELECTRICAL WORK SHALL BE INSTALLED IN ACCORDANCE WITH THE...
  17. THE ELECTRICAL WORK SHALL BE INSTALLED IN ACCORDANCE WITH THE...
  18. THE ELECTRICAL WORK SHALL BE INSTALLED IN ACCORDANCE WITH THE...
  19. THE ELECTRICAL WORK SHALL BE INSTALLED IN ACCORDANCE WITH THE...
  20. THE ELECTRICAL WORK SHALL BE INSTALLED IN ACCORDANCE WITH THE...



STATE OF ILLINOIS     )  
                                  ) SS  
COUNTY OF COOK     )

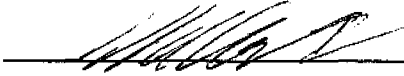
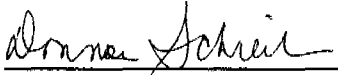
I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, do hereby certify that John F. Spatz, personally known to me to be the General Manager of the DuPage Water Commission, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered said instrument as his free and voluntary act, and as the free and voluntary act of said Commission, for the uses and purposes therein set forth.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

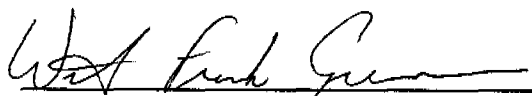
\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

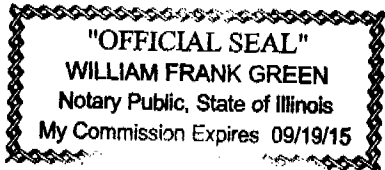
STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF DuPage     )

I, William Frank Green, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Michael J. Dow of the Lisle Township Road District, the road district of Lisle Township, and Donna Schreiber of said Road District, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such  and , respectively, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their free and voluntary act, and as the free and voluntary act of said Road District, for the uses and purposes therein set forth.

Given under my hand and official seal this 7th day of MARCH, 2012.


  
Notary Public

My Commission Expires:  
9/19/15



DATE: March 13, 2012

## REQUEST FOR BOARD ACTION

<b>AGENDA SECTION</b> Finance Committee	<b>ORIGINATING DEPARTMENT</b> General Manager's Office
<b>ITEM</b> A Resolution Approving and Authorizing the Execution of a Settlement Agreement between the County of DuPage and the DuPage Water Commission  Resolution No. R-12-12	<b>APPROVAL</b> 
<p>Account Number: 01-5131</p> <p>After the regular Board packet was distributed on March 8, 2012, the County suggested changes in the formal agreement with the Commission settling all disputes concerning the County's payment of its Capital Cost Recovery Charge under the DuPage County Subsequent Customer Contract. However, the County's proposed settlement terms were substantially different than those proposed by Commission staff by letter dated September 30, 2011, and in the draft agreement sent to County representatives on February 27, 2012.</p> <p>Resolution No. R-12-12, as currently revised, would approve a modified version of the County's proposed settlement agreement. The most significant changes from the County's proposed draft relate to (i) eliminating any requirement for the Commission to return the County's settlement payment in the event any third-party attempts to enforce the payment provisions of the DuPage County Subsequent Customer Contract and (ii) adding County contract defaults as additional conditions to the effectiveness of the release the County requested from the Commission.</p> <p>The revised version of the settlement agreement has been forwarded to the County for its review and comment.</p>	
<b>MOTION:</b> To adopt Resolution No. R-12-12.	

## DUPAGE WATER COMMISSION

## RESOLUTION NO. R-12-12

A RESOLUTION APPROVING AND AUTHORIZING  
THE EXECUTION OF A SETTLEMENT AGREEMENT BETWEEN  
THE COUNTY OF DUPAGE AND THE DUPAGE WATER COMMISSION

WHEREAS, the Commission and the County of DuPage (the "County") have entered into a certain Water Purchase and Sale Contract dated as of July 13, 2006, for the sale by the Commission of Lake Michigan water to the County to serve the various discrete and non-contiguous service areas served by the DuPage County Unit System from time to time (the "DuPage County Contract"); and

WHEREAS, the DuPage County Contract provides that the County shall make all Capital Cost Recovery Charge payments as required by Section 7D of the DuPage County Contract; and

WHEREAS, the Commission believes that through April 30, 2011, the County's monthly Capital Cost Recovery Charge payment has not been calculated in accordance with the requirements of the DuPage County Contract and, specifically, that interest on the County's Capital Cost Recovery Charge was erroneously calculated resulting in an underpayment of \$489,782.36; and

WHEREAS, the County believes that the County's monthly Capital Cost Recovery Charge payment was calculated in accordance with the requirements of the DuPage County Contract and that no additional monies are owed to the Commission, and the County continues to dispute, on a monthly basis, the Commission's current calculation of the County's monthly Capital Cost Recovery Charge payment and the method of calculating the interest to be charged thereon; and

WHEREAS, in order to avoid controversy and avoid the costs and uncertainty of litigation, the Board of Commissioners of the DuPage Water Commission has found and determined that it is appropriate and in the best interests of the Commission to conditionally settle the dispute regarding the County's payments of the Capital Cost Recovery Charge under the DuPage County Contract, including all calculations of principal and interest and all payments with respect thereto, on substantially the same terms and conditions as are set forth in Exhibit 1 attached hereto;

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: Capitalized terms not otherwise defined in this Resolution shall have the meanings ascribed to them in the DuPage County Contract.

SECTION THREE: A Settlement Agreement in substantially the form attached hereto and by this reference incorporated herein and made a part hereof as Exhibit 1 shall be and it hereby is approved.

SECTION FOUR: The General Manager of the DuPage Water Commission shall be and hereby is authorized and directed to execute the Settlement Agreement in substantially the form attached hereto as Exhibit 1; provided, however, that the Settlement Agreement shall not be so executed on behalf of the DuPage Water Commission unless and until the General Manager shall have been presented with copies of the Settlement Agreement executed by a duly authorized representative of the County of DuPage.

SECTION FIVE: Upon execution by the General Manager, the Settlement Agreement, and all things provided for therein, shall be deemed approved and accepted by the DuPage Water Commission without further act.

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

AYES:

NAYS:

ABSENT:

ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2012.

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Clerk

EXHIBIT 1

SETTLEMENT AGREEMENT BETWEEN  
THE COUNTY OF DuPAGE AND THE DuPAGE WATER COMMISSION

This SETTLEMENT AGREEMENT ("Agreement"), entered into as of the \_\_\_ day of \_\_\_\_\_, 2012, by and between the County of DuPage, a unit of local government created and existing under the laws of the State of Illinois (the "County"), and the DuPage Water Commission, a county water commission created and existing under the laws of the State of Illinois (the "Commission"),

WITNESSETH:

WHEREAS, the Commission and the County have entered into a certain Water Purchase and Sale Contract dated as of July 13, 2006, for the sale by the Commission of Lake Michigan water to the County to serve the various discrete and non-contiguous service areas served by the DuPage County Unit System from time to time (the "DuPage County Contract"); and

WHEREAS, the DuPage County Contract provides that the County shall make all Capital Cost Recovery Charge payments as required by Section 7D of the DuPage County Contract; and

WHEREAS, the Commission believes that through April 30, 2011, the County's monthly Capital Cost Recovery Charge payment has not been calculated in accordance with the requirements of the DuPage County Contract and, specifically, that interest on the County's Capital Cost Recovery Charge was erroneously calculated resulting in an underpayment of \$489,782.36; and

WHEREAS, the County believes that the County's monthly Capital Cost Recovery Charge payment was calculated in accordance with the requirements of the DuPage County Contract and that no additional monies are owed to the Commission, and the County continues to dispute, on a monthly basis, the Commission's current



calculation of the County's monthly Capital Cost Recovery Charge payment and the method of calculating the interest to be charged thereon; and

WHEREAS, in order to avoid controversy and avoid the costs and uncertainty of litigation, the County and Commission have agreed to conditionally resolve their dispute regarding the County's payments of the Capital Cost Recovery Charge under the DuPage County Contract, including all calculations of principal and interest and all payments with respect thereto, pursuant to the terms and conditions set forth in this Settlement Agreement;

NOW, THEREFORE, in consideration of the payment to the Commission of the amount set forth below, and in order to avoid controversy and resolve by compromise, the County and the Commission agree as follows:

1. Capitalized terms not otherwise defined in this Settlement Agreement shall have the meanings ascribed to them in the DuPage County Contract.

2. On or before April 30, 2012, the County shall pay the sum of \$2,561,898.00 to the Commission in current funds.

3. Conditioned upon and subject to the limitations set forth below, the Commission releases, discharges, and forgives the County, to the fullest extent allowed under law and by contract, as to the disputed \$489,782.36 sum and shall forego any claim to interest on the disputed \$489,782.36 sum and any other amounts allegedly owed under the DuPage County Contract relating to the Capital Cost Recovery Charge. The terms and effectiveness of this Paragraph 3 are conditioned upon and subject to (i) no Charter Customer of the Commission, no bondholder, no bond Trustee, and no other party entitled by law attempting to enforce the provisions of Section 7 of the DuPage County Contract; (ii) the County

making all other payments due under the DuPage County Contract as and when due, including without limitation the full monthly Capital Cost Recovery Charge payment billed on the February 29, 2012, invoice for the February 2012 water supply due on April 10, 2012, and the County otherwise being in full compliance with all other requirements of the DuPage County Contract and all other agreements related thereto such as Alternate Delivery and easement agreements; and (iii) the County being in full compliance with all requirements of this Settlement Agreement.

4. The parties agree that this is a conditional settlement of the dispute under the DuPage County Contract concerning the calculation of the County's monthly Capital Cost Recovery Charge payments and interest thereon, and that in reaching this compromise and settlement neither party makes any admission of any liability or any admission of improper conduct. In the event of any one or more of the contingencies described in Paragraph 3, above, the parties reserve their right to renew any claim, or defense, as to the disputed matters.

IN WITNESS WHEREOF, the County and the Commission have caused this Settlement Agreement to be executed by their duly authorized officers, pursuant to the proper authorization of their respective governing bodies, as of the date first stated above.

DUPAGE WATER COMMISSION

COUNTY OF DUPAGE

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**DUPAGE WATER COMMISSION  
ITEMS TO BE PAID BY 4-18-12  
Board Meeting Date: March 15, 2012**

<u>Estimate Amount</u>	<u>Description</u>	<u>Check Number</u>	<u>Payment Date</u>	<u>Payment Amount</u>
60,000.00	Blue Cross Blue Shield - Health Insurance			
6,000.00	Principal - Dental Insurance			
10,000.00	Illinois Public Risk Fund - Workers Comp.			
220.00	Envision Health Care - Administration Fees			
500,000.00	Exelon Energy for - Utility Charges			
20,000.00	ComEd - Utility Charges			
30,000.00	City of Chicago - Lexington. Labor			
180,000.00	City of Chicago - Lexington. Electric			
60,000.00	City of Chicago - Lexington. Repairs & Maint			
2,000.00	City of Naperville -Meter Station Electric Bills			
15,000.00	Nicor - Gas			
210.00	Comcast - Internet Service			
2,000.00	AT & T - Telephone Charges			
2,000.00	Nextel - Cell Phone Charges			
1,800.00	Fed - Ex - Postage/Delivery			
5,000.00	Business Card - Toll Charges			
1,000.00	Home Depot - Maintenance Supplies			
500.00	Waste Management - Disposal Services			
1,000.00	Mels - Maintenance Supplies			
1,000.00	Menards - Maintenance Supplies			
1,500.00	Konica Minolta - Copy and Lease Charges			
500.00	West Law - Monthly Subscription/Books			
4,000.00	Laner Muchin - Legal Services			
2,500.00	Airy's Inc - QR Repairs			
505.00	Specialty Mat - Carpet Cleaning Service			
31,000.00	Baker Tilly			
26.00	Aramark - Coffee Supplies			
120.00	My Office Products - Office Supplies			
660.00	Office Depot - Office Supplies			
460.00	Infor - Consulting Services			
36.00	Tree Towns Reprographics - Digi Bond Copy			
53,000.00	City of Elmhurst - annual service fee			
110,000.00	CDM			
400,000.00	Williams Brothers			
<u>1,502,037.00</u>				