



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

Project Summary and Preliminary Environmental Impacts Determination

Date: OCT 20 2021

Loan Applicant: Evanston, IEPA Loan Project Number: L173797

To all interested persons:

Section 662.330 of the Illinois Procedures for Issuing Loans from the Public Water Supply Loan Program requires that the Illinois Environmental Protection Agency (IEPA) conduct an assessment of the environmental impacts of proposed public water supply projects to be funded with loans. This review is carried out in conjunction with the Agency's review of the applicant's project plan.

Prior to final approval of the project plan, the public's comments are sought regarding environmental impacts of the proposed project. Unless new information obtained through the public comment process causes reconsideration, the Agency will approve the project plan at the close of the public comment period.

The applicant will make the attached Project Summary and Preliminary Environmental Impacts Determination (PEID) available for public inspection. Within 60 days of receiving this letter, the applicant must conduct a public hearing regarding both the PEID and project planning. Advertisement of the hearing must be made at least 10 days in advance. The advertisement must include the purpose of the project along with the date, time, and location of the hearing. A comment period of at least 10 days shall be provided after the hearing in which written comments may be submitted to the loan applicant or to the IEPA contact person identified in the attached document.

For information purposes only, a copy of this document is being provided to your local newspaper of record.

Your participation in this process is appreciated.

Sincerely,

Heidi Allen
Pre-Construction Unit Manager
Infrastructure Financial Assistance Section
Bureau of Water

HA:lc, evanston l173797 drinking water_peid cover letter 071819.docx

Attachment

2125 S. First Street, Champaign, IL 61820 (217) 278-5800
1101 Eastport Plaza Dr., Suite 100, Collinsville, IL 62234 (618) 346-5120
9511 Harrison Street, Des Plaines, IL 60016 (847) 294-4000
595 S. State Street, Elgin, IL 60123 (847) 608-3131

2309 W. Main Street, Suite 116, Marion, IL 62959 (618) 993-7200
412 SW Washington Street, Suite D, Peoria, IL 61602 (309) 671-3022
4302 N. Main Street, Rockford, IL 61103 (815) 987-7760

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Project Summary and PEID

Project Summary and Preliminary Environmental Impacts Determination (PEID)

Information in this report is based on information submitted to the Illinois Environmental Protection Agency (IEPA) by the City of Evanston. The source of information includes the following document: Project Plan for the 36”/42” Raw Water Intake Replacement for the City of Evanston, Illinois written by the City of Evanston dated January 12, 2021. Additional documentation was obtained from loan application documents and compiled by the Illinois Environmental Protection Agency.

Part I – Applicant and Project Information

Loan Applicant: City of Evanston

Project Name: Lake Michigan Water Intake Structure

County: Cook

Project Loan Numbers: L173797

Current Population: 491,039

Future Population (20 years): 549,000

Project Description: The City of Evanston is located in Cook County on Lake Michigan and just north of Chicago. Evanston operates and maintains a water system that serves the City of Evanston and additionally provides water service to customers in the Village of Skokie, Lincolnwood, Morton Grove-Niles Water Commission (Morton Grove and Niles) and the communities within the Northwest Water Commission, which consist of Arlington Heights, Buffalo Grove, Palatine, Wheeling, and Des Plaines. The City is responsible for providing water to over 491,039 customers.

The water system was formed in Evanston in 1874 with Lake Michigan serving as a surface water supply for the City water source. Potable water is supplied on a retail basis within the City and sold at wholesale rates to the Village of Skokie, the Village of Lincolnwood, the Morton Grove-Niles Water Commission, and the Northwest Water Commission. Within Evanston, the water service area makes up approximately 14,400 accounts, a total of 73,473 residents, with the largest users being Northwestern University, Evanston Hospital, and St. Francis Hospital.

The City of Evanston has three existing water intakes. The 36-inch/42-inch diameter raw water intake was constructed in 1909. This project will replace the existing 36-inch/42-inch diameter raw water intake structure located in Lake Michigan with a new water intake structure. The new intake structure will consist of nine upturned cones located on the bottom of Lake Michigan approximately 5,500 linear feet from the shoreline. The project will also include a 60-inch diameter intake pipe and associated on shore facilities and appurtenances.

Project Location: See attached map for project locations.

Project Justification: The existing 36/42-inch diameter water intake was installed in 1909 and has exceeded its useful life span. In addition, there has been a history of reduced intake capacity from the existing intake structure.

Estimated Construction Start Date: May 2022

Estimated Construction Completion Date: August 2024

Project Cost Estimate: \$41,606,073.00, Evanston plans on funding approximately \$21,220,073.00 through a loan from the IEPA State Revolving Fund Program (SRF) and the other \$20,386,000.00 through the United States Environmental Protection Agency Water Infrastructure Finance and Innovation Act (WIFIA).

Part II – Project Affordability for Residents and Utility Customers

The applicant is proposing to finance the project costs with a \$21,220,073.00 loan from the IEPA Public Water Supply Loan Program (PWSLP). The loan program rules include provisions for incentives such as reduced interest rates, partial principal forgiveness (a reduction in the amount of principal borrowed that would otherwise have to be repaid), and extended repayment periods for qualifying applicants. The final decision for incentive qualification will be determined at the time a loan agreement is issued using updated Census Bureau and Department of Labor data. The Agency adjusts qualifying criteria annually on July 1st.

A \$21,220,073.00 loan with an estimated interest rate of 1.11% for a twenty (20) year period, would have an annual repayment of approximately \$1,183,617.75. The final loan and annual repayment amounts will be based on the as-bid project costs, and the loan terms in effect on the date the loan agreement is issued. A rate increase is not necessary to repay the loan.

Source of Loan Repayment: User fees

Current Average Monthly Residential Cost of Service: \$20.77

Projected Average Monthly Residential Cost of Service: \$20.77

Average Monthly Residential Water Use: 7.9 CCF or 5,909 Gallons

How the current and proposed monthly residential rate/cost of service is calculated: The current rate structure is based on the following: Bi-monthly minimum charge is \$10.33 (includes 5 CCF), each additional amount of usage is charged as \$2.89 per CCF so this is figured at $(10.8 \times \$2.89) + \$10.33 = \$41.54/2 = \20.77 monthly.

Number of Customers or Service Connections: 14,513 customers

Median Household Income (MHI): \$78,904

Financial Evaluation of the Proposed Project: To evaluate the costs of the proposed project for the community, a percentage comparison of the MHI to the average, annual cost for water service is

utilized. The MHI listed above is from the current fiscal year's census information. The proposed annual water cost of \$249.24 (\$20.77/month) is 0.32% of the MHI for the area. The percentage is for comparison only and has no impact on whether a project qualifies for funding from the IEPA. The percentage comparison and MHI are two of several criteria used to determine whether a loan project qualifies for interest rate reductions or principal forgiveness.

Part III – Environmental Review and Impacts

Project Construction Impacts: Construction will take place within Lake Michigan from the shoreline out to approximately 5,500 linear feet from the shoreline. Best management practices will be followed throughout the project construction. The construction process will cause some minor erosion and wind-blown dust from excavated materials. There will also be the normal noises associated with this type of construction. The probability of any damage or pollution to surface water due to erosion during construction is low.

Illinois Department of Natural Resources: The loan applicant submitted their project information to the Illinois Department of Natural Resources (IDNR) EcoCAT website to determine compliance with the Illinois Endangered Species Act, Illinois Natural Areas Preservation Act, and the Illinois Wetlands Act. Initially, the review results indicated that protected resources may be in the vicinity of the locations submitted and the project will need to be evaluated further. A October 12, 2021 letter by IDNR states that based on additional evaluation, a botanical survey should be conducted and if any ground juniper (*Juniperus communis*), marram grass (*Ammophila breviligulata*), sea rocket (*Cakile edentula*), and seaside spurge (*Chamaesyce polygonifolia*) are located they need to be flagged and avoided throughout the project. If avoidance is not possible the use of conservation measures to help promote the continued existence should be used. Survey results should be submitted to IEPA prior to bidding. If conservation measures are required, instructions must be added to the project plans and specifications. In addition, upon further review of the project, IDNR also determined adverse wetland impacts are unlikely and they terminated their consultation for both 17 Ill. Adm. Code Parts 1090 and 1075.

Because this project involves construction in or near a lake, streambank, floodway, and/or floodplain, the loan applicant also submitted their project information to IDNR's Office of Water Resources (OWR) to determine whether a permit is required to comply with the Illinois Lakes, Rivers, and Streams Act. IDNR OWR determined that Evanston's project must follow all required conditions listed in IDNR OWR Permit # LM20210008 dated September 7, 2021. In addition, Evanston must follow the 13 ILEPA Section 401 Water Quality Certification requirements listed in the IEPA Letter dated March 9, 2021. Both requirements should also be listed in the plans and specifications and used throughout the construction process.

United States Army Corps of Engineers: The City of Evanston submitted their project information to the U.S. Army Corps of Engineers (USACE) for their review and determination of requirements related to placement, or excavation, of any dredged or fill materials into rivers, lakes, ponds, large and small streams with perennial, intermittent, or ephemeral flow, artificial water bodies, and wetlands adjacent to these waters and associated permitting. The U.S. Army Corps of Engineers (USACE), Chicago District Office letter dated September 3, 2021, indicates that the proposed water intake complies with the terms and conditions of Regional Permit 8 (Utility Line Projects) and for all activities authorized under the Regional Permit Program. In addition, the four

special conditions shown in the USACE Letter dated September 3, 2021 must be followed. Both requirements should be listed in the final plans and specifications and followed throughout the project.

Illinois Historic Preservation Division of IDNR: An IDNR letter dated April 8, 2021 indicates that the Cast Iron Pipe and Intake Structure, High-Lift Pumping Building, Shorewell #3 and Low-Lift Pumping House are eligible for listing on the National Register of Historic Places. The IDNR State Historic Preservation Office feels the project meets The Secretary of the Interior’s ‘Standards for Rehabilitation and guidelines for Rehabilitating Historic Buildings’ and they concur in a finding of no adverse effect and compliance with Section 106 of the National Historic Preservation Act of 1966.

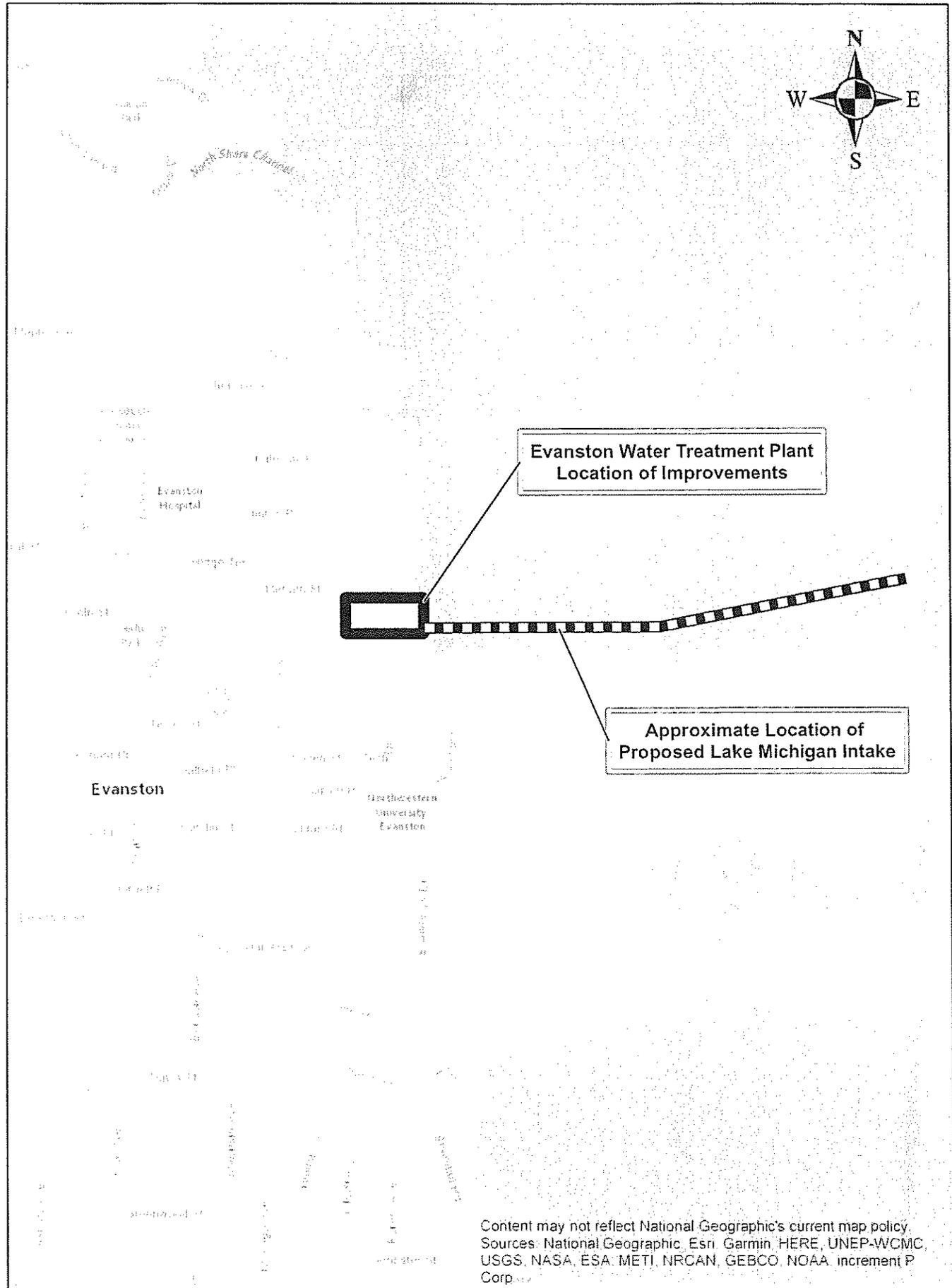
Public comments are invited on the proposed project. For further information contact:

Lanina Clark, Project Manager
Infrastructure Financial Assistance Section
Illinois Environmental Protection Agency
Bureau of Water
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217)782-2027

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Project Location Map

PROJECT LOCATION MAP



Content may not reflect National Geographic's current map policy.
Sources: National Geographic, Esri, Garmin, HERE, UNEP-WCMC, USGS, NASA, ESA, METI, NRCAN, GEBCO, NOAA, increment P Corp.

Project Plan



Illinois Environmental Protection Agency

1021 North Grand Avenue East • P.O. Box 19276 • Springfield • Illinois • 62794-9276 • (217) 782-3397

Drinking Water Project Planning Submittal Checklist Planning File

Before the Agency will begin review of a Project Plan, all of the items below comprising the basic minimum requirements of a Project Plan must be included and the page number(s) of all items noted. Project planning must contain all pertinent information detailed in Ill. Adm. Code 35 Section 662.320(e). The loan applicant should be familiar with their planning responsibilities as detailed in Sections 662.320 and 662.330.

Complete this form online using Adobe Acrobat Reader, save it to your computer, then print and sign it.

Loan Applicant: City of Evanston

Consulting Engineer: Stantec Consulting Services, Inc. Phone Number: 847-448-8217

Project Description:
Replacement of the City's existing 36"/42" raw water intake to address an observed reduction in intake capacity, replace aged infrastructure installed in 1909 that is beyond its useful life, and improve the reliability of the water supply to the region. The project includes a new intake structure consisting of nine upturned cones located on the lake bottom approximately 5,500 feet from the shoreline, a 60" diameter intake pipeline, and associated on-shore facilities.

Fill in the blank with the page(s) where each item below is found in the project plan. Additional information and/or examples for each item number are provided by corresponding numbers contained in the attached instructions.

No.	Page(s) or Comment	Information
1.	Section 1 Pages 2 - 3	Loan applicant's background, total population served by the applicant, customer base, and project location information.
2.	Section 2 Pages 3 - 5	Detailed description of the EXISTING public water supply source(s), treatment facilities, water storage facilities, and distribution system.
3.	Section 3 Pages 5 - 7	Project description that explains the need and justification of the proposed project, including the benefits of the project.
4.	Section 4 Page 8	Discussion of the system's compliance with all applicable laws and regulations governing public water systems.
5.	Section 5 Pages 8 - 11	Basis of design for chosen alternative.
6.	Section 6 Page 12	Inventory of environmental impacts of selected alternative, a discussion of the required mitigation measures, and a completed IEPA Loan Applicant Environmental Checklist form with sign-off documentation.
7.	Appendix C	Reproducible 8.5 X 11 inch map(s) showing the project(s) location(s) relative to the community.
8.	Page 13 and Appendix D	An estimate of the total project costs and a detailed estimate of construction item costs.
9.	Section 9 Pages 13 - 14	Estimated loan terms, including: IEPA loan amount, interest rate, repayment period in years, and the annual loan repayment.
10.	Section 10 Pages 13 - 15	Financial arrangements for assuring adequate annual debt service and O, M, and R coverage, a description of the dedicated source of revenue necessary for loan repayment, and any other funding involved in the project.

No.	Page(s) or Comment	Information
11.	Section 11 Pages 16 - 17	Detailed description of the existing residential rate structure, water consumption, any proposed rate changes, and an example of the existing and the proposed average monthly residential bill because of the project(s).
12.	Appendix E	One copy of completed Existing User Charge and O, M, and R Certification Sheet found on page 3 (attached) should be submitted with the Project Plan.
13.	Section 13 Pages 17 - 18	Discussion of any "green" project components that are part of the proposed project.
14.	Section 14 Page 18	Schedule for project implementation.
15.	Page 19 and Appendix F	Copies of inter-governmental and/or service agreements.
16.	Section 16 Page 19	IEPA construction permit status.
17.	Section 17	Name and address of the local newspaper(s).

Three (3) copies of the Project Plan and related documents should be submitted along with one (1) copy of this completed checklist (pages 1 through 3) to:

Infrastructure Financial Assistance Section (IFAS)
 Illinois Environmental Protection Agency
 1021 North Grand Avenue East
 P.O. Box 19276
 Springfield, IL 62794-9276

IFAS will distribute the planning documents to the appropriate Agency staff for review, comment, and approval. IFAS will contact the loan applicant if further information is needed. Please use the box below for any special instructions or notes.

Please contact the City if hard copies are still needed during CoVID/Remote Working conditions.

The funding plan for this project includes loans from both the USEPA Water Infrastructure Finance and Innovation Act (WIFIA) and the IEPA SRF. On January 8, 2021, the USEPA accepted the City's Letter of Interest for WIFIA funding and invited the City to submit an application for funding of up to 49% of the project. The City may seek to fund only the balance of the project costs through the IEPA SRF Public Water Supply Loan Program (PWSLP). However while the City is at early stages of considering the WIFIA funding, this project plan reflects funding the project fully through the IEPS SRF PWSLP.

**Illinois Environmental Protection Agency
Public Water Supply Loan Program**

Project Plan

36"/42" Raw Water Intake Replacement

City of Evanston, Illinois



January 12, 2021

1.0 Background and Projected Water Demands

The City of Evanston (City) is located within Cook County, Illinois along Lake Michigan, and bordering Chicago to the South. The City operates and maintains a water system that serves Evanston and provides wholesale water service to nearby communities. Within Evanston, the water service area includes approximately 14,500 accounts (over 75,000 residents and numerous commercial and institutional customers), with the largest users being Northwestern University, Evanston Hospital, and St. Francis Hospital. The top ten water users within Evanston represent approximately 22 percent of metered water consumption.

With the addition of a new wholesale customer in 2020, the Evanston Water Utility provides water to a population of approximately 491,000 people; including the City of Evanston, Village of Skokie, Northwest Water Commission (Arlington Heights, Buffalo Grove, Palatine, Wheeling and Des Plaines), the Morton Grove-Niles Water Commission (Morton Grove and Niles), and the Village of Lincolnwood. By 2050 CMAP has estimated the population of these customers to be approximately 549,000.

Projected Water Demands

The Evanston Water Treatment Plant (WTP) is rated at 108 mgd. In 2019, the Average Day Demand (ADD) for treated water was approximately 43.1 mgd and the Maximum Day Demand (MDD) was 60.2 mgd. The following **Table 1** provides a summary of current and projected water demand for Evanston's customer base out to the year 2030 per current IDNR Lake Michigan allocations and contractual agreements. Various peaking factors have been assumed based on contractual agreements or historical data. The 2017 water allocations from the Illinois Department of Natural Resources (IDNR) have also been provided for comparison. An allowance of 10% is also included to account for raw water usage in the water treatment process. Project maximum day demands for 2030 approach the 108 mgd rated capacity of the WTP. While there are no formalized plans to expand the City's water service area beyond the current customer base, it is the City's intent to maintain its ability to operate its WTP at its full rated capacity of 108 mgd.

Table 1 - Current and Projected Water Demands

Customer	2019 Average Day Demand (mgd)	IDNR 2017 Water Allocations (mgd)	2030 Average Day Demand (mgd)	2030 Maximum Day Demand (mgd)
City of Evanston	7.9	9.5	9.7	15.9
Village of Skokie	7.5	10.7	10.8	17.9
Northwest Water Commission	24.3	28.6	30.1	55
Morton Grove – Niles Water Commission	3.4	8.6	9.0	14.9
Village of Lincolnwood	0.0	2.4	2.4	4.0
Total System Demand – Treated Water	43.1	59.8	62.0	107.7
Allowance for WTP Process Usage	10%	10%	10%	10%
Total System Requirement – Raw Water	47.4	65.8	68.2	118.5

2.0 Existing Facilities

The City of Evanston relies upon Lake Michigan for its supply of raw water. The City currently owns and maintains three Lake Michigan intakes that provide raw water to their water treatment facilities located at 555 Lincoln Street in Evanston. The City of Evanston Water Treatment Plant (WTP) is a surface water treatment facility consisting of the three Lake Michigan raw water intakes, preliminary chemical feed and flash mix, flocculation, sedimentation, filtration, post-chlorine feed, and blended phosphate addition. The WTP site also includes low and high lift pumping and finished water storage. As stated previously, the rated capacity of the plant is 108 million gallons per day (mgd).

Finished water storage at the plant consists of eight clearwells beneath the filters and a separate 5.0 MG clearwell. Total (gross) storage volume is 9.4 million gallons (MG). The gross storage volume controls chlorine contact time for disinfection credits. However, the amount of water that can be removed from these storage facilities before breaking suction on the high service pumps (usable storage volume) is 7.2 MG. The usable storage volume is what can be relied upon to equalize fluctuations in plant production and for emergency water supply.

The City's water distribution system consists of one major pumping station at the water treatment plant, two standpipes (5.0 MG and 7.5 MG) with remote booster stations, and approximately 157 miles of water main ranging in diameter from 3 inches to 54 inches.

Existing Intakes

As indicated in the following **Table 2**, the existing raw water intakes range in diameter from 36-inches up to 54-inches and all extend between 5,000 and 6,000 feet out into Lake Michigan, terminating in 25 to 30 feet of water.

Table 2 - Existing Evanston Water Utility Intake Facilities

Date of Construction	Intake Pipeline Diameter (inches)	Approx. Intake Length (ft)	Pipeline Material	Intake Inlet Configuration
1909	36/42	5,943	Cast Iron (On Lake Bottom)	42" upturned tees with wire screens (Linear)
1956/1973	48	5,300	Concrete (Buried)	Nine (9) – 78" upturned cones (balanced cross)
1973	54	5,340	Concrete (Buried)	Single 84" cone within timber crib

The oldest of the City's three intakes was built in 1909 (36"/42" Intake). The 36"/42" Intake pipeline is cast iron, approximately 5,950 feet long, and was laid on the lake bottom (not buried). The pipeline extends from the lake shore at the water plant out approximately 2,850 feet as a 36-inch diameter pipeline with two horizontal bends. The pipe transitions to a 42" pipeline at a wye, and then extends into the lake another 3,100 feet. There is a second wye on the existing 1909 intake that connected at one time to a 30" intake built in 1894. However, this connection and the 30" intake were abandoned in the mid 1970's. The 42-inch section of the 36"/42" Intake pipeline terminates at an array of 14 upturned cones.

The City's other Lake Michigan intakes are each approximately one mile long. The second oldest intake, the 48" Intake, was originally constructed in 1956 and subsequently extended in 1973. It consists of a 48" diameter concrete pipeline that terminates at an array of 9 upturned cones. The newest intake, the 54" Intake, was also constructed during the 1973 intake improvement project. It consists of a 54" diameter concrete pipeline that terminates at a timber crib. The piping for both the 48" Intake and 54" Intake are buried along the lake bottom with approximately five feet of cover.

The City installed chlorine feed to the 48" Intake and 54" Intake as a means to control mussel growth in the summer months, and heating elements to mitigate the formation of ice in the winter months. Visible exterior portions of the intakes are inspected each year by the City's dive team. Historically the three existing intakes have provided high quality raw water. The implementation of the chlorine and heating systems on the 48" Intake and 54" Intake, along with routine dive inspections, have resulted in few operational issues with these two intakes.

The intakes discharge into three interconnected shorewells that are approximately 20 to 80 feet west of the shoreline. The shorewells include traveling screens and discharge through tunnels that feed the water plant low lift pumps. Additional bypass piping provides a separate connection between the 36-inch intake and the low lift pumps.

3.0 Project Need

The City wishes to replace their existing 36"/42" Intake that was constructed in 1909. Over the years the City has regularly performed routine inspections and maintenance on this intake, and has observed a decrease in flow capacity. The intake is also more than 110 years old, and beyond its expected useful life. This loss of capacity, along with the age of the 36"/42" Intake, has prompted the City to take action with a proposed replacement project. The proposed replacement of the existing 36"/42" Intake will require construction of a new intake structure in Lake Michigan, an intake pipeline, and onshore modifications at the WTP site. The existing 36"/42" Intake will be abandoned as part of the proposed project.

By replacing the existing 36"/42" Intake, the City will be ensuring that they can continue to maintain the WTP current capacity of 108 mgd to meet the water demands of Evanston along with wholesale water service customers in nearby communities. Given the importance of the WTP intake system as the sole supply point for all the City's and wholesale customers' drinking water, this project will serve as an important safeguard for maintaining reliable drinking water. As it stands the existing 36"/42" Intake presents multiple concerns to the City that can be alleviated by replacement with a new raw water intake. These concerns include:

- Intake Capacity
 - Observed reduction in capacity over time.
 - Inability of the existing raw water intake system (all three intakes) to provide 120 mgd to meet the water plant capacity at average or low lake level in the event that the 36/42" Intake fails.
- Aging Infrastructure
 - At over 110 years old, the 36"/42" Intake is beyond its expected useful life.
 - General structural integrity of the 36"/42" Intake.
 - Potential deterioration of water quality upon a break in the 36/42" Intake.
- Reliability
 - Susceptibility to icing due to the intake structure configuration. This existing intake cones on the 36"/42" Intake are not optimized hydraulically

for the mitigation of frazil ice formation, nor are they suitable for the installation of an intake heating system.

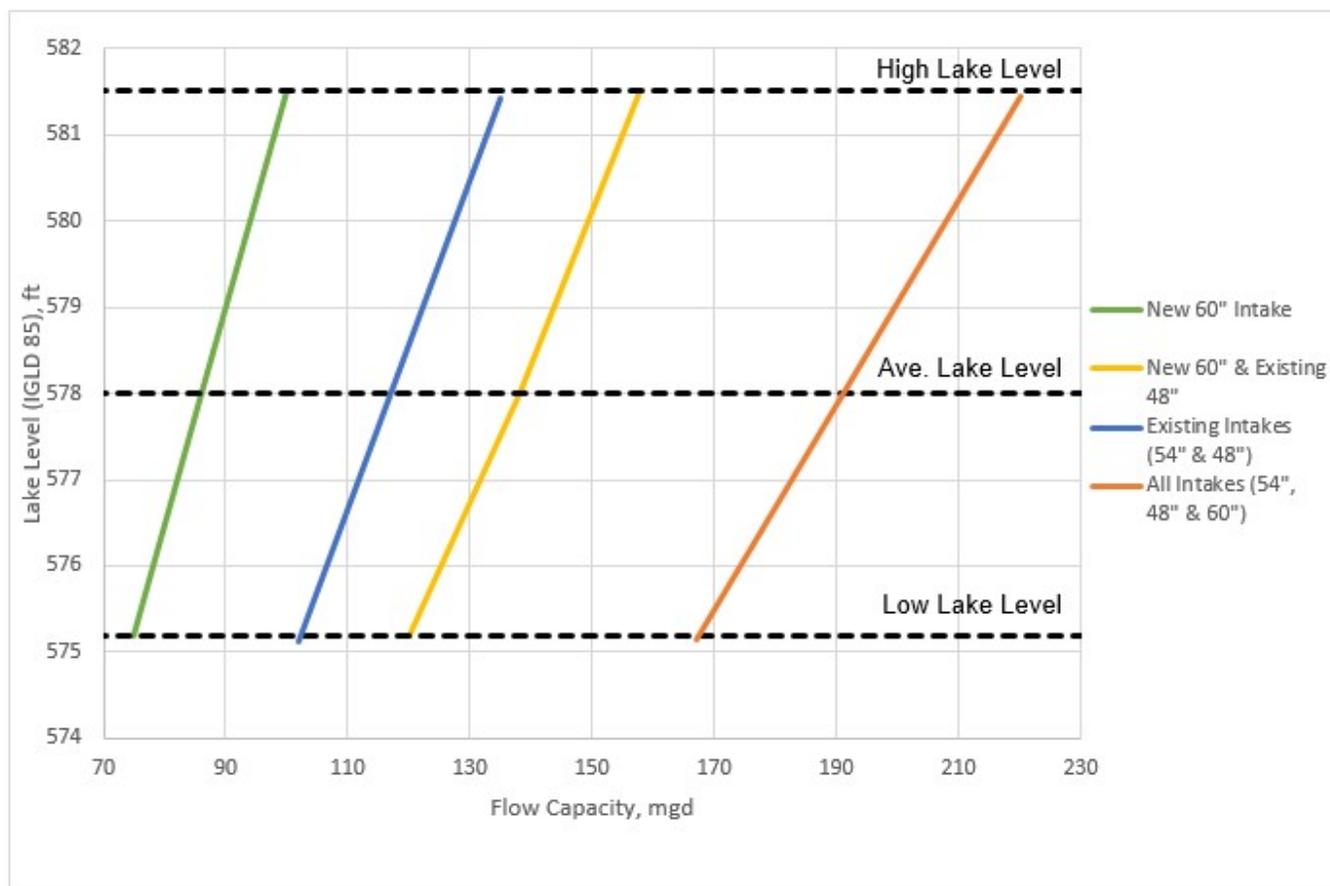
Intake Capacity

Over the years, the City has observed a reduction of flow through the 36"/42" Intake. This may be due to the buildup of silt or sediment within portions of the pipe, or an unseen failure in the pipeline. Even prior to the observed reduction in capacity, the combined intakes did not provide the needed firm raw water supply capacity.

Replacement of the 36"/42" Intake will ensure that the rated WTP capacity can be met without concerns of a bottleneck in the raw water intake system. The WTP has the capacity to treat and supply 108 MGD of potable drinking water. To allow for up to 10% losses in the treatment process due to backwashing and other plant usage, it is necessary that the intake capacity to the plant be equal to or greater than 118.8 mgd. Based on this requirement, an intake system capacity of 120 mgd is proposed. For reliability, this capacity should be available with the largest existing intake out of service. It was determined through hydraulic analysis that the replacement intake should be 60" diameter to meet this criteria and best meet current and future water demands.

The proposed intake capacity is impacted by Lake Michigan water levels which vary seasonally and over time. These variations were taken into consideration when evaluating the required capacity and size of the proposed intake. Projected low lake levels considering climate change were identified as a reasonably conservative design constraint to provide long-term reliable supply. The following **Figure 1** depicts the relationship between the levels in Lake Michigan and the flow capacity of the WTP intake system, including combinations of expected capacities from the existing intakes and the proposed 60" Intake. The yellow line illustrates the capacity of the proposed 60" Intake and 48" Intake, which is the proposed design condition with the largest intake out of service. Furthermore, it can be observed in **Figure 1** that during average to low lake levels the combined 48" Intake and 54" Intake capacity will not provide sufficient flow to meet the required intake system capacity of 120 mgd; which is a scenario that could occur with the continued loss of capacity or failure of the existing 36"/42" Intake.

Figure 1 – Intake Capacity in Respect to Lake Level Variations



Aging Infrastructure

Of the three Evanston raw water intakes the 36"/42" is the oldest. It was installed in 1909, making it over 110 years old and beyond its expected useful life. Given that the 36"/42" Intake is not a buried pipe, but is instead an exposed conduit laid on the lake bed, the impact of lake currents and corrosion is much more severe than on typical buried pipe installations which causes concern for the overall structural integrity of the intake. In addition to the general structural integrity of the intake, the age of 36"/42" Intake puts it well within the range of replacement age. Failure of the 36"/42" intake might not only impact the quantity of the raw water supply, but may also adversely impact the water quality in terms of additional sediment loads on the water treatment plant should the intake pipe line rupture between the intake and the shorewell.

Reliability

Along with the reliability provided with a new, appropriately-sized intake with buried pipe, the proposed intake will be hydraulically balanced, design for low intake velocities, and include a heating system to mitigate the risk of frazil ice formation during winter months. This will further improve the reliability of water supply to the region.

4.0 Regulatory Compliance

The City of Evanston's water system currently meets all applicable laws and regulations. The goal of this project is not to address a regulatory compliance goal, but rather to address aging infrastructure that is not performing as intended. All Evanston WTP improvements are constructed and operated in compliance with Title 35, Environmental Protection, Parts 601 through 691 of the Illinois Administrative Code. The proposed replacement intake will enable the City to meet projected future maximum day demands for raw water with either its 48" or 54" diameter intake out of service when the lake is at low level.

5.0 Basis of Design

Lake Michigan is the only reliable water source available to Evanston. As such, it is imperative that Evanston can maintain an adequate flow of raw water from the intake system to keep up with the rated WTP capacity of 108 mgd. Given the decrease in capacity and the age of the 36"/42" Intake, the City considers it a critical infrastructure item that must be addressed at this time. Alternatives for addressing intake capacity include:

1. Do nothing – This is not a feasible option given concerns related to the long-term reliability of the aging 36"/42" Intake. If the capacity continues to decrease, or it fails, the existing 48" and 54" intakes cannot reliably provide needed water at a low lake level. Additionally, the needed capacity cannot be met at high lake levels if one of the remaining two intakes becomes inoperable.
2. Rehabilitate 36"/42" diameter intake –If restored to its original design capacity, the overall intake system would not meet goal of full capacity with one intake out of service. Additionally, given the age of the existing pipeline and vulnerability associated with the exposed pipeline on the lake bottom, rehabilitation is not a viable option.
3. Replace 36"/42" diameter intake – This is the only option that addresses issues with aging infrastructure and enables the City to meet its objective for reliable long-term supply capacity with one intake out of service. This option is the only viable alternative.

Intake Location, Structure, and Pipe

The intake structure of the proposed intake will consist of nine upturned intake cones located near the lake bottom, at a location approximately 5,500 feet from the shoreline. The location of the new intake cones will be in relatively close proximity to the existing intake structures as this location has historically provided quality raw water, with no areas of concern found during additional coastal investigations. A chlorine feed and heating system will be installed on the proposed intake to mitigate mussel growth in the summer months and the formation of frazil ice in the winter.

The Intake cones will be sized such that the maximum velocity threshold of the flow into the intake cones during winter design conditions will be 0.25 ft/s to mitigate the formation of frazil ice, and 0.5 ft/s at all other times to avoid fish impingement and introduction of sediment into the intake.

Based on an evaluation of suitable materials, Prestressed Concrete Cylinder Pipe (PCCP) per AWWA C301 was selected for the intake pipe material. It is anticipated that the intake pipe will be primarily installed using marine open-trench methods from barges. Pipe will be buried with a minimum of four feet of cover and backfilled with coarse granular material and anchor stone protection. Access ports will be installed at intervals of 1,000 feet along the intake pipeline for use as points of inspection for future maintenance.

Hydraulic Evaluation

As previously indicated, the water treatment plant has the capacity to treat and supply 108 MGD of potable drinking water. A raw water intake system with a design capacity requirement of 120 MGD has been established to provide approximately 10% of additional flow for backwashing and plant operations. For reliability, this flow is to be available with the largest existing intake out of service. The size of the new raw water intake pipe is driven by multiple factors. Characteristics of the existing facilities, water supply requirements, lake level, and pipe roughness all factor into the new pipe sizing. Existing facilities considered in the analysis of the replacement project include the capacity of the existing intakes, intake wells, and low lift pumping station. Each factor was analyzed individually, and then collectively, to determine its impact on the intake pipe sizing.

In order to establish the required design capacity for a new intake, the raw water intake system design capacity requirement, along with the total amount of flow from the existing intakes, must be considered. After the 36"/42" Intake is taken out of service and replaced, the total intake system flow capacity will be equal to the combined capacity of the 48" Intake, the 54" Intake, and the new replacement intake. However, for reliability, the design capacity of the new raw water intake system will provide the 120 mgd raw water supply with the largest intake out of service. The design capacity must also consider variations due to fluctuation in lake levels, specifically when the lake is at the Low Lake Level of 575.2 (IGLD 85). The respective capacities of the existing intakes to remain were calculated using information obtained via pump draw-down tests conducted in July 2019 and hydraulic analysis using hydraulic modeling software.

Results from this evaluation indicate that the combined flow from the 48" Intake and 54" Intake can potentially reach between 92 mgd and 122 mgd depending on lake levels.

It was determined through hydraulic analysis of multiple intake pipe diameters in conjunction with the capacities of the existing 54" and 48" intakes that the proposed intake should be 60" diameter in order to best meet current and future water requirements. This will provide an intake system design capacity of 120 mgd at Low Lake Level (575.2) with the existing 54" Intake out of service. Replacement of the

existing 36"/42" intake with a new 54" intake, which is the next smaller size of commercially available pipe, would not meet the design flow requirements under these same conditions. A summary of existing intake capacities along with the proposed conditions are summarized in the following table.

Table 3 - Summary of Intake Capacity

Lake Level, IGLD 85 (ft)	48" Intake Capacity (mgd)	54" Intake Capacity (mgd)	48" & 54" Existing Intake Combined Capacity (mgd)	Proposed 60" Intake Capacity (mgd) ¹	Intake System Capacity of Existing 48" Intake + Proposed 60" Intake (mgd) ²
Low Lake Level: 575.2	45	47	92	75	120
Average Lake Level: 578.0	52	55	107	86	138
High Lake Level: 581.5	60	62	122	100	160

1. Design capacity of proposed 60" Intake will be 75 mgd.

2. Intake System Design Capacity considered with the existing 54" Intake taken out of service.

Design Summary

Select Drawings showing the overall layout of the project have been included in Appendix A. Project Basis of Design parameters for the proposed 60" Intake are presented in the following **Table 4**. All elevations refer to the Evanston City Datum unless stated otherwise.

Table 4 - Intake Basis of Design

Design Parameter	Value
WTP Rated Capacity	108 mgd
Low Lift Pump Station Average Operating Level	-14.0 ft ECD (564.5 ft IGLD 85)
Low Lake Level	-3.3 ECD (575.2 ft IGLD 85)
Average Lake Level	-0.5 ECD (578.0 ft IGLD 85)
High Lake Level	3.1 ECD (581.5 ft IGLD 85)
60" Intake Capacity at Low Lake Level (Rated Design Capacity)	75 mgd
60" Intake Capacity at Average Lake Level	86 mgd
60" Intake Capacity at High Lake Level (Maximum Flow Condition)	100 mgd
Intake System Design Capacity (Low Lake level with 48" and 60" intakes)	120 mgd
Intake System Capacity at Average Lake Level (with 48" and 60" intakes)	138 mgd
Intake System Capacity at High Lake Level (with 48" and 60" intakes)	160 mgd
Intake Length from Shoreline	5,600
Invert Elevation of Intake Pipe at Shore	-15.0
Invert Elevation of Intake Pipe at Intake Structure	-40.5
Intake Structure Top of Cone Elevation	-26.0
No. of Intake Structures	1
No. of Intake Ports	9
Intake Port Diameter	10.5 ft
Total Intake Port Area	779 sq ft
Intake Port Maximum Velocity Criteria for frazzle ice (based on design capacity of 75 mgd)	0.25 ft/s
Intake Port Maximum Velocity Criteria for fish impingement and sedimentation reduction (based on maximum flow condition, 100 mgd)	0.5 ft/s

6.0 Environmental Impacts

The project has been reviewed against the IEPA Loan Applicant Environmental Checklist. A summary of the review is presented in the following **Table 5**. An Environmental Checklist and the environmental documents referenced in the table are included in Appendix B to this Project Plan.

Table 5 - Environmental Checklist Summary

Potential Impact	Anticipated Result
Illinois Department of Natural Resources (IDNR) National Historic Preservation Act, Section 106	Section 106 consultation was initiated with IDNR on February 6, 2020.
IDNR compliance with: <ul style="list-style-type: none"> • Illinois Endangered Species Protection Act (Part 1075) • Illinois Natural Areas Preservation Act • Illinois Interagency Wetlands Protection Act (Part 1090) 	An IDNR EcoCAT query was submitted on February 7, 2020. The initial IDNR response, dated February 7, 2020, and the official IDNR response, dated February 21, 2020, are attached in Appendix B.
IDNR Office of Water Resources (OWR) - Construction in Lake Michigan	A pre-application meeting with IDNR-OWR and USACE was held on August 16, 2019. IDNR-OWR indicated that an individual permit would be required for the proposed project. A copy of the meeting minutes from the pre-application meeting is attached in Appendix B.
United States Army Corps of Engineers (USACE) – Section 404 permit for fill within waters of the United States	A pre-application meeting with IDNR-OWR and USACE was held on August 16, 2019. USACE indicated that a Regional Permit 8 would be required for the proposed project. A copy of the meeting minutes from the pre-application meeting, and an email from the USACE are attached in Appendix B.
Conversion of prime agricultural land	The proposed project will not impact prime agricultural lands.
Secondary Environmental Impacts - growth in more than 30% reserve capacity	Work will not increase the capacity of the existing water supply system. No additional development is anticipated as a result of this project. No impact is anticipated.
Chicago Metropolitan Agency for Planning (CMAP)	This consultation is not applicable.

7.0 Location Map

A project location map has been included in Appendix C.

8.0 Estimate of Project Cost

A summary of estimated project costs is presented in the following **Table 6**. Engineering costs reflect current contract amounts. A detailed estimate of construction costs is provided in Appendix D. The construction cost carried forward reflects the high range of the AACEI criteria due to the volatility and uncertainty of the current bidding environment, particularly with respect to work on the Great Lakes.

Table 6 - Estimated Project Costs

Category	Amount
Design Engineering	\$766,048.00
Construction Engineering	\$671,254.00
Other Professional Services	\$0.00
Construction	\$40,170,000.00
Construction Contingency (10%)	\$4,017,000
TOTAL ESTIMATED PROJECT COSTS	\$45,624,302.00

9.0 Estimated Loan Terms

The total project cost is estimated at \$45,624,302.00. The funding plan for this project includes loans from both the USEPA Water Infrastructure Finance and Innovation Act (WIFIA) and the IEPA SRF. On January 8, 2021, the USEPA accepted the City's Letter of Interest for WIFIA funding and invited the City to submit an application for funding of up to 49% of the project. The City may seek to fund only the balance of the project costs through the IEPA SRF Public Water Supply Loan Program (PWSLP). However while the City is at early stages of considering the WIFIA funding, this project plan reflects funding the project fully through the IEPS SRF PWSLP. A projected debt repayment schedule based on PWSLP funding is shown in the following **Table 7**. Since the State Revolving Fund interest rate for FY 2022 is not yet known, an assumed interest rate of 2.0% is used.

Table 7 - Dept Repayment Calculation

Percent Funded	100%
Dollars Funded	\$45,624,302.00
Loan Interest Rate	2.0%
Loan Duration	20 years
Annual Loan Payment	\$2,790,233.00

10.0 Financial Arrangements

Revenues for debt repayment will be generated through wholesale and retail water user charges. Evanston retail customers consume only approximately 13.5 percent of the water produced at the Evanston Water Treatment Plant. The remainder is sold to wholesale customers. Evanston wholesale water agreements follow the AWWA M-1 methodology so that wholesale customers share in capital costs proportionate to their water use. Therefore, at the assumed interest rates, wholesale customer rate increases would ultimately cover the project finance costs. However, contractual annual wholesale rate increase caps leave Evanston retail customers responsible for approximately 11 percent of loan repayment costs, or approximately \$311,453, on the first year of the loan, decreasing over the first eight years of the loan repayment.

Revenues from retail and wholesale water sales are deposited in the Water Fund, an enterprise fund. A summary of the Water Fund budget for FY 2021, beginning January 1, 2021, is shown in the following **Table 8**. The City anticipates maintaining the Water Fund O, M & R Reserve at or near the \$3,500,000 target level in future years.

Table 8 - Water Fund Budget Summary

	FY 2020 Year-End Estimate	FY 2021 Adopted Budget
Operating Revenues		
Retail Water Sales	\$ 6,357,400	\$ 6,983,000
Wholesale Water Sales	\$ 8,113,000	\$ 8,270,000
Cross Connection Control	\$ 117,000	\$ 120,000
Bond Proceeds	\$ 2,870,000	\$ 6,100,000
IEPA Loan Proceeds	\$ 1,430,000	\$ 6,190,000
Grants	\$ 14,181	\$ 0
Phosphate Sales	\$ 45,000	\$ 45,000
Property Sales and Rentals	\$ 227,316	\$ 146,100
Other Fees and Sales	\$ 218,000	\$ 190,000
Investment Proceeds	\$ 12,000	\$ 10,000
Miscellaneous	\$ 4,300	\$ 5,000
Total Revenue	\$19,408,197	\$28,059,100
Operating Expenses		
General Support	\$ 898,468	\$ 983,266
Pumping	\$ 2,172,119	\$ 2,246,701
Filtration	\$ 2,572,444	\$ 2,633,653
Distribution	\$ 1,450,368	\$ 1,724,142
Meter Maintenance	\$ 272,565	\$ 193,336
Other Operating Expenses	\$ 464,000	\$ 578,000
Capital Outlay	\$ 368,100	\$ 419,000
Capital Improvement	\$ 7,072,400	\$18,402,600
Debt Service – Bonds	\$ 1,102,835	\$ 978,894
Debt Service – IEPA Loan 3382	\$ 67,505	\$ 67,505
Transfer to General Fund	\$ 3,369,559	\$ 3,374,053
Transfer to Insurance Fund	\$ 468,492	\$ 468,492
Total Expenses	\$20,278,855	\$32,069,642
Net Surplus (Deficit)	(\$ 870,658)	(\$ 4,010,542)
Beginning Water Fund OM&R Reserve	\$ 8,590,091	\$ 7,719,433
Ending Water Fund OM&R Reserve	\$ 7,719,433	\$ 3,708,891
Target Water Fund OM&R Reserve	\$ 3,500,000	\$ 3,500,000

11.0 Rate Structure

Evanston's retail water rates include a minimum charge for the first 5 units based on water meter size, and a quantity charge for every unit in excess of the first 5 units in the bi-monthly billing period (1 unit = 100 cubic feet or 748 gallons of water).

Current retail water rates took effect January 1, 2020. For the 5/8-inch and 3/4-inch meter sizes (the sizes most commonly used in single-family homes) the minimum charge for the first 500 cubic feet consumed in the bi-monthly billing period is \$10.33. The quantity charge for usage in excess of 500 cubic feet is \$2.89 per 100 cubic feet. Calculation of the average bi-monthly water bill (and equivalent monthly cost) for single-family residential customers under current rates is shown in the following **Table 9**. Data in the table reflects the 2019 consumption data with 2020 rates.

Table 9 - Current Estimated Average Single-Family Residential Water Bill

Bi-Monthly Minimum Charge	\$10.33
Average Water Use per Bi-Monthly Billing Period – 2019 (CFF)	15.8
Water Use Included in Minimum Charge (CCF)	5.0
Water Use Billed to Quantity Charge (CCF)	9.1
Water Quantity Rate (\$/CCF)	\$2.89
Water Quantity Charge	\$31.21
Average Bi-Monthly Residential Water Bill	\$41.54
Equivalent Monthly Water Cost	\$20.77

Total billed annual water usage in Evanston was 3,420,555 CCF in 2019. The following **Table 10** outlines the estimate of the annual debt service cost per CCF for this project and the maximum theoretical impact on an average single-family residential customer's bi-monthly water bill (and equivalent monthly water cost). However, as discussed in Section 10, revenue from wholesale water customers will provide much of the revenue needed to repay the loan. The table demonstrates the maximum impact during only the first year of the loan repayments. Furthermore, it is anticipated that Evanston's portion of the annual debt service will be absorbed into existing retail water rates and no retail water rate increase will be necessary to repay the loan. In the long-term financial plan, the rate increase shown in 2025 will be offset by an equivalent decrease in the sewer rate, so that there is a zero net change in the average residential utility bill. The five percent rate increase shown in 2026 will be the first water/sewer utility rate net increase proposed for Evanston residents in ten years.

Table 10 - Average Single-Family Residential Water Bill Increase

Annual Loan Payment (Evanston portion)	\$444,306
2019 Water Consumption in CCF (Evanston retail customers)	3,420,555
Debt Service Cost per CCF	\$0.09
Bi-Monthly Water Usage Billed at Quantity Rate (CCF)	10.8
Increase to Bi-Monthly Water Bill	\$0.97
Equivalent Monthly Water Cost Increase	\$0.49

12.0 Existing User Charge and Certifications

Existing User Charge and O, M, and R Certifications have been included in Appendix E. As noted in Section 10, the water fund is operating annually in a positive balance, with a year-end target Reserves balance of \$3,500,000. The budgeted net operating income for 2021 is at a deficit of approximately \$4,010,542, which is drawing down from a high reserves balance from 2020, and ending 2021 with a reserves balance of \$3,708,891.

13.0 Discussion of “Green” Project Components

Although this project will not receive an Envision rating, it was evaluated using sustainable practices outlined by the Institute for Sustainable Infrastructure (ISI) Envision rating tool.

The 36/42” Raw Water Intake Replacement project was evaluated against the five credit categories included in the Envision rating process which are Quality of Life, Leadership, Resource Allocation, Natural World, and Climate and Risk. Based on this evaluation the following aspects of the design approach provide meaningful steps towards sustainability and resiliency:

- The City has illustrated its commitment to sustainability through its adoption of the Climate Action Resilience Plan (CARP).
- The main performance goal of the project itself is to provide sustaining reliability to satisfy water demands across the City and to its regional wholesale customers.
- Evanston has in place a robust plan for long term monitoring and maintenance to extend the life span of the new infrastructure including Diving Staff within their operations.
- Native material is to be used for marine trench backfill and landside trench backfill.

- The adjustable intake heater system includes a remote temperature probe to allow for efficient power usage for intake heating. Inclusion of the temperature probe improves system efficiency, function, and reliability by reducing the risk of freezing. This illustrates a successful risk reduction strategy promoting improved infrastructure integration.
- The project included an early climate change vulnerability evaluation based on low lake level impacts and associated risk on the intake capacity due to climate change. It considered the achieved resiliency of the installation of a redundant intake to ensure a reliable water source to the regional communities.

14.0 Schedule for Project Completion

Anticipated Project Schedule is outlined in the following **Table 11**.

Table 11 - Anticipated Project Schedule

Milestone	Date(s)
Permitting Agency Coordination Period (including USACE Individual Permit Review Period)	December 2020 to December 2021
Complete Final Bidding Documents	September 2021
Project Advertisement	November 2021
Notice of Award	January 2022
Notice to Proceed	January 2022
Construction Season 1	April 2022 to October 2022
Construction Season 2	April 2023 to October 2023
Project Complete	December 2023

SRF FY 2022 Milestone Notes:

1. IEPA Project Plan Approval Deadline (FY 2022): March 31, 2021
2. Intended Use Plan Published (FY 2022), July 1, 2021
3. Bid Advertisement Deadline (FY 2022): April 15, 2022
4. Final Bid Package due to IEPA (FY 2022): June 15, 2022

15.0 Inter-governmental and Service Agreements

The City of Evanston holds wholesale water supply agreements with the following entities which are included in Appendix F:

- Northwest Water Commission (NWC)
- Village of Skokie
- Morton Grove – Niles Water Commission (MGNWC)
- Village of Lincolnwood

16.0 IEPA Construction Permit Status

This project will require a construction permit from the IEPA. A permit application will be submitted by the end of 2020 with the 60% drawings. An approved permit will be obtained per the requirements of the IEPA loan agreement requirements prior to construction of the proposed infrastructure.

17.0 Name and Address of Local Newspapers

The Daily Northwestern
1999 Campus Drive, Evanston, IL, 60201

The Chicago Sun-Times
30 N. Racine Ave., 3rd Floor, Chicago, IL 60607

The Chicago Tribune
160 N. Stetson Ave., Chicago, IL 60601

APPENDIX A

DRAWINGS

(Under Separate Cover)

APPENDIX B

ENVIRONMENTAL CHECKLIST AND DOCUMENTS

IEPA Loan Applicant Environmental Checklist and Certification Form

Loan Applicant: City of Evanston

L17#: _____

This form must be signed by the loan applicant's Authorized Representative (not the consultant). ALL loan applicants must provide items 1 and 2 below. Items 3-7 are specific to conditions of project. See the attached instructions that explain the requirements and provide contact information. If you believe an item is not required for your project, enter N/A instead of the date of response.

1) Provide records of consultation with Illinois Department of Natural Resources (IDNR) for National Historic Preservation Act, Section 106 sign-off. **Date of IDNR response:** Pending USACE Review

2) Provide records of consultation with IDNR's Division of Ecosystems and Environment for evaluation of the Illinois Endangered Species Protection Act (Part 1075), the Illinois Interagency Wetlands Protection Act (Part 1090), and the Illinois Natural Areas Preservation Act. **Date of Eco-CAT printout:** February 7, 2020

Date of IDNR follow-up letter (when protected resources are identified): February 21, 2020

For projects involving construction within any river, stream, wetland, floodway, waterway, any body of water, or construction located within 250 feet of these areas; provide records of consultation from both of the following:

3) IDNR Office of Water Resources (OWR) **Date of IDNR OWR response:** Aug. 16, 2019 (pre-Application meeting)

4) U.S. Army Corps of Engineers (USACE) **Date of USACE response:** Aug. 16, 2019 (pre-Application meeting)

If the project involves conversion of prime agricultural land to other uses, provide records of consultation from:

5) Illinois Department of Agriculture (IDOA). **Date of IDOA response:** Not applicable

If the project includes 30% or more reserve capacity for future growth in the existing or proposed service areas, provide records of consultation from all applicable environmental regulatory entities listed on this form for the known growth/development areas associated with the identified secondary/indirect environmental impacts.

6) **Secondary impacts list of applicable regulatory entities and date of their responses:** Not applicable

If any project with secondary impacts is located in a county under the jurisdiction of a Designated Water Quality Management Agency (DWQMA), which are the Greater Egypt Regional Planning & Development Commission (GERPDC), the Southwestern Illinois Metropolitan and Regional Planning Commission (SIMAPC), and the Chicago Metropolitan Agency for Planning (CMAP), provide records of consultation from:

7) GERPDC **Date of GERPDC response:** Not Applicable

SIMAPC **Date of SIMAPC response:** Not Applicable

CMAP **Date of CMAP response:** Not applicable

Certification: By signing this form, the Loan Applicant is certifying that the applicable environmental evaluations were conducted for the proposed project locations, and if the review results for any of these environmental evaluations include recommendations, conditions, certifications, and/or permits, the Loan Applicant agrees to comply with them and include them within the bidding and construction contract documents.

Signed: Erika Storkie

Date: 01/11/2021

Loan Applicant's Authorized Representative

Applicant: Stantec (Chicago)
Contact: Rick Bolliger
Address: 350 N. Orleans St.
Suite 1301
Chicago, IL 60654

IDNR Project Number: 2006463
Date: 02/07/2020

Project: City of Evanston 1909 Raw Water Intake Replacement
Address: 531 N. Lincoln Street, Evanston

Description: The City of Evanston proposes to replace a raw water intake pipe in Lake Michigan for their water treatment plant. The existing pipe and intake structure, which were originally constructed in 1909, have exceeded their intended design lifespans and the City has recently observed a decrease in capacity. The replacement pipe will extend approximately 5,600 feet offshore and will be offset from the existing 1909 pipe to allow for construction.

Natural Resource Review Results

Consultation for Endangered Species Protection and Natural Areas Preservation (Part 1075)

The Illinois Natural Heritage Database shows the following protected resources may be in the vicinity of the project location:

- Ground Juniper (*Juniperus communis*)
- Marram Grass (*Ammophila breviligulata*)
- Sea Rocket (*Cakile edentula*)
- Seaside Spurge (*Chamaesyce polygonifolia*)

Wetland Review (Part 1090)

The Illinois Wetlands Inventory shows wetlands within 250 feet of the project location.

An IDNR staff member will evaluate this information and contact you to request additional information or to terminate consultation if adverse effects are unlikely.

Location

The applicant is responsible for the accuracy of the location submitted for the project.

County: Cook

Township, Range, Section:
41N, 14E, 7



IL Department of Natural Resources
Contact
Adam Rawe
217-785-5500
Division of Ecosystems & Environment

Government Jurisdiction
City of Evanston
Paul Moyano
555 Lincoln St.
Evanston, Illinois 60201

Disclaimer

The Illinois Natural Heritage Database cannot provide a conclusive statement on the presence, absence, or condition of natural resources in Illinois. This review reflects the information existing in the Database at the time of this inquiry, and should not be regarded as a final statement on the site being considered, nor should it be a substitute for detailed site surveys or field surveys required for environmental assessments. If additional protected resources are encountered during the project's implementation, compliance with applicable statutes and regulations is required.

Terms of Use

By using this website, you acknowledge that you have read and agree to these terms. These terms may be revised by IDNR as necessary. If you continue to use the EcoCAT application after we post changes to these terms, it will mean that you accept such changes. If at any time you do not accept the Terms of Use, you may not continue to use the website.

1. The IDNR EcoCAT website was developed so that units of local government, state agencies and the public could request information or begin natural resource consultations on-line for the Illinois Endangered Species Protection Act, Illinois Natural Areas Preservation Act, and Illinois Interagency Wetland Policy Act. EcoCAT uses databases, Geographic Information System mapping, and a set of programmed decision rules to determine if proposed actions are in the vicinity of protected natural resources. By indicating your agreement to the Terms of Use for this application, you warrant that you will not use this web site for any other purpose.
2. Unauthorized attempts to upload, download, or change information on this website are strictly prohibited and may be punishable under the Computer Fraud and Abuse Act of 1986 and/or the National Information Infrastructure Protection Act.
3. IDNR reserves the right to enhance, modify, alter, or suspend the website at any time without notice, or to terminate or restrict access.

Security

EcoCAT operates on a state of Illinois computer system. We may use software to monitor traffic and to identify unauthorized attempts to upload, download, or change information, to cause harm or otherwise to damage this site. Unauthorized attempts to upload, download, or change information on this server is strictly prohibited by law.

Unauthorized use, tampering with or modification of this system, including supporting hardware or software, may subject the violator to criminal and civil penalties. In the event of unauthorized intrusion, all relevant information regarding possible violation of law may be provided to law enforcement officials.

Privacy

EcoCAT generates a public record subject to disclosure under the Freedom of Information Act. Otherwise, IDNR uses the information submitted to EcoCAT solely for internal tracking purposes.



EcoCAT Receipt	Project Code 2006463
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APPLICANT	DATE
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Stantec (Chicago) Rick Bolliger 350 N. Orleans St. Suite 1301 Chicago, IL 60654	2/7/2020
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DESCRIPTION	FEE	CONVENIENCE FEE	TOTAL PAID
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EcoCAT Consultation	\$ 125.00	\$ 2.81	\$ 127.81
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TOTAL PAID	\$ 127.81
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Illinois Department of Natural Resources
One Natural Resources Way
Springfield, IL 62702
217-785-5500
dnr.ecocat@illinois.gov



Illinois Department of Natural Resources

One Natural Resources Way Springfield, Illinois 62702-1271
www.dnr.illinois.gov

JB Pritzker, Governor
Colleen Callahan, Director

February 21, 2020

Mr. Richard Bolliger
350 North Orleans Street, Suite 1301
Chicago, IL 60654

**RE: City of Evanston 1909 Raw Water Intake Replacement
Consultation Program
EcoCAT Review #2006463
Cook County**

Dear Mr. Bolliger:

The Department has received your submission for this project for the purposes of consultation pursuant to the *Illinois Endangered Species Protection Act* [520 ILCS 10/11], the *Illinois Natural Areas Preservation Act* [525 ILCS 30/17], and Title 17 *Illinois Administrative Code* Part 1075. Additionally, the Department may offer advice and recommendations for species covered under the *Fish & Aquatic Life Code* [515 ILCS 5, *et seq.*]; the *Illinois Wildlife Code* [520 ILCS 5, *et seq.*]; and the *Herptiles-Herps Act* [510 ILCS 69].

The proposed action consists of replacing a raw water intake pipe and associated infrastructure in Lake Michigan for an existing water treatment plant located in Evanston, IL. The existing structures, originally constructed in 1909, have exceeded their life expectancies, resulting in decreased capacity. A replacement pipe is proposed to extend approximately 5,600 feet offshore and will be offset from the existing pipe to allow for construction. The preliminary design consists of a series of upturned cones with a maximum velocity of 0.25 ft/sec. Final cone spacing and size is dependent upon modeling for efficient operation. A subset of intake cones will have heating systems to minimize impact of ice formation and cones will have chlorine dosing capabilities to reduce quagga and zebra mussel impacts to the pipe. Chlorine dosing procedures will be similar to practices currently in use.

The project was submitted for consultation via the EcoCAT system. EcoCAT searched the Natural Heritage database and determine the following state-listed plants are in the vicinity of the project: ground juniper (*Juniperus communis*), marram grass (*Ammophila breviligulata*), sea rocket (*Cakile edentula*) and seaside spurge (*Chamaesyce polygonifolia*).

State-listed plants belong to the landowner and their fate resides with the landowner's conservation decisions. Express written permission from the landowner should be obtained for construction companies/crews to "take" listed plants to comply with the Illinois Endangered Species Protection Act. However, the Department recommends a botanical survey be conducted and if any of the listed plants are

located, flag their location and avoid them. If avoidance is not possible, please consider conservation measures to help promote the continued existence of these plants in the area.

Given the above recommendation is adopted, the Department has determined that impacts are unlikely. **In accordance with 17 Ill. Adm. Code 1075.40(h), please notify the Department of your decision regarding these recommendations.**

Consultation on the part of the Department is closed, unless the applicant desires additional information or advice related to this proposal. Consultation for Part 1075 is valid for two years unless new information becomes available which was not previously considered; the proposed action is modified; or additional species, essential habitat, or Natural Areas are identified in the vicinity. If the action has not been implemented within two years of the date of this letter, or any of the above listed conditions develop, a new consultation is necessary.

The natural resource review reflects the information existing in the Illinois Natural Heritage Database at the time of the project submittal and should not be regarded as a final statement on the project being considered, nor should it be a substitute for detailed site surveys or field surveys required for environmental assessments. If additional protected resources are unexpectedly encountered during the project's implementation, the applicant must comply with the applicable statutes and regulations.

Please contact me with any questions about this review.

Sincerely,



Adam Rawe
Resource Planner
Office of Realty & Capital Planning
Illinois Dept. of Natural Resources
One Natural Resources Way
Springfield, IL 62702-1271
adam.rawe@illinois.gov
Phone: (217) 785-4991

Permit Pre-Application MeetingEvanston 1909 Raw Water Intake Replacement / 173440108

Date/Time: August 16, 2019 / 10:00 AM
Place: USACE Office, 231 S. LaSalle St. Suite 1500
Next Meeting: Not Applicable
Attendees: Paul Moyano (City of Evanston)
Joe Johnson, Rick Bolliger (Stantec)
Soren Hall (USACE)
Jim Casey (IDNR-OWR, by phone)
Absentees: Not Applicable
Distribution: Attendees, File 173440108

Item:**Action:****1. Project Introduction**

None.

Paul Moyano and Joe Johnson summarized the existing Evanston Lake Michigan raw water intake facilities and the proposed replacement for the 1909 intake. A new 60" trenched pipe and inlet structure are proposed. The design process for this project started in June 2019. The intent of this meeting is to solicit feedback from permitting agencies early in the design process.

Mr. Hall and Mr. Casey asked several questions, including:

- How will the replaced intake be abandoned/sealed? *The existing pipes will be abandoned in place, cut where necessary for the installation of the new pipe, and sealed near the plant.*
- Will the cones be removed from the intake structure? *This has not been addressed yet in the design process, but the cones could possibly be removed.*
- Are the existing cribs marked? *No. But divers inspect them annually.*
- How will the trenching construction work proceed? *Typical lake-bottom trenching involves equipment on a barge to create the trench, sidecasting material on the lake bottom, installing a pipe section, and then covering the pipe with sidecast and/or imported material.*

2. Permits required for Replacement Intake

Permittee will submit a joint permit application to USACE, IDNR, and IEPA.

USACE. If the proposed project does not fit under a Regional or Nationwide Permit, then an Individual Permit will be required. It appears that Regional Permit 8 (Utility Line) may be applicable. It would be a Category 2 permit. RP-9 (Maintenance) generally covers in-kind replacement of functioning structures in

Soren Hall will research whether RP-8 can be used for this project.

Stantec will review RP-8 requirements and

Item:

the same general location, but has a caveat that does not allow it to be used for Lake Michigan shoreline work. Applications are only accepted electronically.

IEPA. Individual 401 Water Quality Certification. An individual 401 WQC will be required for either type of USACE permit (RP-8 or individual). Darren Gove is the permitting contact at IEPA for work within Lake Michigan. A fee of \$10,000 will be required for the 401 WQC.

IDNR-OWR. An individual permit from IDNR will be required, which includes a public notice period. There is a \$2,730 fee for the permit. Applications require one digital copy and 2 hard copies.

CZMA. If an individual permit is required from USACE a Federal Consistency determination will be required from the Illinois Coastal Management Program. If RP-8 is used, a separate CZMA review will not be required.

T&E Species. Mr. Hall and Mr. Casey were not aware of federally-listed sensitive species in the area, but suggested performing a For Information Only EcoCAT query with IDNR to determine if there are potentially state-listed species of concern in the vicinity of the proposed project.

SHPO. The water treatment plant is likely to be old enough to be eligible for historic structure status. The proposed project would not involve any significant modifications to building aesthetics. Mr. Hall suggested printing a map from HARGIS.

Lake Michigan OHWM is 581.5 IFLD.

Mr. Casey verified that no Lake Michigan intakes have been issued permits within the last 25 years.

3. Permits required for Geotechnical Investigation

The geotechnical investigation appears to fit under USACE Nationwide Permit 6 (Survey). NWP-6 does not require a pre-construction notification (PCN). Regional conditions will need to be reviewed to verify if an individual 401 WQC will be required for geotechnical investigations.

4. Soil/Sediment Testing

Coordination with IEPA will be required to determine testing requirements. IEPA may treat trench excavation and sidecasting like a dredging project.

A soil erosion and sedimentation control plan would not be required for the lake-bottom construction.

5. A regional permit may be issued in 60-120 days. Plan on 12 months for an individual 401 WQC or an individual USACE permit.

The meeting adjourned at 11:15 AM

The foregoing is considered to be a true and accurate record of all items discussed. If any discrepancies or inconsistencies are noted, please contact the writer immediately.

Action:

limitations, and send Soren Hall questions.

Stantec will review NWP-6 requirements and limitations, and send Soren Hall questions.

August 16, 2019
Permit Pre-Application Meeting
Page 3 of 3

Stantec Consulting Services Inc.

Rick Bolliger
Environmental Scientist

Phone: 312 831 3070
Richard.Bolliger@stantec.com

Attachment:

c.

Bolliger, Richard

From: Hall, Soren G CIV USARMY CELRC (US) <Soren.G.Hall@usace.army.mil>
Sent: Tuesday, August 20, 2019 2:10 PM
To: Bolliger, Richard
Cc: james.casey@illinois.gov; pmoyano@cityofevanston.org; Johnson, Joe; Gove, Darren
Subject: RE: [Non-DoD Source] RE: LRC-2019-597 Pre-Application Meeting Request - Evanston 1909 Raw Water Intake Replacement (UNCLASSIFIED)
Attachments: LRC-2019-597 location map.pdf; LRC-2019-597 Concept plan.pdf

CLASSIFICATION: UNCLASSIFIED

Rick,

I promised a followup regarding how the dredging and sidecast would affect authorization under Regional Permit 8. We anticipate that we will be able to utilize RP8, not an individual permit, to authorize the work. However, I am expecting that individual 401 water quality certification will be required due to the sidecasting of excavated material for the installation of the pipe. I am copying Darren Gove with the IEPA on this to bring him in the loop and attached.

Please let me know if you have any questions.

Thanks,
Soren

Soren G. Hall
Senior Project Manager
U. S. Army Corps of Engineers - Chicago District Regulatory Branch - East Section
231 South LaSalle Street, Suite 1500
Chicago, Illinois 60604
Desk: 312-846-5532
Cell: 312-730-8839

Regulatory Website: <http://www.lrc.usace.army.mil/Missions/Regulatory.aspx>

APPENDIX C

PROJECT LOCATION MAP

APPENDIX D

COST ESTIMATE

City of Evanston
1909 Raw Water Intake
Class 4 Estimate

Opinion of Probable Construction Costs (OPCC)

Currency: USD-United States-July 2020 Dollar

					Estimated Point Value:	\$32,140,000
					Estimated Market Range:	\$27.32M-\$40.17M
					Mid Point Market Range:	\$33.7M
					Suggested Project Budget:	\$33.7M
Description	Quantity	UOM	Unit Cost	Total Cost	Comments	
1909 Raw Water Intake						
DIRECTS						
1	Mobilization	1	LS	\$2,810,000.00	\$2,810,000.00	
2	Excavation & Backfill- Land	2,000	CY	\$250.00	\$500,000.00	
3	Romove Existing 36" Intake - Land	1	LS	\$160,100.00	\$160,100.00	
4	F&I 60" Line - Landside	15	LF	\$6,300.00	\$94,500.00	
5	F&I 16"x20' Valve Vault	1	EA	\$570,000.00	\$570,000.00	
6	48" Valves, Flanges, Fittings	8	EA	\$50,000.00	\$300,000.00	
7	F&I 48" Line	85	LF	\$3,500.00	\$227,500.00	
8	Reconstruct/Restore Sheeting	3,750	SF	\$30.00	\$112,500.00	
9	Allowance for Landside Mechanical & Electrical	1	LS	\$1,150,000.00	\$1,150,000.00	
10	Shallow Water Marine Excavation	11,900	CY	\$40.00	\$476,000.00	
11	Shallow Water - Installation of 60" line	1,000	LF	\$800.00	\$800,000.00	
12	Deep Water Marine Excavation	27,500	CY	\$70.00	\$1,925,000.00	
13	Deep Water - Installation of 60" line	4,500	LF	\$730.00	\$3,285,000.00	
14	Place Geotextile	30,500	SY	\$50.00	\$1,525,000.00	
15	Place Granular Backfill - Marine	27,482	Ton	\$48.00	\$1,319,136.00	
16	Place Armor Stone - Marine	12,480	Ton	\$110.00	\$1,372,800.00	
17	Place Native Backfill - Marine	12,100	CY	\$50.00	\$605,000.00	
18	Install Manholes	5	EA	\$76,000.00	\$380,000.00	
19	Abandon existing 42" pipe	1	LS	\$165,000.00	\$165,000.00	
20	F&I Intake Cones	1	LS	\$1,420,000.00	\$1,420,000.00	
21	Allowance for F&I Heating System	1	LS	\$1,000,000.00	\$1,000,000.00	
					Running Subtotal:	\$20,197,536
A Field Oversight Expenses						\$ 2,220,000
1	Contractor Indirects	20	months	\$111,000	\$ 2,220,000	
					Running Subtotal:	\$22,417,536
B Allowances						\$4,713,287
1	Unlisted Items Allowance	1	ls	5%	\$1,120,877	
2	Scope and Quantities Adjustment	1	ls	10%	\$2,353,841	
3	Unit Cost and Market Conditions Allowance	1	ls	5%	\$1,238,569	
					Running Subtotal:	\$27,130,823
C Markups						\$5,005,637
1	Prime Contractor OH & P	1	ls	15.0%	\$4,069,623	
2	Bond & Insurance	1	ls	3.0%	\$936,013	
3	Taxes on Materials (Job Materials)	1	ls	0.0%	\$0	No sales tax
					Running Subtotal:	\$32,136,460
Class 4 Range					Cost Range:	\$27,320,000 \$40,170,000
D Owner Project Allowances						\$0
1	Construction Oversight & Management	1	ls	\$0	\$0	Excluded
2	Engineering/Design	1	ls	\$0	\$0	-
3	Permitting/Planning/Procurement	1	ls	\$0	\$0	-
4	Construction Contingency/Management Reserve	1	ls	\$0	\$0	-
						\$32,136,460

AAEC Cost Estimation Range - Class 4

15.00% 25.00%

Cost Range: \$27,320,000 \$40,170,000 AAECI Criteria
Assumes the scope is not changed, significant risk events do not occur and project control is excellent.

OPCC Disclaimer

Stantec has no control over the costs of labor, materials, competitive bidding environments, unidentified field conditions, financial and/or commodity market conditions, or any other factors likely to affect the OPCC of this project, all of which are and will unavoidably remain in a state of change, especially in light of high market volatility attributable to Acts of God and other market forces or events beyond the control of the parties. As such, Client recognizes that this OPCC deliverable is based on normal market conditions, defined by stable resource supply/demand relationships, and does not account for extreme inflationary or deflationary market cycles. Client further acknowledges that this OPCC is a "snapshot in time" and that the reliability of this OPCC will degrade over time. Client agrees that Stantec cannot and does not make any warranty, promise, guarantee or representation, either express or implied that proposals, bids, project construction costs, or cost of O&M functions will not vary significantly from Stantec's good faith Class 5 OPCC.

AAEC International CLASS 4 Cost Estimate - Class 4 estimates are generally prepared based on limited information and subsequently have fairly wide accuracy ranges. Typically, engineering is 10% to 40% complete. They are typically used for project screening, determination of feasibility, concept evaluation, and preliminary budget approval. Virtually all Class 4 estimates use stochastic estimating methods such as cost curves, capacity factors, and other parametric and modeling techniques. Expected accuracy ranges are from -15% to -30% on the low side and +20% to 50% on the high side, depending on the technological complexity of the project, appropriate reference information, and the inclusion of an appropriate contingency determination. Ranges could exceed those shown in unusual circumstances (AAEC International Recommended Practices and Standards).

Estimate Type Class 4 Estimate
 JOB TITLE: 1909 Raw Water Intake
 CUSTOMER: City of Evanston

CONTACT: Bob Ryan
 PHONE: 312-831-3160

DATE: October 5, 2020

PAGE No. 1

SUB-TASK: _____ \$3,583,955.04 \$293,900.00 \$36,000.00 \$202,821.25

Type	Description	Qty	Units	Crew	Add'l Crew	Men/Crew	Unit/MH	Unit/CH	Duration (Days)	Mat'l	Sub	Total Crew hrs	Resource Rate	Total Lab \$	Total Material	Unit Price	Total Material Cost	Total SC Qty	Unit Price	Total Sub Cost	Total Add'l Crew Hrs	Resource Rates	Total Crew Cost
Item #1 Mobilization		1	LS																				
	\$13,296.90 Create Landside Access	500	TON	Barge	-	5	100.000	500	0.1	CA11	-	1.00	796.90	\$796.90	500.00	25.00	\$12,500.00	0.00	0.00	\$0.00	1	0.00	\$0.00
	\$82,993.94 Exploratory Excavation	10	DY	EXPL	-	2	0.050	0.1	10.0	-	VAC	100.00	469.94	\$46,993.94	10.00	0.00	\$0.00	10.00	3,600.00	\$36,000.00	100	0.00	\$0.00
	\$92,325.78 General Mob	10	DY	UNLD	-	7	0.014	0.1	10.0	-	-	100.00	923.26	\$92,325.78	10.00	0.00	\$0.00	0.00	0.00	\$0.00	100	0.00	\$0.00
	\$92,325.78 Site Prep	10	DY	UNLD	-	7	0.014	0.1	10.0	-	-	100.00	923.26	\$92,325.78	10.00	0.00	\$0.00	0.00	0.00	\$0.00	100	0.00	\$0.00
	\$64,844.94 Construct mooring point	5	DY	Barge	-	5	0.020	0.1	5.0	Allow	-	50.00	796.90	\$39,844.94	5.00	5,000.00	\$25,000.00	0.00	0.00	\$0.00	50	0.00	\$0.00
	\$60,608.55 Tug support for mooring	5	DY	tug	-	3	0.033	0.1	5.0	-	-	50.00	1,212.17	\$60,608.55	5.00	0.00	\$0.00	0.00	0.00	\$0.00	50	0.00	\$0.00
	\$617,398.90 Material Handling	104	DY	MATHAN	parebarga	4	0.025	0.1	103.9	-	-	1,039.20	519.11	\$539,458.90	103.92	0.00	\$0.00	0.00	0.00	\$0.00	1,039	75.00	\$77,940.00
	\$593,545.40 Aggregate Loading	39,962	TONS	MATHAN	parebarga	4	10.000	40	99.9	-	-	999.05	519.11	\$518,616.65	39,962.00	0.00	\$0.00	0.00	0.00	\$0.00	999	75.00	\$74,928.75
	\$857,298.79 Tug & Barge Support	39,962	TONS	TUG	parebarga	3	20.000	60	66.6	-	-	666.03	1,212.17	\$807,346.29	39,962.00	0.00	\$0.00	0.00	0.00	\$0.00	666	75.00	\$49,952.50
	\$92,325.78 Site Restoration	10	dy	unld	-	7	0.014	0.1	10.0	-	-	100.00	923.26	\$92,325.78	10.00	0.00	\$0.00	0.00	0.00	\$0.00	100	0.00	\$0.00
	\$242,434.20 Adverse Weather Conditions - IDLE	1	MO	TUG	-	3	0.002	0.005	20.0	-	-	200.00	1,212.17	\$242,434.20	1.00	0.00	\$0.00	0.00	0.00	\$0.00	200	0.00	\$0.00
Subtotal - Item #1												3,405.28	\$2,533,077.71	\$37,500.00	\$36,000.00	3,405.28	\$202,821.25						
Item #2 Excavation - Land		2000	CY																				
	\$220,065.57 Install Cofferdam / SOE	1080	SF	Sheet	-	9	0.800	7.2	15.0	pzc18	-	150.00	1,431.10	\$214,665.57	1,080.00	5.00	\$5,400.00	0.00	0.00	\$0.00	150	0.00	\$0.00
	\$99,600.48 Excavate Trench	2000	CY	lexc	-	6	3.333	20	10.0	-	-	100.00	996.00	\$99,600.48	2,000.00	0.00	\$0.00	0.00	0.00	\$0.00	100	0.00	\$0.00
	\$107,332.79 Remove Cofferdam / SOE	1080	SF	Sheet	-	9	1.600	14.4	7.5	-	-	75.00	1,431.10	\$107,332.79	1,080.00	0.00	\$0.00	0.00	0.00	\$0.00	75	0.00	\$0.00
	\$64,150.33 Backfill Trench - Native Material	1500	CY	lbfill	-	4	4.000	16	9.4	-	-	93.75	684.27	\$64,150.33	1,500.00	0.00	\$0.00	0.00	0.00	\$0.00	94	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
Subtotal - Item #2												418.75	\$485,749.17	\$5,400.00	\$0.00	418.75	\$0.00						
Item #3 Remove Existing 36" Intake - Land		1	LS																				
	\$19,920.10 Excavate Existing Intake	15	CY	Lexc	-	6	0.125	0.75	2.0	-	-	20.00	996.00	\$19,920.10	15.00	0.00	\$0.00	0.00	0.00	\$0.00	20	0.00	\$0.00
	\$39,840.19 Demo Intake	1	EA	Lexc	-	6	0.004	0.025	4.0	-	-	40.00	996.00	\$39,840.19	1.00	0.00	\$0.00	0.00	0.00	\$0.00	40	0.00	\$0.00
	\$44,840.19 Plug Intake	1	WA	Lexc	-	6	0.004	0.025	4.0	Allow	-	40.00	996.00	\$39,840.19	1.00	5,000.00	\$5,000.00	0.00	0.00	\$0.00	40	0.00	\$0.00
	\$55,491.62 Backfill Intake	30	Ton	lbfill	-	4	0.094	0.375	8.0	CA11	lbfill	80.00	684.27	\$54,741.62	30.00	25.00	\$750.00	0.00	0.00	\$0.00	80	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00											0.00	0.00	\$0.00	0.00	0.00	\$0.00	0.00	0.00	\$0.00	0	0.00	\$0.00
	\$0.00					</																	

APPENDIX E

**EXISTING USER CHARGE AND O, M & R
CERTIFICATIONS SHEET**



Illinois Environmental Protection Agency

1021 North Grand Avenue East • P.O. Box 19276 • Springfield • Illinois • 62794-9276 • (217) 782-3397

Existing User Charge and O, M, and R Certification Sheet

10,874 Number of current residential customers served by the system.
7.9 CFF Actual average residential water use per customer per month (based on historical billing data)
\$20.77 Current average monthly residential bill

Provide details that apply to your specific user rate charges:

Water use charges: _____ per _____ gallons
 \$2.89 per _____ 100 cubic feet

Flat Fee or Monthly User Charge: \$10.33

Debt Service Charge: _____

Capital Improvement Charge: _____

Wholesale Charge: _____

Meter Service Fee (average-sized meter): _____

Other Charge: _____

Explain: _____

Other Charge: _____

Explain: _____

1. Is the water/sewer fund annually operating in a positive or negative balance at this time? (select one)

Positive Negative

2. Based upon your most recent annual budget please indicate the net operating income for your water/sewer fund:

(\$4,010,542.00)

Net Operating Income = Total Revenue - Total Cost of Providing Service
Total Revenue = Revenue from user charges, commercial, residential, or wholesale, plus any other dedicated water/sewer fund revenue
Total Cost of Providing Service = All Operation and Maintenance costs (including replacement fund) plus dedicated water/sewer fund debt

3. Will a rate increase or other revenue generating action be necessary to pay for this project? (select one)

Yes No

4. If a rate increase (or other cost increase) is necessary, please provide the proposed user rate charges and proposed average monthly residential water bill as an attachment.

Any person who knowingly makes a false, fictitious, or fraudulent material statement, orally or in writing, to the Illinois EPA commits a Class 4 felony. A second or subsequent offense after conviction is a Class 3 felony. (415 ILCS 5/44(h))

Erika Storlie

 Authorized Representative (Printed)

 Erika Storlie

 Signature

City Manager

 Title

 01 / 11 / 2021

 Date

APPENDIX F

WHOLESALE WATER SUPPLY AGREEMENTS

APPENDIX F

WHOLESALE WATER SUPPLY AGREEMENTS

NORTHWEST WATER COMMISSION (NWC)

AMENDED AND RESTATED
WATER SUPPLY CONTRACT
BETWEEN
THE NORTHWEST WATER COMMISSION
AND
THE CITY OF EVANSTON

THIS AGREEMENT, made and entered into between THE NORTHWEST WATER COMMISSION (formerly THE DES PLAINES, MOUNT PROSPECT, ARLINGTON HEIGHTS, AND PALATINE WATER COMMISSION and hereinafter referred to as the "Commission") and THE CITY OF EVANSTON (hereinafter referred to as "Evanston"),

W I T N E S S E T H:

WHEREAS, the Commission is a water commission created under Chapter 24, Article 11, Division 135, Illinois Revised Statutes, 1979; and

WHEREAS, the Commission was created to acquire and operate a common source of supply of water and to develop facilities of sufficient capacity to furnish an adequate supply of filtered water to Commission customers using Lake Michigan as the source of supply; and

WHEREAS, Evanston is the owner of a water works plant that currently takes water from Lake Michigan to furnish water for the use of area inhabitants; and

WHEREAS, the Commission desires to purchase water from Evanston for distribution and sale by the Commission to certain customers; and

WHEREAS, the Commission is authorized under Chapter 24, Article 11, Division 135, Illinois Revised Statutes, 1979, to enter into this contract; and

WHEREAS, Evanston is willing to furnish water to the Commission and will have available water in the quantities hereinafter contracted for to be sold by it to the Commission; and

WHEREAS, the Commission and Evanston, after lengthy negotiations and deliberations, and in order to compromise, settle and resolve certain disputes between them which arose in connection with interpretation and application of the Water Supply Contract dated March 4, 1981, have agreed to amend and restate that original contract between them, as set forth herein:

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto hereby agree as follows:

1. Supply of Water. Subject to the terms and conditions hereinafter set forth, Evanston shall sell and deliver to the Commission, and the Commission shall purchase and receive from Evanston, a maximum of 55 million gallons per day of Lake Michigan water, as required by the Commission to satisfy the Commission's maximum 24-hour demands for Lake Michigan water for resale to the Commission's customers, which 55 million gallons per day shall be delivered at a rate not to exceed 75 million gallons per day. All water that is provided to the Commission shall be from the official Illinois Department of Transportation allocation granted to the Commission or to its customers.

Evanston shall at all times use maximum feasible efforts to avoid interruptions or reductions of the water required to be delivered by it to the Commission. In the event that, by reason of any emergency, system failure or malfunction, Evanston is unable, despite the use of such maximum feasible efforts, to supply the full water needs of itself, its other customers and the Commission, the total amount of water which Evanston is able to supply to such parties, excluding any water available from the New Reservoir described in paragraph 6(k)(vii) of this contract, none of which shall be supplied to the Commission unless and to the extent that the Commission has made a contribution in accordance with paragraph 17(a) of this contract to cover a portion of Evanston's investment in the New Reservoir which has been allocated to the Commission, shall be equitably apportioned among them. The Commission agrees to use its best efforts to maintain storage facilities equal in capacity to its average day demand.

Nothing in this agreement shall be construed to prohibit the Commission from serving any of its customers in whole or in part with water from wells owned by the Commission or any of its customers or from entering into any emergency water service agreement with any other party or from securing an alternate supply of Lake Michigan water to serve any water need it may have in excess of 55 million gallons per day.

2. Quality of Water. The water to be delivered by Evanston and received by the Commission hereunder shall be of such quality as to meet or exceed, at the point of delivery, any water quality

standards heretofore or hereafter enacted or promulgated by the United States Public Health Service, the Department of Public Health of the State of Illinois, the Federal or State of Illinois Environmental Protection Agencies, or such other State or Federal agency or agencies as shall have jurisdiction from time to time to enact or promulgate such standard, except as follows: Evanston shall not be required to comply with 40 C.F.R. Subpart I, "Control of Lead and Copper", §§141.80-141.85, and 35 Illinois Administrative Code Subtitle F, "Public Water Supplies", Part 611, "Primary Drinking Water Standards", Subpart G, "Lead and Copper," or any equivalent requirements for implementing and maintaining optimal corrosion control treatment for control of lead and copper content, including addition or injection of corrosion control inhibitors or implementing other measures, with respect to the water delivered by Evanston and received by the Commission. The Commission shall be required to meet, at its own cost, any such requirements applicable to the water to be delivered to the municipalities served by the Commission. However, Evanston shall implement and maintain optimal corrosion control treatment for control of lead and copper content pursuant to such regulations, including addition or injection of corrosion control inhibitors, or take other measures, for the water to be delivered by Evanston and received by the Commission if Evanston is requested in writing by the Commission to do so and if such treatment or measures can be implemented and maintained at the Evanston water works plant at or before the point of delivery of water to the Commission, in which

case the Commission shall, in addition to any other charges under this Contract, reimburse Evanston on a monthly basis, as billed by Evanston, for Evanston's actual cost to implement and maintain such optimal corrosion control treatment for control of lead and copper content or to take such other measures with respect to the water delivered by Evanston and received by the Commission. At the Commission's request, Evanston shall enter into a separate letter agreement to more particularly describe the service to be provided and the charges to be imposed in connection with implementing and maintaining such optimal corrosion control treatment for control of lead and copper content or taking such other measures.

3. Point of Delivery. Evanston shall deliver to the Commission the water herein required at its water plant at Lincoln Street in Evanston, Illinois, at not less than 50 p.s.i. at the average centerline of the high lift pumps.

4. Meters. Water sold to the Commission shall be measured at the point of delivery, or at such other point as may be approved by the Commission and Evanston, through a meter or meters selected by the parties hereto which shall be furnished and installed by the Commission and maintained by Evanston. Said meter or meters shall be available for inspection and examination by the Commission at all times. All statements for water delivery shall be based upon readings of such meters, except as hereinafter set forth.

Once per month, on a date as near to the end of a calendar month as practicable, Evanston shall calibrate all meters used for measuring the quantity of water delivered from Evanston to the

Commission. Such calibration shall be done in the presence of a representative of the Commission and the parties shall jointly observe any adjustments that are made to the meters in case any adjustments shall be necessary. The cost of meter maintenance shall be charged to the Commission at a rate of \$200 per month through and including the month of September 1993; thereafter, there shall be no charge for meter maintenance unless and until such charge is reimposed, beginning October 1, 2006, due to initiation of an arbitration proceeding as provided for in paragraph 16(c) hereof.

The Commission may, at its option and its own expense, install and operate a check meter to check each meter maintained by Evanston, but the measurement of water for the purpose of this contract shall be solely by the meters maintained by Evanston as hereinbefore provided, except in the case 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 designated employee or agent of Evanston. The reading, calibration and adjustment of all such check meters shall be performed only by the Commission, but Evanston shall be given notice of any calibration and adjustment of such meters; provided, however, that during any period when a check meter is being used under the provisions hereinafter set forth for measuring the amount of water delivered, the reading, calibration and adjustment thereof shall be performed by Evanston.

If either party at any time observes a variation between a

delivery meter and a check meter or any other evidence of meter malfunction, such party shall promptly notify the other party, and the parties hereto shall then cooperate to procure an immediate calibration test and joint observation of any adjustment, and such meters shall then be adjusted to accuracy.

Each party shall give the other party forty-eight (48) hours' notice of the time of all tests of meters so that the other party may arrange to have a representative present. If said representative is not present at the time set in such notice, the calibration and adjustment may, notwithstanding any other provision of this paragraph, proceed in the absence of said representative. The notice herein required may be waived in writing by either party.

If, upon any inspection or test, any metering equipment is found to be out of service or the percentage inaccuracy of any metering equipment is found to be in excess of two percent (2%), registration thereof as well as charges for water based thereon shall be corrected, by agreement of the parties based on the best data available, for a period extending back to the time when such inaccuracy began, if such time is ascertainable and, if such time is not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. For such purposes, the best data available shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registering. Otherwise, the amount of

water delivered during such period may be estimated (1) by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or (2) if the error is not ascertainable by calibration tests or mathematical calculation, by estimating the quantity of delivery by reference to deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately. Any inability to agree upon such correction or estimate shall be referred to arbitration pursuant to paragraph 8 of this contract.

5. 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, be so calibrated. In the event that it should become necessary or desirable to use other units of measurement, the basis of conversion shall be that 7.48 gallons is equivalent to one (1) cubic foot.

6. Billing and Rates.

(a) Billing. Commencing as of the end of the first month in which deliveries of water are made by Evanston to the Commission hereunder (when used herein, the term "delivery of water" shall not be deemed to include deliveries for construction, testing and other incidental uses), which the parties agree was March 1985, Evanston shall render bills to the Commission on a monthly basis for all water delivered.

For all months through and including September 30, 1993, and except as provided in subparagraphs (f) , (g) and (i) hereof,

bills shall be based on the rates and components determined in accordance with the provisions hereinbelow set forth in subparagraphs (a) through (d) hereof.

Bills for months through and including September 30, 1993, shall consist of two parts as follows:

Part One - Demand Charge: A fixed monthly payment consisting of (i) one-twelfth of the Annual Return on the Fair Value Rate Base as determined in accordance with subparagraph (b) of this paragraph 6; and (ii) a depreciation charge determined in accordance with subparagraph (c) of this paragraph 6.

Part Two - Quantity Charge: A payment based on the quantity of water delivered through the metering point(s) to the Commission's facilities multiplied by the Quantity Rate determined in accordance with the provisions of subparagraph (d) of this paragraph 6.

For all months commencing October 1, 1993, and thereafter, and except as provided in subparagraphs (i) and (l) hereof, bills shall be based on the rates and components determined in accordance with the provisions hereinbelow set forth in subparagraphs (j) and (k) hereof, which rates and components shall be determined annually to be effective as of October 1 of each year. The twelve month period commencing October 1 shall be called the "Service Year." The "Fiscal Year" shall mean the Fiscal Year of the Evanston Water Department, which, after December 31, 1994, shall be the twelve month period beginning on the first day of March and ending on the

last day of the following February.

For all bills submitted by Evanston pursuant to this contract for months beginning on and after October 1, 1993, meter readings taken at the beginning and end of the monthly billing period in question shall be set forth on the bill. All bills so submitted shall be paid by the Commission within 30 days of the receipt of each bill. Any bill not paid within 15 days of the due date, other than those bills originally submitted by Evanston prior to the effective date of this amended and restated contract for the months from October 1993 through such effective date, shall be deemed delinquent and shall bear interest from the due date until the date of payment at the rate of 10 per cent per annum.

(b) Return on Rate Base. "Rate Base" shall consist of those components of Evanston's water works property relating to lake intake and associated source of supply structures, pumping plant and water treatment facilities necessary to deliver water to the Commission at the point of delivery, such components in service on the date of this contract being more specifically set forth in Appendix A which is attached hereto and hereby incorporated as a part hereof.

"Original Cost Rate Base" shall consist of the components of Rate Base valued at the original cost to Evanston of acquisition, construction and installation as reflected on the books, records and financial statements of Evanston less accrued depreciation as of the end of the Fiscal Year used as a basis for determining charges hereunder.

"Reproduction Cost New Rate Base" shall consist of the components of Rate Base valued initially by a computation as of the end of the last Fiscal Year ended prior to the commencement of delivery of water hereunder. Reproduction Cost New Rate Base shall be recomputed every five years as of the end of each succeeding fifth Fiscal Year reflecting components then properly allocated to Rate Base pursuant to this contract. All computations of Reproduction Cost New Rate Base shall utilize the most current valuation of the Water Works Properties of the City of Evanston, as developed by a reputable qualified consulting engineering firm experienced in water works valuation, adjusted to the applicable year of the rate determination by utilizing the then current Engineering News Record 20 Cities Construction Cost Index. Accrued depreciation as determined by the engineering firm's valuation study plus accrued depreciation which has occurred from the date of the valuation to the applicable year of the rate determination shall be deducted from the reproduction cost new of the plant in service.

"Fair Value Rate Base" shall be computed initially as of the end of the latest Fiscal Year of Evanston ended prior to the commencement of delivery of water hereunder, shall be recomputed every five years thereafter as of the end of each succeeding fifth Fiscal Year, and shall consist of the sum of 75% of the original Cost Rate Base plus 25% of the Reproduction Cost New Rate Base as of the computation date.

The Fair Value Rate Base so computed shall be subject to

adjustment annually as of the end of each Fiscal Year between Fair Value Rate Base recomputations to reflect additions to and retirements of plant contained in the Rate Base during the Fiscal Year. Additions shall be valued at their original cost until recomputation of the Fair Value Rate Base, at which time such additions shall be valued in the same manner as the Fair Value Rate Base. Retirements shall be valued at their fair value as reflected in the last previous Fair Value Rate Base computation.

No additions to Rate Base representing the construction, installation or acquisition of additional intake and associated source of supply structures, buildings, filters, settling basins, or any other supply, pumping or treatment facilities designed to increase the capacity of the Evanston water works property shall be allocated to the Commission without its written consent unless and until the Commission shall desire to exceed the 55 million gallons per day use specified in paragraph 1 hereof, in which event the parties shall negotiate in good faith to determine whether such excess use requires an expansion of the Evanston plant and, if so, the basis for allocating the cost of such expansion among the then current users of the plant. This paragraph shall not, however, prohibit additions to rate base arising out of the retirement and replacement of source of supply, pumping plant or water treatment plant assets in accordance with sound management practices, which retirements and replacements may incidentally upgrade or improve the operation or capacity of Evanston's water plant. Any failure by the parties to agree as to whether an addition to rate base for

any addition or replacement is permitted or prohibited under this paragraph shall be referred to arbitration in accordance with paragraph 8 hereof.

"Annual Return on Rate Base" shall be an amount determined by multiplying the commission's share of Fair Value Rate Base as of the end of the latest Fiscal Year as hereinabove provided by 9.5%. The Commission's share of Fair Value Rate Base shall be determined by allocating to the Commission a portion of such Fair Value Rate Base, as adjusted and recomputed from time to time as provided herein, based upon the ratio of its customers' water allocations as established by order of the Illinois Department of Transportation (IDOT Allocation) during the Fiscal Year to the aggregate IDOT Allocations of Evanston, the Commission's customers and other customers or users of the Evanston water works system; provided, however, that until the end of the first two full Service Years of delivery of water hereunder, the Commission's customers' IDOT Allocation shall be deemed to be the Commission's average daily use or a percentage of the Commission's customers' actual IDOT Allocation, whichever is higher, said percentage being 50% for the period from the first delivery of water hereunder until the end of the first Service Year and 60% in the second Service Year.

(c) Depreciation Charge. Depreciation charges shall be computed as of the end of each month following commencement of the delivery of water to the Commission hereunder and shall consist of one-twelfth of an annual depreciation charge, computed by applying

the depreciation rates utilized by Evanston as of the date hereof, as set forth in Appendix B which is attached hereto and hereby incorporated as a part hereof, to the original cost of the depreciable plant in service contained in the Fair Value Rate Base allocated to the Commission pursuant to subparagraph (b) of this paragraph 6. As of the date when any depreciable plant addition allocable to the Fair Value Rate Base as provided in subparagraph (b) above shall be placed in service or any depreciable plant in the Fair Value Rate Base is retired from service, charges for depreciation to the Commission shall be correspondingly adjusted as of the end of the month in which the addition or retirement took place.

(d) Quantity Rate. The Commission shall pay to Evanston a Quantity Charge based upon a Quantity Rate equal to the Commission's share of the "Operating Costs" per 1,000 gallons of water delivered to the point of delivery. The "Operating Costs" to be included in determining the Quantity Rate shall be the costs assigned to the functions of pumping, filtration, administration and insurance as reflected in the audited financial statements of the Evanston Water Fund and as described in Appendix C which is attached hereto and hereby incorporated as a part hereof. The operating costs applicable to deliveries during the Service Year beginning each October 1 shall be determined based on the results of operation of the Evanston water works, as audited by independent certified public accountants, for the current Fiscal Year, which includes the October 1 Service Year starting date. However, during

the Service Year the operating costs applicable to deliveries during the Service Year shall be determined based on the results of operation as reflected in the financial statements of the Evanston Water Fund, as audited by independent certified public accountants, for the Fiscal Year immediately preceding the commencement of the Service Year. The total Quantity Charge shall be adjusted at the end of each Service Year to reflect the actual, total Quantity Charge owed to Evanston based on current Fiscal Year operating costs as finally determined by the current annual audit performed by independent certified public accountants. Accordingly, at the end of each Service Year there shall be a final Quantity Charge or Credit issued by Evanston to the Commission to adjust the total Quantity Rate computed by utilizing the current Fiscal Year audited operating costs. This final charge or credit must be settled within thirty days of the issuance of the invoice or credit memo. In determining the Quantity Rate, Operating Costs shall be allocated to the Commission based upon the ratio of its Average Day Water Use of the Evanston water works system to the aggregate Average Day Water Use of Evanston, the Commission and other customers or users of said system during the Fiscal Year.

The Quantity Rate shall not include any portion of any cost included in computing the Fair Value Rate Base, Annual Return on Rate Base or Depreciation Charge.

(e) Advance Computations. For Service Years beginning on or before October 1, 1992, and for Service Years beginning on and after October 1, 2006, should the methods and principles for

determining billings and rates under subparagraphs (a) through (d) of paragraph 6 hereof become applicable to such Service Years as a result of arbitration pursuant to paragraph 16(c) of this contract, Evanston shall deliver to the Commission not less than 30 days prior to the start of a new Service Year a computation of the Original Cost Rate Base, Reproduction Cost New Rate Base, Fair Value Rate Base, Annual Return on Rate Base, Depreciation Charge and Quantity Rate to be utilized in billing the Commission during the coming Service Year with supporting explanations, data and work papers including an identification of any adjustments to the actual results of operations during the Fiscal Year as reported in the audited financial statements of the Evanston Water Fund made for purposes of determining new charges. The Commission may, at its option and its own expense, examine the books and records of the Evanston Water Fund upon giving no less than 10 days' written notice of its intention to do so. Any such examination shall take place at the Evanston Civic Center during regular business hours.

For Service Years beginning on and after October 1, 1993, and continuing so long as the methods and principles for determining billings and rates set forth in subparagraphs (j) and (k) hereof remain in effect, Evanston shall deliver to the Commission not less than 60 days prior to the start of a new Service Year a computation of the rate per 1000 gallons to be utilized in billing the Commission during the coming Service Year with supporting explanations, data and work papers, provided, that this requirement of advance delivery of the rate computation shall not apply to the

Service Years commencing October 1, 1993 and October 1, 1994. For each Evanston Fiscal Year beginning on or after January 1, 1993, Evanston shall provide to the Commission the following data:

- (i) Evanston's audited financial statement. (It is assumed that said statement will set forth individually the Water Fund operating expenses for the following accounts: Administration (1900 Group), Pumping (1905 Group), and Filtration (1910 Group). If said expenses are not set forth in the statement, they shall be separately provided.)
- (ii) The amount of pension expense included in the operating expense accounts for Administration (1900 Group), Pumping (1905 Group) and Filtration (1910 Group).
- (iii) The amount of insurance expense contained in insurance expense accounts 1935.401, 1935.420, 1935.421 and 1935.423.
- (iv) A list of plant additions and retirements within Source of Supply (WF 171), Pumping Plant (WF 172) and Water Treatment Plant (WF 173), with the cost of each such addition and retirement.
- (v) Evanston's annual report of its 5-year capital improvements program.

Evanston shall provide the following data to the Commission periodically or as available:

- (i) Updates every fifth year of Reproduction Cost New Less Depreciation for Source of Supply, Pumping Plant and Water Treatment Plant components of the water plant. For purposes of this item, Evanston shall not be required to have a valuation performed by a consulting engineering firm.
- (ii) Any appraisal of the water plant that Evanston, in its sole discretion, may choose to have performed.
- (iii) Any capital improvements study of the water plant that Evanston, in its sole discretion, may choose to have performed.

In the event that a dispute arises concerning any of the computations provided for in this subparagraph (e), and the parties

are unable to reach an agreement on any of said computations, such computations shall become subject to arbitration in accordance with paragraph 8 hereof.

(f) Initial Rates. Until such time as data from the first full Fiscal Year following commencement of water deliveries to the Commission hereunder are available for purposes of establishing rates as herein provided, the Commission shall pay such estimated rates as may be agreed upon by the parties based upon the formulas hereinabove set forth and the best available estimates of projected water uses and costs. At the end of such period there shall be an accounting and adjustment between the parties based upon actual experience during said period. Any surplus paid by the Commission or deficit owing from the Commission shall be recouped or paid in twelve equal monthly installments by appropriate adjustments to the bills rendered to the Commission pursuant to subparagraph (a) of this paragraph 6.

(g) Charges for Construction Water. Water taken from the Evanston system by the Commission for construction, testing and other incidental uses prior to the first delivery of water hereunder, shall be metered and shall be billed to and paid for by the Commission on a monthly basis at the rate of 18 cents per thousand gallons.

(h) Illustrative Calculation. For the purposes of illustrating the parties' intent and understanding concerning the method of computing the water rate to be charged to the Commission for Service Years (i) through and including September 30, 1993, and

(ii) beginning October 1, 2006, and thereafter should the methods and principles for determining billings and rates under subparagraphs (a) through (d) of this paragraph 6 become applicable to such Service Years as a result of arbitration pursuant to subparagraph 16(c) of this contract, Appendixes D and E attached hereto are hereby incorporated as illustrative examples of the computations necessary to calculate such rate, except, however, that, with respect to the method of computing the water rate during the period and under the conditions specified in (ii), if any inconsistencies exist between subparagraphs (a) through (d) of this paragraph 6 and Appendix D, on the one hand, and Appendix E, on the other hand, Appendix E shall control.

(i) Billing Credit for Service Years Through September 30, 1993: Notwithstanding the provisions of subparagraphs (a) through (d) of this paragraph 6, the Commission and Evanston agree that in full compromise, settlement and resolution of all bills for water delivered by Evanston and received by the Commission for periods through and including September 30, 1993, and of all claims and disputes relating to such bills, Evanston (i) shall retain all amounts actually paid by the Commission in respect of such bills, which shall constitute full and complete payment of such bills, and (ii) shall give the Commission credits in the total amount of \$850,000 against bills for water delivered by Evanston and received by the Commission for periods commencing on and after October 1, 1993. The total credit of \$850,000 shall be utilized as follows:

(A) \$717,431 shall be applied against amounts owed by the

Commission to Evanston for water delivered by Evanston and received by the Commission during the period October 1, 1993, through December 31, 1994; and (B) the balance of the total credit shall be applied at the rate of \$2,946 per month against amounts billed for water delivered by Evanston and received by the Commission during the period from January 1, 1995, through September 30, 1998. For the period of October 1, 1993, through December 31, 1994, Evanston shall submit a statement to the Commission showing the amount billed for that period in accordance with subparagraph (j) of this paragraph 6, any amounts already paid by the Commission for that period, and the amount of the credit being applied to that period. Evanston shall show on its bill rendered to the Commission for each month in the period January 1, 1995, through the month in which the remaining credit is exhausted, the total amount billed, any amount previously paid by the Commission in respect of service for that month, the amount of credit applicable to that month pursuant to this subparagraph (i), and the net amount, if any, due from the Commission to Evanston or from Evanston to the Commission.

(j) Rates for Service Years Beginning on and After October 1, 1993. Subject to the provision of subparagraph (i) of this paragraph 6 and paragraph 16(c) of this contract, for Service Years beginning October 1, 1993, and thereafter, Evanston shall bill the Commission and the Commission shall pay Evanston for water delivered by Evanston and received by the Commission at a rate consisting of a Base Rate, calculated as set forth in this subparagraph (j), plus, for Service Years beginning on and after

October 1, 2006, a Regulatory Adjustment Charge, if any, in accordance with, and calculated as set forth in, subparagraph (k) hereof. The Base Rate shall be as follows:

(i) For the Service Year beginning October 1, 1993, 30.8 cents per 1000 gallons.

(ii) For each Service Year beginning October 1, 1994 and thereafter, the rate per 1000 gallons applicable in the immediately preceding Service Year multiplied by 1.WXYZ, where ".WXYZ" shall be calculated as described in the following subparagraphs (A) and (B):

(A) Calculate "Annual Inflation" equal to

- a. the percentage change, expressed as a decimal, in the Consumer Price Index -- All Urban Consumers -- Chicago, IL/Northwest IN, as published by the U.S. Department of Labor, Bureau of Labor Statistics, 1982-1984=100, or any successor index (hereinafter referred to as the "CPI"), from the value of the CPI at the second December preceding the Service Year to the value of the CPI at December preceding the Service Year, plus
- b. the percentage change, expressed as a decimal, in the national Producer Price Index -- Total Durable Goods, as published by the U.S. Department of Labor, Bureau of Labor Statistics, 1982=100, or any successor index (hereinafter referred to as the "PPI"), from the value of the PPI at the second December preceding the Service Year to the value of the PPI at December preceding the Service Year,
- c. said sum (a+b) then divided by two to produce the average of the percentage change of the CPI and the PPI and
- d. subject to the limitations that (1) if the resulting dividend $((a+b)/2)$ is

greater than the ceiling of 0.090, Annual Inflation shall be deemed to be 0.0900, and (2) if the resulting dividend is less than the floor of 0.0375, then Annual Inflation shall be deemed to be 0.0375.

(B) Subtract 0.0175 from Annual Inflation as calculated pursuant to the preceding subparagraph 6(j)(ii)(A).

(k) Regulatory Adjustment Charge for Certain Costs Due to Changes in Federal or State Regulatory Requirements.

(i) Calculation of Regulatory Adjustment Charge.

Unless the methods and principles for determining billing rates under subparagraphs (a) through (d) of paragraph 6 hereof become applicable to Service Years beginning on and after October 1, 2006, as a result of arbitration pursuant to subparagraph 16(c) of this contract, for Service Years beginning on and after October 1, 2006, in addition to the Base Rate, Evanston shall bill and the Commission shall pay, where the conditions set forth in this subparagraph (k) are satisfied, a Regulatory Adjustment Charge, calculated as set forth in this subparagraph (k). The Regulatory Adjustment Charge, if any, for the Service Year shall be equal to the product of (A) the Commission's share (based on the ratio of its 55 million gallon per day reservation to the rated maximum daily capacity of the Evanston water works plant during such Service Year (for purposes of this provision, the parties agree that the rated maximum daily capacity of the Evanston water works plant at November 30, 1994, is 108 million gallons per day)) multiplied by (B) the sum of the total annual Principal and Interest Charges plus Net Operating Cost for such Service Year,

attributable to the Qualified Capital Equipment and Facilities. The Regulatory Adjustment Charge, if any, for any Service Year shall be billed by Evanston and paid by the Commission in twelve equal installments as a separately identified item or items on the monthly bills rendered by Evanston.

(ii) Qualified Capital Equipment and Facilities.

"Qualified Capital Equipment and Facilities" means capital equipment and facilities

(A) required in serving the Commission,

(B) properly classified in one of the three accounts originally used in computing the Commission's Rate Base, that is, Source of Supply, WF171.00, Pumping Plant, WF 172.000, or Water Treatment Plant, WF173.000,

(C) having an initial acquisition cost calculated in the Service Year in which installation of such equipment or facility is commenced, equal to or greater than the Threshold Value, which Threshold Value shall be \$1 million in the Service Year beginning October 1, 1993, and for each Service Year beginning October 1, 1994 and thereafter shall be the Threshold Value in the immediately preceding Service Year multiplied by 1.ABCD, where ".ABCD" is the Annual Inflation as defined in subparagraph 6(j)(ii)(A) above,

(D) but only when the need for such equipment or facilities is certified by an independent engineering firm to be entirely and directly due to a specific, identifiable addition or additions to, or change or changes in, Federal or State statutes or

regulations applicable to operation of the Evanston water works plant and/or the delivery of water to the Commission therefrom, including without limiting the foregoing, additions to or changes in the regulations of the United States Public Health Service, the United States Environmental Protection Agency, the Department of Public Health of the State of Illinois, the Illinois Pollution Control Board, or the Illinois Environmental Protection Agency, or any successor departments or agencies, which addition(s) or change(s) become effective on or after October 1, 2006 (hereinafter referred to as a "New Regulation"). Such certification shall be conclusive and binding on the parties.

Any such equipment or facility which is entirely and directly due to a New Regulation shall be deemed Qualified Capital Equipment and Facilities notwithstanding the fact that the equipment or facility also produces other benefits to Evanston such as reducing operating expenses, increasing operating efficiencies, or permitting the retirement of other water works properties. Notwithstanding the foregoing, however, the New Reservoir defined in subparagraph (vii) below shall not be Qualified Capital Equipment and Facilities.

In determining whether to certify equipment or facilities, or what portion of the cost of equipment and facilities to certify, as Qualified Capital Equipment and Facilities, the independent engineering firm shall include only the minimum cost of equipment and facilities necessary to comply with the New Regulation, and shall not include any costs for the equipment or

facilities incurred by Evanston for purposes other than compliance with the New Regulation, such as costs to improve or upgrade the operation, or to expand the capacity, of the Evanston water works plant, that are not entirely and directly due to the New Regulation. Evanston may, in its discretion, incur costs in connection with the acquisition and installation of Qualified Capital Equipment and Facilities for equipment, facilities or purposes not required for compliance with a New Regulation, but none of such additional costs shall be included in the calculation of the Regulatory Adjustment Charge.

(iii) Principal and Interest Charges. "Principal and Interest Charges" means (A) the actual principal and interest payments due during the Service Year in question attributable to the bonds (or that portion of bonds) issued to finance the acquisition and installation of Qualified Capital Equipment and Facilities less the annual depreciation charge which would have been recorded for any assets required in serving the Commission which are retired in connection therewith, computed on a straight-line basis of depreciation using the depreciation rates shown in Appendix B, or (B) if no bonds are issued, the amount of Imputed Payments for such Qualified Capital Equipment and Facilities less the amount of the annual depreciation charge which would have been recorded for any assets required in serving the Commission which are retired in connection therewith, computed on a straight-line basis of depreciation using the depreciation rates shown in Appendix B, where "Imputed Payments" means the principal and

interest charges that would be incurred in the Service Year in question if the Qualified Capital Equipment and Facilities had been financed by an issue of 20-year bonds to be retired by 40 equal, semi-annual payments at an annual interest rate equal to the average interest rate, in the month in which the principal contract for the Qualified Capital Equipment and Facilities is signed by Evanston, for newly-issued municipal bonds carrying the same rating as Evanston's bonds as reported in the Municipal Bond Buyer or similar publication. Principal and Interest Charges shall not be less than zero.

(iv) Net Operating Cost. The "Net Operating Cost" shall be (A) the increase in annual operating expense properly recorded by Evanston in the Water Fund expense accounts for Administration (1900 Group), Pumping (1905 Group), and Filtration (1910 Group), and the portion of the increase in annual operating expense properly recorded by Evanston in the applicable expense accounts for Insurance (1935.401, 1935.423, 1935.420 and 1935.41) that is allocated to the Water Fund, entirely and directly attributable to the operation and maintenance of the Qualified Capital Equipment and Facilities, less (B) any reduction in the operating expense categories specified in subpart (A) entirely and directly attributable (1) to the operation and maintenance of the Qualified Capital Equipment and Facilities or (2) to the retirement due to the installation of the Qualified Capital Equipment and Facilities of any assets at the Evanston water works plant in the Source of Supply, Pumping Plant and/or Water Treatment Plant

categories which had been required in serving the Commission, which annualized Net Operating Costs for the first Service Year incurred shall be so certified by the independent engineering firm identified in subparagraph (k)(ii)(D) above.

(v) Procedure for Certification of Qualified Capital Equipment and Facilities. The independent engineering firm identified in subparagraph (k)(ii)(D) above shall not have been previously employed by either party for at least 4 years prior to the date of its appointment pursuant to said subparagraph, and shall not be utilized by Evanston in connection with designing or installing the Qualified Capital Equipment and Facilities in question. Its contract shall be executed jointly, and its fees shall be shared equally, by Evanston and the Commission. The independent engineering firm shall be informed that its determination of what expenditure is "entirely and directly" due to the New Regulation is to be based on the minimum cost of acquiring and installing, or operating and maintaining, as the case may be, capital equipment and facilities strictly necessary to comply with the New Regulation, and shall not include any expenditures that serve to improve or upgrade operation of, or expand the capacity of, the Evanston water works plant but that are not entirely and directly required by the New Regulation.

(vi) Termination of Regulatory Adjustment Charge. At such time as Evanston ceases to incur any Principal and Interest Charges that are incorporated in the Regulatory Adjustment Charge, either by retirement of bonds actually issued or by reaching the

end of the 20-year amortization period for Imputed Payments specified in subparagraph (k) (iii) above, the Regulatory Adjustment Charge shall be reduced by that amount. The Commission shall continue to pay the balance, if any, of the Regulatory Adjustment Charge.

(vii) New Reservoir. The "New Reservoir" shall mean any addition installed after November 30, 1994 to the treated water storage capacity existing at the Evanston water works plant.

(1) Rates for Service Years Beginning on and After October 1, 2006, in the Event of Exercise of the Right to Reopen. In the event that either the Commission or Evanston exercises the right to reopen determination of the rates to be billed by Evanston and paid by the Commission for water delivered by Evanston and received by the Commission as provided for in paragraph 16 hereof, Evanston shall continue to bill and the Commission shall continue to pay for water received from October 1, 2006, until the completion of the negotiations and/or arbitration proceedings provided for in paragraph 16 at the rates determined in accordance with subparagraphs (j) and (k) of this paragraph 6. Within 30 days following completion of such negotiations or such arbitration proceedings, Evanston shall calculate the amount due from the Commission for water received on and after October 1, 2006, at the rates agreed to or established in, or calculated pursuant to the methods and principles agreed to or established in, such negotiations or such arbitration proceedings, less the amount theretofore actually paid by the Commission for water received on

and after October 1, 2006, and shall render to the Commission a bill or credit for the net amount due from or to the Commission, as the case may be. Thereafter, Evanston shall bill, and the Commission shall pay, for water delivered by Evanston and received by the Commission at the rates agreed to or established in, or calculated pursuant to the methods and principles agreed to or established in, such negotiations or such arbitration proceedings; provided, that this provision shall not eliminate the right of either party to refer any new issues or disputes arising thereafter to arbitration in accordance with paragraph 8 hereof.

7. Service to Others. Except for municipalities and other customers being served by Evanston on the date of this agreement, Evanston agrees not to supply water to any municipality or other customer unless it can do so without impairing the Commission's right to service in accordance with the terms of this contract and, in particular but without limitation, its right to receive 55 million gallons of water per day from Evanston's existing water plant without any increase in the rate base allocable to the Commission under this contract.

8. Arbitration. It is hereby expressly understood and agreed that, if any point in this contract is unclear or ambiguous, or in case of any dispute arising between the parties hereunder, said point or dispute shall, at the written request of either party, be referred to arbitration for determination or settlement under the Uniform Arbitration Act (Ill. Rev. Stat., ch. 10, § 101-123 (1979)), including amendments that may hereafter be made

thereto which at any particular time are in force and effect. The arbitration board shall consist of three (3) experienced specialists in the matter to be arbitrated. One member of the arbitration board is to be chosen by Evanston, one is to be chosen by the Commission, and the two thus named shall appoint a third member, who shall serve as chairman. If the two thus named cannot agree upon a third within ten (10) days, they shall be dismissed, and two other persons shall be appointed as outlined above, this procedure to continue until the full board results; provided, however, that nothing in this section shall act to halt any negotiations, or to relieve Evanston or the Commission of the responsibility for seeking an equitable settlement.

Arbitration hearings shall take place at the Evanston Civic Center unless the parties shall agree to some other place.

It shall be the responsibility of the arbitration board to demand a clear and concise definition of the matter or matters at issue, and to decide and demand whatever information, testimony, or other aid is necessary to its deliberations. It shall be the responsibility of Evanston and the Commission to meet such demands promptly and without reservation.

Any award pursuant to arbitration as herein provided for shall be accompanied by a written opinion of the arbitrators giving reasons for the award. In case of a determination as to a point that has not been covered or adequately covered herein, or that is unclear or ambiguous, the arbitrators in making their determination shall include a consideration of the general objectives sought to

be obtained under this contract and what would appear to be reasonable under the circumstances.

The arbitrators shall be entitled to reasonable compensation and to incur reasonable expenses, and such compensation and all other expenses of the arbitration board shall be shared equally by Evanston and the Commission unless the arbitrators shall specify some other allocation based on the equities of the situation. References in this contract to specific matters to be referred to arbitration in accordance with this paragraph shall not be construed to preclude the referral of any other matter.

9. Regulatory Bodies. This contract shall be subject to all valid rules, regulations, and laws applicable hereto passed or promulgated by the United States of America, the State of Illinois, or any governmental body or agency having lawful jurisdiction, or any authorized representative or agency of any of them; provided, however, that this clause shall not be construed as waiving the right of either party to challenge the validity of any such rule, regulation, or law on any basis, including impairment of this contract.

10. Modification. Any other provision of this contract to the contrary notwithstanding, this contract may be changed or modified only with the consent of the governing bodies of both the Commission and Evanston. Such modification may be requested by either party, in which event, unless the parties shall agree to some other procedure or time, a joint meeting of such governing bodies shall be held not more than thirty (30) days after the

giving of such notice, at which joint meeting the requested changes or modifications shall be discussed and considered.

11. Notices. All notices or communications provided for herein shall be in writing and delivered either in person or by United States Mail, via certified or registered mail, return receipt requested, and with the proper postage prepaid, addressed to the party for whom such notice or communication is intended at the address shown below or at such other address as specified by notice given in accordance herewith:

If for the Commission:

Executive Director
Northwest Water Commission
1525 North Wolf Road
Des Plaines, Illinois 60016

If for Evanston:

City Manager
Evanston Civic Center
2100 Ridge Avenue
Evanston, Illinois 60201

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

13. Term of Contract. Subject to the provisions of paragraph 16 hereof, this contract shall continue in force and effect for a period of forty-five (45) years from the date of first delivery of water to the Commission hereunder (which is not more than 40 years from the effective date of this amended and restated contract), which date of first delivery Evanston and the Commission agree was

March 1, 1985, and shall be renewed automatically at ten (10) year intervals thereafter unless either party hereto conveys notice of its intention to terminate this contract, in writing, not less than five (5) years prior to the end of the initial period hereof or any such ten-year period thereafter. However, both parties hereby agree to negotiate in good faith with reference to the continuation, extension, or renewal of this contract in the event that one party conveys notice of its intention to terminate the contract and the other party hereto requests that said party negotiate for the continuation, extension or renewal of this contract.

14. Effective Date. This amended and restated contract shall become effective on the first day of the next month commencing immediately after its execution by the parties.

15. Termination Contingency. Either party shall have the right to terminate this contract by written notice to the other, delivered not later than June 1, 1981, in the event that the Commission has not, on or before April 1, 1981, entered into binding agreements to sell at least a 1984 annual average of 16.8 mgd of Lake Michigan water to its member municipalities or other customers beginning not later than January 1, 1984. Upon such notice being given as herein provided, this contract shall be of no further force or effect, and neither party shall thereafter have any obligation to the other by reason of this contract. If no such notice is given on or before June 1, 1981, this paragraph shall be of no further force or effect and this contract shall not

thereafter be terminated except in accordance with the provisions of paragraph 13 above or by mutual consent of the parties pursuant to paragraph 10 above.

16. Right to Reopen Determination of Billings and Rates for Service.

(a) Exercise of Right to Reopen. Either party hereto may cause negotiations for the purpose of determining the rates to be billed by Evanston and paid by the Commission for water delivered by Evanston and received by the Commission hereunder on and after October 1, 2006, to be reopened (hereinafter referred to as "Reopening") by giving written notice to the other party, on or before April 1, 2006, but in no event before October 1, 2005, that it is initiating Reopening. Such written notice shall be given by placing it with the United States Postal Service for delivery by registered mail, return receipt requested, postmarked not later than April 1, 2006. Such written notice shall include proposed amendment or amendments to the provisions of this contract relating to the determination of billings and rates for water provided by Evanston to the Commission.

(b) Negotiation. Should either party request Reopening in accordance with subparagraph (a) of this paragraph 16, the Commission and Evanston shall promptly commence negotiations towards determination of a revised method or methods for determining the billings and rates for water provided by Evanston to the Commission on and after October 1, 2006. Such negotiations need not be limited to consideration of the amendment or amendments

to the contract proposed in the written notice submitted by the party initiating Reopening, and may result in an agreement that no change should be made in the provisions of the contract relating to determination of billings and rates for water provided by Evanston to the Commission. Nothing in this Paragraph 16 shall be construed to impose on either the Commission or Evanston any obligation, responsibility or duty whatever to agree to any change in the provisions of this amended and restated contract, each party reserving to itself absolute discretion to decline any proposal advanced pursuant to this Paragraph 16.

(c) Arbitration. Should the parties fail to reach agreement as to the method for determining billings and rates for water provided by Evanston to the Commission under the contract within six months after the date of the notice initiating Reopening, or such later date as Evanston and the Commission may in writing agree, the rates to be billed by Evanston and paid by the Commission for water delivered by Evanston and received by the Commission on and after October 1, 2006, shall thereafter be determined in accordance with the principles and methods set forth in subparagraphs (a), (b), (c) and (d) of paragraph 6 hereof, i.e., the methods and principles applicable under this contract prior to October 1, 1993, as modified by Appendix E hereto, and the determination of the rates for the Service Year beginning on October 1, 2006, shall be referred to arbitration in accordance with paragraph 8 hereof, unless Evanston and the Commission have agreed on such rates. In such arbitration, the arbitrators shall

be limited to determining the rate to be applicable for the Service Year beginning October 1, 2006. The methods and principles to be applied by the arbitrators in determining the rates to be applicable for such Service Year, and to be applied in determining the rates in subsequent Service Years, shall be the methods and principles set forth in the aforesaid subparagraphs (a), (b), (c) and (d) of paragraph 6 hereof as modified by Appendix E hereto, provided, that the parties shall stipulate to and shall not contest, and the arbitration board shall accept as agreed, the components of Annual Return on Rate Base, Original Cost Rate Base, Reproduction Cost New Rate Base, Fair Value Rate Base, Depreciation Charge, and Operating Costs set forth in Appendix E hereto and the methods and procedures reflected therein for calculating said figures. The pendency of arbitration proceedings pursuant to this subparagraph (c) shall not prohibit the parties from continuing negotiations pursuant to subparagraph (b), but neither party shall have any obligation to continue such negotiations.

(d) Rights and Obligations Relating to Delivery and Receipt of Water Unaffected. The initiation of Reopening pursuant to this paragraph 16, and the pendency of any negotiations or arbitration proceedings hereunder, shall not affect the rights and obligations of Evanston and the Commission under this contract relating to the delivery and receipt of water.

(e) Right to Extend or Shorten Term of Contract. Following the conclusion of any negotiations pursuant to subparagraph (b) hereof or of any arbitration proceedings pursuant

to subparagraph (c) hereof, the party which did not initiate Reopening may in its sole discretion elect either to extend or to shorten the term of the contract by five (5) years. Such election shall be made by giving written notice thereof to the other party within 180 days following the effective date of any amendment to the contract agreed to through negotiations pursuant to subparagraph (b) hereof or the date of the arbitration award pursuant to subparagraph (c) hereof.

17. Provisions Relating to Potential Requirement for New Reservoir.

(a) Adequacy of Present Treated Water Storage Capacity.

The Commission and Evanston agree that it is not necessary for Evanston to construct a New Reservoir, and that should Evanston construct additional treated water storage capacity after November 30, 1994, the Commission shall not, under any circumstances, be entitled to, or make any demand for, any allocation of water from such additional treated water storage capacity pursuant to paragraph 1 hereof in the event of emergency, system malfunction or failure, unless and to the extent that the Commission has made a contribution, in an amount agreed to by both parties, and in addition to the rates for water service provided for in this contract, to cover a portion of Evanston's investment in such additional treated water storage capacity which shall have been allocated to the Commission, but nothing in this contract shall require the Commission to make any such contribution.

(b) Cooperation Concerning Potential Requirement for New

Reservoir. In consideration for the exclusion of the costs of a New Reservoir from the calculation of the Regulatory Adjustment Charge pursuant to subparagraph (k) of paragraph 6, the Commission agrees to cooperate with and assist Evanston, in both informal activities and formal proceedings, in demonstrating to the Illinois Environmental Protection Agency and the Illinois Pollution Control Board that Evanston should not be required to construct any additional treated water storage capacity. In carrying out this obligation, the Commission agrees to, among other things, advocate to the Illinois Environmental Protection Agency and the Illinois Pollution Control Board that, insofar as the demands of the Commission's customers are taken into account in determining the need for additional treated water storage capacity, the capacity of the Commission's reservoir in Des Plaines, Illinois should be included as part of the treated water storage capacity at the Evanston water works plant in determining whether the treated water storage capacity at the Evanston water works plant is sufficient in relation to the demands of the customers served by the plant.

18. Booster Station Operation. The Commission's Morton Grove Booster Pump Station (the "Booster Station") shall be operated in accordance with the following procedures:

(a) The Booster Station shall be operated only when pumpage rates from the Evanston Water Treatment Plant to the Commission reservoir are equal to, or greater than, 2.083 million gallons per hour. It is understood and agreed that these hourly pumpage rates will generally not be necessary unless (1) the total

daily (24 hour) water demand of the Commission is at least 40 mgd; or (2) there is a declared emergency situation at the Evanston plant.

(b) All precautions shall be taken to prevent the short cycling use of the Booster Station. In general, Evanston shall attempt to use the Booster Station a minimum of six hours per occurrence of operation.

(c) The objective in operating the Booster Station shall be to provide the Commission with an adequate supply of water which will satisfy the Commission's maximum 24-hour water demand of 55 million gallons.

(d) The Evanston operator shall notify the Commission's operator a minimum of six hours in advance of when the Booster Station will be used, unless shorter notice is necessary due to emergency conditions. However, all efforts shall be made, whenever possible, to notify the Commission's operator during normal working hours prior to the startup of the Booster Station.

(e) The Booster Station shall be operated in accordance with the technical procedures set forth in Appendix F, which is attached hereto and hereby incorporated.

(f) Evanston shall pay all electricity costs associated with the operation of the pumps at the Booster Station, but only for electricity actually used to operate the pumps.

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this amended and restated contract to be executed in several counterparts, each of

which shall constitute an original, all as of this 27 day of April, 1995.

THE NORTHWEST WATER COMMISSION

By: William F. Bally
Chairman

Attest:

P. Stephen Stungell
Clerk

THE CITY OF EVANSTON

By: [Signature]
City Manager

Attest:

Kristen Davis
Clerk

APPENDIX F

WHOLESALE WATER SUPPLY AGREEMENTS

VILLAGE OF SKOKIE

AN AGREEMENT BY AND BETWEEN
THE CITY OF EVANSTON
AND
THE VILLAGE OF SKOKIE
RELATING TO WATER SUPPLY AND SERVICE
EFFECTIVE MARCH 1, 1997

AN AGREEMENT BY AND BETWEEN
 THE CITY OF EVANSTON
 AND
 THE VILLAGE OF SKOKIE
 RELATING TO WATER SUPPLY AND SERVICE

TABLE OF CONTENTS

SECTION 1.	WATER SUPPLY AND SERVICE	2
A.	Full Water Requirements	2
B.	Service Defined	3
C.	Operation and Maintenance of the Evanston/Skokie System	3
D.	Reliability; Curtailments	4
E.	Quality	4
F.	Limitation on New Customers	4
G.	Emergency Connections	5
H.	Supply and Service Agreement Only	5
SECTION 2.	METERS AND MEASUREMENTS	5
A.	Unit of Measurement	5
B.	Delivery Meters	5
C.	Check Meters.	6
D.	Meter Error and Correction	6
E.	Notification Concerning Meter Tests	7
SECTION 3.	BILLING AND RATES	8
A.	Billing	8
B.	Rates	8
C.	Base Rate	9
1.	Initial Base Rate	9
2.	Adjustment of Base Rate in Subsequent Service Years	9
D.	Regulatory Adjustment Rate	10
1.	Definitions	10
2.	Calculation of Regulatory Adjustment Rate	12
E.	Procedure for Certification of Qualified Capital Equipment and Facilities and Net Operating Costs	13
F.	Termination of Regulatory Adjustment Rate	13

G.	Agreements Concerning New Reservoir	14
1.	Adequacy of Present Treated Lake Michigan Water Storage Capacity	14
2.	Cooperation Concerning Potential Requirement for New Reservoir	14
SECTION 4.	EFFECTIVE DATE AND TERM OF AGREEMENT	15
SECTION 5.	GENERAL PROVISIONS	15
A.	Entire Agreement	15
B.	Amendments and Modifications	15
C.	Interpretation	15
D.	Non-Waiver	16
E.	No Third Party Beneficiaries	16
F.	Regulatory Bodies	16
G.	Assignment	16
H.	Notices	16
I.	Enforcement; Arbitration	17
1.	Remedies	17
2.	Arbitration	17
J.	Authority to Execute	18

AN AGREEMENT BY AND BETWEEN
THE CITY OF EVANSTON
AND
THE VILLAGE OF SKOKIE
RELATING TO WATER SUPPLY AND SERVICE

THIS AGREEMENT, made and entered into as of the 1st day of March, 1997, by and between the CITY OF EVANSTON, Cook County, Illinois, a home rule municipal corporation ("Evanston") and the VILLAGE OF SKOKIE, Cook County, Illinois, a home rule municipal corporation ("Skokie"),

WITNESSETH:

WHEREAS, Skokie owns and operates a water distribution system that provides potable Lake Michigan Water to the retail water customers of such system (the "Skokie System"); and

WHEREAS, Evanston is the owner and operator of a water intake, filtration, treatment, and pumping plant on the shore of Lake Michigan (the "Evanston Plant") taking water from Lake Michigan; and

WHEREAS, Evanston owns and operates a water distribution system within the corporate limits of Evanston that provides potable Lake Michigan Water to the retail water customers of such system and also transports water to the Skokie System at points of delivery located at or near the common boundary between Evanston and Skokie (the "Evanston System"); and

WHEREAS, Evanston also supplies water to the Northwest Water Commission, an Illinois Water Commission, pursuant to an existing written agreement that defines the rights and obligations of Evanston with respect to such service; and

WHEREAS, Skokie has been purchasing from Evanston all of the potable Lake Michigan Water required by the customers of the Skokie System since June 5, 1944; and

WHEREAS, Skokie desires to continue to purchase and receive Lake Michigan Water from Evanston for distribution and sale by Skokie to the customers of the Skokie System; and

WHEREAS, Evanston desires to continue to sell and deliver Lake Michigan Water to Skokie and currently has, and will continue to have, available facilities sufficient to pump, treat and deliver Lake Michigan Water to Skokie in quantities sufficient to meet the maximum daily demands of the Skokie System;

NOW, THEREFORE, in consideration of the aforesaid premises, which are hereby made a part of this Agreement, and of the mutual covenants and agreements herein contained, and of other good and valuable consideration, Evanston and Skokie do hereby agree as follows:

SECTION 1. WATER SUPPLY AND SERVICE .

A. Full Water Requirements. Subject to the terms and conditions of this Agreement, Evanston shall sell and deliver to Skokie, and Skokie shall purchase and receive from Evanston, all the Lake Michigan Water required for the use of the retail customers of the Skokie System, as it exists on the effective date of this Agreement and as it may be expanded in the future, with the following exceptions: (1) customers of the Skokie System being supplied from a source other than Evanston as of the effective date of this Agreement may continue to be so supplied; (2) customers of the Skokie System may be supplied from a source other than Evanston at any time in the future if both Evanston and Skokie consent; (3) no new customer, either public or private, having an estimated ultimate average daily use in excess of 100,000 gallons and located outside the corporate limits of Skokie may be supplied by Skokie without the prior written consent of Evanston; and (4) Evanston shall supply on a direct basis its current, and any new, customers located east of the Metropolitan Water Reclamation District Canal, including any such current or new customers located within the corporate limits of Skokie; provided, however, that this Clause 1.A(4) shall not be construed to prevent Evanston from recovering, as a condition to providing such service to any new customer located within such area of Skokie, Evanston's reasonable, actual costs of connecting such new customer to the Evanston System.

B. Service Defined. Evanston shall supply at points of delivery located within Skokie at or near (1) the intersection of McCormick Boulevard and Emerson Street, (2) the intersection of Oakton Street and the Metropolitan Water Reclamation District Canal and (3) the intersection of Old Orchard Road and Gross Point Road (the "Points of Delivery") sufficient Lake Michigan Water to satisfy the maximum 24-hour demand for Lake Michigan Water of the Skokie System. Evanston shall supply Lake Michigan Water to both the Evanston System and the Skokie System by direct pressure from the Evanston Plant without intermediate pumping from reservoirs. The Evanston System and the Skokie System shall be operated as one single, fully integrated water distribution system (the "Evanston/Skokie System"). Evanston shall be responsible for controlling operating pressures within the Evanston/Skokie System and for adjusting such pressures according to the water demands within such System. Operating pressures within the Evanston/Skokie System shall depend on the facilities, such as pumps, feeder mains, tanks and reservoirs, within such System and the ability of the mains within such System to withstand higher pressures. At no time shall the operating pressure or quality of service in the Skokie System be reduced in order to give better service to the Evanston System.

C. Operation and Maintenance of the Evanston/Skokie System. In carrying out its obligations pursuant to Subsection 1.B above, Evanston shall be responsible for operating, controlling, maintaining, restoring and improving the Evanston System and for operating and controlling, but not maintaining, all tanks, reservoirs, booster stations and similar facilities within the Skokie System. Such operation and control of the Skokie System shall be effected remotely from the Evanston Plant over telephone lines leased for that purpose by Skokie and so as to give at all times the best possible service within the Skokie System, with due concern for Skokie's costs. Evanston shall maintain complete and accurate records of Skokie booster station operating periods and of Skokie tank and reservoir water levels and pressures and shall deliver a copy of such records to Skokie at least once during each calendar month. Except as provided in this Subsection

1.C or in a separate agreement between Evanston and Skokie, Skokie shall be responsible for maintaining, restoring and improving the Skokie System.

D. Reliability; Curtailments. Evanston shall at all times use maximum feasible efforts to avoid interruptions to the service required pursuant to this Agreement or reductions in the amount of Lake Michigan Water required to be delivered by it to Skokie pursuant to this Agreement. In the event that, by reason of any emergency, system failure or malfunction, Evanston is unable, despite the use of such maximum feasible efforts, to supply the full Lake Michigan Water needs of the Evanston System, the Skokie System, the Northwest Water Commission and all other Evanston customers, the total amount of Lake Michigan Water that Evanston is able to supply to such parties shall be equitably apportioned among such parties; provided, however, that any Lake Michigan Water available from the New Reservoir described in Paragraph 3.D.1(d) of this Agreement shall not be supplied to Skokie unless, and then only to the extent, that Skokie has made a contribution in accordance with Subsection 3.G of this Agreement to cover a portion of Evanston's investment in the New Reservoir.

E. Quality. The quality of Lake Michigan Water supplied and delivered to the Skokie System pursuant to this Agreement shall at all times be equal to the quality of Lake Michigan Water supplied to the Evanston System and shall, at a minimum, be of such quality as to meet or exceed any water quality standards heretofore or hereafter enacted or promulgated by the United States Public Health Service, the Department of Public Health of the State of Illinois, the United States or Illinois Environmental Protection Agencies, or such other Federal or State agency or agencies as shall have jurisdiction from time to time to enact or promulgate such standards.

F. Limitation on New Customers. Evanston shall not enter into any new, modified or amended agreement to supply Lake Michigan Water to any customer located outside the corporate limits of Evanston unless it can do so without impairing the service to which Skokie is entitled pursuant to this Agreement. Evanston shall give Skokie at least 90 days notice of its intention to

enter into any such new, modified or amended agreement to supply Lake Michigan Water to any customer located outside the corporate limits of Evanston and shall supply Skokie with the evidence available that such service will not impair the service to which Skokie is entitled pursuant to this Agreement.

G. Emergency Connections. Nothing in this Agreement shall be construed to prohibit Skokie from entering into any emergency water service agreement with any other municipality or water agency.

H. Supply and Service Agreement Only. Nothing in this Agreement shall be construed as granting any proprietary or other interest in the Evanston Plant or System to Skokie. Nothing in this Agreement shall be construed as granting any proprietary or other interest in the Skokie System to Evanston. It is the intent of Evanston and Skokie that this Agreement shall constitute only an agreement for the sale and purchase of a water supply and related services.

SECTION 2. METERS AND MEASUREMENTS.

A. Unit of Measurement. The unit of measurement for Lake Michigan Water delivered pursuant to this Agreement shall be gallons of water, U.S. Standard Liquid Measure, and all meters installed pursuant to this Agreement shall, unless Evanston and Skokie otherwise agree, be so calibrated. In the event that it should become necessary or desirable to use other units of measurement, the basis of conversion shall be that 7.48 gallons is equivalent to one cubic foot.

B. Delivery Meters. Lake Michigan Water sold and delivered to Skokie pursuant to this Agreement shall be measured through a meter or meters furnished, installed, and read by Evanston (the "Delivery Meters"). Except as hereinafter provided, all billing for Lake Michigan Water sold and delivered pursuant to this Agreement shall be based upon Evanston's readings of the Delivery Meters. All Delivery Meters shall meet the standards of the American Water Works Association and shall be available for inspection and checking by Skokie at all times.

Evanston, at its own expense, shall maintain and, at intervals not to exceed six months, inspect, test, calibrate and adjust all Delivery Meters. Representatives from Skokie shall have the right to witness all such inspections, tests, calibrations and adjustments. Copies of the results of all such inspections, tests, calibrations and adjustments shall be furnished to Skokie upon request. Any Delivery Meter that tests not over two percent slow or fast shall be considered correct for billing purposes.

C. Check Meters. Skokie may, at its option and its own expense, install and operate a check meter (a "Check Meter") to check each Delivery Meter, but the measurement of Lake Michigan Water for billing pursuant to this Agreement shall, except as hereinafter provided, be solely by the Delivery Meters. All Check Meters shall meet the standards of the American Water Works Association and shall be available for inspection and checking by Evanston at all times.

The maintenance, reading, calibration and adjustment of all Check Meters shall be performed by Skokie; provided, however, that if at any time any such Check Meter is, due to the malfunction of a Delivery Meter or other reason, being used as the primary meter for measuring the amount of Lake Michigan Water delivered to Skokie pursuant to this Agreement, the maintenance, reading, calibration and adjustment of such Check Meter shall be performed by Evanston during such time.

D. Meter Error and Correction. If either Evanston or Skokie at any time observes a variation between a Delivery Meter and a Check Meter or any other evidence of meter malfunction, such party shall promptly notify the other party, and Evanston and Skokie shall then cooperate to procure an immediate inspection and test of the accuracy of such meters.

If, upon any inspection or test, any meter is found to be out of service or the percentage inaccuracy of any meter is found to be in excess of two percent slow or fast, the registration thereof, as well as charges for Lake Michigan Water based thereon, shall be corrected by agreement of Evanston and Skokie, based on the best data available, for a period extending back

to the time when such inaccuracy began, if such time is ascertainable and, if such time is not ascertainable, then for a period extending back one-half of the time elapsed since the last date of calibration, but in no event farther back than a period of six months. For such purposes, the best data available shall be deemed to be the registration of a Check Meter if one has been installed and is accurately registering not more than two percent slow or fast. Otherwise, the amount of Lake Michigan Water delivered during such period may be estimated (i) by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or (ii) if the error is not ascertainable by calibration tests or mathematical calculation, by estimating the quantity of Lake Michigan Water delivered by reference to deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

E. Notification Concerning Meter Tests. Evanston and Skokie shall each deliver to the other written notice at least 48 hours in advance of the time of any planned inspection, test, calibration, adjustment, or other work affecting any meter so that the other party may arrange to have a representative present. If said representative is not present at the time set in such notice, the inspection, test, calibration, adjustment or other work may, notwithstanding any other provision of this Section 2, proceed in the absence of said representative. The notice herein required may be waived in writing by either party. Notices required pursuant to this Subsection 2.E shall be given in the manner provided in Subsection 5.H of this Agreement but, notwithstanding said Subsection 5.H, shall be delivered to only the following persons at the following addresses:

If for Evanston:

Director of Public Works
2100 Ridge Avenue
Evanston, Illinois 60201

If for Skokie:

Public Works Director
5015 Davis Street
Skokie, Illinois 60077

SECTION 3. BILLING AND RATES.

A. Billing. Evanston shall render bills to Skokie pursuant to this Section 3 on a monthly basis for all Lake Michigan Water delivered by Evanston to the Points of Delivery pursuant to this Agreement, which water shall be measured as provided in Section 2 of this Agreement. Each such bill shall be due and payable on or before the 30th day following the date of its delivery to Skokie. Any bill not paid within 45 days following the date of its delivery to Skokie shall thereupon bear interest until paid at the lesser of the prime rate from time to time announced by the largest bank having its principal office in the State of Illinois or 10 percent per annum; provided, however, that in the event Skokie disputes any bill, or portion thereof, in writing within said 45 day period, and prevails in its dispute as to all or any portion of such bill, no interest shall be due or payable with regard to such successfully disputed portion of such bill.

B. Rates. For purposes of this Section 3, a "Service Year" shall be the one year period beginning on March 1 of any year and ending on the last day of February of the following year. During each Service Year, Evanston shall bill Skokie and Skokie shall pay Evanston, as full compensation to Evanston for all Lake Michigan Water sold and delivered and all services rendered pursuant to this Agreement, the following water rates:

- Base Rate. A Base Rate per 1000 gallons of Lake Michigan Water delivered by Evanston to the Points of Delivery, calculated as set forth in Subsection 3.C below, plus
- Regulatory Adjustment Rate. For Service Years beginning on and after March 1, 2007, a Regulatory Adjustment Rate, if any is due, in accordance with, and calculated as set forth in, Subsection 3.D below.

Charges due to the Base Rate shall be stated separately from charges due to the Regulatory Adjustment Rate, if any, on the monthly billings required pursuant to Subsection 3.A of this Agreement.

Evanston shall, no later than January 31 of each year, deliver to Skokie written notice of the Base Rate and the Regulatory Adjustment Rate, if any, for the following Service Year, together with a detailed explanation of the calculation of such Rates.

C. Base Rate.

1. Initial Base Rate. For all Lake Michigan Water delivered during the Service Year beginning March 1, 1997, the Base Rate shall be 72.5 cents per 1000 gallons.

2. Adjustment of Base Rate in Subsequent Service Years. For each Service Year beginning on or after March 1, 1998, the Base Rate shall be calculated by multiplying the factor "1.WXYZ" times the Base Rate applicable in the immediately preceding Service Year, where ".WXYZ" shall be calculated as follows:

(a) Calculate "Annual Inflation" equal to:

- (1) The percentage change, expressed as a decimal, in the Consumer Price Index -- All Urban Consumers -- Chicago, IL/Northwest IN, as published by the U.S. Department of Labor, Bureau of Labor Statistics, 1982-1984=100, or any successor index (the "CPI"), from the value of the CPI at the second December preceding the Service Year to the value of the CPI at the first December preceding the Service Year; plus
- (2) The percentage change, expressed as a decimal, in the national Producer Price Index -- Total Durable Goods, as published by the U.S. Department of Labor, Bureau of Labor Statistics, 1982=100, or any successor index (the "PPI"), from the value of the PPI at the second December preceding the Service Year to the value of the PPI at the first December preceding the Service Year; divided by
- (3) Two to produce the average of the percentage change of the CPI and the PPI $\{(1+2)/2\}$; but subject to the limitations that
- (4) (i) If the resulting dividend $\{(1+2)/2\}$ is greater than the ceiling of 0.0900, Annual Inflation shall be deemed to be 0.0900, and (ii) If the resulting dividend is less than the floor of 0.0375, Annual Inflation shall be deemed to be 0.0375.

- (b) Subtract 0.0175 from Annual Inflation as calculated pursuant to the preceding Subparagraph 3.C.2(a).

D. Regulatory Adjustment Rate.

1. Definitions.

- (a) "Qualified Capital Equipment and Facilities" means any capital equipment or facility that:

(1) Is required to serve Skokie pursuant to this Agreement; and

(2) Has an initial acquisition cost, calculated in the Service Year in which installation of such equipment or facility is commenced, equal to or greater than the "Threshold Value," where the Threshold Value for the Service Year beginning March 1, 1997 is \$1,135,000 and the Threshold Value for each Service Year beginning on or after March 1, 1998, is equal to the factor "1.ABCD" multiplied times the Threshold Value for the immediately preceding Service Year, where ".ABCD" is the Annual Inflation as defined in Subparagraph 3.C.2(a) of this Agreement; BUT

(3) ONLY WHEN the need for such equipment or facilities is certified pursuant to, and by an independent engineering firm (the "Independent Engineer") retained pursuant to, the procedures set forth in Subsection 3.E of this Agreement to be entirely and directly due to one or more specific, identifiable additions to, or changes in, Federal or State statutes or regulations applicable to operation of the Evanston Plant or the delivery of Lake Michigan Water to Skokie therefrom, including without limiting the foregoing, additions to or changes in the regulations of the United States Public Health Service, the United States Environmental Protection Agency, the Department of Public Health of the State of Illinois, the Illinois Pollution Control Board, or the Illinois Environmental Protection Agency, or any successor departments or agencies, which additions or changes become effective on or after March 1, 2007 (a "New Regulation"). Such certification shall be conclusive and binding on Evanston and Skokie.

Any such equipment or facility that is entirely and directly due to a New Regulation shall be deemed Qualified Capital Equipment and Facilities notwithstanding the fact that the equipment or facility also produces other benefits to Evanston such as reducing operating expenses, increasing operating efficiencies, or permitting the retirement of other

Evanston water works properties. Notwithstanding the foregoing, however, the New Reservoir defined in Subparagraph 3.D.1(d) below shall not be Qualified Capital Equipment and Facilities.

In determining whether to certify equipment or facilities, or what portion of the cost of equipment and facilities to certify, as Qualified Capital Equipment and Facilities, the Independent Engineer shall include only the minimum cost of equipment and facilities necessary to comply with the New Regulation, and shall not include any costs for the equipment or facilities incurred by Evanston for purposes other than compliance with the New Regulation, such as costs to improve or upgrade the operation, or to expand the capacity, of the Evanston Plant or System, that are not entirely and directly due to the New Regulation. Evanston may, in its discretion, incur costs in connection with the acquisition and installation of Qualified Capital Equipment and Facilities for equipment, facilities or purposes not required for compliance with a New Regulation, but none of such additional costs shall be included in the calculation of the Regulatory Adjustment Rate.

(b) "Principal and Interest Charges" means:

- (1) The actual principal and interest payments due during the Service Year in question attributable to any bonds (or that portion of any bonds) issued to finance the acquisition and installation of Qualified Capital Equipment and Facilities less the annual depreciation charge that would have been recorded for any assets required in serving Skokie that are retired in connection therewith, computed on a straight-line basis of depreciation over the remaining useful life of such assets as shown in the audited financial records of the Evanston Water Fund; or
- (2) If no bonds are issued, the amount of "Imputed Payments" for such Qualified Capital Equipment and Facilities less the amount of the annual depreciation charge that would have been recorded for any assets required in serving Skokie that are retired in connection therewith, computed on a straight-line basis of depreciation over the remaining useful life of such assets as shown in the audited financial records of the Evanston Water Fund, where "Imputed Payments" means the principal and interest charges that would have been incurred in the Service Year in question if the Qualified Capital Equipment and Facilities had been financed by an issue of 20-year bonds to be retired by 40 equal, semi-

annual payments at an annual interest rate equal to the average interest rate, in the month in which the principal contract for the Qualified Capital Equipment and Facilities is signed by Evanston, for newly-issued municipal bonds carrying the same rating as Evanston's bonds as reported in the Municipal Bond Buyer or similar publication. Principal and Interest Charges shall not be less than zero.

- (c) "Net Operating Cost" means:
- (1) The sum of (i) the increase in annual operating expense properly recorded by Evanston in the Evanston Water Fund plus (ii) the increase in the portion of annual operating expense properly recorded by Evanston in the Evanston General Fund for insurance costs that are properly allocated to the Evanston Water Fund, but only to the extent that such increases are entirely and directly attributable to the operation and maintenance of the Qualified Capital Equipment and Facilities; minus
 - (2) Any reduction in any such operating expenses that is entirely and directly attributable to (i) the operation and maintenance of the Qualified Capital Equipment and Facilities or (ii) the retirement due to the installation of the Qualified Capital Equipment and Facilities of any assets of the Evanston Plant and System that had been required in serving Skokie.

The amount of Net Operating Costs for the Service Year in which any such Net Operating Costs are first incurred shall be certified to both Evanston and Skokie by the Independent Engineer.

- (d) "New Reservoir" means any addition to the treated Lake Michigan Water storage capacity existing at the Evanston Plant that is installed after March 1, 1997.

2. Calculation of Regulatory Adjustment Rate. The Regulatory Adjustment

Rate, if any, for the Service Years beginning on and after March 1, 2007, shall be calculated as follows:

- (a) Determine "Skokie's Share" by taking the ratio of the total quantity of Lake Michigan Water delivered by Evanston to the Points of Delivery during the immediately preceding Service Year to the product of 365 times the rated maximum daily capacity of the Evanston Plant during such preceding Service Year (for purposes of this provision, Evanston and Skokie agree that the rated maximum

daily capacity of the Evanston Plant as of the effective date of this Agreement is 108 million gallons per day); and

- (b) Multiply Skokie's Share times the sum of the total annual Principal and Interest Charges plus Net Operating Cost for the current Service Year attributable to the Qualified Capital Equipment and Facilities; and
- (c) Divide the resulting product by 12 to produce a monthly Regulatory Adjustment Rate.

E. Procedure for Certification of Qualified Capital Equipment and Facilities and Net Operating Costs. The Independent Engineer shall not have been previously employed by either Evanston or Skokie for at least 4 years prior to the date of its appointment pursuant to this Agreement and shall not be utilized by Evanston in connection with designing or installing the Qualified Capital Equipment and Facilities in question. The contract with the Independent Engineer shall be executed jointly by, and the fees of the Independent Engineer shall be shared equally by, Evanston and Skokie. The Independent Engineer shall be informed that its determination of what expenditure is "entirely and directly" due to the New Regulation is to be based on the minimum cost of acquiring and installing, or operating and maintaining, as the case may be, capital equipment and facilities strictly necessary to comply with the New Regulation and shall not include any expenditures that serve to improve or upgrade operation of, or expand the capacity of, the Evanston Plant but that are not entirely and directly required by the New Regulation.

F. Termination of Regulatory Adjustment Rate. At such time as Evanston ceases to incur any Principal and Interest Charges that are incorporated in the Regulatory Adjustment Rate, either by retirement of bonds actually issued or by reaching the end of the 20-year amortization period for Imputed Payments specified in Subparagraph 3.D.2(b) of this Agreement, the Regulatory Adjustment Rate shall be reduced by that amount. Skokie shall continue to pay the balance, if any, of the Regulatory Adjustment Rate.

G. Agreements Concerning New Reservoir.

1. Adequacy of Present Treated Lake Michigan Water Storage Capacity.

Should Evanston construct additional treated Lake Michigan Water storage capacity after March 1, 1997 ("New Reservoir"), Skokie shall not, under any circumstances, be entitled to, or make any demand for, any allocation of Lake Michigan Water from such New Reservoir capacity pursuant to Subsection 1.D hereof in the event of emergency, system malfunction or failure, unless, and then only to the extent, that Skokie has made a contribution, in an amount agreed to by Evanston and Skokie and in addition to the Rates for Lake Michigan Water service provided for in this Agreement, to cover a portion of Evanston's investment in such additional treated Lake Michigan Water storage capacity, but nothing in this contract shall require Skokie to make any such contribution.

2. Cooperation Concerning Potential Requirement for New Reservoir. In

consideration for the exclusion of the costs of a New Reservoir from the calculation of the Regulatory Adjustment Rate pursuant to Subparagraph 3.D.1(a) of this Agreement, Skokie agrees to cooperate with and assist Evanston, in both informal activities and formal proceedings, in demonstrating to the Illinois Environmental Protection Agency and the Illinois Pollution Control Board that Evanston should not be required to construct any additional treated Lake Michigan Water storage capacity. In carrying out this obligation, Skokie agrees to, among other things, advocate to the Illinois Environmental Protection Agency and the Illinois Pollution Control Board that, insofar as the demands of Skokie's customers are taken into account in determining the need for additional treated Lake Michigan Water storage capacity, the capacity of the tanks and reservoirs of the Skokie System should be included as part of the treated Lake Michigan Water storage capacity at the Evanston Plant in determining whether the treated Lake Michigan Water storage capacity at the Evanston Plant is sufficient in relation to the demands of the customers served by the Evanston Plant.

SECTION 4. EFFECTIVE DATE AND TERM OF AGREEMENT.

This Agreement shall take effect as of March 1, 1997, and shall continue in force and effect for a term of twenty years, from March 1, 1997 to February 28, 2017, and shall be renewed automatically at ten year intervals thereafter unless either party hereto delivers notice of its intention to terminate this Agreement, in writing, not less than five years prior to the end of the initial term of this Agreement or any such ten-year term thereafter. However, both Evanston and Skokie agree to negotiate in good faith with reference to the continuation, extension, or renewal of this Agreement in the event that one of them delivers notice of its intention to terminate the Agreement and the other requests such negotiations.

SECTION 5. GENERAL PROVISIONS.

A. Entire Agreement. This Agreement shall constitute the entire agreement of Evanston and Skokie concerning the sale and purchase of Lake Michigan Water; all prior agreements between Evanston and Skokie, whether written or oral, are superseded by this Agreement. There are no representations, covenants, promises, or obligations not contained in this Agreement that form any part of this Agreement or upon which either Evanston and Skokie is relying in entering into this Agreement.

B. Amendments and Modifications. No modification, addition, deletion, revision, alteration, or other change to this Agreement shall be effective unless and until such change is reduced to writing and executed by Evanston and Skokie pursuant to all applicable statutory procedures.

C. Interpretation. It is the intent of Evanston and Skokie that this Agreement shall be construed and interpreted so as to preserve its validity and enforceability as a whole. No rule of construction that a document is to be construed against the drafting party shall be applicable to this Agreement.

D. Non-Waiver. No term or condition of this Agreement shall be deemed waived by either Evanston or Skokie unless the term or condition to be waived and the circumstances giving rise to such waiver are set forth specifically in a duly authorized and written waiver of the party charged with such waiver. No waiver by either Evanston or Skokie of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition of this Agreement, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different term or condition of this Agreement.

E. No Third Party Beneficiaries. No claim as a third party beneficiary under this Agreement by any person, firm or corporation shall be made, or be valid, against either Evanston or Skokie.

F. Regulatory Bodies. This Agreement shall be subject to all valid rules, regulations, and laws applicable hereto passed or promulgated by the United States of America, the State of Illinois, or any governmental body or agency having lawful jurisdiction, or any authorized representative or agency of any of them; provided, however, that this Subsection 5.F shall not be construed as waiving the right of either Evanston or Skokie to challenge the validity of any such rule, regulation, or law on any basis, including impairment of this Agreement.

G. Assignment. Neither this Agreement nor the obligations or rights of either Evanston or Skokie pursuant to this Agreement shall be assigned or transferred except with the mutual consent of both Evanston and Skokie.

H. Notices. Except as provided in Subsection 2.E of this Agreement, all notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof when delivered in person at the address set forth below or five business days after deposit thereof in any main or branch United States post office, certified or

registered mail, return receipt requested, postage prepaid, properly addressed to Evanston and Skokie, respectively, as follows:

If for Evanston:

City Manager
Evanston Civic Center
2100 Ridge Avenue
Evanston, Illinois 60201

If for Skokie:

Village Clerk
Skokie Village Hall
5127 Oakton Street
Skokie, Illinois 60077

with duplicates to:

Village Manager
Skokie Village Hall
5127 Oakton Street
Skokie, Illinois 60077

Corporation Counsel
Skokie Village Hall
5127 Oakton Street
Skokie, Illinois 60077

By notice complying with the foregoing requirements of this Subsection 5.H, Evanston and Skokie shall each have the right to change the addressees or addresses or both for all future notices and communications to itself, but no notice of such a change shall be effective until actually received.

I. Enforcement; Arbitration.

1. Remedies. Subject to Paragraph 5.I.2 below, Evanston and Skokie may in law or in equity enforce or compel the performance of this Agreement and shall otherwise have all remedies provided by applicable law.

2. Arbitration. In case of any dispute arising between Evanston and Skokie concerning this Agreement, such dispute shall, at the written request of either party, be referred

to arbitration before a three person arbitration board for determination or settlement under the Illinois Uniform Arbitration Act, 70 ILCS 5/1 et seq., and the Commercial Arbitration Rules of the American Arbitration Association.

The arbitration board shall consist of three experienced specialists in the matter to be arbitrated. One member of the arbitration board shall be chosen by Evanston, one shall be chosen by Skokie, and the two thus chosen shall appoint a third member, who shall serve as chairman. If the two thus named cannot agree upon a third within thirty days, a third shall be appointed by the American Arbitration Association from its National Panel of Arbitrators and in accordance with its rules for such appointments.

It shall be the responsibility of the arbitrators to demand a clear and concise definition of the matter or matters at issue and to determine and demand all records, information, testimony, and other evidence that may be useful in their deliberations. It shall be the responsibility of Evanston and Skokie to meet such demands promptly and without reservation.

Any award pursuant to arbitration as herein provided for shall be accompanied by a written opinion of the arbitrators giving reasons for the award.

The arbitrators shall be entitled to reasonable compensation and to incur reasonable expenses, and such compensation and all other expenses of the arbitrators shall be shared equally by Evanston and Skokie unless the arbitrators shall specify some other allocation based on the equities of the situation.

J. Authority to Execute. This Agreement, and its execution by the City Manager of Evanston, was approved by the City Council of Evanston on the third day of February, 1997. This Agreement, and its execution by the Village Manager of Skokie, was approved by the Mayor and Board of Trustees of Skokie on the third day of February, 1997. Evanston and Skokie each

warrants to the other that no other approvals are required to make this Agreement binding upon it and enforceable against it.

IN WITNESS WHEREOF, Evanston and Skokie, acting under authority of their respective governing bodies, have caused this Agreement to be executed in several duplicate original counterparts effective as of the date first above written.

ATTEST:

CITY OF EVANSTON

City Clerk

City Manager

ATTEST:

VILLAGE OF SKOKIE

Village Clerk

Village Manager

EXHIBIT B

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

VILLAGE OF SKOKIE)	
)	
Plaintiff,)	
)	
v.)	No. 95 CH 08595
)	
CITY OF EVANSTON,)	Hon. William M. Madden
)	
Defendant.)	

AGREED ORDER

THIS MATTER COMING BEFORE THE COURT upon the agreement of the parties to dismiss this action, including Defendant's Counterclaim, by entry of this Agreed Order, and the Court having been advised that the parties have settled and compromised all differences between them relating to the establishment of the water rate to be charged by Evanston to Skokie for the sale and delivery of Lake Michigan Water, which is this subject matter of this litigation,

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Complaint and Counterclaim herein are dismissed with prejudice as to (a) all matters relating to the water rate charged by Evanston to Skokie at all times up to and including February 28, 1997, and (b) the validity and reasonableness of the water rates to be charged by Evanston to Skokie pursuant to the terms of that certain "Agreement By and Between the City of Evanston And the Village of Skokie Relating to Water Supply and Service," which has been passed and approved by the respective governing bodies of Evanston and Skokie to take effect as of March 1, 1997 (the "New Water Supply Agreement").
2. Nothing in this Agreed Order shall be construed as foreclosing either Skokie or Evanston from litigating any matter involving or related to the interpretation or enforcement of the New Water Supply Agreement, and this Agreed Order shall not be admissible in any such litigation for any purpose.
3. Nothing in this Agreed Order shall be construed as foreclosing either Skokie or Evanston from litigating any matter involving or related to the water rates to be charged or water service to be provided following the expiration of the New Water Supply Agreement, and this Agreed Order shall not be admissible in any such litigation for any purpose.

4. Each party shall bears its own costs.

AGREED:

VILLAGE OF SKOKIE

CITY OF EVANSTON

By: _____
One of the Attorneys for Plaintiff

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Robert C. Newman
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Chicago, Illinois 60606
(312) 258-5680
Attorney No. 01718274

ENTER:

Judge

**AGREEMENT AS TO PROCEDURE FOR DETERMINING COST TO MAINTAIN
SKOKIE BOOSTER STATIONS**

When the first Skokie booster station was completed in 1961, the Village of Skokie suggested that Evanston maintain the station equipment. This was agreed to by the City of Evanston and a monthly fee was paid by Skokie for this service. In 1966 the fee was increased to include the maintenance of station equipment in the second booster station.

The City of Evanston will continue to provide the following service for a monthly fee. The initial monthly base rate for the service year beginning on March 1, 1997 shall be \$1463.00 . This initial monthly base rate will be adjusted annually to reflect the same increase as calculated in Section 3, C, 2, "Adjustment of Base Rate in Subsequent Service Years", of the Agreement By And Between The City Of Evanston And The Village Of Skokie Relating To Water Supply And Service Effective March 1, 1997.

Weekly Inspection and Testing

- General premise inspection
- Minor maintenance of building interior
 - Floor, pump, and pipe cleaning as necessary
- Inspect, test run pumps, and check electrical readings
- Inspect, lubricate, and run sump pumps
- Test air compressor, drain tanks and maintain air line oilers
- Inspect operation of altitude valves and adjust as required
- Check operation of pump discharge valves
- Check dehumidifier operation
- Inspect electrical panels
- Investigate cause of any tripped circuit breakers
- Replace burned out control lamps
- Replace burned out room lamps
- Inspect level, pressure, and flow instrumentation for proper operation
- Confirm telemetering system is communicating with Evanston Control Room
- Adjust and maintain chlorine feed rate
- Test chlorine room exhaust fan, alarms, and cylinder scale
- Remove empty 150# chlorine cylinders and install full cylinders
- Maintain chlorine regulator and injector
- Check for and correct minor water, oil, and chlorine leaks
- Collect water samples for laboratory analysis

Provide Skokie with a monthly report

- Detail operating statistics
- List inspections
- List minor repairs made

Troubleshooting and Repair

- Respond to operating problems 24 hours a day, 7 days a week
- Minor repairs to operating equipment
- Make minor improvements and changes in equipment to improve operation or reliability

Yearly Maintenance

- Lubrication of pumps and motors
- Inspect, clean, and adjust electrical switchgear
- Exercise all valves and adjust stem packing
- General building interior cleanup and equipment painting

Occasionally equipment or equipment parts must be taken to the Evanston Water Plant for repair, testing, and reinstallation which would be covered under this contract agreement.

Supplies such as grease, oil, and for cleaning are furnished at no additional charge.

Replacement equipment or parts are purchased directly by Skokie with information, specifications, and recommendations furnished by Evanston.

Effective Date and Term of Agreement

This contract agreement will run concurrently with the Agreement By and Between The City Of Evanston And The Village Of Skokie Relating To Water Supply and Service Effective March 1, 1997.

This contract agreement may be terminated for any reason or for no reason, provided the party wishing to terminate the agreement delivers written notice of its intention to terminate this agreement ninety (90) days prior to date of termination.

The City of Evanston and the Village of Skokie have caused this Agreement to be executed effective as of the date first above written.

CITY OF EVANSTON

VILLAGE OF SKOKIE



City Manager

 6/5/97

Village Manager

APPENDIX F

WHOLESALE WATER SUPPLY AGREEMENTS MORTON GROVE – NILES WATER COMMISSION (MGNWC)

**WATER SUPPLY AGREEMENT BETWEEN
THE CITY OF EVANSTON AND
THE VILLAGE OF MORTON GROVE AND
THE VILLAGE OF NILES**

Table of Contents

1. Parties.....	1
1.01. Parties.....	1
2. Initial Term of Agreement; Extended Term; Service Year; Fiscal Year;.....	1
2.1 Initial Term.....	1
2.02 Extended Term.....	1
2.03 Service Year; Fiscal Year.....	2
3. Water Defined.....	2
3.01 Water Defined.....	2
4. Commencement of Obligation to Deliver and Receive Water.....	2
4.01 MG-N Notice to Evanston to Proceed with Preliminary Project Phase Work.....	2
4.02 MG-N Notice to Evanston to Proceed with Final Engineering Design.....	2
4.03 MG-N Notice to Evanston to Proceed with Construction.....	3
4.04 Delivery Date.....	3
4.05 MG-N Payment for Water; Water During Construction.....	3
4.06 Phased Water Delivery to Morton Grove and Niles.....	3
4.07 Water Rate Payable to Evanston in Service Years 2018, 2019 and 2020.....	4
4.08 Water rate Payable to Evanston in Service Years 2021 and Thereafter.....	4
4.09 Rate Equity Parameters.....	4

5. Rate.....	5
5.01 Ratemaking Principles and Policies.....	5
5.02 Billing and Payments.....	5
5.03 Return on Rate Base.....	6
5.04 Depreciation Charge.....	8
5.05 Quantity Charge.....	8
5.06 Demand Charge and Quantity Charge Smoothing.....	9
5.07 MG-N Audit Rights.....	9
5.08 True-Up.....	10
6. Water System Definitions.....	10
6.01 Water System Definitions and Related Terms.....	10
7. Water Supply; Allocation; Distribution.....	12
7.01 Water Supply, Sale and Purchase; Allocation.....	12
7.02 Emergency Connections.....	12
7.03 Coefficient of Friction.....	13
7.04 Pressures.....	13
7.05 Supply and Service Agreement Only; Title to Water.....	13
7.06 Temporary Restriction.....	14
7.07 Maintenance.....	15
7.08 MG-N Option to Purchase Water from Other Suppliers.....	15
7.09 Surges and Back-Flows.....	15
7.10 MG-N Responsibility for Damage to Evanston’s Water Utility.....	15
7.11 Evanston’s Responsibility for Damage to MG-N’s Water System.....	16
7.12 Operating Meetings and Plan.....	16
7.13 Continuity of Operations Plan.....	16

8. Existing and Future Customers of Evanston; MG-N Other Users.....	17
8.01 Existing and other Water Customers Served by Evanston.....	17
8.02 Right of MG-N to Supply Water to Other Users.....	18
8.03 Liability for Unreasonable Delay by MG-N.....	18
8.04 Liability for Unreasonable Delay by Evanston.....	18
9. Facility Completion Schedule.....	19
9.01 Specifications and Sequence of Construction for the Project Improvements.....	19
9.02 IEPA and Other Approvals for the Project.....	19
9.03 Easements, Licenses, Permits, Fees and Approvals.....	19
10. Meters and Measurements; Meter Testing.....	20
10.01 Unit of Measurement.....	20
10.02 Supervisory Control and Data Acquisition (“SCADA”).....	20
10.03 Delivery Meters	21
10.04 Check Meters.....	21
10.05 Meter Calibration and Adjustment.....	22
10.06 Notification Concerning Meter Tests.....	22
10.07 Removal of Meters.....	23
10.08 Meters for Customers.....	23
11. Dispute Resolution.....	24
11.01 Negotiation.....	24
11.02 Remedies.....	24
11.03 Venue and Applicable Law.....	24
12. Force Majeure.....	25
12.01 Excuse from Performance.....	25

12.02 Force Majeure Event.....	25
12.03 Notice.....	25
13. Preservation of Water Rights.....	26
14. Good Faith and Fair Dealing.....	26
15. MG-N Option to Create a JAWA or a Water Commission; Assignment.....	26
16. Financing Options for the Project.....	27
16.01 Cooperation with Project Financing.....	27
16.02 MG-N Project Financing Options.....	27
17. Disconnection, Removal Relocation of Connection Facilities or Transmissions Mains.....	28
17.01 Termination of Agreement.....	28
17.02 Relocation.....	28
18. Termination; Default.....	28
18.01 Termination by Evanston.....	28
18.02 Termination by Mutual Agreement.....	29
18.03 Termination by MG-N.....	29
18.04 Default; Cure Period; Relief.....	30
19. General Conditions.....	31
19.01 Entire Agreement.....	31
19.02 Prompt Payment.....	31
19.03 Compliance with Laws.....	31
19.04 Regulatory Bodies.....	31
19.05 Illinois Freedom of Information Act.....	32
19.06 Interpretation; Headings.....	32
19.07 Waiver.....	32
19.08 No Individual or Personal Liability.....	32

19.09 No Third Party Beneficiaries.....	33
19.10 Amendments.....	33
19.11 Assignment.....	33
19.12 Notice.....	34
19.13 Severability.....	36
19.14 No Separate Legal Entity; No Joint Venture or Partnership or Agency.....	36
19.15 Independent Sovereign Status.....	36
19.16 Effective Date.....	36
19.17 Authorization.....	36
19.18 Counterparts.....	37
19.19 Exhibits.....	37

Background

The City of Evanston (“Evanston”) is the owner and operator of a water intake, filtration, treatment and pumping plant (the “Water Plant”) located at 555 Lincoln Street, Evanston, Illinois. The Water Plant is on the shore of Lake Michigan and Evanston draws water from Lake Michigan for Evanston’s drinkable water, firefighting and fire protection needs for its community, and for distribution and resale to its customers (“Evanston Water Utility”). The Village of Morton Grove (“Morton Grove”) and the Village of Niles (“Niles”) (collectively, “MG-N”) want to purchase drinkable Lake Michigan water from the Evanston Water Utility for the uses specifically allowed by this Agreement, including but not limited to, distribution and sale to customers of the Morton Grove and Niles water systems, respectively.

1. Parties

1.01 Parties

The parties to this Water Supply Agreement (“Agreement”) are Evanston, Morton Grove, and Niles, who are at times referred to in this Agreement as a “Party” or collectively as the “Parties”.

2. Initial Term of Agreement; Extended Term; Service Year; Fiscal Year

2.01. Initial Term

Because of the significant financial commitment and debt obligations that MG-N is making and incurring to expand its respective water systems to connect to the Evanston Water Utility under the terms of this Agreement, the Initial Term (“Initial Term”) shall commence on the Effective Date of this Agreement (as defined in Section 19.16 (Effective Date)) and shall end at 11:59 p.m. on December 31, thirty nine (39) years after the Effective Date of this Agreement.

2.02 Extended Term

The Initial Term of this Agreement shall be extended for up to two (2) consecutive terms (generally referred to as an “Extended Term” or specifically referred to as the “First Extended Term” and the “Second Extended Term”) in the sole discretion of MG-N, upon written notice by MG-N delivered to Evanston in writing not less than five (5) years prior to the termination date of the then-existing Term. The First Extended Term and the Second Extended Term will each be ten (10) years in length, unless MG-N delivers notice of its intention to not extend the Initial

Term or any Extended Term of this Agreement. If MG-N elects to extend this Agreement for the Second Extended Term, then this Agreement shall renew automatically at the end of the Second Extended Term at ten (10) year intervals thereafter, unless either Party conveys written notice of its intention to terminate this Agreement not less than five (5) years prior to the termination date of the then-existing Term.

2.03 Service Year; Fiscal Year

Each Service Year (“Service Year”) under this Agreement will be the time period of January 1st to December 31st. Each Fiscal Year (“Fiscal Year”) under this Agreement will be the time period of January 1st to December 31st.

3. Water Defined

3.01 Water Defined

In this Agreement, Water means Lake Michigan water that is safe for human consumption (i.e. drinkable water) and that meets or exceeds the requirements of any current or successor federal, state of Illinois, or local agency or governmental authority having jurisdiction over the operation of public water supplies. Evanston shall supply water that is like kind and quality with that supplied by Evanston to its other customers. Whether “water” is capitalized in this Agreement or not, it shall have the meaning set forth in this Section.

4. Commencement of Obligation to Deliver and Receive Water

4.01 MG-N Notice to Evanston to Proceed with Preliminary Project Phase Work

Not more than thirty (30) calendar days after MG-N awards the corridor and route study relative to identifying the optimum MG-N water transmission route from the Point of Delivery (defined in Section 6.01 (Water System Definitions and Related Terms) between the Evanston Connection Facilities and the MG-N Water System, MG-N shall deliver to Evanston in writing a notice to proceed on preliminary design of the Evanston Connection Facilities.

4.02 MG-N Notice to Evanston to Proceed with Final Engineering Design

Not more than thirty (30) calendar days after MG-N awards the final engineering design work for the MG-N Water System, MG-N shall deliver to Evanston in writing a notice to proceed on final engineering design of the Evanston Connection Facilities.

4.03 MG-N Notice to Evanston to Proceed with Construction

Not more than thirty (30) calendar days after MG-N awards the first construction contract relative to the construction of the MG-N Water System, MG-N shall deliver to Evanston in writing a notice to proceed on construction of the Evanston Connection Facilities.

4.04 Delivery Date

Evanston shall deliver water to MG-N, or to Morton Grove or to Niles on a date mutually agreed by the Parties, but no later than one hundred and twenty (120) calendar days of receiving written notice from MG-N (or Morton Grove or Niles) that MG-N (or Morton Grove or Niles) is ready to receive water.

4.05 MG-N Payment for Water; Water During Construction

Except for water usage during construction and testing of the Project improvements, MG-N shall not be responsible to pay for any water charges under this Agreement until the improvements and construction at the Point of Delivery, are completed, and until Evanston delivers water to MG-N or Morton Grove or Niles for resale to its customers. During the construction and testing of the improvements at the Point of Delivery, Evanston will charge MG-N for its water usage at the water rates and charges identified in Section 4.07 (Water Rate Payable to Evanston in Service Years 2018, 2019 and 2020) of this Agreement.

4.06 Phased Water Delivery to Morton Grove and Niles

Due to separate, existing water supply contract obligations of Morton Grove and Niles with the City of Chicago, Morton Grove may elect, by sending written notice pursuant to Section 4.04 (Delivery Date) to receive water under this Agreement before Niles receives water from Evanston. If Morton Grove elects to receive water under this Agreement before Niles, all water charges incurred by Morton Grove shall be due and owing to Evanston solely from Morton Grove, not Niles. If Niles elects to receive water from Evanston before Morton Grove, then the notice and payment obligations set forth in the preceding sentences applicable to Morton Grove shall apply to Niles. From and after the date that both Morton Grove and Niles are receiving water under this Agreement, the water charges shall be the responsibility of MG-N.

4.07 Water Rate Payable to Evanston in Service Years 2018, 2019, and 2020

The Parties agree that the identification of the total equivalent water rate payable to Evanston per 1,000 gallons supplied to MG-N in Service Years 2018, 2019, and 2020 will be as follows:

Service Year	MG-N Not to Exceed Rate	Morton Grove Only Not to Exceed Rate	Niles Only Not to Exceed Rate
2018	\$ 0.78	\$ 0.84	\$ 0.85
2019	\$ 0.81	\$ 0.86	\$ 0.87
2020	\$ 0.94	\$ 1.01	\$ 1.01

The above rates may be adjusted down based on final rate calculations as provided for in Section 5 (Rate). The rate charged to MG-N for water sold for construction and testing shall also use the above table. No True Up will be calculated for water sold for construction and testing purposes. Except for water sold to MG-N for construction and testing, if the actual rate incurred at any time during Service Years 2018, 2019, or 2020 is different than the scheduled rate set forth in this Section, a “True-Up” calculation, in accordance with Section 5.08 (True-Up) will be completed no later than thirty (30) days after the Evanston Comprehensive Annual Financial Report (“CAFR”) applicable to that Service Year is completed. The Parties attached as **Group Exhibit “A”** to this Agreement an illustrative example of the “True-Up” process, including an identification of the formula and its components that will be used in performing the “True-Up” calculation. Any credit due to MG-N or Morton Grove or Niles will be allocated to that Party according to the process outlined in Section 5.08 (True-Up) of this Agreement. All water charges otherwise required to be paid under Section 4.06 (Phased Water Delivery to Morton Grove and Niles) will be payable by MG-N, or Niles, or Morton Grove, as the case may be.

4.08 Water Rate Payable to Evanston in Service Years 2021 and Thereafter

The Parties agree that the identification of the total equivalent water rate payable to Evanston per 1,000 gallons supplied to MG-N in Service Years 2021 and thereafter will be calculated in accordance with Section 5 (Rate) below.

4.09 Rate Equity Parameters

Unless otherwise agreed to by the Parties, the water rate charged to any new wholesale water customers who have a total IDNR water allocation **less than one hundred and fifty percent (150%)** of the total IDNR water allocation of MG-N shall be calculated based on terms that are

not more favorable than the water rate formula set forth in Section 5.03 (Return on Rate Base), Section 5.04 (Depreciation Charge), and Section 5.05 (Quantity Charge).

5. Rate

5.01 Ratemaking Principles and Policies

The Parties agree that the definitions, policies and principles described in the AWWA M-1, the “Principles of Water Rates, Fees and Charges published by the American Water Works Association, Sixth Edition”, as amended, may be used as a reference guide for the Parties under this Agreement. However, in the event of a conflict or inconsistency between any provision or term of the AWWA M-1 and this Agreement, the provision or term of this Agreement shall govern.

5.02 Billing and Payments

Evanston shall submit all water bills to MG-N on a monthly basis. MG-N shall pay all amounts due to Evanston pursuant to this Agreement in accordance with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq. (“LGPPA”). The water bills shall be itemized with sufficient detail to inform MG-N that the charges and fees set forth in each monthly bill conform to the agreed-upon rates and cost components set forth in this Agreement. If payment is not made within the required thirty (30) calendar day period, Evanston will charge MG-N a penalty for late payment of water bills in accordance with the interest penalty provision contained in Section 4 of the LGPPA (50 ILCS 505/4). No other penalty can be assessed against MG-N for late payments of water bills, except for Evanston’s optional right to terminate this Agreement for nonpayment as provided for in Section 18.01 (Termination by Evanston). Evanston’s termination option is subject to the right of MG-N to resolve any late payment within the applicable cure period. The billing structure will conform to the rates and components identified and defined below:

- Demand Charge: A fixed monthly payment consisting of (i) one-twelfth (1/12th) of the Annual Return on the Fair Value Rate Base as determined in accordance with Section 5.03 (Return on Rate Base) and (ii) a Depreciation Charge determined in accordance with Section 5.04 (Depreciation Charge).

- **Quantity Charge:** A payment based on the quantity of water delivered through the metering point(s) to MG-N's water system multiplied by the Quantity Rate determined in accordance with the provisions of Section 5.05 (Quantity Charge).

5.03 Return on Rate Base

The "Rate Base" consists of those components of Evanston's Water Utility relating to assets in the Source of Supply, Pumping Plant, Treatment Plant, Water Plant and Transmission locations (the "Evanston Water Utility Components"). These Water Utility Components in service as of December 31, 2015, are identified in the "Evanston Water Utility Components Sheet" which is part of attached **Group Exhibit "B"** (Example of Rate Calculation for MG-N Water Rate for Service Year 2017 Based on Evanston Audited Information for Fiscal Year 2015) to this Agreement. The Parties to this Agreement understand and acknowledge that these Evanston Water Utility Components will adjust annually as of the end of each Fiscal Year to reflect additions to, and retirements of, Evanston Water Utility Components. The Parties to this Agreement understand and acknowledge that these Evanston Water Utility Components may adjust between the Effective Date of this Agreement and the date of delivery of water. Evanston shall be included as a component of the Evanston Water Utility for purposes of asset allocation and rate making related to asset allocation only for MG-N.

- **Original Cost Rate Base:** The components of the Rate Base valued at the original cost to Evanston of the acquisition, engineering, construction and installation of the assets of the Water Utility as identified in the most recently available Evanston Comprehensive Annual Financial Report ("Evanston CAFR"), minus accrued depreciation as of the end of the Fiscal Year used as a basis for determining Water Charges under this Agreement.

- **Reproduction Cost New Rate Base:** The components of Rate Base valued initially in the most recently available Evanston CAFR prior to the commencement of delivery of water under this Agreement. Reproduction Cost New Rate Base will be recalculated as of the end of each succeeding fifth Fiscal Year, starting in 2020, reflecting components then properly allocated to the Rate Base pursuant to this Agreement. The recalculation of the Reproduction Cost New Rate Base will utilize the most current valuation of the Evanston Water Utility, as identified by a reputable qualified consulting engineering firm experienced in water works valuation hired by Evanston. Accrued depreciation identified by the engineering firm's valuation study, plus

accrued depreciation which occurred from the date of the valuation to the end of the applicable Fiscal Year of the rate determination, will be deducted from the reproduction cost new of the plant in service at the end of the Fiscal Year.

- **Fair Value Rate Base:** This will be calculated initially in the most recently available Evanston CAFR prior to the commencement of delivery of water under this Agreement. The Fair Value Rate Base will be recalculated as of the end of each succeeding fifth Fiscal Year, starting in 2020, and will consist of the sum of **fifty percent (50%) of the original Cost Rate plus fifty percent (50%)** of the Reproduction Cost Rate Base as of the calculation date. The Fair Value Rate Base will be subject to annual adjustment as of the end of the Fiscal Year between Fair Value Rate Base recalculations to reflect additions to and retirements of Water Utility assets contained in the Rate Base during the Fiscal Year. The next verification of the elements of the Fair Value Rate Base will be performed by Burns and McDonnell in 2020 (or its successor entity selected by Evanston, as the case may be), and then once every five (5) calendar years thereafter. Additions will be valued at their original cost until recalculation of the Fair Value Rate Base, at which time such additions will be valued in the same manner as the Fair Value Rate Base. Retirements will be valued at their fair value as reflected in the last previous Fair Value Rate Base computation.

- **Annual Return on Rate Base:** The Annual Return on Rate Base will be multiplied **nine and one half percent (9.5%)** on the MG-N share of the Fair Value Rate Base identified in the most recently available Evanston CAFR, and otherwise conform to the cost of service principles identified in Section 5.01 (General Principles and Policies). The MG-N share of the Fair Value Rate Base will be determined by allocating to MG-N a portion of such Fair Value Rate Base, as adjusted and recalculated from time to time as provided by this Agreement. This adjustment will be based upon the ratio of each Evanston Water Utility customer allocation, which includes the City of Evanston's allocation, compared to the total allocation of all Evanston Water Utility customers established by order of the Illinois Department of Natural Resources ("IDNR") during the Fiscal Year.

5.04 Depreciation Charge

These charges will be calculated as of the end of each Fiscal Year following commencement of the delivery of water to MG-N and will consist of one-twelfth (1/12th) of an annual depreciation charge, calculated by applying the depreciation rates utilized by Evanston identified in **Group Exhibit “C” (Depreciation Rates)** to this Agreement, to the original cost of the depreciable Water Utility asset defined in Section 5.03 (Return on Rate Base) in service contained in the Fair Value Rate Base allocated to MG-N. As of the date when any depreciable Water Utility asset will be placed in service or any depreciable Water Utility asset in the Fair Value Rate Base is retired from service, charges of depreciation to MG-N will be correspondingly adjusted as of the end of the Fiscal Year in which the addition or retirement took place.

5.05 Quantity Charge

MG-N will pay Evanston a Quantity Charge based upon a Quantity Rate equal to MG-N’s share of the “Operating Costs” per 1,000 gallons of water delivered to the Point of Delivery. The “Operating Costs” to be included in determining the Quantity Rate are the costs assigned to the functions of Administration, Pumping, Filtration, and Distribution, identified in the Evanston CAFR of the Evanston Water Fund described in **Group Exhibit “B”** attached to this Agreement. The Operating Costs applicable to water deliveries during the Service Year will be determined based on the results of operation of the Evanston Water Utility, as audited by independent certified public accountants selected by Evanston, as reviewed by MG-N. The total Quantity Charge will be adjusted at the end of each Service Year to reflect the actual, total Quantity Charge owed to Evanston based on the Fiscal Year Operating Costs finally determined by the latest annual audit performed by the current Evanston independent certified public accountant as defined in Section 5.08 (True Up). In determining the Quantity Rate, Operating Costs will be allocated to MG-N based upon the ratio of its Average Day Demand identified in Section 7 (Water Supply; Allocation; Distribution) of this Agreement supplied by the Evanston Water Utility, to the aggregate of the Average Day Demand of all Evanston Water Utility, MG-N and other customers or users of the Evanston Water Utility system during the Fiscal Year. The Quantity Rate will not include any portion of any costs included in computing the Fair Value Rate Base, Annual Return on Rate Base or Depreciation Charge.

5.06 Demand Charge and Quantity Charge Smoothing

- **Demand Charge Cap.** Upon completion of the Clearwell Project immediately south of the Evanston Water Utility, and upon completion of the Intake Replacement Project, but not later than the end of year 2022, any increase and decrease in any Evanston Water Utility Asset shall not increase the total rate charged to MG-N by more than **four percent (4%)** per year until the entire cost of the Evanston Water Utility Asset has been recovered by either Party compared to the cost change that would have occurred if the Evanston Water Utility Asset change was not smoothed. No cap or smoothing will be calculated due to the change in total customers utilizing the Evanston Water Utility. Any increased capital costs associated exclusively with the acquisition of new customers by Evanston will not be included in the rate calculation for MG-N. MG-N's rate shall not be increased as a result of the acquisition of new Evanston customers. Evanston may accelerate the replacement of assets assigned to MG-N, as needed, to add a new Evanston customer or may add new assets beneficial to MG-N, provided that the new rate for MG-N is equal to or less than the then-current MG-N rate.

- **Quantity Charge Cap.** The Parties agree to cap the annual increase of the labor costs portion of the Operating Costs that are used to determine the Quantity Rate based on the actual, annual aggregate cost increase (if any), **if Evanston labor costs increase more than 4% in any given year.** When Evanston labor costs increase by more than 4% any given year, the labor costs portion of the Operating Costs shall be capped based on the average of the annual percentage increases of labor costs for public works employees of Evanston, Morton Grove and Niles (e.g., Evanston increase (4.4%) plus Morton Grove increase (4.0%) plus Niles increase (4.14%) divided by three equals a 4.167% capped increase).

5.07 MG-N Audit Rights

Not more than once per year, MG-N shall have the right to audit all parts of the water charges, and the components thereof, as well as any other fees, charges, or assessments provided for in this Agreement. MG-N's right to audit includes, but is not limited to, the Demand Charge, the Quantity Rate, the Quantity Charge, the Rate Base and the Depreciation Charge, as well as any other components of the water charges. Evanston shall reasonably cooperate with requests by MG-N and its auditors regarding reasonable requests for documents and information needed to

complete the audit related to the rights and obligations of the Parties under this Agreement. Each Party is responsible for its respective costs of the audit.

5.08 True-Up

At the end of each Service Year and subject to Section 5.07 (MG-N Audit Rights), there will be a final Quantity Charge or credit issued by Evanston to MG-N to adjust the total Quantity Rate calculated by utilizing the latest available Fiscal Year audited Operating Costs. Any adjustments to the water charges, and the components thereof, as well as any other fees, charges, or assessments provided for in this Agreement, that require additional payment to Evanston by MG-N or any credit to MG-N by Evanston shall be calculated as part of this annual True-Up process. The Parties have attached as **Group Exhibit “A”** to this Agreement, illustrative examples of the “True-Up” process. After the True-Up process and any dispute resolution process are completed, this final charge or credit shall be paid by the responsible Party within thirty (30) calendar days of the issuance of the invoice or credit by separate payment or as otherwise mutually agreed to in writing by the Parties.

6. Water System Definitions

6.01 Water System Definitions and Related Terms

In this Agreement, the following definitions apply:

- **Evanston Clearwell Project:** The replacement of the 5.0 MG treated water storage facility located on the south side of Lincoln Street opposite the water treatment plant (See, **Group Exhibit “B”**, #203 of the Treatment Plant asset list).
- **Evanston Connection Facility:** Evanston control valve, delivery meter, piping and other components necessary to supply water to MG-N that will be housed in an underground vault near the intersection of McCormick Boulevard and Emerson Street and owned by Evanston and included as a transmission component in the rate base.
- **Evanston Facilities Adjustments:** Modifications to the Evanston distribution system near the intersection of McCormick Boulevard and Emerson Street necessary to construct the Evanston Connection Facility and continue delivery of water to the Village of Skokie.

- Evanston Intake Replacement Project: The replacement of Evanston’s 36” and 42” diameter intake(s) and all appurtenances thereto (See **Group Exhibit “B”**, #9 and #13 in the Source of Supply asset list).
- Evanston Water Utility: The assets in the Source of Supply, Pumping Plant, Treatment Plant, Water Plant and Transmission locations in service as of December 31, 2015, and identified in **Group Exhibit “B”** to this Agreement, which components may adjust annually as of the end of each Fiscal Year to reflect additions to, and retirements of, Water Utility components.
- Morton Grove Water System: The infrastructure that makes up the Morton Grove Water System, including but not limited to, the water treatment, pumping, storage, distribution and delivery system, pump stations, transmission and distribution mains, valves, meters, and connection facilities.
- Niles Water System: The infrastructure that makes up the Niles Water System, including but not limited to, the water treatment, pumping, storage, distribution and delivery system, pump stations, transmission and distribution mains, valves, meters, and connection facilities.
- MG-N Water System: The infrastructure that makes up a shared waterworks system that extends from the Point of Delivery to the Morton Grove Water System and the Niles Water System, including the MG-N connection facilities.
- Point of Delivery: The point of connection of the MG-N Water System and the Evanston Connection Facility adjacent to the underground vault near the intersection of McCormick Boulevard and Emerson Street.
- Project: The construction of the Evanston Connection Facilities, the Evanston Facilities Adjustments, the MG-N Water System, and all related and necessary improvements made to the Evanston Water Utility, the Morton Grove Water System, and the Niles Water System, as provided for in this Agreement.
- To the extent a word or term is used in this Agreement that is not defined herein, the first source of interpretation of the word or term shall be its definition in the AWWA M-1

Manual or other AWWA publication pertaining to water transmission and distribution facilities (if defined therein), then any applicable federal or state laws (e.g., Clean Water Act) and then the common definition found in the most recent edition of any mutually agreed upon nationally published dictionary (e.g., Webster's Dictionary or Merriman's Dictionary).

7. Water Supply; Allocation; Distribution

7.01 Water Supply, Sale and Purchase; Allocation

Evanston will sell and deliver to MG-N the full water requirements of the MG-N Water System, except as otherwise set forth in this Agreement. MG-N will purchase all of the water it receives from Evanston in accordance with this Agreement.

Morton Grove, Niles and MG-N, and their successor entities, are each responsible to obtain and maintain a water allocation from the Illinois Department of Natural Resources ("IDNR"). In this Agreement, Average Day Demand ("ADD") means the IDNR water allocations established in November 2011 for Morton Grove and Niles. In this Agreement, Maximum Flow Rate ("MFR") means the rate of flow that Evanston is required to provide at the Point of Delivery.

The Maximum Flow Rate to Morton Grove and Niles is based on the Year 2030 IDNR water allocation assigned to Morton Grove and Niles multiplied by a 1.65 peaking factor.

- Illustrative formula for calculating the MFR for Morton Grove and Niles: Morton Grove Year 2030 IDNR water allocation = 3.880 x 1.65 = 6.402 Million Gallons Per Day ("MGD") MFR.
- Niles Year 2030 IDNR water allocation = 5.146 x 1.65 = 8.491 MGD MFR.
- Total Maximum Flow Rate at Point of Delivery by Evanston to MG-N throughout the Term of this Agreement shall be 14.893 MGD MFR.

7.02 Emergency Connections

This Agreement will not prohibit Morton Grove, Niles, MG-N or Evanston from entering into any emergency water service agreement with another municipality, water agency, or other source. Nothing in this Section will prevent Evanston's right to collect all water charges provided for in this Agreement.

7.03 Coefficient of Friction

MG-N shall maintain its transmission mains to provide a coefficient of friction (“C-factor”) to be determined after the completion of the final design engineering for the MG-N Water System, which C-factor will be incorporated into this Agreement by a jointly executed side-letter issued prior to the delivery date of water. Unless otherwise agreed to by the Parties, the C-factor rating of the MG-N Water System between the Point of Delivery and the MG-N booster station or MG-N (referred to as the “Evanston Pressurized Zone” of the MG-N Water System) receiving reservoir shall not be less than a C-factor rating of 90. If the C-factor falls below 90 within the Evanston Pressurized Zone of the MG-N Water System, Evanston is not required to meet the Maximum Flow Rate as indicated in Section 7.01 (Water Supply Sale and Purchase; Allocation). The Maximum Flow Rate shall decrease directly on a one to one basis with the decrease in C-factor rating (e.g., each one (1) point loss or gain of C-factor equals a 1.11% change in the maximum flow rate: 80 C-factor = 88.90% maximum flow rate). The C-factor is identified in Cameron Hydraulic Data, or equivalent successor statement of measure, and typically used for the design of concrete pipes to reflect the roughness of the pipe after many years of operation. MG-N shall test its transmission mains beginning in Year 2023, and every fifth year thereafter, to determine the C-factor rating and promptly provide those results to Evanston to ensure adherence to this requirement. If the transmission main(s) of MG-N fail to meet the required C-factor rating as set forth in this Section, then another C-factor test shall be conducted during the subsequent Service Year.

7.04 Pressures

Evanston will supply water to MG-N by direct pressure from the Evanston Water Plant without intermediate pumping from reservoirs. Evanston shall control operating pressures within its water distribution system and adjust such pressures according to the water demands within its water distribution system to ensure that the pressure at the Point of Delivery is at all times between 40 and 50 pounds per square inch (“PSI”).

7.05 Supply and Service Agreement Only; Title to Water

Nothing in this Agreement shall be construed as granting any proprietary or other interest in the Evanston Water Utility to MG-N. Nothing in this Agreement shall be construed as granting any proprietary or other interest in the MG-N Water System to Evanston. Evanston and MG-N agree

that this Agreement is solely an agreement for the sale and purchase of a supply of Water and related services. Title to Water passes at the Point of Delivery from Evanston to MG-N. Evanston agrees to deliver an adequate water supply on a regular basis to maintain MG-N water requirements as provided for in this Agreement. Evanston agrees to not utilize off-peak pumping to meet the MG-N water requirements, unless requested by MG-N.

7.06 Temporary Restriction

Evanston has the right to restrict, on a temporary basis, the supply of water to MG-N in order to ensure an adequate water supply to all customers of the Evanston Water Utility for basic water services, and firefighting purposes, provided that the duration of the temporary water restriction is limited to the minimum time period necessary to resolve the condition or unforeseen emergency that caused the temporary restriction. Evanston shall take immediate, commercially reasonable actions to fix, repair, employ a temporary solution until a permanent solution is available or resolve the condition or unforeseen emergency that caused the temporary water restriction. If there is an insufficient water supply available to serve MG-N and all other customers, MG-N will receive its pro-rata share of the amount of water that is stored and available at the Evanston Water Utility based on the IDNR water allocation(s) as defined and identified in **Group Exhibit “B”** to this Agreement. If Evanston temporarily restricts the supply of water to MG-N under this Section, it shall deliver immediate written notice to MG-N that explains the reason(s) for the restriction, identifies the estimated reduction in the volume of water to be supplied to MG-N and the anticipated duration of the reduction in water supply service. During the first twenty-four (24) hour period of the temporary water restriction, Evanston shall provide MG-N with status reports in subsequent eight (8) hour intervals relative to the progress in resolving the condition or unforeseen emergency that caused the temporary water restriction. If the temporary water restriction extends or is anticipated to extend beyond a twenty-four (24) hour period, the Parties agree to meet to discuss commercially reasonable options and actions to fix, repair, employ a temporary solution until a permanent solution is available or resolve the condition or unforeseen emergency that caused the temporary water restriction.

7.07 Maintenance

Scheduled maintenance and repair to the Evanston Water Utility or the MG-N Water System that may impact water supply and service to MG-N cannot be done except upon prior notice to the other Parties of not less than five (5) days. Scheduled maintenance to water system infrastructure during peak demand periods shall be avoided to the extent possible. Notice of emergency maintenance or repair will be provided by the Party performing the maintenance and repair to the other Party as soon as practicable under the circumstances. Each Party agrees to maintain their respective water systems in accordance with the manufacturers' warranty and operational specifications.

7.08 MG-N Option to Purchase Water from Other Suppliers

Notwithstanding any other provision in this Agreement, MG-N may purchase water from other water suppliers under the following two (2) situations. First, MG-N may purchase water from other water suppliers to the extent Evanston fails to deliver to MG-N the full water requirements up to the total amount of the IDNR water allocations as required by this Agreement. In the event of such failure by Evanston, but excluding temporary restriction(s) under Section 7.06 or maintenance situations under Section 7.07 above, Evanston shall provide written notice to MG-N of the service failure, which shall include a description of the operational or technical reasons for the failure to deliver MG-N's full water requirements. Second, MG-N may purchase water from the City of Chicago under non-emergency conditions in order to maintain an active, operational water supply connection.

7.09 Surges and Back-Flows

No surges or back-flows into any Party's water system are allowable under this Agreement.

7.10 MG-N Responsibility for Damage to Evanston's Water Utility

MG-N is responsible for damage to the Evanston Water Utility or of any of its customers due to surges and back-flows caused by malfunction or misuse of MG-N's Water System, including, without limitation, valve operation or booster station operation, excluding damage where Evanston is responsible for the operation of the MG-N Water System, including, without limitation, its valve operation or booster station. MG-N shall install a flow control system and a pressure recording system consisting of remotely operated flow control valve(s) at the MG-N

receiving reservoir(s). MG-N shall provide the necessary equipment to transmit pressures, rates of flow and receiving reservoir(s) elevations prior to delivery of water by Evanston. All devices necessary for the control and transmission of pressures, levels and rates of flow of water furnished to MG-N that are part of the MG-N Water System shall be provided and maintained by MG-N, and comply with the provisions of Section 10 (Meters and Measurements; Meter Testing). Water pressure and rate of flow readings shall be transmitted to the Evanston Pumping Station. All flow control valves within the Evanston Water Utility shall be controlled by Evanston in accordance with the provisions of this Agreement.

7.11 Evanston's Responsibility for Damage to MG-N's Water System

Evanston is responsible for damage to the MG-N Water System or of the water systems any of its customers due to surges and back-flows caused by malfunction or misuse of Evanston's Water Utility, including, without limitation, valve operation, booster station operation or pump station operation.

7.12 Operating Meetings and Plan

Evanston shall provide to MG-N, at no cost to MG-N, with a copy of Evanston's most recently prepared annual operating plan and capital plan related to the Evanston Water Utility ("Operating Plan") no less than thirty (30) calendar days before each operations meeting provided for in this Section. Evanston shall convene an operations meeting with MG-N at least two (2) times per year for every year this Agreement is in effect. Meetings may be in person or may be convened through mutually acceptable electronic means. Evanston shall provide MG-N with copies of all required State or Federal filings that Evanston is required to file regarding its operation of its Water Utility and Water System. Evanston will provide MG-N with its then applicable Operating Plan related to the Evanston Water System prior to the date of first delivery of Water to MG-N.

7.13 Continuity of Operations Plan

Evanston agrees to provide a copy of the most recent WTP/Evanston Water Utility System evaluation report, along with a status report on the actions taken on the recommendations made in that report by March 1, 2017.

Evanston agrees to have a plant evaluation performed by a consultant in Year 2018 and every ten (10) years thereafter. This evaluation shall review each system and component of the Evanston Water Treatment Plant (“WTP”), and the portions of the Evanston Water Utility System that serves MG-N, to determine their useful life and dependability in order to meet the needs of the users of the WTP, and shall be summarized in a report. This report will be made available to Evanston’s wholesale water customers and MG-N. The Parties agree to meet and confer regarding the scheduling and implementation of any recommendations provided in the report during meetings convened under Section 7.12 (Operating Meetings and Plan) and Evanston agrees to update its capital improvement plan annually to address the report recommendations and share this information with MG-N.

Evanston has a vulnerability assessment report for the WTP and the Evanston Water Utility System and agrees to update the report on an as needed basis, and to make it available for review by MG-N. This report is currently an exempt public record under the Illinois Freedom of Information Act.

8. Existing and Future Customers of Evanston; MG-N Other Users

8.01 Existing and Other Water Customers Served by Evanston

Evanston agrees that it will continue to supply water to its existing customers without impairing MG-N’s right to Water service from Evanston under this Agreement, or impairing Evanston’s ability to deliver Water to MG-N under this Agreement. Nothing in this Agreement limits Evanston executing new, modified or amended agreements with any other current or future wholesale water customer served by Evanston. Evanston shall give MG-N at least six (6) calendar months prior written notice before Evanston enters into a contract to serve a new wholesale water customer or enters into an addendum to amend any water supply agreements with existing wholesale water customers. Evanston shall provide MG-N with copies of the contract and/or the addendum and the cost / benefit analysis report provided to the Evanston City Council, prepared in regard to the addition of a new wholesale water customer or customer whose IDNR water allocation has been changed, and MG-N may provide Evanston with written comments regarding this subject. MG-N agrees Evanston has the right to serve new wholesale water customer(s) subject to its obligations to MG-N under this Agreement.

In the event of the loss of the Northwest Water Commission (“NWC”) between the years of 2034-2047, the change in the total rate increase shall be calculated, and MG-N shall be assessed, **not more than fifty percent (50%)** of the rate increase incurred by the loss of NWC. Assuming the loss of NWC between the years of 2034-2047, total MG-N rate increases shall be **capped at eight percent (8%) per annum**. Evanston shall take all commercially reasonable actions to reduce all assets in use at the WTP to reflect the new plant demand without NWC. After 2048, MG-N rates shall be recalculated according to this Agreement.

8.02 Right of MG-N to Supply Water to Other Users

MG-N has the right to resell Water it owns under this Agreement to existing and future water users of MG-N’s Water System, provided that MG-N does not exceed its ADD under its then current IDNR water allocation, as determined by the IDNR or its successor regulatory agency. MG-N shall give Evanston at least six (6) calendar months prior written notice before MG-N enters into a contract to service any new water customer(s), and MG-N shall provide Evanston with copies of the contract and the cost / benefit analysis report prepared in regard to the addition of a new wholesale water customer. Evanston may provide MG-N with written comments regarding this subject.

8.03 Liability for Unreasonable Delay by MG-N

If MG-N fails or refuses to complete the MG-N Water System as required by this Agreement, then MG-N shall pay to Evanston all reasonable, actual, documented costs incurred by Evanston as listed in Section 18.03 (G, H, or I) (Termination by MG-N), and in Sections 4.01 (MG-N Notice to Evanston to Proceed With Preliminary Project Phase Work) through Section 4.07 (Commencement of Obligation to Deliver and Receive Water). If MG-N fails to complete the MG-N Water System due to a Force Majeure Event(s) or any other delays that prevent the completion of MG-N’s Project Improvements until after the delivery of water (Section 4.04), MG-N shall not be obligated to pay to Evanston any costs or penalty, provided that MG-N has taken and continues to take all commercially reasonable actions to complete the MG-N Project Improvements as soon as reasonably possible after the expected delivery date of water.

8.04 Liability for Unreasonable Delay by Evanston

If Evanston fails or refuses to complete the components at the Point of Delivery in a commercially reasonable time frame as outlined in Section 4.01 (MG-N Notice to Evanston to Proceed with Preliminary Project Phase Work) through Section 4.07 (Commencement of Obligation to Deliver and Receive Water) and MG-N are unable to receive water from Evanston by the anticipated initial delivery date of water, or such other alternate water delivery date, as provided for in Section 4.01 (MG-N Notice to Evanston to Proceed with Preliminary Project Phase Work) through Section 4.07 (Commencement of Obligation to Deliver and Receive Water) above, due to such failure or refusal by Evanston, then Evanston will pay to MG-N the difference between the water rate that would have been charged by Evanston under this Agreement, and the then-applicable Chicago water rate (or the water rate charged by an alternate water supplier).

9. Facility Completion Schedule

9.01 Specifications and Sequence of Construction for the Project Improvements

After the approval of this Agreement, and subject to the notice to proceed provisions set forth in this Agreement, the Parties agree to work cooperatively together and to share relevant information to develop their respective specifications for their own Project improvements and to prepare construction schedules and operating procedures for the Project improvements, including the joint review of preliminary design plans and final design plans for review comment purposes and delivery of periodic status reports by each Party relative to the Evanston Connection Facilities and the MG-N Water System.

9.02 IEPA and Other Approvals for the Project

The Parties agree to apply for, obtain and maintain all permits, licenses and other approvals required by the federal, state, county and local governments and governmental regulatory agencies with jurisdiction over the Project.

9.03 Easements, Licenses, Permits, Fees and Approvals

A. Evanston. Evanston shall take all necessary action to provide and grant to MG-N easements, permits and licenses for the construction of the MG-N Water System on Evanston-owned or controlled real property or easement premises and within Evanston's corporate boundaries.

Evanston agrees to waive all required permit fees, license fees and plan review fees that would otherwise be paid by MG-N to Evanston related to this Project. However, Evanston will not be responsible for any costs not on Evanston-owned or controlled real property or Evanston held easements but within Evanston's corporate boundaries. Construction of the MG-N Water System within Evanston must be completed in accordance with all Evanston City Code requirements governing construction and restoration applicable in Evanston.

B. MG-N. MG-N shall take all necessary action to acquire easements, permits and licenses for the construction of the MG-N Water System Facilities within Evanston's corporate boundaries and outside of Evanston's corporate boundaries. MG-N agrees to pay all required permit fees, license fees and plan review fees to all governmental regulatory agencies with jurisdiction over the Project, except for Evanston. Construction of the MG-N Water System shall conform to all applicable laws, ordinances, codes, regulations and specifications.

10. Meters and Measurements; Meter Testing

10.01 Unit of Measurement

The unit of measurement for water delivered pursuant to this Agreement will be gallons of water, U.S. Standard Liquid measure, and all meters installed pursuant to this Agreement must, unless the Parties otherwise agree, be so calibrated, and must read at one thousand (1,000) gallons of water.

10.02 Supervisory Control and Data Acquisition ("SCADA")

Evanston shall in real time provide to MG-N the following SCADA information, except during SCADA failure:

- a) total plant flow data;
- b) flow through MG-N master meter data;
- c) pressure at MG-N delivery meter facility data; and
- d) Evanston control valve position.

MG-N shall in real time provide to Evanston incoming and outgoing flow data from each receiving reservoir as well as the water level in each receiving reservoir, except during SCADA failure. At all times, but with prior notice to MG-N unless there is an emergency situation,

Evanston will operate and control the control valves at the booster station / receiving reservoir(s) in Morton Grove or Niles, or in any other jurisdiction where such MG-N facilities are located, through the use of the SCADA system, provided Evanston has approved the design and construction of the pressure control devices, control valves and related SCADA components that are designed and constructed to reasonable industry standards (e.g., a hydraulic transient study). In regard to on-site visits and inspections of each Party's respective water system facilities, the requesting Party shall request any on-site visits and inspections in advance by written notice to the receiving Party and shall comply with all security protocols and be accompanied by the receiving Party's staff during the on-site visit or inspection, and the receiving Party shall cooperate in scheduling such on-site visits and inspections. Evanston and MG-N agree to promptly repair any SCADA failures.

10.03 Delivery Meters

Water sold and delivered to MG-N pursuant to this Agreement must be measured through a meter or meters furnished, installed, maintained, replaced and read by Evanston (the "Delivery Meters"). Except as provided in this Agreement, all billing for Water sold and supplied pursuant to this Agreement must be based upon Evanston's readings of the Delivery Meters, subject to MG-N's right to audit Evanston's readings under Section 5.07 (MG-N Audit Rights) above. All Delivery Meters shall be in good working order, shall at all times meet or exceed the standards of the AWWA, or its successor entity, and shall be available for inspection, testing, and checking by MG-N upon reasonable request to Evanston. Evanston shall at its cost maintain, inspect, test, calibrate and adjust all Delivery Meters not more than two (2) times per year. Representatives from MG-N shall have the right to witness all such maintenance, inspections, tests, calibrations and adjustments. The cost of testing the Delivery Meters payable by MG-N shall be Two Hundred Dollars (\$200.00) per month. Copies of the results of all such maintenance, inspections, tests, calibrations and adjustments must be furnished by Evanston to MG-N upon request.

10.04 Check Meters

MG-N may, at their option and expense, install and operate a check meter(s) (a "Check Meter") to check each Delivery Meter, but the measurement of water for billing pursuant to this Agreement shall, except as hereinafter provided, be measured solely by the Delivery Meters. All Check Meters shall meet or exceed the standards of the AWWA and shall be available for

inspection and checking by Evanston upon reasonable request to MG-N. The costs for installation, maintenance, regulatory fees, reading, testing, calibration, and adjustment of all Check Meters shall be performed by MG-N at MG-N's sole cost and expense.

10.05 Meter Calibration and Adjustment

If either Evanston or MG-N at any time observes a variation between a Delivery Meter and a Check Meter or any other evidence of meter malfunction, such Party must promptly notify the other Party, and Evanston and MG-N agree to cooperate to inspect and test the accuracy of such meter(s). If upon any inspection or test, any meter is found to be out of service or the percentage inaccuracy of any meter is found to be **in excess of two percent (2%)** slow or fast, then the meter's registration, as well as charges for water based on incorrect metering, must be corrected by agreement of Evanston and MG-N based on the best data available. The best data available is defined as the registration of an installed Check Meter that is accurately registering in **excess of two percent (2%)** slow or fast during the period extending back to the time when such inaccuracy began. If it is impossible to determine the time period of inaccuracy, the correction period will extend back one-half of the time elapsed since the last date of calibration. Otherwise, the amount of water delivered during such period may be estimated by:

- correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or
- if the error is not ascertainable by calibration tests or mathematical calculation, by estimating the quantity of water delivered by reference to deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

10.06 Notification Concerning Meter Tests

Evanston and MG-N shall deliver to the other Party written notice at least seventy-two (72) hours in advance of the time of any planned maintenance, inspection, test, calibration, adjustment or other work affecting any Delivery Meter or Check Meter so that the other Party may arrange to have a representative present. If said representative is not present at the time set in such notice, the inspection, test, calibration, adjustment or other work will proceed in the absence of said representative. Notices required under this Section 10.06 shall be given to the

following persons at the following addresses, unless otherwise provided in writing by MG-N or Morton Grove or Niles:

If for Evanston:

Director of Public Works Agency
555 Lincoln Street
Evanston, Illinois 60201
Phone: 847.448.4311
Email: current business email address

If for Morton Grove:

Director, Public Works
Village of Morton Grove
7840 Nagle Avenue
Morton Grove Illinois 60053
Phone: 847.470.5235
Fax: 847.965.9511
Email: current business email address

If for Niles:

Public Services Director
Village of Niles
6849 West Touhy Avenue
Niles, Illinois 60714
Phone: 847.588.7900
Fax: 847.588.7950
Email: current business email address

10.07 Removal of Meters

Delivery Meters and Check Meters may be removed upon termination of this Agreement only upon mutual agreement of the Parties and upon the release of any easements related thereto.

10.08 Meters for Customers

Each Party is responsible for providing water meters to its own customers.

11. Dispute Resolution

11.01 Negotiation

If a dispute arises between Evanston and MG-N concerning this Agreement, the Parties will first attempt to resolve the dispute by negotiation. Each Party will designate persons to negotiate on their behalf. The Party contending that a dispute exists must specifically identify in writing all issues and present it to the other Parties. The Parties will meet and negotiate in an attempt to resolve the matter. If the dispute is resolved as a result of such negotiation, there must be a written determination of such resolution, and ratified by the corporate authorities of each Party, which will be binding upon the Parties. If necessary, the Parties will execute an addendum to this Agreement. Each Party will bear its own costs, including attorneys' fees, incurred in all proceedings in this Section. If the Parties do not resolve the dispute through negotiation, any Party to this Agreement may pursue other remedies under Section 11.02 (Remedies) below to enforce the provisions of this Agreement.

11.02 Remedies

In any action with respect to this Agreement, the Parties are free to pursue any legal remedies at law or in equity. Each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law. Each Party will bear its own costs, expenses, experts' fees, and attorneys' fees, incurred in all litigation arising under this Agreement.

11.03 Venue and Applicable Law

All questions of interpretation, construction and enforcement, and all controversies with respect to this Agreement, will be governed by the applicable constitutional, statutory and common law of the State of Illinois. The Parties agree that, for the purpose of any litigation relative to this Agreement and its enforcement, venue will be in the Circuit Court of Cook County, Illinois or the Northern District, Eastern Division of the United States District Court, Chicago, Illinois, and the Parties consent to the *in personam* jurisdiction of said Courts for any such action or proceeding.

12. Force Majeure

12.01 Excuse From Performance

No Party will be liable in damages to any other Party for delay in performance of, or failure to perform, its obligations under this Agreement, if such delay or failure is caused by a Force Majeure Event as defined in Section 12.02 (Force Majeure Event) below. If a Party cannot perform under this Agreement due to the occurrence of a Force Majeure Event, then the time period for performance of the Party under this Agreement shall be extended by the duration of the Force Majeure Event.

12.02 Force Majeure Event

A “Force Majeure Event” means an event not the fault of, and beyond the control of, the Party claiming excuse which makes it impossible or extremely impracticable for such Party to perform obligations imposed on it by this Agreement, by virtue of its effect on physical facilities and their operation or employees essential to such performance. Force Majeure Events include:

- an “act of God” such as an earthquake, flood, fire, Lake Michigan seiche, tornado, earth movement, or similar catastrophic event,
- an act of terrorism, sabotage, civil disturbance or similar event,
- a strike, work stoppage, picketing, or similar concerted labor action,
- delays in construction caused by unanticipated negligence or breach of contract by a third party or inability to obtain essential materials after diligent and timely efforts, or
- an order or regulation issued by a Federal or State regulatory agency after the Effective Date or a judgment or order entered by a Federal or State court after the Effective Date.

A Force Majeure Event does not include a change in economic or market conditions or a change in the financial condition of a Party to this Agreement.

12.03 Notice

The Party claiming a Force Majeure Event excuse must deliver to the other Parties a written notice of intent to claim excuse from performance under this Agreement by reason of a Force Majeure Event. Notice required by this Section must be given promptly in light of the

circumstances. Such notice must describe the Force Majeure Event, the services impacted by the claimed event, the length of time that the Party expects to be prevented from performing, and the steps which the Party intends to take to restore its ability to perform its obligations under this Agreement.

13. Preservation of Water Rights

Evanston intends to preserve all of its water rights, irrespective of whether the water held under such water rights is allocated under this Agreement. Nothing in this Agreement shall be construed as an abandonment, or evidence of intent to abandon, any of the water rights that Evanston presently possesses.

14. Good Faith and Fair Dealing

The Parties each acknowledge their obligation under Illinois law to act in good faith toward, and deal fairly with, each other with respect to this Agreement.

15. MG-N Option to Create a JAWA or a Water Commission; Assignment

A. JAWA; Water Commission. If a Municipal Joint Action Water Agency (“JAWA”) is created, pursuant to 5 ILCS 220/3.1, as amended from time to time, or a municipal Water Commission is created, pursuant to 65 ILCS 5/11-135-1, et seq., as amended from time to time, which has jurisdiction over the MG-N Water System (the "MG-N Successor Entity"), all of MG-N's rights and obligations under this Agreement shall be automatically assigned to, and assumed by, the MG-N Successor Entity. MG-N shall have no further rights or obligations under this Agreement, effective as of the date of the creation of the MG-N Successor Entity. MG-N shall give Evanston prior written notice of the proposed creation of a MG-N Successor Entity at least ninety (90) calendar days prior to the creation of the MG-N Successor Entity. Immediately after the creation of the MG-N Successor Entity, signed copies of the corporate approval and formation documents (i.e. approving ordinance, intergovernmental agreement and by-laws) of the MG-N Successor Entity shall be sent to Evanston. Thereafter, the MG-N Successor Entity and Evanston agree to enter into an addendum to this Agreement to formally recognize the automatic assignment set forth herein and that MG-N has no further rights or obligations under this Agreement, provided however that MG-N is current in all required payments and charges owing to Evanston prior to such assignment taking effect.

B. Assignment by MG-N or the MG-N Successor Entity. MG-N and any MG-N Successor Entity shall have the right to assign this Agreement to a public water utility or another statutory water agency, provided that MG-N or Morton Grove or Niles becomes a member of the new statutory water agency, subject to prior written notice to Evanston and approval of the assignment by Evanston, which approval shall not be unreasonably withheld so long as the Successor Entity assumes all obligations of MG-N (or the obligations assumed by the MG-N Successor Entity) as set forth in this Agreement or any addendum, and the Successor entity is authorized and obligated to collect adequate revenue from its customers to pay the water rate charged by Evanston. After the assignment, MG-N, Morton Grove, or Niles, or the MG-N Successor Entity, shall have no further rights or obligations under this Agreement.

16. Financing Options for the Project

16.01 Cooperation with Project Financing

Evanston and MG-N will cooperate with each other to explore options for issuing water revenue bonds, other debt obligations and/or applying for any grants or loans to assist with the financing of the anticipated improvements to be made to their respective Water Systems in order to complete and operate the Evanston Connection Facilities, the Evanston Facilities Adjustments, the MG-N Water System and any other Water System improvements covered by this Agreement. Evanston may, if necessary and advantageous for Evanston and as determined solely by Evanston, issue debt to finance the Project, in part or in whole as the case may be, only if necessary and advantageous for MG-N, as determined by MG-N, provided that Evanston is able to earn an acceptable profit on the debt. To the extent that the Parties agree to issue bonds or other debt instruments in the name of Evanston, alone, or in their own respective or collective corporate names, the Parties agree to enter into such other additional intergovernmental agreements as are necessary to provide the statutory authority to issue such bonds and other debt instruments. As between Evanston and MG-N, each respective Party shall be responsible to make payments on its own debt service for its own Project Improvements. Evanston shall not be obligated to pay any of the debt service payments for MG-N Project Improvements. MG-N shall not be obligated to pay any of the debt service payments for Evanston Project Improvements.

16.02 MG-N Project Financing Options

MG-N reserves the right to finance its own Project Improvements.

17. Disconnection, Removal Relocation of Connection Facilities or Transmission Mains

17.01 Termination of Agreement

Upon termination of this Agreement, Evanston, in its discretion and at its cost, may disconnect or remove the Evanston Connection Facilities and / or the MG-N Connection Facilities and / or transmission mains located within Evanston's rights of way or utility easements, but only after the Parties mutually approve and sign an agreement and a release of easements that pertain to disconnection and / or removal of the Evanston Connection Facilities, the MG-N Connection Facilities and /or the transmission mains.

17.02 Relocation

In the event that the Point of Delivery or any portion of the Evanston Connection Facilities and the MG-N Connection Facilities or any transmission mains need to be relocated due to unanticipated circumstances or at the request of either Party, the Parties may negotiate an addendum to this Agreement that provides for the relocation, reconstruction, financing and cost sharing of the relocation work. If this Agreement is terminated, within one (1) year of the effective date of such termination, all connection facility assets, components, and equipment within Evanston must be removed at MG-N's sole cost and expense, unless otherwise agreed upon by the Parties.

18. Termination; Default

18.01 Termination by Evanston

This Agreement shall be subject to termination if a court of competent jurisdiction restricts or limits any of Evanston's rights to obtain, sell, contract for, or distribute water to MG-N in a manner that prohibits Evanston from complying with its obligations to MG-N under this Agreement. Evanston will have the right to terminate this Agreement if MG-N fails and defaults with respect to its obligations under Section 5.02 (Billing and Payments) of this Agreement, and otherwise fails and refuses to cure such default under Section 11.01 (Negotiation) and Section 18.04 (Default; Cure Period; Relief).

18.02 Termination by Mutual Agreement

Only upon mutual consent, the Parties may agree to terminate this Agreement, in writing, after the approval of a termination or wind-down agreement by their respective corporate authorities.

18.03 Termination by MG-N

MG-N shall have the right to terminate this Agreement if it delivers written notice to Evanston of its intention to terminate this Agreement not less than five (5) years prior to the termination date of the then-existing Term. In addition, MG-N has the right to terminate this Agreement for the following reason(s):

A. If MG-N is unable to obtain easements or title to real property to construct the MG-N Connection Facilities and other necessary MG-N Project Improvements.

B. If the MG-N Engineering and Route Study determines that the MG-N Connection Facilities and other necessary MG-N Project Improvements will not be feasible for any reason, including but not limited to a lack of technical feasibility to complete the MG-N Project Improvements, or a lack of relative financial feasibility to pay for the MG-N Project Improvements.

C. If the bid results for the MG-N Connection Facilities and other necessary MG-N Project Improvements exceeds:

1) the MG-N Engineer's Estimate;

2) the approved MG-N Project Budget; or

3) the MG-N Project Financial / Debt Repayment schedule. MG-N shall provide all documents and data to Evanston prior to MG-N cancelling the bid.

D. Evanston fails to deliver water in accordance with or otherwise fails to comply with the terms of this Agreement.

E. MG-N can terminate this Agreement at the end of the Initial Term, or as otherwise provided during any Extended Term, subject to timely written notice to Evanston.

F. MG-N can terminate this Agreement prior to its issuance of written notice to proceed with Evanston's Preliminary Project Phase Work as set forth in Section 4.01 above, for any reason, without any liability to Evanston.

G. MG-N can terminate this Agreement after its issuance of written notice to proceed with Evanston's Preliminary Project Phase Work as set forth in Section 4.01 above, provided MG-N fully reimburses Evanston for all reasonable actual, documented costs incurred by Evanston relating only to Project consultants and Project engineering fees and expenses that are incurred by Evanston after the date of issuance of MG-N's Notice to Evanston to Proceed with Preliminary Project Phase Work. Evanston or MG-N will not be reimbursed for staff time or corporation counsel time or outside legal counsel fees and expenses.

H. MG-N can terminate this Agreement after its issuance of written notice to proceed with Evanston's Final Engineering Design Work as set forth in Section 4.02 above, provided MG-N fully reimburses Evanston for all reasonable actual, documented costs incurred by Evanston relating only to Project consultants and Project engineering fees and expenses that are incurred by Evanston after the date of issuance of MG-N's Notice to Evanston to Proceed with Final Engineering Design Work. Evanston or MG-N will not be reimbursed by the other Party for staff time or corporation counsel time or outside legal counsel fees and expenses.

I. MG-N can terminate this Agreement prior to acceptance of water from Evanston, provided MG-N fully reimburses Evanston for all reasonable actual, documented costs incurred by Evanston, relating only to Project consultants and Project engineering fees and expenses and construction costs that are incurred by Evanston after the date of issuance of MG-N's Notice to Evanston to Proceed with Construction as set forth in Section 4.03 above. Evanston or MG-N will not be reimbursed by the other Party for staff time or corporation counsel time or outside legal counsel fees and expenses.

18.04 Default; Cure Period; Relief

In the event any Party defaults in regard to any obligation under this Agreement, the non-defaulting Party shall send written notice of the default, with a description of the default, and a request that the defaulting Party cure the default. Any Party deemed to be in default under this Agreement by another Party shall have a thirty (30) calendar day cure period to resolve the

default to the other Party's satisfaction or to initiate and continue to take actions that are designed to cure the default in a reasonable time period so that the Party in default is in conformance with the terms of this Agreement. In the event that a default is not cured, the non-defaulting Party and the defaulting Party shall participate in the "Dispute Resolution" process contained in Section 11.01 (Negotiation) above. If the Dispute Resolution process is not successful, then either Party may seek to enforce remedies in Section 11.02 (Remedies) to enforce the provisions of this Agreement.

19. General Conditions

19.01 Entire Agreement

This Agreement constitutes the entire agreement of the Parties concerning all matters specifically covered by this Agreement. There are no representations, covenants, promises or obligations not contained in this Agreement that form any part of this Agreement or upon which any of the Parties is relying upon in entering into this Agreement. There are no other commitments, understandings, promises or conditions among the Parties in any other contract or agreement, whether oral or written, and this Agreement supersedes all prior written or oral agreements, commitments and understandings among the Parties.

19.02 Prompt Payment

In regard to the payment of any fee, charge or assessment provided for under this Agreement, the Parties are subject to and shall comply with the Local Government Prompt Payment Act (50 ILCS 505/1, et seq.).

19.03 Compliance With Laws

The Parties to this Agreement shall comply with all applicable Federal, State and local laws, rules and regulations in carrying out the terms and conditions of this Agreement.

19.04 Regulatory Bodies

This Agreement shall be subject to all valid rules, regulations, and laws applicable hereto passed or promulgated by the United States of America, the State of Illinois, or any governmental body or agency having lawful jurisdiction, or any authorized representative or agency of any of them; provided, however, that this Section 19.04 shall not be construed as waiving the right of any

Party to challenge the validity of any such rule, regulation, or law on any basis, including impairment of this Agreement.

19.05 Illinois Freedom of Information Act

The definition of a “public record” in the Freedom of Information Act (5 ILCS 140/1, et seq.) (“FOIA”) includes a “public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body and that directly relates to the governmental function and is not otherwise exempt under this Act.” (5 ILCS 140/7(2)). Consequently, the Parties shall maintain and make available to the other Parties, upon request, their public records relating to the performance of this Agreement in compliance with the requirements of the Local Records Act (50 ILCS 205/1, et seq.) and FOIA.

19.06 Interpretation; Headings

This Agreement shall be construed and interpreted so as to preserve its validity and enforceability as a whole. No rule of construction that a document is to be construed against any of the drafting Parties shall be applicable to this Agreement. Section headings and titles are descriptive only and do not in any way limit or expand the scope of this Agreement.

19.07 Waiver

The failure of any Party to enforce any section, subsection, term, condition or covenant (collectively referred to as "provision") of this Agreement shall not be deemed a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with such provision and every other provision of this Agreement. No provision of this Agreement shall be deemed waived by any Party, unless the provision to be waived and the circumstances giving rise to such waiver are set forth specifically in a duly authorized and written waiver of the Party charged with such waiver. No waiver by either Evanston or MG-N of any provision of this Agreement shall be deemed or construed as a waiver of any other provision of this Agreement, nor shall any waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different provision of this Agreement.

19.08 No Individual or Personal Liability

The Parties agree that the actions taken in regard to and the representations made by each respective Party in this Agreement and by their respective corporate authorities have not been taken or made in anyone's individual capacity and no mayor/president, board member, council member, official, officer, employee, volunteer or representative of any Party will incur personal liability in conjunction with this Agreement.

19.09 No Third Party Beneficiaries

This Agreement is not intended to benefit any person, entity or municipality not a Party to this Agreement, and no other person, entity or municipality shall be entitled to be treated as beneficiary of this Agreement. This Agreement is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but not limited to, any agent, contractor, subcontractor, consultant, volunteer or other representative of any Party hereto. No agent, employee, contractor, subcontractor, consultant, volunteer or other representative of the Parties hereto will be deemed an agent, employee, contractor, subcontractor, consultant, volunteer or other representative of any other Party hereto.

19.10 Amendments

No amendment to this Agreement shall be effective until it is reduced to writing in an addendum and approved by the corporate authorities of the Parties. All addenda shall be executed by an authorized official of each Party. If any governmental agency with regulatory authority enacts new rules or regulations or new nationally recognized water system engineering requirements are adopted that require the method of water production or any components of the infrastructure used for the delivery of water under this Agreement to be changed or modified, the Parties agree to negotiate an addendum to this Agreement that addresses the construction and operation of the required water system improvements to the Evanston Water Utility and/or the MG-N Water System, the cost allocation of such improvements among the Parties and the financing of such improvements.

19.11 Assignment

Except as set forth in Section 15 (MG-N Option to Create a JAWA or a Water Commission; Assignment), no Party shall assign, sublet, sell or transfer its interest in this Agreement or any of

its rights or obligations under this Agreement without the prior written, mutual consent of the other Parties. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

19.12 Notice

Except as otherwise provided in this Agreement, all notices and other communications in connection with this Agreement shall be in writing and deemed to be given on the date of mailing if sent by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid, or may be delivered by messenger delivery, or overnight express mail, or personal delivery, or via facsimile, or via electronic internet mail ("e-mail") to the current mailing address(es) or email address(es) of the Parties' principal administrative offices, addressed to the Mayor/Village President or the City Administrator/City Manager/Village Manager. Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. E-mail notices shall be deemed valid only to the extent that they are (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (a) the date of actual receipt; or (b) the date that is one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) the date that is three (3) business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each Party to this Agreement shall have the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications shall be addressed to, and delivered at, the following addresses, unless otherwise directed by the Parties:

If for City of Evanston:

With copy to: Corporation Counsel (same address as City Manager)

City Manager

Lorraine Morton Civic Center

2100 Ridge Avenue

Evanston, Illinois 60201

Phone: 847.866.2936

Email:

citymanagersoffice@cityofevanston.org

Director

Public Works Agency

555 Lincoln Street

Evanston, Illinois 60201

Phone: 847.448.4311

Email: publicworks@cityofevanston.org

If for Village of Morton Grove:

With copy to: Corporation Counsel (same address as Village Administrator)

Village Administrator

Richard T. Flickinger Municipal Center

Village of Morton Grove

6101 Capulina Avenue

Morton Grove, Illinois 60053

Phone: 847.663.3001

Fax: 847.370.1649

Email: business email address

Director, Public Works

Village of Morton Grove

7840 Nagle Avenue

Morton Grove, Illinois 60053

Phone: 847.470.5235

Fax: 847.965.9511

Email: Business email address

If For Village of Niles:

With copy to: Corporation Counsel (same address as Village Manager)

Village of Niles

1000 Civic Center Drive

Niles, Illinois 60714

Phone: 847.588.8010

Fax: 847.588.8051

Email: Business email address

Public Services Director

Village of Niles

6849 West Touhy Avenue

Niles, Illinois 60714

Phone: 847.588.7900

Fax: 847.588.7950

Email: mja@vniles.com

By notice with the foregoing requirements of this Section 19.12, the Parties shall have the right to change the addresses for all future notices and communications to itself, but no notice of such a change shall be effective until actually received.

19.13 Severability

In the event any term, provision or condition of this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms, provisions or conditions of this Agreement which can be given effect without the invalid term, provision or condition. To this extent and purpose, the terms, provisions and conditions of this Agreement are declared severable. If any part of this Agreement is adjudged invalid, such adjudication shall not affect the validity of this Agreement as a whole or of any other part.

19.14 No Separate Legal Entity; No Joint Venture or Partnership or Agency

This Agreement establishes a cooperative intergovernmental undertaking, but the Parties do not intend to create a new or separate legal entity by entering into this Agreement. This Agreement does not establish or create a joint venture or partnership between the Parties, and no Party shall be responsible for the liabilities and debts of the other Parties hereto. No Party shall be deemed to be the agent, employee, or representative of any other Party.

19.15 Independent Sovereign Status

The Parties to this Agreement are independent, sovereign units of local government and no Party shall exercise control over either the performance of any other Party or the employees of any other Party.

19.16 Effective Date

The Effective Date of this Agreement shall be the date that the last authorized signatory signs and dates this Agreement, which date shall be inserted on the first page of this Agreement. This Agreement shall become effective only in the event the corporate authorities of each Party approves this Agreement.

19.17 Authorization

In accordance with applicable state laws, this Agreement was approved by each Party as follows:

- A. The adoption of Ordinance 5-O-17 by the Mayor and City Council of Evanston on the 13th day of February, 2017.
- B. The passage of Resolution 17-3 by the Village President and Board of Trustees of the Village of Morton Grove on the 23rd day of January, 2017.
- C. The passage of Resolution 2017-02R by the Village President and Board of Trustees of the Village of Niles on the 24th day of January, 2017.

19.18 Counterparts

This Agreement may be executed in counterparts (including facsimile signatures), each of which shall be deemed to be an original and all of which shall constitute one and the same Agreement.

19.19 Exhibits

In the event of a conflict between any Exhibit attached hereto and the text of this Agreement, the text of this Agreement shall control. The following Exhibits are attached to this Agreement and made a part hereof:

A. Group Exhibit “A”: Illustrative Example of “True-Up” Process comprised of Pages A-1 through A-7 (Page A-1: Morton Grove - Niles Water Supply Quantity Rate True Up Calculation for Service Year 2016; Page A-2: Morton Grove - Niles Water Supply Estimated Quantity Rate for Service Year 2016 Based on FY 2014 Audited Information; Page A-3: 2014 Audited Information, City of Evanston, Illinois, Water Fund – Operations and Maintenance Account, Schedule of Revenues, Expenditures, and Changes in Unreserved Fund Balance – Budget and Actual for the FY ended December 31, 2014 with Comparative Totals for FY ended December 31, 2013 (Page 157); Page A-4: Morton Grove-Niles Water Supply True Up Quantity Rate for Service Year 2016 Based on FY 2015 Audited Information; Page A-5: 2015 Audited Information, City of Evanston, Illinois, Water Fund – Schedule of Revenues, Expenditures, and Changes in Net Position – Budget and Actual for the FY ended December 31, 2015 (Page 123); Page A-6: Calculation of Distribution Expenses Allocated to MG-N; Page A-7: Annual Pumpage (MG) (Water and Sewer 2015 Annual Report, Page 18).

B. Group Exhibit “B”: Example of Rate Calculation for MG-N Water Rate for Service Year 2017 Based on Evanston Audited Information for Fiscal Year 2015 comprised of Pages B-1 through B-21 (Pages B-1 and B-2: Example of Rate Calculation for MG-N Water Supply Prepared on 12/14/2016 by Dave Stoneback, Morton Grove - Niles Water Supply Rate Calculation for Service Year 2017, Based on FY 2015 Actual Information; Pages B-3 to B-12: Evanston Water Utility Component Sheets, Table B-1 dated 6/30/2016 (Reproduction Cost New Less Depreciation As Of December 31, 2015, Pages 1 through 10 of Burns & McDonnell Water Works Properties Valuation); Page B-13: Table B-2 dated 6/30/2016 (Reproduction Cost New Less Depreciation As Of December 31, 2015, Burns & McDonnell Water Works Properties Valuation); B-14: Table B-3 dated 6/30/2016 (Original Cost New Less Depreciation As Of

December 31, 2015, Burns & McDonnell Water Works Properties Valuation); Page B-15: Table B-4 dated 6/30/2016 (OCLD and RCNLD At December 31, 2015, Burns & McDonnell Water Works Properties Valuation); Page B-16: IDNR Water Allocations as of November 2011; Page B-17: 2015 Audited Information, City of Evanston, Illinois, Notes to the Financial Statements for the FY ended December 31, 2015 (Page 40); Page B-18: Evanston Audited Information, City of Evanston, Schedule of Fixed Assets and Depreciation, Year ended December 31, 2014; Page B-19: Annual Pumpage, 2015 Monthly Pumpage (MG) and 2015 Average Day Pumpage (MGD)(Water and Sewer 2014 Annual Report)(Page 17); Page B-20: 2015 Audited Information, City of Evanston, Illinois, Water Fund – Schedule of Revenues, Expenditures, and Changes in Net Position – Budget and Actual for the FY ended December 31, 2015 (Page 123); Page B-21: Evanston Distribution System, Calculation of Percent of System Allocated to MG-N, Calculation of Depreciation Charges.

C. Group Exhibit “C”: Depreciation Rates comprised of Page C-1: Depreciation Rates (Classes of Plant included: Source of Supply, Pumping Plant, Treatment Plant, Water Plant and Transmission)

D. Exhibit “D”: City of Evanston Ordinance 5-O-17 (Approval of Water Supply Agreement Between the City of Evanston, the Village of Morton Grove and the Village of Niles)

E. Exhibit “E”: Village of Morton Grove Resolution 17-3 (Approval of Water Supply Agreement Between the City of Evanston, the Village of Morton Grove and the Village of Niles)

F. Exhibit “F”: Village of Niles Resolution 2017-02R (Approval of Water Supply Agreement Between the City of Evanston, the Village of Morton Grove and the Village of Niles)

IN WITNESS WHEREOF, this Agreement was executed on behalf of the Parties through their authorized representatives, after all duly required corporate action was taken, as set forth below on the signature pages.

SIGNATURE PAGES TO FOLLOW

**SIGNATURE PAGE FOR
CITY OF EVANSTON**

IN WITNESS WHEREOF, the below authorized officials of the City of Evanston signed this Agreement pursuant to legal authorization granted to him/her under Article VII, Section 10 of the 1970 Illinois Constitution, the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) and the corporate approval granted by passage of Ordinance 5-O-17 by the Corporate Authorities of the City of Evanston.

City of Evanston

By: 

Name: Elizabeth B. Tisdahl

Mayor, City of Evanston

Date: March 1, 2017.

Attest:

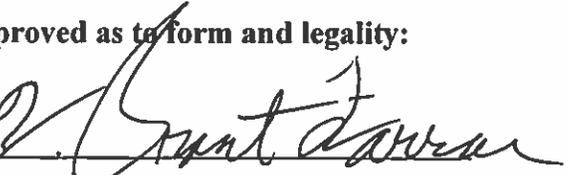
By: 

Name: Rodney Greene

City Clerk, City of Evanston

Date: March 1, 2017

Approved as to form and legality:

By: 

W. Grant Farrar, Corporation Counsel

**SIGNATURE PAGE FOR
VILLAGE OF MORTON GROVE**

IN WITNESS WHEREOF, the below authorized officials of the Village of Morton Grove have signed this Agreement pursuant to legal authorization granted to him/her under Article VII, Section 10 of the 1970 Illinois Constitution, the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) and the corporate approval granted by passage of Resolution 17-3 by the Corporate Authorities of the Village of Morton Grove.

Village of Morton Grove
By: 

Name: Daniel DiMaria

Village President, Village of Morton Grove

Date: 3/16/17, 2017.

Attest:

By: 

Name: Connie Travis

Village Clerk, Village of Morton Grove

Date: March 16, 2017

Approved as to form and legality:

By: 

Teresa Liston, Village Attorney

**SIGNATURE PAGE FOR
VILLAGE OF NILES**

IN WITNESS WHEREOF, the below authorized officials of the Village of Niles have signed this Agreement pursuant to legal authorization granted to him/her under Article VII, Section 10 of the 1970 Illinois Constitution, the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) and the corporate approval granted by passage of Resolution 2017-02R by the Corporate Authorities of the Village of Niles.

Village of Niles

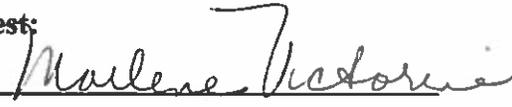
By: 

Name: Andrew Przybylo

Village President, Village of Niles

Date: 3-16-17

Attest:

By: 

Name: Marlene Victorine

Village Clerk, Village of Niles

Date: 3-16-17

Approved as to form and legality:

By: 

Danielle Grcic, Village Attorney

APPENDIX F

WHOLESALE WATER SUPPLY AGREEMENTS

VILLAGE OF LINCOLNWOOD

**WATER SUPPLY AGREEMENT BETWEEN
THE CITY OF EVANSTON AND,
THE VILLAGE OF LINCOLNWOOD**

Contents

Background..... 5

1. Parties..... 5

 1.01 Parties 5

2. Initial Term of Agreement; Extended Term; Service Year; Fiscal Year 5

 2.1. Initial Term..... 5

 2.2 Extended Term 5

 2.3 Service Year; Fiscal Year..... 6

3. Water Defined 6

 3.01 Water Defined..... 6

4. Commencement of Obligation to Deliver and Receive Water..... 6

 4.1 Intentionally Left Blank..... 6

 4.2 LINCOLNWOOD Notice to Evanston to Proceed with Final Engineering Design..... 6

 4.3 LINCOLNWOOD Notice to Evanston to Proceed with Construction..... 6

 4.4 Delivery Date..... 7

 4.5 LINCOLNWOOD Payment for Water; Water During Construction 7

 4.6 Water Rate Payable to Evanston in Service Year 2018 and Beyond 7

 4.7 Water Rate Payable to Evanston in Service Years 2023 and Thereafter..... 7

5. Rate..... 8

 5.1 Ratemaking Principles and Policies..... 8

 5.2 Billing and Payments..... 8

 5.3 Return on Rate Base 9

 5.4 Depreciation Charge 11

 5.5 Quantity Charge..... 11

 5.6 Demand Charge and Quantity Charge Smoothing 12

5.7	LINCOLNWOOD Audit Rights.....	13
5.8	True-Up	13
6.	Water System Definitions	13
6.01	Water System Definitions and Related Terms.....	13
7.	Water Supply; Allocation; Distribution	15
7.1	Water Supply, Sale and Purchase; Allocation	15
7.2	Emergency Connections	15
7.3	Coefficient of Friction	15
7.4	Pressures	16
7.5	Supply and Service Agreement Only; Title to Water.....	16
7.6	Temporary Restriction	17
7.7	Maintenance.....	17
7.8	Lincolnwood Option to Purchase Water from Other Suppliers	18
7.9	Surges and Back-Flows	18
7.10	LINCOLNWOOD Responsibility for Damage to Evanston’s Water Utility	18
7.11	Evanston’s Responsibility for Damage to LINCOLNWOOD’s Water System	19
8.	Existing and Future Customers of Evanston; LINCOLNWOOD Other Users.....	19
8.1	Existing and Other Water Customers Served by Evanston	19
8.2	Northwest Water Commission	19
8.3	Liability for Unreasonable Delay by LINCOLNWOOD	19
8.4	Liability for Unreasonable Delay by Evanston.....	20
9.	Facility Completion Schedule	20
9.1	Specifications and Sequence of Construction for the Project Improvements	20
9.2	IEPA and Other Approvals for the Project.....	21
9.3	Easements, Licenses, Permits, Fees and Approvals	21
10.	Meters and Measurements; Meter Testing.....	21
10.1	Unit of Measurement	21
10.2	Supervisory Control and Data Acquisition (“SCADA”)	21
10.3	Delivery Meters	22
10.4	Check Meters.....	22
10.5	Meter Calibration and Adjustment	23

10.6	Notification Concerning Meter Tests	23
10.7	Removal of Meters.....	24
10.8	Meters for Customers.....	24
11.	Dispute Resolution.....	24
11.1	Negotiation.....	24
11.2	Remedies.....	25
11.3	Venue and Applicable Law.....	25
12.	Force Majeure	25
12.1	Excuse From Performance	25
12.2	Force Majeure Event.....	25
12.3	Notice.....	26
13.	Preservation of Water Rights	26
14.	Good Faith and Fair Dealing.....	26
15.	Disconnection, Removal Relocation of Connection Facilities or Transmission Mains	27
15.1	Termination of Agreement.....	27
15.2	Relocation	27
16.	Termination; Default.....	27
16.1	Termination by Evanston	27
16.2	Termination by Mutual Agreement.....	27
16.3	Termination by LINCOLNWOOD.....	28
16.4	Default; Cure Period; Relief.....	29
17.	General Conditions	30
17.1	Entire Agreement.....	30
17.2	Prompt Payment.....	30
17.3	Compliance With Laws.....	30
17.4	Regulatory Bodies.....	30
17.5	Illinois Freedom of Information Act.....	30
17.6	Interpretation; Headings.....	31
17.7	Waiver.....	31
17.8	No Individual or Personal Liability	31
17.9	No Third Party Beneficiaries	31
17.10	Amendments	32

17.11 Assignment	32
17.12 Notice	32
17.13 Severability	34
17.14 No Separate Legal Entity, No Joint Venture or Partnership or Agency.....	34
17.15 Independent Sovereign Status.....	34
17.16 Effective Date	35
17.17 Authorization	35
17.18 Counterparts.....	35
17.19 Exhibits	35

Background

The City of Evanston (“Evanston”) is the owner and operator of a water intake, filtration, treatment and pumping plant (the “Water Plant”) located at 555 Lincoln Street, Evanston, Illinois. The Water Plant is on the shore of Lake Michigan and Evanston draws water from Lake Michigan for Evanston’s drinkable water, firefighting and fire protection needs for its community, and for distribution and resale to its customers (“Evanston Water Utility”). The Village of Lincolnwood (“Lincolnwood”) wants to purchase drinkable Lake Michigan water from the Evanston Water Utility for the uses specifically allowed by this Agreement, including but not limited to, distribution and sale to customers of the Lincolnwood water system.

1. Parties

1.1 Parties

The parties to this Water Supply Agreement (“Agreement”) are Evanston and Lincolnwood, who are at times referred to in this Agreement as a “Party” or collectively as the “Parties”.

2. Initial Term of Agreement; Extended Term; Service Year; Fiscal Year

2.01. Initial Term

The Initial Term (“Initial Term”) shall commence on the Effective Date of this Agreement (as defined in Section 17.16 (Effective Date)) and shall end at 11:59 p.m. on December 31, thirty nine (39) years after the Effective Date of this Agreement.

2.2 Extended Term

The Initial Term of this Agreement may be extended for up to two (2) consecutive terms (generally referred to as an “Extended Term” or specifically referred to as the “First Extended Term” and the “Second Extended Term”). The First Extended Term and the Second Extended Term will each be ten (10) years in length, unless Lincolnwood delivers written notice of its intention to not extend the Initial Term or any Extended Term of this Agreement. Any such written notice must be delivered to Evanston not less than five (5) years prior to the termination date of the then-existing Term. If this Agreement is extended for the Second Extended Term, then this Agreement shall renew automatically at the end of the Second Extended Term at ten (10) year intervals thereafter, unless either Party conveys written notice of its intention to terminate this Agreement not less than five (5) years prior to the termination date of the then-existing Term.

2.3 Service Year; Fiscal Year

Each Service Year (“Service Year”) under this Agreement will be the time period of January 1st to December 31st. Each Fiscal Year (“Fiscal Year”) under this Agreement will be the time period of January 1st to December 31st.

3. Water Defined

3.1 Water Defined

In this Agreement, Water means Lake Michigan water that is safe for human consumption (i.e. drinkable water) and that meets or exceeds the requirements of any current or successor federal, state of Illinois, or local agency or governmental authority having jurisdiction over the operation of public water supplies. Evanston shall supply water that is like kind and quality with that supplied by Evanston to its other customers. Whether “water” is capitalized in this Agreement or not, it shall have the meaning set forth in this Section.

4. Commencement of Obligation to Deliver and Receive Water

4.01 Intentionally Left Blank

4.2 LINCOLNWOOD Notice to Evanston to Proceed with Final Engineering Design

Not more than thirty (30) calendar days after LINCOLNWOOD awards the final engineering design work for the LINCOLNWOOD Water System, LINCOLNWOOD shall deliver to Evanston in writing a notice to proceed on final engineering design of the Evanston Connection Facilities.

4.3 LINCOLNWOOD Notice to Evanston to Proceed with Construction

Not more than thirty (30) calendar days after LINCOLNWOOD awards the first construction contract relative to the construction of the LINCOLNWOOD Water System, LINCOLNWOOD shall deliver to Evanston in writing a notice to proceed on construction of the Evanston Connection Facilities.

4.4 Delivery Date

Evanston shall deliver water to LINCOLNWOOD, on a date mutually agreed by the Parties, but no later than one hundred and twenty (120) calendar days of receiving written notice from LINCOLNWOOD that LINCOLNWOOD is ready to receive water.

4.5 LINCOLNWOOD Payment for Water; Water During Construction

Except for water usage during construction and testing of the Project improvements, LINCOLNWOOD shall not be responsible to pay for any water charges under this Agreement until the improvements and construction at the Point of Delivery, are completed, and until Evanston delivers water to LINCOLNWOOD for resale to its customers. During the construction and testing of the improvements at the Point of Delivery, Evanston will charge LINCOLNWOOD for its water usage at the water rates and charges identified in Section 4.06 (Water Rate Payable to Evanston in Service Year 2018 and Beyond) of this Agreement.

4.6 Water Rate Payable to Evanston in Service Year 2018 and Beyond

The Parties agree that the identification of the total equivalent water rate payable to Evanston per 1,000 gallons supplied to LINCOLNWOOD in the Service Years identified below will be as follows:

Service Year	LINCOLNWOOD
2018	\$ 1.53 Not to Exceed Rate
2019	\$ 1.44 Not to Exceed Rate
2020	\$ 1.60 Not to Exceed Rate
2021	\$1.63 Projected, conforming to Section 5 below
2022	\$1.82 Projected, conforming to Section 5 below

4.7 Water Rate Payable to Evanston in Service Years 2023 and Thereafter

The Parties agree that the identification of the total equivalent water rate payable to Evanston per 1,000 gallons supplied to LINCOLNWOOD in Service Years 2023 and thereafter will be

calculated in accordance with Section 5 (Rate) below. The above rates may be adjusted down based on final rate calculations as provided for in Section 5 (Rate). The rate charged to Lincolnwood for water sold for construction and testing shall also use the above table. No True Up will be calculated for water sold for construction and testing purposes. Except for water sold to Lincolnwood for construction and testing, if the actual rate incurred at any time during Service Years 2018, 2019, 2020, 2021, or 2022 is different than the scheduled rate set forth in this Section, a "True-Up" calculation, in accordance with Section 5.08 (True-Up) will be completed no later than thirty (30) days after the Evanston Comprehensive Annual Financial Report ("CAFR") applicable to that Service Year is completed. The Parties attached as **Group Exhibit "A"** to this Agreement an illustrative example of the "True-Up" process, including an identification of the formula and its components that will be used in performing the "True-Up" calculation. Any credit due to Lincolnwood will be allocated to that Party according to the process outlined in Section 5.08 (True-Up) of this Agreement. All water charges otherwise required to be paid under Section 4.06 (Phased Water Delivery to LINCOLNWOOD) will be payable by LINCOLNWOOD.

5. Rate

5.1 Ratemaking Principles and Policies

The Parties agree that the definitions, policies and principles described in the AWWA M-1, the "Principles of Water Rates, Fees and Charges published by the American Water Works Association, Sixth Edition", as amended, may be used as a reference guide for the Parties under this Agreement. However, in the event of a conflict or inconsistency between any provision or term of the AWWA M-1 and this Agreement, the provision or term of this Agreement shall govern.

5.2 Billing and Payments

Evanston shall submit all water bills to LINCOLNWOOD on a monthly basis. LINCOLNWOOD shall pay all amounts due to Evanston pursuant to this Agreement in accordance with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq. ("LGPPA"). The water bills shall be itemized with sufficient detail to inform LINCOLNWOOD that the charges and fees set forth in each monthly bill conform to the agreed-upon rates and cost components set forth in this Agreement. If payment is not made within the required thirty (30)

calendar day period, Evanston will charge LINCOLNWOOD a penalty for late payment of water bills in accordance with the interest penalty provision contained in Section 4 of the LGPPA (50 ILCS 505/4). No other penalty can be assessed against LINCOLNWOOD for late payments of water bills, except for Evanston's optional right to terminate this Agreement for nonpayment as provided for in Section 16.01 (Termination by Evanston). Evanston's termination option is subject to the right of LINCOLNWOOD to resolve any late payment within the applicable cure period. The billing structure will conform to the rates and components identified and defined below:

- **Demand Charge:** A fixed monthly payment consisting of (i) one-twelfth (1/12th) of the Annual Return on the Fair Value Rate Base as determined in accordance with Section 5.03 (Return on Rate Base) and (ii) a Depreciation Charge determined in accordance with Section 5.4 (Depreciation Charge).

- **Quantity Charge:** A payment based on the quantity of water delivered through the metering point(s) to Lincolnwood's water system multiplied by the Quantity Rate determined in accordance with the provisions of Section 5.05 (Quantity Charge).

5.3 Return on Rate Base

The "Rate Base" consists of those components of Evanston's Water Utility relating to assets in the Source of Supply, Pumping Plant, Treatment Plant, Water Plant and Transmission locations (the "Evanston Water Utility Components"). These Water Utility Components in service as of December 31, 2015, are identified in the "Evanston Water Utility Components Sheet" which is part of attached **Group Exhibit "B"** (Example of Rate Calculation for LINCOLNWOOD Water Rate for Service Year 2017 Based on Evanston Audited Information for Fiscal Year 2015) to this Agreement. The Parties to this Agreement understand and acknowledge that these Evanston Water Utility Components will adjust annually as of the end of each Fiscal Year to reflect additions to, and retirements of, Evanston Water Utility Components. The Parties to this Agreement understand and acknowledge that these Evanston Water Utility Components may adjust between the Effective Date of this Agreement and the date of delivery of water. Evanston shall be included as a component of the Evanston Water Utility for purposes of asset allocation and rate making related to asset allocation only for LINCOLNWOOD.

- **Original Cost Rate Base:** The components of the Rate Base valued at the original cost to Evanston of the acquisition, engineering, construction and installation of the assets of the Water Utility as identified in the most recently available Evanston Comprehensive Annual Financial Report (“Evanston CAFR”), minus accrued depreciation as of the end of the Fiscal Year used as a basis for determining Water Charges under this Agreement.

- **Reproduction Cost New Rate Base:** The components of Rate Base valued initially in the most recently available Evanston CAFR prior to the commencement of delivery of water under this Agreement. Reproduction Cost New Rate Base will be recalculated as of the end of each succeeding fifth Fiscal Year, starting in 2020, reflecting components then properly allocated to the Rate Base pursuant to this Agreement. The recalculation of the Reproduction Cost New Rate Base will utilize the most current valuation of the Evanston Water Utility, as identified by a reputable qualified consulting engineering firm experienced in water works valuation hired by Evanston. Accrued depreciation identified by the engineering firm’s valuation study, plus accrued depreciation which occurred from the date of the valuation to the end of the applicable Fiscal Year of the rate determination, will be deducted from the reproduction cost new of the plant in service at the end of the Fiscal Year.

- **Fair Value Rate Base:** This will be calculated initially in the most recently available Evanston CAFR prior to the commencement of delivery of water under this Agreement. The Fair Value Rate Base will be recalculated as of the end of each succeeding fifth Fiscal Year, starting in 2020, and will consist of the sum of **fifty percent (50%) of the original Cost Rate plus fifty percent (50%)** of the Reproduction Cost Rate Base as of the calculation date. The Fair Value Rate Base will be subject to annual adjustment as of the end of the Fiscal Year between Fair Value Rate Base recalculations to reflect additions to and retirements of Water Utility assets contained in the Rate Base during the Fiscal Year. The next verification of the elements of the Fair Value Rate Base will be performed by Burns and McDonnell in 2020 (or its successor entity selected by Evanston, as the case may be), and then once every five (5) calendar years thereafter. Additions will be valued at their original cost until recalculation of the Fair Value Rate Base, at which time such additions will be valued in the same manner as the Fair Value Rate Base. Retirements will be valued at their fair value as reflected in the last previous Fair Value Rate Base computation.

- **Annual Return on Rate Base:** The Annual Return on Rate Base will be multiplied ten percent (10.0%) on the LINCOLNWOOD share of the Fair Value Rate Base identified in the most recently available Evanston CAFR, and otherwise conform to the cost of service principles identified in Section 5.01 (General Principles and Policies). The LINCOLNWOOD share of the Fair Value Rate Base will be determined by allocating to LINCOLNWOOD a portion of such Fair Value Rate Base, as adjusted and recalculated from time to time as provided by this Agreement. This adjustment will be based upon the ratio of each Evanston Water Utility customer allocation, which includes the City of Evanston's allocation, compared to the total allocation of all Evanston Water Utility customers established by order of the Illinois Department of Natural Resources ("IDNR") during the Fiscal Year.

5.4 Depreciation Charge

These charges will be calculated as of the end of each Fiscal Year following commencement of the delivery of water to LINCOLNWOOD and will consist of one-twelfth (1/12th) of an annual depreciation charge, calculated by applying the depreciation rates utilized by Evanston identified in **Group Exhibit "C" (Depreciation Rates)** to this Agreement, to the original cost of the depreciable Water Utility asset defined in Section 5.03 (Return on Rate Base) in service contained in the Fair Value Rate Base allocated to LINCOLNWOOD. As of the date when any depreciable Water Utility asset will be placed in service or any depreciable Water Utility asset in the Fair Value Rate Base is retired from service, charges of depreciation to LINCOLNWOOD will be correspondingly adjusted as of the end of the Fiscal Year in which the addition or retirement took place.

5.5 Quantity Charge

LINCOLNWOOD will pay Evanston a Quantity Charge based upon a Quantity Rate equal to LINCOLNWOOD's share of the "Operating Costs" per 1,000 gallons of water delivered to the Point of Delivery. The "Operating Costs" to be included in determining the Quantity Rate are the costs assigned to the functions of Administration, Pumping, Filtration, and Distribution, identified in the Evanston CAFR of the Evanston Water Fund described in **Group Exhibit "B"** attached to this Agreement. The Operating Costs applicable to water deliveries during the Service Year will be determined based on the results of operation of the Evanston Water Utility, as audited by independent certified public accountants selected by Evanston, as reviewed by LINCOLNWOOD. The total Quantity Charge will be adjusted at the end of each Service Year

to reflect the actual, total Quantity Charge owed to Evanston based on the Fiscal Year Operating Costs finally determined by the latest annual audit performed by the current Evanston independent certified public accountant as defined in Section 5.08 (True Up). In determining the Quantity Rate, Operating Costs will be allocated to LINCOLNWOOD based upon the ratio of its Average Day Demand identified in Section 7 (Water Supply; Allocation; Distribution) of this Agreement supplied by the Evanston Water Utility, to the aggregate of the Average Day Demand of all Evanston Water Utility, LINCOLNWOOD and other customers or users of the Evanston Water Utility system during the Fiscal Year. The Quantity Rate will not include any portion of any costs included in computing the Fair Value Rate Base, Annual Return on Rate Base or Depreciation Charge.

5.6 Demand Charge and Quantity Charge Smoothing

Demand Charge Cap. Upon completion of the Clearwell Project immediately south of the Evanston Water Utility, and upon completion of the Intake Replacement Project, but not later than the end of year 2022, any increase and decrease in any Evanston Water Utility Asset shall not increase the total rate charged to LINCOLNWOOD by more than **four percent (4%)** per year until the entire cost of the Evanston Water Utility Asset has been recovered by either Party compared to the cost change that would have occurred if the Evanston Water Utility Asset change was not smoothed. No cap or smoothing will be calculated due to the change in total customers utilizing the Evanston Water Utility. Any increased capital costs associated exclusively with the acquisition of new customers by Evanston will not be included in the rate calculation for LINCOLNWOOD. LINCOLNWOOD's rate shall not be increased as a result of the acquisition of new Evanston customers. Evanston may accelerate the replacement of assets assigned to LINCOLNWOOD, as needed, to add a new Evanston customer or may add new assets beneficial to LINCOLNWOOD, provided that the new rate for LINCOLNWOOD is equal to or less than the then-current LINCOLNWOOD rate.

Quantity Charge Cap. The Parties agree to cap the annual increase of the labor costs portion of the Operating Costs that are used to determine the Quantity Rate based on the actual, annual aggregate cost increase (if any), **if Evanston labor costs increase more than 4% in any given year.** When Evanston labor costs increase by more than 4% any given year, the labor costs portion of the Operating Costs shall be capped based on the average of the annual

percentage increases of labor costs for public works employees of Evanston and Lincolnwood (e.g., Evanston increase (4.4%) plus Lincolnwood Increase (4.0%) divided by two equals a 4.2% capped increase).

5.7 LINCOLNWOOD Audit Rights

Not more than once per year, LINCOLNWOOD shall have the right to audit all parts of the water charges, and the components thereof, as well as any other fees, charges, or assessments provided for in this Agreement. LINCOLNWOOD's right to audit includes, but is not limited to, the Demand Charge, the Quantity Rate, the Quantity Charge, the Rate Base and the Depreciation Charge, as well as any other components of the water charges. Evanston shall reasonably cooperate with requests by LINCOLNWOOD and its auditors regarding reasonable requests for documents and information needed to complete the audit related to the rights and obligations of the Parties under this Agreement. Each Party is responsible for its respective costs of the audit.

5.8 True-Up

At the end of each Service Year and subject to Section 5.07 (LINCOLNWOOD Audit Rights), there will be a final Quantity Charge or credit issued by Evanston to LINCOLNWOOD to adjust the total Quantity Rate calculated by utilizing the latest available Fiscal Year audited Operating Costs. Any adjustments to the water charges, and the components thereof, as well as any other fees, charges, or assessments provided for in this Agreement, that require additional payment to Evanston by LINCOLNWOOD or any credit to LINCOLNWOOD by Evanston shall be calculated as part of this annual True-Up process. The Parties have attached as **Group Exhibit "A"** to this Agreement, illustrative examples of the "True-Up" process. After the True-Up process and any dispute resolution process are completed, this final charge or credit shall be paid by the responsible Party within thirty (30) calendar days of the issuance of the invoice or credit by separate payment or as otherwise mutually agreed to in writing by the Parties.

6. Water System Definitions

6.1 Water System Definitions and Related Terms

In this Agreement, the following definitions apply:

- Evanston Clearwell Project: The replacement of the 5.0 MG treated water storage facility located on the south side of Lincoln Street opposite the water treatment plant (See, **Group Exhibit "B"**, #203 of the Treatment Plant asset list).

- **Evanston Connection Facility:** Evanston control valve, delivery meter, piping and other components necessary to supply water to LINCOLNWOOD that will be housed in an underground vault near the intersection of Oakton Avenue and the North Shore Channel, owned by Evanston and included as a transmission component in the rate base.
- **Evanston Intake Replacement Project:** The replacement of Evanston's 36" and 42" diameter intake(s) and all appurtenances thereto (See **Group Exhibit "B"**, #9 and #13 in the Source of Supply asset list).
- **Evanston Water Utility:** The assets in the Source of Supply, Pumping Plant, Treatment Plant, Water Plant and Transmission locations in service as of December 31, 2015, and identified in **Group Exhibit "B"** to this Agreement, which components may adjust annually as of the end of each Fiscal Year to reflect additions to, and retirements of, Water Utility components.
- **Lincolnwood Water System:** The infrastructure that makes up the Lincolnwood Water System, including but not limited to, the water treatment, pumping, storage, distribution and delivery system, pump stations, transmission and distribution mains, valves, meters, and connection facilities.
- **Point of Delivery:** The point of connection of the LINCOLNWOOD Water System and the Evanston Connection Facility adjacent to the underground vault at Evanston border on the East side of the North Shore Channel.
- **Project:** The construction of the Evanston Connection Facilities, the Evanston Facilities Adjustments, the LINCOLNWOOD Water System, and all related and necessary improvements made to the Evanston Water Utility, and the Lincolnwood Water System, as provided for in this Agreement.
- To the extent a word or term is used in this Agreement that is not defined herein, the first source of interpretation of the word or term shall be its definition in the AWWA M-1 Manual or other AWWA publication pertaining to water transmission and distribution facilities (if defined therein), then any applicable federal or state laws (e.g., Clean Water Act) and then the

common definition found in the most recent edition of any mutually agreed upon nationally published dictionary (e.g., Webster's Dictionary or Merriman's Dictionary).

7. Water Supply; Allocation; Distribution

7.1 Water Supply, Sale and Purchase; Allocation

Evanston will sell and deliver to LINCOLNWOOD the full water requirements of the LINCOLNWOOD Water System, except as otherwise set forth in this Agreement. LINCOLNWOOD will purchase all of the water it receives from Evanston in accordance with this Agreement.

LINCOLNWOOD is responsible to obtain and maintain a water allocation from the Illinois Department of Natural Resources ("IDNR"). In this Agreement, Average Day Demand ("ADD") means the IDNR water allocations established in November 2011 for Lincolnwood. In this Agreement, Maximum Flow Rate ("MFR") means the rate of flow that Evanston is required to provide at the Point of Delivery.

The MFR to Lincolnwood is based on the Year 2030 IDNR water allocation assigned to Lincolnwood multiplied by a 1.65 peaking factor.

- Illustrative formula for calculating the MFR for Lincolnwood: Lincolnwood Year 2030 IDNR water allocation = 2.429 x 1.65 = 4.0079 Million Gallons Per Day ("MGD") MFR.

7.2 Emergency Connections

This Agreement will not prohibit LINCOLNWOOD or Evanston from entering into any emergency water service agreement with another municipality, water agency, or other source. Nothing in this Section will prevent Evanston's right to collect all water charges provided for in this Agreement.

7.3 Coefficient of Friction

LINCOLNWOOD shall maintain its transmission main to provide a coefficient of friction ("C-factor") to be determined after the completion of the final design engineering for the LINCOLNWOOD Water System, which C-factor will be incorporated into this Agreement by a jointly executed side-letter issued prior to the delivery date of water. Unless otherwise agreed to by the Parties, the C-factor rating of the LINCOLNWOOD Water System between the Point of

Delivery and the LINCOLNWOOD booster station or LINCOLNWOOD (referred to as the “Evanston Pressurized Zone” of the LINCOLNWOOD Water System) receiving reservoir shall not be less than a C-factor rating of 90. If the C-factor falls below 90 within the Evanston Pressurized Zone of the LINCOLNWOOD Water System, Evanston is not required to meet the Maximum Flow Rate as indicated in Section 7.01 (Water Supply Sale and Purchase; Allocation). The Maximum Flow Rate shall decrease directly on a one to one basis with the decrease in C-factor rating (e.g., each one (1) point loss or gain of C-factor equals a 1.11% change in the maximum flow rate: 80 C-factor = 88.90% maximum flow rate). The C-factor is identified in Cameron Hydraulic Data, or equivalent successor statement of measure, and typically used for the design of concrete pipes to reflect the roughness of the pipe after many years of operation. LINCOLNWOOD shall test its transmission main beginning in Year 2023, and every fifth year thereafter, to determine the C-factor rating and promptly provide those results to Evanston to ensure adherence to this requirement. If the LINCOLNWOOD’s transmission main fails to meet the required C-factor rating as set forth in this Section, then another C-factor test shall be conducted during the subsequent Service Year.

7.4 Pressures

Evanston will supply water to LINCOLNWOOD by direct pressure from the Evanston Water Plant without intermediate pumping from reservoirs. Evanston shall control operating pressures within its water distribution system and adjust such pressures according to the water demands within its water distribution system to ensure that the pressure at the Point of Delivery is at all times between 40 and 50 pounds per square inch (“PSI”).

7.5 Supply and Service Agreement Only; Title to Water

Nothing in this Agreement shall be construed as granting any proprietary or other interest in the Evanston Water Utility to LINCOLNWOOD. Nothing in this Agreement shall be construed as granting any proprietary or other interest in the LINCOLNWOOD Water System to Evanston. Evanston and LINCOLNWOOD agree that this Agreement is solely an agreement for the sale and purchase of a supply of Water and related services. Title to Water passes at the Point of Delivery from Evanston to LINCOLNWOOD. Evanston agrees to deliver an adequate water supply on a regular basis to maintain LINCOLNWOOD water requirements as provided for in this Agreement. Evanston agrees to not utilize off-peak pumping to meet the LINCOLNWOOD water requirements, unless requested by LINCOLNWOOD.

7.6 Temporary Restriction

Evanston has the right to restrict, on a temporary basis, the supply of water to LINCOLNWOOD in order to ensure an adequate water supply to all customers of the Evanston Water Utility for basic water services, and firefighting purposes, provided that the duration of the temporary water restriction is limited to the minimum time period necessary to resolve the condition or unforeseen emergency that caused the temporary restriction. Evanston shall take immediate, commercially reasonable actions to fix, repair, employ a temporary solution until a permanent solution is available or resolve the condition or unforeseen emergency that caused the temporary water restriction. If there is an insufficient water supply available to serve LINCOLNWOOD and all other customers, LINCOLNWOOD will receive its pro-rata share of the amount of water that is stored and available at the Evanston Water Utility based on the IDNR water allocation(s) as defined and identified in **Group Exhibit "B"** to this Agreement. If Evanston temporarily restricts the supply of water to LINCOLNWOOD under this Section, it shall deliver immediate written notice to LINCOLNWOOD that explains the reason(s) for the restriction, identifies the estimated reduction in the volume of water to be supplied to LINCOLNWOOD and the anticipated duration of the reduction in water supply service. During the first twenty-four (24) hour period of the temporary water restriction, Evanston shall provide LINCOLNWOOD with status reports in subsequent eight (8) hour intervals relative to the progress in resolving the condition or unforeseen emergency that caused the temporary water restriction. If the temporary water restriction extends or is anticipated to extend beyond a twenty-four (24) hour period, the Parties agree to meet to discuss commercially reasonable options and actions to fix, repair, employ a temporary solution until a permanent solution is available or resolve the condition or unforeseen emergency that caused the temporary water restriction.

7.7 Maintenance

Scheduled maintenance and repair to the Evanston Water Utility or the LINCOLNWOOD Water System that may impact water supply and service to LINCOLNWOOD cannot be done except upon prior notice to the other Parties of not less than five (5) days. Scheduled maintenance to water system infrastructure during peak demand periods shall be avoided to the extent possible. Notice of emergency maintenance or repair will be provided by the Party performing the maintenance and repair to the other Party as soon as practicable under the circumstances. Each

Party agrees to maintain their respective water systems in accordance with the manufacturers' warranty and operational specifications.

7.8 Lincolnwood Option to Purchase Water from Other Suppliers

Notwithstanding any other provision in this Agreement, Lincolnwood may purchase water from other water suppliers under the following two (2) situations. First, Lincolnwood may purchase water from other water suppliers to the extent Evanston fails to deliver to Lincolnwood the full water requirements up to the total amount of the IDNR water allocations as required by this Agreement. In the event of such failure by Evanston, but excluding temporary restriction(s) under Section 7.06 or maintenance situations under Section 7.07 above, Evanston shall provide written notice to Lincolnwood of the service failure, which shall include a description of the operational or technical reasons for the failure to deliver Lincolnwood's full water requirements. Second, Lincolnwood may purchase water from the City of Chicago under non-emergency conditions in order to maintain an active, operational water supply connection.

7.9 Surges and Back-Flows

No surges or back-flows into any Party's water system are allowable under this Agreement.

7.10 LINCOLNWOOD Responsibility for Damage to Evanston's Water Utility

LINCOLNWOOD is responsible for damage to the Evanston Water Utility or of any of its customers due to surges and back-flows caused by malfunction or misuse of LINCOLNWOOD's Water System, including, without limitation, valve operation or booster station operation, excluding damage where Evanston is responsible for the operation of the LINCOLNWOOD Water System, including, without limitation, its valve operation or booster station. LINCOLNWOOD shall install a flow control system and a pressure recording system consisting of remotely operated flow control valve(s) at the LINCOLNWOOD receiving reservoir(s). LINCOLNWOOD shall provide the necessary equipment to transmit pressures, rates of flow and receiving reservoir(s) elevations prior to delivery of water by Evanston. All devices necessary for the control and transmission of pressures, levels and rates of flow of water furnished to LINCOLNWOOD that are part of the LINCOLNWOOD Water System shall be provided and maintained by LINCOLNWOOD, and comply with the provisions of Section 10 (Meters and Measurements; Meter Testing). Water pressure and rate of flow readings shall be transmitted to

the Evanston Pumping Station. All flow control valves within the Evanston Water Utility shall be controlled by Evanston in accordance with the provisions of this Agreement.

7.11 Evanston's Responsibility for Damage to LINCOLNWOOD's Water System

Evanston is responsible for damage to the LINCOLNWOOD Water System or of the water systems any of its customers due to surges and back-flows caused by malfunction or misuse of Evanston's Water Utility, including, without limitation, valve operation, booster station operation or pump station operation.

8. Existing and Future Customers of Evanston; LINCOLNWOOD Other Users

8.01 Existing and Other Water Customers Served by Evanston

Evanston agrees that it will continue to supply water to its existing customers without impairing LINCOLNWOOD's right to Water service from Evanston under this Agreement, or impairing Evanston's ability to deliver Water to LINCOLNWOOD under this Agreement. Nothing in this Agreement limits Evanston executing new, modified or amended agreements with any other current or future wholesale water customer served by Evanston. LINCOLNWOOD agrees Evanston has the right to serve new wholesale water customer(s) subject to its obligations to LINCOLNWOOD under this Agreement.

8.2 Northwest Water Commission

In the event of the loss of the Northwest Water Commission ("NWC") between the years of 2034-2047, the change in the total rate increase shall be calculated, and Lincolnwood shall be assessed, **not more than fifty percent (50%)** of the rate increase incurred by the loss of NWC. Assuming the loss of NWC between the years of 2034-2047, total Lincolnwood rate increases shall be **capped at eight percent (8%) per annum**. Evanston shall take all commercially reasonable actions to reduce all assets in use at the WTP to reflect the new plant demand without NWC. After 2048, LINCOLNWOOD rates shall be recalculated according to this Agreement.

8.3 Liability for Unreasonable Delay by LINCOLNWOOD

If LINCOLNWOOD fails or refuses to complete the LINCOLNWOOD Water System as required by this Agreement, then LINCOLNWOOD shall pay to Evanston all reasonable, actual, documented costs incurred by Evanston as listed in Section 16.03 (G, H, or I) (Termination by LINCOLNWOOD), and in Sections 4.01 (LINCOLNWOOD Notice to Evanston to Proceed

With Preliminary Project Phase Work) through Section 4.07 (Commencement of Obligation to Deliver and Receive Water). If LINCOLNWOOD fails to complete the LINCOLNWOOD Water System due to a Force Majeure Event(s) or any other delays that prevent the completion of LINCOLNWOOD's Project Improvements until after the delivery of water (Section 4.04), LINCOLNWOOD shall not be obligated to pay to Evanston any costs or penalty, provided that LINCOLNWOOD has taken and continues to take all commercially reasonable actions to complete the LINCOLNWOOD Project Improvements as soon as reasonably possible after the expected delivery date of water.

8.4 Liability for Unreasonable Delay by Evanston

If Evanston fails or refuses to complete the components at the Point of Delivery in a commercially reasonable time frame as outlined in Section 4.01 (LINCOLNWOOD Notice to Evanston to Proceed with Preliminary Project Phase Work) through Section 4.07 (Commencement of Obligation to Deliver and Receive Water) and LINCOLNWOOD are unable to receive water from Evanston by the anticipated initial delivery date of water, or such other alternate water delivery date, as provided for in Section 4.01 (LINCOLNWOOD Notice to Evanston to Proceed with Preliminary Project Phase Work) through Section 4.07 (Commencement of Obligation to Deliver and Receive Water) above, due to such failure or refusal by Evanston, then Evanston will pay to LINCOLNWOOD the difference between the water rate that would have been charged by Evanston under this Agreement, and the then-applicable Chicago water rate (or the water rate charged by an alternate water supplier).

9. Facility Completion Schedule

9.1 Specifications and Sequence of Construction for the Project Improvements

After the approval of this Agreement, and subject to the notice to proceed provisions set forth in this Agreement, the Parties agree to work cooperatively together and to share relevant information to develop their respective specifications for their own Project improvements and to prepare construction schedules and operating procedures for the Project improvements, including the joint review of preliminary design plans and final design plans for review comment purposes and delivery of periodic status reports by each Party relative to the Evanston Connection Facilities and the LINCOLNWOOD Water System.

9.2 IEPA and Other Approvals for the Project

The Parties agree to apply for, obtain and maintain all permits, licenses and other approvals required by the federal, state, county and local governments and governmental regulatory agencies with jurisdiction over the Project.

9.3 Easements, Licenses, Permits, Fees and Approvals

LINCOLNWOOD shall take all necessary action to acquire easements, permits and licenses for the construction of the LINCOLNWOOD Water System Facilities within Evanston's corporate boundaries and outside of Evanston's corporate boundaries. LINCOLNWOOD agrees to pay all required permit fees, license fees and plan review fees to all governmental regulatory agencies with jurisdiction over the Project, except for Evanston. Construction of the LINCOLNWOOD Water System shall conform to all applicable laws, ordinances, codes, regulations and specifications.

10. Meters and Measurements; Meter Testing**10.1 Unit of Measurement**

The unit of measurement for water delivered pursuant to this Agreement will be gallons of water, U.S. Standard Liquid measure, and all meters installed pursuant to this Agreement must, unless the Parties otherwise agree, be so calibrated, and must read at one thousand (1,000) gallons of water.

10.2 Supervisory Control and Data Acquisition ("SCADA")

Evanston shall in real time provide to LINCOLNWOOD the following SCADA information, except during SCADA failure:

- a) total plant flow data;
- b) flow through LINCOLNWOOD master meter data;
- c) pressure at LINCOLNWOOD delivery meter facility data; and
- d) Evanston control valve position.

LINCOLNWOOD shall in real time provide to Evanston incoming and outgoing flow data from each receiving reservoir as well as the water level in each receiving reservoir, except during SCADA failure. In regard to on-site visits and inspections of each Party's respective water system facilities, the requesting Party shall request any on-site visits and inspections in advance

by written notice to the receiving Party and shall comply with all security protocols and be accompanied by the receiving Party's staff during the on-site visit or inspection, and the receiving Party shall cooperate in scheduling such on-site visits and inspections. Evanston and LINCOLNWOOD agree to promptly repair any SCADA failures.

10.3 Delivery Meters

Water sold and delivered to LINCOLNWOOD pursuant to this Agreement must be measured through a meter or meters furnished, installed, maintained, replaced and read by Evanston (the "Delivery Meters"). Except as provided in this Agreement, all billing for Water sold and supplied pursuant to this Agreement must be based upon Evanston's readings of the Delivery Meters, subject to LINCOLNWOOD's right to audit Evanston's readings under Section 5.07 (LINCOLNWOOD Audit Rights) above. All Delivery Meters shall be in good working order, shall at all times meet or exceed the standards of the AWWA, or its successor entity, and shall be available for inspection, testing, and checking by LINCOLNWOOD upon reasonable request to Evanston. Evanston shall at its cost maintain, inspect, test, calibrate and adjust all Delivery Meters not more than two (2) times per year. Representatives from LINCOLNWOOD shall have the right to witness all such maintenance, inspections, tests, calibrations and adjustments. Lincolnwood shall pay to Evanston the actual cost incurred by Evanston in maintaining, testing, calibrating and adjusting the Delivery Meters, which cost shall be included as part of the Quantity Charge. Copies of the results of all such maintenance, inspections, tests, calibrations and adjustments must be furnished by Evanston to LINCOLNWOOD upon request.

10.4 Check Meters

LINCOLNWOOD may, at their option and expense, install and operate a check meter(s) (a "Check Meter") to check each Delivery Meter, but the measurement of water for billing pursuant to this Agreement shall, except as hereinafter provided, be measured solely by the Delivery Meters. All Check Meters shall meet or exceed the standards of the AWWA and shall be available for inspection and checking by Evanston upon reasonable request to LINCOLNWOOD. The costs for installation, maintenance, regulatory fees, reading, testing, calibration, and adjustment of all Check Meters shall be performed by LINCOLNWOOD at LINCOLNWOOD's sole cost and expense.

10.5 Meter Calibration and Adjustment

If either Evanston or LINCOLNWOOD at any time observes a variation between a Delivery Meter and a Check Meter or any other evidence of meter malfunction, such Party must promptly notify the other Party, and Evanston and LINCOLNWOOD agree to cooperate to inspect and test the accuracy of such meter(s). If upon any inspection or test, any meter is found to be out of service or the percentage inaccuracy of any meter is found to be **in excess of two percent (2%)** slow or fast, then the meter's registration, as well as charges for water based on incorrect metering, must be corrected by agreement of Evanston and LINCOLNWOOD based on the best data available. The best data available is defined as the registration of an installed Check Meter that is accurately registering **equal to or less than two percent (2%)** slow or fast during the period extending back to the time when such inaccuracy began. If it is impossible to determine the time period of inaccuracy, the correction period will extend back one-half of the time elapsed since the last date of calibration. Otherwise, the amount of water delivered during such period may be estimated by:

- correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or
- if the error is not ascertainable by calibration tests or mathematical calculation, by estimating the quantity of water delivered by reference to deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

10.6 Notification Concerning Meter Tests

Evanston and LINCOLNWOOD shall deliver to the other Party written notice at least seventy-two (72) hours in advance of the time of any planned maintenance, inspection, test, calibration, adjustment or other work affecting any Delivery Meter or Check Meter so that the other Party may arrange to have a representative present. If said representative is not present at the time set in such notice, the inspection, test, calibration, adjustment or other work will proceed in the absence of said representative. Notices required under this Section 10.06 shall be given to the following persons at the following addresses, unless otherwise provided in writing by LINCOLNWOOD :

If for Evanston:

Director of Public Works Agency

555 Lincoln Street
Evanston, Illinois 60201
Phone: 847.448.4311
Email: current business email address

If for Lincolnwood:

Director of Public Works
Village of Lincolnwood
7001 N. Lawndale Avenue
Lincolnwood, IL 60712
Phone: 847-675-0888
Fax: 847-675-4432
Email: current business email address

10.7 Removal of Meters

Delivery Meters and Check Meters may be removed upon termination of this Agreement only upon mutual agreement of the Parties and upon the release of any easements related thereto.

10.8 Meters for Customers

Each Party is responsible for providing water meters to its own customers.

11. Dispute Resolution

11.01 Negotiation

If a dispute arises between Evanston and LINCOLNWOOD concerning this Agreement, the Parties will first attempt to resolve the dispute by negotiation. Each Party will designate persons to negotiate on their behalf. The Party contending that a dispute exists must specifically identify in writing all issues and present it to the other Parties. The Parties will meet and negotiate in an attempt to resolve the matter. If the dispute is resolved as a result of such negotiation, there must be a written determination of such resolution, and ratified by the corporate authorities of each Party, which will be binding upon the Parties. If necessary, the Parties will execute an addendum to this Agreement. Each Party will bear its own costs, including attorneys' fees, incurred in all proceedings in this Section. If the Parties do not resolve the dispute through

negotiation, any Party to this Agreement may pursue other remedies under Section 11.02 (Remedies) below to enforce the provisions of this Agreement.

11.2 Remedies

In any action with respect to this Agreement, the Parties are free to pursue any legal remedies at law or in equity. Each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law. Each Party will bear its own costs, expenses, experts' fees, and attorneys' fees, incurred in all litigation arising under this Agreement.

11.3 Venue and Applicable Law

All questions of interpretation, construction and enforcement, and all controversies with respect to this Agreement, will be governed by the applicable constitutional, statutory and common law of the State of Illinois. The Parties agree that, for the purpose of any litigation relative to this Agreement and its enforcement, venue will be in the Circuit Court of Cook County, Illinois or the Northern District, Eastern Division of the United States District Court, Chicago, Illinois, and the Parties consent to the *in personam* jurisdiction of said Courts for any such action or proceeding.

12. Force Majeure

12.1 Excuse From Performance

No Party will be liable in damages to any other Party for delay in performance of, or failure to perform, its obligations under this Agreement, if such delay or failure is caused by a Force Majeure Event as defined in Section 12.02 (Force Majeure Event) below. If a Party cannot perform under this Agreement due to the occurrence of a Force Majeure Event, then the time period for performance of the Party under this Agreement shall be extended by the duration of the Force Majeure Event.

12.2 Force Majeure Event

A "Force Majeure Event" means an event not the fault of, and beyond the control of, the Party claiming excuse which makes it impossible or extremely impracticable for such Party to perform obligations imposed on it by this Agreement, by virtue of its effect on physical facilities and their operation or employees essential to such performance. Force Majeure Events include:

- an “act of God” such as an earthquake, flood, fire, Lake Michigan seiche, tornado, earth movement, or similar catastrophic event,
- an act of terrorism, sabotage, civil disturbance or similar event,
- a strike, work stoppage, picketing, or similar concerted labor action,
- delays in construction caused by unanticipated negligence or breach of contract by a third party or inability to obtain essential materials after diligent and timely efforts, or
- an order or regulation issued by a Federal or State regulatory agency after the Effective Date or a judgment or order entered by a Federal or State court after the Effective Date.

A Force Majeure Event does not include a change in economic or market conditions or a change in the financial condition of a Party to this Agreement.

12.3 Notice

The Party claiming a Force Majeure Event excuse must deliver to the other Parties a written notice of intent to claim excuse from performance under this Agreement by reason of a Force Majeure Event. Notice required by this Section must be given promptly in light of the circumstances. Such notice must describe the Force Majeure Event, the services impacted by the claimed event, the length of time that the Party expects to be prevented from performing, and the steps which the Party intends to take to restore its ability to perform its obligations under this Agreement.

13. Preservation of Water Rights

Evanston intends to preserve all of its water rights, irrespective of whether the water held under such water rights is allocated under this Agreement. Nothing in this Agreement shall be construed as an abandonment, or evidence of intent to abandon, any of the water rights that Evanston presently possesses.

14. Good Faith and Fair Dealing

The Parties each acknowledge their obligation under Illinois law to act in good faith toward, and deal fairly with, each other with respect to this Agreement.

15. Disconnection, Removal Relocation of Connection Facilities or Transmission Mains**15.01 Termination of Agreement**

Upon termination of this Agreement, Evanston, in its discretion and at its cost, may disconnect or remove the Evanston Connection Facilities and / or the LINCOLNWOOD Connection Facilities and / or transmission mains located within Evanston's rights of way or utility easements, but only after the Parties mutually approve and sign an agreement and a release of easements that pertain to disconnection and / or removal of the Evanston Connection Facilities, the LINCOLNWOOD Connection Facilities and /or the transmission mains.

15.02 Relocation

In the event that the Point of Delivery or any portion of the Evanston Connection Facilities and the LINCOLNWOOD Connection Facilities or any transmission mains need to be relocated due to unanticipated circumstances or at the request of either Party, the Parties may negotiate an addendum to this Agreement that provides for the relocation, reconstruction, financing and cost sharing of the relocation work. If this Agreement is terminated, within one (1) year of the effective date of such termination, all connection facility assets, components, and equipment within Evanston must be removed at LINCOLNWOOD's sole cost and expense, unless otherwise agreed upon by the Parties.

16. Termination; Default**16.1 Termination by Evanston**

This Agreement shall be subject to termination if a court of competent jurisdiction restricts or limits any of Evanston's rights to obtain, sell, contract for, or distribute water to LINCOLNWOOD in a manner that prohibits Evanston from complying with its obligations to LINCOLNWOOD under this Agreement. Evanston will have the right to terminate this Agreement if LINCOLNWOOD fails and defaults with respect to its obligations under Section 5.02 (Billing and Payments) of this Agreement, and otherwise fails and refuses to cure such default under Section 11.01 (Negotiation) and Section 16.04 (Default; Cure Period; Relief).

16.2 Termination by Mutual Agreement

Only upon mutual consent, the Parties may agree to terminate this Agreement, in writing, after the approval of a termination or wind-down agreement by their respective corporate authorities.

16.3 Termination by LINCOLNWOOD

LINCOLNWOOD shall have the right to terminate this Agreement if it delivers written notice to Evanston of its intention to terminate this Agreement not less than five (5) years prior to the termination date of the then-existing Term. In addition, LINCOLNWOOD has the right to terminate this Agreement for the following reason(s):

A. If LINCOLNWOOD is unable to obtain easements or title to real property to construct the LINCOLNWOOD Connection Facilities and other necessary LINCOLNWOOD Project Improvements.

B. If the LINCOLNWOOD Engineering and Route Study determines that the LINCOLNWOOD Connection Facilities and other necessary LINCOLNWOOD Project Improvements will not be feasible for any reason, including but not limited to a lack of technical feasibility to complete the LINCOLNWOOD Project Improvements, or a lack of relative financial feasibility to pay for the LINCOLNWOOD Project Improvements.

C. If the bid results for the LINCOLNWOOD Connection Facilities and other necessary LINCOLNWOOD Project Improvements exceeds:

1) the LINCOLNWOOD Engineer's Estimate;

2) the approved LINCOLNWOOD Project Budget; or

3) the LINCOLNWOOD Project Financial / Debt Repayment schedule.

LINCOLNWOOD shall provide all documents and data to Evanston prior to LINCOLNWOOD cancelling the bid.

D. Evanston fails to deliver water in accordance with or otherwise fails to comply with the terms of this Agreement.

E. LINCOLNWOOD can terminate this Agreement at the end of the Initial Term, or as otherwise provided during any Extended Term, subject to timely written notice to Evanston.

F. LINCOLNWOOD can terminate this Agreement on or before December 31, 2018, if Lincolnwood is unable to negotiate with the City of Chicago a renewal of its existing agreement with Chicago, which renewal must include, at a minimum, Chicago's provision to Lincolnwood of an acceptable emergency water supply and otherwise be consistent with Lincolnwood's purchase of water from Evanston as contemplated in this Agreement.

G. LINCOLNWOOD can terminate this Agreement after its issuance of written notice to proceed with Evanston's Preliminary Project Phase Work as set forth in Section 4.01 above, provided LINCOLNWOOD fully reimburses Evanston for all reasonable actual, documented costs incurred by Evanston relating only to Project consultants and Project engineering fees and expenses that are incurred by Evanston after the date of issuance of LINCOLNWOOD's Notice to Evanston to Proceed with Preliminary Project Phase Work. Evanston or LINCOLNWOOD will not be reimbursed for staff time or corporation counsel time or outside legal counsel fees and expenses.

H. LINCOLNWOOD can terminate this Agreement after its issuance of written notice to proceed with Evanston's Final Engineering Design Work as set forth in Section 4.02 above, provided LINCOLNWOOD fully reimburses Evanston for all reasonable actual, documented costs incurred by Evanston relating only to Project consultants and Project engineering fees and expenses that are incurred by Evanston after the date of issuance of LINCOLNWOOD's Notice to Evanston to Proceed with Final Engineering Design Work. Evanston or LINCOLNWOOD will not be reimbursed by the other Party for staff time or corporation counsel time or outside legal counsel fees and expenses.

I. LINCOLNWOOD can terminate this Agreement prior to acceptance of water from Evanston, provided LINCOLNWOOD fully reimburses Evanston for all reasonable actual, documented costs incurred by Evanston, relating only to Project consultants and Project engineering fees and expenses and construction costs that are incurred by Evanston after the date of issuance of LINCOLNWOOD's Notice to Evanston to Proceed with Construction as set forth in Section 4.03 above. Evanston or LINCOLNWOOD will not be reimbursed by the other Party for staff time or corporation counsel time or outside legal counsel fees and expenses.

16.4 Default; Cure Period; Relief

In the event any Party defaults in regard to any obligation under this Agreement, the non-defaulting Party shall send written notice of the default, with a description of the default, and a request that the defaulting Party cure the default. Any Party deemed to be in default under this Agreement by another Party shall have a thirty (30) calendar day cure period to resolve the default to the other Party's satisfaction or to initiate and continue to take actions that are designed to cure the default in a reasonable time period so that the Party in default is in conformance with the terms of this Agreement. In the event that a default is not cured, the non-defaulting Party and the defaulting Party shall participate in the "Dispute Resolution" process

contained in Section 11.01 (Negotiation) above. If the Dispute Resolution process is not successful, then either Party may seek to enforce remedies in Section 11.02 (Remedies) to enforce the provisions of this Agreement.

17. General Conditions

17.1 Entire Agreement

This Agreement constitutes the entire agreement of the Parties concerning all matters specifically covered by this Agreement. There are no representations, covenants, promises or obligations not contained in this Agreement that form any part of this Agreement or upon which any of the Parties is relying upon in entering into this Agreement. There are no other commitments, understandings, promises or conditions among the Parties in any other contract or agreement, whether oral or written, and this Agreement supersedes all prior written or oral agreements, commitments and understandings among the Parties.

17.2 Prompt Payment

In regard to the payment of any fee, charge or assessment provided for under this Agreement, the Parties are subject to and shall comply with the Local Government Prompt Payment Act (50 ILCS 505/1, et seq.).

17.3 Compliance With Laws

The Parties to this Agreement shall comply with all applicable Federal, State and local laws, rules and regulations in carrying out the terms and conditions of this Agreement.

17.4 Regulatory Bodies

This Agreement shall be subject to all valid rules, regulations, and laws applicable hereto passed or promulgated by the United States of America, the State of Illinois, or any governmental body or agency having lawful jurisdiction, or any authorized representative or agency of any of them; provided, however, that this Section 17.04 shall not be construed as waiving the right of any Party to challenge the validity of any such rule, regulation, or law on any basis, including impairment of this Agreement.

17.5 Illinois Freedom of Information Act

The definition of a “public record” in the Freedom of Information Act (5 ILCS 140/1, et seq.) (“FOIA”) includes a “public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function

on behalf of the public body and that directly relates to the governmental function and is not otherwise exempt under this Act.” (5 ILCS 140/7(2). Consequently, the Parties shall maintain and make available to the other Parties, upon request, their public records relating to the performance of this Agreement in compliance with the requirements of the Local Records Act (50 ILCS 205/1, et seq.) and FOIA.

17.6 Interpretation; Headings

This Agreement shall be construed and interpreted so as to preserve its validity and enforceability as a whole. No rule of construction that a document is to be construed against any of the drafting Parties shall be applicable to this Agreement. Section headings and titles are descriptive only and do not in any way limit or expand the scope of this Agreement.

17.7 Waiver

The failure of any Party to enforce any section, subsection, term, condition or covenant (collectively referred to as "provision") of this Agreement shall not be deemed a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with such provision and every other provision of this Agreement. No provision of this Agreement shall be deemed waived by any Party, unless the provision to be waived and the circumstances giving rise to such waiver are set forth specifically in a duly authorized and written waiver of the Party charged with such waiver. No waiver by either Evanston or LINCOLNWOOD of any provision of this Agreement shall be deemed or construed as a waiver of any other provision of this Agreement, nor shall any waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different provision of this Agreement.

17.8 No Individual or Personal Liability

The Parties agree that the actions taken in regard to and the representations made by each respective Party in this Agreement and by their respective corporate authorities have not been taken or made in anyone's individual capacity and no mayor/president, board member, council member, official, officer, employee, volunteer or representative of any Party will incur personal liability in conjunction with this Agreement.

17.9 No Third Party Beneficiaries

This Agreement is not intended to benefit any person, entity or municipality not a Party to this Agreement, and no other person, entity or municipality shall be entitled to be treated as

beneficiary of this Agreement. This Agreement is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but not limited to, any agent, contractor, subcontractor, consultant, volunteer or other representative of any Party hereto. No agent, employee, contractor, subcontractor, consultant, volunteer or other representative of the Parties hereto will be deemed an agent, employee, contractor, subcontractor, consultant, volunteer or other representative of any other Party hereto.

17.10 Amendments

No amendment to this Agreement shall be effective until it is reduced to writing in an addendum and approved by the corporate authorities of the Parties. All addenda shall be executed by an authorized official of each Party. If any governmental agency with regulatory authority enacts new rules or regulations or new nationally recognized water system engineering requirements are adopted that require the method of water production or any components of the infrastructure used for the delivery of water under this Agreement to be changed or modified, the Parties agree to negotiate an addendum to this Agreement that addresses the construction and operation of the required water system improvements to the Evanston Water Utility and/or the LINCOLNWOOD Water System, the cost allocation of such improvements among the Parties and the financing of such improvements.

17.11 Assignment

No Party shall assign, sublet, sell or transfer its interest in this Agreement or any of its rights or obligations under this Agreement without the prior written, mutual consent of the other Parties. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

17.12 Notice

Except as otherwise provided in this Agreement, all notices and other communications in connection with this Agreement shall be in writing and deemed to be given on the date of mailing if sent by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid, or may be delivered by messenger delivery, or overnight express mail, or personal delivery, or via facsimile, or via electronic internet mail ("e-mail") to the current mailing address(es) or email address(es) of the Parties' principal administrative offices, addressed to the Mayor/Village President or the City Manager/Village Manager. Facsimile notices shall be

deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. E-mail notices shall be deemed valid only to the extent that they are (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (a) the date of actual receipt; or (b) the date that is one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) the date that is three (3) business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each Party to this Agreement shall have the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications shall be addressed to, and delivered at, the following addresses, unless otherwise directed by the Parties:

If for City of Evanston:

With copy to: Corporation Counsel (same address as City Manager)

City Manager
Lorraine Morton Civic Center
2100 Ridge Avenue
Evanston, Illinois 60201
Phone: 847.866.2936
Email:
citymanagersoffice@cityofevanston.org

Director
Public Works Agency
555 Lincoln Street
Evanston, Illinois 60201
Phone: 847.448.4311
Email: publicworks@cityofevanston.org

If for Village of Lincolnwood:

Village Manager
Village of Lincolnwood
6900 N. Lincoln Avenue
Lincolnwood, IL 60712

Director of Public Works
Village of Lincolnwood
7001 N. Lawndale Avenue
Lincolnwood, IL 60712

Phone: 847-745-4717

Fax: 847-673-9382

Email: current business email address

Phone: 847-675-0888

Fax: 847-675-4432

Email: current business email address

With a copy to:

Holland & Knight LLP

131 S. Dearborn Street, 30th Floor

Chicago, IL 60603

Attention: Steven M. Elrod, Corporation Counsel

By notice with the foregoing requirements of this Section 17.12, the Parties shall have the right to change the addresses for all future notices and communications to itself, but no notice of such a change shall be effective until actually received.

17.13 Severability

In the event any term, provision or condition of this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms, provisions or conditions of this Agreement which can be given effect without the invalid term, provision or condition. To this extent and purpose, the terms, provisions and conditions of this Agreement are declared severable. If any part of this Agreement is adjudged invalid, such adjudication shall not affect the validity of this Agreement as a whole or of any other part.

17.14 No Separate Legal Entity; No Joint Venture or Partnership or Agency

This Agreement establishes a cooperative intergovernmental undertaking, but the Parties do not intend to create a new or separate legal entity by entering into this Agreement. This Agreement does not establish or create a joint venture or partnership between the Parties, and no Party shall be responsible for the liabilities and debts of the other Parties hereto. No Party shall be deemed to be the agent, employee, or representative of any other Party.

17.15 Independent Sovereign Status

The Parties to this Agreement are independent, sovereign units of local government and no Party shall exercise control over either the performance of any other Party or the employees of any other Party.

17.16 Effective Date

The Effective Date of this Agreement shall be the date that the last authorized signatory signs and dates this Agreement, which date shall be inserted on the first page of this Agreement. This Agreement shall become effective only in the event the corporate authorities of each Party approves this Agreement.

17.17 Authorization

In accordance with applicable state laws, this Agreement was approved by each Party as follows:

- A. The adoption of Ordinance _____-O-18 by the Mayor and City Council of Evanston on the _____, 2018.
- B. The passage of Resolution 18-²⁰¹⁰_____ by the Village President and Board of Trustees of the Village of Lincolnwood on the July 23, 2018.

17.18 Counterparts

This Agreement may be executed in counterparts (including facsimile signatures), each of which shall be deemed to be an original and all of which shall constitute one and the same Agreement.

17.19 Exhibits

In the event of a conflict between any Exhibit attached hereto and the text of this Agreement, the text of this Agreement shall control. The following Exhibits are attached to this Agreement and made a part hereof:

- A. **Group Exhibit "A"**: Illustrative Example of "True-Up" Process comprised of Pages A-1 through A-7 (Page A-1: Morton Grove - Niles Water Supply Quantity Rate True Up Calculation for Service Year 2016; Page A-2: Morton Grove - Niles Water Supply Estimated Quantity Rate for Service Year 2016 Based on FY 2014 Audited Information; Page A-3: 2014 Audited Information, City of Evanston, Illinois, Water Fund – Operations and Maintenance Account, Schedule of Revenues, Expenditures, and Changes in Unreserved Fund Balance – Budget and Actual for the FY ended December 31, 2014 with Comparative Totals for FY ended December 31, 2013 (Page 157); Page A-4: Morton Grove- Niles Water Supply True Up Quantity Rate for Service Year 2016 Based on FY 2015 Audited Information; Page A-5: 2015 Audited Information, City of Evanston, Illinois, Water Fund – Schedule of Revenues, Expenditures, and Changes in Net Position – Budget and Actual for the FY ended December 31, 2015 (Page 123); Page A-6: Calculation of Distribution Expenses

Allocated to LINCOLNWOOD; Page A-7: Annual Pumpage (MG) (Water and Sewer 2015 Annual Report, Page 18).

B. Group Exhibit “B”: Example of Rate Calculation for LINCOLNWOOD Water Rate for Service Year 2017 Based on Evanston Audited Information for Fiscal Year 2015 comprised of Pages B-1 through B-21 (Pages B-1 and B-2: Example of Rate Calculation for LINCOLNWOOD Water Supply Prepared on 12/14/2016 by Dave Stoneback, Morton Grove - Niles Water Supply Rate Calculation for Service Year 2017, Based on FY 2015 Actual Information; Pages B-3 to B-12: Evanston Water Utility Component Sheets, Table B-1 dated 6/30/2016 (Reproduction Cost New Less Depreciation As Of December 31, 2015, Pages 1 through 10 of Burns & McDonnell Water Works Properties Valuation); Page B-13: Table B-2 dated 6/30/2016 (Reproduction Cost New Less Depreciation As Of December 31, 2015, Burns & McDonnell Water Works Properties Valuation); B-14: Table B-3 dated 6/30/2016 (Original Cost New Less Depreciation As Of December 31, 2015, Burns & McDonnell Water Works Properties Valuation); Page B-15: Table B-4 dated 6/30/2016 (OCLD and RCNLD At December 31, 2015, Burns & McDonnell Water Works Properties Valuation); Page B-16: IDNR Water Allocations as of November 2011; Page B-17: 2015 Audited Information, City of Evanston, Illinois, Notes to the Financial Statements for the FY ended December 31, 2015 (Page 40); Page B-18: Evanston Audited Information, City of Evanston, Schedule of Fixed Assets and Depreciation, Year ended December 31, 2014; Page B-19: Annual Pumpage, 2015 Monthly Pumpage (MG) and 2015 Average Day Pumpage (MGD)(Water and Sewer 2014 Annual Report)(Page 17); Page B-20: 2015 Audited Information, City of Evanston, Illinois, Water Fund – Schedule of Revenues, Expenditures, and Changes in Net Position – Budget and Actual for the FY ended December 31, 2015 (Page 123); Page B-21: Evanston Distribution System, Calculation of Percent of System Allocated to LINCOLNWOOD, Calculation of Depreciation Charges.

C. Group Exhibit “C”: Depreciation Rates comprised of Page C-1: Depreciation Rates (Classes of Plant included: Source of Supply, Pumping Plant, Treatment Plant, Water Plant and Transmission)

D. Exhibit “D”: City of Evanston Ordinance 45-O-18 (Approval of Water Supply Agreement Between the City of Evanston and the Village of Lincolnwood)

E. Exhibit "E": Village of Lincolnwood Resolution 18- (Approval of Water Supply Agreement Between the City of Evanston and the Village of Lincolnwood)

IN WITNESS WHEREOF, this Agreement was executed on behalf of the Parties through their authorized representatives, after all duly required corporate action was taken, as set forth below on the signature pages.

SIGNATURE PAGES TO FOLLOW

**SIGNATURE PAGE FOR
CITY OF EVANSTON**

IN WITNESS WHEREOF, the below authorized officials of the City of Evanston signed this Agreement pursuant to legal authorization granted to him/her under Article VII, Section 10 of the 1970 Illinois Constitution, the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) and the corporate approval granted by passage of Ordinance 45-O-18 by the Corporate Authorities of the City of Evanston.

City of Evanston

By: Wally Bobkiewicz

Name: Wally Bobkiewicz

City Manager, City of

Evanston Date: 8/24

2018.

Attest:

By: [Signature]

Name: ~~Devon Reid~~ Eduardo Gomez

Deputy City Clerk, City of Evanston

Date: 8/24, 2018

Approved as to form and legality:

By: Michelle L. Masoncup

Michelle L. Masoncup, Corporation
Counsel

**SIGNATURE PAGE FOR
VILLAGE OF LINCOLNWOOD**

IN WITNESS WHEREOF, the below authorized officials of the Village of Lincolnwood have signed this Agreement pursuant to legal authorization granted to him/her under Article VII, Section 10 of the 1970 Illinois Constitution, the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) and the corporate approval granted by passage of Resolution 2018-207 by the Corporate Authorities of the Village of Lincolnwood.

Village of Lincolnwood

By: *Barry I. Bass*

Name: Barry I. Bass

Village President, Village of Lincolnwood

Date: August 1, 2018.

Attest:

By: *Beryl Herman*

Name: Beryl Herman

Village Clerk, Village of Lincolnwood

Date: August 1, 2018

Approved as to form and legality:

By: *Robert L. Green*

Village Attorney

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Loan Application



Illinois Environmental Protection Agency

1021 North Grand Avenue East • P.O. Box 19276 • Springfield • Illinois • 62794-9276 • (217) 782-3397

Illinois Public Water Supply Loan Program (PWSLP) Loan Application

For IEPA's use:

Loan Number: L17 3797

Date Received:

The Loan Application, plus all accompanying materials, should be submitted to the attention of your Project Manager at the address below prior to bidding the project and should reflect the latest pre-bid estimated project costs. Biddable plans and specifications, accompanied by the IEPA Certification of Plans and Specifications, may be submitted with this package or submitted separately prior to bidding the project.

Mail three copies of the Loan Application and two copies of all applicable attachments (page 9) to the attention of your Project Manager at:

Illinois Environmental Protection Agency
Bureau of Water, Infrastructure Financial Assistance Section
1021 North Grand Avenue East
PO Box 19276
Springfield, IL 62794-9276

Please use the guide below to ensure you are including all required materials in your submittal to IEPA.

- Loan Applicant and Project Information – Pages 1 - 6.
- Comprehensive financial projections, including historical information for the last three (3) years and projections for the next five (5) years, starting with the current fiscal year (8 years total). Instructions on page 7.
- All required/applicable attachments – detailed listing on page 9.

Appendix: Ensure you have filled in all boxes and included your signature wherever requested.

- Amount and source of any local funds to be used for project (Pg. 1)
- Intent Regarding National Flood Insurance (Pg. 2)
- Certification Regarding Project Site, Rights - of - Way, Easements and Permits (Pg. 3)
- Taxpayer Identification Number (Pg. 4)
- Executive Compensation Data (5 Officer Form) (Pg. 5)
- Authorization of a Loan Applicant's Authorized Representative (Pg. 6)
- Certification of Information on All Previous Pages (Pg. 7), including
 - Debarment, Suspension and Other Responsibility Matters (Pg. 2)
 - Use of American Iron and Steel Products (Pg. 3)

Refer to Loan Application Instructions for additional information. Questions? Please contact us:

General questions: Your Project Manager or Heidi.Allen@illinois.gov

Financial questions: Jacob.Poeschel@illinois.gov

Legal questions: Stephanie.Flowers@illinois.gov



Illinois Environmental Protection Agency

1021 North Grand Avenue East • P.O. Box 19276 • Springfield • Illinois • 62794-9276 • (217) 782-3397

Illinois Public Water Supply Loan Program (PWSLP) Loan Application

For IEPA's use:
Loan Number: L17 3797
Date Received:

APPLICANT INFORMATION

Applicant Name: City of Evanston

Applicant Address: 2100 Ridge Avenue

City: Evanston

Zip+4: 60201-2716

County: Cook

Mailing Address (if different): _____

City: _____

Zip+4: _____

County: _____

Applicant type: Municipal County Cooperative Private Other

If Other, enter type here _____

Public Water System Number IL0310810

Public Water System Name City of Evanston

Data Universal Number System (DUNS) Number 074-390-907

U.S. Congressional District(s) 9

Illinois Representative District 14, 17

Illinois Senate District 7, 9

PROJECT INFORMATION

Project Title: 1909 Raw Water Intake Replacement

Project Address: 555 Lincoln Street

City: Evanston

Zip+4: 60201-2452

County: Cook

County or Counties Served by Project: Cook

U.S. Congressional District(s): 9

Same as applicant

Illinois Representative District: 14, 17

Illinois Senate District: 7, 9

Is this a multi-phased project? Yes No

If yes, include previous loan number: L17

CONTACT INFORMATION

Loan Applicant's Authorized Representative (please refer to application instructions)

Name: Kelley Gandurski

Title: City Manager (Interim)

Phone: (847) 448-8009 Cell Office

Email: kgandurski@cityofevanston.org

Project Engineer

Name: Joe Johnson

Firm: Stantec Consulting Services

Address:

350 North Orleans St Suite 1301 Chicao IL 60654

Phone: (312) 831-3117 Cell Office

Email: joe.johnson@stantec.com

Attorney

Name: Nicholas Cummings

Firm: City of Evanston

Address:

2100 Ridge Avenue Evanston IL 60201
--

Phone: (847) 448-8094 Cell Office

Email: ncummings@cityofevanston.org

Finance Director

Name: Hitesh Desai

Firm: City of Evanston

Address:

2100 Ridge Avenue Evanston IL 60201
--

Phone: (847) 448-8082 Cell Office

Email: hdesai@cityofevanston.org

Other (describe role) Project Manager

Name: Paul Moyano

Firm: City of Evanston

Address:

555 Lincoln Street Evanston IL 60201

Phone: (847) 448-8217 Cell Office

Email: pmoyano@cityofevanston.org

4. List any other proposed sources of funding in addition to the PWSLP request

Source	Amount	Applied for	Approved	Received
EPA WIFIA	\$20,386,000.00	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

LOAN REPAYMENT PERIOD AND PLEDGED REVENUES

5. Pledged revenues. Federal and state law requires that a specific source(s) of revenue be dedicated and pledged to make the loan repayments. Provide a description of the source(s) of revenue pledged to repay the proposed financing agreement (e.g., system revenues, sales taxes, property taxes) and method used to secure collection. Please ensure that the Ordinance Authorizing Debt to be Incurred names the same pledged revenues as the source of repayment proposed in the comprehensive 5-year financial projections requested in Question 19.

Repayment of the loan to the IEPA by the City is to be solely from the revenues derived from the Water Fund. See Ordinance Authorizing Debt 94-O-21, Attachment 6. The draft Ordinance was introduced to City Council on October 11th, and is expected to be passed on October 24th. An executed copy will be submitted as soon as it is available.

6. Loan repayment period requested 20 years

SYSTEM INFORMATION

7. Active service connections. Not applicable

Connection Type	Number of Connections	Current Monthly User Charge	Projected Monthly User Charge
Residential	13,445	\$43.26	\$44.23
Commercial	930	\$246.88	\$252.43
Industrial	34	\$89.28	\$91.29
Other	125	\$81.32	\$83.15
Total	14,534		

8. User charges. Please provide the following dates:

When did current user charges go into effect? 1/1/2020

What is the effective date for the projected monthly user charges? 1/1/2022

9. Is an annual review of the revenue system and other related user charges being performed?

Yes

No

10. When was the most recent revenue system study performed? Ongoing by City of Evanston staff.

11. Largest customers. Provide information on customers accounting for at least 5% of system revenues. Only include non-residential customers.

Customer	Type of Business	% of System Revenues
Northwest Water Commission	Wholesale Water Customer	24%
Skokie	Municipality	17%
Morton Grove Nilis Water Comm.	Wholesale Water Customer	9%

12. Are other entities substantially benefiting (greater than 5%) from the project?

Yes

No

If Yes, submit copies of any applicable service agreement(s) with substantial beneficiaries.

CURRENT AND FUTURE DEBT

13. Debt obligations. For the revenue source(s) pledged to repay the proposed PWSLP loan in #5 above, list all debt obligations currently being paid by the same revenue source(s). (Use additional pages if needed.)

Title of Debt	Amount	Annual Payment	Maturity Date
IEPA Loan L173382	\$641,297.00	\$64,129.70	12/31/2030
IEPA Loan L174820	\$1,353,117.58	\$104,329.51	12/31/2035
IEPA Loan L175107	\$1,418,593.05	\$95,958.40	12/31/2037
2012 A GO Bonds	\$2,990,000.00	\$302,143.76	5/18/2032
2013 A GO Bonds	\$1,465,000.00	\$149,812.12	12/31/2033
2014 A GO Bonds	\$2,115,000.00	\$194,298.29	12/31/2034
2015 A GO Bonds	\$4,485,000.00	\$386,922.09	12/31/2035
2016 A GO Bonds	\$3,070,000.00	\$238,205.08	12/31/2036
2017 A GO Bonds	\$865,000.00	\$66,517.28	12/31/2037
2018 B GO Bonds	\$4,837,719.30	\$389,547.90	12/31/2038
2019 B GO Bonds	\$2,841,767.70	\$235,121.30	12/31/2039
2020 A GO Bonds	\$1,400,000.00	\$217,700.00	12/31/2040
2020 B GO Bonds	\$1,770,382.00	\$211,404.18	12/31/2040
2021 SRF Loan	\$18,561,401.40	\$1,137,147.00	12/31/1941
	<i>Illinois PWSLP Loan Application</i>		

14. Planned debt issuance. Please describe current plans for debt issuance over the next three years for the public water supply system. Include any authorized debt which is not project-related. Indicate whether the debt will be parity or subordinate to PWSLP financing, if known, and the anticipated revenue source for repayment.

Planned debt issuance for 2022, 2023, and 2024 is \$29,630,000, \$35,355,000, and \$15,569,000 respectively, as shown on the comprehensive 5-year financial projection (Attachment 3). The debt is fully financed and will be parity to the PWSLP financing, repaid from revenues derived from the Water Fund. \$41,606,073 of debt scheduled over the next three years is associated with the 1909 Intake Replacement Project as a combination of SRF and WIFIA funding. The financial model adds 1.5% to the Capital Cost of SRF debt calculations to account for interest during construction. Debt associated with water plant projects (such as the intake) are covered by rate increases from wholesale customers.

15. Current bond ratings (if available)

	Standard & Poor's	Moody's	Fitch
G.O.	AA+		AA+
Revenue			

PROPERTY TAX INFORMATION

Complete only if General Obligation bond is pledged to repay the loan.

16. Property tax information. Provide valuation and collection data for the most recent three years.

Year NA _____

Assessed Value of Property _____

Market Value of Property _____

Property Tax Revenues Levied _____

Property Taxes Collected _____

Property Tax Collection Rate _____

SALES TAX INFORMATION

Complete only if sales taxes are pledged to repay the loan

17. Sales tax collection data. Please complete for the most recent twelve (12) months.

Month/Year	Amount Collected	Month/Year	Amount Collected
NA			

FINANCIAL PROJECTIONS

ALL applicants must complete the following.

18. Start of system fiscal year January 1

19. Submit a comprehensive five (5) year financial projection demonstrating that the dedicated source(s) of revenue is sufficient to cover the PWSLP debt service costs. Projections must begin with the current fiscal year. Historical information for the last three (3) years must be provided and must tie to information in audited financial statements. A sample worksheet in Microsoft Excel can be found at www2.illinois.gov/epa/topics/grants-loans/state-revolving-fund/guidance/Pages. You may add rows to the worksheet to demonstrate additional sources of revenues or expenditures.

If you wish to submit projections using your own worksheets, ensure that they include the following:

- Revenues and expenses, including operations and maintenance expenses, from the previous three (3) years and projections for the next five (5) years, starting with the current fiscal year (8 years total).
- Projected revenues for the dedicated source of revenues to be used for repaying the PWSLP loan.
 - If system revenues will be pledged for the loan, ensure the revenues include all applicable service revenues. Ensure that any anticipated rate increases are included.
 - If another source of revenues will be pledged for the loan (e.g., property taxes, sales taxes, special assessments), demonstrate that sufficient revenues will be raised and transferred to the water fund for the purposes for repaying the IEPA loan.
 - If revenues are insufficient, the applicant will be asked to raise rates or find other capital to infuse into the system.
- Projected expenses. If system revenues will be pledged, ensure that the budget includes operations, maintenance, and replacement reserves, as well as current and future debt costs.
- Ensure the new amount available for repayment of the SRF loan is included.
- If applicant is a private entity, use Federal tax returns for the previous three (3) years.
- Refer to the IEPA PWSLP Loan Application and Approval Process for additional clarification.

20. Provide a written narrative detailing the major assumptions used in arriving at the current and proposed projections (e.g. additional customers, rate increases, other revenues, changes in operations and maintenance costs, and debt service). If rate increases are anticipated, explain when those will go into effect, and what the revised rates will be. Any variances greater than 10% from year to year must be explained. Attach additional pages if needed.

Refer to Attachment 3.

ATTACHMENTS

- Item Attached?** Complete and submit the following attachments. Please check the box next to each item to confirm that the item is attached to your application.
- Audited financial statements. Please provide the most recent audited financial statement. If posted online at the entity's website or the State Comptroller's Local Government Warehouse (<http://warehouse.illinoiscomptroller.com>), provide links. IEPA may request additional audit reports. If applicant is a private entity, submit Federal tax returns.
 - Single Audit report. If a Single Audit has been completed within the last 3 years, provide the most recent one. If posted online, provide links.
 - Projected revenues, expenses and debt coverage for pledged revenue. Provide 5 year projected revenues, beginning with the current fiscal year. See #19 above for guidance. The projections must show that there are sufficient revenues to offset relevant costs and SRF debt service. See the IEPA PWSLP Financial Capability Review Criteria instructions for additional information.
 - If any other entities are substantially benefiting (more than 5%) from the project, provide copies of applicable service agreement(s) with these beneficiaries.
 - Amortization schedules for all debt obligations listed in #13.
 - Copy of a certified ordinance (bond ordinance) authorizing the debt to be incurred and identifying a dedicated source of repayment. Required for publicly owned entities. Sample ordinances can be found at www2.illinois.gov/epa/topics/grants-loans/state-revolving-fund/guidance/Pages. The applicant may use an ordinance developed by its bond counsel. Refer to the Loan Application and Approval Process for more information on this requirement, and for requirements for nonpublic applicants. If an applicant is not using the IEPA sample ordinance, it is highly encouraged to submit the draft ordinance for pre-approval to Stephanie Flowers at Stephanie.Flowers@illinois.gov to avoid delays in loan closing. Please ensure that the ordinance authorizing debt to be incurred names the same pledged revenues as the source of repayment that is proposed in the comprehensive 5-year financial projections requested in #19.
 - Water rate ordinances defining user charges. Alternatively, provide the website address.
 - Signed tax certificate and agreement (www2.illinois.gov/epa/topics/grants-loans/state-revolving-fund/Pages/state-revolving-fund-forms.aspx).
 - Corporate resolution to apply, borrow, and to grant security (required for corporations).
 - Federal non-profit certification (required for non-profit applicants).
 - If the system is involved in a lawsuit or pending litigation that is in excess of \$10,000, attach a statement from the system's attorney describing the situation.
 - Loan program certifications and related forms (Appendix). The applicant must agree to the loan certifications and related forms listed in the appendix starting on the next page.

**Attachment 1 – Audited Financial
Statement**

The City of Evanston Comprehensive Annual Financial Report for the Year Ended December 31, 2020 is available at

<https://www.cityofevanston.org/home/showpublisheddocument/65222/637622857911970000>.

Attachment 2 – Single Audit Report

The City of Evanston Single Audit Report for the Year Ended December 31, 2020 is available at <https://www.cityofevanston.org/home/showpublisheddocument/66561/637691170488200000>.

**Attachment 3 – Projected Revenues,
Expenses, and Debt Coverage**

Written Narrative Detailing the Major Assumptions Used in Arriving at the Current and Proposed Projections

The following provides a narrative to Attachment 3 - Projected Revenues, Expenses, and Debt Coverage.

Revenue for the Water Fund is primarily derived from retail rate payers and wholesale water customers. The water rate for all retail water users within the City of Evanston is currently \$2.89 per 100 cubic feet of metered water use, which is calculated after a minimum charge that covers the first 500 cubic feet and varies depending on meter size. The City of Evanston retail customers account for approximately 41% of the total water fund revenue. The four wholesale water customers and their approximate percentage of total water fund revenue are; Northwest Water Commission (NWC) – 24%, Village of Skokie – 17%, Morton Grove-Niles Water Commission (MGNWC) – 9%, Village of Lincolnwood – 4%. Wholesale water contracts follow the AWWA M-1 general methodology, and are comprised of Return on Rate, Depreciation, and Quantity charges. The remaining 5% of the water fund revenue comes from miscellaneous fees and sales.

Water rate increases since 2016 through 2021 have been offset by sewer rate decreases, resulting in no overall utility rate increase to Evanston residents and businesses. The sewer rate decreases are possible due to the completion of debt service related to IEPA SRF loans from with the City's \$210 million Long-Term Sewer Relief Program constructed from 1991 through 2008. A proposed water rate increase of 9.5% currently under discussion with City Council includes a decrease in the sewer rate, but results in a net increase of the combined water/sewer rate of less than 2.0%. The water rate increases currently proposed for 2025 is completely offset by a reduction in the sewer rate. The planned 3.6% rate increase for 2026 results in a 2.0% increase in the combined water/sewer rate. These water rate increases are to support the City's annual water main replacement program.

Out of the operating costs, approximately 56% are for labor and benefits, which are assumed to escalate annually at 2.5% and 5% respectively. Benefits shows a decrease in 2022 due to an anticipated decrease in IMRF contributions. The next biggest operating costs are energy and chemicals, which are included under Utilities and Supplies and accounting for a total of 11% of operating costs. These costs are typically assumed to escalate at approximately 3.1% per year. The remaining costs are a combination of materials, equipment, training, fees, consulting fees, and other miscellaneous items, escalating at an average of approximately 3% per year.

The water fund debt service is 10% of total revenue in 2021. Due to significant capital improvements planned over the next several years, the percentage is expected to increase. New debt is a combination of GO bonds, planned future IEPA loans, and WIFIA bond issues. GO bonds fund a portion of the City's annual water main replacement program. The most significance new debt will be issued to fund the \$41.6 million 1909 Intake Replacement Project. This will be a combination of \$20,386,000 in funding from WIFIA bond issues and \$21,220,073 in funding from the IEPA SRF. Future projects that the City desires to fund with IEPA SRF loans are Water Transmission Main Rehabilitation (L17-5106 – out for bid as of 10/6/21), Small Diameter Water Main Lining (L17-5393 - 2022), Lead Service Line Replacement

Pilot (2022), Large Diameter Water Main Lining (2022), Medium Voltage Reliability (2023-2024), and East Filter Reliability (2025).

Capital projects are driven by water main and water plant improvement needs. The City replaces approximately 1.5 miles of water main every year to stay on a 100-year replacement cycle. Needs at the water plant are identified through formal water plant evaluations, operator needs, and security assessments. Significant projects are planned for the near term which address aging infrastructure at the water plant, including the 1909 Intake Replacement Project, the Medium Voltage Reliability Project, and the East Filter Reliability Project.

The City strives to maintain its reserves at \$3.5 million. The fund reserves are currently much higher than the target because of deferred projects and a settlement from the Village of Skokie that was made in a single payment rather than spread out over time as previously budgeted. The reserves will be drawn down over the next five years.

The debt service to support the funding of the 1909 Intake Replacement Project will be funded by increased revenues from the City's wholesale customers. The cost of new assets are worked into the wholesale customer rates, following the methodology established in each customer's contract. The majority of the wholesale customer revenue increase between 2025 and 2026 (\$2,708,293) will cover the annual debt service from both the WIFIA and SRF funding (\$2,211,220) .

Attachment 4 – Service Agreements

AMENDED AND RESTATED
WATER SUPPLY CONTRACT
BETWEEN
THE NORTHWEST WATER COMMISSION
AND
THE CITY OF EVANSTON

THIS AGREEMENT, made and entered into between THE NORTHWEST WATER COMMISSION (formerly THE DES PLAINES, MOUNT PROSPECT, ARLINGTON HEIGHTS, AND PALATINE WATER COMMISSION and hereinafter referred to as the "Commission") and THE CITY OF EVANSTON (hereinafter referred to as "Evanston"),

W I T N E S S E T H:

WHEREAS, the Commission is a water commission created under Chapter 24, Article 11, Division 135, Illinois Revised Statutes, 1979; and

WHEREAS, the Commission was created to acquire and operate a common source of supply of water and to develop facilities of sufficient capacity to furnish an adequate supply of filtered water to Commission customers using Lake Michigan as the source of supply; and

WHEREAS, Evanston is the owner of a water works plant that currently takes water from Lake Michigan to furnish water for the use of area inhabitants; and

WHEREAS, the Commission desires to purchase water from Evanston for distribution and sale by the Commission to certain customers; and

WHEREAS, the Commission is authorized under Chapter 24, Article 11, Division 135, Illinois Revised Statutes, 1979, to enter into this contract; and

WHEREAS, Evanston is willing to furnish water to the Commission and will have available water in the quantities hereinafter contracted for to be sold by it to the Commission; and

WHEREAS, the Commission and Evanston, after lengthy negotiations and deliberations, and in order to compromise, settle and resolve certain disputes between them which arose in connection with interpretation and application of the Water Supply Contract dated March 4, 1981, have agreed to amend and restate that original contract between them, as set forth herein:

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto hereby agree as follows:

1. Supply of Water. Subject to the terms and conditions hereinafter set forth, Evanston shall sell and deliver to the Commission, and the Commission shall purchase and receive from Evanston, a maximum of 55 million gallons per day of Lake Michigan water, as required by the Commission to satisfy the Commission's maximum 24-hour demands for Lake Michigan water for resale to the Commission's customers, which 55 million gallons per day shall be delivered at a rate not to exceed 75 million gallons per day. All water that is provided to the Commission shall be from the official Illinois Department of Transportation allocation granted to the Commission or to its customers.

Evanston shall at all times use maximum feasible efforts to avoid interruptions or reductions of the water required to be delivered by it to the Commission. In the event that, by reason of any emergency, system failure or malfunction, Evanston is unable, despite the use of such maximum feasible efforts, to supply the full water needs of itself, its other customers and the Commission, the total amount of water which Evanston is able to supply to such parties, excluding any water available from the New Reservoir described in paragraph 6(k)(vii) of this contract, none of which shall be supplied to the Commission unless and to the extent that the Commission has made a contribution in accordance with paragraph 17(a) of this contract to cover a portion of Evanston's investment in the New Reservoir which has been allocated to the Commission, shall be equitably apportioned among them. The Commission agrees to use its best efforts to maintain storage facilities equal in capacity to its average day demand.

Nothing in this agreement shall be construed to prohibit the Commission from serving any of its customers in whole or in part with water from wells owned by the Commission or any of its customers or from entering into any emergency water service agreement with any other party or from securing an alternate supply of Lake Michigan water to serve any water need it may have in excess of 55 million gallons per day.

2. Quality of Water. The water to be delivered by Evanston and received by the Commission hereunder shall be of such quality as to meet or exceed, at the point of delivery, any water quality

standards heretofore or hereafter enacted or promulgated by the United States Public Health Service, the Department of Public Health of the State of Illinois, the Federal or State of Illinois Environmental Protection Agencies, or such other State or Federal agency or agencies as shall have jurisdiction from time to time to enact or promulgate such standard, except as follows: Evanston shall not be required to comply with 40 C.F.R. Subpart I, "Control of Lead and Copper", §§141.80-141.85, and 35 Illinois Administrative Code Subtitle F, "Public Water Supplies", Part 611, "Primary Drinking Water Standards", Subpart G, "Lead and Copper," or any equivalent requirements for implementing and maintaining optimal corrosion control treatment for control of lead and copper content, including addition or injection of corrosion control inhibitors or implementing other measures, with respect to the water delivered by Evanston and received by the Commission. The Commission shall be required to meet, at its own cost, any such requirements applicable to the water to be delivered to the municipalities served by the Commission. However, Evanston shall implement and maintain optimal corrosion control treatment for control of lead and copper content pursuant to such regulations, including addition or injection of corrosion control inhibitors, or take other measures, for the water to be delivered by Evanston and received by the Commission if Evanston is requested in writing by the Commission to do so and if such treatment or measures can be implemented and maintained at the Evanston water works plant at or before the point of delivery of water to the Commission, in which

case the Commission shall, in addition to any other charges under this Contract, reimburse Evanston on a monthly basis, as billed by Evanston, for Evanston's actual cost to implement and maintain such optimal corrosion control treatment for control of lead and copper content or to take such other measures with respect to the water delivered by Evanston and received by the Commission. At the Commission's request, Evanston shall enter into a separate letter agreement to more particularly describe the service to be provided and the charges to be imposed in connection with implementing and maintaining such optimal corrosion control treatment for control of lead and copper content or taking such other measures.

3. Point of Delivery. Evanston shall deliver to the Commission the water herein required at its water plant at Lincoln Street in Evanston, Illinois, at not less than 50 p.s.i. at the average centerline of the high lift pumps.

4. Meters. Water sold to the Commission shall be measured at the point of delivery, or at such other point as may be approved by the Commission and Evanston, through a meter or meters selected by the parties hereto which shall be furnished and installed by the Commission and maintained by Evanston. Said meter or meters shall be available for inspection and examination by the Commission at all times. All statements for water delivery shall be based upon readings of such meters, except as hereinafter set forth.

Once per month, on a date as near to the end of a calendar month as practicable, Evanston shall calibrate all meters used for measuring the quantity of water delivered from Evanston to the

Commission. Such calibration shall be done in the presence of a representative of the Commission and the parties shall jointly observe any adjustments that are made to the meters in case any adjustments shall be necessary. The cost of meter maintenance shall be charged to the Commission at a rate of \$200 per month through and including the month of September 1993; thereafter, there shall be no charge for meter maintenance unless and until such charge is reimposed, beginning October 1, 2006, due to initiation of an arbitration proceeding as provided for in paragraph 16(c) hereof.

The Commission may, at its option and its own expense, install and operate a check meter to check each meter maintained by Evanston, but the measurement of water for the purpose of this contract shall be solely by the meters maintained by Evanston as hereinbefore provided, except in the case 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 designated employee or agent of Evanston. The reading, calibration and adjustment of all such check meters shall be performed only by the Commission, but Evanston shall be given notice of any calibration and adjustment of such meters; provided, however, that during any period when a check meter is being used under the provisions hereinafter set forth for measuring the amount of water delivered, the reading, calibration and adjustment thereof shall be performed by Evanston.

If either party at any time observes a variation between a

delivery meter and a check meter or any other evidence of meter malfunction, such party shall promptly notify the other party, and the parties hereto shall then cooperate to procure an immediate calibration test and joint observation of any adjustment, and such meters shall then be adjusted to accuracy.

Each party shall give the other party forty-eight (48) hours' notice of the time of all tests of meters so that the other party may arrange to have a representative present. If said representative is not present at the time set in such notice, the calibration and adjustment may, notwithstanding any other provision of this paragraph, proceed in the absence of said representative. The notice herein required may be waived in writing by either party.

If, upon any inspection or test, any metering equipment is found to be out of service or the percentage inaccuracy of any metering equipment is found to be in excess of two percent (2%), registration thereof as well as charges for water based thereon shall be corrected, by agreement of the parties based on the best data available, for a period extending back to the time when such inaccuracy began, if such time is ascertainable and, if such time is not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of six (6) months. For such purposes, the best data available shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registering. Otherwise, the amount of

water delivered during such period may be estimated (1) by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or (2) if the error is not ascertainable by calibration tests or mathematical calculation, by estimating the quantity of delivery by reference to deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately. Any inability to agree upon such correction or estimate shall be referred to arbitration pursuant to paragraph 8 of this contract.

5. 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, be so calibrated. In the event that it should become necessary or desirable to use other units of measurement, the basis of conversion shall be that 7.48 gallons is equivalent to one (1) cubic foot.

6. Billing and Rates.

(a) Billing. Commencing as of the end of the first month in which deliveries of water are made by Evanston to the Commission hereunder (when used herein, the term "delivery of water" shall not be deemed to include deliveries for construction, testing and other incidental uses), which the parties agree was March 1985, Evanston shall render bills to the Commission on a monthly basis for all water delivered.

For all months through and including September 30, 1993, and except as provided in subparagraphs (f) , (g) and (i) hereof,

bills shall be based on the rates and components determined in accordance with the provisions hereinbelow set forth in subparagraphs (a) through (d) hereof.

Bills for months through and including September 30, 1993, shall consist of two parts as follows:

Part One - Demand Charge: A fixed monthly payment consisting of (i) one-twelfth of the Annual Return on the Fair Value Rate Base as determined in accordance with subparagraph (b) of this paragraph 6; and (ii) a depreciation charge determined in accordance with subparagraph (c) of this paragraph 6.

Part Two - Quantity Charge: A payment based on the quantity of water delivered through the metering point(s) to the Commission's facilities multiplied by the Quantity Rate determined in accordance with the provisions of subparagraph (d) of this paragraph 6.

For all months commencing October 1, 1993, and thereafter, and except as provided in subparagraphs (i) and (l) hereof, bills shall be based on the rates and components determined in accordance with the provisions hereinbelow set forth in subparagraphs (j) and (k) hereof, which rates and components shall be determined annually to be effective as of October 1 of each year. The twelve month period commencing October 1 shall be called the "Service Year." The "Fiscal Year" shall mean the Fiscal Year of the Evanston Water Department, which, after December 31, 1994, shall be the twelve month period beginning on the first day of March and ending on the

last day of the following February.

For all bills submitted by Evanston pursuant to this contract for months beginning on and after October 1, 1993, meter readings taken at the beginning and end of the monthly billing period in question shall be set forth on the bill. All bills so submitted shall be paid by the Commission within 30 days of the receipt of each bill. Any bill not paid within 15 days of the due date, other than those bills originally submitted by Evanston prior to the effective date of this amended and restated contract for the months from October 1993 through such effective date, shall be deemed delinquent and shall bear interest from the due date until the date of payment at the rate of 10 per cent per annum.

(b) Return on Rate Base. "Rate Base" shall consist of those components of Evanston's water works property relating to lake intake and associated source of supply structures, pumping plant and water treatment facilities necessary to deliver water to the Commission at the point of delivery, such components in service on the date of this contract being more specifically set forth in Appendix A which is attached hereto and hereby incorporated as a part hereof.

"Original Cost Rate Base" shall consist of the components of Rate Base valued at the original cost to Evanston of acquisition, construction and installation as reflected on the books, records and financial statements of Evanston less accrued depreciation as of the end of the Fiscal Year used as a basis for determining charges hereunder.

"Reproduction Cost New Rate Base" shall consist of the components of Rate Base valued initially by a computation as of the end of the last Fiscal Year ended prior to the commencement of delivery of water hereunder. Reproduction Cost New Rate Base shall be recomputed every five years as of the end of each succeeding fifth Fiscal Year reflecting components then properly allocated to Rate Base pursuant to this contract. All computations of Reproduction Cost New Rate Base shall utilize the most current valuation of the Water Works Properties of the City of Evanston, as developed by a reputable qualified consulting engineering firm experienced in water works valuation, adjusted to the applicable year of the rate determination by utilizing the then current Engineering News Record 20 Cities Construction Cost Index. Accrued depreciation as determined by the engineering firm's valuation study plus accrued depreciation which has occurred from the date of the valuation to the applicable year of the rate determination shall be deducted from the reproduction cost new of the plant in service.

"Fair Value Rate Base" shall be computed initially as of the end of the latest Fiscal Year of Evanston ended prior to the commencement of delivery of water hereunder, shall be recomputed every five years thereafter as of the end of each succeeding fifth Fiscal Year, and shall consist of the sum of 75% of the original Cost Rate Base plus 25% of the Reproduction Cost New Rate Base as of the computation date.

The Fair Value Rate Base so computed shall be subject to

adjustment annually as of the end of each Fiscal Year between Fair Value Rate Base recomputations to reflect additions to and retirements of plant contained in the Rate Base during the Fiscal Year. Additions shall be valued at their original cost until recomputation of the Fair Value Rate Base, at which time such additions shall be valued in the same manner as the Fair Value Rate Base. Retirements shall be valued at their fair value as reflected in the last previous Fair Value Rate Base computation.

No additions to Rate Base representing the construction, installation or acquisition of additional intake and associated source of supply structures, buildings, filters, settling basins, or any other supply, pumping or treatment facilities designed to increase the capacity of the Evanston water works property shall be allocated to the Commission without its written consent unless and until the Commission shall desire to exceed the 55 million gallons per day use specified in paragraph 1 hereof, in which event the parties shall negotiate in good faith to determine whether such excess use requires an expansion of the Evanston plant and, if so, the basis for allocating the cost of such expansion among the then current users of the plant. This paragraph shall not, however, prohibit additions to rate base arising out of the retirement and replacement of source of supply, pumping plant or water treatment plant assets in accordance with sound management practices, which retirements and replacements may incidentally upgrade or improve the operation or capacity of Evanston's water plant. Any failure by the parties to agree as to whether an addition to rate base for

any addition or replacement is permitted or prohibited under this paragraph shall be referred to arbitration in accordance with paragraph 8 hereof.

"Annual Return on Rate Base" shall be an amount determined by multiplying the commission's share of Fair Value Rate Base as of the end of the latest Fiscal Year as hereinabove provided by 9.5%. The Commission's share of Fair Value Rate Base shall be determined by allocating to the Commission a portion of such Fair Value Rate Base, as adjusted and recomputed from time to time as provided herein, based upon the ratio of its customers' water allocations as established by order of the Illinois Department of Transportation (IDOT Allocation) during the Fiscal Year to the aggregate IDOT Allocations of Evanston, the Commission's customers and other customers or users of the Evanston water works system; provided, however, that until the end of the first two full Service Years of delivery of water hereunder, the Commission's customers' IDOT Allocation shall be deemed to be the Commission's average daily use or a percentage of the Commission's customers' actual IDOT Allocation, whichever is higher, said percentage being 50% for the period from the first delivery of water hereunder until the end of the first Service Year and 60% in the second Service Year.

(c) Depreciation Charge. Depreciation charges shall be computed as of the end of each month following commencement of the delivery of water to the Commission hereunder and shall consist of one-twelfth of an annual depreciation charge, computed by applying

the depreciation rates utilized by Evanston as of the date hereof, as set forth in Appendix B which is attached hereto and hereby incorporated as a part hereof, to the original cost of the depreciable plant in service contained in the Fair Value Rate Base allocated to the Commission pursuant to subparagraph (b) of this paragraph 6. As of the date when any depreciable plant addition allocable to the Fair Value Rate Base as provided in subparagraph (b) above shall be placed in service or any depreciable plant in the Fair Value Rate Base is retired from service, charges for depreciation to the Commission shall be correspondingly adjusted as of the end of the month in which the addition or retirement took place.

(d) Quantity Rate. The Commission shall pay to Evanston a Quantity Charge based upon a Quantity Rate equal to the Commission's share of the "Operating Costs" per 1,000 gallons of water delivered to the point of delivery. The "Operating Costs" to be included in determining the Quantity Rate shall be the costs assigned to the functions of pumping, filtration, administration and insurance as reflected in the audited financial statements of the Evanston Water Fund and as described in Appendix C which is attached hereto and hereby incorporated as a part hereof. The operating costs applicable to deliveries during the Service Year beginning each October 1 shall be determined based on the results of operation of the Evanston water works, as audited by independent certified public accountants, for the current Fiscal Year, which includes the October 1 Service Year starting date. However, during

the Service Year the operating costs applicable to deliveries during the Service Year shall be determined based on the results of operation as reflected in the financial statements of the Evanston Water Fund, as audited by independent certified public accountants, for the Fiscal Year immediately preceding the commencement of the Service Year. The total Quantity Charge shall be adjusted at the end of each Service Year to reflect the actual, total Quantity Charge owed to Evanston based on current Fiscal Year operating costs as finally determined by the current annual audit performed by independent certified public accountants. Accordingly, at the end of each Service Year there shall be a final Quantity Charge or Credit issued by Evanston to the Commission to adjust the total Quantity Rate computed by utilizing the current Fiscal Year audited operating costs. This final charge or credit must be settled within thirty days of the issuance of the invoice or credit memo. In determining the Quantity Rate, Operating Costs shall be allocated to the Commission based upon the ratio of its Average Day Water Use of the Evanston water works system to the aggregate Average Day Water Use of Evanston, the Commission and other customers or users of said system during the Fiscal Year.

The Quantity Rate shall not include any portion of any cost included in computing the Fair Value Rate Base, Annual Return on Rate Base or Depreciation Charge.

(e) Advance Computations. For Service Years beginning on or before October 1, 1992, and for Service Years beginning on and after October 1, 2006, should the methods and principles for

determining billings and rates under subparagraphs (a) through (d) of paragraph 6 hereof become applicable to such Service Years as a result of arbitration pursuant to paragraph 16(c) of this contract, Evanston shall deliver to the Commission not less than 30 days prior to the start of a new Service Year a computation of the Original Cost Rate Base, Reproduction Cost New Rate Base, Fair Value Rate Base, Annual Return on Rate Base, Depreciation Charge and Quantity Rate to be utilized in billing the Commission during the coming Service Year with supporting explanations, data and work papers including an identification of any adjustments to the actual results of operations during the Fiscal Year as reported in the audited financial statements of the Evanston Water Fund made for purposes of determining new charges. The Commission may, at its option and its own expense, examine the books and records of the Evanston Water Fund upon giving no less than 10 days' written notice of its intention to do so. Any such examination shall take place at the Evanston Civic Center during regular business hours.

For Service Years beginning on and after October 1, 1993, and continuing so long as the methods and principles for determining billings and rates set forth in subparagraphs (j) and (k) hereof remain in effect, Evanston shall deliver to the Commission not less than 60 days prior to the start of a new Service Year a computation of the rate per 1000 gallons to be utilized in billing the Commission during the coming Service Year with supporting explanations, data and work papers, provided, that this requirement of advance delivery of the rate computation shall not apply to the

Service Years commencing October 1, 1993 and October 1, 1994. For each Evanston Fiscal Year beginning on or after January 1, 1993, Evanston shall provide to the Commission the following data:

- (i) Evanston's audited financial statement. (It is assumed that said statement will set forth individually the Water Fund operating expenses for the following accounts: Administration (1900 Group), Pumping (1905 Group), and Filtration (1910 Group). If said expenses are not set forth in the statement, they shall be separately provided.)
- (ii) The amount of pension expense included in the operating expense accounts for Administration (1900 Group), Pumping (1905 Group) and Filtration (1910 Group).
- (iii) The amount of insurance expense contained in insurance expense accounts 1935.401, 1935.420, 1935.421 and 1935.423.
- (iv) A list of plant additions and retirements within Source of Supply (WF 171), Pumping Plant (WF 172) and Water Treatment Plant (WF 173), with the cost of each such addition and retirement.
- (v) Evanston's annual report of its 5-year capital improvements program.

Evanston shall provide the following data to the Commission periodically or as available:

- (i) Updates every fifth year of Reproduction Cost New Less Depreciation for Source of Supply, Pumping Plant and Water Treatment Plant components of the water plant. For purposes of this item, Evanston shall not be required to have a valuation performed by a consulting engineering firm.
- (ii) Any appraisal of the water plant that Evanston, in its sole discretion, may choose to have performed.
- (iii) Any capital improvements study of the water plant that Evanston, in its sole discretion, may choose to have performed.

In the event that a dispute arises concerning any of the computations provided for in this subparagraph (e), and the parties

are unable to reach an agreement on any of said computations, such computations shall become subject to arbitration in accordance with paragraph 8 hereof.

(f) Initial Rates. Until such time as data from the first full Fiscal Year following commencement of water deliveries to the Commission hereunder are available for purposes of establishing rates as herein provided, the Commission shall pay such estimated rates as may be agreed upon by the parties based upon the formulas hereinabove set forth and the best available estimates of projected water uses and costs. At the end of such period there shall be an accounting and adjustment between the parties based upon actual experience during said period. Any surplus paid by the Commission or deficit owing from the Commission shall be recouped or paid in twelve equal monthly installments by appropriate adjustments to the bills rendered to the Commission pursuant to subparagraph (a) of this paragraph 6.

(g) Charges for Construction Water. Water taken from the Evanston system by the Commission for construction, testing and other incidental uses prior to the first delivery of water hereunder, shall be metered and shall be billed to and paid for by the Commission on a monthly basis at the rate of 18 cents per thousand gallons.

(h) Illustrative Calculation. For the purposes of illustrating the parties' intent and understanding concerning the method of computing the water rate to be charged to the Commission for Service Years (i) through and including September 30, 1993, and

(ii) beginning October 1, 2006, and thereafter should the methods and principles for determining billings and rates under subparagraphs (a) through (d) of this paragraph 6 become applicable to such Service Years as a result of arbitration pursuant to subparagraph 16(c) of this contract, Appendixes D and E attached hereto are hereby incorporated as illustrative examples of the computations necessary to calculate such rate, except, however, that, with respect to the method of computing the water rate during the period and under the conditions specified in (ii), if any inconsistencies exist between subparagraphs (a) through (d) of this paragraph 6 and Appendix D, on the one hand, and Appendix E, on the other hand, Appendix E shall control.

(i) Billing Credit for Service Years Through September 30, 1993: Notwithstanding the provisions of subparagraphs (a) through (d) of this paragraph 6, the Commission and Evanston agree that in full compromise, settlement and resolution of all bills for water delivered by Evanston and received by the Commission for periods through and including September 30, 1993, and of all claims and disputes relating to such bills, Evanston (i) shall retain all amounts actually paid by the Commission in respect of such bills, which shall constitute full and complete payment of such bills, and (ii) shall give the Commission credits in the total amount of \$850,000 against bills for water delivered by Evanston and received by the Commission for periods commencing on and after October 1, 1993. The total credit of \$850,000 shall be utilized as follows:

(A) \$717,431 shall be applied against amounts owed by the

Commission to Evanston for water delivered by Evanston and received by the Commission during the period October 1, 1993, through December 31, 1994; and (B) the balance of the total credit shall be applied at the rate of \$2,946 per month against amounts billed for water delivered by Evanston and received by the Commission during the period from January 1, 1995, through September 30, 1998. For the period of October 1, 1993, through December 31, 1994, Evanston shall submit a statement to the Commission showing the amount billed for that period in accordance with subparagraph (j) of this paragraph 6, any amounts already paid by the Commission for that period, and the amount of the credit being applied to that period. Evanston shall show on its bill rendered to the Commission for each month in the period January 1, 1995, through the month in which the remaining credit is exhausted, the total amount billed, any amount previously paid by the Commission in respect of service for that month, the amount of credit applicable to that month pursuant to this subparagraph (i), and the net amount, if any, due from the Commission to Evanston or from Evanston to the Commission.

(j) Rates for Service Years Beginning on and After October 1, 1993. Subject to the provision of subparagraph (i) of this paragraph 6 and paragraph 16(c) of this contract, for Service Years beginning October 1, 1993, and thereafter, Evanston shall bill the Commission and the Commission shall pay Evanston for water delivered by Evanston and received by the Commission at a rate consisting of a Base Rate, calculated as set forth in this subparagraph (j), plus, for Service Years beginning on and after

October 1, 2006, a Regulatory Adjustment Charge, if any, in accordance with, and calculated as set forth in, subparagraph (k) hereof. The Base Rate shall be as follows:

(i) For the Service Year beginning October 1, 1993, 30.8 cents per 1000 gallons.

(ii) For each Service Year beginning October 1, 1994 and thereafter, the rate per 1000 gallons applicable in the immediately preceding Service Year multiplied by 1.WXYZ, where ".WXYZ" shall be calculated as described in the following subparagraphs (A) and (B):

(A) Calculate "Annual Inflation" equal to

- a. the percentage change, expressed as a decimal, in the Consumer Price Index -- All Urban Consumers -- Chicago, IL/Northwest IN, as published by the U.S. Department of Labor, Bureau of Labor Statistics, 1982-1984=100, or any successor index (hereinafter referred to as the "CPI"), from the value of the CPI at the second December preceding the Service Year to the value of the CPI at December preceding the Service Year, plus
- b. the percentage change, expressed as a decimal, in the national Producer Price Index -- Total Durable Goods, as published by the U.S. Department of Labor, Bureau of Labor Statistics, 1982=100, or any successor index (hereinafter referred to as the "PPI"), from the value of the PPI at the second December preceding the Service Year to the value of the PPI at December preceding the Service Year,
- c. said sum (a+b) then divided by two to produce the average of the percentage change of the CPI and the PPI and
- d. subject to the limitations that (1) if the resulting dividend $((a+b)/2)$ is

greater than the ceiling of 0.090, Annual Inflation shall be deemed to be 0.0900, and (2) if the resulting dividend is less than the floor of 0.0375, then Annual Inflation shall be deemed to be 0.0375.

(B) Subtract 0.0175 from Annual Inflation as calculated pursuant to the preceding subparagraph 6(j)(ii)(A).

(k) Regulatory Adjustment Charge for Certain Costs Due to Changes in Federal or State Regulatory Requirements.

(i) Calculation of Regulatory Adjustment Charge.

Unless the methods and principles for determining billing rates under subparagraphs (a) through (d) of paragraph 6 hereof become applicable to Service Years beginning on and after October 1, 2006, as a result of arbitration pursuant to subparagraph 16(c) of this contract, for Service Years beginning on and after October 1, 2006, in addition to the Base Rate, Evanston shall bill and the Commission shall pay, where the conditions set forth in this subparagraph (k) are satisfied, a Regulatory Adjustment Charge, calculated as set forth in this subparagraph (k). The Regulatory Adjustment Charge, if any, for the Service Year shall be equal to the product of (A) the Commission's share (based on the ratio of its 55 million gallon per day reservation to the rated maximum daily capacity of the Evanston water works plant during such Service Year (for purposes of this provision, the parties agree that the rated maximum daily capacity of the Evanston water works plant at November 30, 1994, is 108 million gallons per day)) multiplied by (B) the sum of the total annual Principal and Interest Charges plus Net Operating Cost for such Service Year,

attributable to the Qualified Capital Equipment and Facilities. The Regulatory Adjustment Charge, if any, for any Service Year shall be billed by Evanston and paid by the Commission in twelve equal installments as a separately identified item or items on the monthly bills rendered by Evanston.

(ii) Qualified Capital Equipment and Facilities.

"Qualified Capital Equipment and Facilities" means capital equipment and facilities

(A) required in serving the Commission,

(B) properly classified in one of the three accounts originally used in computing the Commission's Rate Base, that is, Source of Supply, WF171.00, Pumping Plant, WF 172.000, or Water Treatment Plant, WF173.000,

(C) having an initial acquisition cost calculated in the Service Year in which installation of such equipment or facility is commenced, equal to or greater than the Threshold Value, which Threshold Value shall be \$1 million in the Service Year beginning October 1, 1993, and for each Service Year beginning October 1, 1994 and thereafter shall be the Threshold Value in the immediately preceding Service Year multiplied by 1.ABCD, where ".ABCD" is the Annual Inflation as defined in subparagraph 6(j)(ii)(A) above,

(D) but only when the need for such equipment or facilities is certified by an independent engineering firm to be entirely and directly due to a specific, identifiable addition or additions to, or change or changes in, Federal or State statutes or

regulations applicable to operation of the Evanston water works plant and/or the delivery of water to the Commission therefrom, including without limiting the foregoing, additions to or changes in the regulations of the United States Public Health Service, the United States Environmental Protection Agency, the Department of Public Health of the State of Illinois, the Illinois Pollution Control Board, or the Illinois Environmental Protection Agency, or any successor departments or agencies, which addition(s) or change(s) become effective on or after October 1, 2006 (hereinafter referred to as a "New Regulation"). Such certification shall be conclusive and binding on the parties.

Any such equipment or facility which is entirely and directly due to a New Regulation shall be deemed Qualified Capital Equipment and Facilities notwithstanding the fact that the equipment or facility also produces other benefits to Evanston such as reducing operating expenses, increasing operating efficiencies, or permitting the retirement of other water works properties. Notwithstanding the foregoing, however, the New Reservoir defined in subparagraph (vii) below shall not be Qualified Capital Equipment and Facilities.

In determining whether to certify equipment or facilities, or what portion of the cost of equipment and facilities to certify, as Qualified Capital Equipment and Facilities, the independent engineering firm shall include only the minimum cost of equipment and facilities necessary to comply with the New Regulation, and shall not include any costs for the equipment or

facilities incurred by Evanston for purposes other than compliance with the New Regulation, such as costs to improve or upgrade the operation, or to expand the capacity, of the Evanston water works plant, that are not entirely and directly due to the New Regulation. Evanston may, in its discretion, incur costs in connection with the acquisition and installation of Qualified Capital Equipment and Facilities for equipment, facilities or purposes not required for compliance with a New Regulation, but none of such additional costs shall be included in the calculation of the Regulatory Adjustment Charge.

(iii) Principal and Interest Charges. "Principal and Interest Charges" means (A) the actual principal and interest payments due during the Service Year in question attributable to the bonds (or that portion of bonds) issued to finance the acquisition and installation of Qualified Capital Equipment and Facilities less the annual depreciation charge which would have been recorded for any assets required in serving the Commission which are retired in connection therewith, computed on a straight-line basis of depreciation using the depreciation rates shown in Appendix B, or (B) if no bonds are issued, the amount of Imputed Payments for such Qualified Capital Equipment and Facilities less the amount of the annual depreciation charge which would have been recorded for any assets required in serving the Commission which are retired in connection therewith, computed on a straight-line basis of depreciation using the depreciation rates shown in Appendix B, where "Imputed Payments" means the principal and

interest charges that would be incurred in the Service Year in question if the Qualified Capital Equipment and Facilities had been financed by an issue of 20-year bonds to be retired by 40 equal, semi-annual payments at an annual interest rate equal to the average interest rate, in the month in which the principal contract for the Qualified Capital Equipment and Facilities is signed by Evanston, for newly-issued municipal bonds carrying the same rating as Evanston's bonds as reported in the Municipal Bond Buyer or similar publication. Principal and Interest Charges shall not be less than zero.

(iv) Net Operating Cost. The "Net Operating Cost" shall be (A) the increase in annual operating expense properly recorded by Evanston in the Water Fund expense accounts for Administration (1900 Group), Pumping (1905 Group), and Filtration (1910 Group), and the portion of the increase in annual operating expense properly recorded by Evanston in the applicable expense accounts for Insurance (1935.401, 1935.423, 1935.420 and 1935.41) that is allocated to the Water Fund, entirely and directly attributable to the operation and maintenance of the Qualified Capital Equipment and Facilities, less (B) any reduction in the operating expense categories specified in subpart (A) entirely and directly attributable (1) to the operation and maintenance of the Qualified Capital Equipment and Facilities or (2) to the retirement due to the installation of the Qualified Capital Equipment and Facilities of any assets at the Evanston water works plant in the Source of Supply, Pumping Plant and/or Water Treatment Plant

categories which had been required in serving the Commission, which annualized Net Operating Costs for the first Service Year incurred shall be so certified by the independent engineering firm identified in subparagraph (k)(ii)(D) above.

(v) Procedure for Certification of Qualified Capital Equipment and Facilities. The independent engineering firm identified in subparagraph (k)(ii)(D) above shall not have been previously employed by either party for at least 4 years prior to the date of its appointment pursuant to said subparagraph, and shall not be utilized by Evanston in connection with designing or installing the Qualified Capital Equipment and Facilities in question. Its contract shall be executed jointly, and its fees shall be shared equally, by Evanston and the Commission. The independent engineering firm shall be informed that its determination of what expenditure is "entirely and directly" due to the New Regulation is to be based on the minimum cost of acquiring and installing, or operating and maintaining, as the case may be, capital equipment and facilities strictly necessary to comply with the New Regulation, and shall not include any expenditures that serve to improve or upgrade operation of, or expand the capacity of, the Evanston water works plant but that are not entirely and directly required by the New Regulation.

(vi) Termination of Regulatory Adjustment Charge. At such time as Evanston ceases to incur any Principal and Interest Charges that are incorporated in the Regulatory Adjustment Charge, either by retirement of bonds actually issued or by reaching the

end of the 20-year amortization period for Imputed Payments specified in subparagraph (k) (iii) above, the Regulatory Adjustment Charge shall be reduced by that amount. The Commission shall continue to pay the balance, if any, of the Regulatory Adjustment Charge.

(vii) New Reservoir. The "New Reservoir" shall mean any addition installed after November 30, 1994 to the treated water storage capacity existing at the Evanston water works plant.

(1) Rates for Service Years Beginning on and After October 1, 2006, in the Event of Exercise of the Right to Reopen. In the event that either the Commission or Evanston exercises the right to reopen determination of the rates to be billed by Evanston and paid by the Commission for water delivered by Evanston and received by the Commission as provided for in paragraph 16 hereof, Evanston shall continue to bill and the Commission shall continue to pay for water received from October 1, 2006, until the completion of the negotiations and/or arbitration proceedings provided for in paragraph 16 at the rates determined in accordance with subparagraphs (j) and (k) of this paragraph 6. Within 30 days following completion of such negotiations or such arbitration proceedings, Evanston shall calculate the amount due from the Commission for water received on and after October 1, 2006, at the rates agreed to or established in, or calculated pursuant to the methods and principles agreed to or established in, such negotiations or such arbitration proceedings, less the amount theretofore actually paid by the Commission for water received on

and after October 1, 2006, and shall render to the Commission a bill or credit for the net amount due from or to the Commission, as the case may be. Thereafter, Evanston shall bill, and the Commission shall pay, for water delivered by Evanston and received by the Commission at the rates agreed to or established in, or calculated pursuant to the methods and principles agreed to or established in, such negotiations or such arbitration proceedings; provided, that this provision shall not eliminate the right of either party to refer any new issues or disputes arising thereafter to arbitration in accordance with paragraph 8 hereof.

7. Service to Others. Except for municipalities and other customers being served by Evanston on the date of this agreement, Evanston agrees not to supply water to any municipality or other customer unless it can do so without impairing the Commission's right to service in accordance with the terms of this contract and, in particular but without limitation, its right to receive 55 million gallons of water per day from Evanston's existing water plant without any increase in the rate base allocable to the Commission under this contract.

8. Arbitration. It is hereby expressly understood and agreed that, if any point in this contract is unclear or ambiguous, or in case of any dispute arising between the parties hereunder, said point or dispute shall, at the written request of either party, be referred to arbitration for determination or settlement under the Uniform Arbitration Act (Ill. Rev. Stat., ch. 10, § 101-123 (1979)), including amendments that may hereafter be made

thereto which at any particular time are in force and effect. The arbitration board shall consist of three (3) experienced specialists in the matter to be arbitrated. One member of the arbitration board is to be chosen by Evanston, one is to be chosen by the Commission, and the two thus named shall appoint a third member, who shall serve as chairman. If the two thus named cannot agree upon a third within ten (10) days, they shall be dismissed, and two other persons shall be appointed as outlined above, this procedure to continue until the full board results; provided, however, that nothing in this section shall act to halt any negotiations, or to relieve Evanston or the Commission of the responsibility for seeking an equitable settlement.

Arbitration hearings shall take place at the Evanston Civic Center unless the parties shall agree to some other place.

It shall be the responsibility of the arbitration board to demand a clear and concise definition of the matter or matters at issue, and to decide and demand whatever information, testimony, or other aid is necessary to its deliberations. It shall be the responsibility of Evanston and the Commission to meet such demands promptly and without reservation.

Any award pursuant to arbitration as herein provided for shall be accompanied by a written opinion of the arbitrators giving reasons for the award. In case of a determination as to a point that has not been covered or adequately covered herein, or that is unclear or ambiguous, the arbitrators in making their determination shall include a consideration of the general objectives sought to

be obtained under this contract and what would appear to be reasonable under the circumstances.

The arbitrators shall be entitled to reasonable compensation and to incur reasonable expenses, and such compensation and all other expenses of the arbitration board shall be shared equally by Evanston and the Commission unless the arbitrators shall specify some other allocation based on the equities of the situation. References in this contract to specific matters to be referred to arbitration in accordance with this paragraph shall not be construed to preclude the referral of any other matter.

9. Regulatory Bodies. This contract shall be subject to all valid rules, regulations, and laws applicable hereto passed or promulgated by the United States of America, the State of Illinois, or any governmental body or agency having lawful jurisdiction, or any authorized representative or agency of any of them; provided, however, that this clause shall not be construed as waiving the right of either party to challenge the validity of any such rule, regulation, or law on any basis, including impairment of this contract.

10. Modification. Any other provision of this contract to the contrary notwithstanding, this contract may be changed or modified only with the consent of the governing bodies of both the Commission and Evanston. Such modification may be requested by either party, in which event, unless the parties shall agree to some other procedure or time, a joint meeting of such governing bodies shall be held not more than thirty (30) days after the

giving of such notice, at which joint meeting the requested changes or modifications shall be discussed and considered.

11. Notices. All notices or communications provided for herein shall be in writing and delivered either in person or by United States Mail, via certified or registered mail, return receipt requested, and with the proper postage prepaid, addressed to the party for whom such notice or communication is intended at the address shown below or at such other address as specified by notice given in accordance herewith:

If for the Commission:

Executive Director
Northwest Water Commission
1525 North Wolf Road
Des Plaines, Illinois 60016

If for Evanston:

City Manager
Evanston Civic Center
2100 Ridge Avenue
Evanston, Illinois 60201

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

13. Term of Contract. Subject to the provisions of paragraph 16 hereof, this contract shall continue in force and effect for a period of forty-five (45) years from the date of first delivery of water to the Commission hereunder (which is not more than 40 years from the effective date of this amended and restated contract), which date of first delivery Evanston and the Commission agree was

March 1, 1985, and shall be renewed automatically at ten (10) year intervals thereafter unless either party hereto conveys notice of its intention to terminate this contract, in writing, not less than five (5) years prior to the end of the initial period hereof or any such ten-year period thereafter. However, both parties hereby agree to negotiate in good faith with reference to the continuation, extension, or renewal of this contract in the event that one party conveys notice of its intention to terminate the contract and the other party hereto requests that said party negotiate for the continuation, extension or renewal of this contract.

14. Effective Date. This amended and restated contract shall become effective on the first day of the next month commencing immediately after its execution by the parties.

15. Termination Contingency. Either party shall have the right to terminate this contract by written notice to the other, delivered not later than June 1, 1981, in the event that the Commission has not, on or before April 1, 1981, entered into binding agreements to sell at least a 1984 annual average of 16.8 mgd of Lake Michigan water to its member municipalities or other customers beginning not later than January 1, 1984. Upon such notice being given as herein provided, this contract shall be of no further force or effect, and neither party shall thereafter have any obligation to the other by reason of this contract. If no such notice is given on or before June 1, 1981, this paragraph shall be of no further force or effect and this contract shall not

thereafter be terminated except in accordance with the provisions of paragraph 13 above or by mutual consent of the parties pursuant to paragraph 10 above.

16. Right to Reopen Determination of Billings and Rates for Service.

(a) Exercise of Right to Reopen. Either party hereto may cause negotiations for the purpose of determining the rates to be billed by Evanston and paid by the Commission for water delivered by Evanston and received by the Commission hereunder on and after October 1, 2006, to be reopened (hereinafter referred to as "Reopening") by giving written notice to the other party, on or before April 1, 2006, but in no event before October 1, 2005, that it is initiating Reopening. Such written notice shall be given by placing it with the United States Postal Service for delivery by registered mail, return receipt requested, postmarked not later than April 1, 2006. Such written notice shall include proposed amendment or amendments to the provisions of this contract relating to the determination of billings and rates for water provided by Evanston to the Commission.

(b) Negotiation. Should either party request Reopening in accordance with subparagraph (a) of this paragraph 16, the Commission and Evanston shall promptly commence negotiations towards determination of a revised method or methods for determining the billings and rates for water provided by Evanston to the Commission on and after October 1, 2006. Such negotiations need not be limited to consideration of the amendment or amendments

to the contract proposed in the written notice submitted by the party initiating Reopening, and may result in an agreement that no change should be made in the provisions of the contract relating to determination of billings and rates for water provided by Evanston to the Commission. Nothing in this Paragraph 16 shall be construed to impose on either the Commission or Evanston any obligation, responsibility or duty whatever to agree to any change in the provisions of this amended and restated contract, each party reserving to itself absolute discretion to decline any proposal advanced pursuant to this Paragraph 16.

(c) Arbitration. Should the parties fail to reach agreement as to the method for determining billings and rates for water provided by Evanston to the Commission under the contract within six months after the date of the notice initiating Reopening, or such later date as Evanston and the Commission may in writing agree, the rates to be billed by Evanston and paid by the Commission for water delivered by Evanston and received by the Commission on and after October 1, 2006, shall thereafter be determined in accordance with the principles and methods set forth in subparagraphs (a), (b), (c) and (d) of paragraph 6 hereof, i.e., the methods and principles applicable under this contract prior to October 1, 1993, as modified by Appendix E hereto, and the determination of the rates for the Service Year beginning on October 1, 2006, shall be referred to arbitration in accordance with paragraph 8 hereof, unless Evanston and the Commission have agreed on such rates. In such arbitration, the arbitrators shall

be limited to determining the rate to be applicable for the Service Year beginning October 1, 2006. The methods and principles to be applied by the arbitrators in determining the rates to be applicable for such Service Year, and to be applied in determining the rates in subsequent Service Years, shall be the methods and principles set forth in the aforesaid subparagraphs (a), (b), (c) and (d) of paragraph 6 hereof as modified by Appendix E hereto, provided, that the parties shall stipulate to and shall not contest, and the arbitration board shall accept as agreed, the components of Annual Return on Rate Base, Original Cost Rate Base, Reproduction Cost New Rate Base, Fair Value Rate Base, Depreciation Charge, and Operating Costs set forth in Appendix E hereto and the methods and procedures reflected therein for calculating said figures. The pendency of arbitration proceedings pursuant to this subparagraph (c) shall not prohibit the parties from continuing negotiations pursuant to subparagraph (b), but neither party shall have any obligation to continue such negotiations.

(d) Rights and Obligations Relating to Delivery and Receipt of Water Unaffected. The initiation of Reopening pursuant to this paragraph 16, and the pendency of any negotiations or arbitration proceedings hereunder, shall not affect the rights and obligations of Evanston and the Commission under this contract relating to the delivery and receipt of water.

(e) Right to Extend or Shorten Term of Contract. Following the conclusion of any negotiations pursuant to subparagraph (b) hereof or of any arbitration proceedings pursuant

to subparagraph (c) hereof, the party which did not initiate Reopening may in its sole discretion elect either to extend or to shorten the term of the contract by five (5) years. Such election shall be made by giving written notice thereof to the other party within 180 days following the effective date of any amendment to the contract agreed to through negotiations pursuant to subparagraph (b) hereof or the date of the arbitration award pursuant to subparagraph (c) hereof.

17. Provisions Relating to Potential Requirement for New Reservoir.

(a) Adequacy of Present Treated Water Storage Capacity.

The Commission and Evanston agree that it is not necessary for Evanston to construct a New Reservoir, and that should Evanston construct additional treated water storage capacity after November 30, 1994, the Commission shall not, under any circumstances, be entitled to, or make any demand for, any allocation of water from such additional treated water storage capacity pursuant to paragraph 1 hereof in the event of emergency, system malfunction or failure, unless and to the extent that the Commission has made a contribution, in an amount agreed to by both parties, and in addition to the rates for water service provided for in this contract, to cover a portion of Evanston's investment in such additional treated water storage capacity which shall have been allocated to the Commission, but nothing in this contract shall require the Commission to make any such contribution.

(b) Cooperation Concerning Potential Requirement for New

Reservoir. In consideration for the exclusion of the costs of a New Reservoir from the calculation of the Regulatory Adjustment Charge pursuant to subparagraph (k) of paragraph 6, the Commission agrees to cooperate with and assist Evanston, in both informal activities and formal proceedings, in demonstrating to the Illinois Environmental Protection Agency and the Illinois Pollution Control Board that Evanston should not be required to construct any additional treated water storage capacity. In carrying out this obligation, the Commission agrees to, among other things, advocate to the Illinois Environmental Protection Agency and the Illinois Pollution Control Board that, insofar as the demands of the Commission's customers are taken into account in determining the need for additional treated water storage capacity, the capacity of the Commission's reservoir in Des Plaines, Illinois should be included as part of the treated water storage capacity at the Evanston water works plant in determining whether the treated water storage capacity at the Evanston water works plant is sufficient in relation to the demands of the customers served by the plant.

18. Booster Station Operation. The Commission's Morton Grove Booster Pump Station (the "Booster Station") shall be operated in accordance with the following procedures:

(a) The Booster Station shall be operated only when pumpage rates from the Evanston Water Treatment Plant to the Commission reservoir are equal to, or greater than, 2.083 million gallons per hour. It is understood and agreed that these hourly pumpage rates will generally not be necessary unless (1) the total

daily (24 hour) water demand of the Commission is at least 40 mgd; or (2) there is a declared emergency situation at the Evanston plant.

(b) All precautions shall be taken to prevent the short cycling use of the Booster Station. In general, Evanston shall attempt to use the Booster Station a minimum of six hours per occurrence of operation.

(c) The objective in operating the Booster Station shall be to provide the Commission with an adequate supply of water which will satisfy the Commission's maximum 24-hour water demand of 55 million gallons.

(d) The Evanston operator shall notify the Commission's operator a minimum of six hours in advance of when the Booster Station will be used, unless shorter notice is necessary due to emergency conditions. However, all efforts shall be made, whenever possible, to notify the Commission's operator during normal working hours prior to the startup of the Booster Station.

(e) The Booster Station shall be operated in accordance with the technical procedures set forth in Appendix F, which is attached hereto and hereby incorporated.

(f) Evanston shall pay all electricity costs associated with the operation of the pumps at the Booster Station, but only for electricity actually used to operate the pumps.

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this amended and restated contract to be executed in several counterparts, each of

which shall constitute an original, all as of this 27 day of April, 1995.

THE NORTHWEST WATER COMMISSION

By: William R. Bally
Chairman

Attest:

P. Stephen Stungell
Clerk

THE CITY OF EVANSTON

By: [Signature]
City Manager

Attest:

Kristen Davis
Clerk

**WATER SUPPLY AGREEMENT BETWEEN
THE CITY OF EVANSTON AND
THE VILLAGE OF MORTON GROVE AND
THE VILLAGE OF NILES**

Table of Contents

1. Parties.....	1
1.01. Parties.....	1
2. Initial Term of Agreement; Extended Term; Service Year; Fiscal Year;.....	1
2.1 Initial Term.....	1
2.02 Extended Term.....	1
2.03 Service Year; Fiscal Year.....	2
3. Water Defined.....	2
3.01 Water Defined.....	2
4. Commencement of Obligation to Deliver and Receive Water.....	2
4.01 MG-N Notice to Evanston to Proceed with Preliminary Project Phase Work.....	2
4.02 MG-N Notice to Evanston to Proceed with Final Engineering Design.....	2
4.03 MG-N Notice to Evanston to Proceed with Construction.....	3
4.04 Delivery Date.....	3
4.05 MG-N Payment for Water; Water During Construction.....	3
4.06 Phased Water Delivery to Morton Grove and Niles.....	3
4.07 Water Rate Payable to Evanston in Service Years 2018, 2019 and 2020.....	4
4.08 Water rate Payable to Evanston in Service Years 2021 and Thereafter.....	4
4.09 Rate Equity Parameters.....	4

5. Rate.....	5
5.01 Ratemaking Principles and Policies.....	5
5.02 Billing and Payments.....	5
5.03 Return on Rate Base.....	6
5.04 Depreciation Charge.....	8
5.05 Quantity Charge.....	8
5.06 Demand Charge and Quantity Charge Smoothing.....	9
5.07 MG-N Audit Rights.....	9
5.08 True-Up.....	10
6. Water System Definitions.....	10
6.01 Water System Definitions and Related Terms.....	10
7. Water Supply; Allocation; Distribution.....	12
7.01 Water Supply, Sale and Purchase; Allocation.....	12
7.02 Emergency Connections.....	12
7.03 Coefficient of Friction.....	13
7.04 Pressures.....	13
7.05 Supply and Service Agreement Only; Title to Water.....	13
7.06 Temporary Restriction.....	14
7.07 Maintenance.....	15
7.08 MG-N Option to Purchase Water from Other Suppliers.....	15
7.09 Surges and Back-Flows.....	15
7.10 MG-N Responsibility for Damage to Evanston’s Water Utility.....	15
7.11 Evanston’s Responsibility for Damage to MG-N’s Water System.....	16
7.12 Operating Meetings and Plan.....	16
7.13 Continuity of Operations Plan.....	16

8. Existing and Future Customers of Evanston; MG-N Other Users.....	17
8.01 Existing and other Water Customers Served by Evanston.....	17
8.02 Right of MG-N to Supply Water to Other Users.....	18
8.03 Liability for Unreasonable Delay by MG-N.....	18
8.04 Liability for Unreasonable Delay by Evanston.....	18
9. Facility Completion Schedule.....	19
9.01 Specifications and Sequence of Construction for the Project Improvements.....	19
9.02 IEPA and Other Approvals for the Project.....	19
9.03 Easements, Licenses, Permits, Fees and Approvals.....	19
10. Meters and Measurements; Meter Testing.....	20
10.01 Unit of Measurement.....	20
10.02 Supervisory Control and Data Acquisition (“SCADA”).....	20
10.03 Delivery Meters	21
10.04 Check Meters.....	21
10.05 Meter Calibration and Adjustment.....	22
10.06 Notification Concerning Meter Tests.....	22
10.07 Removal of Meters.....	23
10.08 Meters for Customers.....	23
11. Dispute Resolution.....	24
11.01 Negotiation.....	24
11.02 Remedies.....	24
11.03 Venue and Applicable Law.....	24
12. Force Majeure.....	25
12.01 Excuse from Performance.....	25

12.02 Force Majeure Event.....	25
12.03 Notice.....	25
13. Preservation of Water Rights.....	26
14. Good Faith and Fair Dealing.....	26
15. MG-N Option to Create a JAWA or a Water Commission; Assignment.....	26
16. Financing Options for the Project.....	27
16.01 Cooperation with Project Financing.....	27
16.02 MG-N Project Financing Options.....	27
17. Disconnection, Removal Relocation of Connection Facilities or Transmissions Mains.....	28
17.01 Termination of Agreement.....	28
17.02 Relocation.....	28
18. Termination; Default.....	28
18.01 Termination by Evanston.....	28
18.02 Termination by Mutual Agreement.....	29
18.03 Termination by MG-N.....	29
18.04 Default; Cure Period; Relief.....	30
19. General Conditions.....	31
19.01 Entire Agreement.....	31
19.02 Prompt Payment.....	31
19.03 Compliance with Laws.....	31
19.04 Regulatory Bodies.....	31
19.05 Illinois Freedom of Information Act.....	32
19.06 Interpretation; Headings.....	32
19.07 Waiver.....	32
19.08 No Individual or Personal Liability.....	32

19.09 No Third Party Beneficiaries.....	33
19.10 Amendments.....	33
19.11 Assignment.....	33
19.12 Notice.....	34
19.13 Severability.....	36
19.14 No Separate Legal Entity; No Joint Venture or Partnership or Agency.....	36
19.15 Independent Sovereign Status.....	36
19.16 Effective Date.....	36
19.17 Authorization.....	36
19.18 Counterparts.....	37
19.19 Exhibits.....	37

Background

The City of Evanston (“Evanston”) is the owner and operator of a water intake, filtration, treatment and pumping plant (the “Water Plant”) located at 555 Lincoln Street, Evanston, Illinois. The Water Plant is on the shore of Lake Michigan and Evanston draws water from Lake Michigan for Evanston’s drinkable water, firefighting and fire protection needs for its community, and for distribution and resale to its customers (“Evanston Water Utility”). The Village of Morton Grove (“Morton Grove”) and the Village of Niles (“Niles”) (collectively, “MG-N”) want to purchase drinkable Lake Michigan water from the Evanston Water Utility for the uses specifically allowed by this Agreement, including but not limited to, distribution and sale to customers of the Morton Grove and Niles water systems, respectively.

1. Parties

1.01 Parties

The parties to this Water Supply Agreement (“Agreement”) are Evanston, Morton Grove, and Niles, who are at times referred to in this Agreement as a “Party” or collectively as the “Parties”.

2. Initial Term of Agreement; Extended Term; Service Year; Fiscal Year

2.01. Initial Term

Because of the significant financial commitment and debt obligations that MG-N is making and incurring to expand its respective water systems to connect to the Evanston Water Utility under the terms of this Agreement, the Initial Term (“Initial Term”) shall commence on the Effective Date of this Agreement (as defined in Section 19.16 (Effective Date)) and shall end at 11:59 p.m. on December 31, thirty nine (39) years after the Effective Date of this Agreement.

2.02 Extended Term

The Initial Term of this Agreement shall be extended for up to two (2) consecutive terms (generally referred to as an “Extended Term” or specifically referred to as the “First Extended Term” and the “Second Extended Term”) in the sole discretion of MG-N, upon written notice by MG-N delivered to Evanston in writing not less than five (5) years prior to the termination date of the then-existing Term. The First Extended Term and the Second Extended Term will each be ten (10) years in length, unless MG-N delivers notice of its intention to not extend the Initial

Term or any Extended Term of this Agreement. If MG-N elects to extend this Agreement for the Second Extended Term, then this Agreement shall renew automatically at the end of the Second Extended Term at ten (10) year intervals thereafter, unless either Party conveys written notice of its intention to terminate this Agreement not less than five (5) years prior to the termination date of the then-existing Term.

2.03 Service Year; Fiscal Year

Each Service Year (“Service Year”) under this Agreement will be the time period of January 1st to December 31st. Each Fiscal Year (“Fiscal Year”) under this Agreement will be the time period of January 1st to December 31st.

3. Water Defined

3.01 Water Defined

In this Agreement, Water means Lake Michigan water that is safe for human consumption (i.e. drinkable water) and that meets or exceeds the requirements of any current or successor federal, state of Illinois, or local agency or governmental authority having jurisdiction over the operation of public water supplies. Evanston shall supply water that is like kind and quality with that supplied by Evanston to its other customers. Whether “water” is capitalized in this Agreement or not, it shall have the meaning set forth in this Section.

4. Commencement of Obligation to Deliver and Receive Water

4.01 MG-N Notice to Evanston to Proceed with Preliminary Project Phase Work

Not more than thirty (30) calendar days after MG-N awards the corridor and route study relative to identifying the optimum MG-N water transmission route from the Point of Delivery (defined in Section 6.01 (Water System Definitions and Related Terms) between the Evanston Connection Facilities and the MG-N Water System, MG-N shall deliver to Evanston in writing a notice to proceed on preliminary design of the Evanston Connection Facilities.

4.02 MG-N Notice to Evanston to Proceed with Final Engineering Design

Not more than thirty (30) calendar days after MG-N awards the final engineering design work for the MG-N Water System, MG-N shall deliver to Evanston in writing a notice to proceed on final engineering design of the Evanston Connection Facilities.

4.03 MG-N Notice to Evanston to Proceed with Construction

Not more than thirty (30) calendar days after MG-N awards the first construction contract relative to the construction of the MG-N Water System, MG-N shall deliver to Evanston in writing a notice to proceed on construction of the Evanston Connection Facilities.

4.04 Delivery Date

Evanston shall deliver water to MG-N, or to Morton Grove or to Niles on a date mutually agreed by the Parties, but no later than one hundred and twenty (120) calendar days of receiving written notice from MG-N (or Morton Grove or Niles) that MG-N (or Morton Grove or Niles) is ready to receive water.

4.05 MG-N Payment for Water; Water During Construction

Except for water usage during construction and testing of the Project improvements, MG-N shall not be responsible to pay for any water charges under this Agreement until the improvements and construction at the Point of Delivery, are completed, and until Evanston delivers water to MG-N or Morton Grove or Niles for resale to its customers. During the construction and testing of the improvements at the Point of Delivery, Evanston will charge MG-N for its water usage at the water rates and charges identified in Section 4.07 (Water Rate Payable to Evanston in Service Years 2018, 2019 and 2020) of this Agreement.

4.06 Phased Water Delivery to Morton Grove and Niles

Due to separate, existing water supply contract obligations of Morton Grove and Niles with the City of Chicago, Morton Grove may elect, by sending written notice pursuant to Section 4.04 (Delivery Date) to receive water under this Agreement before Niles receives water from Evanston. If Morton Grove elects to receive water under this Agreement before Niles, all water charges incurred by Morton Grove shall be due and owing to Evanston solely from Morton Grove, not Niles. If Niles elects to receive water from Evanston before Morton Grove, then the notice and payment obligations set forth in the preceding sentences applicable to Morton Grove shall apply to Niles. From and after the date that both Morton Grove and Niles are receiving water under this Agreement, the water charges shall be the responsibility of MG-N.

4.07 Water Rate Payable to Evanston in Service Years 2018, 2019, and 2020

The Parties agree that the identification of the total equivalent water rate payable to Evanston per 1,000 gallons supplied to MG-N in Service Years 2018, 2019, and 2020 will be as follows:

Service Year	MG-N Not to Exceed Rate	Morton Grove Only Not to Exceed Rate	Niles Only Not to Exceed Rate
2018	\$ 0.78	\$ 0.84	\$ 0.85
2019	\$ 0.81	\$ 0.86	\$ 0.87
2020	\$ 0.94	\$ 1.01	\$ 1.01

The above rates may be adjusted down based on final rate calculations as provided for in Section 5 (Rate). The rate charged to MG-N for water sold for construction and testing shall also use the above table. No True Up will be calculated for water sold for construction and testing purposes. Except for water sold to MG-N for construction and testing, if the actual rate incurred at any time during Service Years 2018, 2019, or 2020 is different than the scheduled rate set forth in this Section, a “True-Up” calculation, in accordance with Section 5.08 (True-Up) will be completed no later than thirty (30) days after the Evanston Comprehensive Annual Financial Report (“CAFR”) applicable to that Service Year is completed. The Parties attached as **Group Exhibit “A”** to this Agreement an illustrative example of the “True-Up” process, including an identification of the formula and its components that will be used in performing the “True-Up” calculation. Any credit due to MG-N or Morton Grove or Niles will be allocated to that Party according to the process outlined in Section 5.08 (True-Up) of this Agreement. All water charges otherwise required to be paid under Section 4.06 (Phased Water Delivery to Morton Grove and Niles) will be payable by MG-N, or Niles, or Morton Grove, as the case may be.

4.08 Water Rate Payable to Evanston in Service Years 2021 and Thereafter

The Parties agree that the identification of the total equivalent water rate payable to Evanston per 1,000 gallons supplied to MG-N in Service Years 2021 and thereafter will be calculated in accordance with Section 5 (Rate) below.

4.09 Rate Equity Parameters

Unless otherwise agreed to by the Parties, the water rate charged to any new wholesale water customers who have a total IDNR water allocation **less than one hundred and fifty percent (150%)** of the total IDNR water allocation of MG-N shall be calculated based on terms that are

not more favorable than the water rate formula set forth in Section 5.03 (Return on Rate Base), Section 5.04 (Depreciation Charge), and Section 5.05 (Quantity Charge).

5. Rate

5.01 Ratemaking Principles and Policies

The Parties agree that the definitions, policies and principles described in the AWWA M-1, the “Principles of Water Rates, Fees and Charges published by the American Water Works Association, Sixth Edition”, as amended, may be used as a reference guide for the Parties under this Agreement. However, in the event of a conflict or inconsistency between any provision or term of the AWWA M-1 and this Agreement, the provision or term of this Agreement shall govern.

5.02 Billing and Payments

Evanston shall submit all water bills to MG-N on a monthly basis. MG-N shall pay all amounts due to Evanston pursuant to this Agreement in accordance with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq. (“LGPPA”). The water bills shall be itemized with sufficient detail to inform MG-N that the charges and fees set forth in each monthly bill conform to the agreed-upon rates and cost components set forth in this Agreement. If payment is not made within the required thirty (30) calendar day period, Evanston will charge MG-N a penalty for late payment of water bills in accordance with the interest penalty provision contained in Section 4 of the LGPPA (50 ILCS 505/4). No other penalty can be assessed against MG-N for late payments of water bills, except for Evanston’s optional right to terminate this Agreement for nonpayment as provided for in Section 18.01 (Termination by Evanston). Evanston’s termination option is subject to the right of MG-N to resolve any late payment within the applicable cure period. The billing structure will conform to the rates and components identified and defined below:

- Demand Charge: A fixed monthly payment consisting of (i) one-twelfth (1/12th) of the Annual Return on the Fair Value Rate Base as determined in accordance with Section 5.03 (Return on Rate Base) and (ii) a Depreciation Charge determined in accordance with Section 5.04 (Depreciation Charge).

- **Quantity Charge:** A payment based on the quantity of water delivered through the metering point(s) to MG-N's water system multiplied by the Quantity Rate determined in accordance with the provisions of Section 5.05 (Quantity Charge).

5.03 Return on Rate Base

The "Rate Base" consists of those components of Evanston's Water Utility relating to assets in the Source of Supply, Pumping Plant, Treatment Plant, Water Plant and Transmission locations (the "Evanston Water Utility Components"). These Water Utility Components in service as of December 31, 2015, are identified in the "Evanston Water Utility Components Sheet" which is part of attached **Group Exhibit "B"** (Example of Rate Calculation for MG-N Water Rate for Service Year 2017 Based on Evanston Audited Information for Fiscal Year 2015) to this Agreement. The Parties to this Agreement understand and acknowledge that these Evanston Water Utility Components will adjust annually as of the end of each Fiscal Year to reflect additions to, and retirements of, Evanston Water Utility Components. The Parties to this Agreement understand and acknowledge that these Evanston Water Utility Components may adjust between the Effective Date of this Agreement and the date of delivery of water. Evanston shall be included as a component of the Evanston Water Utility for purposes of asset allocation and rate making related to asset allocation only for MG-N.

- **Original Cost Rate Base:** The components of the Rate Base valued at the original cost to Evanston of the acquisition, engineering, construction and installation of the assets of the Water Utility as identified in the most recently available Evanston Comprehensive Annual Financial Report ("Evanston CAFR"), minus accrued depreciation as of the end of the Fiscal Year used as a basis for determining Water Charges under this Agreement.

- **Reproduction Cost New Rate Base:** The components of Rate Base valued initially in the most recently available Evanston CAFR prior to the commencement of delivery of water under this Agreement. Reproduction Cost New Rate Base will be recalculated as of the end of each succeeding fifth Fiscal Year, starting in 2020, reflecting components then properly allocated to the Rate Base pursuant to this Agreement. The recalculation of the Reproduction Cost New Rate Base will utilize the most current valuation of the Evanston Water Utility, as identified by a reputable qualified consulting engineering firm experienced in water works valuation hired by Evanston. Accrued depreciation identified by the engineering firm's valuation study, plus

accrued depreciation which occurred from the date of the valuation to the end of the applicable Fiscal Year of the rate determination, will be deducted from the reproduction cost new of the plant in service at the end of the Fiscal Year.

- **Fair Value Rate Base:** This will be calculated initially in the most recently available Evanston CAFR prior to the commencement of delivery of water under this Agreement. The Fair Value Rate Base will be recalculated as of the end of each succeeding fifth Fiscal Year, starting in 2020, and will consist of the sum of **fifty percent (50%) of the original Cost Rate plus fifty percent (50%)** of the Reproduction Cost Rate Base as of the calculation date. The Fair Value Rate Base will be subject to annual adjustment as of the end of the Fiscal Year between Fair Value Rate Base recalculations to reflect additions to and retirements of Water Utility assets contained in the Rate Base during the Fiscal Year. The next verification of the elements of the Fair Value Rate Base will be performed by Burns and McDonnell in 2020 (or its successor entity selected by Evanston, as the case may be), and then once every five (5) calendar years thereafter. Additions will be valued at their original cost until recalculation of the Fair Value Rate Base, at which time such additions will be valued in the same manner as the Fair Value Rate Base. Retirements will be valued at their fair value as reflected in the last previous Fair Value Rate Base computation.

- **Annual Return on Rate Base:** The Annual Return on Rate Base will be multiplied **nine and one half percent (9.5%)** on the MG-N share of the Fair Value Rate Base identified in the most recently available Evanston CAFR, and otherwise conform to the cost of service principles identified in Section 5.01 (General Principles and Policies). The MG-N share of the Fair Value Rate Base will be determined by allocating to MG-N a portion of such Fair Value Rate Base, as adjusted and recalculated from time to time as provided by this Agreement. This adjustment will be based upon the ratio of each Evanston Water Utility customer allocation, which includes the City of Evanston's allocation, compared to the total allocation of all Evanston Water Utility customers established by order of the Illinois Department of Natural Resources ("IDNR") during the Fiscal Year.

5.04 Depreciation Charge

These charges will be calculated as of the end of each Fiscal Year following commencement of the delivery of water to MG-N and will consist of one-twelfth (1/12th) of an annual depreciation charge, calculated by applying the depreciation rates utilized by Evanston identified in **Group Exhibit “C” (Depreciation Rates)** to this Agreement, to the original cost of the depreciable Water Utility asset defined in Section 5.03 (Return on Rate Base) in service contained in the Fair Value Rate Base allocated to MG-N. As of the date when any depreciable Water Utility asset will be placed in service or any depreciable Water Utility asset in the Fair Value Rate Base is retired from service, charges of depreciation to MG-N will be correspondingly adjusted as of the end of the Fiscal Year in which the addition or retirement took place.

5.05 Quantity Charge

MG-N will pay Evanston a Quantity Charge based upon a Quantity Rate equal to MG-N’s share of the “Operating Costs” per 1,000 gallons of water delivered to the Point of Delivery. The “Operating Costs” to be included in determining the Quantity Rate are the costs assigned to the functions of Administration, Pumping, Filtration, and Distribution, identified in the Evanston CAFR of the Evanston Water Fund described in **Group Exhibit “B”** attached to this Agreement. The Operating Costs applicable to water deliveries during the Service Year will be determined based on the results of operation of the Evanston Water Utility, as audited by independent certified public accountants selected by Evanston, as reviewed by MG-N. The total Quantity Charge will be adjusted at the end of each Service Year to reflect the actual, total Quantity Charge owed to Evanston based on the Fiscal Year Operating Costs finally determined by the latest annual audit performed by the current Evanston independent certified public accountant as defined in Section 5.08 (True Up). In determining the Quantity Rate, Operating Costs will be allocated to MG-N based upon the ratio of its Average Day Demand identified in Section 7 (Water Supply; Allocation; Distribution) of this Agreement supplied by the Evanston Water Utility, to the aggregate of the Average Day Demand of all Evanston Water Utility, MG-N and other customers or users of the Evanston Water Utility system during the Fiscal Year. The Quantity Rate will not include any portion of any costs included in computing the Fair Value Rate Base, Annual Return on Rate Base or Depreciation Charge.

5.06 Demand Charge and Quantity Charge Smoothing

- **Demand Charge Cap.** Upon completion of the Clearwell Project immediately south of the Evanston Water Utility, and upon completion of the Intake Replacement Project, but not later than the end of year 2022, any increase and decrease in any Evanston Water Utility Asset shall not increase the total rate charged to MG-N by more than **four percent (4%)** per year until the entire cost of the Evanston Water Utility Asset has been recovered by either Party compared to the cost change that would have occurred if the Evanston Water Utility Asset change was not smoothed. No cap or smoothing will be calculated due to the change in total customers utilizing the Evanston Water Utility. Any increased capital costs associated exclusively with the acquisition of new customers by Evanston will not be included in the rate calculation for MG-N. MG-N's rate shall not be increased as a result of the acquisition of new Evanston customers. Evanston may accelerate the replacement of assets assigned to MG-N, as needed, to add a new Evanston customer or may add new assets beneficial to MG-N, provided that the new rate for MG-N is equal to or less than the then-current MG-N rate.

- **Quantity Charge Cap.** The Parties agree to cap the annual increase of the labor costs portion of the Operating Costs that are used to determine the Quantity Rate based on the actual, annual aggregate cost increase (if any), **if Evanston labor costs increase more than 4% in any given year.** When Evanston labor costs increase by more than 4% any given year, the labor costs portion of the Operating Costs shall be capped based on the average of the annual percentage increases of labor costs for public works employees of Evanston, Morton Grove and Niles (e.g., Evanston increase (4.4%) plus Morton Grove increase (4.0%) plus Niles increase (4.14%) divided by three equals a 4.167% capped increase).

5.07 MG-N Audit Rights

Not more than once per year, MG-N shall have the right to audit all parts of the water charges, and the components thereof, as well as any other fees, charges, or assessments provided for in this Agreement. MG-N's right to audit includes, but is not limited to, the Demand Charge, the Quantity Rate, the Quantity Charge, the Rate Base and the Depreciation Charge, as well as any other components of the water charges. Evanston shall reasonably cooperate with requests by MG-N and its auditors regarding reasonable requests for documents and information needed to

complete the audit related to the rights and obligations of the Parties under this Agreement. Each Party is responsible for its respective costs of the audit.

5.08 True-Up

At the end of each Service Year and subject to Section 5.07 (MG-N Audit Rights), there will be a final Quantity Charge or credit issued by Evanston to MG-N to adjust the total Quantity Rate calculated by utilizing the latest available Fiscal Year audited Operating Costs. Any adjustments to the water charges, and the components thereof, as well as any other fees, charges, or assessments provided for in this Agreement, that require additional payment to Evanston by MG-N or any credit to MG-N by Evanston shall be calculated as part of this annual True-Up process. The Parties have attached as **Group Exhibit “A”** to this Agreement, illustrative examples of the “True-Up” process. After the True-Up process and any dispute resolution process are completed, this final charge or credit shall be paid by the responsible Party within thirty (30) calendar days of the issuance of the invoice or credit by separate payment or as otherwise mutually agreed to in writing by the Parties.

6. Water System Definitions

6.01 Water System Definitions and Related Terms

In this Agreement, the following definitions apply:

- **Evanston Clearwell Project:** The replacement of the 5.0 MG treated water storage facility located on the south side of Lincoln Street opposite the water treatment plant (See, **Group Exhibit “B”**, #203 of the Treatment Plant asset list).
- **Evanston Connection Facility:** Evanston control valve, delivery meter, piping and other components necessary to supply water to MG-N that will be housed in an underground vault near the intersection of McCormick Boulevard and Emerson Street and owned by Evanston and included as a transmission component in the rate base.
- **Evanston Facilities Adjustments:** Modifications to the Evanston distribution system near the intersection of McCormick Boulevard and Emerson Street necessary to construct the Evanston Connection Facility and continue delivery of water to the Village of Skokie.

- Evanston Intake Replacement Project: The replacement of Evanston’s 36” and 42” diameter intake(s) and all appurtenances thereto (See **Group Exhibit “B”**, #9 and #13 in the Source of Supply asset list).
- Evanston Water Utility: The assets in the Source of Supply, Pumping Plant, Treatment Plant, Water Plant and Transmission locations in service as of December 31, 2015, and identified in **Group Exhibit “B”** to this Agreement, which components may adjust annually as of the end of each Fiscal Year to reflect additions to, and retirements of, Water Utility components.
- Morton Grove Water System: The infrastructure that makes up the Morton Grove Water System, including but not limited to, the water treatment, pumping, storage, distribution and delivery system, pump stations, transmission and distribution mains, valves, meters, and connection facilities.
- Niles Water System: The infrastructure that makes up the Niles Water System, including but not limited to, the water treatment, pumping, storage, distribution and delivery system, pump stations, transmission and distribution mains, valves, meters, and connection facilities.
- MG-N Water System: The infrastructure that makes up a shared waterworks system that extends from the Point of Delivery to the Morton Grove Water System and the Niles Water System, including the MG-N connection facilities.
- Point of Delivery: The point of connection of the MG-N Water System and the Evanston Connection Facility adjacent to the underground vault near the intersection of McCormick Boulevard and Emerson Street.
- Project: The construction of the Evanston Connection Facilities, the Evanston Facilities Adjustments, the MG-N Water System, and all related and necessary improvements made to the Evanston Water Utility, the Morton Grove Water System, and the Niles Water System, as provided for in this Agreement.
- To the extent a word or term is used in this Agreement that is not defined herein, the first source of interpretation of the word or term shall be its definition in the AWWA M-1

Manual or other AWWA publication pertaining to water transmission and distribution facilities (if defined therein), then any applicable federal or state laws (e.g., Clean Water Act) and then the common definition found in the most recent edition of any mutually agreed upon nationally published dictionary (e.g., Webster's Dictionary or Merriman's Dictionary).

7. Water Supply; Allocation; Distribution

7.01 Water Supply, Sale and Purchase; Allocation

Evanston will sell and deliver to MG-N the full water requirements of the MG-N Water System, except as otherwise set forth in this Agreement. MG-N will purchase all of the water it receives from Evanston in accordance with this Agreement.

Morton Grove, Niles and MG-N, and their successor entities, are each responsible to obtain and maintain a water allocation from the Illinois Department of Natural Resources ("IDNR"). In this Agreement, Average Day Demand ("ADD") means the IDNR water allocations established in November 2011 for Morton Grove and Niles. In this Agreement, Maximum Flow Rate ("MFR") means the rate of flow that Evanston is required to provide at the Point of Delivery.

The Maximum Flow Rate to Morton Grove and Niles is based on the Year 2030 IDNR water allocation assigned to Morton Grove and Niles multiplied by a 1.65 peaking factor.

- Illustrative formula for calculating the MFR for Morton Grove and Niles: Morton Grove Year 2030 IDNR water allocation = 3.880 x 1.65 = 6.402 Million Gallons Per Day ("MGD") MFR.
- Niles Year 2030 IDNR water allocation = 5.146 x 1.65 = 8.491 MGD MFR.
- Total Maximum Flow Rate at Point of Delivery by Evanston to MG-N throughout the Term of this Agreement shall be 14.893 MGD MFR.

7.02 Emergency Connections

This Agreement will not prohibit Morton Grove, Niles, MG-N or Evanston from entering into any emergency water service agreement with another municipality, water agency, or other source. Nothing in this Section will prevent Evanston's right to collect all water charges provided for in this Agreement.

7.03 Coefficient of Friction

MG-N shall maintain its transmission mains to provide a coefficient of friction (“C-factor”) to be determined after the completion of the final design engineering for the MG-N Water System, which C-factor will be incorporated into this Agreement by a jointly executed side-letter issued prior to the delivery date of water. Unless otherwise agreed to by the Parties, the C-factor rating of the MG-N Water System between the Point of Delivery and the MG-N booster station or MG-N (referred to as the “Evanston Pressurized Zone” of the MG-N Water System) receiving reservoir shall not be less than a C-factor rating of 90. If the C-factor falls below 90 within the Evanston Pressurized Zone of the MG-N Water System, Evanston is not required to meet the Maximum Flow Rate as indicated in Section 7.01 (Water Supply Sale and Purchase; Allocation). The Maximum Flow Rate shall decrease directly on a one to one basis with the decrease in C-factor rating (e.g., each one (1) point loss or gain of C-factor equals a 1.11% change in the maximum flow rate: 80 C-factor = 88.90% maximum flow rate). The C-factor is identified in Cameron Hydraulic Data, or equivalent successor statement of measure, and typically used for the design of concrete pipes to reflect the roughness of the pipe after many years of operation. MG-N shall test its transmission mains beginning in Year 2023, and every fifth year thereafter, to determine the C-factor rating and promptly provide those results to Evanston to ensure adherence to this requirement. If the transmission main(s) of MG-N fail to meet the required C-factor rating as set forth in this Section, then another C-factor test shall be conducted during the subsequent Service Year.

7.04 Pressures

Evanston will supply water to MG-N by direct pressure from the Evanston Water Plant without intermediate pumping from reservoirs. Evanston shall control operating pressures within its water distribution system and adjust such pressures according to the water demands within its water distribution system to ensure that the pressure at the Point of Delivery is at all times between 40 and 50 pounds per square inch (“PSI”).

7.05 Supply and Service Agreement Only; Title to Water

Nothing in this Agreement shall be construed as granting any proprietary or other interest in the Evanston Water Utility to MG-N. Nothing in this Agreement shall be construed as granting any proprietary or other interest in the MG-N Water System to Evanston. Evanston and MG-N agree

that this Agreement is solely an agreement for the sale and purchase of a supply of Water and related services. Title to Water passes at the Point of Delivery from Evanston to MG-N. Evanston agrees to deliver an adequate water supply on a regular basis to maintain MG-N water requirements as provided for in this Agreement. Evanston agrees to not utilize off-peak pumping to meet the MG-N water requirements, unless requested by MG-N.

7.06 Temporary Restriction

Evanston has the right to restrict, on a temporary basis, the supply of water to MG-N in order to ensure an adequate water supply to all customers of the Evanston Water Utility for basic water services, and firefighting purposes, provided that the duration of the temporary water restriction is limited to the minimum time period necessary to resolve the condition or unforeseen emergency that caused the temporary restriction. Evanston shall take immediate, commercially reasonable actions to fix, repair, employ a temporary solution until a permanent solution is available or resolve the condition or unforeseen emergency that caused the temporary water restriction. If there is an insufficient water supply available to serve MG-N and all other customers, MG-N will receive its pro-rata share of the amount of water that is stored and available at the Evanston Water Utility based on the IDNR water allocation(s) as defined and identified in **Group Exhibit “B”** to this Agreement. If Evanston temporarily restricts the supply of water to MG-N under this Section, it shall deliver immediate written notice to MG-N that explains the reason(s) for the restriction, identifies the estimated reduction in the volume of water to be supplied to MG-N and the anticipated duration of the reduction in water supply service. During the first twenty-four (24) hour period of the temporary water restriction, Evanston shall provide MG-N with status reports in subsequent eight (8) hour intervals relative to the progress in resolving the condition or unforeseen emergency that caused the temporary water restriction. If the temporary water restriction extends or is anticipated to extend beyond a twenty-four (24) hour period, the Parties agree to meet to discuss commercially reasonable options and actions to fix, repair, employ a temporary solution until a permanent solution is available or resolve the condition or unforeseen emergency that caused the temporary water restriction.

7.07 Maintenance

Scheduled maintenance and repair to the Evanston Water Utility or the MG-N Water System that may impact water supply and service to MG-N cannot be done except upon prior notice to the other Parties of not less than five (5) days. Scheduled maintenance to water system infrastructure during peak demand periods shall be avoided to the extent possible. Notice of emergency maintenance or repair will be provided by the Party performing the maintenance and repair to the other Party as soon as practicable under the circumstances. Each Party agrees to maintain their respective water systems in accordance with the manufacturers' warranty and operational specifications.

7.08 MG-N Option to Purchase Water from Other Suppliers

Notwithstanding any other provision in this Agreement, MG-N may purchase water from other water suppliers under the following two (2) situations. First, MG-N may purchase water from other water suppliers to the extent Evanston fails to deliver to MG-N the full water requirements up to the total amount of the IDNR water allocations as required by this Agreement. In the event of such failure by Evanston, but excluding temporary restriction(s) under Section 7.06 or maintenance situations under Section 7.07 above, Evanston shall provide written notice to MG-N of the service failure, which shall include a description of the operational or technical reasons for the failure to deliver MG-N's full water requirements. Second, MG-N may purchase water from the City of Chicago under non-emergency conditions in order to maintain an active, operational water supply connection.

7.09 Surges and Back-Flows

No surges or back-flows into any Party's water system are allowable under this Agreement.

7.10 MG-N Responsibility for Damage to Evanston's Water Utility

MG-N is responsible for damage to the Evanston Water Utility or of any of its customers due to surges and back-flows caused by malfunction or misuse of MG-N's Water System, including, without limitation, valve operation or booster station operation, excluding damage where Evanston is responsible for the operation of the MG-N Water System, including, without limitation, its valve operation or booster station. MG-N shall install a flow control system and a pressure recording system consisting of remotely operated flow control valve(s) at the MG-N

receiving reservoir(s). MG-N shall provide the necessary equipment to transmit pressures, rates of flow and receiving reservoir(s) elevations prior to delivery of water by Evanston. All devices necessary for the control and transmission of pressures, levels and rates of flow of water furnished to MG-N that are part of the MG-N Water System shall be provided and maintained by MG-N, and comply with the provisions of Section 10 (Meters and Measurements; Meter Testing). Water pressure and rate of flow readings shall be transmitted to the Evanston Pumping Station. All flow control valves within the Evanston Water Utility shall be controlled by Evanston in accordance with the provisions of this Agreement.

7.11 Evanston's Responsibility for Damage to MG-N's Water System

Evanston is responsible for damage to the MG-N Water System or of the water systems any of its customers due to surges and back-flows caused by malfunction or misuse of Evanston's Water Utility, including, without limitation, valve operation, booster station operation or pump station operation.

7.12 Operating Meetings and Plan

Evanston shall provide to MG-N, at no cost to MG-N, with a copy of Evanston's most recently prepared annual operating plan and capital plan related to the Evanston Water Utility ("Operating Plan") no less than thirty (30) calendar days before each operations meeting provided for in this Section. Evanston shall convene an operations meeting with MG-N at least two (2) times per year for every year this Agreement is in effect. Meetings may be in person or may be convened through mutually acceptable electronic means. Evanston shall provide MG-N with copies of all required State or Federal filings that Evanston is required to file regarding its operation of its Water Utility and Water System. Evanston will provide MG-N with its then applicable Operating Plan related to the Evanston Water System prior to the date of first delivery of Water to MG-N.

7.13 Continuity of Operations Plan

Evanston agrees to provide a copy of the most recent WTP/Evanston Water Utility System evaluation report, along with a status report on the actions taken on the recommendations made in that report by March 1, 2017.

Evanston agrees to have a plant evaluation performed by a consultant in Year 2018 and every ten (10) years thereafter. This evaluation shall review each system and component of the Evanston Water Treatment Plant (“WTP”), and the portions of the Evanston Water Utility System that serves MG-N, to determine their useful life and dependability in order to meet the needs of the users of the WTP, and shall be summarized in a report. This report will be made available to Evanston’s wholesale water customers and MG-N. The Parties agree to meet and confer regarding the scheduling and implementation of any recommendations provided in the report during meetings convened under Section 7.12 (Operating Meetings and Plan) and Evanston agrees to update its capital improvement plan annually to address the report recommendations and share this information with MG-N.

Evanston has a vulnerability assessment report for the WTP and the Evanston Water Utility System and agrees to update the report on an as needed basis, and to make it available for review by MG-N. This report is currently an exempt public record under the Illinois Freedom of Information Act.

8. Existing and Future Customers of Evanston; MG-N Other Users

8.01 Existing and Other Water Customers Served by Evanston

Evanston agrees that it will continue to supply water to its existing customers without impairing MG-N’s right to Water service from Evanston under this Agreement, or impairing Evanston’s ability to deliver Water to MG-N under this Agreement. Nothing in this Agreement limits Evanston executing new, modified or amended agreements with any other current or future wholesale water customer served by Evanston. Evanston shall give MG-N at least six (6) calendar months prior written notice before Evanston enters into a contract to serve a new wholesale water customer or enters into an addendum to amend any water supply agreements with existing wholesale water customers. Evanston shall provide MG-N with copies of the contract and/or the addendum and the cost / benefit analysis report provided to the Evanston City Council, prepared in regard to the addition of a new wholesale water customer or customer whose IDNR water allocation has been changed, and MG-N may provide Evanston with written comments regarding this subject. MG-N agrees Evanston has the right to serve new wholesale water customer(s) subject to its obligations to MG-N under this Agreement.

In the event of the loss of the Northwest Water Commission (“NWC”) between the years of 2034-2047, the change in the total rate increase shall be calculated, and MG-N shall be assessed, **not more than fifty percent (50%)** of the rate increase incurred by the loss of NWC. Assuming the loss of NWC between the years of 2034-2047, total MG-N rate increases shall be **capped at eight percent (8%) per annum**. Evanston shall take all commercially reasonable actions to reduce all assets in use at the WTP to reflect the new plant demand without NWC. After 2048, MG-N rates shall be recalculated according to this Agreement.

8.02 Right of MG-N to Supply Water to Other Users

MG-N has the right to resell Water it owns under this Agreement to existing and future water users of MG-N’s Water System, provided that MG-N does not exceed its ADD under its then current IDNR water allocation, as determined by the IDNR or its successor regulatory agency. MG-N shall give Evanston at least six (6) calendar months prior written notice before MG-N enters into a contract to service any new water customer(s), and MG-N shall provide Evanston with copies of the contract and the cost / benefit analysis report prepared in regard to the addition of a new wholesale water customer. Evanston may provide MG-N with written comments regarding this subject.

8.03 Liability for Unreasonable Delay by MG-N

If MG-N fails or refuses to complete the MG-N Water System as required by this Agreement, then MG-N shall pay to Evanston all reasonable, actual, documented costs incurred by Evanston as listed in Section 18.03 (G, H, or I) (Termination by MG-N), and in Sections 4.01 (MG-N Notice to Evanston to Proceed With Preliminary Project Phase Work) through Section 4.07 (Commencement of Obligation to Deliver and Receive Water). If MG-N fails to complete the MG-N Water System due to a Force Majeure Event(s) or any other delays that prevent the completion of MG-N’s Project Improvements until after the delivery of water (Section 4.04), MG-N shall not be obligated to pay to Evanston any costs or penalty, provided that MG-N has taken and continues to take all commercially reasonable actions to complete the MG-N Project Improvements as soon as reasonably possible after the expected delivery date of water.

8.04 Liability for Unreasonable Delay by Evanston

If Evanston fails or refuses to complete the components at the Point of Delivery in a commercially reasonable time frame as outlined in Section 4.01 (MG-N Notice to Evanston to Proceed with Preliminary Project Phase Work) through Section 4.07 (Commencement of Obligation to Deliver and Receive Water) and MG-N are unable to receive water from Evanston by the anticipated initial delivery date of water, or such other alternate water delivery date, as provided for in Section 4.01 (MG-N Notice to Evanston to Proceed with Preliminary Project Phase Work) through Section 4.07 (Commencement of Obligation to Deliver and Receive Water) above, due to such failure or refusal by Evanston, then Evanston will pay to MG-N the difference between the water rate that would have been charged by Evanston under this Agreement, and the then-applicable Chicago water rate (or the water rate charged by an alternate water supplier).

9. Facility Completion Schedule

9.01 Specifications and Sequence of Construction for the Project Improvements

After the approval of this Agreement, and subject to the notice to proceed provisions set forth in this Agreement, the Parties agree to work cooperatively together and to share relevant information to develop their respective specifications for their own Project improvements and to prepare construction schedules and operating procedures for the Project improvements, including the joint review of preliminary design plans and final design plans for review comment purposes and delivery of periodic status reports by each Party relative to the Evanston Connection Facilities and the MG-N Water System.

9.02 IEPA and Other Approvals for the Project

The Parties agree to apply for, obtain and maintain all permits, licenses and other approvals required by the federal, state, county and local governments and governmental regulatory agencies with jurisdiction over the Project.

9.03 Easements, Licenses, Permits, Fees and Approvals

A. Evanston. Evanston shall take all necessary action to provide and grant to MG-N easements, permits and licenses for the construction of the MG-N Water System on Evanston-owned or controlled real property or easement premises and within Evanston's corporate boundaries.

Evanston agrees to waive all required permit fees, license fees and plan review fees that would otherwise be paid by MG-N to Evanston related to this Project. However, Evanston will not be responsible for any costs not on Evanston-owned or controlled real property or Evanston held easements but within Evanston's corporate boundaries. Construction of the MG-N Water System within Evanston must be completed in accordance with all Evanston City Code requirements governing construction and restoration applicable in Evanston.

B. MG-N. MG-N shall take all necessary action to acquire easements, permits and licenses for the construction of the MG-N Water System Facilities within Evanston's corporate boundaries and outside of Evanston's corporate boundaries. MG-N agrees to pay all required permit fees, license fees and plan review fees to all governmental regulatory agencies with jurisdiction over the Project, except for Evanston. Construction of the MG-N Water System shall conform to all applicable laws, ordinances, codes, regulations and specifications.

10. Meters and Measurements; Meter Testing

10.01 Unit of Measurement

The unit of measurement for water delivered pursuant to this Agreement will be gallons of water, U.S. Standard Liquid measure, and all meters installed pursuant to this Agreement must, unless the Parties otherwise agree, be so calibrated, and must read at one thousand (1,000) gallons of water.

10.02 Supervisory Control and Data Acquisition ("SCADA")

Evanston shall in real time provide to MG-N the following SCADA information, except during SCADA failure:

- a) total plant flow data;
- b) flow through MG-N master meter data;
- c) pressure at MG-N delivery meter facility data; and
- d) Evanston control valve position.

MG-N shall in real time provide to Evanston incoming and outgoing flow data from each receiving reservoir as well as the water level in each receiving reservoir, except during SCADA failure. At all times, but with prior notice to MG-N unless there is an emergency situation,

Evanston will operate and control the control valves at the booster station / receiving reservoir(s) in Morton Grove or Niles, or in any other jurisdiction where such MG-N facilities are located, through the use of the SCADA system, provided Evanston has approved the design and construction of the pressure control devices, control valves and related SCADA components that are designed and constructed to reasonable industry standards (e.g., a hydraulic transient study). In regard to on-site visits and inspections of each Party's respective water system facilities, the requesting Party shall request any on-site visits and inspections in advance by written notice to the receiving Party and shall comply with all security protocols and be accompanied by the receiving Party's staff during the on-site visit or inspection, and the receiving Party shall cooperate in scheduling such on-site visits and inspections. Evanston and MG-N agree to promptly repair any SCADA failures.

10.03 Delivery Meters

Water sold and delivered to MG-N pursuant to this Agreement must be measured through a meter or meters furnished, installed, maintained, replaced and read by Evanston (the "Delivery Meters"). Except as provided in this Agreement, all billing for Water sold and supplied pursuant to this Agreement must be based upon Evanston's readings of the Delivery Meters, subject to MG-N's right to audit Evanston's readings under Section 5.07 (MG-N Audit Rights) above. All Delivery Meters shall be in good working order, shall at all times meet or exceed the standards of the AWWA, or its successor entity, and shall be available for inspection, testing, and checking by MG-N upon reasonable request to Evanston. Evanston shall at its cost maintain, inspect, test, calibrate and adjust all Delivery Meters not more than two (2) times per year. Representatives from MG-N shall have the right to witness all such maintenance, inspections, tests, calibrations and adjustments. The cost of testing the Delivery Meters payable by MG-N shall be Two Hundred Dollars (\$200.00) per month. Copies of the results of all such maintenance, inspections, tests, calibrations and adjustments must be furnished by Evanston to MG-N upon request.

10.04 Check Meters

MG-N may, at their option and expense, install and operate a check meter(s) (a "Check Meter") to check each Delivery Meter, but the measurement of water for billing pursuant to this Agreement shall, except as hereinafter provided, be measured solely by the Delivery Meters. All Check Meters shall meet or exceed the standards of the AWWA and shall be available for

inspection and checking by Evanston upon reasonable request to MG-N. The costs for installation, maintenance, regulatory fees, reading, testing, calibration, and adjustment of all Check Meters shall be performed by MG-N at MG-N's sole cost and expense.

10.05 Meter Calibration and Adjustment

If either Evanston or MG-N at any time observes a variation between a Delivery Meter and a Check Meter or any other evidence of meter malfunction, such Party must promptly notify the other Party, and Evanston and MG-N agree to cooperate to inspect and test the accuracy of such meter(s). If upon any inspection or test, any meter is found to be out of service or the percentage inaccuracy of any meter is found to be **in excess of two percent (2%)** slow or fast, then the meter's registration, as well as charges for water based on incorrect metering, must be corrected by agreement of Evanston and MG-N based on the best data available. The best data available is defined as the registration of an installed Check Meter that is accurately registering in **excess of two percent (2%)** slow or fast during the period extending back to the time when such inaccuracy began. If it is impossible to determine the time period of inaccuracy, the correction period will extend back one-half of the time elapsed since the last date of calibration. Otherwise, the amount of water delivered during such period may be estimated by:

- correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or
- if the error is not ascertainable by calibration tests or mathematical calculation, by estimating the quantity of water delivered by reference to deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

10.06 Notification Concerning Meter Tests

Evanston and MG-N shall deliver to the other Party written notice at least seventy-two (72) hours in advance of the time of any planned maintenance, inspection, test, calibration, adjustment or other work affecting any Delivery Meter or Check Meter so that the other Party may arrange to have a representative present. If said representative is not present at the time set in such notice, the inspection, test, calibration, adjustment or other work will proceed in the absence of said representative. Notices required under this Section 10.06 shall be given to the

following persons at the following addresses, unless otherwise provided in writing by MG-N or Morton Grove or Niles:

If for Evanston:

Director of Public Works Agency
555 Lincoln Street
Evanston, Illinois 60201
Phone: 847.448.4311
Email: current business email address

If for Morton Grove:

Director, Public Works
Village of Morton Grove
7840 Nagle Avenue
Morton Grove Illinois 60053
Phone: 847.470.5235
Fax: 847.965.9511
Email: current business email address

If for Niles:

Public Services Director
Village of Niles
6849 West Touhy Avenue
Niles, Illinois 60714
Phone: 847.588.7900
Fax: 847.588.7950
Email: current business email address

10.07 Removal of Meters

Delivery Meters and Check Meters may be removed upon termination of this Agreement only upon mutual agreement of the Parties and upon the release of any easements related thereto.

10.08 Meters for Customers

Each Party is responsible for providing water meters to its own customers.

11. Dispute Resolution

11.01 Negotiation

If a dispute arises between Evanston and MG-N concerning this Agreement, the Parties will first attempt to resolve the dispute by negotiation. Each Party will designate persons to negotiate on their behalf. The Party contending that a dispute exists must specifically identify in writing all issues and present it to the other Parties. The Parties will meet and negotiate in an attempt to resolve the matter. If the dispute is resolved as a result of such negotiation, there must be a written determination of such resolution, and ratified by the corporate authorities of each Party, which will be binding upon the Parties. If necessary, the Parties will execute an addendum to this Agreement. Each Party will bear its own costs, including attorneys' fees, incurred in all proceedings in this Section. If the Parties do not resolve the dispute through negotiation, any Party to this Agreement may pursue other remedies under Section 11.02 (Remedies) below to enforce the provisions of this Agreement.

11.02 Remedies

In any action with respect to this Agreement, the Parties are free to pursue any legal remedies at law or in equity. Each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law. Each Party will bear its own costs, expenses, experts' fees, and attorneys' fees, incurred in all litigation arising under this Agreement.

11.03 Venue and Applicable Law

All questions of interpretation, construction and enforcement, and all controversies with respect to this Agreement, will be governed by the applicable constitutional, statutory and common law of the State of Illinois. The Parties agree that, for the purpose of any litigation relative to this Agreement and its enforcement, venue will be in the Circuit Court of Cook County, Illinois or the Northern District, Eastern Division of the United States District Court, Chicago, Illinois, and the Parties consent to the *in personam* jurisdiction of said Courts for any such action or proceeding.

12. Force Majeure

12.01 Excuse From Performance

No Party will be liable in damages to any other Party for delay in performance of, or failure to perform, its obligations under this Agreement, if such delay or failure is caused by a Force Majeure Event as defined in Section 12.02 (Force Majeure Event) below. If a Party cannot perform under this Agreement due to the occurrence of a Force Majeure Event, then the time period for performance of the Party under this Agreement shall be extended by the duration of the Force Majeure Event.

12.02 Force Majeure Event

A “Force Majeure Event” means an event not the fault of, and beyond the control of, the Party claiming excuse which makes it impossible or extremely impracticable for such Party to perform obligations imposed on it by this Agreement, by virtue of its effect on physical facilities and their operation or employees essential to such performance. Force Majeure Events include:

- an “act of God” such as an earthquake, flood, fire, Lake Michigan seiche, tornado, earth movement, or similar catastrophic event,
- an act of terrorism, sabotage, civil disturbance or similar event,
- a strike, work stoppage, picketing, or similar concerted labor action,
- delays in construction caused by unanticipated negligence or breach of contract by a third party or inability to obtain essential materials after diligent and timely efforts, or
- an order or regulation issued by a Federal or State regulatory agency after the Effective Date or a judgment or order entered by a Federal or State court after the Effective Date.

A Force Majeure Event does not include a change in economic or market conditions or a change in the financial condition of a Party to this Agreement.

12.03 Notice

The Party claiming a Force Majeure Event excuse must deliver to the other Parties a written notice of intent to claim excuse from performance under this Agreement by reason of a Force Majeure Event. Notice required by this Section must be given promptly in light of the

circumstances. Such notice must describe the Force Majeure Event, the services impacted by the claimed event, the length of time that the Party expects to be prevented from performing, and the steps which the Party intends to take to restore its ability to perform its obligations under this Agreement.

13. Preservation of Water Rights

Evanston intends to preserve all of its water rights, irrespective of whether the water held under such water rights is allocated under this Agreement. Nothing in this Agreement shall be construed as an abandonment, or evidence of intent to abandon, any of the water rights that Evanston presently possesses.

14. Good Faith and Fair Dealing

The Parties each acknowledge their obligation under Illinois law to act in good faith toward, and deal fairly with, each other with respect to this Agreement.

15. MG-N Option to Create a JAWA or a Water Commission; Assignment

A. JAWA; Water Commission. If a Municipal Joint Action Water Agency (“JAWA”) is created, pursuant to 5 ILCS 220/3.1, as amended from time to time, or a municipal Water Commission is created, pursuant to 65 ILCS 5/11-135-1, et seq., as amended from time to time, which has jurisdiction over the MG-N Water System (the "MG-N Successor Entity"), all of MG-N's rights and obligations under this Agreement shall be automatically assigned to, and assumed by, the MG-N Successor Entity. MG-N shall have no further rights or obligations under this Agreement, effective as of the date of the creation of the MG-N Successor Entity. MG-N shall give Evanston prior written notice of the proposed creation of a MG-N Successor Entity at least ninety (90) calendar days prior to the creation of the MG-N Successor Entity. Immediately after the creation of the MG-N Successor Entity, signed copies of the corporate approval and formation documents (i.e. approving ordinance, intergovernmental agreement and by-laws) of the MG-N Successor Entity shall be sent to Evanston. Thereafter, the MG-N Successor Entity and Evanston agree to enter into an addendum to this Agreement to formally recognize the automatic assignment set forth herein and that MG-N has no further rights or obligations under this Agreement, provided however that MG-N is current in all required payments and charges owing to Evanston prior to such assignment taking effect.

B. Assignment by MG-N or the MG-N Successor Entity. MG-N and any MG-N Successor Entity shall have the right to assign this Agreement to a public water utility or another statutory water agency, provided that MG-N or Morton Grove or Niles becomes a member of the new statutory water agency, subject to prior written notice to Evanston and approval of the assignment by Evanston, which approval shall not be unreasonably withheld so long as the Successor Entity assumes all obligations of MG-N (or the obligations assumed by the MG-N Successor Entity) as set forth in this Agreement or any addendum, and the Successor entity is authorized and obligated to collect adequate revenue from its customers to pay the water rate charged by Evanston. After the assignment, MG-N, Morton Grove, or Niles, or the MG-N Successor Entity, shall have no further rights or obligations under this Agreement.

16. Financing Options for the Project

16.01 Cooperation with Project Financing

Evanston and MG-N will cooperate with each other to explore options for issuing water revenue bonds, other debt obligations and/or applying for any grants or loans to assist with the financing of the anticipated improvements to be made to their respective Water Systems in order to complete and operate the Evanston Connection Facilities, the Evanston Facilities Adjustments, the MG-N Water System and any other Water System improvements covered by this Agreement. Evanston may, if necessary and advantageous for Evanston and as determined solely by Evanston, issue debt to finance the Project, in part or in whole as the case may be, only if necessary and advantageous for MG-N, as determined by MG-N, provided that Evanston is able to earn an acceptable profit on the debt. To the extent that the Parties agree to issue bonds or other debt instruments in the name of Evanston, alone, or in their own respective or collective corporate names, the Parties agree to enter into such other additional intergovernmental agreements as are necessary to provide the statutory authority to issue such bonds and other debt instruments. As between Evanston and MG-N, each respective Party shall be responsible to make payments on its own debt service for its own Project Improvements. Evanston shall not be obligated to pay any of the debt service payments for MG-N Project Improvements. MG-N shall not be obligated to pay any of the debt service payments for Evanston Project Improvements.

16.02 MG-N Project Financing Options

MG-N reserves the right to finance its own Project Improvements.

17. Disconnection, Removal Relocation of Connection Facilities or Transmission Mains

17.01 Termination of Agreement

Upon termination of this Agreement, Evanston, in its discretion and at its cost, may disconnect or remove the Evanston Connection Facilities and / or the MG-N Connection Facilities and / or transmission mains located within Evanston's rights of way or utility easements, but only after the Parties mutually approve and sign an agreement and a release of easements that pertain to disconnection and / or removal of the Evanston Connection Facilities, the MG-N Connection Facilities and /or the transmission mains.

17.02 Relocation

In the event that the Point of Delivery or any portion of the Evanston Connection Facilities and the MG-N Connection Facilities or any transmission mains need to be relocated due to unanticipated circumstances or at the request of either Party, the Parties may negotiate an addendum to this Agreement that provides for the relocation, reconstruction, financing and cost sharing of the relocation work. If this Agreement is terminated, within one (1) year of the effective date of such termination, all connection facility assets, components, and equipment within Evanston must be removed at MG-N's sole cost and expense, unless otherwise agreed upon by the Parties.

18. Termination; Default

18.01 Termination by Evanston

This Agreement shall be subject to termination if a court of competent jurisdiction restricts or limits any of Evanston's rights to obtain, sell, contract for, or distribute water to MG-N in a manner that prohibits Evanston from complying with its obligations to MG-N under this Agreement. Evanston will have the right to terminate this Agreement if MG-N fails and defaults with respect to its obligations under Section 5.02 (Billing and Payments) of this Agreement, and otherwise fails and refuses to cure such default under Section 11.01 (Negotiation) and Section 18.04 (Default; Cure Period; Relief).

18.02 Termination by Mutual Agreement

Only upon mutual consent, the Parties may agree to terminate this Agreement, in writing, after the approval of a termination or wind-down agreement by their respective corporate authorities.

18.03 Termination by MG-N

MG-N shall have the right to terminate this Agreement if it delivers written notice to Evanston of its intention to terminate this Agreement not less than five (5) years prior to the termination date of the then-existing Term. In addition, MG-N has the right to terminate this Agreement for the following reason(s):

A. If MG-N is unable to obtain easements or title to real property to construct the MG-N Connection Facilities and other necessary MG-N Project Improvements.

B. If the MG-N Engineering and Route Study determines that the MG-N Connection Facilities and other necessary MG-N Project Improvements will not be feasible for any reason, including but not limited to a lack of technical feasibility to complete the MG-N Project Improvements, or a lack of relative financial feasibility to pay for the MG-N Project Improvements.

C. If the bid results for the MG-N Connection Facilities and other necessary MG-N Project Improvements exceeds:

1) the MG-N Engineer's Estimate;

2) the approved MG-N Project Budget; or

3) the MG-N Project Financial / Debt Repayment schedule. MG-N shall provide all documents and data to Evanston prior to MG-N cancelling the bid.

D. Evanston fails to deliver water in accordance with or otherwise fails to comply with the terms of this Agreement.

E. MG-N can terminate this Agreement at the end of the Initial Term, or as otherwise provided during any Extended Term, subject to timely written notice to Evanston.

F. MG-N can terminate this Agreement prior to its issuance of written notice to proceed with Evanston's Preliminary Project Phase Work as set forth in Section 4.01 above, for any reason, without any liability to Evanston.

G. MG-N can terminate this Agreement after its issuance of written notice to proceed with Evanston's Preliminary Project Phase Work as set forth in Section 4.01 above, provided MG-N fully reimburses Evanston for all reasonable actual, documented costs incurred by Evanston relating only to Project consultants and Project engineering fees and expenses that are incurred by Evanston after the date of issuance of MG-N's Notice to Evanston to Proceed with Preliminary Project Phase Work. Evanston or MG-N will not be reimbursed for staff time or corporation counsel time or outside legal counsel fees and expenses.

H. MG-N can terminate this Agreement after its issuance of written notice to proceed with Evanston's Final Engineering Design Work as set forth in Section 4.02 above, provided MG-N fully reimburses Evanston for all reasonable actual, documented costs incurred by Evanston relating only to Project consultants and Project engineering fees and expenses that are incurred by Evanston after the date of issuance of MG-N's Notice to Evanston to Proceed with Final Engineering Design Work. Evanston or MG-N will not be reimbursed by the other Party for staff time or corporation counsel time or outside legal counsel fees and expenses.

I. MG-N can terminate this Agreement prior to acceptance of water from Evanston, provided MG-N fully reimburses Evanston for all reasonable actual, documented costs incurred by Evanston, relating only to Project consultants and Project engineering fees and expenses and construction costs that are incurred by Evanston after the date of issuance of MG-N's Notice to Evanston to Proceed with Construction as set forth in Section 4.03 above. Evanston or MG-N will not be reimbursed by the other Party for staff time or corporation counsel time or outside legal counsel fees and expenses.

18.04 Default; Cure Period; Relief

In the event any Party defaults in regard to any obligation under this Agreement, the non-defaulting Party shall send written notice of the default, with a description of the default, and a request that the defaulting Party cure the default. Any Party deemed to be in default under this Agreement by another Party shall have a thirty (30) calendar day cure period to resolve the

default to the other Party's satisfaction or to initiate and continue to take actions that are designed to cure the default in a reasonable time period so that the Party in default is in conformance with the terms of this Agreement. In the event that a default is not cured, the non-defaulting Party and the defaulting Party shall participate in the "Dispute Resolution" process contained in Section 11.01 (Negotiation) above. If the Dispute Resolution process is not successful, then either Party may seek to enforce remedies in Section 11.02 (Remedies) to enforce the provisions of this Agreement.

19. General Conditions

19.01 Entire Agreement

This Agreement constitutes the entire agreement of the Parties concerning all matters specifically covered by this Agreement. There are no representations, covenants, promises or obligations not contained in this Agreement that form any part of this Agreement or upon which any of the Parties is relying upon in entering into this Agreement. There are no other commitments, understandings, promises or conditions among the Parties in any other contract or agreement, whether oral or written, and this Agreement supersedes all prior written or oral agreements, commitments and understandings among the Parties.

19.02 Prompt Payment

In regard to the payment of any fee, charge or assessment provided for under this Agreement, the Parties are subject to and shall comply with the Local Government Prompt Payment Act (50 ILCS 505/1, et seq.).

19.03 Compliance With Laws

The Parties to this Agreement shall comply with all applicable Federal, State and local laws, rules and regulations in carrying out the terms and conditions of this Agreement.

19.04 Regulatory Bodies

This Agreement shall be subject to all valid rules, regulations, and laws applicable hereto passed or promulgated by the United States of America, the State of Illinois, or any governmental body or agency having lawful jurisdiction, or any authorized representative or agency of any of them; provided, however, that this Section 19.04 shall not be construed as waiving the right of any

Party to challenge the validity of any such rule, regulation, or law on any basis, including impairment of this Agreement.

19.05 Illinois Freedom of Information Act

The definition of a “public record” in the Freedom of Information Act (5 ILCS 140/1, et seq.) (“FOIA”) includes a “public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body and that directly relates to the governmental function and is not otherwise exempt under this Act.” (5 ILCS 140/7(2)). Consequently, the Parties shall maintain and make available to the other Parties, upon request, their public records relating to the performance of this Agreement in compliance with the requirements of the Local Records Act (50 ILCS 205/1, et seq.) and FOIA.

19.06 Interpretation; Headings

This Agreement shall be construed and interpreted so as to preserve its validity and enforceability as a whole. No rule of construction that a document is to be construed against any of the drafting Parties shall be applicable to this Agreement. Section headings and titles are descriptive only and do not in any way limit or expand the scope of this Agreement.

19.07 Waiver

The failure of any Party to enforce any section, subsection, term, condition or covenant (collectively referred to as "provision") of this Agreement shall not be deemed a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with such provision and every other provision of this Agreement. No provision of this Agreement shall be deemed waived by any Party, unless the provision to be waived and the circumstances giving rise to such waiver are set forth specifically in a duly authorized and written waiver of the Party charged with such waiver. No waiver by either Evanston or MG-N of any provision of this Agreement shall be deemed or construed as a waiver of any other provision of this Agreement, nor shall any waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different provision of this Agreement.

19.08 No Individual or Personal Liability

The Parties agree that the actions taken in regard to and the representations made by each respective Party in this Agreement and by their respective corporate authorities have not been taken or made in anyone's individual capacity and no mayor/president, board member, council member, official, officer, employee, volunteer or representative of any Party will incur personal liability in conjunction with this Agreement.

19.09 No Third Party Beneficiaries

This Agreement is not intended to benefit any person, entity or municipality not a Party to this Agreement, and no other person, entity or municipality shall be entitled to be treated as beneficiary of this Agreement. This Agreement is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but not limited to, any agent, contractor, subcontractor, consultant, volunteer or other representative of any Party hereto. No agent, employee, contractor, subcontractor, consultant, volunteer or other representative of the Parties hereto will be deemed an agent, employee, contractor, subcontractor, consultant, volunteer or other representative of any other Party hereto.

19.10 Amendments

No amendment to this Agreement shall be effective until it is reduced to writing in an addendum and approved by the corporate authorities of the Parties. All addenda shall be executed by an authorized official of each Party. If any governmental agency with regulatory authority enacts new rules or regulations or new nationally recognized water system engineering requirements are adopted that require the method of water production or any components of the infrastructure used for the delivery of water under this Agreement to be changed or modified, the Parties agree to negotiate an addendum to this Agreement that addresses the construction and operation of the required water system improvements to the Evanston Water Utility and/or the MG-N Water System, the cost allocation of such improvements among the Parties and the financing of such improvements.

19.11 Assignment

Except as set forth in Section 15 (MG-N Option to Create a JAWA or a Water Commission; Assignment), no Party shall assign, sublet, sell or transfer its interest in this Agreement or any of

its rights or obligations under this Agreement without the prior written, mutual consent of the other Parties. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

19.12 Notice

Except as otherwise provided in this Agreement, all notices and other communications in connection with this Agreement shall be in writing and deemed to be given on the date of mailing if sent by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid, or may be delivered by messenger delivery, or overnight express mail, or personal delivery, or via facsimile, or via electronic internet mail ("e-mail") to the current mailing address(es) or email address(es) of the Parties' principal administrative offices, addressed to the Mayor/Village President or the City Administrator/City Manager/Village Manager. Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. E-mail notices shall be deemed valid only to the extent that they are (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (a) the date of actual receipt; or (b) the date that is one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) the date that is three (3) business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each Party to this Agreement shall have the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications shall be addressed to, and delivered at, the following addresses, unless otherwise directed by the Parties:

If for City of Evanston:

With copy to: Corporation Counsel (same address as City Manager)

City Manager Lorraine Morton Civic Center 2100 Ridge Avenue Evanston, Illinois 60201 Phone: 847.866.2936 Email: citymanagersoffice@cityofevanston.org	Director Public Works Agency 555 Lincoln Street Evanston, Illinois 60201 Phone: 847.448.4311 Email: publicworks@cityofevanston.org
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If for Village of Morton Grove:

With copy to: Corporation Counsel (same address as Village Administrator)

Village Administrator Richard T. Flickinger Municipal Center Village of Morton Grove 6101 Capulina Avenue Morton Grove, Illinois 60053 Phone: 847.663.3001 Fax: 847.370.1649 Email: business email address	Director, Public Works Village of Morton Grove 7840 Nagle Avenue Morton Grove, Illinois 60053 Phone: 847.470.5235 Fax: 847.965.9511 Email: Business email address
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If For Village of Niles:

With copy to: Corporation Counsel (same address as Village Manager)

Village of Niles 1000 Civic Center Drive Niles, Illinois 60714 Phone: 847.588.8010 Fax: 847.588.8051 Email: Business email address	Public Services Director Village of Niles 6849 West Touhy Avenue Niles, Illinois 60714 Phone: 847.588.7900 Fax: 847.588.7950 Email: mja@vniles.com
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By notice with the foregoing requirements of this Section 19.12, the Parties shall have the right to change the addresses for all future notices and communications to itself, but no notice of such a change shall be effective until actually received.

19.13 Severability

In the event any term, provision or condition of this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms, provisions or conditions of this Agreement which can be given effect without the invalid term, provision or condition. To this extent and purpose, the terms, provisions and conditions of this Agreement are declared severable. If any part of this Agreement is adjudged invalid, such adjudication shall not affect the validity of this Agreement as a whole or of any other part.

19.14 No Separate Legal Entity; No Joint Venture or Partnership or Agency

This Agreement establishes a cooperative intergovernmental undertaking, but the Parties do not intend to create a new or separate legal entity by entering into this Agreement. This Agreement does not establish or create a joint venture or partnership between the Parties, and no Party shall be responsible for the liabilities and debts of the other Parties hereto. No Party shall be deemed to be the agent, employee, or representative of any other Party.

19.15 Independent Sovereign Status

The Parties to this Agreement are independent, sovereign units of local government and no Party shall exercise control over either the performance of any other Party or the employees of any other Party.

19.16 Effective Date

The Effective Date of this Agreement shall be the date that the last authorized signatory signs and dates this Agreement, which date shall be inserted on the first page of this Agreement. This Agreement shall become effective only in the event the corporate authorities of each Party approves this Agreement.

19.17 Authorization

In accordance with applicable state laws, this Agreement was approved by each Party as follows:

- A. The adoption of Ordinance 5-O-17 by the Mayor and City Council of Evanston on the 13th day of February, 2017.
- B. The passage of Resolution 17-3 by the Village President and Board of Trustees of the Village of Morton Grove on the 23rd day of January, 2017.
- C. The passage of Resolution 2017-02R by the Village President and Board of Trustees of the Village of Niles on the 24th day of January, 2017.

19.18 Counterparts

This Agreement may be executed in counterparts (including facsimile signatures), each of which shall be deemed to be an original and all of which shall constitute one and the same Agreement.

19.19 Exhibits

In the event of a conflict between any Exhibit attached hereto and the text of this Agreement, the text of this Agreement shall control. The following Exhibits are attached to this Agreement and made a part hereof:

A. Group Exhibit “A”: Illustrative Example of “True-Up” Process comprised of Pages A-1 through A-7 (Page A-1: Morton Grove - Niles Water Supply Quantity Rate True Up Calculation for Service Year 2016; Page A-2: Morton Grove - Niles Water Supply Estimated Quantity Rate for Service Year 2016 Based on FY 2014 Audited Information; Page A-3: 2014 Audited Information, City of Evanston, Illinois, Water Fund – Operations and Maintenance Account, Schedule of Revenues, Expenditures, and Changes in Unreserved Fund Balance – Budget and Actual for the FY ended December 31, 2014 with Comparative Totals for FY ended December 31, 2013 (Page 157); Page A-4: Morton Grove-Niles Water Supply True Up Quantity Rate for Service Year 2016 Based on FY 2015 Audited Information; Page A-5: 2015 Audited Information, City of Evanston, Illinois, Water Fund – Schedule of Revenues, Expenditures, and Changes in Net Position – Budget and Actual for the FY ended December 31, 2015 (Page 123); Page A-6: Calculation of Distribution Expenses Allocated to MG-N; Page A-7: Annual Pumpage (MG) (Water and Sewer 2015 Annual Report, Page 18).

B. Group Exhibit “B”: Example of Rate Calculation for MG-N Water Rate for Service Year 2017 Based on Evanston Audited Information for Fiscal Year 2015 comprised of Pages B-1 through B-21 (Pages B-1 and B-2: Example of Rate Calculation for MG-N Water Supply Prepared on 12/14/2016 by Dave Stoneback, Morton Grove - Niles Water Supply Rate Calculation for Service Year 2017, Based on FY 2015 Actual Information; Pages B-3 to B-12: Evanston Water Utility Component Sheets, Table B-1 dated 6/30/2016 (Reproduction Cost New Less Depreciation As Of December 31, 2015, Pages 1 through 10 of Burns & McDonnell Water Works Properties Valuation); Page B-13: Table B-2 dated 6/30/2016 (Reproduction Cost New Less Depreciation As Of December 31, 2015, Burns & McDonnell Water Works Properties Valuation); B-14: Table B-3 dated 6/30/2016 (Original Cost New Less Depreciation As Of

December 31, 2015, Burns & McDonnell Water Works Properties Valuation); Page B-15: Table B-4 dated 6/30/2016 (OCLD and RCNLD At December 31, 2015, Burns & McDonnell Water Works Properties Valuation); Page B-16: IDNR Water Allocations as of November 2011; Page B-17: 2015 Audited Information, City of Evanston, Illinois, Notes to the Financial Statements for the FY ended December 31, 2015 (Page 40); Page B-18: Evanston Audited Information, City of Evanston, Schedule of Fixed Assets and Depreciation, Year ended December 31, 2014; Page B-19: Annual Pumpage, 2015 Monthly Pumpage (MG) and 2015 Average Day Pumpage (MGD)(Water and Sewer 2014 Annual Report)(Page 17); Page B-20: 2015 Audited Information, City of Evanston, Illinois, Water Fund – Schedule of Revenues, Expenditures, and Changes in Net Position – Budget and Actual for the FY ended December 31, 2015 (Page 123); Page B-21: Evanston Distribution System, Calculation of Percent of System Allocated to MG-N, Calculation of Depreciation Charges.

C. Group Exhibit “C”: Depreciation Rates comprised of Page C-1: Depreciation Rates (Classes of Plant included: Source of Supply, Pumping Plant, Treatment Plant, Water Plant and Transmission)

D. Exhibit “D”: City of Evanston Ordinance 5-O-17 (Approval of Water Supply Agreement Between the City of Evanston, the Village of Morton Grove and the Village of Niles)

E. Exhibit “E”: Village of Morton Grove Resolution 17-3 (Approval of Water Supply Agreement Between the City of Evanston, the Village of Morton Grove and the Village of Niles)

F. Exhibit “F”: Village of Niles Resolution 2017-02R (Approval of Water Supply Agreement Between the City of Evanston, the Village of Morton Grove and the Village of Niles)

IN WITNESS WHEREOF, this Agreement was executed on behalf of the Parties through their authorized representatives, after all duly required corporate action was taken, as set forth below on the signature pages.

SIGNATURE PAGES TO FOLLOW

**SIGNATURE PAGE FOR
CITY OF EVANSTON**

IN WITNESS WHEREOF, the below authorized officials of the City of Evanston signed this Agreement pursuant to legal authorization granted to him/her under Article VII, Section 10 of the 1970 Illinois Constitution, the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) and the corporate approval granted by passage of Ordinance 5-O-17 by the Corporate Authorities of the City of Evanston.

City of Evanston

By: Elizabeth B Tisdahl

Name: Elizabeth B. Tisdahl

Mayor, City of Evanston

Date: March 1, 2017.

Attest:

By: Rodney Greene

Name: Rodney Greene

City Clerk, City of Evanston

Date: March 1, 2017

Approved as to form and legality:

By: W. Grant Farrar

W. Grant Farrar, Corporation Counsel

**SIGNATURE PAGE FOR
VILLAGE OF MORTON GROVE**

IN WITNESS WHEREOF, the below authorized officials of the Village of Morton Grove have signed this Agreement pursuant to legal authorization granted to him/her under Article VII, Section 10 of the 1970 Illinois Constitution, the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) and the corporate approval granted by passage of Resolution 17-3 by the Corporate Authorities of the Village of Morton Grove.

Village of Morton Grove

By: 

Name: Daniel DiMaria

Village President, Village of Morton Grove

Date: 3/16/17, 2017.

Attest:

By: 

Name: Connie Travis

Village Clerk, Village of Morton Grove

Date: March 16, 2017

Approved as to form and legality:

By: 

Teresa Liston, Village Attorney

**SIGNATURE PAGE FOR
VILLAGE OF NILES**

IN WITNESS WHEREOF, the below authorized officials of the Village of Niles have signed this Agreement pursuant to legal authorization granted to him/her under Article VII, Section 10 of the 1970 Illinois Constitution, the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) and the corporate approval granted by passage of Resolution 2017-02R by the Corporate Authorities of the Village of Niles.

Village of Niles

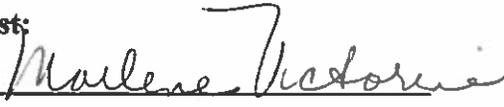
By: 

Name: Andrew Przybylo

Village President, Village of Niles

Date: 3-16-17

Attest:

By: 

Name: Marlene Victorine

Village Clerk, Village of Niles

Date: 3-16-17

Approved as to form and legality:

By: 

Danielle Grcic, Village Attorney

**FIRST ADDENDUM TO THE WATER SUPPLY AGREEMENT
BETWEEN THE CITY OF EVANSTON AND THE
MORTON GROVE-NILES WATER COMMISSION**

This **FIRST ADDENDUM TO THE WATER SUPPLY AGREEMENT BETWEEN THE CITY OF EVANSTON AND THE MORTON GROVE-NILES WATER COMMISSION** (the "First Addendum") is entered into on _____, 2018 (the "Effective Date") by and between the City of Evanston ("Evanston"), an Illinois home rule municipal corporation (the "City") and the Morton Grove-Niles Water Commission ("MGNWC" or "Commission"), an Illinois water commission created in 2017 by the approval of an intergovernmental agreement by the Village of Morton Grove, a home rule Illinois municipal corporation ("Morton Grove"), and the Village of Niles, a home rule Illinois municipal corporation ("Niles"). The City and the MGNWC may be referred to herein collectively as the "Parties" and individually as a "Party."

WHEREAS, in 2017, the corporate authorities of Evanston, Morton Grove and Niles each adopted an Ordinance or Resolutions that authorized the approval and execution of an agreement entitled "Water Supply Agreement Between The City Of Evanston And The Village Of Morton Grove And The Village Of Niles" (the "Water Supply Agreement"). The respective Ordinance and Resolutions approving the Water Supply Agreement are identified as follows: Evanston approved Ordinance Number 5-O-17 on February 13, 2017; Morton Grove approved Resolution Number 17-03 on January 23, 2017; and Niles approved Resolution Number 2017-02R on January 24, 2017; and

WHEREAS, after the approval of the Water Supply Agreement, the Morton Grove-Niles Water Commission ("MGNWC" or "Commission") was established by an intergovernmental agreement approved by Morton Grove and Niles by the adoption of ordinances pursuant to Division 135 of Article 11 of the Illinois Municipal Code (65 ILCS 5/11-135-1, *et seq.*) ("Division 135"), Article VII, Section 10 of the 1970 Constitution of the State of Illinois, and the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1, *et seq.*) for purposes of constructing and operating a public water supply system (the "MGNWC System") consisting of water transmission mains, pumping, storage, and other related water delivery and receiving infrastructure between a connection point on the Evanston water system and existing water receiving points of Niles and Morton Grove (the "Project"). Evanston's "Connection Point" is near the intersection of Emerson Street and McCormick Boulevard, which is Evanston's western border; and

WHEREAS, Section 15(A) (MG-N Option to Create a JAWA or a Water Commission; Assignment) of the Water Supply Agreement states that, in the event Morton Grove and Niles create a water commission (i.e., the MGNWC): (a) all of Morton Grove's and Niles' rights and obligations under the Water Supply Agreement are automatically assigned to, and assumed by, the MGNWC; (b) Morton Grove and Niles shall have no further rights or obligations under the Water Supply Agreement; (c) the MGNWC and Evanston will enter into an addendum to the Water Supply Agreement to formally recognize the automatic assignment set forth in the Water Supply Agreement; and (d) Morton Grove and Niles shall have no further rights or obligations under the Water Supply Agreement, provided they are current in all required payments and charges owing to Evanston prior to such assignment taking effect; and

WHEREAS, now that the MGNWC has been created, the MGNWC and Evanston desire to approve and enter into an agreement entitled "First Addendum to Water Supply Agreement Between The City Of Evanston And The Morton Grove-Niles Water Commission" (the "First Addendum") in

compliance with the provisions of Section 15(A) (MG-N Option to Create a JAWA or a Water Commission; Assignment) of the Water Supply Agreement; and

WHEREAS, Evanston stated that Morton Grove and Niles are current in all required payments and charges owing to Evanston under the Water Supply Agreement prior to the automatic assignment of the Water Supply Agreement from Morton Grove and Niles to the MGNWC taking effect; and

WHEREAS, the corporate authorities of Evanston and MGNWC both approved this First Addendum by each adopting a resolution that contained the same findings and content; and

WHEREAS, the corporate authorities of Evanston and MGNWC were authorized to approve and enter into this First Addendum pursuant to Article VII, Section 10 of the 1970 Constitution of the State of Illinois, the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1, *et seq.*) and the Illinois Municipal Code (65 ILCS 5/1, *et seq.*, including 65 ILCS 5/11-135-1, *et seq.*), and found that entering into the First Addendum was in their best respective interests.

NOW, THEREFORE, in consideration of the mutual consideration exchanged between the Parties as set forth herein, the sufficiency and receipt of which are mutually acknowledged, the Parties agree as follows:

1. **Recitals**: The foregoing Recitals are incorporated into this First Addendum as material terms of this First Addendum.
2. **Incorporation**: The Water Supply Agreement is incorporated herein by reference and made a part hereof, in all respects, except as specifically amended by this First Addendum, or, unless the action or obligation or term has been completed or satisfied, the obligations, terms, conditions and provisions of the Water Supply Agreement shall otherwise remain in full force and effect. In the event of any conflict between the terms of the Water Supply Agreement and this First Addendum, this First Addendum shall control.
3. **Assignment and Assumption of Obligations Under the Water Supply Agreement**:
 - A. **Evanston**: Evanston agrees as follows:
 - a. All of Evanston's obligations and rights as set forth in the Water Supply Agreement that related to Morton Grove and Niles are automatically assigned to and assumed by the MGNWC by operation of Section 15(A) (MG-N Option to Create a JAWA or a Water Commission; Assignment) of the Water Supply Agreement and the creation of the MGNWC by Morton Grove and Niles.
 - b. All of Evanston's obligations and rights as set forth in the Water Supply Agreement remain in full force and effect and now relate to the MGNWC.
 - c. Morton Grove and Niles were current in all required payments and charges owing to Evanston under the Water Supply Agreement prior to such automatic assignment taking effect, and, therefore, Morton Grove and Niles have no further rights or obligations under the Water Supply Agreement.

B. MGNWC: The MGNWC agrees as follows:

- a. All of Morton Grove's and Niles' obligations and rights as set forth in the Water Supply Agreement have been automatically assigned to and assumed by the MGNWC by operation of Section 15(A) (MG-N Option to Create a JAWA or a Water Commission; Assignment) of the Water Supply Agreement and the creation of the MGNWC by Morton Grove and Niles.
- b. All of the obligations and rights of Morton Grove and Niles as set forth in the Water Supply Agreement that have been automatically assigned to and assumed by the MGNWC remain in full force and effect.
- c. Morton Grove and Niles were current in all required payments and charges owing to Evanston under the Water Supply Agreement prior to such automatic assignment taking effect, and, therefore, Morton Grove and Niles have no further rights or obligations under the Water Supply Agreement.

4. General Terms:

- A. **Validity:** The Parties warrant and represent that the execution, delivery of and performance under this First Addendum is pursuant to authority, validly and duly conferred upon the Parties and the signatories hereto.
- B. **Binding:** This First Addendum shall inure to the benefit of, and shall be binding upon, the transferees, assignees, representatives, owners, insurers, agents, servants, employees, administrators and/or successors in interest of any kind whatsoever of the Parties hereto.
- C. **Entire Agreement; Amendment:** This First Addendum amends the Water Supply Agreement and contains the entire understanding between the Parties and supersedes any prior written or oral understanding or agreement between them with respect to the subject matter of this First Addendum. There are no representations, agreements, arrangements or understandings, oral or written, between and among the Parties hereto relating to the subject matter of this First Addendum which are not fully expressed herein. This First Addendum may only be amended in writing with the mutual consent of the Parties or their successors in interest.
- D. **Effective Date:** This First Addendum shall be deemed dated and become effective on the date that the last Party signs this First Addendum, which date shall be inserted on page 1 of this First Addendum.

IN WITNESS WHEREOF, this First Addendum was executed on behalf of the Parties, through their authorized representatives, after all duly required corporate action was taken, as set forth below on the signature pages.

SIGNATURE PAGES TO FOLLOW

**SIGNATURE PAGE FOR
CITY OF EVANSTON**

IN WITNESS WHEREOF, the below authorized officials of the City of Evanston signed this First Addendum pursuant to legal authorization granted to him/her under Article VII, Section 10 of the 1970 Illinois Constitution, the Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*) and the corporate approval granted by passage of Resolution 4-R-18 by the Corporate Authorities of the City of Evanston.

City of Evanston

By: 
Stephen H. Hagerty
Mayor, City of Evanston

Date: February 5, 2018

Attest:


By: _____
Devon Reid
City Clerk, City of Evanston

Date: January 31st, 2018

Approved as to form and legality:

By: 
W. Grant Farrar, Corporation Counsel
City of Evanston

Date: February 5, 2018

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

CLERK'S CERTIFICATE

I, Devon Reid, Clerk of the City of Evanston, in the County of Cook and State of Illinois, certify that the attached and foregoing is a true and correct copy of that certain Resolution now on file in my Office, entitled:

RESOLUTION NO. 4-R-18

**AN ORDINANCE AUTHORIZING THE APPROVAL AND EXECUTION OF
THE FIRST ADDENDUM TO THE WATER SUPPLY AGREEMENT BETWEEN THE
CITY OF EVANSTON AND THE MORTON GROVE-NILES WATER COMMISSION**

(City of Evanston)

which Resolution was passed by the City Council of the City of Evanston at a Regular City Council Meeting on the 22nd day of January, 2018, at which meeting a quorum was present, and approved by the Mayor of the City of Evanston on the 31st day of January, 2018.

I further certify that the vote on the question of the passage of said Resolution was taken by Ayes and Nays and recorded in the Regular City Council Meeting Minutes of the City of Evanston, and that the result of said vote was as follows:

AYES: 9
NAYS: 0
ABSENT: 0

I do further certify that the original Resolution, of which the foregoing is a true copy, is entrusted to my care for safekeeping, and that I am the lawful keeper of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Evanston, this 6 day of February 2018.



City Clerk



approved by Evanston Council 6/17/63

AGREEMENT BETWEEN CITY OF EVANSTON

AND

VILLAGE OF SKOKIE

RELATING TO WATER SUPPLY

THIS AGREEMENT made and entered into between the CITY OF EVANSTON, a municipal corporation, Cook County, Illinois, as party of the first part, sometimes hereinafter for convenience referred to as "EVANSTON", and the VILLAGE OF SKOKIE, a municipal corporation, Cook County, Illinois, as party of the second part, sometimes hereinafter for convenience referred to as "SKOKIE".

W I T N E S S E T H:

WHEREAS, the City of Evanston is the owner of the Water Works Plant taking water from Lake Michigan to furnish water for use of its own inhabitants, and

WHEREAS, the Village of Skokie has been purchasing water from Evanston at its corporate boundary since June 5, 1944, to furnish water for the use of its inhabitants and for fire protection, and

WHEREAS, the Village of Skokie desires to continue such purchase of water in the future,

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the parties hereto do mutually agree, as follows:

1. SERVICE AGREEMENT

Subject to the terms and conditions hereinafter set forth, Evanston shall sell and deliver to Skokie, and Skokie shall purchase and receive from Evanston, all the water required for the use of its customers within and without the corporate limits of Skokie with the following exceptions: (1) customers within Skokie

currently being supplied from a source other than Evanston may continue to be so supplied; (2) customers within Skokie may be supplied from a source other than Evanston at any time in the future if both Evanston and Skokie consent; (3) new customers, either public or private, outside the limits of Skokie may be supplied by Skokie, provided that Evanston's approval must be obtained in advance if the customer's average daily use is estimated to be in excess of 100,000 gallons; and (4) Evanston retains the right to supply on a direct basis its current customers within Skokie located east of the Sanitary District Canal, provided that Skokie's approval must be obtained in advance before any such additional customers are supplied directly by Evanston.

Nothing in this agreement shall be construed to prohibit Skokie from entering into any emergency water service agreement with any other municipality. Shortage of water due to a failure of water mains or equipment of either Evanston or Skokie, or the temporary inability of Evanston to furnish water to Skokie in amounts sufficient for its daily requirements, shall be construed and considered an emergency condition.

Evanston agrees to supply water at the city limits of a quality no lower than that supplied to Evanston water customers, and in all cases meeting or exceeding the standards of the U.S. Public Health Service for safe drinking water and all requirements of the Illinois State Department of Public Health.

2. PERIOD COVERED

This agreement shall continue in effect for a period of thirty years, from July 1, 1963 through June 30, 1993.

3. RATE RENEGOTIATION DATES

The wholesale rate paid by Skokie to Evanston shall be renegotiated at five-year intervals, unless neither party has signified by written notice to the other prior to January 1, in the years 1968, 1973, 1978, 1983, and 1988, that

renegotiation is desired. Such notice must specify the changes sought and the reasons therefor, and shall include supporting data. In the absence of such notification, the rates will remain unchanged for the succeeding five-year period.

Renegotiation of rates at other than dates specified shall occur only if called for by Skokie by reason of Evanston entering formal negotiations to sell water to another municipality or other extra-Evanston customer. Such negotiations shall result in reductions of both rate components in the Skokie-Evanston contract as calculated using the rate determination methods provided for hereinafter. If the effective date of the contract between Evanston and another municipality or other extra-Evanston customer is less than one year before the end of the five-year period specified above, the rate component reductions shall only be effective as of the first day of the new five-year period and shall continue in effect during that five-year period.

4. ARBITRATION

In the event that Evanston and Skokie are unable to agree on a rate or rates, it is agreed that an arbitration board, consisting of three experienced specialists in water rate determination, shall be appointed no later than sixty days prior to the rate renegotiation date concerned. One member of the arbitration board is to be chosen by Evanston, one is to be chosen by Skokie, and the two thus named shall appoint a third member, who shall serve as chairman.

If the two thus named cannot agree upon a third within ten days, they shall be dismissed and other persons be appointed, as outlined above, this procedure to continue until the full board results; provided, however, that nothing in this section shall act to halt negotiations, or to relieve Evanston or Skokie of the responsibility for seeking an equitable settlement.

It shall be the responsibility of the arbitration board to demand a clear and concise definition of the matter or matters at issue, and to decide and demand whatever information, testimony, or other aid is necessary to its deliberations.

It shall be the responsibility of both Evanston and Skokie to meet such demands promptly and without reservation.

Compensation of arbitration board members shall be that generally accepted in this field as equitable in such matters, and such compensation and all other expenses of the arbitration board shall be shared equally by Evanston and Skokie.

It is further agreed that a majority vote of the arbitration board on the rate to be charged by Evanston for the succeeding five-year period shall be binding upon the parties hereto.

5. RATE DETERMINATION AND INITIAL RATE

- (a) Rate components. Payments to Evanston by Skokie shall be in two parts, a fixed monthly amount representing a return on a rate base and a share of the depreciation of Evanston's physical water works property, and a monthly amount based on the quantity of water actually furnished to Skokie by Evanston. These payments shall be Evanston's compensation for water supplied and shall give Skokie no right, title, or interest in any part of Evanston's physical water works property.
- (b) Return on rate base. The amount representing the return on the rate base for the year 1963-1964 shall be \$382,103 (\$31,842 per month). In each of the following four years, this amount shall be reduced by 5.50 per cent of the amount paid during the previous year for depreciation, and shall be increased by 5.50 per cent of Skokie's share of any expenditures made by Evanston during the previous year for capital improvements to its water works system, providing that no such increase shall be made until Evanston has made capital expenditures totaling \$3,258,200 and that such increase shall apply only to capital expenditures in excess of \$3,258,200. Deductions from the rate base for depreciation accrued during each calendar year and additions for capital expenditures incurred during each calendar year shall be made as of July 1 of the following year.
- (c) Depreciation. The amount representing depreciation for the year 1963-1964 shall be \$95,069 (\$7,922 per month). As of the date when any addition to the Evanston Water Works system shall be placed in operation during the first five years, this amount shall be increased by Skokie's share of the depreciation on such addition, the rate of depreciation and the percentage allocated to Skokie, for each class of structure, to be the same as those used in computing the above amount of \$95,069, such percentages and rates being a matter of record.

- (d) Quantity rate. The rate based on the quantity of water sold shall, for the first five years, be 3.86 cents per 100 cubic feet.
- (e) Rate base review. The basis for payments by Skokie to Evanston shall be reviewed, and adjustments made if necessary, at five-year intervals. It is the intent of both parties that, prior to January 1, 1968, agreement will be reached on the procedures for such review and adjustment and that such procedures will be mandatory for the remaining life of the contract.

As a means to this end, Evanston will, prior to July 1, 1967, determine the original cost of all of its water works property, as accurately as possible, and will cause to be prepared an engineering appraisal of its water works property on the basis of reconstruction at that date.

When agreement has been reached on original cost and reproduction cost, a fair value, to be used as a rate base, will be determined, which fair value will be a composite of original cost and reproduction cost, reduced by all accrued depreciation.

Determination of Skokie's share of the total rate base will be made, so far as water supply structures (intakes, pumping stations, filtration plant, and the like) are concerned, on the basis of the share of the design capacity estimated to be used by Skokie when the design capacity is reached. <If Evanston contracts to supply water to another municipality or extra-Evanston customer, Skokie's share of the total rate base shall be based upon a portion of the design capacity then assigned to Skokie. This proportional assignment of ultimate capacity shall be re-determined at each regular rate renegotiation thereafter.>

6. METERS

Water sold to Skokie shall be measured through a meter or meters which shall be furnished, installed and maintained by Evanston. Said meter or meters shall be available for inspection and checking by Skokie at all times. All statements for water shall be based upon such readings, provided, however, that if in any period the said meter or meters shall have failed to correctly register the flow of water, or if for any reason a meter shall have been temporarily removed, or be out of service, then billing for such period shall be made upon such reasonable basis as may be mutually agreed upon by Evanston and Skokie. Failure of a meter

or meters to operate shall not relieve Skokie from its obligation to pay for the water actually delivered to it.

7. METER TESTS

Evanston shall at its own expense, at intervals not to exceed six months, inspect and test all meters measuring the water supply to Skokie. Representatives from Skokie may witness these tests at any time, and copies of the dates and results of the tests shall be furnished Skokie upon request. A meter which tests not over two (2) per cent slow or fast shall be considered correct for billing purposes.

8. BILLING

Bills for service rendered hereunder shall be submitted monthly by Evanston as a two-part bill based on rates in effect for that period. Part one shall be the fixed monthly payments covering return on the rate base and depreciation, and part two shall be the quantity charge based on meter readings taken at the beginning and end of the monthly billing period.

All bills for service shall be paid by Skokie from month-to-month without penalty or interest.

9. TYPE OF SERVICE TO BE PROVIDED

Evanston agrees to supply sufficient water to satisfy Skokie's maximum 24-hour demands for water. The Skokie system, as well as Evanston's, is to be supplied by direct pressure from the Evanston Pumping Station without intermediate pumping from reservoirs. The two systems shall be operated as one, and at no time will Skokie's pressure or service be reduced in order to give better service to Evanston.

Distribution system pressures shall be the responsibility of Evanston and shall be adjusted up or down according to water demands in the areas served.

Operating pressures will depend on the facilities provided by Evanston and Skokie such as pumps, feeder mains, tanks and reservoirs and the ability of the mains to withstand higher pressures.

10. OPERATION OF TANKS AND BOOSTER STATIONS

Tanks, reservoirs and booster stations connected to the Skokie system shall be operated and controlled remotely over leased telephone lines from the Evanston Pumping Station at no extra cost to Skokie, except that Skokie shall pay for the leased lines. Any maintenance of such Skokie facilities by Evanston is not covered by the water rates established herein, and shall be compensated for by a separate payment from Skokie to Evanston determined on a basis agreed upon by the parties hereto.

It shall be Evanston's responsibility to operate the Skokie tanks, reservoirs and booster stations in a manner that will give the best possible service within Skokie with due concern for Skokie's costs. Evanston shall maintain a running record of booster station operating periods and tank and reservoir water levels and pressures, and shall report same to Skokie monthly.

11. CONSTRUCTION OF ADDITIONAL FEEDER LINE

Evanston agrees to construct and place in operation prior to June 1, 1965, an additional 36-inch supply line for Skokie's exclusive use from the west end of the existing 48-inch line to the corporate boundary at McCormick Blvd.

The entire cost of this supply main, when placed in service, shall be added to Skokie's rate base.

12. SALE OF WATER TO ADDITIONAL CUSTOMERS

Evanston agrees not to contract to supply any additional municipalities or other customers outside the boundaries of Evanston with water unless it can do so without impairing Skokie's service. Evanston also agrees that its contracting

to supply any additional customers shall confer upon Skokie the right to call for rate renegotiation, as provided in section 3 of this contract. Evanston shall notify Skokie in advance of its intention to supply any such customers referred to in this paragraph.

13. WATER DISTRICT

If a water district is created in the future through an act of the Illinois General Assembly, by a referendum, by some agreement, or in any other way, Evanston agrees to protect Skokie's interests and water rate to the extent of its power and abilities to do so. Evanston agrees to notify Skokie of any negotiations concerning alteration of the status of the Evanston Water Plant, and further agrees that Skokie shall have the right to attend such negotiations.

14. MISCELLANEOUS

This agreement may be amended from time to time by mutual consent of the parties, except that this agreement shall remain in full force and effect throughout the thirty-year period mentioned herein, and the parties hereto are entitled to rely upon the duration of this contract for said thirty-year period.

Nothing herein contained shall be construed to grant to Skokie any proprietary interest in the Evanston water system, it being the intent of the parties that this agreement shall constitute an agreement on the part of Evanston to sell and Skokie to buy water. It is further agreed by and between the parties that Evanston shall not be liable for damages to Skokie or any person, firm, or corporation purchasing water from Skokie or otherwise in privity with Skokie, for the interruption or stoppage of water service under the terms of this agreement, except where the action arises solely out of the negligence of Evanston.

This agreement, as of the date of its execution, supercedes all previous agreements entered into by the parties hereto relative to the sale of water by Evanston to Skokie.

This agreement was approved by the City Council of the City of Evanston, a municipal corporation, on the _____ day of _____, 1963. This agreement was approved by the President and Board of Trustees of the Village of Skokie, a municipal corporation, on the _____ day of _____, 1963.

Dated this _____ day of _____, 1963

ATTEST:

CITY OF EVANSTON

City Clerk

City Manager

ATTEST:

Village of Skokie

Village Clerk

Village Manager

A G R E E M E N T

Amending an Agreement between
the City of Evanston and Village
of Skokie, dated June 18, 1963
relating to Water Supply.

THIS AGREEMENT, made this 1st day of December, 1969, amending
an Agreement dated June 18, 1963 between the City of Evanston, a municipal
corporation, hereinafter referred to as EVANSTON, and the Village of Skokie,
a municipal corporation, hereinafter referred to as SKOKIE.

W I T N E S S E T H

WHEREAS, the parties hereto entered into an Agreement dated June 18,
1963 to sell and buy water, and said Agreement, under paragraph 3 and paragraph
5, provided for the renegotiation of the wholesale rate paid by Skokie to Evans-
ton at 5-year intervals; and

WHEREAS, the parties have now completed rate renegotiations and are
desirous of establishing the wholesale rate to be paid by Skokie to Evanston
for the period from July 1, 1968 through June 30, 1973 and also desire to make
certain amendments in the rate determination method to be employed when the
rate is renegotiated in 1973, 1978, 1983, and 1988:

NOW, THEREFORE, in consideration of the covenants and agreements to
be performed by the parties hereto, it is agreed as follows:

1. Paragraph 5, Subsections (b), (c), (d), and (e) in the Agreement
dated June 18, 1963 is hereby amended to read as follows:

5. RATE DETERMINATION AND 1968-73 RATE

- (b) Return on rate base. The amount representing the return on the rate base for the year 1968-1969 shall be \$459,858 (\$38,322 per month). In each of the following four years, this amount shall be reduced by 6.00 per cent of the amount paid during the previous year for depreciation and shall be increased by 6.00 per cent of Skokie's share of any expenditures made by Evanston during the previous year for capital improvements to its water works system. Deductions from the rate base for depreciation accrued during each calendar year shall be made as of July 1 of the following year.
- (c) Depreciation. The amount representing depreciation for the year 1968-1969 shall be \$102,383 (\$8,532 per month). As of the date when any addition to the Evanston Water Works system shall be placed in operation, the annual depreciation charge shall be increased by Skokie's share of the depreciation on such addition. The rate of depreciation and the percentage allocated to Skokie, for each class of structure, shall be the same as those used in computing the above amount of \$102,353, such rates and allocation percentages being a matter of record.
- (d) Quantity rate. The rate based on the quantity sold shall for the 1968-1973 rate period be 5.32 cents per 100 cubic feet of water supplied. This quantity rate is based on the assumption that Evanston's total operating expenses will rise at the rate of 6.25 per cent per year. In the event that Evanston's total

operating expenses for any calendar year rise less than 4.5 per cent, Skokie shall receive a refund of \$.000532 per 100 cubic feet of water for each 1.0 per cent Evanston's total operating expenses rise less than the 6.25 per cent increase assumed. In the event that Evanston's total operating expenses in any calendar year rise more than 8.0 per cent, Evanston shall receive an additional payment of \$.000532 per 100 cubic feet of water supplied for each 1.0 per cent the actual increase exceeds the 6.25 per cent increase assumed. The adjustment for each calendar year shall be made on approximately July 1 of the following year, and any downward or upward adjustment in the rate shall apply during the balance of the 1968-1973 rate period.

- (e) Rate base valuation. For purposes of renegotiating the Skokie water rate in the years 1973, 1978, 1983, and 1988, a fair value rate base shall be established using the same rate base formula as was used in calculating the rate for the 1968-1973 period. This fair value rate base shall be composed of 50 per cent of the original cost less accrued depreciation, plus 50 per cent of the reproduction cost new less accrued depreciation. Reproduction costs shall be determined by engineering appraisal or by the use of appropriate cost indices. Determination of Skokie's share of the total rate base shall be made, so far as water supply structures (intakes, pumping station, filtration plant, and the like) are concerned, on the basis of actual pumpage during the five maximum days in the

five years comprising the previous rate period. The percentage allocated to Skokie would be determined by totaling Skokie's consumption on those five days and calculating what percentage Skokie's consumption was of the total Evanston-Skokie consumption on those five days.

2. All other terms and conditions of the original Agreement dated June 18, 1963 shall remain in full force and effect except as amended by this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective corporate officials, pursuant to authorization of their corporate authorities the date first above written.

CITY OF EVANSTON

By Wayne J. Anderson
City Manager

ATTEST:

Maurice P. Brown
City Clerk

VILLAGE OF SKOKIE

By William J. Brady
Village Manager

ATTEST:

William J. Segel
Village Clerk

A G R E E M E N T

Amending Agreements between
the City of Evanston and Village
of Skokie, dated June 18, 1963
and December 1, 1969, relating
to Water Supply.

THIS AGREEMENT, made this _____ day of _____ 1972, amending Agreements dated June 18, 1963 and December 1, 1969 between the City of Evanston, a municipal corporation, hereinafter referred to as EVANSTON and the Village of Skokie, a municipal corporation, hereinafter referred to as SKOKIE.

W I T N E S S E T H

WHEREAS, the parties hereto entered into an Agreement dated June 18, 1963 to sell and buy water, and said Agreement was amended on June 18, 1963, concerning rates paid by Skokie to Evanston; and

WHEREAS, neither the original agreement or amendment has made any provision for terms of allowing the construction of additional points of connection between the Evanston and Skokie water systems; and

WHEREAS, Skokie now desires to establish a new point of connection between the two water systems, to be located on Oakton Street, west of Hartrey Avenue in Evanston, Illinois;

NOW, THEREFORE, IT IS AGREED between the parties hereto as follows:

1. Subject to the conditions hereinafter set out in this agreement, Evanston will allow Skokie to install water pipe and auxiliary equipment necessary to extend the existing water line lying under that portion of Oakton Street from the end of the existing twelve (12) inch water main, westward to the City limits line:

2. The water main to be installed shall not exceed eight (8) inch nominal diameter.

3. Plans and specification shall be prepared by Skokie for the portion of the proposed work that will be located within Evanston City limits, designed to comply with Evanston standards of materials and workmanship, and the plans and specifications shall have been approved by the Evanston Superintendent of Water before the start of construction.

4. Skokie shall require the contractor employed to install the water line to provide adequate bond, insurance, and hold harmless agreements satisfactory to Evanston.

5. Skokie shall pay all costs incurred in extending the existing water line and providing a meter and meter vault, and shall maintain at its own expense the water line extension and auxiliary equipment for a period of one year from the date of completion.

6. After expiration of one year from the date of completion, the complete installation within Evanston City limits shall become Evanston property and all maintenance will be assumed by the City.

CITY OF EVANSTON

By _____
City Manager

ATTEST:

City Clerk

VILLAGE OF SKOKIE

By *[Signature]*
Village Manager

ATTEST:

[Signature]
Village Clerk

AGREEMENT

Amending an Agreement between the
City of Evanston and Village of Skokie,
dated June 18, 1963, as amended by Agreements
dated December 1, 1969, March 9, 1974 and
February 12, 1979, relating to Water Supply.

THIS AGREEMENT, made as of this 28th day of January,
1985, amending an Agreement dated June 18, 1963, as amended
by Agreements dated December 1, 1969, March 9, 1974 and
February 12, 1979, between the City of Evanston, a municipal
corporation, hereinafter referred to as EVANSTON, and the
Village of Skokie, a municipal corporation, hereinafter
referred to as SKOKIE.

W I T N E S S E T H

WHEREAS, the parties hereto entered into an Agreement
dated June 18, 1963 to sell and buy water, and said Agree-
ment, under paragraphs 3 and 5, provides for the renegotia-
tion of the wholesale rate paid by Skokie to Evanston at
five-year intervals and upon request by Skokie, when Evanston
enters into negotiations to sell water to another muni-
cipality; and

WHEREAS, the parties have now completed rate renegotia-
tions and are desirous of establishing the wholesale rate to
be paid by Skokie to Evanston for the period from July 1,
1983 through June 30, 1988, including appropriate adjustments
to the wholesale rate as a result of Evanston beginning to
supply water to the Northwest Water Commission, hereinafter

referred to as NWWC, and also desire to establish the general methodology with regard to rate determination to be employed when the rate is renegotiated in 1988; and

WHEREAS, the parties have agreed on a resolution of differences between the temporary rates paid by Skokie to Evanston for service prior to the date that billings under the rates set forth in this agreement began:

NOW, THEREFORE, in consideration of the covenants and agreements to be performed by the parties hereto, it is agreed as follows:

1. The wholesale water rates for the period from July 1, 1983 through February 28, 1985 shall be those rates previously billed to and paid by Skokie, subject only to the refund discussed in this paragraph. Skokie reaffirms its previous receipt of a refund in the amount of \$129,408.00 as full settlement of all water rate matters to and including February 28, 1985.

2. Paragraph 5, subsections (b), (c) and (d) of the Agreement dated June 18, 1963, as previously amended, is hereby amended to read as follows:

"(b) Rate determination and rates applicable from March 1, 1985 through June 30, 1988. Rates will be established for two periods, as set forth in subsections (c) and (d) below. The first such period, hereinafter referred to as the interim service period to

NWWC, shall commence on March 1, 1985 and continue through the last day of the last calendar month during which Evanston provides water to NWWC by bypassing NWWC's reservoir and pumping water directly to NWWC's member municipalities or until June 30, 1988, whichever is earlier. The second such period, hereinafter referred to as the first regular service period to NWWC, shall commence on the first day of the first calendar month after Evanston discontinues direct pumping to NWWC's member municipalities and begins pumping water only to NWWC's reservoir and shall continue through June 30, 1988.

(c) Rates during the interim service period to NWWC.

(i) Return on fair value rate base. The amount representing the return on the rate base for the period March 1, 1985 through June 30, 1986, unless the interim service period to NWWC ends prior to June 30, 1986, shall be \$1,631,525 annually (\$135,960 per month). This reflects an 8.00% return on the fair value rate base of \$20,394,061. In each of the following years during the interim service period to NWWC, the amount representing the return on rate base shall be reduced by 8.00% of the amount paid during the

previous calendar year for depreciation and shall be increased by 8.00% of Skokie's share of any net expenditures made by Evanston during the previous year for capital improvements to its water works system on an original cost basis. Adjustments to rate base shall be made as of July 1 of each year, beginning in 1986, but reproduction cost new values shall not be updated until the 1988 re-negotiation date.

(ii) Depreciation. The amount representing depreciation for the period March 1, 1985 through June 30, 1986, unless the interim service period to NWWC ends prior to June 30, 1986, shall be \$48,939 annually (\$4,078 per month). Adjustments to depreciation charges, reflecting audited depreciation expense for the most recent calendar year, shall be made as of July 1 of each year, beginning in 1986, using the same depreciation rates and percentages allocated to Skokie for each class of structure which were used in computing the above amount of \$48,939 annually.

(iii) Quantity rate. The rate for the period March 1, 1985 through June 30, 1986, unless the interim service period to NWWC ends prior to June 30, 1986, shall be 12.674 cents per 100 cubic feet

of water supplied. This quantity rate does not include an allowance for increases in operating expenses over 1984 expenses. If the interim service period to NWWC should extend beyond July 1, 1986, audited 1985 operating expenses shall be substituted in the formula to calculate new quantity rates for the year beginning on July 1, 1986. Audited 1986 operating expenses shall be substituted in the formula to calculate new quantity rates for any portion of the interim service period to NWWC continuing after July 1, 1987.

(iv) Illustrative calculation. Attached as Exhibits A-1 through A-3 and B are computations supporting the rates reflected in this subsection (c), which have been calculated for an estimated interim service period to NWWC of March 1, 1985 through December 31, 1985. The aforementioned Exhibits are intended to clarify and provide support for the provisions herein, but the actual rates are subject to future changes as herein provided.

(d) Rates during the first regular service period to NWWC. The parties are uncertain of the date upon which Evanston will commence full pumping service to

NWWC. Therefore, the specific rates set forth below are estimated on the assumption that full service to NWWC will commence prior to July 1, 1986. Notwithstanding the fact that the parties are uncertain of the date upon which full pumping service to NWWC will commence, the parties agree that the quantity rate specified in subsection (d)(iii) hereof shall remain in effect from the time that the first regular service period commences until June 30, 1988.

(i) Estimated return on fair value rate base.

The amount representing the estimated return on rate base (assuming the first regular service period to NWWC commences prior to July 1, 1986) shall be \$1,436,145 annually (\$119,679 per month). This reflects an 8.00% return on the fair value rate base of \$17,951,809. In each of the years during the first regular service period to NWWC, the amount representing the return on rate base shall be reduced by 8.00% of the amount paid during the previous calendar year for depreciation and shall be increased by 8.00% of Skokie's share of any net expenditures made by Evanston during the previous year for capital improvements to its water works system on an original cost basis. Adjustments to rate base shall be made as of July

1 of each year, beginning in 1986, but reproduction cost new values shall not be updated until the 1988 renegotiation date.

(ii) Estimated depreciation. The amount representing estimated depreciation (assuming the first regular service period to NWWC commences prior to July 1, 1986) shall be \$42,903 annually (\$3,575 per month). Adjustments to depreciation charges, reflecting audited depreciation expense for the most recent calendar year, shall be made as of July 1 of each year, beginning in 1986, using the same depreciation rates and percentages allocated to Skokie for each class of structure which were used in computing the above amount of \$42,903 annually.

(iii) Estimated quantity rate. The rate shall be 12.5178 cents per 100 cubic feet of water supplied. Annual operating expense projections on which the variable quantity rate is based assume an annual increase of 6.5% compounded annually during the estimated first regular service period to NWWC. Quantity rate adjustments during each five-year rate period shall be made under the following circumstances. If Evanston's audited total operating expenses for any calendar year

rise between 4.75% and 8.25%, no adjustment shall be made. If Evanston's audited total operating expenses for any calendar year rise less than 4.75% or more than 8.25%, the quantity rate for the following year and the balance of the rate period shall be adjusted for the percentage change in total operating expenses, rounded to the nearest 1%, above or below the annual 6.5% increase assumed; provided that, for annual operating expense increases exceeding 10%, the annual increase assumed for purposes of this adjustment shall be 10%; and further provided that, for annual operating expense increases of less than 3%, the annual increase assumed for purposes of this adjustment shall be 3%.

6.5
- 3.0

- 3.5 rate
max

The annual quantity rate adjustment shall be effective as of July 1 of each year during the five-year rate period and will begin at the start of the second year of each five-year period. The initial rate will be agreed to at the start of each five-year period. Notwithstanding the foregoing adjustment provisions, no annual quantity rate adjustments shall be made under such provisions during the period between March 1, 1985 and June 30, 1988.

7/1/88

(iv) Illustrative estimated calculation.

Attached as Exhibits B and C-1 through C-3 are computations supporting the estimated rates reflected in this subsection (d), which have been estimated assuming full pumping service to NWWC commences on or before January 1, 1986. The aforementioned Exhibits are intended to clarify and provide support for the provisions herein, but the actual rates (other than the quantity rate specified in subsection (d)(iii) and shown on Exhibit C-3) are subject to future changes as herein provided."

3. For purposes of renegotiating the Skokie water rate in 1988, the general methodology and approach used in calculating the estimated rates for the first regular service period to NWWC shall be used.

4. Skokie reaffirms its previous receipt of a refund in the amount of \$39,144.70 (in the form of a credit to the July, 1985 water bill) as full settlement of all water rate matters between March 1, 1985 and June 30, 1985.

5. All other terms and conditions of the original Agreement dated June 18, 1963, as previously amended, shall remain in full force and effect except as amended by this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their respective corporate officials, pursuant to authorization of their corporate authorities as of the date first above written.

ATTEST:

Kristen Davis
City Clerk

CITY OF EVANSTON

BY *Don O'Leary*
City Manager

ATTEST:

Marlene Williams
Village Clerk

VILLAGE OF SKOKIE

BY *Tom Flapley*
Village Manager

AN AGREEMENT BY AND BETWEEN
THE CITY OF EVANSTON
AND
THE VILLAGE OF SKOKIE
RELATING TO WATER SUPPLY AND SERVICE
EFFECTIVE MARCH 1, 1997

AN AGREEMENT BY AND BETWEEN
THE CITY OF EVANSTON
AND
THE VILLAGE OF SKOKIE
RELATING TO WATER SUPPLY AND SERVICE

TABLE OF CONTENTS

SECTION 1.	WATER SUPPLY AND SERVICE	2
A.	Full Water Requirements	2
B.	Service Defined	3
C.	Operation and Maintenance of the Evanston/Skokie System	3
D.	Reliability; Curtailments	4
E.	Quality	4
F.	Limitation on New Customers	4
G.	Emergency Connections	5
H.	Supply and Service Agreement Only	5
SECTION 2.	METERS AND MEASUREMENTS	5
A.	Unit of Measurement	5
B.	Delivery Meters	5
C.	Check Meters.	6
D.	Meter Error and Correction	6
E.	Notification Concerning Meter Tests	7
SECTION 3.	BILLING AND RATES	8
A.	Billing	8
B.	Rates	8
C.	Base Rate	9
1.	Initial Base Rate	9
2.	Adjustment of Base Rate in Subsequent Service Years	9
D.	Regulatory Adjustment Rate	10
1.	Definitions	10
2.	Calculation of Regulatory Adjustment Rate	12
E.	Procedure for Certification of Qualified Capital Equipment and Facilities and Net Operating Costs	13
F.	Termination of Regulatory Adjustment Rate	13

G. Agreements Concerning New Reservoir 14

 1. Adequacy of Present Treated Lake Michigan Water Storage Capacity 14

 2. Cooperation Concerning Potential Requirement for New Reservoir 14

SECTION 4. EFFECTIVE DATE AND TERM OF AGREEMENT 15

SECTION 5. GENERAL PROVISIONS 15

 A. Entire Agreement 15

 B. Amendments and Modifications 15

 C. Interpretation 15

 D. Non-Waiver 16

 E. No Third Party Beneficiaries 16

 F. Regulatory Bodies 16

 G. Assignment 16

 H. Notices 16

 I. Enforcement; Arbitration 17

 1. Remedies 17

 2. Arbitration 17

 J. Authority to Execute 18

AN AGREEMENT BY AND BETWEEN
THE CITY OF EVANSTON
AND
THE VILLAGE OF SKOKIE
RELATING TO WATER SUPPLY AND SERVICE

THIS AGREEMENT, made and entered into as of the 1st day of March, 1997, by and between the CITY OF EVANSTON, Cook County, Illinois, a home rule municipal corporation ("Evanston") and the VILLAGE OF SKOKIE, Cook County, Illinois, a home rule municipal corporation ("Skokie"),

WITNESSETH:

WHEREAS, Skokie owns and operates a water distribution system that provides potable Lake Michigan Water to the retail water customers of such system (the "Skokie System"); and

WHEREAS, Evanston is the owner and operator of a water intake, filtration, treatment, and pumping plant on the shore of Lake Michigan (the "Evanston Plant") taking water from Lake Michigan; and

WHEREAS, Evanston owns and operates a water distribution system within the corporate limits of Evanston that provides potable Lake Michigan Water to the retail water customers of such system and also transports water to the Skokie System at points of delivery located at or near the common boundary between Evanston and Skokie (the "Evanston System"); and

WHEREAS, Evanston also supplies water to the Northwest Water Commission, an Illinois Water Commission, pursuant to an existing written agreement that defines the rights and obligations of Evanston with respect to such service; and

WHEREAS, Skokie has been purchasing from Evanston all of the potable Lake Michigan Water required by the customers of the Skokie System since June 5, 1944; and

WHEREAS, Skokie desires to continue to purchase and receive Lake Michigan Water from Evanston for distribution and sale by Skokie to the customers of the Skokie System; and

WHEREAS, Evanston desires to continue to sell and deliver Lake Michigan Water to Skokie and currently has, and will continue to have, available facilities sufficient to pump, treat and deliver Lake Michigan Water to Skokie in quantities sufficient to meet the maximum daily demands of the Skokie System;

NOW, THEREFORE, in consideration of the aforesaid premises, which are hereby made a part of this Agreement, and of the mutual covenants and agreements herein contained, and of other good and valuable consideration, Evanston and Skokie do hereby agree as follows:

SECTION 1. WATER SUPPLY AND SERVICE .

A. Full Water Requirements. Subject to the terms and conditions of this Agreement, Evanston shall sell and deliver to Skokie, and Skokie shall purchase and receive from Evanston, all the Lake Michigan Water required for the use of the retail customers of the Skokie System, as it exists on the effective date of this Agreement and as it may be expanded in the future, with the following exceptions: (1) customers of the Skokie System being supplied from a source other than Evanston as of the effective date of this Agreement may continue to be so supplied; (2) customers of the Skokie System may be supplied from a source other than Evanston at any time in the future if both Evanston and Skokie consent; (3) no new customer, either public or private, having an estimated ultimate average daily use in excess of 100,000 gallons and located outside the corporate limits of Skokie may be supplied by Skokie without the prior written consent of Evanston; and (4) Evanston shall supply on a direct basis its current, and any new, customers located east of the Metropolitan Water Reclamation District Canal, including any such current or new customers located within the corporate limits of Skokie; provided, however, that this Clause 1.A(4) shall not be construed to prevent Evanston from recovering, as a condition to providing such service to any new customer located within such area of Skokie, Evanston's reasonable, actual costs of connecting such new customer to the Evanston System.

B. Service Defined. Evanston shall supply at points of delivery located within Skokie at or near (1) the intersection of McCormick Boulevard and Emerson Street, (2) the intersection of Oakton Street and the Metropolitan Water Reclamation District Canal and (3) the intersection of Old Orchard Road and Gross Point Road (the "Points of Delivery") sufficient Lake Michigan Water to satisfy the maximum 24-hour demand for Lake Michigan Water of the Skokie System. Evanston shall supply Lake Michigan Water to both the Evanston System and the Skokie System by direct pressure from the Evanston Plant without intermediate pumping from reservoirs. The Evanston System and the Skokie System shall be operated as one single, fully integrated water distribution system (the "Evanston/Skokie System"). Evanston shall be responsible for controlling operating pressures within the Evanston/Skokie System and for adjusting such pressures according to the water demands within such System. Operating pressures within the Evanston/Skokie System shall depend on the facilities, such as pumps, feeder mains, tanks and reservoirs, within such System and the ability of the mains within such System to withstand higher pressures. At no time shall the operating pressure or quality of service in the Skokie System be reduced in order to give better service to the Evanston System.

C. Operation and Maintenance of the Evanston/Skokie System. In carrying out its obligations pursuant to Subsection 1.B above, Evanston shall be responsible for operating, controlling, maintaining, restoring and improving the Evanston System and for operating and controlling, but not maintaining, all tanks, reservoirs, booster stations and similar facilities within the Skokie System. Such operation and control of the Skokie System shall be effected remotely from the Evanston Plant over telephone lines leased for that purpose by Skokie and so as to give at all times the best possible service within the Skokie System, with due concern for Skokie's costs. Evanston shall maintain complete and accurate records of Skokie booster station operating periods and of Skokie tank and reservoir water levels and pressures and shall deliver a copy of such records to Skokie at least once during each calendar month. Except as provided in this Subsection

1.C or in a separate agreement between Evanston and Skokie, Skokie shall be responsible for maintaining, restoring and improving the Skokie System.

D. Reliability; Curtailments. Evanston shall at all times use maximum feasible efforts to avoid interruptions to the service required pursuant to this Agreement or reductions in the amount of Lake Michigan Water required to be delivered by it to Skokie pursuant to this Agreement. In the event that, by reason of any emergency, system failure or malfunction, Evanston is unable, despite the use of such maximum feasible efforts, to supply the full Lake Michigan Water needs of the Evanston System, the Skokie System, the Northwest Water Commission and all other Evanston customers, the total amount of Lake Michigan Water that Evanston is able to supply to such parties shall be equitably apportioned among such parties; provided, however, that any Lake Michigan Water available from the New Reservoir described in Paragraph 3.D.1(d) of this Agreement shall not be supplied to Skokie unless, and then only to the extent, that Skokie has made a contribution in accordance with Subsection 3.G of this Agreement to cover a portion of Evanston's investment in the New Reservoir.

E. Quality. The quality of Lake Michigan Water supplied and delivered to the Skokie System pursuant to this Agreement shall at all times be equal to the quality of Lake Michigan Water supplied to the Evanston System and shall, at a minimum, be of such quality as to meet or exceed any water quality standards heretofore or hereafter enacted or promulgated by the United States Public Health Service, the Department of Public Health of the State of Illinois, the United States or Illinois Environmental Protection Agencies, or such other Federal or State agency or agencies as shall have jurisdiction from time to time to enact or promulgate such standards.

F. Limitation on New Customers. Evanston shall not enter into any new, modified or amended agreement to supply Lake Michigan Water to any customer located outside the corporate limits of Evanston unless it can do so without impairing the service to which Skokie is entitled pursuant to this Agreement. Evanston shall give Skokie at least 90 days notice of its intention to

enter into any such new, modified or amended agreement to supply Lake Michigan Water to any customer located outside the corporate limits of Evanston and shall supply Skokie with the evidence available that such service will not impair the service to which Skokie is entitled pursuant to this Agreement.

G. Emergency Connections. Nothing in this Agreement shall be construed to prohibit Skokie from entering into any emergency water service agreement with any other municipality or water agency.

H. Supply and Service Agreement Only. Nothing in this Agreement shall be construed as granting any proprietary or other interest in the Evanston Plant or System to Skokie. Nothing in this Agreement shall be construed as granting any proprietary or other interest in the Skokie System to Evanston. It is the intent of Evanston and Skokie that this Agreement shall constitute only an agreement for the sale and purchase of a water supply and related services.

SECTION 2. METERS AND MEASUREMENTS.

A. Unit of Measurement. The unit of measurement for Lake Michigan Water delivered pursuant to this Agreement shall be gallons of water, U.S. Standard Liquid Measure, and all meters installed pursuant to this Agreement shall, unless Evanston and Skokie otherwise agree, be so calibrated. In the event that it should become necessary or desirable to use other units of measurement, the basis of conversion shall be that 7.48 gallons is equivalent to one cubic foot.

B. Delivery Meters. Lake Michigan Water sold and delivered to Skokie pursuant to this Agreement shall be measured through a meter or meters furnished, installed, and read by Evanston (the "Delivery Meters"). Except as hereinafter provided, all billing for Lake Michigan Water sold and delivered pursuant to this Agreement shall be based upon Evanston's readings of the Delivery Meters. All Delivery Meters shall meet the standards of the American Water Works Association and shall be available for inspection and checking by Skokie at all times.

Evanston, at its own expense, shall maintain and, at intervals not to exceed six months, inspect, test, calibrate and adjust all Delivery Meters. Representatives from Skokie shall have the right to witness all such inspections, tests, calibrations and adjustments. Copies of the results of all such inspections, tests, calibrations and adjustments shall be furnished to Skokie upon request. Any Delivery Meter that tests not over two percent slow or fast shall be considered correct for billing purposes.

C. Check Meters. Skokie may, at its option and its own expense, install and operate a check meter (a "Check Meter") to check each Delivery Meter, but the measurement of Lake Michigan Water for billing pursuant to this Agreement shall, except as hereinafter provided, be solely by the Delivery Meters. All Check Meters shall meet the standards of the American Water Works Association and shall be available for inspection and checking by Evanston at all times.

The maintenance, reading, calibration and adjustment of all Check Meters shall be performed by Skokie; provided, however, that if at any time any such Check Meter is, due to the malfunction of a Delivery Meter or other reason, being used as the primary meter for measuring the amount of Lake Michigan Water delivered to Skokie pursuant to this Agreement, the maintenance, reading, calibration and adjustment of such Check Meter shall be performed by Evanston during such time.

D. Meter Error and Correction. If either Evanston or Skokie at any time observes a variation between a Delivery Meter and a Check Meter or any other evidence of meter malfunction, such party shall promptly notify the other party, and Evanston and Skokie shall then cooperate to procure an immediate inspection and test of the accuracy of such meters.

If, upon any inspection or test, any meter is found to be out of service or the percentage inaccuracy of any meter is found to be in excess of two percent slow or fast, the registration thereof, as well as charges for Lake Michigan Water based thereon, shall be corrected by agreement of Evanston and Skokie, based on the best data available, for a period extending back

to the time when such inaccuracy began, if such time is ascertainable and, if such time is not ascertainable, then for a period extending back one-half of the time elapsed since the last date of calibration, but in no event farther back than a period of six months. For such purposes, the best data available shall be deemed to be the registration of a Check Meter if one has been installed and is accurately registering not more than two percent slow or fast. Otherwise, the amount of Lake Michigan Water delivered during such period may be estimated (i) by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or (ii) if the error is not ascertainable by calibration tests or mathematical calculation, by estimating the quantity of Lake Michigan Water delivered by reference to deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

E. Notification Concerning Meter Tests. Evanston and Skokie shall each deliver to the other written notice at least 48 hours in advance of the time of any planned inspection, test, calibration, adjustment, or other work affecting any meter so that the other party may arrange to have a representative present. If said representative is not present at the time set in such notice, the inspection, test, calibration, adjustment or other work may, notwithstanding any other provision of this Section 2, proceed in the absence of said representative. The notice herein required may be waived in writing by either party. Notices required pursuant to this Subsection 2.E shall be given in the manner provided in Subsection 5.H of this Agreement but, notwithstanding said Subsection 5.H, shall be delivered to only the following persons at the following addresses:

If for Evanston:

Director of Public Works
2100 Ridge Avenue
Evanston, Illinois 60201

If for Skokie:

Public Works Director
5015 Davis Street
Skokie, Illinois 60077

SECTION 3. BILLING AND RATES.

A. Billing. Evanston shall render bills to Skokie pursuant to this Section 3 on a monthly basis for all Lake Michigan Water delivered by Evanston to the Points of Delivery pursuant to this Agreement, which water shall be measured as provided in Section 2 of this Agreement. Each such bill shall be due and payable on or before the 30th day following the date of its delivery to Skokie. Any bill not paid within 45 days following the date of its delivery to Skokie shall thereupon bear interest until paid at the lesser of the prime rate from time to time announced by the largest bank having its principal office in the State of Illinois or 10 percent per annum; provided, however, that in the event Skokie disputes any bill, or portion thereof, in writing within said 45 day period, and prevails in its dispute as to all or any portion of such bill, no interest shall be due or payable with regard to such successfully disputed portion of such bill.

B. Rates. For purposes of this Section 3, a "Service Year" shall be the one year period beginning on March 1 of any year and ending on the last day of February of the following year. During each Service Year, Evanston shall bill Skokie and Skokie shall pay Evanston, as full compensation to Evanston for all Lake Michigan Water sold and delivered and all services rendered pursuant to this Agreement, the following water rates:

- Base Rate. A Base Rate per 1000 gallons of Lake Michigan Water delivered by Evanston to the Points of Delivery, calculated as set forth in Subsection 3.C below, plus
- Regulatory Adjustment Rate. For Service Years beginning on and after March 1, 2007, a Regulatory Adjustment Rate, if any is due, in accordance with, and calculated as set forth in, Subsection 3.D below.

Charges due to the Base Rate shall be stated separately from charges due to the Regulatory Adjustment Rate, if any, on the monthly billings required pursuant to Subsection 3.A of this Agreement.

Evanston shall, no later than January 31 of each year, deliver to Skokie written notice of the Base Rate and the Regulatory Adjustment Rate, if any, for the following Service Year, together with a detailed explanation of the calculation of such Rates.

C. Base Rate.

1. Initial Base Rate. For all Lake Michigan Water delivered during the Service Year beginning March 1, 1997, the Base Rate shall be 72.5 cents per 1000 gallons.

2. Adjustment of Base Rate in Subsequent Service Years. For each Service Year beginning on or after March 1, 1998, the Base Rate shall be calculated by multiplying the factor "1.WXYZ" times the Base Rate applicable in the immediately preceding Service Year, where ".WXYZ" shall be calculated as follows:

(a) Calculate "Annual Inflation" equal to:

- (1) The percentage change, expressed as a decimal, in the Consumer Price Index -- All Urban Consumers -- Chicago, IL/Northwest IN, as published by the U.S. Department of Labor, Bureau of Labor Statistics, 1982-1984=100, or any successor index (the "CPI"), from the value of the CPI at the second December preceding the Service Year to the value of the CPI at the first December preceding the Service Year; plus
- (2) The percentage change, expressed as a decimal, in the national Producer Price Index -- Total Durable Goods, as published by the U.S. Department of Labor, Bureau of Labor Statistics, 1982=100, or any successor index (the "PPI"), from the value of the PPI at the second December preceding the Service Year to the value of the PPI at the first December preceding the Service Year; divided by
- (3) Two to produce the average of the percentage change of the CPI and the PPI $(\{1+2\}/2)$; but subject to the limitations that
- (4) (i) If the resulting dividend $(\{1+2\}/2)$ is greater than the ceiling of 0.0900, Annual Inflation shall be deemed to be 0.0900, and (ii) If the resulting dividend is less than the floor of 0.0375, Annual Inflation shall be deemed to be 0.0375.

- (b) Subtract 0.0175 from Annual Inflation as calculated pursuant to the preceding Subparagraph 3.C.2(a).

D. Regulatory Adjustment Rate.

1. Definitions.

- (a) "Qualified Capital Equipment and Facilities" means any capital equipment or facility that:

- (1) Is required to serve Skokie pursuant to this Agreement; and
- (2) Has an initial acquisition cost, calculated in the Service Year in which installation of such equipment or facility is commenced, equal to or greater than the "Threshold Value," where the Threshold Value for the Service Year beginning March 1, 1997 is \$1,135,000 and the Threshold Value for each Service Year beginning on or after March 1, 1998, is equal to the factor "1.ABCD" multiplied times the Threshold Value for the immediately preceding Service Year, where ".ABCD" is the Annual Inflation as defined in Subparagraph 3.C.2(a) of this Agreement; BUT
- (3) ONLY WHEN the need for such equipment or facilities is certified pursuant to, and by an independent engineering firm (the "Independent Engineer") retained pursuant to, the procedures set forth in Subsection 3.E of this Agreement to be entirely and directly due to one or more specific, identifiable additions to, or changes in, Federal or State statutes or regulations applicable to operation of the Evanston Plant or the delivery of Lake Michigan Water to Skokie therefrom, including without limiting the foregoing, additions to or changes in the regulations of the United States Public Health Service, the United States Environmental Protection Agency, the Department of Public Health of the State of Illinois, the Illinois Pollution Control Board, or the Illinois Environmental Protection Agency, or any successor departments or agencies, which additions or changes become effective on or after March 1, 2007 (a "New Regulation"). Such certification shall be conclusive and binding on Evanston and Skokie.

Any such equipment or facility that is entirely and directly due to a New Regulation shall be deemed Qualified Capital Equipment and Facilities notwithstanding the fact that the equipment or facility also produces other benefits to Evanston such as reducing operating expenses, increasing operating efficiencies, or permitting the retirement of other

Evanston water works properties. Notwithstanding the foregoing, however, the New Reservoir defined in Subparagraph 3.D.1(d) below shall not be Qualified Capital Equipment and Facilities.

In determining whether to certify equipment or facilities, or what portion of the cost of equipment and facilities to certify, as Qualified Capital Equipment and Facilities, the Independent Engineer shall include only the minimum cost of equipment and facilities necessary to comply with the New Regulation, and shall not include any costs for the equipment or facilities incurred by Evanston for purposes other than compliance with the New Regulation, such as costs to improve or upgrade the operation, or to expand the capacity, of the Evanston Plant or System, that are not entirely and directly due to the New Regulation. Evanston may, in its discretion, incur costs in connection with the acquisition and installation of Qualified Capital Equipment and Facilities for equipment, facilities or purposes not required for compliance with a New Regulation, but none of such additional costs shall be included in the calculation of the Regulatory Adjustment Rate.

- (b) "Principal and Interest Charges" means:
- (1) The actual principal and interest payments due during the Service Year in question attributable to any bonds (or that portion of any bonds) issued to finance the acquisition and installation of Qualified Capital Equipment and Facilities less the annual depreciation charge that would have been recorded for any assets required in serving Skokie that are retired in connection therewith, computed on a straight-line basis of depreciation over the remaining useful life of such assets as shown in the audited financial records of the Evanston Water Fund; or
 - (2) If no bonds are issued, the amount of "Imputed Payments" for such Qualified Capital Equipment and Facilities less the amount of the annual depreciation charge that would have been recorded for any assets required in serving Skokie that are retired in connection therewith, computed on a straight-line basis of depreciation over the remaining useful life of such assets as shown in the audited financial records of the Evanston Water Fund, where "Imputed Payments" means the principal and interest charges that would have been incurred in the Service Year in question if the Qualified Capital Equipment and Facilities had been financed by an issue of 20-year bonds to be retired by 40 equal, semi-

annual payments at an annual interest rate equal to the average interest rate, in the month in which the principal contract for the Qualified Capital Equipment and Facilities is signed by Evanston, for newly-issued municipal bonds carrying the same rating as Evanston's bonds as reported in the Municipal Bond Buyer or similar publication. Principal and Interest Charges shall not be less than zero.

- (c) "Net Operating Cost" means:
- (1) The sum of (i) the increase in annual operating expense properly recorded by Evanston in the Evanston Water Fund plus (ii) the increase in the portion of annual operating expense properly recorded by Evanston in the Evanston General Fund for insurance costs that are properly allocated to the Evanston Water Fund, but only to the extent that such increases are entirely and directly attributable to the operation and maintenance of the Qualified Capital Equipment and Facilities; minus
 - (2) Any reduction in any such operating expenses that is entirely and directly attributable to (i) the operation and maintenance of the Qualified Capital Equipment and Facilities or (ii) the retirement due to the installation of the Qualified Capital Equipment and Facilities of any assets of the Evanston Plant and System that had been required in serving Skokie.

The amount of Net Operating Costs for the Service Year in which any such Net Operating Costs are first incurred shall be certified to both Evanston and Skokie by the Independent Engineer.

- (d) "New Reservoir" means any addition to the treated Lake Michigan Water storage capacity existing at the Evanston Plant that is installed after March 1, 1997.

2. Calculation of Regulatory Adjustment Rate. The Regulatory Adjustment

Rate, if any, for the Service Years beginning on and after March 1, 2007, shall be calculated as follows:

- (a) Determine "Skokie's Share" by taking the ratio of the total quantity of Lake Michigan Water delivered by Evanston to the Points of Delivery during the immediately preceding Service Year to the product of 365 times the rated maximum daily capacity of the Evanston Plant during such preceding Service Year (for purposes of this provision, Evanston and Skokie agree that the rated maximum

daily capacity of the Evanston Plant as of the effective date of this Agreement is 108 million gallons per day); and

- (b) Multiply Skokie's Share times the sum of the total annual Principal and Interest Charges plus Net Operating Cost for the current Service Year attributable to the Qualified Capital Equipment and Facilities; and
- (c) Divide the resulting product by 12 to produce a monthly Regulatory Adjustment Rate.

E. Procedure for Certification of Qualified Capital Equipment and Facilities and Net Operating Costs. The Independent Engineer shall not have been previously employed by either Evanston or Skokie for at least 4 years prior to the date of its appointment pursuant to this Agreement and shall not be utilized by Evanston in connection with designing or installing the Qualified Capital Equipment and Facilities in question. The contract with the Independent Engineer shall be executed jointly by, and the fees of the Independent Engineer shall be shared equally by, Evanston and Skokie. The Independent Engineer shall be informed that its determination of what expenditure is "entirely and directly" due to the New Regulation is to be based on the minimum cost of acquiring and installing, or operating and maintaining, as the case may be, capital equipment and facilities strictly necessary to comply with the New Regulation and shall not include any expenditures that serve to improve or upgrade operation of, or expand the capacity of, the Evanston Plant but that are not entirely and directly required by the New Regulation.

F. Termination of Regulatory Adjustment Rate. At such time as Evanston ceases to incur any Principal and Interest Charges that are incorporated in the Regulatory Adjustment Rate, either by retirement of bonds actually issued or by reaching the end of the 20-year amortization period for Imputed Payments specified in Subparagraph 3.D.2(b) of this Agreement, the Regulatory Adjustment Rate shall be reduced by that amount. Skokie shall continue to pay the balance, if any, of the Regulatory Adjustment Rate.

G. Agreements Concerning New Reservoir.

1. Adequacy of Present Treated Lake Michigan Water Storage Capacity.

Should Evanston construct additional treated Lake Michigan Water storage capacity after March 1, 1997 ("New Reservoir"), Skokie shall not, under any circumstances, be entitled to, or make any demand for, any allocation of Lake Michigan Water from such New Reservoir capacity pursuant to Subsection 1.D hereof in the event of emergency, system malfunction or failure, unless, and then only to the extent, that Skokie has made a contribution, in an amount agreed to by Evanston and Skokie and in addition to the Rates for Lake Michigan Water service provided for in this Agreement, to cover a portion of Evanston's investment in such additional treated Lake Michigan Water storage capacity, but nothing in this contract shall require Skokie to make any such contribution.

2. Cooperation Concerning Potential Requirement for New Reservoir. In

consideration for the exclusion of the costs of a New Reservoir from the calculation of the Regulatory Adjustment Rate pursuant to Subparagraph 3.D.1(a) of this Agreement, Skokie agrees to cooperate with and assist Evanston, in both informal activities and formal proceedings, in demonstrating to the Illinois Environmental Protection Agency and the Illinois Pollution Control Board that Evanston should not be required to construct any additional treated Lake Michigan Water storage capacity. In carrying out this obligation, Skokie agrees to, among other things, advocate to the Illinois Environmental Protection Agency and the Illinois Pollution Control Board that, insofar as the demands of Skokie's customers are taken into account in determining the need for additional treated Lake Michigan Water storage capacity, the capacity of the tanks and reservoirs of the Skokie System should be included as part of the treated Lake Michigan Water storage capacity at the Evanston Plant in determining whether the treated Lake Michigan Water storage capacity at the Evanston Plant is sufficient in relation to the demands of the customers served by the Evanston Plant.

SECTION 4. EFFECTIVE DATE AND TERM OF AGREEMENT.

This Agreement shall take effect as of March 1, 1997, and shall continue in force and effect for a term of twenty years, from March 1, 1997 to February 28, 2017, and shall be renewed automatically at ten year intervals thereafter unless either party hereto delivers notice of its intention to terminate this Agreement, in writing, not less than five years prior to the end of the initial term of this Agreement or any such ten-year term thereafter. However, both Evanston and Skokie agree to negotiate in good faith with reference to the continuation, extension, or renewal of this Agreement in the event that one of them delivers notice of its intention to terminate the Agreement and the other requests such negotiations.

SECTION 5. GENERAL PROVISIONS.

A. Entire Agreement. This Agreement shall constitute the entire agreement of Evanston and Skokie concerning the sale and purchase of Lake Michigan Water; all prior agreements between Evanston and Skokie, whether written or oral, are superseded by this Agreement. There are no representations, covenants, promises, or obligations not contained in this Agreement that form any part of this Agreement or upon which either Evanston and Skokie is relying in entering into this Agreement.

B. Amendments and Modifications. No modification, addition, deletion, revision, alteration, or other change to this Agreement shall be effective unless and until such change is reduced to writing and executed by Evanston and Skokie pursuant to all applicable statutory procedures.

C. Interpretation. It is the intent of Evanston and Skokie that this Agreement shall be construed and interpreted so as to preserve its validity and enforceability as a whole. No rule of construction that a document is to be construed against the drafting party shall be applicable to this Agreement.

D. Non-Waiver. No term or condition of this Agreement shall be deemed waived by either Evanston or Skokie unless the term or condition to be waived and the circumstances giving rise to such waiver are set forth specifically in a duly authorized and written waiver of the party charged with such waiver. No waiver by either Evanston or Skokie of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition of this Agreement, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different term or condition of this Agreement.

E. No Third Party Beneficiaries. No claim as a third party beneficiary under this Agreement by any person, firm or corporation shall be made, or be valid, against either Evanston or Skokie.

F. Regulatory Bodies. This Agreement shall be subject to all valid rules, regulations, and laws applicable hereto passed or promulgated by the United States of America, the State of Illinois, or any governmental body or agency having lawful jurisdiction, or any authorized representative or agency of any of them; provided, however, that this Subsection 5.F shall not be construed as waiving the right of either Evanston or Skokie to challenge the validity of any such rule, regulation, or law on any basis, including impairment of this Agreement.

G. Assignment. Neither this Agreement nor the obligations or rights of either Evanston or Skokie pursuant to this Agreement shall be assigned or transferred except with the mutual consent of both Evanston and Skokie.

H. Notices. Except as provided in Subsection 2.E of this Agreement, all notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof when delivered in person at the address set forth below or five business days after deposit thereof in any main or branch United States post office, certified or

registered mail, return receipt requested, postage prepaid, properly addressed to Evanston and Skokie, respectively, as follows:

If for Evanston:

City Manager
Evanston Civic Center
2100 Ridge Avenue
Evanston, Illinois 60201

If for Skokie:

Village Clerk
Skokie Village Hall
5127 Oakton Street
Skokie, Illinois 60077

with duplicates to:

Village Manager
Skokie Village Hall
5127 Oakton Street
Skokie, Illinois 60077

Corporation Counsel
Skokie Village Hall
5127 Oakton Street
Skokie, Illinois 60077

By notice complying with the foregoing requirements of this Subsection 5.H, Evanston and Skokie shall each have the right to change the addressees or addresses or both for all future notices and communications to itself, but no notice of such a change shall be effective until actually received.

I. Enforcement: Arbitration.

1. Remedies. Subject to Paragraph 5.I.2 below, Evanston and Skokie may in law or in equity enforce or compel the performance of this Agreement and shall otherwise have all remedies provided by applicable law.

2. Arbitration. In case of any dispute arising between Evanston and Skokie concerning this Agreement, such dispute shall, at the written request of either party, be referred

to arbitration before a three person arbitration board for determination or settlement under the Illinois Uniform Arbitration Act, 70 ILCS 5/1 et seq., and the Commercial Arbitration Rules of the American Arbitration Association.

The arbitration board shall consist of three experienced specialists in the matter to be arbitrated. One member of the arbitration board shall be chosen by Evanston, one shall be chosen by Skokie, and the two thus chosen shall appoint a third member, who shall serve as chairman. If the two thus named cannot agree upon a third within thirty days, a third shall be appointed by the American Arbitration Association from its National Panel of Arbitrators and in accordance with its rules for such appointments.

It shall be the responsibility of the arbitrators to demand a clear and concise definition of the matter or matters at issue and to determine and demand all records, information, testimony, and other evidence that may be useful in their deliberations. It shall be the responsibility of Evanston and Skokie to meet such demands promptly and without reservation.

Any award pursuant to arbitration as herein provided for shall be accompanied by a written opinion of the arbitrators giving reasons for the award.

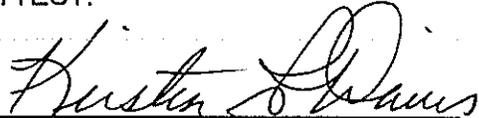
The arbitrators shall be entitled to reasonable compensation and to incur reasonable expenses, and such compensation and all other expenses of the arbitrators shall be shared equally by Evanston and Skokie unless the arbitrators shall specify some other allocation based on the equities of the situation.

J. Authority to Execute. This Agreement, and its execution by the City Manager of Evanston, was approved by the City Council of Evanston on the third day of February, 1997. This Agreement, and its execution by the Village Manager of Skokie, was approved by the Mayor and Board of Trustees of Skokie on the third day of February, 1997. Evanston and Skokie each

warrants to the other that no other approvals are required to make this Agreement binding upon it and enforceable against it.

IN WITNESS WHEREOF, Evanston and Skokie, acting under authority of their respective governing bodies, have caused this Agreement to be executed in several duplicate original counterparts effective as of the date first above written.

ATTEST:



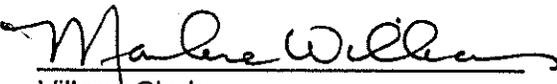
City Clerk

CITY OF EVANSTON



City Manager

ATTEST:



Village Clerk

VILLAGE OF SKOKIE



Village Manager

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Clif 1/28/97 copied to .003 and revised

**WATER SUPPLY AGREEMENT BETWEEN
THE CITY OF EVANSTON AND,
THE VILLAGE OF SKOKIE**

Contents

Background..... 5

1. Parties 5

 1.01 Parties..... 5

2. Initial Term of Agreement; Extended Term; Service Year; Fiscal Year 5

 2.01. Initial Term 5

 2.02 Extended Term..... 5

 2.03 Service Year; Fiscal Year 6

 2.04 Option to Revise Water Delivery Method to “Dump & Pump” Method 6

3. Water Defined 6

 3.01 Water Defined..... 6

4. Initial Water Rates 6

 4.01 Water Rate Payable to Evanston in Service Year 2020 and Beyond 6

 4.02 Water Rate Payable to Evanston in Service Years 2024 and Thereafter 7

5. Rate 7

 5.01 Ratemaking Principles and Policies 7

 5.02 Billing and Payments 7

 5.03 Return on Rate Base..... 8

 5.04 Depreciation Charge..... 10

 5.05 Quantity Charge 10

 5.06 Demand Charge and Quantity Charge Smoothing..... 11

 5.07 SKOKIE Audit Rights..... 11

 5.08 True-Up 12

6. Water System Definitions 12

 6.01 Water System Definitions and Related Terms 12

7. Water Supply; Allocation; Distribution	14
7.01 Water Supply, Sale and Purchase; Allocation.....	14
7.02 Emergency Connections	14
7.03 Pressures.....	14
7.04 Skokie Water System Pressure	14
7.05 Supply and Service Agreement Only; Title to Water.....	15
7.06 Temporary Restriction.....	15
7.07 Maintenance.....	16
7.08 Skokie Option to Purchase Water from Other Suppliers.....	16
7.09 Surges and Back-Flows	17
7.10 SKOKIE Responsibility for Damage to Evanston’s Water Utility	17
7.11 Evanston’s Responsibility for Damage to SKOKIE’s Water System	17
8. Existing and Future Customers of Evanston; SKOKIE Other Users	17
8.01 Existing and Other Water Customers Served by Evanston	17
8.02 Northwest Water Commission.....	17
8.03 Skokie Allocation.....	18
9. Future Transmission Main Asset Adjustments.....	18
9.01 Church Street Delivery Point	18
9.02 36-inch Supply Line installed in 1965	18
9.03 Documentation of Transmission Main Asset Adjustments	18
10. Meters and Measurements; Meter Testing	19
10.01 Unit of Measurement.....	19
10.02 Supervisory Control and Data Acquisition (“SCADA”)	19
10.03 Delivery Meters	19
10.04 Check Meters	20
10.05 Meter Calibration and Adjustment.....	20
10.06 Notification Concerning Meter Tests	21
10.07 Removal of Meters	21
10.08 Meters for Customers	21
11. Dispute Resolution.....	21
11.01 Negotiation	21
11.02 Remedies.....	22

11.03	Venue and Applicable Law.....	22
12.	Force Majeure.....	22
12.01	Excuse From Performance.....	22
12.02	Force Majeure Event	23
12.03	Notice	23
13.	Preservation of Water Rights.....	23
14.	Good Faith and Fair Dealing	24
15.	Disconnection, Removal Relocation of Transmission Mains.....	24
15.01	Termination of Agreement	24
15.02	Relocation.....	24
16.	Termination; Default.....	24
16.01	Termination by Evanston.....	24
16.02	Termination by Mutual Agreement.....	24
16.03	Termination by SKOKIE.....	25
16.04	Default; Cure Period; Relief	25
16.05	Dispute Resolution in Quantity Rate Calculation	25
17.	General Conditions	26
17.01	Entire Agreement	26
17.02	Prompt Payment.....	26
17.03	Compliance With Laws	26
17.04	Regulatory Bodies.....	26
17.05	Illinois Freedom of Information Act	26
17.06	Interpretation; Headings	27
17.07	Waiver	27
17.08	No Individual or Personal Liability.....	27
17.09	No Third Party Beneficiaries	27
17.10	Amendments	28
17.11	Assignment	28
17.12	Notice	28
17.13	Severability	30
17.14	No Separate Legal Entity; No Joint Venture or Partnership or Agency	30
17.15	Independent Sovereign Status.....	30

17.16 Effective Date 30
17.17 Authorization 30
17.18 Counterparts..... 31
17.19 Exhibits..... 31

Background

The City of Evanston (“Evanston”) is the owner and operator of a water intake, filtration, treatment and pumping plant (the “Water Plant”) located at 555 Lincoln Street, Evanston, Illinois. The Water Plant is on the shore of Lake Michigan and Evanston draws water from Lake Michigan for Evanston’s drinkable water, firefighting and fire protection needs for its community and for distribution and resale to its customers (“Evanston Water Utility”). The Village of Skokie (“Skokie”) has purchased drinkable water since 1941 and desires to continue to purchase drinkable Lake Michigan water through portions of the Evanston Water Utility for the uses specifically allowed by this Agreement, including but not limited to, distribution and sale to customers of the Skokie water system.

1. Parties

1.01 Parties

The parties to this Water Supply Agreement (“Agreement”) are Evanston and Skokie, who are at times referred to in this Agreement as a “Party” or collectively as the “Parties”.

2. Initial Term of Agreement; Extended Term; Service Year; Fiscal Year

2.01. Initial Term

The Initial Term (“Initial Term”) shall commence on the Effective Date of this Agreement (as defined in Section 17.16 (Effective Date)) and shall end at 11:59 p.m. on December 31, 2040.

2.02 Extended Term

The Initial Term of this Agreement may be extended for up to two (2) consecutive terms (generally referred to as an “Extended Term” or specifically referred to as the “First Extended Term” and the “Second Extended Term”). The First Extended Term and the Second Extended Term will each be ten (10) years in length, unless Skokie delivers written notice of its intention to not extend the Initial Term or any Extended Term of this Agreement. Any such written notice must be delivered to Evanston not less than three (3) years prior to the termination date of the then-existing Term. If this Agreement is extended for the Second Extended Term, then this Agreement shall renew automatically at the end of the Second Extended Term at ten (10) year intervals thereafter, unless either Party conveys written notice of its intention to terminate this Agreement not less than three (3) years prior to the termination date of the then-existing Term.

2.03 Service Year; Fiscal Year

Each Service Year (“Service Year”) under this Agreement will be the time period of January 1st to December 31st. Each Fiscal Year (“Fiscal Year”) under this Agreement will be the time period of January 1st to December 31st.

2.04 Option to Revise Water Delivery Method to “Dump & Pump” Method

Beginning on January 1, 2027, or any time thereafter, SKOKIE shall have the right, after first giving Evanston three (3) years notice pursuant to the Notice provisions of 17.12, to terminate this contract, without breach, and revise the method of water delivery to a “dump & pump” system from Evanston to SKOKIE whereby SKOKIE, at its own expense, will build, maintain, and control a separate water tower and corresponding water mains from which Evanston will provide water to SKOKIE. If termination occurs pursuant to this section, Skokie shall continue to pay the rates according to this Agreement until a new or amended Agreement is executed.

3. Water Defined

3.01 Water Defined

In this Agreement, Water means Lake Michigan water that is safe for human consumption (i.e. drinkable water) and that meets or exceeds the requirements of any current or successor federal, state of Illinois, or local agency or governmental authority having jurisdiction over the operation of public water supplies. Evanston shall supply water that is like kind and quality with that supplied by Evanston to its other customers. Whether “water” is capitalized in this Agreement or not, it shall have the meaning set forth in this Section.

4. Initial Water Rates

4.01 Water Rate Payable to Evanston in Service Year 2020 and Beyond

The Parties agree that subject to the Rate calculations and True-Up provisions in Section 5 of this Agreement, the total equivalent water rate to be paid by Skokie to Evanston per 1,000 gallons supplied during the Service Years identified below will be as follows:

2021	\$1.26 Not to Exceed Rate
2022	\$1.40 Not to Exceed Rate
2023	\$1.43 Not to Exceed Rate

4.02 Water Rate Payable to Evanston in Service Years 2024 and Thereafter

The Parties agree that the identification of the total equivalent water rate payable to Evanston per 1,000 gallons supplied to SKOKIE in Service Years 2024 and thereafter will be calculated in accordance with Section 5 (Rate) below. The above rates may be adjusted down based on final rate calculations as provided for in Section 5 (Rate). If the actual rate incurred at any time during Service Years 2021, 2022 or 2023 is different than the scheduled rate set forth in this Section, a “True-Up” calculation, in accordance with Section 5.08 (True-Up) will be completed no later than thirty (30) days after the Evanston Comprehensive Annual Financial Report (“CAFR”) applicable to that Service Year is completed. The Parties attached as **Group Exhibit “A”** to this Agreement an illustrative example of the “True-Up” process, including an identification of the formula and its components that will be used in performing the “True-Up” calculation. Any credit due to Skokie will be allocated to that Party according to the process outlined in Section 5.08 (True-Up) of this Agreement.

5. Rate

5.01 Ratemaking Principles and Policies

The Parties agree that the definitions, policies and principles described in the AWWA M-1, the “Principles of Water Rates, Fees and Charges published by the American Water Works Association, Sixth Edition”, as amended, may be used as a reference guide for the Parties under this Agreement. However, in the event of a conflict or inconsistency between any provision or term of the AWWA M-1 and this Agreement, the provision or term of this Agreement shall govern.

5.02 Billing and Payments

Evanston shall submit all water bills to SKOKIE on a monthly basis. SKOKIE shall pay all amounts due to Evanston pursuant to this Agreement in accordance with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq. (“LGPPA”). The water bills shall be itemized with sufficient detail to inform SKOKIE that the charges and fees set forth in each monthly bill conform to the agreed-upon rates and cost components set forth in this Agreement. If payment is not made within the required thirty (30) calendar day period, Evanston will charge SKOKIE a penalty for late payment of water bills in accordance with the interest penalty provision contained in Section 4 of the LGPPA (50 ILCS 505/4). No other penalty can be assessed against SKOKIE for late payments of water bills. Evanston’s termination option is subject to the right of

SKOKIE to resolve any late payment within the applicable cure period. The billing structure will conform to the rates and components identified and defined below:

- Demand Charge: A fixed monthly payment consisting of (i) one-twelfth (1/12th) of the Annual Return on the Fair Value Rate Base as determined in accordance with Section 5.03 (Return on Rate Base) and (ii) 1/12th of fixed monthly Depreciation Charge determined in accordance with Section 5.04 (Depreciation Charge).

- Quantity Charge: A payment based on the quantity of water delivered through the metering point(s) to Skokie's water system multiplied by the Quantity Rate determined in accordance with the provisions of Section 5.05 (Quantity Charge).

5.03 Return on Rate Base

The "Rate Base" consists of those components of Evanston's Water Utility relating to assets in the Source of Supply, Pumping Plant, Treatment Plant, Water Plant and Transmission locations (the "Evanston Water Utility Components"). These Water Utility Components in service as of December 31, 2019, are identified in the "Evanston Water Utility Components Sheet" which is part of attached **Group Exhibit "B"** (Example of Rate Calculation for SKOKIE Water Rate for Service Year 2021 Based on Evanston Audited Information for Fiscal Year 2019) to this Agreement. The Parties to this Agreement understand and acknowledge that these Evanston Water Utility Components will adjust annually as of the end of each Fiscal Year to reflect additions to, and retirements of, Evanston Water Utility Components. Evanston shall be included as a component of the Evanston Water Utility for purposes of asset allocation and rate making related to asset allocation only for SKOKIE.

- Original Cost Rate Base: The components of the Rate Base valued at the original cost to Evanston of the acquisition, engineering, construction and installation of the assets of the Water Utility as identified in the most recently available Evanston Comprehensive Annual Financial Report ("Evanston CAFR"), minus accrued depreciation as of the end of the Fiscal Year used as a basis for determining Water Charges under this Agreement.

- Reproduction Cost New Rate Base: The components of Rate Base valued initially in the most recently available Evanston CAFR prior to the commencement of delivery of water under this Agreement. Reproduction Cost New Rate Base will be recalculated as of the end of

each succeeding fifth Fiscal Year, starting in 2025, reflecting components then properly allocated to the Rate Base pursuant to this Agreement. The recalculation of the Reproduction Cost New Rate Base will utilize the most current valuation of the Evanston Water Utility, as identified by a reputable qualified consulting engineering firm experienced in water works valuation hired by Evanston. Accrued depreciation identified by the engineering firm's valuation study, plus accrued depreciation which occurred from the date of the valuation to the end of the applicable Fiscal Year of the rate determination, will be deducted from the reproduction cost new of the plant in service at the end of the Fiscal Year.

- **Fair Value Rate Base:** This will be calculated initially in the most recently available Evanston CAFR prior to the commencement of delivery of water under this Agreement. The Fair Value Rate Base will be recalculated as of the end of each succeeding fifth Fiscal Year, starting in 2025, and will consist of the sum of **fifty percent (50%) of the original Cost Rate plus fifty percent (50%)** of the Reproduction Cost Rate Base as of the calculation date. The Fair Value Rate Base will be subject to annual adjustment as of the end of the Fiscal Year between Fair Value Rate Base recalculations to reflect additions to and retirements of Water Utility assets contained in the Rate Base during the Fiscal Year. The next verification of the elements of the Fair Value Rate Base will be performed by Burns and McDonnell in 2025 (or its successor entity selected by Evanston, as the case may be), and then once every five (5) calendar years thereafter. Additions will be valued at their original cost until recalculation of the Fair Value Rate Base, at which time such additions will be valued in the same manner as the Fair Value Rate Base. Retirements will be valued at their fair value as reflected in the last previous Fair Value Rate Base computation.

- **Annual Return on Rate Base:** The Annual Return on Rate Base will be multiplied nine and one half percent (9.5%) on the SKOKIE share of the Fair Value Rate Base identified in the most recently available Evanston CAFR, and otherwise conform to the cost of service principles identified in Section 5.01 (General Principles and Policies). The SKOKIE share of the Fair Value Rate Base will be determined by allocating to SKOKIE a portion of such Fair Value Rate Base, as adjusted and recalculated from time to time as provided by this Agreement. This adjustment will be based upon the ratio of each Evanston Water Utility customer allocation, which includes the City of Evanston's allocation, compared to the total allocation of all Evanston

Water Utility customers established by order of the Illinois Department of Natural Resources (“IDNR”) during the Fiscal Year.

5.04 Depreciation Charge

These charges will be calculated as of the end of each Fiscal Year and will consist of one-twelfth (1/12th) of an annual depreciation charge, calculated by applying the depreciation rates utilized by Evanston identified in **Group Exhibit “C” (Depreciation Rates)** to this Agreement, to the original cost of the depreciable Water Utility asset defined in Section 5.03 (Return on Rate Base) in service contained in the Fair Value Rate Base allocated to SKOKIE. As of the date when any depreciable Water Utility asset will be placed in service or any depreciable Water Utility asset in the Fair Value Rate Base is retired from service, charges of depreciation to SKOKIE will be correspondingly adjusted as of the end of the Fiscal Year in which the addition or retirement took place. Furthermore, it shall be agreed, accepted and understood by all parties that once an asset has been fully depreciated; there shall no longer be an annual depreciation charge on that particular asset.

5.05 Quantity Charge

SKOKIE will pay Evanston a Quantity Charge based upon a Quantity Rate equal to SKOKIE’s share of the “Operating Costs” per 1,000 gallons of water delivered to the Point of Delivery. The “Operating Costs” to be included in determining the Quantity Rate are the costs assigned to the functions of Administration, Pumping, Filtration, and Distribution, identified in the Evanston CAFR of the Evanston Water Fund described in **Group Exhibit “B”** attached to this Agreement. The Operating Costs applicable to water deliveries during the Service Year will be determined based on the results of operation of the Evanston Water Utility, as audited by independent certified public accountants selected by Evanston, as reviewed by SKOKIE. The total Quantity Charge will be adjusted at the end of each Service Year to reflect the actual, total Quantity Charge owed to Evanston based on the Fiscal Year Operating Costs finally determined by the latest annual audit performed by the current Evanston independent certified public accountant as defined in Section 5.08 (True Up). In determining the Quantity Rate, Operating Costs will be allocated to SKOKIE based upon the ratio of its Average Day Demand identified in Section 7 (Water Supply; Allocation; Distribution) of this Agreement supplied by the Evanston Water Utility, to the aggregate of the Average Day Demand of all Evanston Water Utility, SKOKIE and other customers or users of the Evanston Water Utility system during the Fiscal Year. The

Quantity Rate will not include any portion of any costs included in computing the Fair Value Rate Base, Annual Return on Rate Base or Depreciation Charge.

5.06 Demand Charge and Quantity Charge Smoothing

Demand Charge Cap. Upon completion of the Clearwell Project immediately south of the Evanston Water Utility, and upon completion of the Intake Replacement Project, but not later than the end of year 2022, any increase and decrease in any Evanston Water Utility Asset shall not increase the total rate charged to SKOKIE by more than **four percent (4%)** per year until the entire cost of the Evanston Water Utility Asset has been recovered by either Party compared to the cost change that would have occurred if the Evanston Water Utility Asset change was not smoothed. No cap or smoothing will be calculated due to the change in total customers utilizing the Evanston Water Utility. Any increased capital costs associated exclusively with the acquisition of new customers by Evanston will not be included in the rate calculation for SKOKIE. SKOKIE's rate shall not be increased as a result of the acquisition of new Evanston customers. Evanston may accelerate the replacement of assets assigned to SKOKIE, as needed, to add a new Evanston customer or may add new assets beneficial to SKOKIE, provided that the new rate for SKOKIE is equal to or less than the then-current SKOKIE rate.

Quantity Charge Cap. The Parties agree to cap the annual increase of the labor costs portion of the Operating Costs that are used to determine the Quantity Rate based on the actual, annual aggregate cost increase (if any), **if Evanston labor costs increase more than 4% in any given year.** When Evanston labor costs increase by more than 4% any given year, the labor costs portion of the Operating Costs shall be capped based on the average of the annual percentage increases of labor costs for public works employees of Evanston and Skokie (e.g., Evanston increase (4.4%) plus Skokie Increase (4.0%) divided by two equals a 4.2% capped increase).

5.07 SKOKIE Audit Rights

Not more than once per year, SKOKIE shall have the right to audit all parts of the water charges, and the components thereof, as well as any other fees, charges, or assessments provided for in this Agreement. SKOKIE's right to audit includes, but is not limited to, the Demand Charge, the Quantity Rate, the Quantity Charge, the Rate Base and the Depreciation Charge, as well as any other components of the water charges. Evanston shall reasonably cooperate with requests by

SKOKIE and its auditors regarding reasonable requests for documents and information needed to complete the audit related to the rights and obligations of the Parties under this Agreement. Each Party is responsible for its respective costs of the audit.

5.08 True-Up

At the end of each Service Year and subject to Section 5.07 (SKOKIE Audit Rights), there will be a final Quantity Charge or credit issued by Evanston to SKOKIE to adjust the total Quantity Rate calculated by utilizing the latest available Fiscal Year audited Operating Costs. Any adjustments to the water charges, and the components thereof, as well as any other fees, charges, or assessments provided for in this Agreement, that require additional payment to Evanston by SKOKIE or any credit to SKOKIE by Evanston shall be calculated as part of this annual True-Up process. The Parties have attached as **Group Exhibit “A”** to this Agreement, illustrative examples of the “True-Up” process for the Quantity Charge. After the True-Up process and any dispute resolution process are completed, this final charge or credit shall be paid by the responsible Party within sixty (60) calendar days of the issuance of the invoice or credit by separate payment or as otherwise mutually agreed to in writing by the Parties.

6. Water System Definitions

6.01 Water System Definitions and Related Terms

In this Agreement, the following definitions apply:

- Evanston Clearwell Project: The replacement of the 5.0 MG treated water storage facility located on the south side of Lincoln Street opposite the water treatment plant
- Evanston Intake Replacement Project: The replacement of Evanston’s 36” and 42” diameter intake(s) and all appurtenances thereto (See **Group Exhibit “B”**, Assets #9 and #13 in the Source of Supply asset list).
- Evanston Water Utility: The assets in the Source of Supply, Pumping Plant, Treatment Plant, Water Plant and Transmission locations in service as of December 31, 2019, and identified in **Group Exhibit “B”** to this Agreement, which components may adjust annually as of the end of each Fiscal Year to reflect additions to, and retirements of, Water Utility components.

- Skokie Water System: The infrastructure that makes up the Skokie Water System, including but not limited to, the water treatment, pumping, storage, distribution and delivery system, pump stations, transmission and distribution mains, valves, meters, and connection facilities.

- Points of Delivery: EVANSTON shall deliver water to the Skokie Water System at or near:

- The intersection of McCormick Boulevard and Emerson Street
- The intersection of Oakton Street and the Metropolitan Water Reclamation District Channel
- The intersection of Harrison Street and Gross Point Road
- The intersection of Church Street and the Metropolitan Water Reclamation District Channel

- Intergovernmental Agreement: A separate agreement between the Parties for use of the Skokie fire training tower by Evanston as compensation for Evanston to operate and control the Skokie water system to assure pressure in the Skokie Water System and providing Booster Station records as indicated in sections 7.03 and 7.04 of this agreement. The IGA is attached as Exhibit F to this Agreement.

- “Total Equivalent Rate” is a calculation used to estimate a water rate in a cost per thousand gallons. The fixed annual return on fair value rate charge and the annual depreciation charge are each divided by the water supplied to the wholesale customer during the previous year (in 1,000 units) to develop an estimated cost per thousand gallons for the fair value rate charge and the depreciation charge. These two estimated costs per thousand gallon rates are then added to the preliminary quantity charge to calculate a total equivalent rate. Estimated fair value rate charge costs per 1,000 gallons + estimated depreciation charge costs per 1,000 gallons - preliminary quantity charge per 1,000 gallons \approx total equivalent rate.

- To the extent a word or term is used in this Agreement that is not defined herein, the first source of interpretation of the word or term shall be its definition in the AWWA M-1 Manual or other AWWA publication pertaining to water transmission and distribution facilities (if defined therein), then any applicable federal or state laws (e.g., Clean Water Act) and then the

common definition found in the most recent edition of any mutually agreed upon nationally published dictionary (e.g., Webster's Dictionary or Merriman's Dictionary).

7. Water Supply; Allocation; Distribution

7.01 Water Supply, Sale and Purchase; Allocation

Evanston will sell and deliver to SKOKIE the full water requirements of the SKOKIE Water System, except as otherwise set forth in this Agreement. SKOKIE will purchase all of the water it receives from Evanston in accordance with this Agreement.

SKOKIE is responsible to obtain and maintain a water allocation from the Illinois Department of Natural Resources ("IDNR"). In this Agreement, Average Day Demand ("ADD") means the IDNR water allocations established in November 2011 for Skokie. In this Agreement, Maximum Flow Rate ("MFR") means the rate of flow that Evanston is required to provide at the Points of Delivery.

The MFR to Skokie is based on the Year 2030 IDNR water allocation assigned to Skokie multiplied by a 1.65 peaking factor.

- Illustrative formula for calculating the MFR for Skokie: Skokie Year 2030 IDNR water allocation = 10.838 x 1.65 = 17.883 Million Gallons per Day ("MGD") MFR.

7.02 Emergency Connections

This Agreement will not prohibit SKOKIE or Evanston from entering into any emergency water service agreement with another municipality, water agency, or other source. Nothing in this Section will affect Evanston's right to collect all water charges provided for in this Agreement.

7.03 Pressures

Evanston will supply water to SKOKIE by direct pressure from the Evanston Water Plant without intermediate pumping from reservoirs. Evanston shall control operating pressures within its water distribution system and adjust such pressures according to the water demands within its water distribution system to ensure that the pressure at the Emerson Street Delivery Point is at all times between 40 and 50 pounds per square inch ("PSI").

7.04 Skokie Water System Pressure

EVANSTON shall operate and control, but not maintain, the SKOKIE water system to assure pressure at the Skokie Village Hall is maintained at a minimum pressure of 27 PSI, based on

pressure measurements taken at the same location and elevation as the current pressure monitor. Such operation and control shall be affected remotely from the Evanston Pumping Station using SCADA equipment and information provided by SKOKIE. SKOKIE is responsible to provide accurate information about their water system and assure that the set points of flow control valves are appropriate set and components of their system are in proper operating condition.

EVANSTON shall maintain complete and accurate records of Skokie booster station operating periods and of Skokie tank and reservoir water levels and pressures and shall deliver a copy of such records to SKOKIE at least once each calendar month.

As long as EVANSTON operates and controls the Skokie water system and provides the records as indicated in section 7.04, SKOKIE shall waive the maintenance costs and annual fees up to \$30,000.00 for use of the fire training tower pursuant to a separately-executed Intergovernmental Agreement.

7.05 Supply and Service Agreement Only; Title to Water

Nothing in this Agreement shall be construed as granting any proprietary or other interest in the Evanston Water Utility to SKOKIE. Nothing in this Agreement shall be construed as granting any proprietary or other interest in the SKOKIE Water System to Evanston. Evanston and SKOKIE agree that this Agreement is solely an agreement for the sale and purchase of a supply of Water and related services. Title to Water passes at the Point of Delivery from Evanston to SKOKIE. Evanston agrees to deliver an adequate water supply on a regular basis to maintain SKOKIE water requirements as provided for in this Agreement. Evanston agrees to not utilize off-peak pumping to meet the SKOKIE water requirements, unless requested by SKOKIE.

7.06 Temporary Restriction

Evanston has the right to restrict, on a temporary basis, the supply of water to SKOKIE in order to ensure an adequate water supply to all customers of the Evanston Water Utility for basic water services, and firefighting purposes, provided that the duration of the temporary water restriction is limited to the minimum time period necessary to resolve the condition or unforeseen emergency that caused the temporary restriction and provided further that the restrictions imposed upon SKOKIE shall be consistent with the restrictions imposed on other customers (including Evanston). Evanston shall take immediate, commercially reasonable actions to fix, repair, employ a temporary solution until a permanent solution is available or resolve the

condition or unforeseen emergency that caused the temporary water restriction. If there is an insufficient water supply available to serve SKOKIE and all other customers, SKOKIE will receive its pro-rata share of the amount of water that is stored and available at the Evanston Water Utility based on the IDNR water allocation(s) as defined and identified in **Group Exhibit “B”** to this Agreement. If Evanston temporarily restricts the supply of water to SKOKIE under this Section, it shall deliver immediate written notice to SKOKIE that explains the reason(s) for the restriction, identifies the estimated reduction in the volume of water to be supplied to SKOKIE and the anticipated duration of the reduction in water supply service. During the first twenty-four (24) hour period of the temporary water restriction, Evanston shall provide SKOKIE with status reports in subsequent eight (8) hour intervals relative to the progress in resolving the condition or unforeseen emergency that caused the temporary water restriction. If the temporary water restriction extends or is anticipated to extend beyond a twenty-four (24) hour period, the Parties agree to meet to discuss commercially reasonable options and actions to fix, repair, employ a temporary solution until a permanent solution is available or resolve the condition or unforeseen emergency that caused the temporary water restriction.

7.07 Maintenance

Scheduled maintenance and repair to the Evanston Water Utility or the SKOKIE Water System that may impact water supply and service to SKOKIE cannot be done except upon prior notice to the other Parties of not less than five (5) days. Scheduled maintenance to water system infrastructure during peak demand periods shall be avoided to the extent possible. Notice of emergency maintenance or repair will be provided by the Party performing the maintenance and repair to the other Party as soon as practicable under the circumstances. Each Party agrees to maintain their respective water systems in accordance with the manufacturers’ warranty and operational specifications.

7.08 Skokie Option to Purchase Water from Other Suppliers

Notwithstanding any other provision in this Agreement, Skokie may purchase water from other water suppliers under the following situation: Skokie may purchase water from other water suppliers to the extent Evanston fails to deliver to Skokie the full water requirements up to the total amount of the IDNR water allocations as required by this Agreement. In the event of such failure by Evanston, but excluding temporary restriction(s) under Section 7.06 or maintenance situations under Section 7.07 above, Evanston shall provide written notice to Skokie of the

service failure, which shall include a description of the operational or technical reasons for the failure to deliver Skokie's full water requirements.

7.09 Surges and Back-Flows

No surges or back-flows into any Party's water system are allowable under this Agreement.

7.10 SKOKIE Responsibility for Damage to Evanston's Water Utility

SKOKIE is responsible for damage to the Evanston Water Utility or of any of its customers due to surges and back-flows caused by malfunction or misuse of SKOKIE's Water System, including, without limitation, valve operation or booster station operation, excluding damage where Evanston is responsible for the operation of the SKOKIE Water System, including, without limitation, its valve operation or booster station.

7.11 Evanston's Responsibility for Damage to SKOKIE's Water System

Evanston is responsible for damage to the SKOKIE Water System or of the water systems any of its customers due to surges and back-flows caused by malfunction or misuse of Evanston's Water Utility, including, without limitation, valve operation, booster station operation or pump station operation.

8. Existing and Future Customers of Evanston; SKOKIE Other Users

8.01 Existing and Other Water Customers Served by Evanston

Evanston agrees that it will continue to supply water to its existing customers without impairing SKOKIE's right to Water service from Evanston under this Agreement, or impairing Evanston's ability to deliver Water to SKOKIE under this Agreement. Nothing in this Agreement limits Evanston executing new, modified or amended agreements with any other current or future wholesale water customer served by Evanston. SKOKIE agrees Evanston has the right to serve new wholesale water customer(s) subject to its obligations to SKOKIE under this Agreement.

8.02 Northwest Water Commission

In the event of the loss of the Northwest Water Commission ("NWC") between the years of 2034-2040, the change in the total rate increase shall be calculated, and Skokie shall be assessed, **not more than fifty percent (50%)** of the rate increase incurred by the loss of NWC. Assuming the loss of NWC between the years of 2034-2040, total Skokie rate increases shall be **capped at eight percent (8%) per annum**. Evanston shall take all commercially reasonable actions to

reduce all assets in use at the WTP to reflect the new plant demand without NWC. After 2040, SKOKIE rates shall be recalculated according to this Agreement.

8.03 Skokie Allocation

Evanston agrees that any new, modified or amended agreement or contract with any current or future wholesale water customer that results in a lower proportional usage of the asset by Skokie, due to sharing of assets in accordance with Section 5.03, shall result in a comparable reduction of Skokie's asset allocation.

9. Future Transmission Main Asset Adjustments

9.01 Church Street Delivery Point

Evanston will cap the 24-inch water main on Church Street at Pitner Avenue in 2021 eliminating the Church Street Delivery Point.

Beginning in Service Year 2022, the 24-inch water main (asset number 476) and the associated four (4) 16-inch valves (asset number 398) needed for the Church Street Delivery Point will be removed from the select water mains assigned to Skokie.

9.02 36-inch Supply Line installed in 1965

Skokie agrees that the 36-inch supply line (asset number 533) constructed and placed into operation prior to June 1, 1965 in accordance with the 1963 Agreement between the City of Evanston and Village of Skokie Relating to Water Supply, is no longer for Skokie's exclusive use.

Beginning in Service Year 2022; the portion of the 36-inch supply line from the west end of the existing 48-inch line to the connection of the 24-inch diameter water main located at Bridge Street will be shared between Evanston and Skokie.

The portion of the 36-inch supply line from the connection of the 24-inch diameter water main located at Bridge Street to the corporate boundary at McCormick Blvd shall be included only in the Skokie rate base.

9.03 Documentation of Transmission Main Asset Adjustments

The transmission main asset adjustments, stated in section 9.01 and 9.02 above, are reflected in the select water main asset list for select water mains-Skokie and select water mains shared by Evanston and Skokie as well as an illustration of Shared Transmission Fixed Assets Map in Exhibit G .

10. Meters and Measurements; Meter Testing

10.01 Unit of Measurement

The unit of measurement for water delivered pursuant to this Agreement will be gallons of water, U.S. Standard Liquid measure, and all meters installed pursuant to this Agreement must, unless the Parties otherwise agree, be so calibrated, and must read at one thousand (1,000) gallons of water.

10.02 Supervisory Control and Data Acquisition (“SCADA”)

SKOKIE shall in real time provide to Evanston the digital and analog input / output signals as listed in Exhibit D, except during SCADA failure. EVANSTON shall in real time provide to SKOKIE the digital and analog input / output signals as listed in Exhibit E, except during SCADA failure.

In regard to on-site visits and inspections of each Party’s respective water system facilities, the requesting Party shall request any on-site visits and inspections in advance by written notice to the receiving Party and shall comply with all security protocols and be accompanied by the receiving Party’s staff during the on-site visit or inspection, and the receiving Party shall cooperate in scheduling such on-site visits and inspections. Evanston and SKOKIE agree to promptly repair any SCADA failures.

10.03 Delivery Meters

Water sold and delivered to SKOKIE pursuant to this Agreement must be measured through a meter or meters furnished, installed, maintained, replaced and read by Evanston (the “Delivery Meters”). Except as provided in this Agreement, all billing for Water sold and supplied pursuant to this Agreement must be based upon Evanston’s readings of the Delivery Meters, subject to SKOKIE’s right to audit Evanston’s readings under Section 5.07 (SKOKIE Audit Rights) above. All Delivery Meters shall be in good working order, shall at all times meet or exceed the standards of the AWWA, or its successor entity, and shall be available for inspection, testing, and checking by SKOKIE upon reasonable request to Evanston. Evanston shall at its cost maintain, inspect, test, calibrate and adjust all Delivery Meters not more than two (2) times per year. Representatives from SKOKIE shall have the right to witness all such maintenance, inspections, tests, calibrations and adjustments. Skokie shall pay to Evanston the actual cost incurred by Evanston in maintaining, testing, calibrating and adjusting the Delivery Meters,

which cost shall be included as part of the Quantity Charge. Copies of the results of all such maintenance, inspections, tests, calibrations and adjustments must be furnished by Evanston to SKOKIE upon request.

10.04 Check Meters

SKOKIE may, at their option and expense, install and operate a check meter(s) (a “Check Meter”) to check each Delivery Meter, but the measurement of water for billing pursuant to this Agreement shall, except as hereinafter provided, be measured solely by the Delivery Meters. All Check Meters shall meet or exceed the standards of the AWWA and shall be available for inspection and checking by Evanston upon reasonable request to SKOKIE. The costs for installation, maintenance, regulatory fees, reading, testing, calibration, and adjustment of all Check Meters shall be performed by SKOKIE at SKOKIE’S sole cost and expense.

10.05 Meter Calibration and Adjustment

If either Evanston or SKOKIE at any time observes a variation between a Delivery Meter and a Check Meter or any other evidence of meter malfunction, such Party must promptly notify the other Party, and Evanston and SKOKIE agree to cooperate to inspect and test the accuracy of such meter(s). If upon any inspection or test, any meter is found to be out of service or the percentage inaccuracy of any meter is found to be **in excess of two percent (2%)** slow or fast, then the meter’s registration, as well as charges for water based on incorrect metering, must be corrected by agreement of Evanston and SKOKIE based on the best data available. The best data available is defined as the registration of an installed Check Meter that is accurately registering **equal to or less than two percent (2%)** slow or fast during the period extending back to the time when such inaccuracy began. If it is impossible to determine the time period of inaccuracy, the correction period will extend back one-half of the time elapsed since the last date of calibration. Otherwise, the amount of water delivered during such period may be estimated by:

- correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or
- if the error is not ascertainable by calibration tests or mathematical calculation, by estimating the quantity of water delivered by reference to deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

10.06 Notification Concerning Meter Tests

Evanston and SKOKIE shall deliver to the other Party written notice at least seventy-two (72) hours in advance of the time of any planned maintenance, inspection, test, calibration, adjustment or other work affecting any Delivery Meters or Check Meters so that the other Party may arrange to have a representative present. If said representative is not present at the time set in such notice, the inspection, test, calibration, adjustment or other work will proceed in the absence of said representative. Notices required under this Section 10.06 shall be given to the following persons at the following addresses, unless otherwise provided in writing by SKOKIE:

If for Evanston:

Water Bureau Chief
555 Lincoln Street
Evanston, Illinois 60201
Phone: 847.448.4311
Email: current business email address

If for Skokie:

Village of Skokie
Attn: Village Manager
5127 Oakton Street
Skokie, Illinois 60077
Phone: 847.673.0500
Email: current business email address

10.07 Removal of Meters

Delivery Meters and Check Meters may be removed upon termination of this Agreement only upon mutual agreement of the Parties and upon the release of any easements related thereto.

10.08 Meters for Customers

Each Party is responsible for providing water meters to its own customers.

11. Dispute Resolution

11.01 Negotiation

If a dispute arises between Evanston and SKOKIE concerning this Agreement, the Parties will first attempt to resolve the dispute by negotiation. Each Party will designate persons to negotiate

on their behalf. The Party contending that a dispute exists must specifically identify in writing all issues and present it to the other Parties. The Parties will meet and negotiate in an attempt to resolve the matter. If the dispute is resolved as a result of such negotiation, there must be a written determination of such resolution, and ratified by the corporate authorities of each Party, which will be binding upon the Parties. If necessary, the Parties will execute an addendum to this Agreement. Each Party will bear its own costs, including attorneys' fees, incurred in all proceedings in this Section. If the Parties do not resolve the dispute through negotiation, any Party to this Agreement may pursue other remedies under Section 11.02 (Remedies) below to enforce the provisions of this Agreement.

11.02 Remedies

In any action with respect to this Agreement, the Parties are free to pursue any legal remedies at law or in equity. Each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law. Each Party will bear its own costs, expenses, experts' fees, and attorneys' fees, incurred in all litigation arising under this Agreement.

11.03 Venue and Applicable Law

All questions of interpretation, construction and enforcement, and all controversies with respect to this Agreement, will be governed by the applicable constitutional, statutory and common law of the State of Illinois. The Parties agree that, for the purpose of any litigation relative to this Agreement and its enforcement, venue will be in the Circuit Court of Cook County, Illinois or the Northern District, Eastern Division of the United States District Court, Chicago, Illinois, and the Parties consent to the *in personam* jurisdiction of said Courts for any such action or proceeding.

12. Force Majeure

12.01 Excuse From Performance

No Party will be liable in damages to any other Party for delay in performance of, or failure to perform, its obligations under this Agreement, if such delay or failure is caused by a Force Majeure Event as defined in Section 12.02 (Force Majeure Event) below. If a Party cannot perform under this Agreement due to the occurrence of a Force Majeure Event, then the time

period for performance of the Party under this Agreement shall be extended by the duration of the Force Majeure Event.

12.02 Force Majeure Event

A “Force Majeure Event” means an event not the fault of, and beyond the control of, the Party claiming excuse which makes it impossible or extremely impracticable for such Party to perform obligations imposed on it by this Agreement, by virtue of its effect on physical facilities and their operation or employees essential to such performance. Force Majeure Events include:

- an “act of God” such as an earthquake, flood, fire, Lake Michigan seiche, tornado, earth movement, or similar catastrophic event,
- an act of terrorism, sabotage, civil disturbance or similar event,
- a strike, work stoppage, picketing, or similar concerted labor action,
- delays in construction caused by unanticipated negligence or breach of contract by a third party or inability to obtain essential materials after diligent and timely efforts, or
- an order or regulation issued by a Federal or State regulatory agency after the Effective Date or a judgment or order entered by a Federal or State court after the Effective Date.

A Force Majeure Event does not include a change in economic or market conditions or a change in the financial condition of a Party to this Agreement.

12.03 Notice

The Party claiming a Force Majeure Event excuse must deliver to the other Parties a written notice of intent to claim excuse from performance under this Agreement by reason of a Force Majeure Event. Notice required by this Section must be given promptly in light of the circumstances. Such notice must describe the Force Majeure Event, the services impacted by the claimed event, the length of time that the Party expects to be prevented from performing, and the steps which the Party intends to take to restore its ability to perform its obligations under this Agreement.

13. Preservation of Water Rights

Evanston intends to preserve all of its water rights, irrespective of whether the water held under such water rights is allocated under this Agreement. Nothing in this Agreement shall be

construed as an abandonment, or evidence of intent to abandon, any of the water rights that Evanston presently possesses.

14. Good Faith and Fair Dealing

The Parties each acknowledge their obligation under Illinois law to act in good faith toward, and deal fairly with, each other with respect to this Agreement.

15. Disconnection, Removal Relocation of Transmission Mains

15.01 Termination of Agreement

Upon termination of this Agreement, Evanston, in its discretion and at its cost, may disconnect or remove the transmission mains located within Evanston's rights of way or utility easements, but only after the Parties mutually approve and sign an agreement and a release of easements that pertain to disconnection and / or removal of the transmission mains.

15.02 Relocation

In the event that the Points of Delivery or any portion of the Evanston Water System and the Skokie Water System need to be relocated due to unanticipated circumstances or at the request of either Party, the Parties may negotiate an addendum to this Agreement that provides for the relocation, reconstruction, financing and cost sharing of the relocation work.

16. Termination; Default

16.01 Termination by Evanston

This Agreement shall be subject to termination if a court of competent jurisdiction restricts or limits any of Evanston's rights to obtain, sell, contract for, or distribute water to SKOKIE in a manner that prohibits Evanston from complying with its obligations to SKOKIE under this Agreement. Evanston will have the right to terminate this Agreement if SKOKIE fails and defaults with respect to its obligations under Section 5.02 (Billing and Payments) of this Agreement, and otherwise fails and refuses to cure such default under Section 11.01 (Negotiation) and Section 16.04 (Default; Cure Period; Relief).

16.02 Termination by Mutual Agreement

Only upon mutual consent, the Parties may agree to terminate this Agreement, in writing, after the approval of a termination or wind-down agreement by their respective corporate authorities.

16.03 Termination by SKOKIE

SKOKIE shall have the right to terminate this Agreement if it delivers written notice to Evanston of its intention to terminate this Agreement not less than five (5) years prior to the termination date of the then-existing Term. In addition, SKOKIE has the right to terminate this Agreement for the following reason(s):

A. Evanston fails to deliver water in accordance with or otherwise fails to comply with the terms of this Agreement.

B. SKOKIE can terminate this Agreement at the end of the Initial Term, or as otherwise provided during any Extended Term, subject to timely written notice to Evanston.

16.04 Default; Cure Period; Relief

In the event any Party defaults in regard to any obligation under this Agreement, the non-defaulting Party shall send written notice of the default, with a description of the default, and a request that the defaulting Party cure the default. Any Party deemed to be in default under this Agreement by another Party shall have a thirty (30) calendar day cure period to resolve the default to the other Party's satisfaction or to initiate and continue to take actions that are designed to cure the default in a reasonable time period so that the Party in default is in conformance with the terms of this Agreement. In the event that a default is not cured, the non-defaulting Party and the defaulting Party shall participate in the "Dispute Resolution" process contained in Section 11.01 (Negotiation) above. If the Dispute Resolution process is not successful, then either Party may seek to enforce remedies in Section 11.02 (Remedies) to enforce the provisions of this Agreement.

16.05 Dispute Resolution in Quantity Rate Calculation

If a dispute develops between the parties pursuant to Section 5.07 and 5.08, the parties will submit to non-binding mediation to address any controversy or claim arising out of, or relating to those Sections.

The mediation shall be conducted by JAMS. Both parties shall share the cost of the dispute resolution process equally; however, personal attorneys and witnesses or specialists are the direct responsibility of each party and any associated fees and expenses shall be the responsibility of the respective party.

17. General Conditions

17.01 Entire Agreement

This Agreement constitutes the entire agreement of the Parties concerning all matters specifically covered by this Agreement. There are no representations, covenants, promises or obligations not contained in this Agreement that form any part of this Agreement or upon which any of the Parties is relying upon in entering into this Agreement. There are no other commitments, understandings, promises or conditions among the Parties in any other contract or agreement, whether oral or written, and this Agreement supersedes all prior written or oral agreements, commitments and understandings among the Parties.

17.02 Prompt Payment

In regard to the payment of any fee, charge or assessment provided for under this Agreement, the Parties are subject to and shall comply with the Local Government Prompt Payment Act (50 ILCS 505/1, et seq.).

17.03 Compliance With Laws

The Parties to this Agreement shall comply with all applicable Federal, State and local laws, rules and regulations in carrying out the terms and conditions of this Agreement.

17.04 Regulatory Bodies

This Agreement shall be subject to all valid rules, regulations, and laws applicable hereto passed or promulgated by the United States of America, the State of Illinois, or any governmental body or agency having lawful jurisdiction, or any authorized representative or agency of any of them; provided, however, that this Section 17.04 shall not be construed as waiving the right of any Party to challenge the validity of any such rule, regulation, or law on any basis, including impairment of this Agreement.

17.05 Illinois Freedom of Information Act

The definition of a “public record” in the Freedom of Information Act (5 ILCS 140/1, et seq.) (“FOIA”) includes a “public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body and that directly relates to the governmental function and is not otherwise exempt under this Act.” (5 ILCS 140/7(2)). Consequently, the Parties shall maintain and make available to the other Parties, upon request, their public records relating to the

performance of this Agreement in compliance with the requirements of the Local Records Act (50 ILCS 205/1, et seq.) and FOIA.

17.06 Interpretation; Headings

This Agreement shall be construed and interpreted so as to preserve its validity and enforceability as a whole. No rule of construction that a document is to be construed against any of the drafting Parties shall be applicable to this Agreement. Section headings and titles are descriptive only and do not in any way limit or expand the scope of this Agreement.

17.07 Waiver

The failure of any Party to enforce any section, subsection, term, condition or covenant (collectively referred to as "provision") of this Agreement shall not be deemed a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with such provision and every other provision of this Agreement. No provision of this Agreement shall be deemed waived by any Party, unless the provision to be waived and the circumstances giving rise to such waiver are set forth specifically in a duly authorized and written waiver of the Party charged with such waiver. No waiver by either Evanston or SKOKIE of any provision of this Agreement shall be deemed or construed as a waiver of any other provision of this Agreement, nor shall any waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different provision of this Agreement.

17.08 No Individual or Personal Liability

The Parties agree that the actions taken in regard to and the representations made by each respective Party in this Agreement and by their respective corporate authorities have not been taken or made in anyone's individual capacity and no mayor/president, board member, council member, official, officer, employee, volunteer or representative of any Party will incur personal liability in conjunction with this Agreement.

17.09 No Third Party Beneficiaries

This Agreement is not intended to benefit any person, entity or municipality not a Party to this Agreement, and no other person, entity or municipality shall be entitled to be treated as beneficiary of this Agreement. This Agreement is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but not limited to, any agent, contractor, subcontractor, consultant, volunteer or other representative of any Party hereto.

No agent, employee, contractor, subcontractor, consultant, volunteer or other representative of the Parties hereto will be deemed an agent, employee, contractor, subcontractor, consultant, volunteer or other representative of any other Party hereto.

17.10 Amendments

No amendment to this Agreement shall be effective until it is reduced to writing in an addendum and approved by the corporate authorities of the Parties. All addenda shall be executed by an authorized official of each Party. If any governmental agency with regulatory authority enacts new rules or regulations or new nationally recognized water system engineering requirements are adopted that require the method of water production or any components of the infrastructure used for the delivery of water under this Agreement to be changed or modified, the Parties agree to negotiate an addendum to this Agreement that addresses the construction and operation of the required water system improvements to the Evanston Water Utility and/or the SKOKIE Water System, the cost allocation of such improvements among the Parties and the financing of such improvements.

17.11 Assignment

No Party shall assign, sublet, sell or transfer its interest in this Agreement or any of its rights or obligations under this Agreement without the prior written, mutual consent of the other Parties. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

17.12 Notice

Except as otherwise provided in this Agreement, all notices and other communications in connection with this Agreement shall be in writing and deemed to be given on the date of mailing if sent by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid, or may be delivered by messenger delivery, or overnight express mail, or personal delivery, or via facsimile, or via electronic internet mail ("e-mail") to the current mailing address(es) or email address(es) of the Parties' principal administrative offices, addressed to the Mayor/Village President or the City Manager/Village Manager. Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. E-mail notices shall be deemed valid only to the extent that they are (a) opened by the recipient

on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (a) the date of actual receipt; or (b) the date that is one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) the date that is three (3) business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each Party to this Agreement shall have the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications shall be addressed to, and delivered at, the following addresses, unless otherwise directed by the Parties:

If for City of Evanston:

With copy to: Corporation Counsel (same address as City Manager)

City Manager
Lorraine Morton Civic Center
2100 Ridge Avenue
Evanston, Illinois 60201
Phone: 847.866.2936
Email:
citymanagersoffice@cityofevanston.org

Water Production Bureau Chief
555 Lincoln Street
Evanston, Illinois 60201
Phone: 847.448.4311
Email: publicworks@cityofevanston.org

With a copy to: Corporation Counsel (same address as Village Manager)

Village of Skokie
Attn: Village Manager
5127 Oakton Street
Skokie, Illinois 60077
Phone: 847.673.0500
Email: current business email address

By notice with the foregoing requirements of this Section 17.12, the Parties shall have the right to change the addresses for all future notices and communications to itself, but no notice of such a change shall be effective until actually received.

17.13 Severability

In the event any term, provision or condition of this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms, provisions or conditions of this Agreement which can be given effect without the invalid term, provision or condition. To this extent and purpose, the terms, provisions and conditions of this Agreement are declared severable. If any part of this Agreement is adjudged invalid, such adjudication shall not affect the validity of this Agreement as a whole or of any other part.

17.14 No Separate Legal Entity; No Joint Venture or Partnership or Agency

This Agreement establishes a cooperative intergovernmental undertaking, but the Parties do not intend to create a new or separate legal entity by entering into this Agreement. This Agreement does not establish or create a joint venture or partnership between the Parties and no Party shall be responsible for the liabilities and debts of the other Parties hereto. No Party shall be deemed to be the agent, employee, or representative of any other Party.

17.15 Independent Sovereign Status

The Parties to this Agreement are independent, sovereign units of local government and no Party shall exercise control over either the performance of any other Party or the employees of any other Party.

17.16 Effective Date

The Effective Date of this Agreement shall be the date that the last authorized signatory signs and dates this Agreement, which date shall be inserted on the first page of this Agreement. This Agreement shall become effective only in the event the corporate authorities of each Party approve this Agreement.

17.17 Authorization

In accordance with applicable state laws, this Agreement was approved by each Party as follows:

- A. The adoption of Ordinance 42-O-21 by the Mayor and City Council of Evanston on the 10th of May, 2021.
- B. The passage of Resolution 21-4-R-1499 by the Mayor and Board of Trustees of the Village of Skokie on the 19th of April, 2021.

17.18 Counterparts

This Agreement may be executed in counterparts (including facsimile signatures), each of which shall be deemed to be an original and all of which shall constitute one and the same Agreement.

17.19 Exhibits

In the event of a conflict between any Exhibit attached hereto and the text of this Agreement, the text of this Agreement shall control. The following Exhibits are attached to this Agreement and made a part hereof:

A. Group Exhibit “A”: Illustrative Example of “True-Up” Process comprised of Pages A-1 through A-11:

- Page A-1: Skokie Quantity Rate True Up Calculation for Service Year 2021;
- Page A-2: Skokie Preliminary Quantity Rate for Service Year 2021 Based on FY 2019 Pumpage and Audited Information;
- Page A-3 to A-6: 2019 Audited Information for Water Expenses Per CAFR, City of Evanston, Illinois, for the FY ended December 31, 2019;
- Page A-7: Skokie Actual Quantity Rate for Service Year 2021 Based on FY 2021 Pumpage and Audited Information;
- Page A-8 to A-11: 2021 Audited Information for Water Expenses per CAFR, City of Evanston, Illinois, for the FY ended December 31, 2021.

B. Group Exhibit “B”: Example of Rate Calculation for Skokie Water Rate for Service Year 2021 Based on Evanston Projected Information for Fiscal Year 2019 comprised of Pages B-1 through B-31.

- Pages B-1 to B-5: Example of Rate Calculation for Skokie Water Supply;
- Pages B-6 to B-17: Evanston Water Utility Component Sheets, Table 1 dated 11/5/2020 (Reproduction Cost New Less Depreciation As Of December 31, 2019, Pages 1 through 12 of Burns & McDonnell Water Works Properties Valuation);
- Page B-18: Evanston Water Utility Component Sheets, Table 2 dated 11/5/2020 (Summary of Reproduction Cost New Less Depreciation As Of December 31, 2019, of Burns & McDonnell Water Works Properties Valuation);

- Page B-19: Evanston Water Utility Component Sheets, Table 3 dated 11/5/2020 (Summary of Original Cost Less Depreciation As Of December 31, 2019, of Burns & McDonnell Water Works Properties Valuation);
- Page B-20: Evanston Water Utility Component Sheets, Table 4 dated 11/5/2020 (Summary of OCLD and RCNLD At December 31, 2019, of Burns & McDonnell Water Works Properties Valuation);
- Page B-21: IDNR Water Allocations as of November 2011;
- Page B-22: 2019 Capital Assets Activity, City of Evanston, Illinois, for the FY ended December 31, 2019 (Page 38 of the Evanston 2019 CAFR);
- Page B-23: Evanston Audited Information, City of Evanston, Schedule of Plant Fixed Assets and Depreciation, Year Ended December 31, 2019;
- Pages B-24 to B-25: Evanston Audited Information, City of Evanston, Schedule of Transmission Fixed Assets and Depreciation, Year Ended December 31, 2019;
- Page B-26: Illustration of Shared Transmission Fixed Assets, December 31, 2019
- Page B-27: 2019 Annual Pumpage (Water & Sewer 2019 Annual Report);
- Pages B-28 to B-31: 2019 Audited Information for Water Expenses per CAFR, City of Evanston, Illinois, for the FY ended December 31, 2019.

C. Group Exhibit “C”: Depreciation Rates comprised of Page C-1: Depreciation Rates (Classes of Plant included: Source of Supply, Pumping Plant, Treatment Plant, Water Plant and Transmission)

D. Exhibit “D”: Digital and analog input and output signals that Skokie shall provide Evanston in real time.

E. Exhibit “E”: Digital and analog input and output signals that Evanston shall provide Skokie in real time.

F. Exhibit “F”: Intergovernmental Agreement between the City of Evanston and Village of Skokie.

G. Exhibit “G”: Shared Transmission Fixed Assets Map

H. Exhibit “H”: City of Evanston Ordinance 42-O-21 (Approval of Water Supply Agreement Between the City of Evanston and the Village of Skokie)

I. Exhibit “I”: Village of Skokie Resolution 21-4-R (Approval of Water Supply Agreement Between the City of Evanston and the Village of Skokie)

IN WITNESS WHEREOF, this Agreement was executed on behalf of the Parties through their authorized representatives, after all duly required corporate action was taken, as set forth below on the signature pages.

SIGNATURE PAGES TO FOLLOW

**SIGNATURE PAGE FOR
CITY OF EVANSTON**

IN WITNESS WHEREOF, the below authorized officials of the City of Evanston signed this Agreement pursuant to legal authorization granted to him/her under Article VII, Section 10 of the 1970 Illinois Constitution, the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) and the corporate approval granted by passage of Ordinance 45-O-18 by the Corporate Authorities of the City of Evanston.

City of Evanston

By: Stephen H. Hagerty

Name: Stephen H. Hagerty

Mayor, City of Evanston

Date: May 19 2021

Attest:

By: Eduardo Gomez

Name: Eduardo Gomez

Deputy City Clerk, City of Evanston

Date: May 10, 2021

Approved as to form and legality:

By: Nicholas E. Cummings

Nicholas E. Cummings,

Corporation Counsel

**SIGNATURE PAGE FOR
VILLAGE OF SKOKIE**

IN WITNESS WHEREOF, the below authorized officials of the Village of Skokie have signed this Agreement pursuant to legal authorization granted to him/her under Article VII, Section 10 of the 1970 Illinois Constitution, the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) and the corporate approval granted by passage of Resolution 21-4-R-1499 by the Corporate Authorities of the Village of Skokie.

Village of Skokie

By: Jan J. Lachy

Date: APRIL 19, 2021.

Attest:

By: Phah

Name:

Village Clerk, Village of Skokie

Date: APRIL 19, 2021

Approved as to form and legality:

By: [Signature]
Corporation Counsel

TITLE	Skokie Water Service Agreement - Resignature
FILE NAME	052721 WSA COE & Skokie [FINAL] (1).pdf
DOCUMENT ID	0acbc486ff2479ab781ac016182b8dfc4582a66b
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Completed

Document History



05 / 27 / 2021
15:27:45 UTC-5

Sent for signature to Nicholas E. Cummings (ncummings@cityofevanston.org), Steve Hagerty (steve.hagerty@hagertyconsulting.com) and Eduardo Gomez (egomez@cityofevanston.org) from lthomas@cityofevanston.org
IP: 66.158.65.76



05 / 27 / 2021
15:28:07 UTC-5

Viewed by Nicholas E. Cummings (ncummings@cityofevanston.org)
IP: 66.158.65.76



05 / 27 / 2021
15:28:21 UTC-5

Signed by Nicholas E. Cummings (ncummings@cityofevanston.org)
IP: 66.158.65.76



05 / 27 / 2021
17:03:04 UTC-5

Viewed by Steve Hagerty (steve.hagerty@hagertyconsulting.com)
IP: 168.93.161.250

TITLE	Skokie Water Service Agreement - Resignature
FILE NAME	052721 WSA COE & Skokie [FINAL] (1).pdf
DOCUMENT ID	0acbc486ff2479ab781ac016182b8dfc4582a66b
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Completed

Document History

**05 / 27 / 2021**
17:04:12 UTC-5Signed by Steve Hagerty
(steve.hagerty@hagertyconsulting.com)
IP: 168.93.161.250**05 / 28 / 2021**
08:41:02 UTC-5Viewed by Eduardo Gomez (egomez@cityofevanston.org)
IP: 66.158.65.76**05 / 28 / 2021**
08:41:17 UTC-5Signed by Eduardo Gomez (egomez@cityofevanston.org)
IP: 66.158.65.76**05 / 28 / 2021**
08:41:17 UTC-5

The document has been completed.

**WATER SUPPLY AGREEMENT BETWEEN
THE CITY OF EVANSTON AND,
THE VILLAGE OF LINCOLNWOOD**

Contents

Background 5

1. Parties 5

 1.01 Parties 5

2. Initial Term of Agreement; Extended Term; Service Year; Fiscal Year 5

 2.1. Initial Term 5

 2.2 Extended Term 5

 2.3 Service Year; Fiscal Year 6

3. Water Defined 6

 3.01 Water Defined..... 6

4. Commencement of Obligation to Deliver and Receive Water..... 6

 4.1 Intentionally Left Blank..... 6

 4.2 LINCOLNWOOD Notice to Evanston to Proceed with Final Engineering Design..... 6

 4.3 LINCOLNWOOD Notice to Evanston to Proceed with Construction..... 6

 4.4 Delivery Date..... 7

 4.5 LINCOLNWOOD Payment for Water; Water During Construction 7

 4.6 Water Rate Payable to Evanston in Service Year 2018 and Beyond 7

 4.7 Water Rate Payable to Evanston in Service Years 2023 and Thereafter..... 7

5. Rate..... 8

 5.1 Ratemaking Principles and Policies..... 8

 5.2 Billing and Payments..... 8

 5.3 Return on Rate Base 9

 5.4 Depreciation Charge 11

 5.5 Quantity Charge..... 11

 5.6 Demand Charge and Quantity Charge Smoothing 12

- 5.7 LINCOLNWOOD Audit Rights..... 13
- 5.8 True-Up 13
- 6. Water System Definitions 13
 - 6.01 Water System Definitions and Related Terms..... 13
- 7. Water Supply; Allocation; Distribution 15
 - 7.1 Water Supply, Sale and Purchase; Allocation 15
 - 7.2 Emergency Connections 15
 - 7.3 Coefficient of Friction 15
 - 7.4 Pressures 16
 - 7.5 Supply and Service Agreement Only; Title to Water..... 16
 - 7.6 Temporary Restriction 17
 - 7.7 Maintenance..... 17
 - 7.8 Lincolnwood Option to Purchase Water from Other Suppliers 18
 - 7.9 Surges and Back-Flows 18
 - 7.10 LINCOLNWOOD Responsibility for Damage to Evanston’s Water Utility 18
 - 7.11 Evanston’s Responsibility for Damage to LINCOLNWOOD’s Water System 19
- 8. Existing and Future Customers of Evanston; LINCOLNWOOD Other Users..... 19
 - 8.1 Existing and Other Water Customers Served by Evanston 19
 - 8.2 Northwest Water Commission 19
 - 8.3 Liability for Unreasonable Delay by LINCOLNWOOD 19
 - 8.4 Liability for Unreasonable Delay by Evanston..... 20
- 9. Facility Completion Schedule 20
 - 9.1 Specifications and Sequence of Construction for the Project Improvements 20
 - 9.2 IEPA and Other Approvals for the Project..... 21
 - 9.3 Easements, Licenses, Permits, Fees and Approvals 21
- 10. Meters and Measurements; Meter Testing 21
 - 10.1 Unit of Measurement 21
 - 10.2 Supervisory Control and Data Acquisition (“SCADA”) 21
 - 10.3 Delivery Meters 22
 - 10.4 Check Meters..... 22
 - 10.5 Meter Calibration and Adjustment 23

10.6	Notification Concerning Meter Tests	23
10.7	Removal of Meters.....	24
10.8	Meters for Customers.....	24
11.	Dispute Resolution.....	24
11.1	Negotiation.....	24
11.2	Remedies.....	25
11.3	Venue and Applicable Law.....	25
12.	Force Majeure	25
12.1	Excuse From Performance	25
12.2	Force Majeure Event.....	25
12.3	Notice.....	26
13.	Preservation of Water Rights	26
14.	Good Faith and Fair Dealing.....	26
15.	Disconnection, Removal Relocation of Connection Facilities or Transmission Mains	27
15.1	Termination of Agreement.....	27
15.2	Relocation	27
16.	Termination; Default.....	27
16.1	Termination by Evanston	27
16.2	Termination by Mutual Agreement.....	27
16.3	Termination by LINCOLNWOOD.....	28
16.4	Default; Cure Period; Relief.....	29
17.	General Conditions	30
17.1	Entire Agreement.....	30
17.2	Prompt Payment.....	30
17.3	Compliance With Laws.....	30
17.4	Regulatory Bodies.....	30
17.5	Illinois Freedom of Information Act.....	30
17.6	Interpretation; Headings.....	31
17.7	Waiver.....	31
17.8	No Individual or Personal Liability	31
17.9	No Third Party Beneficiaries	31
17.10	Amendments	32

17.11 Assignment 32

17.12 Notice 32

17.13 Severability 34

17.14 No Separate Legal Entity, No Joint Venture or Partnership or Agency 34

17.15 Independent Sovereign Status 34

17.16 Effective Date 35

17.17 Authorization 35

17.18 Counterparts 35

17.19 Exhibits 35

Background

The City of Evanston (“Evanston”) is the owner and operator of a water intake, filtration, treatment and pumping plant (the “Water Plant”) located at 555 Lincoln Street, Evanston, Illinois. The Water Plant is on the shore of Lake Michigan and Evanston draws water from Lake Michigan for Evanston’s drinkable water, firefighting and fire protection needs for its community, and for distribution and resale to its customers (“Evanston Water Utility”). The Village of Lincolnwood (“Lincolnwood”) wants to purchase drinkable Lake Michigan water from the Evanston Water Utility for the uses specifically allowed by this Agreement, including but not limited to, distribution and sale to customers of the Lincolnwood water system.

1. Parties

1.1 Parties

The parties to this Water Supply Agreement (“Agreement”) are Evanston and Lincolnwood, who are at times referred to in this Agreement as a “Party” or collectively as the “Parties”.

2. Initial Term of Agreement; Extended Term; Service Year; Fiscal Year

2.01. Initial Term

The Initial Term (“Initial Term”) shall commence on the Effective Date of this Agreement (as defined in Section 17.16 (Effective Date)) and shall end at 11:59 p.m. on December 31, thirty nine (39) years after the Effective Date of this Agreement.

2.2 Extended Term

The Initial Term of this Agreement may be extended for up to two (2) consecutive terms (generally referred to as an “Extended Term” or specifically referred to as the “First Extended Term” and the “Second Extended Term”). The First Extended Term and the Second Extended Term will each be ten (10) years in length, unless Lincolnwood delivers written notice of its intention to not extend the Initial Term or any Extended Term of this Agreement. Any such written notice must be delivered to Evanston not less than five (5) years prior to the termination date of the then-existing Term. If this Agreement is extended for the Second Extended Term, then this Agreement shall renew automatically at the end of the Second Extended Term at ten (10) year intervals thereafter, unless either Party conveys written notice of its intention to terminate this Agreement not less than five (5) years prior to the termination date of the then-existing Term.

2.3 Service Year; Fiscal Year

Each Service Year (“Service Year”) under this Agreement will be the time period of January 1st to December 31st. Each Fiscal Year (“Fiscal Year”) under this Agreement will be the time period of January 1st to December 31st.

3. Water Defined

3.1 Water Defined

In this Agreement, Water means Lake Michigan water that is safe for human consumption (i.e. drinkable water) and that meets or exceeds the requirements of any current or successor federal, state of Illinois, or local agency or governmental authority having jurisdiction over the operation of public water supplies. Evanston shall supply water that is like kind and quality with that supplied by Evanston to its other customers. Whether “water” is capitalized in this Agreement or not, it shall have the meaning set forth in this Section.

4. Commencement of Obligation to Deliver and Receive Water

4.01 Intentionally Left Blank

4.2 LINCOLNWOOD Notice to Evanston to Proceed with Final Engineering Design

Not more than thirty (30) calendar days after LINCOLNWOOD awards the final engineering design work for the LINCOLNWOOD Water System, LINCOLNWOOD shall deliver to Evanston in writing a notice to proceed on final engineering design of the Evanston Connection Facilities.

4.3 LINCOLNWOOD Notice to Evanston to Proceed with Construction

Not more than thirty (30) calendar days after LINCOLNWOOD awards the first construction contract relative to the construction of the LINCOLNWOOD Water System, LINCOLNWOOD shall deliver to Evanston in writing a notice to proceed on construction of the Evanston Connection Facilities.

4.4 Delivery Date

Evanston shall deliver water to LINCOLNWOOD, on a date mutually agreed by the Parties, but no later than one hundred and twenty (120) calendar days of receiving written notice from LINCOLNWOOD that LINCOLNWOOD is ready to receive water.

4.5 LINCOLNWOOD Payment for Water; Water During Construction

Except for water usage during construction and testing of the Project improvements, LINCOLNWOOD shall not be responsible to pay for any water charges under this Agreement until the improvements and construction at the Point of Delivery, are completed, and until Evanston delivers water to LINCOLNWOOD for resale to its customers. During the construction and testing of the improvements at the Point of Delivery, Evanston will charge LINCOLNWOOD for its water usage at the water rates and charges identified in Section 4.06 (Water Rate Payable to Evanston in Service Year 2018 and Beyond) of this Agreement.

4.6 Water Rate Payable to Evanston in Service Year 2018 and Beyond

The Parties agree that the identification of the total equivalent water rate payable to Evanston per 1,000 gallons supplied to LINCOLNWOOD in the Service Years identified below will be as follows:

Service Year	LINCOLNWOOD
2018	\$ 1.53 Not to Exceed Rate
2019	\$ 1.44 Not to Exceed Rate
2020	\$ 1.60 Not to Exceed Rate
2021	\$1.63 Projected, conforming to Section 5 below
2022	\$1.82 Projected, conforming to Section 5 below

4.7 Water Rate Payable to Evanston in Service Years 2023 and Thereafter

The Parties agree that the identification of the total equivalent water rate payable to Evanston per 1,000 gallons supplied to LINCOLNWOOD in Service Years 2023 and thereafter will be

calculated in accordance with Section 5 (Rate) below. The above rates may be adjusted down based on final rate calculations as provided for in Section 5 (Rate). The rate charged to Lincolnwood for water sold for construction and testing shall also use the above table. No True Up will be calculated for water sold for construction and testing purposes. Except for water sold to Lincolnwood for construction and testing, if the actual rate incurred at any time during Service Years 2018, 2019, 2020, 2021, or 2022 is different than the scheduled rate set forth in this Section, a "True-Up" calculation, in accordance with Section 5.08 (True-Up) will be completed no later than thirty (30) days after the Evanston Comprehensive Annual Financial Report ("CAFR") applicable to that Service Year is completed. The Parties attached as **Group Exhibit "A"** to this Agreement an illustrative example of the "True-Up" process, including an identification of the formula and its components that will be used in performing the "True-Up" calculation. Any credit due to Lincolnwood will be allocated to that Party according to the process outlined in Section 5.08 (True-Up) of this Agreement. All water charges otherwise required to be paid under Section 4.06 (Phased Water Delivery to LINCOLNWOOD) will be payable by LINCOLNWOOD.

5. Rate

5.1 Ratemaking Principles and Policies

The Parties agree that the definitions, policies and principles described in the AWWA M-1, the "Principles of Water Rates, Fees and Charges published by the American Water Works Association, Sixth Edition", as amended, may be used as a reference guide for the Parties under this Agreement. However, in the event of a conflict or inconsistency between any provision or term of the AWWA M-1 and this Agreement, the provision or term of this Agreement shall govern.

5.2 Billing and Payments

Evanston shall submit all water bills to LINCOLNWOOD on a monthly basis. LINCOLNWOOD shall pay all amounts due to Evanston pursuant to this Agreement in accordance with the Local Government Prompt Payment Act, 50 ILCS 505/1 et seq. ("LGPPA"). The water bills shall be itemized with sufficient detail to inform LINCOLNWOOD that the charges and fees set forth in each monthly bill conform to the agreed-upon rates and cost components set forth in this Agreement. If payment is not made within the required thirty (30)

calendar day period, Evanston will charge LINCOLNWOOD a penalty for late payment of water bills in accordance with the interest penalty provision contained in Section 4 of the LGPPA (50 ILCS 505/4). No other penalty can be assessed against LINCOLNWOOD for late payments of water bills, except for Evanston's optional right to terminate this Agreement for nonpayment as provided for in Section 16.01 (Termination by Evanston). Evanston's termination option is subject to the right of LINCOLNWOOD to resolve any late payment within the applicable cure period. The billing structure will conform to the rates and components identified and defined below:

- **Demand Charge:** A fixed monthly payment consisting of (i) one-twelfth (1/12th) of the Annual Return on the Fair Value Rate Base as determined in accordance with Section 5.03 (Return on Rate Base) and (ii) a Depreciation Charge determined in accordance with Section 5.4 (Depreciation Charge).

- **Quantity Charge:** A payment based on the quantity of water delivered through the metering point(s) to Lincolnwood's water system multiplied by the Quantity Rate determined in accordance with the provisions of Section 5.05 (Quantity Charge).

5.3 Return on Rate Base

The "Rate Base" consists of those components of Evanston's Water Utility relating to assets in the Source of Supply, Pumping Plant, Treatment Plant, Water Plant and Transmission locations (the "Evanston Water Utility Components"). These Water Utility Components in service as of December 31, 2015, are identified in the "Evanston Water Utility Components Sheet" which is part of attached **Group Exhibit "B"** (Example of Rate Calculation for LINCOLNWOOD Water Rate for Service Year 2017 Based on Evanston Audited Information for Fiscal Year 2015) to this Agreement. The Parties to this Agreement understand and acknowledge that these Evanston Water Utility Components will adjust annually as of the end of each Fiscal Year to reflect additions to, and retirements of, Evanston Water Utility Components. The Parties to this Agreement understand and acknowledge that these Evanston Water Utility Components may adjust between the Effective Date of this Agreement and the date of delivery of water. Evanston shall be included as a component of the Evanston Water Utility for purposes of asset allocation and rate making related to asset allocation only for LINCOLNWOOD.

- **Original Cost Rate Base:** The components of the Rate Base valued at the original cost to Evanston of the acquisition, engineering, construction and installation of the assets of the Water Utility as identified in the most recently available Evanston Comprehensive Annual Financial Report (“Evanston CAFR”), minus accrued depreciation as of the end of the Fiscal Year used as a basis for determining Water Charges under this Agreement.

- **Reproduction Cost New Rate Base:** The components of Rate Base valued initially in the most recently available Evanston CAFR prior to the commencement of delivery of water under this Agreement. Reproduction Cost New Rate Base will be recalculated as of the end of each succeeding fifth Fiscal Year, starting in 2020, reflecting components then properly allocated to the Rate Base pursuant to this Agreement. The recalculation of the Reproduction Cost New Rate Base will utilize the most current valuation of the Evanston Water Utility, as identified by a reputable qualified consulting engineering firm experienced in water works valuation hired by Evanston. Accrued depreciation identified by the engineering firm’s valuation study, plus accrued depreciation which occurred from the date of the valuation to the end of the applicable Fiscal Year of the rate determination, will be deducted from the reproduction cost new of the plant in service at the end of the Fiscal Year.

- **Fair Value Rate Base:** This will be calculated initially in the most recently available Evanston CAFR prior to the commencement of delivery of water under this Agreement. The Fair Value Rate Base will be recalculated as of the end of each succeeding fifth Fiscal Year, starting in 2020, and will consist of the sum of **fifty percent (50%) of the original Cost Rate plus fifty percent (50%)** of the Reproduction Cost Rate Base as of the calculation date. The Fair Value Rate Base will be subject to annual adjustment as of the end of the Fiscal Year between Fair Value Rate Base recalculations to reflect additions to and retirements of Water Utility assets contained in the Rate Base during the Fiscal Year. The next verification of the elements of the Fair Value Rate Base will be performed by Burns and McDonnell in 2020 (or its successor entity selected by Evanston, as the case may be), and then once every five (5) calendar years thereafter. Additions will be valued at their original cost until recalculation of the Fair Value Rate Base, at which time such additions will be valued in the same manner as the Fair Value Rate Base. Retirements will be valued at their fair value as reflected in the last previous Fair Value Rate Base computation.

- **Annual Return on Rate Base:** The Annual Return on Rate Base will be multiplied ten percent (10.0%) on the LINCOLNWOOD share of the Fair Value Rate Base identified in the most recently available Evanston CAFR, and otherwise conform to the cost of service principles identified in Section 5.01 (General Principles and Policies). The LINCOLNWOOD share of the Fair Value Rate Base will be determined by allocating to LINCOLNWOOD a portion of such Fair Value Rate Base, as adjusted and recalculated from time to time as provided by this Agreement. This adjustment will be based upon the ratio of each Evanston Water Utility customer allocation, which includes the City of Evanston's allocation, compared to the total allocation of all Evanston Water Utility customers established by order of the Illinois Department of Natural Resources ("IDNR") during the Fiscal Year.

5.4 Depreciation Charge

These charges will be calculated as of the end of each Fiscal Year following commencement of the delivery of water to LINCOLNWOOD and will consist of one-twelfth (1/12th) of an annual depreciation charge, calculated by applying the depreciation rates utilized by Evanston identified in **Group Exhibit "C" (Depreciation Rates)** to this Agreement, to the original cost of the depreciable Water Utility asset defined in Section 5.03 (Return on Rate Base) in service contained in the Fair Value Rate Base allocated to LINCOLNWOOD. As of the date when any depreciable Water Utility asset will be placed in service or any depreciable Water Utility asset in the Fair Value Rate Base is retired from service, charges of depreciation to LINCOLNWOOD will be correspondingly adjusted as of the end of the Fiscal Year in which the addition or retirement took place.

5.5 Quantity Charge

LINCOLNWOOD will pay Evanston a Quantity Charge based upon a Quantity Rate equal to LINCOLNWOOD's share of the "Operating Costs" per 1,000 gallons of water delivered to the Point of Delivery. The "Operating Costs" to be included in determining the Quantity Rate are the costs assigned to the functions of Administration, Pumping, Filtration, and Distribution, identified in the Evanston CAFR of the Evanston Water Fund described in **Group Exhibit "B"** attached to this Agreement. The Operating Costs applicable to water deliveries during the Service Year will be determined based on the results of operation of the Evanston Water Utility, as audited by independent certified public accountants selected by Evanston, as reviewed by LINCOLNWOOD. The total Quantity Charge will be adjusted at the end of each Service Year

to reflect the actual, total Quantity Charge owed to Evanston based on the Fiscal Year Operating Costs finally determined by the latest annual audit performed by the current Evanston independent certified public accountant as defined in Section 5.08 (True Up). In determining the Quantity Rate, Operating Costs will be allocated to LINCOLNWOOD based upon the ratio of its Average Day Demand identified in Section 7 (Water Supply; Allocation; Distribution) of this Agreement supplied by the Evanston Water Utility, to the aggregate of the Average Day Demand of all Evanston Water Utility, LINCOLNWOOD and other customers or users of the Evanston Water Utility system during the Fiscal Year. The Quantity Rate will not include any portion of any costs included in computing the Fair Value Rate Base, Annual Return on Rate Base or Depreciation Charge.

5.6 Demand Charge and Quantity Charge Smoothing

Demand Charge Cap. Upon completion of the Clearwell Project immediately south of the Evanston Water Utility, and upon completion of the Intake Replacement Project, but not later than the end of year 2022, any increase and decrease in any Evanston Water Utility Asset shall not increase the total rate charged to LINCOLNWOOD by more than **four percent (4%)** per year until the entire cost of the Evanston Water Utility Asset has been recovered by either Party compared to the cost change that would have occurred if the Evanston Water Utility Asset change was not smoothed. No cap or smoothing will be calculated due to the change in total customers utilizing the Evanston Water Utility. Any increased capital costs associated exclusively with the acquisition of new customers by Evanston will not be included in the rate calculation for LINCOLNWOOD. LINCOLNWOOD's rate shall not be increased as a result of the acquisition of new Evanston customers. Evanston may accelerate the replacement of assets assigned to LINCOLNWOOD, as needed, to add a new Evanston customer or may add new assets beneficial to LINCOLNWOOD, provided that the new rate for LINCOLNWOOD is equal to or less than the then-current LINCOLNWOOD rate.

Quantity Charge Cap. The Parties agree to cap the annual increase of the labor costs portion of the Operating Costs that are used to determine the Quantity Rate based on the actual, annual aggregate cost increase (if any), **if Evanston labor costs increase more than 4% in any given year.** When Evanston labor costs increase by more than 4% any given year, the labor costs portion of the Operating Costs shall be capped based on the average of the annual

percentage increases of labor costs for public works employees of Evanston and Lincolnwood (e.g., Evanston increase (4.4%) plus Lincolnwood Increase (4.0%) divided by two equals a 4.2% capped increase).

5.7 LINCOLNWOOD Audit Rights

Not more than once per year, LINCOLNWOOD shall have the right to audit all parts of the water charges, and the components thereof, as well as any other fees, charges, or assessments provided for in this Agreement. LINCOLNWOOD's right to audit includes, but is not limited to, the Demand Charge, the Quantity Rate, the Quantity Charge, the Rate Base and the Depreciation Charge, as well as any other components of the water charges. Evanston shall reasonably cooperate with requests by LINCOLNWOOD and its auditors regarding reasonable requests for documents and information needed to complete the audit related to the rights and obligations of the Parties under this Agreement. Each Party is responsible for its respective costs of the audit.

5.8 True-Up

At the end of each Service Year and subject to Section 5.07 (LINCOLNWOOD Audit Rights), there will be a final Quantity Charge or credit issued by Evanston to LINCOLNWOOD to adjust the total Quantity Rate calculated by utilizing the latest available Fiscal Year audited Operating Costs. Any adjustments to the water charges, and the components thereof, as well as any other fees, charges, or assessments provided for in this Agreement, that require additional payment to Evanston by LINCOLNWOOD or any credit to LINCOLNWOOD by Evanston shall be calculated as part of this annual True-Up process. The Parties have attached as **Group Exhibit "A"** to this Agreement, illustrative examples of the "True-Up" process. After the True-Up process and any dispute resolution process are completed, this final charge or credit shall be paid by the responsible Party within thirty (30) calendar days of the issuance of the invoice or credit by separate payment or as otherwise mutually agreed to in writing by the Parties.

6. Water System Definitions

6.1 Water System Definitions and Related Terms

In this Agreement, the following definitions apply:

- Evanston Clearwell Project: The replacement of the 5.0 MG treated water storage facility located on the south side of Lincoln Street opposite the water treatment plant (See, **Group Exhibit "B"**, #203 of the Treatment Plant asset list).

- **Evanston Connection Facility:** Evanston control valve, delivery meter, piping and other components necessary to supply water to LINCOLNWOOD that will be housed in an underground vault near the intersection of Oakton Avenue and the North Shore Channel, owned by Evanston and included as a transmission component in the rate base.
- **Evanston Intake Replacement Project:** The replacement of Evanston's 36" and 42" diameter intake(s) and all appurtenances thereto (See **Group Exhibit "B"**, #9 and #13 in the Source of Supply asset list).
- **Evanston Water Utility:** The assets in the Source of Supply, Pumping Plant, Treatment Plant, Water Plant and Transmission locations in service as of December 31, 2015, and identified in **Group Exhibit "B"** to this Agreement, which components may adjust annually as of the end of each Fiscal Year to reflect additions to, and retirements of, Water Utility components.
- **Lincolnwood Water System:** The infrastructure that makes up the Lincolnwood Water System, including but not limited to, the water treatment, pumping, storage, distribution and delivery system, pump stations, transmission and distribution mains, valves, meters, and connection facilities.
- **Point of Delivery:** The point of connection of the LINCOLNWOOD Water System and the Evanston Connection Facility adjacent to the underground vault at Evanston border on the East side of the North Shore Channel.
- **Project:** The construction of the Evanston Connection Facilities, the Evanston Facilities Adjustments, the LINCOLNWOOD Water System, and all related and necessary improvements made to the Evanston Water Utility, and the Lincolnwood Water System, as provided for in this Agreement.
- To the extent a word or term is used in this Agreement that is not defined herein, the first source of interpretation of the word or term shall be its definition in the AWWA M-1 Manual or other AWWA publication pertaining to water transmission and distribution facilities (if defined therein), then any applicable federal or state laws (e.g., Clean Water Act) and then the

common definition found in the most recent edition of any mutually agreed upon nationally published dictionary (e.g., Webster's Dictionary or Merriman's Dictionary).

7. Water Supply; Allocation; Distribution

7.1 Water Supply, Sale and Purchase; Allocation

Evanston will sell and deliver to LINCOLNWOOD the full water requirements of the LINCOLNWOOD Water System, except as otherwise set forth in this Agreement. LINCOLNWOOD will purchase all of the water it receives from Evanston in accordance with this Agreement.

LINCOLNWOOD is responsible to obtain and maintain a water allocation from the Illinois Department of Natural Resources ("IDNR"). In this Agreement, Average Day Demand ("ADD") means the IDNR water allocations established in November 2011 for Lincolnwood. In this Agreement, Maximum Flow Rate ("MFR") means the rate of flow that Evanston is required to provide at the Point of Delivery.

The MFR to Lincolnwood is based on the Year 2030 IDNR water allocation assigned to Lincolnwood multiplied by a 1.65 peaking factor.

- Illustrative formula for calculating the MFR for Lincolnwood: Lincolnwood Year 2030 IDNR water allocation = 2.429 x 1.65 = 4.0079 Million Gallons Per Day ("MGD") MFR.

7.2 Emergency Connections

This Agreement will not prohibit LINCOLNWOOD or Evanston from entering into any emergency water service agreement with another municipality, water agency, or other source. Nothing in this Section will prevent Evanston's right to collect all water charges provided for in this Agreement.

7.3 Coefficient of Friction

LINCOLNWOOD shall maintain its transmission main to provide a coefficient of friction ("C-factor") to be determined after the completion of the final design engineering for the LINCOLNWOOD Water System, which C-factor will be incorporated into this Agreement by a jointly executed side-letter issued prior to the delivery date of water. Unless otherwise agreed to by the Parties, the C-factor rating of the LINCOLNWOOD Water System between the Point of

Delivery and the LINCOLNWOOD booster station or LINCOLNWOOD (referred to as the “Evanston Pressurized Zone” of the LINCOLNWOOD Water System) receiving reservoir shall not be less than a C-factor rating of 90. If the C-factor falls below 90 within the Evanston Pressurized Zone of the LINCOLNWOOD Water System, Evanston is not required to meet the Maximum Flow Rate as indicated in Section 7.01 (Water Supply Sale and Purchase; Allocation). The Maximum Flow Rate shall decrease directly on a one to one basis with the decrease in C-factor rating (e.g., each one (1) point loss or gain of C-factor equals a 1.11% change in the maximum flow rate: 80 C-factor = 88.90% maximum flow rate). The C-factor is identified in Cameron Hydraulic Data, or equivalent successor statement of measure, and typically used for the design of concrete pipes to reflect the roughness of the pipe after many years of operation. LINCOLNWOOD shall test its transmission main beginning in Year 2023, and every fifth year thereafter, to determine the C-factor rating and promptly provide those results to Evanston to ensure adherence to this requirement. If the LINCOLNWOOD’s transmission main fails to meet the required C-factor rating as set forth in this Section, then another C-factor test shall be conducted during the subsequent Service Year.

7.4 Pressures

Evanston will supply water to LINCOLNWOOD by direct pressure from the Evanston Water Plant without intermediate pumping from reservoirs. Evanston shall control operating pressures within its water distribution system and adjust such pressures according to the water demands within its water distribution system to ensure that the pressure at the Point of Delivery is at all times between 40 and 50 pounds per square inch (“PSI”).

7.5 Supply and Service Agreement Only; Title to Water

Nothing in this Agreement shall be construed as granting any proprietary or other interest in the Evanston Water Utility to LINCOLNWOOD. Nothing in this Agreement shall be construed as granting any proprietary or other interest in the LINCOLNWOOD Water System to Evanston. Evanston and LINCOLNWOOD agree that this Agreement is solely an agreement for the sale and purchase of a supply of Water and related services. Title to Water passes at the Point of Delivery from Evanston to LINCOLNWOOD. Evanston agrees to deliver an adequate water supply on a regular basis to maintain LINCOLNWOOD water requirements as provided for in this Agreement. Evanston agrees to not utilize off-peak pumping to meet the LINCOLNWOOD water requirements, unless requested by LINCOLNWOOD.

7.6 Temporary Restriction

Evanston has the right to restrict, on a temporary basis, the supply of water to LINCOLNWOOD in order to ensure an adequate water supply to all customers of the Evanston Water Utility for basic water services, and firefighting purposes, provided that the duration of the temporary water restriction is limited to the minimum time period necessary to resolve the condition or unforeseen emergency that caused the temporary restriction. Evanston shall take immediate, commercially reasonable actions to fix, repair, employ a temporary solution until a permanent solution is available or resolve the condition or unforeseen emergency that caused the temporary water restriction. If there is an insufficient water supply available to serve LINCOLNWOOD and all other customers, LINCOLNWOOD will receive its pro-rata share of the amount of water that is stored and available at the Evanston Water Utility based on the IDNR water allocation(s) as defined and identified in **Group Exhibit "B"** to this Agreement. If Evanston temporarily restricts the supply of water to LINCOLNWOOD under this Section, it shall deliver immediate written notice to LINCOLNWOOD that explains the reason(s) for the restriction, identifies the estimated reduction in the volume of water to be supplied to LINCOLNWOOD and the anticipated duration of the reduction in water supply service. During the first twenty-four (24) hour period of the temporary water restriction, Evanston shall provide LINCOLNWOOD with status reports in subsequent eight (8) hour intervals relative to the progress in resolving the condition or unforeseen emergency that caused the temporary water restriction. If the temporary water restriction extends or is anticipated to extend beyond a twenty-four (24) hour period, the Parties agree to meet to discuss commercially reasonable options and actions to fix, repair, employ a temporary solution until a permanent solution is available or resolve the condition or unforeseen emergency that caused the temporary water restriction.

7.7 Maintenance

Scheduled maintenance and repair to the Evanston Water Utility or the LINCOLNWOOD Water System that may impact water supply and service to LINCOLNWOOD cannot be done except upon prior notice to the other Parties of not less than five (5) days. Scheduled maintenance to water system infrastructure during peak demand periods shall be avoided to the extent possible. Notice of emergency maintenance or repair will be provided by the Party performing the maintenance and repair to the other Party as soon as practicable under the circumstances. Each

Party agrees to maintain their respective water systems in accordance with the manufacturers' warranty and operational specifications.

7.8 Lincolnwood Option to Purchase Water from Other Suppliers

Notwithstanding any other provision in this Agreement, Lincolnwood may purchase water from other water suppliers under the following two (2) situations. First, Lincolnwood may purchase water from other water suppliers to the extent Evanston fails to deliver to Lincolnwood the full water requirements up to the total amount of the IDNR water allocations as required by this Agreement. In the event of such failure by Evanston, but excluding temporary restriction(s) under Section 7.06 or maintenance situations under Section 7.07 above, Evanston shall provide written notice to Lincolnwood of the service failure, which shall include a description of the operational or technical reasons for the failure to deliver Lincolnwood's full water requirements. Second, Lincolnwood may purchase water from the City of Chicago under non-emergency conditions in order to maintain an active, operational water supply connection.

7.9 Surges and Back-Flows

No surges or back-flows into any Party's water system are allowable under this Agreement.

7.10 LINCOLNWOOD Responsibility for Damage to Evanston's Water Utility

LINCOLNWOOD is responsible for damage to the Evanston Water Utility or of any of its customers due to surges and back-flows caused by malfunction or misuse of LINCOLNWOOD's Water System, including, without limitation, valve operation or booster station operation, excluding damage where Evanston is responsible for the operation of the LINCOLNWOOD Water System, including, without limitation, its valve operation or booster station. LINCOLNWOOD shall install a flow control system and a pressure recording system consisting of remotely operated flow control valve(s) at the LINCOLNWOOD receiving reservoir(s). LINCOLNWOOD shall provide the necessary equipment to transmit pressures, rates of flow and receiving reservoir(s) elevations prior to delivery of water by Evanston. All devices necessary for the control and transmission of pressures, levels and rates of flow of water furnished to LINCOLNWOOD that are part of the LINCOLNWOOD Water System shall be provided and maintained by LINCOLNWOOD, and comply with the provisions of Section 10 (Meters and Measurements; Meter Testing). Water pressure and rate of flow readings shall be transmitted to

the Evanston Pumping Station. All flow control valves within the Evanston Water Utility shall be controlled by Evanston in accordance with the provisions of this Agreement.

7.11 Evanston's Responsibility for Damage to LINCOLNWOOD's Water System

Evanston is responsible for damage to the LINCOLNWOOD Water System or of the water systems any of its customers due to surges and back-flows caused by malfunction or misuse of Evanston's Water Utility, including, without limitation, valve operation, booster station operation or pump station operation.

8. Existing and Future Customers of Evanston; LINCOLNWOOD Other Users

8.01 Existing and Other Water Customers Served by Evanston

Evanston agrees that it will continue to supply water to its existing customers without impairing LINCOLNWOOD's right to Water service from Evanston under this Agreement, or impairing Evanston's ability to deliver Water to LINCOLNWOOD under this Agreement. Nothing in this Agreement limits Evanston executing new, modified or amended agreements with any other current or future wholesale water customer served by Evanston. LINCOLNWOOD agrees Evanston has the right to serve new wholesale water customer(s) subject to its obligations to LINCOLNWOOD under this Agreement.

8.2 Northwest Water Commission

In the event of the loss of the Northwest Water Commission ("NWC") between the years of 2034-2047, the change in the total rate increase shall be calculated, and Lincolnwood shall be assessed, **not more than fifty percent (50%)** of the rate increase incurred by the loss of NWC. Assuming the loss of NWC between the years of 2034-2047, total Lincolnwood rate increases shall be **capped at eight percent (8%) per annum**. Evanston shall take all commercially reasonable actions to reduce all assets in use at the WTP to reflect the new plant demand without NWC. After 2048, LINCOLNWOOD rates shall be recalculated according to this Agreement.

8.3 Liability for Unreasonable Delay by LINCOLNWOOD

If LINCOLNWOOD fails or refuses to complete the LINCOLNWOOD Water System as required by this Agreement, then LINCOLNWOOD shall pay to Evanston all reasonable, actual, documented costs incurred by Evanston as listed in Section 16.03 (G, H, or I) (Termination by LINCOLNWOOD), and in Sections 4.01 (LINCOLNWOOD Notice to Evanston to Proceed

With Preliminary Project Phase Work) through Section 4.07 (Commencement of Obligation to Deliver and Receive Water). If LINCOLNWOOD fails to complete the LINCOLNWOOD Water System due to a Force Majeure Event(s) or any other delays that prevent the completion of LINCOLNWOOD's Project Improvements until after the delivery of water (Section 4.04), LINCOLNWOOD shall not be obligated to pay to Evanston any costs or penalty, provided that LINCOLNWOOD has taken and continues to take all commercially reasonable actions to complete the LINCOLNWOOD Project Improvements as soon as reasonably possible after the expected delivery date of water.

8.4 Liability for Unreasonable Delay by Evanston

If Evanston fails or refuses to complete the components at the Point of Delivery in a commercially reasonable time frame as outlined in Section 4.01 (LINCOLNWOOD Notice to Evanston to Proceed with Preliminary Project Phase Work) through Section 4.07 (Commencement of Obligation to Deliver and Receive Water) and LINCOLNWOOD are unable to receive water from Evanston by the anticipated initial delivery date of water, or such other alternate water delivery date, as provided for in Section 4.01 (LINCOLNWOOD Notice to Evanston to Proceed with Preliminary Project Phase Work) through Section 4.07 (Commencement of Obligation to Deliver and Receive Water) above, due to such failure or refusal by Evanston, then Evanston will pay to LINCOLNWOOD the difference between the water rate that would have been charged by Evanston under this Agreement, and the then-applicable Chicago water rate (or the water rate charged by an alternate water supplier).

9. Facility Completion Schedule

9.1 Specifications and Sequence of Construction for the Project Improvements

After the approval of this Agreement, and subject to the notice to proceed provisions set forth in this Agreement, the Parties agree to work cooperatively together and to share relevant information to develop their respective specifications for their own Project improvements and to prepare construction schedules and operating procedures for the Project improvements, including the joint review of preliminary design plans and final design plans for review comment purposes and delivery of periodic status reports by each Party relative to the Evanston Connection Facilities and the LINCOLNWOOD Water System.

9.2 IEPA and Other Approvals for the Project

The Parties agree to apply for, obtain and maintain all permits, licenses and other approvals required by the federal, state, county and local governments and governmental regulatory agencies with jurisdiction over the Project.

9.3 Easements, Licenses, Permits, Fees and Approvals

LINCOLNWOOD shall take all necessary action to acquire easements, permits and licenses for the construction of the LINCOLNWOOD Water System Facilities within Evanston's corporate boundaries and outside of Evanston's corporate boundaries. LINCOLNWOOD agrees to pay all required permit fees, license fees and plan review fees to all governmental regulatory agencies with jurisdiction over the Project, except for Evanston. Construction of the LINCOLNWOOD Water System shall conform to all applicable laws, ordinances, codes, regulations and specifications.

10. Meters and Measurements; Meter Testing

10.1 Unit of Measurement

The unit of measurement for water delivered pursuant to this Agreement will be gallons of water, U.S. Standard Liquid measure, and all meters installed pursuant to this Agreement must, unless the Parties otherwise agree, be so calibrated, and must read at one thousand (1,000) gallons of water.

10.2 Supervisory Control and Data Acquisition ("SCADA")

Evanston shall in real time provide to LINCOLNWOOD the following SCADA information, except during SCADA failure:

- a) total plant flow data;
- b) flow through LINCOLNWOOD master meter data;
- c) pressure at LINCOLNWOOD delivery meter facility data; and
- d) Evanston control valve position.

LINCOLNWOOD shall in real time provide to Evanston incoming and outgoing flow data from each receiving reservoir as well as the water level in each receiving reservoir, except during SCADA failure. In regard to on-site visits and inspections of each Party's respective water system facilities, the requesting Party shall request any on-site visits and inspections in advance

by written notice to the receiving Party and shall comply with all security protocols and be accompanied by the receiving Party's staff during the on-site visit or inspection, and the receiving Party shall cooperate in scheduling such on-site visits and inspections. Evanston and LINCOLNWOOD agree to promptly repair any SCADA failures.

10.3 Delivery Meters

Water sold and delivered to LINCOLNWOOD pursuant to this Agreement must be measured through a meter or meters furnished, installed, maintained, replaced and read by Evanston (the "Delivery Meters"). Except as provided in this Agreement, all billing for Water sold and supplied pursuant to this Agreement must be based upon Evanston's readings of the Delivery Meters, subject to LINCOLNWOOD's right to audit Evanston's readings under Section 5.07 (LINCOLNWOOD Audit Rights) above. All Delivery Meters shall be in good working order, shall at all times meet or exceed the standards of the AWWA, or its successor entity, and shall be available for inspection, testing, and checking by LINCOLNWOOD upon reasonable request to Evanston. Evanston shall at its cost maintain, inspect, test, calibrate and adjust all Delivery Meters not more than two (2) times per year. Representatives from LINCOLNWOOD shall have the right to witness all such maintenance, inspections, tests, calibrations and adjustments. Lincolnwood shall pay to Evanston the actual cost incurred by Evanston in maintaining, testing, calibrating and adjusting the Delivery Meters, which cost shall be included as part of the Quantity Charge. Copies of the results of all such maintenance, inspections, tests, calibrations and adjustments must be furnished by Evanston to LINCOLNWOOD upon request.

10.4 Check Meters

LINCOLNWOOD may, at their option and expense, install and operate a check meter(s) (a "Check Meter") to check each Delivery Meter, but the measurement of water for billing pursuant to this Agreement shall, except as hereinafter provided, be measured solely by the Delivery Meters. All Check Meters shall meet or exceed the standards of the AWWA and shall be available for inspection and checking by Evanston upon reasonable request to LINCOLNWOOD. The costs for installation, maintenance, regulatory fees, reading, testing, calibration, and adjustment of all Check Meters shall be performed by LINCOLNWOOD at LINCOLNWOOD's sole cost and expense.

10.5 Meter Calibration and Adjustment

If either Evanston or LINCOLNWOOD at any time observes a variation between a Delivery Meter and a Check Meter or any other evidence of meter malfunction, such Party must promptly notify the other Party, and Evanston and LINCOLNWOOD agree to cooperate to inspect and test the accuracy of such meter(s). If upon any inspection or test, any meter is found to be out of service or the percentage inaccuracy of any meter is found to be **in excess of two percent (2%)** slow or fast, then the meter's registration, as well as charges for water based on incorrect metering, must be corrected by agreement of Evanston and LINCOLNWOOD based on the best data available. The best data available is defined as the registration of an installed Check Meter that is accurately registering **equal to or less than two percent (2%)** slow or fast during the period extending back to the time when such inaccuracy began. If it is impossible to determine the time period of inaccuracy, the correction period will extend back one-half of the time elapsed since the last date of calibration. Otherwise, the amount of water delivered during such period may be estimated by:

- correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculation; or
- if the error is not ascertainable by calibration tests or mathematical calculation, by estimating the quantity of water delivered by reference to deliveries during the preceding periods under similar conditions when the meter or meters were registering accurately.

10.6 Notification Concerning Meter Tests

Evanston and LINCOLNWOOD shall deliver to the other Party written notice at least seventy-two (72) hours in advance of the time of any planned maintenance, inspection, test, calibration, adjustment or other work affecting any Delivery Meter or Check Meter so that the other Party may arrange to have a representative present. If said representative is not present at the time set in such notice, the inspection, test, calibration, adjustment or other work will proceed in the absence of said representative. Notices required under this Section 10.06 shall be given to the following persons at the following addresses, unless otherwise provided in writing by LINCOLNWOOD :

If for Evanston:

Director of Public Works Agency

555 Lincoln Street
Evanston, Illinois 60201
Phone: 847.448.4311
Email: current business email address

If for Lincolnwood:

Director of Public Works
Village of Lincolnwood
7001 N. Lawndale Avenue
Lincolnwood, IL 60712
Phone: 847-675-0888
Fax: 847-675-4432
Email: current business email address

10.7 Removal of Meters

Delivery Meters and Check Meters may be removed upon termination of this Agreement only upon mutual agreement of the Parties and upon the release of any easements related thereto.

10.8 Meters for Customers

Each Party is responsible for providing water meters to its own customers.

11. Dispute Resolution

11.01 Negotiation

If a dispute arises between Evanston and LINCOLNWOOD concerning this Agreement, the Parties will first attempt to resolve the dispute by negotiation. Each Party will designate persons to negotiate on their behalf. The Party contending that a dispute exists must specifically identify in writing all issues and present it to the other Parties. The Parties will meet and negotiate in an attempt to resolve the matter. If the dispute is resolved as a result of such negotiation, there must be a written determination of such resolution, and ratified by the corporate authorities of each Party, which will be binding upon the Parties. If necessary, the Parties will execute an addendum to this Agreement. Each Party will bear its own costs, including attorneys' fees, incurred in all proceedings in this Section. If the Parties do not resolve the dispute through

negotiation, any Party to this Agreement may pursue other remedies under Section 11.02 (Remedies) below to enforce the provisions of this Agreement.

11.2 Remedies

In any action with respect to this Agreement, the Parties are free to pursue any legal remedies at law or in equity. Each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law. Each Party will bear its own costs, expenses, experts' fees, and attorneys' fees, incurred in all litigation arising under this Agreement.

11.3 Venue and Applicable Law

All questions of interpretation, construction and enforcement, and all controversies with respect to this Agreement, will be governed by the applicable constitutional, statutory and common law of the State of Illinois. The Parties agree that, for the purpose of any litigation relative to this Agreement and its enforcement, venue will be in the Circuit Court of Cook County, Illinois or the Northern District, Eastern Division of the United States District Court, Chicago, Illinois, and the Parties consent to the *in personam* jurisdiction of said Courts for any such action or proceeding.

12. Force Majeure

12.1 Excuse From Performance

No Party will be liable in damages to any other Party for delay in performance of, or failure to perform, its obligations under this Agreement, if such delay or failure is caused by a Force Majeure Event as defined in Section 12.02 (Force Majeure Event) below. If a Party cannot perform under this Agreement due to the occurrence of a Force Majeure Event, then the time period for performance of the Party under this Agreement shall be extended by the duration of the Force Majeure Event.

12.2 Force Majeure Event

A "Force Majeure Event" means an event not the fault of, and beyond the control of, the Party claiming excuse which makes it impossible or extremely impracticable for such Party to perform obligations imposed on it by this Agreement, by virtue of its effect on physical facilities and their operation or employees essential to such performance. Force Majeure Events include:

- an “act of God” such as an earthquake, flood, fire, Lake Michigan seiche, tornado, earth movement, or similar catastrophic event,
- an act of terrorism, sabotage, civil disturbance or similar event,
- a strike, work stoppage, picketing, or similar concerted labor action,
- delays in construction caused by unanticipated negligence or breach of contract by a third party or inability to obtain essential materials after diligent and timely efforts, or
- an order or regulation issued by a Federal or State regulatory agency after the Effective Date or a judgment or order entered by a Federal or State court after the Effective Date.

A Force Majeure Event does not include a change in economic or market conditions or a change in the financial condition of a Party to this Agreement.

12.3 Notice

The Party claiming a Force Majeure Event excuse must deliver to the other Parties a written notice of intent to claim excuse from performance under this Agreement by reason of a Force Majeure Event. Notice required by this Section must be given promptly in light of the circumstances. Such notice must describe the Force Majeure Event, the services impacted by the claimed event, the length of time that the Party expects to be prevented from performing, and the steps which the Party intends to take to restore its ability to perform its obligations under this Agreement.

13. Preservation of Water Rights

Evanston intends to preserve all of its water rights, irrespective of whether the water held under such water rights is allocated under this Agreement. Nothing in this Agreement shall be construed as an abandonment, or evidence of intent to abandon, any of the water rights that Evanston presently possesses.

14. Good Faith and Fair Dealing

The Parties each acknowledge their obligation under Illinois law to act in good faith toward, and deal fairly with, each other with respect to this Agreement.

15. Disconnection, Removal Relocation of Connection Facilities or Transmission Mains

15.01 Termination of Agreement

Upon termination of this Agreement, Evanston, in its discretion and at its cost, may disconnect or remove the Evanston Connection Facilities and / or the LINCOLNWOOD Connection Facilities and / or transmission mains located within Evanston's rights of way or utility easements, but only after the Parties mutually approve and sign an agreement and a release of easements that pertain to disconnection and / or removal of the Evanston Connection Facilities, the LINCOLNWOOD Connection Facilities and /or the transmission mains.

15.02 Relocation

In the event that the Point of Delivery or any portion of the Evanston Connection Facilities and the LINCOLNWOOD Connection Facilities or any transmission mains need to be relocated due to unanticipated circumstances or at the request of either Party, the Parties may negotiate an addendum to this Agreement that provides for the relocation, reconstruction, financing and cost sharing of the relocation work. If this Agreement is terminated, within one (1) year of the effective date of such termination, all connection facility assets, components, and equipment within Evanston must be removed at LINCOLNWOOD's sole cost and expense, unless otherwise agreed upon by the Parties.

16. Termination; Default

16.1 Termination by Evanston

This Agreement shall be subject to termination if a court of competent jurisdiction restricts or limits any of Evanston's rights to obtain, sell, contract for, or distribute water to LINCOLNWOOD in a manner that prohibits Evanston from complying with its obligations to LINCOLNWOOD under this Agreement. Evanston will have the right to terminate this Agreement if LINCOLNWOOD fails and defaults with respect to its obligations under Section 5.02 (Billing and Payments) of this Agreement, and otherwise fails and refuses to cure such default under Section 11.01 (Negotiation) and Section 16.04 (Default; Cure Period; Relief).

16.2 Termination by Mutual Agreement

Only upon mutual consent, the Parties may agree to terminate this Agreement, in writing, after the approval of a termination or wind-down agreement by their respective corporate authorities.

16.3 Termination by LINCOLNWOOD

LINCOLNWOOD shall have the right to terminate this Agreement if it delivers written notice to Evanston of its intention to terminate this Agreement not less than five (5) years prior to the termination date of the then-existing Term. In addition, LINCOLNWOOD has the right to terminate this Agreement for the following reason(s):

A. If LINCOLNWOOD is unable to obtain easements or title to real property to construct the LINCOLNWOOD Connection Facilities and other necessary LINCOLNWOOD Project Improvements.

B. If the LINCOLNWOOD Engineering and Route Study determines that the LINCOLNWOOD Connection Facilities and other necessary LINCOLNWOOD Project Improvements will not be feasible for any reason, including but not limited to a lack of technical feasibility to complete the LINCOLNWOOD Project Improvements, or a lack of relative financial feasibility to pay for the LINCOLNWOOD Project Improvements.

C. If the bid results for the LINCOLNWOOD Connection Facilities and other necessary LINCOLNWOOD Project Improvements exceeds:

1) the LINCOLNWOOD Engineer's Estimate;

2) the approved LINCOLNWOOD Project Budget; or

3) the LINCOLNWOOD Project Financial / Debt Repayment schedule.

LINCOLNWOOD shall provide all documents and data to Evanston prior to LINCOLNWOOD cancelling the bid.

D. Evanston fails to deliver water in accordance with or otherwise fails to comply with the terms of this Agreement.

E. LINCOLNWOOD can terminate this Agreement at the end of the Initial Term, or as otherwise provided during any Extended Term, subject to timely written notice to Evanston.

F. LINCOLNWOOD can terminate this Agreement on or before December 31, 2018, if Lincolnwood is unable to negotiate with the City of Chicago a renewal of its existing agreement with Chicago, which renewal must include, at a minimum, Chicago's provision to Lincolnwood of an acceptable emergency water supply and otherwise be consistent with Lincolnwood's purchase of water from Evanston as contemplated in this Agreement.

G. LINCOLNWOOD can terminate this Agreement after its issuance of written notice to proceed with Evanston's Preliminary Project Phase Work as set forth in Section 4.01 above, provided LINCOLNWOOD fully reimburses Evanston for all reasonable actual, documented costs incurred by Evanston relating only to Project consultants and Project engineering fees and expenses that are incurred by Evanston after the date of issuance of LINCOLNWOOD's Notice to Evanston to Proceed with Preliminary Project Phase Work. Evanston or LINCOLNWOOD will not be reimbursed for staff time or corporation counsel time or outside legal counsel fees and expenses.

H. LINCOLNWOOD can terminate this Agreement after its issuance of written notice to proceed with Evanston's Final Engineering Design Work as set forth in Section 4.02 above, provided LINCOLNWOOD fully reimburses Evanston for all reasonable actual, documented costs incurred by Evanston relating only to Project consultants and Project engineering fees and expenses that are incurred by Evanston after the date of issuance of LINCOLNWOOD's Notice to Evanston to Proceed with Final Engineering Design Work. Evanston or LINCOLNWOOD will not be reimbursed by the other Party for staff time or corporation counsel time or outside legal counsel fees and expenses.

I. LINCOLNWOOD can terminate this Agreement prior to acceptance of water from Evanston, provided LINCOLNWOOD fully reimburses Evanston for all reasonable actual, documented costs incurred by Evanston, relating only to Project consultants and Project engineering fees and expenses and construction costs that are incurred by Evanston after the date of issuance of LINCOLNWOOD's Notice to Evanston to Proceed with Construction as set forth in Section 4.03 above. Evanston or LINCOLNWOOD will not be reimbursed by the other Party for staff time or corporation counsel time or outside legal counsel fees and expenses.

16.4 Default; Cure Period; Relief

In the event any Party defaults in regard to any obligation under this Agreement, the non-defaulting Party shall send written notice of the default, with a description of the default, and a request that the defaulting Party cure the default. Any Party deemed to be in default under this Agreement by another Party shall have a thirty (30) calendar day cure period to resolve the default to the other Party's satisfaction or to initiate and continue to take actions that are designed to cure the default in a reasonable time period so that the Party in default is in conformance with the terms of this Agreement. In the event that a default is not cured, the non-defaulting Party and the defaulting Party shall participate in the "Dispute Resolution" process

contained in Section 11.01 (Negotiation) above. If the Dispute Resolution process is not successful, then either Party may seek to enforce remedies in Section 11.02 (Remedies) to enforce the provisions of this Agreement.

17. General Conditions

17.1 Entire Agreement

This Agreement constitutes the entire agreement of the Parties concerning all matters specifically covered by this Agreement. There are no representations, covenants, promises or obligations not contained in this Agreement that form any part of this Agreement or upon which any of the Parties is relying upon in entering into this Agreement. There are no other commitments, understandings, promises or conditions among the Parties in any other contract or agreement, whether oral or written, and this Agreement supersedes all prior written or oral agreements, commitments and understandings among the Parties.

17.2 Prompt Payment

In regard to the payment of any fee, charge or assessment provided for under this Agreement, the Parties are subject to and shall comply with the Local Government Prompt Payment Act (50 ILCS 505/1, et seq.).

17.3 Compliance With Laws

The Parties to this Agreement shall comply with all applicable Federal, State and local laws, rules and regulations in carrying out the terms and conditions of this Agreement.

17.4 Regulatory Bodies

This Agreement shall be subject to all valid rules, regulations, and laws applicable hereto passed or promulgated by the United States of America, the State of Illinois, or any governmental body or agency having lawful jurisdiction, or any authorized representative or agency of any of them; provided, however, that this Section 17.04 shall not be construed as waiving the right of any Party to challenge the validity of any such rule, regulation, or law on any basis, including impairment of this Agreement.

17.5 Illinois Freedom of Information Act

The definition of a “public record” in the Freedom of Information Act (5 ILCS 140/1, et seq.) (“FOIA”) includes a “public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function

on behalf of the public body and that directly relates to the governmental function and is not otherwise exempt under this Act.” (5 ILCS 140/7(2). Consequently, the Parties shall maintain and make available to the other Parties, upon request, their public records relating to the performance of this Agreement in compliance with the requirements of the Local Records Act (50 ILCS 205/1, et seq.) and FOIA.

17.6 Interpretation; Headings

This Agreement shall be construed and interpreted so as to preserve its validity and enforceability as a whole. No rule of construction that a document is to be construed against any of the drafting Parties shall be applicable to this Agreement. Section headings and titles are descriptive only and do not in any way limit or expand the scope of this Agreement.

17.7 Waiver

The failure of any Party to enforce any section, subsection, term, condition or covenant (collectively referred to as "provision") of this Agreement shall not be deemed a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with such provision and every other provision of this Agreement. No provision of this Agreement shall be deemed waived by any Party, unless the provision to be waived and the circumstances giving rise to such waiver are set forth specifically in a duly authorized and written waiver of the Party charged with such waiver. No waiver by either Evanston or LINCOLNWOOD of any provision of this Agreement shall be deemed or construed as a waiver of any other provision of this Agreement, nor shall any waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or a different provision of this Agreement.

17.8 No Individual or Personal Liability

The Parties agree that the actions taken in regard to and the representations made by each respective Party in this Agreement and by their respective corporate authorities have not been taken or made in anyone's individual capacity and no mayor/president, board member, council member, official, officer, employee, volunteer or representative of any Party will incur personal liability in conjunction with this Agreement.

17.9 No Third Party Beneficiaries

This Agreement is not intended to benefit any person, entity or municipality not a Party to this Agreement, and no other person, entity or municipality shall be entitled to be treated as

beneficiary of this Agreement. This Agreement is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but not limited to, any agent, contractor, subcontractor, consultant, volunteer or other representative of any Party hereto. No agent, employee, contractor, subcontractor, consultant, volunteer or other representative of the Parties hereto will be deemed an agent, employee, contractor, subcontractor, consultant, volunteer or other representative of any other Party hereto.

17.10 Amendments

No amendment to this Agreement shall be effective until it is reduced to writing in an addendum and approved by the corporate authorities of the Parties. All addenda shall be executed by an authorized official of each Party. If any governmental agency with regulatory authority enacts new rules or regulations or new nationally recognized water system engineering requirements are adopted that require the method of water production or any components of the infrastructure used for the delivery of water under this Agreement to be changed or modified, the Parties agree to negotiate an addendum to this Agreement that addresses the construction and operation of the required water system improvements to the Evanston Water Utility and/or the LINCOLNWOOD Water System, the cost allocation of such improvements among the Parties and the financing of such improvements.

17.11 Assignment

No Party shall assign, sublet, sell or transfer its interest in this Agreement or any of its rights or obligations under this Agreement without the prior written, mutual consent of the other Parties. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

17.12 Notice

Except as otherwise provided in this Agreement, all notices and other communications in connection with this Agreement shall be in writing and deemed to be given on the date of mailing if sent by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid, or may be delivered by messenger delivery, or overnight express mail, or personal delivery, or via facsimile, or via electronic internet mail ("e-mail") to the current mailing address(es) or email address(es) of the Parties' principal administrative offices, addressed to the Mayor/Village President or the City Manager/Village Manager. Facsimile notices shall be

deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. E-mail notices shall be deemed valid only to the extent that they are (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three (3) business days thereafter at the appropriate address set forth below. Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (a) the date of actual receipt; or (b) the date that is one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) the date that is three (3) business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each Party to this Agreement shall have the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications shall be addressed to, and delivered at, the following addresses, unless otherwise directed by the Parties:

If for City of Evanston:

With copy to: Corporation Counsel (same address as City Manager)

City Manager
Lorraine Morton Civic Center
2100 Ridge Avenue
Evanston, Illinois 60201
Phone: 847.866.2936
Email:
citymanagersoffice@cityofevanston.org

Director
Public Works Agency
555 Lincoln Street
Evanston, Illinois 60201
Phone: 847.448.4311
Email: publicworks@cityofevanston.org

If for Village of Lincolnwood:

Village Manager
Village of Lincolnwood
6900 N. Lincoln Avenue
Lincolnwood, IL 60712

Director of Public Works
Village of Lincolnwood
7001 N. Lawndale Avenue
Lincolnwood, IL 60712

Phone: 847-745-4717

Fax: 847-673-9382

Email: current business email address

Phone: 847-675-0888

Fax: 847-675-4432

Email: current business email address

With a copy to:

Holland & Knight LLP

131 S. Dearborn Street, 30th Floor

Chicago, IL 60603

Attention: Steven M. Elrod, Corporation Counsel

By notice with the foregoing requirements of this Section 17.12, the Parties shall have the right to change the addresses for all future notices and communications to itself, but no notice of such a change shall be effective until actually received.

17.13 Severability

In the event any term, provision or condition of this Agreement is held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms, provisions or conditions of this Agreement which can be given effect without the invalid term, provision or condition. To this extent and purpose, the terms, provisions and conditions of this Agreement are declared severable. If any part of this Agreement is adjudged invalid, such adjudication shall not affect the validity of this Agreement as a whole or of any other part.

17.14 No Separate Legal Entity; No Joint Venture or Partnership or Agency

This Agreement establishes a cooperative intergovernmental undertaking, but the Parties do not intend to create a new or separate legal entity by entering into this Agreement. This Agreement does not establish or create a joint venture or partnership between the Parties, and no Party shall be responsible for the liabilities and debts of the other Parties hereto. No Party shall be deemed to be the agent, employee, or representative of any other Party.

17.15 Independent Sovereign Status

The Parties to this Agreement are independent, sovereign units of local government and no Party shall exercise control over either the performance of any other Party or the employees of any other Party.

17.16 Effective Date

The Effective Date of this Agreement shall be the date that the last authorized signatory signs and dates this Agreement, which date shall be inserted on the first page of this Agreement. This Agreement shall become effective only in the event the corporate authorities of each Party approves this Agreement.

17.17 Authorization

In accordance with applicable state laws, this Agreement was approved by each Party as follows:

- A. The adoption of Ordinance _____-O-18 by the Mayor and City Council of Evanston on the _____, 2018.
- B. The passage of Resolution 18-²⁰¹⁰_____ by the Village President and Board of Trustees of the Village of Lincolnwood on the July 23, 2018.

17.18 Counterparts

This Agreement may be executed in counterparts (including facsimile signatures), each of which shall be deemed to be an original and all of which shall constitute one and the same Agreement.

17.19 Exhibits

In the event of a conflict between any Exhibit attached hereto and the text of this Agreement, the text of this Agreement shall control. The following Exhibits are attached to this Agreement and made a part hereof:

- A. **Group Exhibit "A"**: Illustrative Example of "True-Up" Process comprised of Pages A-1 through A-7 (Page A-1: Morton Grove - Niles Water Supply Quantity Rate True Up Calculation for Service Year 2016; Page A-2: Morton Grove - Niles Water Supply Estimated Quantity Rate for Service Year 2016 Based on FY 2014 Audited Information; Page A-3: 2014 Audited Information, City of Evanston, Illinois, Water Fund – Operations and Maintenance Account, Schedule of Revenues, Expenditures, and Changes in Unreserved Fund Balance – Budget and Actual for the FY ended December 31, 2014 with Comparative Totals for FY ended December 31, 2013 (Page 157); Page A-4: Morton Grove- Niles Water Supply True Up Quantity Rate for Service Year 2016 Based on FY 2015 Audited Information; Page A-5: 2015 Audited Information, City of Evanston, Illinois, Water Fund – Schedule of Revenues, Expenditures, and Changes in Net Position – Budget and Actual for the FY ended December 31, 2015 (Page 123); Page A-6: Calculation of Distribution Expenses

Allocated to LINCOLNWOOD; Page A-7: Annual Pumpage (MG) (Water and Sewer 2015 Annual Report, Page 18).

B. Group Exhibit “B”: Example of Rate Calculation for LINCOLNWOOD Water Rate for Service Year 2017 Based on Evanston Audited Information for Fiscal Year 2015 comprised of Pages B-1 through B-21 (Pages B-1 and B-2: Example of Rate Calculation for LINCOLNWOOD Water Supply Prepared on 12/14/2016 by Dave Stoneback, Morton Grove - Niles Water Supply Rate Calculation for Service Year 2017, Based on FY 2015 Actual Information; Pages B-3 to B-12: Evanston Water Utility Component Sheets, Table B-1 dated 6/30/2016 (Reproduction Cost New Less Depreciation As Of December 31, 2015, Pages 1 through 10 of Burns & McDonnell Water Works Properties Valuation); Page B-13: Table B-2 dated 6/30/2016 (Reproduction Cost New Less Depreciation As Of December 31, 2015, Burns & McDonnell Water Works Properties Valuation); B-14: Table B-3 dated 6/30/2016 (Original Cost New Less Depreciation As Of December 31, 2015, Burns & McDonnell Water Works Properties Valuation); Page B-15: Table B-4 dated 6/30/2016 (OCLD and RCNLD At December 31, 2015, Burns & McDonnell Water Works Properties Valuation); Page B-16: IDNR Water Allocations as of November 2011; Page B-17: 2015 Audited Information, City of Evanston, Illinois, Notes to the Financial Statements for the FY ended December 31, 2015 (Page 40); Page B-18: Evanston Audited Information, City of Evanston, Schedule of Fixed Assets and Depreciation, Year ended December 31, 2014; Page B-19: Annual Pumpage, 2015 Monthly Pumpage (MG) and 2015 Average Day Pumpage (MGD)(Water and Sewer 2014 Annual Report)(Page 17); Page B-20: 2015 Audited Information, City of Evanston, Illinois, Water Fund – Schedule of Revenues, Expenditures, and Changes in Net Position – Budget and Actual for the FY ended December 31, 2015 (Page 123); Page B-21: Evanston Distribution System, Calculation of Percent of System Allocated to LINCOLNWOOD, Calculation of Depreciation Charges.

C. Group Exhibit “C”: Depreciation Rates comprised of Page C-1: Depreciation Rates (Classes of Plant included: Source of Supply, Pumping Plant, Treatment Plant, Water Plant and Transmission)

D. Exhibit “D”: City of Evanston Ordinance 45-O-18 (Approval of Water Supply Agreement Between the City of Evanston and the Village of Lincolnwood)

E. Exhibit "E": Village of Lincolnwood Resolution 18- (Approval of Water Supply Agreement Between the City of Evanston and the Village of Lincolnwood)

IN WITNESS WHEREOF, this Agreement was executed on behalf of the Parties through their authorized representatives, after all duly required corporate action was taken, as set forth below on the signature pages.

SIGNATURE PAGES TO FOLLOW

[Faint handwritten signature]

[Faint handwritten signature]

[Faint handwritten signature]

**SIGNATURE PAGE FOR
CITY OF EVANSTON**

IN WITNESS WHEREOF, the below authorized officials of the City of Evanston signed this Agreement pursuant to legal authorization granted to him/her under Article VII, Section 10 of the 1970 Illinois Constitution, the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) and the corporate approval granted by passage of Ordinance 45-O-18 by the Corporate Authorities of the City of Evanston.

City of Evanston

By: Wally Bobkiewicz

Name: Wally Bobkiewicz

City Manager, City of

Evanston Date: 8/24

2018.

Attest:

By: [Signature]

Name: ~~Devon Reid~~ Eduardo Gomez

Deputy City Clerk, City of Evanston

Date: 8/24, 2018

Approved as to form and legality:

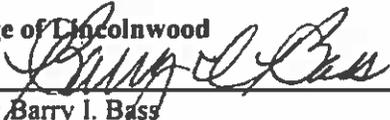
By: Michelle L. Masoncup

Michelle L. Masoncup, Corporation
Counsel

**SIGNATURE PAGE FOR
VILLAGE OF LINCOLNWOOD**

IN WITNESS WHEREOF, the below authorized officials of the Village of Lincolnwood have signed this Agreement pursuant to legal authorization granted to him/her under Article VII, Section 10 of the 1970 Illinois Constitution, the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) and the corporate approval granted by passage of Resolution 2018-207P by the Corporate Authorities of the Village of Lincolnwood.

Village of Lincolnwood

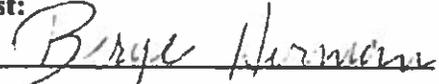
By: 

Name: Barry I. Bass

Village President, Village of Lincolnwood

Date: August 1, 2018.

Attest:

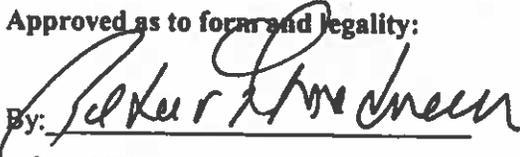
By: 

Name: Beryl Herman

Village Clerk, Village of Lincolnwood

Date: August 1, 2018

Approved as to form and legality:

By: 

Village Attorney

Attachment 5 – Amortization Schedules

Attachment 6 – Approved Ordinance

Repayment of the loan to the IEPA by the City is to be solely from the revenues derived from the Water Fund. See Ordinance Authorizing Debt 94-O-21, Attachment 6. The draft Ordinance was introduced to City Council on October 11th, and was passed on October 24th. An executed copy will be submitted as soon as it is available.

94-O-21

AN ORDINANCE

**Authorizing the City to Borrow Funds from
the Illinois Environmental Protection Agency
Public Water Supply Loan Program**

WHEREAS, the City of Evanston, in the County of Cook, Illinois (the “City”) operates its public water supply system (“the System”) and in accordance with the provisions of the provisions of Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois and the Local Government Debt Reform Act, 30 ILCS 350/1 et seq. (collectively “the Act”); and

WHEREAS, the Mayor and City Council of the City (the “Corporate Authorities”) have determined that it is advisable, necessary, and in the best interest of the public health, safety and welfare to improve the System including the following:

Replace an existing 1909 intake in Lake Michigan that supplies raw water to the Evanston Water Plant, which involves abandoning the existing 1909 intake structure and pipeline, construction of a new replacement intake structure and pipeline, construction of new onshore facilities, and modifications to existing facilities to incorporate the new intake into the water treatment process at the Evanston Water Plant

together with any land or rights in land and all electrical, mechanical or other services necessary, useful or advisable to the construction and installation (the “Project”), all in accordance with the plans and specifications prepared by the consulting engineers of the City, which Project has a useful life of 100 years; and

WHEREAS, the estimated cost of constructing and installing the Project, including engineering, legal, financial, and other related expenses is Forty-one Million

Six-hundred-six-thousand Seventy-three dollars (\$41,606,073) and there are insufficient funds on hand and lawfully available to pay such costs; and

WHEREAS, the loan shall bear an interest rate as defined by 35 Ill. Adm. Code 662, which does not exceed the maximum rate authorized by the Bond Authorization Act, as amended, 30 ILCS 305/0.01 et seq., at the time of the issuance of the loan; and

WHEREAS, the principal and interest payment shall be payable semi-annually and the loan shall mature in twenty (20) years, which is within the period of useful life of the Project; and

WHEREAS, the costs are expected to be paid for with a loan to the City from the Public Water Supply Loan Program through the Illinois Environmental Protection Agency, the loan to be repaid from revenues from the System and the loan is authorized to be accepted at this time pursuant to the Act; and

WHEREAS, in accordance with the provisions of the Act, the City is authorized to borrow funds from the Public Waters Supply Loan Program in the aggregate principal amount of Twenty-one Million Two Hundred Twenty Thousand Seventy-three dollars (\$21,220,073) to provide funds to pay the costs of the Project and;

WHEREAS, the loan to the City shall be made pursuant to a Loan Agreement, including certain terms and conditions between the City and the Illinois Environmental Protection Agency;

NOW THEREFORE, BE IT ORDAINED BY THE CORPORATE AUTHORITIES OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS AS FOLLOWS:

SECTION 1: The Corporate Authorities hereby find that the recitals contained in the preambles are true and correct, and incorporate them into this Ordinance by this reference.

SECTION 2: It is necessary and in the best interests of the City to construct the Project for the public health, safety and welfare, in accordance with the plans and specifications, as described; that the System continues to be operated in accordance with the provisions of the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq.; and that for the purpose of constructing the Project, it is hereby authorized that funds be borrowed by the City in the aggregate principal amount (which can include construction period interest financed over the term of the loan) not to exceed Twenty-one Million Two Hundred Twenty Thousand Seventy-three dollars (\$21,220,073).

SECTION 3: The Corporate Authorities may adopt additional ordinances or proceedings supplementing or amending this Ordinance, providing for entering into the Loan Agreement with the Illinois Environmental Protection Agency, prescribing all the details of the Loan Agreement, and providing for the collection, segregation and distribution of the revenues of the System, so long as the maximum amount of the Loan Agreement as set forth in this Ordinance is not exceeded and there is no material change in the project or purposes described herein. Any additional ordinances or proceedings shall in all instances become effective in accordance with the Act or other applicable laws. This Ordinance, together with such additional ordinances or

proceedings, shall constitute complete authority for entering into the Loan Agreement under applicable law.

However, notwithstanding the above, the City may not adopt additional ordinances or amendments which provide for any substantive or material change in the scope and intent of this Ordinance, including but not limited to interest rate, preference or priority of any other ordinance with this Ordinance, parity of any other ordinance with this Ordinance, or otherwise alter or impair the obligation of the City to pay the principal and interest due to the Public Water Supply Loan Program without the written consent of the Illinois Environmental Protection Agency.

SECTION 4: Repayment of the loan to the Illinois Environmental Protection Agency by the City pursuant to this Ordinance is to be solely from the revenue derived from revenues of the System, and the loan does not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation.

SECTION 5: The City Manager is hereby authorized to make an application to the Illinois Environmental Protection Agency for a loan through the Public Water Supply Loan Program, in accordance with the loan requirements set out in 35 Ill. Adm. Code 662.

SECTION 6: The Corporate Authorities hereby authorize acceptance of the offer of a loan through the Public Water Supply Loan Program, including all terms and conditions of the Loan Agreement as well as all special conditions contained therein and made a part thereof by reference. The Corporate Authorities further agree that the loan funds awarded shall be used solely for the purposes of the project as approved by

the Illinois Environmental Protection Agency in accordance with the terms and conditions of the Loan Agreement.

SECTION 7: The City has outstanding bonds, payable from revenues of the system, that are senior to the loan authorized by this Ordinance, and the City establishes an account, coverage, and reserves equivalent to the account(s), coverage(s) and reserve(s) as the senior lien holders in accordance with 35 Ill. Adm. Code 662.350(a)(9)(C)(PWS).

SECTION 8: The City Manager is hereby authorized and directed to execute the Loan Agreement with the Illinois Environmental Protection Agency. The Corporate Authorities may authorize by resolution a person other than the City Manager for the sole purpose of authorizing or executing any documents associated with payment requests or reimbursements from the Illinois Environmental Protection Agency in connection with this loan.

SECTION 9: If any section, paragraph, clause or provision of this Ordinance is held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

SECTION 10: All ordinances, resolutions, orders, or parts thereof, which conflict with the provisions of this Ordinance, to the extent of such conflict, are hereby repealed.

Introduced: _____, 2021

Approved:

Adopted: _____, 2021

_____, 2021

Daniel Biss, Mayor

Attest:

Approved as to form:

Stephanie Mendoza, City Clerk

Nicholas E. Cummings, Corporation
Counsel

Attachment 7 – Water Rate Ordinance

142-O-19

AN ORDINANCE

**Amending City Code Section 7-12-17,
City Waterworks System “Charges, Rates, Fees and Penalties”**

**NOW BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
EVANSTON, COOK COUNTY, ILLINOIS, THAT:**

SECTION 1: Section 7-12-17 “Charges, Rates, Fees and Penalties” of the City Code of 2012 is hereby amended to read as follows, to include a five and four tenths percent (5.4%) rate increase effective January 1, 2020.

7-12-17: CHARGES, RATES, FEES AND PENALTIES:

The fees and penalties for the waterworks system shall be paid according to the following table. Fees and penalties not covered by this table shall be as described in Section 1-4-1 of this Code.

Waterworks System Charges, Rates, Fees and Penalties	
Construction Water Fee (prior to meter installation) Section 7-12-3(B)	\$100.00/ diametric inch/ month
Connection Fee	
Initial Connections:	
5/8 inch displacement	\$930.00
3/4 inch displacement	\$1,331.00
1 inch displacement	\$2,261.00
1 1/2 inch displacement	\$4,393.00
2 inch displacement, compound, or turbine	\$7,024.00
3 inch displacement	\$13,310.00
3 inch compound	\$14,197.00
3 inch turbine	\$15,923.00
4 inch displacement or compound	\$22,615.00
4 inch turbine	\$27,280.00
6 inch displacement or compound	\$43,936.00
6 inch turbine	\$54,483.00
8 inch compound	\$70,988.00
8 inch turbine	\$80,081.00

<p>Upgrade Connections: The fee for upgrading to a larger connection shall equal the difference between the costs of the new, larger connection and the original connection. The fees collected for Initial Connections and Upgrade Connections shall be placed in a special account earmarked for the purpose of funding capital investment in new waterworks facilities.</p> <p>Replacement Connections: Services, 2" and smaller Services, greater than 2" Section 7-12-3(D)</p>	<p>\$100.00 \$100.00/ diametric inch</p>																				
<p>Water Meter Installation Permit Fee Section 7-12-6-2(B)</p>	<p>\$50.00</p>																				
<p>Water Meter Transfer Fee Section 7-12-6-2(B)2</p>	<p>\$50.00</p>																				
<p>Meter Charges & Water Rates Bi-monthly meter charge - The minimum service charge includes the first five hundred cubic feet (500 cu.ft.) of water consumed during the two (2)-month period for which the minimum service charge is assessed. Any fractional part of the calendar year less than two (2) months shall be prorated and the proper minimum service charge collected. Quantity rate charged for all water used during the period for which the minimum service charge is assessed, in excess of the first five hundred cubic feet (500 cu.ft.) of water that is included in the minimum service charge. Section 7-12-7-1</p>	<table border="1"> <thead> <tr> <th>Size</th> <th>Charge</th> </tr> </thead> <tbody> <tr> <td>5/8" and 3/4"</td> <td>\$10.33</td> </tr> <tr> <td>1"</td> <td>\$20.61</td> </tr> <tr> <td>1 1/2"</td> <td>\$38.58</td> </tr> <tr> <td>2"</td> <td>\$60.74</td> </tr> <tr> <td>3"</td> <td>\$106.97</td> </tr> <tr> <td>4"</td> <td>\$171.35</td> </tr> <tr> <td>6"</td> <td>\$302.17</td> </tr> <tr> <td>8"</td> <td>\$511.54</td> </tr> <tr> <td colspan="2">2.89/100 cubic feet</td> </tr> </tbody> </table>	Size	Charge	5/8" and 3/4"	\$10.33	1"	\$20.61	1 1/2"	\$38.58	2"	\$60.74	3"	\$106.97	4"	\$171.35	6"	\$302.17	8"	\$511.54	2.89/100 cubic feet	
Size	Charge																				
5/8" and 3/4"	\$10.33																				
1"	\$20.61																				
1 1/2"	\$38.58																				
2"	\$60.74																				
3"	\$106.97																				
4"	\$171.35																				
6"	\$302.17																				
8"	\$511.54																				
2.89/100 cubic feet																					
<p>Water Turn On Fee During business hours Outside of business hours Section 7-12-7-3</p>	<p>\$25.00 \$75.00</p>																				
<p>Fire Service Semi-Annual Charge Section 7-12-8</p>	<p>\$20.00/ diametric inch/ 6 months</p>																				
<p>Air Conditioning Device Annual Demand Charge (unless equipped with water conservation device) Section 7-12-9-2(C)</p>	<p>\$20.00/ ton capacity over 5 tons</p>																				
<p>Unauthorized Water Turn On Penalty Services, 2" and smaller Services, greater than 2" Section 7-12-12</p>	<p>Time and materials for repairs plus: \$100.00 \$500.00</p>																				
<p>Shut-Off for Property Vacancy Fee Section 7-12-13</p>	<p>\$50.00</p>																				
<p>Lawn Sprinkling Restriction Violation Penalty Section 7-12-14-2(C)</p>	<p>\$25.00 - \$500.00 per day of violation</p>																				

Penalty For Tampering With City Waterworks System Section 7-12-15(A)	\$500.00 plus the estimated cost of water
Penalty for Obstruction of Roundway, Service Box or Water Meter Section 7-12-15(B)	\$50.00
Cross Connection Control Device Installation Permit Fee Subsection 7-12-16-4	\$40.00/ device
Annual Cross Connection Control Fee Subsection 7-12-16-6	\$35.00/ device

SECTION 2: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: If any provision of this Ordinance 142-O-19 or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid application of this Ordinance is severable.

SECTION 4: The findings and recitals contained herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

SECTION 5: This Ordinance 142-O-19 shall be in full force and effect on January 1, 2020, after its passage, approval, and publication in the manner provided by law.

Introduced: November 11, 2019

Adopted: November 25, 2019

Approved:

December 16, 2019

Stephen H. Hagerty
Stephen H. Hagerty, Mayor

Attest:

Eduardo Gomez
~~Devon Reid, City Clerk~~
Eduardo Gomez, Deputy City Clerk

Approved as to form:

Michelle L. Masoncup
Michelle L. Masoncup, Corporation
Counsel

**Attachment 8 – Tax Certificate and
Agreement**

FORM OF PARTICIPANT TAX AGREEMENT

INTRODUCTION: RECIPIENT'S TAX LAW OBLIGATIONS UNDER THE LOAN

IN ORDER TO HELP MINIMIZE INTEREST RATES CHARGED IN CONNECTION WITH THE STATE REVOLVING FUND (SRF) PROGRAMS, THE FUNDING FOR THE LOANS IS OBTAINED THROUGH THE ISSUANCE OF FEDERALLY SUBSIDIZED TAX-EXEMPT BONDS BY THE ILLINOIS FINANCE AUTHORITY FOR THE BENEFIT OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (IEPA OR AGENCY) AND ITS SRF PROGRAMS. SUCH BENEFICIAL FINANCING COMES WITH CERTAIN FEDERAL TAX LAW COMPLIANCE REQUIREMENTS, WHICH ARE SUMMARIZED IN THE ATTACHED TAX AGREEMENT.

THE TAX AGREEMENT IS REQUIRED FOR ALL RECIPIENTS OF SRF LOANS. IT PROVIDES THAT THE RECIPIENT WILL COMPLY WITH ALL APPLICABLE TAX LAW REQUIREMENTS. MANY OF THESE REQUIREMENTS AFFECT RECIPIENTS ONLY UNDER UNUSUAL CIRCUMSTANCES, SUCH AS WHEN A DEBT SERVICE FUND THAT IS NOT DEPLETED AT LEAST ONCE A YEAR IS ESTABLISHED OR ANY PART OF THE PROJECT IS SOLD OR USED IN A PRIVATE BUSINESS USE OR OTHER USE THAT WAS NOT AUTHORIZED WHEN THE LOAN WAS ORIGINATED.

THE "**DATE OF ISSUANCE OF THE BONDS**" REFERRED TO IN THE TAX AGREEMENT IS APRIL 16, 2019, OR, FOR LOANS FINANCED FROM PROCEEDS OF BONDS ISSUED AFTER THAT DATE, THE DATE OF ISSUANCE OF THOSE BONDS, AS PROVIDED TO THE RECIPIENT BY THE IEPA.

THE "**WEBSITE INSTRUCTIONS**" REFERRED TO IN THE TAX AGREEMENT MAY BE FOUND AT <https://www2.illinois.gov/epa/Documents/epa-forms/water/financial-assistance/srf/srf-recipient-tax-certificate-instructions.pdf> FOR SPECIFIC QUESTIONS ABOUT THE APPLICATION OF THESE REQUIREMENTS TO THE RECIPIENT'S CIRCUMSTANCES, YOU MAY CONTACT IEPA'S WATER REVOLVING FUND FINANCE MANAGER (FOR PROGRAM MATTERS) AT (217) 524-1340, OR IFA'S TAX COUNSEL (FOR LEGAL MATTERS) AT (312) 902-5564.

TAX COMPLIANCE CERTIFICATE AND AGREEMENT

The City of Evanston (the "Recipient") is executing this Tax Compliance Certificate and Agreement ("Tax Agreement") to allow the Illinois Environmental Protection Agency (the "Agency") to fund one or more loans (L17# 3797) (the "Loan") to the Recipient with proceeds of tax-exempt bonds.

Section 1. Expectations. The Recipient and the Agency have previously executed or will execute a loan agreement or loan agreements providing that the Agency lend funds to the Recipient to reimburse the Recipient for eligible costs incurred for the Project described therein. This Tax Agreement establishes the expectations and covenants of the Recipient with respect to future events regarding the Loan and the use of Loan proceeds. The Recipient recognizes that the Loan proceeds are derived in whole or in part from the proceeds of tax-exempt bonds. Certain certifications and covenants necessary to preserve the tax-exemption of the bonds are presented here in summary form; additional information is available in the Website Instructions, which are incorporated in this Tax Certificate to the extent relevant to the Project.

Section 2. Internal Revenue Service Audits. The Internal Revenue Service has not contacted the Recipient regarding any bonds or other debt obligations issued by or on behalf of the Recipient in connection with its wastewater or drinking water system and no such obligations are currently under examination by the Internal Revenue Service.

Section 3. Purpose of the Loan. The proceeds of this Loan will be used to finance eligible capital expenditures of the Project, including architectural or engineering costs incurred prior to construction. The Recipient expects to borrow at least 90% of the commitment amount of the Loan and to spend all of the Loan Proceeds on the Project.

Section 4. The Project — Binding Commitment and Timing. The Recipient expects that the work of constructing the Project and the expenditure of Loan proceeds will proceed with due diligence (i.e., without substantial or unnecessary delay) after the Loan is originated. The Recipient expects to draw and spend all of the Loan proceeds no later than the third anniversary of the Date of Issuance of the Bonds (as defined in the Introduction to this Tax Agreement).

Section 5. Reimbursement. None of the proceeds of the Loan will be used to reimburse expenditures actually paid by the Recipient prior to the Date of Issuance of the Bonds (as defined in the Introduction to this Tax Agreement), unless the Recipient has adopted a qualified "official intent resolution" or the expenditures constitute qualified "preliminary expenditures" (see Website Instructions for details).

Section 6. Hedge and Investment Agreements. The Recipient will not enter into any interest rate swap, interest rate cap, futures contract, forward contract, guaranteed investment contract, certificate of deposit, option or similar instrument in connection with the Loan or the proceeds of the Loan unless an exception applies (see Website Instructions).

Section 7. Funds and Accounts. The Recipient will establish and maintain a Repayment Fund, in which all amounts deposited are actually applied to principal and interest payments on the Loan within one year of the deposit date. No other funds pledged to, or expected to be used to pay, the Loan will be maintained by the Recipient. The Loan does not replace any invested funds

of the Recipient that were previously reserved to pay the costs of the Project and the term of the Loan is no longer than 120% of the expected useful life of the Project.

Section 8. Use of Proceeds and Project. None of the Loan proceeds or the Project will be used by any person or entity, other than a state or local government unit, pursuant to any special arrangement that does not include all members of the general public (such as a sale; lease; management, service or output contract; or similar arrangement), unless an exception applies (see Website Instructions). Also, none of the Loan proceeds will be lent to any party other than a state or local government unit.

Section 9. No Sale of the Project. The Recipient will not sell or otherwise dispose of any portion of the Project without prior written approval of the Agency.

Section 10. Purchase of Bonds by Recipient. The Recipient will not purchase any tax-exempt bonds the proceeds of which were, or might have been, used to fund the Loan (if in doubt, contact the Agency).

Section 11. Compliance Procedures. The Recipient will adopt, and periodically monitor its compliance with, written procedures for satisfaction of its covenants hereunder. Such procedures must contain, among other things, the following characteristics to ensure that violations are timely identified and corrected so that the Loan and the Bonds remain in compliance with federal tax requirements from the time they are issued until they are no longer outstanding: (a) due diligence review at specified regular intervals, (b) identification and training of the officer or employee responsible for review, (c) retention of adequate records to substantiate compliance (e.g., records relating to the allocation of proceeds, etc.), (d) procedures reasonably expected to timely identify noncompliance, and procedures to ensure that steps will be taken to timely correct noncompliance. A form of such procedures that may be adapted to the Recipient's circumstances is contained in the Website Instructions.

Section 12. Records. The Recipient will keep and retain adequate records to demonstrate compliance with all of the covenants in this Tax Agreement (including the Website Instructions, if applicable), at least until the third anniversary of the payment in full of the Bonds.

Dated: 10/27, 2021

Kelley Gandurski

Name of Authorized Representative

By 

Authorized/Representative Signature

Approved as to form:


Nicholas E. Cummings
Corporation Counsel

Attachment 9 – Pending Litigation

There are no pending cases that would potentially impact the City's water assets.

**Attachment 10 – Loan Program
Certifications and Related Forms**

APPENDIX: LOAN PROGRAM CERTIFICATIONS

Loan Applicant's Authorized Representative shall complete and sign in all areas indicated.

- The loan applicant hereby agrees to pay all project costs not covered by the loan. If the project costs provided by the applicant exceed the lesser of 5% of the total project cost or \$100,000, please provide the following information:

Amount to be provided by applicant: \$20,386,000.00

Source of funds: EPA WIFIA Bonds

- The loan applicant hereby certifies that it has analyzed the costs and the financial impacts of the proposed project and that it has the legal, institutional, managerial and financial capability to insure adequate building, operation, maintenance and replacement of the treatment works project.
- The loan applicant hereby certifies that no unlawful or corrupt practice has taken place in the planning or design of the proposed project.
- The loan applicant hereby certifies that it has complied with all applicable State and Federal statutory and regulatory requirements in regard to the proposed project.
- The loan applicant hereby certifies that it is not barred from being awarded a contract or subcontract under Section 10.1 of the Illinois Purchasing Act.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION
AND OTHER RESPONSIBILITY MATTERS

The prospective participant to the best of its knowledge and belief that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
- c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in fine of up to \$10,000 or imprisonment for up to 5 years, or both.

INTENT REGARDING NATIONAL FLOOD INSURANCE

- Whereas application provisions for loans from the Public Water Supply Loan Program require compliance with the National Flood Insurance Act 1968, as amended, and
- Whereas the costs of securing and maintaining flood insurance are eligible for loan participation during the approved construction period, and
- Whereas failure to secure flood insurance for eligible construction located in designated flood hazard areas will cause this construction to become ineligible for loan funds:
- Now therefore, be it resolved that the City of Evanston will cooperate and coordinate with the National Flood Insurance Program to acquire and maintain any flood insurance made available for Project L17-3797 for the entire useful life of the insurable construction pursuant to the Flood Insurance Act of 1968, as amended, and that it will secure said flood insurance for each insurable structure, as soon as said insurance is available and will notify the Illinois Environmental Protection Agency in writing that the National Flood Insurance requirement has been satisfied.

CERTIFICATION REGARDING PROJECT SITE, RIGHTS-OF-WAY, EASEMENTS AND PERMITS

1. The applicant has investigated and ascertained the location of the site or sites, rights-of-way and easements being provided for the facilities in its application for loan assistance. In my opinion, the applicant has a sufficient legal interest in the said site or sites, rights-of-way and easements to permit the building of such facilities thereon and to permit the operation and maintenance of such facilities thereon during the estimated life of the facility by the applicant after the completion of construction.
2. The loan applicant has compiled with the provisions of 49 CFR 24 as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (42 USC 4601 et seq.).
3. The loan applicant has obtained all the necessary permits as indicated below:

Type of Permit	Permit Number	Date Issued
Army Corps of Eng. 404	LRC-2019-00597	9/3/2021
IL Dept. of Trans.	NA	
County Highway	NA	
Other		

LOAN APPLICANT ACKNOWLEDGEMENT OF THE USE OF AMERICAN IRON AND STEEL PRODUCTS REQUIREMENT

1. I am aware that all iron and steel products used for this project must be produced in the United States per Federal appropriations;
2. I understand the term "iron and steel products" refers to the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete and construction materials;
3. I am aware that loan recipients must be able to verify that products used in their State Revolving Fund (SRF) projects comply with the AIS requirements;
4. I am aware that this requirement applies to all portions of the project.

Information regarding the American Iron and Steel Requirements is available on IEPA's website, www2.illinois.gov/epa/topics/grants-loans/state-revolving-fund/guidance/Pages, or by calling the Infrastructure Financial Assistance Section at (217) 782-2027.

TAXPAYER IDENTIFICATION NUMBER

I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).
 - If you are an individual, enter your name and SSN as it appears on your Social Security Card.
 - If you are a sole proprietor, enter the owner's name on the name line followed by the name of the business and the owner's SSN or EIN.
 - If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's name on the name line and the d/b/a on the business name line and enter the owner's SSN or EIN.
 - If the LLC is a corporation or partnership, enter the entity's business name and EIN and for corporations, attach IRS acceptance letter (CP261 or CP277).
 - For all other entities, enter the name of the entity as used to apply for the entity's EIN and the EIN.

Name: City of Evanston

Business Name: _____

Taxpayer Identification Number: _____

Social Security Number: _____

or

Employer Identification Number: 36-6005870

Legal Status (check one):

- | | |
|--|--|
| <input type="radio"/> Individual | <input checked="" type="radio"/> Governmental |
| <input type="radio"/> Sole Proprietor | <input type="radio"/> Nonresident alien |
| <input type="radio"/> Partnership | <input type="radio"/> Estate or trust |
| <input type="radio"/> Legal Services Corporation | <input type="radio"/> Pharmacy (Non-Corp.) |
| <input type="radio"/> Tax-exempt | <input type="radio"/> Pharmacy/Funeral Home/Cemetery (Corp.) |
| <input type="radio"/> Corporation providing or billing medical and/or health care services | Limited Liability Company |
| <input type="radio"/> Corporation NOT providing or billing medical and/or health care services | (select applicable tax classification): |
| | <input type="radio"/> D = disregarded entity |
| | <input type="radio"/> C = corporation |
| | <input type="radio"/> P = partnership |

Signature: 

Date: 10/27/21

EXECUTIVE COMPENSATION DATA (5 OFFICER FORM)

DUNS number: 074-390-907

CCR/Cage Number: _____

Loan Recipient Name: City of Evanston

Name of Project: 1909 Raw Water Intake Replacement

Federal Reporting Contact Information:

Name: Hitesh Desai

Phone: (847) 448-8082

Email: hdesai@cityofevanston.org

Requirements to report five most highly compensated officers:

When all three of the following conditions are met in the previous fiscal year, you must report the five most highly compensated officers of the entity.

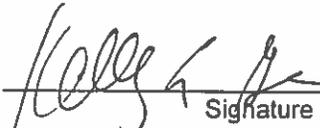
1. The recipient received 80 percent or more of its annual gross revenues in Federal awards, and
2. The recipient received \$25,000,000 or more in annual gross revenue from Federal awards, and
3. The public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 (26 U.S.C. §6104).

Check either box A or B below and complete the requested information.

A. I certify that in the preceding fiscal year, 2020, City of Evanston
 (Fiscal year) (Loan recipient name)

- 1. **DID NOT** receive 80 percent or more of its annual gross revenues in Federal awards, or
- 2. **DID NOT** receive \$25,000,000 or more in annual gross revenue from Federal awards, or
- 3. The public **DOES** have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 (26 U.S.C. §6104).

And is therefore not required to report the names and compensation of the five most highly compensated officers.

 Signature
 _____ City Manager Title
 _____ 10/27/21 Date

B. The five most highly compensated officers of _____ are:

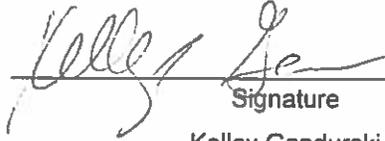
Name	Compensation Amount ¹

¹ Compensation includes: (1) Salary and bonus. (2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R. (3) Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees. (4) Change in present value of defined benefit and actuarial pension plans. (5) Above-market earnings on deferred compensation that is not tax-qualified. (6) Other compensation. For example: severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

AUTHORIZATION OF A LOAN APPLICANT'S AUTHORIZED REPRESENTATIVE
TO SIGN PWSLP LOAN APPLICATION DOCUMENTS

Whereas, application provisions for loans from the Public Water Supply Loan Program require that the City of Evanston authorize a representative to sign the loan application forms and supporting documents; therefore, be it resolved by the City Council of the City of Evanston that City Manager Kelley Gandurski is hereby authorized to sign all loan application forms and documents.

Resolved this 27 day of October, 2021.



Signature

Kelley Gandurski

Printed Name

10/27/21

Date

City Manager

Title

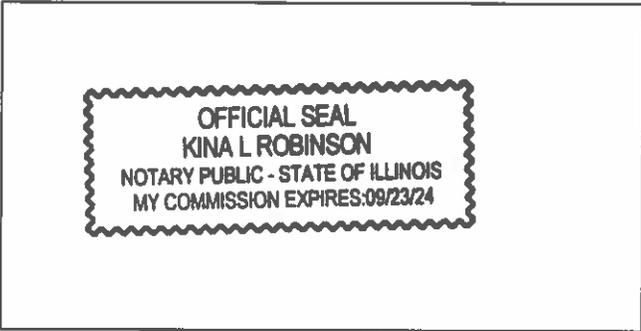
Certified to be a true and accurate copy, passed and adopted on the above date.



Signature & Stamp/Seal of Notary Public

CERTIFICATION OF INFORMATION ON ALL PREVIOUS PAGES
BY LOAN APPLICANT'S AUTHORIZED REPRESENTATIVE

I, Kelley Gandurski, hereby verify that the above information is, to the best of my knowledge, true and correct.

 Signature of Authorized Representative	<u>10/27/21</u> Date
Kelley Gandurski Printed Name	City Manager Title
Attested by Municipality Official or Notary	
	
Signature & Stamp/Seal	