

AGENDA
Administrative-Finance Committee
October 2, 2023
6:00 p.m. – City Hall Conference Room

- 1. Call to Order**
- 2. Public Comment**
- 3. New Business**
 - a. Motion to approve the tax levy determination for general and special purposes for Fiscal Year 2023-2024**
 - b. Motion to approve an ordinance approving a water purchase and sale contract between the DuPage Water Commission and contract customers**
 - c. Approval of Minutes – September 5, 2023**
- 4. Other Business**
- 5. Next Meeting – November 6, 2023**
- 6. Adjournment**

AGENDA MEMO
Administrative/Finance Committee
Meeting Date: October 2, 2023

Issue Statement

Motion to approve the tax levy determination for general and special purposes for Fiscal Year 2023-2024.

Background/History

The process for setting a tax levy is to determine how much revenue to collect from the property tax, and request that the County levy a tax to generate that amount of money. The first approval required is the tax levy determination, which takes place prior to the approval of the tax levy ordinance. Not less than 20 days prior to the adoption of the aggregate levy, the Council shall determine the amounts of money to be levied. There are also special requirements if the aggregate amount of the Corporate and Special Purpose levy is more than 105% or of the preceding year's extension and abatements.

Unfortunately, we are still subject to a timing constraint that requires us to make our initial request by the end of December, a few months before we are far enough into the budget process to make a final judgment on what we will need. In previous years the City has approached the process with an underlying assumption that the Council will not increase property taxes for the combined general corporate purpose (general fund) and special corporate levy (police pension fund).

At the same time, the Council can approve additional abatements up to the end of March. This gives the Council the ability to request a "ceiling" amount, while allowing us to review the budget early next year and consider abatements to the original request.

The attached ordinance requests a general corporate purpose (general fund=\$zero) and special corporate levy (police pension fund=\$2,506,638) for a total of \$2,506,638 which represents a 0.00% increase over this year's extension. The police pension actuary report recommended contribution for this year is \$2,589,935. In order to maintain last year's tax extension and not increase the property tax the city would contribute \$83,297 from other revenue sources.

Additionally, a levy for any outstanding bonds has been filed upon the adoption of the bond ordinances. The 2022 levy amount to pay for the principal and interest on these bonds totaled \$804,320. The 2023 levy amount to pay for the principal and interest on these bonds totals \$692,825. After the water fund bond abatements, the total bond amount to be paid is \$-0-. All of the bond abatement will be presented in conjunction with our budget review. Therefore, the total requested levy is \$2,506,638, which is equal over last year's extension of \$2,506,638.

With respect to the tax levy for Special Service Area #1, we have a plan for maintenance expenses for these wetlands and storm water infrastructure, and the recommended revenue from this levy is proposed to be maintained at \$5,000.

Staff/Committee Recommendation

Staff recommends approval of the levy determination and ordinances which:

- Set the City's 2023 general property tax levy and special corporate tax levy (police pension fund) at \$2,506,638.
- Set the City's 2023 Special Service Area I property tax levy at \$5,000.

Alternate Consideration

Levy different amounts.

Decision Mode

The tax levy determination will be on the October 16, 2023, Council meeting for formal consideration. This final tax levy ordinance will be on the November 20, 2023, City Council agenda for formal consideration.

**CITY OF DARIEN
DU PAGE COUNTY, ILLINOIS**

ORDINANCE NO. _____

**AN ORDINANCE FOR THE LEVY AND ASSESSMENT OF
TAXES FOR THE FISCAL YEAR BEGINNING ON THE FIRST DAY OF MAY, 2023
AND ENDING ON THE THIRTIETH DAY OF APRIL, 2024,
IN AND FOR THE CITY OF DARIEN SPECIAL SERVICE AREA NUMBER ONE
KNOWN AS TARA HILL**

**ADOPTED BY THE
MAYOR AND CITY COUNCIL
OF THE
CITY OF DARIEN**

THIS 20th DAY OF NOVEMBER, 2023

**Published in pamphlet form by authority
of the Mayor and City Council of the City
of Darien, DuPage County, Illinois, this
_____ day of November, 2023.**

**AN ORDINANCE FOR THE LEVY AND ASSESSMENT OF
TAXES FOR THE FISCAL YEAR BEGINNING ON THE FIRST DAY OF MAY, 2023,
AND ENDING ON THE THIRTIETH DAY OF APRIL, 2024,
IN AND FOR THE CITY OF DARIEN SPECIAL SERVICE AREA NUMBER ONE
KNOWN AS TARA HILL**

WHEREAS, the City of Darien is a home rule unit of local government pursuant to the provisions of Article VII, Section 6 of the Illinois Constitution of 1970; and

WHEREAS, as a home rule unit of local government, the City may exercise any power and perform any function pertaining to its government except as limited by Article VII, Section 6.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, IN THE EXERCISE OF ITS HOME RULE POWERS, as follows:

SECTION 1 - Findings: The City of Darien Special Service Area Number One was created by Ordinance No. 0-35-90 entitled “An Ordinance Establishing City of Darien Special Service Area Number One - Tara Hill”, adopted June 18, 1990, and effective as of September 18, 1990. No petition was filed opposing the creation of the special service area, pursuant to Section 9 of Public Act 78-901. Special Service Area Number One consists of the territory described in **Exhibit A**, attached hereto and made a part hereof. The City of Darien is authorized to levy taxes for special services in Special Service Area Number One.

SECTION 2: The total amount of appropriations for all the purposes to be collected from the tax levy of the current fiscal year in Special Service Area Number One is ascertained to be the sum of \$5,000.

SECTION 3: The following sums shall be levied upon the taxable property, as defined in the Revenue Act of 1939, in the City of Darien Special Service Area Number One; said tax to be levied for the fiscal year beginning May 1, 2023, and ending April 30, 2024.

Contractual Services

Professional Services	\$5,000
TOTAL LEVY	\$5,000

SECTION 4: This tax is levied pursuant to Article VII, Sections 6A and 6L, of the Constitution of the State of Illinois, and pursuant to Public Act 78-901 and pursuant to Ordinance No. 0-35-90 Establishing City of Darien Special Service Area Number One.

SECTION 5: The \$5,000 tax levy is certified to the County Clerk of DuPage County, Illinois. The City of Darien determines this \$5,000 tax levy to be the total amount required to be raised by taxation for the current fiscal year of the City for Special Service Area Number One. The City Clerk is hereby ordered and directed to file with the County Clerk of DuPage County, Illinois, on or before the time required by law, a certified copy of this ordinance.

SECTION 6: This ordinance and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such ordinance should (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the City of Darien that to the extent that the terms of this ordinance should be inconsistent with any non-preemptive state law, that this ordinance shall supersede state law in that regard within its jurisdiction.

SECTION 7: This ordinance shall become effective from and after its passage, approval and publication in the manner prescribed by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, this 20th day of November 2023.

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED BY THE MAYOR OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, this 20th day of November 2023.

JOSEPH MARCHESE, MAYOR

ATTEST:

JOANNE E. RAGONA, CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY



DRAFT FOR TAX LEVY DETERMINATION

CITY OF DARIEN

DU PAGE COUNTY, ILLINOIS

ORDINANCE NO. _____

AN ORDINANCE LEVYING TAXES FOR
GENERAL AND SPECIAL CORPORATE PURPOSES
FOR THE FISCAL YEAR COMMENCING ON THE FIRST DAY OF MAY, 2023,
AND ENDING ON THE THIRTIETH DAY OF APRIL, 2024,
FOR THE CITY OF DARIEN, ILLINOIS

ADOPTED BY THE

MAYOR AND CITY COUNCIL

OF THE

CITY OF DARIEN

THIS _____ DAY OF NOVEMBER, 2023

Published in pamphlet form by authority of
the Mayor and City Council of the City of
Darien, DuPage County, Illinois, this
_____ day of November, 2023.

ORDINANCE NO. _____

**AN ORDINANCE LEVYING TAXES FOR
GENERAL AND SPECIAL CORPORATE PURPOSES
FOR THE FISCAL YEAR COMMENCING ON THE FIRST DAY OF MAY, 2023,
AND ENDING ON THE THIRTIETH DAY OF APRIL, 2024,
FOR THE CITY OF DARIEN, ILLINOIS**

WHEREAS, the City of Darien is a home rule unit of local government pursuant to the provisions of Article VII, Section 6 of the Illinois Constitution of 1970; and

WHEREAS, as a home rule unit of local government, the City may exercise any power and perform any function pertaining to its government except as limited by Article VII, Section 6; and

WHEREAS, the City Council of the City of Darien, Illinois, adopted the Annual Budget for the City of Darien, Illinois, for the Fiscal Year beginning on May 1, 2023, and ending on April 30, 2024, and which has been duly published.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, IN THE EXERCISE OF ITS HOME RULE POWERS, as follows:

SECTION 1: A tax for the following sums of money or so much thereof as may be authorized by law to defray all expenses and liabilities of the City of Darien be, and the same is hereby levied, for the purposes specified against all taxable property in said City for the Fiscal Year commencing on the First day of May, 2023, and ending on the Thirtieth day of April, 2024.

ORDINANCE NO. _____

<u>Purpose</u>	<u>Amount Budgeted</u>	<u>Derived From Other Sources</u>	<u>Amount Levied</u>
<u>For Department of Administration:</u>			
Total	1,453,717	1,453,717	0
<u>For Police Department:</u>			
Total	10,095,824	10,095,824	0
<u>For Community Development Department:</u>			
Total	1,131,665	1,131,665	0
<u>For Municipal Services Department:</u>			
Total	4,597,682	4,597,682	0
Total Amount Levied for General Corporate Purposes			<u>0</u>
Police Pension Fund.....			2,506,638
2012 G.O. Refunding Bond- Water System....			305,125
2018G.O. Bond- Water System			387,700
Total Amount Levied for Special Corporate Purposes & Debt			<u>3,199,463</u>
TOTAL TAX LEVY FOR ALL FUNDS			<u>\$3,199,463</u>

SECTION 2: The City Clerk of the City of Darien is hereby directed to file with the County Clerk of the County of DuPage, a certified copy of this Ordinance as provided by law.

SECTION 3: If any item or portion of this Ordinance is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Ordinance.

SECTION 4: This ordinance and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such ordinance should (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the City of Darien that to the extent that the terms of this ordinance should be inconsistent with any non-preemptive state law, that this ordinance shall supersede state law in that

ORDINANCE NO. _____

regard within its jurisdiction.

SECTION 5: This Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form, as required by law, and shall be known as Ordinance Number _____ of the City of Darien, Illinois.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, this 20th day of November, 2023.

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED BY THE MAYOR OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, this 20th day of November, 2023.

ATTEST:

JOSEPH MARCHESE, MAYOR

JOANNE E. RAGONA, CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

AGENDA MEMO
Administrative/Finance Committee
Meeting Date: October 2, 2023

Issue Statement

MOTION TO APPROVE AN ORDINANCE APPROVING A WATER PURCHASE AND SALE CONTRACT BETWEEN THE DUPAGE WATER COMMISSION AND CONTRACT CUSTOMERS

Background/History

The City of Darien, along with 28 entities, receives water from the DuPage Water Commission (DWC). The DWC is a separate unit of local government that buys water from the City of Chicago and sells it to the local water utilities in DuPage County. There is a contract in place with the DWC and includes 28 governing bodies that are signatories to the contract. The DWC/Customer Water Contract will expire on February 24, 2024.

For this reason, a steering group comprised of eight municipal representatives was assembled to represent the municipalities in preparation of the contract renewal, which will become the water supply contract for the next 40-year period. The objective of this collaboration was to ensure the document provides as much continuity with the previous contract as possible, while removing sections that no longer applied (primarily regarding the original water system construction). The municipal legal review for the document was performed concurrently by both the DuPage County States Attorney and the Naperville City Attorney. I had John Murphey review the draft “Water Purchase and Sale Contract” on our behalf and he has no objection to the City Council approving this Contract. I had John Murphey review the draft “Water Purchase and Sale Contract” on our behalf and he has no objection to the City Council approving this Contract.

This review process has now been concluded with all parties recommending approval of the contract extension (Steering Committee, DuPage County States Attorney, Naperville City Attorney, and DWC). We now enter the legislative approval process which is prescribed by Section 16 of the current DWC/Customer contract, and which will require a sequence of activities by DWC, an assembled group of municipal customers’ governing bodies, and each municipal board individually.

In addition to the contract renewal between the DWC and the 28 entities, the DWC also has a contract with the City of Chicago to purchase water for its customers. The DWC/Chicago contract expires on March 19, 2024. The municipalities will not be a signatory to that contract but will need to provide a resolution concurring with the recommended action that will be presented by the DWC at the October 31 joint customer meeting. The status of this item is also described in the attached memorandums dated 8/28/2023 from Paul D. May,

DuPage Water Commission General Manager. Additional memorandum attached from James F. Zay, Chairman.

Staff/Committee Recommendation

Staff recommends approval of AN ORDINANCE APPROVING A WATER PURCHASE AND SALE CONTRACT BETWEEN THE DUPAGE WATER COMMISSION AND CONTRACT CUSTOMERS

Alternate Consideration

As directed

Decision Mode

Staff anticipates this to be on the November 20, 2023 city council meeting for consideration.



MEMORANDUM

To: DWC Municipal Customers, Mayors & Managers
From: Paul D. May, DuPage Water Commission General Manager
Date: 8/28/2023
Subject: **DWC Strategic Initiatives & Contracts Status Update**

As the process for the DWC/Customer Contract advances, DWC wishes to take the opportunity to provide an update on strategic objectives and present a summary of required activities relative to the contract approval process. There will be several DWC communication events which will be scheduled to assist with communication relative to these items, including joint meetings on September 28 and October 31.

Please note that the prescribed sequencing of required activities relative to the DWC/Customer and DWC/Chicago contract presents a logistically challenging sequence of events to ensure that both contracts remain fully authorized at all times, and that adequate time is allotted for the various municipal, DWC, and City of Chicago legislative processes to be completed in in the requisite order. This memorandum seeks to provide greater clarity relative to these events.

Required Municipal Board Legislative Activities:

It will be necessary for each municipal board to vote on two DWC-related items:

- 1) DWC/Customer Contract (*presented by DWC at the 9/28 Joint Meeting*), and;
- 2) DWC/Chicago Contract (*presented by DWC at the 10/31 Joint meeting*)

Each municipality will be a direct party to the Customer contract and will have a designated signature line accordingly. DWC will hold a Joint Meeting on September 28 to present the DWC/Customer contract, as required by Section 16 of the current contract. The status of the DWC customer contract is described in greater detail separately in this memorandum.

Relative to the DWC/Chicago contract, the municipalities will not be a signatory, but will need to provide a resolution concurring with the recommended action which is presented by the DWC at the October 31th Joint Meeting. The status of this item is also described in greater detail separately in this memorandum.

It is anticipated that municipalities may desire to act on both required activities at one meeting; therefore, DWC has prepared a matrix of sequenced activities which will present the opportunity to do so in November - but will be dependent upon the unique legislative process of each community. Following, please see the anticipated sequence of activities.

DWC Water Contracts Sequencing Matrix:

<u>Date</u>	<u>Action</u>	<u>Responsible Party</u>
8/28/2023	Registered notice of Joint Meeting mailed	DWC
9/22/2023	IML Conference communication event	DWC
9/28/2023	DWC/Customer Contract [Joint Meeting #1]	DWC / Municipalities
9/28/2023	Notice provided for second Joint meeting	DWC
10/19/2023*	Alternative Source Water Presentation	DWC / Consultants
10/31/2023	DWC/Chicago Contract [Joint Meeting#2]	DWC / Municipalities
9/28/23 – 12/8/23	Municipal Board Customer contract approval	Municipalities
11/1/23 – 12/8/23	Municipal Board Chicago contract consent	Municipalities
12/8 - 12/21/2023	Customer contract municipal signatures	DWC/Municipalities
12/21/2023*	DWC Board - Customer contract approval	DWC
12/21/2023*	DWC Board - Chicago contract action	DWC

* *DWC Board meeting*

Following, please find a summary of current strategic initiatives, including detailed status of the contract negotiations as well as the alternative source water concept.

DWC / Customer Contract:

The DWC/Customer contract expires on February 28, 2024. Due to the number of governmental bodies which are party to the contract it is not practicable to engage the 28 governmental bodies in separate individual negotiations. Rather, a steering group of 8 municipal representatives was assembled to participate in preparation of the new DWC/Customer contract, assisted by the legal staff from the City of Naperville and the DuPage County States attorney.

Procedurally, it will be necessary to facilitate compliance with the process prescribed in Section 16 of the current contract, and to provide adequate time for municipalities to schedule individual legislative processes - which may include review by a subcommittee, or a first and second reading procedure. It is also anticipated that some municipalities may hold only one meeting in November due to the Thanksgiving holiday.

A memorandum provided separately describes the targeted dates and sequence of events, which will begin with a Joint Meeting of the governing bodies at the DWC on September 28th to present the contract. Following that meeting, municipalities will commence their legislative procedures with the objective of providing all municipal authorizations by early December. If the municipal (and private) signatories can authorize the contract by the DWC’s December 21 Board meeting, the contract will be fully executed at that time, with a backup date of January 18, 2024.

DWC / Chicago Contract:

The DWC/Chicago contract expires on March 19, 2024. DWC has been earnestly attempting to engage the City of Chicago in meaningful negotiations for several years, but very little progress was made with the former City of Chicago administration. While the new Chicago administration has been more engaged, it remains likely that a favorable contract will not be formalized prior to the expiration date of the current contract.

In particular, DWC has taken the positions that 1) the lower-rate “Cost-of-Service” commodity costing methodology established in the Joliet contract, should be included in the DWC contract effective immediately; and 2) DWC should be granted operational control and ownership of the Lexington Pumping facility (which was built by DWC and serves only DWC - but is under the control of Chicago in the existing contract). A satisfactory solution has not been agreed to by Chicago relative to either of these priorities. While we will continue to negotiate with Chicago in good faith, it is prudent to consider alternatives, should a satisfactory conclusion to negotiations not be possible.

Absent negotiation of a suitable agreement, DWC would consider extending the contract unilaterally for a period 10+ years. The current contract provides the DWC with the authority to extend the current contract for no less than 10 years. DWC could therefore extend the contract under the current terms and continue to negotiate with the City during that period of time.

In the event that another water purchaser (e.g. Joliet) receives water at a lower rate during that time, DWC would enforce our current favored nations clause for parity relative to rate and methodology. Additionally, the length of the Chicago contract extension could be established to facilitate construction of a new source water system should that alternative prove most favorable (see following alternative source water project summary).

In a manner similar to the process prescribed for the DWC/Customer contract, any action on the DWC/Chicago contract will require a rather complex sequence of events, including participation by the governing bodies of the DWC Customer municipalities. At minimum, this process will require the assembly of a Joint Meeting for discussion of the proposed action on the Chicago contract, followed by a municipal legislative process which must result in approval of the proposed action by ¾ of the DWC charter customer’s municipal boards.

Therefore, this process will include the following steps: 1) joint meeting of DWC customers with minimum 30 days notice, 2) municipal process to approve resolutions authorizing the proposed action on the Chicago contract, 3) authorization of the action by the DWC Board, and 4) notice of and/or approval of the action by the City of Chicago.

Alternative Source Water Project:

The conclusion of the existing Chicago contract presents an opportunity to consider the future of water supply for DuPage County and the larger suburban region. Due to commodity cost rate escalation from the City of Chicago and the absence of governance participation in the critical source water supply, DWC commenced an initiative in 2022 to study alternative supplies of Lake Michigan source water.

The initial study was completed in April, 2023 at which time a presentation was made to the DWC Board of Commissioners. The report indicated that it is technically feasible and financially viable to construct a new source water system which would be owned and operated by DWC and potentially other suburban partners. The initial study identified the “North” route as likely most

preferable, and recommended that following activities include engagement with other regional water wholesalers to determine if a partnership would be possible; through which the source water infrastructure would be jointly owned by participating suburban water agencies, essentially replacing the commodity service currently provided by Chicago. A partnership would increase the scale of the project, but the cost would be shared by more consumers, likely resulting in lower water rates when compared with DWC acting alone.

DWC therefore began engaging the Northwest Suburban Municipal Joint Action Water Agency (NSMJAWA) and the Northwest Water Commission (NWC), and both agencies expressed a desire to participate in further consideration of a source water project. DWC then directed consulting engineering firm, Carollo Inc, to update the report to evaluate the “North” route with partner agencies NSMJAWA and NWC. This report is now being completed, and a following engineering validation study will be performed by engineering firm Burns & McDonnell, and a financial validation study and strategy document will be performed by Raftelis, Inc.

The results of these studies will be presented to the DWC Board of Commissioners at the October 19, 2023 Board meeting, at which time details will be provided relative to project scope, cost, schedule, and financial implications - including the projected rate impacts. This meeting will be open to the public, and interested parties are encouraged to attend. Following the meeting, summary study information can be made available to DWC municipalities.

It should be noted that the October meeting is not intended to result in a decision regarding the source water project; rather to inform the DWC Board relative to the whether an alternative source water project presents a favorable alternative compared to a long-term Chicago contract. If so, it will be recommended that the project be advanced for further study and consideration. The results of the study may also inform the DWC Board relative to the desired length of the Chicago contract extension.

DWC Communication Enhancement Events:

As described above, there are many strategic initiatives and relatively complex activities underway with the DWC, customers, and partners agencies.

DWC appreciates the engagement and collaboration of the Customer Steering Committee relative to the DWC/Customer Contract, and will be focusing on enhanced outreach and engagement over the next several months. In particular, please consider attending the following, and of course feel free to reach out at any time with questions.

- 9/22/2023 IML Conference communication event (*invitations pending*)
- 9/28/2023 DWC/Customer Contract [Joint Meeting #1]
- 10/19/2023 Alternative Source Water Presentation
- 10/31/2023 DWC/Chicago Contract [Joint Meeting #2]



MEMORANDUM

To: DWC Municipal Customers, Mayors & Managers

From: Paul D. May, DuPage Water Commission General Manager

Date: 8/28/2023

Subject: **Procedural activities for approval of the DWC/Customer Water Contract**

As you are likely aware, the DWC/Customer Water Contract will expire on February 24, 2024. The DWC has been working diligently to advance the water contract extension for several years. This activity is concluding with a focused effort over the last 12 months which utilized a Customer Steering Group to assist in assembling the contract and performing the legal review on behalf of the municipal members. This process is described following:

Municipal Steering Committee & Legal Review:

There are 28 governing bodies that are signatories to the contract; therefore, it is not practicable to engage in individual contract negotiations with each municipality. For this reason, a steering group comprised of eight municipal representatives was assembled to represent the municipalities in preparation of the contract, which will become the water supply contract for the next 40-year period.

The objective of this collaboration was to ensure the document provides as much continuity with the previous contract as possible, while removing sections which no longer applied (primarily regarding the original water system construction). The municipal legal review for the document was performed concurrently by both the DuPage County States Attorney and the Naperville City Attorney.

This process has now been concluded with all parties recommending approval of the contract extension (Steering Committee, DuPage County States Attorney, Naperville City Attorney, and DWC). We now enter the legislative approval process which is prescribed by Section 16 of the current DWC/Customer contract, and which will require a somewhat complex sequence of activities by DWC, an assembled group of municipal customers' governing bodies, and each municipal board individually.

The following page includes a list of the attachments to this letter, as well as a summary and target timeline for the prescribed sequence of events necessary to approve a new DWC/Customer Contract prior to the expiration date.

Please feel free to contact me with any questions.



DWC / Customer Contract Approval Process & Procedures:

<u>Date</u>	<u>Action</u>	<u>Responsible Party</u>
8/28/2023	Registered notice of Joint Meeting mailed	DWC
8/28/2023	Email summary to Mayors and Managers	DWC
9/28/2023	DWC/Customer Contract Joint Meeting 9:00 AM at DWC	DWC / Municipalities
9/28/23 – 12/8/23	Municipal Board contract approval	Municipalities
12/21/2023	Document circulated for municipal signatures	DWC/Municipalities
12/21/2023	DWC Board contract approval [Target date]	DWC

Attachments:

1. DWC/Customer Contract procedural memorandum (*this document*)
2. DWC Registered Mailing to Mayors/Presidents RE: Joint Meeting of Governing Bodies
3. DWC Water Purchase and Sale Contract [clean]
4. DWC Water Purchase and Sale Contract [redline]
5. DRAFT Municipal Water Purchase and Sale Ordinance Template
6. DWC Strategic Initiatives Summary memorandum



August 28, 2023

RE: DuPage Water Commission / Customer Water Contract Extension [JOINT MEETING]

Dear Mayor,

As you are likely aware, the DuPage Water Commission/Customer Contract will expire on February 24, 2024. Prior to that date, it is necessary for each municipal governing body to approve a contract extension, followed by the DuPage Water Commission Board of Commissioners.

Municipal Steering Committee & Legal Review:

There are 28 governing bodies that are signatories to the contract; therefore, it is not practicable to engage in individual contract negotiations with each municipality. For this reason, a steering group comprised of eight municipal representatives was assembled to represent the municipalities in preparation of the contract, which will become the water supply contract for the next 40-year period.

The objective of this collaboration was to ensure the document provides as much continuity with the previous contract as possible, while removing sections which no longer applied (primarily regarding the original system construction). The municipal legal review for the document was performed concurrently by both the DuPage County States Attorney and the Naperville City Attorney.

This process has now been concluded with all parties recommending approval of the contract extension (Steering Committee, DuPage County States Attorney, Naperville City Attorney, DWC). Following separately by e-mail transfer, please find a copy of the proposed contract as well as a procedural memorandum and ordinance template.

Lastly, pursuant to Section 16 of the current contract, a Joint Meeting of all governing bodies must be held to provide a venue for the discussion of the proposed contract extension – a proxy representative may attend on your behalf. During the meeting, DWC will also provide an update relative to other ongoing initiatives including the Chicago water contract and an alternative source water project. The Joint Meeting is scheduled at the following time:

DWC/Customer Water Supply Contract Joint Meeting of Governing Bodies
9:00 AM September 28, 2023, DWC Public Meeting Room
600 E. Butterfield Road, Elmhurst, IL 60126

Sincerely,

James F. Zay
Chairman

CE: Village Manager
File

Odelson, Murphey, Frazier & McGrath, Ltd.

3318 West 95th Street – Evergreen Park, Illinois 60805
Phone (708) 424-5678 ~ Fax (708) 741-5053
JBM Direct Dial (708) 634-0266
JBM e-mail: jmurphey@omfmlaw.com

Memorandum

VIA E-MAIL

To: Bryon Vana
From: John B. Murphey
Date: September 25, 2023
Re: DuPage Water Commission/ “Water Purchase and Sale Contract”

I have reviewed the draft “Water Purchase and Sale Contract” between the DuPage Water Commission and its “Contract Customers,” including the City of Darien. I have no objection to the City Council approving this Contract.

By way of background, when the DuPage Water Commission (DWC) was formed in the mid-1980s, it was not certain as to which municipalities would immediately join DWC and which ones would take a wait-and-see approach. As a result, the original DWC agreement created two classes of customers – “Charter Customers” and “Subsequent Customers.” Darien was a Charter Customer. Under the original agreement, those municipalities who joined DWC in later years were referred to as “Subsequent Customers.” Under the original DWC contract, Subsequent Customers had to pay what amounted to a catch-up fee representing their share of the monies they would have paid for things like capital, financing, and administration costs had they come in as Charter Customers.

There is no longer a need for the Charter Customer – Subsequent Customer distinction. Therefore, much of the new agreement amounts to non-substantive housekeeping clean-up. For example, all members are now referred to as “Contract Customers.” The remaining edits are non-substantive.

There is one substantive definitional change which should be noted. That is a new definition for “Water Supply Contract”:

. . . means the Water Supply Contract dated March 19, 1984, between the Commission and the City of Chicago, Illinois, as amended, supplemented or extended from time to time, or any alternative water supply agreement.

As you will update the Council, DWC is in negotiations with Chicago toward a new long-term contract. If DWC is not able to reach a satisfactory agreement with Chicago, DWC will exercise its right to extend the current water supply agreement with Chicago for another 10 years. This new definition is included to provide DWC with negotiating and implementation flexibility.

I am attaching a copy of the uniform ordinance which DWC is requesting each member to adopt. The template has been adapted to the Darien form.

Please review and call with questions. Thanks.

JBM/sml
Enclosure

CITY OF DARIEN
DU PAGE COUNTY, ILLINOIS

ORDINANCE NO. _____

**AN ORDINANCE APPROVING A WATER PURCHASE AND SALE CONTRACT
BETWEEN THE DUPAGE WATER COMMISSION AND CONTRACT CUSTOMERS**

**ADOPTED BY THE
MAYOR AND CITY COUNCIL
OF THE
CITY OF DARIEN**

THIS ____ DAY OF _____, 2023

**Published in pamphlet form by authority
of the Mayor and City Council of the City
of Darien, DuPage County, Illinois, this
_____ day of _____, 2023.**

ORDINANCE NO. _____

AN ORDINANCE APPROVING A WATER PURCHASE AND SALE CONTRACT BETWEEN THE DUPAGE WATER COMMISSION AND CONTRACT CUSTOMERS

WHEREAS, the City of Darien is a current customer of the DuPage Water Commission (the “Commission”) pursuant to the Water Purchase and Sale Contract Between the DuPage Water Commission and Charter Customers dated June 11, 1986 (the “Original Contract”); and

WHEREAS, the Original Contract expires on February 24, 2024;

WHEREAS, the Commission and current customers desire and intend to enter into a new Water Purchase and Sale Contract Between The DuPage Water Commission and Contract Customers (the “New Contract”) (attached hereto as Exhibit 1 and incorporated as if fully set forth herein) whereby the Commission will supply water to the customers according to the terms and conditions of the New Contract negotiated between them; and

WHEREAS, the Darien City Council deems it to be in the best interests of the City of Darien and its residents to approve and enter into the New Contract.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, IN THE EXERCISE OF ITS HOME RULE POWERS, ILLINOIS, as follows:

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

SECTION 2: Water Purchase and Sale Contract. The Water Purchase and Sale Contract Between The DuPage Water Commission and Contract Customers attached hereto and by this reference incorporated herein and made a part hereof as **Exhibit 1**, shall be and hereby is

ORDINANCE NO. _____

approved and ratified.

SECTION 3: Authorization. The Mayor is hereby authorized and directed to execute the Water Purchase and Sale Contract Between The DuPage Water Commission and Contract Customers attached as **Exhibit 1** on behalf of the City of Darien.

SECTION 4: Home Rule. This ordinance and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such ordinance should (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter no delegated to municipalities by state law. It is the intent of the corporate authorities of the City of Darien that to the extent of the terms of this ordinance should be inconsistent with any non-preemptive state law, that this ordinance shall supercede state law in that regard within its jurisdiction.

SECTION 5: Effective Date. This Ordinance shall be in full force and effect upon its passage, approval, and publication as required by law.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, this ____ day of _____, 2023.

AYES _____

NAYS: _____

ABSENT: _____

APPROVED BY THE MAYOR OF THE CITY OF DARIEN, DU PAGE COUNTY, ILLINOIS, this ____ day of _____, 2023.

ORDINANCE NO. _____

JOSEPH A. MARCHESE, MAYOR

ATTEST:

JOANNE E. RAGONA, CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

ORDINANCE NO. _____

Exhibit 1

Water Purchase and Sale Contract

DU PAGE WATER COMMISSION
Counties of DuPage, Cook, [Kane](#) and Will, Illinois

WATER PURCHASE AND SALE CONTRACT

Between

The DuPage Water Commission

and

[Contract](#)~~harter~~ Customers

[ADMINISTRATION/AGREEMENTS/
WTR. PUR.&SALE CONT BTW DW&CHART. CUST 1986](#)

DuPAGE WATER COMMISSION

COUNTIES OF DuPAGE, COOK, KANE AND WILL ILLINOIS

AND

VILLAGE OF ADDISON
VILLAGE OF BARTLETT
VILLAGE OF BENSENVILLE
VILLAGE OF BLOOMINGDALE
VILLAGE OF CAROL STREAM
~~V~~VILLAGE OF CLARENDON HILLS
CITY OF DARIEN
VILLAGE OF DOWNERS GROVE
COUNTY OF DUPAGE
CITY OF ELMHURST
VILLAGE OF GLENDALE HEIGHTS
VILLAGE OF GLEN ELLYN
VILLAGE OF HINSDALE
VILLAGE OF ITASCA
VILLAGE OF LISLE
VILLAGE OF LOMBARD
CITY OF NAPERVILLE
VILLAGE OF OAK BROOK
CITY OF OAKBROOK TERRACE
VILLAGE OF ROSELLE
VILLAGE OF VILLA PARK
VILLAGE OF WESTMONT
CITY OF WHEATON
VILLAGE OF WILLOWBROOK
VILLAGE OF WINFIELD
CITY OF WOOD DALE
VILLAGE OF WOODRIDGE
ILLINOIS AMERICAN WATER
ARGONNE NATIONAL LABORATORY
AQUA ILLINOIS

WATER PURCHASE AND SALE CONTRACT
DATED AS OF JUNE 11, 1986 _____,

WATER PURCHASE AND SALE CONTRACT

Table of Contents

	<u>Page</u>
PREAMBLES	
Section 1. Definitions	
Section 2. Water Supply	
(a) Agreement to Purchase and Sell	
(b) Certain Limits on Supply and Commission's Power to Contract	
(c) Emergency or Maintenance Shut-Off	
(d) Curtailment; Emergency Use of Other Sources	
(e) Water Quality	
Section 3. Storage, Delivery, Distribution and Conservation	
(a) Storage	
(b) Points of Delivery, Back-Flows, Pressure	
(c) <u>Charter Contract</u> Customer to Maintain Water Quality and Unit System and to Prevent Waste	
Section 4. Measuring Equipment	
(a) Commission to Supply Equipment, Official Record	
(b) -Calibration	
(c) Check Meters	
(d) Variations between Meters; Reconciliation	
(e) Removal of Commission Metering Station	
Section 5. Unit of Measurement	
Section 6. Prices and Terms of Payment	
(a) Operation and Maintenance Costs; Underconsumption Costs	
(b) Fixed Costs	
(c) Bills and Due Date	
(d) Default Shares	
(e) Disputed Payments	
(f) Interest on Overdue Payments	
(g) Security Deposit	
(h) Rates to <u>Charter Contract</u> Customers Same	
(i) Limitation on Payments; Net Indebtedness of <u>Charter Contract</u> Customers	
(j) May Use Other Moneys	
(k) Sole Method for <u>Charter Contract</u> Customers to Enforce Provisions Hereof Against Other Customers	
(l) Beginning of Obligation to Pay	
(m) Provision in Lieu of Water Allocation	

- Section 7. Procedural and Other Limitations; Further Covenants of the Commission
- (a) Procedural Rule
 - (b) Lake Water Only
 - (c) Taxes
 - (d) Covenants to Be Set Out in Bond Ordinances/Resolutions
 - (e) Absolute Conditions
 - (f) Emergency Supply
 - (g) Governance
 - (h) Retail Sales
 - (i) Evidence of Customer Action
 - (j) Limitation on Funds
 - ~~(k) General Obligation Bonds~~
 - (h)(k) Certain Budget, Rate Limitation, Notice and Hearing Provisions
 - ~~(m) Use of Sales Taxes to Rebate Charges In Limited Circumstances~~
- Section 8. Special Conditions and Covenants
- (a) Commission to Build Waterworks System and Supply -Lake Water
 - (b) Title to Lake Water
 - ~~(c) Commission to Use Best Efforts to Build and Finance Construction~~
 - (d)(c) Payments Hereunder an Operation Expense of Unit Systems
 - (e)(d) Commission Insurance
 - (f)(e) Commission to Continue to Serve
 - (g)(f) Commission Covenant to Operate Properly
- Section 9. Additional Charter-Contract Customer Covenants
- (a) Maintain and Operate Unit System
 - (b) Rate Covenant
 - (c) Segregate Revenues
 - (d) Future Subordination of Revenue Bond Lien
 - (e) General Covenant to Operate Properly
 - (f) Accounting and Audit
 - (g) Maintain Ownership of Unit System and Properties
 - (h) Insurance
 - (i) Budget and Appropriations
 - (j) Continue to Serve
 - (k) Maintain Water Allocation
 - (l) Combining or Separating Unit System Accounts
 - (m) Customer Covenants as to Rate of Withdrawal

Section 10. Election as to Water Purchase Requirements

Section 11. ~~Abandonment~~ Intentionally Omitted

Section 12. Subsequent and Other Contracts
(a) No Contract With Rate More Favorable
(b) Occasional Service Only Except to Contract Customers
(c) Subsequent Contract Terms

Section 13. Force Majeure

Section 14. Commission Defaults

Section 15. ~~Charter Contract~~ Customer's Obligation Unconditional

Section 16. Modification of this Contract or of the ~~Chicago~~ Water Supply Contract

Section 17. Non-Assignability

Section 18. Cooperation In Construction of Commission Water Supply

Section 19. Mutual Cooperation in Issuance of Obligations

Section 20. Regulatory Bodies

Section 21. Commission Cooperative Arrangements with Other Water
~~Suppliers~~ Supplies

Section 22. Notices and Evidence of Actions

Section 23. Severability

Section 24. Effective Date and Term

Section 25. Governing Law; Superseder

Section 26. Venue

Section 27. Execution in Counterparts

SIGNATURES

EXHIBIT 1 Map

List of Defined Terms and References

<u>Term</u>	<u>Page</u>
Act	
Aggregate Costs	
Bonds	
Bond Resolution	
Charter Customers	
Charter Date	
Chicago Water Supply Contract	
Commission	
Contract	
Contract Customers	
Costs of the Project	
Customer	
Effective Date	
Fiscal Year	
Fixed Costs	
Full Water Requirements	
Lake Water	
Minimum Take or Pay Requirement	
Operation and Maintenance Costs	
Prior Contracts	
Project	
Rebate	
Rebate Recipients	
60% Completion Date	
Subsequent Customer	
Subsequent Contract	
Trustee	
Underconsumer	
Underconsumption	
Underconsumption Costs	
Underconsumption Ratio	
Unit System	
Water Allocation	
Waterworks System	

DuPAGE WATER COMMISSION
COUNTIES OF DuPAGE, COOK, KANE AND WILL, ILLINOIS
WATER PURCHASE AND SALE CONTRACT

This Water Purchase and Sale Contract, dated as of ~~XX~~June 11, 1986, by and between the DuPage Water Commission, Counties of DuPage, Cook and Will, Illinois (the "Commission"), a county water commission and public corporation under Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 et seq., and the Water Commission Act of 1985, 70 ILCS 3720/1 et seq. (collectively, the "Acts"), and each of the following units of local government and private water providers in~~of~~ the State of Illinois:

Unit of Local Government

Village of Addison	Village of Itasca
<u>Village of Bartlett</u>	Village of Lisle
Village of Bensenville	Village of Lombard
<u>Village of Bartlett</u>	City of Naperville
Village of Bloomingdale	Village of Oak Brook
Village of Carol Stream	City of Oakbrook Terrace
Village of Clarendon Hills	Village of Roselle
City of Darien	Village of Villa Park
<u>County of DuPage</u>	Village of Westmont
Village of Downers Grove	City of Wheaton
<u>County of DuPage</u>	Village of Willowbrook
City of Elmhurst	<u>Village of Winfield</u>
Village of Glendale Heights	City of Wood Dale
Village of Glen Ellyn	Village of Woodridge
Village of Hinsdale	

Private Utilities

Illinois American Water
Argonne National Laboratory
Aqua Illinois

WITNESSETH:

WHEREAS, the Commission has been organized under said division and act (collectively, the "Act") to supply water within its territorial limits; and

WHEREAS, the aforementioned units of local government (the "Contract~~Charter~~ Customers" as hereafter defined) have each executed counterparts of this Contract and are authorized under the Act to receive potable water from Lake Michigan ("Lake Water" as hereafter defined) through the instrumentality of the Commission and, by executing

this Contract are enabling the Commission to construct and complete its waterworks system (the “Waterworks System” as hereafter defined); and

WHEREAS, the ~~Contract~~~~Charter~~ Customers each have a waterworks system (a “Unit System” as hereafter defined) and have each received or may properly petition to receive from the State of Illinois ~~Department of Transportation~~Department of Natural Resources, Office of Water Resources, a “Water Allocation” as hereafter defined; and

WHEREAS, the Commission has entered into a contract ~~with the City of Chicago~~ to purchase Lake Water sufficient to meet the water supply needs of the Commission and the ~~Charter~~Contract Customers and others (the “~~Chicago~~ Water Supply Contract” as hereafter defined); and

WHEREAS, the Commission proposes to issue and sell its “Bonds” as hereafter defined from time to time during the term of this Contract in sufficient amounts for the payment of: ~~Costs~~ of the Project” as hereafter defined; and

WHEREAS, the Bonds will be issued from time to time by the Commission pursuant to a “Bond Resolution” as hereafter defined; and

WHEREAS, pursuant to the Act, Article VII, Section 10 of the Illinois Constitution of 1970, and the Intergovernmental Cooperation ~~Act~~, 5 ILCS 220/1 et seq., as amended, the Commission and ~~its~~the Charter Customers are authorized to enter into this Contract; and

WHEREAS, by the execution of this Contract, ~~its~~the Charter Customers are surrendering none of their respective rights to the ownership and operation of their respective Unit Systems, except as expressly limited to this Contract, nor is the Commission surrendering any of its rights to the ownership and operation of its Waterworks System, but all expressly assert their continued right to operate such systems; and

WHEREAS, it is known to ~~its~~the Charter Customers that the Commission ~~may~~will use this Contract as the basis for obtaining loans from time to time to be evidenced by the issuance of the Bonds and for payment of the principal of and premium, if any, and interest on the Bonds and as the means for the payment of its maintenance and operating expenses; and for the establishment and maintenance of accounts and reserves for such purposes as may be required in the Bond Resolution authorizing issuance of Bonds or authorized by applicable statutes; and

WHEREAS, ~~its~~the Charter Customers recognize that the Commission may in the future enter into contracts with other “Subsequent Customers” as hereafter defined and other customers as may be served from time to time who have Water Allocations; and

~~WHEREAS, certain Charter Customers were members of the Commission as it existed under prior law and previously entered into water purchase contracts (the “Prior~~

~~Contracts” as hereafter defined) with the Commission, which gave them substantial rights not only as contracting parties, but also as voting members of the Commission; and such Charter Customers would not enter into this Contract, which cancels the provisions of the Prior Contracts, unless this Contract retained many of the powers and protections accorded to them in the Prior Contracts; and~~

WHEREAS, the Commission, in Article VI, Section 7.b5-(e) of its By-Laws, requires a greater than majority vote containing a certain composition of Commissioners to validate certain motions, resolutions or ordinances; and the ~~Contract~~ Charter Customers enter into this Contract in reliance upon the continuation of procedural rules of the Commission as set forth in said Article VI, Section 7.b5-(e) which grant this vote and composition; and

WHEREAS, this Contract also contains certain requirements for the nature and composition of the vote of the Commission required to effectuate certain actions relating to the contractual rights of the ~~Contract~~ Charter Customers herein; and such ~~Contract~~ Charter Customers execute this Contract in reliance upon the continuation of such requirements for the term of this Contract; and

WHEREAS, the ~~Contract~~ Charter Customers have entered into this Contract in reliance upon Section 2 (j) of the Water Commission Act of 1985 which provides that units of local government may enter into contracts for the supply of Lake Water with the Commission in contemplation of and reliance upon the pledge of the State of Illinois that no subsequent legislation would impair or limit the power or ability of a County Water Commission or a unit of local government fully to carry out the terms of any contract for the supply of Lake Water; and, in particular, the rights of the ~~Contract~~ Charter Customers and the obligations of the Commission under this Contract are intended by the ~~Contract~~ Charter Customers and acknowledged by the Commission to be subject to such pledge and agreement of the State of Illinois;

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

The preambles hereto are hereby incorporated herein by reference, as if set out in full. Section numbers and captions are for reference and convenience only and do not expand or limit the meaning as contained in the text of this Contract. A definition in the singular may be used in the plural, and vice-versa.

Section 1. Definitions. The following words and phrases shall have the following meanings when used in this Contract, unless the context clearly indicates a different meaning is intended.

~~“Acts” means Division 135 of Article 11, Division 135 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 et seq., and the Water Commission Act of 1985, 70 ILCS 3720/1 et seq.~~

“Aggregate Costs” means Operation and Maintenance Costs, Fixed Costs and Underconsumption Costs, collectively, as herein defined.

“Bonds” means all of the Commission’s obligations which are payable from the revenues of the Waterworks System, whether in the form of bonds, notes, or other evidences of indebtedness, in whatever original principal amount, together with any such additional revenue obligations authorized by statute to be issued by the Commission from time to time and refunding revenue obligations issued to refund other such obligations.

“Bond Resolution” means the Commission’s bond resolution or bond resolutions or bond ordinance or bond ordinances under which the Commission will authorize the issuance of and issue Bonds.

“Charter Customers” means the units of local government that executed the original contract between the Commission and its customers dated June 11, 1986~~named as initial parties hereto in the heading of this Contract and which do properly authorize the execution of and execute a counterpart of this Contract as acceptance hereof and file the same with the Clerk of the Commission on or before the Charter Date as provided in Section 24 hereof.~~

~~“Chicago Water Supply Contract” means the water supply contract, dated March 19, 1984~~December 14, 1983, between the Commission and the City of Chicago, Illinois, as amended, or supplemented or extended from time to time, or any alternative water supply agreement.

“Commission” means the DuPage Water Commission, Counties of DuPage, Cook, Kane and Will, Illinois.

“Contract” means this eContract.

“Contract Customers” collectively means Charter Customers and any other entity that has executed a contract with the Commission to receive Lake Michigan Water from the Commission and wholesale it to the public prior to the date of this Contract~~Subsequent Customers, collectively.~~

“Cost of the Project” means, with respect to a Project, all costs of the Project, including costs of the acquisition of necessary lands, easements, and rights-of-way over lands and waters; the erection, construction, rehabilitation, repair and replacement of f pumping, storage or other facilities, and the installation of mains and pipelines; costs of financing and administration during any period of acquisition, erection, construction, rehabilitation, repair, replacement or installation, as aforesaid; costs of repayment of such interim indebtedness as may be incurred for such costs, including administrative expenses prior to issuance of Bonds for a Project; and costs for such other purposes,

including without limitation reasonable reserves and working capital, as may be determined by the Commission.

“Customer” means any customer purchasing water from the Commission, ~~including Contract Customers.~~

“Fiscal Year” means the fiscal year of the Commission.

“Fixed Costs” means an amount sufficient, at all times, to pay the principal of and premium, if any, and interest on Bonds, to provide reserves required therefor, to provide an adequate depreciation fund for the Waterworks System, to comply with the covenants of the Bond Resolution, and to pay reasonable capital costs necessary to carry out the corporate purposes and powers of the Commission; and except as any of the above are included in Operations and Maintenance Costs.

“Full Water Requirements” means, with respect to a Customer, the amount of water necessary from time to time to meet the potable water requirements of all then current customers served by the Unit System of such Customer (including municipal use where applicable) whether within or without the corporate limits or applicable service area of such Customer.

“Lake Water” means potable, filtered water drawn from Lake Michigan.

“Minimum Take or Pay Requirement” means a requirement that a certain minimum amount of Lake Water from the Waterworks System will be taken or, if not taken, will be paid for on the same basis as if taken.

“Operations and Maintenance Costs” means amounts payable under the ~~Chicago~~ Water Supply Contract, but not including Underconsumption Costs except as provided in Section 10 of this Contract, and similar water supply contracts, and all expenses incurred in the administration, operation and maintenance of the Waterworks System and the accumulation of reserves related to payment of said costs. Upon the adoption of a Bond Resolution by the Commission in connection with the sale of Bonds, Operation and Maintenance Costs payable under this Contract shall in any month at least be equal to the amount required to be deposited in that month into the operation and maintenance fund or account created under the Bond Resolution.

~~“Prior Contracts” means the water purchase contracts between the Commission and certain Charter Customers, executed on various dates in the year 1984, providing for a supply of Lake Water.~~

“Project” means any acquisition or construction for the provision of Lake Water related to the Waterworks System including initial acquisition and construction thereof and all future improvements or extensions, acquisition, construction, repair, maintenance or replacement thereof.

“Subsequent Customer” means a customer of the Waterworks System which has a Water Allocation, is not a ~~Contract~~~~Charter~~ Customer and is served pursuant to a Subsequent Contract executed after the Effective Date of this contract.

“Subsequent Contract” means a contract which provides for a Customer to ~~either~~ take its Full Water Requirements from the Waterworks System or contains a Minimum Take or Pay Requirement and which contract further provides for storage and other requirements, terms of payment (expressly subject to the following sentence), Force Majeure and Commission Defaults substantially the same as Sections 3, 6, 13, 14, and 15 hereof (which provisions may relate to a Full Water Requirements agreement ~~of or~~ a Minimum Take or Pay Requirement agreement as the case may be). The rate or charges for Lake Water may be higher than those provided herein, and only the terms of payment need be substantially the same.

“Trustee” means the trustee provided in the Bond Resolution.

“Underconsumer” means, for any given year, a Contract Customer which takes less Lake Water in such year than its Water Allocation times 365 times the Underconsumption Ratio for such year.

“Underconsumption” means the amount by which the amount of Lake Water actually taken by a Contract Customer is less than the Underconsumption Ratio times such customer’s Water Allocation times 365.

“Underconsumption Costs” means any amount which the Commission is obligated to pay under the ~~Chicago~~ Water Supply Contract solely by reason of failure to accept delivery of the minimum quantity of Lake Water that the Commission is obligated to purchase under the ~~Chicago~~ Water Supply Contract.

“Underconsumption Ratio” means, for any given year, ~~(i)~~ the minimum amount of Lake Water required to be taken by the Commission under the ~~Chicago~~ Water Supply Contract divided by (ii) the sum of the Water Allocations of all Contract Customers times 365.

“Unit System” means the waterworks system or combined waterworks and sewerage system (if such systems are combined for financing and accounting purposes) from time to time of a Contract Customer.

“Water Allocation” means, with respect to a Customer, such Customer’s allocation and allowable excess from time to time of Lake Water pursuant to the Level of Lake Michigan Act, as amended from time to time as ordered by the; Illinois Department of ~~Natural Resources~~~~Transportation~~ Administrative Opinion Order Nos. ~~XXLMO 80-1,~~ ~~LMO 80-4~~ and subsequent orders of the State of Illinois Department of Transportation; or such other amounts of Lake Water as a Customer may lawfully take.

“Water Supply Contract” means the water supply contract, dated March 19, 1984, between the Commission and the City of Chicago, Illinois, as amended, ~~θ~~ supplemented or extended from time to time, or any alternative water supply agreement.

“Waterworks System” means all the Commission’s facilities, including land, easements, rights-of-way over lands and waters, pumping, storage and other facilities, mains and pipelines acquired and used for the purposes of providing and transmitting Lake Water ~~from the City of Chicago’s water supply system to Customers substantially in accordance with the plans and project description attached hereto as Exhibit 1. Said Exhibit 1 which~~ may be modified, amended and supplemented from time to time by the Commission in its sole discretion to serve the Lake Water needs of only those Customers or potential Customers located within the territorial limits of the Commission ~~on March 1, 1986, or within territory which by annexation or consolidation becomes part of municipalities defined as~~ “included units” in the Act ~~as the Act is written on March 1, 1986, without amendment thereto.~~

Section 2. Water Supply.

(a) Agreement to Purchase and Sell. Subject to the provisions of this Contract, the Commission shall sell to each Charter Contract Customer and each Charter Contract Customer agrees to purchase from the Commission an amount of Lake Water necessary from time to time to serve its Full Water Requirements. The Commission’s obligation to each Charter Contract Customer, however, to deliver Lake Water hereunder shall be limited to a maximum annual amount equivalent to such Charter Contract Customer’s then current Water Allocation and to a maximum rate of Lake Water in any one hour equal to 1.7 times such Charter Contract Customer’s Water Allocation divided by 24. Further, the Commission’s obligation to each Charter Contract Customer to deliver Lake Water at a maximum hourly rate shall be divided among the connection points, if more than one of each such Charter Contract Customer as provided in the design of the Waterworks System.

(b) Certain Limits on Supply and Commission’s Power to Contract. The Commission shall use its best efforts to furnish Lake Water to the Charter Contract Customers as hereinabove provided, but its obligation hereunder shall be limited by ~~(i)~~ the amount of Lake Water from time to time available to the Commission; (ii) contracts between the Commission and its other Customers; (iii) the capacity of the Waterworks System; and (iv) ordinary transmission loss, including standard metering error, between the Commission’s source of supply and the points of delivery. The Commission shall not enter into contracts with other Customers that would cause the Commission to be obligated to sell Lake Water in excess of the least of ~~(i)~~ Waterworks System capacity, (ii) the maximum amount of Lake Water available under the Chicago Water Supply Contract or (iii) an amount which would decrease the amount of Lake Water then being supplied or to be supplied in the future to the Charter Contract Customers.

(c) Emergency or Maintenance Shut-Off. The Commission undertakes to use reasonable care and diligence to provide a constant supply of Lake Water as herein

provided for, but reserves the right at any time temporarily to turn off the Lake Water in its mains for emergency and maintenance purposes. The Commission shall give to the Charter Contract Customers notice not less than forty-eight (48) hours in advance of any such turn-off, except that in emergencies it shall give notice which is reasonable under the particular circumstances.

(d) Curtailment; Emergency Use of Other Sources. If it becomes necessary for the Commission to limit its delivery of Lake Water to its Customers for any reason, each Charter Contract Customer shall be entitled to the fullest extent possible to receive during such period of curtailment its pro rata share of Lake Water available as determined by the ratio of its total Lake Water use during the prior Fiscal Year to the sum of Lake Water use during the prior Fiscal Year of all Customers entitled to Lake Water during such period of curtailment. Nothing in this Contract shall be construed to prohibit each Charter Contract Customer from serving its customers in cases of emergency, or when the Commission for whatever reason is unable to meet such Charter Contract Customer's Full Water Requirements, from any source including wells owned by such Charter Contract Customer and maintained for emergency use.

(e) Water Quality. The Commission further undertakes to provide ~~in the Chicago Supply Contract and similar water supply contracts~~ that all Lake Water delivered to the Commission under said contracts shall be of such quality, at the point of delivery to the Commission under said contracts, as to meet the requirements of any Federal, State or local agency as shall have jurisdiction from time to time for the operation of public water supplies. The Commission shall supply each Charter Contract Customer with Lake Water of a quality commensurate with that furnished other Charter Contract Customers, and meeting state and federal water quality standards. The Commission bears no responsibility for the contamination of Lake Water or deterioration of water quality occurring beyond the points of delivery to the Charter Contract Customers.

Section 3. Storage, Delivery, Distribution and Conservation.

(a) Storage. The ~~Chicago~~ Water Supply Contract currently requires the Commission to provide for and maintain water storage within the Waterworks System and certain Customer Unit Systems, collectively, of sufficient capacity to store not less than two times the annual average daily water demands (including operable shallow well capacity which may be counted towards meeting up to ten percent (10%) of the storage requirements.) In the event the City of Chicago enforces the minimum water storage standards and thereby requires the Commission to provide additional water storage and capacity, then this Section will apply. Each Charter Contract Customer agrees to use its best efforts to increase the water storage capacity of its Unit System; but in no event shall a Charter Contract Customer be required to increase the water storage capacity contained in its Unit System (including its operable shallow well capacity which may be counted towards meeting up to ten percent (10%) of its storage requirements) to an amount more than ~~(4)~~ twice the amount of its then annual average daily water demand, less that portion of the Commission's storage capacity in its Waterworks System equal to such Charter Contract Customer's annual average daily

water demand divided by the total annual average daily water demands of all Customers (to the extent that such Customers are included as parties for whom storage must be provided and maintained under the provisions of the ~~Chicago Water Supply Contract~~) ~~or (ii) an amount of storage (including storage under construction or ordered to be constructed pursuant to this subsection) relative to its annual average daily water demand which is more than any other Contract Customer's storage relative to its annual average daily water demand.~~

(b) Points of Delivery, Back-Flows, Pressure. The points of delivery shall be defined as the points of outlet where the Lake Water delivered hereunder leaves the Waterworks System and enters a Unit System. These points will be to the lesser of ten feet downstream from the Commission's metering stations or a common dividing wall between the Commission's metering station and the Contract Customer's pressure adjusting or rate control stations. The number and location of connections to each ~~CharterContract~~ Customer's system are shown on Exhibit 1. Each ~~CharterContract~~ Customer shall receive its supply of Lake Water downstream of the Commission's metering stations at pressures that will vary from time to time. Each point of delivery shall have a pressure adjusting or rate control~~increasing/reducing~~ station. Each ~~CharterContract~~ Customer is responsible for the siting, design, construction, operation, maintenance and replacement of the pressure adjusting or rate control stations supplied by Contract Customer~~increasing/reducing stations~~ to convey water from the Waterworks System into the Unit System. ~~The Commission shall pay or reimburse each CharterContract Customer for reasonable costs of design and initial construction of such stations; provided, that each CharterContract Customer shall provide appropriate sites without reimbursement.~~

~~Initial construction and~~ Future construction and modification of plans and specifications of the pressure ~~increasing/reducing~~ stations shall be submitted to the Commission for review and approval, which shall not be unreasonably withheld.

Each ~~CharterContract~~ Customer's operation of its pressure adjusting or rate control~~increasing/reducing~~ stations shall not cause surges or back-flows into the Waterworks System nor shall the operation of the Customer's pressure adjusting or rate control~~increasing/reducing~~ facilities cause the Waterworks System pressure to drop below 20 psi. The Commission shall not be responsible for any damage to the Unit System caused by design, operation or maintenance of the Customer's connection facilities to the Waterworks System.

(c) ~~CharterContract~~ Customer to Maintain Water Quality and Unit System and to Prevent Waste. Each ~~CharterContract~~ Customer agrees to operate its Unit System from the points of delivery on to the consumer in such a manner as at no time to place the Commission and the Waterworks System in jeopardy of failing to meet the regulations of any agency or governmental authority having jurisdiction for its operation of public water supplies. Each ~~CharterContract~~ Customer also agrees to notify the Commission as promptly as possible of all emergency and other conditions which may

directly or indirectly affect the quantity or quality of the Lake Water received hereunder or the Waterworks System.

Section 4. Measuring Equipment.

(a) Commission to Supply Equipment, Official Record. The Commission shall furnish, install, own, operate, maintain, repair and replace, at its own expense, at the points of delivery the necessary equipment and devices of a type meeting the standards of the American Waterworks Association for measuring properly the quantity of Lake Water delivered under this Contract, together with such above-ground structures as the Commission shall deem necessary to house such equipment and devices. Such meter or meters and other equipment so installed and structures so constructed shall remain the property of the Commission. Such structures and equipment shall be located at sites selected and provided by each ~~Charter~~Contract Customer, respectively, for Lake Water delivered to it, for such purpose. Such sites shall be subject to review and approval by the Commission, which shall not be unreasonably withheld. Each ~~Charter~~Contract Customer shall grant to the Commission a property interest in each respective site sufficient to enable the Commission to install, use, operate and maintain such structures and equipment during the term of this Contract; however, each Contract Customer shall be responsible for maintaining the grounds and landscaping, including but not limited to shrubbery and other plantings, located on each site provided. The Commission and each ~~Charter~~Contract Customer shall have access to such structures and equipment for examination and inspection at all reasonable times, but the reading for billing purposes, calibration and adjustment thereof shall be done only by the employees or agents of the Commission. For the purpose of this Contract, the official record of readings of the meter or meters shall be the journal or other record book of the Commission in its office in which the records of the employees or agents of the Commission who take the readings are or may be transcribed. Upon written request of a ~~Charter~~Contract Customer, the Commission will give the ~~Charter~~Contract Customer a copy of such journal or record book, or permit the ~~Charter~~Contract Customer to have access thereto in the office of the Commission during regular business hours.

(b) Calibration. At least once in each Fiscal Year, the Commission shall calibrate its meters dedicated to measuring Lake Water to a ~~Charter~~Contract Customer if requested in writing by such ~~Charter~~Contract Customer to do so, in the presence of a representative of the ~~Charter~~Contract Customer, and the Commission and such ~~Charter~~Contract Customer shall jointly observe any adjustments which are made to the meters in case any adjustments shall be necessary, and if any check meters as hereinafter provided for have been installed, such meters shall also be calibrated by the ~~Charter~~Contract Customer in the presence of a representative of the Commission and the Commission and such ~~Charter~~Contract Customer shall jointly observe an adjustment in case any adjustment is necessary.

(c) Check Meters. A ~~Charter~~Contract Customer may, at its option and its own expense, install and operate a check meter to check each meter installed by the

Commission, but the measurement of Lake Water for the purpose of this Contract shall be solely by the Commission's meters, except in the cases hereinafter specifically provided to the contrary. All such check meters shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of the Commission, but the calibration and adjustment thereof shall be made only by such CharterContract Customer, except during any period when a check meter may be used under the provisions hereunder for measuring the amount of water delivered, in which case the calibration and adjustment thereof shall be made by the Commission with like effects as if such check meter or meters had been furnished and installed by the Commission.

(d) Variations between Meters; Reconciliation. Notwithstanding the foregoing, if the Commission or any Contract Customer at any time observes a variation between a delivery meter and a check meter, if any such check meter shall have been installed, or any other evidence of meter malfunctions, such party shall promptly notify the other party and the Commission and such Contract Customer shall then cooperate to procure an immediate calibration test and adjustment of such meter to accuracy and shall jointly observe any such adjustment. The party who discovers such variation shall give the other party notice not less than forty-eight (48) hours prior to the time of all tests of meters (which tests shall be conducted during normal working hours) so that the other party may conveniently have a representative present. If said representative is not present at the time set in such notice, calibration and adjustment may, notwithstanding any other provision of this paragraph, proceed in the absence of said representative. If, upon any test, the percentage of inaccuracy of any meter is found to be in excess of two percent (2%), registration thereof shall be corrected by agreement of the Commission and such Contract Customer based upon 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 183 calendar days of meter operations~~six (6) months~~. If for any reason any meters are out of service or out of repair so that the amount of Lake Water delivered cannot be ascertained or computed from the reading thereof, the Lake Water delivered during the period such meters are out of service or out of repair 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 Lake Water delivered during such period shall be estimated ~~(i)~~ by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculations, or (ii) if the error is not ascertainable by calibration tests or mathematical calculation, by estimating the quantity of delivery by considering deliveries during preceding periods under similar conditions when the meter or meters were registering accurately.

(e) Removal of Commission Metering Station. Within ninety (90) days after the termination of this Contract ~~(absent a failure to renew)without renewal~~, the Commission shall at its own expense remove metering equipment and stations from and restore the property of each CharterContract Customer to which such termination without renewal applies. If the Commission fails to remove and restore, as aforesaid,

the CharterContract Customer affected may elect to enforce its right to same or to take title to such equipment and station.

Section 5. Unit of Measurement. The unit of measurement for Lake Water delivered hereunder shall be gallons of water, U.S. Standard Liquid Measure, and all measuring devices shall, unless the Commission and affected Contract Customer otherwise agree, to 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.

Section 6. Prices and Terms of Payment.

(a) Operation and Maintenance Costs; Underconsumption Costs. Each CharterContract Customer shall pay a share of Operation and Maintenance Costs for each month, which shall be an amount equal to the then current price per 1,000 gallons for Operation and Maintenance Costs times the quantity of Lake Water divided by 1,000 delivered by the Waterworks System to such CharterContract Customer for such month. At any time no Lake Water is being supplied through the Waterworks System to Contract Customers, each Contract Customer's share of monthly Operation and Maintenance Costs shall be that proportion of those costs which such Contract Customer's Water Allocation bears to the total Water Allocations of all Contract Customers required to make Operation and Maintenance Costs payments during the same period. The Commission may require Subsequent Customers to pay for any month a share of Operation and Maintenance Costs, which share may be based upon a rate or proportion higher than that which is applicable to CharterContract Customers. Such requirement of a greater share may but need not be applied by the Commission to reduce the shares of said costs payable in any month by the CharterContract Customers; provided, however, that in no event shall the Commission reduce the shares of CharterContract Customers by an amount which exceeds the amount that is available due to such greater share being paid by a Subsequent Customer.

Each Underconsumer shall pay its share of Underconsumption Costs as determined and assessed by the Commission after notification of such costs by the City of Chicago. Each Underconsumer's share of Underconsumption Costs for a year shall be equal to the ratio of its Underconsumption to the aggregate Underconsumption of all Underconsumers for such year.

(b) Fixed Costs. ~~Subject to the single limitation on its obligation to pay Fixed Costs set forth in this subsection, e~~Each CharterContract Customer agrees to pay its share of Fixed Costs for each Fiscal Year, which share shall be payable monthly and shall be that proportion of Fixed Costs which such CharterContract Customer's Full Water Requirements for the two preceding calendar years prior to such Fiscal Year bears to the sum of the Full Water Requirements ~~of or~~ Minimum Take of Pay Requirements, as applicable, of all those Contract Customers for such two preceding calendar years, ~~who are not relieved from Fixed Costs payments pursuant to the~~

~~payment limitation set forth in the last sentence of this subsection.~~ The Commission may require Subsequent Customers to pay for any month a share of Fixed Costs which is greater than said proportion. Such requirement of a greater share may but need not be applied by the Commission to reduce the shares of said costs payable in any month by the CharterContract Customers; provided, however, that in no event shall the Commission reduce the shares of CharterContract Customers by an amount which exceeds the amount that is available due to such greater share being paid by a Subsequent Customer. Prior to the Commission's delivery of Lake Water to any CharterContract Customer for two (2) calendar years, each CharterContract Customer's share of monthly Fixed Costs shall be that portion of Fixed Costs which such CharterContract Customer's Water Allocation bears to the total Water Allocations of Contract Customers, ~~who are not relieved from Fixed Costs payments pursuant to the payment limitation set forth in the last sentence of this paragraph.~~ ~~Subject to the single limitation on its obligation to pay Fixed Costs set forth in this paragraph, each Charter Customer's obligation to make all payment of Fixed Costs as required hereunder is unconditional and irrevocable, payable without setoff or counterclaim and irrespective of whether Lake Water is ever furnished, made available or delivered to any Charter Customer or whether the Waterworks System is completed, operable or operating, and notwithstanding suspension, interruption, interference, reduction or curtailment of the supply of Lake Water. The rights of the Charter Customer in the event of the failure by the Commission to perform its obligations under this Contract are governed by Section 14. Each Charter Customer's obligation to pay Fixed Costs hereunder is subject to the single limitation that, if for any period of time (and only during such period) the Commission is in fact supplying the Full Water Requirements or Minimum Take or Pay Requirements, as applicable, of Contract Customers other than such Charter Customer, whose Full Water Requirements and Minimum Take or Pay Requirements are more than 85% of the sum of the Full Water Requirements or Minimum Take or Pay Requirements, as applicable, of all Contract Customers, and during such period of time the Commission is unable to supply any Lake Water to such Charter Customer, then such Charter Customer shall have no obligation to pay Fixed Costs for such period.~~

(c) Bills and Due Date. The Commission shall notify each CharterContract Customer of such CharterContract Customer's share of Aggregate Costs for a month on or before the tenth (10th) day of the following month. The CharterContract Customer's share of Aggregate Costs for a month shall be due and payable and must be received at the offices of the Commission on or before the tenth day of the month following the month of the Commission's notification. ~~or, if~~ If the Commission provides the notice later than the tenth (10th) day of the month, CharterContract Customer shall have, within twenty-eight (28) days of from the date of notification to make said payment.

(d) Default Shares. If any Customer shall default in the payment to the Commission of any part of its share of Aggregate Costs, or any part of the payment of its share due pursuant to this subsection 6(d), each CharterContract Customer agrees to pay a share of the amount so in default to the Commission, which share shall be in the same proportion as such CharterContract Customer's share of the Aggregate Costs for the month prior to the month of the default bears to the sum of the shares of

Aggregate Costs in that month of all Contract Customers obligated to make payments under this subsection 6(d) not in default. A ~~CharterContract~~ Customer's share of defaulted Aggregate Costs, or such defaulted payment of shares, as the case may be, shall be due and payable twenty-one (21) days after the Commission's written demand therefor. The demand shall include the Commission's calculations of the amount due by the ~~Carter-Contract~~ Customer hereunder. If and when the defaulting Customer makes a payment to the Commission of a defaulted amount or interest thereon for which the ~~CharterContract~~ Customers have made a payment to the Commission under this paragraph, the Commission will pay to each ~~CharterContract~~ Customer its proportionate share of such amount, including any such interest paid thereon.

(e) Disputed Payments. If a ~~CharterContract~~ Customer desires to dispute all or any part of any payments under this Agreement, the ~~CharterContract~~ Customer shall nevertheless pay the full amount of any such payment when due and include with such payment written notification to the Commission that charges are disputed, the grounds for dispute and the amount in dispute.

Upon receipt of notification of dispute, representatives of the Commission shall meet with representatives of the ~~CharterContract~~ Customer to resolve such dispute. No adjustment or relief on account of any disputed charges shall be made unless disputed charges are the subject of such notice within twenty-one (21) days of receipt by Contract Customer of the billtime herein specified, or within a reasonable period from the time the ~~CharterContract~~ Customer knew or should have known of the facts giving the rise to the dispute.

The Commission and the ~~CharterContract~~ Customer shall promptly attempt and continue efforts to resolve the dispute. In the event that it is determined that the ~~CharterContract~~ Customer shall have overpaid, it shall receive a refund with interest at the rate set out in subsection (f).

(f) Interest on Overdue Payments. If a ~~CharterContract~~ Customer shall fail to make any payment required under this Contract on or before its due date, such ~~CharterContract~~ Customer shall be in default, and interest on the amount of such payment shall accrue during the period of non-payment at the maximum legal rate payable by an Illinois non-home rule unit, not to exceed the higher of the weighted average effective interest rate on all series of Bonds of the Commission any of which are then outstanding plus two percent (2%) or the prime rate from time to time announced by the largest commercial bank, measured in terms of total assets, located and doing banking business in the State of Illinois, plus five percent (5%), from the date such payment becomes due until paid in full with interest as herein specified. In the event such payment is not made within thirty (30) days from the date such payment becomes due, the Commission may at its option and in its discretion reduce or discontinue delivery of Lake Water to the ~~Charger-Contract~~ Customer until the amount due the Commission is paid in full with interest as herein specified. The Commission shall give notice to the ~~CharterContract~~ Customer not less than twenty (20) days prior to the event of its intention to reduce or discontinue delivery of Lake Water in accordance

with this subsection (f) and shall provide the Charter Contract Customer an opportunity for a hearing prior to any reduction or discontinuance. If the Commission reduces or discontinues the delivery of Lake Water under such circumstances, the Charter Contract Customer shall, nevertheless, continue to be liable to pay all charges herein provided for. The rights specified in this subsection shall be in addition to all other rights and remedies available to the Commission at law or in equity for breach of any of the provisions of this Contract.

(g) Security Deposit. If a Charter Contract Customer is in default in any payment due under this Contract and the default is not cured within thirty (30) days after the due date of the defaulted payment, the Commission may, at its option, require such Charter Contract Customer, as a further obligation under this Contract, to deposit as security for the payment of such Charter Contract Customer's obligations hereunder a reasonable amount determined by the Commission. The Charter Contract Customer's compliance with the Commission's demand for a security deposit shall be a condition precedent to the curing of such Charter Contract Customer's default and the restoration of the Lake Water service to such Charter Contract Customer, if abated or reduced by reason of such default. The security deposit or any part thereof may, at the Commission's discretion, be applied to any subsequent default by the Charter Contract Customer in any payments due hereunder. If so applied, the Charter Contract Customer shall provide funds within three (3) business days immediately to restore the security deposit to the amount required by the Commission. At the earliest of the end of the term of this Contract, a term of two (2) years after the curing of the most recent default by the Charter Contract Customer, or at such time that the Commission may in its sole discretion determine, any security deposit shall be returned to the Charter Contract Customer if the Charter Contract Customer has performed all its obligations under this Contract.

(h) Rates to Charter Contract Customers Same. No change in the rates or charges under this Contract for any Charter Contract Customer may be made unless the same change is made for all Charter Contract Customers.

(i) Limitation on Payments; Net Indebtedness of Charter Contract Customers. Notwithstanding any other provisions of this Contract to the contrary, the payments required to be made by each Charter Contract Customer under this Contract shall be required to be made solely from revenues to be derived by such Charter Contract Customer from the operation of its Unit System. This Contract shall not constitute an indebtedness of any Charter Contract Customer within the meaning of any statutory or constitutional limitation.

(j) May Use Other Moneys. Notwithstanding the provisions of Subsection (i) of this Section, the Charter Contract Customers are not prohibited by this Contract from using other available funds to make the payments required by this Contract.

(k) Sole Method for Charter Contract Customers to Enforce Provisions Hereof Against Other Customers. Each Charter Contract Customer acknowledges

that its obligations to make payments hereunder are of benefit to each other ~~CharterContract~~ Customer and to Subsequent Customers as such other Customers' obligations are of benefit to the ~~CharterContract~~ Customer. Accordingly, each ~~ContractCharter~~ Customer agrees that, in addition to the Commission, Bondholders, a Trustee or other parties by law entitled to enforce the provisions of this Contract, any three (3) or more ~~Contract-Subsequent~~ Customers acting together may enforce the provisions of this Section 6, but only if the Commission has not acted to enforce such provisions within ninety (90) days of failure to make a payment hereunder. Any rights any Contract Customer has under this Contract or other contracts with the Commission shall be limited in enforcement as set forth herein.

(l) Beginning of Obligation to Pay. The obligation to make any and all payments under this Contract shall begin the month immediately following the issuance of~~after~~ any Bonds or the obtaining of Lake Water from the Commission, whichever is later-are issued.

(m) Provision in Lieu of Water Allocation. At any time when no Water Allocation is in effect for a Customer and reference to a Water Allocation is necessary to give meaning to a term of this Contract, the Water Allocation for such Customer shall be deemed to be as follows:

~~—(i) prior to May 1, 1988, the MGD value set out for such Customer in Section 24 hereof, if applicable, or in the applicable Subsequent Contract for a Subsequent Customer and~~

~~—(ii) on or after May 1, 1988, such Customer's Full Water Requirements for the then most recently completed calendar year divided by 365.~~

Section 7. Procedural and Other Limitations; Further Covenants of the Commission. Notwithstanding any other provisions of this Contract, the ~~CharterContract~~ Customers shall have the rights enumerated within this section and the Commission in its activities shall be obligated in the manner provided in this section.

(a) Procedural Rule. No motion, resolution or ordinance concerning the subjects enumerated below shall be adopted by the Commission except by at least a majority affirmative vote of all of the Commissioners which majority must contain the votes of at least one-third (1/3) of the Commissioners appointed by the County Board Chairman and forty percent (40%) of the Commissioners appointed by the Mayors as provided in the Act: (1) Approval of individual contracts or a series of contracts related to a single Project in an amount in excess of \$100,000; (2) Setting of rates for the sale of Lake Water to ~~CharterContract~~ Customers; (3) Borrowing funds; (4) Exercise of eminent domain powers; (5) Employment of the General Manager and Financial Administrator, and managerial and professional ~~personnel either as employees or consultants; or~~ (6) Amendment of the ~~Chicago~~ Water Supply Contract or (7) entering into any agreement to provide Lake Michigan Water to a Subsequent Customer.

(b) Lake Water Only. Without the prior approval of the corporate authorities of any CharterContract Customer affected, the Commission shall not deliver any water to a CharterContract Customer other than Lake Water. Costs for Lake Water charged by the Commission shall only include Aggregate Costs relating to the purchase and delivery of Lake Water.

~~**(c) Intentionally Omitted Taxes.** To the fullest extent it may lawfully do so, the Commission covenants to do as follows. It shall annually appropriate and impose its corporate sales taxes, or any taxes permitted which are a substitution for sales taxes, in the maximum amounts authorized by law. In the event that any CharterContract Customer (il) is not supplied by the Commission an amount of water equal to its Water Allocation times 365 times the Underconsumption Ratio for a given year but nevertheless pays a share of Underconsumption Costs for such year, (ii) is entitled to a Rebate as hereinafter defined and provided for or (iii) pays Operation and Maintenance Costs or Fixed Costs in the case of abandonment of the Waterworks System, the Commission shall apply such sums of money as it receives from the proceeds of such taxes (x) to repay to CharterContract Customers the amount paid by each, respectively, for Underconsumption Costs as set forth in clause (il), (y) to pay the Rebate as set forth in clause (ii) and (z) to repay to CharterContract Customers the amount paid by each, respectively, for Operation and Maintenance Costs and Fixed Costs as set forth in clause (iii). If the Commission cannot pay all of said amounts, it shall make payment thereon pro rata.~~

(d) Covenants to Be Set Out in Bond Ordinance. Any Bond Resolution passed by the Commission shall contain language to the following effect:

Any holder or registered owner of a bond or any of its coupons, in any civil action, mandamus, or other proceeding, may enforce and compel performance of all duties required by law to be performed by the Commission or by any customers of the Commission, including the making of rates and charges, the collecting of sufficient revenue and the application thereof, as provided by applicable law, and including, expressly, all of the terms and provisions of Sections 6, 7 and 16 of the Contract [referring to this Contract].

The parties or persons which make loans of funds to the Commission [by this Bond Resolution] have received the pledge of the State of Illinois that it will not impair or limit the power or ability of the Commission or a unit of local government fully to carry out the terms of any contract for the supply of water entered into by the Commission and a unit of local government for the term of such contract. For purposes of such impairment or limitation, the contracts for the supply of water executed by units of local government and the Commission contain terms and conditions intended by the parties thereto and by the Bondholders to be absolute conditions thereof.

(e) Absolute Conditions. For purposes of the pledge and agreement of the State of Illinois that it will not impair or limit the power or ability of the Commission or the

CharterContract Customers fully to carry out the terms and conditions hereof, all terms and conditions contained herein are intended to be absolute conditions hereof and are agreed to by the parties. It is hereby intended that no change in the Act or other law or regulation subsequent to the date hereof shall affect any of the terms or provisions of this Contract, and neither the CharterContract Customers nor the Commission, without the unanimous consent of all of them, shall take any actions under a change in the Act or other law or regulation contrary to the terms and conditions herein.

(f) Emergency Supply. A CharterContract Customer may contract for a temporary supply of water in case of an emergency from any other unit of local government or any entity.

(g) Governance. For the term of this Contract, the number of Commissioners appointed by the Mayors as provided in the Act shall be not less than one-half (1/2) the total number of Commissioners (excluding, expressly, for purposes of said count, the Chairman).

(h) Retail Sales. The Commission shall not engage in the retail sale or distribution of water to residents or customers of any CharterContract Customer.

(i) Evidence of Customer Action. Wherever in this Contract the consent or authorization of a CharterContract Customer or a group of CharterContract Customers are required, the consent may only be evidenced by a resolution or motion passed by the corporate authorities of the CharterContract Customer.

(j) Limitation on Funds. No funds received by the Commission from Operation and Maintenance Costs or Fixed Costs payable from CharterContract Customers may be expended for the planning, construction, operations or maintenance of a waterworks system other than the Waterworks System, or the extension thereof, specified within this Contract.

~~**(k) General Obligation Bonds.** The Commission shall not issue any Bonds until or unless they shall have issued general obligation bonds for the Waterworks System in an amount of at least \$100,000,000. Such general obligation bonds and Bonds may be issued simultaneously.~~

(k) Certain Budget, Rate Limitation, Notice and Hearing Provisions. Not less than sixty (60) days prior to the beginning of each Fiscal Year, the Commission shall prepare and send to the CharterContract Customers a tentative budget. Each such budget shall include, among such other items as the Commission may choose, an estimate of Fixed Costs to be payable by each CharterContract Customer in a stated aggregate dollar amount per month for each and an estimate of Operations and Maintenance Costs in a stated price per 1,000 gallons. The Commission will hold a hearing on such budget, at which the CharterContract Customers may be heard, and shall give the CharterContract Customers not less than twenty-one (21) days notice of such hearing. Operations and Maintenance Costs payable in each Fiscal Year shall be

determined and assessed by the Commission on a price per 1,000 gallons basis; such price may not exceed the estimate as set forth in the tentative budget unless the Commission shall hold a hearing on such higher price, at which the ~~Charter~~Contract Customers may be heard, and shall give the ~~Charter~~Contract Customers not less than twenty-one (21) days' notice of such hearing.

~~—— (Im) Use of Sales Taxes to Rebate Charges In Limited Circumstances. To the fullest extent it may lawfully do so, the Commission agrees to rebate solely from the corporate sales taxes of the Commission, or any taxes permitted which are a substitution for sales taxes, within a reasonable time, payments of Aggregate Costs made by Charter Customers under this Contract upon the conditions as follows:~~

~~—— (i) This provision applies only upon initial construction of the Waterworks System.~~

~~—— (ii) The “60% Completion Date” is defined as the date during initial construction upon which the Waterworks System is serving or able to serve the Full Water Requirements of Charter Customers the sum of whose Water Allocations equals or exceeds sixty percent (60%) of the sum of the Water Allocations of all Charter Customers.~~

~~—— (iii) This provision applies only to those Charter Customers (the “Rebate Recipients”) which are not being served or able to be served with any Lake Water by reason of the Waterworks System not having been sufficiently completed one year after the 60% Completion Date.~~

~~—— (iv) The Commission shall rebate from such sales taxes, or any taxes permitted which are a substitution for sales taxes, to each Rebate Recipient the amount paid (the “Rebate”) by such Rebate Recipient to the Commission pursuant to this Contract during the period beginning one year after the 60% Completion Date to the date upon which the Waterworks System can deliver Lake Water to such Rebate Recipient.~~

~~—— (v) The Commission agrees, to the fullest extent it may lawfully do so, annually to appropriate such amount of such sales taxes, or any taxes permitted which are a substitution for sales taxes, as may be necessary to meet its obligation to pay the Rebates to the Rebate Recipients; provided, the Commission shall not be required to pay any Rebates until it has had sufficient time to take such budget and appropriations measures as are necessary under law.~~

~~—— (vi) The Rebate Recipients are not relieved of any obligation under this Contract by the terms of this subsection but become entitled to payment of Rebates from the taxes as are herein described. The Charter Customers acknowledge that such funds are limited in amount. The Rebate Recipients shall have no recourse against any revenues of the Waterworks System. No interest shall be paid on any Rebate amount.~~

Section 8. Special Conditions and Covenants.

(a) Commission to Build Waterworks System and Supply Lake Water.

~~The Commission shall proceed promptly with the construction of the Waterworks System necessary to the performance of its obligations hereunder. The Commission will make a diligent effort to have its facilities completed to the point of delivery so as to furnish Lake Water to the Charter Customers by January 31, 1992, but the Commission does not hereby guarantee delivery by such date. The Commission shall not be liable to any Charter Customer for any damages occasioned by delay in the commencement of such service to any Charter Customer, and all payments provided for under this Contract remain due and payable in accordance with its terms notwithstanding any such delay. After Lake Water is first tendered for delivery to a Charter Customer at any point of delivery, the Commission shall, subject to the other terms and conditions of this Contract, continually hold itself ready, willing and able to supply Lake Water to any such CharterContract Customer. The Commission shall also use its best efforts, consistent with its legal obligations to its other Customers and consistent with fair and equitable treatment of all of its Customers, to supply each CharterContract Customer with such additional amounts of Lake Water as may be from time to time allocated to such CharterContract Customer over and above its present Water Allocation, but the Commission does not hereby guarantee a supply of such additional amounts.~~

(b) Title to Lake Water. Title to all Lake Water ~~s~~Supplied hereunder shall remain in the Commission to the lesser of the points ten feet (10 ft.) downstream from the Commission's metering stations or a common dividing wall between the Commission's metering station and the Contract Customer's pressure adjusting or rate control stations for each Unit System and thereupon shall pass to such CharterContract Customer.

~~**(c) Commission to Use Best Efforts to Build and Finance Construction.**~~

~~The Commission shall use its best efforts to obtain the necessary permits and contracts for labor and material, and to borrow funds and issue its Bonds therefor in order to acquire and construct the Waterworks System.~~

~~**(d)**~~**(c) Payments Hereunder an Operation Expense of Unit Systems.**

Obtaining water is an essential item of expense of the Unit Systems. To the fullest extent permitted by law or contract, all of the payments to be made by each CharterContract Customer hereunder shall constitute operating expenses of the Unit Systems as to any and all revenue bonds of such CharterContract Customer which are supported in whole or in part by a pledge of the revenues of its Unit System, with the effect that such CharterContract Customer's obligation to make payments from its water revenues under this Contract has priority over its obligation to make payments of the principal of and and premium, if any, and interest on any such bonds which are or will be supported in whole or in part by a pledge of such Unit System revenues. Each CharterContract Customer shall make all budgetary, emergency and other provisions and appropriations necessary to provide for and authorize the prompt payment by such CharterContract Customer to the Commission of its shares of Aggregate Costs. The obligations of each CharterContract Customer under this Contract are further payable from all other accounts of the Unit System of each CharterContract Customer,

respectively, for its shares, in which there are lawfully available funds. In any revenue bond ordinances or resolutions hereafter enacted by a CharterContract Customer, the priority of lien established pursuant to this Contract shall be expressly provided and set forth in said bond ordinances or resolutions. If legal action is brought against a CharterContract Customer challenging the priority of such CharterContract Customer's obligations hereunder over the lien of any revenue bonds supported by a pledge of the revenues of its Unit System, the Commission shall, if requested to do so by such CharterContract Customer, undertake the defense of the legal action at the Commission's expense.

(e)(d) Commission Insurance. The Commission will carry insurance or maintain self-insurance with respect to the Waterworks System of the kinds and in the amounts which are customarily carried or maintained by parties operating similar properties, including, without limiting the generality of the foregoing, fire and other casualty and public liability insurance or protection. All moneys received for loss under the insurance policies or on deposit as self-insurance reserve funds shall be used in making good the loss or damage in respect of which they were paid except to the extent no longer deemed useful to or profitable in the operation of the Waterworks System, whether by repairing the property damaged or replacing the property destroyed, and provision for making good such loss or damage or replacing the property destroyed shall be made within a reasonable time from date of loss. The proceeds derived from any and all policies or available from self-insurance reserves for public liability losses shall be used in paying or reimbursing any accounts from which payments for settlements, judgments or expenses were advanced.

(f)(e) Commission to Continue to Serve. The Commission will use its best efforts to continue serving all the CharterContract Customers.

(g)(f) Commission Covenant to Operate Properly. From time to time, the Commission will take steps reasonably necessary so that the Waterworks System may at all times be operated properly ~~and advantageously~~.

Section 9. Additional CharterContract Customer Covenants. Each CharterContract Customer further covenants as follows:

(a) Maintain and Operate Unit System. It will own and maintain its Unit System, and all improvements and extensions of its Unit System, in good repair and working order, will operate the same efficiently, and will punctually perform all duties with respect to its Unit System as may be required by the Constitution and laws of the State of Illinois and all other applicable laws and by all resolutions and ordinances of such CharterContract Customer.

(b) Rate Covenant. It will establish, maintain, revise as necessary and collect, rates and charges for customers of its Unit System as shall be required from time to time to produce revenues at least sufficient ~~(i)~~ to pay all amounts due under this Contract and to pay all other costs of operation and maintenance of its Unit System, (ii)

to provide an adequate depreciation fund for its Unit System, (iii) to make all deposits in all funds and accounts required by the terms of resolutions or ordinances authorizing bonds payable from revenues of its Unit System and (iv) to pay the principal of and interest on all bonds of such CharterContract Customer payable from the revenues of its Unit System. The Commission may not sue to enforce the provisions of this Section as they relate to clauses (ii) through (iv) unless it can show that the ability of the CharterContract Customer to make the payments set forth in clause (i) is substantially impaired by the inadequacy of said rates and charges. The rates and charges for customers of a Unit System shall not be required, however, to be sufficient to produce amounts required to make payments under this contract so long as available amounts sufficient for making such payments for the next six (6) months or the remainder of such CharterContract Customer's fiscal year, whichever is longer, shall have been set aside in cash or investments in a separate account in its Unit System Fund designated for the purpose of making payments under this Contract,

(c) Segregate Revenues. It shall provide for the segregation of all revenues of its Unit System in such Unit System Fund and provide for the application of the revenues for the purpose of subsection (b) of this Section. Moneys of a Unit System of a CharterContract Customer which exceed the obligations of such CharterContract Customer hereunder may be used for any lawful corporate purposes.

(d) Future Subordination of Revenue Bond Lien. Any resolution or ordinance of the CharterContract Customer which authorizes the issuance after the date of this Contract of any obligation of the CharterContract Customer to be paid from revenues of its Unit System will expressly provide that revenues of its Unit System may be used to pay principal of and premium, if any, and interest of those obligations only to the extent that those revenues exceed the amounts required to pay the operation and maintenance expenses of its Unit System including, expressly, all amounts payable from time to time under this Contract.

(e) General Covenant to Operate Properly. From time to time, it will take steps reasonably necessary so that its Unit System may at all times be operated in accordance with industry standards properly and advantageously.

(f) Accounting and Audit. It will make and keep proper books and accounts (separate and apart from all other records and accounts of such CharterContract Customer) in which complete entries shall be made of all transactions relating to its Unit System, and, within two hundred ten (210) days following the close of each fiscal year of such CharterContract Customer, it will cause the books and accounts of its Unit System to be audited annually by independent certified public accountants, showing the receipts and disbursements on account of its Unit System.

(g) Maintain Ownership of Unit System and Properties. It will continue to own and possess its Unit System and will, within the exercise of reasonable business judgment and in a manner so as not to cause a default hereunder, dispose of property which is part of its Unit System only to the extent that the Commission consents in

writing, which consent shall not be unreasonably withheld such property is no longer useful or profitable in the operations of its Unit System. This subsection (g) does not prohibit a Contract Customer from selling specific equipment that it considers surplus and that is no longer needed or utilized to operate its Unit System.

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

(i) Budget and Appropriations. It will adopt a budget or appropriations ordinance for each fiscal year of such CharterContract Customer, or otherwise in accordance with applicable state laws, provide lawful authority for payment of all sums anticipated to be due to the Commission during such fiscal year.

(j) Continue to Serve. It will use its best efforts to continue serving all customers of its Unit System within its territorial limits which are served as of the date of this Contract.

(k) Maintain Water Allocation. It will use its best efforts to obtain or retain, from time to time, a Water Allocation at least equal to ~~but not in excess of two (2) times~~ its Full Water Requirements from time to time.

(l) Combining or Separating Unit System Accounts. It ~~shall not combine its existing separate waterworks system with its separate sewerage system or separate its existing combined waterworks and sewerage system into separate systems before May 1, 1990. Thereafter, it~~ may combine its waterworks system with its sewerage system or separate its combined waterworks system and sewerage system into separate systems only on the conditions as follows: (i) the CharterContract Customer shall provide the Commission with written evidence that the proposed combination or separation will not materially and adversely affect the CharterContract Customer's ability to comply with all of the terms, conditions and covenants of this Contract; and (ii) if the Commission shall then determine the proposed combination or separation will not materially and adversely affect the CharterContract Customer's ability to comply with all of the terms conditions and covenants of this Contract, then and only then the Commission shall approve such combination or separation and advise such CharterContract Customer in writing.

(m) **Customer Covenants as to Rate of Withdrawal.** Each CharterContract Customer will take Lake Water at the most uniform and continuous rate of withdrawal practicable.

Section 10. Election as to Water Purchase Requirements. ~~When and if the Commission pays in full all of its Bonds, a~~Any CharterContract Customer electing to take may elect to thereafter purchase from time to time less than its Full Water Requirements, as determined by from the Commission, shall pay its pro rata share of the Operations and Maintenance Costs and the Fixed Costs for the period of time during which its Full Water Requirements are not taken. In the event such CharterContract Customer elects to purchase less than its Full Water Requirements in any year pursuant to this Section, it shall pay a share of Underconsumption Costs, if any, incurred for such year and such CharterContract Customer's share of such Underconsumption Costs shall be deemed to be Operation and Maintenance Costs under this Contract. The prior sentence shall not be applicable where the Underconsumption is caused by an emergency situation as approved in writing by the highest executive of the Commission and lasts for less than thirty (30) days. Such CharterContract Customer's share of Operation and Maintenance Costs and Fixed Underconsumption Costs, if any, for the year shall be that proportion of those costs which the Operation and Maintenance Costs and Fixed CostsUnderconsumption of such CharterContract Customer for that year was to the sum of the Operation and Maintenance Costs and Fixed CostsUnderconsumption of all Customers for such year.

Section 11. Resale Limitations. Charter Customers shall not resell more than five percent of the water purchased from the Commission except:

- ~~_____~~ (i) ~~—To~~ retail water customers under published rates and charges, without any special contract; or
- ~~(ii) —A~~ any contract approved in writing by the Commission, which approval shall be in the sole discretion of the Commission.

Abandonment. ~~Upon obtaining the consent of not less than (i) two-thirds of all Charter Customers, (ii) a majority of those Charter Customers which would receive less than one-half of their Full Water Requirements due to the termination hereinafter referred to and (iii) a majority of those Charter Customers which would receive no Lake Water due to such termination, the Commission may elect to terminate acquisition and construction of all or any part of its Waterworks System prior to its substantial completion. All of the following must occur before such termination.~~

- ~~_____ (a) The Commission shall have found that the cost of substantial completion of the Waterworks System would so greatly exceed original estimates of that cost that it would not be economically feasible for the Contract Customers together to pay the Fixed Costs which would be payable after substantial completion.~~

~~_____ (b) The Commission and each Charter Customer shall have been provided with a certificate from an independent consulting engineer and a certificate from an independent financial consultant to the effect that they each concur with the finding of the commission described in subsection (a) of this Section.~~

~~_____ (c) The Charter Customers and any Trustee appointed under a Bond Resolution of the Commission shall have been given ninety (90) days' notice of the proposed termination of acquisition and construction of all or any part of the Waterworks System.~~

~~_____ (d) The Commission shall have caused to be prepared a cooperative study by an attorney or firm of attorneys having nationally recognized expertise in municipal finance, an independent consulting engineer, and an independent financial consultant as to the proper, advantageous and equitable operation and disposition of the assets of the Waterworks System.~~

~~_____ If the Commission terminates acquisition and construction of all or any part of the Waterworks System pursuant to this Section, the obligations of each Charter Customer to make the payments required for Aggregate Costs under Section 6 of this Contract or required under subsection 6(d) of this Contract shall continue.~~

Section 12. Subsequent and Other Contracts.

(a) No Contract with Rate More Favorable. The Commission shall not supply Lake Water except pursuant to a written contract. No Subsequent Contract entered into after the Effective Date shall provide rates, charges or terms lower or more favorable to the Subsequent Customer than those provided in this Contract for Charter Contract Customers.

(b) Occasional Service Only Except to Contract Customers. Other than the providing of service to Charter Contract Customers, ~~the~~ Commission shall not contract for a supply of Lake Water to any person except to a Subsequent Customer or for occasional water use; Occasional water use is being the use of Lake Water for not more than thirty (30) days during any two-year period.

(c) Subsequent Contract Terms. After the Effective Date, ~~the~~ Commission shall not enter into a Subsequent Contract with any of the units of local government or private entities that are is not a Contract Customer named in Section 24 hereof, unless such Subsequent Contract provides for an equitable and lawful differential rate or charge in the formula for Aggregate Costs which may take into account any pertinent factor and shall take into account each of the factors as follows: (i) the utility rate which would be chargeable by a regulated utility for the proposed service, (ii) replacement cost of the Waterworks System less depreciation and net outstanding Bonds, and (iii) the amount and time of payment of Fixed Costs which would have been payable by the proposed Customer had such Customer become a Charter Contract Customer, plus

interest on such costs from the time when they would have been paid, compounded semiannually, ~~at not less than ten percent (10%) per annum.~~

The differential may be satisfied by a lump sum payment or by surcharge for any term of years not longer than the then remaining term of this Contract. The differential shall inure to the benefit of the previous Contract Customers as their interests may appear (that is, those that have borne greater costs shall benefit proportionally greater) in such reasonable manner as the Commission may determine.

The ~~differential and the~~ allocation of the benefit so derived among prior Contract Customers shall be made by the Commission only after it has received and reviewed the recommendations of an independent consulting engineer, independent financial consultant and competent attorney, working together, who shall be selected by the Commission from a list of three (3) individuals or firms for each position by the CharterContract Customers.

For the purpose of making such list of three (3) individuals or firms, the Commission shall call a meeting of only the CharterContract Customers that are units of local government by giving notice to the CharterContract Customers as provided in this Contract not less than thirty (30) days prior to a proposed meeting date. The Commission shall convene the meeting, but thereupon the CharterContract Customers that are units of local government shall elect a presiding officer from among their number. Such meeting may be adjourned from time to time without notice. The majority of CharterContract Customers that are units of local government present and voting at said meeting shall be empowered to select such individuals or firms. The Commission shall keep the minutes of the meeting.

If the CharterContract Customers that are units of local government do not act at said meeting or within twenty-one (21) days thereof, the Commission shall proceed to select such persons or firms itself.

If the Commission shall impose the recommended differential, then the differential as imposed shall not be subject to any dispute or claim by any Contract Customer. This provision shall not require the Commission to follow such recommendations.

This entire subsection is qualified by the Commission's legal duty to serve within its territorial limits and to charge for such service fair and equitable rates which are not prohibitive. It is the intent of the Commission in entering into this provision of the Contract to recognize that the CharterContract Customers that are units of local government, solely, enable the Commission to proceed to construct the Waterworks System, that the units of local government hereinafter referred to need to be induced to become CharterContract Customers and that this provision is an express inducement, that by its essential design in accordance with good engineering practice, the Waterworks System must be built in many ways sufficient upon initial completion to

serve all of said units, but that only those units of local government who become CharterContract Customers will pay for such from the start of construction.

Section 13. Force Majeure. In case by reason of force majeure event any party hereto shall be rendered unable wholly or in part to carry out its obligation under this Contract, then if such party shall give notice and full particulars of such force majeure event in writing to the other parties within seven (7) days~~a reasonable time~~ after the occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure event shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term “force majeure” as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States, of the State of Illinois, or of any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or tunnels, partial or entire failure of water supply, and inability on the part of the Commission to deliver Lake Water hereunder, or of ~~any~~ CharterContract Customer to receive Lake Water hereunder, on account of any other causes not reasonably within the control of the party claiming such inability. The settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any ~~“force majeure”~~ events shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlements is unfavorable to it in the judgment of the party having the difficulty. No force majeure event which renders any of the parties unable to perform under this Contract shall relieve a CharterContract Customer of its obligation to make payments to the Commission as required under Section 6.

Section 14. Commission Defaults. Failure by the Commission to deliver Lake Water to any CharterContract Customer as required by this Contract or failure of the Commission to perform any other obligation under this Contract and the continuation of that failure to perform for thirty (30) days after written notice from such CharterContract Customer to the Commission of such failure shall be a default of the Commission under this Contract, unless any such failure is excused pursuant to Section 13 of this Contract. If the Commission defaults under this Contract, the CharterContract Customer or CharterContract Customers affected may bring any action against the Commission, including an action for money damage or in equity and actions for mandamus and specific performance of the Commission’s obligations to the extent allowed by law. Election of any remedy shall not be a waiver of any other remedy.

Section 15. CharterContract Customer’s Obligation Unconditional. The CharterContract Customers shall have no right to terminate, cancel or rescind this Contract, no right to withhold from the Commission or the Trustee who is an assignee of the Commission pursuant to Section 17 of this Contract payments due or to become

due under this Contract, no right to recover from the Commission or such Trustee amounts previously paid under this Contract unless paid ~~in error or contrary~~ to the provisions of this Contract or law, no right of reduction or set-off against the amounts due or to become due under this Contract, to the Commission or such Trustee, and no lien on any amounts in any fund established by the Commission or such Trustee for any reason or on account of the existence or occurrence of any event, condition or contingency, whether foreseen or unforeseen or foreseeable or unforeseeable by the CharterContract Customers or the Commission or any other person; including by way of illustration, and not limitation, by reason of the fact that the Waterworks System in whole or in part is not completed, operable or operating; the output of the Waterworks System in whole or in part is suspended, interrupted, interfered with, reduced or curtailed; any party to the ~~Chicago~~ Water Supply Contract, ~~including the City of Chicago~~, does not perform in whole or in part thereunder; the Water Allocation of any Customer is modified or terminated or any Customer does not perform in whole or in part under this Contract or any other agreement or instrument; it being the intent hereof that the CharterContract Customers shall be absolutely and unconditionally obligated to make all payments hereunder ~~excepting the single limitation set forth in the last sentence of Section 6(b)~~. The Commission ~~may will~~ issue ~~its~~ Bonds in specific reliance on the limitations set forth in this Section with respect to the rights of the CharterContract Customers.

Section 16. Modification of this Contract or of the ~~Chicago~~ Water Supply Contract. Except for revisions and adjustments otherwise expressly provided for, neither this Contract nor the ~~Chicago~~ Water Supply Contract may be changed or modified unless the consent of the Commission and of three-fourths of the CharterContract Customers shall have been obtained. Such modification may be requested by any party, in which event a joint meeting of representatives of all governing bodies shall be called by the Commission and held not more than sixty (60) days after such request is made and not less than thirty (30) days before the giving of notice of such meeting. At the joint meeting, the requested changes or modifications shall be considered and discussed. No such change or modification may materially impair or adversely affect the ability or obligation of any CharterContract Customer under the Contract to make payments to the Commission at the times, in the amounts, and with the priority required in order for the Commission timely to meet its obligations under this Contract, the ~~Chicago~~ Water Supply Contract, other water purchase or sale contracts of the Commission and the Bond Ordinances/Resolutions, including without limitation the making of all deposits in various funds and accounts created under the Bond Ordinances/Resolutions; or materially impair or adversely affect the ability of the holders of the Bonds or the Trustee, under the Contract or Bond Ordinances/Resolutions, to enforce the terms of the Contract. No such change of modification which will affect the rights and interest of the holders of the Bonds shall be made without the written approval of an authorized representative of the holders of at least seventy percent (70%) of the outstanding Bonds and no such change or modification shall be effective which would cause a violation of any provisions of the Bond Ordinances/Resolutions or any ordinance authorizing bonds of any CharterContract Customer.

Section 17. Non-Assignability. Except to the extent hereinafter provided, no party shall assign or transfer this Contract or any rights or interests herein without the written consent of three-fourths of the [CharterContract](#) Customers and the Commission. The right to receive all payments which are required to be made by the [CharterContract](#) Customers to the Commission in accordance with the provisions of this Contract may be assigned by the Commission to any Trustee as provided in the Bond [Ordinances/Resolutions](#) to secure the payment of the principal of, premium, if any, and interest on the Bonds as those amounts come due, subject to the application of those payments as may be provided in the Bond [Ordinances/Resolutions](#). The [CharterContract](#) Customers will, upon notice of assignment to any such Trustee, make all payments directly to such Trustee. The rights of the Commission to enforce the provisions of this Contract may be assigned to such Trustee and, in such event, the Trustee will have the right to enforce this Contract at law or in equity with or without the further consent or participation of the Commission. The Commission may also retain the right to enforce this Contract.

Section 18. Cooperation in Construction of Commission Water Supply. The [CharterContract](#) Customers shall cooperate with the Commission in the construction and acquisition of the Waterworks System. Each [CharterContract](#) Customer shall grant without charge to the Commission any reasonable required construction easements and any easements necessary for portions of the Waterworks System to be located on such [CharterContract](#) Customer's property, provided the Commission agrees to restore the easement property in a reasonable manner after construction. Each [CharterContract](#) Customer shall grant the Commission access to its property to the extent reasonably necessary to construct and [maintain the Waterworks System](#)~~install the points of delivery and the appurtenant devices~~.

Section 19. Mutual Cooperation in Issuance of Obligations. Each [CharterContract](#) Customer shall cooperate with the Commission in the issuance of the Bonds, and the Commission shall cooperate with each [CharterContract](#) Customer in the issuance of the [CharterContract](#) Customer's general obligation bonds or revenue bonds of its Unit System. In such connection, each [CharterContract](#) Customer and the Commission will comply with all reasonable requests of each other and will, upon request, do as follows:

- (i) Make available general and financial information about itself [in accordance with GAAP](#);
- (ii) Consent to publication and distribution of its financial information~~;~~;
- (iii) Certify that general and financial information about it is accurate, does not contain ~~and any~~ untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements in that information, in light of the circumstances under which they were made, not misleading~~;~~;
- (iv) Make available certified copies of official proceedings~~;~~;

(v) Provide reasonable certifications to be used in a transcript of closing documents; and

(vi) Provide and pay for reasonably requested opinions of counsel as to the validity of its actions taken with respect to and the binding effect of this Contract, title to its Unit System or the Waterworks System, as applicable, pending or threatened litigation which could materially affect its performance hereunder, and other reasonably related opinions.

Section 20. Regulatory Bodies. The parties through this Contract seek to exercise and maintain all sovereign rights granted to them under and through the Constitution and laws of the State of Illinois. This Contract shall be subject to all valid rules, regulations, and laws, applicable hereto passed or promulgated by the United States of America, the State of Illinois, or any governmental body or agency having lawful jurisdiction, or any authorized representative or agency or any of them; provided however, that this clause shall not be construed as waiving the right of either party to challenge the validity of such rule, regulation, or law on any basis, including the impairment of this Contract.

Section 21. Commission Cooperative Arrangements With Other Water Suppliers. Notwithstanding any of the provisions of this Contract, the Commission is not prohibited by this Contract from entering into cooperative arrangements with other suppliers of Lake Water to provide Lake Water to each other to meet their water needs, provided that these arrangements do not interfere, except in emergencies, with the delivery of Lake Water to the CharterContract Customers.

Section 22. Notices and Evidence of Actions. All notices or communications provided for herein shall be in writing and shall be delivered to the CharterContract Customers affected or the Commission either in person or by United States mail, via certifiedregistered mail, return receipt requested, postage prepaid, addressed to the principal office thereof.

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

Section 23. 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 portions or provisions shall not be affected thereby.

Section 24. Effective Date and Term. ~~For purposes of this Section of the Contract, the following units of local government are included as potential Charter Customers and shall have the MGD value set forth for each in parentheses beside its name:~~

Unit of Local Government and MGD

Village of Addison	(4,980)	Village of Lombard	(4,634)
Village of Bensenville	(2,682)	City of Naperville	(9,624)
Village of Bloomingdale	(2,411)	Village of Oak Brook	(4,219)
Village of Carol Stream	(2,793)	City of Oakbrook Terrace	(0.663)
Village of Clarendon Hills	(0.749)	Village of Roselle	(2.072)
City of Darien	(1.480)	Village of Villa Park	(2.349)
Village of Downers Grove	(6.479)	City of West Chicago	(2.896)
The County of DuPage	(1.492)	Village of Westmont	(1.818)
City of Elmhurst	(6.021)	City of Wheaton	(5.909)
Village of Glendale Heights	(2.211)	Village of Willowbrook	(1.287)
Village of Glen Ellyn	(3.134)	Village of Winfield	(0.856)
Village of Hinsdale	(2.906)	City of Wood Dale	(1.200)
Village of Itasca	(0.700)	Village of Woodridge	(2.599)
Village of Lisle	(2.652)		

~~The Commission shall authorize and execute this Contract and offer it to the aforesaid units. The aforesaid units shall have until September 1, 1986 (the "Charter Date"), to authorize the execution of and execute a counterpart of this Contract as acceptance hereof and to file same with the Clerk of the Commission. This Contract will become effective on the date (the "Effective Date"), which must be on or before February 24, 2024 the Charter Date, upon which said units having an MGD value as listed which have in totalsum to an MGD value of 55 or more shall have executed and filed counterparts hereof. Said units may become Charter Customers by executing and filing counterparts hereof after the Effective Date but on or before the Charter Date. If on or before the Charter Date an insufficient number of said units shall have executed counterparts hereof so as to make this Contract effective, then this Contract shall be null and void and of no effect as to the Commission and all units having so executed and filed. If effective as hereinabove provided, This Contract may be executed in counterparts and shall be effective when all the parties have executed this Contract (the "Effective Date"). This Contract shall continue in force and effect until February 24, 20242064. The ~~CharterContract~~ Customers and the Commission agree to begin negotiation of a succeeding Water Purchase and Sale Contract not later than five (5) years prior to the end of the term of this Contract.~~

Section 25. Governing Law; Superseder. This Contract shall be construed exclusively under the applicable laws of the State of Illinois. All other contracts between the Commission and the ~~CharterContract~~ Customers are hereby superseded and shall be null and void.

Section 26. Venue. Any action brought to enforce the terms of this Contract shall be brought in the Eighteenth Judicial Circuit, DuPage County, Illinois.

Section 276. Execution in Counterparts. This Contract may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. Any such counterpart may be signed by one or more of the parties hereto so long as each of the parties hereto has signed one or more of such counterparts.

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

SIGNATURE PAGES TO FOLLOW

VILLAGE OF ADDISON,
ILLINOIS

By ANTHONY RUSSOTTO
President

Date: 8/29/86

{SEAL}

Attest:

By PANOREA LEKKAS
Village Clerk

VILLAGE OF BENSENVILLE,
ILLINOIS

By JOHN C. GEILS
President

Date: 8/29/86

{SEAL}

Attest:

By ELVIRA L. JOHNSON
Village Clerk

VILLAGE OF BLOOMINGDALE,
ILLINOIS

By SAMUEL J. TENUTO
President

Date: 8/29/86

[SEAL]

Attest:

By MARIE E. TAYFEL
Village Clerk

VILLAGE OF CAROL STREAM,
ILLINOIS

By JANICE GERZEVSKE
President

Date: 7/22/86

[SEAL]

Attest:

By CLELA A. MONTGOMERY
Village Clerk

VILLAGE OF CLARENDON
HILLS, ILLINOIS

By ALAN I. HURD
President

Date: 8/4/86

[SEAL]

Attest:

By MARY A. ARNOLD
Village Clerk

CITY OF DARIEN,
ILLINOIS

By ERWIN A. SIROVY
Mayor

Date: 8/27/86

[SEAL]

Attest:

By GERTRUDE M. COIT
City Clerk

VILLAGE OF DOWNERS

GROVE, ILLINOIS

By BETTY M. CHEEVER

Mayor

Date: 8/18/86

[SEAL]

Attest:

By BARBARA WALDNER
Village Clerk

CITY OF ELMHURST,

ILLINOIS

By ROBERT J. QUINN

Mayor

Date: 8/18/86

[SEAL]

Attest:

By DOROTHY L. SCHMIDTKE
Deputy City Clerk

VILLAGE OF GLENDALE

HEIGHTS, ILLINOIS

By JERI SULLIVAN

President

Date: 8/28/86

[SEAL]

Attest:

By PAT ZAGNY
Village Clerk

VILLAGE OF GLEN ELLYN
ILLINOIS

By MICHAEL R. FORMENTO
President

Date: 8/25/86

[SEAL]

Attest:

By WILMA D. LINDE
Village Clerk

VILLAGE OF HINSDALE,
ILLINOIS

By RICHARD L. MILLER, JR.
President

Date: 8/26/86

[SEAL]

Attest:

By ELLEN B. MOONEY
Village Clerk

VILLAGE OF ITASCA, ILLINOIS

By SHIRLEY H. KETTER
President

Date: 8/26/86

[SEAL]

Attest:

By EDWINA SKORA
Village Clerk

VILLAGE OF LISLE, ILLINOIS

By GEORGE A. VARNEY

President

Date: 8/11/86

[SEAL]

Attest:

By MARJORIE M. CONNELLY

Village Clerk

JOSEPHINE A. HIRSMAN

Deputy Clerk

VILLAGE OF LOMBARD,

ILLINOIS

By RICHARD ARNOLD

President

Date: 8/21/86

[SEAL]

Attest:

By LORRAINE G. GERHARDT

Village Clerk

VILLAGE OF NAPERVILLE,

ILLINOIS

By MARGARET P. PRICE

Mayor

Date: 8/5/86

[SEAL]

Attest:

By SUZANNE L. HOLT

City Clerk

VILLAGE OF OAK BROOK,

ILLINOIS

By WENCE F. CERNE

President

Date: 8/12/86

[SEAL]

Attest:

By MARIANNE LAKOSIL

Village Clerk

CITY OF OAKBROOK

TERRACE, ILLINOIS

By RICHARD F. SARALLO

Mayor

Date: 8/27/86

[SEAL]

Attest:

By ROBERTA GRENINGER

City Clerk

VILLAGE OF ROSELLE,

ILLINOIS

By SANDRA J. BIRDSALL

President

Date: 7/7/86

[SEAL]

Attest:

By HARRIET M. WARD

Village Clerk

VILLAGE OF VILLA PARK,

ILLINOIS

By PAUL W. HYDE

President Pro Tem

Date: 8/26/86

[SEAL]

Attest:

By M. CAROL REEDY
Village Clerk

VILLAGE OF WESTMONT,
ILLINOIS

By FRANK H. BELLERIVE
Mayor

Date: 8/28/86

[SEAL]

Attest:

By ELMER FRIES
Village Clerk

CITY OF WHEATON,
ILLINOIS

By ROBERT J. MARTIN
Mayor

Date: 8/25/86

[SEAL]

Attest:

By LILLIAN JOHNSON
City Clerk

VILLAGE OF WILLOWBROOK,
ILLINOIS

By EUGENE NOOSE
President

Date: 8/25/86

[SEAL]

Attest:

By DARLENE WILSON
Deputy Village Clerk

CITY OF WOOD DALE,
ILLINOIS

By JERRY C. GREER
Mayor

Date: 8/25/86

[SEAL]

Attest:

By GERALDINE JACOBS
City Clerk

VILLAGE OF WOODRIDGE,
ILLINOIS

By WILLIAM F. MURPHY, JR.
Mayor

Date: 8/28/86

[SEAL]

Attest:

By DOROTHY M. STAHL
Village Clerk

DuPAGE WATER COMMISSION

By GEORGE CONGREVE
Chairman

Date: 8/29/86

[SEAL]

Attest:

By PETER W. ERNST
Clerk

City of Darien
Minutes of the Administrative/Finance Committee
September 5, 2023

Chairwoman/Alderswoman Sullivan called the Meeting to order at 6:00 pm. Committee members Leganski and Schauer were present. City Administrator Vana, Treasurer Coren, Mayor Marchese, Alderman Stompanato, Accounting Manager, Julie Saenz, Anytime Fitness owner, Michael Moelman, and Kellen Omalley from Sikich were also present.

Health club – opt out of amusement tax

Mayor Marchese received a letter from Anytime Fitness, which is a new business, located in Brookhaven Plaza. Anytime Fitness owner, Michael Moelman, is requesting the city amend its Amusement Tax ordinance by eliminating health clubs as a business included in the tax. Mayor Marchese sent this request to the Admin/Finance Committee for a review. Mr. Moelman explained how the amusement tax affects his business and advised the park district is exempt from the tax. Staff advised they did check the city code web site, which allows access to other city codes and did not find any communities that apply the tax to health clubs and if the council wants to revise this code to accommodate this request, staff will prepare the ordinance change. The committee members unanimously recommended amending the amusement tax to delete physical fitness centers from paying a local amusement tax. Alderman Stompanato also advised he was in favor of the change.

Presentation – Draft FYE 23 Annual Financial Report

Kellen Omalley of Sikich presented the draft Annual Financial Report for the Year Ended April 30, 2023. The final report will be presented to the City Council October 2, 2023.

FYE 23 Audit to Budget Comparison

Staff advised that upon completion of the yearly financial audit, the Administrative/Finance Committee reviews a comparison between the FYE 4-30-23 audited numbers and the FYE 4-30-23 estimated numbers included in the FYE 4-30-24 budget. The General Fund audited fund balance exceeded the estimated balance used in the 4-30-24 budget by \$1,051,447. The City Council previously approved the *Capital Improvements Plan Guidelines*. Section 3 of the guidelines includes the following:

- Surplus from the general fund, in excess of 3 months operating reserve, will be transferred to the capital projects fund annually

Based on these guidelines staff recommended that the Administrative/Finance Committee recommend that the City Council approve an additional FYE 24 transfer of \$1,000,000 to the Capital Projects Fund from the General Fund. This item will be scheduled for the October 2, 2023, City Council meeting. The committee unanimously recommended approval of the recommendation.

Pension Fund Report – Overview by Treasurer Coren

Treasurer Coren provided an overview of the CITY OF DARIEN POLICE PENSION FUND ACTUARIAL VALUATION AS OF MAY 1, 2023, conducted by the pension board.

Minutes – June 5, 2023 – The committee unanimously approved the minutes.

Adjournment - The meeting adjourned at 7:00 p.m.

Approved:

Mary Sullivan, Chairwoman _____

Ted Schauer, Member _____

Gerry Leganski, Member _____