

**A RESOLUTION APPROVING AN AMENDED AND
RESTATED WATER SUPPLY CONTRACT BETWEEN THE
NORTHWEST WATER COMMISSION AND THE VILLAGE
OF ARLINGTON HEIGHTS, THE VILLAGE OF BUFFALO GROVE,
THE VILLAGE OF PALATINE AND THE VILLAGE OF WHEELING**

BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF ARLINGTON HEIGHTS:

SECTION ONE: That an Amended and Restated Water Supply Contract between the Northwest Water Commission and the Village of Arlington Heights, the Village of Buffalo Grove, the Village of Palatine and the Village of Wheeling, dated November 4, 2019, consolidating previously approved water supply contracts and amendments, and providing for other necessary and appropriate amendments to said contract, a true and correct copy of which is attached hereto, be and the same is hereby approved.

SECTION TWO: The Village President and Village Clerk are hereby authorized and directed to execute said Amended and Restated Water Supply Contract on behalf of the Village of Arlington Heights.

SECTION THREE: This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

AYES:

NAYS:

PASSED AND APPROVED this 21st day of January, 2020.

Village President

ATTEST:

Village Clerk

AMENDED AND RESTATED WATER SUPPLY CONTRACT

BETWEEN

THE NORTHWEST WATER COMMISSION

AND

THE VILLAGE OF ARLINGTON HEIGHTS

THE VILLAGE OF BUFFALO GROVE

THE VILLAGE OF PALATINE

THE VILLAGE OF WHEELING

DATED NOVEMBER 4, 2019

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**AMENDED AND RESTATED
WATER SUPPLY CONTRACT
BETWEEN THE
NORTHWEST WATER COMMISSION
AND
THE VILLAGE OF ARLINGTON HEIGHTS, THE VILLAGE OF BUFFALO GROVE,
THE VILLAGE OF PALATINE, AND THE VILLAGE OF WHEELING**

THIS AMENDED AND RESTATED WATER SUPPLY CONTRACT (hereinafter referred to as this "Contract") made and entered into as of this ____ day of _____, 2013, by, between and among the NORTHWEST WATER COMMISSION (hereinafter referred to as the "Commission") a water commission created under Chapter 65, Article 11, Division 135, Illinois Compiled Statutes (65 ILCS 5/11-135-1, et seq.), and the VILLAGE OF ARLINGTON HEIGHTS (hereinafter sometimes referred to as "Arlington Heights"), the VILLAGE OF BUFFALO GROVE (hereinafter sometimes referred to as "Buffalo Grove"), the VILLAGE OF PALATINE (hereinafter sometimes referred to as "Palatine"), the VILLAGE OF WHEELING (hereinafter sometimes referred to as "Wheeling"), municipal corporations in Cook and Lake Counties, Illinois acting under the Constitution and laws of the State of Illinois, and each of them, (hereinafter sometimes referred to individually as the "Municipality" and collectively as the "Municipalities"),

WHEREAS, the Commission has been created to acquire and operate a common source of supply of water and to develop facilities of sufficient capacity to furnish an adequate supply of potable water to Commission members and customers; and

WHEREAS, each of the Municipalities has received from the State of Illinois Department of Transportation an allocation of Lake Michigan water as detailed in said Department's Administrative Opinion and Order LMO 80-4 and, in the case of Palatine, as modified in said Department's Administrative Opinion and Order LMO 81-3; and

WHEREAS, the Commission has entered into a Water Supply Contract with the City of

Evanston, dated March 4, 1981, as amended, (hereinafter referred to as the "Evanston Contract") in order to have available Lake Michigan water in the quantities herein contracted to be sold by it to the Municipalities; and

WHEREAS, the Commission and each of the Municipalities have previously entered into substantially identical Northwest Water Commission Water Supply Contracts dated April 6, 1981, and have amended said Water Supply Contracts by entering into substantially identical First Amendments thereto dated March 15, 1982, in the case of Arlington Heights, Buffalo Grove and Wheeling, and dated March 8, 1982 in the case of Palatine; and

WHEREAS, the Commission and the Municipalities have previously on April 4, 1983 entered into a First Amended Water Supply Contract ("1983 Agreement"), an Amendment to the 1983 Agreement dated September 5, 1990 and a Second Amendment to the 1983 Agreement dated September 20, 1993; and

WHEREAS, each of the Municipalities owns its own waterworks system (hereinafter referred to as the "Municipal Systems" and generally depicted in Exhibit A attached hereto and by this reference incorporated herein and made a part hereof), and is desirous of ensuring an adequate and dependable public water supply; and

WHEREAS, the Commission and the Municipalities desire to enter into this Contract in order to consolidate the provisions of the aforementioned Water Supply Contracts, First Amendments, and to provide for other necessary and appropriate amendments to said contracts, amendments and agreement; and

WHEREAS, by entering into this Contract, the parties intend that it shall supersede the aforementioned contracts and amendments and that from and after the effective date of this Contract said contracts and amendments shall become null and void and that this Contract shall

thereupon become the entire agreement between and among the Commission and the Municipalities with regard to the matters addressed herein; and

WHEREAS, the parties each hereby acknowledge that the Commission will use this Contract as the basis for obtaining credit through the issuance of the Commission's Bonds or other instruments of debt as authorized by law and as the source of funds for payment of the principal of premium, if any, and interest on such Bonds, for the payment of its construction, maintenance and operating expenses, and for the establishment and maintenance of accounts and reserves for such purposes as may be required or authorized by applicable statutes and the ordinance or ordinances authorizing the issuance of the Bonds or other instruments of debt; and

WHEREAS, by the execution of this Contract, the Municipalities are surrendering none of their rights to the ownership and operation of their respective Municipal Systems, nor is the Commission surrendering any of its rights to the ownership and operation of its Water Supply System, but each expressly asserts its ownership of and continued right to operate such Systems consistent with this Contract;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and pursuant to authority under the Constitution and laws of the State of Illinois, and particularly Chapter 65, Article 11, Division 135, Illinois Compiled Statutes (65 ILCS 5/11-135, et seq.), 2012; Article VII, Section 10 of the Illinois Constitution of 1970; Chapter 127, Section 741 et seq., Illinois Compiled Statutes, 2012; and the home rule powers of the Municipalities, the Commission and the Municipalities hereby agree as follows:

1. Water Supply.

(a) Quantity. Subject to the provisions stated in this Contract, each of the Municipalities agrees to purchase from the Commission and the Commission agrees to sell to each

of the Municipalities, an amount of Lake Michigan water necessary from time to time to serve the full water requirements of all present and future customers of the respective Municipalities Municipal Systems, including municipal use, system leakage and metering losses, located within or without the corporate limits of such Municipalities (hereinafter referred to as the Municipalities respective "Full Water Requirements"); provided, however, that the Commission's obligation to deliver water to each Municipality hereunder during each calendar year shall be limited to a maximum annual amount determined on the basis of that Municipality's average daily water allocation in effect for such calendar year as set forth in Exhibit B attached hereto and by this reference incorporated herein and made a part hereof (hereinafter referred to as each Municipality's "Allocation"); and provided further that the maximum quantity of water that the Commission shall be required to deliver to any Municipality in any one day shall be an amount equal to 1.8 times that Municipality's then average daily water allocation as set forth in Exhibit B.

(b) Quality. The Commission shall provide in any and all contracts for its water supply that all 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 establishing public water supply standards. The Commission shall use its best efforts to prevent contamination during transmission from said point of delivery to the Municipalities respective Points of Delivery. The Commission shall not, however, be responsible for water treatment except to the extent necessary to maintain bacteriological standards in accordance with applicable regulations.

(c) "Take-or-Pay" Obligation. Notwithstanding any other provision of this Contract, if at any time any Municipality shall fail to take from the Commission its Full Water Requirements for whatever reason, that Municipality shall nevertheless be deemed to be taking

such Full Water Requirements from the Commission for purposes of determining payments due the Commission under Paragraph 5 hereof. Each of the Municipalities hereby acknowledges its unconditional obligation to make all payments coming due under Paragraph 5 on the basis of its Full Water Requirements regardless of whether all or any portion of its Full Water Requirements are or are not received from or delivered by the Commission, regardless of the reason for any failure to receive or deliver such Full Water Requirements.

(d) Commission Obligation. The Commission shall use its best efforts to remain in a position to furnish water as herein contracted to be sold to the Municipalities, but its obligation hereunder shall be limited by the completion and capacity of the Commission's Water Supply System; the amount of water from time to time available to the Commission, accounting for ordinary transmission loss, including standard metering error, between the Commission's source of supply and the Points of Delivery; and contracts between the Commission and its other customers. The Commission undertakes to use reasonable care and diligence to provide a constant supply of water as herein provided for, but reserves the right at any time to turn off the water in its mains for emergency and maintenance purposes. The Commission shall give forty-eight (48) hours' notice of any such turn-off, except that in emergencies it shall give notice which is reasonable under the particular circumstances.

(e) Curtailments. In the event that it should become necessary for the Commission to limit the delivery of water through its Water Supply System for any reason, each of the Municipalities shall be entitled to receive during such period of curtailment its respective pro-rata share, based upon the Municipalities' actual usage in the prior Service Year. Nothing in this Contract shall be construed to prohibit the Municipalities or any of them from serving their customers in cases of emergency from any source other than the Commission, including wells

owned by the Municipalities and maintained for emergency use in accordance with applicable Rules of the Illinois Department of Transportation. It is expressly understood and agreed, however, that each of the Municipalities shall nevertheless be deemed to be taking its respective Full Water Requirements during any such period of curtailment or emergency for the purpose of determining payments due from it to the Commission under Paragraph 5 hereof, and no such curtailment or emergency shall in any way affect or relieve the Municipalities' respective payment obligations hereunder.

2. Storage, Delivery, Distribution and Conservation.

(a) Municipality Storage Requirement. Each of the Municipalities shall provide facilities adequate at all times to receive all water required to be delivered hereunder, and shall provide storage capacity for not less than their respective average daily water allocations from time to time as set forth in Exhibit B hereto.

(b) Points of Delivery. Each Municipality's "Points of Delivery" shall be defined as the points of outlet where the water delivered hereunder leaves the Commission's Water Supply System and enters such Municipality's receiving storage facilities. The Points of Delivery of water to the Municipalities from the Commission's Water Supply System shall be at the following approximate locations and maximum required elevations:

Arlington Heights:

1. 3702 N. Kennicott Avenue — 777.0' U.S.G.S.
2. 1405 W. Kirchoff Road — 739.0' U.S.G.S.
3. 222 N. Ridge — 749.0' U.S.G.S.
4. 2302 N. Arlington Heights Road — 747.2' U.S.G.S.

Buffalo Grove:

1. 400 LaSalle Lane — 683.25' U.S.G.S.
2. 120 Horatio Boulevard — 678.0' U.S.G.S.
3. 345 S. Arlington Heights Road — 731.0' U.S.G.S.
4. 525 N. Arlington Heights Road — 703.25' U.S.G.S.

Palatine:

1. Palatine High School — 781.33' U.S.G.S.
2. Salt Creek at Michigan Avenue — 763.68' U.S.G.S.

Wheeling:

1. Commonwealth Ed./Soo Line R-O-W South of Lake Cook Road —
695.00' U.S.G.S.
2. Wheeling Road North of Hintz Road — 695.00' U.S.G.S.
3. Commonwealth Ed. R-O-W North of Old Willow Road — 695.00'
U.S.G.S.

The location of Points of Delivery may change from time to time upon a unanimous vote of the Commissioners. A current list of all Points of Delivery shall be kept at the offices of the Commission. A change in the Points of Delivery shall not require an amendment to this Contract.

(c) Delivery Pressure. Water shall be delivered at atmospheric pressure such that an air gap exists between the Commission's Water Supply System and each Municipality's receiving storage facilities; provided, however, that in the case of Wheeling's Points of Delivery, where water may be delivered at direct pressure during such periods, if any, when delivery conditions are such that delivery takes place at a point higher than the maximum required elevation, and in the case of Buffalo Grove's second Point of Delivery (120 Horatio Boulevard), where a water line connecting a Village well to the receiving storage facility and to Buffalo Grove's

Municipal System intersects the Water Supply System at a point located between the Commission's meter and said Point of Delivery, backflow prevention equipment will be provided and maintained in good working order at all times.

(d) Operation of Municipal Systems. Each of the Municipalities agrees to operate its Municipal System from the Points of Delivery on to the consumer in such a manner as to at no time place the Commission and its Water Supply System in jeopardy of failing to meet (1) the regulations of any agency or governmental authority having jurisdiction over the operation of public water supply systems or (2) the commitments the Commission has to its other customers and to its water suppliers. Each of the Municipalities 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 the quality of the water to be received hereunder or the Commission's Water Supply System or water supply. Each of the Municipalities further agrees to take reasonable measures to conserve water.

3. Measuring Equipment.

(a) Commission Meters and Records. The Commission shall furnish, install, operate, maintain, repair and replace at its own expense at the Points of Delivery such metering equipment of a type meeting the standards of the American Water Works Association (hereinafter referred to as "AWWA") as shall be necessary for measuring properly the quantity of water delivered under this Contract, together with such structures as the Commission shall deem necessary to house such equipment and devices. The measurement of water delivered to the Municipalities shall be by said equipment. 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 upon land in which an ownership interest or appropriate easement rights

have been provided to the Commission by the respective Municipalities for such purpose. Both the Commission and the respective Municipalities 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 of the equipment shall be done only by the employees or agents of the Commission, not more than once in each calendar year, the Commission shall, if so requested in writing by any Municipality, calibrate its meters in the presence of representatives of each of the Municipalities. The parties shall jointly observe any adjustments which are made to the meters in case any adjustments shall be necessary.

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

(b) Municipality Check Meters. Each of the Municipalities may, at its option and own expense, install and operate a check meter to check each meter installed by the Commission at such Municipality's Points of Delivery, but except in the cases hereinafter specifically provided to the contrary, the measurement of water for the purpose of this Contract shall be solely by the Commission's meters. All such check meters shall be of standard make, shall meet AWWA standards, 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 the respective Municipalities, except during any period when a check meter may be used pursuant to the provisions hereof for measuring the amount of water delivered, in which case

the calibration and adjustment thereof shall be made by the Commission with like effect as if such check meter or meters had been furnished and installed by the Commission. Any calibration of such meters shall be done only in the presence of a representative of the Commission and the parties shall jointly observe any adjustment in case any adjustment is necessary.

(c) Unit of Measurement. The unit of measurement for water delivered hereunder shall be gallons of water, U.S. Standard Liquid Measure, and all measuring devices shall, unless the parties otherwise agree, be so calibrated. In the event that it should become necessary or desirable to use other units of measurement, the basis of conversion shall be that 7.48 gallons is equivalent to one (1) cubic foot.

(d) Meter Inaccuracy; Estimated Quantities. If any party hereto at any time observes a variation between a delivery meter and any check meter, or any other evidence of meter malfunction, such party shall promptly notify all of the other parties and the parties hereto shall then cooperate to procure an immediate calibration test and adjustment of such meter to accuracy and shall jointly observe any such adjustment.

If, upon any test, the percentage of inaccuracy of any meter is found to be in excess of two percent (2%), the registration thereof shall be corrected, by agreement of the parties 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 six (6) months.

If for any reason any meters are out of service or out of repair so that the amount of water delivered cannot be ascertained or computed from the reading thereof, the water delivered during the period such meters are out of service or out of repair shall be estimated and agreed upon by the

parties hereto upon the basis of the best data available. For such purpose, the best data available shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registering. Otherwise, the amount of water delivered during such period may be estimated (1) by correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculations, or (2) if the error is not ascertainable by calibration tests or mathematical calculation, by estimating the quantity of delivery by considering other data deemed relevant by the Parties, including but not limited to deliveries during preceding periods when the meter or meters were registering accurately. During any period of such disagreement, the Commission's estimate of water delivered shall be used for the purpose of computing payments due under this Contract, and any adjustments based upon later resolution of such disagreement shall be made by appropriate adjustments to the quarterly installment payments of the affected Municipalities' Annual Charges remaining to be paid during the Service Year.

(e) Notice of Tests, Calibrations and Adjustments. Each party shall give the other parties forty-eight (48) hours' notice of the time of all tests, calibrations and adjustments of meters so that the other parties may conveniently have a representative present. If said representatives are not present at the time set in such notice/testing, calibration and adjustment, then the party may, notwithstanding any other provision of this Paragraph, proceed in the absence of said representatives.

4. Satisfaction of Payment Obligations under 1983 Agreement.

(a) It is hereby understood and agreed that all payments required pursuant to Paragraph 4 of the 1983 Agreement have been paid.

5. Charges; Computation and Terms of Payment.

(a) Annual Charges. Each of the Municipalities agrees to pay the Commission,

during each "Service Year," an "Annual Charge" which shall be the respective "Municipality's Share" of the Commission's "Net Annual Cost".

The "Service Year" shall extend from May 1 to April 30. The dates for a service year may be changed by majority vote of the Commissioners. Each "Municipality's Share" shall be a fraction of which (1) the numerator is the amount of water delivered (or deemed to be delivered under subparagraph 1(c) above if less than its Full Water Requirements are taken) to that Municipality by the Commission during the prior twelve consecutive month period ended on December 31 immediately preceding the start of the Service Year in question and (2) the denominator is the total amount of water delivered (or deemed to be delivered under subparagraph 1(c) above if less than their total Full Water Requirements are taken) to all of the Municipalities by the Commission during such twelve consecutive month period.

The Commission's "Net Annual Cost" shall be an amount determined by the Commission as the excess of "Commission Expenses" over "Commission Receipts" during the Service Year.

"Commission Expenses" shall be those amounts determined from time to time by the Commission to be necessary: (1) to pay, as they come due, the costs of operation and maintenance of the Commission's Water Supply System, including those charges payable by the Commission under the Evanston Contract; (2) to pay, as they come due, the principal of, at maturity or pursuant to mandatory redemption requirements, premium, if any, and interest on any loans obtained or bonds issued by the Commission; (3) to provide an adequate depreciation fund for the Commission's Water Supply System as determined by the Commission on the basis of its statutory duties and its obligations under the Bonds and the ordinance or ordinances authorizing the issuance of the Bonds; (4) to comply with the covenants of the ordinance or ordinances authorizing the issuance of any loans obtained or bonds issued by Commission; (5) to meet parity bond requirements of the

ordinance or ordinances authorizing the issuance of any loans obtained or bonds issued by Commission; (6) to repay all obligations incurred by the Commission for which other adequate provision has not been made; and (7) to fund other such reserves as are deemed appropriate and prudent by the Commission.

Commission Receipts shall be those amounts (if any) determined from time to time by the Commission to be available from (1) rates and charges to be collected by the Commission under water service contracts with Commission customers or members other than the Municipalities; (2) any other revenues (other than revenues collected by the Commission pursuant to this Contract) to be collected by the Commission for or with respect to the use or services of its Water Supply System; (3) interest to be credited to the Water Fund established by the initial ordinance authorizing the issuance of any loans obtained or bonds issued by Commission; and (4) any surplus on hand, without regard to its source, and, in the sole discretion of the Commission, available to the Commission to pay or provide for Commission Expenses during the Service Year.

The Commission's financial books and records shall be audited annually by a qualified independent certified public accountant. Each of the Municipalities shall be provided with a report of each such annual audit.

On or before two months prior to the commencement of a new fiscal year, the Commission shall prepare a budget for the next following Service Year and shall in such budget determine the Net Annual Cost and each Municipality's Share thereof, and each Municipality's Annual Charge for the next following Service Year. The Commission shall then deliver to each of the Municipalities a statement of such Net Annual Cost, that Municipality's Share thereof and its Annual Charge, which statement shall include a detailed explanation of the computations thereof. Said statement shall serve as the basis for each Municipality's payment of its Annual Charge during

the said next following Service Year.

Following receipt of the aforesaid statement each of the Municipalities shall pay to the Commission, without further demand by the Commission, said Municipality's Annual Charge. Said Annual Charge shall be paid in advance in four installments as follows: 30% of the Annual Charge on or before May 1 and August 1, and 20% of the Annual Charge on or before November 1 and February 1 of each Service Year. Payments under this Contract shall be made to the Commission at its principal office or, upon written notice to the Municipalities, directly to a bank or trust company selected by the Commission as a depository of funds received hereunder to carry out the purposes of this Contract.

Throughout the duration of each Service Year, the Commission shall analyze and, if necessary, revise its budget and review each Municipality's Share and its Annual Charge required hereunder to determine if such Annual Charges are sufficient to meet the Commission's reasonably foreseeable obligations as they come due and to determine if said Municipality's Shares are equitable as among the Municipalities. In the event that such Annual Charges are deemed not sufficient for any reason, or in the event that such Municipality's Shares are deemed inequitable due to any substantial unforeseen change in any Municipality's water needs, the Commission shall adjust any or all of the Municipalities' Annual Charges to provide sufficient and equitable amounts provided, however, that in no event shall the Municipalities' Annual Charges, taken together, be less than an amount sufficient to cover the Net Annual Cost; and, provided further, that no such adjustment shall be permitted if, as a result, the Commission would not be able to meet Commission Expenses as they came due or if such adjustment would violate any Commission obligation under any loans obtained or bonds issued by Commission or the ordinance or ordinances authorizing the issuance of any loans obtained or bonds issued by Commission. A detailed

statement setting forth the reason for any such adjustments and the calculation thereof shall be delivered to each of the Municipalities no less than thirty (30) days prior to the due date of the first installment payment to be based thereon. Any additional amounts due the Commission or reductions due any Municipality pursuant to any such adjustment shall be paid or credited, as the case may be, in equal installments as part of the installment payments remaining to be paid during the Service Year in question.

In addition to any adjustments that may be made pursuant to the foregoing paragraph, the Commission may also bill the Municipalities for their respective Municipality's Shares of any amounts required by the Commission to cover any final Quantity Charge issued by the City of Evanston or any other water supplier to the Commission pursuant to the provisions of the Evanston Contract or contract with any other water supplier, and each of the Municipalities hereby agrees to pay the amount of any such bill to the Commission within 21 days after delivery by the Commission of such bill.

(b) Guarantee Payment. In the event that any Municipality shall fail to make in full any quarterly installment payment claimed by the Commission to be due under subparagraph 5(a) hereof, and such non-payment shall continue for a period in excess of thirty (30) days from the due date, each of the other, non-defaulting Municipalities agrees that it shall, on each of its regular quarterly installment payment dates following such non-payment and until all arrearages, including any additional non-payments by the defaulting Municipality, have been eliminated, make, in addition to all other payments hereunder required, a quarterly "Guarantee Payment" which shall be calculated by multiplying its "Guarantee Share" by the "Guarantee Revenue Need".

Each non-defaulting Municipality's "Guarantee Share" shall be a fraction of which (1) the

numerator is the amount of water delivered, or deemed to be delivered under subparagraph 1(c) hereof, to that Municipality during the most recent quarterly billing period for which the Commission has complete data and (2) the denominator is the total amount of water delivered, or deemed to be delivered under subparagraph 1(c) hereof, during the same quarterly period to all of the Municipalities which are then not in default in their payments due to the Commission pursuant to this Paragraph 5.

The "Guarantee Revenue Need" shall be an amount determined by the Commission to be necessary to be collected on or before the next quarterly installment payment date in order to permit the Commission to meet all of its obligations as they come due, including amounts sufficient: (1) to pay the costs of operation and maintenance of the Water Supply System, including those charges payable by the Commission under the Evanston Contract; (2) to provide an adequate depreciation fund for the Water Supply System as determined by the Commission on the basis of its statutory duties and its obligations under any loans obtained or bonds issued by Commission and the ordinance or ordinances authorizing the issuance of any loans obtained or bonds issued by Commission; (3) to pay the principal of, at maturity or pursuant to mandatory redemption requirements, premium, if any, and interest on the Bonds; (4) to comply with the covenants of the ordinance or ordinances authorizing the issuance of any loans obtained or bonds issued by Commission; and (5) to carry out the Commission's corporate purposes and powers, notwithstanding the defaulting Municipality's failure to make the payments claimed to be due from it under this Paragraph 5. For purposes of this subparagraph (b), a "sufficient" amount shall mean an amount adequate, when taken together with any and all other amounts available, in the sole discretion of the Commission, to enable the Commission to meet its obligations and responsibilities as they come due, including without limitation the making of all deposits required

to be made under the ordinance or ordinances authorizing the issuance of any loans obtained or bonds issued by Commission.

The Commission agrees to notify each non-defaulting Municipality of the amount of any Guarantee Payment required under this subparagraph (b) at least 30 days in advance of the next quarterly installment payment date, to supply the Municipality with all supporting calculations, and to certify to the Municipality that the Guarantee Payment is necessary to permit the Commission to meet its obligations as they come due. The Commission further agrees to advise the non-defaulting Municipalities of steps being taken to cure the default.

Nothing in this subparagraph (b) shall be construed to relieve the defaulting Municipality of its obligation to make all payments due hereunder, calculated in accordance with subparagraphs 5(a) and without regard to this subparagraph (b), or to limit the rights of the Commission, the non-defaulting Municipalities, the holders of any loans obtained or bonds issued by Commission or any trustee appointed for the benefit of the holders of any loans obtained or bonds issued by Commission from enforcing this Contract at law or in equity, by specific performance, mandamus or otherwise.

The Commission agrees to reimburse the non-defaulting Municipalities for any additional sums paid by them as Guarantee Payments in accordance with this subparagraph (b), together with interest thereon at the rate of interest actually paid to the Commission on the past due amounts under subparagraph 6(b), by appropriate adjustments to the quarterly installment payments of the non-defaulting Municipalities' Annual Charges, at such time as the past due amounts have been paid to the Commission and become available in the Surplus Account or such other fund or account from which such reimbursement may be paid under the ordinance or ordinances authorizing the issuance of any loans obtained or bonds issued by Commission; provided, however, that the parties

hereto hereby acknowledge and agree that the Commission's reimbursement obligation under this subparagraph (b) shall be subordinate to the Commission's obligations under the ordinance or ordinances authorizing the issuance of any loans obtained or bonds issued by Commission and applicable statutes.

(c) Commission Dissolution. In the event of a dissolution of the Commission, Commission assets shall be distributed to each of the Municipalities according to their respective percentage of water used in the prior five (5) Service Years.

6. Disputes and Defaults of Payment Obligations.

(a) Payment Disputes; Obligation to Make Disputed Payments; Right to Refund. In the event that any of the Municipalities desires to dispute all or any part of any payment claimed by the Commission to be due pursuant to this Contract, or the basis for any such payment, that Municipality shall nevertheless pay the full amount of such payment when claimed by the Commission to be due and shall provide written notification to the Commission, not later than the due date of such payment, that the payment is disputed, the grounds for dispute and the amount in dispute, and shall also provide a copy of such notification to each of the other Municipalities.

Upon any notification of dispute given as hereinabove set forth representatives of the Commission shall meet with representatives of the disputing Municipality to resolve such dispute. In the event that said representatives are unable to resolve the dispute within thirty (30) days following the date of notification the dispute shall be deemed unresolved, unless extended mutually by the parties, and the parties shall be allowed to pursue any and all remedies under this Contract. The existence of such dispute shall not excuse the Municipality in question from continuing to make all payments from time to time claimed by the Commission to be due under this Contract as such payments come due; provided, however, that should any such dispute be

finally resolved in favor of the Municipality so as to establish that excessive payments were demanded by the Commission and paid by said Municipality, the excess amounts of said payments, together with interest on such amounts at the highest legal rate payable by the Commission, not to exceed 75% of the prime rate of interest established by the largest bank in the State of Illinois measured in terms of total assets, shall be refunded to said Municipality by means of a credit on its first quarterly installment payment due for the Service Year next following the Service Year in which such dispute is finally resolved or on such earlier quarterly installment payment as may be agreed to by the Commission.

No Municipality shall be entitled to any adjustment or relief on account of any disputed charges unless the disputed charges are brought to the attention of the Commission within the time and in the manner herein specified, or within a reasonable period from the time the Municipality knew or should have known of the facts giving rise to the dispute.

(b) Payment Defaults. In the event that any Municipality shall fail to make, on or before the due date, any payment or portion thereof claimed by the Commission to be due pursuant to this Contract, interest on the amount of such payment or unpaid portion thereof shall, whether or not such payment is disputed, accrue during the period of non-payment at the then maximum legal rate payable by that Municipality, not to exceed 100% of the prime rate published by the Wall Street Journal measured in terms of total assets.

In the event that any payment or portion thereof claimed by the Commission to be due pursuant to this Contract is not made within thirty (30) days from the date such payment becomes due, the Commission may at its option and in its discretion, and whether or not such payment is disputed, reduce or discontinue delivery of water to the defaulting Municipality until the amount claimed to be due to the Commission is paid in full with interest as herein specified. The

Commission shall give the defaulting Municipality ten (10) days notice of its intention to reduce or discontinue delivery of water in accordance with this subparagraph (b) and shall provide the defaulting Municipality a reasonable opportunity for a hearing prior to any reduction or discontinuance. If the Commission reduces or discontinues the delivery of water under such circumstances, the Municipality shall, nevertheless, continue to be liable to make all payments hereunder as if it were taking its Full Water Requirements.

(c) Remedies. In addition to the rights specified in subparagraph (b), the Commission, any non-defaulting Municipality, the holders of any loans obtained or bonds issued by Commission and any trustee appointed for the benefit of the holders of any loans obtained or bonds issued by Commission shall have all other rights and remedies available at law or in equity for breach of any of the provisions of this Contract, including the right to specifically enforce such provisions or to seek mandamus, which rights shall be available with respect to any and all payments claimed to be due hereunder, whether or not such payments are in dispute, it being the intent of the parties that said payments shall continue to be made during periods of dispute, subject to refund as provided in subparagraph 6(a) above in the event that such dispute is resolved in favor of a disputing Municipality.

7. Covenants.

(a) Conditions. It is expressly understood and agreed that any obligation on the part of the Commission to finance, construct, maintain, improve, expand, and operate the Water Supply System and to deliver water hereunder shall be conditioned upon the following: (1) receiving the necessary permits and approvals of all Federal, State and local governmental entities and agencies having jurisdiction over the project or any aspect of it; (2) sale of any loans obtained or bonds issued by Commission in an amount to provide for the construction and acquisition of

the Commission's Water Supply System; (3) the Commission's ability to obtain all necessary material, labor, and equipment necessary for construction and/or maintenance of the Commission's Water Supply System; (4) the Commission's ability to secure and maintain an adequate water supply under the Evanston Contract or through other available means; and (5) the respective Municipalities construction and maintenance of all equipment and facilities necessary to receive and take water from the Commission at the Points of Delivery.

(b) Continuous Supply; Additional Supplies. The Commission shall, subject to the other terms and conditions of this Contract, continually hold itself ready, willing, and able to supply water to the Municipalities. The Commission shall also use its best efforts, consistent with its legal obligations to its other members and customers and consistent with fair and equitable treatment of all of its members, to supply the Municipalities with such additional amounts of water as may from time to time be allocated to any of them by the Illinois Department of Transportation over and above the allocation amounts set forth in Exhibit B hereto, but the Commission does not hereby guarantee to supply such additional amounts.

(c) Title; Liability; Hold Harmless. Title to all water supplied hereunder shall remain in the Commission to the Points of Delivery, and upon passing each Point of Delivery, title to the Water shall pass to the respective Municipalities. Each party hereto hereby agrees to save and hold the other parties harmless from all claims, demands, and causes of action which may be asserted by anyone on account of the transportation, delivery, and disposal of water while title is in such party. This covenant is not made for the benefit of any third party.

(d) Commission Charges and Rates Covenant. The Commission hereby covenants to establish such charges and rates for water supplied to the Municipalities as will be sufficient at all times (1) to pay the costs of operation and maintenance of its Water Supply System,

including those charges payable by the Commission under the Evanston Contract; (2) to provide an adequate depreciation fund for its Water Supply System as determined by the Commission on the basis of its statutory duties and its obligations under any loans obtained or bonds issued by Commission and the ordinance or ordinances authorizing the issuance of the Bonds any loans obtained or bonds issued by Commission; (3) to pay the principal of, at maturity or pursuant to mandatory redemption requirements, premium, if any, and interest on any loans obtained or bonds issued by Commission; (4) to comply with the covenants of the ordinance or ordinances authorizing the issuance of any loans obtained or bonds issued by Commission; and (5) to carry out its corporate purposes and powers.

For purposes of this subparagraph (d), a "sufficient" amount shall mean an amount adequate, when taken together with any and all other amounts available, in the sole discretion of the Commission, to enable the Commission to meet its obligations and responsibilities as they come due, including without limitation the making of all deposits required to be made under the ordinance or ordinances authorizing the issuance of any loans obtained or bonds issued by Commission.

(e) Municipality Charges and Rates Covenant, Each of the Municipalities hereby covenants to establish such charges and rates for water supplied by it to consumers as will be sufficient at all times (1) to pay the cost of operation and maintenance of its Municipal System, including those amounts necessary to pay the charges and rates established by the Commission hereunder; (2) to provide an adequate depreciation fund for such Municipal System; (3) to pay the principal of and interest on all of its revenue bonds payable from the revenues of its Municipal System and to meet all other requirements of any ordinances authorizing its revenue bonds for water or sewer purposes; and (4) to pay the charges and rates established by the Commission for

the sale of water by the Commission to the Municipalities.

For purposes of this subparagraph (e), a "sufficient" amount shall mean an amount adequate, when taken together with any and all other amounts which have been set aside, in cash or investments, in a separate account and legally designated, pledged and appropriated for the purpose of making payments due under Paragraph 5 of this Contract, to enable the Municipality to make all such payments as they come due.

(f) Additional Municipality Covenants. Each of the Municipalities further covenants: (1) to operate and maintain its Municipal System in good repair and working order so as at all times to be in a position to receive and distribute the water required to be purchased from the Commission pursuant to this Contract; (2) to continue to possess, control and operate its Municipal System and dispose of components of such System only to the extent that such components are no longer useful in the operation of the Municipal System, and not to mortgage or encumber such System (except for such pledge of revenues as may be required to issue its bonds payable from the revenues of said System in accordance with applicable law and the provisions of this Contract); (3) to carry insurance or other risk management protection on its Municipal System of the kinds and in the amounts which are customarily carried by parties operating similar facilities; (4) to use its best efforts to continue serving all current customers of its Municipal System, and to cause its Municipal System to be expanded to serve all future water users in the Municipality, all to the fullest extent allowable by law; (5) to use its best efforts to maintain in effect at all times a Lake Michigan water allocation that will satisfy its Full Water Requirements; (6) to provide the Commission with a report of all water taken from any source other than the Water Supply System within 10 days after the end of any calendar month in which it takes such water; (7) to provide for the segregation of all revenues from its Municipal System in a separate Municipality fund not to

be commingled with any other Municipality funds and to provide for the application of such revenues for purposes of making the payments due under Paragraph 5 hereof; and (8) to make all budgetary, emergency and other provisions and appropriations necessary to provide for and authorize the prompt payment to the Commission of all amounts claimed by the Commission to be due under this Contract.

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

(h) Character of Payment Obligations as Operating Expenses. Inasmuch as obtaining water is an essential item of expense of a waterworks system, each of the Municipalities hereby represents and covenants that all payments required to be made by it pursuant to the provisions of Paragraph 5 hereof shall constitute operating expenses of its Municipal System and

that such payments will constitute operating expenses as to any and all revenue bonds of that Municipality which are supported in whole or in part by a pledge of the revenues of its Municipal System, with the effect that such Municipality'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 interest on any such bonds which are or will be supported in whole or in part by a pledge of that Municipality's Municipal System revenues. Consistent with this subparagraph (h), each of the Municipalities hereby covenants and agrees that from and after the date of this Contract, any ordinance or resolution to be passed by it authorizing the issuance of Municipality obligations to be paid from the revenues of its Municipal System shall expressly provide that the revenues of the Municipal System may be used to pay the principal of and interest on such obligations only to the extent that those revenues exceed amounts required to pay the operating expenses of the Municipality's Municipal System, including all payments to be made by it under this Contract regardless of whether water is being delivered or is ever delivered to the Municipality hereunder. Without in any manner limiting the foregoing provisions of this subparagraph (h), it is also expressly understood and agreed that the obligation of each of the Municipalities under this Contract shall be enforceable against and collectable from any monies from time to time available in any of the various accounts and funds, including reserve and surplus accounts, maintained by the respective Municipalities in connection with their Municipal Systems.

8. Service to Others. Except for this Contract, no contract for the sale of water by the Commission to any customer shall be entered into unless authorized by a majority vote of the Commissioners and unless such contract contains rates or charges to any customer that are at least equivalent to the rates and charges provided by this Contract for the Municipalities. The Commission hereby acknowledges that future customers, other than the Municipalities, will not

have incurred the same risks nor undertaken the same financial obligations, as the Municipalities, and the Commission hereby agrees to take account of the risks and obligations undertaken by the Municipalities, including the fact that certain amounts paid by the Municipalities, and which were not to be repaid or were repaid only in part, when determining rates and charges to be included in contracts for water service to such future customers. The addition of new members to the Commission shall require the affirmative vote of the governing bodies of the Municipalities.

9. Force Majeure. In case by reason of Force Majeure any party hereto shall be rendered unable wholly or in part to carry out any of its obligations under this Contract, then if such party shall give notice and full particulars of such Force Majeure in writing to the other parties within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The 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, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint 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 water hereunder or of the Municipalities to receive water hereunder, on account of any other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that 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

shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty. Notwithstanding the foregoing, Force Majeure shall not relieve any of the Municipalities of their respective obligations to make, when due, all payments as required under this Contract whether or not such Force Majeure results in a delay, interruption or termination of water delivery to such Municipality.

10. Modification. Except as to paragraph 2, 3, and 5 of this Agreement which may be amended by unanimous vote of the Commissioners, no other amendment shall be effective unless passed by each of the Member's elected bodies. Such modification may be requested by any party, in which event, unless the parties agree to some other procedure, a joint meeting of the Commissioners shall be held not more than ninety (90) days after the giving of such notice, at which joint meeting the requested changes or modifications shall be considered and discussed. No such change or modification shall be made which will affect the rights and interests of the holders of any loans obtained or bonds issued by Commission except in accordance with the provisions of the ordinance or ordinances authorizing the issuance of any loans obtained or bonds issued by Commission.

11. Non-Assignability. No party shall assign, sublet, or transfer this Contract or any rights or interests herein without the written consent of the Commission and all of the Municipalities, except that this provision shall not be deemed to preclude the Commission from including in any bond covenants or any ordinance or ordinances authorizing the issuance of any loans obtained or bonds issued by Commission any provisions of whatever nature giving bondholders or any trustee appointed for their benefit rights in or under this Contract, including, without limitation, the right to enforce the provisions of this Contract.

It is hereby expressly agreed that in the event of the appointment of a trustee or trustees for the benefit of the holders of any loans obtained or bonds issued by Commission, such trustee or trustees may take whatever action at law or in equity it or they shall deem necessary or desirable to collect any payments or other amounts then due or thereafter to become due hereunder or to enforce performance and observance of any obligation, agreement or covenant of the parties hereto or of any of them, including, without limitation, the securing of mandamus or specific performance of the provisions of this Contract.

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

13. Notices. Except in cases of emergency, all notices or communications provided for herein shall be in writing and shall be delivered to the Municipalities or the Commission either in person or by United States mail, via registered mail, return receipt requested, postage prepaid, addressed to the Municipalities as follows:

Village Manager
Village of Arlington Heights
33 South Arlington Heights Road
Arlington Heights, Illinois 60005

Village Manager
Village of Buffalo Grove
50 Raupp Boulevard
Buffalo Grove, Illinois 60090

Village Manager
Village of Palatine

200 East Wood Street
Palatine, Illinois 60067

Village Manager
Village of Wheeling
255 West Dundee Road
Wheeling, Illinois 60090

or addressed to the Commission as follows:

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

until and unless other addresses are specified by notice given in accordance herewith. Notices and communications shall be deemed to be given or delivered on the date of delivery, if in person, or two days (excluding Saturdays, Sundays and holidays) after deposit in the mail, if by United States mail. Notice which is reasonable in view of the circumstances shall be given in cases of emergency.

14. Severability; Conflicts. 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.

It is expressly understood and agreed that in the event that there should at any time be any conflict or possibility of conflict between the provisions of this Contract and the provisions of the ordinance or ordinances authorizing the issuance of any loans obtained or bonds issued by Commission regarding the obligations of the Commission and the Municipalities, the provisions of the ordinance or ordinances authorizing the issuance of any loans obtained or bonds issued by Commission shall prevail.

15. Effective Date and Term. This Contract shall become effective at such time as it has been duly executed by the Commission and all of the Municipalities and shall continue in force and effect for a period of forty (40) years from the effective date of this Contract. The

Municipalities and the Commission agree to begin negotiation of a succeeding Water Supply Contract not later than five (5) years prior to the termination of this Contract.

16. Entire Agreement. From and after the effective date of this Contract, this Contract shall be deemed to and it shall supersede the following Agreements:

Northwest Water Commission Water
Supply Contract for the Village of
Arlington Heights, dated April 6, 1981

Northwest Water Commission Water
Supply Contract for the Village of Buffalo
Grove, dated April 6, 1981

Northwest Water Commission Water
Supply Contract for the Village of Palatine,
dated April 6, 1981

Northwest Water Commission Water
Supply Contract for the Village of
Wheeling, dated April 6, 1981

First Amendment to
Water Supply Contract for
the Village of Arlington Heights,
dated March 15, 1982

First Amendment to
Water Supply Contract
for the Village of Buffalo Grove,
dated March 15, 1982

First Amendment to Water Supply
Contract for the Village of Palatine,
dated March 8, 1982

First Amendment to Water Supply
Contract for the Village of Wheeling,
dated March 15, 1982

Intergovernmental Agreement Providing
for Proportionate Transfers of Funds
Between the Northwest Water
Commission and its Member

Municipalities dated March 15, 1982

First Amended Water Supply Contract
Between the Northwest Water
Commission
and the Village of Arlington Heights, the
Village of Buffalo Grove, the Village of
Palatine, the Village of Wheeling
dated April 4, 1983

First Amendment to the First Amended
Water Supply Contract dated September
5, 1990

Second Amendment to the First Amended
Water Supply Contract dated September
20, 1993

and said Agreements shall thereupon become null and void and of no further force or effect, and
this Contract shall thereupon become the entire agreement between the Commission and the
Municipalities with regard to the matters addressed herein.

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective
governing bodies have caused this Contract to be duly executed in several counterparts, each of
which shall constitute an original all as of the day and year first written above.

ATTEST:

NORTHWEST WATER COMMISSION

By _____
Chairman

VILLAGE OF ARLINGTON HEIGHTS

By _____
Village President

VILLAGE OF BUFFALO GROVE

By _____

Village President

VILLAGE OF PALATINE

By _____
Mayor

VILLAGE OF WHEELING

By _____
Village President

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EXHIBIT A

**NORTHWEST WATER COMMISSION
WATER SUPPLY SYSTEM
AND MUNICIPALITY MUNICIPAL SYSTEMS**

[ON FILE WITH THE NORTHWEST WATER COMMISSION]

EXHIBIT B

LAKE MICHIGAN ALLOCATIONS*

(In million gallons per day)

	<u>Arlington Heights</u>	<u>Palatine</u>	<u>Wheeling</u>	<u>Buffalo Grove</u>
1984	8.316	6.088	2.497	2.456
1985	8.350	6.193	2.690	2.594
1986	8.384	6.290	2.774	2.717
1987	8.418	6.437	2.858	2.840
1988	8.452	6.585	2.942	2.964
1989	8.486	6.731	3.026	3.087
1990	8.520	6.879	3.110	3.210
2000	8.850	7.706	3.650	4.487
2010	9.180	7.859	3.716	4.507
2020	9.500	8.505	4.005	4.920

* As amended from time to time by IDNR