

**NORTHWEST WATER COMMISSION
SUPPLEMENTAL WATER PURCHASE AND SALE CONTRACT
BY AND BETWEEN
THE NORTHWEST WATER COMMISSION
AND THE CITY OF DES PLAINES**

Dated: _____, 2014

TABLE OF CONTENTS

SECTION 1	BACKGROUND.....	1
SECTION 2	DEFINITIONS.....	2
SECTION 3	SUPPLEMENTAL WATER SUPPLY.....	6
A.	<u>AGREEMENT TO SELL AND PURCHASE.....</u>	6
B.	<u>BEGINNING OF OBLIGATIONS TO DELIVER AND RECEIVE POTABLE WATER.....</u>	6
C.	<u>LIMITS ON SUPPLY.....</u>	6
D.	<u>ADDITIONAL SUBSEQUENT CUSTOMER.....</u>	7
E.	<u>EMERGENCY OR MAINTENANCE STOPPAGE OR FLOW REDUCTION.....</u>	7
F.	<u>CURTAILMENT: EMERGENCY USE OF OTHER SOURCES.....</u>	7
G.	<u>LIMITS ON USE.....</u>	7
SECTION 4	QUALITY; DELIVERY; STORAGE; DISTRIBUTION; CONSERVATION.....	8
A.	<u>WATER QUALITY.....</u>	8
B.	<u>MAINTENANCE OF SYSTEM; WATER QUALITY; PREVENTION OF WASTE.....</u>	8
C.	<u>NO USE OF WELLS AND WELL WATER.....</u>	8
D.	<u>SURGES AND BACK-FLOWS.....</u>	8
E.	<u>CITY WATERWORKS SYSTEM PRESSURES.....</u>	9
F.	<u>CONNECTION TO TRANSMISSION MAINS.....</u>	9
G.	<u>CITY SYSTEM CONNECTION FACILITIES.....</u>	9
SECTION 5	MEASURING EQUIPMENT.....	9
A.	<u>METERING STATIONS.....</u>	9
B.	<u>RECORDS.....</u>	10
C.	<u>CALIBRATION.....</u>	11
D.	<u>CHECK METERS.....</u>	11
E.	<u>METER MALFUNCTIONS.....</u>	11
F.	<u>REMOVAL OF METERING STATIONS.....</u>	13
G.	<u>REMOVAL OF TRANSMISSION MAINS.....</u>	13
H.	<u>METERS FOR CITY CUSTOMERS.....</u>	13
I.	<u>RIGHT OF INSPECTION.....</u>	13
SECTION 6	UNIT OF MEASUREMENT.....	14
SECTION 7	RATES AND TERMS OF PAYMENT.....	14
A.	<u>RATE.....</u>	14
B.	<u>ADJUSTMENTS TO RATE.....</u>	14

C.	<u>RESERVED</u>	14
D.	<u>RESERVED</u>	14
E.	<u>BILLS AND DUE DATE</u>	14
F.	<u>DISPUTED PAYMENTS</u>	14
G.	<u>OVERDUE PAYMENTS</u>	15
H.	<u>BEGINNING OF OBLIGATION TO PAY</u>	17
I.	<u>RATE AGREED TO BE REASONABLE</u>	17
J.	<u>COMMISSION CHARGES AND RATES COVENANT</u>	17
K.	<u>CITY CHARGES AND RATES COVENANT</u>	18
L.	<u>CHARACTER OF PAYMENT OBLIGATIONS AS WATER REVENUE OBLIGATIONS</u>	18
M.	<u>CHARACTER OF PAYMENT OBLIGATIONS AS OPERATING EXPENSES</u>	19
SECTION 8	SPECIAL CONDITIONS AND COVENANTS	19
A.	<u>NO LIABILITY FOR DELAY</u>	20
B.	<u>TITLE TO POTABLE WATER</u>	20
C.	<u>OTHER SUPPLY; EMERGENCY SUPPLY</u>	20
D.	<u>COVENANTS TO BE SET OUT IN BOND ORDINANCES</u>	20
E.	<u>OTHER FINANCIAL OBLIGATIONS OF CITY WATERWORKS SYSTEM</u>	20
F.	<u>MAINTENANCE OF CITY'S EXISTENCE</u>	21
G.	<u>CITY JURISDICTION</u>	21
H.	<u>MAINTENANCE AND OPERATION OF CITY WATERWORKS SYSTEM</u>	21
I.	<u>CITY REGULATIONS EQUIVALENT TO MEMBER MUNICIPALITY REGULATIONS</u>	22
J.	<u>ACCOUNTING AND AUDIT</u>	22
K.	<u>MAINTAIN OWNERSHIP OF CITY WATERWORKS SYSTEM</u>	22
L.	<u>NO SALE OF CITY WATERWORKS SYSTEM</u>	23
M.	<u>RELEASE AND INDEMNIFICATION</u>	23
N.	<u>ASSIGNMENT OF LITIGATION</u>	24
O.	<u>RATE OF WITHDRAWAL</u>	24
P.	<u>STATUS AS CUSTOMER</u>	24
SECTION 9	SCHEDULE FOR COMPLETION OF VARIOUS FACILITIES	25
A.	<u>PLANS AND SPECIFICATIONS FOR CITY SYSTEM CONNECTION FACILITIES AND COMMISSION CONNECTION FACILITIES</u>	25
B.	<u>IEPA AND OTHER APPROVALS FOR CITY SYSTEM CONNECTION FACILITIES AND COMMISSION CONNECTION FACILITIES</u>	25
C.	<u>COMMENCEMENT OF CONSTRUCTION OF CITY SYSTEM CONNECTION FACILITIES AND COMMISSION CONNECTION FACILITIES</u>	25
D.	<u>TRANSFER OF PROPERTY RIGHTS/PAYMENT COVENANT/OVERSIZING</u>	25

SECTION 10	ASSIGNABILITY	26
A.	<u>ASSIGNMENT BY CITY</u>	26
B.	<u>ASSIGNMENT BY THE COMMISSION</u>	26
SECTION 11	FORCE MAJEURE	27
SECTION 12	COMMISSION DEFAULTS, CITY TERMINATION	27
SECTION 13	CITY RIGHTS AND OBLIGATIONS	28
SECTION 14	TAX COVENANTS	28
SECTION 15	COOPERATION IN ISSUANCE OF OBLIGATIONS	29
SECTION 16	REGULATORY BODIES	30
SECTION 17	OTHER WATER SUPPLIERS	30
SECTION 18	EFFECTIVE DATE: TERM	30
A.	<u>EFFECTIVE DATE</u>	30
B.	<u>TERM</u>	30
SECTION 19	TERMINATION BY COMMISSION	31
SECTION 20	GENERAL	32
A.	<u>GOVERNING LAW</u>	32
B.	<u>NOTICES</u>	33
C.	<u>CALENDAR DAYS AND TIME</u>	33
D.	<u>ENTIRE AGREEMENT</u>	33
E.	<u>AMENDMENTS</u>	34
F.	<u>FURTHER ACTION</u>	34
G.	<u>CAPTIONS</u>	34
H.	<u>EXHIBITS</u>	34
I.	<u>CHANGES IN LAWS</u>	34
J.	<u>TIME IS OF THE ESSENCE</u>	34
K.	<u>PENDING LAWSUITS</u>	34
L.	<u>RESPONSIBLE PARTY</u>	35
M.	<u>COMMISSION EXEMPTIONS</u>	35
N.	<u>SEVERABILITY</u>	35
O.	<u>REIMBURSEMENT OF PROFESSIONAL FEES/COSTS</u>	35

**NORTHWEST WATER COMMISSION
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BY AND BETWEEN
THE NORTHWEST WATER COMMISSION
AND THE CITY OF DES PLAINES**

THIS SUPPLEMENTAL WATER PURCHASE AND SALE CONTRACT is made and entered into as of _____, 2014, by and between the **NORTHWEST WATER COMMISSION**, an Illinois water commission and public corporation organized and existing under the Illinois Constitution of 1970 and Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.* (2010), and the **CITY OF DES PLAINES**, a municipal corporation organized and existing under the Illinois Constitution of 1970 and the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.* (2010) for and in consideration of the mutual covenants and agreements herein contained.

SECTION 1 BACKGROUND

A. The Commission owns and operates the Commission Waterworks System for the receipt of Potable Water and for the delivery of Potable Water to its Member Municipalities and other Customers.¹

B. The Commission has issued and sold, and may in the future issue and sell, Bonds from time to time during the term of this Contract in sufficient amounts for the payment of the costs of acquiring, designing, constructing, and maintaining its Waterworks System.

C. The City owns and operates the City Waterworks System for the delivery of Potable Water to its customers.

D. The City has received an allocation from the State of Illinois Department of Natural Resources to divert water from Lake Michigan for the City Waterworks System.

E. The City desires to purchase Potable Water from the Commission and the Commission desires to sell Potable Water to the City, solely for the purposes set forth in and in

¹ All capitalized words and phrases throughout this Contract shall have the meanings set forth in Section 2 hereof.

strict accordance with the provisions of this Contract. The Commission and the City acknowledge that this is not an exclusive contract for the sale and purchase of water to the City. Further, the City acknowledges that it is not and shall not be entitled to receive more than 75% of its water use from the Commission.

F. Pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.* (2012), the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.* (2012), and Article VII, Sections 3 and 10 of the Illinois Constitution of 1970, the Commission and the City are authorized to enter into this Contract.

G. The City recognizes that the Commission may use this Contract as the basis, in part, for obtaining loans from time to time to be evidenced by the issuance of its Bonds; and for payment of the principal of and the premium, if any, and interest on such Bonds; and as the means for the payment of its maintenance and operating expenses; and for such purposes as may be authorized by applicable statutes or required in any Bond Ordinance adopted by the Commission authorizing issuance of Bonds.

SECTION 2 **DEFINITIONS**

The following words and phrases shall have the following meanings when used in this Contract.

“Bond Ordinances” means all of the respective bond ordinances and resolutions under which the Parties have or will authorize the issuance of, or issue, Bonds.

“Bonds” means Commission Revenue Bonds and City Bonds.

“City” means the City of Des Plaines.

“City Bonds” means the debt obligations, whether in the form of bonds, notes, or other evidences of indebtedness, to be issued by the City in an amount sufficient to pay the expected costs to complete all of the City’s obligations under this Contract, including, without limitation, costs of construction and professional services.

“City System Connection Facilities” means those portions of the City Waterworks System to connect the existing City Waterworks System to the Commission Waterworks System, which facilities are depicted in the preliminary plans to be approved by both Parties and attached as Exhibit B to this Contract. The City System Connection Facilities include, among other items, the valves [and pressure adjusting station] described in this Contract and pipeline and equipment appurtenant thereto.

“City Waterworks System” means all of the City’s facilities, including land; easements; rights-of-way over lands and waters; pumping facilities, wells, treatment facilities, storage facilities, metering stations, and other facilities; mains; and pipelines acquired and used for the purposes of transmitting and providing Potable Water to the City’s customers, as depicted in Exhibit A.

“Commission” means the Northwest Water Commission.

“Commission Connection Facilities” means the portions of the Commission Waterworks System to be constructed pursuant to this Contract by the City after approval by the Commission to connect the City Waterworks System to the existing Commission Waterworks System, which facilities are depicted in the preliminary plans to be approved by both Parties and attached as Exhibit B to this Contract. The Commission Connection Facilities include, among other items, the metering station and Supervisory Control and Data Acquisition (“SCADA”) facilities described in Subsection 5A of this Contract and pipelines and equipment appurtenant thereto.

“Commission Revenue Bonds” means all of the Commission’s debt obligations, whether in the form of bonds, notes, or other evidences of indebtedness, in whatever original principal amount, together with any such revenue obligations authorized by law to be issued by the Commission from time to time and refunding revenue obligations issued to refund other such obligations.

“Commission Waterworks System” means all of the Commission’s facilities, including land; easements; rights-of-way over lands and waters; pumping facilities, treatment facilities, storage facilities, metering stations, and other facilities; mains; and pipelines acquired and used for the purposes of transmitting Potable Water to the Commission’s Member Municipalities and Customers. The Commission Waterworks System includes the metering station and all meters and other equipment located therein constructed as part of the Commission Connection Facilities.

“Connection Area” means the area at the east side of the Commission’s pump station on and adjacent to the Commission’s property as depicted in Exhibit B, or as otherwise may be agreed upon by the Parties.

“Connection Facilities” means the Commission Connection Facilities and the City System Connection Facilities.

“Contract” means this Contract.

“Customer” means any person or entity to whom the Commission sells Potable Water.

“Day” means any 24-hour continuous period commencing at 12:00 a.m. (midnight) local time.

“Delivery Date” means the date that the Commission first delivers Potable Water to the City.

“Effective Date” means the date established in Section 18 of this Contract.

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

“Force Majeure” means acts of God; strikes, lockouts, or other industrial disturbances; acts of a 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; acts of terrorism; epidemics; pandemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraints of government and people; civil disturbances; explosions, breakage, or accidents to machinery, pipelines, plants, canals, or tunnels; and inability on the

part of the Commission to deliver Potable Water hereunder, or of the City to receive Potable Water hereunder, on account of any other causes not reasonably within the control or ability to cure of the Party claiming such inability.

“Maximum Water Supply Amount” means the maximum amount of Potable Water that the Commission shall be obligated to deliver to the City, and that the City shall be authorized to purchase from the Commission, pursuant to this Contract, which amount shall not exceed five (5) million gallons per Day (“MGD”), unless otherwise agreed in writing from time to time by the Commission and the City.

“Member Municipalities” means the Villages of Arlington Heights, Buffalo Grove, Palatine, and Wheeling.

“Party” or **“Parties”** means either the City, the Commission, or both, as appropriate.

“Point of Delivery” means the first valve immediately downstream from the metering station at which the Potable Water delivered to the City pursuant to this Contract leaves the Commission Waterworks System and enters the City Waterworks System.

“Potable Water” means treated, filtered water drawn from Lake Michigan provided to the Commission.

“Rate” means the customary and applicable rate for delivery of Potable Water established by the Commission for a particular fiscal year.

“Trustee” means a trustee provided in a Bond Ordinance.

“Water Allocation” means the sum of the City’s allocations and allowable excesses from time to time of Potable Water for the City Waterworks System pursuant to the Level of Lake Michigan Act, 615 ILCS 50/1 *et seq.* (2010), as amended from time to time; the Illinois Department of Natural Resources Rules and Regulations for the Allocation of Water from Lake Michigan, 92 Ill. Admin. Code Part 730, as amended from time to time; applicable Illinois Department of Natural Resources decisions, as amended from time to time; and such other amounts of Potable Water as the City may lawfully take for the City Waterworks System.

“Well Water” means either treated, filtered water or untreated, unfiltered water drawn from wells owned and, operated by the City.

SECTION 3 SUPPLEMENTAL WATER SUPPLY

A. **Agreement to Sell and Purchase.** Subject to all provisions of this Contract, the Commission shall sell and deliver to the City, and the City shall purchase and receive from the Commission, an amount of Potable Water not to exceed five (5) MGD and in no event shall it exceed 75% of the City's total water usage. This amount includes municipal use, system leakage and metering losses located beyond the Point of Delivery. The Commission's obligation to the City to deliver Potable Water hereunder shall be limited to this amount.

B. **Beginning of Obligations to Deliver and Receive Potable Water.** The Commission shall be obligated to deliver Potable Water to the City Waterworks System, and the City shall be obligated to receive at the City Waterworks System, Potable Water delivered by the Commission immediately after completion of construction of the Point of Delivery and any other City System Connection Facilities and any Commission Connection Facilities and inspection and approval for operation thereof by the Commission and any other regulatory agency. This paragraph includes any water used to test or prepare the City System Connection Facilities.

C. **Limits on Supply.** The Commission shall use its best efforts to furnish Potable Water to the City as hereinabove provided, but the City acknowledges and agrees that the Commission's obligation hereunder is limited by:

- i. The amount of Potable Water available to the Commission from time to time;
- ii. The capacity of, and any risk of harm to, the Commission Waterworks System due to the furnishing of Potable Water;
- iii. Ordinary transmission loss, including standard metering error, between the Commission's source of supply and/or the Point of Delivery to the City Waterworks System;
- iv. The Provisions of this Contract; and

v. Force Majeure.

D. Additional Subsequent Customer The City acknowledges that the Commission may enter into contracts for the sale by the Commission of Potable Water to Customers other than City. The Parties acknowledge that the rates for the sale of Potable Water in such contracts may affect the rates charged to the City pursuant to Section 7 of this Contract.

E. Emergency or Maintenance Stoppage or Flow Reduction. The Commission undertakes to use reasonable care and diligence to provide a constant supply of Potable Water as herein provided, but reserves the right at any time to cease or reduce the flow of Potable Water in its mains for emergency and maintenance purposes. The Commission shall give notice not less than 48 hours in advance of any stoppage for scheduled maintenance purposes and it shall give such notice as is reasonable under the particular circumstances of any cessation or reduction of flow for emergency purposes. The Commission shall provide as much notice as practical where the flow of water is expected to be reduced temporarily.

F. Curtailment: Emergency Use of Other Sources. Subject to the rights of the Member Municipalities, if it becomes necessary for the Commission to limit its delivery of Potable Water to its Customers for any reason, the City shall be entitled, to the extent possible after taking into account all factors including but not limited to the rights of the Member Municipalities, to receive during such period of curtailment a pro rata share of available Potable Water as determined by the ratio of the City Waterworks System's total Potable Water delivered during the prior Fiscal Year to the sum of Potable Water delivered during the prior Fiscal Year of all of the Commission's Customers entitled to Potable Water during such period of curtailment.

G. Limits on Use. Potable Water delivered by the Commission to the City pursuant to this Contract shall be used solely for the purpose of resale by City for use on land within the jurisdiction of the City. Except for the City's extraterritorial customers existing as of the Effective Date, as listed in Exhibit C to this Contract, neither the City nor any customer of the City shall

sell or resell Potable Water to anyone outside the jurisdiction, or for use outside of the jurisdiction, of the City without the written approval of the Commission.

SECTION 4 QUALITY; DELIVERY; STORAGE; DISTRIBUTION; CONSERVATION

A. Water Quality. The Commission shall supply the City with Potable Water of a quality commensurate to that furnished to the Commission's other Customers and Member Municipalities. The Commission bears no responsibility for the contamination of Potable Water or deterioration of water quality occurring beyond the Point of Delivery to the City Waterworks System.

B. Maintenance of System; Water Quality; Prevention of Waste. The City shall operate the City Waterworks Systems in such a manner as at no time to place the Commission, or the Commission Waterworks System, in jeopardy of failing to meet (i) the regulations of any federal, State of Illinois, or local agency or governmental authority having jurisdiction over the operation of the Commission's Waterworks System or (ii) the commitments the Commission has to its Members, other customers and to its water suppliers. The City shall notify the Commission immediately of all emergency and other conditions that may directly or indirectly affect quantity or the quality of the water to be received under this Contract or the Commission Waterworks System or water supply. The City further agrees to take reasonable measures to conserve water.

C. No Use of Wells and Well Water. The City warrants and represents that it does not distribute well water through the City Waterworks System to its Potable Water customers and will not do so in the future without the written consent of the Commission.

D. Surges and Back-Flows. The City's operation of the City Waterworks System, including, without limitation, its pressure adjusting stations, shall not cause surges or back-flows into the Commission Waterworks System and any connection to the Commission Connection Facilities and/or Commissioner Waterworks System to the City System Connection Facilities shall be provided with air gap protection. The Commission shall not be responsible for any

damage to the City Waterworks System caused by the design, operation, or maintenance of the City Waterworks System.

E. City Waterworks System Pressures. The City shall be solely responsible for delivering Potable Water to its customers at pressures required or necessary to make such delivery.

F. Connection to Transmission Mains. The City shall not construct or install, nor permit to be constructed or installed, any taps from or connections to the Commission Waterworks System. Such prohibited taps and connections shall include, without limitation, distribution mains, valves, fire hydrants and service lines. Nor shall City construct taps on the City Waterworks System at or near the Point of Delivery, without written consent of the Commission.

G. City System Connection Facilities. The City, at its own expense and pursuant to the schedule established in Section 9 of this Contract, shall site, design, construct, operate, maintain, and when necessary replace the City System Connection Facilities, including any valves and/or pressure adjusting stations as may be required, immediately downstream from the Point of Delivery. Initial design and construction plans and specifications for the City System Connection Facilities, and any future modifications thereof, shall be submitted in advance of construction or modification to the Commission for review and approval.

SECTION 5 MEASURING EQUIPMENT

A. Metering Stations.

i. Construction of Metering Stations. The City shall, pursuant to the schedule established in Section 9 of this Contract, furnish and install metering stations containing the necessary equipment and devices of a type meeting the standards of the American Water Works Association, and as determined in the sole discretion of the Commission, for measuring properly the quantity of Potable Water delivered under this Contract, including all structures as the Commission shall deem necessary to house such

equipment and devices. Such furnishing and installing of the metering stations shall be done in substantial conformance with the preliminary plans therefor attached as Exhibit B to this Contract, as such preliminary plans may be revised by mutual agreement of the Commission and the City. After construction is completed by the City and approved by the Commission, the City shall convey to the Commission and the Commission shall own, operate, maintain, and replace such metering stations and all equipment and structures related thereto.

ii. Site of Point of Delivery Metering Station. The metering station for the Point of Delivery shall be located within the Connection Area in a specific location determined by the Commission. Water shall be delivered at atmospheric pressure such that an air gap exists between the Commission Waterworks System and the City System Connection Facilities.

iii. Access by City. The City shall have access to the metering stations for examination and inspection in a manner to be mutually agreed by the Parties. The reading of the meters for billing purposes, and the calibration and adjustment of the meters and other equipment in the metering stations, shall be done only by the employees or agents of the Commission at the cost of the City.

iv. Meter Reading. The Commission intends to read the meters in the metering station on the first day of each month.

B. Records. For the purpose of this Contract, the official record of readings of each meter at the metering station shall be the handwritten journal or other handwritten or electronic 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 or entered. Upon written request of the City, the Commission will give the City a copy of such handwritten journal or record book, or permit the City to have access thereto in the office of the Commission during regular business hours.

C. Calibration. The Commission shall calibrate its meters at least once in each Fiscal Year measuring the Potable Water delivered to the City Waterworks System. If requested in writing by the City to do so, said calibration shall be in the presence of a representative of the City, and the Commission and the City shall jointly observe any adjustments that are made to the meters in case any adjustments shall be necessary. If any check meters have been installed, then such check meters shall be calibrated by the City, if requested in writing by the Commission to do so, at least once in each Fiscal Year in the presence of a representative of the Commission, and the Commission and the City shall jointly observe any adjustments that are made to the meters in case any adjustments shall be necessary.

D. Check Meters. The City, at its option and its own expense, may install and operate a check meter to check each meter installed by the Commission. Notwithstanding the foregoing, the measurement of Potable Water for purposes of this Contract shall be solely by the Commission's meters, except in the cases hereinafter specifically provided to the contrary. All check meters shall be of standard make and shall be subject to inspection and examination by any employee or agent of the Commission at all reasonable times. The calibration and adjustment of check meters shall be made only by the City, except during any period when a check meter may be used under the provisions hereunder for measuring the amount of Potable Water delivered to the City, in which case the calibration and adjustment of such check meter shall be made by the Commission with like effects as if such check meter had been furnished and installed by the Commission.

E. Meter Malfunctions. If the Commission or the City at any time observe a variation between a meter and a check meter or any evidence of meter malfunction, such Party shall promptly notify the other Party and the Commission and the City shall then cooperate to procure an immediate calibration test and such adjustment, replacement, or other work necessary to return such meter to accuracy. The Party who discovers such variation or malfunction shall give the other Party notice not less than 72 hours prior to the time of any test of any meter (which

tests shall be conducted, if practical, during normal working hours) so that the other Party may conveniently have a representative present. If such representative is not present after the required notification at the time set in such notice, calibration and adjustment may proceed in the absence of said representative notwithstanding any other provision of this Subsection. If the percentage of inaccuracy of any meter is found to be in excess of two percent between the check meter and the Commission meter, registration thereof shall be corrected by agreement of the Commission and the City based on the best data available, for a period extending back to the time when such inaccuracy began if such time is ascertainable, or for a period extending back one-half of the time elapsed since the last date of calibration (but in no event further back than a period of six months) if such time is not ascertainable.

If for any reason any meter is out of service or in disrepair so that the amount of Potable Water delivered cannot be ascertained or computed from the reading thereof, then the Potable Water delivered during the period such meter is out of service or in disrepair shall be deemed to be the registration of the check meter if one has been installed and is registering accurately, or, in the event that no check meter has been installed or the check meter is registering inaccurately, 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. During any period of such disagreement, the Commission's estimate of water delivered shall be used for the purpose of computing payments due under Section 7 of this Contract, and any adjustments based upon later resolution of such disagreement shall be made by appropriate adjustments to the City's future payments pursuant to Section 7.

F. Removal of Metering Stations. At any time after 90 days following the termination of this Contract without renewal, the Commission, at its own expense and in its discretion, may remove the metering stations, including equipment, and any SCADA antennas and appurtenant facilities and release any perpetual easements therefor.

G. Removal of Transmission Mains. Within 120 days after the termination of this Contract without renewal, the City, at its own expense, shall remove or abandon in place any City transmission mains and other equipment and appurtenances owned by the City that are located on Commission property or within the Commission service area. Any proposal by the City to abandon in place shall be subject to the prior review and approval by the Commission. The City shall be solely responsible for completing all restoration work necessary as a result of the removal of the same.

H. Meters for City Customers. The Commission shall have no responsibility for ensuring that the City customers have operable water meters meeting the standards of the American Water Works Association.

I. Right of Inspection. The Commission reserves the right to inspect the property of the City System Connection Facilities to ensure that the facilities are being operated consistent with the terms of this Contract, including but not limited to inspections to ensure there are no cross connections that threaten potential contamination to the Commission Waterworks System and to ensure that the Commission Waterworks System is otherwise fully in accordance with state and federal law. If the inspection discloses any code violations or threats to the Commission Waterworks System, the Commission shall deliver the City a notice at the address listed in Section 20 hereof of the Commission's intention to shut off the supply of water to the City at the expiration of 48 hours after giving such notice unless within the 48 hour period the City shall cure said threats to the Commission Waterworks System. The foregoing notwithstanding, in the event such threats to the Commission Waterworks System constitute an

emergency, the notice required of the Commission shall be no more than is reasonable under the circumstances.

SECTION 6 UNIT OF MEASUREMENT

The unit of measurement for Potable Water delivered hereunder shall be gallons of water, U.S. Standard Liquid Measure, and all measuring devices shall be so calibrated unless the Commission and the City agree otherwise in writing. Should it become necessary or desirable to use other units of measurement, the basis of conversion shall be that 7.48 gallons is equivalent to one cubic foot.

SECTION 7 RATES AND TERMS OF PAYMENT

A. Rate. For the first year of this Contract, the rate to be charged shall be based on actual monthly usage by the City and shall be a minimum of \$1.78/1,000 gallons. This rate is based on a (1) capital charge based on current capacity which is presently \$0.60/1000 gallons; (2) operation and maintenance costs of the Commission based upon actual usage which is presently \$1.18/1000 gallons; and (3) costs charged by the City of Evanston for providing water to the Commission, under the contract between the Commission and the City of Evanston, that are not included in the operation and maintenance costs charged pursuant to item (2) above (collectively the "Rate Formula").

B. Adjustments to Rate. Rates will be examined by the Commission and shall be subject to annual adjustment by the Commission pursuant to the Rate Formula set forth above.

C. Reserved.

D. Reserved.

E. Bills and Due Date. The Commission shall bill the City monthly based upon actual monthly usage as delivered by the Commission pursuant to this Contract.

F. Disputed Payments. If the City desires to dispute any payment, or part thereof, due or claimed to be due under this Contract, the City shall nevertheless pay the full amount of any such payment when claimed by the Commission to be due and shall provide written

notification to the Commission that charges are disputed, the grounds for dispute, and the amount in dispute, not later than the due date of such payment. No adjustment or relief on account of any disputed charges shall be made unless disputed charges are the subject of such notice within the time herein specified, or within a reasonable period from the time the City knew or should have known of the facts giving rise to the dispute. It is expressly understood and agreed that no dispute over payments due or claimed to be due under this Contract shall be referred to arbitration for review or settlement. Upon receipt of a notification of dispute, representatives of the Commission shall meet with representatives of the City to resolve such dispute. In the event the dispute is resolved in favor of the City, a credit will be made on the next bill of the City.

G. Overdue Payments. If the City shall fail to make any payment required under this Contract on or before its due date, and after notice and an opportunity to cure as set forth herein has been exhausted, the Commission shall have the right to exercise any or all of the following three remedies:

i. Interest. The Commission, at its option and in its discretion, may collect from the City, and the City shall pay to the Commission, interest on the amount of such payment, at the maximum legal rate payable, not to exceed the higher of:

- a. the highest coupon rate of interest payable on all series of Commission Revenue Bonds any of which are then outstanding, plus 2%; or
- b. 110% of the prime rate of interest from time to time established by the largest commercial bank, measured in terms of total assets, located and doing banking business in the State of Illinois. Such interest shall accrue and shall be compounded on a monthly basis from the date such payment becomes due until paid in full with interest as herein specified.

ii. Reduction or Discontinuance of Delivery. If such payment is not made by the City within 30 days after the date such payment becomes due, then the Commission, at its

option and in its discretion, and whether or not such payment is disputed, may reduce or discontinue delivery of Potable Water to the City Waterworks System until the amount due to the Commission is paid in full with interest as herein specified. The Commission shall give notice to the City not less than 10 business days prior to the event of its intention to reduce or discontinue delivery of Potable Water in accordance with this Subsection and shall provide the City an opportunity for a hearing prior to any reduction or discontinuance. If the Commission reduces or discontinues the delivery of water under such circumstances, the City shall continue to be liable to make all payments hereunder for any water used.

iii. Security Deposit.

- a. Purpose. If the City is at any time in default on any payment due under this Contract and the default is not cured within 60 days after the due date of the defaulted payment, then the Commission, at its option and in its discretion, may require City, as a further obligation under this Contract, to deposit in a separate interest bearing account in the Commission's name, with authorized signatories as designated by the Commission's Executive Director, a sum of money in a reasonable amount determined by the Commission, as security for the payment of the City's obligations hereunder. The City's compliance with the Commission's demand for such a security deposit shall be a condition precedent to the curing of such City's default and the restoration of the Potable Water service to the City Waterworks System, if such Potable Water service has been reduced or discontinued by reason of such default.
- b. Use; Restoration. The security deposit or any part thereof may be applied, at the Commission's option and in its discretion, to any subsequent default by the City in any payments due under this Contract.

If so applied, the City shall provide funds immediately to restore the security deposit to the amount required by the Commission.

- c. Return. At the earliest of the end of the term of this Contract, or a term of two years after the curing of the most recent default by the City, or such earlier time that the Commission at its option and in its discretion may determine, any security deposit with all accrued interest shall be returned to the City if the City has performed all its obligations under this Contract.

H. Beginning of Obligation to Pay. Notwithstanding any other provision of this Contract, the City's obligation to make any and all payments under this Contract shall begin with the issuance by the Commission of the first bill issued after the first delivery of water to the City Waterworks System or any portion thereof. This obligation includes, but is not limited to, any water used to test or prepare the City Waterworks System.

I. Rate Agreed to be Reasonable. The City agrees that it has had an opportunity to conduct its own studies and evaluation of the rates to be charged under this Contract. The City recognizes and acknowledges that as a Customer it has not incurred the same risks nor undertaken the same financial obligations with regard to the Commission Waterworks System as the Member Municipalities. The City further unconditionally agrees that the rates in this Contract are reasonable and non-discriminatory and hereby expressly waives any and all claims challenging the rates in any way.

J. Commission Charges and Rates Covenant. The Commission hereby covenants to establish such charges and rates for water supplied to the City as will be sufficient at all times (1) to pay the costs of operation and maintenance of the Commission Waterworks System; (2) to provide an adequate depreciation fund for the Commission Waterworks System as determined by the Commission on the basis of its statutory duties and its obligations under the Bonds and ordinance or ordinances authorizing the issuance of the Bonds; (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 the Bonds; and (5) to carry out its corporate purposes and powers.

For purposes of this paragraph J, 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 issuances of the Bonds and for maintenance of a reserve fund.

K. City Charges and Rates Covenant. City hereby covenants to establish such charges and rates for water supplied by the City to consumers as will be sufficient at all times (1) to pay the costs of operation and maintenance of the City Waterworks System, (2) to provide an adequate depreciation fund therefor, (3) to pay the principal of and interest on all revenue bonds of the City payable from the revenues of the City Waterworks System, (4) to pay the charges and rates established by the Commission for the sale of water by the Commission to the City. The City agrees to approve initial rates sufficient to satisfy this rate covenant not later than 30 days after execution of this Contract and shall file its rate ordinances with the Commission upon adoption.

L. Character of Payment Obligations as Water Revenue Obligations. This Contract shall not be construed to constitute an indebtedness of the City within the meaning of any statutory or constitutional limitation. It is expressly understood and agreed that all payments to be made hereunder by the City may be required to be made only from revenues to be derived from the operation of its City Waterworks System, and this Contract shall be a continuing, valid and binding obligation of the City payable from such revenues throughout the term hereof. Without in any manner limiting the foregoing provisions of this Paragraph L, it is also expressly understood and agreed that the aforesaid revenues from the operation of the said City Waterworks System shall remain available for payments due or claimed to be due under this

Contract without regard to any designation of such revenues by the City from time to time as operating revenue, retained earnings, reserves, surplus or otherwise. Nothing in this Paragraph L or this Contract shall, however, prohibit any City from using any other legally available funds for payments due hereunder.

M. Character of Payment Obligations as Operating Expenses. Inasmuch as obtaining water is an essential item of expense of a waterworks system, City hereby represents and covenants that all payments required to be made by it pursuant to the provisions of this Contract shall constitute operating expenses of its City Waterworks System and that such payments will constitute operation expenses as to any and all revenue bonds of that City which are supported in whole or in part by a pledge of the revenues of its City Waterworks System, with the effect that such City's obligation to make payment from its water revenues under this Contract has priority over its obligation to make payments of the principal of any interest on any such bonds which are or will be supported in whole or in part by a pledge of that City's Waterworks System revenues. Consistent with this paragraph M, City 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 City obligations to be paid from the revenues of its City Waterworks System shall expressly provide that the revenues of the City Waterworks 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 City Waterworks 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 City hereunder. Without in any manner limiting the foregoing provisions of this Paragraph M, it is also expressly understood and agreed that the obligation of the City 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 City in connection with the City Waterworks System.

SECTION 8 SPECIAL CONDITIONS AND COVENANTS

A. No Liability for Delay. The City acknowledges and agrees that the Commission shall not be liable to the City nor any of the City's customers for any damages occasioned by or in any way related to delay or failure in the delivery of Potable Water to the City Waterworks System, except if the Commission willfully delays or discontinues water service in breach of this Contract.

B. Title to Potable Water. Title to all Potable Water supplied hereunder shall remain in the Commission to the Point of Delivery and thereupon shall pass to the City.

C. Other Supply; Emergency Supply. The City must, during the term of this Contract, maintain a contract with another unit of local government or any other entity for purchase of Potable Water to meet its full water requirements, not including water supplied by the Commission. The City shall install meters, on any system providing additional water supply, which would allow the Commission to monitor the amount of water provided to the City on a daily basis.

D. Covenants to Be Set Out in Bond Ordinances. The City acknowledges and agrees future Bond Ordinances may grant to bondholders certain rights and duties of the Commission, and that such bondholder rights may be included in any subsequent Bond Ordinances.

E. Other Financial Obligations of City Waterworks System.

i. Payment Obligations. The City shall make all budgetary, emergency, and other provisions and appropriations necessary to provide for and authorize the prompt payment to the Commission of all amounts under this Contract.

ii. Future City Debt. In any revenue bond, indenture, or other evidence of indebtedness hereafter issued by the City, the obligation for payment established pursuant to this Contract shall be expressly provided and set forth in the ordinances or resolutions providing for the issuance of such bonds, indentures, or other evidence of indebtedness.

F. Maintenance of City's Existence. The City's corporate authorities agree that, during the term of this Contract, the City will maintain its existence as a municipal corporation, it will continue to be a municipal corporation in good standing in the State of Illinois, it will not voluntarily dissolve or otherwise dispose of all or substantially all of its assets, and, unless the City shall be the surviving entity, it will not consolidate with or merge into any other legal entity or permit any other legal entity to consolidate with or merge into it; provided, however, that the City may consolidate with or merge into another legal entity, or permit one or more legal entities to consolidate with or merge into it, or sell or otherwise transfer to another legal entity all or substantially all of its assets as an entirety and thereafter dissolve, if, but only if, the City first provides the Commission with (1) a transferee assumption agreement, in form and substance conforming with Exhibit D attached, in which the new entity agrees to accept all the rights, duties, and obligations of the City under this Contract; (2) evidence that the surviving, resulting, or transferee legal entity, as the case may be, is a legal entity organized and existing under the laws of one of the states of the United States of America or the District of Columbia, is qualified to do business in the State of Illinois, and has a consolidated net worth immediately subsequent to such acquisition, consolidation, or merger at least equal to that of the City immediately prior to such acquisition, consolidation, or merger; (3) evidence that such consolidation, merger, sale, or transfer will not affect the tax exempt status of the interest on any Bonds of the Commission; and (4) certificates from the chief financial officer and the general counsel of the City that in the opinion of each such officer none of the covenants, agreements, or obligations contained in this Contract will be violated as a result of such consolidation, merger, sale, or transfer.

G. City Jurisdiction. The City shall not serve any customers outside of its Municipal boundaries, except as provided in Subsection 3G of this Contract and as listed in Exhibit C or with the express prior written agreement of the Commission.

H. Maintenance and Operation of City Waterworks System. The City shall own and maintain the City Waterworks System, and all improvements and extensions of said System, in

good repair and working order, shall operate said System efficiently, shall take all steps reasonably necessary so that said System may at all times be operated properly and advantageously, and shall punctually perform all duties with respect to said System as may be required by this Contract, and by the Constitution and laws of the United States of America and the State of Illinois and all other applicable laws. In addition, City shall carry insurance or other risk management protection on its City Waterworks System of the kinds and in the amounts which are customarily carried by parties operating similar facilities.

I. City Regulations Equivalent to Member Municipality Regulations. The City shall enact regulatory measures regarding the supply and use of Potable Water within the City, including, without limitation, lawn sprinkling, that are at least as restrictive as the strictest among those adopted by the Commission or the Member Municipalities.

J. Accounting and Audit. The City shall, within six months after the close of each of its fiscal years occurring during the term of this Contract, provide to the Commission complete annual audited financial statements of the City, which may be on a consolidated basis, duly certified by the City's independent certified public accountants. In addition, no later than October 31 of each calendar year, the City shall provide the Commission with a full accounting of water use and source of supply for the prior 12-month period.

K. Maintain Ownership of City Waterworks System. Subject to the proper exercise by a governmental authority of its powers of eminent domain including its power to acquire property in lieu of obtaining judgment in an eminent domain action, the City shall continue to own and possess the City Waterworks System and, within the exercise of reasonable business judgment and in a manner so as not to cause a default hereunder, shall dispose of property which is part of said System only to the extent that such property is no longer useful or profitable in the operations of said System and with approval of the Commission, which approval shall not be unreasonably withheld.

L. No Sale of City Waterworks System. The City shall not sell or otherwise convey the City Waterworks System or any portion thereof, or enter into an agreement for the sale of the City Waterworks System or any portion thereof, unless such sale or conveyance is to the Commission, or an entity approved by the Commission, in its sole discretion.

M. Release and Indemnification. The City hereby releases the Commission and the Member Municipalities from, agrees that the Commission and Member Municipalities shall not be liable for, and agrees to indemnify and hold the Commission harmless from: (1) any liabilities for any loss or damage to property or any injury to, or death of, any third party that may be occasioned by or related to any cause whatsoever pertaining to the provision of water under this Contract, except if the Commission willfully acts in breach of this Contract, or to construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the City Waterworks System or to the City System Connection Facilities or (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of the City to comply with its covenants or obligations contained in this Contract, including, in each such case, any attorneys' fees (all of the matters in phrases (1) and (2) being referred to individually as a "Claim" and collectively as the "Claims"). The City agrees to indemnify and hold the Commission, the Commissioners and Member Municipalities individually harmless to the fullest extent permitted by law from any losses, costs, charges, expenses (including attorneys' fees), judgments, and liabilities incurred by the Commission, the Commissioners, or Member Municipalities in connection with any Claim or action, suit, or proceeding instituted or threatened by any third party in connection with any Claim. If any Claim is asserted, the Commission, the Commissioners, or Member Municipalities shall give prompt notice to the City, and the City, if requested by the Commission, the Commissioners, or Member Municipalities, shall assume the defense thereof, it being understood, however, that the City shall not settle or consent to the settlement of any such Claim without the written consent of the Commission, the Commissioners, or Member Municipalities and that the Commission shall be entitled to choose

the counsel for any such defense. This paragraph shall in no way be construed to be nor shall it be a waiver of any immunity that the Commission, the Commissioners, or Member Municipalities and/or City may assert to any Claim.

N. Assignment of Litigation. The City shall promptly notify the Commission of any litigation or administrative or other proceeding concerning this Contract or which may in any way limit any Party's ability to perform any of the obligations of this Contract. Upon request of the Commission, the City shall promptly assign to the Commission the right to prosecute, defend or intervene in any litigation or administrative or other proceeding, to which the City is a party or in which the City is involved, that involves or arises out of the limitation of the Party's obligation as set forth in this Contract. Upon assignment, the Commission shall be responsible for all costs and expenses of the litigation or administrative or other proceeding.

O. Rate of Withdrawal. The City will take Potable Water at the most uniform and continuous rate of withdrawal practicable.

P. Status as Customer. The City recognizes that it is a customer and not a member of the Commission. The City understands and agrees that it has no claim or right to become a member, and no claim that the City should be granted Member Municipality status due to the terms of this Contract and no claim to any assets of the Commission or the Member Municipalities. Notwithstanding any other provision of this Contract, in the event that the State statutory threshold for becoming a member of the Commission is amended to be less restrictive than the current requirements, as of the Effective Date, found in 65 ILCS 5/11-135-1 et seq. then the Commission and the City, prior to the effective date of those less restrictive State amendments, will confer in good faith on amendments to this Contract to avoid any right in the City to be a member of the Commission and any obligation of the Commission to confer membership status on the City, and, in the absence of agreement on amendments, after reasonable negotiations, prior to the effective date of the State amendments, then the Commission shall have the right to terminate this Contract.

SECTION 9 SCHEDULE FOR COMPLETION OF VARIOUS FACILITIES

A. Plans and Specifications for City System Connection Facilities and Commission Connection Facilities. The City shall prepare, and submit to the Commission for its review and approval, complete detailed plans, specifications, and construction contract documents (collectively the “Construction Documents”) for the City to construct the City System Connection Facilities and the Commission Connection Facilities. The Commission shall provide its comments and revisions on the Construction Documents to the City within 45 days after receipt of those documents. The City shall make all required changes to the Construction Documents necessary to ensure compliance with this Contract.

B. IEPA and Other Approvals For City System Connection Facilities and Commission Connection Facilities. The City shall, within 40 days after receipt of Commission’s comments and revisions pursuant to Subsection 9A above, submit the final Construction Documents for approval and permitting to the Illinois Environmental Protection Agency (the “IEPA”) and each other federal, state, or local governmental body having jurisdiction over the City System Connection Facilities and Commission Connection Facilities, and shall diligently pursue each such approval and permit until it is secured.

C. Commencement of Construction of City System Connection Facilities and Commission Connection Facilities. The City shall cause construction of the City System Connection Facilities and Commission Connection Facilities to be commenced within [90]days after the City receives the last approval from any governmental body required as a condition precedent to construction of the City System Connection Facilities, Metering Stations and Commission Connection Facilities. The City shall cause construction to be pursued diligently and continuously until it is completed.

D. Transfer of Property Rights/Payment Covenant/Oversizing.

i. Conveyance of City Easement. The City shall grant to the Commission all necessary easements for the Commission metering stations and other facilities to be constructed on City owned or controlled property pursuant to this Contract.

ii. Acquisition of Property. The City shall commence all actions necessary to acquire all property rights not already owned by it necessary to fulfill the requirements of this Contract.

iii. Payment Covenant. It is expressly understood and agreed that the City shall be responsible for the payment of the design and construction of the City System Connection Facilities and Commission Connection Facilities. It is further agreed that upon completion and approval of the Commission Connection Facilities, by the Commission, said improvements shall be conveyed to the Commission, at no cost to the Commission.

iv. Oversizing. In the event that the Commission requires that the City System Connection Facilities, the Commission Connection Facilities, or any other element of the City's work on an element of the Commission Waterworks System be oversized, said cost of oversizing will be reimbursed to the City through a reduction in the cost of water provided pursuant to this Contract. The reimbursement will be applied to the City's bill for water service on a monthly basis over a one year period or such longer period as necessary to fully reimburse the cost of oversizing to the City.

SECTION 10 ASSIGNABILITY

A. Assignment by City. The City shall not assign or transfer this Contract or any rights or interests herein without the advance written consent of the Commission.

B. Assignment by the Commission. The right to receive all payments that are required to be made by the City to the Commission in accordance with the provisions of this Contract may be assigned by the Commission to any Trustee as provided in any Bond Ordinance to secure the payment of the principal of and the 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 any Bond Ordinance. The City, upon notice of assignment to any such Trustee, shall make all payments directly to such Trustee. Further, the rights of the Commission to enforce the provisions of this Contract may be assigned to any such Trustee and, in such event, such Trustee shall 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 also may retain the right to enforce this Contract.

SECTION 11 FORCE MAJEURE

If by reason of *Force Majeure* either Party to this Contract 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* in writing to the other Party 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 settlement of strikes and lockouts shall be entirely within the discretion of the Party having the difficulty and 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.

SECTION 12 COMMISSION DEFAULTS, CITY TERMINATION

Failure by the Commission to deliver Potable Water to the City as required by this Contract for a period of seven days after written notice from the City to the Commission of such failure, or a failure of the Commission to perform any other obligation under this Contract for a period of 60 days after written notice from the City to the Commission of such failure, shall be a default of the Commission under this Contract, unless any such failure is excused or exercised pursuant to this Contract. If the Commission defaults under this Contract, then the City may, as

its sole and exclusive remedy, declare this Contract null and void after giving the required notice set forth above.

SECTION 13 CITY RIGHTS AND OBLIGATIONS

The City shall have: (1) no right to terminate, cancel, or rescind this Contract, except for the right of termination in the event the Commission is unable to provide water to the City for a period of thirty (30) days after the commencement of water service; (2) no right to withhold from the Commission or any Trustee who is an assignee of the Commission pursuant to this Contract payments due under this Contract; (3) no right to recover from the Commission or any such Commissioner amounts previously paid under this Contract unless paid in error or contrary to the provisions of this Contract or law; (4) no right of reduction or set-off against the amounts due or to become due under this Contract to the Commission; and (5) no lien on any amounts in any fund established by the Commission 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 City or the Commission or any other person. It is the intent hereof that the City shall be absolutely and unconditionally obligated to make all payments under this Contract except as otherwise expressly provided in this Contract. The Commission may issue its Bonds in specific reliance on the limitations set forth in this Section with respect to the rights of the City.

SECTION 14 TAX COVENANTS

At no time shall the City permit use of the City Waterworks System, as a result of (1) ownership, (2) actual or beneficial use pursuant to a lease or a management, service, incentive payment or output contract, or (3) any other similar arrangement, agreement or understanding, whether written or oral, so that such use would prevent the Commission from issuing Bonds as "governmental use" bonds within the meaning of Section 141 of the Internal Revenue Code of 1986. Furthermore, the City shall not take any action, or omit to take any action lawful and within its power to take, which action or omission would cause interest on any of the

Commission's Bonds to become subject to federal income taxes in addition to federal income taxes to which interest on such Bond is subject on the date of original issuance thereof. Additionally, the City shall use its best efforts to ensure that none of its debt obligations, including, without limitation, the City Bonds, ever become "private activity bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986.

SECTION 15 COOPERATION IN ISSUANCE OF OBLIGATIONS

The City and the Commission shall cooperate with each other in the issuance of their respective debt obligations. Each shall comply with all reasonable requests of the other and shall, upon reasonable request of the other:

- A. Make available general and financial information about itself; and
- B. Consent to publication and distribution of its financial information; and
- C. Certify that general and financial information about it is accurate, does not contain an 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; and
- D. Make available certified copies of official proceedings; and
- E. Provide reasonable certifications to be used in a transcript of closing documents; and
- F. Provide and pay for reasonably requested opinions of counsel of its choice as to the validity of its actions taken with respect to and the binding effect of this Contract, title to the applicable system, pending or threatened litigation which could materially affect its performance hereunder, and other reasonably related opinions. The first such opinion that is requested by each Party shall be at opposite Party's sole cost and expense. Subsequent opinions shall be at the sole cost and expense of the requesting Party.

The provisions of Subsection A of this Section shall be deemed satisfied by delivery of a complete set of the annual audited financial statements for the most recently completed fiscal year, duly certified by independent certified public accountants.

SECTION 16 REGULATORY BODIES

The Commission and the City 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, any governmental body or agency having lawful jurisdiction, and any authorized representative or agent of any of them; provided, however, that this clause shall not be construed as waiving the right of either Party to challenge the validity of such rule, regulation, or law on any basis, including the impairment of this Contract.

SECTION 17 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 or users of Potable Water to provide Potable Water to each other to meet each other's water needs, provided that these arrangements do not interfere, except in emergencies, with the delivery of Potable Water to the City Waterworks System.

SECTION 18 EFFECTIVE DATE: TERM

A. Effective Date. Except for the provisions of Section 9 of this Contract relating to the commencement of certain work following execution of this Contract, as to which provisions this Contract shall be effective immediately after authorization and execution by both Parties hereto.

B. Term. This Contract shall continue in force and effect for a period of that is coterminous with the term of the 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 and the Village of Wheeling, dated April 4, 1983 and any subsequent amendments thereto. Provided, however, that the term of this Contract shall not exceed 20 years in total from the Effective Date at which time this Contract and the Commission's obligations to provide water shall terminate, unless otherwise terminated earlier pursuant to the terms of this Contract. Notwithstanding any other provision contained in this Contract, any right of the City to receive water from the Commission shall automatically terminate upon the termination of the Agreement between the Commission and the Member Municipalities.

SECTION 19 TERMINATION BY COMMISSION

A. Notwithstanding any other provision of this Contract, upon the occurrence of any of the following events, the Commission, in its sole discretion, may terminate this Contract as provided in this Section 19 for the following reasons:

- i. If the City fails to make any payment required under this Contract on or before its due date and fails to cure that failure within five business days after demand therefor from the Commission; or
- ii. Termination of the Commission; or
- iii. Immediate threat of damage to the Commission Waterworks System or of danger to public health, unless the Commission, with the assistance of the City as appropriate, can reasonably and promptly mitigate the threat of damage or danger by engineering, operational, or other means short of termination of this Contract; or
- iv. The Commission's inability to receive water from the City of Evanston.

B. If, within the first ten (10) years following the Delivery Date, the Commission terminates the Contract for any reason other than the reasons enumerated in Section A above or through the expiration of this Contract, the Commission shall reimburse the City for its costs in developing and constructing the City System Connection Facilities in the amounts as follows:

<u>Termination Period</u>	<u>Reimbursement Rate</u>
Prior to that date which is one (1) year after	100%

the Delivery Date

After that date which is one (1) year after the Delivery Date but prior to that date which is two (2) years after the Delivery Date	90%
After that date which is two (2) years after the Delivery Date but prior to that date which is three (3) years after the Delivery Date	80%
After that date which is three (3) years after the Delivery Date but prior to that date which is four (4) years after the Delivery Date	70%
After that date which is four (4) years after the Delivery Date but prior to that date which is five (5) years after the Delivery Date	60%
After that date which is five (5) years after the Delivery Date but prior to that date which is six (6) years after the Delivery Date	50%
After that date which is six (6) years after the Delivery Date but prior to that date which is seven (7) years after the Delivery Date	40%
After that date which is seven (7) years after the Delivery Date but prior to that date which is eight (8) years after the Delivery Date	30%
After that date which is eight (8) years after the Delivery Date but prior to that date which is nine (9) years after the Delivery Date	20%
After that date which is nine (9) years after the Delivery Date but prior to that date which is ten (10) years after the Delivery Date	10%
After that date which is ten (10) years after the Delivery Date	0%

SECTION 20 GENERAL

A. Governing Law. This Contract and the rights of the Parties hereunder shall be interpreted and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

B. Notices. Unless expressly provided otherwise herein, all notices and other communications in connection with this Contract shall be in writing, and shall be deemed delivered to the addressee thereof when delivered in person at the address set forth below, or three business days after deposit thereof in any main or branch United States post office, overnight express delivery, or mailed by United States registered mail or certified mail, postage prepaid, properly addressed to the Parties, respectively, as follows:

For notices and communications to the Commission:

Northwest Water Commission
1525 N Wolf Road
Des Plaines, IL 60016-1181
Attention: Executive Director

For notices and communications to City:

City of Des Plaines
1420 Miner Street
Des Plaines, IL 60016
Attention: City Manager

By notice complying with the foregoing requirements of this Subsection, each Party shall have the right to change the address or addressee, or both, for all future notices and communications to such Party, but no notice of a change of address shall be effective until actually received.

C. Calendar Days and Time. Any reference herein to “day” or “days” shall mean calendar and not business days unless the word “business” is used. If the date for giving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday or federal holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday or federal holiday. Any reference herein to time of day shall refer to local time for Des Plaines, Illinois.

D. Entire Agreement. This Contract, including the exhibits hereto, contains the entire agreement between the Parties hereto with respect to the transactions contemplated by this Contract and matters related thereto, and does hereby supersede and render null and void and

of no further force or effect any and all prior agreements, drafts of agreements and understandings between the Parties.

E. Amendments. This Contract may not be modified or amended except by a written instrument executed by each of the Parties hereto. No such modification or amendment shall materially impair or adversely affect the ability or obligation of the City to make payments to the Commission to meet the Commission's obligations under the Bond Ordinances.

F. Further Action. Each of the Parties hereto agree from time to time to execute and deliver such further instruments, and to take such further action not inconsistent with the provisions of this Contract, as may reasonably be necessary in order to fully perform and carry out the terms and intent hereof.

G. Captions. The headings, titles or captions contained in this Contract have been inserted only as a matter of convenience and for reference, and such captions in no way define, limit, extend or describe the scope of this Contract or the intent of any provision hereof.

H. Exhibits. Exhibits A through D attached hereto are, by this reference, incorporated herein. In case of any conflict between an exhibit to the Contract and the text of this Contract, the text of this Contract shall control. The Parties recognize that Exhibit B is not in final form as of the date of execution of this Contract. When that Exhibit B is in final and approved by both Parties, it shall be deemed to be incorporated into this Contract.

I. Changes in Laws. Unless otherwise explicitly provided in this Contract, any reference to laws, ordinances, rules, or regulations shall include such laws, ordinances, rules, or regulations as they may be amended or modified from time to time hereafter.

J. Time is of the Essence. Time is of the essence in the performance of all terms and provisions of this Contract.

K. Pending Lawsuits. There are no agreements in effect and no lawsuits pending or, to the best of either Parties' knowledge, threatened, that would materially and adversely affect the ability of either Party to fulfill the terms of this Contract.

L. Responsible Party. The City shall notify and keep the Commission informed of a telephone number or numbers at which a responsible individual with knowledge of water operations for the City can be reached at all times to an emergency. Initially, the City designates the following telephone number and names: Telephone: (847) 391-5464; Names: Tim Oakley, Director of Public Works and Engineering and Tim Watkins, Assistant Director of Public Works and Engineering.

M. Commission Exemptions. The City recognizes that the Commission is a municipal corporation. Accordingly, the Parties agree that the Commission shall be exempt from the zoning and permitting authority of the City, but only for facilities and equipment directly related to the functions of the Commission. Further, for any project performed in furtherance of this Contract, the Commission shall not be charged any fees or costs.

N. Severability. In the event any part or portion of this Contract, or any provision, clause, wording or designation contained within this Contract, is held to be invalid by a court of competent jurisdiction, such part, portion, provision, clause, wording or designation shall be deemed to be excised from this Contract and the invalidity thereof shall not affect the remainder of this Contract.

O. Reimbursement of Professional Fees/Costs. The City agrees to reimburse the Commission for all legal, engineering and other professional fees incurred by the Commission related to the design, review and approval of all facilities necessary to provide the City with water pursuant to this Contract. The Parties shall confer regularly to estimate fees, to review fees that have been incurred and to consider what fees are estimated still to be incurred, and the Commission will take all reasonable and appropriate steps to avoid excessive fees.

IN WITNESS WHEREOF, the Parties hereto have caused their respective corporate names to be subscribed hereto and their respective corporate seals to be affixed hereto and attested by their duly authorized officers, all on the date first shown above.

NORTHWEST WATER COMMISSION, a water commission and unit of local government duly constituted under the laws of the State of Illinois

By: _____

Name: _____

Title: _____

ATTEST:

By: _____
Clerk

CITY OF DES PLAINES, an Illinois municipal corporation

By: _____
Matthew Bogusz, Mayor

ATTEST:

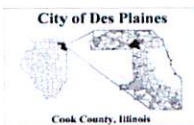
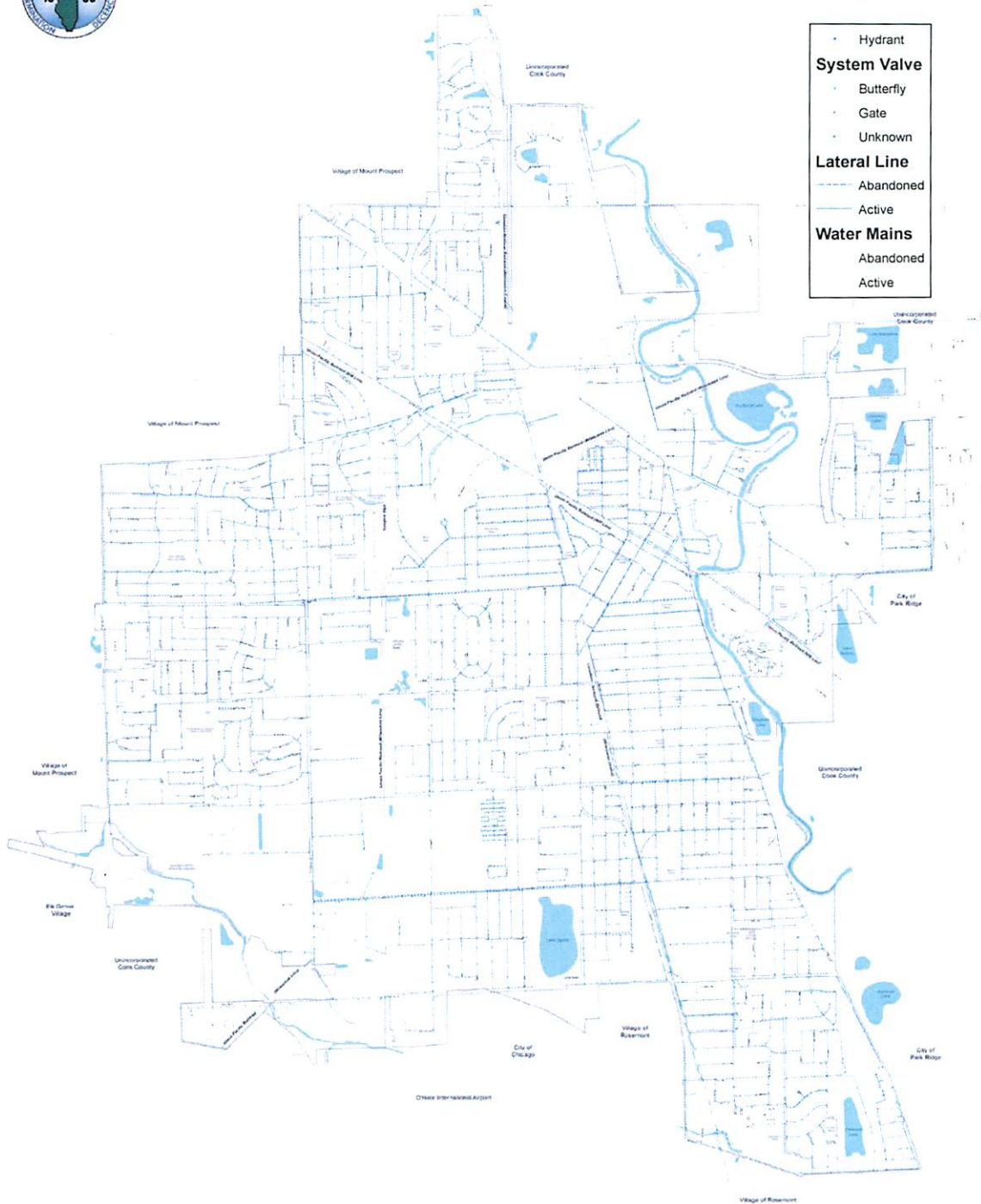
By: _____
Gloria Ludwig, City Clerk

LIST OF EXHIBITS

- Exhibit A: City Waterworks System
- Exhibit B: Preliminary Plan for the Commission Connection Facilities, City System Connection Facilities, and the Point of Delivery
- Exhibit C: City's Pre-Existing Extraterritorial Customers
- Exhibit D: Form of Transferee Assumption Agreement

Water Utility Map

City of Des Plaines



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1:14,000

0 2,400 4,800 9,600 Feet

Exhibit B

Preliminary Plan for the Commission Connection Facilities, City System Connection Facilities, and the Point of Delivery

[SUBJECT TO REVISION WITH APPROVAL OF BOTH PARTIES]

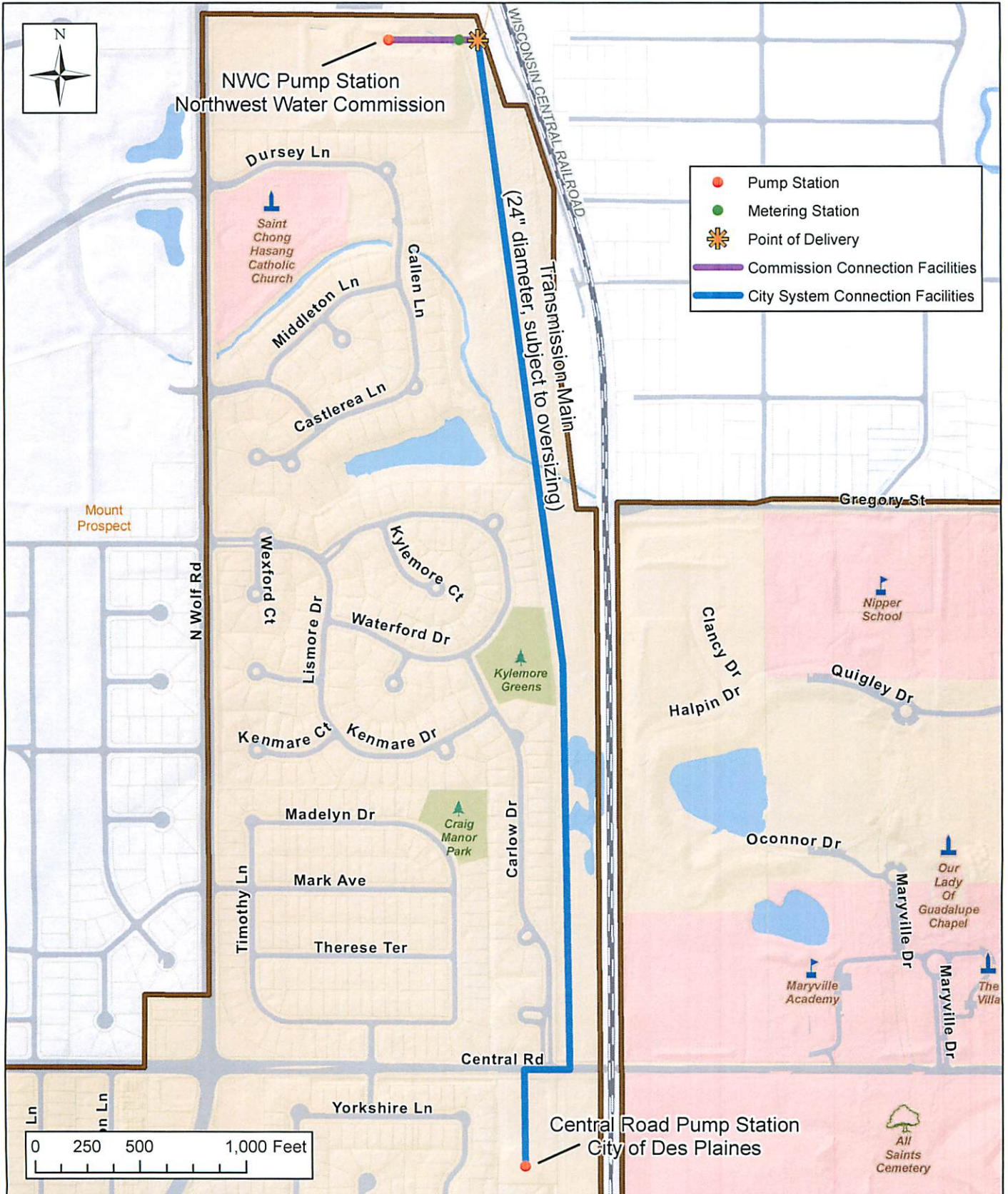


EXHIBIT C

CITY'S PRE-EXISTING EXTRATERRITORIAL CUSTOMERS

101 Gregory Street, Des Plaines
103 Gregory Street, Des Plaines
123 Gregory Street, Des Plaines
202 N Graylynn Drive, Mount Prospect
2434 Church Street, Des Plaines
12521 W Touhy Avenue, Des Plaines

EXHIBIT D

FORM OF TRANSFeree ASSUMPTION AGREEMENT

THIS AGREEMENT is dated as of this ____ day of _____, 20____, and is made and entered into by, between and among the **NORTHWEST WATER COMMISSION**, an Illinois water commission and public corporation organized and existing under the Illinois Constitution of 1970 and Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135/1 *et seq.* (2010) {**"Commission"**}, and the **City of Des Plaines**, a municipal corporation organized and existing under the Illinois Constitution of 1970 and the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.* (2010) (**"City"**) and **[NAME AND DESCRIPTION OF ASSUMING ENTITY]**.

1. BACKGROUND

A. The Commission and the City have entered into a certain Water Purchase and Sale Contract dated _____, 20__ (the "Contract").

B. Subsection 8F of the Contract provides that the City may consolidate with or merge into any other legal entity, or permit any other legal entity to consolidate with or merge into it, or sell or otherwise transfer to another legal entity all or substantially all of its assets as an entirety and thereafter dissolve, only upon the performance of certain obligations and compliance with certain requirements, including, without limitation, providing to the Commission a transferee assumption agreement in which the new entity agrees to accept all the rights, duties, and obligation of the City under the Contract.

C. The City has proposed to **[describe proposal]** and has provided this Transferee Assumption to the Commission pursuant to the Contract.

D. The Commission has reviewed the materials provided by the City **[and the assuming entity]** pursuant to the Contract and has concluded that the City **[and the assuming entity]** have met the obligations and requirements of the Contract in connection with the proposed **[describe proposal]**.

2. ASSUMPTION OF OBLIGATIONS **[NAME OF ASSUMING ENTITY]**, on its behalf and on behalf of its successors, assigns, heirs, executors and administrators, hereby agree, at their sole cost and expense, to comply with all of the terms, requirements and obligations of the Contract, including all amendments and exhibits thereto.

3. ACKNOWLEDGEMENT AND RELEASE OF CITY The Commission hereby acknowledges its agreement to the assumption of the obligation to comply with the terms, requirements and obligations set forth in the Contract, including all amendments, and exhibits thereto.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the date first above written.

ATTEST:

NORTHWEST WATER COMMISSION

By: _____

ATTEST:

CITY OF DES PLAINES

By: _____

ATTEST:

[NAME OF ASSUMING ENTITY]

By: _____

ACKNOWLEDGEMENTS

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

This instrument was acknowledged before me on _____, 20__, by _____, the Chairman of the **NORTHWEST WATER COMMISSION**, an Illinois water commission and body politic and corporate, and by _____, the Clerk of said Commission.

Signature of Notary

SEAL

My Commission expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

This instrument was acknowledged before me on _____, 20__, by _____, Mayor of the City of Des Plaines], an Illinois municipal corporation, and by _____, Secretary of said municipal corporation.

Signature of Notary

SEAL

My Commission expires: _____

[Acknowledgment for Assuming Entity]