

AGENDA
SPECIAL FINANCE COMMITTEE
Village of Hoffman Estates
March 2, 2020

7:00 p.m. – Board Room

Members:	Gary Pilafas, Chairperson	Karen Mills, Trustee
	Anna Newell, Vice Chairperson	Gary Stanton, Trustee
	Michael Gaeta, Trustee	Karen Arnet, Trustee
		William McLeod, Mayor

I. Roll Call

NEW BUSINESS

1. Request Board approval of an Ordinance approving a Second Extended, Amended and Restated Water Supply Agreement between the Village of Hoffman Estates and the Northwest Suburban Joint Action Water Agency (relocation of Agency's main transmission main along Interstate 90).

II. President's Report

III. Adjournment

Further details and information can be found in the agenda packet attached hereto and incorporated herein and can also be viewed online at www.hoffmanestates.org and/or in person in the Village Clerk's office.

The Village of Hoffman Estates complies with the Americans with Disabilities Act (ADA). For accessibility assistance, call the ADA Coordinator at 847/882-9100.

COMMITTEE AGENDA ITEM

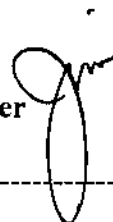
VILLAGE OF HOFFMAN ESTATES

SUBJECT: Request approval of an ordinance approving a Second Extended, Amended and Restated Water Supply Agreement between the Northwest Suburban Municipal Joint Action Water Agency (JAWA) and the Village of Hoffman Estates

MEETING DATE: Special Finance Committee

COMMITTEE: March 2, 2020

FROM: James H. Norris, Village Manager



PURPOSE: Request approval of an ordinance approving a Second Extended, Amended and Restated Water Supply Agreement between the Village of Hoffman Estates and the Northwest Suburban Joint Action Water Agency to allow the agency to issue bonds to pay the outstanding debt to the Illinois State Toll Highway Authority for relocation of the agency's main transmission main along Interstate 90.

BACKGROUND: For many years, the Village of Hoffman Estates has been a member of the Northwest Suburban Joint Action Water Agency (Agency) with the communities of Elk Grove, Hanover Park, Mount Prospect, Rolling Meadows, Schaumburg and Streamwood.

The original water supply agreements between the individual member communities and the Agency were scheduled to expire in 2022. In 2017, the Agency's Board of Directors recommended to the member communities that each member approve an Extended, Amended and Restated Water Supply Agreement. The key changes in the revised agreement were to extend the term to 2058 and modify the cost-sharing requirements to have certain costs split equally among the 7 members and other costs split based on water consumption. That amended Water Supply Agreement was presented to the Public Works & Utilities Committee on January 22, 2018 and was approved by the Village Board on February 5, 2018.

DISCUSSION: There is now a need to approve another amended and restated Water Supply Agreement. This second amended agreement was conceived at the recommendation of JAWA's financial and legal advisors.

In 2011, the Agency was notified by the Illinois State Toll Highway Authority (ISTHA) that it was moving forward with the expansion of the I-90 corridor from O'Hare to Rockford. The Agency had 16 miles of pipeline that parallels the ISTHA project. The Agency has negotiated an agreement with the ISTHA that limits the Agency's total exposure for the moving and replacement of sections of the pipeline to \$73.115 million. The ISTHA will pay the contracts for the Agency upfront and requires that the Agency pay a minimum of \$1 million per year to the ISTHA and must have the full amount paid by December 31, 2023. The interim financing from the ISTHA is interest free until 2021. In 2022, the Agency must begin paying interest in the amount of 8%.

The Agency is taking advantage of current economic conditions to refinance all of the Agency's outstanding debt through Revenue Bonds at rates that will yield substantial savings in debt service (estimated to be in excess of \$2 million annually). In addition, the ISTHA agreed that it would reduce the principal owed by the Agency by \$1.5 million, if the Agency paid off its debt by May 1, 2020.

The key changes in the second revised agreement are to restore the ability to use a Trustee for the new bonds that are to be issued. In this situation, a bond trustee is a financial institution that is given fiduciary powers by the Agency to enforce the terms of a bond indenture (contract). The Trustee ensures that principal and interest payments are made as scheduled and represents the interests of the bondholders, if the Agency (or an individual member) were to default on its obligations.

The attached memo from the Agency's legal counsel summarizes the terms of the agreement and highlights the steps in the process leading to the new agreement. This agreement has also been reviewed by Corporation Counsel and has received approval for the consideration of the Village Board.

RECOMMENDATION: Request approval of an ordinance approving a Second Extended, Amended and Restated Water Supply Agreement between the Village of Hoffman Estates and the Northwest Suburban Joint Action Water Agency to allow the agency to issue bonds to pay the outstanding debt to the Illinois State Toll Highway Authority for relocation of the agency's main transmission main along Interstate 90.

MEMORANDUM

To: Executive Committee

CC: Village and City Legal Counsel

From: Derke J. Price

Subject: Second Extended, Amended and Restated Water Supply Agreement

Date: February 25, 2020

Following up on my memo of February 14, I have forwarded clean and final drafts of the Second Extended, Amended and Restated Water Supply Agreement. The amendments, including recommendations from Village Counsel and the Bond Counsel, are detailed below.

Again, the need for these changes is the result of a change in circumstances concerning Agency debt financing from when the Extended, Amended and Restated Water Supply Agreement was created. Our Financial Advisor and Bond Counsel all recommend these changes as essential if the Agency is to maximize all possible savings and cost reductions offered by the Toll Authority and the historically low rates for the debt to be issued. Because of the May 1 deadline imposed by the Toll Authority, it is essential we move expeditiously to have the amendments in place at the time of the offering (missing the May deadline will cost each Village/City \$214,000 in principal savings) plus marginal increases in the debt service rate.

BACKGROUND

At the time of approval of the Extended, Amended and Restated Water Supply Agreement, the Agency was in the process of negotiating relief on the terms of the debt owed to the Illinois State Toll Highway Authority and eagerly contemplating the retirement of the original debt structure in place since the inception of the Agency. More specifically, the Agency was anticipating that the Toll Authority was going to agree to more favorable terms for the debt it holds and that any future bond debt would be modest and no longer require a Trustee (and no longer require the myriad of special funds and accounts for security). Accordingly, the Extended, Amended and Restated Water Supply Agreement was written in anticipation that there would be a reduction in

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administration costs and in the amount of money that was required to be held in reserve by the Agency.

Unfortunately, the anticipated favorable revision in debt terms with the Toll Authority never came to fruition. However, historically low rates in the market combined with the Agency's history and solid rating offer the Agency the opportunity to refinance all of the Agency's debt through Revenue Bonds at rates that will yield substantial savings in debt service (estimated to be in excess of \$2mm annually). Furthermore, the Toll Authority agreed that if the Agency accomplished the refinancing and paid off that debt by May 1, the Toll Authority would reduce the principal owed by the Agency by \$1,500,000.

In preparation for achieving these savings, Bond Counsel (Katten), the Financial Advisor (Speer) and I reviewed the Extended, Amended and Restated Water Supply Agreement. Because of the size of the issue and the fact that these are Revenue Bonds, we all concur that a Trustee will inevitably be a part of the structure. Accordingly, we agreed that we now need to restore certain provisions to the WSA to recognize the reality of the Trustee and to position the Agency for maximum savings on debt service. We restored provisions only where we thought doing so would result in increasing the confidence of the bondholders (or avoid questions of the bondholders) and therefore result in the best possible rate.

Although certain provisions need to be restored, we still found a way to honor the Members' directive to reduce administrative costs and number and amount of reserved funds. This is accomplished through coordinated changes to the Water Supply Agreement and to the Revenue Bond and Note General Resolution. Furthermore, we were able to include future flexibility to do away with certain security requirements where not demanded by the market.

CHANGES AND EXPLANATION

Title: Changed to "Second Extended, Amended and Restated Agreement."

Section 102: Added the definition of "Existing Bonds" to recognize the 2018 series bonds (that will also be retired as of May 1, but that Bond Counsel recommended be acknowledged here to avoid questions). Consequently, the document also changed every reference to the "2013 Series" to "Existing Bonds" (see, e.g., Definitions and Section 605).

Sections 601 (4) and 605(a): Restored the use of the "Fixed Cost" concept in 601 (carried over from the original debt structure) because the new Revenue Bonds will

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likewise require use of the “Debt Service Fund,” “Bond Anticipation Note Debt Service Fund” and “General Fund”. *However, because of the change we made to 605, this will not disturb the revisions made in the prior draft to apportion some costs of the Agency equally among the Members while the remainder are apportioned in accordance with the relative percentage volume of water purchased.*

Section 612. Change made to avoid raising any questions with respect to Member obligations generally under the Agreement (as the bondholders/Trustee will – in the event of default by a Member and then a subsequent default by the Agency -- have the right to enforce the agreement against each Member as necessary to obtain payments of the debt obligations).

Section 613. This change is to allow the Agency to eliminate the Member Deposits whenever the Bond Resolution does not require it (which can change over time). Because we were amending the WSA, we are looking to take advantage of the opportunity to remove this obligation when possible.

Section 702: This is to be consistent with the changes made in 601 and 605 concerning Fixed Costs.

Section 801. As with 612, restoration here is made because we will have a Trustee and this will avoid any questions by the bondholders about their rights concerning Member obligations generally under the Agreement.

Section 1406. At the suggestion of one of the Village Attorneys, a provision further clarifying the protection given each Member in the event of Agency default.

p.46: Formulas updated for Fixed Costs (to match changes above in 601/605) while preserving the Equal Share Costs from before.

Again, we are recommending this as necessary to give the bondholders the greatest security and confidence possible while honoring the Members’ goals. Every question or uncertainty represents an identified risk that will cost the Agency money in the rate charged.

Thank you again for all your assistance and let me know as soon as possible if you have any questions.

VILLAGE OF HOFFMAN ESTATES

**AN ORDINANCE APPROVING THE SECOND EXTENDED, AMENDED
AND RESTATED WATER SUPPLY AGREEMENT
WITH THE NORTHWEST SUBURBAN MUNICIPAL
JOINT ACTION WATER AGENCY**

WHEREAS, the Village of Hoffman Estates, Cook and Kane Counties, Illinois (the "Village") is a duly organized and existing municipal corporation created under the provisions of the laws of the State of Illinois and under the provisions of the Illinois Municipal Code, as from time to time supplemented and amended, with home rule powers; and

WHEREAS, in 1981, the Village President and Board of Trustees of the Village of Hoffman Estates (the "Corporate Authorities") determined that the Village was in need of additional supplies of water for its municipal water system users and that it was necessary that the Village obtain a source of Lake Michigan water to meet the needs of its municipal water system users; and

WHEREAS, for that purpose, and in accordance with Article VII, Section 10 of the Illinois Constitution of 1970 providing that units of local government may contract or otherwise associate among themselves to obtain or share services and to exercise, combine or transfer any power or function in any manner not prohibited by law or by ordinance, and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, further authorizing intergovernmental cooperation, the Corporate Authorities, together with six (6) other northwest suburban municipalities established the Municipal Joint Action Water Agency ("JAWA" or the "Agency") in order to secure adequate supplies of water on an economical and efficient basis for the respective member municipalities (Ord. 1260-1981); and

WHEREAS, at its inception, JAWA entered into individual Water Supply Agreements with each of the member municipalities setting forth the terms under which JAWA supplies, and the member municipalities pay for, the Lake Michigan water; and

WHEREAS, JAWA has since constructed a joint waterworks and supply system to obtain water from Lake Michigan and deliver the same to its member municipalities; and

WHEREAS, JAWA has negotiated, from time to time, a source agreement with the City of Chicago for the delivery of Lake Michigan water to JAWA's System; and

WHEREAS, the current Water Supply Agreements between the individual member municipalities and JAWA was approved on February 5, 2018; and

WHEREAS, the Village continues to be in need, and will be in need, for an adequate water supply of Lake Michigan water for decades to come for its municipal water system users; and

WHEREAS, JAWA has need to issue revenue bonds to reimburse the Illinois State Toll Highway Authority (ISTHA) for the cost of moving the Agency's pipeline during the I-90 widening project; and

WHEREAS, the previous member agreement did not contemplate the use of a Trustee for future bond issues and the proposed bond issue requires a Trustee, thus requiring amendments to the 2018 approved Agreement; and

WHEREAS, it is necessary and in the best interests of the Village that it enter into the Second Extended, Amended and Restated Water Supply Agreement, a copy of which is attached to and made a part of this Ordinance as Exhibit "A" (the "Agreement") and the Agency provided by that Agreement.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Hoffman Estates, Cook and Kane Counties, as follows:

Section 1: The Corporate Authorities hereby find that the facts and statements, and the legislative findings, contained in the recitals of this Ordinance are true and correct and the same are hereby incorporated herein and made a part hereof, as though fully set forth herein.

Section 2: Designation of Members of Board of Directors and Executive Committee. The Village designates as its member on the Board of Directors of the Agency its President from time to time, and as its member on the Executive Committee of the Agency its Village Manager from time to time. The Village may at any time, upon adoption of an ordinance or a resolution of the President and Board of Trustees of the Village, and consistent with the terms of the Agency Agreement and the Bylaws adopted thereunder, designate some other elected official to serve as the Village's member on the Board of Directors of the Agency and/or some other appointed official as the Village's member on the Executive Committee of the Agency.

Section 3: Costs. The Village shall, from time to time, appropriate funds and use its credit, revenues and other resources to pay its proportionate share of the costs of the Agency as provided in the Agreement and as provided by law.

Section 4: Officers' Power. The Clerk of the Village is authorized and directed to send a certified copy of this Ordinance to each other municipality listed on the signature page of the Agreement. The President, Clerk and Manager of the Village are authorized and directed to take whatever additional steps are necessary for the Village to enter into the Agreement and to participate in the Agency.

Section 5: The Village shall enter into the Agreement. The President of the Village is authorized and directed to enter into the Agreement in substantially the form attached hereto as Exhibit "A" and made a part of this Ordinance.

Section 6: All ordinances, resolutions, motions or orders in conflict with this Ordinance are hereby repealed to the extent of such conflict.

Section 7 If any section, paragraph, clause or provision of this Ordinance shall be held invalid or its application to any person or under any circumstances is adjudged invalid, the invalidity thereof shall not affect any other provision of this Ordinance.

Section 8: The Village Clerk is hereby authorized to publish this ordinance in pamphlet form.

Section 9: This Ordinance shall be in full force and effect immediately from and after its passage and approval, and publication according to law.

PASSED THIS _____ day of _____, 2020

VOTE	AYE	NAY	ABSENT	ABSTAIN
Trustee Karen V. Mills	_____	_____	_____	_____
Trustee Anna Newell	_____	_____	_____	_____
Trustee Gary J. Pilafas	_____	_____	_____	_____
Trustee Gary G. Stanton	_____	_____	_____	_____
Trustee Michael Gaeta	_____	_____	_____	_____
Trustee Karen Arnet	_____	_____	_____	_____
Mayor William D. McLeod	_____	_____	_____	_____

APPROVED THIS _____ DAY OF _____, 2020

Village President

ATTEST:

Village Clerk

Published in pamphlet form this _____ day of _____, 2020.

| SECOND, EXTENDED, AMENDED AND RESTATED
WATER SUPPLY AGREEMENT

BETWEEN

NORTHWEST SUBURBAN MUNICIPAL
JOINT ACTION WATER AGENCY

AND

EACH OF:

VILLAGE OF ELK GROVE VILLAGE

VILLAGE OF HANOVER PARK

VILLAGE OF HOFFMAN ESTATES

VILLAGE OF MOUNT PROSPECT

CITY OF ROLLING MEADOWS

VILLAGE OF SCHAUMBURG

VILLAGE OF STREAMWOOD

Dated _____

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This Second Extended, Amended and Restated Agreement (“Agreement”) is entered into by and between the Northwest Suburban Municipal Joint Action Water Agency (“Agency”) and the _____ of _____ pursuant to its statutory and home rule powers, effective as of the Contract Date as defined herein, being this ____ day of _____, 20_____.

ARTICLE I
RECITALS, DEFINITIONS AND RULES OF CONSTRUCTION

SECTION 101: *Recitals*

(a) The Northwest Suburban Municipal Joint Action Water Agency is a municipal corporation and public body politic and corporate, organized under the Northwest Suburban Municipal Joint Action Water Agency Agreement, as amended (the "Agency Agreement"). The Agency Agreement has been entered into by seven Illinois municipalities pursuant to Article VII, Section 10 of the Constitution of the State of Illinois, the Intergovernmental Cooperation Act, as amended (the "Act"), and the home rule powers of each of the member municipalities.

(b) The membership of the Agency is composed of the Villages of Elk Grove Village, Hanover Park, Hoffman Estates, Mount Prospect, Schaumburg and Streamwood and the City of Rolling Meadows (together the "Original Municipalities"). Other cities and villages may join the Agency as additional members (the "Additional Municipalities") (The Original Municipalities and any Additional Municipalities are referred to individually and collectively herein as the "Municipalities").

(c) The Municipality is one of the Original Municipalities.

(d) The Agency is established for the purpose of providing adequate supplies of Lake Michigan water (the "Lake Water") on an economical and efficient basis for the Municipalities.

(e) The Agency has entered into a water purchase agreement with the City of Chicago for a supply of Lake Water in quantities adequate to meet the estimated needs of the

Municipalities, including such amounts as provided in this agreement, for a term through December 31, 2032, with the opportunity to further extend that contract if the Agency so chooses.

(f) The Municipalities have (or shall have) each received an allocation of Lake Water pursuant to the Level of Lake Michigan Act, as amended.

(g) The Agency proposes to maintain, finance, acquire, construct, operate, improve and expand as necessary its existing water supply system for the purpose of obtaining, receiving, storing, pumping and transmitting Lake Water to the Municipalities.

(h) The Agency System is to have sufficient capacity to serve the Municipalities on the basis of their projected water needs in the year 2035. As such, the Agency System is designed to have a maximum capacity in excess of 99 million gallons per day.

(i) The Agency has had Water Supply Agreements in effect with its Original Municipalities since 1982 and has constructed the Agency System using bond anticipation notes and revenue bonds. The Agency may in the future issue additional revenue bonds to finance the construction and acquisition of extensions and improvements to the Agency System and to pay capitalized interest, fund a debt service reserve fund and pay costs of issuance of those bonds. The Agency also proposes to enter into water supply agreements with each of the Municipalities (the "Water Supply Agreements"). The payments to be made to the Agency under those Agreements are to be sufficient to pay the costs to the Agency of operation and maintenance (including costs of purchasing Lake Water) of the Agency System, to pay principal of and interest on its bonds and notes or other authorized borrowing, and to provide adequate funds for debt service reserve, for replacements and contingencies to the Agency System, for improvements and extensions to the Agency System, and for other purposes.

(j) The Agency is authorized to sell Lake Water to the Municipalities and to enter into Water Supply Agreements with the Municipalities for that purpose in accordance with the Act and the Agency Agreement.

(k) The Water Supply Agreements will provide that the payments made under it by the Municipalities may be required to be made from revenues derived by Municipalities from the operation of its waterworks or its combined waterworks and sewerage system. The Water Supply Agreements shall not constitute an indebtedness of the Municipalities within the meaning of any statutory or constitutional limitation. This Agreement shall be a continuing, valid and binding obligation of the Municipalities payable from such revenues for a renewed term of 40 years from the date of this Extended, Amended and Restated Water Supply Agreement. This Extended, Amended and Restated Water Supply Agreement shall not prohibit the Municipalities from using any other funds for payments due under the Water Supply Agreements.

(l) The Agency needs to enter into these Extended, Amended and Restated Water Supply Agreements with the Municipalities to provide certainty of an adequate source of revenues in order to be able to cover its costs of operation and to pay or issue its revenue bonds, bond anticipation notes or other authorized borrowing to finance the costs of the Agency System.

(m) The Municipality is the owner and operator of its own waterworks or combined waterworks and sewerage system (the "Municipality System").

(n) The Municipality desires to obtain from the Agency an adequate supply of Lake Water on an economical and efficient basis to serve the present and future customers of the Municipality System.

(o) The Municipality is authorized to enter into this Agreement.

(p) The Municipality recognizes that the Agency has entered into, or will shortly enter into Extended, Amended, and Restated Water Supply Agreements with the other Municipalities and may in the future provide Lake Water for other water suppliers or users, including private water companies, as may from time to time contract with the Agency for Lake Water, all in accordance with applicable State Water Allocations and the Agency Agreement.

(q) The Agency and the Municipality have determined that it is necessary and in their respective best interests for the Municipality to contract with the Agency for a supply of Lake Water.

SECTION 102: *Definitions*

Terms which are defined in the Bond Resolution relating to the prior issuance of Bonds shall have the same meaning in this Agreement, unless a different meaning is indicated in this Section. In addition, the following words and phrases shall have the following meanings when used in this Agreement unless the context clearly indicates a different meaning.

"Act" means the Intergovernmental Cooperation Act, as amended (5 ILCS 220 et seq.)

"Additional Facilities" means any storage, transmission, and pumping facilities that need to be constructed in order to supply sufficient quantities of Lake Water to the Municipalities.

"Additional Municipalities" means any village or city other than an Original Municipality.

"Agency" means the Northwest Suburban Municipal Joint Action Water Agency.

"Agency Agreement" means the Northwest Suburban Municipal Joint Action Water Agency Agreement, as amended.

"Agency Customer" means any person, other than a Municipality, purchasing or agreeing to purchase Lake Water from the Agency pursuant to Section 901, including without limitation municipal corporations and other governmental bodies.

"Agency Obligations" means all bonds, notes or other authorized borrowing of the Agency payable in whole or in part from revenues of the operation of the Agency System and issued pursuant to the General Resolution or other instrument.

"Agency System" means all facilities of the Agency for receiving, storing and transmitting water, including any expansions, additions, replacements and relocations of the Initial Completed Project and/or the Additional Facilities.

"Bill" means the monthly statement from the Agency to the Municipality of amounts due under this Agreement.

"Bond Resolution" means the resolution or resolutions authorizing the issuance of Agency Obligations, including the General Resolution and any supplemental resolutions of series resolutions.

"Budget" means the annual budget of the Agency to be adopted as provided in Section 701.

"Calendar Year" means a twelve month period beginning on January 1 and ending on the succeeding December 31.

"Chicago Contract" means the Water Purchase Agreement between the Agency and the City of Chicago for a term through December 31, 2032 (subject to renewal), as it may be amended, extended or rewritten from time to time.

"Consulting Engineer" means an engineer or engineering firm or corporation having a nationwide and favorable reputation for skill and experience in the construction and operation of water transmission systems, other than one who at the time is retained by the Agency to design or to supervise construction of any portion of the System.

"Contract Date" means the date on which the Agency's Board of Directors shall have entered into this Second Extended, Amended and Restated Water Supply Agreement following its approval by each of the Original Municipalities.

"Costs" means the Water Purchase Costs, the Power Costs, the Operation and Maintenance Costs, the Fixed Costs, the Equal Share Costs, the Under-consumption Costs, and the Municipality Default Costs, collectively.

"Current Fiscal Year" means, at any time, the then current Fiscal Year.

"Delivered Quantity" means the amount of Lake Water delivered by the Agency to the Municipalities.

"Deposit" means the moneys which shall be deposited from time to time by the

Municipality with the Agency or the Trustee pursuant to Section 613.

"Devices" means the devices for controlling, measuring and recording the quantity of Lake Water, as described in Exhibit C to this Agreement as amended from time to time.

"Excess Capacity" means Agency System capacity in a Fiscal Year as determined by the Board of the Agency in excess of the sum of (i) the aggregate of the amount of Lake Water which all Municipalities have a right to purchase for that Fiscal year and (ii) the aggregate amount of Lake Water which all Agency Customers have a right to purchase for that fiscal year.

"Equal Share Costs" means those budgeted line item costs of the Agency, as determined in each budget cycle—that would be expressly made an incorporated schedule to that particular Budget—that are divided equally among the Municipalities and billed each month.

"Existing Bonds" means the Agency's Water Supply System Revenue Refunding Bonds, Series 2013, and the Water Supply System Revenue Refunding Bonds, Series 2018.

"Fiscal Year" means the period beginning on May 1 in any Calendar Year and ending on April 30 of the succeeding Calendar Year. The name of each Fiscal year shall be the Calendar year in which that Fiscal Year ends.

"Fixed Costs" means, for each month, the amount which under the Bond Resolution is required to be paid in that month from the Revenue Fund to the Debt Service Fund, the Bond Anticipation Note Debt Service Fund, and the General Fund.

"General Resolution" means the Agency Water Supply System Revenue Bond and Note General Resolution.

"Independent Financial Consultant" means an individual or firm having a nationwide and favorable reputation for skill and experience as a financial advisor for

issuers of municipal bonds.

"Initial Completed Project" means the initial water supply system constructed by the Agency to obtain, receive, store, pump and transmit Lake Water to the Municipalities from the City of Chicago's water distribution system, all substantially as described in Exhibit A to this Agreement.

"Lake Water" means potable water drawn from Lake Michigan.

"Maximum Quantity" means the maximum average daily quantity of Lake Water for a Municipality, as set forth in Exhibit D, as amended from time to time pursuant to Section 301(e).

"MGD" means million gallons per day.

"Minimum Quantity" means the respective minimum quantities as may be in effect from time to time as set forth in Section 303 of the Water Supply Agreement between the Agency and each respective Municipality to satisfy the terms of the ~~Existing Water Supply System Revenue Refunding Bonds, Series 2013~~ ("~~2013 Bonds~~"). Upon satisfaction of the ~~Existing 2013~~ Bonds, there shall be no requirement for any "Minimum Quantity" for any Municipality.

"Municipality" means each village or city that is or becomes a member of the Agency.

"Municipality Default Costs" means for a month the amount of payments of the Municipalities' shares of Costs which were due and payable in the prior month and were not for any reason received by the Agency (or the Trustee) by the last day of that prior month.

"Municipality Requirement" means the entire quantity of water needed from time to time by the Municipality to meet the demands of the Municipality System. "Municipality Requirement" includes all water sold by the Municipality but does not include water not furnished by the Agency, nor water which is used by a Municipality for purposes other than human consumption,

nor water not used for sale or resale, nor water used for testing or flushing emergency back-up or inter-connect systems. In the case of Mount Prospect, "Municipality Requirement" does not include the water needed by those properties within Mount Prospect that, as of the effective date, receive water service from Illinois American Water. Lake Water produced by the City of Chicago and received by the Municipality for testing or flushing may be incorporated into the Municipality System; however, water produced by community wells and used for testing or flushing may not be incorporated into the Municipality System but must be wasted.

"Municipality System" means the waterworks or combined waterworks and sewerage system of the Municipality and includes the delivery pipe commencing after the structure housing the delivery Device.

"Municipality System Fund" means the fund or funds of the Municipality into which all revenues of the Municipality System and all other amounts which are to be used to pay the costs of the Municipality System are to be deposited pursuant to Section 1301(c).

"Operation and Maintenance Costs" means for a month the amount which the Trustee is required by Section 603(2) of the General Resolution to pay to the Agency for deposit into the Operation and Maintenance Fund in that month, excluding amounts required for Power Costs and Water Purchase Costs. If the General Resolution is no longer in effect, Operation and Maintenance Costs shall be the amount which would be so required if the General Resolution were in effect.

"Original Municipalities" means, collectively, the Villages of Elk Grove Village, Hanover Park, Hoffman Estates, Mount Prospect, Schaumburg and Streamwood and the City of Rolling Meadows.

"Points of Delivery" means the points at which the Agency System delivers Lake Water to the Municipality System, as described in Section 403(a) and Exhibit B and any additional points of delivery established pursuant to Section 403(b). A Point of Delivery includes the delivery structure, Device, and the structure housing the delivery Device. The delivery pipe

commencing after the structure housing the delivery Device shall be part of the Municipality System.

"Power Costs" means for a month the amount which the Trustee is required by Section 603(2)(c) of the General Resolution to pay in that month for deposit into the Operation and Maintenance Fund for Power Costs.

"Retirement Date" shall mean the date upon which the ~~Existing Water Supply System Revenue Refunding Bonds, Series 2013, is are~~ retired by payment, provision for payment, refunding or otherwise such that the obligations of the Agency thereunder have ended.

"State Water Allocation" means the Municipality's allocation from time to time of Lake Water pursuant to the Level of Lake Michigan Act, as amended from time to time.

"Total Water Use" means, for any period, the aggregate of the Delivered Quantity and the quantity of water pumped from wells or acquired from other sources for a Municipality System, and not more than the lesser of (i) the amount of Lake Water which the Municipality has a right to purchase in that period pursuant to Section 301 or (ii) the total State Water Allocation for that Municipality in that period (the sum of the average allowable MGD for each day in that period).

"Trustee" means the trustee or trustees for the benefit of the holders of the Agency Obligations, appointed as provided in the Bond Resolution.

"Under-consumption" means the amount, if any, by which the Minimum Quantity exceeds the Delivered Quantity for a Calendar Year.

"Under-consumption Costs" means the shortfall amount, if any, which the Municipality is obligated to pay in order for the Agency to satisfy the terms of the ~~Existing Water Supply System Revenue Refunding Bonds, Series 2013.~~

"Water Procurement Costs" means costs incurred for obtaining Lake Water (e.g., amounts payable under the Chicago Contract, or amounts payable for any water purchased from

other sources, or amounts payable to produce Lake Water). Water Procurement Costs for any month are calculated by adding (i) the number of quantity units of water obtained by the Agency in the prior month multiplied by the net charge in effect for each of those units and (ii) the number of quantity units of water delivered to the Agency, payment for which is due in that month, from any other sources, multiplied by the charge to the Agency in effect for each of those quantity units.

"Water Supply Agreement" means this First Extension and Amendment to a Water Supply Agreement and a similar Agreement with each of the Municipalities.

SECTION 103: *Rule of Construction*

(a) Unless the context indicates otherwise, references to Sections, Articles, Exhibits and Appendices refer to the specific Sections and Articles of this Agreement and the specific Exhibits and Appendices to this Agreement.

ARTICLE II
SALE AND PURCHASE OF LAKE WATER

SECTION 201: *Purchase and Sale*. The Agency agrees to sell Lake Water to the Municipality, and the Municipality agrees to purchase Lake Water from the Agency, on the terms and subject to the conditions set forth in this Agreement.

ARTICLE III
QUANTITY

This article governs the quantity of Lake Water which the Municipality shall have a right to purchase from the Agency and the amount of Lake Water which the Municipality is obligated to purchase or, in any event, to pay for as provided in this Agreement.

SECTION 301: *Maximum Quantity*

(a) On each calendar day through the term of this Agreement, the Municipality shall have the right to purchase up to 1.8 times the Maximum Quantity established for the Fiscal Year in which that day occurs. Exhibit D sets forth the Maximum Quantity for

the Municipality in each of the Fiscal Years of the term of this Agreement, as Exhibit D is in effect as of the Contract Date. As provided in subsection (a) of this Section, Exhibit D may be adjusted from time to time. The Agency shall sell and deliver to the Municipality in each calendar day all amounts of Lake Water requested by the Municipality up to the amount specified in this paragraph.

(b) Notwithstanding paragraph (a) of this Section, the amount of Lake Water which the Municipality may purchase and the Agency shall sell to the Municipality shall not exceed in any Allocation Year the State Water Allocation for that Allocation Year, including any allowable excess, in effect from time to time for the Municipality.

(c) The Agency shall be obligated to sell Lake Water to the Municipality under this Agreement except to the extent that the Agency does not receive or otherwise obtain a sufficient amount of Lake Water, or to the extent that for reasons beyond the reasonable control of the Agency, it is not able to deliver sufficient Lake Water to the Municipality at the Points of Delivery.

(d) The Maximum Quantity as set forth in Exhibit D may be changed as described in this subsection.

(i) The Maximum Quantity may be reduced upon notice by the Municipality to the Agency and approval of the Agency (which shall not be unreasonably withheld) but only in an amount equal to the aggregate for that Fiscal Year of (A) the amount by which the aggregate of the Maximum Quantities for all other Municipalities is increased pursuant to paragraph (ii) of this subsection at the time of or prior to the approval by the Agency of such reduction and (B) the amount by which the aggregate amount of Lake Water which all Agency Customers have the right to purchase is increased at the time of or prior to the approval by the Agency of such reduction. The Municipality may receive payment from another Municipality or an Agency Customer as consideration for reducing the Maximum

Quantity of the Municipality.

(ii) The Maximum Quantity for each Fiscal Year may be increased upon notice by the Municipality to the Agency and approval of the Agency (which shall not be unreasonably withheld), but only in an amount equal to the aggregate for that Fiscal Year of (A) the amount by which the aggregate of the Maximum Quantities for all other Municipalities is reduced pursuant to paragraph (i) of this subsection at the time of or prior to the approval by the Agency of such increase and (B) the amount by which the aggregate amount of Lake Water which all Agency Customers have the right to purchase is reduced at the time of or prior to the approval by the Agency of such increase. The Municipality may make payment to another Municipality or Agency Customer as consideration for making available additional capacity to the Municipality.

(iii) The approval of the Agency of any reduction or increase in the Maximum Quantity of the Municipality pursuant to paragraphs (i) or (ii) of this subsection shall be subject to payment or arrangements for payment to the Agency of any costs incurred by the Agency as a result of the reduction or increase.

(iv) The Maximum Quantity of the Municipality is increased for each Fiscal Year for which there is Excess Capacity. The amount of the increase shall be that proportion of the Excess Capacity which the Municipality's Maximum Quantity for that Fiscal Year is to the aggregate of the Maximum Quantities of all of the Municipalities for that Fiscal Year,

(v) All reductions and increases in the Maximum Quantity shall be effective on the first day of the Fiscal Year following approval of the reduction or increase by the Agency.

SECTION 302: Requirement Obligations of the Municipality

(a) The Municipality shall, for the Term of this Agreement, purchase all water

necessary to meet its entire Municipality Requirement (but no more than the amount which it has the right to receive under Section 301) for so long as the Agency shall purchase or otherwise receive water from water sources or from water suppliers (e.g., from the City of Chicago). The Municipality shall not obtain water from any source other than the Agency to meet any or all of the Municipality Requirement, except to the extent that the Municipality Requirement exceeds the amount which the Municipality has the right to receive under Section 301.

(b) The Municipality shall be obligated to purchase Lake Water in accordance with subsection (a) of this Section only to the extent that the Agency is able to supply the amounts of Lake Water required to be purchased by the Municipality. Where required by the terms of any Resolution authorizing the issuance of any instruments of Agency debt, the Municipality shall continue to be obligated to make all payments required under Article VI even if the Agency fails to deliver any or all of those amounts of Lake Water. If the failure to deliver those amounts of Lake Water is a default of the Agency under Sections 1404 and 1405, the Municipality shall have only the rights granted in Section 1406.

SECTION 303: *Minimum Quantity*

The Municipality shall, until the Retirement Date, and where necessary to meet the obligations under the ~~Existing~~2013 Bonds, be obligated to purchase from the Agency, or in any event to pay for, the minimum quantities of Lake Water as set forth in Exhibit G.

The amounts payable by the Municipality in the event it does not accept delivery of the Minimum Quantity shall be determined in accordance with Article VI. Those amounts shall be payable by the Municipality even in the event that the Municipality's State Water Allocation is less than the Minimum Quantity. Failure to accept delivery of the Minimum Quantity shall not be a default under this Agreement.

SECTION 304. *Agency Obligation in Event of Emergency or Failure of System*

(a) If for any reason, including an emergency or a failure or malfunction of the Agency System, the Agency is unable to deliver in full the quantities of Lake Water to be delivered from time to time to the Municipalities and any Agency Customers, the total amount of Lake Water which the Agency is able to furnish shall be apportioned in so far as practicable among the Municipalities in proportion to their respective proportional use during the prior two fiscal years and the Agency Customers on the terms of applicable water supply agreements with each of the Agency Customers.

(b) The Agency shall use due diligence to operate the Agency System during any emergency or any failure or malfunction of the Agency System to provide Lake Water (and any other potable water which may be available) to the Municipality insofar as practicable and shall, as promptly as possible, take such action, including, without limitation and by way of example, making and expediting repairs or adjustments, enforcing the Chicago Contract, purchasing water from the City of Chicago or other suppliers, or any other such actions as are reasonably necessary and appropriate to restore delivery to the Municipality of the Lake Water to be furnished from time to time under this Agreement.

(c) The obligation of the Municipality to pay all amounts due under Article VI shall not be reduced as a result of any failure by the Agency to deliver any quantity of Lake Water.

ARTICLE IV TRANSMISSION, STORAGE, DELIVERY AND QUALITY

This Article sets forth the obligations of the Agency and the Municipality with respect to various aspects of the storage and delivery of Lake Water, including the Municipality and Agency storage capacities, the points of delivery of Lake Water to the Municipality, the rate of delivery of Lake Water and the quality of Lake Water.

SECTION 401: *Reserved.*

SECTION 402: *Municipality and Agency Storage Capacity.*

(a) Until the Retirement Date, the Municipality shall provide and maintain at all times, as part of the Municipality System, water storage of sufficient capacity to store not less than 0.55 times the daily State Water Allocation, as then in effect, for the State Water Allocation Year, plus 3.3 million gallons, or such lesser amount as the Agency may allow in a particular case. The Municipality will use its best efforts to increase its water storage capacity as required to meet its obligation under the Section so that each required increment of storage capacity is available within 24 months after the State Water Allocations requiring such increment become effective.

(b) Until the Retirement Date, the Agency shall provide and maintain at all times water storage capacity as follows:

(i) As part of the Agency System outside of the present corporate limits of the City of Chicago, water storage of sufficient capacity to store not less than 0.20 of the daily State Water Allocations from time to time in effect for the Municipalities and any Agency Customer.

(ii) As part of the Agency System within the present corporate limits of the City of Chicago, a water storage capacity of not less than 20 million gallons.

(c) In addition, the Agency will use its best efforts to provide and maintain further water storage capacity of $6 \frac{2}{3}$ million gallons for each full increment of $3 \frac{1}{3}$ MGD by which State Water Allocations from time to time of all Municipalities and Agency Customers exceed 45 MGD, up to a maximum of 20 million gallons of such additional capacity.

(d) The obligations of the Municipality to make all payments required by Article VI shall not be affected by any failure of the Agency to provide and maintain the water storage capacities described in this subsection. If that failure is an Agency default under Sections 1404 and 1405, the Municipality shall have only the rights granted in Section 1406.

SECTION 403: *Delivery*

(a) The Agency shall deliver Lake Water to the Municipality through Points of Delivery as set forth on Exhibit B. Title to Lake Water delivered under this Agreement shall pass from the Agency to the Municipality upon passing through the Devices at the Points of Delivery. The Points of Delivery described in this subsection are part of the Agency System, and the Agency shall bear the costs of providing and maintaining them. The Points of Delivery described in this subsection, and any replacement or improvement of them, shall generally conform to Exhibit B (which shall specify the location and designation of the Municipality System's points of connection to the Agency's System). Exhibit B may be amended from time to time by the Agency, in consultation with the Municipality, on 60 days' written notice to the Municipality, provided that any such amendment shall not adversely affect the ability of the Agency to perform obligations under this Agreement.

(b) Additional Points of Delivery may be established upon the mutual agreement of the Agency and the Municipality, provided that any additional Points of Delivery shall conform to the specifications of the Agency. The point of connection of the Municipality System to the Agency System shall be designated by agreement between the Agency and the Municipality when an additional Point of Delivery is established. The Municipality shall pay any costs of establishing such additional Points of Delivery. Such additional Points of Delivery shall be owned by the Agency and shall be under control of and operated by the Agency.

SECTION 404: *Rate of Withdrawal*

(a) Except as otherwise required by fire emergencies, the Lake Water furnished and taken under this Agreement shall be delivered at all times during the 24 hours of each calendar day in order to maintain as even a rate of withdrawal as practicable.

(b) Except as otherwise required by fire emergencies, the daily rate of delivery of Lake Water at the Points of Delivery shall not exceed 2.2 times the daily State Water Allocation from

time to time in effect for the Municipality. The maximum rate of delivery as established by this subsection may be reduced by the Agency to not less than 1.8 times the daily State Water Allocation from time to time in effect for the Municipality to the extent necessary to ensure that the aggregate daily deliveries to the Municipalities do not exceed 1.8 times the aggregate of the State Water Allocation from time to time in effect for the Municipalities.

SECTION 405: *Pressure*

Lake Water shall be delivered to the Municipality System with specified maximum hydraulic capacity at a pressure within the limits set forth by the Agency except in cases of emergency or failures or malfunctions in the Agency System.

SECTION 406: *Connections*

(a) The Municipality shall pay all costs of connecting or re-connecting the Municipality System to the Agency System at the Points of Delivery.

(b) The Agency shall at its own expense install, maintain and replace, as necessary, a back-flow control system or a pressure stabilization system or both at the Points of Delivery.

(c) The Municipality is responsible for maintaining all pipe and infrastructure after the structure housing the delivery Device.

SECTION 407: *Water Quality*

(a) The Agency shall supply the Municipality at the Points of Delivery with Lake Water of a quality commensurate with that furnished to other Municipalities. All Lake Water furnished to the Municipality at the Points of Delivery shall meet all applicable water quality standards established by any Federal, State or local agency (other than the Municipality) as shall have, from time to time, jurisdiction over or for public water supplies.

(b) In the event that at the Points of Delivery the Lake Water fails to meet the minimum water quality standards established by subsection (a) of this Section, the Municipality, prior to taking corrective action, shall consult the Agency and coordinate such action with the Agency in order to use the most effective and cost efficient means to correct any water quality deficiency.

(c) The Agency shall bear no responsibility for quality of Lake Water beyond the Points of Delivery to the Municipality.

ARTICLE V MEASUREMENT

This article provides for measurement or estimates of the quantities of Lake Water delivered under this Agreement.

SECTION 501: *Points of Measurement*

The Agency shall measure the quantity of Lake Water furnished to the Municipality under this Agreement during each hour of each day at the Points of Delivery, or at such other point(s) as the parties may agree to in writing. The unit of measurement shall be gallons of water, U.S. Standard Liquid Measure.

SECTION 502: *Measurement Devices*

The Devices described in Exhibit C shall be used at the Points of Delivery for the purpose of controlling, measuring, and recording the quantity of Lake Water furnished under this Agreement and of transmitting and recording pressures and other required operational information. Exhibit C may be amended from time to time by the Agency on 60 days' written notice to the Municipality, provided that any such amendment shall not adversely affect the ability of the Agency to perform its obligations under this Agreement.

SECTION 503: *Installation and Operation of Devices*

The Agency shall provide, operate, maintain and replace the Devices, together with such structures at the Points of Delivery as are necessary, in the judgment of the Agency, to house the Devices.

SECTION 504: *Access to Devices*

Authorized representatives of the Municipality shall have access at all reasonable times to all of the Devices for examination and inspection. The Agency may have a representative present

at each such examination and inspection. The Municipality may, at its own expense and with the approval of the Agency as to the design of the connection, make connections to the Devices for the purpose of monitoring and information measured by the Devices.

SECTION 505: Inspection and Calibration of Devices

The Agency will, in accordance with the recommended standards of the American Water Works Association, inspect and test the accuracy of each of the Devices for the purpose of measuring the supply of Lake Water furnished under this Agreement. The Agency shall notify the Municipality in advance of the time and place of such inspection and testing. The Municipality may, upon its request, have an authorized representative of the Municipality present at such inspection and testing. The results of any such inspection and test shall be immediately provided to the Municipality. The Agency will as soon as practicable calibrate, repair or replace any such Device or part of a Device which is known or suspected to be registering incorrectly.

SECTION 506: Readings

The readings made of such Devices for the purpose of computing the Municipality Share of certain Costs shall be done by the Agency on the last day of each calendar month. A representative of the Municipality may be present at the reading of the Devices, if the Municipality so requests.

SECTION 507: Estimates

If for any reason any of the Devices is out-of-service, out-of-repair or determined to be registering incorrectly so that the quantity of Lake Water delivered to the Municipality cannot be ascertained or computed from the readings of such Devices, the Lake Water delivered during a period when such Devices are in such condition shall be estimated, by agreement of the Municipality and Agency, upon the basis of the best data and information available. The period for which the estimate is made shall be either that period extending back to the time when the condition is known to have begun or that period extending back one-half of the time elapsed since the device was last determined to be registering correctly but in no event more than six months.

The estimate shall be based either (i) upon correcting the error if the percentage of the error is ascertainable, (ii) upon estimating the Lake Water delivered by reference to deliveries during preceding periods under similar conditions when the devices registered correctly or (iii) upon the readings recorded by Municipality check meters, if any. Bills for the period for which any such estimate is made shall be adjusted to reflect the quantity so estimated.

SECTION 508: Municipality Check Meters

The Municipality may, at its own expense, install, operate, maintain and replace a check meter to check the Devices on the discharge piping of the Point of Delivery. Such check meter shall be for the Municipality's information, but its reading may serve as a source of data and information available for the purposes of Section 507. Authorized representatives of the Agency shall have access at all reasonable times to the Municipality's check meter for examination and inspection. The Municipality may have a representative present at such examination and inspection.

SECTION 509: Measurement Basis for Delivered Quantity

The Municipality Delivered Quantity shall be based on readings of the Devices or on estimates made pursuant to Section 507.

ARTICLE VI
PAYMENTS

This Article sets forth the obligations of the Municipality to make payments to the Agency in exchange for the Agency's agreement to undertake to operate, improve and expand the Agency System and to undertake to supply Lake Water to the Municipality.

SECTION 601: Payments

The Municipality agrees to pay, at the times, on the terms and subject to the conditions set forth in this Article:

(1) The Municipality's share of Water Purchase Costs as determined in accordance with Section 602;

(2) The Municipality's share of Power Costs as determined in accordance with Section 603;

(3) The Municipality's share of Operation and Maintenance Costs as determined in accordance with Section 604;

(4) ~~Through the Retirement Date, the~~ The Municipality's share of Fixed Costs as determined in accordance with Section 605(a) and (b);

(5) The Municipality's share of Equal Share Costs as determined in accordance with Section 605(c);

(6) Through the Retirement Date, the Municipality's share of any Under-consumption Costs as determined in accordance with Section 606; and

(7) The Municipality's share of Municipality Default Costs as determined in accordance with Section 607.

The total of the shares of Costs to be paid by the Municipality, together with the shares of Costs to be paid by the other Municipalities and other receipts of the Agency, shall always be sufficient among other requirements to enable the Agency to pay when due the Expense of Operation and Maintenance of the Agency System (including Power Costs and Water Purchase Costs), to provide adequate depreciation, reserve or replacement funds with respect the Agency System and the Agency Obligations and to pay principal of, premium, if any, and interest on the Agency Obligations as such amounts come due.

Notwithstanding any other provisions of this Agreement, the payments due under this Agreement, together with the payments due under the Water Supply Agreements with all other Municipalities, shall at all times be sufficient (together with other amounts available in the Revenue Fund established by the Bond Resolution) to enable the Trustee to make all payments provided in the Bond Resolution from the Revenue Fund to the Operation and Maintenance Fund, the Debt Service Fund, the Debt Service Reserve Fund, the Bond Anticipation Note Debt Service Fund and the General Fund at the times and in the amounts provided in the Bond Resolution and

the Series Resolutions authorizing particular issues of Agency Obligations so that there shall be at no time any deficiency in any of those payments and credits. In the event there should at any time be any conflict or possibility of conflict between the requirements of the Bond Resolution and this Agreement regarding the obligations of the Municipality and the Agency, the provisions of the Bond Resolution shall govern.

SECTION 602: Share of Water Purchase Costs

The Municipality's share of Water Purchase Costs for each month shall be that proportion of those Costs for that month which the Municipality's Delivered Quantity in the prior month was to the sum of the Delivered Quantities for all Municipalities in the prior month. (A formula expressing the Municipality's share of these Costs is set forth in Section A of Appendix 1)

SECTION 603: Share of Power Costs.

For each month, the Municipality's share of Power Costs shall be that proportion of those Costs for that month which the Municipality's Delivered Quantity in the prior month was to the sum of the Delivered Quantities for all Municipalities in that prior month.

SECTION 604: Share of Operation and Maintenance Costs.

For each month, the Municipality's share of Operation and Maintenance Costs shall be that proportion of those Costs for that month which the Municipality's Total Water Use for the most recent Calendar Year completed prior to the beginning of the Current Fiscal Year was to the sum of the Total Water Use of all Municipalities in that Calendar Year.

SECTION 605: Share of Fixed and Equal Share Costs.

(a) Where needed exclusively for purposes related to the ~~Existing Bonds~~^{2013-Bond Issue}, and only through the Retirement Date, the Municipality's share of Fixed Costs for each month shall be the amount of those Costs for that month multiplied by the sum of the following amounts divided by four: (i) two times that proportion which the Municipality Total Water Use in the most recent Calendar Year completed prior to the beginning of the Current Fiscal Year was to the sum of the Total Water Use for all Municipalities in that Calendar Year (except for any month

which begins before the System Commencement Date in which the Minimum Quantity for the first Fiscal Year after System Commencement Date shall be substituted for the Total Water Use), (ii) the Distance Share as was formerly calculated from time to time and (iii) that proportion which the sum of the Municipality Maximum Quantity for each Fiscal Year remaining in the term of this Agreement (excluding the current Fiscal Year), as in effect from time to time, is to the sum of the Maximum Quantities for all Municipalities for each Fiscal Year in the term of this Agreement (excluding the current Fiscal Year), as in effect from time to time. After the Retirement Date, the Municipality's share of the aggregate Fixed Costs (as set forth in the Budget) shall be that proportion of those Costs which the Municipality's Total Water Use for the most recent Calendar Year completed prior to the beginning of the Current Fiscal Year was to the sum of the Total Water Use of all Municipalities in that Calendar Year (and the Village shall pay 1/12 of its share of the aggregate Fixed Costs each month of the 12 months of the Fiscal Year).

(b) Where needed exclusively for purposes related to the Existing Bonds2013-Bond Issue, and only through the Retirement Date, within 30 days after the end of each Fiscal Year which ends after the System Commencement Date Municipality's share of Fixed Costs for the twelve months in that Fiscal Year shall be recomputed on the basis of Total Water Use in that Fiscal year rather than Total Water Use in the most recent Calendar year completed prior to the beginning of that Fiscal Year. The amount by which the Municipality's share of Fixed Costs as recomputed is less than the sum of the monthly shares in that Fiscal Year shall be paid to the Agency in the second month following the end of the Fiscal Year and the amount by which it is greater shall be credited to the Municipality in the third month following the end of the Fiscal Year.

(c) The Municipality's share of Equal Share Costs for each month shall be the Equal Share Costs as determined with the Budget for each Fiscal Year (including any amendments to the Budget), divided by 12, divided by the number of member Municipalities.

SECTION 606: *Share of Under-consumption Costs*

When required prior to the Retirement Date, the Village's share of Under-consumption Costs, if any, shall be calculated as that proportion of those Costs which the Under-consumption of the Municipality for the most recently completed Calendar Year to the sum of the Under-consumption of all Municipalities for that same Calendar Year. (A formula expressing the Village's share of these Costs is set forth in Section E of Appendix 1)

SECTION 607: Share of Municipality Default Costs

The Municipality's share of Municipality Default Costs, if any, for each month shall be that proportion of those Costs which the Municipality's share of all Costs in the prior month, except any Municipality Default Costs, was to the sum of the shares of all Costs, except Municipality Default Costs, in the prior month of all Municipalities not in default in their payment obligations under their Water Supply Agreements. (A formula expressing the Municipality's share of these Costs is set forth in Section F of Appendix 1)

SECTION 608: Formulae

Formulae expressing the Municipality's share of each of the Costs, except Fixed Costs, are set forth in Appendix 1. In the event of any inconsistency between Sections 602 through 607 and these formulae, other than for Fixed Costs, the formulae shall control.

SECTION 609: Time of Payment

The Municipality's share of Costs for a month shall be due and payable on the 25th day of that month.

SECTION 610: Late Charges and Interest

(a) The Municipality agrees to pay a late charge of 3% of all amounts not paid on or before the due date.

(b) In the event that the Municipality has not paid all amounts due including any late charges by the end of the month in which they are due, the Municipality agrees to pay interest on all unpaid amounts at the rate of 1% per month or portion of a month beginning with the first calendar month after the due date.

(c) In addition to the right to receive a late charge and interest as provided in this Section, the Agency reserves all other rights and remedies it may have at law, in equity or under this Agreement or the Agency Agreement as a result of any failure by the Municipality to pay when due all amounts payable under this Agreement. Election of any remedy shall not be a waiver of any other remedy.

SECTION 611: *Partial Payments*

Any partial payments shall be applied in accordance with the provisions of the General Resolution. In the event the General Resolution is no longer in effect, partial payments shall be applied as if the General Resolution were in effect unless some other method is chosen by the Board of Directors. Acceptance of any partial payment shall not be deemed a waiver with respect to any amounts not paid.

SECTION 612: *Nature of Payment Obligation*

(a) Although the Agency shall act at all times in good faith and use its best efforts to fulfill its obligations hereunder, the obligation of the Municipality to make all payments as required by this Agreement is unconditional and irrevocable without regard to performance or nonperformance by the Agency of its obligations under this Agreement. The rights of the Municipality in the event of failure by the Agency to perform its obligation under this Agreement are governed by Sections 1404, 1405, and 1406. By way of illustration and not as a limitation of the preceding two sentences, if delivery of Lake Water does not occur or is delayed, interrupted or reduced, for any reason including the fault of the Agency, the Municipality will continue to be obligated to make all payments required by this Agreement and, if the Agency is in default under Sections 1404 and 1405, the Municipality shall have only the rights granted in Section 1406.

(b) ~~Until the Retirement Date, the The~~ payments required to be made by the Municipality under this agreement shall be required to be made solely from revenues to be derived by the Municipality from the operation of the Municipality System. This Agreement shall not constitute

an indebtedness of the Municipality within the meaning of any statutory or constitutional limitation.

(c) Notwithstanding the provisions of subsection (b) of this Section, the Municipality is not prohibited by this Agreement from using any other available funds to make the payments required by this Agreement.

(d) The obligation of the Municipality to make payments required by this Agreement from revenues of the Municipality System shall be payable from the operation and maintenance accounts of the Municipality System Fund and from all other accounts of the Municipality System Fund in which there are available funds.

SECTION 613: *Deposit*

(a) As required by the General Resolution, and as security for payment of the Village's obligations under this Agreement, the Village shall pay to the Trustee (or to the Agency if there are no Agency Obligations outstanding) on or before the tenth day of each Fiscal Year, beginning May 10, 1983, an amount which, together with amounts already on deposit pursuant to this Section in the Member Deposit Fund established by the General Resolution in the name of the Village, equals the maximum amount of the Village's estimated share (as set forth in the Budget) of the Costs for any month in that Fiscal Year. The Deposit shall be held by the Trustee and invested at the direction of the Agency in investments permitted by the General Resolution. The Deposit shall be applied as provided in Section 610 of the General Resolution. The obligation to fund the Member Deposit Fund shall end when ~~In the event~~ the General Resolution shall no longer be in effect or no longer require contributions to the Member Deposit Fund. ~~the Deposit shall be applied as if the General Resolution were in effect, except that the Deposit may be held by the Agency rather than the Trustee.~~ At the end of the term of this Agreement or at the end of the obligation to fund the Member Deposit Fund, the Deposit shall, unless otherwise agreed by the Agency and the Members, be returned to the Village if the Village has performed all of its obligations under this Agreement.

(b) In the event that the Deposit is applied to payment of the Village's share of Costs as described in the subsection (a) of this Section, the Village shall immediately provide sufficient funds to restore the Deposit to the amount required by subsection (a) of this Section.

(c) Investment earnings on the Deposit will be applied as received by the Trustee as provided in Section 610 of the General Resolution.

SECTION 614: *Credits*

(a) The Agency shall direct the Trustee to make deposits into the Revenue Credits Account pursuant to Section 608 of the General Resolution to the extent that any amounts in the General Reserve Account are available so to be deposited, up to the amount of the Municipality Default Costs which have been paid and not previously reimbursed pursuant to this paragraph, together with interest on those amounts, compounded monthly, at 1% per month or portion of a month until reimbursed. The amount so deposited shall be credited to amounts required to be paid by the Municipalities under the Water Supply Agreements on the basis of the proportionate shares of Municipality Default Costs paid by and not reimbursed to those Municipalities by credits pursuant to this paragraph. Municipality Default Costs shall be reimbursed under this paragraph in the order in which they were paid.

(b) The Agency may direct the Trustee that any amounts available to be deposited in the Revenue Credits Account, after all deposits have been made which are required to be made pursuant to paragraph (a) of this Section, be deposited in the Revenue Credits Account. Amounts so deposited shall be credited to the Municipalities as follows:

(1) Amounts deposited in the Revenue Credits Account which are derived from investment income on the funds of the Agency or from an initial capital contribution made by an Additional Municipality or an Agency Customer shall be credited on the basis of the proportionate shares of Fixed Costs of the Municipalities (not including that Additional Municipality) as established (prior to any annual adjustment under Section 605 (b)) at the time those amounts were received by the Agency.

(2) Amounts deposited in the Revenue Credits Account which are derived from sales of Lake Water to Agency Customers or from late charges paid by Municipalities shall be credited on the basis of the proportionate shares of Costs of the Municipalities as established (prior to any annual adjustment under Section 605 (b)) at the time those amounts were received by the Agency.

ARTICLE VII AGENCY BUDGET, BILLS

This Article provides for an annual Budget of the Agency to estimate the costs of the Agency for each Fiscal Year and to estimate the shares of Costs for the Municipalities in that Fiscal Year. The amounts provided in the Budget as the shares of certain Costs will be the basis of the monthly Bill for shares of those Costs. The Budget and the Bills are designed for the convenience of the Municipalities in making their financial plans. The payment obligations of the Municipality are estimated by the Budget. Should the amounts due as determined by Article VI be larger for any period than the amount of the Bills for the period, the amount due shall be the amounts determined under Article VI. In any event, the Municipality shall pay for any period not less than the amount of the Bills for that period.

SECTION 701: *Budget*

(a) The Agency shall adopt a Budget for each Fiscal Year of the Agency during the term of this Agreement. A proposed Budget shall be prepared no later than 90 days prior to the beginning of each Fiscal Year, and the Budget shall be adopted not later than 60 days prior to the beginning of each Fiscal Year.

(b) The Budget shall set forth as accurate an estimate as possible of the amounts (i) expected to be needed in the Fiscal Year for Water Purchase Costs, for Power Costs, for Operation and Maintenance Costs, for Equal Share Costs and for Fixed Costs and (ii) expected to be received in that Fiscal Year from sources other than Municipalities. The Budget shall set forth with particularity, those items to be included in the calculation of Equal Share Costs (an example of same being attached hereto as Exhibit E).

(c) The Budget shall set forth as accurate an estimate as possible, the share of Power Costs, the share of Operation and Maintenance Costs, the share of Equal Share Costs, the share of Fixed Costs for each of the Municipalities (if any) and, if any Municipality is in default in its payment obligations at the time of adoption of the Budget, the share of Municipality Default Costs for each of the other Municipalities. The amounts in the Budget for each month for Operation and Maintenance Costs, for Equal Share Costs, for Fixed Costs (if any) and for Municipality Default Costs shall be those Costs for that month for purpose of computing the share of those Costs under Article VI. The Budget shall also set forth as accurate an estimate as possible for each of the Municipalities of the amounts which will be deposited in the Revenue Credits Account and credited to that Municipality in each month of that Fiscal Year.

(d) The Budget and the estimated amount of the Municipality's share of Costs as set forth in the Budget may be amended by the Agency on 60 days' written notice to each Municipality.

SECTION 702: *Bills*

The Agency shall prepare and deliver to the Municipality not later than the fifth day of each month a Bill which shall set forth separately for that month:

- (a) The Municipality's share of Water Purchase Costs;
- (b) The Municipality's share of Power Costs;
- (c) The Municipality's share of Operation and Maintenance Costs;
- ~~(d) The Municipality's share of Fixed Costs;~~
- ~~(e)~~ The Municipality's share of Equal Share Costs;
- ~~(f)~~ The Municipality's share of Municipality Default Costs;

Under certain circumstances as provided in this Agreement and as necessary through the Retirement Date, the Bill shall also set forth one or more of the following for that month:

- ~~(a) The Municipality's share of any Fixed Costs;~~
- ~~(ab)~~ The Municipality's share of Under-consumption Costs;

(be) The amount required to be deposited in the Member Deposit Fund of the Municipality; and

(cd) The amounts which have been deposited in the Revenue Credits Account and credited to the Municipality.

SECTION 703: *Budget and Bills Not Conclusive*

Although it is intended that the Budget will be an accurate estimate of, and the Bills will accurately state, the payment obligations of the Municipality, the obligations of the Municipality are determined by Article VI. Failure by the Agency to adopt a Budget or to send a Bill, or inaccuracies in a Budget or Bill, shall not affect the obligations of the Municipality to pay all amounts due pursuant to Article VI.

ARTICLE VIII
ASSIGNMENT

SECTION 801: *Assignment*

(a) Each Municipality's right to receive payments from its customers for water, together with said Municipality's water fund accounts, revenues and reserves, are pledged and, in the event of default by the Municipality, assigned to the Agency.

(b) The right to receive all payments which are required to be made by the Municipality to the Agency in accordance with the provisions of this Agreement, including the shares of Costs and the Deposit, will, ~~through the Retirement Date,~~ be assigned by the Agency to the Trustee as provided in the General Resolution to secure the payment of the principal of, premium, if any, and interest on the Agency Obligations as those amounts come due, subject to the application of those payments as may be provided in the General Resolution. The Municipality agrees that it will, upon notice of assignment to the Trustee, make all payments directly to the Trustee.

(c) It is understood and agreed that the rights of the Agency to enforce the provisions of this Agreement, including the covenants set forth in Section 1301, will, ~~through the Retirement~~

Date, as provided in the General Resolution. be assigned to the Trustee and that the Trustee will have the right to enforce this Agreement at law or in equity with or without the further consent or participation of the Agency. As provided in the General Resolution, the Agency also shall retain the right to enforce this Agreement.

ARTICLE IX
AGENCY CUSTOMERS; ADDITIONAL MUNICIPALITIES

This Article establishes the circumstances and terms under which the Agency may sell Lake Water to an Agency Customer and under which the Agency may enter into a Water Supply Agreement with an Additional Municipality.

SECTION 901: Sales of Lake Water to Agency Customers

The Agency may sell or agree to sell Lake Water to an Agency Customer on any terms subject to the following limitations:

(1) The Agency may sell or agree to sell Lake Water to a prospective Agency Customer only to the extent that the Agency Customer may be served by direct connection to the Agency System.

(2) Any sales of Lake Water to an Agency Customer shall be in accordance with Section 8(a)(ix) or (x) of the Agency Agreement, including the requirement that any Agency Customer have a State Water Allocation.

SECTION 902: Sales to Additional Municipalities

The Agency may enter into an agreement to supply water to Additional Municipalities subject to the approval of the Board of Directors.

ARTICLE X
RESERVED

ARTICLE XI
REPORTING

This Article sets forth the reports and information which the Municipality and the Agency are to make available to each other.

SECTION 1101: *Reports to Agency*

(a) The Municipality shall provide the Agency with a report of the Municipality Total Water Use for each month within 5 days after the end of that month and an estimate of the Municipality Total Water Use for each Fiscal Year no later than 90 days prior to the beginning of that Fiscal Year.

(b) The Municipality shall provide the Agency with a copy of the Municipality's budget prepared in accordance with Section 1301(j) within 10 days after that budget is adopted. The budget as so provided shall include a description and an estimate of any revenues other than revenue from rates and charges for the Municipality System which are to be used to make payments under this Agreement.

(c) The Municipality shall keep on file with the Agency a copy of the Municipality's effective rates for the Municipality System (including any separate sewerage rates), including any formula by which less than 100% of the rates are billed for collection.

(d) The Municipality shall keep on file with the Agency and with each other Municipality a copy of the effective Municipality State Water Allocation.

(e) The Municipality shall keep on file with the Agency a copy of the emergency water use plan of the Municipality as in effect from time to time.

(f) The Municipality shall immediately notify the Agency of any emergency, malfunction or failure of the Municipality System or other event or condition which affects or may affect directly or indirectly the ability of the Municipality to perform its obligations under the Agreement or which affects or may affect directly or indirectly the quality of Lake Water.

(g) The Municipality shall keep the Agency informed of the name(s) of the person(s) in charge of the operation of the Municipality System.

(h) The Municipality shall make available to the Agency in a timely manner all Municipality information related to performance of this Agreement, including, without limitation, audits, capital improvements and prospective expansions of the Municipality System.

SECTION 1102: *Agency Reports to Municipality*

(a) The Agency shall provide the Municipality with a copy of the proposed Budget within 5 days after it is proposed and a copy of the final Budget within 5 days after it is adopted.

(b) The Agency shall provide the Municipality within 5 days after the end of each month with a monthly report of (i) Delivered Quantities for each of the Municipalities and each of the Agency Customers and (ii) the amount of Lake Water received under the Chicago Contract.

(c) The Agency shall immediately notify the Municipality in writing of any proposed Additional Municipalities or Agency Customers and of any proposed amendments to Exhibit D or Exhibit E.

(d) The Agency shall immediately notify the Municipality of any emergency failure or malfunction of the Agency System or of any other condition or event which affects or may affect directly or indirectly the performance of this Agreement or the quality of the Lake Water.

(e) The Agency shall keep the Municipality informed of the name(s) of the person(s) in charge of the Agency System.

(f) The Agency shall make available to the Municipality on request all records of the Agency.

ARTICLE XII
AGENCY COVENANTS

SECTION 1201: *Covenants Regarding Financing the Initial Project.*

Subject to the provision of Article X, the Agency covenants and agrees that:

(a) It will use its best efforts to administer Agency Obligations in an amount sufficient to refund the outstanding notes and other interim financing notes of the Agency, to pay costs of issuance of the bonds and notes, to pay capitalized interest on the Agency Obligations for the

period or periods to be determined by the Agency, to fund a debt service reserve fund for the bonds, and to pay other costs related to those costs.

(b) Reserved.

(c) Reserved.

(d) Reserved.

SECTION 1202: Agency Covenants Regarding the Agency System

The Agency covenants and agrees:

(a) Reserved.

(b) That it will complete the acquisition and construction of the Additional Facilities as the Board of Directors of the Agency determines those facilities are needed to supply sufficient quantities of Lake Water to the Municipalities.

(c) That it will operate and maintain the Agency System in order to be able to perform the obligation to supply Lake Water to the Municipality and other Municipalities and Agency Customers.

(d) That it will maintain in effect a Water Supply Agreement with each of the Municipalities as required by the Bond Resolution or other authorized borrowing.

(e) That the Water Supply Agreements with other Municipalities will be substantially identical to this Agreement except for (i) the name and address of Municipality, (ii) the Maximum Quantity, (iii) Reserved and (iv) the Points of Delivery described in Section 403 and the Exhibit B to each such Agreement.

(f) That it will treat all Municipalities equitably without preference for any one or more Municipalities over any other one or more Municipalities.

(g) That it will enforce the provisions of each of the Water Supply Agreements.

(h) That it will perform all of its covenants under the Bond Resolution. For the purposes of this covenant, the covenants of the Bond Resolution shall survive for the term of this Agreement.

ARTICLE XIII
MUNICIPALITY COVENANTS

SECTION 1301: *Covenants Regarding the Municipality System*

The Municipality covenants and agrees as follows:

(a) It will operate and maintain the Municipality System, and all improvements and extensions of the Municipality System, in good repair and working order, will operate the same efficiently and faithfully, and will punctually perform all duties with respect to the Municipality System as may be required by the Constitution and laws of the State of Illinois and all other applicable laws and by all resolutions and ordinances of the Municipality, which resolutions or ordinances shall not be contrary to this Agreement.

(b) It will establish, maintain, revise as necessary and collect, rates and charges for customers of the Municipality System as shall be required from time to time to produce revenues at least sufficient for the purposes of (i) making all payments to be made under this Agreement and for paying all other costs of operation and maintenance of the Municipality System, (ii) making all deposits in all funds and accounts required by the terms of resolutions providing for bonds to be paid from revenues of the Municipality System and (iii) paying the principal of and interest on all bonds of the Municipality which by their terms are payable from the revenues of the Municipality System. The rates and charges for customers of the Municipality System shall not be required, however, to be sufficient to produce amounts required to make payments under this Agreement during the period specified in this subsection to the extent that available amounts sufficient for making those payments shall have been set aside in cash or investments in a separate account in the Municipality System Fund designated for that purpose and appropriated to make payments under this Agreement. The period specified in this subsection is the longer of (i) the immediately succeeding six months or (ii) the remainder of the Fiscal Year.

(c) It will provide for the segregation of all revenues of the Municipality System in the Municipality System Fund and provide for the application of the revenues for the purpose of subsection (b) of this Section.

(d) Any ordinance of the Municipality which authorizes the issuance after the Contract Date of any obligation of the Municipality to be paid from revenues of the Municipality System will expressly provide the revenues of the Municipality System may be used to pay principal of and interest on those obligations only to the extent that those revenues exceeds the amounts required to pay the operation and maintenance expenses of the Municipality System including all amounts payable form time to time under this Agreement.

(e) From time to time it will make all necessary and proper repairs, replacements, additions and betterments to the Municipality System so it may at all times be operated properly and advantageously, and when any equipment or facility shall have been worn out, destroyed or otherwise is insufficient for proper use, it will be promptly replaced (subject to subsection (h) of this Section) so that the efficiency of the Municipality System shall be at all times fully maintained.

(f) It will establish rules and regulations for the control and operation of the Municipality System necessary for the efficient and economical operation of the Municipality System.

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

(h) It will continue to own and possess the Municipality System and will dispose of property which is part of the Municipality System only to the extent that such property is no longer useful or profitable in the operations of the Municipality System. It will mortgage or

encumber the Municipality System only to the extent required to issue bonds payable from revenues of the Municipality System in accordance with applicable law.

(i) It will carry insurance or maintain other risk management protection of the Municipality System of the kinds and in the amounts which are customarily carried or maintained by parties operating similar properties, including, without limiting the generality of the foregoing, fire, windstorm insurance, public liability, and all additional insurance or protection covering those risks, including such coverage as may be recommended for coverage by a competent consultant employed for the purpose of making such recommendation. All moneys received for loss under the insurance policies or risk management protection shall be used in making good the loss or damage in respect of which they were paid except to the extent that the property damaged or lost would be permitted to be disposed of under subsection (h) of this Section, whether by repairing the property damaged or replacing the property destroyed, and provision for making good such loss or damage or replacing the property destroyed shall be made within ninety (90) days from date of loss. The proceeds derived from any and all policies or risk management protection for public liability shall be credited to an account for payment of operation and maintenance of the Municipality System and used in paying the claims on account of which they were received.

(j) It will adopt a budget for each fiscal year of the Municipality in accordance with applicable state laws providing for payment of all sums anticipated to be due to the Agency during the Municipality's fiscal year.

(k) It will use its best efforts to obtain and maintain in effect at all times a State Water Allocation which satisfies the Municipality Requirement.

(l) It will use its best efforts to continue serving all customers of the Municipality System which are served as of the Contract Date.

SECTION 1302: *Warranty Regarding Payment Obligation*

The Municipality represents and warrants that payments required to be made under Article VI will constitute operation expenses of the Municipality System.

SECTION 1303: Cooperation in Construction of Agency System

The Municipality agrees to cooperate with the Agency in the Agency's construction and acquisition of easements and any easements necessary for portions of the Agency System to be located on Municipality property. The Municipality shall provide to Agency, at no charge, permanent easements on Municipal rights of way and, provided it does not interfere with the Municipality's use, other Municipal Property with no obligation upon the Agency to relocate the Agency System except at the full cost of the Municipality. The Agency shall compensate the Municipality for any taking of Municipal Property where an easement was not sufficient for the Agency's needs or where the Agency's easement materially alters the Municipality's existing use of the municipal property. The Agency shall pay for the full cost of the use of eminent domain powers of a Municipality needed for any reasonable Agency use. The Municipality shall grant the Agency access to Municipality property to the extent reasonably necessary to construct and install the Points of Delivery and the Devices.

SECTION 1304. Cooperation in Issuance of Agency Obligations.

The Municipality agrees to cooperate with the Agency in the issuance of the Agency Obligations. In connection with the issuance of Agency Obligations, the Municipality agrees to comply with all reasonable requests of the Agency and will, upon request:

- (1) Make available Municipality financial information;
- (2) Consent to publication and distribution of Municipality financial information;
- (3) Certify that Municipality financial information 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;

- (4) Make available to the Agency certified copies of official Municipality proceedings;
- and
- (5) Provide certificates to be used in a transcript of closing documents.

ARTICLE XIV
DEFAULTS AND REMEDIES

This Article sets forth the rights of the Agency in the event that the Municipality fails to perform its obligation under this Agreement and the rights of the Municipality in the event that the Agency fails to perform its obligations under this Agreement.

SECTION 1401: *Defaults*

The following events or conditions shall be considered defaults of the Municipality under this Agreement:

- (a) Failure to pay when due any amounts payable under this Agreement;
- (b) Failure to purchase the Municipality Requirement from the Agency; and
- (c) Failure to perform any other obligation under this Agreement and the continuation of that failure for 30 days after written notice from the Agency of the Trustee of such failure.

SECTION 1402: *Agency Remedies in Event of Municipality Default*

In addition to any other remedy which may be available to the Agency at law or in equity or under this Agreement of the Agency Agreement, including any right to suspend delivery of Lake Water, the Agency shall have the following remedies in the event of default by the Municipality:

- (a) In the event of a default described in Section 1401(a) the Agency (and the Trustee) shall have the right to exercise the assignment of the defaulting Municipality's water fund accounts, revenues and reserves as provided in Section 801 and to collect the late charge and interest provided in Section 610.

(b) In the event of a default described in Section 1401(b) or (c), the Agency shall have the rights to mandamus and specific performance of the Municipality's obligations to the extent allowed by law.

Election of any remedy shall not be a waiver of any other remedy.

SECTION 1403: Effect on Defaulting Municipality of Budgeting and Billing Share of Municipality Default Costs.

In the event that the Municipality is in default under Section 1401(a), the obligation of the Municipality to pay the Municipality's share of the Costs shall continue to accrue, notwithstanding the fact that other Municipalities may have been billed for or may have paid shares of Municipality Default Costs as a result of the default by the Municipality. Payment of any amounts by the Municipality while in default shall be applied first to the payment of late charges, interest and overdue amounts (in that order) until those amounts are paid in full. The obligation to make payments of amounts in default, including late charges and interest, shall survive beyond the term of this Agreement until those amounts are paid.

SECTION 1404: Agency Defaults.

Failure by the Agency to deliver Lake Water to the Municipality as required by this Agreement or failure of the Agency to perform any other obligation under this Agreement and the continuation of that failure to perform for 30 days after written notice from the Municipality to the Agency of such failure shall be a default of the Agency under this Agreement, unless any such failure is excused pursuant to Section 1405.

SECTION 1405: Force Majeure

The Agency shall not be in default under this Agreement to the extent that it is prevented from or delayed in performance of its obligations under this Agreement by any event or condition beyond its reasonable control, including, but not limited to, strikes or other work stoppages, war, acts of civil or military authorities other than the Agency, earthquakes, tornadoes, inability of the Agency to borrow money to finance construction, maintenance or replacement of the Agency

System, failure of the City of Chicago to perform its obligations under the Chicago Contract and acts of the Municipality.

SECTION 1406: *Remedies in Event of Agency Default.*

In the event of a default by the Agency under this Agreement, the Municipality may bring any action against the Agency, including an action in equity and actions for mandamus and specific performance of the Agency's obligations to the extent allowed by law, but in any event, whether or not there is an Agency default, the Municipality shall have no right to cancel or rescind this Agreement, no right to withhold payments due or to become due under this Agreement, no right to recover amounts previously paid under this Agreement, no right to recover amounts previously paid under this Agreement from any other Member. and no claim on any amounts in the Revenue Fund, the Debt Service Fund, the Debt Service Reserve Fund, the Bond Anticipation Note Debt Service Fund, the General Fund or any other Funds required to be maintained as a result of other authorized borrowing. Election of any remedy shall not be a waiver of any other remedy. The Agency will issue its Bonds and Notes and undertake other authorized borrowing in specific reliance on the limitations set forth in this Section with respect to the rights of the Municipality.

ARTICLE XV
MISCELLANEOUS PROVISIONS

SECTION 1501: *Term.*

(a) This Agreement shall have a term of forty (40) years from the Contract Date.

(b) The obligation of the Agency to furnish Lake Water after the date on which any contract with a water supplier such as the City of Chicago expires shall be contingent upon the ability of the Agency to enter into an extension of that contract, enter into a replacement contract, or otherwise arrange for an alternate supply of water.

SECTION 1502: *Effective Date.*

This Agreement shall become effective on the Contract Date.

SECTION 1503: *Amendment.*

This Agreement may be amended only by written agreement between the Agency and the Municipality. Amendments shall not diminish the rights of any other Member. If the Agency should pledge or assign any of its rights under this Agreement to the Trustee in connection with the sale, issuance and payment of Agency Obligations, then this Agreement shall not be terminated, revoked, amended or modified except as provided in and permitted by the Bond Resolution so long as the Bond Resolution is in effect. The same situation shall exist with other authorized borrowing.

SECTION 1504: *Agency Cooperative Arrangements With Other Water Suppliers.*

Notwithstanding any of the provisions of this Agreement, the Agency is not prohibited by this Agreement from entering into cooperative arrangements with other suppliers of water to provide water to each other to meet their water needs, provided that these arrangements do not interfere, except in emergencies, with the delivery of Lake Water to the Municipality.

SECTION 1505: *Municipality Cooperative Arrangements With Other Water Suppliers.*

Notwithstanding any of the provisions of this Agreement, the Municipality is not prohibited by this Agreement from entering into cooperative arrangements with other suppliers of water to provide water to each other to meet their emergency water needs. The Municipality may also receive Lake Water produced by the City of Chicago from other licensed water suppliers for purposes of testing or flushing without having to waste such Lake Water.

SECTION 1506: *Nonassignment*

Except as otherwise provided in Article VIII, this Agreement may not be assigned by either party without the written consent of the other.

SECTION 1507: *Notices*

All notices, invoices and Bills under this Agreement shall be in writing except in case of emergency and shall be delivered or mailed by first class mail, if to the Agency at:

Northwest Suburban Municipal Joint Action Water Agency
901 Wellington Avenue
Elk Grove Village, Illinois 60007
Attention: Executive Director

and if to the Municipality at:

or such other address as either the Agency or the Municipality shall designate by notice to the other. Notices shall be considered given when delivered or 3 days after being deposited in the mail or such other method as the Board of Directors shall establish.

SECTION 1508: *Miscellaneous Provisions*

(a) This Agreement supersedes all prior negotiations or understandings and is the whole agreement of the parties. There are no other oral or written agreements concerning the subject of this Agreement. This Agreement shall have no effect, however, on the Agency Agreement.

(b) This Agreement shall be governed by, and administered and interpreted in accordance with, the laws of the State of Illinois.

(c) The provisions of this Agreement shall be interpreted when possible in a manner to sustain their legality and enforceability. The unenforceability of any provision of the Agreement in a specific situation shall not affect the enforceability of that provision in another situation or the remaining provisions of the Agreement.

(d) If any part of this Agreement shall be held invalid for any reason, the remainder of this Agreement shall remain valid to the maximum extent possible.

(e) No action by either party to this Agreement other than a written statement signed by the party against whom a waiver is claimed, shall be deemed a waiver of any rights granted by this Agreement. A waiver of rights with respect to any matter arising under this Agreement shall

not be deemed a waiver of any other rights under this Agreement, nor shall it be deemed a waiver of similar or identical rights with respect to any other matter.

IN WITNESS OF THIS AGREEMENT, the Agency and the Municipality have executed this Agreement this _____ day of _____, 20____

MUNICIPALITY

By _____

Attest:

By _____

NORTHWEST SUBURBAN MUNICIPAL
JOINT ACTION WATER AGENCY

By _____

Attest:

By _____

APPENDIX 1

A. Municipality's Share of Water Purchase Costs
 (Section 602) The Municipality's share of Water Purchase Costs for a month shall equal:

$$\frac{A}{B} \times C$$

where

A = the Municipality Delivered Quantity in the prior month;
 B = the sum of factor A for all Municipalities; and
 C = the Agency's Water Purchase Costs for that month.

B. Municipality's Share of Power Costs (Section 603)
 After the System Commencement Date, the Municipality's share of Power Costs for a month shall equal:

$$\frac{D}{E} \times F$$

where

D = the Municipality Delivered Quantity in the prior month;
 E = the sum of factor D for all Municipalities; and
 F = the Power Costs of the Agency for that month

$$\frac{D_1}{E_1}$$

C. Municipality's Share of Operation and Maintenance Costs (Sec. 604) (Section 604) After the System Commencement Date, the Municipality's share of Operations and Maintenance Costs for a month shall equal;

$$\frac{G}{H} \times I$$

where

G = the Municipality's Total Water Use in the most recent Calendar Year completed prior to the beginning of the Current Fiscal Year;
 H = the sum factor G for all Municipalities; and

I = the Operation and Maintenance Costs for that month

D. Municipality's Share of Fixed Costs (Sec. 605(a)) After the Retirement Date, the Municipality's share of Fixed Costs for a month shall equal:

$$\frac{G}{H} \times J$$

where

G = the Municipality's Total Water Use in the most recent Calendar year completed prior to the beginning of the current Fiscal Year;

H = the sum factor G for all Municipalities; and

J = the aggregate Fixed Costs in Budget divided by twelve

Municipality's Share of Equal Share Costs (Section 605(c)) The Municipality's Share of Equal Share Costs for a month shall equal:

$$KJ \div LK \div 12$$

where

KJ = the sum of designated budget line items adopted as a Schedule to the applicable Budget

LK = the number of Municipalities;

E. Municipality's Share of Under-consumption Costs (Section 606) If Section 606 is applicable, the Village's share of Under-consumption Costs for a month shall equal:

$$\frac{P}{Q} \times R$$

P = the difference between the Village Minimum Quantity and the Delivered Quantity in the most recently completed Calendar Year (but not less than zero);

Q = the of factor P for all Municipalities which is purchased less than their Minimum Quantity in the most recently completed Calendar Year; and

R = Under-consumption Costs (as defined in Section 102) for that month, if any,

F. Municipality's Share of Municipality Default Costs

(Section 607) If Section 607 is applicable, the Municipality's share of Municipality Default Costs for a month shall equal:

$$\frac{S}{T} \times U$$

where

S = the Municipality's share of Costs for the prior month, except any share of Municipality Default Costs;

T = the sum of factor S for all Municipalities not in default in their payment obligations under their Water Supply Agreement; and

U = the Municipality Default Costs for that month.

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