



Reviewed By:

Legal	<input type="checkbox"/>
Finance	<input type="checkbox"/>
Engineer	<input type="checkbox"/>
City Administrator	<input checked="" type="checkbox"/>
Community Development	<input type="checkbox"/>
Purchasing	<input type="checkbox"/>
Police	<input type="checkbox"/>
Public Works	<input type="checkbox"/>
Parks and Recreation	<input type="checkbox"/>

Agenda Item Number

Mayor's Report #3

Tracking Number

CC 2024-80

Agenda Item Summary Memo**Title:** DuPage Water Commission Agreements**Meeting and Date:** City Council – October 8, 2024**Synopsis:** Please see the attached memo.**Council Action Previously Taken:**

Date of Action: _____ Action Taken: _____

Item Number: _____

Type of Vote Required: Majority**Council Action Requested:** Approval

Submitted by: Bart Olson Administration

Name Department

Agenda Item Notes:

Revised the resolution for the water purchase and sale contract agreement: the waiver of bidding

reference was removed. In addition, a Supermajority vote is no longer required.

Have a question or comment about this agenda item?

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Memorandum

To: City Council
From: Bart Olson, City Administrator
CC:
Date: October 3, 2024
Subject: DuPage Water Commission Agreements

Summary

Consideration of four agreements that will cause Yorkville to join the DuPage Water Commission (DWC).

Background

This item was last discussed by the City Council at the September 24th City Council meeting, when the City Council approved an amendment to the second escrow agreement between the City and the DWC which allowed certain project costs to be covered by the existing escrow. Prior to that meeting, the City Council heard a verbal update at the September 10th meeting that the final DWC agreements were expected to be ready for consideration at the October 8th City Council meeting.

The four companion agreements included in this agenda item are:

- 1) Water Purchase and Sale Contract / Yorkville Subsequent Customer Agreement
 - a. This is the main agreement that allows Yorkville to join the DWC and receive Lake Michigan water. The terms of this agreement are relatively standard between all DWC communities, and so Yorkville's will mirror the terms that were included in the agreement from Bartlett (the last community to join DWC before Yorkville). In general, the agreement covers sale of water to Yorkville, confirmation that the transmission pipe construction is expected to be complete in 2028 with commissioning of the system and use of the water by Yorkville immediately thereafter, that Yorkville will pay rates as established by the DWC, that Yorkville agrees to pay our share of the transmission pipe construction costs, and that Yorkville agrees to pay a ~\$8.01m "capital cost recovery charge" (also known as a connection fee) to DWC. Said capital cost recovery charge is being financed by DWC at 0% interest rate and may be offset by costs associated with a future decision by the City to pay for a transmission main oversizing, as described more fully in the Capital Cost Recovery Charge intergovernmental agreement.
 - b. Other items to note within this agreement:
 - i. The City's use of water is limited by:
 1. Our current IDNR Lake Michigan allocation permit amount (or as modified by the City and IDNR in the future)
 2. Any future DWC curtailment agreement, as contemplated by the DWC Board and all DWC communities

3. The physical capacity of the system
 - ii. Yorkville is required to maintain proper storage of water in the amount of 2x the City's daily average water demand. This requirement is driving the consideration to build a water storage tank near the receiving stations and in future areas where the water system is being expanded (i.e. Eldamain Road). Costs of new water storage tanks related to the receiving stations have been included in prior Lake Michigan project cost estimates. Costs of new water storage tanks related to the Eldamain corridor are being estimated, with the intent to require future data center projects to cover the cost of the tanks.
 - iii. The City will construct two receiving stations, one near the Grande Reserve water tower and water treatment plant, and one expected to be near Route 71 and 126 (site under discussion for acquisition). DWC will construct and operate two metering stations adjacent to the City's receiving stations.
 - iv. There are currently 13 DWC board members (2 board members from each DWC district and one at-large board member). The approval of this agreement will cause the DWC board member count to increase to 15, with both of the new DWC members coming from Kendall County. One of the board members will be chosen from Kendall County by the DuPage County Board Chair, and the other board member will be appointed by a majority vote of the Yorkville, Oswego, and Montgomery mayors. Any future towns added to DWC membership in the future will be put into the Yorkville/Oswego/Montgomery board district, and will share appointing authority with our mayors.
- 2) Waterlink Project Escrow Intergovernmental Agreement
 - a. This is the main construction funding agreement for the transmission main project. These costs include land acquisition. This agreement requires Yorkville to fund its 40.22% share of the project costs in advance of DWC incurring costs (and at a schedule to be determined at a later date once bids have been received) and to replenish the escrow account anytime it drops below \$30m.
 - b. Other items to note within this agreement:
 - i. DWC is offering each town a line of credit in the amount of \$7m to use for construction funding. The interest rates for this line of credit are set at DWC's highest interest rate on its investments plus 1% - and thus, it is unlikely to be a better option than WIFIA, state revolving loan fund, or even the City's normal bonds. However, this line-of-credit could be used if any of the other financing options fall short or if the City misses a construction funding escrow payment. In the latter scenario, DWC would have the ability to charge the line-of-credit to offset the City's non-payment.
- 3) Intergovernmental Agreement Concerning Development of Connection Facilities to Implement Water Service

- a. This project covers definitions and processes of the actual construction project for the transmission main:
 - i. Defines what components are included in the different cost estimates for the project
 - ii. Clarifies that DWC will be responsible for designing and constructing the connection facilities to be housed on the City's receiving station properties
 - iii. Declares DWC to be responsible for land acquisition, including eminent domain processes if needed
 - iv. Confirms that DWC will do the project design, construction management, and final acceptance of the transmission main project and connection facilities
- 4) Intergovernmental Agreement concerning the Capital Cost Recovery Charge
 - a. This agreement confirms Yorkville's ~\$8.01m connection fee to join DWC, gives Yorkville the ability to pay this connection fee at a 0% interest rate over the next 30 years, and to offset this cost through a future decision to pay for a transmission main oversizing on one section of pipe in the project from a 48" to a 54" pipe.
 - b. This future decision on oversizing the pipe is on the table because DWC feels that other communities along this section of pipe may want to tie into the DWC system at a future date, and they have elected to direct the overall project to include this 54" pipe section even though it is not needed to serve Yorkville, Oswego, and Montgomery (i.e. we could be served with the smaller 48" pipe). Engineers have estimated that the incremental cost of the 54" pipe as compared to the 48" pipe will be roughly equal to all three communities connection fees. Thus, DWC has offered to trade the connection fee for the oversizing cost. If Yorkville elects to pay for the oversizing, both Yorkville and the DWC will calculate the value of the difference in interest between the 0% connection fee interest rate vs. an assumed WIFIA loan interest rate for the oversizing cost. The benefit to both entities is that DWC will not have to pay for the construction costs of oversizing the pipe, and Yorkville can push more of its costs into a WIFIA loan (but with an effective interest rate of 0% for this component).

Recommendation

Staff recommends approval of all four agreements: the water purchase and sale agreement; the escrow intergovernmental agreement; the development of connection facilities intergovernmental agreement; the capital cost recovery charge intergovernmental agreement. Approval of all four agreements by Yorkville follows Oswego's unanimous approval of the agreements on October 1st, will lead the way for Montgomery to approve the agreements at their October 14th Village Board meeting, and for the DWC to take them up at their October 17th board meeting. Following DWC approval, project bids are slated to begin by the end of 2024 with some construction work expected in the region by early 2025. As a general reminder, EEI is finalizing water rate projections as part of our WIFIA loan, and these water rate projections are expected to be discussed by the City Council by the end of 2024.

Finally, it should be noted that the approval of these agreements represents a significant milestone in a project to choose a new water source first discussed by the City Council more than a decade ago and resulting in a decision around 2016 to begin to move away from the aquifer. These documents represent thousands of hours of work by staff members, consultants, engineers, attorneys, lobbyists, elected officials, and others. This decision sets the community up with a sustainable water source for existing residents and businesses and allows us to recruit future commercial and industrial development into the area which should lower the tax burden for residents in the future.

Resolution No. 2024-_____

**A RESOLUTION AUTHORIZING THE EXECUTION OF A WATER
PURCHASE AND SALE CONTRACT BETWEEN THE DUPAGE
WATER COMMISSION AND THE UNITED CITY OF YORKVILLE
FOR THE UNITED CITY OF YORKVILLE UNIT SYSTEM**

WHEREAS, the United City of Yorkville, Kendall County, Illinois (the “*City*”) is a duly organized and validly existing non-home-rule municipality created in accordance with the Constitution of the State of Illinois of 1970 and the laws of the State; and

WHEREAS, the DuPage Water Commission, DuPage, Cook, and Will Counties, State of Illinois (the “*Commission*”), is a county water commission and public corporation under Division 135 of Article 11 of the Illinois Municipal Code (65 ILCS 5/11-135-1 *et seq.*), and the Water Commission Act of 1985 (70 ILCS 3720/1 *et seq.*) (collectively, the “*Acts*”); and

WHEREAS, the Constitution of the State of Illinois of 1970, Article VII, Section 10, and the Intergovernmental Cooperation Act, (5 ILCS 220/1 *et seq.*), authorize units of local government to 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; and

WHEREAS, the Commission has been organized under the Acts to supply water within its territorial limits; and

WHEREAS, the Commission owns and maintains a waterworks system as a supplier of Lake Michigan water to member customers that contract for such service; and

WHEREAS, the City currently owns and operates a municipal drinking water system served by wells that extract source water from an underground aquifer; and

WHEREAS, the City is within the territorial limits of the Commission; and

WHEREAS, the City, together with the Village of Montgomery and the Village of Oswego (collectively the “*WaterLink Communities*”), conducted extensive study and concluded that the most sustainable alternative water source to serve the WaterLink Communities through the municipal waterworks systems currently serving the WaterLink Communities, as well as any extensions or improvements of those systems is Lake Michigan water from the Commission; and

WHEREAS, the City has applied for and received from the State of Illinois Department of Natural Resources, Office of Water Resources, a Lake Michigan water allocation permit for the Yorkville Unit System; and

WHEREAS, the City is in the process of designing and constructing the conversion of its waterworks system that will be owned and operated by the City and extended or improved from time to time to meet the potable water requirements of all residents and businesses to be served with water from the City; and

WHEREAS, the Commission and the WaterLink Communities have entered into Escrow Agreements and have been taking steps to finance, study, engineer, design, and construct the facilities necessary for the WaterLink Communities to receive Lake Michigan water, and the Commission has been taking steps to study, finance, engineer, design, and construct facilities to deliver Lake Michigan water to the WaterLink Communities; and

WHEREAS, the City desires that its waterworks system as well as any extensions or improvements of that system (the “*Yorkville Unit System*”) be served with water from the Commission as mutually agreed to by the parties and pursuant to the terms of the Water Purchase and Sale Contract (the “*Contract*”), attached hereto as *Exhibit A*; and

WHEREAS, the Commission has entered various water supply contracts with the City of

Chicago to purchase Lake Michigan water sufficient to meet the water supply needs of the Commission and its customers (the “*Water Supply Contract*”) and most recently in 2024 and extends until 2041; and

WHEREAS, at some point during the term of the Contract, the Commission may build alone or with others a water treatment, distribution, and transmission system to obtain Lake Michigan water directly from Lake Michigan that will serve the Commission; and

WHEREAS, The Parties deem it to be in their best interests to approve this Water Purchase and Sale Contract for the Yorkville Unit System.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE UNITED CITY OF YORKVILLE, KENDALL COUNTY, ILLINOIS, as follows:

Section 1. That the recitals set forth above are incorporated here by reference.

Section 2. That the Mayor and City Council hereby approve the Water Purchase and Sale Contract with the DuPage Water Commission for the United City of Yorkville Unit System, and the Mayor and City Clerk are authorized and directed to execute on behalf of the United City of Yorkville the Water Purchase and Sale Contract for the United City of Yorkville Unit System substantially in the form attached as “Exhibit A.”

Section 3. All Resolutions or parts of Resolutions in conflict with any of the provisions of this Resolution shall be, and the same hereby repealed to the extent of the conflict.

Section 4. This Resolution and every provision thereof shall be considered severable. If any section, paragraph, clause or provision of this Resolution is declared by a court of law to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity of any other provisions of this Resolution.

Section 5. This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

[Remainder Intentionally Left Blank. Roll Call Vote to Follow]

Passed by the City Council of the United City of Yorkville, Kendall County, Illinois this
____ day of _____, A.D. 2024.

CITY CLERK

KEN KOCH _____

DAN TRANSIER _____

ARDEN JOE PLOCHER _____

CRAIG SOLING _____

CHRIS FUNKHOUSER _____

MATT MAREK _____

SEAVER TARULIS _____

RUSTY CORNEILS _____

APPROVED by me, as Mayor of the United City of Yorkville, Kendall County, Illinois
this ____ day of _____, A.D. 2024.

MAYOR

Attest:

CITY CLERK

DUPAGE WATER COMMISSION

WATER PURCHASE AND SALE CONTRACT

Between

The DuPage Water Commission

and

The United City of Yorkville

FOR THE UNITED CITY OF YORKVILLE

October 17, 2024

**DUPAGE WATER COMMISSION
WATER PURCHASE AND SALE CONTRACT
WITH THE UNITED CITY OF YORKVILLE**

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**DUPAGE WATER COMMISSION
WATER PURCHASE AND SALE CONTRACT WITH THE UNITED CITY
OF YORKVILLE
FOR THE UNITED CITY OF YORKVILLE UNIT SYSTEM**

This Water Purchase and Sale Contract (“Contract”), dated as of October 17, 2024, by and between the **DUPAGE WATER COMMISSION**, DuPage, Cook, and Will Counties, State of Illinois (the “Commission”), a county water commission and public corporation under Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.*, and the Water Commission Act of 1985, 70 ILCS 3720/1 *et seq.* (collectively, the “Acts”), and the **UNITED CITY OF YORKVILLE**, Kendall County, Illinois, a municipal corporation duly organized and existing under the laws of the State of Illinois (“Yorkville”);

WITNESSETH:

WHEREAS, the Commission has been organized under the Acts to supply water within its territorial limits; and

WHEREAS, the Commission owns and maintains a waterworks system as a supplier of Lake Michigan water to member customers that contract for such service; and

WHEREAS, Yorkville currently owns and operates a municipal drinking water system served by wells that extract source water from the Ironton-Galesville aquifer; and

WHEREAS, Yorkville is within the territorial limits of the Commission; and

WHEREAS, Yorkville, together with the Village of Oswego and the Village of Montgomery (collectively the “WaterLink Communities”), conducted extensive study

and concluded that the most sustainable alternative water source to serve the WaterLink Communities through the municipal waterworks systems currently serving the WaterLink Communities, as well as any extensions or improvements of those systems is Lake Michigan water from the Commission; and

WHEREAS, Yorkville (along with the WaterLink Communities) has applied for and received from the State of Illinois Department of Natural Resources, Office of Water Resources, a Lake Michigan water allocation permit for the Yorkville Unit System; and

WHEREAS, Yorkville is in the process of designing and constructing the conversion of its waterworks system that will be owned and operated by Yorkville and extended or improved from time to time to meet the potable water requirements of all residents and businesses to be served with water from Yorkville, which waterworks system is preliminarily depicted in Exhibit A attached to this Contract; and

WHEREAS, the Commission and the WaterLink Communities have entered into Escrow Agreements and have been taking steps to finance, study, engineer, design, and construct the facilities necessary for the WaterLink Communities to receive Lake Michigan water, and the Commission has been taking steps to study, finance, engineer, design, and construct the Commission Connection Facilities (as defined herein) to deliver Lake Michigan water to the WaterLink Communities; and

WHEREAS, contemporaneously with this Agreement, the WaterLink Communities and the Commission are entering into a WaterLink Project Escrow Intergovernmental Agreement, an Intergovernmental Agreement with the United City

of Yorkville Concerning Capital Cost Recovery Charge, and an Intergovernmental Agreement Concerning Development of Connection Facilities to Implement Water Service; and

WHEREAS, the WaterLink Communities have started Optimal Corrosion Control Treatment (OCCT) Studies of their water systems to be filed with the Illinois Environmental Protection Agency. The Commission and Yorkville acknowledge that the OCCT Study, including recommendations for infrastructure improvements that may be needed as a result of recommendations for optimized corrosion control treatment, will not be completed and reviewed by IEPA until approximately October 2025; and

WHEREAS, Yorkville and the Commission recognize that construction may begin pending the results of the OCCT Study; and

WHEREAS, Yorkville desires that its waterworks system preliminarily depicted in Exhibit A attached to this Contract as well as any extensions or improvements of that system (the “Yorkville Unit System”) be served with water from the Commission beginning sometime in 2028 as mutually agreed to by the parties; and

WHEREAS, the Commission has entered various water supply contracts with the City of Chicago to purchase Lake Michigan water sufficient to meet the water supply needs of the Commission and its customers (the “Water Supply Contract”) and most recently in 2024 and extends until 2041; and

WHEREAS, at some point during the term of this Contract, the Commission may build alone or with others a water treatment, distribution, and transmission system to

obtain Lake Michigan water directly from Lake Michigan that will serve the Commission; and

WHEREAS, the Commission has issued and sold and may further propose to issue and sell Bonds (as defined in Section 2 below) from time to time during the term of this Contract in sufficient amounts for the payment of the costs of its project of acquiring, designing, constructing, and maintaining its Waterworks System (as defined in Section 2 below); and

WHEREAS, such Bonds have been and may be issued in the future from time to time by the Commission pursuant to Bond Ordinances (as defined in Section 2 below) adopted by the Commission; and

WHEREAS, pursuant to the Acts, Article VII, Section 10 of the Illinois Constitution of 1970, the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, and the Public Utilities Act, 220 ILCS 5/1 *et seq.* as amended, the Commission and Yorkville are authorized to enter into this Contract; and

WHEREAS, by the execution of this Contract, Yorkville is surrendering none of its rights to the ownership and operation of the Yorkville Unit System, except as expressly provided for, and only to the limited extent so provided for, in this Contract, and Commission is surrendering none of its rights to the ownership and operation of its Waterworks System, but each asserts its continued right to operate such systems; and

WHEREAS, Yorkville recognizes that the Commission may use this Contract as the basis, in part, for obtaining loans from time to time to be evidenced by the issuance

of its Bonds; and for payment of the principal of and the premium, if any, and interest on such Bonds; and as the means for the payment of its maintenance and operating expenses; and for such purposes as may be authorized by applicable statutes or required in any Bond Ordinance adopted by the Commission authorizing issuance of Bonds; and

WHEREAS, Yorkville recognizes that the Commission may in the future enter into contracts with other customers that are members of or may join the Commission.

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

SECTION 1. PREAMBLES.

The preambles hereto are hereby incorporated herein by this reference and are made fully a part of this Contract.

SECTION 2. DEFINITIONS.

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

- A. “Aggregate Costs” means Operation and Maintenance Costs, Fixed Costs, and Underconsumption Costs, collectively, as defined herein.
- B. “Alternate Delivery” means the delivery of Lake Water purchased by Yorkville from the Commission to the Yorkville Unit System through facilities owned by a Contract Customer (commonly referred to as “Wheeling”).
- C. “Asset-In-Kind Amount” means the differential amount, if any, that Yorkville pays

for a portion of the increase in size of the primary 48" western pipeline (commencing at Book Road and 75th Street and extending west of the Fox River to a termination point at Orchard Road, also known as "TW 6/25" in the DWC naming convention) from the baseline pipe size to 54". The Commission and Yorkville will mutually agree in a separate document to be executed prior to the closing of the WIFIA Loan on the value of the contribution.

D. "Average Contract Customer Rate Per 1,000 Gallons" means Total Contract Customer Revenue divided by Total Contract Customer Use.

E. "Bond Ordinances" means all of the Commission's ordinances and resolutions under which the Commission has or will authorize the issuance of, or issue, Bonds.

F. "Bonds" means Revenue Bonds and Other Bonds.

G. "Capital Cost Recovery Charge" means the amount necessary, pursuant to Section 0.02 of the Water Commission Act of 1985 (as added by Public Act 093-0226) and Commission Resolution No. R-79-04, entitled "A Resolution Expressing the Policy of the DuPage Water Commission Regarding the New Subsequent Customer Pricing Methodology," to recover Yorkville's proportionate share of Original Capital Costs less Rebates, where Yorkville's proportionate share of Original Capital Costs less Rebates is that proportion of Original Capital Costs less Rebates which Yorkville's Full Water Requirements for 2022 and 2023 as reported by Yorkville to the IEPA bears to the sum of the Full Water Requirements or Minimum Take or Pay Requirements (as defined in the Contract Customer Contract), as applicable, of all of the Commission's Contract Customers for such two years which the parties agree shall be \$8,013,886.00

based on the method of calculating such amount illustrated in Exhibit E attached to this Contract.

H. "Charter Customer Facilities" means all of the feeder mains, metering stations, and pressure adjusting stations constructed as of May 1, 1992, solely for the purpose of initially connecting the Charter Customers to the Waterworks System.

I. Intentionally Omitted.

J. "Charter Customers" means the units of local government (not including the Commission) that are parties to the Charter Customer Contract, excluding, however, any such unit of local government whose rights and obligations under such Contract have been terminated, including without limitation the United City of Yorkville.

K. "Commission" means the DuPage Water Commission, DuPage, Cook, and Will Counties, State of Illinois.

L. "Commission Connection Facilities" means the portions of the Waterworks System constructed by the Commission to initially connect the WaterLink Communities including the Yorkville Unit System to the existing Waterworks System, which facilities are depicted in the preliminary plans attached as Exhibit B-2 to this Contract, as such facilities may be relocated, replaced, extended, or improved and may be used in the service of other customers from time to time. The Commission Connection Facilities include, among other items, metering station(s), including pipelines and equipment appurtenant thereto, and SCADA System facilities attributable to the Yorkville Unit System, including equipment appurtenant thereto.

M. "Connection Facilities" means the Yorkville Unit System Connection Facilities

and the Commission Connection Facilities.

N. “Connection Facilities Cost” means the full actual cost incurred by the Commission in connection with (i) the design, bidding, contracting, managing, and actual construction, installation, removal, relocation, replacement, extension, or improvement of the Connection Facilities, including without limitation equipment required for the operation of the Connection Facilities and all administrative, financing, supervisory, inspection, engineering, surveying, and legal fees, costs, and expenses associated therewith; (ii) the acquisition and divestment of lands, easements, and rights of way over lands and waters necessary for the construction, installation, removal, relocation, replacement, extension, or improvement of the Connection Facilities, and all administrative, title, surveying, and legal fees, costs, and expenses associated therewith; and (iii) the review and processing of plans and agreements for the construction, installation, removal, relocation, replacement, extension, or improvement of the Connection Facilities and in connection with the negotiation, preparation, consideration, and review of this Contract, including without limitation all legal, engineering, consulting, and administrative fees, costs, and expenses associated therewith; except as any of the above are included in Operation and Maintenance Costs.

O. “Contract” means this Water Purchase and Sale Contract.

P. “Contract Customer Contract” means the Water Purchase and Sale Contract between the Commission and the Contract Customers dated as of January 18, 2024.

Q. “Contract Customers” collectively means the Contract Customers, Yorkville, and

any other entity with whom the Commission has entered into, or may in the future enter into, a contract or agreement for the sale by the Commission of Lake Water to that entity, except only contracts and agreements providing for the delivery of Lake Water during times of emergency only.

R. “Days” means calendar days.

S. “Determination Date” means the last day of December immediately preceding the Interest Period for which the Earned Interest Rate pursuant to this Contract is being calculated, but the effective date of any change in the Earned Interest Rate shall, for purposes hereof, be the first day of May following such Determination Date.

T. “Earned Interest Rate” means, with respect to each Interest Period under this Contract, the highest monthly average yield to maturity interest rate earned by the Commission (total funds) as reported monthly on the Commission’s Schedule of Investments for the immediate preceding fiscal year (May 1 – April 30) as determined by the Commission, which determination shall be conclusive and binding upon Yorkville absent manifest error, but the effective date of any change in the Earned Interest Rate shall, for purposes hereof, be the first day of May following such Determination Date.

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

V. “Fixed Costs” means an amount sufficient at all times to pay the principal of and the premium, if any, and interest on any Revenue Bonds, to provide reserves required therefor, to provide an adequate depreciation fund for the Waterworks System, to comply with the covenants of all Revenue Bond Ordinances, and to pay reasonable

capital costs necessary to carry out the corporate purposes and powers of the Commission; except as any of the above are included in Operation and Maintenance Costs.

W. “Full Water Requirements” means, (i) as it applies to calculating Yorkville’s Capital Cost Recovery Charge, the amount of water necessary to meet the potable water requirements of all then current customers served by the Yorkville Unit System at the time Yorkville’s Capital Cost Recovery Charge is being calculated, (ii) as it applies to the Yorkville Unit System for all other purposes of this Contract, the amount of water necessary from time to time to meet the potable water requirements of all then current customers served by the Yorkville Unit System, and (iii) as it applies to other Contract Customers of the Commission, such Contract Customers’ full water requirements as defined in their respective contracts with the Commission.

X. “Interest Period” means (i) initially, the period commencing on the first date on which Yorkville first becomes obligated to make payments under Subsection 7.D of this Contract and ending on the next succeeding first day of May and (ii) thereafter, each period commencing on the last day of the next preceding Interest Period and ending on the next succeeding first day of May; provided, however, that any Interest Period that otherwise extends beyond May 1, 2058, shall end on February 24, 2064.

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

Z. “Operation and Maintenance Costs” means amounts payable by the Commission under the Water Supply Contract, except Underconsumption Costs, and all expenses incurred in the administration, operation, and maintenance of the Waterworks System

and the accumulation of reserves related to payment of said costs. Operation and Maintenance Costs in any month shall be at least equal to the amount required to be deposited by the Commission in that month into the operation and maintenance funds or accounts created under all Revenue Bond Ordinances.

AA. “Original Capital Costs” means all costs paid by the Commission for property owned by the Commission, as of April 30, 2024, without reduction for depreciation, including actual costs of construction, engineering, and capitalized interest on assets in service and under construction but excluding the cost of constructing the Charter Customer Facilities and financing costs other than interest capitalized in accordance with Generally Accepted Accounting Principles.

BB. “Original Revenue Bonds” means the Series 1987 Revenue Bonds, originally issued in the amount of \$200,000,000 pursuant to Ordinance No. 0-1-87 adopted January 15, 1987, and the Series 1993 Water Refunding Revenue Bonds, originally issued in the amount of \$182,755,000 pursuant to Ordinance No. 0-8-93 adopted April 8, 1993, and any other Revenue Bonds that may in the future be issued to refund or refinance all or any portion of the indebtedness represented by said Series 1987, 1993, 2003, and 2013 Revenue Bonds. As of the date of this Contract, all of the Original Revenue Bonds are fully paid and retired.

CC. “Yorkville” means the United City of Yorkville, located in Kendall County, State of Illinois.

DD. “Yorkville’s Base Rate” means a water rate stated as dollars or cents per 1,000 gallons that is calculated by (i) the sum of all Operation and Maintenance Cost payments, all Fixed Costs payments, all Connection Facilities Cost payments, and all

Capital Cost Recovery Charge payments under the Contract Customer Contract estimated to be made by Yorkville pursuant to this Contract in the Fiscal Year for which Yorkville's Base Rate pursuant to this Contract is being calculated and (ii) dividing the resulting amount by the total amount of Lake Water, stated in 1,000 gallon units, estimated to be delivered to Yorkville in said Fiscal Year.

EE. "Yorkville Unit System" means the waterworks system described in Exhibit A attached to this Contract as well as any extensions or improvements of that system acquired by Yorkville and used for the purpose of providing and transmitting water to its customers.

FF. "Yorkville Unit System Connection Facilities" means those portions of the Yorkville Unit System, lying downstream from the Point of Delivery, to be constructed pursuant to this Contract by Yorkville at its expense to initially connect the Yorkville Unit System to the Waterworks System, which facilities are depicted in the preliminary plans attached as Exhibit B-1 to this Contract, as such facilities may be relocated, replaced, extended, or improved from time to time. The Yorkville Unit System Connection Facilities include, among other items, the pressure adjusting station(s) described in Subsection 4.A of this Contract and pipeline and equipment appurtenant thereto.

GG. "Other Bond Ordinances" means all of the Commission's ordinances and resolutions under which the Commission has or may authorize the issuance of, or issue, Other Bonds.

HH. "Other Bonds" means all of the Commission's debt obligations that are not

Revenue Bonds, whether in the form of bonds, notes, or other evidence of indebtedness, in whatever original principal amount, together with any such additional non-revenue obligations authorized by statute to be issued by the Commission from time to time and refunding obligations issued to refund other such obligations.

II. “Point(s) of Delivery” means the point(s) at which the Lake Water delivered to Yorkville pursuant to this Contract leaves the Commission’s Waterworks System and enters the Yorkville Unit System. A Point of Delivery shall be a point in the water main connecting the Commission’s metering station(s) to Yorkville’s pressure adjusting station(s) located downstream from the inside face of the outside wall or foundation of the Commission’s metering station(s) a distance of 10 feet or where such water main enters the outside face of the outside wall or foundation of Yorkville’s pressure adjusting station(s), whichever is closer to the Commission’s metering station(s).

JJ. “Prime Rate” means the base corporate rate of interest then most recently announced by the largest commercial bank, measured in terms of total assets, located and doing banking business in the State of Illinois, which rate may or may not be said bank’s lowest rate of interest charged by said bank for extensions of credit to debtors. The effective date of any change in the Prime Rate shall, for purposes hereof, be the effective date stated in the public announcement of said bank.

KK. “Rebates” means rebates formally declared as such by Commission Resolution as of the month prior to the month in which Yorkville first becomes obligated to make payments under Subsection 7.D of this Contract. As of the date of this Contract, the

Commission has formally declared \$106,326,287.00 in Rebates pursuant to Resolution Nos. R-19-94, R-21-95, R-15-96, R-24-97, R-18-98 and R-28-07.

LL. “Revenue Bond Ordinances” means all of the Commission’s resolutions under which the Commission has or will authorize the issuance of, or issue, Revenue Bonds.

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

NN. “SCADA System” means the Supervisory Control and Data Acquisition System of the Commission that provides an integrated control, communication, and security system for the Waterworks System, including data processing, management, transfer, and exchange; central operation; system control and monitoring; and operator-machine interfacing.

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

PP. “Underconsumer” means, for any given year, a Contract Customer of the Commission that takes less Lake Water in such year than such Contract Customer’s Water Allocation times 365 times the Underconsumption Ratio for such year.

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

RR. “Underconsumption Costs” means any amount that the Commission is obligated

to pay under the Water Supply Contract solely by reason of failure to accept delivery of the minimum quantity of Lake Water that the Commission is obligated to purchase under the Water Supply Contract.

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

TT. “Water Allocation” means, as it applies to other Contract Customers of the Commission, such Contract Customers’ water allocation as defined in their respective contracts with the Commission, and, as it applies to Yorkville, the sum of Yorkville’s allocations and allowable excesses from time to time of Lake Water for the Yorkville Unit System pursuant to the Level of Lake Michigan Act, as amended from time to time (See State of Illinois Department of Transportation, Division of Water Resources Decision on 1989 Allocation Review, Order No. LMO 89-2 and subsequent orders of the State of Illinois Department of Transportation, Division of Water Resources, or the successor to its responsibilities, the State of Illinois Department of Natural Resources, Office of Water Resources); and such other amounts of Lake Water as Yorkville may lawfully take for the Yorkville Unit System. At any time when the Full Water Requirements of the Yorkville Unit System shall exceed the Water Allocation for the Yorkville Unit System, then “Water Allocation” shall mean the Full Water Requirements of the Yorkville Unit System for all purposes of this Contract.

UU. “Water Supply Contract” means the water supply contract, dated March 19, 1984,

between the Commission and the City of Chicago, Illinois, as amended, supplemented, or extended from time to time, or any alternative water supply agreement, and most recently in 2024 and extends until 2041.

VV. “Waterworks System” means all the Commission’s facilities, including land; easements; rights-of-way over lands and waters; pumping facilities, storage facilities, metering stations, and other facilities; mains; and pipelines acquired and used for the purposes of providing and transmitting Lake Water from the Lake Michigan water supply system to the Commission’s customers. The Yorkville Unit System Connection Facilities are not part of the Waterworks System.

SECTION 3. WATER SUPPLY.

A. Agreement to Sell and Purchase. Subject to the provisions of this Contract, the Commission shall sell to Yorkville and Yorkville shall purchase from the Commission an amount of Lake Water necessary from time to time to serve the Yorkville Unit System’s Full Water Requirements. The Commission’s obligation to Yorkville to deliver Lake Water hereunder shall be limited, however, to a maximum annual amount equal to Yorkville’s then current Water Allocation times 365 and to a maximum rate of Lake Water to the Yorkville Unit System in any one hour equal to 1.7 times Yorkville’s then current Water Allocation divided by 24.

B. Beginning of Obligations to Deliver and Receive Lake Water. Unless this Contract is sooner terminated by the Commission pursuant to Subsection 20.B of this Contract, the Commission shall be obligated to deliver Lake Water to the Yorkville Unit System and Yorkville shall be obligated to receive at the Yorkville Unit System Lake Water delivered by the Commission immediately after completion of

construction of the Connection Facilities and the water storage capacity required pursuant to Subsection 4.B of this Contract; provided, however, that Yorkville shall have the right to receive Lake Water pursuant to this Contract prior to the completion of construction of the required storage capacity if such storage capacity has been substantially completed to the point where it is capable of serving its intended function or would be capable of serving its intended function except for the fact that painting or other finishing and restoration work are not complete.

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

- (i) The amount of Lake Water from time to time available to the Commission; and
- (ii) Provisions in contracts between the Commission and its Contract Customers and other customers related to curtailment and other limits on the supply of Lake Water; and
- (iii) The capacity of the Waterworks System; and
- (iv) Ordinary transmission loss, including standard metering error, between the Commission's source of supply and the Point of Delivery to the Yorkville Unit System; and
- (v) The other provisions of this Contract, including but not limited to Section 20.

D. Emergency or Maintenance Turn-Off. The Commission undertakes to use reasonable care and diligence to provide a constant supply of Lake Water as herein provided for but reserves the right at any time to turn off the flow of Lake Water in its mains for emergency and maintenance purposes. The Commission shall give notice not less than 48 hours in advance of any turn-off for maintenance purposes and it shall

give such notice as is reasonable under the particular circumstances of any turn-off for emergency purposes.

E. Curtailment; Emergency Use of Other Sources. If it becomes necessary for the Commission to limit its delivery of Lake Water to its customers for any reason, Yorkville shall be entitled, to the extent possible, to receive during such period of curtailment a pro rata share of available Lake Water as determined by the ratio of (i) the Yorkville Unit System's total Lake Water use during the prior Fiscal Year for other than start-up purposes pursuant to Subsection 10.I of this Contract to (ii) the sum of Lake Water use during the prior Fiscal Year of all of the Commission's customers entitled to Lake Water during such period of curtailment. Prior to the Commission's delivery of Lake Water to the Yorkville Unit System for a full Fiscal Year for other than start-up purposes pursuant to Subsection 10.I of this Contract, Yorkville shall be entitled, to the extent possible, to receive during such period of curtailment a pro rata share of available Lake Water as determined by the ratio of the Yorkville Unit System's Full Water Requirements during the prior Fiscal Year to the sum of (i) Lake Water use during the prior Fiscal Year of all of the Commission's other customers entitled to Lake Water during such period of curtailment and (ii) the Yorkville Unit System's Full Water Requirements during the prior Fiscal Year. Yorkville, in cases of emergency or when the Commission for whatever reason is unable to meet the Yorkville Unit System's Full Water Requirements, may, subject to the terms, conditions, and limitations set forth in Subsection 9.N of this Contract, serve its customers from any source; provided, however, that Yorkville shall continue to pay all

amounts due to the Commission hereunder during such period as if the Yorkville Unit System were receiving its Full Water Requirements from the Commission.

F. Water Quality. The Commission shall supply Yorkville with Lake Water of a quality commensurate to that furnished to the Commission's other Contract Customers, and meeting the requirements of any federal, State of Illinois, or local agency as shall have jurisdiction from time to time for the operation of public water supplies such as the Waterworks System. The Commission bears no responsibility for the contamination of Lake Water or deterioration of water quality occurring beyond the Points of Delivery to the Yorkville Unit System.

SECTION 4. DELIVERY; STORAGE.

A. Yorkville Unit System Connection Facilities. Yorkville shall receive its supply of Lake Water at the Yorkville Unit System Points of Delivery at pressures that will vary from time to time. Yorkville, at its own expense and pursuant to the schedule established in Section 10 of this Contract, shall site, design, construct, operate, maintain, and when necessary, replace the Yorkville Unit System Connection Facilities, including a pressure adjusting station immediately downstream from the Points of Delivery. Initial design and construction plans and specifications for the Yorkville Unit System Connection Facilities, and any future modifications thereof, shall be submitted in advance of construction or modification to the Commission for review and approval, which approval shall not be unreasonably withheld. In the event the Yorkville Unit System or the Yorkville Unit System Connection Facilities are to be relocated, replaced, extended, or improved at the request of the Commission, its

successor, other than those circumstances where the Commission is compelled to relocate the Yorkville Unit System or the Yorkville Unit System Connection Facilities for a non-Commission conflicting public infrastructure project or by State or Federal mandate, Yorkville will be entitled to reasonable and fair market value recovery for all costs without reduction for depreciation including actual costs of construction, engineering, and capitalized interest on assets in service and under construction and financing costs other than interest capitalized in accordance with Generally Accepted Accounting Principles.

B. Storage. Yorkville shall provide sufficient storage capacity within the Yorkville Unit System to store not less than two times the annual average daily water demand of the Yorkville Unit System; provided, however, that said requirement shall be reduced by (i) the amount of operable shallow well capacity (stated in gallons per hour) maintained by Yorkville in the Yorkville Unit System up to a maximum of 10 percent (10%) of said requirement plus (ii) an amount equal to the storage capacity maintained by the Commission in its Waterworks System multiplied by a fraction, the numerator of which is the annual average daily water demand of the Yorkville Unit System and the denominator of which is the total annual average daily water demands of all Contract Customers. The calculation of said water storage capacity requirement for the Yorkville Unit System is provided in Exhibit C attached to this Contract. In accordance with said requirement, Yorkville, at its own expense and pursuant to the schedule established in Section 10 of this Contract, shall construct for the Yorkville Unit System at least the amount of water storage capacity shown on Exhibit C to this Contract as the “Minimum Additional Required Storage.” Such water storage capacity

shall be in addition to the amount of water storage capacity shown on Exhibit C to this Contract as the “Existing Storage” in the Yorkville Unit System. Yorkville shall properly maintain all such water storage capacity, including operable shallow well capacity, in good and serviceable condition. If at any time Yorkville’s water storage capacity in the Yorkville Unit System, including its allowances for operable shallow well capacity and Commission storage capacity as provided above, falls below 1.9 times the annual average daily water demand of the Yorkville Unit System, then Yorkville, within 24 months after such level of deficiency is reached, shall construct additional water storage capacity within the Yorkville Unit System of sufficient quantity to increase the total storage capacity of the Yorkville Unit System, including its allowances for operable shallow well capacity and Commission storage capacity as provided above, to not less than two times the annual average daily water demand of the Yorkville Unit System.

C. Metering of Shallow Wells. Yorkville shall furnish, install, and maintain a meter on each of its operable shallow wells. All such meters shall be of standard make and shall be subject to inspection and examination by any employee or agent of the Commission at all reasonable times. Yorkville shall calibrate all such meters at least once in each Fiscal Year. Yorkville shall notify the Commission of the time, date, and place of each calibration at least five days in advance thereof, and a representative of the Commission shall have the right to observe any adjustments made to such meters in case any adjustments shall be necessary. The Commission shall have the right to place any or all of such meters under seal at any time.

D. Surges and Back-Flows. Yorkville’s operation of its pressure adjusting

station shall not cause surges or back-flows into the Waterworks System, nor shall the operation of the Yorkville's pressure adjusting station cause the Waterworks System pressure to drop below 20 pounds per square inch. The Commission shall not be responsible for any damage to the Yorkville Unit System or the Yorkville Unit System Connection Facilities caused by the design, operation, or maintenance of the Connection Facilities.

E. Maintenance of System; Water Quality; Prevention of Waste. Yorkville shall operate the Yorkville Unit System and the Yorkville Unit System Connection Facilities in such a manner as at no time to place the Commission and the Waterworks System in jeopardy of failing to meet the regulations of any agency or governmental authority having jurisdiction over the Commission's operation of its Waterworks System. The Commission and Yorkville shall notify each other immediately of all emergency and other conditions which may directly or indirectly affect the Waterworks System, the Yorkville Unit System, the Connection Facilities, or the quantity or quality of the Lake Water received pursuant to this Contract.

SECTION 5. MEASURING EQUIPMENT.

A. Metering Station and Instrumentation. The Commission shall, pursuant to the timetable established in Section 10 of this Contract, furnish, and install at the Points of Delivery a metering station containing the necessary equipment and devices of a type meeting the standards of the American Water Works Association for measuring properly the quantity of Lake Water delivered under this Contract, including all structures as the Commission shall deem necessary to house such equipment and

devices. Such furnishing and installing of a metering station shall be done in substantial conformance with the preliminary plans therefor attached as Exhibit B-2 to this Contract, as such preliminary plans may be revised by mutual agreement of the Commission and Yorkville. The Commission shall own, operate, maintain, and replace such metering station and all equipment and structures related thereto.

The metering station shall be located at a site or sites selected and acquired by Yorkville, and title transferred to the Commission, free and clear of all liens, claims, encumbrances, and restrictions unless otherwise approved by the Commission in writing. Yorkville shall be responsible for maintaining the grounds and landscaping, including but not limited to shrubbery and other plantings, located on each site provided. Such sites shall be subject to reasonable review and approval of the Commission, without charge to the Commission and pursuant to the timetable established in Section 10 of this Contract, shall grant to the Commission all necessary and insured easements for such site(s) and access thereto to the reasonable satisfaction of the Commission in a form similar to that attached as Exhibit D to this Contract and satisfactory to the Commission's attorneys. Yorkville also shall grant to the Commission all necessary and insured easements for the appropriate location and installation of antennas and appurtenant facilities for the Commission's SCADA System attributable to the Yorkville Unit System on property owned by Yorkville or on property lying within the corporate limits of Yorkville, free and clear of all liens, claims, encumbrances, and restrictions unless otherwise approved by the Commission in writing. Such SCADA System antennas or facilities shall be installed on such

easements in a manner that will reduce so far as reasonably possible any interference with the telemetry of the Yorkville Unit System.

Yorkville shall have access to the metering station for examination and inspection at reasonable times, but the reading for billing purposes, calibration, and adjustment of the equipment therein shall be done only by the employees or agents of the Commission.

B. Records. For the purpose of this Contract, the official record of readings of each meter at the metering station shall be the journal or other record book of the Commission in its office in which the records of the employees or agents of the Commission who take the readings are or may be transcribed. Upon written request of Yorkville, the Commission will give Yorkville a copy of such journal or record book, or permit Yorkville to have access thereto in the office of the Commission during regular business hours.

C. Calibration. At least once in each Fiscal Year, the Commission shall calibrate its meters dedicated to measuring the Lake Water delivered to the Yorkville Unit System, in the presence of a representative of Yorkville, and the Commission and Yorkville shall jointly observe any adjustments that are made to the meters in case any adjustments shall be necessary. If any check meters have been installed, then such check meters shall be calibrated at least once in each Fiscal Year by Yorkville in the presence of a representative of the Commission, and the Commission and Yorkville shall jointly observe any adjustments that are made to the meters in case any adjustments shall be necessary.

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

E. Meter Malfunctions. If the Commission or Yorkville at any time observes a variation between a meter and a check meter or any evidence of meter malfunction, such party shall promptly notify the other party, and the Commission and Yorkville shall then cooperate to procure an immediate calibration test and such adjustment, replacement, or other work necessary to return such meter to accuracy. The party who discovers such variation or malfunction shall give the other party written notice not less than 48 hours prior to the time of any test of any meter (which tests shall be conducted during normal working hours) so that the other party may conveniently have a representative present. If such representative is not present after the required notification at the time set in such notice, calibration and adjustment may proceed in

the absence of said representative notwithstanding any other provision of this Subsection 5.E. If the percentage of inaccuracy of any meter is found to be in excess of two percent, registration thereof shall be corrected by agreement of the Commission and Yorkville based upon the best data available, for a period extending back to the time when such inaccuracy began if such time is ascertainable, or for a period extending back one-half of the time elapsed since the last date of calibration (but in no event further back than a period of six months) if such time is not ascertainable.

If for any reason any meter is out of service or out of repair so that the amount of Lake Water delivered cannot be ascertained or computed from the reading thereof, then the Lake Water delivered during the period such meter is out of service or out of repair shall be deemed to be the registration of the check meter if one has been installed and is registering accurately, or, in the event that no check meter has been installed or the check meter is registering inaccurately, shall be estimated:

- (i) By correcting the error if the percentage of the error is ascertainable by calibration tests or mathematical calculations; or
- (ii) If the error is not ascertainable by calibration tests or mathematical calculation, by estimating the quantity of delivery by considering deliveries during preceding periods under similar conditions when the meter or meters were registering accurately, adjusted for the addition of new customers to the Yorkville Unit System.

F. Removal of Metering Station and SCADA System Facilities. Within ninety (90) days after the termination of this Contract (absent a failure to renew), the Commission, at its own expense and in its discretion, may remove the metering station, including equipment, and the SCADA System antennas and appurtenant facilities from the property of Yorkville and release the perpetual easement therein. If the

Commission fails to remove such station, equipment, and facilities, as aforesaid, Yorkville may take title to such station, equipment, and facilities.

SECTION 6. UNIT OF MEASUREMENT.

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

SECTION 7. PRICES AND TERMS OF PAYMENT.

A. Operation and Maintenance Costs Payment. Yorkville shall pay monthly to the Commission, at the time specified in Subsections 7.G and 7.M below, a share of the Commission's Operation and Maintenance Costs for each month, which shall be an amount equal to the then current price per 1,000 gallons for Operation and Maintenance Costs times the quantity of Lake Water divided by 1,000 delivered by the Waterworks System to the Yorkville Unit System for such month. At any time after the commencement of Lake Water delivery, no Lake Water is being supplied through the Waterworks System to any Contract Customer, Yorkville's share of monthly Operation and Maintenance Costs for the Yorkville Unit System shall be that proportion of those costs which the Yorkville Unit System's Water Allocation bears to the total Water Allocations of all of the Commission's customers required to make Operation and Maintenance Costs payments during the same period.

B. Fixed Costs Payment. Subject to the single limitation on its obligation to

pay Fixed Costs set forth in this Subsection 7.B, Yorkville shall pay monthly to the Commission, at the time specified in Subsections 7.G and 7.M below, one-twelfth of the Yorkville Unit System's share of Fixed Costs for each Fiscal Year. However, as of the date of this Contract, the Fixed Costs are \$0 per month. For the purposes of this Contract, the Yorkville Unit System's share of Fixed Costs for each Fiscal Year shall be that proportion of Fixed Costs which the Yorkville Unit System's Full Water Requirements for the two preceding calendar years prior to such Fiscal Year bears to the sum of the Full Water Requirements or Minimum Take or Pay Requirements, as applicable, of all of the Commission's Contract Customers for such two preceding calendar years who are not relieved from Fixed Costs payments pursuant to the terms of their contracts. Prior to the Commission's delivery of Lake Water to the Yorkville Unit System for two calendar years for other than start-up purposes pursuant to Subsection 10.I of this Contract, the Yorkville Unit System's share of Fixed Costs shall be that portion of Fixed Costs which the Yorkville Unit System's Water Allocation bears to the total Water Allocations or the Full Water Requirements or Minimum Take or Pay Requirements, whichever is then applicable, of all of the Commission's Contract Customers who are not relieved from Fixed Costs payments pursuant to the terms of their contracts. Subject to the following single limitation, Yorkville's obligation to make all payments of Fixed Costs as required hereunder is unconditional and irrevocable, payable without setoff or counterclaim, and irrespective of whether Lake Water is ever furnished, made available, or delivered to the Yorkville Unit System, or whether the Waterworks System is completed, operable, or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the

supply of Lake Water. Yorkville's obligation to pay Fixed Costs hereunder is subject to the single limitation that, if for any period of time, and only during such period of time, the Commission is in fact supplying the Full Water Requirements or Minimum Take or Pay Requirements, as applicable, to Contract Customers of the Commission, other than Yorkville, whose Full Water Requirements and Minimum Take or Pay Requirements are more than 85 percent of the sum of the Full Water Requirements or Minimum Take or Pay Requirements, as applicable, of all Contract Customers of the Commission, and during such time the Commission is unable to supply any Lake Water to the Yorkville Unit System, then Yorkville shall have no obligation to pay Fixed Costs for the Yorkville Unit System. However, as of the date of this Contract, the Capital Recovery Cost Credit is \$0 because Fixed Costs are currently \$0.

C. Connection Facilities Cost Payment. Yorkville shall pay to the Commission its share of the Connection Facilities Cost in accordance with the WaterLink Communities Intergovernmental Cost Share Agreement, wherein Yorkville commits and agrees to pay 40.22% of the total Connection Facilities Cost. The Commission is not a party to the WaterLink Communities' Intergovernmental Cost-Share Agreement and has no responsibility or liability as to any true-up or adjusted accounting between the WaterLink Communities. Contemporaneously and pursuant to this Contract, Yorkville and the Commission shall enter into an WaterLink Project Escrow Intergovernmental Agreement with the United City of Yorkville (the "Escrow IGA") substantially in the form attached hereto as Exhibit G. In the event a line of credit issued by the Commission to Yorkville and any of the WaterLink Communities for Connection Facilities Costs the total line of credit amount provided to the

WaterLink Communities shall not exceed Twenty-one Million Dollars (\$21,000,000) (the "Commitment Amount"). Yorkville's obligation to make its share of the payment for the Connection Facilities Cost as required in and under the Escrow IGA is unconditional and irrevocable, and may be payable without setoff or counterclaim, and irrespective of whether Lake Water is ever furnished, made available, or delivered to Yorkville, or whether the Waterworks System is completed, operable, or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the supply of Lake Water.

D. Capital Cost Recovery Charge Payment. Yorkville shall pay monthly to the Commission, at the time specified in Subsections 7.G and 7.M below, an amount calculated by amortizing the Capital Cost Recovery Charge (less any Asset-in-Kind Amount), in equal monthly installments of principal and interest, at a rate per annum equal to the Earned Interest Rate determined for each Interest Period plus one percent, over the life of the Contract Customer Contract remaining as of the month in which Yorkville first becomes obligated to make such payment; provided, however, that such monthly installment may be adjusted by the Commission, on May 1 of each year thereafter, to ensure amortization of the then-current amount of the Capital Cost Recovery Charge (less any Asset-in-Kind Amount) remaining unpaid, as of such May 1, over the life of the Contract Customer Contract then remaining, and to reflect any change in the Earned Interest Rate, as of such May 1. The method of calculating the Capital Cost Recovery Charge is illustrated in Exhibit E attached to this Contract. Yorkville's obligation to make all Capital Cost Recovery Charge payments as required

hereunder is unconditional and irrevocable, payable without setoff or counterclaim, and irrespective of whether Lake Water is ever furnished, made available, or delivered to Yorkville, or whether the Waterworks System is completed, operable, or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the supply of Lake Water.

E. Underconsumption Costs Payment. If Yorkville is an Underconsumer at the Yorkville Unit System, then Yorkville shall pay, at the time specified in Subsections 7.G and 7.M below, its share of Underconsumption Costs as determined and assessed by the Commission after notification of such costs under the Water Supply Contract. In such event, Yorkville's share of Underconsumption Costs for the Yorkville Unit System for a year shall be equal to the ratio of its Underconsumption to the aggregate Underconsumption of all Underconsumers for such year.

F. Default Shares. If any of the Commission's Contract Customers shall default in any payment to the Commission, or any part of any payment, including default shares, Yorkville agrees to pay to the Commission a share of the amount so in default, which share shall be in the same proportion as the Yorkville Unit System's share of Aggregate Costs for the month prior to the month of the default bears to the sum of the shares of Aggregate Costs in that month of all of the Commission's Contract Customers not in default and obligated to make payments with respect to the amount so in default.

Subject to Subsection 7.M below, Yorkville's share of the amount so in default shall be due and payable 21 days after the Commission's written demand therefor. The

demand shall include the Commission's calculations of the amount due by Yorkville hereunder. If and when the defaulting customer makes a payment to the Commission of a defaulted amount or interest thereon for which Yorkville made a payment to the Commission under this Subsection 7.F, then the Commission will pay to Yorkville its proportionate share of such amount, including such interest.

G. Bills and Due Date. Except with respect to the payment of the Possible Shortfall required pursuant to Subsection 7.C above and the payment of default shares pursuant to Subsection 7.F above, the Commission shall notify Yorkville of the total amount due under this Contract for each month on or before the 10th day of the following month. Yorkville's costs for each month shall be due and payable and must be received at the offices of the Commission, on or before the 10th day of the month following the month of the Commission's notification or within 28 days after the date of notification, whichever is later.

H. Disputed Payments. If Yorkville desires to dispute any payment, or part thereof, due or reasonably claimed by the Commission to be due under this Contract, Yorkville shall nevertheless pay the full amount of any such payment when due and include with such payment written notification to the Commission that charges are disputed, the grounds for dispute, and the amount in dispute. No adjustment or relief on account of any disputed charges shall be made unless disputed charges are the subject of such notice within the time herein specified, or within a reasonable period from the time Yorkville knew or should have known of the facts giving rise to the dispute.

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

If the Commission and Yorkville determine that all or a portion of the disputed payment should be refunded to Yorkville, then such sum shall be refunded with interest thereon at the rate established in Subsection 7.I below from the date such disputed payment was made.

I. Interest on Overdue Payments. If Yorkville shall fail to make any payment required under this Contract, the Escrow IGA, or the Capital Cost Recovery Charge IGA to the United City of Yorkville on or before its due date, Yorkville shall be in default, and interest on the amount of such payment shall accrue to the extent permitted by law, and be compounded on a monthly basis, during the period of non-payment at the higher of:

(i) the weighted average effective interest rate on all series of Bonds of the Commission any of which are then outstanding plus two percent; or

(ii) the Prime Rate plus five percent.

Such interest shall accrue from the date such payment becomes due until paid in full with interest as herein specified. If such payment is not made by Yorkville within 30 days after the date such payment becomes due, then the Commission, at its option

and in its discretion, may reduce or discontinue delivery of Lake Water to the Yorkville Unit System until the amount due the Commission is paid in full with interest as herein specified. The Commission shall give notice to Yorkville not less than 20 days prior to the event of its intention to reduce or discontinue delivery of Lake Water in accordance with this Subsection 7.I and shall provide Yorkville an opportunity for a hearing before the Commission prior to any reduction or discontinuance. If the Commission reduces or discontinues the delivery of Lake Water under such circumstances, Yorkville shall nevertheless continue to be liable to pay all charges provided for herein as if the Yorkville Unit System were receiving its Full Water Requirements from the Commission. The rights specified in this Subsection 7.I shall be in addition to all other rights and remedies available to the Commission under this Contract, at law, or in equity for breach of any of the provisions of this Contract.

J. Security Deposit. If Yorkville is at any time in default on any payment due under this Contract, the Escrow IGA, or the Capital Cost Recovery Charge IGA, and the default is not cured within 30 days after the due date of the defaulted payment, then the Commission, at its option and in its discretion, may require Yorkville, as a further obligation under this Contract, to deposit in a separate account in the Commission's name a sum of money as security for the payment of Yorkville's obligations hereunder of a reasonable amount determined by the Commission. Yorkville's compliance with the Commission's demand for such a security deposit shall be a condition precedent to the curing of such Yorkville default and the restoration of the Lake Water service to the Yorkville Unit System if such Lake Water service has been reduced or discontinued

by reason of such default. The security deposit or any part thereof may be applied, at the Commission's option and in its discretion, to any subsequent default by Yorkville in any payments due under this Contract, the Escrow IGA or the Capital Cost Recovery Charge IGA. If so applied, Yorkville shall provide funds within 10 days to restore the security deposit to the amount required by the Commission. At the earliest of the end of the term of this Contract, or a term of two years after the curing of the most recent default by Yorkville, or such earlier time that the Commission at its option and in its discretion may determine, any security deposit shall be returned to Yorkville if Yorkville has performed all its obligations under this Contract, the Escrow IGA or the Capital Cost Recovery Charge IGA. Yorkville shall not be entitled to receive any interest on any security deposit.

K. Prepayments. Subject to the limitations of this paragraph, Yorkville may (i) at any time, and from time to time, before Yorkville first becomes obligated to make payments of Operation and Maintenance Costs pursuant to Subsection 7.M below, and (ii) no more frequently than once in any given year thereafter, at any time during the month of December, prepay, in whole or in part, the Connection Facilities Cost, the Capital Cost Recovery Charge Amount due, or other amount previously agreed to, pursuant to this Contract, without premium or penalty, upon at least one business day's irrevocable notice to the Commission, specifying the date and amount of prepayment. If such notice is given, Yorkville shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. The proceeds of any such prepayment shall be applied by the Commission first, to the

payment of accrued and unpaid interest, if any, on the Connection Facilities Cost accruing after the date specified in Subsection 7.M below; second, to the payment of the unpaid principal balance of the Connection Facilities Cost; third, to the payment of accrued and unpaid interest, if any, on the Capital Cost Recovery Charge Amount accruing after the date specified in Subsection 7.M below; and fourth, to the payment of the unpaid principal balance of the Capital Cost Recovery Charge Amount; provided, however, that Yorkville shall not be entitled to make any such prepayment pursuant to this paragraph if Yorkville's Base Rate during the Fiscal Year next following the date of such payment would be, as estimated by the Commission, less than the Average Contract Customer Rate Per 1,000 Gallons. For purposes of calculating Yorkville's Base Rate, any such prepayment shall be deemed to have been paid effective as of the 30th day of April next following the date of such payment or the 30th day of April next following the month in which Yorkville first becomes obligated to make such Connection Facilities Cost payments and Capital Cost Recovery Charge Amount payments, whichever is later. Yorkville shall not be entitled to, nor receive any credit for, interest on any such prepayment.

Notwithstanding anything to the contrary contained herein, in the event the Yorkville Unit System has not been constructed, installed, and completed, to a point where it is capable of serving its intended function at the time Yorkville first becomes obligated to make payments of Operation and Maintenance Costs pursuant to Subsection 7.M below, then the Commission may, in its sole and absolute discretion, declare the principal amount of the Connection Facilities Cost remaining unpaid, in whole or in

part, the principal amount of the Capital Cost Recovery Charge remaining unpaid, in whole or in part, or both of such remaining unpaid costs, in whole or in part, due and payable within 30 days following the date of such declaration, together with accrued and unpaid interest as herein specified on such declared due amounts to the date paid, unless the Commission shall have exercised its right to terminate this Contract pursuant to Subsection 20.C of this Contract. The rights specified in this paragraph shall be in addition to all other rights and remedies available to the Commission under this Contract, at law, or in equity for breach of any of the provisions of this Contract.

L. Enforcement of Provisions Hereof by Other Customers. Yorkville acknowledges that its obligation to make payments pursuant to the terms of this Section 7 is of benefit to the Commission's Contract Customers, Bondholders, and any Trustee. Accordingly, Yorkville agrees that, in addition to the Commission, Bondholders, a Trustee or other parties allowed by law are entitled to enforce the provisions of this Contract. Further, any three or more of the Commission's Contract Customers acting together may enforce the provisions of this Section 7, but only if the Commission has not acted to enforce such provisions within 90 days after any failure by Yorkville to make a payment hereunder.

M. Beginning of Obligation to Pay. Notwithstanding any other provision of this Contract, the obligation to make any and all payments under this Contract, except only payments of Operation and Maintenance Costs pursuant to Subsection 7.A above and payment of any Possible Shortfall required pursuant to Subsection 7.C above, shall begin on the Commission's first regular billing cycle after the earlier to occur of (i) the

first delivery of Lake Water to the Yorkville Unit System or any portion thereof or (ii) 12 months following completion of construction of the Commission Connection Facilities, other than the SCADA System facilities, to the point where they are capable of serving their intended function or would be capable of serving their intended function except for the fact that the Yorkville Unit System Connection Facilities are not complete. The obligation to make payments of Operation and Maintenance Costs pursuant to Subsection 7.A above shall begin on the Commission's first regular billing cycle after the earlier to occur of (i) the first delivery of Lake Water to the Yorkville Unit System or any portion thereof or (ii) completion of construction of the Commission Connection Facilities, other than the SCADA System Facilities, to the point where they are capable of serving their intended function or would be capable of serving their intended function except for the fact that the Yorkville Unit System Connection Facilities are not complete. At any time prior to the first delivery of Lake Water to the Yorkville Unit System when Yorkville is obligated to make payments pursuant to this Subsection 7.M, such payments shall be based on the Full Water Requirements of the Yorkville Unit System.

SECTION 8. SPECIAL CONDITIONS AND COVENANTS.

A. Construction of the Commission Connection Facilities; No Delay Damages; Supply of Lake Water. The Commission will make a diligent effort to have the Commission Connection Facilities completed to the Points of Delivery so as to furnish Lake Water to the Yorkville Unit System by the date specified in Subsection 10.H of this Contract, but the Commission does not in any way guaranty delivery by such date.

Yorkville acknowledges and agrees that the Commission shall not be liable to Yorkville for any damages occasioned by or in any way related to delay in the delivery of Lake Water to the Yorkville Unit System, and all payments from Yorkville provided for under this Contract shall remain due and payable in accordance with the terms of this Contract notwithstanding any such delay.

After Lake Water is first tendered for delivery to the Yorkville Unit System at the Points of Delivery for other than start-up purposes pursuant to Subsection 10.I of this Contract, the Commission, subject to the other terms and conditions of this Contract, shall use its best efforts to continually hold itself ready, willing, and able to supply Lake Water to the Yorkville Unit System at such Points of Delivery. The Commission also shall use its best efforts, consistent with its prior obligations and legal obligations to its customers and consistent with the fair and equitable treatment of all of its Contract Customers, to supply the Yorkville Unit System with such additional amounts of Lake Water as from time to time may be allocated to the Yorkville Unit System over and above the Yorkville Unit System's present Water Allocation; provided, however, that the Commission does not in any way guaranty a supply of such additional amounts.

B. Lake Water Only; Costs. Except with the prior approval of Yorkville, the Commission shall not deliver any water to the Yorkville Unit System other than Lake Water. Except for Lake Water supplied for start-up purposes pursuant to Subsection 10.I of this Contract, costs for Lake Water charged to Yorkville by the Commission pursuant to this Contract shall include only the costs set forth in Section 7 of this Contract.

C. Title to Lake Water. Title to all Lake Water supplied hereunder shall remain in the Commission to the Points of Delivery and thereupon shall pass to Yorkville.

D. Emergency Supply. Subject to the terms, conditions, and limitations set forth in Subsection 9.N of this Contract, Yorkville may contract for a temporary supply of water in case of an emergency from any unit of local government or any other entity. Yorkville shall notify the Commission and shall promptly provide the Commission with copies of all such contracts.

E. Covenants to Be Set Out in Bond Ordinance. Yorkville acknowledges the existence, and its understanding of the provisions, of certain Bond Ordinances pursuant to which the Commission has previously issued its Bonds. Yorkville further acknowledges and agrees that said Bond Ordinances grant to Bondholders certain rights to enforce certain duties of the Commission and its customers, including those with respect to the making of rates and charges and the collection of revenues, and that such Bondholder rights may be included in any subsequent Bond Ordinances.

F. Payments Hereunder are an Operational Expense of the Yorkville Unit System. Yorkville agrees that, to the fullest extent permitted by law or contract, all payments to be made by Yorkville pursuant to this Contract shall constitute operating expenses of the Yorkville Unit System as to any and all revenue bonds of Yorkville which are supported in whole or in part by a pledge of the revenues of the Yorkville Unit System, with the effect that Yorkville's obligation to make payments from its water revenues under this Contract has priority over its obligation to make payments

of the principal and of the premium, if any, and interest on any such bonds which are or will be supported in whole or in part by a pledge of any Yorkville Unit System revenues. Yorkville shall make all budgetary, emergency, and other provisions and appropriations necessary to provide for and authorize the prompt payment to the Commission of all rates and charges under this Contract. The obligations of Yorkville under this Contract are further payable from all other accounts of the Yorkville Unit System in which there are lawful available funds. In any revenue bond or indenture hereafter issued by Yorkville, the priority of lien established pursuant to this Contract shall be expressly provided and set forth in said bond ordinances or resolutions. Notwithstanding the foregoing, however, Yorkville's obligations under the IEPA Loans referenced in Subsection 9.D to be secured in whole or in part by a pledge of Yorkville Unit System revenues to the IEPA shall have priority of lien over Yorkville's obligation to make payment from its water revenues under this Contract.

SECTION 9. ADDITIONAL YORKVILLE COVENANTS.

A. Maintenance of Corporate Existence. Yorkville agrees that during the term of this Contract it will maintain its municipal corporate existence, it will continue to be a municipal corporation in good standing in the State of Illinois, it will not dissolve or otherwise dispose of all or substantially all of the assets of the Yorkville Unit System.

B. Maintenance and Operation of Yorkville Unit System. Yorkville shall own and maintain the Yorkville Unit System and the Yorkville Unit System Connection Facilities, and all improvements and extensions of the Yorkville Unit System and the

Yorkville Unit System Connection Facilities, in good repair and working order, will operate the Yorkville Unit System and the Yorkville Unit System Connection Facilities efficiently, and will punctually perform all duties with respect to the Yorkville Unit System and the Yorkville Unit System Connection Facilities as may be required by this Contract, and by the Constitution and laws of the State of Illinois and all other applicable laws. In the event of any deterioration, injury, damage, or other loss to the Yorkville Unit System or the Yorkville Unit System Connection Facilities affecting Yorkville's ability to deliver water to any of Yorkville's customers, Yorkville shall promptly restore the Yorkville Unit System or the Yorkville Unit System Connection Facilities and their capacity to so deliver water.

C. Rate Covenant. Yorkville shall take all necessary actions to establish, maintain, revise as necessary, and collect rates and charges for customers of the Yorkville Unit System as shall be required from time to time to produce revenues at least sufficient:

(i) To pay all amounts due under this Contract, the Escrow IGA, the Capital Cost Recovery Charge IGA and the IEPA Loans referenced herein, and to pay all other costs of operation and maintenance of the Yorkville Unit System and the Yorkville Unit System Connection Facilities; and

(ii) To provide an adequate depreciation fund for the Yorkville Unit System and the Yorkville Unit System Connection Facilities; and

(iii) To make all deposits in all funds and accounts required by the terms of resolutions or ordinances authorizing any obligation of Yorkville payable from the revenues of the Yorkville Unit System; and

(iv) To pay the principal of and the premium, if any, and interest on all

obligations of Yorkville payable from the revenues of the Yorkville Unit System including, but not limited to, its obligations under the Escrow IGA, the Capital Cost Recovery Charge IGA, and to repay the IEPA Loans referenced in Subsection 9.D.

D. Future Subordination of Obligations. Any ordinance, resolution, motion, or other action of Yorkville which authorizes the issuance after the date of this Contract of any obligation of Yorkville to be paid from the revenues of the Yorkville Unit System will expressly provide that revenues of said System may be used to pay principal of, and the premium, if any, and the interest on such obligations only to the extent that those revenues exceed the amounts required to pay the operation and maintenance expenses of said System including, expressly, all amounts payable from time to time under this Contract, except for any present or future ordinance, resolution, motion or other action of Yorkville which authorizes, or has authorized, it to borrow funds from and enter a loan agreement with the Illinois Environmental Protection Agency (the "IEPA Loans") which may provide for the collection, segregation, distribution and/or pledge of revenues of the Yorkville Unit System which shall be the only obligation with preference of priority over Yorkville's obligation to the Commission hereunder.

E. General Covenant to Operate Properly. From time to time, Yorkville shall take all steps reasonably necessary so that the Yorkville Unit System and the Yorkville Unit System Connection Facilities may at all times be operated in accordance with industry standards.

F. Accounting and Audit. Yorkville shall make and keep proper books and accounts (separate and apart from all other records and accounts of Yorkville) in which

complete entries shall be made of all transactions relating to the Yorkville Unit System, and, within 180 days after the close of each of its fiscal years occurring during the term of this Contract, Yorkville shall cause the books and accounts of the Yorkville Unit System to be audited annually by independent certified public accountants, showing the receipts and disbursements on account of the Yorkville Unit System.

G. Maintain Ownership of Yorkville Unit System. Yorkville shall construct to completion and thereafter continue to own and possess the Yorkville Unit System and, within the exercise of reasonable business judgment and in a manner so as not to cause a default hereunder, shall dispose of property which is part of said System only to the extent that the Commission consents in writing, which consent shall not be unreasonably withheld. This subsection G does not prohibit Yorkville from selling specific equipment that it considers surplus and that is no longer needed or utilized to operate the Yorkville Unit System.

H. Insurance. Yorkville shall carry insurance or maintain self-insurance with respect to the Yorkville Unit System and the Yorkville Unit System Connection Facilities of the kinds and in the amounts that are customarily carried or maintained by parties operating similar properties, including, without limiting the generality of the foregoing, fire and other casualty and liability insurance or protection. All moneys received for loss under the insurance policies or on deposit as self-insurance reserves shall be used in making good the loss or damage in respect of which they were paid, whether by repairing the property damaged or replacing the property destroyed, and provision for making good such loss or damage or replacing the property destroyed

shall be made within a reasonable time from date of loss. The proceeds derived from any and all policies or available from self-insurance reserves for public liability losses shall be used in paying or reimbursing any accounts from which payments for settlements, judgments, or expenses were advanced.

I. Continue to Serve. Yorkville shall use its best efforts to continue serving all customers of the Yorkville Unit System within its territorial limits that are intended to be served by the Yorkville Unit System as of the date of this Contract.

J. Maintain Water Allocation. Yorkville shall use its best efforts to obtain or retain, from time to time, a Water Allocation for the Yorkville Unit System at least equal to, but not in excess of two times, the Yorkville Unit System's Full Water Requirements from time to time.

K. Release and Indemnification. To the fullest extent permitted by law, Yorkville hereby releases the Commission from, agrees that the Commission shall not be liable for, and agrees to indemnify and hold the Commission harmless from: (1) any liabilities for any loss or damage to property or any injury to, or death of, any person that may be occasioned by or related to any cause whatsoever pertaining to the construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Yorkville Unit System or the Connection Facilities or (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of Yorkville to comply with its covenants or obligations contained in this Contract, including, in each such case, any attorneys' fees. Yorkville agrees to indemnify and hold the Commission harmless to the fullest extent permitted by law from any losses, costs, charges, expenses (including attorneys' fees), judgments, and

liabilities incurred by the Commission in connection with any action, suit, or proceeding instituted or threatened by any third party in connection with this Contract. If any such claim is asserted, the Commission shall give prompt notice to Yorkville and Yorkville, if requested by the Commission, shall assume the defense thereof, it being understood, however, that Yorkville shall not settle or consent to the settlement of any such claim without the written consent of the Commission.

L. Combining or Separating System Accounts. Yorkville shall not combine its waterworks system with its sewerage system or separate its combined waterworks and sewerage system into separate systems unless:

- (i) Yorkville shall have provided the Commission with written evidence, satisfactory to the Commission, that the proposed combination or separation will not materially or adversely affect Yorkville's ability to comply with all of the terms, conditions, and covenants of this Contract; and
- (ii) The Commission shall have approved such combination or separation in writing.

M. Rate of Withdrawal. Yorkville will take Lake Water at the most uniform and continuous rate of withdrawal practical.

N. Emergency Interconnections. No emergency interconnection between the Yorkville Unit System and a water distribution system owned and operated by another Contract Customer ("Emergency Interconnection") shall be constructed, operated, or maintained except in accordance with the following terms, conditions, and limitations:

- (i) The other Contract Customer and Yorkville shall submit to the Commission, for its review and approval, at least 60 days prior to the construction of the Emergency Interconnection or, if the Emergency Interconnection was constructed prior to the execution of this Contract, within 60 days following the execution of this Contract, a report detailing

the exact location of the Emergency Interconnection, the manner in which the Emergency Interconnection has been and will be operated and maintained, and the terms of any written or oral agreement for the operation and maintenance of the Emergency Interconnection. Such report shall include as-built drawings of the Emergency Interconnection and exact duplicates of any written agreement for the operation and maintenance of the Emergency Interconnection. The Emergency Interconnection shall not be operated unless and until the Commission shall have approved such report and the Commission shall have received and approved the written agreements required pursuant to clauses (ix) and (xii) of this Subsection 9.N. No approval of such report shall be withheld unless the Emergency Interconnection, or any agreement for the operation and maintenance of the Emergency Interconnection, violate the Contract Customer Contract, this Contract, the Water Supply Contract, or applicable laws or regulations, or pose a threat to the Commission or its Waterworks System.

(ii) The Emergency Interconnection shall be utilized only under emergency conditions unless otherwise approved, in writing, by the Commission. An emergency condition shall be defined to mean the inability to provide average day flow demands to regular, non-emergency supply customers during a limited period of time due to conditions beyond the control of the party requesting Lake Water. An emergency condition shall not mean any limitation imposed by the Commission on the supply of Lake Water to the other Contract Customer or Yorkville specifically related to the other Contract Customer or Yorkville pursuant to Section 3 of this Contract or any similar provision of any other water purchase and sale contract, as the case may be, and the Emergency Interconnection shall not be utilized to circumvent the provisions of any agreement approved by the Commission for the Alternate Delivery of Lake Water.

(iii) The Emergency Interconnection shall be maintained in such a manner as at no time to place or threaten to place the Commission or its Waterworks System in jeopardy of failing to meet the terms of the Contract Customer Contract, this Contract, the Water Supply Contract, or the regulations of any agency or governmental authority having jurisdiction over the of a public water supply.

(iv) The party experiencing the emergency condition shall give telephonic notice to the Commission and to the other party of the emergency condition, the expected duration of the emergency condition, and the amount of Lake Water needed, prior to the operation of the Emergency Interconnection. The Emergency Interconnection shall not

be operated unless and until the party experiencing the emergency condition shall have given said notice to the Commission.

(v) The party receiving Lake Water through the Emergency Interconnection shall provide daily telephonic notice to the Commission and the party delivering Lake Water for so long as the emergency deliveries continue, and shall provide telephonic notice to the Commission before final shut-off of the emergency flow of Lake Water through the Emergency Interconnection for each such emergency condition.

(vi) The other Contract Customer and Yorkville shall keep a joint record of the amount of Lake Water delivered through the Emergency Interconnection, a copy of which shall be provided to the Commission within five days following termination of the use of the Emergency Interconnection for each such emergency condition and, in any case, every five days where the Emergency Interconnection is continuous for more five days.

(vii) The amount of Lake Water delivered to the other Contract Customer's water distribution system or to the Yorkville Unit System through the Emergency Interconnection, as the case may be, shall be paid to the Commission directly by the party receiving Lake Water through the Emergency Interconnection at the rates applicable pursuant to, and in accordance with, that party's water purchase and sale contract with the Commission. In case of service curtailment, the other Contract Customer's flow of water through the Emergency Interconnection shall be considered as a portion of the other Contract Customer's allocation from the Commission. In case of service curtailment, Yorkville's flow of water through the Emergency Interconnection shall be considered as a portion of Yorkville's allocation from the Commission.

(viii) The Commission shall have the right to inspect the Emergency Interconnection, and its operation and maintenance. The Commission shall have the right to install seals or such other devices as the Commission, in its sole and absolute discretion, determines are necessary to determine the operation of the Emergency Interconnection, and all equipment required to be installed to allow the installation of the seals or such other devices shall be installed at Yorkville's sole cost and expense.

(ix) The Commission shall bear no responsibility for, and the other Contract Customer and Yorkville shall, in writing, release the Commission from, and agree, to the fullest extent permitted by law, that the Commission shall not be liable for, and agree to indemnify and hold the Commission harmless from, any claims, damages, liabilities, and

litigation that may be occasioned by, connected with, or in any way related to the construction, operation, and maintenance of the Emergency Interconnection. The other Contract Customer and Yorkville shall agree, in writing, to pay all fees, costs, and expenses, including legal and administrative fees, costs, and expenses, incurred by the Commission in defending itself with regard to any and all of the matters mentioned in this Subsection 9.N.

(x) The operation and maintenance of the Emergency Interconnection shall comply in all other respects with the Water Commission Act of 1985, the Contract Customer Contract, this Contract and the Water Supply Contract and the requirements of the Commission thereunder.

(xi) Notwithstanding anything to the contrary contained in any written or oral agreement for the operation and maintenance of the Emergency Interconnection, the Emergency Interconnection shall be operated and maintained only in accordance with this Subsection 9.N and such additional or other terms, conditions, and limitations as the Commission shall impose pursuant to any policy established by the Commission with respect to emergency interconnections. No such agreement shall be amended, modified, or otherwise changed except upon the prior written approval of the Commission.

(xii) The Commission reserves the right to order all use of the Emergency Interconnection to be discontinued, and the other Contract Customer and Yorkville shall agree, in writing, to discontinue such use, at any time the terms, conditions, and limitations of this Subsection 9.N and any such additional or other terms, conditions and limitations imposed by the Commission pursuant to any policy established by the Commission with respect to emergency interconnections are not satisfied.

No emergency interconnection between the Yorkville Unit System and a water distribution system owned and operated by any other person, firm, or organization shall be constructed, operated, or maintained except upon the prior written approval of Commission.

SECTION 10. SCHEDULE FOR COMPLETION OF VARIOUS FACILITIES.

A. Plans and Specifications for Yorkville Unit System Connection Facilities.

Yorkville shall prepare and submit to the Commission for its review and approval,

complete detailed plans, specifications, and construction contract documents for the Yorkville Unit System Connection Facilities not later than one week after the effective date of this Contract. The Commission shall provide its comments and revisions to Yorkville within 4 weeks after receipt of such documents. Yorkville shall incorporate all required changes to such documents within 4 weeks after receipt of the Commission's comments and revisions.

B. IEPA and Other Approvals for Yorkville Unit System Connection Facilities. Yorkville shall, within one week after receipt of the Commission's comments and revisions pursuant to Subsection 10.A above, submit such finally revised documents for approval and permitting to the Illinois Environmental Protection Agency (the "IEPA") and every other federal, state, or local governmental body having jurisdiction over any element of the Yorkville Unit System Connection Facilities, and shall diligently pursue each such approval and permit until it is secured.

C. Commencement of Construction of Yorkville Unit System Connection Facilities. Yorkville shall cause construction of the Yorkville Unit System Connection Facilities to be commenced within 32 weeks after the effective date of this Contract or 11 weeks after receipt of the last approval from any governmental body required as a condition precedent to construction of the Yorkville Unit System Connection Facilities, whichever is later. Yorkville shall cause construction to be completed within 30 weeks after commencement.

D. **Intentionally Omitted.**

E. **Intentionally Omitted.**

F. **Intentionally Omitted.**

G. Transfer of Property Rights. Yorkville shall grant to the Commission all necessary easements for the Commission metering station and other facilities to be constructed pursuant to Subsection 5.A of this Contract within 26 weeks after the effective date of this Contract. Yorkville shall, immediately upon execution of this Contract, commence all actions necessary to acquire all property rights not already owned by it necessary to fulfill the requirements of Subsection 5.A of this Contract and this Subsection 10.G.

H. Commencement of Construction of Commission Connection Facilities. The Commission shall cause design of the Commission Connection Facilities to be commenced within 8 weeks after receipt from Yorkville of the preliminary plans and specifications for the Yorkville Unit System Connection Facilities satisfactory to the Commission or upon acquisition of all rights of way and other property by Yorkville acquired for the installation of the Commission Connection Facilities, whichever is later. The Commission shall cause construction to be completed within 104 weeks after receipt of the last approval from any governmental body required as a condition precedent to construction of the Commission Connection Facilities or May 1, 2028, whichever is later. Yorkville acknowledges and agrees, however, that the Commission may, in the exercise of its sole and absolute discretion, accelerate commencement of the design and construction of the Commission Connection Facilities, or completion of construction thereof, without in any way affecting the obligations of Yorkville under this Contract, including without limitation Yorkville's payment obligations.

I. Delivery of Water for Start-Up Purposes. The Commission shall use its best efforts, consistent with its prior obligations and legal obligations to its customers

and consistent with the fair and equitable treatment of all of its Contract Customers, to supply Yorkville with Lake Water for pressure testing, disinfecting, and flushing the Yorkville Unit System, the Yorkville Unit System Connection Facilities, and the required water storage facilities prior to completion of construction if (i) construction of the Yorkville Unit System, the Yorkville Unit System Connection Facilities, and the required water storage facilities is proceeding in the regular course to completion; (ii) the construction of the Commission Connection Facilities has been completed, other than the SCADA System facilities, to the point where the Commission Connection facilities are capable of serving their intended function or would be capable of serving their intended function except for the fact that the Yorkville Unit System or the Yorkville Unit System Connection Facilities are not complete; (iii) such Lake Water is utilized by Yorkville solely for purposes of pressure testing, disinfecting, and flushing the Yorkville Unit System, the Yorkville Unit System Connection Facilities, or the required water storage facilities; and (iv) Yorkville pays to the Commission, at the time specified in Subsection 7.H of this Contract, an amount equal to the then current price per 1,000 gallons for Operation and Maintenance Costs times the amount of water, stated in thousands of gallons, actually received from the Commission for such purposes until such time as Yorkville first becomes obligated to make payments of Operation and Maintenance Costs pursuant to Subsections 7.A and 7.M of this Contract.

J. Illustrative Schedule of Events. An “Illustrative Schedule of Events” depicting, on the basis of assumptions concerning the length of time necessary to secure various governmental approvals, the sequence of work pursuant to this Section

10 is attached to this Contract as Exhibit F. In the event of any conflict or inconsistency between the provisions of Exhibit F and the provisions of this Section 10, the provisions of this Section 10 shall control.

SECTION 11. ASSIGNABILITY.

Yorkville shall not assign or transfer this Contract or any rights or interests herein without the advance written consent of the Commission.

The right to receive all payments that are required to be made by Yorkville to the Commission in accordance with the provisions of this Contract may be assigned by the Commission to any Trustee as provided in any Bond Ordinances/Resolutions to secure the payment of the principal of and the premium, if any, and interest on the Bonds as those amounts come due, subject to the application of those payments as may be provided in any Bond Ordinances/Resolutions. Yorkville, upon notice of assignment to any such Trustee, shall make all payments directly to such Trustee. Further, the rights of the Commission to enforce the provisions of this Contract may be assigned to any such Trustee and, in such event, such Trustee shall have the right to enforce this Contract at law or in equity with or without the further consent or participation of the Commission. The Commission also may retain the right to enforce this Contract.

SECTION 12. FORCE MAJEURE.

If, by reason of a force majeure event, either party to this Contract shall be rendered unable wholly or in part to carry out its obligation under this Contract, then if such party shall give notice and full particulars of such force majeure event in writing to the

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

shall continue as if the Yorkville Unit System were receiving its Full Water Requirements from the Commission.

SECTION 13. COMMISSION DEFAULTS.

Failure by the Commission to deliver Lake Water to Yorkville as required by this Contract or failure of the Commission to perform any other obligation under this Contract, and the continuation of that failure to perform for 30 days after written notice from Yorkville to the Commission of such failure, shall be a default of the Commission under this Contract, unless any such failure is excused pursuant to Section 12 of this Contract. If the Commission defaults under this Contract, then Yorkville may bring any action against the Commission allowed by law. No Commission default shall relieve Yorkville of its obligation to make payments to the Commission as required under Section 7 of this Contract and such payments shall continue as if the Yorkville Unit System were receiving its Full Water Requirements from the Commission.

SECTION 14. YORKVILLE OBLIGATION UNCONDITIONAL.

Yorkville shall have no right to terminate, cancel, or rescind this Contract; no right to withhold from the Commission or any Trustee who is an assignee of the Commission pursuant to Section 11 of this Contract payments due or to become due under this Contract; no right to recover from the Commission or any such Trustee amounts previously paid under this Contract unless paid in error or contrary to the provisions of this Contract or law; no right of reduction or set-off against the amounts due or to become due under this Contract to the Commission or any such Trustee; and no lien on any amounts in any fund established by the Commission or such Trustee for any

reason or on account of the existence or occurrence of any event, condition, or contingency, whether foreseen or unforeseen or foreseeable or unforeseeable by Yorkville or the Commission or any other person, including by way of illustration and not limitation by reason of the fact that the Waterworks System in whole or in part is not completed, operable, or operating; or the output of the Waterworks System in whole or in part is suspended, interrupted, interfered with, reduced, or curtailed; or any party to the Water Supply Contract does not perform in whole or in part thereunder; or the Water Allocation of any of the Commission's Contract Customers is modified or terminated or any such Contract Customer does not perform in whole or in part any agreement or instrument, it being the intent hereof that Yorkville shall be absolutely and unconditionally obligated to make all payments under this Contract. The Commission may issue Bonds in specific reliance on the limitations set forth in this Section 14 with respect to the rights of Yorkville.

SECTION 15. COOPERATION IN CONSTRUCTION; EASEMENTS.

Yorkville shall cooperate with the Commission in the construction and acquisition of the Waterworks System. Yorkville is responsible for acquiring all necessary real property and easements within the City to build the Connection Facilities and shall transfer that insured real property and insured easements to the Commission upon acquisition. Additionally, Yorkville, within 30 days after Commission's request therefor, shall grant without charge to the Commission all required construction easements and all insured easements necessary for portions of the Waterworks System to be located on Yorkville's property, free and clear of all liens, claims, encumbrances,

and restrictions unless otherwise approved by the Commission in writing, provided the Commission agrees to restore the easement property in a reasonable manner after construction. Yorkville shall grant the Commission all access to its property necessary to construct and install the Commission Connection Facilities and all other equipment and appurtenant devices to the Point of Delivery.

SECTION 16. COOPERATION IN ISSUANCE OF BONDS.

Yorkville shall cooperate with the Commission in the issuance of Bonds. In connection therewith, Yorkville shall comply with all reasonable requests of the Commission and shall upon request do as follows:

- A. Make available general and financial information about itself in accordance with GAAP; and
- B. Consent to publication and distribution of its financial information; and
- C. Certify that general and financial information about it is accurate, does not contain an untrue statement of a material fact, and does not omit to state a material fact necessary in order to make the statements in that information, in light of the circumstances under which they were made, not misleading; and
- D. Make available certified copies of official proceedings; and
- E. Provide reasonable certifications to be used in a transcript of closing documents; and
- F. Provide and pay for reasonably requested opinions of counsel of its choice as to the validity of its actions taken with respect to, and the binding effect of, this Contract, title to the Yorkville Unit System, pending or threatened litigation which could materially affect its performance hereunder, and other reasonably related opinions.

SECTION 17. REGULATORY BODIES.

The Commission and Yorkville through this Contract seeks to exercise and maintain

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

SECTION 18. OTHER WATER SUPPLIERS.

Notwithstanding any of the provisions of this Contract, the Commission is not prohibited by this Contract from entering into cooperative arrangements with other suppliers or users of Lake Water to provide Lake Water to each other to meet each other's water needs, provided that these arrangements do not interfere, except in emergencies, with the delivery of Lake Water to the Yorkville Unit System.

SECTION 19. NOTICES; EVIDENCE OF ACTIONS; WAIVER.

A. Notices. All notices or communications provided for herein shall be in writing and shall be delivered either in person or by United States mail, by certified mail with return receipt requested, postage prepaid, and addressed as follows:

To the Commission:

DuPage Water Commission
600 East Butterfield Road
Elmhurst, IL 60126
Attention: General Manager

To Yorkville:

United City of Yorkville
800 Game Farm Road
Yorkville IL 60560
Attention: City Administrator

Copy to:

Kathleen Field Orr
City Attorney
Kathleen Field Orr & Associates
2024 Hickory Road, Suite 305
Yorkville, IL 60560

until and unless other addresses or addressees are specified by notice given in accordance herewith.

B. Evidence of Actions. Any action hereunder to be taken by the Commission or Yorkville may be evidenced by copy of official proceedings (including pertinent minutes, motions, resolutions, or ordinances, as applicable) duly certified by the Clerk of the Commission or the City Clerk of Yorkville.

All notices, demands, requests, consents, approvals, and other instruments required or permitted to be made or given by Yorkville pursuant to this Contract shall be in writing, signed by a duly authorized officer, agent, or attorney of Yorkville.

C. Waiver. No course of dealing or failure of the Commission or Yorkville to enforce strictly any term, right, or condition of this Contract shall be construed as a waiver of such term, right, or condition. No express waiver of any term, right, or condition of this Contract shall operate as a waiver of any other term, right, or condition.

D. Partial Invalidity. If a term or provision of this Contract or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable,

the remainder of this Contract, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Contract shall be valid and be enforced to the fullest extent permitted by law.

SECTION 20. EFFECTIVE DATE; TERMINATION; PAYMENT OF INTERIM COSTS; TERM.

A. Effective Date. Except for the provisions of Section 10 of this Contract relating to the commencement of certain work following execution of this Contract and except for the provisions of Section 20.C of this Contract relating to the payment of certain costs, as to which provisions this Contract shall be effective immediately after authorization and execution by both parties hereto, this Contract shall be effective upon authorization and execution by both parties hereto and issuance by the State of Illinois Department of Natural Resources, Office of Water Resources, of a Water Allocation permit to Yorkville for each discrete and non-contiguous service area served by the Yorkville Unit System.

B. Commission Right to Terminate. If the Yorkville Unit System has not been constructed, installed, and completed to a point where it is capable of serving its intended function at the time Yorkville first becomes obligated to make payments of Operation and Maintenance Costs pursuant to Subsection 7.M of this Contract, the Commission may, in its sole and absolute discretion, terminate this Contract, in which event the Commission shall give notice to Yorkville not less than 20 days in advance of its intention to terminate this Contract and shall provide Yorkville an opportunity for a hearing before the Commission prior to the effective date of such termination

and, upon the concurrence of a majority of the Commissioners of the Commission following the conclusion of such hearing, this Contract shall be of no further force or effect except for the provisions of Subsection 20.D below, as to which provisions this Contract shall remain in full force and effect.

C. Payment of Interim Costs. Whether or not the Yorkville Unit System is ever completed, operable, or operating, Yorkville shall pay to the Commission all attorneys', engineering, and administrative fees, costs, and expenses incurred by the Commission for any work related to, or participation in, any regulatory proceeding which shall be required or requested of the Commission by the Illinois Department of Natural Resources, Office of Water Resources, or by Yorkville as a result of, or occasioned by, this Contract and, further, shall pay to the Commission all attorneys', engineering, and administrative fees, costs, and expenses incurred by the Commission in connection with the negotiation, preparation, consideration, and review of this Contract and in implementing the terms of this Contract, including without limitation the costs of the design and construction of the Commission Connection Facilities. If the Yorkville Unit System has not been completed as and when required by Subsection 20.B above and the Commission elects, in its sole and absolute discretion, to terminate this Contract pursuant to Subsection 20.B above, then Yorkville's payment hereunder shall be due and payable immediately after receipt by it of an invoice from the Commission detailing such costs, after deducting therefrom the amount or amounts of any prepayments made pursuant to Subsection 7.K of this Contract. If the amount or amounts of any such prepayments exceed Yorkville's payment obligation hereunder,

the Commission shall refund the difference to Yorkville. If either (i) the Yorkville Unit System is completed as and when required by Subsection 20.B above or (ii) if not completed, the Commission does not elect to terminate this Contract, then such costs shall be treated as part of the Connection Facilities Cost provided in Subsection 7.C of this Contract.

D. Term. Unless this Contract is sooner terminated by the Commission pursuant to Subsection 20.B above, this Contract shall continue in force and effect until February 24, 2064.

SECTION 21. GOVERNING LAW AND VENUE.

This Contract shall be construed exclusively under the applicable laws, but not the conflicts of laws rules, of the State of Illinois. The parties agree that venue for any litigation arising out of this Contract shall only be proper in the Eighteenth Judicial Circuit Court, DuPage County, Illinois and waive any right, whether statutory or otherwise, to venue in any other jurisdiction.

SECTION 22. MUNICIPAL BOUNDARIES.

Not later than 365 days after the execution of this Contract, Yorkville shall provide the Commission with: (i) a current list of all parcels within Yorkville's corporate limits, identified by Property Index Number and common address, (ii) a correct, complete legal description of the entire boundary of the municipality, and (iii) an aerial photograph depicting the entire boundary of the Yorkville municipal limits. Yorkville shall update the information in this Section 22 within 60 days of any changes in its municipal boundaries.

SECTION 23. MODIFICATIONS OR AMENDMENTS.

This Contract shall not be modified or amended in any way except in writing approved by both parties hereto. No such modification or amendment shall materially impair or adversely affect the ability or obligation of Yorkville to make payments to the Commission to meet the Commission's obligations under the Water Supply Contract, the Contract Customer Contract, and the Bond Ordinances/Resolutions.

SECTION 24. EXHIBITS INCORPORATED.

Exhibits A, B-1, B-2, C, D, E, F, and G to this Contract are hereby fully incorporated into this Contract as substantive provisions of this Contract.

SECTION 25. EXECUTION IN COUNTERPARTS.

This Contract shall be executed in two counterparts, each of which shall be deemed to be an original, and each of which shall constitute but one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

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

Date: _____

UNITED CITY OF YORKVILLE

By: _____
John Purcell – Mayor

ATTEST:

Jori Behland – City Clerk

Date: _____

DUPAGE WATER COMMISSION

By: _____
James F. Zay – Chairman

ATTEST:

Danna M. Mundall – Clerk

EXHIBIT A
YORKVILLE UNIT SYSTEM

Village of Yorkville
Water Purchase and Sale Contract

EXHIBIT A - YORKVILLE UNIT SYSTEM

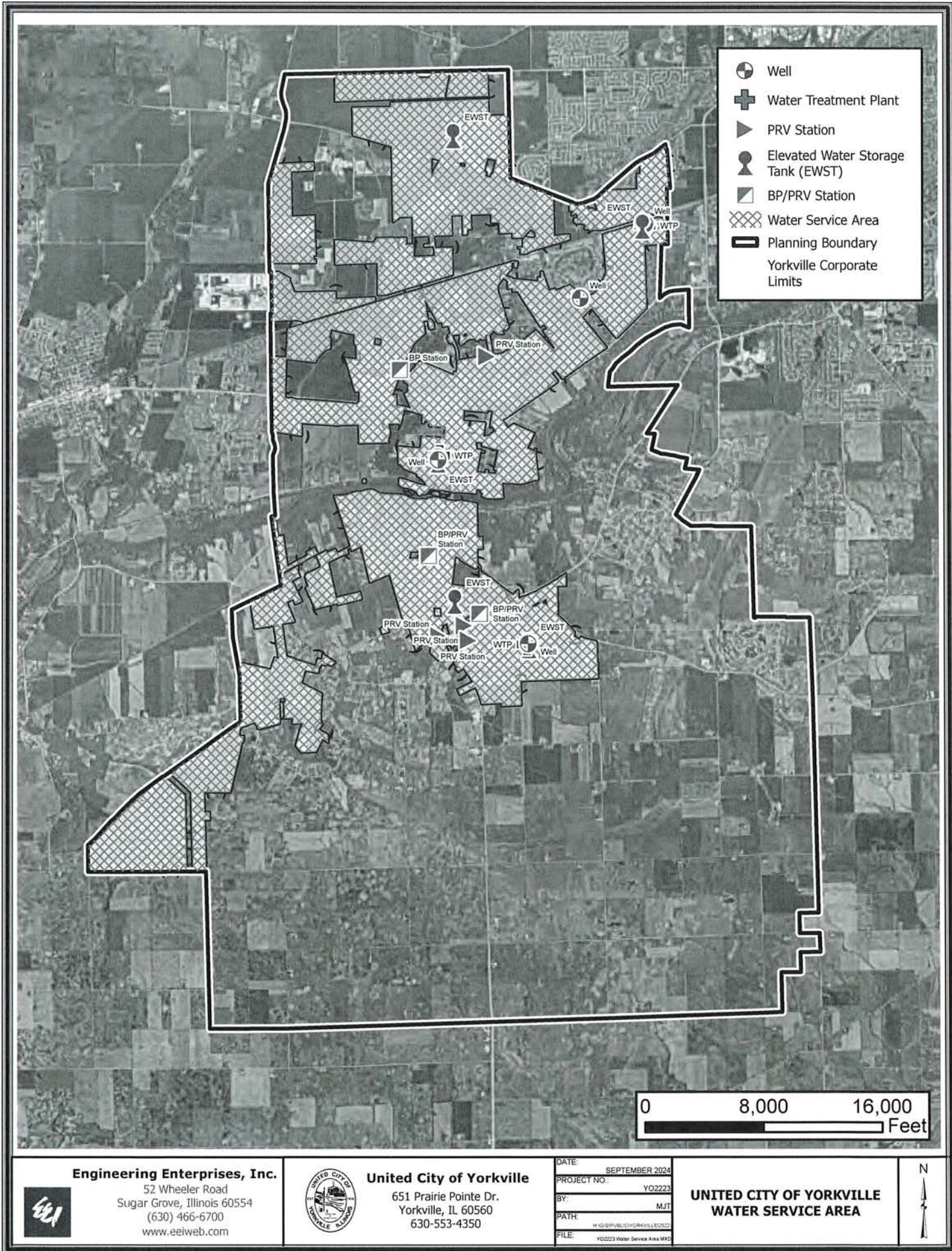


EXHIBIT B-1
YORKVILLE UNIT SYSTEM CONNECTION FACILITIES

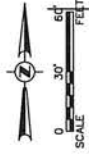
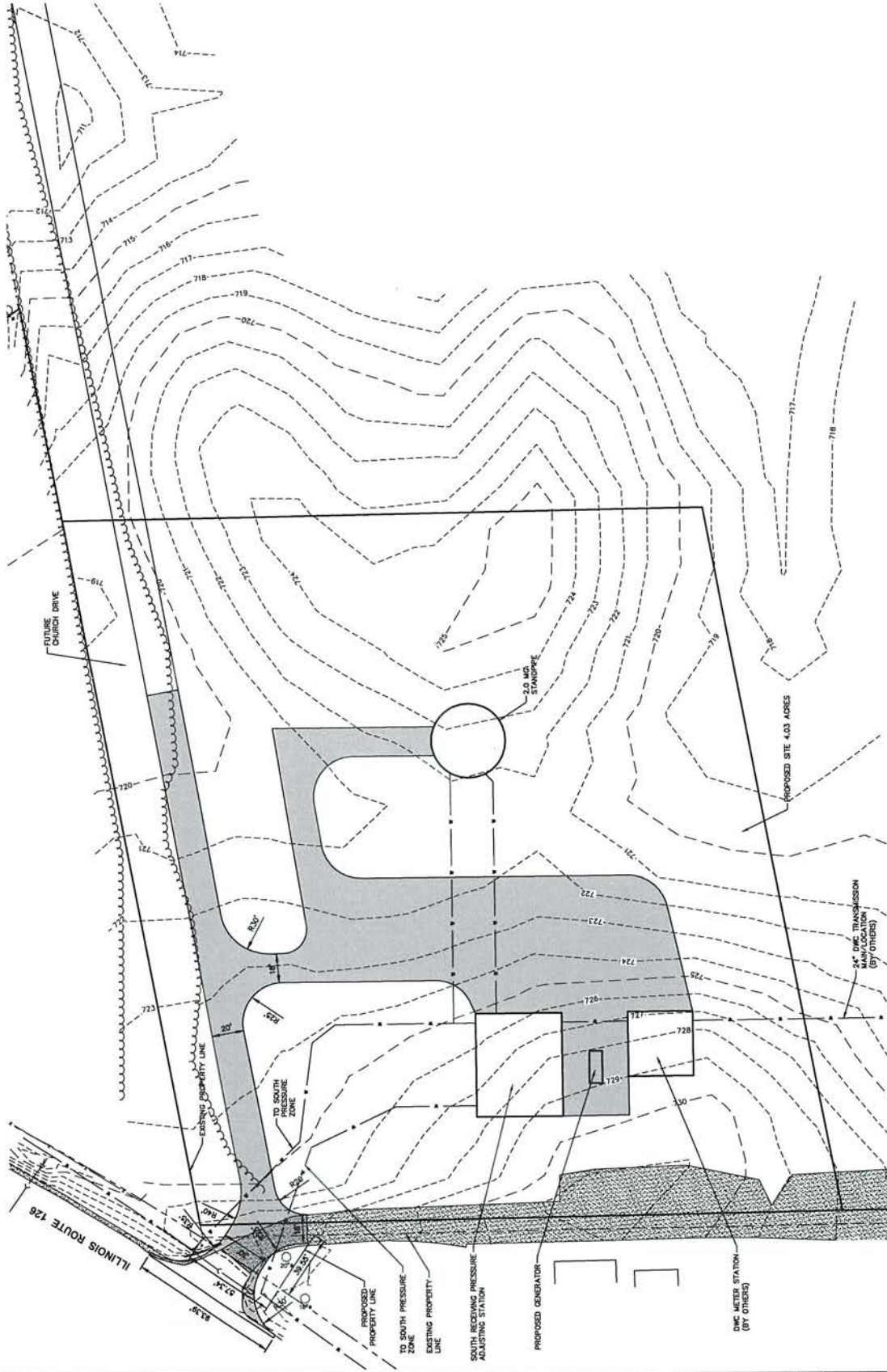
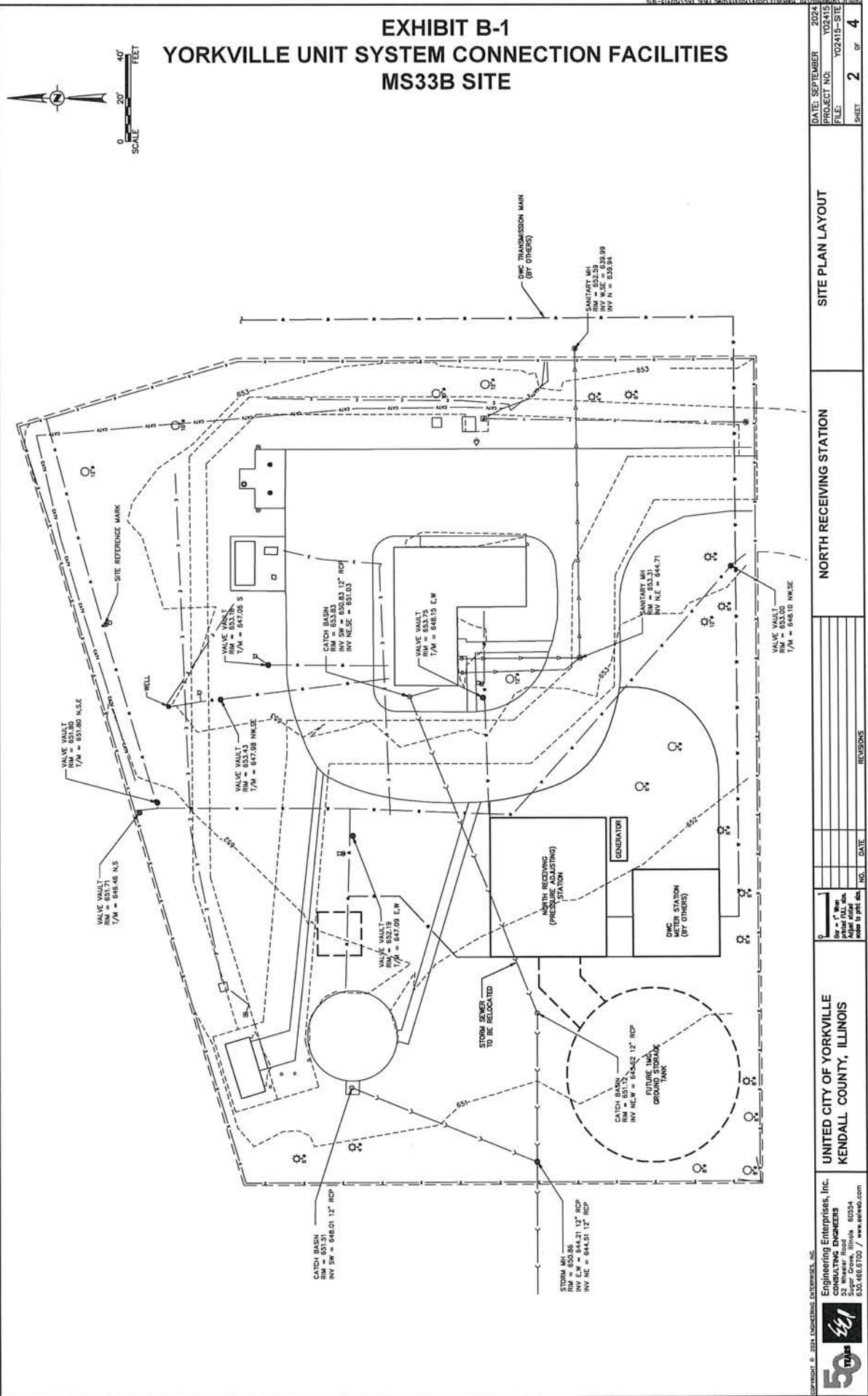


EXHIBIT B-1
YORKVILLE UNIT SYSTEM CONNECTION FACILITIES
MS33A SITE



DATE: SEPTEMBER 2024		PROJECT NO: Y02416 FILE: Y02416-SITE SHEET XX OF 4	
SITE PLAN			
SOUTH RECEIVING STATION			
UNITED CITY OF YORKVILLE KENDALL COUNTY, ILLINOIS			
Engineering Enterprises, Inc. CONSULTING ENGINEERS Superior, Illinois 62454 630.466.6700 / www.eeinc.com			
1 Rev = 1: Map 2: Additions 3: Deletions 4: Adjustments made to print set		REVISIONS	
NO.		DATE	

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<div>50 YEARS</div> <div>Engineering Enterprises, Inc. CONSULTING ENGINEERS 32 Wheeler Road Sugar Grove, Illinois 830.486.9700 / www.eeinc.com</div>		UNITED CITY OF YORKVILLE KENDALL COUNTY, ILLINOIS		<div>0</div> <div>Box = 1" min printed full size. Kippel digital made to print size.</div>		NORTH RECEIVING STATION		SITE PLAN LAYOUT		<div>DATE: SEPTEMBER 2024</div> <div>PROJECT NO: Y02415</div> <div>FILE: Y02415-SITE</div> <div>SHEET 2 OF 4</div>	
				NO.		DATE		REVISIONS			

EXHIBIT B-1

WATER DELIVERY DATA

DU PAGE WATER COMMISSION

Date: September 18, 2024 (data provided by Yorkville consultant working with DWC Consultant)

CUSTOMER NAME United City of Yorkville

DELIVERY POINT (DWC NODE No.) MS 33A

TYPE OF CUSTOMER PAS FACILITY REQUIRED Rate Control Type D

LOCATION AT Illinois Route 71 and Wing Rd., Yorkville IL

DWC DESIGN MINIMUM HYDRAULIC GRADE* (USGS DATUM) 824

CUSTOMER'S SYSTEM OVERFLOW ELEV. AND/OR REQUIRED HEAD** 920

CUSTOMER'S STORAGE FACILITY 1.5 MG Elevated

HYDRAULIC DATA

	Flow Rate @ Customer's Facility MGD	— DWC Hydraulic Grade 10 ft. Downstream of DWC Meter Station USGS Datum
2032 Avg. Day	<u>1.00 MGD</u>	<u>876</u>
<u>2032</u> Max. Day	<u>1.70 MGD</u>	<u>885</u>
<u>2050</u> Avg. Day	<u>2.42 MGD</u>	<u>824</u>
<u>2050</u> Max. Day	<u>4.11 MGD</u>	<u>875</u>
<u>2050</u> Peak***	<u>7.26 MGD</u>	

* DWC design minimum hydraulic grade will fluctuate approx. \pm 10 feet depending upon Commission's elevated storage water elevation.

** It is customer's responsibility to verify the system overflow elevation or required head.

*** 3 x 2050 average day flow or 1500 GPM minimum.

EXHIBIT B-1

WATER DELIVERY DATA

DU PAGE WATER COMMISSION

Date: September 18, 2024 (data provided by Yorkville consultant working with DWC Consultant)

CUSTOMER NAME United City of Yorkville

DELIVERY POINT (DWC NODE No.) MS 33B

TYPE OF CUSTOMER PAS FACILITY REQUIRED Rate Control Type C

LOCATION AT 3099 Lehman Crossing, Yorkville IL

DWC DESIGN MINIMUM HYDRAULIC GRADE* (USGS DATUM) 836

CUSTOMER'S SYSTEM OVERFLOW ELEV. AND/OR REQUIRED HEAD** 810

CUSTOMER'S STORAGE FACILITY 1.5 MG Elevated

HYDRAULIC DATA

	Flow Rate @ Customer's Facility MGD	DWC Hydraulic Grade 10 ft. Downstream of DWC Meter Station USGS Datum
<u>2032</u> Avg. Day	<u>1.50 MGD</u>	<u>878</u>
<u>2032</u> Max. Day	<u>2.55 MGD</u>	<u>897</u>
<u>2050</u> Avg. Day	<u>3.64 MGD</u>	<u>836</u>
<u>2050</u> Max. Day	<u>6.19 MGD</u>	<u>882</u>
<u>2050</u> Peak***	<u>10.92 MGD</u>	

* DWC design minimum hydraulic grade will fluctuate approx. \pm 10 feet depending upon Commission's elevated storage water elevation.

** It is customer's responsibility to verify the system overflow elevation or required head.

*** 3 x 2050 average day flow or 1500 GPM minimum.

EXHIBIT B-1

PRELIMINARY PLANS FOR THE YORKVILLE UNIT SYSTEM CONNECTION FACILITIES

MINIMUM REQUIREMENTS FOR PRESSURE ADJUSTING (PA) STATIONS AND SCHEMATICS

1. Rate Controllers shall be adjusted and the water distribution shall otherwise be operated to take a normally uniform flow rate from the DWC system. The maximum hourly rate should in no case be greater than 1.7 times the average annual hourly rate based on the current Lake Michigan water allocation for the PA station. The adequacy of customer system storage and proper operation of storage facilities to assure uniform take-off is the customer's responsibility.
2. Designs shall provide for the appropriate fluctuation of customer storage facility levels to assure uniform take-off. Elevated storage tanks shall be fluctuated appropriately during sub freezing conditions.
3. Emergency bypass lines, flow rate controllers and system isolation check valves shall be required in all designs.
4. Altitude valves or other appropriate means for preventing elevated and ground storage tank overflows are recommended if such provisions do not already exist in the customer's system.
5. Surge relief facilities for protection of both the customer and DWC facilities shall be required.
6. the type and design of the PA station will be dependent upon:
 - a. The difference between, (i) the minimum DWC system pressure (hydraulic grade) 10 feet downstream of the DWC Metering Station (MS) and, (ii) the customer's elevated tank overflow or system pressure.
 - b. Whether ground storage will be used to receive water at the PA station.

In general, the recommended design types for the various receiving facility designs and the differential between the minimum DWC system grade (at the point of delivery) and the customer system elevated tank overflows or system pressure are as follows:

<u>Design Type</u>	<u>Head (DWC – Customer)</u>
Pressure Reducing (Type A & B)	> / = 28 feet
Rate Control (Type C)	< 28 feet & >= 0 feet
Pressure Increasing (Type D)	< 0 feet

EXHIBIT B-1

PRELIMINARY PLANS FOR THE YORKVILLE UNIT SYSTEM CONNECTION FACILITIES

7. Where pumping stations are required (Type D), each station shall be equipped with three (3) pumping units of equal size. Each unit shall have rated capacity of approximately equal to the average day, year 2020 flow, at the station. Two (2) pumping units shall have a combined capacity to provide maximum day, year 2020 flow (1.7 times average day year 2020 flow). The third unit is for standby. A fourth space is shown on the pumping station (Type D) schematic for an additional pumping unit at the customer's option.
8. The facility requirements indicated are for illustrative purposes showing general guidelines and various design functions to be provided. Each station shall be designed and proper equipment shall be selected to meet local and specific conditions.
9. Emergency conditions may permit three (3) times average day flow at the PA based on the year 2020 Lake Michigan Water Allocation or 1500 GPM, whichever is greater.
10. The Commission will only provide a chlorine residual meeting State and Federal Standards at the point of delivery. Additional chlorination facilities, if required, shall be provided by the customer at the customer's expense.

EXHIBIT B-1 YORKVILLE UNIT SYSTEM CONNECTION FACILITIES

PRESSURE REDUCING STATION - TYPE A

- 1) HOURLY FLOWS SHALL BE UNIFORM THROUGHOUT EACH DAY* AND RATE NOT EXCEED 1.7 X AVERAGE DAY FLOW AT THE STATION BASED ON CURRENT YEAR LAKE MICHIGAN WATER ALLOCATION.
- 2) PRESSURE REDUCING STATION IS REQUIRED IF THE COMMISSION'S SYSTEM DESIGN PRESSURE** EXCEEDS THE DESIRED CUSTOMER'S SYSTEM PRESSURE BY TWELVE (12) P.S.I. (28 FT.) OR MORE.
- 3) PRESSURE REDUCING STATION TYPE A - CONNECTIONS TO GROUND RESERVOIR AND SYSTEM.
 - A. PRESSURE REDUCING AND CHECK VALVE, AND RATE CONTROLLER (MAXIMUM FLOW LIMIT CONTROL) ARE REQUIRED.
 - B. PRESSURE RELIEF FOR BOTH DWC AND CUSTOMER'S SYSTEM IS REQUIRED.
 - C. EMERGENCY BYPASS IS REQUIRED.
 - D. ALTITUDE VALVE WITH PRESSURE SUSTAINING FUNCTION AND BYPASS (CUSTOMER'S RESPONSIBILITY) ARE RECOMMENDED FOR GROUND RESERVOIR CONNECTION. PROPER DAILY USE OF THE RESERVOIR IS REQUIRED.
 - E. CHLORINATION SYSTEM IS OPTIONAL (CUSTOMER'S RESPONSIBILITY).
- 4) EMERGENCY CONDITIONS MAY PERMIT 3X AVERAGE DAY FLOW AT THE STATION BASED ON 2020 LAKE MICHIGAN WATER ALLOCATION OR 1500 GPM WHICHEVER IS LARGER.
- 5) STANDBY PRESSURE REDUCING AND CHECK VALVE ARE REQUIRED.
- 6) THE FACILITY REQUIREMENTS INDICATED ARE FOR ILLUSTRATIVE PURPOSE SHOWING GENERAL GUIDELINES AND VARIOUS DESIGN FUNCTIONS TO BE PROVIDED. EACH STATION SHALL BE DESIGNED, AND PROPER EQUIPMENT SHALL BE SELECTED TO MEET LOCAL CONDITIONS AND SITE SPECIFICS.

*ACCOMPLISHED BY SETTING RATE CONTROLLER IN ACCORDANCE WITH THE CUSTOMER DEMAND.

**DESIGN PRESSURE WILL FLUCTUATE APPROXIMATELY \pm 10 FEET DEPENDING UPON COMMISSION'S ELEVATED STORAGE WATER ELEVATION.

SCHEMATIC OF PRESSURE REDUCING STATION TYPE A

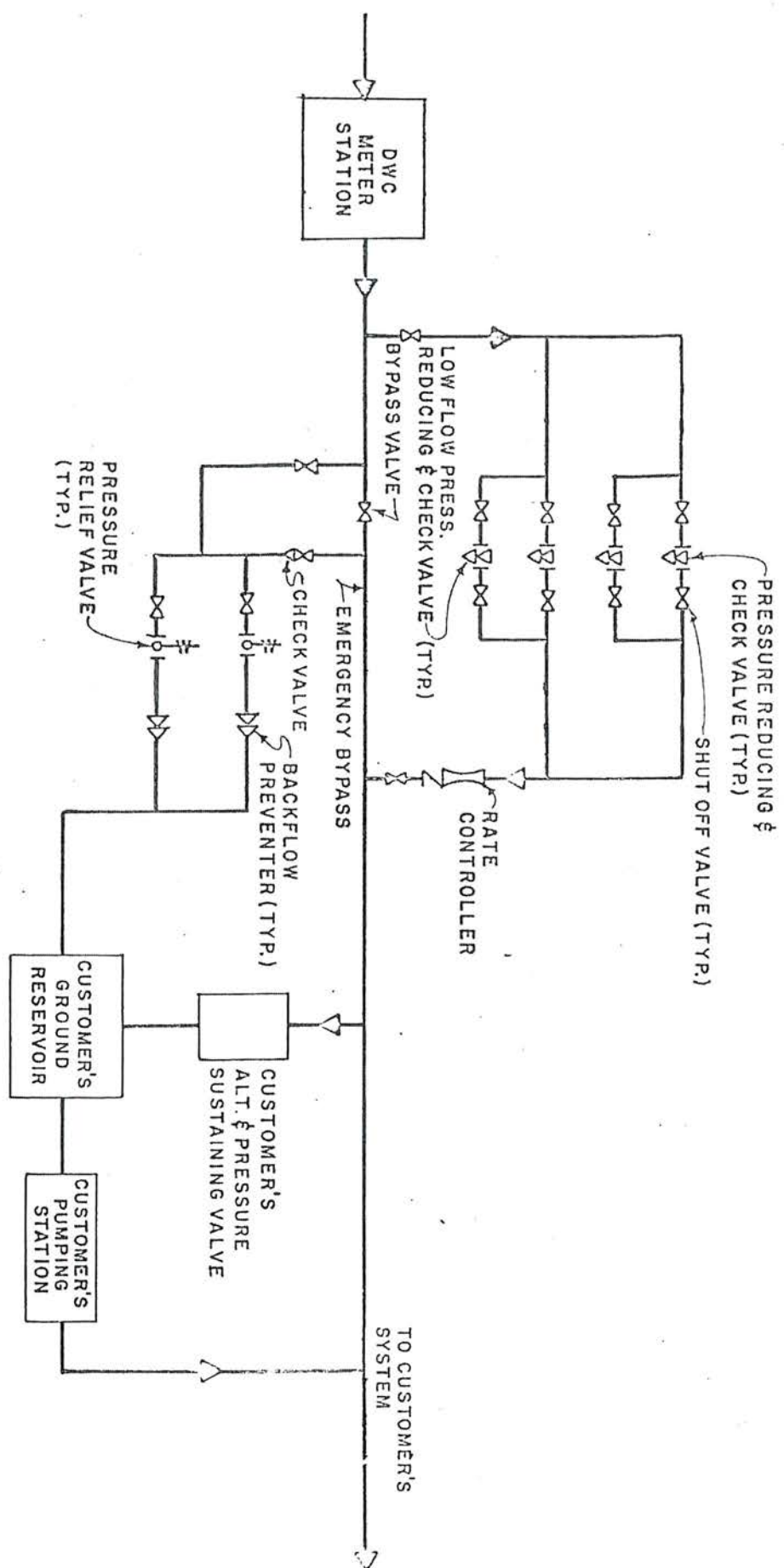


EXHIBIT B-1 YORKVILLE UNIT SYSTEM CONNECTION FACILITIES

PRESSURE REDUCING STATION - TYPE B

- 1) HOURLY FLOWS SHALL BE UNIFORM THROUGHOUT EACH DAY* AND RATE NOT EXCEED 1.7 X AVERAGE DAY FLOW AT THE STATION BASED ON CURRENT YEAR LAKE MICHIGAN WATER ALLOCATION.
- 2) PRESSURE REDUCING STATION IS REQUIRED IF THE COMMISSION'S SYSTEM DESIGN PRESSURE** EXCEEDS THE DESIRED CUSTOMER'S SYSTEM PRESSURE BY TWELVE (12) P.S.I. (28 FT.) OR MORE.
- 3) PRESSURE REDUCING STATION TYPE B - CONNECTIONS TO ELEVATED TANK AND SYSTEM.
 - A. PRESSURE REDUCING AND CHECK VALVE, AND RATE CONTROLLER (MAXIMUM FLOW LIMIT CONTROL) ARE REQUIRED.
 - B. PRESSURE RELIEF FOR BOTH DWC AND CUSTOMER'S SYSTEM IS REQUIRED.
 - C. EMERGENCY BYPASS IS REQUIRED.
 - D. ALTITUDE VALVE WITH BYPASS (CUSTOMER'S RESPONSIBILITY) IS RECOMMENDED FOR ELEVATED TANK CONNECTION. PROPER DAILY USE OF THE TANK IS REQUIRED.
 - E. CHLORINATION SYSTEM IS OPTIONAL (CUSTOMER'S RESPONSIBILITY).
- 4) EMERGENCY CONDITIONS MAY PERMIT 3X AVERAGE DAY FLOW AT THE STATION BASED ON 2020 LAKE MICHIGAN WATER ALLOCATION OR 1500 GPM WHICHEVER IS LARGER.
- 5) STANDBY PRESSURE REDUCING AND CHECK VALVE ARE REQUIRED.
- 6) THE FACILITY REQUIREMENTS INDICATED ARE FOR ILLUSTRATIVE PURPOSE SHOWING GENERAL GUIDELINES AND VARIOUS DESIGN FUNCTIONS TO BE PROVIDED. EACH STATION SHALL BE DESIGNED, AND PROPER EQUIPMENT SHALL BE SELECTED TO MEET LOCAL CONDITIONS AND SITE SPECIFICS.

*ACCOMPLISHED BY SETTING RATE CONTROLLER IN ACCORDANCE WITH THE CUSTOMER DEMAND.

**DESIGN PRESSURE WILL FLUCTUATE APPROXIMATELY ± 10 FEET DEPENDING UPON COMMISSION'S ELEVATED STORAGE WATER ELEVATION.

SCHEMATIC OF PRESSURE REDUCING STATION TYPE B

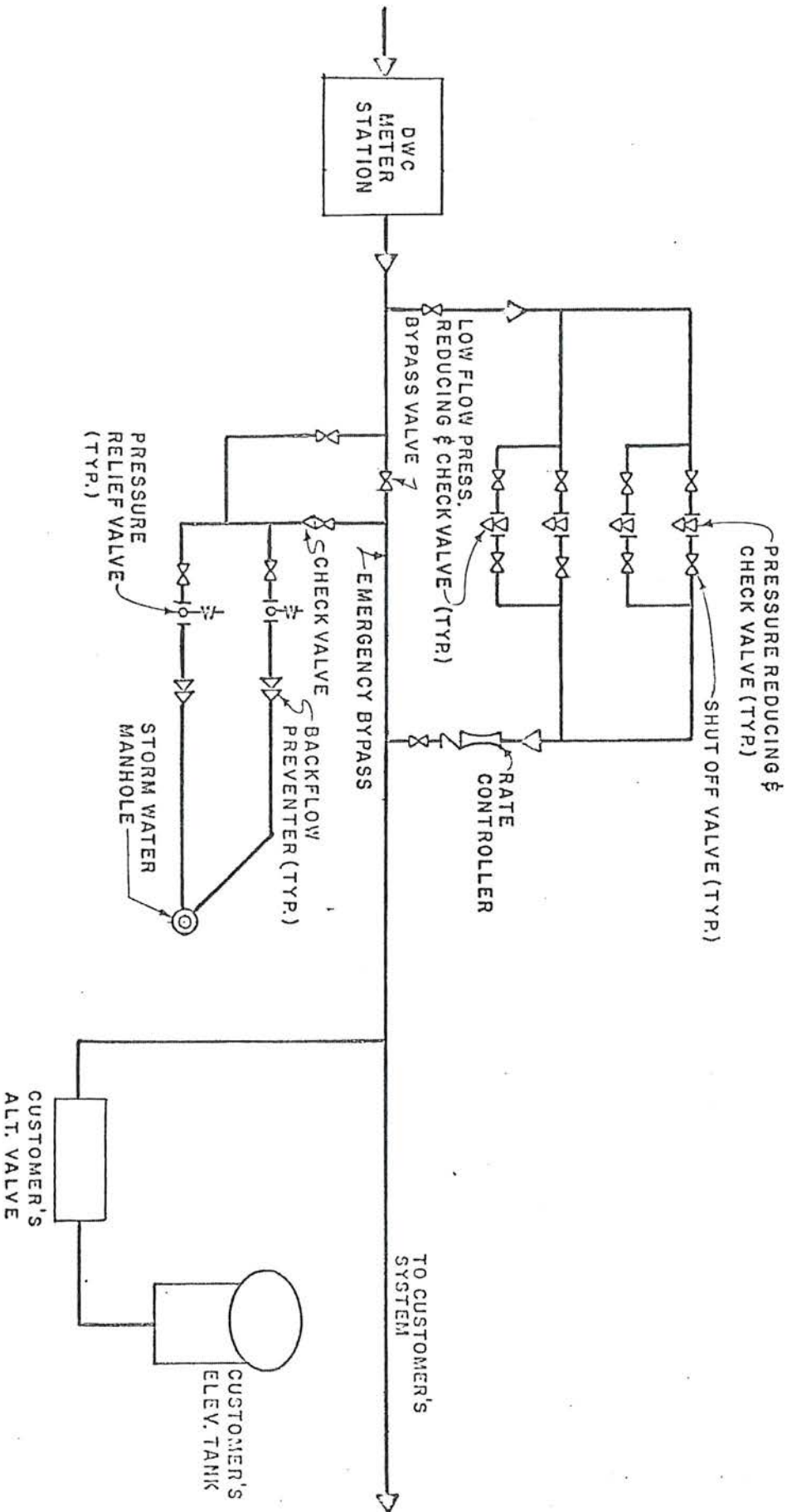


EXHIBIT B-1 YORKVILLE UNIT SYSTEM CONNECTION FACILITIES

DUPAGE WATER COMMISSION
DATE:

ALVORD, BURDICK & HOWSON
ENGINEERS CHICAGO

EXHIBIT B-1 YORKVILLE UNIT SYSTEM CONNECTION FACILITIES

PRESSURE REDUCING STATION - TYPE C

- 1) HOURLY FLOWS SHALL BE UNIFORM THROUGHOUT EACH DAY* AND RATE NOT EXCEED 1.7 X AVERAGE DAY FLOW AT THE STATION BASED ON CURRENT YEAR LAKE MICHIGAN WATER ALLOCATION.
- 2) PRESSURE REDUCING STATION IS REQUIRED IF THE COMMISSION'S SYSTEM DESIGN PRESSURE** EXCEEDS THE DESIRED CUSTOMER'S SYSTEM PRESSURE BY TWELVE (12) P.S.I. (28 FT.) OR MORE.
- 3) PRESSURE REDUCING STATION TYPE C - DIRECT CONNECTIONS TO DISTRIBUTION SYSTEM.
 - A. ALL DIRECT CONNECTIONS FROM DUPAGE WATER COMMISSION FEEDER MAIN TO DISTRIBUTION SYSTEM SHALL REQUIRED DWC APPROVAL.
 - B. MAXIMUM HOUR TAKE-OFF RATE SHALL BE REGULATED TO COMPLY WITH ITEM 1) REQUIREMENTS. ADEQUACY OF STORAGE CAPACITY IS CUSTOMER'S RESPONSIBILITY.
 - C. PRESSURE REDUCING AND CHECK VALVE, AND RATE CONTROLLER (MAXIMUM FLOW LIMIT CONTROL) ARE REQUIRED.
 - D. PRESSURE RELIEF FOR BOTH DWC AND CUSTOMER'S SYSTEM IS REQUIRED.
 - E. EMERGENCY BYPASS IS REQUIRED.
 - F. ALTITUDE VALVE WITH BYPASS (AND PRESSURE SUSTAINING FUNCTION FOR GROUND STORAGE) IS RECOMMENDED FOR STORAGE CONNECTION (CUSTOMER'S RESPONSIBILITY). PROPER DAILY USE OF THE STORAGE IS REQUIRED.
 - G. CHLORINATION SYSTEM IS OPTIONAL (CUSTOMER'S RESPONSIBILITY).
- 4) EMERGENCY CONDITIONS MAY PERMIT 3X AVERAGE DAY FLOW AT THE STATION BASED ON 2020 LAKE MICHIGAN WATER ALLOCATION OR 1500 GPM WHICHEVER IS LARGER.
- 5) STANDBY PRESSURE REDUCING AND CHECK VALVE ARE REQUIRED.
- 6) THE FACILITY REQUIREMENTS INDICATED ARE FOR ILLUSTRATIVE PURPOSE SHOWING GENERAL GUIDELINES AND VARIOUS DESIGN FUNCTIONS TO BE PROVIDED. EACH STATION SHALL BE DESIGNED, AND PROPER EQUIPMENT SHALL BE SELECTED TO MEET LOCAL CONDITIONS AND SITE SPECIFICS.

*ACCOMPLISHED BY SETTING RATE CONTROLLER IN ACCORDANCE WITH THE CUSTOMER DEMAND.

**DESIGN PRESSURE WILL FLUCTUATE APPROXIMATELY ± 10 FEET DEPENDING UPON COMMISSION'S ELEVATED STORAGE WATER ELEVATION.

SCHEMATIC OF PRESSURE REDUCING STATION TYPE C

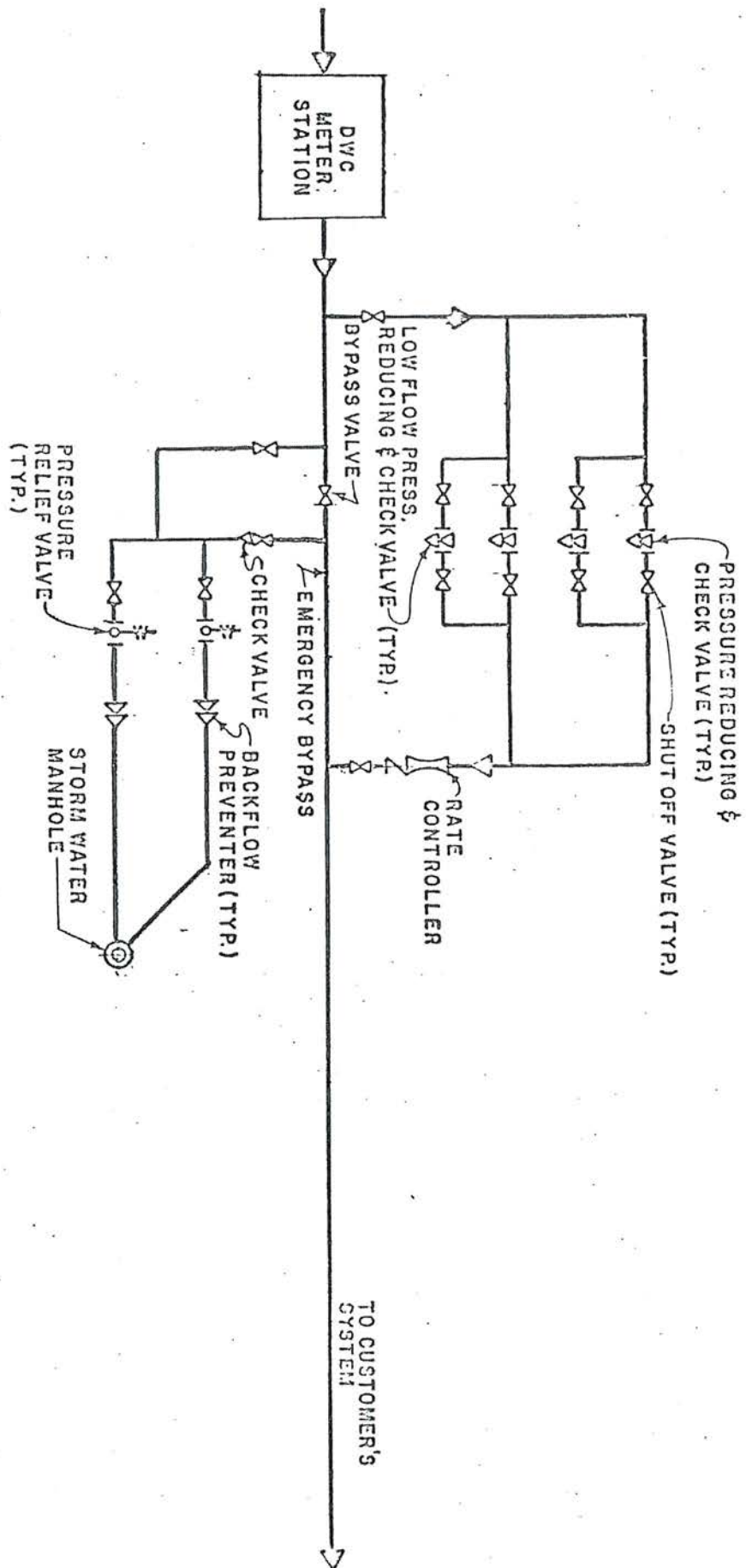


EXHIBIT B-1 YORKVILLE UNIT SYSTEM CONNECTION FACILITIES

RATE CONTROL STATION - TYPE D

- 1) HOURLY FLOWS SHALL BE UNIFORM THROUGHOUT EACH DAY* AND RATE NOT EXCEED 1.7 X AVERAGE DAY FLOW AT THE STATION BASED ON CURRENT YEAR LAKE MICHIGAN WATER ALLOCATION.
- 2) RATE CONTROL STATION IS REQUIRED IF THE DIFFERENCE BETWEEN THE COMMISSION'S MINIMUM DESIGN PRESSURE** AND THE CUSTOMER'S DESIRED SYSTEM PRESSURE IS NOT MORE THAN TWELVE (12) P.S.I. (28 FT.).
- 3) RATE CONTROL STATION TYPE D - CONNECTIONS TO ELEVATED TANK AND SYSTEM.
 - A. PRESSURE SUSTAINING AND CHECK VALVE, AND RATE CONTROLLER (MAXIMUM FLOW LIMIT CONTROL) ARE REQUIRED.
 - B. PRESSURE RELIEF FOR BOTH DWC AND CUSTOMER'S SYSTEM IS REQUIRED.
 - C. EMERGENCY BYPASS IS REQUIRED.
 - D. ALTITUDE VALVE WITH BYPASS (CUSTOMER'S RESPONSIBILITY) IS RECOMMENDED FOR ELEVATED TANK CONNECTION. PROPER DAILY USE OF THE TANK IS REQUIRED.
 - E. CHLORINATION SYSTEM IS OPTIONAL (CUSTOMER'S RESPONSIBILITY).
- 4) EMERGENCY CONDITIONS MAY PERMIT 3X AVERAGE DAY FLOW AT THE STATION BASED ON 2020 LAKE MICHIGAN WATER ALLOCATION OR 1500 GPM WHICHEVER IS LARGER.
- 5) STANDBY PRESSURE SUSTAINING AND CHECK VALVE ARE REQUIRED.
- 6) THE FACILITY REQUIREMENTS INDICATED ARE FOR ILLUSTRATIVE PURPOSE SHOWING GENERAL GUIDELINES AND VARIOUS DESIGN FUNCTIONS TO BE PROVIDED. EACH STATION SHALL BE DESIGNED, AND PROPER EQUIPMENT SHALL BE SELECTED TO MEET LOCAL CONDITIONS AND SITE SPECIFICS.

*ACCOMPLISHED BY SETTING RATE CONTROLLER IN ACCORDANCE WITH THE CUSTOMER DEMAND.

**DESIGN PRESSURE WILL FLUCTUATE APPROXIMATELY + 10 FEET DEPENDING UPON COMMISSION'S ELEVATED STORAGE WATER ELEVATION.

SCHEMATIC OF PRESSURE INCREASING STATION TYPE D

NOTE: CUSTOMER SHALL UPGRADE DISTRIBUTION SYSTEM
AS REQUIRED TO APPROPRIATELY UTILIZE THE
WATER STORAGE FACILITIES.

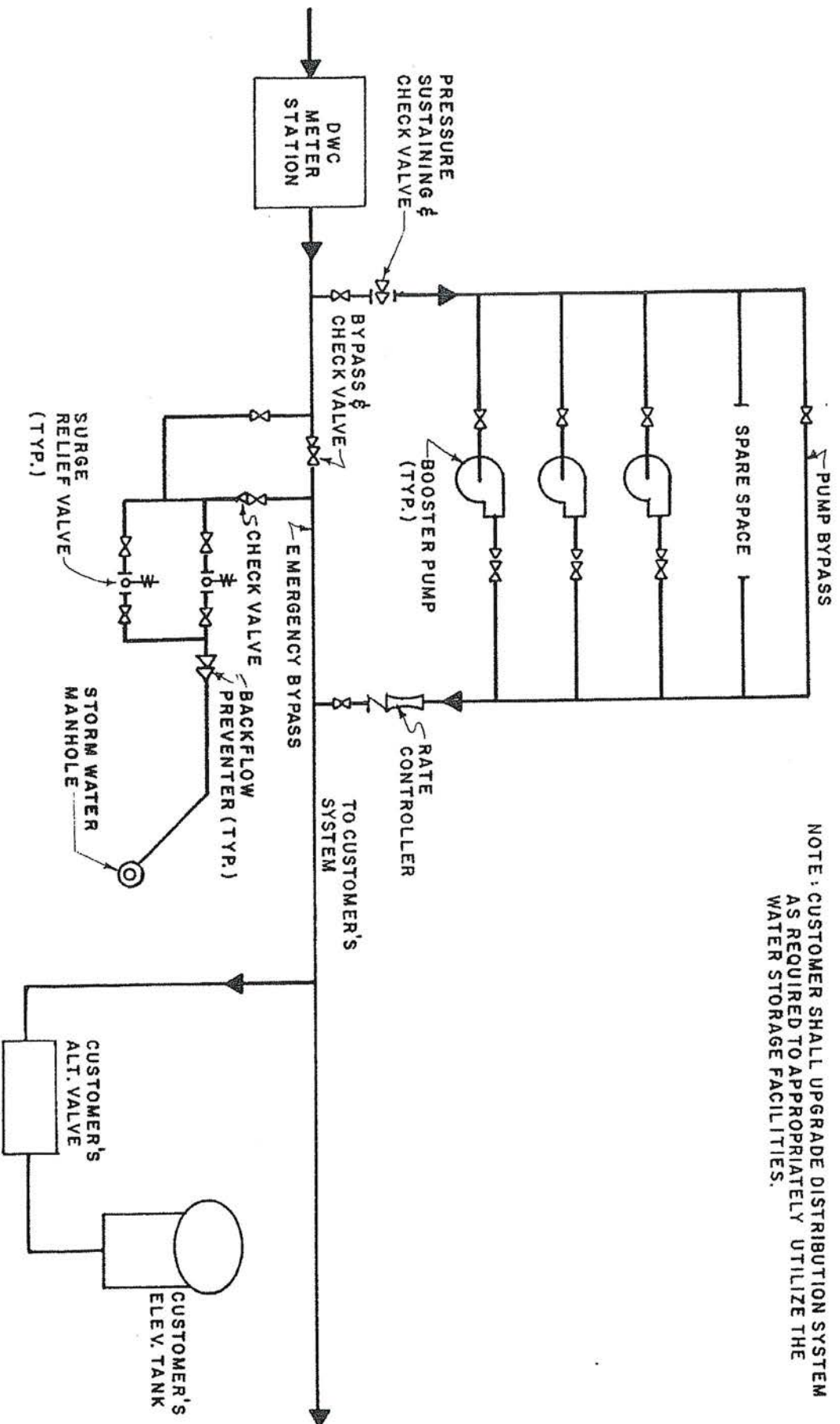
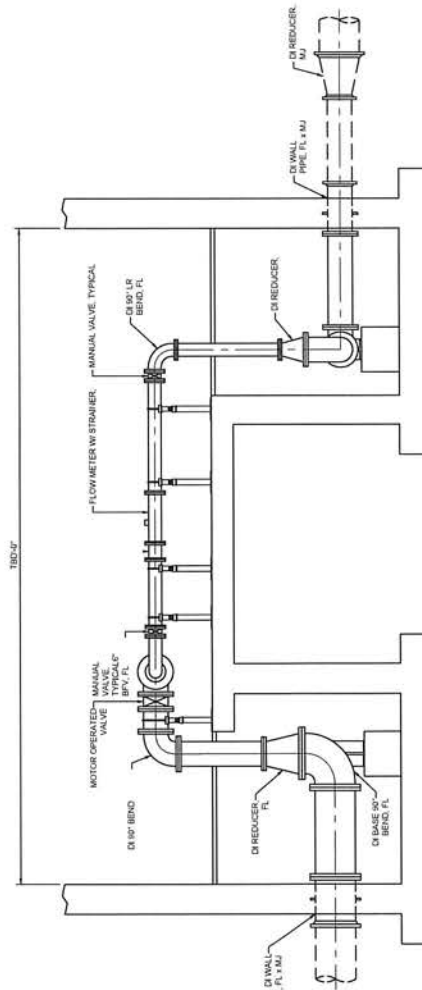
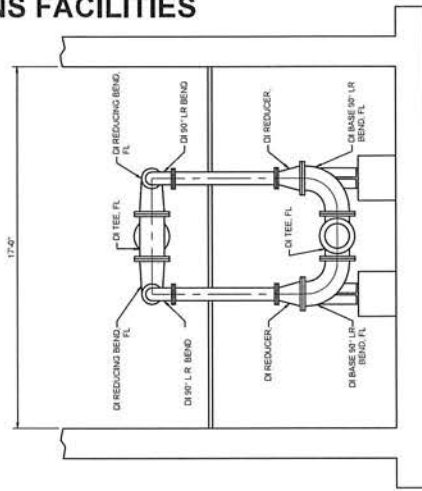
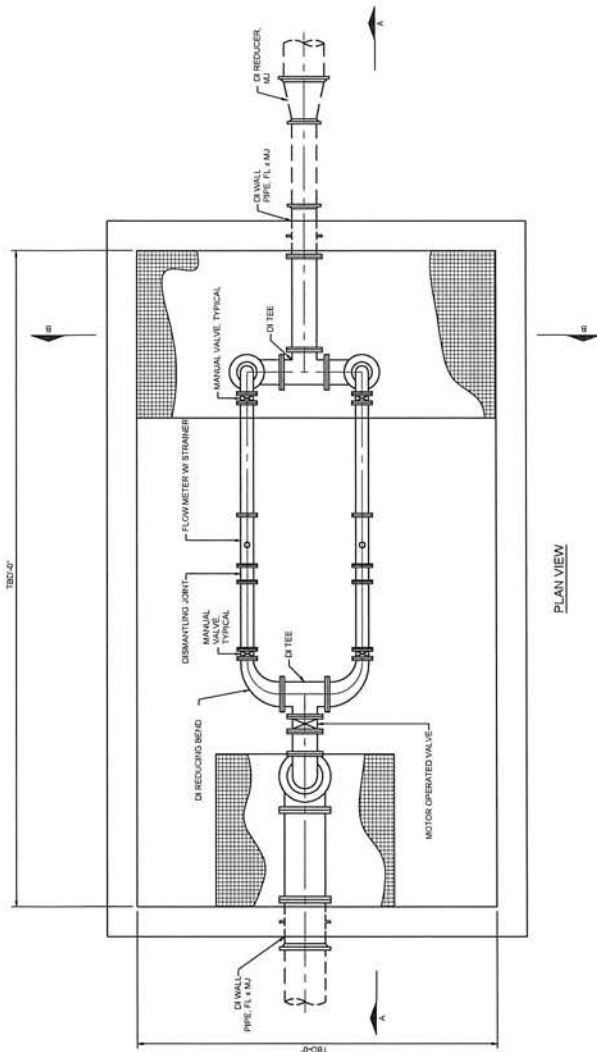


EXHIBIT B-1 YORKVILLE UNIT SYSTEM CONNECTION FACILITIES

EXHIBIT B-2
COMMISSION CONNECTION FACILITIES

EXHIBIT B-2
COMMISSION CONNECTIONS FACILITIES

TYPICAL 2 TRAIN METER STATION LAYOUT



SECTION A-A

SECTION B-B



DUPAGE WATER COMMISSION
WATERLINK EXTENSION

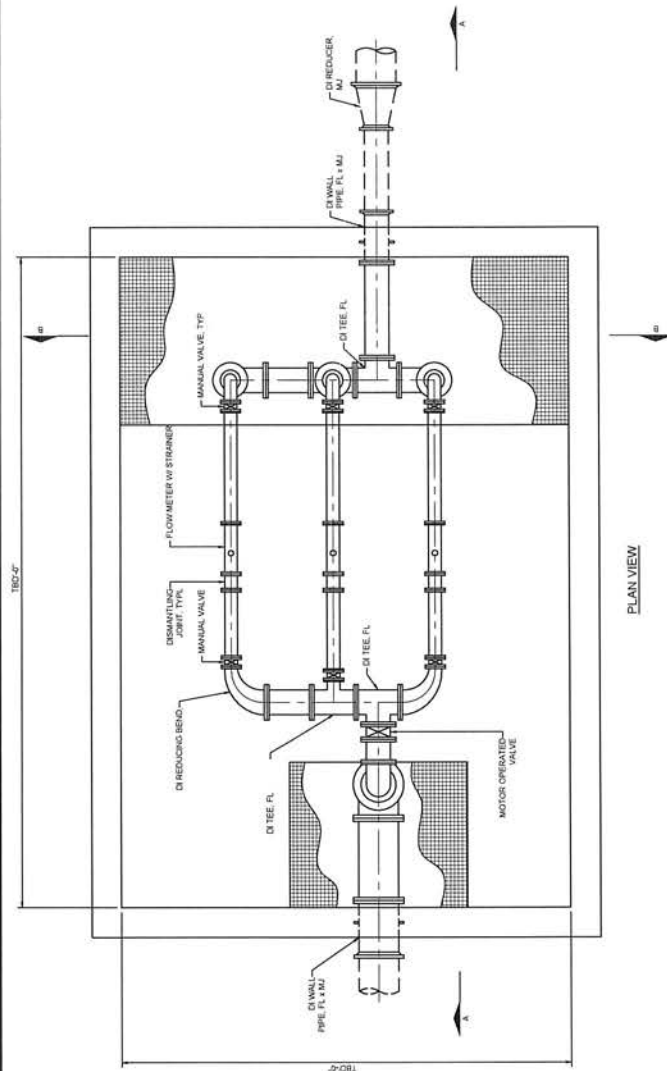
TYPICAL 2-TRAIN
DMC METER STATION
PRELIMINARY PIPING LAYOUT



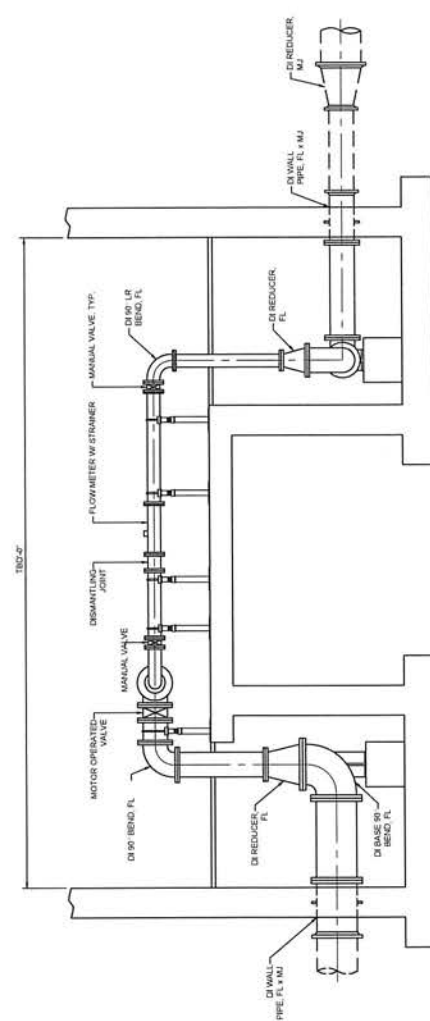
DRAWING NO.	SHEET NO.
D-101	1 of 2

EXHIBIT B-2
COMMISSION CONNECTION FACILITIES

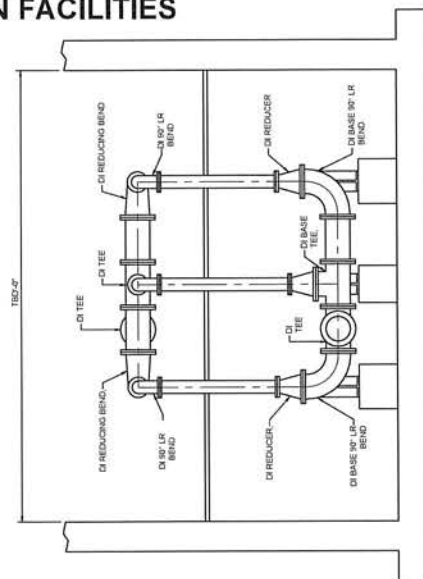
TYPICAL 3-TRAIN METER STATION LAYOUT



PLAN VIEW



SECTION A-A



SECTION B-B

REV	DATE	DESCRIPTION	BY	DATE	DESIGNED	MAO	CHECKED	JWG	DRAWN	NSZ	CHECKED	OG



DUPAGE WATER COMMISSION
WATERLINK
WATERLINK
WATERLINK

TYPICAL 3-TRAIN
DWC METER STATION
PRELIMINARY PIPING LAYOUT



DRAWING NO	SHEET NO
D-102	2 of 2

EXHIBIT C
YORKVILLE UNIT SYSTEM STORAGE REQUIREMENTS

EXHIBIT C
CUSTOMER WATER STORAGE REQUIREMENTS

CUSTOMER	CUSTOMER EXISTING STORAGE (MG)	2030 ALLOCATION (MGD)	ALLOCATION AS A PERCENTAGE OF SYSTEM	STORAGE REQUIRED BY CONTRACT (MG)	10% SHALLOW WELL ALLOWANCE (MG)(1)	PORTION OF DWC STORAGE (MG)	STORAGE ABOVE OR (BELOW) REQUIREMENT (MG)
ADDISON	6.75	3.582	3.99%	7.16	0.72	2.50	2.80
ARGONNE	1.60	0.758	0.85%	1.52	0.15	0.53	0.76
BARTLETT	7.50	3.246	3.62%	6.49	0.65	2.26	3.92
BENSENVILLE	3.55	1.907	2.13%	3.81	0.00	1.33	1.07
BLOOMINGDALE	4.80	2.348	2.62%	4.70	0.47	1.64	2.21
CAROL STREAM	6.50	3.667	4.09%	7.33	0.73	2.56	2.46
IAWC ARROWHEAD	0.40	0.145	0.16%	0.29	0.03	0.10	0.24
IAWC COUNTRY CLUB	0.20	0.105	0.12%	0.21	0.02	0.07	0.08
IAWC DU PAGE/LISLE	0.76	0.470	0.52%	0.94	0.09	0.33	0.24
IAWC LOMBARD	0.05	0.050	0.06%	0.10	0.01	0.03	(0.01)
IAWC VALLEY VIEW	0.88	0.520	0.58%	1.04	0.10	0.36	0.31
IAWC LIBERTY RIDGE WEST	0.40	0.300	0.33%	0.60	0.06	0.21	0.07
IAWC LIBERTY RIDGE EAST	0.05	0.030	0.03%	0.06	0.01	0.02	0.02
CLARENDON HILLS	1.25	0.818	0.91%	1.64	0.16	0.57	0.35
DARIEN /DPC-SERWF	4.00	3.269	3.65%	6.54	0.65	2.28	0.39
DOWNERS GROVE	8.00	6.097	6.80%	12.19	1.22	4.25	1.28
DuPAGE COUNTY	2.63	1.483	1.65%	2.97	0.30	1.03	0.99
ELMHURST	15.00	4.083	4.55%	8.17	0.82	2.85	10.50
GLENDALE HEIGHTS	4.70	2.671	2.98%	5.34	0.53	1.86	1.75
GLEN ELLYN	3.25	2.562	2.86%	5.12	0.51	1.79	0.42
HINSDALE	4.50	2.468	2.75%	4.94	0.49	1.72	1.78
ITASCA	3.50	1.486	1.66%	2.97	0.30	1.04	1.86
LISLE	5.50	2.686	3.00%	5.37	0.54	1.87	2.54
LOMBARD	5.60	4.174	4.66%	8.35	0.83	2.91	1.00
NAPERVILLE	43.90	17.454	19.47%	34.91	3.49	12.17	24.65
OAK BROOK	8.00	3.294	3.67%	6.59	0.66	2.30	4.37
OAKBROOK TERRACE	0.50	0.261	0.29%	0.52	0.05	0.18	0.21
ROSELLE	1.75	1.866	2.08%	3.73	0.37	1.30	(0.31)
VILLA PARK	3.80	1.784	1.99%	3.57	0.00	1.24	1.48
WESTMONT	4.50	2.552	2.85%	5.10	0.51	1.78	1.69
WHEATON	7.26	4.846	5.40%	9.69	0.97	3.38	1.92
WILLOWBROOK	4.00	1.031	1.15%	2.06	0.21	0.72	2.86
WINFIELD	1.60	0.916	1.02%	1.83	0.18	0.64	0.59
WOOD DALE	3.35	1.244	1.39%	2.49	0.25	0.87	1.98
WOODRIDGE	6.15	3.058	3.41%	6.12	0.61	2.13	2.78
YORKVILLE (2)	4.05	2.432	2.71%	4.86	0.49	1.70	1.37
CUSTOMER TOTAL STORAGE	180.23	89.663	100.00%	174.46	16.71	62.50	79.23
DWC SYSTEM STORAGE	62.50						
TOTAL CUSTOMER AND DWC STORAGE	242.73						

(1) Customer Shallow Well Allowance and Storage Requirements are audited annually for compliance.

(2) Yorkville is currently in preliminary design phase to add 4.0 MG of new storage in 2027 and decommissioning 0.5 MG storage in 2029.

EXHIBIT D
METER STATION AND ACCESS EASEMENTS

EXHIBIT D
METER STATION AND ACCESS EASEMENTS
(FORM OF)

DUPAGE WATER COMMISSION

METERING STATION

EASEMENT AGREEMENT

[Meter Station Name]

[PERMANENT REAL ESTATE TAX INDEX NO. XX-XX-XXX-XXX]

Prepared by and Mail to:

Paul D. May, PE
General Manager
DuPage Water Commission
600 East Butterfield Road
Elmhurst, Illinois 60126-4642
630-834-0100

METERING STATION
EASEMENT AGREEMENT
[Meter Station Name]

THIS EASEMENT AGREEMENT, made and entered into this ____ day of _____, 202_, by and between the DUPAGE WATER COMMISSION, a county water commission created and existing under the laws of the State of Illinois (the "Commission") and the ***[MUNICIPALITY]***, a unit of local government created and existing under the laws of the State of Illinois and a customer of the Commission (the "Customer"),

WITNESSETH:

WHEREAS, the Commission and the Customer have entered into a certain Water Purchase and Sale Contract dated as of October 17, 2024 (the "Contract"); and

WHEREAS, the Contract provides that the Commission is to furnish, install, own, operate, maintain, and repair certain equipment and devices, together with certain structures and portions of its water distribution main, including underground feeder pipeline and related equipment, for properly conveying and measuring the quantity of Lake Michigan water delivered by the Commission to the Customer at the connection point provided for under the Contract (collectively referred to as the "Metering Station"); and

WHEREAS, the Contract provides that the Metering Station is to be located at a site selected and provided by the Customer, subject to review and approval by the Commission; and

WHEREAS, the Customer has selected the site legally described in Exhibit 1 attached hereto and by this reference incorporated herein and made a part hereof (the "Metering Station Easement Premises") for the location of the Metering Station as

generally depicted in Exhibit 2 attached hereto and by this reference incorporated herein and made a part hereof; and

WHEREAS, the Commission has reviewed the Metering Station Easement Premises and approved the same for the location of the Metering Station; and

WHEREAS, the Commission has submitted to the Customer for review the drawings and specifications for the Metering Station; and

WHEREAS, the Commission and the Customer desire to enter into this Easement Agreement in order to provide the Commission with a sufficient property interest in the Metering Station Easement Premises to fulfill the provisions and purpose of the Contract;

WHEREAS, the Commission has duly adopted its Ordinance No. **[O-XX-XX]**, being "An Ordinance Requesting the Intergovernmental Transfer of Easement Rights for the **[Municipality]** Metering Station MS-**[XXX]** Site and Authorizing the Execution of the **[Municipality]** Metering Station Easement Agreement," pursuant to the Local Government Property Transfer Act, 50 ILCS 605/0.01 et seq.; and

WHEREAS, the Customer has duly adopted its Resolution No. **[TBD]**, being "A Resolution Approving the Intergovernmental Transfer of Easement Rights to the DuPage Water Commission," pursuant to the Local Government Property Transfer Act, 50 ILCS 605/0.01 et seq.;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in the exercise of their powers and authority under the intergovernmental cooperation provisions of Article VII, Section 10 of the Illinois Constitution of 1970 and the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., and other applicable authority, the Commission and the Customer hereby agree as follows:

1. The foregoing recitals are hereby incorporated herein as substantive provisions of this Easement Agreement.

2. The Customer hereby grants, conveys, warrants, and dedicates to the Commission, its successors and assigns, an exclusive perpetual easement to construct, furnish, install, own, operate, maintain, test, inspect, remove, repair, and replace the Metering Station at, in, under, and upon the Metering Station Easement Premises, together with all reasonable rights of ingress and egress along or across any adjoining lands of, or under the jurisdiction and control of, the Customer. The Customer hereby further grants, conveys, warrants, and dedicates to the Commission, its successors and assigns, a non-exclusive perpetual access easement along and across the real property legally described in Exhibit 1 attached hereto and by this reference incorporated herein and made a part hereof (the "Access Easement Premises"). The Customer hereby further grants, conveys, warrants, and dedicates to the Commission, its successors and assigns, a non-exclusive perpetual utility access easement along and across the real property legally described in Exhibit 1 attached hereto and by this reference incorporated herein and made a part hereof (the "Utility Access Easement Premises").

3. The Metering Station shall be not located, constructed, or maintained in any manner not in substantial conformity with Exhibit 2 without the express consent of the Customer, which consent shall not be unreasonably withheld.

4. The Customer hereby further grants to the Commission a temporary construction easement for the installation of the Metering Station upon, along, and across the real property legally described in Exhibit 3 attached hereto and by this reference incorporated herein and made a part hereof (the "Subject Property"). Said temporary construction easement shall be used by the Commission only during periods of actual

installation, replacement or repair activity and for any necessary restoration of the Metering Station Easement Premises.

5. The Commission shall exercise the easement rights hereby granted with due care, and shall not unreasonably interfere with, damage, or harm any Customer property located upon the Subject Property or Customer's adjacent property.

6. After construction of the Metering Station, the Metering Station Easement Premises shall be restored in accordance with the drawings and specifications for the Metering Station. All fences, roads, landscaping, and improvements shall be restored to former condition by the Commission if disturbed or altered in any manner by construction or maintenance activities of the Commission.

7. The Customer hereby reserves the right to use the Metering Station Easement Premises, the Access Easement Premises, the Utility Access Easement Premises, and its adjacent property in any manner that will not prevent or interfere in any way with the exercise by the Commission of the rights granted hereunder; provided, however, that the Customer shall not in any manner disturb, damage, destroy, injure, obstruct, or permit to be obstructed the Metering Station Easement Premises, the Access Easement Premises, or the Utility Access Easement Premises without the express prior written consent of the Commission, nor shall the Customer permanently or temporarily improve, damage, or obstruct the Metering Station Easement Premises, the Access Easement Premises, or the Utility Access Easement Premises in any manner that would impair the exercise by the Commission of the rights hereby granted.

8. To the fullest extent permitted by law, the Customer agrees to indemnify and defend the Commission with respect to any and all claims or damages to persons or property which may arise from the acts of the Customer, or its agents or employees, at

the Metering Station Easement Premises, the Access Easement Premises, the Utility Access Easement Premises, the Subject Property, and its adjacent property in conjunction with its rights pursuant to Paragraph 7 hereof, and, except as otherwise provided in the Contract, the Commission agrees to indemnify and defend the Customer with respect to any and all claims of damages to persons or property which may arise from the of the Commission, or its agents or employees, at the Metering Station Easement Premises, the Access Easement Premises, the Utility Access Easement Premises and the Subject Property in conjunction with its rights pursuant to Paragraphs 2, 4, 5 and 7 hereof. The Customer shall provide to the Commission, and the Commission shall provide to the Customer, a certificate of insurance or proof of self-insurance coverage as evidence of its continuing ability to meet the obligation established in this Paragraph, and both shall maintain such coverage at all times.

9. This Easement Agreement shall constitute and stand in the place of all Customer permits required of the Commission or its contractor to construct, furnish, install, own, operate, maintain, test, inspect, repair, remove, or replace the Metering Station at, in, under, and upon the Metering Station Easement Premises, and the Customer hereby agrees to execute any and all additional documents, approvals, waivers, or consents, if any, that may be reasonably necessary for the Commission to secure any permits required from any county, state, or federal agency for or in connection with constructing, furnishing, installing, owning, operating, maintaining, testing, inspecting, repairing, removing, or replacing the Metering Station.

10. In the event that the Contract is terminated without renewal with respect to the Customer, the Commission shall, within 90 days execute and deliver to the Customer an appropriate document evidencing the termination of this Easement Agreement and

releasing the easement rights hereby granted. The Commission may, within said 90 day period, in its own discretion, and at the Customer's expense, remove the Metering Station from the Metering Station Easement Premises. If the Commission fails to remove the **[Municipality]** Metering Station, as aforesaid, the Customer may take title to the Metering Station.

11. All rights, title, and privileges herein granted, including all benefits and burdens, shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective grantees, successors, assigns, and legal representatives.

12. All representations and warranties contained herein shall survive the execution of this Easement Agreement and the recordation hereof and shall not be merged.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their proper representatives duly authorized to execute the same.

DUPAGE WATER COMMISSION

ATTEST:

By: _____
Paul May, PE
General Manager

Danna Mundall
Clerk

[MUNICIPALITY]

By: _____
[NAME]
[Village/City President/Mayor]

ATTEST:

By: _____

Its: _____

EXHIBIT 1

LEGAL DESCRIPTIONS OF THE
METERING STATION EASEMENT PREMISES

PERMANENT METER STATION EASEMENT:

[INSERT LEGAL DESCRIPTION PROVIDED BY CUSTOMER]

PERMANENT ACCESS EASEMENT:

[INSERT LEGAL DESCRIPTION PROVIDED BY CUSTOMER]

EXHIBIT 1

LEGAL DESCRIPTIONS OF THE
METERING STATION EASEMENT PREMISES

PERMANENT UTILITY ACCESS EASEMENT:

[INSERT LEGAL DESCRIPTION PROVIDED BY CUSTOMER]

EXHIBIT 2

PLANS FOR METERING STATION

[PROVIDED BY THE COMMISSION]

EXHIBIT 2-A

MS ELEVATION DRAWINGS

[PROVIDED BY THE COMMISSION]

EXHIBIT 2-B

MS FLOOR PLANS

[PROVIDED BY THE COMMISSION]

EXHIBIT 2-C

MS SECTION DRAWINGS

[PROVIDED BY THE COMMISSION]

EXHIBIT 3

LEGAL DESCRIPTION OF THE TEMPORARY CONSTRUCTION
EASEMENT PREMISES

TEMPORARY CONSTRUCTION EASEMENT:

[INSERT LEGAL DESCRIPTION PROVIDED BY CUSTOMER]

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, _____, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Paul D. May, personally known to me to be the General Manager of the DuPage Water Commission, and Danna M. Mundall, personally known to me to be the Clerk of the DuPage Water Commission, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed, and delivered said instrument as his/her free and voluntary act, and as the free and voluntary act of said Commission, for the uses and purposes therein set forth.

Given under my hand and official seal this _____ day of _____, 202__.

Notary Public

My Commission Expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF [1)

I, _____, a Notary Public in and for said County, in the State aforesaid, do hereby certify that **[Name]**, personally known to me to be the **[Title]** of the **[Municipality]**, and _____, personally known to me to be the _____ of the Village of Oswego, and personally known to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered said instrument as their free and voluntary act, and as the free and voluntary act of said Village, for the uses and purposes therein set forth.

Given under my hand and official seal this _____ day of _____, 202__.

Notary Public

My Commission Expires: _____

EXHIBIT E
CAPITAL COST RECOVERY CHARGE

EXHIBIT E

CAPITAL COST RECOVERY CHARGE

DuPage Water Commission
Calculation of Capital Cost Recovery Charge as of May 1, 2024
For Yorkville

Fixed Assets (Audited as of 04-30-2024)	
Land	\$ 11,728,902
Infrastructure	383,618,530
Buildings	110,194,197
Office Equipment	4,763,332
Machinery	27,061,530
Vehicles	1,055,314
CIP	<u>15,415,869</u>
Total	\$553,837,674
Less: Feeder Mains & Meter Stations	<u>94,321,158</u>
	459,516,516
Less: Total Rebates	<u>106,326,287</u>
Total	<u><u>\$353,190,229</u></u>

		Total Capital Cost Recovery Charge	
	MGD		
Oswego (CY2022-CY2023 Avg)	2.505	3.128%	\$ 11,047,790
Montgomery (CY2022-CY2023 Avg)	2.267	2.831%	\$ 9,998,815
Yorkville (CY2022-CY2023 Avg)	1.817	2.269%	\$ 8,013,886
DuPage Water Commission (CY2022-CY2023 Avg)	73.483		
Total	<u>80.071</u>	\$	29,060,491

EXHIBIT F
SCHEDULE OF EVENTS

EXHIBIT F

YORKVILLE ILLUSTRATIVE SCHEDULE OF EVENTS

WEEKS>>	0	4	8	9
I. <u>YORKVILLE DUTIES</u>	(CONTRACT SIGNED)			
A. Property Interests	Commence acquisition of necessary interests (Section 10G)			
B. Yorkville Connection Facilities	Submit plans and specs for DWC review (Section 10A)	DWC completes review (Section 10A)	Complete design of Customer Connection Facilities (Section 10A)	Submit for IEPA and local approvals (Section 10B)
C. Water Storage Facilities (Not Applicable)				
II. <u>DWC DUTIES</u>				
A. Property Interests				
B. Commission Connection Facilities		Commence Design upon receipt of all required easements and interests (Section 10H)		
II. <u>OTHER EVENTS</u>				
A. Delivery of Water				
B. Payment of Costs other than O&M				
C. Payment of O&M Costs				

EXHIBIT F

YORVILLE ILLUSTRATIVE SCHEDULE OF EVENTS

WEEKS>>	21	26	32	115	185
I. <u>YORKVILLE DUTIES</u> A. Property Interests <hr/> B. Yorkville Connection Facilities <hr/> C. Water Storage Facilities (Not Applicable)		Convey all required easements and interests to DWC (Section 10G) <hr/>			
	Projected IEPA and local approvals <hr/>		Commence construction of Customer Connection Facilities (Section 10C) <hr/>	Complete construction of Customer Connection Facilities (Section 10C) <hr/>	
II. <u>DWC DUTIES</u> A. Property Interests <hr/> B. Commission Connection Facilities					Complete Construction of Commission Connection Facilities (May 1, 2028) <hr/>
III. <u>OTHER EVENTS</u> A. Delivery of Water <hr/> B. Payment of Costs other than O&M <hr/> C. Payment of O&M Costs					Commence Delivery of Lake Water <hr/> Oswego's First payment due at 1 st billing cycle after earlier of delivery of water or 12 months after Commission Connection Facilities substantially completed. (Section 7M) <hr/> Oswego's First payment due at 1 st billing cycle after substantial completion of Commission Connection Facilities (Section 7M)

EXHIBIT F

YORKVILLE ILLUSTRATIVE SCHEDULE OF EVENTS

WEEKS>>	185	158	185
I. <u>YORVILLE DUTIES</u> A. Property Interests ----- B. Yorkville Connection Facilities ----- C. Water Storage Facilities (Not Applicable)	----- Commence construction of Customer Connection Facilities (Section 10C) -----	----- Complete construction of Customer Connection Facilities (Section 10C) -----	----- -----
II. <u>DWC DUTIES</u> A. Property Interests ----- B. Commission Connection Facilities	----- -----	----- -----	----- Complete Construction of Commission Connection Facilities (May 1, 2028) -----
III. <u>OTHER EVENTS</u> A. Delivery of Water ----- B. Payment of Costs other than O&M ----- C. Payment of O&M Costs	----- -----	----- -----	Commence Delivery of Lake Water ----- Oswego's First payment due at 1 st billing cycle after earlier of delivery of water or 12 months after Commission Connection Facilities substantially completed. (Section 7M) ----- Oswego's First payment due at 1 st billing cycle after substantial completion of Commission Connection Facilities (Section 7M)

EXHIBIT G
WATERLINK PROJECT ESCROW INTERGOVERNMENTAL AGREEMENT

**WATERLINK PROJECT
ESCROW INTERGOVERNMENTAL AGREEMENT**

This WaterLink Project Escrow Intergovernmental Agreement (the “WaterLink Project Escrow Agreement” or this “Agreement”)) is dated the 17th day of October 2024 between the Village of Montgomery (“Montgomery”), the Village of Oswego (“Oswego”), and the United City of Yorkville (“Yorkville”) (Oswego, Montgomery, and Yorkville are collectively referred to herein as the “WaterLink Communities”) and the DuPage Water Commission (the “Commission”), a county water commission and public corporation under Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.*, and the Water Commission Act of 1985, 70 ILCS 3720/0.01 *et seq.* (the “Acts”).

WITNESSETH:

WHEREAS, the Commission has been organized under the Acts to supply water within its territorial limits; and

WHEREAS, the WaterLink Communities currently own and operate municipal drinking water systems served by wells that extract source water from the Ironton-Galesville aquifer; and

WHEREAS, the WaterLink Communities are within the territorial limits of the Commission; and

WHEREAS, the WaterLink Communities intend to change from the Ironton-Galesville groundwater source to Lake Michigan source water, through water purchase and sale agreements with the Commission, and have applied for and been awarded Lake Michigan Water Allocation Permits from the State of Illinois Department of Natural Resources, Office of Water Resources for each discrete and non-contiguous service area served by each WaterLink Community’s Unit System (“Service Area”); and

WHEREAS, the WaterLink Communities have conducted extensive study and have concluded that the most sustainable alternative water source to serve the WaterLink Communities through the municipal waterworks systems currently serving the WaterLink Communities, as well as any extensions or improvements of those systems, is Lake Michigan water from the Commission; and

WHEREAS, the Commission owns and maintains a waterworks system as a supplier of Lake Michigan water to member customers that contract for such service (“Commission’s Waterworks System”); and

WHEREAS, the parties seek to complete the improvements necessary to connect the Commission’s Waterworks System to the WaterLink Communities’ individual Unit Systems in 2028; and

WHEREAS, the Commission has entered into a Water Supply Contract with the City of Chicago to purchase Lake Michigan water sufficient to meet the water supply needs of the Commission and its customers; and

WHEREAS, the Commission’s Water Supply Contract with the City of Chicago is set to expire in 2041, and the Commission is currently: (1) exploring an alternative solution to obtaining Lake Michigan water; and (2) in discussions and negotiations with the City of Chicago for a new Water Supply Contract; and

WHEREAS, to carry out their duties and responsibilities, and desire to create a method of providing an adequate supply of Lake Michigan water to the Service Area, the Commission and each of the WaterLink Communities, contemporaneously with this Agreement are entering into Water Purchase and Sale Contracts (the “Water Purchase Agreements”) and this Agreement incorporates the defined terms of the Water Purchase Agreements unless otherwise specified herein; and

WHEREAS, to become a member of the Commission and comply with the Water Purchase Agreements, each WaterLink Community must pay its proportional share of the costs for the property owned by the Commission; and

WHEREAS, contemporaneously with this Agreement, the WaterLink Communities and the Commission are each entering into a Capital Cost Recovery Agreements that establish the terms and conditions for financing each WaterLink Community’s proportional share of the costs for the property owned by the Commission; and

WHEREAS, contemporaneously with this Agreement, each WaterLink Community and the Commission are entering into an Intergovernmental Agreement Concerning the Development of Connection Facilities to Implement Water Service (the “Development Agreement”); and

WHEREAS, the WaterLink Communities intend that certain provisions within this Agreement be used only to the extent that one or all of the WaterLink Communities have failed to properly fund this Agreement after notice has been provided in accordance with this Agreement; and

WHEREAS, the Commission will incur in connection with (i) the design, bidding, contracting, managing, and actual construction, installation, removal, relocation, replacement, extension, or improvement of the Connection Facilities, including without limitation equipment required for the operation of the Connection Facilities and all administrative, financing, supervisory, inspection, engineering, surveying, and legal fees, costs, and expenses associated therewith; (ii) the acquisition and divestment of lands, easements, and rights of way over lands and waters necessary for the construction, installation, removal, relocation, replacement, extension, or improvement of the Connection Facilities, and all administrative, title, surveying, and legal fees, costs, and expenses associated therewith; and (iii) the review and processing of plans and agreements for the construction, installation, removal, relocation, replacement, extension, or improvement of the Connection Facilities and in connection with the negotiation, preparation, consideration, and review of this Contract, including without limitation all legal, engineering, consulting, and administrative fees, costs, and expenses associated therewith; except as any of the above are included in Operation and Maintenance Costs (“Connection Facilities Cost”); and

WHEREAS, the Commission and the WaterLink Communities have previously entered into First and Second Escrow Intergovernmental Agreements (the “Prior Escrow Agreements”) for what is defined under those Prior Escrow Agreements as Phase I and Phase 2 Services; and

WHEREAS, prior to the execution of documents requiring the expenditure of Commission Expenses, the Commission requires the WaterLink Communities to establish an additional escrow fund with the Commission as stated herein to provide a funding source for the Commission Expenses beyond those incurred for the Phase 1 and Phase 2 Services; and

WHEREAS, pursuant to the Development Agreement, the WaterLink Communities will be responsible for the Connection Facilities Cost; and

WHEREAS, the WaterLink Communities have previously agreed to each Municipality's percentage share of the Connection Facilities Cost pursuant to an Intergovernmental Cost Share Agreement (the "Cost Share Agreement"). The WaterLink Communities agree that the costs paid into the escrow account under this WaterLink Project Escrow Agreement will mirror the Division of Financial Responsibilities/Allocation of Costs set forth in the Cost Share Agreement. Specifically, Montgomery commits and agrees to pay 24.42%, Yorkville commits and agrees to pay 40.22%, and Oswego commits and agrees to pay 35.36%. The Commission is not a party to the Cost Share Agreement and has no responsibility or liability as to any true-up or adjusted accounting between the WaterLink Communities; and

WHEREAS, pursuant to Article VII, Section 10 of the Illinois Constitution of 1970, and the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., the Commission and the WaterLink Communities are authorized to enter into this WaterLink Project Escrow Agreement.

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

1. The foregoing recitals are by this reference incorporated herein and made a part hereof as if fully set forth herein. Further, to the extent any capitalized terms in this Agreement are set forth as a defined term in the Water Purchase Agreements, the capitalized terms in this Agreement shall have the same meaning in this Agreement as the definition in the Water Purchase Agreements.

2. The Commission will establish a segregated escrow account for the sole purpose of funding the Connection Facilities Cost (the "Waterlink Project Escrow Account"). The WaterLink Communities will each deposit into the Waterlink Project Escrow Account all payments necessary to fund the Connection Facilities Cost. Any remaining funds from the prior Escrow Agreements will remain in the related escrow account, and any funds not expended or necessary for Phase I and Phase II Services, when those phases are complete, may be transferred

to the WaterLink Project Escrow Account, unless otherwise directed by the WaterLink Communities.

3. The Commission will draw from the WaterLink Project Escrow Account to pay for or reimburse any Connection Facilities Cost incurred.

4. The WaterLink Project Escrow Account will be insured and interest-bearing, and the Commission will provide the WaterLink Communities with Quarterly Statements within twenty-one (21) days after the end of each quarter: (1) showing the starting and ending balances for that quarter in the WaterLink Project Escrow Account; and (2) detailing the costs of Connection Facilities Cost incurred for that quarter including any amounts received or paid from the WaterLink Project Escrow Account. The WaterLink Communities will have the right to conduct audits for three years after the termination of this WaterLink Project Escrow Agreement relative to the WaterLink Project Escrow Account.

5. The Commission will keep a record of all pay requests from the WaterLink Project Escrow Account for reimbursement of Connection Facilities Cost incurred (the "Pay Request") and sufficient documentation of the Connection Facilities Cost incurred in support of the Pay Request. The documentation will be retained for review by the WaterLink Communities upon request and included within the Quarterly Statements issued by the Commission.

If at any time during the term of this WaterLink Project Escrow Agreement, the balance in the WaterLink Project Escrow Account is less than Thirty Million Dollars (\$30,000,000.00) (the "Minimum Balance Amount"), the Commission will notify the WaterLink Communities. Within thirty (30) days of the Commission notifying the WaterLink Communities under this Paragraph 5, the WaterLink Communities will each pay the Commission its proportionate share (as set forth in the Cost Share Agreement) of the request to ensure that the Minimum Balance is met. Failure to make such payment when required under this Paragraph 5 shall be considered a default of this Agreement by the WaterLink Communities.

6. The Commission will, after the execution and delivery of this Agreement, make available as a line of credit to the WaterLink Communities an amount not to exceed \$21,000,000

(the “Commitment Amount”) to pay a portion of the Connection Facilities Cost as defined in the Water Purchase Agreements. The actual amounts of money borrowed by each of the WaterLink Communities pursuant to the Commitment Amount will constitute the “Line of Credit.”

7. The WaterLink Communities will repay the principal balance of the Line of Credit, plus accrued and unpaid interest at the Interest Rate set forth in Paragraph 8 of this Agreement from the Interest Commencement Date through the Line of Credit Payment Commencement Date (the “Capitalized Interest”), as those terms are hereinafter defined on the unpaid principal balance, and any Capitalized Interest, of the Line of Credit from and after the Line of Credit Payment Commencement Date, as that term is hereinafter defined, in 240 monthly installments, commencing on the 10th day of every month (the “Monthly Payment Date”) commencing on the Line of Credit Payment Commencement Date as hereafter defined in Paragraph 9 and continuing in successive monthly installments on each Monthly Payment Date in each month thereafter, with the final payment of any unpaid interest and principal, if not sooner paid, on the 240th Monthly Payment Date. Each of the 240 monthly installments of principal on the Line of Credit will be determined as of the last day of the month preceding the Monthly Payment Date in any given year during the term of the Line of Credit (a “Principal Determination Date”) and will be determined by dividing the unpaid principal balance, and any Capitalized Interest, of the Line of Credit as of the applicable Principal Determination Date by the number of monthly installments of principal remaining to be paid during the term of the Line of Credit. The accrued and unpaid interest will be capitalized on a monthly basis until the Line of Credit Payment Commencement Date. There will be no penalty for prepayment.

8. Interest on the unpaid principal balance, and any Capitalized Interest, of the Line of Credit will accrue at a rate (the “Interest Rate”) that is equivalent to the highest yield to maturity interest rate earned by the Commission (based on all investments) as reported monthly on the Commission’s Schedule of Investments for the immediately preceding fiscal year (May 1 – April 30) as determined by the Commission (the “Earned Interest Rate”) plus one percent (1%). Interest will only accrue on money actually borrowed under Paragraph 6 of this Agreement and will begin to accrue when the Commission makes its first draw on the Line of Credit for the WaterLink Communities (the “Interest Commencement Date”). The Interest Rate for each year that the Line

of Credit remains outstanding will be calculated on the basis of a calendar year consisting of 360 days of twelve 30-day months and will be adjusted on May 1st of each year, and will be applied to the outstanding unpaid principal balance, and any Capitalized Interest, as determined on the most recent Principal Determination Date, will be paid commencing on the Monthly Payment Date, and continuing on the Monthly Payment Date each month thereafter until the principal balance of the Line of Credit and all interest thereon has been paid in full.

9. Payments of principal and interest, including Capitalized Interest, will begin no later than the 10th day of the first month after the first delivery of potable, filtered water drawn from Lake Michigan to any of the WaterLink Communities individual Unit Systems as that term is defined in the Water Purchase Agreement (the “Line of Credit Payment Commencement Date”).

10. Payments of the principal and interest will be made in lawful money of the United States of America in federal or other immediately available funds.

11. If at any time, the Commission receives invoices incurred arising out of the Connection Facilities Cost for which there are insufficient funds in the Construction Escrow Agreement, the Commission will pay the actual costs incurred from the Connection Facilities Cost Line of Credit. The Commission payments for the Connection Facilities Cost will be paid out of the Commitment Amount and will be immediately considered part of the Line of Credit. The Commission may make payments from the Line of Credit no more than once per month, on the 10th day of the month, provided that the Commission will give the WaterLink Communities notice (which notice must be received by the WaterLink Communities prior to 10:00 a.m., local time, 7 days prior to the requested borrowing date), specifying the amount to be paid and the payment date. It is anticipated that only a single borrowing will be requested each month. Each borrowing pursuant to this Agreement will be in an aggregate principal amount less than the Available Commitment. For purposes of this Paragraph 11, the Available Commitment at a particular time is an amount equal to the difference between the Commitment Amount and the aggregate principal balance of the Line of Credit then outstanding.

12. Subject to the limitations of Paragraph 12, the WaterLink Communities may, without premium or penalty, upon at least one business day’s irrevocable notice to the

Commission, specifying the date and amount of prepayment, make such prepayment; and the payment amount specified in such notice will be due and payable on the date specified therein. The proceeds of any such prepayment will be applied by the Commission first, to the payment of accrued and unpaid interest, if any, on the Line of Credit, and second, to the payment of the unpaid principal balance of the Line of Credit. The WaterLink Communities will not be entitled to, nor receive any credit for, interest on any such prepayment.

13. The proceeds of the Line of Credit will be devoted to and used with due diligence for the purpose of paying the Connection Facilities Cost identified in Exhibit A; provided, however, that where an unexpended balance remains in any one or more of the various cost components of the Connection Facilities Cost detailed in Exhibit A attached hereto, such balance may be transferred and expended, in whole or in part, to and for any other cost component of the Connection Facilities Cost detailed in Exhibit A attached hereto.

14. The Covenants set forth in Subsections 9A, 9B, 9C, and 9D of the Water Purchase Agreements are incorporated into this Agreement by reference.

15. This WaterLink Project Escrow Agreement will terminate, and any monies not paid or incurred for Connection Facilities Cost, including any interest therein will be returned to the WaterLink Communities, unless mutually agreed to by the WaterLink Communities and the Commission, upon the earlier of:

- a. upon written request by the WaterLink Communities, a written direction that is issued by the General Manager of the Commission that the funds are no longer needed for any Connection Facilities Cost, which direction shall not be unreasonably withheld; or
- b. upon the WaterLink Communities' written notification to the Commission that they are no longer pursuing the purchase of Lake Michigan water from the Commission, and the payment of all the Connection Facilities Cost.

No monies will be returned to the WaterLink Communities until a full accounting has been completed of the expenditures incurred under this WaterLink Project Escrow Agreement.

16. If any WaterLink Community or the Commission defaults in the full and timely performance of any of its obligations hereunder, the non-breaching entity or entities, after first providing written notice to the breaching entity of the event of default and providing the breaching entity ten (10) days to cure the same, will be entitled to invoke its legal rights and remedies as a result thereof, including, but not limited to, its equitable remedy of specific performance. THE FOREGOING NOTWITHSTANDING, NO ENTITY WILL BE LIABLE TO ANOTHER ENTITY OR ANY OF ITS AFFILIATES, AGENTS, EMPLOYEES, OR CONTRACTORS FOR SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES.

17. There are no third-party beneficiaries of this WaterLink Project Escrow Agreement and nothing in this WaterLink Project Escrow Agreement, express or implied, is intended to confer on any person other than the Parties hereto (and their respective successors, heirs, and permitted assigns), any rights, remedies, obligations, or liabilities.

18. Any notices under this WaterLink Project Escrow Agreement will be personally delivered, delivered by the deposit thereof in the U. S. Postal Service, postage prepaid, registered, or certified, return receipt requested, or by overnight courier service to the Party at the address listed below or at another address hereafter designated by notice, or by email transmission. Any such notice will be deemed to have been delivered and given upon personal delivery or delivery by a nationally recognized overnight courier service, or deposit with the United States Postal Service or upon receipt of written confirmation that facsimile or email transmission has been successfully completed:

If to the Commission:

Paul D. May, P.E., General Manager
DuPage Water Commission
600 E. Butterfield Road
Elmhurst, IL 60126
Email: may@dpwc.org

With a copy to:

Phillip A. Luetkehans
Luetkehans, Brady, Garner & Armstrong, LLC
105 E. Irving Park Road
Itasca, IL 60143
Email: pal@lbgallaw.com

If to the WaterLink Communities:

Village Administrator
Village of Oswego
100 Parkers Mill
Oswego, IL 60543
Email: info@oswegoil.org

With a copy to:

David J. Silverman
Village Attorney
Mahoney, Silverman, & Cross, LLC
126 South Main Street
Oswego, Illinois 60543

Village Administrator
Village of Montgomery
200 N River Street
Montgomery, IL 60538
Email: zoephel@montgomeryil.org

With a copy to:

Laura M. Julien
Village Attorney
Mickey Wilson, Weiler, Renzi, Lenert, & Julien, PC
140 Municipal Drive
Sugar Grove, IL 60554

City Administrator
United City of Yorkville
800 Game Farm Road
Yorkville, IL 60560
Email: bolson@yorkville.il.us

With a copy to:

Kathleen Field Orr & Associates
Kathleen Field Orr
2024 Hickory Road, Suite 205
Homewood, IL 60430

With a copy to:

Irene Schild Caminer
Caminer Law, LLC
2612 W. Sunnyside Ave.
Chicago, IL 60625
Email: Irene@caminerlaw.com

19. Each WaterLink Community will hold the Commission harmless and defend the Commission from any claims or litigation that arise out of the engineering, construction, property acquisition, and easement acquisitions for the Connection Facilities being constructed for the WaterLink Communities due to one of all of the WaterLink Communities' failure to comply with the payment obligations arising under this WaterLink Project Escrow Agreement.

20. Miscellaneous.

- a. This WaterLink Project Escrow Agreement shall be deemed to supplement the Water Purchase Agreements in connection with the supply of Lake Michigan water to the Waterlink Communities' individual Unit Systems. If there is any other conflict or inconsistency between the terms of this Agreement and the terms of the Water Purchase Agreements, then the terms of this WaterLink Project Escrow Agreement shall control. The WaterLink Communities shall at all times comply with all terms and conditions of the Water Purchase Agreements except as otherwise provided in this Agreement.

- b. Except as provided herein, the WaterLink Communities and the Commission will not assign this WaterLink Project Escrow Agreement or any right or privilege any WaterLink Communities and the Commission may have under this WaterLink Project Escrow Agreement without the prior written consent of all Parties hereto, not to be unreasonably withheld conditioned or delayed.
- c. This WaterLink Project Escrow Agreement shall be governed by and construed exclusively under the applicable laws, but not the conflict of laws rules, of the State of Illinois. Venue for any litigation arising out of this Agreement shall only be proper in the Eighteenth Judicial Circuit Court, DuPage County, Illinois.
- d. The person(s) executing this WaterLink Project Escrow Agreement on behalf of the Parties hereto warrant that: (i) each WaterLink Community and the Commission are duly organized and existing; (ii) the individual signing is duly authorized to execute and deliver this WaterLink Project Escrow Agreement on behalf of said WaterLink Community or the Commission; (iii) by so executing this WaterLink Project Escrow Agreement, such WaterLink Community and the Commission are formally bound to the provisions and conditions contained in this WaterLink Project Escrow Agreement; and (iv) the entering into this WaterLink Project Escrow Agreement by a WaterLink Community and the Commission does not violate any provision of any other agreement to which said WaterLink Community and the Commission is bound.
- e. Each WaterLink Community and the Commission acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to complete the objectives and requirements that are set forth in this WaterLink Project Escrow Agreement. Each WaterLink Community and the Commission hereby agree to cooperate with each other by executing such other documents or taking such other actions as may be reasonably necessary to complete the objectives and requirements set forth herein in accordance with the intent of each WaterLink Community and the Commission as evidenced by this WaterLink Project Escrow Agreement.

- f. This WaterLink Project Escrow Agreement is the entire agreement between the WaterLink Communities and the Commission regarding its subject matter and may not be changed or amended except pursuant to a written instrument signed by each WaterLink Community and the Commission.
- g. This WaterLink Project Escrow Agreement may be executed in any number of identical counterparts, each of which will be considered an original, but which together will constitute one and the same agreement.

IN WITNESS WHEREOF, each WaterLink Community and the Commission hereto have caused their respective corporate names to be subscribed hereto and their respective corporate seals to be affixed hereto and attested by their duly authorized officers.

ATTEST:

DuPage Water Commission

BY: _____

ATTEST:

Village of Montgomery

BY: _____

ATTEST:

Village of Oswego

BY: _____

ATTEST:

United City of Yorkville

BY: _____

EXHIBIT A

CONNECTION FACILITIES COST

WATERLINK PROJECT ESCROW INTERGOVERNMENTAL AGREEMENT

EXHIBIT A

CONNECTION FACILITIES COST ESTIMATE (1)

CONSTRUCTION (including 25% contingency)	\$210,389,827
PROPERTY INTERESTS/LAND ACQUISITION	\$17,477,530
LEGAL & ADMINISTRATIVE	\$1,000,000
ENGINEERING	\$28,000,000
	<hr/>
	\$256,867,357
COST ESCALATION OVER PROJECT DURATION	\$26,699,000
	<hr/>
ESTIMATED PROJECT COST (2)	\$283,566,357

(1) COST ESTIMATE IS BASED UPON FORECASTED PROJECT COSTS AS OF THE DATE IDENTIFIED BELOW AND IS PROVIDED FOR REFERENCE ONLY. ACTUAL PROJECT COSTS WILL BE BASED UPON AWARDED PROJECT CONTRACT(S) AND ACTUAL REALIZED UNIT PRICE AND LUMP SUM COSTS, INCLUDING PROPERTY ACQUISITION, ENGINEERING, LEGAL AND COMMISSIONING COSTS, ALL OF WHICH HAVE BEEN ESTIMATED HEREIN BUT WILL NOT BE FINALLY DETERMINED UNTIL THE COMPLETION OF THE PROJECT AND FINAL COMMISSIONING.

(2) BASED UPON ESTIMATES INCLUDED IN THE PROJECT DEVELOPMENT REPORT DATED FEBRUARY 1, 2024

Resolution No. 2024-_____

**A RESOLUTION AUTHORIZING THE EXECUTION OF WATERLINK PROJECT
ESCROW INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF
MONTGOMERY, THE VILLAGE OF OSWEGO, THE UNITED CITY OF
YORKVILLE, AND THE DUPAGE WATER COMMISSION**

WHEREAS, the United City of Yorkville, Kendall County, Illinois (the "*City*"), the Village of Oswego ("*Oswego*") and the Village of Montgomery ("*Montgomery*") are duly organized units of government of the State of Illinois within the meaning of Article VII, Section 10 of the 1970 Illinois Constitution (collectively, the "*WaterLink Communities*"); and

WHEREAS, the Constitution of the State of Illinois of 1970, Article VII, Section 10, and the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, authorize units of local government to 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; and

WHEREAS, the DuPage Water Commission (the "*Commission*") is a county water commission and public corporation under Division 15 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.* and the Water Commission Act of 1985, 70 ILCS 3720/0.01 *et seq.*; and

WHEREAS, the Commission has been organized under the Acts to supply water within its territorial limits; and

WHEREAS, the WaterLink Communities currently own and operate municipal drinking water systems served by wells that extract source water from the Ironton-Galesville aquifer; and

WHEREAS, the WaterLink Communities are within the territorial limits of the Commission; and

WHEREAS, the WaterLink Communities intend to change from the Ironton-Galesville groundwater source to Lake Michigan source water, through water purchase and sale agreements with the Commission, and have applied for and been awarded Lake Michigan Water Allocation Permits from the State of Illinois Department of Natural Resources, Office of Water Resources for each discrete and non-contiguous service area served by each WaterLink Community's Unit System; and

WHEREAS, the WaterLink Communities have conducted extensive study and have concluded that the most sustainable alternative water source to serve the WaterLink Communities through the municipal waterworks systems currently serving the WaterLink Communities, as well as any extensions or improvements of those systems, is Lake Michigan water from the Commission; and

WHEREAS, the Commission owns and maintains a waterworks system as a supplier of Lake Michigan water to member customers that contract for such service ("*Commission's Waterworks System*"); and

WHEREAS, the parties seek to complete the improvements necessary to connect the Commission's Waterworks System to the WaterLink Communities' individual Unit Systems in 2028; and

WHEREAS, the Commission has entered into a Water Supply Contract with the City of Chicago to purchase Lake Michigan water sufficient to meet the water supply needs of the Commission and its customers; and

WHEREAS, the Commission's Water Supply Contract with the City of Chicago is set to expire in 2041, and the Commission is currently: (1) exploring an alternative solution to obtaining Lake Michigan water; and (2) in discussions and negotiations with the City of

Chicago for a new Water Supply Contract; and

WHEREAS, the Commission will be required to incur certain costs, as defined in the attached Agreement, in pursuit of connecting the WaterLink Communities to the Commission's Waterworks System (the "*Connection Facilities Cost*"); and

WHEREAS, the Commission and the WaterLink Communities have previously entered into First and Second Escrow Intergovernmental Agreements (the "*Prior Escrow Agreements*") for what is defined under those Prior Escrow Agreements as Phase 1 and Phase 2 Services; and

WHEREAS, the Commission requires the WaterLink Communities to establish an additional escrow fund with the Commission to provide a funding source for the Commission Expenses beyond those incurred for the Phase 1 and Phase 2 Services, the WaterLink Project Escrow Agreement (the "*Agreement*"), substantially in the form attached hereto as *Exhibit A*; and

WHEREAS, the WaterLink Communities will be responsible for the Connection Facilities Cost; and

WHEREAS, the WaterLink Communities have previously agreed to each Municipality's percentage share of the Connection Facilities Cost pursuant to an Intergovernmental Cost Share Agreement (the "*Cost Share Agreement*") and the WaterLink Communities agree that the costs paid into the escrow account under this Agreement will mirror the Division of Financial Responsibilities/Allocation of Costs set forth in the Cost Share Agreement; and

WHEREAS, the WaterLink Communities intend that certain provisions within this Agreement be used only to the extent that one or all of the WaterLink Communities have failed to properly fund this Agreement after notice has been provided in accordance with this Agreement; and

WHEREAS, the parties deem it to be in their best interests to approve this WaterLink Project Escrow Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE UNITED CITY OF YORKVILLE, KENDALL COUNTY, ILLINOIS, as follows:

Section 1. That the recitals set forth above are incorporated here by reference.

Section 2. The Mayor and City Council hereby approve the WaterLink Project Escrow Agreement, and the Mayor and City Clerk are authorized and directed to execute on behalf of the United City of Yorkville the WaterLink Project Escrow Agreement for the United City of Yorkville substantially in the form attached as “Exhibit A.”

Section 3. All Resolutions or parts of Resolutions in conflict with any of the provisions of this Resolution shall be, and the same hereby repealed to the extent of the conflict.

Section 4. This Resolution and every provision thereof shall be considered severable. If any section, paragraph, clause or provision of this Resolution is declared by a court of law to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity of any other provisions of this Resolution.

Section 5. This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

Passed by the City Council of the United City of Yorkville, Kendall County, Illinois this ____ day of _____, A.D. 2024.

CITY CLERK

KEN KOCH _____

DAN TRANSIER _____

ARDEN JOE PLOCHER _____

CRAIG SOLING _____

CHRIS FUNKHOUSER _____

MATT MAREK _____

SEAVER TARULIS _____

RUSTY CORNEILS _____

APPROVED by me, as Mayor of the United City of Yorkville, Kendall County, Illinois
this ____ day of _____, A.D. 2024.

MAYOR

Attest:

CITY CLERK

**WATERLINK PROJECT
ESCROW INTERGOVERNMENTAL AGREEMENT**

This WaterLink Project Escrow Intergovernmental Agreement (the “WaterLink Project Escrow Agreement” or this “Agreement”)) is dated the 17th day of October 2024 between the Village of Montgomery (“Montgomery”), the Village of Oswego (“Oswego”), and the United City of Yorkville (“Yorkville”) (Oswego, Montgomery, and Yorkville are collectively referred to herein as the “WaterLink Communities”) and the DuPage Water Commission (the “Commission”), a county water commission and public corporation under Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.*, and the Water Commission Act of 1985, 70 ILCS 3720/0.01 *et seq.* (the “Acts”).

WITNESSETH:

WHEREAS, the Commission has been organized under the Acts to supply water within its territorial limits; and

WHEREAS, the WaterLink Communities currently own and operate municipal drinking water systems served by wells that extract source water from the Ironton-Galesville aquifer; and

WHEREAS, the WaterLink Communities are within the territorial limits of the Commission; and

WHEREAS, the WaterLink Communities intend to change from the Ironton-Galesville groundwater source to Lake Michigan source water, through water purchase and sale agreements with the Commission, and have applied for and been awarded Lake Michigan Water Allocation Permits from the State of Illinois Department of Natural Resources, Office of Water Resources for each discrete and non-contiguous service area served by each WaterLink Community’s Unit System (“Service Area”); and

WHEREAS, the WaterLink Communities have conducted extensive study and have concluded that the most sustainable alternative water source to serve the WaterLink Communities through the municipal waterworks systems currently serving the WaterLink Communities, as well as any extensions or improvements of those systems, is Lake Michigan water from the Commission; and

WHEREAS, the Commission owns and maintains a waterworks system as a supplier of Lake Michigan water to member customers that contract for such service (“Commission’s Waterworks System”); and

WHEREAS, the parties seek to complete the improvements necessary to connect the Commission’s Waterworks System to the WaterLink Communities’ individual Unit Systems in 2028; and

WHEREAS, the Commission has entered into a Water Supply Contract with the City of Chicago to purchase Lake Michigan water sufficient to meet the water supply needs of the Commission and its customers; and

WHEREAS, the Commission’s Water Supply Contract with the City of Chicago is set to expire in 2041, and the Commission is currently: (1) exploring an alternative solution to obtaining Lake Michigan water; and (2) in discussions and negotiations with the City of Chicago for a new Water Supply Contract; and

WHEREAS, to carry out their duties and responsibilities, and desire to create a method of providing an adequate supply of Lake Michigan water to the Service Area, the Commission and each of the WaterLink Communities, contemporaneously with this Agreement are entering into Water Purchase and Sale Contracts (the “Water Purchase Agreements”) and this Agreement incorporates the defined terms of the Water Purchase Agreements unless otherwise specified herein; and

WHEREAS, to become a member of the Commission and comply with the Water Purchase Agreements, each WaterLink Community must pay its proportional share of the costs for the property owned by the Commission; and

WHEREAS, contemporaneously with this Agreement, the WaterLink Communities and the Commission are each entering into a Capital Cost Recovery Agreements that establish the terms and conditions for financing each WaterLink Community’s proportional share of the costs for the property owned by the Commission; and

WHEREAS, contemporaneously with this Agreement, each WaterLink Community and the Commission are entering into an Intergovernmental Agreement Concerning the Development of Connection Facilities to Implement Water Service (the “Development Agreement”); and

WHEREAS, the WaterLink Communities intend that certain provisions within this Agreement be used only to the extent that one or all of the WaterLink Communities have failed to properly fund this Agreement after notice has been provided in accordance with this Agreement; and

WHEREAS, the Commission will incur in connection with (i) the design, bidding, contracting, managing, and actual construction, installation, removal, relocation, replacement, extension, or improvement of the Connection Facilities, including without limitation equipment required for the operation of the Connection Facilities and all administrative, financing, supervisory, inspection, engineering, surveying, and legal fees, costs, and expenses associated therewith; (ii) the acquisition and divestment of lands, easements, and rights of way over lands and waters necessary for the construction, installation, removal, relocation, replacement, extension, or improvement of the Connection Facilities, and all administrative, title, surveying, and legal fees, costs, and expenses associated therewith; and (iii) the review and processing of plans and agreements for the construction, installation, removal, relocation, replacement, extension, or improvement of the Connection Facilities and in connection with the negotiation, preparation, consideration, and review of this Contract, including without limitation all legal, engineering, consulting, and administrative fees, costs, and expenses associated therewith; except as any of the above are included in Operation and Maintenance Costs (“Connection Facilities Cost”); and

WHEREAS, the Commission and the WaterLink Communities have previously entered into First and Second Escrow Intergovernmental Agreements (the “Prior Escrow Agreements”) for what is defined under those Prior Escrow Agreements as Phase I and Phase 2 Services; and

WHEREAS, prior to the execution of documents requiring the expenditure of Commission Expenses, the Commission requires the WaterLink Communities to establish an additional escrow fund with the Commission as stated herein to provide a funding source for the Commission Expenses beyond those incurred for the Phase 1 and Phase 2 Services; and

WHEREAS, pursuant to the Development Agreement, the WaterLink Communities will be responsible for the Connection Facilities Cost; and

WHEREAS, the WaterLink Communities have previously agreed to each Municipality's percentage share of the Connection Facilities Cost pursuant to an Intergovernmental Cost Share Agreement (the "Cost Share Agreement"). The WaterLink Communities agree that the costs paid into the escrow account under this WaterLink Project Escrow Agreement will mirror the Division of Financial Responsibilities/Allocation of Costs set forth in the Cost Share Agreement. Specifically, Montgomery commits and agrees to pay 24.42%, Yorkville commits and agrees to pay 40.22%, and Oswego commits and agrees to pay 35.36%. The Commission is not a party to the Cost Share Agreement and has no responsibility or liability as to any true-up or adjusted accounting between the WaterLink Communities; and

WHEREAS, pursuant to Article VII, Section 10 of the Illinois Constitution of 1970, and the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., the Commission and the WaterLink Communities are authorized to enter into this WaterLink Project Escrow Agreement.

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

1. The foregoing recitals are by this reference incorporated herein and made a part hereof as if fully set forth herein. Further, to the extent any capitalized terms in this Agreement are set forth as a defined term in the Water Purchase Agreements, the capitalized terms in this Agreement shall have the same meaning in this Agreement as the definition in the Water Purchase Agreements.

2. The Commission will establish a segregated escrow account for the sole purpose of funding the Connection Facilities Cost (the "Waterlink Project Escrow Account"). The WaterLink Communities will each deposit into the Waterlink Project Escrow Account all payments necessary to fund the Connection Facilities Cost. Any remaining funds from the prior Escrow Agreements will remain in the related escrow account, and any funds not expended or necessary for Phase I and Phase II Services, when those phases are complete, may be transferred

to the WaterLink Project Escrow Account, unless otherwise directed by the WaterLink Communities.

3. The Commission will draw from the WaterLink Project Escrow Account to pay for or reimburse any Connection Facilities Cost incurred.

4. The WaterLink Project Escrow Account will be insured and interest-bearing, and the Commission will provide the WaterLink Communities with Quarterly Statements within twenty-one (21) days after the end of each quarter: (1) showing the starting and ending balances for that quarter in the WaterLink Project Escrow Account; and (2) detailing the costs of Connection Facilities Cost incurred for that quarter including any amounts received or paid from the WaterLink Project Escrow Account. The WaterLink Communities will have the right to conduct audits for three years after the termination of this WaterLink Project Escrow Agreement relative to the WaterLink Project Escrow Account.

5. The Commission will keep a record of all pay requests from the WaterLink Project Escrow Account for reimbursement of Connection Facilities Cost incurred (the “Pay Request”) and sufficient documentation of the Connection Facilities Cost incurred in support of the Pay Request. The documentation will be retained for review by the WaterLink Communities upon request and included within the Quarterly Statements issued by the Commission.

If at any time during the term of this WaterLink Project Escrow Agreement, the balance in the WaterLink Project Escrow Account is less than Thirty Million Dollars (\$30,000,000.00) (the “Minimum Balance Amount”), the Commission will notify the WaterLink Communities. Within thirty (30) days of the Commission notifying the WaterLink Communities under this Paragraph 5, the WaterLink Communities will each pay the Commission its proportionate share (as set forth in the Cost Share Agreement) of the request to ensure that the Minimum Balance is met. Failure to make such payment when required under this Paragraph 5 shall be considered a default of this Agreement by the WaterLink Communities.

6. The Commission will, after the execution and delivery of this Agreement, make available as a line of credit to the WaterLink Communities an amount not to exceed \$21,000,000

(the “Commitment Amount”) to pay a portion of the Connection Facilities Cost as defined in the Water Purchase Agreements. The actual amounts of money borrowed by each of the WaterLink Communities pursuant to the Commitment Amount will constitute the “Line of Credit.”

7. The WaterLink Communities will repay the principal balance of the Line of Credit, plus accrued and unpaid interest at the Interest Rate set forth in Paragraph 8 of this Agreement from the Interest Commencement Date through the Line of Credit Payment Commencement Date (the “Capitalized Interest”), as those terms are hereinafter defined on the unpaid principal balance, and any Capitalized Interest, of the Line of Credit from and after the Line of Credit Payment Commencement Date, as that term is hereinafter defined, in 240 monthly installments, commencing on the 10th day of every month (the “Monthly Payment Date”) commencing on the Line of Credit Payment Commencement Date as hereafter defined in Paragraph 9 and continuing in successive monthly installments on each Monthly Payment Date in each month thereafter, with the final payment of any unpaid interest and principal, if not sooner paid, on the 240th Monthly Payment Date. Each of the 240 monthly installments of principal on the Line of Credit will be determined as of the last day of the month preceding the Monthly Payment Date in any given year during the term of the Line of Credit (a “Principal Determination Date”) and will be determined by dividing the unpaid principal balance, and any Capitalized Interest, of the Line of Credit as of the applicable Principal Determination Date by the number of monthly installments of principal remaining to be paid during the term of the Line of Credit. The accrued and unpaid interest will be capitalized on a monthly basis until the Line of Credit Payment Commencement Date. There will be no penalty for prepayment.

8. Interest on the unpaid principal balance, and any Capitalized Interest, of the Line of Credit will accrue at a rate (the “Interest Rate”) that is equivalent to the highest yield to maturity interest rate earned by the Commission (based on all investments) as reported monthly on the Commission’s Schedule of Investments for the immediately preceding fiscal year (May 1 – April 30) as determined by the Commission (the “Earned Interest Rate”) plus one percent (1%). Interest will only accrue on money actually borrowed under Paragraph 6 of this Agreement and will begin to accrue when the Commission makes its first draw on the Line of Credit for the WaterLink Communities (the “Interest Commencement Date”). The Interest Rate for each year that the Line

of Credit remains outstanding will be calculated on the basis of a calendar year consisting of 360 days of twelve 30-day months and will be adjusted on May 1st of each year, and will be applied to the outstanding unpaid principal balance, and any Capitalized Interest, as determined on the most recent Principal Determination Date, will be paid commencing on the Monthly Payment Date, and continuing on the Monthly Payment Date each month thereafter until the principal balance of the Line of Credit and all interest thereon has been paid in full.

9. Payments of principal and interest, including Capitalized Interest, will begin no later than the 10th day of the first month after the first delivery of potable, filtered water drawn from Lake Michigan to any of the WaterLink Communities individual Unit Systems as that term is defined in the Water Purchase Agreement (the “Line of Credit Payment Commencement Date”).

10. Payments of the principal and interest will be made in lawful money of the United States of America in federal or other immediately available funds.

11. If at any time, the Commission receives invoices incurred arising out of the Connection Facilities Cost for which there are insufficient funds in the Construction Escrow Agreement, the Commission will pay the actual costs incurred from the Connection Facilities Cost Line of Credit. The Commission payments for the Connection Facilities Cost will be paid out of the Commitment Amount and will be immediately considered part of the Line of Credit. The Commission may make payments from the Line of Credit no more than once per month, on the 10th day of the month, provided that the Commission will give the WaterLink Communities notice (which notice must be received by the WaterLink Communities prior to 10:00 a.m., local time, 7 days prior to the requested borrowing date), specifying the amount to be paid and the payment date. It is anticipated that only a single borrowing will be requested each month. Each borrowing pursuant to this Agreement will be in an aggregate principal amount less than the Available Commitment. For purposes of this Paragraph 11, the Available Commitment at a particular time is an amount equal to the difference between the Commitment Amount and the aggregate principal balance of the Line of Credit then outstanding.

12. Subject to the limitations of Paragraph 12, the WaterLink Communities may, without premium or penalty, upon at least one business day’s irrevocable notice to the

Commission, specifying the date and amount of prepayment, make such prepayment; and the payment amount specified in such notice will be due and payable on the date specified therein. The proceeds of any such prepayment will be applied by the Commission first, to the payment of accrued and unpaid interest, if any, on the Line of Credit, and second, to the payment of the unpaid principal balance of the Line of Credit. The WaterLink Communities will not be entitled to, nor receive any credit for, interest on any such prepayment.

13. The proceeds of the Line of Credit will be devoted to and used with due diligence for the purpose of paying the Connection Facilities Cost identified in Exhibit A; provided, however, that where an unexpended balance remains in any one or more of the various cost components of the Connection Facilities Cost detailed in Exhibit A attached hereto, such balance may be transferred and expended, in whole or in part, to and for any other cost component of the Connection Facilities Cost detailed in Exhibit A attached hereto.

14. The Covenants set forth in Subsections 9A, 9B, 9C, and 9D of the Water Purchase Agreements are incorporated into this Agreement by reference.

15. This WaterLink Project Escrow Agreement will terminate, and any monies not paid or incurred for Connection Facilities Cost, including any interest therein will be returned to the WaterLink Communities, unless mutually agreed to by the WaterLink Communities and the Commission, upon the earlier of:

- a. upon written request by the WaterLink Communities, a written direction that is issued by the General Manager of the Commission that the funds are no longer needed for any Connection Facilities Cost, which direction shall not be unreasonably withheld; or
- b. upon the WaterLink Communities' written notification to the Commission that they are no longer pursuing the purchase of Lake Michigan water from the Commission, and the payment of all the Connection Facilities Cost.

No monies will be returned to the WaterLink Communities until a full accounting has been completed of the expenditures incurred under this WaterLink Project Escrow Agreement.

16. If any WaterLink Community or the Commission defaults in the full and timely performance of any of its obligations hereunder, the non-breaching entity or entities, after first providing written notice to the breaching entity of the event of default and providing the breaching entity ten (10) days to cure the same, will be entitled to invoke its legal rights and remedies as a result thereof, including, but not limited to, its equitable remedy of specific performance. THE FOREGOING NOTWITHSTANDING, NO ENTITY WILL BE LIABLE TO ANOTHER ENTITY OR ANY OF ITS AFFILIATES, AGENTS, EMPLOYEES, OR CONTRACTORS FOR SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES.

17. There are no third-party beneficiaries of this WaterLink Project Escrow Agreement and nothing in this WaterLink Project Escrow Agreement, express or implied, is intended to confer on any person other than the Parties hereto (and their respective successors, heirs, and permitted assigns), any rights, remedies, obligations, or liabilities.

18. Any notices under this WaterLink Project Escrow Agreement will be personally delivered, delivered by the deposit thereof in the U. S. Postal Service, postage prepaid, registered, or certified, return receipt requested, or by overnight courier service to the Party at the address listed below or at another address hereafter designated by notice, or by email transmission. Any such notice will be deemed to have been delivered and given upon personal delivery or delivery by a nationally recognized overnight courier service, or deposit with the United States Postal Service or upon receipt of written confirmation that facsimile or email transmission has been successfully completed:

If to the Commission:

Paul D. May, P.E., General Manager
DuPage Water Commission
600 E. Butterfield Road
Elmhurst, IL 60126
Email: may@dpwc.org

With a copy to:

Phillip A. Luetkehans
Luetkehans, Brady, Garner & Armstrong, LLC
105 E. Irving Park Road
Itasca, IL 60143
Email: pal@lbgallaw.com

If to the WaterLink Communities:

Village Administrator
Village of Oswego
100 Parkers Mill
Oswego, IL 60543
Email: info@oswegoil.org

With a copy to:

David J. Silverman
Village Attorney
Mahoney, Silverman, & Cross, LLC
126 South Main Street
Oswego, Illinois 60543

Village Administrator
Village of Montgomery
200 N River Street
Montgomery, IL 60538
Email: zoephel@montgomeryil.org

With a copy to:

Laura M. Julien
Village Attorney
Mickey Wilson, Weiler, Renzi, Lenert, & Julien, PC
140 Municipal Drive
Sugar Grove, IL 60554

City Administrator
United City of Yorkville
800 Game Farm Road
Yorkville, IL 60560
Email: bolson@yorkville.il.us

With a copy to:

Kathleen Field Orr & Associates
Kathleen Field Orr
2024 Hickory Road, Suite 205
Homewood, IL 60430

With a copy to:

Irene Schild Caminer
Caminer Law, LLC
2612 W. Sunnyside Ave.
Chicago, IL 60625
Email: Irene@caminerlaw.com

19. Each WaterLink Community will hold the Commission harmless and defend the Commission from any claims or litigation that arise out of the engineering, construction, property acquisition, and easement acquisitions for the Connection Facilities being constructed for the WaterLink Communities due to one of all of the WaterLink Communities' failure to comply with the payment obligations arising under this WaterLink Project Escrow Agreement.

20. Miscellaneous.

- a. This WaterLink Project Escrow Agreement shall be deemed to supplement the Water Purchase Agreements in connection with the supply of Lake Michigan water to the Waterlink Communities' individual Unit Systems. If there is any other conflict or inconsistency between the terms of this Agreement and the terms of the Water Purchase Agreements, then the terms of this WaterLink Project Escrow Agreement shall control. The WaterLink Communities shall at all times comply with all terms and conditions of the Water Purchase Agreements except as otherwise provided in this Agreement.

- b. Except as provided herein, the WaterLink Communities and the Commission will not assign this WaterLink Project Escrow Agreement or any right or privilege any WaterLink Communities and the Commission may have under this WaterLink Project Escrow Agreement without the prior written consent of all Parties hereto, not to be unreasonably withheld conditioned or delayed.
- c. This WaterLink Project Escrow Agreement shall be governed by and construed exclusively under the applicable laws, but not the conflict of laws rules, of the State of Illinois. Venue for any litigation arising out of this Agreement shall only be proper in the Eighteenth Judicial Circuit Court, DuPage County, Illinois.
- d. The person(s) executing this WaterLink Project Escrow Agreement on behalf of the Parties hereto warrant that: (i) each WaterLink Community and the Commission are duly organized and existing; (ii) the individual signing is duly authorized to execute and deliver this WaterLink Project Escrow Agreement on behalf of said WaterLink Community or the Commission; (iii) by so executing this WaterLink Project Escrow Agreement, such WaterLink Community and the Commission are formally bound to the provisions and conditions contained in this WaterLink Project Escrow Agreement; and (iv) the entering into this WaterLink Project Escrow Agreement by a WaterLink Community and the Commission does not violate any provision of any other agreement to which said WaterLink Community and the Commission is bound.
- e. Each WaterLink Community and the Commission acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to complete the objectives and requirements that are set forth in this WaterLink Project Escrow Agreement. Each WaterLink Community and the Commission hereby agree to cooperate with each other by executing such other documents or taking such other actions as may be reasonably necessary to complete the objectives and requirements set forth herein in accordance with the intent of each WaterLink Community and the Commission as evidenced by this WaterLink Project Escrow Agreement.

- f. This WaterLink Project Escrow Agreement is the entire agreement between the WaterLink Communities and the Commission regarding its subject matter and may not be changed or amended except pursuant to a written instrument signed by each WaterLink Community and the Commission.
- g. This WaterLink Project Escrow Agreement may be executed in any number of identical counterparts, each of which will be considered an original, but which together will constitute one and the same agreement.

IN WITNESS WHEREOF, each WaterLink Community and the Commission hereto have caused their respective corporate names to be subscribed hereto and their respective corporate seals to be affixed hereto and attested by their duly authorized officers.

ATTEST:

DuPage Water Commission

BY: _____

ATTEST:

Village of Montgomery

BY: _____

ATTEST:

Village of Oswego

BY: _____

ATTEST:

United City of Yorkville

BY: _____

EXHIBIT A

CONNECTION FACILITIES COST

WATERLINK PROJECT ESCROW INTERGOVERNMENTAL AGREEMENT

EXHIBIT A

CONNECTION FACILITIES COST ESTIMATE (1)

CONSTRUCTION (including 25% contingency)	\$210,389,827
PROPERTY INTERESTS/LAND ACQUISITION	\$17,477,530
LEGAL & ADMINISTRATIVE	\$1,000,000
ENGINEERING	\$28,000,000
	<hr/>
	\$256,867,357
COST ESCALATION OVER PROJECT DURATION	\$26,699,000
	<hr/>
ESTIMATED PROJECT COST (2)	\$283,566,357

(1) COST ESTIMATE IS BASED UPON FORECASTED PROJECT COSTS AS OF THE DATE IDENTIFIED BELOW AND IS PROVIDED FOR REFERENCE ONLY. ACTUAL PROJECT COSTS WILL BE BASED UPON AWARDED PROJECT CONTRACT(S) AND ACTUAL REALIZED UNIT PRICE AND LUMP SUM COSTS, INCLUDING PROPERTY ACQUISITION, ENGINEERING, LEGAL AND COMMISSIONING COSTS, ALL OF WHICH HAVE BEEN ESTIMATED HEREIN BUT WILL NOT BE FINALLY DETERMINED UNTIL THE COMPLETION OF THE PROJECT AND FINAL COMMISSIONING.

(2) BASED UPON ESTIMATES INCLUDED IN THE PROJECT DEVELOPMENT REPORT DATED FEBRUARY 1, 2024

Resolution No. 2024-_____

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN
INTERGOVERNMENTAL AGREEMENT CONCERNING DEVELOPMENT OF
CONNECTION FACILITIES TO IMPLEMENT WATER SERVICE BY AND
BETWEEN THE VILLAGE OF MONTGOMERY, THE VILLAGE OF OSWEGO, THE
UNITED CITY OF YORKVILLE, AND THE DUPAGE WATER COMMISSION**

WHEREAS, the United City of Yorkville, Kendall County, Illinois (the "*City*"), the Village of Oswego ("*Oswego*") and the Village of Montgomery ("*Montgomery*") are duly organized units of government of the State of Illinois within the meaning of Article VII, Section 10 of the 1970 Illinois Constitution (collectively, the "*WaterLink Communities*"); and

WHEREAS, the Constitution of the State of Illinois of 1970, Article VII, Section 10, and the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, authorize units of local government to 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; and

WHEREAS, the DuPage Water Commission (the "*Commission*") is a county water commission and public corporation under Division 15 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.* and the Water Commission Act of 1985, 70 ILCS 3720/0.01 *et seq.*; and

WHEREAS, the Commission has been organized under the Acts to supply water within its territorial limits; and

WHEREAS, the WaterLink Communities currently own and operate municipal drinking water systems served by wells that extract source water from the Ironton-Galesville aquifer; and

WHEREAS, the WaterLink Communities are within the territorial limits of the Commission; and

WHEREAS, the WaterLink Communities intend to change from the Ironton-Galesville groundwater source to Lake Michigan source water, through water purchase and sale agreements with the Commission, and have applied for and been awarded Lake Michigan Water Allocation Permits from the State of Illinois Department of Natural Resources, Office of Water Resources for each discrete and non-contiguous service area served by each WaterLink Community's Unit System; and

WHEREAS, the WaterLink Communities have conducted extensive study and have concluded that the most sustainable alternative water source to serve the WaterLink Communities through the municipal waterworks systems currently serving the WaterLink Communities, as well as any extensions or improvements of those systems, is Lake Michigan water from the Commission; and

WHEREAS, the Commission owns and maintains a waterworks system as a supplier of Lake Michigan water to member customers that contract for such service ("*Commission's Waterworks System*"); and

WHEREAS, the WaterLink Communities seek to connect their individual Unit Systems to the Commission's Waterworks System; and

WHEREAS, beginning in 2028 the WaterLink Communities seek to have completed the improvements to certain of their WaterLink Communities' individual Unit Systems necessary to connect to the Commission's Waterworks System (the "*Connection Facilities*"); and

WHEREAS, the Commission has entered into a water supply contract with the City of Chicago to purchase Lake Michigan water sufficient to meet the water supply needs of the Commission and its customers ("*Water Supply Contract*"); and

WHEREAS, the Commission’s Water Supply Contract with the City of Chicago is set to expire in 2041 and the Commission is currently: (1) exploring an alternative solution to obtaining Lake Michigan water; and (2) in discussions and negotiations with the City of Chicago for a new Water Supply Contract; and

WHEREAS, the construction of certain improvements to the Commission’s Waterworks System will enable the WaterLink Communities to provide water to the Individual Unit Systems (the “*Improvements*”); and

WHEREAS, to carry out their duties and responsibilities, and desiring to create a method of providing an adequate supply of Lake Michigan water to the Individual Unit Systems, the Commission and the WaterLink Communities, contemporaneously with this Agreement, are entering into a Water Purchase and Sale Contract dated October 17, 2024 (the “*Water Purchase Agreement*”); and

WHEREAS, it is in the best interests of the Commission and the WaterLink Communities to coordinate and implement the supply of Lake Michigan water to the Individual Unit Systems in accordance with the Water Purchase Agreement; and

WHEREAS, the Commission and the WaterLink Communities desire to set forth their understanding regarding such coordination and implementation in an Intergovernmental Agreement Concerning Development of Connection Facilities to Implement Water Service, substantially in the form attached hereto as *Exhibit A*; and

WHEREAS, the matters set forth in this Agreement will serve the public interest and assure that the residents of the Individual Unit Systems are provided safe water to the greatest extent possible; and

WHEREAS, contemporaneously with this Agreement, the WaterLink Communities

and the Commission are entering into other agreements including but not limited to a WaterLink Project Escrow Intergovernmental Agreement to fund the construction of the Connection Facilities; and

WHEREAS, the WaterLink Communities have previously agreed to each Municipality's percentage share of the Connection Facilities Cost pursuant to an Intergovernmental Cost Share Agreement (the "*Cost Share Agreement*"). The WaterLink Communities agree that the costs paid for the Connection Facilities will mirror the Division of Financial Responsibilities/Allocation of Costs set forth in the Cost Share Agreement; and

WHEREAS, the parties deem it to be in their best interests to approve this Intergovernmental Agreement Concerning Development of Connection Facilities to Implement Water Service.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE UNITED CITY OF YORKVILLE, KENDALL COUNTY, ILLINOIS, as follows:

Section 1. That the recitals set forth above are incorporated here by reference.

Section 2. The Mayor and City Council hereby approve the Intergovernmental Agreement Concerning Development of Connection Facilities to Implement Water Service, and the Mayor and City Clerk are authorized and directed to execute on behalf of the United City of Yorkville the Intergovernmental Agreement Concerning Development of Connection Facilities to Implement Water Service, substantially in the form attached as "Exhibit A."

Section 3. All Resolutions or parts of Resolutions in conflict with any of the provisions of this Resolution shall be, and the same hereby repealed to the extent of the conflict.

Section 4. This Resolution and every provision thereof shall be considered severable. If any section, paragraph, clause or provision of this Resolution is declared by a court of law to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity of any other provisions of this Resolution.

Section 5. This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

Passed by the City Council of the United City of Yorkville, Kendall County, Illinois this
____ day of _____, A.D. 2024.

CITY CLERK

KEN KOCH _____

DAN TRANSIER _____

ARDEN JOE PLOCHER _____

CRAIG SOLING _____

CHRIS FUNKHOUSER _____

MATT MAREK _____

SEAVER TARULIS _____

RUSTY CORNEILS _____

APPROVED by me, as Mayor of the United City of Yorkville, Kendall County, Illinois
this ____ day of _____, A.D. 2024.

MAYOR

Attest:

CITY CLERK

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT CONCERNING DEVELOPMENT OF CONNECTION FACILITIES TO IMPLEMENT WATER SERVICE

This Intergovernmental Agreement, (the “Agreement”) is dated the 17th day of October, 2024 (the “Effective Date”), by and between the Village of Montgomery (“Montgomery”), the Village of Oswego (“Oswego”), and the United City of Yorkville (“Yorkville”) (Oswego, Montgomery, and Yorkville are collectively referred to herein as the “WaterLink Communities”) and the DuPage Water Commission, (the “Commission”) a county water commission and public corporation under Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.*, and the Water Commission Act of 1985, 70 ILCS 3720/0.01 *et seq.* (the “Acts”).

W I T N E S S E T H:

WHEREAS, the Commission has been organized under the Acts to supply water within its territorial limits; and

WHEREAS, the WaterLink Communities currently own and operate municipal drinking water systems served by wells that extract source water from the Ironton-Galesville aquifer; and

WHEREAS, the WaterLink Communities are within the territorial limits of the Commission; and

WHEREAS, the WaterLink Communities intend to change from the Ironton-Galesville groundwater source to Lake Michigan source water, through a water purchase agreement with the Commission, and have applied for and been awarded a Lake Michigan Water Allocation Permit (“Permit”) from the State of Illinois Department of Natural Resources, Office of Water Resources) for each discrete and non-contiguous service area served by each WaterLink Community’s Unit System; and

WHEREAS, the WaterLink Communities have conducted extensive study and concluded that the most sustainable alternative water source to serve the WaterLink Communities through the municipal waterworks systems currently serving the WaterLink Communities, as well as any extensions or improvements of those systems is Lake Michigan water from the Commission; and

WHEREAS, the Commission owns and maintains a waterworks system as a supplier of Lake Michigan water to member customers that contract for such service (“Commission’s Waterworks System”); and

WHEREAS, the WaterLink Communities seek to connect to their individual Unit Systems to Lake Michigan through the Commission; and

WHEREAS, beginning in 2028 the WaterLink Communities seek to have completed the improvements to certain of their WaterLink Communities’ individual Unit Systems necessary to connect to the Commission’s Waterworks System (the “Connection Facilities”); and

WHEREAS, the Commission has entered into a water supply contract with the City of Chicago to purchase Lake Michigan water sufficient to meet the water supply needs of the Commission and its customers (“Water Supply Contract”); and

WHEREAS, the Commission’s Water Supply Contract with the City of Chicago is set to expire in 2041 and the Commission is currently: (1) exploring an alternative solution to obtaining Lake Michigan water; and (2) in discussions and negotiations with the City of Chicago for a new Water Supply Contract; and

WHEREAS, the construction of certain improvements to the Commission's Waterworks System will enable the WaterLink Communities to provide water to the Individual Unit Systems (the "Improvements"); and

WHEREAS, to carry out their duties and responsibilities, and desiring to create a method of providing an adequate supply of Lake Michigan water to the Individual Unit Systems, the Commission and the WaterLink Communities, contemporaneously with this Agreement, are entering into a Water Purchase and Sale Contract dated October 17, 2024 (the "Water Purchase Agreement"); and

WHEREAS, it is in the best interests of the Commission and the WaterLink Communities to coordinate and implement the supply of Lake Michigan water to the Individual Unit Systems in accordance with the Water Purchase Agreement; and

WHEREAS, the Commission and the WaterLink Communities desire to set forth their understanding regarding such coordination and implementation in this Agreement; and

WHEREAS, the matters set forth in this Agreement will serve the public interest and assure that the residents of the Individual Unit Systems are provided safe water to the greatest extent possible; and

WHEREAS, pursuant to Section 10 of Article VII of the Illinois Constitution of 1970, the provisions of the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, and other applicable authority, the Commission and the WaterLink Communities are authorized to enter into this Agreement; and

WHEREAS, contemporaneously with this Agreement, the WaterLink Communities and the Commission are entering into other agreements including but not limited to a WaterLink

Project Escrow Intergovernmental Agreement to fund the construction of the Connection Facilities (the “WaterLink Escrow Agreement”); and

WHEREAS, the WaterLink Communities have previously agreed to each Municipality’s percentage share of the Connection Facilities Cost pursuant to an Intergovernmental Cost Share Agreement (the “Cost Share Agreement”). The WaterLink Communities agree that the costs paid for the Connection Facilities will mirror the Division of Financial Responsibilities/Allocation of Costs set forth in the Cost Share Agreement. Specifically, Montgomery commits and agrees to pay 24.42%, Yorkville commits and agrees to pay 40.22% and Oswego commits and agrees to pay 35.36%. The Commission is not a party to the Cost Share Agreement and has no responsibility or liability as to any true-up or adjusted accounting between the WaterLink Communities.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the Commission and the WaterLink Communities hereby agree as follows:

SECTION 1. INCORPORATION OF PREAMBLES AND DEFINITIONS FROM WATER PURCHASE AGREEMENT

The foregoing recitals are by this reference incorporated herein and made a part hereof as if fully set forth herein. Further, to the extent any capitalized terms in this Agreement are set forth as a defined term in the Water Purchase Agreement, the capitalized terms in this Agreement will have the same meaning in this Agreement as the definition in the Water Purchase Agreement.

SECTION 2. CONSTRUCTION OF IMPROVEMENTS; EXTENSION OF SERVICE

A. Description of the Connection Facilities. For purposes of this Agreement, the Connection Facilities will include the water mains, metering station(s), and appurtenances necessary to be built by the Commission to provide water to the WaterLink Communities,

including portions of the Waterworks System constructed by the Commission to initially connect the WaterLink Communities' individual Unit Systems to the Commission's existing Waterworks System as depicted in preliminary plans attached to the Water Purchase Agreement as Exhibits B-1 and B-2.

B. Design of the Connection Facilities. As outlined in the Water Purchase Agreement, the Commission will be the contracting party with the design engineer and will administer the design contract for the benefit of both the Commission and the WaterLink Communities for the Connection Facilities. The Commission will keep the WaterLink Communities advised as to the progress of the design work. The Commission and the WaterLink Communities will confer upon issues regarding the details of such design work. The final design of the Connection Facilities will be subject to the review of both the Commission and the WaterLink Communities.

C. Land Acquisition. The Commission will be responsible for the acquisition and divestment of lands, easements, and rights of way over lands and waters necessary for the construction, installation, removal, relocation, replacement, extension, and/or improvement of the Connection Facilities outside the corporate limits of the WaterLink Communities and all administrative, title, surveying, and legal fees, costs and expenses associated therewith, including, if necessary, exercising the power of eminent domain to procure any necessary easements, which expenses will be added to the Connection Facilities Cost amount that the WaterLink Communities will pay the Commission. The Commission will keep the WaterLink Communities advised of all land acquisition costs and any necessary condemnation proceedings. All land acquired and costs associated therewith within the WaterLink Communities will be the sole responsibility of the WaterLink Communities.

D. Construction and Acceptance of the Connection Facilities. The Commission will solicit bids for the construction of the Connection Facilities. The Commission's standard form of bidding and construction contract documents will be used. The Commission will solicit, award, and administer all contracts for the project in the best interest of both the Commission and the WaterLink Communities and will consult with, and keep advised, the WaterLink Communities' officials regarding the progress of the work and any problems encountered or changes recommended. Once the winning contractor(s) and the construction costs have been determined, the Commission will enter into a construction contract(s) with the selected contractor(s) and will administer such construction contract(s) in conformance with this Agreement. Any change orders, as well as final acceptance and approval of the completed Connection Facilities, will be subject to the final approval of the Commission.

E. Connection Facilities Cost. In accordance with the WaterLink Project Escrow Intergovernmental Agreement, the Commission, will make available in the form of a Line of Credit to the WaterLink Communities funds needed for the Connection Facilities Cost, up to the amount of the Commitment Amount as that term is defined therein, and the WaterLink Communities agree to reimburse the Commission for those costs.

SECTION 3. DEFAULTS AND REMEDIES

A. Commission Defaults. The occurrence of the following will constitute a default by the Commission under this Agreement: The failure by the Commission to observe and/or perform any covenant, condition, and/or agreement on its part to be observed and/or performed under this Agreement, and the continuation of said failure for thirty (30) days after the Commission's receipt of written notice thereof from the WaterLink Communities. However, if said failure cannot be remedied by the Commission within said thirty (30) day period, and the Commission has diligently

pursued the resolution of the failure during said thirty (30) days, the period will be extended by such additional time as may be reasonably required by the Commission to cure or correct said failure. In no event will the period be extended by more than ninety (90) days. In the event of a default by the Commission under this Agreement, the WaterLink Communities will have the same remedies as are provided for, and only the remedies provided for, in the Water Purchase Agreement for a default by the Commission.

B. WaterLink Communities Defaults. The occurrence of the following will constitute a default by the WaterLink Communities under this Agreement:

1. The failure by the WaterLink Communities to observe and/or perform any covenant, condition, and/or agreement on its part to be observed and/or performed under this Agreement, and the continuation of said failure for thirty (30) days after the WaterLink Communities' receipt of written notice thereof from the Commission. However, if said failure cannot be remedied by the WaterLink Communities within said thirty (30) day period, and the WaterLink Communities will have diligently pursued the resolution of the failure during said thirty (30) days, the period will be extended by such additional time as may be reasonably required by the WaterLink Communities to cure or correct said failure. In no event will the period be extended by more than ninety (90) days; or
2. A default by the WaterLink Communities under the WaterLink Project Escrow Intergovernmental Agreement; or
3. A default by any of the WaterLink Communities under the Intergovernmental Agreements with each individual WaterLink Community Concerning Capital Cost Recovery Charge.

In the event of one of the above defaults, the Commission will: (i) be paid its reasonable attorneys' fees and costs incurred in connection with that default, in addition to any attorneys' fees and costs incurred in enforcing the terms of this Agreement; (2) be entitled to the right to enforce a lien against all income derived from the WaterLink Communities individual Unit Systems, other than that income necessary to pay any loans to the Government of the United States, of the State of Illinois or their agencies for the construction of the WaterLink Communities individual Unit Systems, until the line of credit referenced in the WaterLink Project Escrow Intergovernmental Agreement is paid back in full; and (3) will have the same remedies as are provided for in the Water Purchase Agreements for a default by the individual WaterLink Communities.

C. Force Majeure. In case by reason of a force majeure event, a party to this Agreement will be rendered unable wholly or in part to carry out its obligation under this Agreement, then if such party will give notice and full particulars of such force majeure event in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure event, will be suspended during the continuance of the inability then claimed, but for no longer period, and any such party will endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure event" as employed in this Agreement will mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States, of the State of Illinois, or of any civil or military authority, insurrections, riots, epidemics, pandemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or tunnels, partial or entire failure of water supply, and inability on the part of the Commission or of the WaterLink

Communities to deliver Lake Michigan water, or of the WaterLink Communities to receive Lake Michigan water, on account of any other causes not reasonably within the control of the party claiming such inability. The settlement of strikes and lockouts will be entirely within the discretion of the party having the difficulty and the above requirement that any “force majeure event” will be remedied with all reasonable dispatch will not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

SECTION 4. LEGAL RELATIONSHIPS AND REQUIREMENTS

A. Supplemental Agreement. This Agreement will be deemed to supplement the Water Purchase Agreement in connection with the supply of Lake Michigan water to Oswego’s Unit System. If there is any other conflict or inconsistency between the terms of this Agreement and the terms of the Water Purchase Agreement, then the terms of this Agreement will control. The WaterLink Communities will at all times comply with all terms and conditions of the Water Purchase Agreement except as otherwise provided in this Agreement.

B. Term of Agreement. This Agreement will continue in full force and effect from the Effective Date until the Line of Credit is paid in full by the WaterLink Communities.

C. Cooperation and Further Agreements. The Commission and Oswego agree to meet and cooperate in good faith throughout the term of this Agreement to implement the letter and spirit of the provisions set forth in this Agreement.

D. Assignment. This Agreement may not be assigned by any party, in whole or in part, without the prior written consent of the other party.

E. Notices. Any notices under this Agreement will be personally delivered, delivered by the deposit thereof in the U. S. Postal Service, postage prepaid, registered, or certified, return receipt requested, or by overnight courier service to the Party at the address listed below

or at another address hereafter designated by notice or by email transmission. Any such notice will be deemed to have been delivered and given upon personal delivery or delivery by a nationally recognized overnight courier service, or deposit with the United States Postal Service or upon receipt of written confirmation that facsimile or email transmission has been successfully completed:

If to the Commission:

Paul D. May, P.E., General Manager
DuPage Water Commission
600 E. Butterfield Road
Elmhurst, IL 60126
Email: may@dpwc.org

With a copy to:

Phillip A. Luetkehans
Luetkehans, Brady, Garner & Armstrong
2700 International Drive, Suite 305
West Chicago, IL 60185
Email: pal@lbgalaw.com

If to the WaterLink Communities:

Village Administrator
Village of Oswego
100 Parkers Mill
Oswego, IL 60543
Email: info@oswegoil.org

With a copy to:

David J. Silverman
Village Attorney
Mahoney, Silverman, & Cross, LLC
126 South Main Street
Oswego, Illinois 60543

Village Administrator
Village of Montgomery
200 N River Street
Montgomery, IL 60538
Email: zoephel@montgomeyil.org

With a copy to:

Laura M. Julien
Village Attorney
Mickey Wilson, Weiler, Renzi, Lenert, & Julien, PC
140 Municipal Drive
Sugar Grove, IL 60554

City Administrator
United City of Yorkville
800 Game Farm Road
Yorkville, IL 60560
Email: bolson@yorkville.il.us

With a copy to:

Kathleen Field Orr & Associates
Kathleen Field Orr
2024 Hickory Road, Suite 205
Homewood, IL 60430

With a copy to:

Irene Schild Caminer
Caminer Law, LLC
2612 W. Sunnyside Ave.
Chicago, IL 60625
Email: Irene@caminerlaw.com

By notice complying with the requirements of this Section 4.E, the Commission and the WaterLink Communities each will have the right to change the address or addressee or both for all future notices to it, but no notice of a change of address will be effective until actually received.

F. No Oral Agreements. No oral agreements exist by or between the Commission and the WaterLink Communities with respect to this Agreement, nor was the making and execution of this Agreement induced by any representation, statement, warranty, agreement, or action other than those expressed or explicitly referenced in this Agreement.

G. No Waiver. No course of dealing or failure of the Commission or the WaterLink Communities to enforce strictly any term, right, or condition of this Agreement will be construed as a waiver of such term, right, or condition. No express waiver of any term, right, or condition of this Agreement will operate as a waiver of any other term, right, or condition.

H. No Third-Party Beneficiaries. This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement, or to acknowledge, establish, or impose any legal duty to any third party.

I. Governing Law and Venue. This Agreement will be governed by and construed exclusively under the applicable laws, but not the conflict of laws rules, of the State of Illinois. Venue for any litigation arising out of this Agreement will only be proper in the Eighteenth Judicial Circuit Court, DuPage County, Illinois.

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

K. Authority. The person(s) executing this Agreement on behalf of the Parties hereto warrant that: (i) such The WaterLink Communities and the Commission are duly organized and existing; (ii) the individual signing is duly authorized to execute and deliver this Agreement on behalf of said WaterLink Communities or the Commission; (iii) by so executing this Agreement, such WaterLink Communities and the Commission are formally bound to the provisions and conditions contained in this Agreement; and (iv) the entering into this Agreement by the WaterLink Communities and the Commission does not violate any provision of any other

agreement to which said WaterLink Communities and the Commission is bound.

L. Mutual Cooperation. The WaterLink Communities and the Commission acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to complete the objectives and requirements that are set forth in this Agreement. the WaterLink Communities and the Commission hereby agree to cooperate with each other by executing such other documents or taking such other actions as may be reasonably necessary to complete the objectives and requirements set forth herein in accordance with the intent of the WaterLink Communities and the Commission as evidenced by this Agreement.

M. Amendment. This Agreement is the entire agreement between the WaterLink Communities and the Commission regarding its subject matter and may not be changed or amended except pursuant to a written instrument signed by each Municipality and the Commission.

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

ATTEST:

DuPage Water Commission

BY: _____

ATTEST:

Village of Montgomery

BY: _____

ATTEST:

Village of Oswego

BY: _____

ATTEST;

United City of Yorkville

BY: _____

Resolution No. 2024-_____

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN
INTERGOVERNMENTAL AGREEMENT CONCERNING CAPITAL COST
RECOVERY CHARGE BETWEEN THE UNITED CITY OF YORKVILLE
AND THE DUPAGE WATER COMMISSION**

WHEREAS, the United City of Yorkville, Kendall County, Illinois (the “*City*”) is a duly organized and validly existing non-home-rule municipality created in accordance with the Constitution of the State of Illinois of 1970 and the laws of the State; and

WHEREAS, the Constitution of the State of Illinois of 1970, Article VII, Section 10, and the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, authorize units of local government to 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; and

WHEREAS, the DuPage Water Commission (the “*Commission*”) is a county water commission and public corporation under Division 15 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.* and the Water Commission Act of 1985, 70 ILCS 3720/0.01 *et seq.* (the “*Acts*”); and

WHEREAS, the Commission has been organized under the Acts to supply water within its territorial limits; and

WHEREAS, the City currently owns and operates a municipal drinking water system (“*Yorkville Unit System*”) served by wells that extract source water from the Ironton-Galesville aquifer; and

WHEREAS, the City is within the territorial limits of the Commission; and

WHEREAS, the City intends to change from the Ironton-Galesville groundwater source to Lake Michigan source water, through a Water Purchase and Sale Contract with the DuPage

Water Commission, and has applied for and received a Lake Michigan Water Allocation Permit (“*Permit*”) from the State of Illinois Department of Natural Resources, Office of Water Resources; and

WHEREAS, the City has conducted extensive study and has concluded that the most sustainable alternative water source to serve the City through the municipal waterworks system currently serving the City, as well as any extensions or improvements of that system, is Lake Michigan water from the Commission; and

WHEREAS, the Commission owns and maintains a waterworks system as a supplier of Lake Michigan water to member customers that contract for such service (“*Commission’s Waterworks System*”); and

WHEREAS, the City is seeking to obtain water for its residents beginning in 2028 from the Commission in the incorporated areas within the City (the “*Service Area*”); and

WHEREAS, the City seeks to connect to Lake Michigan through the Commission; and

WHEREAS, the Commission has entered into a water supply contract with the City of Chicago to purchase Lake Michigan water sufficient to meet the water supply needs of the Commission and its customers; and

WHEREAS, the Commission’s water supply contract with the City of Chicago is set to expire in 2041 and the Commission is currently: (1) exploring an alternative solution to obtaining Lake Michigan water; and (2) in discussions and negotiations with the City of Chicago for a new water supply agreement; and

WHEREAS, to carry out their duties and responsibilities, and desire to create a method of providing an adequate supply of Lake Michigan water to the Yorkville Unit System, the Commission, and the City, concurrent with the Intergovernmental Agreement Concerning Capital

Cost Recovery Charge, substantially in the form (the “*Agreement*”), attached hereto as *Exhibit A*, are entering into the Water Purchase and Sale Contract dated October 17, 2024, WaterLink Project Escrow Intergovernmental Agreement, and an Intergovernmental Agreement Concerning Development of Connection Facilities to Implement Water Service; and

WHEREAS, to become a member of the Commission and comply with the Water Purchase and Sale Contract, the City must pay its proportional share of the costs for the property owned by the Commission (the “*Capital Cost Recovery Charge*”); and

WHEREAS, the Commission previously enacted Resolution R-79-04 allowing the Commission the ability to finance the Capital Cost Recovery Charge for potential Subsequent Customers (customers other than its original customers) requesting such accommodation on a case-by case basis; and

WHEREAS, the matters set forth in the Agreement will serve the public interest, and the Commission and the City deem it to be in each of their best interests for the Commission to provide financing to the City for the money necessary to pay the Capital Cost Recovery Charge and enter into the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE UNITED CITY OF YORKVILLE, KENDALL COUNTY, ILLINOIS, as follows:

Section 1. That the recitals set forth above are incorporated here by reference.

Section 2. The Mayor and City Council hereby approve the Intergovernmental Agreement Concerning Capital Cost Recovery Charge, and the Mayor and City Clerk are authorized and directed to execute on behalf of the United City of Yorkville the Intergovernmental Agreement Concerning Capital Cost Recovery Charge, substantially in the form attached as “Exhibit A.”

Section 3. All Resolutions or parts of Resolutions in conflict with any of the provisions of this Resolution shall be, and the same hereby repealed to the extent of the conflict.

Section 4. This Resolution and every provision thereof shall be considered severable. If any section, paragraph, clause or provision of this Resolution is declared by a court of law to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity of any other provisions of this Resolution.

Section 5. This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

[Remainder Intentionally Left Blank. Roll Call Vote to Follow]

Passed by the City Council of the United City of Yorkville, Kendall County, Illinois this
____ day of _____, A.D. 2024.

CITY CLERK

KEN KOCH _____

DAN TRANSIER _____

ARDEN JOE PLOCHER _____

CRAIG SOLING _____

CHRIS FUNKHOUSER _____

MATT MAREK _____

SEAVER TARULIS _____

RUSTY CORNEILS _____

APPROVED by me, as Mayor of the United City of Yorkville, Kendall County, Illinois
this ____ day of _____, A.D. 2024.

MAYOR

Attest:

CITY CLERK

**INTERGOVERNMENTAL AGREEMENT WITH THE UNITED CITY OF
YORKVILLE CONCERNING CAPITAL COST RECOVERY CHARGE**

This Intergovernmental Agreement, (the “Agreement”) is dated the 17th day of October 2024 (the “Effective Date”), by and between the United City of Yorkville (“City”) and the DuPage Water Commission (the “Commission”), a county water commission and public corporation under Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.*, and the Water Commission Act of 1985, 70 ILCS 3720/0.01 *et seq.* (the “Acts”).

W I T N E S S E T H:

WHEREAS, the Commission has been organized under the Acts to supply water within its territorial limits; and

WHEREAS, the City currently owns and operates a municipal drinking water system (“Yorkville Unit System”) served by wells that extract source water from the Ironton-Galesville aquifer; and

WHEREAS, the City is within the territorial limits of the Commission; and

WHEREAS, the City intends to change from the Ironton-Galesville groundwater source to Lake Michigan source water, through a Water Purchase and Sale Contract with the DuPage Water Commission, and has applied for and received a Lake Michigan Water Allocation Permit (“Permit”) from the State of Illinois Department of Natural Resources, Office of Water Resources; and

WHEREAS, the City has conducted extensive study and has concluded that the most sustainable alternative water source to serve the City through the municipal waterworks system currently serving the City, as well as any extensions or improvements of that system, is Lake Michigan water from the Commission; and

WHEREAS, the Commission owns and maintains a waterworks system as a supplier of

Lake Michigan water to member customers that contract for such service (“Commission’s Waterworks System”); and

WHEREAS, the City is seeking to obtain water for its residents beginning in 2028 from the Commission in the incorporated areas within the City (the “Service Area”); and

WHEREAS, the City seeks to connect to Lake Michigan through the Commission; and

WHEREAS, the Commission has entered into a water supply contract with the City of Chicago to purchase Lake Michigan water sufficient to meet the water supply needs of the Commission and its customers; and

WHEREAS, the Commission’s water supply contract with the City of Chicago is set to expire in 2041 and the Commission is currently: (1) exploring an alternative solution to obtaining Lake Michigan water; and (2) in discussions and negotiations with the City of Chicago for a new water supply agreement; and

WHEREAS, to carry out their duties and responsibilities, and desire to create a method of providing an adequate supply of Lake Michigan water to the Yorkville Unit System, the Commission, and the City, concurrent with this Agreement, are entering into the Water Purchase and Sale Contract dated October 17, 2024, WaterLink Project Escrow Intergovernmental Agreement, and an Intergovernmental Agreement Concerning Development of Connection Facilities to Implement Water Service; and

WHEREAS, to become a member of the Commission and comply with the Water Purchase and Sale Contract, the City must pay its proportional share of the costs for the property owned by the Commission (the “Capital Cost Recovery Charge”); and

WHEREAS, the Commission previously enacted Resolution R-79-04 allowing the Commission the ability to finance the Capital Cost Recovery Charge for potential Subsequent

Customers (customers other than its original customers) requesting such accommodation on a case-by case basis; and

WHEREAS, the matters set forth in this Agreement will serve the public interest, and the Commission and the City deem it to be in each of their best interests for the Commission to provide financing to the City for the money necessary to pay the Capital Cost Recovery Charge and enter into this Agreement; and

WHEREAS, pursuant to Section 10 of Article VII of the Illinois Constitution of 1970, the provisions of the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, and other applicable authority, the Commission and the City are authorized to enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the Commission and the City hereby agree as follows:

SECTION 1. PREAMBLES

The foregoing recitals are by this reference incorporated herein and made a part hereof as if fully set forth herein.

SECTION 2. COMMISSION FINANCING

A. Capital Cost Recovery Financing. The Commission will, after the execution and delivery of this Agreement, provide financing to the City in the amount of \$8,013,886.00 (the “Capital Cost Recovery Amount”).

B. Payment Terms.

1. The City will pay the Commission the principal balance of the Capital Cost Recovery Amount in 360 monthly installments, commencing at the time the first payment is due under Subsection 7M in the Water Purchase and Sale Contract (the “Monthly Payment Date”), and continuing in successive monthly installments on each Monthly Payment Date, with the final

payment of any principal, if not sooner paid, on the 360th Monthly Payment Date. Each of the 360 monthly installments of principal for the Capital Cost Recovery Amount will be in the amount of \$22,260.79, except that the final payment will be in the amount of \$22,262.39.

2. Interest on the unpaid principal balance of the Capital Cost Recovery Amount, will accrue at the rate of zero percent (0%) per annum.

C. Tender of Capital Cost Recovery Amount Payments. Payments of the principal of and interest will be made in lawful money of the United States of America in federal or other immediately available funds.

D. Asset-in-Kind Contribution. To the extent the City agrees to pay for a portion of the increase in size of the primary 48” western pipeline (commencing at Book Road and 75th Street and extending west of the Fox River to a termination point at Orchard Road, also known as “TW 6/25” in the DWC naming convention), from the baseline pipe size to 54”, the value of that contribution by the City will be mutually agreed upon and set forth in a separate agreement between the Commission and the City before the closing of the WIFIA Loan.

E. Covenants. The covenants set forth in Subsections 9A, 9B, 9C, and 9D of the Water Purchase and Sale Contract are incorporated into this Agreement by reference.

SECTION 3. DEFAULTS AND REMEDIES

A. Commission Defaults. The occurrence of the following will constitute a default by the Commission under this Agreement: The failure by the Commission to observe and/or perform any covenant, condition, and/or agreement on its part to be observed and/or performed under this Agreement, and the continuation of said failure for thirty (30) days after the Commission’s receipt of written notice thereof from the City. However, if said failure cannot be remedied by the Commission within said thirty (30) day period and the Commission has diligently pursued the

resolution of the failure during said thirty (30) days, the period will be extended by such additional time as may be reasonably required by the Commission to cure or correct said failure. In no event will the period be extended by more than ninety (90) days. In the event of a default by the Commission under this Agreement, the City will have the same remedies as are provided for, and only the remedies provided for, in the Water Purchase and Sale Contract for a default by the Commission.

B. City Defaults. The occurrence of the following will constitute a default by the City under this Agreement:

1. The failure by the City to observe and/or perform any covenant, condition, and/or agreement on its part to be observed and/or performed under this Agreement, and the continuation of said failure for thirty (30) days after the City's receipt of written notice thereof from the Commission. However, if said failure cannot be remedied by the City within said thirty (30) day period and the City has diligently pursued the resolution of the failure during said thirty (30) days, the period will be extended by such additional time as may be reasonably required by the City to cure or correct said failure. In no event will the period be extended by more than ninety (90) days. In the event of a default by the City under this Agreement, the Commission will have the same remedies as are provided for, and only the remedies provided for, in the Water Purchase and Sale Contract for a default by the City;
2. A default under the October 17, 2024 Intergovernmental Agreement Concerning Development of Connection Facilities to Implement Water Service; or

3. A default under the October 17, 2024 WaterLink Project Escrow Intergovernmental Agreement.

In the event of a default by the City, the Commission will: (i) be paid its reasonable attorneys' fees and costs incurred in connection with that default, in addition to any attorneys' fees and costs incurred in enforcing the terms of this Agreement; (2) be entitled to the right to enforce a lien against all income derived from the Yorkville Unit System, other than that income necessary to pay any loans to the State of Illinois or its agencies for the construction of the Yorkville Unit System, until the City's Capital Cost Recovery Amount and any amounts due from the City under the WaterLink Project Escrow Intergovernmental Agreement are paid back in full; and (3) will have the same remedies as are provided for in the Water Purchase and Sale Contract for a default by the City.

C. Force Majeure. In case by reason of a force majeure event, either party to this Agreement will be rendered unable wholly or in part to carry out its obligation under this Agreement, then if such party will give notice and full particulars of such force majeure event in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure event, will be suspended during the continuance of the inability then claimed, but for no longer period, and any such party will endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure event" as employed in this Agreement will mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States, of the State of Illinois, or of any civil or military authority, insurrections, riots, epidemics, pandemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or tunnels, partial or entire

failure of water supply, and inability on the part of the Commission or of the City to deliver Lake Michigan water, or of the City to receive Lake Michigan water, on account of any other causes not reasonably within the control of the party claiming such inability. The settlement of strikes and lockouts will be entirely within the discretion of the party having the difficulty, and the above requirement that any “force majeure event” will be remedied with all reasonable dispatch will not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

SECTION 4. LEGAL RELATIONSHIPS AND REQUIREMENTS

A. Supplemental Agreement. This Agreement will be deemed to supplement the Water Purchase and Sale Contract in connection with the supply of Lake Michigan water to the Yorkville Unit System. If there is any other conflict or inconsistency between the terms of this Agreement and the terms of the Water Purchase and Sale Contract, then the terms of this Agreement will control. The City will at all times comply with all terms and conditions of the Water Purchase and Sale Contract, except as otherwise provided in this Agreement.

B. Term of Agreement. This Agreement will continue in full force and effect from the Effective Date until the Capital Cost Recovery Amount is paid in full by the City.

C. Cooperation and Further Agreements. The Commission and the City agree to cooperate in good faith throughout the term of this Agreement to implement the letter and spirit of the provisions set forth in this Agreement.

D. Assignment. This Agreement may not be assigned by any party, in whole or in part, without the prior written consent of the other party.

E. Notices. Any notices under this Agreement will be personally delivered, delivered by the deposit thereof in the U. S. Postal Service, postage prepaid, registered, or certified, return receipt requested, or by overnight courier service to the Party at the address listed below or at

another address hereafter designated by notice, or by email transmission. Any such notice will be deemed to have been delivered and given upon personal delivery or delivery by a nationally recognized overnight courier service, or deposit with the United States Postal Service or upon receipt of written confirmation that facsimile or email transmission has been successfully completed:

If to the Commission:

Paul D. May, P.E., General Manager
DuPage Water Commission
600 E. Butterfield Road
Elmhurst, IL 60126
Email: may@dpwc.org

With a copy to:

Phillip A. Luetkehans
Luetkehans, Brady, Garner & Armstrong
2700 International Drive, Suite 305
West Chicago, IL 60185
Email: pal@lbgallaw.com

If to the City:

City Administrator
United City of Yorkville
800 Game Farm Road
Yorkville, IL 60560
Email: bolson@yorkville.il.us

With a copy to:

City Attorney
Kathleen Field Orr
Kathleen Field Orr & Associates
2024 Hickory Road, Suite 205
Homewood, IL 60430

With a copy to:

Irene Schild Caminer
Caminer Law, LLC
2612 W. Sunnyside Ave.
Chicago, IL 60625
Email: Irene@caminerlaw.com

By notice complying with the requirements of this Section 4.E, the Commission and the City each will have the right to change the address or addressee or both for all future notices to it, but no notice of a change of address will be effective until actually received.

F. No Oral Agreements. No oral agreements exist by or between the Commission and the City with respect to this Agreement, nor was the making and execution of this Agreement induced by any representation, statement, warranty, agreement, or action other than those expressed or explicitly referenced in this Agreement.

G. No Waiver. No course of dealing or failure of the Commission or the City to enforce strictly any term, right, or condition of this Agreement will be construed as a waiver of such term, right, or condition. No express waiver of any term, right, or condition of this Agreement will operate as a waiver of any other term, right, or condition.

H. No Third-Party Beneficiaries. This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement, or to acknowledge, establish, or impose any legal duty to any third party.

I. Governing Law and Venue. This Agreement will be governed by and construed exclusively under the applicable laws, but not the conflict of laws rules, of the State of Illinois. Venue for any litigation arising out of this Agreement will only be proper in the Eighteenth Judicial Circuit Court, DuPage County, Illinois.

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

K. Authority. The person(s) executing this Agreement on behalf of the Parties hereto warrant that: (i) such the City and the Commission are duly organized and existing; (ii) the individual signing is duly authorized to execute and deliver this Agreement on behalf of said City or the Commission; (iii) by so executing this Agreement, such City and the Commission are formally bound to the provisions and conditions contained in this Agreement; and (iv) the entering into this Agreement by the City and the Commission does not violate any provision of any other agreement to which said City and the Commission is bound.

L. Mutual Cooperation. The City and the Commission acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to complete the objectives and requirements that are set forth in this Agreement. The City and the Commission hereby agree to cooperate with each other by executing such other documents or taking such other actions as may be reasonably necessary to complete the objectives and requirements set forth herein in accordance with the intent of the City and the Commission as evidenced by this Agreement.

M. Amendment. This Agreement is the entire agreement between the City and the Commission regarding its subject matter and may not be changed or amended except pursuant to a written instrument signed by the City and the Commission.

IN WITNESS WHEREOF, the City and the Commission hereto have caused their respective corporate names to be subscribed hereto and their respective corporate seals to be affixed hereto and attested by their duly authorized officers.

ATTEST:

DuPAGE WATER COMMISSION

By: _____

By: _____

Its: _____

Its: _____

ATTEST:

UNITED CITY OF YORKVILLE

By: _____

By: _____

Its: _____

Its: _____