

040033

DISTRICT 3

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) _____ Waiver of First Requested
____ Recommendations of Boards, Commissions & Committees (Green)
____ Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: March 10, 2004 (COW) (B of T) **Date:** 3/18/04

TITLE: Intergovernmental Agreement with DuPage Water Commission

SUBMITTED BY: David A. Dratnol, P.E., Village Engineer *DA*

BACKGROUND/POLICY IMPLICATIONS:

See attached Memo.

FISCAL IMPACT/FUNDING SOURCE:

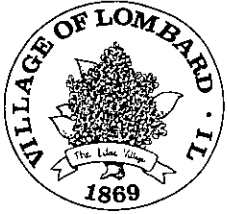
Review (as necessary):

Village Attorney X _____ Date _____

Finance Director X _____ Date _____

Village Manager X *W.T. Lichter* _____ Date *3/10/04*

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



InterOffice Memo

To: William T. Lichter, Village Manager
From: David A. Dratnol, P.E., Village Engineer *Dratnol*
Date: March 10, 2004
Subject: Intergovernmental Agreement with DuPage Water Commission

Attached is a resolution authorizing signature of the Village President and Clerk on an "Intergovernmental Agreement Concerning the Construction and Operation of a Joint Facility and Other Construction Facilities" between the Village of Lombard and the DuPage Water Commission. The IGA covers the design, construction and operation of a water main and metering station to serve the proposed Eisenhower Lane Reservoir Facility.

The agreement is structured to cover two phases of work. The first phase is for the connection to the existing Water Commission main under Highland Avenue, and construction of approximately 85 feet of water main. This initial phase is for work located within the limits of the Highland Avenue Improvements and will be scheduled and coordinated with the Highland Avenue Improvements project. The second phase covers the remainder of the water main that will feed the Eisenhower Lane Reservoir Facility and the metering station. The second phase will be constructed in coordination with the Village's construction of the reservoir facility (currently programmed for FY2007).

Please present this IGA to the Board of Trustees at their meeting on March 18, 2004 for approval. We have forwarded the Village Attorney's comments to the DWC for incorporation (copy attached hereto for Board information). The Water Commission has placed this item on their March 11, 2004 agenda also for approval.

c: File: WA 04-03

RESOLUTION

R _____ 04

**A RESOLUTION AUTHORIZING SIGNATURE OF
PRESIDENT AND CLERK ON AN AGREEMENT**

WHEREAS, the Corporate Authorities of the Village of Lombard have received an Intergovernmental Agreement Concerning the Construction and Operation of a Joint Facility and Other Connection Facilities between the Village of Lombard and the DUPAGE WATER COMMISSION, as attached hereto and marked Exhibit "A"; and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

SECTION 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said agreement in substantially the form attached hereto.

SECTION 2: That the Village Clerk be and hereby is authorized to attest said agreement as attached hereto.

Adopted this 18th day of March, 2004.

Ayes: _____

Nays: _____

Absent: _____

Approved this 18th day of March, 2004.

William J. Mueller
Village President

ATTEST:

Barbara Johnson
Deputy Village Clerk

APPROVAL AS TO FORM:

Thomas P. Bayer
Village Attorney

INTERGOVERNMENTAL AGREEMENT
CONCERNING THE CONSTRUCTION AND OPERATION OF
A JOINT FACILITY AND OTHER CONNECTION FACILITIES

THIS AGREEMENT, made and entered into this _____ day of _____, 2004, 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 VILLAGE OF LOMBARD, a municipal corporation created and existing under the laws of the State of Illinois (the "Village"),

WITNESSETH:

WHEREAS, the Commission was formed and exists pursuant to 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.), for the purposes of securing an adequate source and supply of water for its customers; and

WHEREAS, the Commission operates a water system supplying a number of municipalities and other customers in DuPage County with water drawn from Lake Michigan (the "Commission Waterworks System"); and

WHEREAS, the Village owns and operates a water distribution system (the "Village Water System"), which system is supplied with water by the Commission pursuant to the terms of that certain Water Purchase and Sale Contract dated as of June 11, 1986 (the "Charter Customer Contract") with the Commission, and which system is connected at four points to the Commission Waterworks System; and

WHEREAS, the Commission and the Village have determined that it is necessary and desirable to provide an additional connection point between the Commission Waterworks System and the Village Water System; and

WHEREAS, it is in the best interest of the Commission and the Village to design and construct this connection as a Joint Facility (the "Joint Facility") which would include all equipment necessary to accomplish the additional connection described above; and

WHEREAS, the Commission and the Village have determined that it is in their respective best interests to set forth in this Agreement their understandings concerning the construction and operation of the Joint Facility and other connection facilities; and

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

NOW, THEREFORE, it is agreed by and between the Commission and the Village 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. CONSTRUCTION AND OPERATION OF THE JOINT FACILITY AND OTHER CONNECTION FACILITIES

A. For purposes of this Agreement, the "Joint Facility" shall mean a facility to convey, measure, and regulate the flow of water from the Commission Waterworks System to the Village Water System and shall include the following:

- (i) A Metering Station, to be known as Metering Station 14e ("MS-14e"), for properly conveying and measuring the quantity of Lake Michigan water delivered by the Commission to the Village, including certain equipment, devices, and structures, and portions of the Commission's water distribution main, including underground feeder pipe lines and related equipment, and all antennas and appurtenant facilities for the Commission's Supervisory Control and Data Acquisition Instrumentation System attributable to MS-14e, as such facilities may be relocated, replaced, extended, or improved from time to time (the "Metering Station").

- (ii) A type D pressure adjusting station for the Village Water System in accordance with the design criteria set forth in the document entitled "Water Delivery Data DuPage Water Commission" dated _____, 2004, and identifying the Village as "customer," a copy of which is attached hereto and by this reference incorporated herein and made a part hereof as Exhibit A (the "Village PAS").
- (iii) Such other equipment and appurtenances as may be necessary for the operation and construction of the foregoing in conformance with the approved design plans therefor.

B. The Joint Facility shall be located at a site selected, acquired, and owned by the Village (the "Joint Facility Site"). The Joint Facility Site shall be subject to the review and approval of the Commission. The Joint Facility is expected to be constructed on property dedicated to the Village and located at _____ Eisenhower Lane in the Village of Lombard. In the event the property is not dedicated or is otherwise determined by the Commission and the Village to be unsuitable for locating the Joint Facility, the Village shall endeavor in good faith to obtain an alternative location for the Joint Facility Site acceptable to both the Commission and the Village.

C. For purposes of this Agreement, the "Connection Facilities" shall mean the portions of the Commission Waterworks System constructed by the Commission to initially connect MS-14e to the existing Commission Waterworks System, which facilities are depicted in the conceptual plans attached as Exhibit B to this Agreement. The Connection Facilities include, among other items, the Metering Station and the following:

- (i) Approximately 85 feet of 20" diameter watermain from a connection to the Commission's existing 24" Southwest Feeder Main under Highland Avenue to approximately 85 feet west of said connection in Majestic Drive, together with valve in vault and all other necessary appurtenances thereto (the "Phase I Pipeline Facilities").
- (ii) Approximately _____ feet of 20" diameter watermain, extending west along Majestic Drive and thence south along Main Street to the Joint Facility Site, together with all necessary appurtenances thereto (the "Phase II Pipeline Facilities").

- (iii) Such other equipment and appurtenances as may be necessary for the operation and construction of the Phase I and Phase II Pipeline Facilities (collectively, the "Pipeline Facilities") in conformance with the approved design plans therefor.

D. The Village shall be solely responsible for the costs in designing the Connection Facilities. It is understood that 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 Village. The Commission will consult with the Village to keep the Village advised as to the progress of the design work and to address issues of mutual concern regarding the details of such design work. The final design of the Connection Facilities shall be subject to the review of both the Commission and the Village and subject to the approval of the Commission to the extent of the Metering Station and the Pipeline Facilities, the Village to the extent of the Village PAS, and both the Commission and the Village to the extent of the common areas of the Joint Facility. For the purposes of this Agreement, the common areas of the Joint Facility shall include those portions of the Joint Facility, such as the structure and area grounds, which serve the needs of both the Commission and the Village.

E. The Village shall be solely responsible for the costs in constructing the Connection Facilities. The Commission shall solicit bids for the construction of the Connection Facilities, including all equipment and appurtenances necessary for the Metering Station and the Village PAS. The Commission's standard form of bidding and construction contract documents shall used and the cost of the Metering Station, the Pipeline Facilities, the Village PAS, and the common areas of the Joint Facility shall be separately identified in the bidding and construction contract documents. The Commission agrees to solicit, award, and administer all contracts for the project in the best interest of both the Commission and the Village and to consult with, and keep

advised, officials of the Village regarding the progress of the work and any problems encountered or changes recommended. Both the Commission and the Village must agree to the award of any contract for such construction work. Upon approval of both the Commission and the Village, the Commission shall enter into a construction contract(s) with the selected contractor(s), and shall administer such construction contract(s) in conformance with this Agreement. It is understood that, although the Village will not be a party to the construction contract(s), the Village will be designated as a beneficiary of any insurance, guaranty, or warranty required by the construction contract(s). In addition, any change order, as well as final acceptance and approval of the completed Connection Facilities, shall be subject to the approval of the Commission to the extent of the Metering Station and the Pipeline Facilities, the Village to the extent of the Village PAS, and both the Commission and the Village to the extent of the common areas of the Joint Facility. Neither the Commission nor the Village shall be required to approve or accept any portion of the Joint Facility until all portions of the Joint Facility, including all punch list items, have been fully and properly completed.

F. The Connection Facilities shall be designed and constructed in two phases. The Phase I Pipeline Facilities shall be designed and constructed in coordination with the State of Illinois Department of Transportation Highland Avenue Improvement Project. The Phase II Pipeline Facilities and the Joint Facility shall be designed and constructed in accordance with a schedule to be approved by the Commission and the Village.

G. The Village shall reimburse the Commission for the full actual cost incurred by the Commission in connection with (a) 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; (b) 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 (c) 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 Agreement, including without limitation all legal, engineering, consulting, and administrative fees, costs, and expenses associated therewith. The Village shall reimburse the Commission monthly for such fees, costs, and expenses, and payment shall be due within thirty (30) days after receipt of an invoice therefor from the Commission.

H. Prior to the Commission's solicitation of bids for the construction of the Joint Facility, the Village, without charge to the Commission, shall: (a) present the Commission with adequate evidence of merchantable fee simple title to the Joint Facility Site; (b) grant to the Commission all necessary and insured easements for the Joint Facility Site, in substantially the form attached hereto and by this reference incorporated herein and made part hereof as Exhibit C and satisfactory to the Commission's attorneys, free and clear of all liens, claims, encumbrances, and restrictions unless otherwise approved by the Commission in writing; and (c) grant to the Commission all necessary and insured easements for the appropriate location and installation of

antennas and appurtenant facilities for the Commission's Supervisory Control and Data Acquisition Instrumentation System attributable to the Metering Station, free and clear of all liens, claims, encumbrances, and restrictions unless otherwise approved by the Commission in writing.

I. Upon acceptance and approval of the Joint Facility, ownership of the Village PAS and a bill of sale therefor shall be conveyed to the Village. Immediately following such conveyance, the Village shall own and operate the Village PAS, the Village PAS shall become the sole and exclusive property of the Village, and the Village shall have all duty, responsibility, and liability to maintain and repair the Village PAS and the common areas of the Joint Facility and the Commission shall have no obligation or duty with respect thereto. Upon completion of the construction and installation of the Joint Facility, the Commission shall maintain and repair the Metering Station.

J. Once the Joint Facility becomes operational, the rate of withdrawal from the Joint Facility shall not exceed the rate allowed by Subsections 2A and 8M of the Charter Customer Contract.

K. The Village acknowledges and agrees that: (a) the Commission is not, and shall not be, in any way liable for damages or injuries that may be sustained as a result of the Commission's review and approval of any plans for the Connection Facilities, or as a result of the issuance of any approvals, certificates, or acceptances for the development or use of any portion of the Connection Facilities, or as a result of the design of the Connection Facilities or the operation or maintenance of the Connection Facilities; and (b) the Commission's review and approval of any such plans and issuance of any such approvals, certificates, or acceptances does not, and shall not, in any way be deemed to insure the Village, or any respective successors, assigns,

tenants, or licensees, or any third party, against damage or injury of any kind at any time.

L. The Village hereby releases the Commission from, agrees that the Commission shall not be liable for, and agrees to indemnify and hold the Commission harmless from: (a) any damages resulting from failure to supply lake water or for any interruption of the lake water supply; (b) any damage to the Village Water System caused by the design of the Connection Facilities or the operation or maintenance of the Connection Facilities; and (c) any claims, litigation, and liabilities for any loss or damage to property or any injury to, or death of, any person that may be occasioned by, connected with, or in any way attributable to, the construction and installation of the Connection Facilities or the maintenance of the Village Water System or the Connection Facilities, or to any exercise by the Village of any right or duty herein granted or any failure by the Village to exercise any such right or duty or to comply with any of the terms and conditions of this Agreement. The Village shall, and does hereby agree to, pay all expenses, including legal fees and administrative expenses, incurred by the Commission in defending itself with regard to any and all of the matters mentioned in this Subsection 2L.

SECTION 3. LEGAL RELATIONSHIPS AND REQUIREMENTS

A. This Agreement, and the Connection Facilities provided by this Agreement, shall be deemed to supplement the Charter Customer Contract to provide for an additional point of delivery to the Unit System, as defined in the Charter Customer Contract, of the Village. Except where expressly provided in this Agreement, nothing in this Agreement shall be construed to be, or applied in any manner, inconsistent with the terms of the Charter Customer Contract, and if there is any conflict or inconsistency

between the terms of this Agreement and the terms of the Charter Customer Contract, then the terms of the Charter Customer Contract shall control. The Village shall at all times comply with all terms and conditions of the Charter Customer Contract, including without limitation the making of all payments due thereunder promptly to the Commission. Under no circumstances shall any dispute of any nature under this Agreement, or the inability to receive water through the Connection Facilities provided by this Agreement, excuse, delay, or in any other way affect the Village's performance under the Charter Customer Contract, including without limitation the making of all such payments.

For the purposes of the Charter Customer Contract, and the Connection Facilities provided by this Agreement, the point of delivery with respect to the Village Water System shall be a point in the water main connecting the Metering Station to the Village PAS located downstream from the inside face of the outside wall or foundation of the Metering Station a distance of ten (10) feet or where such water main enters the outside face of the outside wall or foundation of the Village PAS, whichever is closer to the Metering Station.

Notwithstanding anything to the contrary contained in the Charter Customer Contract, the Commission and the Village expressly acknowledge and agree that the Village shall not be entitled to payment or reimbursement from the Commission for the design, bidding, contracting, managing, and actual construction, installation, removal, relocation, replacement, extension, or improvement of the Connection Facilities.

B. The Commission and the Village 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 herein. The Commission and the Village agree and acknowledge

that further details regarding the construction and operation of the Connection Facilities may be subject to a future agreement.

C. This Agreement may not be assigned by any party, in whole or in part, without the prior written consent of the other parties, which consent, with respect to the Village and the Village, shall not be unreasonably withheld.

D. Either the Commission or the Village may terminate this Agreement upon 30 days advance written notice to the other, in the following situations:

- (i) In the event the Commission and the Village are unable to agree on the award by the Commission of a contract for the construction of the Phase I Pipeline Facilities on or before _____, 2004.
- (ii) In the event the property for the Joint Facility Site is not dedicated to the Village, or an alternative location is not obtained, as provided in Subsection 2B of this Agreement, on or before _____, 200_.
- (iii) In the event the Village shall not have approved the final design of the Village PAS and the common areas of the Joint Facility on or before _____, 200_.
- (iv) In the event the Commission and the Village are unable to agree on the award by the Commission of a contract(s) for the construction of the Joint Facility and the Phase II Pipeline Facilities on or before _____, 200_.

Upon termination, this Agreement shall be void and of no force or effect; provided, however, that the Village shall remain responsible for all fees, costs, and expenses incurred or accrued by the Commission prior to termination of this Agreement. The obligation of the Village to reimburse the Commission as required by this Agreement is unconditional and irrevocable, payable without set off or counterclaim, and irrespective of whether lake water is ever furnished, made available, or delivered to the Village through the Connection Facilities, or whether the Connection Facilities are completed, operable, or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the supply of lake water. In the event that, following service of such notice but before actual termination, the basis for such notice

is corrected, the notice shall be considered void and of no effect, and this Agreement shall continue in full force and effect.

E. In case any one or more of the provisions contained in this Agreement should be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby; provided, however, that if the remaining parts hereof may not reasonably be construed together without the part or parts so held invalid or unenforceable, the parties agree to negotiate such reasonable amendments hereto as shall be required to most nearly conform this Agreement, as thereby amended, to the original intention of the parties.

IN WITNESS WHEREOF, the DuPage Water Commission and the Village of Lombard have caused this Agreement to be executed on their behalf by their duly authorized officers as of the day and year first above written.

DUPAGE WATER COMMISSION

Chairman

ATTEST:

Clerk

VILLAGE OF LOMBARD

Mayor

ATTEST:

Village Clerk

EXHIBIT A

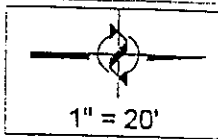
WATER DELIVERY DATA DuPAGE WATER COMMISSION

[TO BE SUPPLIED BY LOMBARD]

EXHIBIT B

CONCEPTUAL PLANS FOR THE CONNECTION FACILITIES

PROPOSED WATER MAIN TO BE
INSTALLED BY OTHERS
(DUPAGE WATER COMMISSION
CONTRACTOR)



MAJESTIC DR.

DUPAGE WATER COMMISSION
EXISTING 24" WATER MAIN

HIGHLAND AVE.

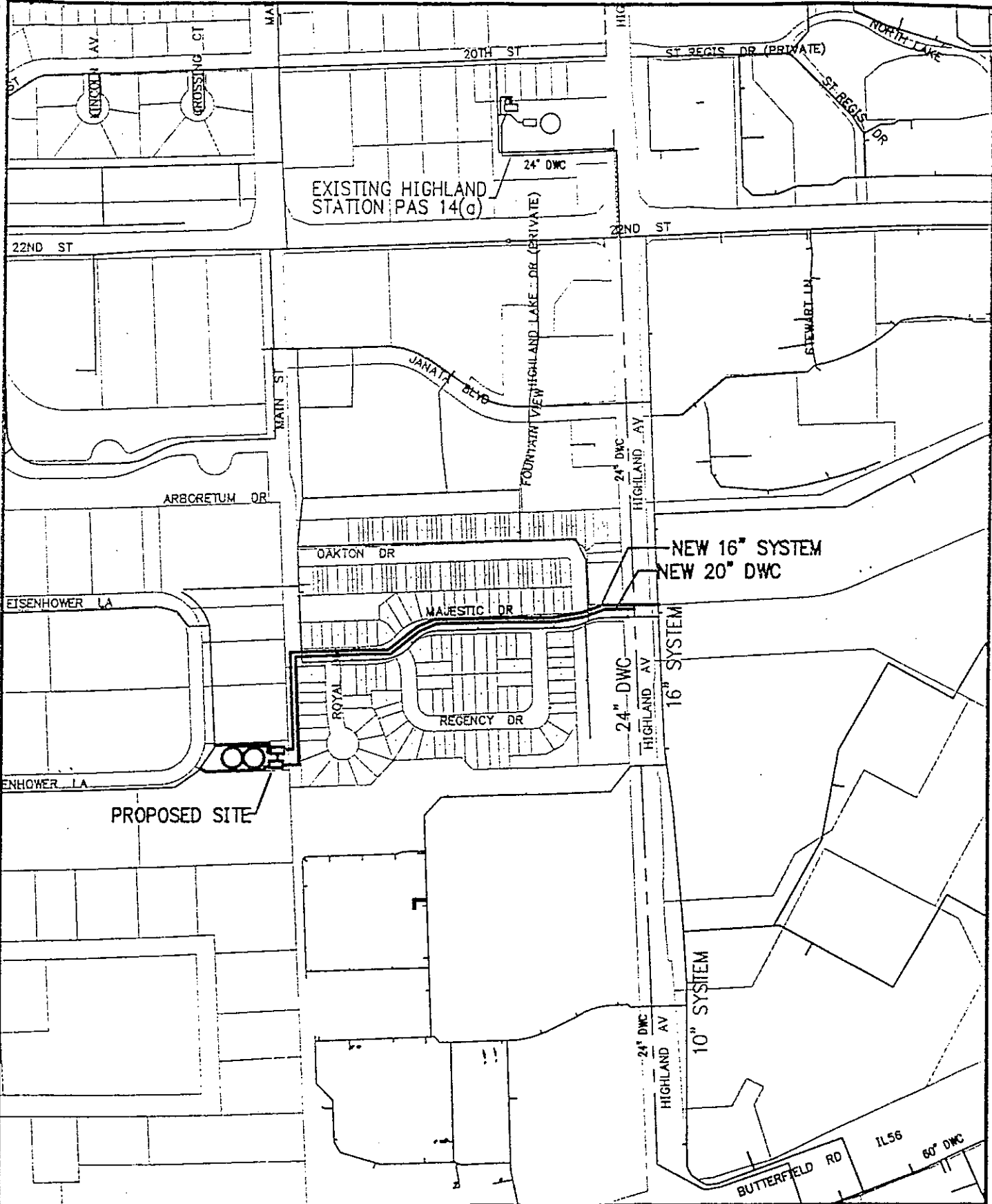
A MINIMUM 18" VERTICAL SEPARATION
SHALL BE MAINTAINED BETWEEN THE
24" DWC WATER MAIN AND THE
PROPOSED CASING PIPE.

PLAN PER

—CB 1651

COPYRIGHT(C) 2004 BURNS AND MCDONNELL ENGINEERING COMPANY, INC.

DWC. NAME: PROPWATER2003(FIG4)_REV1



VILLAGE OF LOMBARD
PROPOSED MAJESTIC DRIVE
AND NEW DWC
CONNECTION ROUTE

EXHIBIT C

FORM OF METERING STATION EASEMENT AGREEMENT

DUPAGE WATER COMMISSION

METERING STATION

EASEMENT AGREEMENT
(Lombard MS-14e)

PERMANENT REAL ESTATE TAX INDEX NO. ____-____-____

Prepared by and Mail to:

Maureen A. Crowley
Staff Attorney
DuPage Water Commission
600 East Butterfield Road
Elmhurst, Illinois 60126-4642
630-834-0100

METERING STATION
EASEMENT AGREEMENT
(Lombard MS-14e)

THIS EASEMENT AGREEMENT, made and entered into this ____ day of _____, 200_, 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 VILLAGE OF LOMBARD, a municipal corporation 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 June 11, 1986 (the "Charter Customer Contract"), as supplemented by a certain Intergovernmental Agreement Concerning the Construction and Operation of a Joint Facility and Other Connection Facilities, dated as of _____, 2004 (the "Joint Facility Agreement"); and

WHEREAS, the Joint Facility Agreement 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 pipe lines and related equipment, for properly conveying and measuring the quantity of Lake Michigan water delivered by the Commission to the Customer at the additional connection point provided for under the Joint Facility Agreement (collectively referred to as the "Metering Station"); and

WHEREAS, the Joint Facility Agreement 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 Charter Customer Contract, as supplemented by the Joint Facility Agreement; and

WHEREAS, the Commission has duly adopted its Ordinance No. O-__-0_, being "An Ordinance Requesting the Intergovernmental Transfer of Easement Rights for the Lombard Metering Station MS-14e Site and Authorizing the Execution of the Lombard 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. _____, 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, a 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 perpetual access easement 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 "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 4 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 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.

[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.

[7]. The Customer hereby reserves the right to use the Metering Station Easement Premises[, *the 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 [*or the 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 [*or the Access Easement Premises*] in any manner that would impair the exercise by the Commission of the rights hereby granted.

[8]. 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 directly from the negligence of the Customer, or its agents or employees, in performing any work on the Metering Station Easement Premises[, *the Access Easement*

Premises, and the Subject Property] in conjunction with its rights pursuant to Paragraph [7] hereof, and, except as otherwise provided in the Joint Facility Agreement, 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 directly from the negligence of the Commission, or its agents or employees, in performing any work on the Metering Station Easement Premises[, *the Access Easement Premises, and the Subject Property*] in conjunction with its rights pursuant to Paragraphs 2, [4, 5, and 6] 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 by 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 Charter Customer 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 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.

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: _____
General Manager

VILLAGE OF LOMBARD

ATTEST:

By: _____
Mayor

Village Clerk

!!

EXHIBIT 1

LEGAL DESCRIPTION OF THE METERING STATION EASEMENT PREMISES

[TO BE SUPPLIED BY LOMBARD]

!!

EXHIBIT 2

PLANS FOR THE LOCATION OF THE METERING STATION

[TO BE SUPPLIED BY THE COMMISSION]

EXHIBIT 3

LEGAL DESCRIPTION OF THE ACCESS EASEMENT PREMISES

[TO BE SUPPLIED BY LOMBARD--IF NECESSARY]

EXHIBIT 4

LEGAL DESCRIPTION OF THE SUBJECT PROPERTY

[TO BE SUPPLIED BY LOMBARD--IF NECESSARY]

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, _____, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, personally known to me to be the General Manager of the DuPage Water Commission, and personally known to me to be the same person whose name is 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 _____, 200_.

Notary Public

My Commission Expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF DUPAGE)

I, _____, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, personally known to me to be the Mayor of the Village of Lombard, a municipal corporation, and _____, personally known to me to be the Village Clerk of said Village, 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 _____, 200__.

Notary Public

My Commission Expires: _____

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Date: March 3, 2004

TO: Dave Dratnoi - Village Engineer

RE: IGA with DuPage Water Commission

Telephone: (630) 620-5740

Fax No.: (630) 620-5982

FROM: Tom Bayer

KLEIN, THORPE AND JENKINS, LTD.

Writer's Direct Dial: 312-984-6422

Number of pages to follow (including cover page): 10

If the specified quantity is not received, please notify our office.

Comments: Dave -

Here are my comments on the IGA and the
Exhibits attached thereto. I have only included
the pages with comments.

Tom

CONFIDENTIAL NOTICE: The materials enclosed with this facsimile transmission are private and confidential and are the property of the sender. The information contained in the material is privileged and is intended only for the use of the individual(s) or entity(ies) named above. If you are not the intended recipient, be advised that any unauthorized disclosure, copying, distribution, or the taking of any action in reliance on the contents of this telecopied information is strictly prohibited. If you have received this facsimile transmission in error, please immediately notify us by telephone (collect calls will be accepted) to arrange for return of the forwarded documents to us at our expense.

WHEREAS, it is in the best interest of the Commission and the Village to design and construct this connection as a Joint Facility (the "Joint Facility") which would include all equipment necessary to accomplish the additional connection described above; and

WHEREAS, the Commission and the Village have determined that it is in their respective best interests to set forth in this Agreement their understandings concerning the construction and operation of the Joint Facility and other Connection Facilities and

(as defined below)

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

the Joint Facility, including all equipment necessary to accomplish the additional connection described above, and other Connection Facilities

NOW, THEREFORE, it is agreed by and between the Commission and the Village 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. CONSTRUCTION AND OPERATION OF THE JOINT FACILITY AND OTHER CONNECTION FACILITIES

A. For purposes of this Agreement, the "Joint Facility" shall mean a facility to convey, measure, and regulate the flow of water from the Commission Waterworks System to the Village Water System and shall include the following:

- (i) A Metering Station, to be known as Metering Station 14e ("MS-14e"), for properly conveying and measuring the quantity of Lake Michigan water delivered by the Commission to the Village, including certain equipment, devices, and structures, and portions of the Commission's water distribution main, including underground feeder pipe lines and related equipment, and all antennas and appurtenant facilities for the Commission's Supervisory Control and Data Acquisition Instrumentation System attributable to MS-14e, as such facilities may be relocated, replaced, extended, or improved from time to time (the "Metering Station").

- (ii) A type D pressure adjusting station for the Village Water System in accordance with the design criteria set forth in the document entitled "Water Delivery Data DuPage Water Commission" dated _____, 2004, and identifying the Village as "customer," a copy of which is attached hereto and by this reference incorporated herein and made a part hereof as Exhibit A (the "Village PAS").
- (iii) Such other equipment and appurtenances as may be necessary for the operation and construction of the foregoing in conformance with the approved design plans therefor.

B. The Joint Facility shall be located at a site selected, acquired, and owned by the Village (the "Joint Facility Site"). The Joint Facility Site shall be subject to the review and approval of the Commission. The Joint Facility is expected to be constructed on property dedicated to the Village and located at _____ Eisenhower Lane in the Village of Lombard. In the event the property is not dedicated or is otherwise determined by the Commission and the Village to be unsuitable for locating the Joint Facility, the Village shall endeavor in good faith to obtain an alternative location for the Joint Facility Site acceptable to both the Commission and the Village.

C. For purposes of this Agreement, the "Connection Facilities" shall mean the portions of the Commission Waterworks System constructed by the Commission to initially connect MS-14e to the existing Commission Waterworks System, which facilities are depicted in the conceptual plans attached as Exhibit B to this Agreement. The Connection Facilities include, among other items, the Metering Station and the following:

- (i) Approximately 85 feet of 20" diameter watermain from a connection to the Commission's existing 24" Southwest Feeder Main under Highland Avenue to approximately 85 feet west of said connection in Majestic Drive, together with valve in vault and all other necessary appurtenances thereto (the "Phase I Pipeline Facilities").
- (ii) Approximately _____ feet of 20" diameter watermain, extending west along Majestic Drive and thence south along Main Street to the Joint Facility Site, together with all necessary appurtenances thereto (the "Phase II Pipeline Facilities").

pursuant to Section 2A(i), the "Joint Facility" includes the "Metering Station". Pursuant to this Section 2C, the "Connection Facilities" include the "Metering Station" - which is correct

→ The Village and its officers, agents and employees should be named as additional insureds on all construction contracts, as some of the work is being done on land owned by or under the jurisdiction of the Village.

advised, officials of the Village regarding the progress of the work and any problems encountered or changes recommended. Both the Commission and the Village must agree to the award of any contract for such construction work. Upon approval of both the Commission and the Village, the Commission shall enter into a construction contract(s) with the selected contractor(s), and shall administer such construction contract(s) in conformance with this Agreement.

It is understood that, although the Village will not be a party to the construction contract(s), the Village will be designated as a beneficiary of any insurance, guaranty, or warranty required by the construction

contract(s). In addition, any change order, as well as final acceptance and approval of the completed Connection Facilities, shall be subject to the approval of the Commission to the extent of the Metering Station and the Pipeline Facilities, the Village to the extent of the Village PAS, and both the Commission and the Village to the extent of the common areas of the Joint Facility. Neither the Commission nor the Village shall be required to approve or accept any portion of the Joint Facility until all portions of the Joint Facility, including all punch list items, have been fully and properly completed.

F. The Connection Facilities shall be designed and constructed in two phases. The Phase I Pipeline Facilities shall be designed and constructed in coordination with the State of Illinois Department of Transportation Highland Avenue Improvement Project. The Phase II Pipeline Facilities and the Joint Facility shall be designed and constructed in accordance with a schedule to be approved by the Commission and the Village.

G. The Village shall reimburse the Commission for the full actual cost incurred by the Commission in connection with (a) the design, bidding, contracting, managing, and actual construction, installation, removal, relocation, replacement,

tenants, or licensees, or any third party, against damage or injury of any kind at any time.

L. The Village hereby releases the Commission from, agrees that the Commission shall not be liable for, and agrees to indemnify and hold the Commission harmless from: (a) any damages resulting from failure to supply lake water or for any interruption of the lake water supply; (b) any damage to the Village Water System caused by the design of the Connection Facilities or the operation or maintenance of the Connection Facilities; and (c) any claims, litigation, and liabilities for any loss or damage to property or any injury to, or death of, any person that may be occasioned by, connected with, or in any way attributable to, the construction and installation of the Connection Facilities or the maintenance of the Village Water System or the Connection Facilities, or to any exercise by the Village of any right or duty herein granted or any failure by the Village to exercise any such right or duty or to comply with any of the terms and conditions of this Agreement. The Village shall, and does hereby agree to, pay all expenses, including legal fees and administrative expenses, incurred by the Commission in defending itself with regard to any and all of the matters mentioned in

this Subsection 2L, except to the extent that said fees and expenses are covered by insurance or indemnification provided to the Commission by the contractor(s) used to construct the Connection Facilities and/or the Joint Facility.

SECTION 3. LEGAL RELATIONSHIPS AND REQUIREMENTS

A. This Agreement, and the Connection Facilities provided by this Agreement, shall be deemed to supplement the Charter Customer Contract to provide for an additional point of delivery to the Unit System, as defined in the Charter Customer Contract, of the Village. Except where expressly provided in this Agreement, nothing in this Agreement shall be construed to be, or applied in any manner, inconsistent with the terms of the Charter Customer Contract, and if there is any conflict or inconsistency

that further details regarding the construction and operation of the Connection Facilities may be subject to a future agreement.

C. This Agreement may not be assigned by ^{either} any party, in whole or in part, without the prior written consent of the other ^{party,} parties, which consent, with respect to the Village, ~~and the Village,~~ shall not be unreasonably withheld.

D. Either the Commission or the Village may terminate this Agreement upon ^{thirty} (30) days advance written notice to the other, in the following situations:

- (i) In the event the Commission and the Village are unable to agree on the award by the Commission of a contract for the construction of the Phase I Pipeline Facilities on or before _____, 2004.
- (ii) In the event the property for the Joint Facility Site is not dedicated to the Village, or an alternative location is not obtained, as provided in Subsection 2B of this Agreement, on or before _____, 200_.
- (iii) In the event the Village shall not have approved the final design of the Village PAS and the common areas of the Joint Facility on or before _____, 200_.
- (iv) In the event the Commission and the Village are unable to agree on the award by the Commission of a contract(s) for the construction of the Joint Facility and the Phase II Pipeline Facilities on or before _____, 200_.

Upon termination, this Agreement shall be void and of no force or effect; provided, however, that the Village shall remain responsible for all fees, costs, and expenses incurred or accrued by the Commission prior to termination of this Agreement. The obligation of the Village to reimburse the Commission as required by this Agreement is unconditional and irrevocable, payable without set off or counterclaim, and irrespective of whether ^{Michigan} lake water is ever furnished, made available, or delivered to the Village through the Connection Facilities, or whether the Connection Facilities are completed, operable, or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the supply of ^{Michigan} lake water. In the event that, following service of such notice but before actual termination, the basis for such notice

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 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.~~ ^{Metering Station Easement Premises, the Access Easement Premises} or the

[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.

[7]. The Customer hereby reserves the right to use the Metering Station Easement Premises[, *the 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 [*or the 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 [*or the Access Easement Premises*] in any manner that would impair the exercise by the Commission of the rights hereby granted.

[8]. 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 directly from the negligence of the Customer, or its agents or employees, in performing any work on the Metering Station Easement Premises[, *the Access Easement*

Premises, and the Subject Property] in conjunction with its rights pursuant to Paragraph [7] hereof, and, except as otherwise provided in the Joint Facility Agreement, 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 directly from the negligence of the Commission, or its agents or employees, in performing any work on the Metering Station Easement Premises, *the Access Easement Premises, and the Subject Property*] in conjunction with its rights pursuant to Paragraphs 2, [4, 5, and 6] 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 by 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 Charter Customer Contract is terminated without renewal with respect to the Customer, the Commission shall, within ~~ninety~~ ^{ninety} (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