

VILLAGE OF LOMBARD

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING REPRESENTATIVE ATTENDANCE
AT A JOINT MEETING OF CHARTER CUSTOMERS
CONVENED TO VOTE A PROPOSED AMENDMENT TO SECTION 12 (C)
OF THE WATER PURCHASE AND SALE CONTRACT BETWEEN
THE DUPAGE WATER COMMISSION AND THE CHARTER CUSTOMERS
DATED 1986

WHEREAS, the Village of Lombard on January 19, 2006 adopted Resolution 47-06 approving a waiver of certain provisions of Section 12 (C) the 1986 Water Purchase and Sales Agreement (hereinafter Charter Agreement) with the DuPage Water Commission, as they pertain to the appointment of an Independent Consultants Panel to formulate a proposed differential rate for DuPage County's becoming a Subsequent Customer of the DuPage Water Commission; and

WHEREAS, all Charter Members with the exception of one (1), adopted resolutions approving such Waivers; and

WHEREAS, the Corporate Authorities of the Village of Lombard have concluded that the appointment of the Independent Consultants Panel under the Rule 12 (C), to consider the County of DuPage's application to become a subsequent customer of the DuPage Water Commission, is unnecessary, economically inefficient, and not in the best interests of the customers of the DuPage Water Commission; and

WHEREAS, Section 16 of the Charter Agreement allows amendment of the Charter Agreement so long as the Amendment does not materially impair or adversely affect the ability or obligations of any Charter Customer under the Contract to make payments to the Commission when required and does not adversely affect the

Resolution No. _____

Commission's ability to timely meet its obligations under the Contract, the Chicago Water Supply Contract, other water purchase and sales contracts of the Commission, its obligations to its Bond holders; and

WHEREAS, the proposed amendment to Section 12 (C) of the Water Purchase and Sales Contract to permit 12 (C) Waivers of the Independent Consultants Panel by three quarters of the Charter Members:

- A) Is consistent with Section 16 of the Charter Agreement;
- B) Is consistent with Resolution # 47-06 approving 12(C) Waiver);
- C) Would not compromise the ability of the majority of the Charter Customers to require the empanelment of a 12 (C) Independent Panel when three quarters of the Charter Customers believe that the empanelment is necessary and appropriate;
- D) Would not permit less than one quarter of the Charter Members to require the empanelment of the 12 (C) Consultants when three quarters of the other Charter Members conclude that the submission of 12 (C) Waivers is appropriate;
- E) Would be consistent with those portions of the Charter Agreement which requires three quarters of the votes of the Charter Members on significant issues such as amendment of the Charter Agreement; and

WHEREAS : The Commission has provided notice that Joint Meetings of Charter members to consider a proposed amendment to the third paragraph of Section 12 (C) of the Charter Agreement and to also commence the 12 (C) process has been scheduled by the Commission for March 15th, 2006.

NOW THEREFORE, be it Resolved by the President and the Village Board of the Village of Lombard of DuPage County, Illinois, as follows:

Resolution No. _____

A) That William J. Mueller is hereby appointed and authorized to attend and participate in a Joint Meeting of representatives of all governing bodies of the DuPage Water Commission scheduled for March 15th, 2006, and is hereby directed to vote to approve, a proposed amendment to the third paragraph of Section 12 (C) of the Water Purchase Agreement which amendment shall cause the third paragraph of 12 (C) to read as follows:

Unless otherwise waived by resolution adopted by three quarters of the Charter Customers and filed with the Clerk of the Commission, the differential and the allocation of the benefit so derived among prior Contract Customers shall be made by the Commission only after it has received and reviewed the recommendations of an Independent Consulting Engineer, Independent Financial Consultant and Competent Attorney, working together, who shall be selected by the Commission from a list of three (3) individuals or firms for each position by the Charter Customers.

B) In all other terms and conditions except those that have been amended by State Statute, the Corporate Authorities of the Village of Lombard hereby reaffirm their concurrence in the other terms, conditions and covenants of Section 12 (C) of the Water Purchase and Sale Agreement with the DuPage Water Commission.

C) That William J. Mueller is also appointed and authorized to attend the March 15th, 2006 meeting at the DuPage Water Commission to participate in the Charter Customer Section 12 (C) meeting in conformance with the terms and conditions of Section 12 (C).

D) Except as otherwise provided herein, all of the terms, provisions, and conditions of the Charter Customer Contract shall remain in full force and effect.

Resolution No. _____

This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED this _____ day of _____, 2006.

AYES: _____

NAYS: _____

ABSENT: _____

APPROVED this _____ day of _____, 2006

William J. Mueller

Village President

ATTEST:

Brigitte O'Brien
Village Clerk

APPROVAL AS TO FORM

Thomas P. Bayer
Village Attorney

**NOTICE OF CHARTER CUSTOMER MEETING
CONCERNING SECTION 12(C) ADVISORY PANEL
AND PROPOSED CONTRACT AMENDMENT
PURSUANT TO SECTION 12(c) AND SECTION 16
OF THE CHARTER CUSTOMER CONTRACT**

NOTICE IS HEREBY GIVEN that on Wednesday, March 15, 2006, at 4:00 P.M., at the offices of the Commission, 600 East Butterfield Road, Elmhurst, Illinois, a joint meeting of representatives of the governing bodies of the Charter Customers and the Commission will be held for the purposes of considering the changes to the Charter Customer Contract requested by the Village of Carol Stream and a meeting of the Charter Customers by means of the designated representatives of the governing bodies of the Charter Customers will be held for the purposes of making the list of three independent consulting engineering firms or individuals, three independent financial consulting firms or individuals, and three competent attorneys or legal firms pursuant to, and in accordance with and as required by, Section 12(c) of the Charter Customer Contract.

For your reference, copies of the Village of Carol Stream letter requesting changes to the Charter Customer Contract and Commission Staff Attorney memorandum dated February 3, 2006, concerning the Section 12(c) process are attached.

Each Charter Customer may designate one representative to represent its interests at the meeting. The designated representative of the governing bodies of a Charter Customer shall have the right to provide written and oral comments, ask questions, vote, and otherwise participate in the meeting, and shall be designated by resolution or motion passed by the Corporate Authorities of the Charter Customer.

Maureen A. Crowley
Clerk
DuPage Water Commission

ROSS FERRARO

MAYOR



Village of Carol Stream

OFFICE OF THE MAYOR

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February 8, 2006

Mr. Michael Vondra, Chairman
DuPage Water Commission
600 E. Butterfield Road
Elmhurst, IL 60126

Dear Chairman Vondra:

Item IX.B on the revised February 9, 2006 agenda of the DuPage Water Commission proposes calling a meeting of the Charter Customers for the purpose of making the list of three independent engineering, financial and legal consultants as required by Section 12(c) of the Charter Customer Contract with regard to the proposed DuPage County subsequent customer agreement. I would request pursuant to Section 16 of the Charter Customer Contract that in addition to the purpose stated in the February 9th agenda, the meeting be called to also consider an amendment to the Charter Customer Contract requiring less than unanimous concurrence of Charter Customers for a waiver of the 12(c) process to occur. It is my understanding that once a party to the Charter Customer Contract makes this request the meeting is mandatory. If the amendment occurs timely it would obviously be more efficient and fiscally responsible than the 12 (c) process. Your cooperation in presenting this for the full consideration of the DuPage Water Commission on February 9th is greatly appreciated.

Sincerely,

Ross Ferraro
Mayor/Commissioner-District 6



DuPage Water Commission MEMORANDUM

TO: Chairman and Commissioners

CC: Richard Thorn, Treasurer
Robert L. Martin, General Manager

FROM: Maureen A. Crowley *MAC*
Staff Attorney

DATE: February 3, 2006

SUBJECT: Section 12(c) Process

For reasons that will be explained in greater detail below, before the Commission may enter into a Subsequent Contract with the County of DuPage, the requirements of Section 12(c) of the Charter Customer Contract must be complied with, eliminated by formal contract amendment, or waived by unanimous consent of the Charter Customers. As you may know, all of the Charter Customers that have recently considered waiving the requirements of Section 12(c) in connection with the proposed Subsequent Customer Contract with DuPage County have consented to the waiver *except for the Village of Bensenville*. As a result, unless the Commission or a Charter Customer requests that the Charter Customer Contract be amended to eliminate the requirement, the Commission will need to comply with the requirements of Section 12(c) of the Charter Customer Contract.

*Historical Background**

Section 12(c) of the Charter Customer Contract provides that Subsequent Customer Contracts with any of the units of local government eligible to become a Charter Customers of the Commission but which did not do so (i.e. Winfield, West Chicago, and DuPage County) must contain an equitable and lawful differential rate or charge, subject at all times to the Commission's legal duty to serve within its territorial limits and to charge for such service fair and equitable rates which are not prohibitive. With the enactment of PA 93-0226, the factors to be considered in establishing the differential to be assessed are limited to original capital costs, rebates, proportionate shares thereof, and actual costs of connection.

The differential to be assessed, and the allocation of the benefit to be derived among the then existing Contract Customers (i.e. Charter and Subsequent Customers), is made by the Commission after it has received and reviewed the recommendations of an

* Excerpted from April 27, 2005, Memorandum to DuPage County Service Task Force Members.

independent consulting engineer, independent financial consultant, and competent attorney, working together.

The Commission is not required to follow the recommendations made by such individuals or firms. If the Commission does impose the recommended differential, however, then the differential as imposed shall not be subject to any dispute or claim by the Contract Customers.

Proposed DuPage County Subsequent Customer Contract

At the November 2005 meeting, the Board conceptually recommended consideration by the Charter Customers of the November 29, 2005, draft of the DuPage County Subsequent Customer Contract and, because the special procedures set forth in Section 12(c) of the Charter Customer Contract are cumbersome, time-consuming, and costly, the associated Section 12(c) waiver. Unfortunately, however, the Village of Bensenville considered, but failed to adopt, a resolution approving the requested waiver. Now, unless the Commission or a Charter Customer requests that the Charter Customer Contract be amended to eliminate the requirement to comply, the Commission will need to comply with the requirements of Section 12(c) of the Charter Customer Contract.

Section 12(c) Process

The first step in the process is to select the Section 12(c) Advisory Panel. The independent consulting engineer, independent financial consultant, and competent attorney that comprise the Section 12(c) Advisory Panel are selected by the Commission from a list of three individuals or firms for each position compiled by the Charter Customers. The list is compiled after a majority of the Charter Customers present at a joint meeting convened for such purposes have agreed upon the individuals or firms to be listed. The Commission is the party responsible for calling the joint meeting. Thus, the following recommended motion appears on the February 2005 Agenda as Item No. IX.B:

RECOMMENDED MOTION: To call a meeting of the Charter Customers for the purposes of making the list of three independent consulting engineering firms or individuals, three independent financial consulting firms or individuals, and three competent attorneys or legal firms pursuant to, and in accordance with and as required by, Section 12(c) of the Charter Customer Contract; the date, time, and place of such meeting shall be determined by the General Manager.

After the Section 12(c) Advisory Panel has been selected, the Commission needs to educate the panel, obtain its recommendations and, if accepted by the Commission, the recommendations need to be incorporated into the DuPage County Subsequent Customer Contract.