

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

**DISTRICT**

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 :** January 12, 2006    **B of T** January 19, 2006

**SUBJECT:** Resolution Approving a Waiver of Certain Provisions of the Charter Customer Contract with the DuPage Water Commission

**SUBMITTED BY:** William T. Lichter, Village Manager

**BACKGROUND/POLICY IMPLICATIONS:**

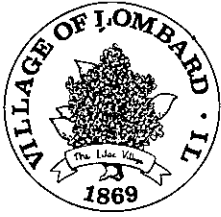
Please see attached memorandum.

**Fiscal Impact/Funding Source:**

Review (as necessary):

Finance Director	_____	Date	_____
Village Manager	<u>W.T. Lichter</u>	Date	<u>1/12/06</u>

**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.



**To:** Honorable President and Board of Trustees

**From:** William T. Lichter, Village Manager *WTL*

**Date:** January 12, 2006

**Subject:** **DuPage Water Commission Section 12 (C) Waiver**

The DuPage Water Commission has authority pursuant to State Statute and the Water Purchase and Sale Contract to determine what entities may be subsequent customers of the Water Commission. For some time, representatives of the Charter municipal customers, DuPage County, and the DuPage Water Commission have been negotiating the terms of a subsequent customer contract under which DuPage County would become a customer of the Water Commission.

In outlining a lengthy process of analysis and review by outside consultants, Section 12 (C) of the Charter Agreement provides a methodology for determining equitable and lawful differential rates or charges in the formula of aggregate costs for subsequent customers. The process under Section 12 (C) is mandatory unless waived by the Charter customers. Historically, the Charter customers have previously waived the 12 (C) requirement in favor of a Water Commission staff analysis of the required information.

The Mayors and Managers participating in negotiations with DuPage County regarding the subsequent customer contract have recommended adoption of a 12 (C) waiver from each Charter customer based upon their conclusion that permitting this matter to proceed directly to the Water Commission and by-passing the independent analysis required under Section 12 (C) would be appropriate as it relates to the County's application to become a subsequent customer. The attached resolution provides for the recommended Section 12 (C) waiver.

**VILLAGE OF LOMBARD**

**RESOLUTION**

**R \_\_\_\_\_ 05**

**A RESOLUTION APPROVING A WAIVER OF CERTAIN PROVISIONS OF THE CHARTER CUSTOMER CONTRACT WITH THE DUPAGE WATER COMMISSION**

**WHEREAS**, the DuPage Water Commission (the "Commission") was formed and exists pursuant to the Water Commission Act of 1985, 70 ILCS 3720/0.01 *et seq.*, and Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.*, for the purpose of securing an adequate source and supply of water for its customers; and

**WHEREAS**, the Commission and the Village of Lombard (the "Customer") entered into that certain Water Purchase and Sale Contract dated as of June 11, 1986 (the "Charter Customer Contract"); and

**WHEREAS**, the Charter Customer Contract provides that the Commission may not contract to supply Lake Michigan water on a long-term basis to any customer other than a Lake Michigan water supplier or a Charter Customer, as defined in the Charter Customer Contract, except pursuant to a Subsequent Contract, as defined in the Charter Customer Contract; and

**WHEREAS**, pursuant to the Charter Customer Contract, no Subsequent Contract may provide rates, charges, or terms lower or more favorable to the Subsequent Customer, as defined in the Charter Customer Contract, than those provided in the Charter Customer Contract for Charter Customers; and

**WHEREAS**, Subsequent Contracts with any of the units of local government who were eligible to become Charter Customers of the Commission, as set forth in Section 24 of the Charter Customer Contract, but which did not do so are subject to the additional requirements set forth in Section 12(c) of the Charter Customer Contract, including the assessment of an equitable and lawful differential rate or charge to be determined by the Commission based upon the factors and the procedures set forth in said Section 12(c), 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; and

**WHEREAS**, effective July 22, 2003, the Water Commission Act of 1985 was amended by Public Act 93-0226 to require that all water supply customers of the Commission pay water rates equal to the water rates paid by other water supply customers of the Commission and to prohibit the payment of additional fees, costs, or differentials as a condition of becoming a water supply customer of the Commission other than payment of a pro-rata portion of the Commission's original capital costs less any rebates and costs of connection; and

**WHEREAS**, based upon (i) the reports prepared by the Commission's independent financial and legal consultants that analyzed the requirements of Public Act 93-0226, (ii) the report prepared by a working group of Commissioners, consultants, and staff that identified the highest cost and the least cost pricing methodologies that would conform to the requirements of

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Public Act 93-0226, (iii) the recommendation of the working group as to a more moderate pricing methodology, and (iv) the questions, comments, and concerns expressed by the Commission's existing Charter and Subsequent Customers with respect to the various alternative rate structures—high, low, and recommended—that could be implemented by the Commission, the Commission adopted Resolution No. R-79-04: A Resolution Expressing the Policy of the DuPage Water Commission Regarding the New Subsequent Customer Pricing Methodology; and

**WHEREAS**, after the Commission adopted the new pricing methodology pursuant to Resolution No. R-79-04, a Task Force of Commission, Charter Customer, and DuPage County representatives appointed by DuPage County Board Chairman Schillerstrom negotiated a Subsequent Contract by and between the Commission and the County of DuPage, which is one of the units of local government eligible to become a Charter Customer of the Commission but which did not do so; and

**WHEREAS**, a substantially final draft of the DuPage County Subsequent Contract dated November 29, 2005, was delivered to the Customer on December 9, 2005; and

**WHEREAS**, the Customer was provided the opportunity to have any questions or concerns with the November 29, 2005, draft of the DuPage County Subsequent Contract addressed at an open forum of the Charter Customers held on December 20, 2005; and

**WHEREAS**, questions and concerns with the November 29, 2005, draft of the DuPage County Subsequent Contract have been addressed and the Customer has elected in its discretion not to object to it; and

**WHEREAS**, 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; and

**WHEREAS**, the Commission's new Subsequent Customer pricing methodology, and thus the November 29, 2005, draft of the DuPage County Subsequent Contract, includes a differential rate or charge as required by Section 12(c) of the Charter Customer Contract but formulates that differential rate or charge based in part upon the factors mandated in Public Act 93-0226 rather than those exclusively suggested factors identified in said Section 12(c); and

**WHEREAS**, the independent consultants engaged by the Commission to assist in developing the new Subsequent Customer pricing methodology were not selected pursuant to the procedures set forth in Section 12(c) of the Charter Customer Contract and did not include an independent consulting engineer as required by said Section 12(c); and

**WHEREAS**, the Commission has therefore requested that all Charter Customers waive the requirements of Section 12(c) of the Charter Customer Contract; and

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**WHEREAS**, the Customer acknowledges that if the Commission enters into a Subsequent Contract with the County of DuPage in substantially the form of the November 29, 2005, draft of the DuPage County Subsequent Contract previously supplied to the Customer, then the Commission will do so in contemplation of and in reliance upon the adoption of this Resolution, which Resolution is intended to be an express inducement for the Commission to enter into said Subsequent Contract;

**NOW, THEREFORE, BE IT RESOLVED** by the President and Board of Trustees of the Village of Lombard, as follows:

**SECTION ONE:** The foregoing recitals are incorporated herein by the President and Board of Trustees of the Village of Lombard.

**SECTION TWO:** The requirements of Section 12(c) of the Charter Customer Contract shall be and they hereby are waived on behalf of the Village of Lombard only with respect to the Subsequent Contract by and between the Commission and the County of DuPage in substantially the form of the November 29, 2005, draft of the DuPage County Subsequent Contract previously supplied to the Customer; provided, however, that the waiver herein provided shall be of no force or effect unless and until all of the other Charter Customers of the Commission shall have similarly agreed to the waiver in form substantially the same as this Resolution. Further this waiver shall have no force and effect until certified copies of all of the 12 c waivers required to make this waiver effective are filed by hand delivery by an attorney of the law offices of Walsh, Knippen, Knight and Pollock, with the Clerk of the Commission. Attorney James Knippen of the law offices of Walsh, Knippen, Knight and Pollock is authorized to hold this waiver in escrow.

**SECTION THREE:** The waiver provided in Section Two of this Resolution may be withdrawn no earlier than thirty days after filing, provided that a request in writing for the withdrawal of such waiver is filed with the Commission. Any such request for withdrawal shall be effective only if the County of DuPage has not, as of the date of receipt of the request for withdrawal, executed a Subsequent Contract with the Commission in substantially the form of the November 29, 2005, draft of the DuPage County Subsequent Contract previously supplied to the Customer. Unless withdrawn in the manner herein specified, the waiver provided in Section Two of this Resolution shall remain in full force and effect.

**SECTION FOUR:** Except as otherwise provided herein, all of the terms, provisions, and conditions of the Charter Customer Contract shall remain in full force and effect.

**SECTION FIVE:** 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: \_\_\_\_\_

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ABSENT: \_\_\_\_\_

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
**William J. Mueller**  
**Village President**

ATTEST:

\_\_\_\_\_  
**Brigitte O'Brien**  
**Village Clerk**

APPROVED AS TO FORM:

\_\_\_\_\_  
**Thomas P. Bayer**  
**Village Attorney**