

NEXT ORDINANCE NUMBER: 0-23-031 NEXT RESOLUTION NUMBER: R-23-69

### PUBLIC NOTICE OF CITY COUNCIL MEETING

IN ACCORDANCE WITH THE APPLICABLE STATUTES OF THE STATE OF ILLINOIS AND THE ORDINANCES OF THE CITY OF WOOD DALE, THE NEXT REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF WOOD DALE IS SCHEDULED TO BE HELD AT THE HOUR OF 7:30 P.M. ON THURSDAY, NOVEMBER 16, 2023 IN THE COUNCIL CHAMBERS OF THE CITY HALL, 404 N. WOOD DALE ROAD, WOOD DALE, ILLINOIS, DURING WHICH MEETING IT IS ANTICIPATED THAT THERE WILL BE DISCUSSION OF THE FOLLOWING:

# AGENDA CITY OF WOOD DALE, ILLINOIS REGULAR CITY COUNCIL MEETING NOVEMBER 16, 2023

- I. CALL TO ORDER
- II. ROLL CALL

### **Mayor Pulice**

Alderwoman Ames Alderman Messina
Alderman Catalano Alderman Susmarski
Alderman Curiale Alderman Art Woods
Alderman Jakab Alderman Artie Woods

- III. PLEDGE OF ALLEGIANCE
- IV. APPROVAL OF MINUTES
  - A. November 2, 2023 Regular City Council Meeting Minutes
- V. COMMUNICATIONS AND PETITIONS

Citizens will be given the opportunity to address the City Council during the time set aside in the Meeting for Public Comment under Communications and Petitions. Please direct your comments to the Mayor, limit your remarks to three (3) minutes, and kindly refrain from making repetitive statements.

- A. Citizens To Be Heard
- B. Written Communiques of Citizens to Be Heard
- VI. MAYOR'S REPORT

### VII. CITY MANAGER'S REPORT

### VIII. CONSENT AGENDA

### A. Omnibus Vote

- A Resolution Approving an Amendment to PCS Site Agreement with T-Mobile Central, LLC for Telecommunication Equipment at 269 West Irving Park Road
- ii. A Resolution Approving an Amendment to Land Lease Agreement with Chicago SMSA Limited Partnership d/b/a Verizon Wireless for Telecommunication Equipment at 320 Richert Road

### IX. COMMITTEE CHAIRMAN REPORTS

- A. Planning, Zoning And Building Committee
  - A Resolution Authorizing the Execution of a Development Agreement with Cyrus One, LLC for Bryn Mawr Phase III
- B. Public Health, Safety, Judiciary And Ethics Committee
  - i. An Ordinance Declaring Property Owned by the City of Wood Dale Surplus for the Purpose of Selling
- C. Public Works Committee
  - i. A Resolution Approving an Easement Agreement for the Release of Unimproved Easements within Maple Meadows Golf Club
  - ii. Approval of Final Payment to Superior Road Striping Inc for the FY 24 Payement Marking Program in the Amount of \$19,771.51
- iii. Approval of Final Payment to Globe Construction, Inc. for the FY 24 Sidewalk Replacement Program in the Amount of \$57,020.00
- D. Finance And Administration Committee
  - A Resolution Approving a Non-Exclusive Parking License Agreement for the Use of City Property for Additional Parking for Woody's Sports Bar, Located at 230 East Irving Park Road, Wood Dale
  - ii. An Ordinance Approving a Water Purchase and Sale Contract Between the DuPage Water Commission and Contract Customers
  - iii. A Resolution Approving an Extension of the Water Supply Contract Between the DuPage Water Commission and the City of Chicago

### X. OTHER BUSINESS

- A. Airport Noise Report
- B. Stormwater Commission Report

### XI. APPROVAL OF LIST OF BILLS

i. List of Bills for November 16, 2023 - \$1,770,032.48

### XII. EXECUTIVE SESSION

XIII. ITEMS TO BE REFERRED

XIV. ITEMS FOR INFORMATION ONLY

XV. ADJOURNMENT

### POSTED IN CITY HALL ON NOVEMBER 14, 2023 AT 4:00 PM

LYNN CURIALE, CITY CLERK
BY: MAURA MONTALVO, DEPUTY CITY CLERK



### CITY OF WOOD DALE

404 North Wood Dale Rd. ● Wood Dale, Illinois ● 60191

# MINUTES OF THE REGULAR CITY COUNCIL MEETING OF THE CITY OF WOOD DALE, DU PAGE COUNTY, ILLINOIS IN THE CITY ADMINISTRATION BUILDING November 2, 2023

### I. CALL TO ORDER REGULAR CITY COUNCIL MEETING:

Mayor Pulice called the Regular City Council Meeting to Order at 7:30 p.m.

### II. ROLL CALL

Upon roll call, the following were:

Present: Alderwoman Ames, Alderman Catalano, Alderman Curiale, Alderman

Jakab, Alderman Messina, Alderman Susmarski, Alderman Art Woods

(arrived 7:31 pm), Alderman Artie Woods, Mayor Pulice

Absent: None

Also Present: City Clerk Curiale, Treasurer Porch, Legal Counsel Bond, City Manager

Mermuys, Sergeant Zlotnicki, Finance Director Wilson, Public Works

Director Lange, Asst. Director Public Works Hastings

Whereupon the Mayor declared a quorum present.

### III. PLEDGE OF ALLEGIANCE

### IV. APPROVAL OF MINUTES

Alderman Susmarski made a motion, seconded by Alderwoman Ames, to approve the Regular City Council Minutes of October 19, 2023. When the question was put, a voice call vote was taken with the following results:

Ayes: Alderwoman Ames, Alderman Catalano, Alderman Curiale, Alderman Jakab,

Alderman Messina, Alderman Susmarski, Alderman Art Woods, Alderman

Artie Woods

Navs: None

Whereupon the Mayor declared the motion carried.

### V. COMMUNICATIONS AND PETITIONS:

i. Citizens to be Heard.None

ii. Written Communiqués of Citizens to Be Heard None

### VI. MAYOR'S REPORT

A. Water Quality Flag

Mayor Pulice reported the City of Wood Dale, Wood Dale for a Greener Tomorrow Committee and the Stormwater Management Committee partnered with SCARCE to be awarded a Water Quality Flag for the City's efforts in ensuring the quality of stormwater discharge. He welcomed the DuPage County Board Member Michael Childress, and SCARCE Executive Director Kay McKeen and thanked them for their partnership, and City Staff for their continued dedication to pollution prevention ensuring the health and safety of our residents.

Mayor Pulice then turned the microphone over to Assistant Public Works Director Patrick Hastings.

Director Hastings thanked Mayor Pulice, the Aldermen, and County Representatives for being here. He stated earning the Water Quality Flag has been a long process. A lot of initiative was taken on by the Wood Dale for a Greener Tomorrow Committee and the Stormwater Subcommittee, along with Staff support, residents at large, as well as other community organizations that have helped us achieve this goal,

He then presented a slide show elaborating on many of the achievements that earned this Flag: Water Quality Staff Trainings by SCARCE; Pharmaceuticals collected by the Police Dept.; a newly initiated Used Cooking Oil Recycling collection site at Public Works; Adopt-A-Drain Program; Rain Barrel Reimbursement; Rear Yard Drainage Programs; Rain Gardens; Detention Basin Rehabilitation Projects; Large scale Ward 2/3 Stormwater Projects including a litter and debris separator that helps reduce pollutants going into Salt Creek; Community involvement with education and Events by partnering and collaborating with SCARCE, the City, Library, local Schools, Park District, DuPage Forest Preserve, Public Works. Our Green Fair Event recycled 10,000 lbs. of electronic waste and four (4) 30-gallon bins of pharmaceuticals. This year the City has a dumpster for collecting pumpkins for composting November 1-8. The Salt Creek Clean-up is one of the direct benefits of our initiatives of citizens helping clean-up the banks, and this last spring a 1-ton dump truck was filled with garbage collected by a handful of people for 2 hours.

Director Hastings then introduced Executive Director McKeen.

Director McKeen stated she was pleased and proud to work with the Wood Dale for a Greener Tomorrow Committee and she felt they are a good role model for other cities, saying every step the City takes helps the Residents, and every step that helps the Residents, gives everyone clean water. People need to be encouraged to find ways they

can participate by finding what can work for them to help the water system and environment. For example, a step people can take to participate and help protect water quality is by composting pumpkins to help keep them out of the landfill reducing leachate and methane gas. She was also pleased and appreciative Mayor Pulice sits on the Stormwater Committee and is involved with helping make decisions on water quality for the whole County and everyone living here.

She introduced Michael Childress, County Board Member, District 1.

Mr. Childress said he was proud of the work the City of Wood Dale does to improve Storm Water Management and more specifically to address water-related issues and the quality of water by implementing the projects that have been done, and Wood Dale is a model for what should be done in communities.

Ms. McKeen then introduced Christopher Vonnahme, P.E., CFM, Deputy Director DuPage County Stormwater Management and Raul Glavan, Stormwater Outreach Coordinator Then she asked for members of the Greener Tomorrow and the Mayor to come up for the presentation of the Water Quality Flag.

She explained SCARCE and Stormwater Staff worked on creating this flag together and this flag is unique to DuPage County. There are 3 main Watersheds in DuPage County: Salt Creek, the East Branch of the DuPage, and the West Branch of the DuPage. The DuPage County Stormwater Management received National recognition in Washington, DC for this kind of initiative and education tool for the whole State and the whole country.

Mayor Pulice thanked them for coming.

### VII. CITY MANAGER'S REPORT

City Manager Mermuys had three (3) reports:

- Adopt-a-Family this Thanksgiving.
   The Wood Dale Police Department hosts the Adopt-A-Family Program which assists local families in need for the Thanksgiving holiday. By participating, you help support a family to have a traditional Thanksgiving meal. The last day to sign up for this is November 4. Please contact the Police Department for more information
- Veterans Appreciation Breakfast and Ceremony.

  The City, VFW Tioga Post #2149, and Wood Dale Park District host this Annual Veterans Appreciation Breakfast at Salt Creek to honor Wood Dale Veterans. It will take place on Saturday, November 11, 8:30-10:30 A.M. Veteran Banners from 2022 will be retired and given to the Veteran participant or their family along with a certificate from the City. Following the Breakfast, VFW will hold a ceremony at Veterans Memorial Park at 11 A.M.
- City Hall will be closed Friday, November 10, 2023 in observance of Veterans Day

### VIII. CONSENT AGENDA

### A. Omnibus Vote

- i. An Ordinance Approving a Plat of Subdivision for Consolidation of Property Located at 895 N. Wood Dale Road, Wood Dale, Illinois
- ii. An Ordinance Approving the Grant of a Special Use Permit, Planned Unit Development, Variance and Site Plan Review Concerning Property Located at 895 N. Wood Dale Road in the City of Wood Dale
- iii. A Resolution Approving a Professional Services Agreement between the City of Wood Dale and HR Green for Phase II Engineering Services for the Elizabeth Drive Multi-Use Path Project in an Amount Not to Exceed \$117,953
- iv. A Resolution Approving an Engineering Services Agreement between the City of Wood Dale and Baxter & Woodman, Inc. for Central Avenue Phase III Engineering Services in an Amount Not to Exceed \$88,276

The Mayor questioned if there were any objections to the Consent Agenda. Hearing none and on a motion by Alderman Jakab, seconded by Alderman Susmarski, to approve the Consent Agenda. When the question was put, a roll call vote was taken with the following results:

Ayes: Alderwoman Ames, Alderman Catalano, Alderman Curiale, Alderman Jakab, Alderman Messina, Alderman Susmarski, Alderman Art Woods and Alderman Artie Woods

Nays: None

Whereupon the Mayor declared the motion carried, approving the following items:

- i. An Ordinance Approving a Plat of Subdivision for Consolidation of Property Located at 895 N. Wood Dale Road, Wood Dale, Illinois
- ii. An Ordinance Approving the Grant of a Special Use Permit, Planned Unit Development, Variance and Site Plan Review Concerning Property Located at 895 N. Wood Dale Road in the City of Wood Dale
- iii. A Resolution Approving a Professional Services Agreement between the City of Wood Dale and HR Green for Phase II Engineering Services for the Elizabeth Drive Multi-Use Path Project in an Amount Not to Exceed \$117,953
- iv. A Resolution Approving an Engineering Services Agreement between the City of Wood Dale and Baxter & Woodman, Inc. for Central Avenue Phase III Engineering Services in an Amount Not to Exceed \$88,276

On a motion by Alderman Catalano, seconded by Alderwoman Ames, to approve items on the Consent Agenda, consisting of Items 1 through 4. When the question was put, a roll call vote was taken with the following results:

Ayes: Alderwoman Ames, Alderman Catalano, Alderman Curiale, Alderman Jakab, Alderman Messina, Alderman Susmarski, Alderman Art Woods, Alderman Artie Woods

Nays: None

Whereupon the Mayor declared the motion carried.

### IX. COMMITTEE CHAIR REPORTS

### A. Planning, Zoning and Building Committee

No Report

### B. Public Health, Safety, Judiciary and Ethics Committee

No Report

### C. Public Works Committee

i. Approval of Final Payment to Done Right Enviro Renovation, Inc. for the Community Development Department Renovations in the Amount of \$4,000

On a motion by Alderman Jakab, seconded by Alderwoman Ames, to *Approve Final Payment to Done Right Enviro Renovation, Inc. for the Community Development Department Renovations in the Amount of \$4,000.* When the question was put, a roll call vote was taken with the following results:

Ayes: Alderwoman Ames, Alderman Catalano, Alderman Curiale, Alderman Jakab, Alderman Messina, Alderman Susmarski, Alderman Art Woods, Alderman

Artie Woods

Nays: None

Whereupon the Mayor declared the motion carried.

 ii. A Resolution Approving an Intergovernmental Agreement with the State of Illinois and the City of Wood Dale Appropriating Funds for the Central Avenue Resurfacing Improvements

On a motion by Alderman Jakab, seconded by Alderman Curiale, to *Approve A Resolution Approving an Intergovernmental Agreement with the State of Illinois and the City of Wood Dale Appropriating Funds for the Central Avenue Resurfacing Improvements.* 

Alderwoman Ames asked when this Project was going to take place. Director Lange answered work will take place next year in late spring/early summer.

Alderman Woods asked why the City is not fully matching funds for the Project. Director Lange responded that the \$626,438 is the Federal share. The City is required to appropriate the remaining \$268,473 or as much funding as necessary to complete the Project. Under the STP, the City received funding to cover 70% and the City must come up with 30% or as much as necessary to complete the Project.

When the question was put, a roll call vote was taken with the following results:

Ayes: Alderwoman Ames, Alderman Catalano, Alderman Curiale, Alderman Jakab,

Alderman Messina, Alderman Susmarski, Alderman Art Woods, Alderman

Artie Woods

Nays: None

Whereupon the Mayor declared the motion carried.

### D. Finance and Administration Committee

No Report

### X. OTHER BUSINESS

### A. Airport Noise Committee

No Report

### **B. Stormwater Commission Report:**

No Report

### XI. APPROVAL OF LIST OF BILLS: November 2, 2023 \$ 996,060.98

On a motion by Alderwoman Ames, seconded by Alderman Susmarski, to approve the November 2, 2023 payment of the List of Bills, for the total amount of \$996,060.98 for the following:

General Fund	\$ 282,699.85
<ul> <li>Road &amp; Bridge Fund</li> </ul>	\$ -
<ul> <li>Motor Fuel Tax Fund</li> </ul>	\$ -
<ul> <li>Tourism Fund</li> </ul>	\$ 3,76207
<ul> <li>Narcotics Fund</li> </ul>	\$ 750.00
• TIF District #1	\$ 26,665.94
• TIF District #2	\$ 14,043.00
<ul> <li>Capital Projects Fund</li> </ul>	\$ 535,406.57
<ul> <li>Land Acquisition Fund</li> </ul>	\$ -
<ul> <li>Commuter Parking Lot Fund</li> </ul>	\$ 2,347.49
<ul> <li>Sanitation Fund</li> </ul>	\$ 74,197.99
<ul> <li>Water &amp; Sewer Fund</li> </ul>	\$ 56,188.07
• CERF	\$ -
• Special Service Area Fund	\$ -

When the question was put a roll call vote was taken with the following results:

Ayes: Alderwoman Ames, Alderman Catalano, Alderman Curiale, Alderman Jakab,

Alderman Messina, Alderman Susmarski, Alderman Art Woods, Alderman

\$ 996,060.98

**75** 

Artie Woods

Total of all Funds:

**Total Number of Checks:** 

Nays: None

Whereupon the Mayor declared the motion carried.

### XII. EXECUTIVE SESSION

Review of the Executive Session Official Minutes [Pursuant to 5 ILCS 120/2(c)(21)]; and to discuss Land Acquisition [Pursuant to 5 ILCS 120/(c)(5)].

### XIII. <u>ITEMS TO BE REFERRED</u>

None

### XIV. <u>ITEMS FOR INFORMATION ONLY</u>

None

### XV. <u>ADJOURNMENT</u>

On a motion by Alderman Susmarski, seconded by Alderwoman Ames, to adjourn the Meeting of November 2, 2023 to go to Executive Session to Review Executive Session Official Minutes [Pursuant to 5 ILCS 120/2(c)(21)], and Land Acquisition [Pursuant to 5 ILCS 120/(c)(5)]. When the question was put, all Aldermen voted in the affirmative. Whereupon the Mayor declared the City Council Meeting adjourned to Executive Session at 7:50 p.m.

Minutes Taken by City Clerk Lynn Curiale Reviewed by Legal Counsel Patrick Bond



### **REQUEST FOR COUNCIL ACTION**

Referred to Council: November 16, 2023

Subject: T-Mobile Lease Extension Staff Contact: Brad Wilson, Finance Director

Department: Finance

TITLE: A RESOLUTION APPROVING AN AMENDMENT TO PCS SITE AGREEMENT WITH T-MOBILE CENTRAL, LLC FOR TELECOMMUNICATION EQUIPMENT AT 269 WEST IRVING PARK ROAD

### **COMMITTEE ACTION FOLLOW-UP ITEMS:**

Committee Vote: 7-0

Committee Meeting Date: 11-09-2023

Requested information from Committee: None

### **DOCUMENTS ATTACHED**

✓ Resolution

✓ Agreement

### STRATEGIC PLAN ITEM

☐ Yes ☒ No

### **RESOLUTION NO. R-23-69**

## A RESOLUTION APPROVING AN AMENDMENT TO PCS SITE AGREEMENT WITH T-MOBILE CENTRAL, LLC FOR TELECOMMUNICATION EQUIPMENT AT 269 WEST IRVING PARK ROAD

**WHEREAS**, the City of Wood Dale ("City") is a body politic and corporate, organized and existing to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; and

**WHEREAS**, the City is authorized and empowered under the Illinois Municipal Code, and its Ordinances adopted pursuant thereto, to enter into license agreements for the use of its real property; and

**WHEREAS**, the City possesses the authority, pursuant to the Illinois Municipal Code 65 ILCS 5/1-1-1 *et seq.*, to adopt ordinances pertaining to public health, safety and welfare; and

**WHEREAS**, the City Council of the City (hereinafter referred to as the "City Council") is the corporate authority for the City and is authorized by law to exercise all powers and to control the affairs of the City; and

**WHEREAS**, the City Council possesses full power and authority to approve and pass all necessary ordinances, resolutions, rules and regulations and agreements necessary for carrying into effect the objects for which the City was formed, in accordance with the Illinois Municipal Code. 65 ILCS 5/1-2-1; and

WHEREAS, the City Code regulates small wireless telecommunication facilities located in the City in order to protect the public health, safety and welfare of the Citizens of the City and authorizes the City to enter into Land Lease Agreements with telecommunication providers in order to protect the public health, safety and welfare of the Citizens of the City; and

**WHEREAS**, the City is the Owner of a certain Parcel of property located at 269 West Irving Park Road, Wood Dale, IL (the "Parent Parcel"); and

**WHEREAS**, the City entered into a certain PCS Site Agreement (the "Agreement") with T-Mobile (formally Cook Inlet/VoiceStream Operating Company, LLC) ("Tenant"), dated May 1, 2000, for the installation and maintenance of utility equipment on a portion of the Parent Parcel; and

**WHEREAS**, pursuant to said Agreement, Tenant is licensed to utilize a portion of the Parent Parcel for the operation and maintenance of communication equipment; and

WHEREAS, said Agreement will expire on April 30, 2024; and

**WHEREAS**, the City has negotiated a First Amendment to the PCS Site Agreement (hereinafter the "Amendment") with Tenant subject to City Council approval, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A"; and

WHEREAS, the City Council has reviewed the Amendment and deems it in the best interests of the City and its residents to authorize the execution of the Agreement on the terms set forth therein.

### NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WOOD DALE, DUPAGE COUNTY ILLINOIS, as follows:

- <u>SECTION 1</u>: The recitals set forth above are incorporated herein and made a part hereof.
- <u>SECTION 2</u>: That the First Amendment to the PCS Site Agreement with T-Mobile, in substantially the same form as attached to this Resolution as Exhibit "A", and incorporated herein by reference, is approved and accepted by the City of Wood Dale.
- <u>SECTION 3</u>: The Mayor is authorized to execute said Amendment on behalf of the City of Wood Dale, which signature shall be attested to by the City Clerk.
- <u>SECTION 4</u>: The City Manager, Staff and/or the City Attorney shall take the steps necessary to put the terms and conditions of the Amendment into effect.
- <u>SECTION 5</u>: That all ordinances and resolutions, or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.
- SECTION 6: That this Resolution shall be in full force and effect, from and after its adoption, approval and publication in pamphlet form, as provided by law.

Passed this 16	oth day of November, 2023	
AYES:		_
NAYS:		_
ABSENT:		_
APPROVED	this 16 <sup>th</sup> day of November, 2023	
SIGNED:	Annunziato Pulice, Mayor	_
ATTEST:	Lynn Curiale, City Clerk	_
	Published in pamphlet form,	2023

### Exhibit A

The First Amendment to the PCS Site Agreement

### FIRST AMENDMENT TO PCS SITE AGREEMENT

This First Amendment to PCS Site Agreement (the "<u>First Amendment</u>") is effective as of the last signature below (the "<u>Effective Date</u>"), by and between the City of Wood Dale, an Illinois municipal corporation ("<u>City</u>"), and T-Mobile Central LLC, a Delaware limited liability company ("<u>Grantee</u>") (each a "<u>Party</u>", or collectively, the "<u>Parties</u>").

City and Grantee (or their predecessors-in-interest) entered into that certain PCS Site Agreement dated May 1, 2000 (the "<u>Agreement</u>") regarding the licensed premises (the "<u>Site</u>") located at 269 W. Irving Park Road, Wood Dale, IL 60191 (the "<u>Land</u>").

For good and valuable consideration, City and Grantee agree as follows:

- 1. At the expiration of the Agreement, the term of the Agreement will automatically be extended for four (4) additional and successive five (5) year terms, each included as an Extended Term, provided that Grantee may elect not to renew by providing City at least thirty (30) days' notice prior to the expiration of the then current Extended Term.
- 2. At the commencement of the first Extended Term provided for in this First Amendment, Grantee shall pay City Three Thousand Four Hundred Twenty-One and 44/100 Dollars (\$3,421.44) per month as a Fee, partial calendar months to be prorated in advance, by the fifth (5<sup>th</sup>) day of each calendar month. Thereafter, notwithstanding anything to the contrary in the Agreement, the Fee will escalate by 2.5% on November 9, 2026 and on each annual anniversary thereafter. Where duplicate Fee would occur, a credit shall be taken by Grantee for any prepayment of duplicate Fee by Grantee.
- 3. City consents to allow Grantee to complete upgrades and additions of the Equipment on the Site for no additional consideration, in compliance with required permits.
- 4. Upon the Effective Date of the First Amendment, in addition to any rights set forth in the Agreement, Grantee and its employees, representatives and agents will have twenty-four (24) hour access, seven (7) days per week to the Site at no additional charge.
- 5. City grants Grantee the option to expand the Site, to the extent practicable, so that grants Grantee may implement any necessary modifications, supplements, replacements, refurbishments or expansions to Grantee's installation, as determined by Grantee in its sole discretion (the "Expansion Option"). The Expansion Option shall be exercisable by Grantee at any time during the term (as renewed or extended). In the event Grantee exercises the Expansion Option, the monthly Fee payable for such additional Site shall be the lesser of (i) One and 50/100 Dollars (\$1.50) per square foot or (ii) the same per square foot rate as the then-current base Fee applicable to Site under the Agreement (the "Additional Site Fee"). The Additional Site Fee shall be compensation for space utilized by the expansion of Grantee's room/cabinet/ground area (as applicable) beyond the Site and for the expansion of antenna area(s) beyond the approximate locations currently occupied by Grantee, but Grantee's addition of coaxial cables, raceways, conduits and

other ancillary equipment and such related space usage, shall not require or result in Additional Premises Fee or any other compensation to City, nor shall Grantee's utilization of space as contemplated under the Agreement. City agrees to take such actions and enter into and deliver to Grantee such documents as Grantee reasonably requests in order to affect and memorialize the license of the Site to Grantee.

- 6. If City desires to redevelop, modify, remodel, alter the Land or make any improvements thereon ("Redevelopment") and both Parties agree that the Redevelopment necessitates relocation of the Equipment, then: (i) City may require Grantee to relocate Equipment once during the Term of the Agreement; (ii) City shall give Grantee not less than twenty-four (24) months' written notice prior to relocation; (iii) both Parties shall agree upon a suitable area for the relocation; (iv) all costs and expenses associated with or arising out of the relocation, including approval and permitting costs, shall be paid by City; (v) the relocation shall not limit or interfere with Grantee's permitted uses of the Site; (vii) the relocation shall not result in any interruption, impairment or alteration of the communications services or quality thereof provided from the Equipment; and (viii) if the Parties cannot agree upon a suitable area for relocation, then Grantee may terminate the Agreement in its reasonable judgment upon written notice to City, without penalty or further obligation.
- 7. Should temporary relocation of the Equipment be required for City repairs to the Tank or the Site, then: (i) City may require Grantee to temporarily relocate Grantee's Equipment once per each Renewal Term of the Agreement ("Temporary Relocation"); (ii) City shall provide Grantee at least six (6) months' prior written notice of any repairs, maintenance or other work (the "Work"), which would require the Temporary Relocation; (iii) the Work will not limit or interfere with Grantee's permitted uses; and (iv) City will reimburse Grantee for all expenses incurred by Grantee required to accommodate the Work. Grantee may elect to install a temporary communications facility (e.g. a "cell on wheels," or "COW") in another mutually agreeable location on the Land that provides Grantee coverage and service levels similar to those of the Equipment at the original location, while the Work is being performed. Grantee shall have the right to reinstall the Equipment immediately upon the completion of the Work.
- 8. Grantee shall have the right to connect to and otherwise utilize any and all pre-existing utility related equipment, or alternatively, to construct, install, operate, maintain, repair, add, upgrade, remove or replace utility related equipment (collectively, the "<u>Utility Facilities</u>") located on or serving the Land, which are either owned by or available to City.
- 9. Grantee shall have the right to assign, or otherwise transfer the Agreement, upon Grantee's delivery to City of written notice of any assignment or transfer by Grantee. Grantee shall be relieved of all liabilities and obligations and City shall look solely to the assignee, or transferee for performance under the Agreement. Grantee shall have the right to sublease the Agreement without the need for City's consent.

10. All notices, requests, demands and other communications shall be in writing and shall be deemed to have been delivered upon receipt or refusal to accept delivery, and are effective only when deposited into the U.S. certified mail, return receipt requested, or when sent via a nationally recognized courier to the addresses set forth below. City or Grantee may from time to time designate any other address for this purpose by providing written notice to the other Party.

If to Grantee: If to City:

T-Mobile USA, Inc.

City of Wood Dale

12920 SE 38th Street

404 N. Wood Dale Road

Bellevue, WA 98006

Wood Dale, IL 60191

Attn: Lease Compliance/ CH14260A

- 11. Grantee and City will reasonably cooperate with each other's requests to approve permit applications and other documents related to the Land without additional payment or consideration.
- 12. Any charges payable under the Agreement other than Fee shall be billed by City to Grantee within twelve (12) months from the date in which the charges were incurred or due; otherwise, the same shall be deemed time-barred and be forever waived and released by City.
- 13. Except as expressly set forth in this First Amendment, the Agreement otherwise is unmodified. To the extent any provision contained in this First Amendment conflicts with the terms of the Agreement, the terms and provisions of this First Amendment shall control. Each reference in the Agreement to itself shall be deemed also to refer to this First Amendment.
- 14. This First Amendment may be executed in duplicate counterparts, each of which will be deemed an original. Signed electronic, scanned, or facsimile copies of this First Amendment will legally bind the Parties to the same extent as originals.
- 15. Each of the Parties represents and warrants that it has the right, power, legal capacity and authority to enter into and perform its respective obligations under this First Amendment. City represents and warrants to Grantee that the consent or approval of a third party has either been obtained or is not required with respect to the execution of this First Amendment. If City is represented by any property manager, broker or any other leasing agent ("Agent"), then (a) City is solely responsible for all commission, fees or other payment to Agent and (b) City shall not impose any fees on Grantee to compensate or reimburse City for the use of Agent, including any such commissions, fees or other payments arising from negotiating or entering into this First Amendment or any future amendment.

16. This First Amendment will be binding on and inure to the benefit of the Parties herein, their heirs, executors, administrators, successors-in-interest and assigns.

IN WITNESS, the Parties execute this First Amendment as of the Effective Date.

City:	Grantee:
City of Wood Dale, an Illinois municipal corporation	T-Mobile Central LLC, a Delaware limited liability company
Ву:	Ву:
Print Name:	Print Name:
Title:	Title:
Date:	Date:





### **REQUEST FOR COUNCIL ACTION**

Referred to Council:

Subject:

Staff Contact:

November 16, 2023

Verizon Lease Extension

Brad Wilson, Finance Director

Department: Finance

TITLE: A RESOLUTION APPROVING AN AMENDMENT TO LAND LEASE AGREEMENT WITH CHICAGO SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS FOR TELECOMMUNICATION EQUIPMENT AT 320 RICHERT ROAD

### **COMMITTEE ACTION FOLLOW-UP ITEMS:**

Committee Vote: 7-0

Committee Meeting Date: 11-09-2023

Requested information from Committee: None

### **DOCUMENTS ATTACHED**

✓ Resolution

✓ Agreement

### STRATEGIC PLAN ITEM

☐ Yes ☒ No

### **RESOLUTION NO. R-23-70**

## A RESOLUTION APPROVING AN AMENDMENT TO LAND LEASE AGREEMENT WITH CHICAGO SMSA LIMITED PARTNERSHIP D/B/A VERIZON WIRELESS FOR TELECOMMUNICATION EQUIPMENT AT 320 RICHERT ROAD

**WHEREAS**, the City of Wood Dale ("City") is a body politic and corporate, organized and existing to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; and

**WHEREAS**, the City is authorized and empowered under the Illinois Municipal Code, and its Ordinances adopted pursuant thereto, to enter into license agreements for the use of its real property; and

**WHEREAS**, the City possesses the authority, pursuant to the Illinois Municipal Code 65 ILCS 5/1-1-1 *et seq.*, to adopt ordinances pertaining to public health, safety and welfare; and

WHEREAS, the City Council of the City (hereinafter referred to as the "City Council") is the corporate authority for the City and is authorized by law to exercise all powers and to control the affairs of the City; and

**WHEREAS**, the City Council possesses full power and authority to approve and pass all necessary ordinances, resolutions, rules and regulations and agreements necessary for carrying into effect the objects for which the City was formed, in accordance with the Illinois Municipal Code 65 ILCS 5/1-2-1; and

WHEREAS, the City Code regulates small wireless telecommunication facilities located in the City in order to protect the public health, safety and welfare of the Citizens of the City and authorizes the City to enter into Land Lease Agreements with telecommunication providers in order to protect the public health, safety and welfare of the Citizens of the City; and

**WHEREAS**, the City is the Owner of a certain Parcel of property located at 320 Richert Road, Wood Dale, IL (the "Parent Parcel"); and

**WHEREAS**, the City entered into a certain Land Lease Agreement (the "Agreement") with Chicago SMSA Limited Partnership d/b/a Verizon Wireless ("Tenant"), dated January 28, 2010, for the installation and maintenance of utility equipment on a portion of the Parent Parcel; and

**WHEREAS**, pursuant to said Agreement, Tenant is the beneficiary of certain easements on the Parent Parcel for access and public utilities; and

WHEREAS, said Agreement will expire on April 30, 2025; and

WHEREAS, the City has negotiated a First Amendment to Land Lease Agreement (hereinafter the "Amendment") with Tenant, subject to City Council approval, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A"; and

WHEREAS, the City Council has reviewed the Amendment and deems it in the best interests of the City and its residents to authorize the execution of the Agreement on the terms set forth therein.

### NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WOOD DALE, DUPAGE COUNTY ILLINOIS, as follows:

<u>SECTION 1</u>: The recitals set forth above are incorporated herein and made a part hereof.

SECTION 2: That the First Amendment to Land Lease Agreement with Chicago SMSA Limited Partnership d/b/a Verizon Wireless, in substantially the same form as attached to this Resolution as Exhibit "A", and incorporated herein by reference, is approved and accepted by the City of Wood Dale.

<u>SECTION 3</u>: The Mayor is authorized to execute said Amendment on behalf of the City of Wood Dale, which signature shall be attested to by the City Clerk.

<u>SECTION 4</u>: The City Manager, Staff and/or the City Attorney shall take the steps necessary to put the terms and conditions of the Amendment into effect.

<u>SECTION 5</u>: That all ordinances and resolutions, or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

<u>SECTION 6</u>: That this Resolution shall be in full force and effect, from and after its adoption, approval and publication in pamphlet form, as provided by law.

Passed this 16th day of November, 2023		
AYES:		_
NAYS:		_
ABSENT:		_
APPROVED	this 16 <sup>th</sup> day of November, 2023	
SIGNED:	Annunziato Pulice, Mayor	_
ATTEST:	Lynn Curiale, City Clerk	_
	Published in pamphlet form	, 2023

### Exhibit A

The First Amendment to Land Lease Agreement

#### THE FIRST AMENDMENT TO LAND LEASE AGREEMENT

This First Amendment to Land Lease Agreement (this "Amendment") is made effective as of the latter signature date hereof (the "Effective Date") by and between City of Wood Dale ("Landlord") and Chicago SMSA Limited Partnership d/b/a Verizon Wireless ("Tenant") (Landlord and Tenant being collectively referred to herein as the "Parties").

#### **RECITALS**

**WHEREAS**, Landlord owns the real property described on **Exhibit A** attached hereto and by this reference made a part hereof (the "**Parent Parcel**"); and

WHEREAS, Landlord (or its predecessor-in-interest) and Tenant (or its predecessor-in-interest) entered into that certain Land Lease Agreement dated January 28, 2010 (as the same may have been amended, collectively, the "Lease"), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities, all as more particularly described in the Lease (such portion of the Parent Parcel so leased along with such portion of the Parent Parcel so affected, collectively, the "Leased Premises"), which Leased Premises are also described on Exhibit A; and

WHEREAS, Tenant, Verizon Communications Inc., a Delaware corporation, and other parties identified therein, entered into a Management Agreement and a Master Prepaid Lease, both with an effective date of March 27, 2015 and both with ATC Sequoia LLC, a Delaware limited liability company ("American Tower"), pursuant to which American Tower subleases, manages, operates and maintains, as applicable, the Leased Premises, all as more particularly described therein; and

**WHEREAS**, Tenant has granted American Tower a limited power of attorney (the "*POA*") to, among other things, prepare, negotiate, execute, deliver, record and/or file certain documents on behalf of Tenant, all as more particularly set forth in the POA; and

**WHEREAS**, Landlord and Tenant desire to amend the terms of the Lease to extend the term thereof and to otherwise modify the Lease as expressly provided herein.

**NOW THEREFORE**, in consideration of the foregoing recitals and the mutual covenants set forth herein and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

- 1. Lease Term Extended. The Parties agree that the Lease, has a final expiration date of April 30, 2025 (the "Current Expiration Date"). The initial term of this Amendment shall be ten (10) years ("Initial Term"). Following the Initial Term, Tenant shall have the option to extend the Lease for each of four (4) additional five (5) year renewal terms (each a "New Renewal Term" and, collectively, the "New Renewal Terms"). The Initial Term shall commence on the day immediately following the Current Expiration Date. The first New Renewal Term shall commence on the day immediately following the end of the Initial Term. The Initial Term and all New Renewal Terms shall automatically renew unless Tenant notifies Landlord that Tenant elects not to renew the Lease not less than ninety (90) days prior to the expiration of the then current term. The Landlord hereby agrees to execute and return to Tenant an original Memorandum of Lease in the form and of the substance attached hereto as Exhibit B and by this reference made a part hereof (the "Memorandum") executed by Landlord, together with any applicable forms needed to record the Memorandum, which forms shall be supplied by Tenant to Landlord.
- Rent and Escalation. Commencing with the first rental payment due following the Effective Date, the rent payable from Tenant to Landlord under the Lease is hereby increased to Four Thousand Two Hundred Fifty and No/100 Dollars (\$4,250.00) per month (the "Rent"). Commencing on May 1, 2024 and on each successive annual anniversary thereof, Rent due under the Lease, as modified by this Amendment, shall increase by an amount equal to three percent (3%) of the then current Rent. In the event of any

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overpayment of Rent prior to or after the Effective Date, Tenant shall have the right to deduct from any future Rent payments an amount equal to the overpayment amount. Notwithstanding anything to the contrary contained in the Lease, all Rent and any other payments expressly required to be paid by Tenant to Landlord under the Lease and this Amendment shall be paid to **City of Wood Dale**. The escalations in this Section shall be the only escalations to the Rent and any/all rental escalations otherwise contained in the Lease are hereby null and void and are of no further force and effect.

- 3. Notices. The Parties acknowledge and agree that Section 23 of the Lease is hereby deleted in its entirety and is of no further force and effect. From and after the Effective Date the notice address and requirements of the Lease, as modified by this Amendment, shall be controlled by this Section of this Amendment. All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein: to Landlord at: City of Wood Dale, 404 NORTH WOOD DALE RD., WOOD DALE, IL 60191; to Tenant at: Verizon Wireless, Attn.: Network Real Estate, 180 Washington Valley Road, Bedminster, NJ 07921; with copy to: American Tower, Attn.: Land Management, 10 Presidential Way, Woburn, MA 01801; and also with copy to: Attn.: Legal Dept. 116 Huntington Avenue, Boston, MA 02116. Any of the Parties, by thirty (30) days prior written notice to the others in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.
- 4. <u>Counterparts</u>. This Amendment may be executed in several counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument, even though all Parties are not signatories to the original or the same counterpart. Furthermore, the Parties may execute and deliver this Amendment by electronic means such as .pdf or similar format. Each of the Parties agrees that the delivery of the Amendment by electronic means will have the same force and effect as delivery of original signatures and that each of the Parties may use such electronic signatures as evidence of the execution and delivery of the Amendment by all Parties to the same extent as an original signature.
- 5. Conflict/Capitalized Terms. The Parties hereby acknowledge and agree that in the event of a conflict between the terms and provisions of this Amendment and those contained in the Lease, the terms and provisions of this Amendment shall control. Except as otherwise defined or expressly provided in this Amendment, all capitalized terms used in this Amendment shall have the meanings or definitions ascribed to them in the Lease. To the extent of any inconsistency in or conflict between the meaning, definition, or usage of any such capitalized terms or similar or analogous terms in the Lease, the meaning, definition, or usage of any such capitalized terms in this Amendment shall control.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

ATC Site No: 416616 VZW Site No: 187766 Site Name: Wood Dale N IL

LANDLORD:
City of Wood Dale
Signature:
Print Name:
Title:
Date:

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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Chicago SMSA Limited Partnership d/b/a Verizon Wireless
By: ATC Sequoia LLC, a Delaware limited liability company Title: Attorney-in-Fact
Signature:
Print Name:
Title:
Date:

TENANT:

ATC Site No: 416616 VZW Site No: 187766 Site Name: Wood Dale N IL Packet Page #28

#### **EXHIBIT A**

This Exhibit A may be replaced at Tenant's option as described below.

#### PARENT PARCEL

Tenant shall have the right to replace this description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's improvements thereon.

The Parent Parcel consists of the entire legal taxable lot owned by Landlord as described in a deed (or deeds) to Landlord of which the Leased Premises is a part thereof with such Parent Parcel being described below:

PARCEL 1: LOT 36 IN KLEFSTAD'S WOODDALE INDUSTRIAL PARK UNIT ONE, BEING A SUBDIVISION IN SECTIONS 3 AND 10, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 22, 1973 AS DOCUMENT R73-15596, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2: LOT 1 IN WOOD DALE VISTA INDUSTRIAL PARK, BEING A RESUBDIVISION IN THE NORTH 1/2 OF SECTION 10, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 8, 1975 AS DOCUMENT R75-54897, IN DUPAGE COUNTY, ILLINOIS.

Tax Parcel No. 03-10-211-002.

ATC Site No: 416616 VZW Site No: 187766 Site Name: Wood Dale N IL

### **EXHIBIT A (continued)**

#### **LEASED PREMISES**

Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements. The Square footage of the Leased Premises shall be the greater of: (i) 2,000 square feet; (ii) Tenant's (and Tenant's customers) existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

A PARCEL OF LAND FOR LEASE SITE PURPOSES, BEING A PART OF LOT 1 IN WOOD DALE VISTA INDUSTRIAL PARK, A SUBDIVISION IN THE NORTH HALF OF SECTION 10, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 8, 1975 AS INSTRUMENT NUMBER R75-54897, BOOK 74, PAGE 39 IN DUPAGE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE NORTH 88 DEGREES 23 MINUTES 17 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 1, 29.95 FEET; THENCE SOUTH 01 DEGREES 36 MINUTES 43 SECONDS EAST PERPENDICULAR TO THE LAST DESCRIBED COURSE, 10.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 88 DEGREES 23 MINUTES 17 SECONDS EAST PARALLEL WITH THE NORTH LINE OF SAID LOT 1, 45.00 FEET; THENCE SOUTH 01 DEGREES 07 MINUTES 33 SECONDS EAST PARALLEL WITH THE WEST LINE OF SAID LOT 1, 40.00 FEET; THENCE SOUTH 88 DEGREES 23 MINUTES 17 SECONDS WEST PARALLEL WITH THE NORTH LINE OF SAID LOT 1, 50.00 FEET; THENCE NORTH 01 DEGREES 07 MINUTES 33 SECONDS WEST PARALLEL WITH THE WEST LINE OF SAID LOT 1, 40.00 FEET; THENCE NORTH 88 DEGREES 23 MINUTES 17 SECONDS EAST PARALLEL WITH THE NORTH LINE OF SAID LOT 1, 5.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,000 SQUARE FEET.

ATC Site No: 416616 VZW Site No: 187766 Site Name: Wood Dale N IL

### **EXHIBIT A (continued)**

### **ACCESS AND UTILITIES**

The access and utility easements include all easements of record as well that portion of the Parent Parcel currently utilized by Tenant (and Tenant's customers) for ingress, egress and utility purposes from the Leased Premises to and from a public right of way including but not limited to:

A PARCEL OF LAND FOR ACCESS & UTILITY EASEMENT PURPOSES, BEING A PART OF LOT 1 IN WOOD DALE VISTA INDUSTRIAL PARK, A SUBDIVISION IN THE NORTH HALF OF SECTION 10, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 8, 1975 AS INSTRUMENT NUMBER R75-54897, BOOK 74, PAGE 39 AND LOT 36 IN KLEFSTAD'S WOODDALE INDUSTRIAL UNIT ONE, A SUBDIVISION IN THE SECTIONS 3 AND 10, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 22, 1973 AS INSTRUMENT NUMBER R73-15596, BOOK 66, PAGE 70, ALL IN TOWNSHIP 40 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DUPAGE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1: THENCE NORTH 88 DEGREES 23 MINUTES 17 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 1. 29.95 FEET; THENCE SOUTH 01 DEGREES 07 MINUTES 33 SECONDS EAST, 10.00 FEET TO THE POINT OF BEGINNING: THENCE NORTH 88 DEGREES 23 MINUTES 17 SECONDS EAST PARALLEL WITH THE NORTH LINE OF SAID LOT 1, 12.00 FEET; THENCE NORTH 01 DEGREES 07 MINUTES 33 SECONDS WEST, 6.00 FEET; THENCE NORTH 88 DEGREES 23 MINUTES 17 SECONDS EAST, 56.31 FEET; THENCE NORTH 00 DEGREES 35 MINUTES 00 SECONDS EAST 87.35 FEET; THENCE NORTH 06 DEGREES 56 MINUTES 32 SECONDS WEST, 100.00 FEET; THENCE NORTH 03 DEGREES 19 MINUTES 27 SECONDS WEST. 67.69 FEET TO THE SOUTH LINE OF RICHERT ROAD: THENCE NORTH 89 DEGREES 51 MINUTES 59 SECONDS WEST ALONG SAID SOUTH LINE, 12.02 FEET; THENCE SOUTH 03 DEGREES 19 MINUTES 27 SECONDS EAST, 68.79 FEET; THENCE SOUTH 06 DEGREES 56 MINUTES 32 SECONDS EAST, 99.59 FEET; THENCE SOUTH 00 DEGREES 35 MINUTES 00 SECONDS WEST, 75.01 FEET; THENCE SOUTH 88 DEGREES 23 MINUTES 17 SECONDS WEST, 56,66 FEET; THENCE SOUTH 01 DEGREES 07 MINUTES 33 SECONDS EAST, 18.00 TO THE POINT OF BEGINNING.

> ATC Site No: 416616 VZW Site No: 187766 Site Name: Wood Dale N IL

### **EXHIBIT B**

### FORM OF MEMORANDUM OF LEASE

ATC Site No: 416616 VZW Site No: 187766

Site Name: Wood Dale N IL Packet Page #32

### **Prepared by and Return to:**

American Tower 10 Presidential Way Woburn, MA 01801

Attn: Land Management/Emily Lacy, Esq.

ATC Site No: 416616

ATC Site Name: Wood Dale N IL Assessor's Parcel No(s): 03-10-211-002 **Prior Recorded Lease Reference:** 

Document No. R2010-016600

State of Illinois County of DuPage

### **MEMORANDUM OF LEASE**

This Memorandum of Lease (the "Memorandum") is entered into as of the latter signature date hereof, by and between City of Wood Dale ("Landlord") and Chicago SMSA Limited Partnership d/b/a Verizon Wireless ("Tenant").

**NOTICE** is hereby given of the Lease (as defined and described below) for the purpose of recording and giving notice of the existence of said Lease. To the extent that notice of such Lease has previously been recorded, then this Memorandum shall constitute an amendment of any such prior recorded notice(s).

- 1. Parent Parcel and Lease. Landlord is the owner of certain real property being described in Exhibit A attached hereto and by this reference made a part hereof (the "Parent Parcel"). Landlord (or its predecessor-in-interest) and Tenant (or its predecessor-in-interest) entered into that certain Land Lease Agreement dated January 28, 2010 (as the same may have been amended from time to time, collectively, the "Lease"), pursuant to which the Tenant leases a portion of the Parent Parcel and is the beneficiary of certain easements for access and public utilities, all as more particularly described in the Lease (such portion of the Parent Parcel so leased along with such portion of the Parent Parcel so affected, collectively, the "Leased Premises"), which Leased Premises is also described on Exhibit A.
- 2. <u>American Tower</u>. Tenant, Verizon Communications Inc., a Delaware corporation, and other parties identified therein, entered into a Management Agreement and a Master Prepaid Lease, both with an effective date of March 27, 2015 and both with ATC Sequoia LLC, a Delaware limited liability company ("American Tower"), pursuant to which American Tower subleases, manages, operates and maintains, as applicable, the Leased Premises, all as more particularly described therein. In connection with these responsibilities, Tenant has also granted American Tower a limited power of attorney (the "POA") to, among other things, prepare, negotiate, execute, deliver, record and/or file certain documents on behalf of Tenant, all as more particularly set forth in the POA.
- 3. **Expiration Date**. Subject to the terms, provisions, and conditions of the Lease, and assuming the exercise by Tenant of all renewal options contained in the Lease, the final expiration date of the Lease would be

ATC Site No: 416616 VZW Site No: 187766 Site Name: Wood Dale N IL Packet Page #33 April 30, 2055. Notwithstanding the foregoing, in no event shall Tenant be required to exercise any option to renew the term of the Lease.

- 4. Right of First Refusal. There is a right of first refusal in the Lease.
- 5. <u>Effect/Miscellaneous</u>. This Memorandum is not a complete summary of the terms, provisions and conditions contained in the Lease. In the event of a conflict between this Memorandum and the Lease, the Lease shall control. Landlord hereby grants the right to Tenant to complete and execute on behalf of Landlord any government or transfer tax forms necessary for the recording of this Memorandum. This right shall terminate upon recording of this Memorandum.
- 6. Notices. All notices must be in writing and shall be valid upon receipt when delivered by hand, by nationally recognized courier service, or by First Class United States Mail, certified, return receipt requested to the addresses set forth herein: to Landlord at: City of Wood Dale, 404 NORTH WOOD DALE RD., WOOD DALE, IL 60191; to Tenant at: Verizon Wireless, Attn.: Network Real Estate, 180 Washington Valley Road, Bedminster, NJ 07921; with copy to: American Tower, Attn.: Land Management, 10 Presidential Way, Woburn, MA 01801, and also with copy to: Attn.: Legal Dept. 116 Huntington Avenue, Boston, MA 02116. Any of the parties hereto, by thirty (30) days prior written notice to the other in the manner provided herein, may designate one or more different notice addresses from those set forth above. Refusal to accept delivery of any notice or the inability to deliver any notice because of a changed address for which no notice was given as required herein, shall be deemed to be receipt of any such notice.
- 7. <u>Counterparts</u>. This Memorandum may be executed in multiple counterparts, each of which when so executed and delivered, shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

ATC Site No: 416616 VZW Site No: 187766 Site Name: Wood Dale N IL

**IN WITNESS WHEREOF**, Landlord and Tenant have each executed this Memorandum as of the day and year set forth below.

LANDLORD	2 WITNESSES
City of Wood Dale	
Signature: Print Name: Title:	Signature:
Date:	Print Name:
State/Commonwealth of	
County of	
personally appeared of satisfactory evidence, to be the person(sacknowledged to me that he/she/they exe	, 202, before me, the undersigned Notary Public,, who proved to me on the basis s) whose name(s) is/are subscribed to the within instrument and cuted the same in his/her/their authorized capacity(ies), and that nent, the person(s) or the entity upon which the person(s) acted,
WITNESS my hand and official seal.	
Notary Public	-
Print Name: My commission expires:	

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

ATC Site No: 416616 VZW Site No: 187766 Site Name: Wood Dale N IL

TENANT	WITNESS
Chicago SMSA Limited Partnership d/b/a Veriz Wireless	on
By: ATC Sequoia LLC, a Delaware limited liability company Title: Attorney-in-Fact  Signature: Print Name: Title: Date:	Signature: Print Name: Signature: Print Name:
WITNESS A	AND ACKNOWLEDGEMENT
Commonwealth of Massachusetts	
County of Middlesex	
personally appeared of satisfactory evidence, to be the person(s) whacknowledged to me that he/she/they execute	, 202, before me, the undersigned Notary Public,, who proved to me on the basis nose name(s) is/are subscribed to the within instrument and d the same in his/her/their authorized capacity(ies), and that , the person(s) or the entity upon which the person(s) acted,
WITNESS my hand and official seal.	
Notary Public	
Print Name: My commission expires:	[SEAL]
,	[

#### **EXHIBIT A**

This Exhibit A may be replaced at Tenant's option as described below.

#### PARENT PARCEL

Tenant shall have the right to replace this description with a description obtained from Landlord's deed (or deeds) that include the land area encompassed by the Lease and Tenant's improvements thereon.

The Parent Parcel consists of the entire legal taxable lot owned by Landlord as described in a deed (or deeds) to Landlord of which the Leased Premises is a part thereof with such Parent Parcel being described below:

PARCEL 1: LOT 36 IN KLEFSTAD'S WOODDALE INDUSTRIAL PARK UNIT ONE, BEING A SUBDIVISION IN SECTIONS 3 AND 10, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 22, 1973 AS DOCUMENT R73-15596, IN DUPAGE COUNTY, ILLINOIS.

PARCEL 2: LOT 1 IN WOOD DALE VISTA INDUSTRIAL PARK, BEING A RESUBDIVISION IN THE NORTH 1/2 OF SECTION 10, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 8, 1975 AS DOCUMENT R75-54897, IN DUPAGE COUNTY, ILLINOIS.

Tax Parcel No. 03-10-211-002.

ATC Site No: 416616 VZW Site No: 187766 Site Name: Wood Dale N IL

#### **EXHIBIT A (continued)**

#### **LEASED PREMISES**

Tenant shall have the right to replace this description with a description obtained from the Lease or from a description obtained from an as-built survey conducted by Tenant.

The Leased Premises consists of that portion of the Parent Parcel as defined in the Lease which shall include access and utilities easements. The Square footage of the Leased Premises shall be the greater of: (i) 2,000 square feet; (ii) Tenant's (and Tenant's customers) existing improvements on the Parent Parcel; or (iii) the legal description or depiction below (if any).

A PARCEL OF LAND FOR LEASE SITE PURPOSES, BEING A PART OF LOT 1 IN WOOD DALE VISTA INDUSTRIAL PARK, A SUBDIVISION IN THE NORTH HALF OF SECTION 10, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 8, 1975 AS INSTRUMENT NUMBER R75-54897, BOOK 74, PAGE 39 IN DUPAGE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1; THENCE NORTH 88 DEGREES 23 MINUTES 17 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 1, 29.95 FEET; THENCE SOUTH 01 DEGREES 36 MINUTES 43 SECONDS EAST PERPENDICULAR TO THE LAST DESCRIBED COURSE, 10.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 88 DEGREES 23 MINUTES 17 SECONDS EAST PARALLEL WITH THE NORTH LINE OF SAID LOT 1, 45.00 FEET; THENCE SOUTH 01 DEGREES 07 MINUTES 33 SECONDS EAST PARALLEL WITH THE WEST LINE OF SAID LOT 1, 40.00 FEET; THENCE SOUTH 88 DEGREES 23 MINUTES 17 SECONDS WEST PARALLEL WITH THE NORTH LINE OF SAID LOT 1, 50.00 FEET; THENCE NORTH 01 DEGREES 07 MINUTES 33 SECONDS WEST PARALLEL WITH THE WEST LINE OF SAID LOT 1, 40.00 FEET; THENCE NORTH 88 DEGREES 23 MINUTES 17 SECONDS EAST PARALLEL WITH THE NORTH LINE OF SAID LOT 1, 5.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,000 SQUARE FEET.

ATC Site No: 416616 VZW Site No: 187766 Site Name: Wood Dale N IL

#### **EXHIBIT A (continued)**

#### **ACCESS AND UTILITIES**

The access and utility easements include all easements of record as well that portion of the Parent Parcel currently utilized by Tenant (and Tenant's customers) for ingress, egress and utility purposes from the Leased Premises to and from a public right of way including but not limited to:

A PARCEL OF LAND FOR ACCESS & UTILITY EASEMENT PURPOSES, BEING A PART OF LOT 1 IN WOOD DALE VISTA INDUSTRIAL PARK, A SUBDIVISION IN THE NORTH HALF OF SECTION 10, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 8, 1975 AS INSTRUMENT NUMBER R75-54897, BOOK 74, PAGE 39 AND LOT 36 IN KLEFSTAD'S WOODDALE INDUSTRIAL UNIT ONE, A SUBDIVISION IN THE SECTIONS 3 AND 10, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 22, 1973 AS INSTRUMENT NUMBER R73-15596, BOOK 66, PAGE 70, ALL IN TOWNSHIP 40 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, DUPAGE COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID LOT 1: THENCE NORTH 88 DEGREES 23 MINUTES 17 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 1. 29.95 FEET; THENCE SOUTH 01 DEGREES 07 MINUTES 33 SECONDS EAST, 10.00 FEET TO THE POINT OF BEGINNING: THENCE NORTH 88 DEGREES 23 MINUTES 17 SECONDS EAST PARALLEL WITH THE NORTH LINE OF SAID LOT 1, 12.00 FEET; THENCE NORTH 01 DEGREES 07 MINUTES 33 SECONDS WEST, 6.00 FEET; THENCE NORTH 88 DEGREES 23 MINUTES 17 SECONDS EAST, 56.31 FEET; THENCE NORTH 00 DEGREES 35 MINUTES 00 SECONDS EAST 87.35 FEET; THENCE NORTH 06 DEGREES 56 MINUTES 32 SECONDS WEST, 100.00 FEET; THENCE NORTH 03 DEGREES 19 MINUTES 27 SECONDS WEST. 67.69 FEET TO THE SOUTH LINE OF RICHERT ROAD: THENCE NORTH 89 DEGREES 51 MINUTES 59 SECONDS WEST ALONG SAID SOUTH LINE, 12.02 FEET; THENCE SOUTH 03 DEGREES 19 MINUTES 27 SECONDS EAST, 68.79 FEET; THENCE SOUTH 06 DEGREES 56 MINUTES 32 SECONDS EAST, 99.59 FEET; THENCE SOUTH 00 DEGREES 35 MINUTES 00 SECONDS WEST, 75.01 FEET; THENCE SOUTH 88 DEGREES 23 MINUTES 17 SECONDS WEST, 56,66 FEET; THENCE SOUTH 01 DEGREES 07 MINUTES 33 SECONDS EAST, 18.00 TO THE POINT OF BEGINNING.

> ATC Site No: 416616 VZW Site No: 187766 Site Name: Wood Dale N IL

**Instructions for completing the Resolution and Consent Affidavit** 

\*IMPORTANT INFORMATION BELOW\*

In order to avoid delays in the completion of this transaction, the Resolution and Consent

Affidavit must be signed by ALL Members, Partners, Directors, Shareholders, Officers or

Trustees of the organization. Section 6 of this form allows for the organization to appoint one

person to sign the remaining documents but ONE HUNDRED PERCENT (100%) of the ownership

or voting interest of the organization must sign this first. Failure to comply with these

instructions or properly indicate the percentage of ownership and/or voting interest will result

in delays and could require the documents to be re-executed. If you have any questions, please

contact your land lease representative.

ATC Site No: 416616 VZW Site No: 187766

Site Name: Wood Dale N IL

#### Prepared by and Return to:

American Tower

Attn: Land Management/Emily Lacy, Esq.

10 Presidential Way Woburn, MA 01801

Assessor's Parcel No(s): 03-10-211-002

\_\_\_\_\_

#### **RESOLUTION AND CONSENT AFFIDAVIT**

#### City of Wood Dale

Be it known that, under the pains and penalties of perjury, the undersigned Members, Partners, Directors, Shareholders, Officers or Trustees, as applicable (collectively, the "Affiants") of the above referenced entity (the "Landlord"), hereby declare and resolve the following:

- Landlord (or its predecessor-in-interest) has leased or subleased a portion of land to Chicago SMSA
   Limited Partnership d/b/a Verizon Wireless (the "Tenant") pursuant to that certain Land Lease
   Agreement dated January 28, 2010 (as the same may have been amended from time to time,
   collectively, the "Lease").
- 2. Landlord and Tenant desire to enter into an amendment of the Lease (the "Amendment") in order to extend the term thereof and to further amend the Lease as more particularly set forth in the Amendment.
- 3. Landlord is duly organized, validly existing, and in good standing in the jurisdiction of its formation, organization, and/or incorporation, as applicable, and is otherwise authorized to transact business and in good standing in any other jurisdictions where such qualifications are required. Landlord has full power and authority to enter into and perform Landlord's obligations under the Amendment and the other Transaction Documents (as hereinafter defined), and the Amendment and the other Transaction Documents have been duly executed and delivered by Landlord. The Affiants listed below are the only legal and equitable owners of Landlord and are the only members, partners, directors, shareholders, officers and/or trustees, as applicable, of Landlord.
- 4. The Affiants hereby approve of the Transaction Documents and all of the terms and provisions contained therein and declare, resolve and/or affirm, as applicable, that Landlord is hereby authorized to enter into the Transaction Documents with Tenant and effect the transactions contemplated therein. The Affiants hereby declare and affirm that any other corporate and shareholder, member, partner, and/or trustee actions required to effectuate the transactions contemplated in the

ATC Site No: 416616 VZW Site No: 187766 Site Name: Wood Dale N IL

Amendment and other Transaction Documents have been completed.

- 5. The Affiants also declare that they have full legal authority to bind Landlord under the laws of the State or Commonwealth in which the Leased Premises (as defined in the Amendment) is located, and Affiants have the full authority to execute any and all of the Transaction Documents on behalf of Landlord and to nominate individuals to act on Landlord's behalf.
- 6. The Affiants hereby nominate the below listed individual (the "Nominee") as attorney-in-fact to execute and deliver the Amendment, together with any other documents and agreements, including, without limitation, the Memorandum (as defined in the Amendment), required to be executed and delivered pursuant to the terms and provisions of the Amendment (the Amendment and all of such other aforementioned agreements and documents, collectively, the "Transaction Documents"), on behalf of Affiants and Landlord. The Nominee shall have full power and authority to act on behalf of Affiants and on behalf of Landlord for purposes of executing and delivering the Transaction Documents and ensuring that Landlord fulfills its obligations thereunder. Additionally, the Nominee shall have full authority to direct the manner in which all payments made by Tenant pursuant to the Amendment are to be made to Landlord, including, without limitation, identifying which bank account(s) to transfer funds to in the event a wire payment is made by Tenant.

NOMINEE: (Print Name) (Address)	

- 7. This Resolution and Consent Affidavit shall become effective as of the date of the last notarized signature of the Affiants listed below.
- 8. Affiants hereby acknowledge and agree that Tenant, its lenders, and its title insurance company are relying upon, and are entitled to rely upon, this Resolution and Consent Affidavit and the contents hereof as a material inducement to entering into the Amendment and other Transaction Documents. Tenant, its lenders, and its title insurance company may rely upon a faxed, scanned or otherwise electronically reproduced fully-executed copy of this document as if it were an original.
- 9. This document can only be amended or modified by addendum or an amendment that is fully executed and notarized by all Affiants listed hereunder.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

ATC Site No: 416616 VZW Site No: 187766 Site Name: Wood Dale N IL

AFFIANT NO. 1	2 WITNESSES
Signature:	
Print Name:	Signature:
Date:	Print Name:
Title: (circle one) Member, Partner, Director,	Signature:
Shareholder, Officer, Trustee	Print Name:
Percentage Ownership or Voting Interest:%	
WITNESS AN	ID ACKNOWLEDGEMENT
State/Commonwealth of	<u> </u>
County of	
personally appeared of satisfactory evidence, to be the person(s) who acknowledged to me that he/she/they executed	, 202, before me, the undersigned Notary Public,, who proved to me on the basis se name(s) is/are subscribed to the within instrument and the same in his/her/their authorized capacity(ies), and that he person(s) or the entity upon which the person(s) acted,
WITNESS my hand and official seal.	
Notary Public	
Print Name:	fa-1.1
My commission expires:	[SEAL]

ATC Site No: 416616 VZW Site No: 187766 Site Name: Wood Dale N IL Packet Page #43

AFFIANT NO. 2	2 WITNESSES
Signature:	
Print Name:	Signature:
Date:	Print Name:
Title: (circle one) Member, Partner, Director,	Signature:
Shareholder, Officer, Trustee	Print Name:
Percentage Ownership or Voting Interest:%	
WITNESS AN	ID ACKNOWLEDGEMENT
State/Commonwealth of	<u> </u>
County of	
of satisfactory evidence, to be the person(s) who acknowledged to me that he/she/they executed	, 202, before me, the undersigned Notary Public,, who proved to me on the basis se name(s) is/are subscribed to the within instrument and the same in his/her/their authorized capacity(ies), and that the person(s) or the entity upon which the person(s) acted,
WITNESS my hand and official seal.	
Notary Public	
Print Name:	
My commission expires:	[SEAL]

ATC Site No: 416616 VZW Site No: 187766 Site Name: Wood Dale N IL

AFFIANT NO. 3	2 WITNESSES
Signature:	Signatura
Print Name: Date:	Signature: Print Name:
Title: (circle one) Member, Partner, Director, Shareholder, Officer, Trustee	Signature: Print Name:
Percentage Ownership or Voting Interest:%	
WITNESS AN	ID ACKNOWLEDGEMENT
State/Commonwealth of	_
County of	
personally appeared of satisfactory evidence, to be the person(s) who acknowledged to me that he/she/they executed	, 202, before me, the undersigned Notary Public,, who proved to me on the basis se name(s) is/are subscribed to the within instrument and the same in his/her/their authorized capacity(ies), and that the person(s) or the entity upon which the person(s) acted,
WITNESS my hand and official seal.	
Notary Public	
Print Name: My commission expires:	[SEAL]
iviy commission expires.	[JLAL]

ATC Site No: 416616 VZW Site No: 187766 Site Name: Wood Dale N IL

AFFIANT NO. 4	2 WITNESSES
Signature:	
Print Name:	Signature:
Date:	Print Name:
Title: (circle one) Member, Partner, Director,	Signature:
Shareholder, Officer, Trustee	Print Name:
Percentage Ownership or Voting Interest:%	
	ID ACKNOWLEDGEMENT
State/Commonwealth of	_
County of	
personally appeared	, 202, before me, the undersigned Notary Public, , who proved to me on the basis
of satisfactory evidence, to be the person(s) who acknowledged to me that he/she/they executed	se name(s) is/are subscribed to the within instrument and the same in his/her/their authorized capacity(ies), and that he person(s) or the entity upon which the person(s) acted,
WITNESS my hand and official seal.	
Notary Public	
Print Name:	
My commission expires:	[SEAL]

ATC Site No: 416616 VZW Site No: 187766 Site Name: Wood Dale N IL Packet Page #46

AFFIANT NO. 5	2 WITNESSES	
Signature:		
Print Name:	Signature:	
Date:	Print Name:	
Title: (circle one) Member, Partner, Director, Shareholder, Officer, Trustee	Signature: Print Name:	
Percentage Ownership or Voting Interest:%		
	D ACKNOWLEDGEMENT	
State/Commonwealth of	_	
County of		
of satisfactory evidence, to be the person(s) who acknowledged to me that he/she/they executed	, 202, before me, the undersigned Notary Public,, who proved to me on the basis se name(s) is/are subscribed to the within instrument and the same in his/her/their authorized capacity(ies), and that he person(s) or the entity upon which the person(s) acted,	
WITNESS my hand and official seal.		
Notary Public		
Print Name:		
My commission expires:	[SEAL]	

ATC Site No: 416616 VZW Site No: 187766 Site Name: Wood Dale N IL

AFFIANT NO. 6	2 WITNESSES
Signature:	Signaturo
Print Name:	Signature: Print Name:
Title: (circle one) Member, Partner, Director,	Signature:
Shareholder, Officer, Trustee	Print Name:
Percentage Ownership or Voting Interest:%	
WITNESS AN	D ACKNOWLEDGEMENT
State/Commonwealth of	_
County of	
of satisfactory evidence, to be the person(s) who acknowledged to me that he/she/they executed	, 202, before me, the undersigned Notary Public,, who proved to me on the basis se name(s) is/are subscribed to the within instrument and the same in his/her/their authorized capacity(ies), and that he person(s) or the entity upon which the person(s) acted,
WITNESS my hand and official seal.	
Notary Public	
Print Name:	for (1)
My commission expires:	[SEAL]

ATC Site No: 416616 VZW Site No: 187766 Site Name: Wood Dale N IL



## REQUEST FOR COUNCIL ACTION

Referred to Council: November 16, 2023

Subject: Bryn Mawr Phase III Development Agreement and Note

Staff Contact: Staci Springer, Director Department: Community Development

TITLE: A Resolution Authorizing the Execution of a Development Agreement with Cyrus One, LLC for Bryn Mawr Phase III

#### **RECOMMENDATION:**

Approval of Resolution approving documents subject to Final Attorney Review.

#### **BACKGROUND:**

The Council previously concurred and gave the City Staff and the City Attorney direction to prepare an Agreement in connection with the Public Funds being dedicated to the Bryn Mawr Phase III Project. The Development Agreement has been prepared, which establishes a Lien through Promissory Note terms, secured by a Mortgage on the Property currently owned by CyrusOne in the Bryn Mawr Phase II Development Area.

This will protect the City's money until such time as the Phase III Parcels are annexed to the municipal boundaries of the City. Once annexed, the Phase III properties will serve as the collateral for the City's contribution. Upon annexation, a Special Service Area (SSA) will be established, which will further protect the City. The SSA will be terminated upon the development of Phase III.

The \$8 million will be repaid through TIF funds established in Phase III.

#### **DOCUMENTS ATTACHED**

- ✓ Resolution
- ✓ Draft Wood Dale Cyrus One Development Agreement
- ✓ Draft Mortgage Security Agreement

# STRATEGIC PLAN ITEM ☐ Yes ☐ No

#### **RESOLUTION R-23-71**

# A RESOLUTION AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT WITH CYRUS ONE, LLC FOR BRYN MAWR PHASE III

- **WHEREAS,** the City of Wood Dale (hereinafter the "City") is a body politic and corporate, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1, et seq.; and
- **WHEREAS,** the City possesses the authority, pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*, to adopt ordinances pertaining to the public health, safety and welfare; and
- WHEREAS, the City Council of the City (hereinafter referred to as the "City Council") is the corporate authority for the City and is authorized by law to exercise all powers and to control the affairs of the City; and
- WHEREAS, the City Council possesses full power and authority to approve and pass all necessary ordinances, resolutions, rules and regulations necessary for carrying into effect the objects for which the City was formed, in accordance with the Illinois Municipal Code; and
- **WHEREAS**, the City has identified an unincorporated area of Illinois Route 83 (Busse Highway") which is an appropriate area for redevelopment (the "Bryn Mawr Phase III Property") with Data Centers; and
- **WHEREAS**, the City, in an effort to assist in said redevelopment, undertook a Study of the Area to determine whether it was appropriate for redevelopment, utilizing benefits available through Tax Increment Financing; and
- WHEREAS, the Study of the Area determined that said area satisfied the criteria to be eligible for a Tax Increment Financing District (the "Busse Highway Redevelopment Project Area"); and
- **WHEREAS**, Cyrus One, LLC., an Illinois Limited Liability Company (the "Developer"), has expressed its interest in working with the City on the redevelopment of the Property with not less than three (3) Data Centers; and
- **WHEREAS**, for such purpose the City and the Developer have negotiated the terms of a Development Agreement, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A"; and
- **WHEREAS**, the Mayor and the City Council have reviewed the terms of the proposed Development Agreement and have determined that execution of the Development Agreement is in the best interests of the future development of the City and will be beneficial to the residents of the City of Wood Dale.

# NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF WOOD DALE, DUPAGE COUNTY, AN ILLINOIS MUNICIPAL CORPORATION, as follows:

SECTION 1: The recitals set forth above are incorporated herein and made a part hereof.

SECTION 2: The Development Agreement, in substantially the same form as attached to this Resolution as Exhibit "A" and incorporated herein by reference, and as may be finalized by the City Attorney, is approved and accepted by the City of Wood Dale.

<u>SECTION 3:</u> The Mayor is authorized to execute said Development Agreement on behalf of the City of Wood Dale, which signature shall be attested to by the City Clerk.

<u>SECTION 4:</u> The Mayor, City Manager, Staff, and/or the City Attorney shall take all the steps necessary to carry out the Agreement.

<u>SECTION 5:</u> All ordinances and resolutions or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

<u>SECTION 6:</u> This Resolution shall be in full force and effect from and after its adoption, approval, and publication in pamphlet form as provided by law.

PASSED thi	s 16 <sup>th</sup> day of November, 2023
AYES:	
NAYS:	
ABSENT: _	
APPROVED	this 16 <sup>th</sup> day of November, 2023
SIGNED:	Annunziato Pulice, Mayor
ATTEST:	Lvnn Curiale, City Clerk

#### **DEVELOPMENT AGREEMENT**

This Development Agreement ("<u>Agreement</u>") is made and entered into this \_\_\_\_\_ day of November, 2023, by and between the CITY OF WOOD DALE, an Illinois municipal corporation (the "<u>City</u>"), and CYRUSONE, LLC, an Illinois limited liability company (the "<u>Developer</u>"). The City and the Developer are from time to time individually referred to as a "<u>Party</u>" and collectively referred to as the "<u>Parties</u>."

WHEREAS, the City is a municipality as defined by and subject to the Illinois Municipal Code, 65 ILCS 5/1-1-1, et seq.; and

WHEREAS, the Developer is an Illinois limited liability company which has its principal place of business in Dallas, TX; and

WHEREAS, the Developer is the fee simple owner of certain real property located within the corporate boundaries of the City of Wood Dale, generally described as approximately 24 acres of land roughly bounded by Busse Highway to the east, Bryn Mawr Avenue to the north, parcels north of and adjacent to Washington Street to the south, and parcels west of and adjacent to Pine Street to the west, in Wood Dale, Illinois, being described in Exhibit "A" attached hereto and incorporated herein (the "Bryn Mawr Phase II Property"); and

WHEREAS, the Developer is the contract purchaser of certain real property located immediately south of the Bryn Mawr Phase II Property, outside the corporate boundaries of the City of Wood Dale, and more particularly described as approximately 44 acres of land roughly bounded by Busse Highway to the east, the parcels north of and adjacent to Washington Street to the north, the parcels west of and adjacent to Pine Street on the west, and Foster Avenue and Hawthorne Avenue on the south, in Wood Dale, Illinois, being described in Exhibit "B" attached hereto and incorporated herein (the "Bryn Mawr Phase III Property"); and

WHEREAS, the Bryn Mawr Phase II Property is zoned by the City as I-1 Industrial/Business Park District and is included in a tax increment allocation financing district identified therein as the Busse Highway Redevelopment Project Area; and

WHEREAS, the Developer intends to acquire, annex, and develop the Bryn Mawr Phase III Property, which is outside but adjacent to and wholly surrounded by the corporate boundaries of the City of Wood Dale and the City of Bensenville, IL;

WHEREAS, Developer has submitted an application for the Bryn Mawr Phase III Property into the City and, upon annexation, to rezone said Property under City zoning as I-1 Industrial/Business Park District where warehouses are permitted in the I-1 District, and to redevelop the Bryn Mawr Phase III Property pursuant to the provisions of the City's Unified Development Code with not less than three (3) data centers (the "Bryn Mawr Phase III Project"); and

WHEREAS, the Developer intends to redevelop, construct and operate the Bryn Mawr Phase III Project in accordance with (1) a concept plan attached hereto and incorporated as <a href="Exhibit">Exhibit "C"</a> (2) a construction schedule attached hereto and incorporated as <a href="Exhibit">Exhibit "D"</a>, and (3) governing City ordinances; and

WHEREAS, the Developer and the City agree that the development of the Bryn Mawr Phase III Project will:

- a. substantially increase the market value and the equalized assessed value of the Bryn Mawr Phase III Property, and
- b. provide orderly development consistent with the City's existing land use plans; and
- c. create or retain job opportunities within the City; and

- d. serve to further the development of adjacent areas; and
- e. strengthen the commercial sector of the City; and
- f. generate additional sales tax revenue for the City; and
- g. provide other economic benefits to the City that will promote the public health, safety, and general welfare of the City and its residents and businesses.

WHEREAS, but for City financial assistance, Developer's acquisition and development of the Bryn Mawr Phase III Property would not be economically feasible and would not occur; and

WHEREAS, the City wishes to support, encourage, and facilitate the Bryn Mawr Phase III Project by funding a portion of the Developer's land acquisition costs subject and according to the terms and conditions of this Agreement; and

WHEREAS, the Corporate Authorities find that this Agreement is made in the best interests of the City; and

WHEREAS, the Developer finds that this Agreement is made in the best interests of the Developer.

NOW, THEREFORE, in consideration of the mutual promises set forth below and all other good and valid consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

- 1. <u>Incorporation of Recitals</u>. The above-stated Recitals are a material part of this Agreement and are incorporated herein by reference, as if fully set forth.
- 2. <u>Definitions.</u> The following words, terms and/or phrases shall have the meanings set forth thereafter and such meanings shall be applicable to the singular and plural form thereof:
  - A. "Business Day" shall mean any weekday except for those weekdays that a

- banking institution within the State of Illinois is required by said state to be closed.
- B. "City Funds" shall mean readily available funds in the amount of eight million dollars (\$8,000,000.00).
- C. "Completion Date" shall mean, respectively, "December 31, 2029 for the first data center building in Bryn Mawr Phase III, "December 31, 2030 for the second data center building in Bryn Mawr Phase III, and "December 31, 2031 for the third data center building in Bryn Mawr Phase III, or such other dates as the Parties mutually agree in writing.
- D. "Event of Default" shall mean the occurrence or happening of any one or more of the events identified in Section 4.B.(2)(i) and (ii) of this Agreement.
- E. "Mortgage" shall mean a mortgage in favor of the City or its assigns as security for the Mortgage Term Note, against all or that portion of the Bryn Mawr Phase II Property that has a market value not less than the City Funds, in form and substance attached hereto as Exhibit "F".
- F. "Note" shall mean the Mortgage Term Note in the amount of the City

  Funds in form and substance attached hereto as Exhibit "E."
- G. "SSA Law" shall mean the Special Service Area Tax Law, 35 ILCS 200/27-5 et seq.
- H. "TIF Act" shall mean the Tax Increment Allocation Redevelopment Act,65 ILCS 5/11-74.4 et seq.
- 3. Construction and Operation of the Project. From and after the effective date of

this Agreement, the Developer shall:

- A. Close on the acquisition of all of the Bryn Mawr Phase III Property;
- B. Pursue zoning and development approval, and building permits, and commence and diligently continue construction of the Bryn Mawr Phase III Project in accordance with the terms and conditions of this Agreement.
- C. Complete construction of all three (3) data center buildings in the Bryn Mawr Phase III Project, so that each building is ready for the issuance of occupancy permits by the City, no later than the respective Completion Date for each building.
- 4. <u>City Incentive</u>. Subject to the terms and provisions of this <u>Section 4</u>, the Developer shall obtain all financing necessary to complete the Project. However, in consideration of the Developer's substantial economic commitment to the redevelopment of the Bryn Mawr Phase III Property, the City agrees to provide the following as an economic incentive to the Developer.
  - A. <u>Generally</u>. Subject to the terms, conditions and restrictions of this <u>Section</u> <u>4</u>, on or before November 27, 2023 the City shall the deliver the City Funds to the Developer solely for Developer's purchase of the Bryn Mawr Phase III Property.

#### B. <u>Note and Mortgage</u>.

- (1) Developer shall, as a condition of and upon receipt of the City Funds execute and deliver to the City the Mortgage and Note.
- (2) No payment on the Note shall become due prior to the City's establishment of a special service area and tax increment financing district including the Bryn Mawr Phase III Property, unless:
  - (i) CyrusOne or the successor owner of the Bryn Mawr Phase

II Property or the Bryn Mawr Phase III Property: (a) files any voluntary or had involuntarily filed against it in any court or with any governmental body pursuant to any statute either of the United States or of any State, a petition in bankruptcy or insolvency or seeking to effect any plan or other arrangement with creditors, or seeking the appointment of a receiver; (b) had a receiver, conservator or liquidating agent or similar person appointed for all or a substantial portion of its assets, suffered the attachment or other judicial seizure of all, or substantially all of its assets; (c) gives notice to any person or governmental body of insolvency; or (d) has made an assignment for the benefit of its creditors or taken any other similar action for the protection or benefit of its creditors; or

- (ii) Developer abandons the Bryn Mawr Phase III Project, as evidenced by:
- a. CyrusOne's conveyance of any Bryn Mawr Phase III Property without the City's written consent; or
- b. CyrusOne's giving the City notice that it is abandoning the
   Bryn Mawr Phase III Project; or
- c. CyrusOne's withdrawing its zoning and development application or in the City's reasonable judgment CyrusOne's failure to diligently pursue annexation, zoning and development approval for the Bryn Mawr Phase III Project; or

- d. CyrusOne's other default or breach of this Agreement.
- (3) The Note shall be secured by the Mortgage.
- (4) The Note shall be cancelled and the Mortgage shall be released upon Developer's full payment under the Note, or at such earlier time as the special service area and tax increment financing under Sub-Section C. of this Section 4. are established.

#### C. Special Service Area and Tax Increment Financing.

- (1) The City's allocation of the City Funds and the City's issuance of debt up to that amount are for purposes constituting special services under the SSA Law.
- (2) The parties agree to establish and implement a special service area that includes the Bryn Mawr Phase III Property ("SSA") and an ad valorem tax pursuant thereto and in full compliance with the SSA Law.
- (3) The parties shall cooperate with respect to the establishment and implementation of the SSA. Developer and its successor(s) agree not to object to the establishment of the SSA.
- (4) The SSA shall be established as soon as reasonably possible after the City's annexation and rezoning of the Bryn Mawr Phase III Property.
  - (5) The SSA shall be structured as follows:
    - (A) The term of the SSA and the ad valorem tax pursuant thereto shall remain in effect until the earlier of (i) the Note is paid in full; or (ii) the City Funds together with actual interest thereon at the Interest Rate as stated the Note are

captured by the SSA, (iii) the date that is ten (10) years following the last of the Project's Completion Dates; or (iv) the occupancy permits required for the occupancy and operation of each Bryn Mawr Phase III Project data center are issued by the City on or before the respective Completion Date for each data center. Upon the occurrence of (i), (ii) (iii) or (iv), the SSA shall be terminated by the City.

- (B) The ad valorem tax budgeted for levy pursuant to the SSA shall be abated by the City each year unless: (i) there has been an Event of Default; or (ii) the certificates of occupancy for each data center building have not been issued by the City on or after any of the data center buildings' respective Completion Date.
- (6) Developer and its assigns or successors in interest to this Agreement or the Bryn Mawr Phase III Property, agrees to and shall timely pay any and all SSA taxes that are approved, established, and levied.
- (7) Concurrently with the establishment of the SSA, as reasonably practicable, the City shall establish and implement pursuant to the TIF Act a redevelopment plan and project consisting of the Bryn Mawr Phase III Project, a redevelopment project area consisting of the Bryn Mawr Phase III Property, and tax increment allocation financing. The parties shall cooperate with respect to the establishment and implementation of the Bryn Mawr Phase III TIF.

- (8) As between the City and the Developer, the City will be entitled to 100% of all Incremental Taxes which are deposited from time to time in the special tax fund established by the City for the Bryn Mawr Phase III Project. As used herein, "Incremental Taxes" or "Tax Increment" means in each calendar year during the term of this Agreement, the portion of the ad valorem real estate taxes arising from levies upon taxable real property in the Bryn Mawr Phase III Property by taxing districts, as defined in Sections 11-74.4-3(t) and 11-74.4-8(b)(4) of the TIF Act, that is attributable to the increase in the equalized assessed value of the taxable real property in the Bryn Mawr Phase III Project Area over the equalized assessed value of the taxable real property in the Bryn Mawr Phase III Project Area pursuant to the DuPage County Certificate of Equalized Assessed Valuation issued for the Area, which, pursuant to the City's tax increment financing ordinance and Section 5/11-74.4-8(b) of the TIF Act, has been allocated to and when collected shall be paid to the comptroller of the City for deposit by the comptroller into the fund established to pay project costs and obligations incurred in the payment thereof.
- (9) The City Funds paid to Developer for the acquisition of Bryn Mawr Phase III land are a debt and are mortgaged as a TIF-eligible expense. The Tax Increment available for reimbursement to the City each calendar year shall be allocated by the City to pay City project costs including the repayment of the City Funds or the City's resulting debt obligations.
- (10) In the Event of Default by Developer the City shall levy the SSA tax and Developer shall make the SSA tax payments. If the Developer does not

timely make SSA tax payments, the City shall be entitled to record a lien against the Bryn Mawr Phase III Property, in the amount of the outstanding SSA balance remaining due, and foreclose said lien in the same manner as the foreclosure of a mortgage.

5. Upon Developer's acquisition of the Bryn Mawr Phase III Property, Developer shall procure (or shall have procured, as applicable) and shall maintain, at Developer's sole cost and expense, in full force and effect during construction operations, until a certificate of occupancy has been issued by the City, a policy or policies of general commercial comprehensive liability insurance, including contractual liability insurance and, during any period of construction, contractor's general liability insurance with liability coverage under each such policy to be not less than Three Million and No/100 U.S. Dollars (\$3,000,000.00) for each occurrence and in the aggregate, worker's compensation insurance in statutory limits, employer's liability insurance with at least One Million and No/100 U.S. Dollars (\$1,000,000.00) per accident, One Million and No/100 U.S. Dollars (\$1,000,000.00) per disease, per employee and One Million and No/I00 U.S. Dollars (\$1,000,000.00) per disease, aggregate and auto liability with combined single limits of at least Five Million and No/100 U.S. Dollars (\$5,000,000.00) per occurrence. All such policies shall be in such form and issued by such companies as shall be reasonably acceptable to the City to protect the City and the owner of the Bryn Mawr Phase III Property from any liability incidental to the use of or resulting from any claim for personal injury or property damage occurring at, on or about the Bryn Mawr Phase III Property or stemming from the construction and/or improvement of the Bryn Mawr Phase III Project. Each such policy shall name the City and its officials (whether appointed or elected), including the City Mayor and the City Councilmembers (the "City Council"), and the City's officers, employees, agents and

attorneys, as additional insureds and shall contain an affirmative statement by the issuer that it will give written notice to Developer and the City at least thirty (30) calendar days prior to any cancellation or amendment of its policy. A certificate of insurance for each such policy naming the City as an additional insured consistent with the above requirements must be delivered to the City by Developer before Developer commences construction of any of the improvements that are a part of the Redevelopment Project. Any other insurance or self-insurance maintained by the City shall be in excess of and shall not contribute to the protection the City receives as an additional insured on the insurance required by the Agreement. Subject to the rights of the Developer's lender, any liability insurance proceeds received hereunder to which the City is legally entitled shall be deposited in the general operational fund of the City as such sums will be used to reimburse the City for sums normally paid from the general fund of the City. Developer shall require any and all subsequent owners or tenants of the Bryn Mawr Phase III Property to comply with the terms of this Section of this Agreement. In any document regarding or related to the sale, lease or other disposition of the Property whereby Developer is dispossessed of the Bryn Mawr Phase III Property, such documentation shall: (a) direct the subsequent owner or tenant to comply with the terms of this Section of this Agreement; (b) name the City as a third-party beneficiary to the aforesaid documentation; and (c) ensure that the covenants, conditions and terms of this Section of this Agreement are explicitly incorporated into the dispositional agreements.

- 6. <u>Mutual Assistance</u>. The City and the Developer agree to do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms hereof.
  - 7. Notices. All notices required to be given hereunder shall be in writing and shall

be given by registered or certified mail, return receipt requested, or by a nationally recognized

overnight courier with a copy sent by first class mail, or by facsimile. Notices given by

registered or certified mail shall be deemed to have been received five days after such notices are

mailed addressed to the Parties at the addresses set forth below. Any notice which is sent by

overnight courier, hand-delivered or sent by facsimile shall be deemed to have been received on

the date of delivery or, as the case may be, on the date of transmission. Either Party may change

its address, for purpose of receiving notice, by notice to the other Party given in compliance with

this Section 7. Notices to the Parties shall be addressed to the respective addresses set forth

below:

If to the City:

City of Wood Dale

404 N. Wood Dale Road

Wood Dale, Illinois 60191

Attn: Community Development Director

Phone: (630) 766-4900

Fax:

(630) 766-4251

With a copy to:

Bond, Dickson & Conway

400 S. Knoll Street, Unit C

Wheaton, Illinois 60187

Attn: Patrick K. Bond

Phone: (630) 681-1000

Fax:

(630) 681-1020

With a copy to:

Ice Miller LLP

200 W. Madison Street, Suite 3500

Chicago, Illinois 60606

Attn: James Snyder

Phone: (312) 726-7127

Fax:

(312) 726-2696

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#### If to the Developer:

CyrusOne, LLC
2850 N Harwood St.,
Suite 2200
Dallas, Texas 75201
Attn: Bradd Hout
Phone: ( )
Fax: ( )

With a copy to:

Attn:
Phone:

#### 8. <u>General Provisions</u>.

Fax:

- A. <u>Entire Agreement</u>. This Agreement, including all exhibits attached hereto, constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof, and there are no other prior or contemporaneous written or oral agreements, undertakings, promises, warranties, or covenants by and between the Parties that are not contained herein.
- B. <u>Severability</u>. If any provision of this Agreement is held invalid by a court of competent jurisdiction, after exhaustion of all appeals or periods for such, or in the event such a court shall determine that the City does not have the power to perform any such provision, after exhaustion of all appeals or periods for such appeals, such provision shall be deemed to be excised here-from, and the invalidity thereof shall not affect any of the other provisions contained herein, and such judgment or decree shall relieve the City from performance under such invalid provision of this Agreement. At its sole expense, the City agrees to defend any court action that may be brought attacking the City's power

or authority to enter into this Agreement or perform any of its provisions, including any appeals therefrom reasonably required by law.

- C. <u>Waiver</u>. No waiver of any condition or provision of this Agreement by either Party shall be valid unless in writing signed by such Party. No such waiver shall be deemed or construed as a waiver of any other or similar provision or of any future event, act or default.
- D. <u>Amendment</u>. This Agreement may be amended only by a written instrument executed by both of the Parties.
- E. <u>Binding Effect</u>. The parties intend that the terms and conditions of this Agreement shall be a covenant running with the land and shall constitute a lien against the Bryn Mawr Phase III Property until the Note and Mortgage are released as provided herein and against the Bryn Mawr Phase III Property until the SSA is cancelled or expires as provided herein; and that the terms and conditions of this Agreement shall be enforceable by the CITY and shall be binding upon and inure to the benefit of the parties hereto, their grantees, successors in interest, assignees, heirs, executors, and the owners of interests in the aforesaid CyrusOne Properties.
- F. <u>Section and Other Headings</u>. Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- G. <u>Assignment</u>. The Developer shall not assign this Agreement to any person or entity without the prior written consent of the City, which may be withheld in the City's reasonable discretion. No such assignment shall be effective, even if consented to by the City, unless and until the assignee assumes in writing the obligations of the

Developer hereunder.

- H. Permits and Approvals. The Developer recognizes and agrees that the City has sole discretion with regard to all approvals and permits including, but not limited to, approval of the final development plan, building permits, and occupancy permits, and failure on the part of the City to grant any required approval or issue any required permit shall not be deemed as the cause of default under this Agreement, or give rise to any claim against or liability to the City pursuant to this Agreement unless such approval shall be unreasonably withheld by the City.
- I. <u>Authorization to Execute</u>. The officers of the Developer who have executed this Agreement warrant that they respectively have been lawfully authorized to execute this Agreement on the Developer's behalf. The Mayor and Clerk of the City hereby warrant that they have been lawfully authorized by the City's Corporate Authorities to execute this Agreement. The Developer and the City shall deliver, upon request, to each other at the respective time such entities cause their authorized agents to affix their signatures hereto, copies of all articles of incorporation, by-laws, resolutions, ordinances, or other documents required to legally evidence the authority to so execute this Agreement on behalf of the respective Parties.
- J. <u>Defaults</u>. Failure on the part of the Developer or the City to comply with any term, representation, warranty, provision or condition of this Agreement, after written notice thereof from the other Party and failure to cure within 15 Business Days thereafter shall constitute an event of default unless such default is caused by the action or inaction of the other Party or cannot be cured within such time period and, in which event, the Party in default diligently and continuously exerts its best efforts to cure such

default, in which event the cure period shall be extended by such period of time required to cure the default upon the written agreement of the non-defaulting Party. ("Event of Default") Upon an occurrence of an Event of Default by the Developer or the City, the non-defaulting Party (unless such default is a result of the action or non-action of the non-defaulting Party) shall be relieved of any and all of its obligations arising pursuant to this Agreement, and such obligations shall be immediately canceled and without any force or effect, and the non-defaulting Party may take whatever action at law or in equity to enforce the performance and observance of any obligation, understanding, covenant, or agreement as aforesaid, including, but not limited to, costs incurred by use of its employees, officers and attorneys.

- K. <u>Governing Laws and Venue</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. and any legal proceeding of any kind arising from this Agreement shall be filed in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.
- L. <u>Counterparts</u>. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute a single instrument.
- M. <u>Force Majeure</u>. Neither the City nor the Developer nor any successor in interest to either of them shall be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, labor strike or work stoppage, shortage of required, required energy to be provided by Commonwealth Edison, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures

of abnormal degree or of abnormal duration, tornados or cyclones, and other events or conditions beyond the reasonable control of the Party affected which in fact interferes with the ability of such Party to discharge its obligations hereunder. The Party relying on this Section with respect to any such delay shall, upon the occurrence of the event causing the delay, immediately give written notice to the other Party. The Party relying on this Section with respect to any such delay may rely on this Section only to the extent of the actual number of days of delay affected by any such events described above.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

CITY OF WOOD DALE	CyrusOne, LLC an Illinois limited liability company
By:	
Annunziato Pulice, Mayor	By:
	Name:
	Its:
ATTEST:	ATTEST:
Lynn Curiale, Clerk	, Secretary
-	

# EXHIBIT A BRYN MAWR PHASE II PROPERTY



### EXHIBIT B

### BRYN MAWR PHASE III



# EXHIBIT C

## CONCEPT PLAN



# EXHIBIT D

## CONSTRUCTION SCHEDULE



# EXHIBIT E

# NOTE



# EXHIBIT F

## MORTGAGE



(Above sp	pace for recording information)		
************	***********	******	*******
THIS INSTRUMENT PREPARED BY:			Ice Miller LLP bot Dr., Suite 455 sle, Illinois 60532
AFTER RECORDING, MAIL TO:	Ś		

### MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES

#### Dated as of November 27, 2023

THIS MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES (this "Mortgage") is made and dated to be effective as of the date set forth above by

CYRUSONE, LLC, a Delaware limited liability company (the "Mortgagor"),

to

CITY OF WOOD DALE, an Illinois municipal corporation, its successors and assigns (the "Mortgagee").

#### WITNESSETH:

WHEREAS, Mortgagor is the owner and holder of fee simple title in and to all of the following described real estate located in the County of DuPage, State of Illinois, which real estate forms a portion of the Premises hereinafter described:

Per the Legal Description set forth in <u>Exhibit A</u> attached hereto and forming a part hereof, containing approximately 24 acres.

WHEREAS, pursuant to a Development Agreement (the "<u>Development Agreement</u>") and a Mortgage Term Note (the "<u>Note</u>") (each as amended or replaced from time to time); both being of even date herewith between Mortgagor and Mortgagee, Mortgagor agreed to provide a term loan to the Mortgagee in the original principal amount of Eight Million and 00/100 Dollars (\$8,000,000).

NOW, THEREFORE, to secure the payment of the principal of and interest due under the Note, to secure the payment of all other sums which may at any time be due and owing or required to be paid as herein provided, and the performance and observance of all of the covenants, agreements and provisions herein, and to secure the payment and performance by Mortgagor of its obligations under the Note, the Development Agreement, and all other documents associated with the foregoing, inclusive of and any amendments, modifications, extensions, renewals and replacements of any of the foregoing (collectively, the "Indebtedness" and all such documents referred to herein as the "Indebtedness Documents"), and in consideration of the extension of credit by Mortgagee to Mortgagor, as evidenced by the Note, and for other good and valuable considerations, the receipt and sufficiency whereof are hereby acknowledged by Mortgagor, Mortgagor DOES HEREBY GRANT, DEMISE, RELEASE, ALIEN, MORTGAGE and CONVEY unto Mortgagee, its successors and assigns forever, the real estate above described (and together with the other property mentioned in the following paragraphs hereto, is called the "Premises");

TOGETHER with all right, title and interest of Mortgagor, including any after-acquired title or reversions, in and to the beds of the ways, streets, avenues and alleys adjoining the aforesaid real estate;

TOGETHER with all rights, title and interest of Mortgagor, in and to all minerals and mineral rights belonging or appertaining to the Premises, including any right to prospect for, drill for, produce, mine, extract and remove such minerals upon, from and under the Premises;

TOGETHER with all and singular the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, other rights, liberties and privileges thereof or in any way now or hereafter appertaining to said real estate, including any other claim at law or in equity as well as any after-acquired title, franchise or license and the reversions and remainder and remainders thereof;

TOGETHER with all buildings and improvements of every kind and description now or hereafter erected or placed thereon and all materials intended for construction, reconstruction, alteration and repairs of such improvements now or hereafter erected thereon, all of which

materials shall be deemed to be included within the Premises immediately upon the delivery thereof to the aforesaid real estate, and all fixtures and articles of personal property now or hereafter owned by Mortgagor and attached to or forming a part of or used in connection with the aforesaid real estate or the operation and convenience of any building or buildings and improvements located thereon, including, but without limitation, all furniture, furnishings, equipment, apparatus, machinery, motors, elevators, fittings, screens, awnings, partitions, carpeting, curtains and drapery, hardware used or useful in the operation and/or convenience of the aforesaid real property and improvements thereon and all plumbing, electrical, heating, lighting, ventilating, refrigerating, incineration, air-conditioning and sprinkler equipment, systems, fixtures and conduits (including, but not limited to, all furnaces, boilers, plants, units, condensers, compressors, ducts, apparatus and hot and cold water equipment and system), air conditioners, antennae, appliances, basins, bathtubs, bidets, bookcases, cabinets, coolers, dehumidifiers, disposals, doors, dryers, ducts, dynamos, engines, equipment, escalators, fans, fittings, floor coverings, hardware, heaters, humidifiers, incinerators, lighting, motors, ovens, pipes, pumps, radiators, ranges, recreational facilities, refrigerators, communication or security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, building materials, and all renewals or replacements thereof or articles in substitution therefor, in all cases whether or not the same are or shall be attached to said building or buildings in any manner, it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the aforesaid realty shall, so far as permitted by law, be deemed to be fixtures, a part of the realty, and security for the Indebtedness. Notwithstanding the agreement and declaration hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Illinois Uniform Commercial Code), this instrument shall constitute a security agreement, creating a security interest in such goods as collateral, in Mortgagee as a secured party, all in accordance with said Illinois Uniform Commercial Code as more particularly set forth in the Section herein titled "Uniform Commercial Code";

TOGETHER with all right, title, estate and interest of Mortgagor in and to the Premises, property, improvements, furniture, furnishing, apparatus and fixtures hereby conveyed, assigned, pledged and hypothecated, or intended so to be, and all right to retain possession of the Premises after default in payment or breach of any covenant herein contained;

TOGETHER with all right, title and interest of Mortgagor in and to any and all contracts now or hereafter relating to the Premises and executed by any architects, engineers, construction manager's owner's representatives, materialmen, suppliers or contractors, including all amendments, supplements, and revisions thereof, together with all Mortgagor's rights and remedies thereunder and benefit of all covenants and warranties thereon, and also together with all right, title and interest of Mortgagor in and to any and all drawings, designs, estimates, layouts, surveys, plats, plans, and specifications prepared by an architect, engineer, or contractor, including any amendments, supplements, and revisions thereof and the right to use and enjoy the same, as well as all other rights, licenses, permits, agreements, and test results relating to construction on the Premises;

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TOGETHER with all right, title and interest of Mortgagor in and to any and all contracts, permits and licenses now or hereafter relating to the operation of the Premises or the conduct of business thereon, including without limitation all management and other service contracts, and the right to appropriate and use any and all trade names used or to be used in connection with such business;

TOGETHER with all right, title and interest of Mortgagor in the rents, issues, deposits (including security deposits and utility deposits), and profits in connection with all leases, contracts and other agreements made or agreed to by any person or entity (including without limitation Mortgagor with any person or entity pertaining to all or any part of the Premises, whether such agreements have been heretofore or are hereafter made;

TOGETHER with all right, title and interest of Mortgagor in all performance bonds or other surety, letters of credit, payment intangibles and general intangibles relating to the Premises, and all proceeds thereof;

TOGETHER with all right, title and interest of Mortgagor in and to rights in and proceeds from all fire and hazard, loss-of-income, and other non-liability insurance policies now or hereafter covering improvements now or hereafter located on the Premises or described in this Mortgage, the use or occupancy thereof, or the business conducted thereon; and

TOGETHER with all awards and other compensation heretofore or hereafter to be made to the present and all subsequent owners of the Premises for any taking by eminent domain, either permanent or temporary, of all or any part of the Premises or any easement or appurtenance thereof, including severance and consequential damage and change in grade of streets, which said awards and compensation are hereby assigned to Mortgagee, and Mortgagor hereby designates Mortgagee as its agent and directs and empowers Mortgagee, at the option of Mortgagee, on behalf of Mortgagor, or the successors or assigns of Mortgagor, to adjust or compromise the claim for any award and to collect and receive the proceeds thereof, to give proper receipts and acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds as provided in the Section herein titled "Condemnation."

TO HAVE AND TO HOLD the Premises, with the appurtenances, and fixtures, unto Mortgagee, its successors and assigns, forever, for the purposes and upon the uses and purposes herein set forth together with all right to possession of the Premises after any default in the payment of all or any part of the Indebtedness, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default as hereinafter defined; Mortgagor hereby RELEASING AND WAIVING all rights under and by virtue of the homestead exemption laws, if any, of the State in which the Premises are located.

PROVIDED, NEVERTHELESS, that (1) if Mortgagor shall: (i) pay when due the Indebtedness; and (ii) duly and/or timely perform and observe all of the terms, provisions, covenants and agreements provided for in the Indebtedness Documents, and herein provided, to be performed and observed by Mortgagor; or (2) the special service area is established as required under the Development Agreement; then this Mortgage and the estate, right and interest of

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Mortgagee in the Premises shall cease and become void and of no effect, otherwise to remain in full force and effect.

#### MORTGAGOR COVENANTS AND AGREES AS FOLLOWS:

**Section 1. Payment of Indebtedness**. Mortgagor shall pay when due (a) the principal of and interest and premium, if any, on the Indebtedness evidenced by the Note, and (b) all other Indebtedness Documents; and Mortgagor shall duly and punctually perform and observe all of the terms, provisions, conditions, covenants and agreements on Mortgagor's part to be performed and observed as provided herein, in the Development Agreement, the Note and the other the Indebtedness Documents and this Mortgage and shall secure such payment, performance and observance.

Maintenance, Repair, Restoration, Liens, etc. Mortgagor shall (a) Section 2. promptly repair, restore or rebuild any building or improvement now or hereafter included within the definition of Premises which may become damaged or be destroyed whether or not proceeds of insurance are available or sufficient for the purpose; (b) keep the Premises in good condition and repair, without waste, and free from mechanic's, materialmen's or similar liens or claims or other liens or claims for lien; (c) pay, when due, any indebtedness which may be secured by a lien or charge on the Premises, whether or not junior to the lien hereof and, upon request, exhibit to Mortgagee satisfactory evidence of the discharge of such lien; (d) complete, in the manner and within the time provided under the Development Agreement, any building or buildings or other improvements now or at any time in the process of erection upon the Premises; (e) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof; (f) make or permit no material alterations in the Premises except as required by the Development Agreement and applicable law or ordinance without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed; (g) suffer or permit no change in the general nature of the occupancy of the Premises; (h) not initiate or acquiesce in any zoning reclassification with respect to the Premises without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld or delayed; and (i) not suffer or permit any unlawful use of, or nuisance to exist upon, the Premises.

Section 3. Other Liens. Except as otherwise expressly provided herein and for Permitted Encumbrances, Mortgagor shall not create or suffer to exist any mortgage, lien, charge or encumbrance to attach to the Premises, whether such lien or encumbrance is inferior or superior to the lien of this Mortgage, excepting only the lien of real estate taxes and assessments not due or delinquent. As used herein, "Permitted Encumbrances" shall mean with respect to the Premises, all private, public and utility easements and roads and highways, if any; existing leases and tenancies; if any; special or general taxes not yet due and payable; covenants, conditions, restrictions and easements of record, and any Permitted Liens under the Indebtedness Documents.

**Section 4. Taxes**. Mortgagor shall pay before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "<u>Taxes</u>"), whether or not assessed against Mortgagor, if applicable to the Premises or any interest therein, or the Indebtedness, or any obligation or agreement secured hereby; and Mortgagor shall, upon written request, furnish to Mortgagee duplicate receipts therefor. Mortgagor shall pay in full under protest

in the manner provided by statute, any Taxes which Mortgagor may desire to contest; provided, however, that if deferment of payment of any such Taxes is required to conduct any contest or review, Mortgagor shall deposit with Mortgagee the full amount thereof, together with an amount equal to the estimated interest and penalties thereon during the period of contest, and in any event, shall pay such Taxes, notwithstanding such contest, if in the reasonable opinion of Mortgagee the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; and if Mortgagor shall not pay the same when required to do so, Mortgagee may do so and may apply such deposit for the purpose. In the event that any law or court decree has the effect of deducting from the value of the land for the purpose of taxation any lien thereon, or imposing upon Mortgagee the payment of the whole or any part of the Taxes or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of Mortgagee in the Premises, or the manner of collection of Taxes, so as to affect this Mortgage or the Indebtedness or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such Taxes, or reimburse Mortgagee therefor on demand, unless such payment or reimbursement by Mortgagor is unlawful, in which event the Indebtedness shall be due and payable within thirty (30) days after written demand by Mortgagee to Mortgagor. Nothing in this Section shall require Mortgagor to pay any income, franchise or excise tax imposed upon Mortgagee, excepting only such which may be levied against such income expressly as and for a specific substitute for Taxes pertaining to the Premises, and then only in an amount computed as if Mortgagee derived no income from any source other than its interest hereunder.

**Section 5. Insurance Coverage.** Mortgagor at its own expense will insure and keep insured itself and all of the buildings and improvements now or hereafter included within the Premises, and each and every part and parcel thereof against such perils and hazards and in such amounts as Mortgagee may from time to time reasonably require, and in any event including the insurance required under the Development Agreement.

**Section 6. Insurance Policies**. All policies of insurance to be maintained and provided as required herein shall be with companies, and in such form and amounts satisfactory to Mortgagee and all policies of casualty insurance shall have attached thereto mortgagee clauses or endorsements in favor of and with loss payable to and in form satisfactory to Mortgagee and shall provide that such insurance may not be cancelled or altered as to Mortgagee without at least thirty (30) days prior written notice to Mortgagee. Mortgagor will deliver all policies and certificates of insurance, including additional and renewal policies to Mortgagee and, in case of insurance policies about to expire, Mortgagor will deliver renewal policies not less than thirty (30) days prior to the respective dates of expiration.

#### Section 7. Reserved.

**Section 8. Proceeds of Insurance**. Mortgagor will give Mortgagee prompt notice of any damage to or destruction of the Premises, and:

(a) In case of loss covered by policies of insurance, Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be) is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of Mortgagor, or (ii) allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; provided that Mortgagor may itself adjust losses

aggregating not in excess of One Hundred Thousand Dollars (\$100,000.00) if such adjustment is carried out in a competent and timely manner, and provided that in any case Mortgagee shall, and is hereby authorized to, collect and give receipt for any such insurance proceeds; and the expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness, and shall be reimbursed to Mortgagee upon demand;

- (b) In the event of any insured damage to or destruction of the Premises or any part thereof (herein called an "Insured Casualty"), and if, in the reasonable judgment of Mortgagee, the Premises can be restored to an economic unit not less valuable than the same was prior to the Insured Casualty and adequately securing the outstanding balance of the Indebtedness, then, if no Event of Default, as hereinafter defined, shall have occurred and be then continuing and Mortgagor shall not be in default hereunder, the proceeds of insurance shall be applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Premises or part thereof subject to Insured Casualty, as provided for in the Section herein titled "Disbursement of Insurance Proceeds"; and Mortgagor hereby covenants and agrees forthwith to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided, always, that Mortgagor shall pay all costs of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof;
- (c) Except as provided in subsection (b) of this Section, Mortgagee may apply the proceeds of insurance from any Insured Casualty upon the Indebtedness, in such order or manner as Mortgagee may elect; provided, however, that such application of proceeds shall not be considered a voluntary prepayment of any Indebtedness which would require the payment of any prepayment premium or penalty; and
- (d) In the event that proceeds of insurance, if any, shall be made available to Mortgagor for the restoring, repairing, replacing or rebuilding of the Premises, Mortgagor hereby covenants to restore, repair, replace or rebuild the same, to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with plans and specifications to be first submitted to and approved by Mortgagee, which approval shall not be unreasonably withheld or delayed.
- **Disbursement of Insurance Proceeds**. In the event Mortgagor is entitled Section 9. to reimbursement out of insurance proceeds held by Mortgagee, such proceeds shall be disbursed from time to time upon the Mortgagee being furnished with (i) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (ii) funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, plats of survey, permits and such other evidences of cost, payment and performance as the Mortgagee may reasonably require and approve; and the Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding by submitted to and approved by the Mortgagee prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety (90%) percent of the value of the work performed from time to time; funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and at all times the undisbursed balance of such proceeds remaining in the hands of the Mortgagee, together with

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funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee must be sufficient to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of insurance proceeds held by the Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall, at the option of Mortgagee, be applied on account of the Indebtedness then most remotely to be paid, or be paid to the Mortgagor.

Section 10. Condemnation. Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any award or claim for damages for any of the Premises taken or damaged under the power of eminent domain or by condemnation including any payments made in lieu of or in settlement of a claim or threat of condemnation. Mortgagee may elect to apply the proceeds of the award upon or in reduction of the Indebtedness then most remotely to be paid, whether due or not, or require Mortgagor to restore or rebuild the Premises, in which event the proceeds shall be held by Mortgagee and used to reimburse Mortgagor for the cost of such rebuilding or restoring. If, in the reasonable judgment of Mortgagee, the Premises can be restored to an economic unit not less valuable than the same was prior to the condemnation and adequately securing the outstanding balance of the Indebtedness, the award shall be used to reimburse Mortgagor for the cost of restoration and rebuilding; provided, always, that Mortgagor is not in default hereunder and that no Event of Default has occurred and is then continuing. If Mortgagor is required or permitted to rebuild or restore the Premises as aforesaid, such rebuilding or restoration shall be effected solely in accordance with plans and specifications previously submitted to and approved by Mortgagee, and proceeds of the award shall be paid out in the same manner as is provided in the Section herein titled "Disbursement of Insurance Proceeds" for the payment of insurance proceeds towards the cost of rebuilding or restoration. If the amount of such award is insufficient to cover the cost of rebuilding or restoration, Mortgagor shall pay such costs in excess of the award before being entitled to reimbursement out of the award. Any surplus which may remain out of the award after payment of such costs of rebuilding or restoration shall, at the option of Mortgagee, be paid to Mortgagor.

Environmental Laws. Mortgagor shall at all times comply with all Section 11. applicable environmental protection regulations imposed by federal, state, municipal and/or public or quasi-public agencies having jurisdiction over the Premises. Under no circumstances shall Mortgagor permit hazardous materials (as hereinafter defined) to be disposed of on the Premises. The term "hazardous materials" shall mean (i) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) or by applicable state law, each as amended from time to time, and regulations promulgated thereunder; and by (ii) any "hazardous substance" as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) or by applicable state law, each as amended from time to time, and regulations promulgated thereunder. Mortgagor shall not permit any liens to be filed against the Premises by reason of services or materials furnished in connection with the clean-up of environmental contamination or the removal of any hazardous materials. If requested to do so by any public or quasi-public agency, Mortgagor shall promptly prepare and implement a clean-up plan with respect to the elimination of any hazardous materials or environmental contamination. Mortgagor shall indemnify and hold harmless Mortgagee, its agents, employees and successors, from all costs incurred to clean-up any environmental contamination or the removal of any hazardous materials, as provided in the Environmental

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Indemnity dated as of the date of this Mortgage. The indemnification provided herein shall survive foreclosure of this Mortgage.

**Section 12. Stamp Tax**. If, by the laws of the United States of America, or of any state or municipality having jurisdiction over Mortgagor or the Premises, any tax is used or becomes due in respect of the Note or the other Indebtedness Documents, Mortgagor shall pay such tax in the manner required by such law.

Section 13. Effect of Extensions of Time and Amendments. If the payment of the Indebtedness, or any part thereof, be extended or varied, or if any part of the security therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by Mortgagee, notwithstanding any such extension, variation or release. Any person, firm or corporation taking a junior mortgage, or other lien upon the Premises or any interest therein, shall take the said lien subject to the rights of Mortgagee to amend, modify and supplement this Mortgage, the Development Agreement, the Indebtedness Documents and the assignments herein referred to, and to extend the maturity of the Indebtedness, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien.

Mortgagee's Performance of Mortgagor's Obligations. In case of Section 14. default herein, Mortgagee, either before or after acceleration of the Indebtedness or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein required of Mortgagor (whether or not Mortgagor is personally liable therefor), including without limitation obligations under the Indebtedness Documents with respect to the operation of the Premises, in any form and manner deemed expedient to Mortgagee; and Mortgagee may, but shall not be required to, make full or partial payments of principal and interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or contest any tax or assessment, and may, but shall not be required to, complete construction, furnishing and equipping of the improvements upon the Premises and rent, operate and manage the Premises and such improvements and pay operating costs and expenses, including management fees, of every kind and nature in connection therewith, so that the Premises and improvements shall be operational and usable for their intended purposes. All monies paid for any of the purposes herein authorized, and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees and other monies advanced by Mortgagee to protect the Premises and the lien hereof, or to complete construction, furnishing and equipping or to rent, operate and manage the Premises and such improvements or to pay any such operating costs and expenses thereof or to keep the Premises and improvements operational and usable for its intended purpose, shall be so much additional Indebtedness, whether or not they exceed the face amount of the Note, and shall become immediately due and payable without notice, and with interest thereon at the Default Rate, as defined in the Indebtedness Documents. Inaction of Mortgagee shall never be considered as a waiver of any right accruing to it on account of any default on the part of Mortgagor. Mortgagee, in making any payment hereby authorized (a) relating to taxes and assessments, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof;

- (b) for the purchase, discharge, compromise or settlement of any other prior lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction, furnishing or equipping of the improvements or the rental, operation or management of the Premises or the payment of operating costs and expenses thereof, Mortgagee may do so in such amounts and to such persons as Mortgagee may deem appropriate and may enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.
- **Section 15. Inspection of Premises and Records**. Mortgagee shall have the right to inspect the Premises and all books, records and documents relating thereto at all reasonable times upon reasonable advance notice, and access thereto shall be permitted for that purpose.
- **Section 16. Uniform Commercial Code**. This Mortgage constitutes a Security Agreement under the Illinois Uniform Commercial Code (the "<u>Code</u>") with respect to any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (all for the purposes of this Section called "<u>Collateral</u>"); all of the terms, provisions, conditions and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Section shall not limit the generality or applicability of any other provision of this Mortgage but shall be in addition thereto:
- (a) Mortgagor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances except Permitted Encumbrances:
- (b) The Collateral is to be used by Mortgagor solely for business purposes and is being installed upon the Premises for Mortgagor's own use or as the equipment and furnishings furnished by Mortgagor, as landlord, to tenants of the Premises;
- (c) The Collateral will be kept at the real estate comprised within the Premises, and will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code), or as otherwise provided in the Indebtedness Documents or any other person and the Collateral may be affixed to such real estate but will not be affixed to any other real estate;
- (d) The only persons having any interest in the Premises are Mortgagor, Mortgagee and permitted tenants and users thereof;
- (e) No Financing Statement covering any of the Collateral or any proceeds thereof is on file in any public office; and Mortgagor will at its own cost and expenses, upon demand, furnish to Mortgagee such further information and will execute and deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts and things as Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no adverse liens or encumbrances and Mortgagor will pay the cost of filing the same or filing or recording such financing statements or other documents, and

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this instrument, in all public offices wherever filing or recording is deemed by Mortgagee to be necessary or desirable;

- Upon any Event of Default hereunder that remains uncured after the passage of any applicable cure periods provided herein, and at any time thereafter, Mortgagee at its option may declare the Indebtedness immediately due and payable, all as more fully set forth in the Section herein titled "Events of Default" hereof, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including, but without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Mortgagor can give authority therefor, with judicial process, enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations as provided in the Code. Mortgagee, without removal may render the Collateral unusable and dispose of the Collateral on the Premises. Mortgagee will give Mortgagor at least five (5) business days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by registered or certified mail or equivalent, postage prepaid, to the address of Mortgagor shown in the Section herein titled "Notices" of this Mortgage at least five (5) business days before the time of the sale or disposition. Mortgagee may buy at any public sale, and if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the real estate comprised within the Premises, the Collateral and real estate to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses or retaking, holding, preparing for sale, selling or the like and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the Indebtedness. Mortgagee will account to Mortgagor for any surplus realized on such disposition;
- (g) The remedies of the Mortgage hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof so long as any part of the Indebtedness remains unsatisfied;
- (h) The terms and provisions contained in this Section shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code; and
- (i) This Mortgage is intended to be a financing statement within the purview of the Code with respect to the Collateral and the goods described at the beginning of this Mortgage, which goods are or are to become fixtures relating to the Premises. This Mortgage is to be filed for record with the Recorder of Deeds or other proper office of the County or Counties where the Premises are located. Mortgagor is the record owner of the Premises.

- **Section 17. Restrictions on Transfer**. Except as permitted by the Indebtedness Documents, it shall be an Event of Default hereunder if, without the prior written consent of Mortgagee, any one or more of the following shall occur:
- (a) If Mortgagor shall create, effect or consent to or shall suffer or permit any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of the Premises or any part thereof or interest therein, including the equity of redemption;
- (b) If Mortgagor is a corporation, or if any corporation is a beneficiary of a trustee mortgagor, then if any shareholder of such corporation shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of any such shareholder's shares in such corporation except as permitted in the Development Agreement; provided that if such corporation is a corporation whose stock is publicly traded on a national securities exchange or on the "Over The Counter" market, then this Section shall be inapplicable;
- (c) If Mortgagor is a partnership or joint venture, or if any beneficiary of a trustee mortgagor is a partnership or joint venture, then if any partner or joint venturer in such partnership or joint venture shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of all or any part of the partnership interest or joint venture interest, as the case may be, of such partner or joint venturer:
- If Mortgagor is a limited liability company, or if any limited liability company is a beneficiary of a trustee mortgagor, then if any member in such limited liability company shall create, effect or consent to or shall suffer or permit any sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation of all or any part of the membership interest of such member except as may be permitted under the Development Agreement; and in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly, voluntarily or involuntarily, by operation of law or otherwise; provided that the foregoing provisions of this Section shall not apply to (i) liens securing the Indebtedness, (ii) the lien of current taxes and assessments not in default, and (iii) any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership, joint venture or membership interests, as the case may be, in Mortgagor or any beneficiary of a trustee mortgagor by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate, personal representatives and/or committee. The provisions of this Section shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise shall acquire any part of or interest in or encumbrance upon the Premises, or such beneficial interest in, shares of stock of, or partnership or joint venture interest in, Mortgagor or any beneficiary of a trustee mortgagor.

**Section 18. Events of Default**. If one or more of the following events (herein called "Events of Default") shall occur:

- (a) If a default or an Event of Default under the Development Agreement, or any of the Indebtedness Documents occurs and continues beyond any applicable cure period;
- (b) If a default under any loan to or agreement with Mortgagee by the Mortgagor shall occur and be continuing beyond any applicable cure period;
- (c) If an Event of Default under the Section herein titled "<u>Restrictions on Transfer</u>" shall occur and be continuing without notice or period of grace of any kind;
- (d) If any default exists under any other provisions hereof, and such default shall continue for thirty (30) days after written notice to Mortgagor or if such failure cannot reasonably be corrected within such thirty (30) day time period, such longer period not to exceed ninety (90) days that the Mortgagor diligently pursues the correction thereof;
  - (e) If the Premises shall be abandoned for six (6) or more consecutive months; or
- which requires the prepayment of borrowed money or the acceleration of the maturity thereof, under the terms of any evidence of indebtedness or other agreement issued, assumed or entered into by the Mortgagor or any co-maker or guarantor of the Indebtedness or under the terms of any indenture, agreement or instrument under which any such evidence of indebtedness or other agreement is issued, assumed, secured or guaranteed, whether owed to Mortgagee or any other creditor, and such event shall continue beyond any applicable period of grace; then Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of Mortgagee hereunder to declare, without further notice, all Indebtedness to be accelerated and immediately due and payable, whether or not such default be thereafter remedied by Mortgagor, and Mortgagee may immediately proceed to foreclose this Mortgage or to exercise any right, power or remedy provided by this Mortgage, the Indebtedness Documents or by law or in equity conferred.
- **Section 19. Possession by Mortgagee**. When the Indebtedness shall become due, whether by acceleration or otherwise, Mortgagee, shall after filing a complaint, if applicable law permits, have the right to enter into and upon the Premises and take possession thereof or to appoint an agent, receiver or trustee for the collection of the rents, issues and profits of the Premises. The net income, after allowing a reasonable fee for the collection thereof and for the management of the Premises, may be applied to the payment of Taxes, insurance premiums and other charges applicable to the Premises, or in reduction of the Indebtedness; and the rents, issues and profits of and from the Premises are hereby specifically pledged to the payment of the Indebtedness.
- **Section 20. Environmental Assessment**. When an Event of Default has occurred, Mortgagor shall, promptly upon written request of Mortgagee, obtain and deliver to Mortgagee, an environmental assessment of the Premises by a qualified environmental or engineering firm.
- **Section 21. Foreclosure**. When the Indebtedness, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such Indebtedness or part thereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree of sale, all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's

fees, outlays for documentary and expert evidence, stenographer's charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and similar data and assurance with respect to title, as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree, the true conditions of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this Section, and such other expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Development Agreement or the Premises, including probate and bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, shall be so much additional Indebtedness and shall be immediately due and payable by Mortgagor, with interest thereon at the interest rate then in effect under the Note until paid.

Section 22. Receiver. Upon, or at any time after, the filing of a complaint to foreclose this Mortgage, the Court in which such complaint is filed may appoint a receiver of the Premises. Such appointment may be made either before or after sale, without regard to solvency or insolvency of Mortgagor at the time of application for such receiver, and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not; and Mortgagee hereunder or any employee or agent thereof may be appointed as such receiver. Such receiver shall have the power to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and deficiency, during the full statutory period of redemption, if any, whether there be a redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collection of such rents, issues and profits and all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court may, from time to time, authorize the receiver to apply the net income from the Premises in his hands in payment in whole or in part of:

- (a) The Indebtedness or the indebtedness secured by a decree foreclosing this Mortgage, or any tax, special assessment, or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to the foreclosure sale; or
  - (b) The deficiency in case of a sale and deficiency.

Section 23. Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the Section regarding foreclosure herein; Second, all other items which, under the terms hereof, constitute Indebtedness additional to that evidenced by the Note with interest on such items as herein provided; Third, to interest remaining unpaid upon the Note; Fourth, to the principal remaining unpaid upon the Note; and Fifth, any overage to Mortgagor and its successors or assigns, as their rights may appear.

**Section 24. Insurance Upon Foreclosure**. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied

in rebuilding or restoring the buildings or improvements as aforesaid, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct. In the case of foreclosure of this Mortgage, the court, in its decree, may provide that Mortgagee's clause attached to each of the casualty insurance policies may be cancelled and that the decree creditor may cause a new loss clause to be attached to each of said casualty insurance policies making the loss thereunder payable to said decree creditors; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in such case made and provided, then in every such case, each and every successive redemptor may cause the preceding loss clause attached to each casualty insurance policy to be cancelled and a new loss clause to be attached thereto, making the loss thereunder payable to such redemptor. In the event of foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at the sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any of the said insurance policies without credit or allowance to Mortgagor for prepaid premiums thereon.

Waiver. Mortgagor waives the benefit of all laws now existing or that Section 25. hereafter may be enacted providing for (i) any appraisement before sale of any portion of the premises, and (ii) in any way extending the time for the enforcement of the collection of the Note or the debt evidenced thereby or creating or extending a period of reinstatement or redemption from any sale made in collecting said debt. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisement, valuation, stay, extension, reinstatement or redemption, and Mortgagor, for Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the premises, to the extent permitted by law, hereby waives and releases all rights of reinstatement, redemption, valuation, appraisement, stay of execution, notice of election to mature or declare due the whole of the Indebtedness and marshalling in the event of foreclosure of the liens hereby (and in the supplementary collateral) created. If any law referred to in this Section and now in force, of which Mortgagor, Mortgagor's heirs, devisees, successors and assigns or other person may take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Mortgagor expressly waives and relinquishes any and all rights and remedies which Mortgagor may have or be able to assert by reason of the laws of the State in which the Premises are located pertaining to the rights and remedies of sureties. Without limiting the foregoing, but in addition thereto and in amplification thereof, Mortgagor hereby expressly waives any and all rights of reinstatement or redemption from sale under any order, judgment, or decree of foreclosure of this Mortgage, on its own behalf and on behalf of each and every person, excepting only decree or judgment creditors of Mortgagor acquiring any interest in or title to the premises subsequent to the date thereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and all other persons are and shall be deemed to be hereby waived to the full extent permitted by the provisions of Illinois law.

**Section 26. Assignment of Rents and Leases.** Without limiting the generality of any other provisions hereof, as additional security, Mortgagor hereby assigns to Mortgagee the rents, issues and profits of the Premises, and upon the occurrence of any Event of Default, Mortgagee may receive and collect said rents, issues and profits so long as such Event of Default shall exist, including without limitation during the pendency of any foreclosure proceedings. As of the date

of this Mortgage, as additional security, Mortgagor also hereby assigns to Mortgagee all of its right, title and interest in any leases between Mortgagor and any tenant of the Premises, and any renewals, amendments or modifications of any such leases, and any and all written and oral leases, whether now in existence or which may hereafter come into existence during the term of this Mortgage, or any extension hereof, and the lease payments, rents, income and profits thereunder covering the Premises or any portion thereof. The collection of rents by Mortgagee pursuant to this Section shall in no way waive the right of Mortgagee to foreclose this Mortgage in the event of any Event of Default, and Mortgagee shall not be required to commence foreclosure proceedings prior to exercising its rights to collect rents pursuant to this Section. Notwithstanding the foregoing, until a notice in writing is sent to Mortgagor stating that an Event of Default or any event of condition that with notice or passage of time or both might become an Event of Default has occurred under the terms and conditions of this Mortgage (a "Notice"), Mortgagor may receive, collect and enjoy the lease payments, rents, income, and profits accruing from the Premises (the "Rents"). Mortgagee may, after service of a Notice, receive and collect the Rents as they become due. Mortgagee may thereafter continue to receive and collect all such Rents as long as such Event of Default shall exist and during the pendency of any foreclosure proceedings.

Mortgagor hereby appoints Mortgagee its true and lawful attorney, which appointment is irrevocable and coupled with an interest, with full power of substitution and with full power for Mortgagee in its own name and capacity or in the name and capacity of Mortgagor, from and after the service of a Notice (with or without taking possession of the Premises), to demand, collect, receive, and give complete acquittance for any and all Rents and at Mortgagee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims, either in its own name or in the name of Mortgagor or otherwise, that Mortgagor may deem necessary or desirable in order to collect or enforce the payment of the Rents. Lessees and tenants of the Premises are hereby expressly authorized and directed to pay any and all rents due Mortgagor to Mortgagee or such nominee as Mortgagee may designate in writing delivered to and received by such lessees and tenants, who are expressly relieved of any and all duty, liability or obligation to Mortgagor in respect of all payments so made.

From and after the service of a Notice, Mortgagee is hereby vested with full power to use all measures, legal and equitable, it may deem necessary or proper to enforce this assignment and to assume and exercise all rights and remedies of Mortgagor under the Lease, collect the Rents, including without limitation the right of Mortgagee or its designee to enter upon the Premises, or any part thereof, with or without process of law, take possession of all or any part of the Premises and all personal property, fixtures, documents, books, records, papers, and accounts of Mortgagor relating thereto, and exclude Mortgagor and its agents and servants wholly therefrom. Mortgagor hereby grants full power and authority to Mortgagee to exercise all rights, privileges, and powers herein granted to any and all times after service of a Notice, without further notice to Mortgagor, with full power to use and apply all of the Rents to the payment of the costs of managing and operating the Premises and of the Indebtedness in such order as Mortgagee shall determine. Mortgagee shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of Mortgagor as landlord or as lessor, and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Mortgagor in the leases or otherwise. This assignment shall not place responsibility for the control, care, management, or repair of the Premises or parts thereof, upon Mortgagee, nor shall it make Mortgagee liable for the performance of any of the terms and

conditions of any of the leases, for any waste of the Premises by lessee under any of the leases or any other person, for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss, injury, or death to any lessee, licensee, employee, or stranger.

In the exercise of the powers herein granted to Mortgagee, no liability shall be asserted or enforced against Mortgagee, all such liability being expressly waived and released by Mortgagor.

The assignment contained in this Section is given as collateral security and the execution and delivery hereof shall not in any way impair or diminish the obligations of Mortgagor, nor shall this assignment impose any obligation on Mortgagee to perform any provision of any contract pertaining to the Premises or any responsibility for the non-performance thereof by Mortgagor or any other person. The assignment under this Section is given as a primary pledge and assignment of the rights described herein and such assignment shall not be deemed secondary to the security interest and mortgage of Mortgagee in the Premises. Mortgagee shall have the right to exercise any rights under this Section before, together with, or after exercising any other rights under this Mortgage. Nothing herein contained shall be deemed to obligate Mortgagee to perform or discharge any obligation, duty, or liability of Mortgagor under this assignment, and Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any and all reasonable costs (including without limitation reasonable attorneys' fees, legal costs and expenses, and reasonable time charges of attorneys who may be employees of Mortgagee whether in or out of court, in original or appellate proceedings or in bankruptcy), liability, loss, or damage which Mortgagee may or might incur by reason of this assignment; and any and all such costs, liability, loss, or damage incurred by Mortgagee (whether successful or not), shall be the Indebtedness hereby secured, and Mortgagor shall reimburse Mortgagee therefor on demand, together with interest thereon at the interest rate then in effect under the Note until paid.

**Section 27. Mortgagee in Possession**. Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Premises.

**Section 28.** Further Assurances. Mortgagor will do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper, in the sole judgment of Mortgagee, for the better assuring, conveying, mortgaging, assigning and confirming unto Mortgagee all property mortgaged hereby or property intended so to be; whether now owned by Mortgagor or hereafter acquired.

**Section 29. Rights Cumulative**. Each right, power and remedy herein conferred upon Mortgagee is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing, at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient to Mortgagee and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of Mortgagee in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any default or acquiescence therein.

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- **Section 30.** Waiver of Defense. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid to the party interposing the same in an action at law upon the Development Agreement.
- **Section 31. Time of the Essence**. Time is of the essence with respect to the Indebtedness Documents and this Mortgage.
- **Section 32. Option to Subordinate**. At the option of Mortgagee, this Mortgage shall become subject and subordinate in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases of all or any part of the Premises upon the execution by Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds or other proper office, in and for the county or counties wherein the Premises are situated, of a unilateral declaration to that effect.
- **Section 33. Business Purpose Statement**. The undersigned Mortgagor represents and agrees that the loan evidenced by this Mortgage is a business loan within the purview of the laws and regulations of the State of Illinois and of the United States and is transacted solely for the business purpose of Mortgagor (or, if Mortgagor is a Trust, then of the beneficiaries of Mortgagor) and for its or their investment or profit, as contemplated by such laws and regulations.
- **Section 34. Amendments**. The parties may not amend or alter this Mortgage except by an agreement in writing signed by Mortgagor and Mortgagee. In the event of any inconsistency between the provisions of this Mortgage and the other Indebtedness Documents, the provisions of the other Indebtedness Documents shall prevail. There are no promises, representations or understandings made in connection with this Mortgage, except as set forth in this Mortgage or the other Indebtedness Documents.
- **Section 35. Assignments.** Mortgagee may assign, negotiate, pledge or otherwise hypothecate all or any portion of this Mortgage or grant participations herein, or in any of its rights and security hereunder without relieving Mortgagor from any obligation to Mortgagee with respect to any unassigned debt, obligation or liability. Mortgagor will accord full recognition to any such assignment. The assignee, including any holder or holders of the Note from time to time, will be able to enforce all of Mortgagee's rights and remedies in connection with the interest so assigned against Mortgagor with the same force and effect and to the same extent as Mortgagee could have but for the assignment, except that the assignee's rights will be subordinate to Mortgagee's rights as to any unassigned debt, obligation or liability.
- **Section 36. Severability**. If a court of competent jurisdiction declares or finds all or any portion of any provision of this Mortgage to be unenforceable or null and void, such provision or portion thereof shall be deemed stricken and severed from this Mortgage and the remaining provisions and portions hereof will continue in full force and effect.
- **Section 37.** Successors and Assigns. This Mortgage and all of its provisions, conditions, promises and covenants inure to the benefit of Mortgagee, its successors and assigns, and shall be binding upon Mortgagor and its successors, assigns, executors, heirs, and personal representatives (including, without limitation, each and every record owner from time to time of

the Premises or any other person having an interest therein). Mortgagor may not assign its rights or delegate its duties under this Mortgage without Mortgagee's prior written consent.

In the event that the ownership of the Premises becomes vested in a person or persons other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest of Mortgagor with reference to this Mortgage and the Indebtedness in the same manner as with Mortgagor. Mortgagor will give immediate written notice to Mortgagee of any conveyance, transfer or change of ownership of the Premises, but nothing in this Section shall vary or negate the provisions of the Section herein entitled "Notices".

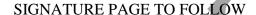
**Section 38. Notices**. Mortgagor and Mortgagee must give all notices, requests, demands, directions and other communications (collectively "<u>Notices</u>") required by this Mortgage in accordance with the Indebtedness Documents.

Section 39. Applicable Law. The internal laws of the State in which the Premises are located and not the law of conflicts will govern and control the form and essential validity of this Mortgage. Mortgagor consents and submits to the jurisdiction of any local, state or federal court with jurisdiction over DuPage County, in the State of Illinois. Mortgagor waives any right it may have to transfer or change the venue of any litigation Mortgagee brings against Mortgagor in accordance with this paragraph. In addition to any methods of service of process provided for under applicable law, Mortgagee may make all services of process in any such suit, action or proceeding in any local, state or federal court, with jurisdiction over DuPage County, in the State of Illinois, by certified or registered mail, return receipt requested, directed to Mortgagor at its address stated in the Indebtedness Documents, and service so made will be deemed complete five (5) business days after being mailed. Nothing in this Mortgage affects Mortgagee's right to serve process in any manner permitted by law or limits Mortgagee's right to bring proceedings against Mortgagor in any other court or jurisdiction.

Section 40. WAIVER OF TRIAL BY JURY. THE PARTIES IRREVOCABLY, KNOWINGLY, WILLINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, COUNTERCLAIM OR PROCEEDING (1) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS MORTGAGE OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH, OR (2) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS MORTGAGE OR ANY SUCH AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT. ANY SUCH ACTION, SUIT, COUNTERCLAIM OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. NO INDIVIDUAL HAS MADE ANY REPRESENTATIONS OF FACT OR OPINION TO INDUCE MORTGAGOR'S WAIVER OF HIS, HER OR ITS RIGHT TO TRIAL BY JURY. MORTGAGOR HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL WHICH HE, SHE OR IT SELECTED, AND HE, SHE OR IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

**Section 41. Compliance With State Law.** In the event that any provision in this Mortgage shall be inconsistent with any provision of the Illinois Compiled Statutes, as amended,

or the comparable statute governing the State in which the Premises are located (herein called the "Statute"), the provisions of the Statute shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provisions of this Mortgage that can be construed in a manner consistent with the Statute. Furthermore, if any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Statute in the absence of said provisions, Mortgagee shall be vested with the rights granted in the Statute to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under the Statute, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Mortgage, shall be added to the Indebtedness secured by this Mortgage or by the judgment of foreclosure.



IN WITNESS WHEREOF, Mortgagor has duly executed and delivered this Mortgage as of the date first written above.

#### **MORTGAGOR**:

CYRUSONE, LLC a Delaware limited liability company

By:	
Name:	
Title:	

STATE OF ILLINOIS ) ) SS
COUNTY OF)
The undersigned, a Notary Public in and for the County and State aforesaid, does hereby certify that as of CYRUSONE, LLC, 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 signed, sealed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said company for the uses and purposes therein set forth.
Given under my hand and notary seal this day of, 2023.
Notary Public

#### **EXHIBIT A**

#### Legal Description

#### **LEGAL DESCRIPTION:**

AS DESCRIBED IN FIRST AMERICAN TITLE INSURANCE COMPANY COMMITMENT NUMBERS 3097411, 3097127, 3068379, 3087498, 3097125, 3058264, 3097123, 3086514, 3018701, 3099671, 3166837, 3166835, 3166833, 3162571, 3162569, 3166839, 3166840, 3166836, 3065390, 3053671, 3099659, 3099679, 3094907, 3063500, 3099666, 3099648, 3092086, 3099680, 3099675, 3065436, 3001848, 3014859, 3014858, 3065257, 3099685, 3015907, 3100828, 3099695, 3099686, 3168159, 3168127, 3168140, 3168142, 3168136, 3168156, 3168138, 3168137, 3168162, 3168125, 3168123, 3168135, 3168141, 3168158 AND 3067607, 3169158, 3168975, 3169161, 3168978, 3169162. INDIVIDUAL TITLE COMMITMENTS DESCRIBE EACH LOT INDIVIDUALLLY, LEGAL DESCRIPTION BELOW IS AN OVERALL DESCRIPTION.

LOTS 49 THROUGH 51, LOTS 53 THROUGH 54, LOTS 57 THROUGH 58, LOTS 62 THROUGH 92 AND LOTS 103 THROUGH 127 IN BRANIGAR'S MOHAWK MANOR, BEING A SUBDIVISION IN SECTIONS 3 AND 10, TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED NOVEMBER 28, 1956 AS DOCUMENT 825111, IN DU PAGE COUNTY, ILLINOIS.

CONTAINING 1,651,686 SQUARE FEET OR 37.9175 ACRES



**VICINITY MAP** 





# REQUEST FOR COUNCIL ACTION

Referred to Council: November 16, 2023

Subject: Ordinance for the Sale of Surplus Property

Staff Contact: Chris Zito, Chief of Police

Department: Police

**TITLE:** AN ORDINANCE DECLARING PROPERTY OWNED BY THE CITY OF WOOD DALE SURPLUS FOR THE PURPOSE OF SELLING

#### **RECOMMENDATION:**

Staff recommends an ordinance declaring property owned by the City of Wood Dale surplus for the purpose of selling.

#### **BACKGROUND:**

As part of a past criminal investigation and charges for multiple burglaries that occurred to vehicles during church services, the final disposition of the case ordered that the suspect vehicle be turned over to the police department for use or sale.

As noted by the vehicle maintenance garage:

Vehicle # 421-075: 2007 Dodge Charger VIN #: 2B3KA53H57H867566

Mileage: 173,303

This vehicle was Seized by the police department and was assigned to the detectives as a surveillance vehicle as vehicle # 421-075. The vehicle was put into service on 7/6/22.

The City was awarded the vehicle by the courts and we have spent the following in maintenance. \$1,303.79 in fuel and maintenance and 25.0-man hours repairing the vehicle. The vehicle has a check engine light on due to Catalytic converters removed making the vehicle not EPA compliant. It runs and drives

fine otherwise. The body is in poor shape with both front fenders damaged and rear quarter panels rusting out. The interior is in fair shape except for the driver's seat falling apart.

Vehicle # 416-111: 2011 Ford Taurus VIN # 1FAHP2DW0BG107719

Mileage: 55,407

This vehicle was purchased on 06/25/10 for the Police Department. The vehicle was assigned as # 400-111, 410-111, and then transferred to Detectives as #416-111 on 08/12/16.

The City originally purchased the Car for \$19,257.75 and have spent \$6,996.23 (36% of the original purchase price) and 158-man hours repairing the vehicle. It has a Vehicle Evaluation score of 29 out of a possible 60 points (48%). The vehicle has no known mechanical issues currently. The body is in poor shape. It has rust is forming under paint on roof and all over the vehicle. Rear bumper damage. Trim panel on trunk falling off. Weatherstripping dried out, cracking, and missing, which allows water inside the vehicle. The interior is in good shape.

#### **ANALYSIS:**

These vehicles will be placed for auction on Public Surplus without a minimum bid. Bids will be submitted for a period of 14 days with the vehicles being awarded to the highest bidder. Public Surplus will take a 7% administrative fee which will come out of the proceeds from the sale.

#### **DOCUMENTS ATTACHED**

- ✓ Ordinance
- ✓ Vehicle Replacement Scoring Sheet #421-075
- ✓ Vehicle Replacement Scoring Sheet #416-111

<b>STRATEGI</b>	C PLAN	ITEM
Yes		
⊠ No		

#### ORDINANCE NO. O-23-031

# AN ORDINANCE DECLARING PROPERTY OWNED BY THE CITY OF WOOD DALE SURPLUS FOR THE PURPOSE OF SELLING

**WHEREAS,** in the opinion of at least a simple majority of the corporate authorities of the City of Wood Dale, it is no longer necessary or useful to or for the best interest of the City of Wood Dale, to retain ownership of the personal property hereinafter described; and

**WHEREAS**, it has been determined by the City Council of the City of Wood Dale to sell said personal property via the internet "Public Auction" website beginning after November 16, 2023; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WOOD DALE, DU PAGE COUNTY, ILLINOIS, as follows:

**SECTION ONE:** That pursuant to 65 ILCS 5/11-76-4 of the Illinois Municipal Code, the City Council of the City of Wood Dale finds that the following described personal property:

Vehicle	Inventory ID	VIN #	Min. Value
2007 Dodge Charger	# 421-075	2B3KA53H57H867566	None
2011 Ford Taurus	# 416-111	1FAHP2DW0BG107719	None

now owned by the City of Wood Dale, is no longer necessary or useful to the City of Wood Dale and the best interests of the City will be served by its sale.

**SECTION TWO:** Pursuant to said 65 ILCS 5/11-76-4, the City Manager is hereby authorized and directed to sell the aforementioned personal property now owned by the City of Wood Dale via the internet "Public Auction" website to the highest bidder on said property.

**SECTION THREE:** That all Ordinances and Resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, expressly repealed.

**SECTION FOUR:** No bid which is less than the minimum price set forth in the list of property to be sold shall be accepted except as authorized by the City Manager or his agent.

**SECTION FIVE:** That the City Clerk of the City of Wood Dale be and is directed hereby to publish this Ordinance in pamphlet form, pursuant to the statutes of the State of Illinois.

**SECTION SIX:** That the City Manager is hereby authorized and may direct "Public Surplus" to enter into an agreement for the sale of said personal property. They will charge an administrative fee of 7% which will come out of the proceeds from the sale.

**SECTION SEVEN**: Upon payment of the full auction price, the City Manager is hereby authorized and directed to convey the aforesaid personal property to the successful bidder.

**SECTION EIGHT:** That this Ordinance shall be in full force and effect from and after its passage, by a simple majority vote of the corporate authorities, and approval in the manner provided by law.

PASSED th	iis 16 <sup>th</sup> day of November, 2023.	
AYES:		
NAYS:		
ABSENT: _		
APPROVEI	O this 16 <sup>th</sup> day of November, 2023.	
SIGNED: _	Annunziato Pulice, Mayor	_
ATTEST: _	Lynn Curiale, City Clerk	_
Published ii	n pamphlet form	, 2023

# City of Wood Dale Public Works Department Vehicle Replacement Scoring Sheet

	Months in Service	Age Points	Miles	Mileage Points
	15	N/A	173,303	N/A
	Original Cost	Repair Cost	Repair Cost %	Repair Cost Points
Vehicle #	Seizure	\$1,303.79	N/A	0
421-075	# of Repair Orders	Mech. Cond Pts	Body Cond. Pts	Int. Cond. Pts
	2	N/A	N/A	N/A
	Maximum Points	Points for #	Notes from Vehicle Maintenance Staff	
	N/A	N/A		

# City of Wood Dale Public Works Department Vehicle Replacement Scoring Sheet

	Months in Service	Age Points	Miles	Mileage Points
	158	0	55,407	5
	Original Cost	Repair Cost	Repair Cost %	Repair Cost Points
	\$19,257.75	6,996.23	36	8
Vehicle #	# of Repair Orders	Mech. Cond Pts	Body Cond. Pts	Int. Cond. Pts
416-111	48	6	4	6
	Maximum Points	Points for #	Notes from Vehicle Maintenance Staff	
			Rust forming under paint all over,	
	60	29	damage to rear bumper,	
			weatherstripping peeling and cracking	



# REQUEST FOR COUNCIL ACTION

Referred to Council: November 16, 2023

Subject: Release of Unimproved Easements Staff Contact: Alan Lange, Public Works Director

Department: Public Works

TITLE: A Resolution Approving an Easement Agreement for the Release of Unimproved Easements within Maple Meadows Golf Club

#### **RECOMMENDATION:**

Staff Recommends a Resolution Approving an Easement Agreement for the Release of Unimproved Easements within Maple Meadows Golf Club.

#### **BACKGROUND:**

Three easements located on Maple Meadows Golf Club were previously dedicated to the City from the Forest Preserve District of DuPage County for the purpose of installing public utilities. The easements were never used, and the City has determined that there are no future needs for the unimproved easements. Therefore, the Forest Preserve District has requested that the City release the unused easements. There is one remaining easement which has been improved with watermain which will remain valid and in effect.

#### **ANALYSIS:**

There is no cost associated with releasing the easement. If future easements are needed, the City has maintained a good working relationship with the Forest Preserve to provide the necessary easements at no cost.

#### **DOCUMENTS ATTACHED**

- ✓ Resolution
- ✓ Easement Agreement
- ✓ Exhibits

#### STRATEGIC PLAN ITEM

☐ Yes ☒ No

#### **RESOLUTION NO. R-23-72**

# A RESOLUTION APPROVING AN EASEMENT AGREEMENT FOR THE RELEASE OF UNIMPROVED EASEMENTS WITHIN MAPLE MEADOWS GOLF CLUB

**WHEREAS**, the DISTRICT owns certain property commonly known as the Maple Meadows Golf Club (hereinafter "Maple Meadows"); and

WHEREAS, on March 14, 1987, a Plat of Easement for "Public Utilities" was granted to the CITY within a portion of Maple Meadows and recorded as document R1987-039818, and said recorded Plat of Easement is attached hereto and incorporated herein as **Exhibit A**. A certain portion of the easement was never improved with public utilities, and said unimproved portion of the easement is hereinafter referred to as "Unimproved Easement 1". The Unimproved Easement 1 is legally described in **Exhibit B** and depicted in **Exhibit C**, both of which are attached hereto and incorporated herein; and

**WHEREAS,** a certain portion of the recorded easement attached hereto as Exhibit A is improved with a watermain and shall not be released and shall remain in effect and valid, and said improved portion of the easement is hereinafter referred to as "Reserved Easement". The Reserved Easement is legally described in **Exhibit D** and depicted in **Exhibit E**, both of which are attached hereto and incorporated herein; and

WHEREAS, on March 14, 1987, a Plat of Easement for "Public Utilities" was granted to the CITY within a portion of Maple Meadows and recorded as document R1987-039819, and said recorded Plat of Easement is attached hereto and incorporated herein as **Exhibit F**. The easement was never improved with public utilities and said unimproved easement is hereinafter referred to as "Unimproved Easement 2". The Unimproved Easement 2 is legally described in **Exhibit G** and depicted in **Exhibit H**, both of which are attached hereto and incorporated herein; and

WHEREAS, on March 14, 1987, a Plat of Easement for "Public Utilities" was granted to the CITY within a portion of Maple Meadows and recorded as document R1987-039820, and said recorded Plat of Easement is attached hereto and incorporated herein as Exhibit I. The easement was never improved with public utilities and said unimproved easement is hereinafter referred to as "Unimproved Easement 3". The Unimproved Easement 3 is legally described in Exhibit J and depicted in Exhibit K, both of which are attached hereto and incorporated herein; and

**WHEREAS**, the DISTRICT is in the planning stage of a golf course rebuilding project within Maple Meadows and has requested that Unimproved Easement 1, Unimproved Easement 2, and Unimproved Easement 3 be released by the CITY; and

**WHEREAS**, the CITY has determined that there are no future needs for Unimproved Easement 1, Unimproved Easement 2, and Unimproved Easement 3; and

**WHEREAS,** the CITY has determined that it is reasonable, necessary, and in the public interest and welfare to release Unimproved Easement 1, Unimproved Easement 2, and Unimproved Easement 3, subject to the terms and conditions set forth herein.

# NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF WOOD DALE, DUPAGE COUNTY, AN ILLINOIS CORPORATION, as follows:

**SECTION 1:** The recitals set forth above are incorporated herein and made a part hereof.

**SECTION 2:** The Mayor is authorized to execute said Agreement on behalf of the City of Wood Dale, which signature shall be attested to by the City Clerk.

**SECTION 3:** The City Manager, staff and/or the City Attorney shall take the steps necessary to put the terms and conditions of the Agreement into effect.

**SECTION 4:** That all ordinances and resolutions, or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

**SECTION 5:** That this Resolution shall be in full force and effect from and after its adoption, approval and publication in pamphlet form as provided by law.

PASSED this <b>16<sup>th</sup> day of November, 2023.</b>
AYES:
NAYS:
ABSENT:
APPROVED this <b>16<sup>th</sup> day of November, 2023.</b>
SIGNED:Annunziato Pulice, Mayor
Annunziato Pulice, Mayor
ATTEST:
Lynn Curiale, City Clerk

Prepared by and return to: Forest Preserve District of DuPage County C/O Executive Director P.O. Box 5000 Wheaton, IL 60189-5000

**P.A.**:

VACANT LAND
West of Addison Road and North of I-290,
Wood Dale, IL 60191

P.I.N.: 03-16-306-014 (part) & 03-17-406-016 (part)

# AN EASEMENT AGREEMENT FOR THE RELEASE OF UNIMPROVED EASEMENTS WITHIN MAPLE MEADOWS GOLF CLUB

THIS EASEMENT AGREEMENT (hereinafter referred to as the "Agreement") is effective upon being signed by all parties and is made and entered into by and between the Forest Preserve District of DuPage County, a body politic and corporate (hereinafter referred to as "DISTRICT") and the City of Wood Dale, a municipal corporation (hereinafter referred to as "CITY"). The DISTRICT and CITY are sometimes referred herein individually as a "Party" and collectively as the "Parties."

## WITNESSETH:

WHEREAS, the DISTRICT owns certain property commonly known as the Maple Meadows Golf Club (hereinafter "Maple Meadows"); and

WHEREAS, on March 14, 1987, a Plat of Easement for "Public Utilities" was granted to the CITY within a portion of Maple Meadows and recorded as document R1987-039818, and said recorded Plat of Easement is attached hereto and incorporated herein as **Exhibit A**. A certain portion of the easement was never improved with public utilities, and said unimproved portion of the easement is hereinafter referred to as "Unimproved Easement 1". The Unimproved Easement 1 is legally described in **Exhibit B** and depicted in **Exhibit C**, both of which are attached hereto and incorporated herein; and

WHEREAS, a certain portion of the recorded easement attached hereto as Exhibit A is improved with a watermain and shall not be released and shall remain in effect and valid, and said improved portion of the easement is hereinafter referred to as "Reserved Easement". The Reserved Easement is legally described in **Exhibit D** and depicted in **Exhibit E**, both of which are attached hereto and incorporated herein; and

WHEREAS, on March 14, 1987, a Plat of Easement for "Public Utilities" was granted to the CITY within a portion of Maple Meadows and recorded as document R1987-039819, and said recorded Plat of Easement is attached hereto and incorporated herein as **Exhibit F**. The easement was never improved with public utilities and said unimproved easement is hereinafter referred to as

"Unimproved Easement 2". The Unimproved Easement 2 is legally described in **Exhibit G** and depicted in **Exhibit H**, both of which are attached hereto and incorporated herein; and

WHEREAS, on March 14, 1987, a Plat of Easement for "Public Utilities" was granted to the CITY within a portion of Maple Meadows and recorded as document R1987-039820, and said recorded Plat of Easement is attached hereto and incorporated herein as **Exhibit I**. The easement was never improved with public utilities and said unimproved easement is hereinafter referred to as "Unimproved Easement 3". The Unimproved Easement 3 is legally described in **Exhibit J** and depicted in **Exhibit K**, both of which are attached hereto and incorporated herein; and

WHEREAS, the DISTRICT is in the planning stage of a golf course rebuilding project within Maple Meadows and has requested that Unimproved Easement 1, Unimproved Easement 2, and Unimproved Easement 3 be released by the CITY; and

WHEREAS, the CITY has determined that there are no future needs for Unimproved Easement 1, Unimproved Easement 3; and

WHEREAS, the CITY has determined that it is reasonable, necessary, and in the public interest and welfare to release Unimproved Easement 1, Unimproved Easement 2, and Unimproved Easement 3, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing preambles and the promises, terms and conditions set forth herein, the Parties agree as follows:

# 1.0 INCORPORATION OF RECITALS

1.1 The recitals set forth above are incorporated herein and made a part of this Agreement.

# 2.0 EASEMENTS RELEASED

2.1 The CITY hereby releases, terminates, and quit claims to the DISTRICT any and all right, title, and interest in Unimproved Easement 1, Unimproved Easement 2, and Unimproved Easement 3 subject to the terms and conditions as provided for in this Agreement.

# 3.0 MISCELLANEOUS TERMS

- 3.1 All rights, title, and privileges herein granted shall run with the land and be binding upon and inure to the benefit of the Parties hereto, their respective successors and assigns.
- 3.2 The DISTRICT shall be responsible for recording this Agreement, at its expense, in the Office of the Recorder of Deeds, DuPage County, and for providing the CITY with a recorded copy.
- 3.3 The provisions set forth herein represent the entire agreement between the Parties and supersede any previous oral or written agreements, as it is the intent of the Parties to provide for a complete integration within the terms of this Agreement. No provision may be modified in any respect unless such modification is in writing, duly approved and signed by all Parties.
- 3.4 This Agreement shall be executed in duplicate, and each Party shall retain a fully executed original, all of which shall be deemed to be one Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates stated below.

CITY OF WOOD DALE	FOREST PRESERVE DISTRICT OF DUPAGE COUNTY		
Annunziato Pulice, Mayor	Daniel Hebreard, President		
Attest:	Attest:		
Lynn Curiale, City Clerk	Judith Malahy, Secretary		
Date signed:	Date signed:		

TRUST NO.
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# **LEGAL DESCRIPTION – UNIMPROVED EASEMENT 1**

THE 20 FOOT WIDE EASEMENT FOR PUBLIC UTILITIES AS SHOWN ON THE PLAT OF EASEMENT DEDICATION TO THE CITY OF WOODDALE RECORDED MARCH 24, 1987 AS DOCUMENT R87-39818 EXCEPT THAT PART THEREOF DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID EASEMENT. BEING AT THE INTERSECTION OF THE NORTH LINE OF WEST DOMINION COURT WITH THE WEST LINE OF ST. ANDREWS DRIVE, SHOWN AS A CORNER OF LOT 17 ON RAY MACDONALD COUNTY CLERK'S ASSESSMENT PLAT OF DOMINION PROPERTIES FIRST ASSESMENT DIVISION RECORDED AS DOCUMENT R74-64064: THENCE SOUTH 01 DEGREES 51 MINUTES 45 SECONDS WEST 20.01 FEET TO THE SOUTHEAST CORNER OF SAID EASEMENT: THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF SAID EASEMENT 105.38 FEET: THENCE NORTH 01 DEGRESS 43 MINUTES 40 SECONDS EAST. ALONG A LINE WHICH IS PARALLEL WITH AND 20 FEET WEST OF THE OF THE NORTHERLY EXTENSION OF THE WEST LINE OF LOT 7 IN SAID ASSESSMENT PLAT. 20.01 FEET TO THE NORTH LINE OF SAID EASEMENT: THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 105.43 TO THE PLACE OF BEGINNING IN THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 40 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

PIN: 03-17-306-014 (part)

# **DEPICTION - UNIMPROVED EASEMENT 1**





Unimproved Easement 1





# **LEGAL DESCRIPTION - RESERVED EASEMENT**

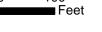
THAT PART OF THE 20 FOOT WIDE EASEMENT FOR PUBLIC UTILITIES AS SHOWN ON THE PLAT OF EASEMENT DEDICATION TO THE CITY OF WOODDALE RECORDED MARCH 24, 1987 AS DOCUMENT R87-39818 DESCRIBED BY BEGINNING AT THE NORTHEAST CORNER OF SAID EASEMENT. BEING AT THE INTERSECTION OF THE NORTH LINE OF WEST DOMINION COURT WITH THE WEST LINE OF ST. ANDREWS DRIVE, SHOWN AS A CORNER OF LOT 17 ON RAY MACDONALD COUNTY CLERK'S ASSESSMENT PLAT OF DOMINION PROPERTIES FIRST ASSESMENT DIVISION RECORDED AS DOCUMENT R74-64064: THENCE SOUTH 01 DEGREES 51 MINUTES 45 SECONDS WEST 20.01 FEET TO THE SOUTHEAST CORNER OF SAID EASEMENT: THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST ALONG THE SOUTH LINE OF SAID EASEMENT 105.38 FEET: THENCE NORTH 01 DEGRESS 43 MINUTES 40 SECONDS EAST, ALONG A LINE WHICH IS PARALLEL WITH AND 20 FEET WEST OF THE OF THE NORTHERLY EXTENSION OF THE WEST LINE OF LOT 7 IN SAID ASSESSMENT PLAT. 20.01 FEET TO THE NORTH LINE OF SAID EASEMENT: THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 105.43 TO THE PLACE OF BEGINNING IN THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 40 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

PIN: 03-17-306-014 (part) and 03-17-306-016 (part)

# **DEPICTION - RESERVED EASEMENT**







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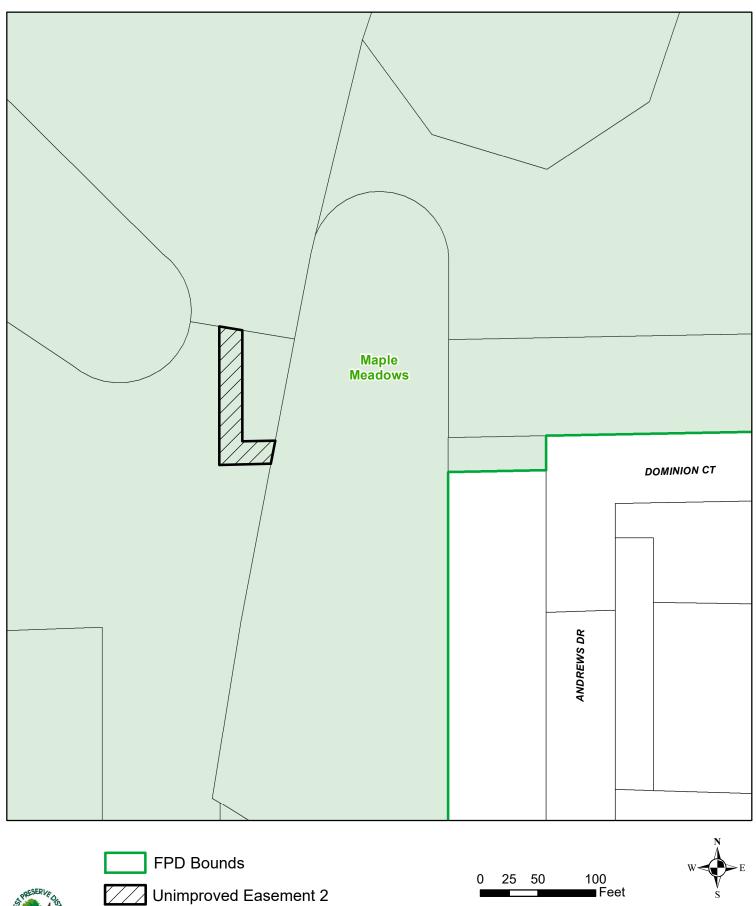
**≐.** 1996/19<sup>©</sup> €

# **LEGAL DESCRIPTION – UNIMPROVED EASEMENT 2**

DEDICATION OF PROPERTY, 20.00 FEET IN WIDTH THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS: THAT PART OF LOT 1 IN SCHOOL TRUSTEES SUBDIVISION OF SECTION 16 AND THAT PART OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 17. THE NORTHEAST QUARTER OF SECTION 20, AND THE NORTHWEST QUARTER OF SECTION 21, ALL IN TOWNSHIP 40 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE NORTHERLY LINE OF F.A.I., ROUTE 90, SAID POINT BEING 1285.95 FEET NORTHWESTERLY OF (AS MEASURED ALONG SAID NORTHERLY LINE) THE EAST LINE OF THE NORTHEAST QUARTER OF SECTON 20. AFORESAID: THENCE NORTH 01 DEGREE 46 MINUTES 51 SECONDS EAST, 155.74 FEET; THENCE SOUTH 88 DEGREES 13 MINUTES 09 SECONDS, EAST, 174.58 FEET; THENCE NORTH 41 DEGREES 14 MINUTES 07 SECONDS EAST, 367.98 FEET; THENCE NORTH 13 DEGREES 10 MINUTES 20 SECONDS EAST, 232.90 FEET; THENCE SOUTH 54 DEGREES 14 MINUTES 00 SECONDS EAST, 758.83 FEET; THENCE EASTERLY ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 60.0 FEET AND BEING TANGENT TO THE LAST DESCRIBED COURSE, 111.27 FEET; THENCE SOUTH 77 DEGREES 51 MINUTES 43 SECONDS EAST ALONG A LINE THAT IS RADIAL TO THE LAST DESCRIBED CURVE. 50.20 FEET TO THE PLACE OF BEGINNING: THENCE SOUTH 00 DEGREES EAST 111.36 FEET TO A POINT ON A LINE PARALLEL WITH AND 20.01 FEET NORTH OF THE NORTH LINE OF LOT 7 IN RAY W. MacDONALD COUNTY CLERK'S ASSESSMENT PLAT OF DOMINION PROPERTIES FIRST ASSESSMENT DIVISION RECORDED AS DOCUMENT R74-64064: THENCE NORTH 90 DEGREES EAST 36.71 FEET TO THE EASTERLY LINE OF THE PROPERTY DESCRIBED AS PARCEL E IN DOCUMENT R81-27850 RECORDED MAY 29. 1981. ALL IN DUPAGE COUNTY. ILLINOIS. THE SIDE LINES OF SAID 20.00 FOOT EASEMENT TO BE EXTENDED OR SHORTENED TO INTERSECT AT ANGLE POINTS AND TERMINATE AT THE AFORESAID BOUNDARIES.

PIN: 03-17-406-016 (part)

# **DEPICTION - UNIMPROVED EASEMENT 2**





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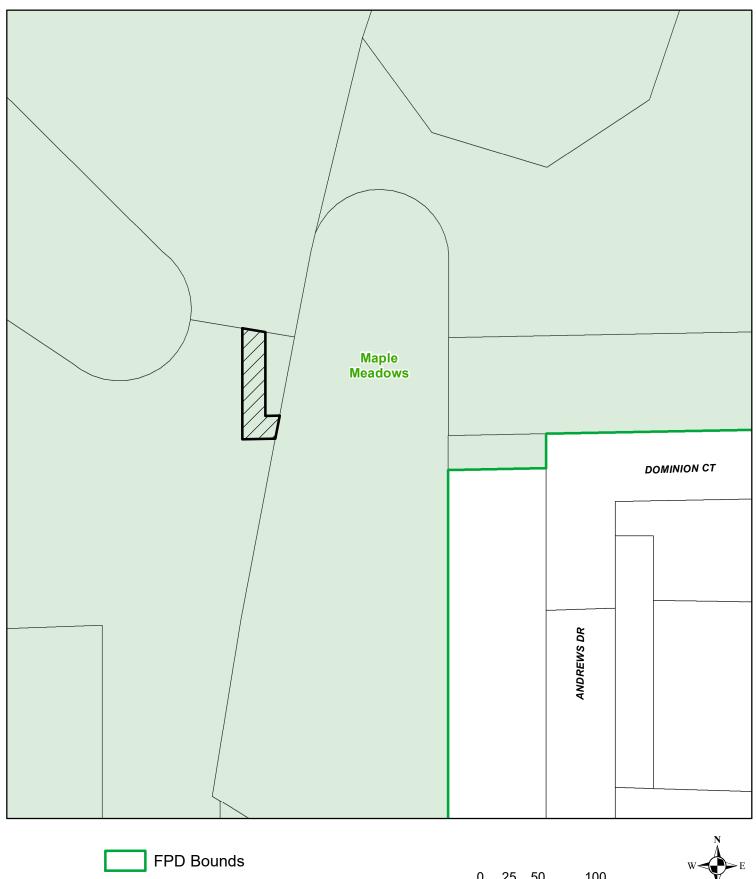
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# **LEGAL DESCRIPTION - UNIMPROVED EASEMENT 3**

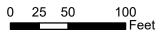
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P.I.N. 06-17-406-016 (part)

# **DEPICTION - UNIMPROVED EASEMENT 3**









Unimproved Easement 3



# REQUEST FOR COUNCIL ACTION

Referred to Council: November 16, 2023

Subject: Pavement Marking Final Payment Staff Contact: Alan Lange, Public Works Director

Department: Public Works

TITLE: Approval of Final Payment to Superior Road Striping Inc. for the FY 24 Pavement Marking Program in the Amount of \$19,771.51.

# **RECOMMENDATION:**

Staff Recommends Approval of Final Payment to Superior Road Striping Inc. for the FY 24 Payement Marking Program in the Amount of \$19,771.51.

# **BACKGROUND:**

The City Council previously awarded a proposal to Superior Road Striping Inc. for the restriping of various roadways throughout the City. Nearly 11,702 linear feet of pavement markings were completed including the restriping of the parking lot for City Hall. The work has been completed and staff recommends approval of final payment.

# **ANALYSIS:**

The contract was awarded in an amount not to exceed \$26,305. Less than expected quantities were present at the specified locations which resulted in a final total of \$19,771.51.

# **DOCUMENTS ATTACHED**

✓ Superior Road Striping Inc. Invoice

STRATEGIC PLAN	ITEM
□ No	

**Objective: Provide Exceptional Services – Public Works ES#14:** Prioritize street program and potholes upkeep in a timelier manner.

# **SRS**

# SUPERIOR ROAD STRIPING INC.

1980 N. HAWTHORNE AVE

**MELROSE PARK, IL 60160** 

Telephone Fax

708-865-0718 708-865-0296

**PATRICK** 

HERE ARE OUR FINAL STRIPING QUANTITIES, PLEASE LET ME KNOW IF YOU AGREE

DESCRIPTION	UNIT	TOTAL QUANTITY	UNIT PRICE	AMOUNT
THPL PVT MK L & S THPL PVT MK LINE 4 THPL PVT MK LINE 6 THPL PVT MK LINE 8 THPL PVT MK LINE 12 THPL PVT MK LINE 24	SF LF LF LF LF	52.9 8147.0 1608.0 4512.0 1372.0 163.0	5.25 0.73 1.19 1.75 2.10 5.25	277.73 5947.31 1913.52 7896.00 2881.20 855.75

\$ 19,771.51

THANK YOU SANDY



# REQUEST FOR COUNCIL ACTION

Referred to Council: November 16, 2023

Subject: Sidewalk Replacement Final Payment Staff Contact: Alan Lange, Public Works Director

Department: Public Works

TITLE: Approval of Final Payment to Globe Construction, Inc. for the FY 24 Sidewalk Replacement Program in the Amount of \$57,020.00.

# **RECOMMENDATION:**

Staff Recommends Approval of Final Payment to Globe Construction, Inc. for the FY 24 Sidewalk Replacement Program in the Amount of \$57,020.00.

# **BACKGROUND:**

The City Council previously awarded a proposal to Globe Construction, Inc. for the FY 2024 sidewalk replacement program. Seventy-three sidewalk squares, nearly five hundred square feet of driveway, and 30 feet of curb were replaced under this contract. The work has been completed and staff recommends approval of final payment.

# **ANALYSIS:**

The contract was awarded in an amount not to exceed \$55,000. After the contract was approved, a main break occurred requiring additional concrete restoration. This additional work brought the final total to \$57,020.00. The FY24 budget includes funding in the amount of \$65,000 for sidewalk replacement.

# **DOCUMENTS ATTACHED**

- ✓ Globe Construction Inc. Invoice
- √ Final Waiver

<b>STRAT</b>	<b>EGIC</b>	<b>PLAN</b>	<b>ITEM</b>
=			

∐ Yes ⊠ No



# 1781 W. Armitage Court Addison, IL 60101 630-620-0313 globeconstructioninc@gmail.com

# Bill To City of Wood Dale 404 N Wood Dale Rd Wood Dale, IL 60191

# **INVOICE**

Date	Invoice #
10/24/2023	2283

**Project** 

FY24 Sidewalk Replacement Program

Qty	Item	Description	Rate	Amount
1,695	S/W R&R - sf	5" PCC Sidewalk Removal & Replacement per square foot	24.00	40,680.00
180	S/W R&R - sf	6" PCC Sidewalk Removal & Replacement per square foot	28.00	5,040.00
490	D/W R&R - sf	PCC Driveway Removal & Replacement per square foot	20.00	9,800.00
30	Comb C&G R&R - If	Combination Concrete Curb and Gutter Removal & Replacement per lineal foot	50.00	1,500.00
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		Tota	al	\$57,020.00

NET: 30 DAYS

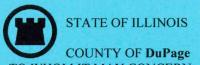
**Balance Due** 

Payments/Credits

\$57,020.00

\$0.00

### FINAL WAIVER OF LEIN



Gty #
-------

Invoice 2283

TO WHOM IT MAY CONCERN:

WHEREAS the undersigned has been employed by City of Wood Dale

to furnish Labor and Materials

for the premises known as FY24 Sidewalk Replacement Program

of which is the owner City of Wood Dale

The undersigned, for and in consideration Fifty-Seven Thousand Twenty Dollars and 00/100

(\$ 57,020.00) Dollars, and other good and valuable considerations, the receipt whereof is hereby acknowledged, do(es)

hereby waive and release any and all lien or claim of, or right to, lien, under the statutes of the State of Illinois, relating to mechanics' liens, with respect to and on said above-described premises, and the improvements thereon, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds or other considerations due or to become due from the owner, on account of all labor, services, material, fixtures, apparatus or machinery, heretofore furnished, or which may be furnished at any time hereafter, by the undersigned for the above-described premises, INCLUDING EXTRAS\*

DATE: 10/30/2023

COMPANY NAME: Globe Construction Inc

ADDRESS: 1781 Armitage Court - Addison, IL 60101

SIGNATURE AND TITLE:

\*EXTRAS INCLUDE BUT ARE NOT LIMITED TO CHANGE ORDERS, BOTH ORAL AND WRITTEN, TO THE CONTRACT

# **CONTRACTOR'S AFFIDAVIT**

STATE OF ILLINOIS COUNTY OF DuPage

TO WHOM IT MAY CONCERN:

THE UNDERSIGNED, (NAME) Peter Martire, BEING DULY SWORN, DEPOSES

AND SAYS THAT HE OR SHE IS (POSITION) President OF

(COMPANY NAME) Globe Construction Inc WHO IS THE

CONTRACTOR FURNISHING Labor and Materials WORK ON THE BUILDING

**LOCATED AT Various Locations** 

**OWNED City of Wood Dale** 

That the total amount of the contract including extras\* \$ 57,020.00 on which he or she has received payment of \$ 0.00 prior to this payment. That all waivers are true, correct and genuine and delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers. That the following are the names and addresses of all parties who have furnished material or labor, or both, for said work and all parties having contracts or sub contracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each, and that the items mentioned include all labor and material required to complete said work according to plans and specifications:

NAMES AND ADDRESSES	WHAT FOR	CONTRACT PRICE INCLDG EXTRAS*	AMOUNT PAID	THIS PAYMENT	BALANCE DUE
Globe Construction, Inc.	Labor & Material	\$57,020.00		\$57,020.00	\$0.00
TOTAL LABOR AND MATERIAL INCLUDIN	NO EXTENDED TO				
TOTAL LABOR AND MATERIAL INCLUDIT COMPLETE.	NG EXTRAS* TO	\$57,020.00	\$0.00	\$57,020.00	\$0.00

That there are no other contracts for said work outstanding, and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or in connection with said work other than above stated.

SIGNATURE:

SUBSCRIBED AND SWORN TO BEFORE ME THIS

CHLOIE A. KAROLCZUK OFFICIAL SEAL otary Public, State of Illinois My Commission Expires February 22, 2027



# **REQUEST FOR COUNCIL ACTION**

Referred to Council: November 16, 2023 Subject: Parking Agreement

Staff Contact: Brad Wilson, Finance Director

Department: Finance

TITLE: A RESOLUTION APPROVING A NON-EXCLUSIVE PARKING LICENSE AGREEMENT FOR THE USE OF CITY PROPERTY FOR ADDITIONAL PARKING FOR WOODY'S SPORTS BAR, LOCATED AT 230 EAST IRVING PARK ROAD, WOOD DALE

# **COMMITTEE ACTION FOLLOW-UP ITEMS:**

Committee Vote: 7-0

Committee Meeting Date: 11-09-2023

Requested information from Committee: Attorney Bond will be at the Council meeting Thursday night to discuss any questions/concerns relating to this topic.

# **DOCUMENTS ATTACHED**

- ✓ Resolution
- ✓ Agreement

# STRATEGIC PLAN ITEM

☐ Yes ⊠ No

# **RESOLUTION NO. R-23-73**

# A RESOLUTION APPROVING A NON-EXCLUSIVE PARKING LICENSE AGREEMENT FOR THE USE OF CITY PROPERTY FOR ADDITIONAL PARKING FOR WOODY'S SPORTS BAR, LOCATED AT 230 EAST IRVING PARK ROAD, WOOD DALE

- **WHEREAS**, the City of Wood Dale (the "City") is a body politic and corporate, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; and
- WHEREAS, the City is authorized and empowered under the Illinois Municipal Code, and its Ordinances adopted pursuant thereto, to enter into license agreements for the use of its real property; and
- **WHEREAS,** under 11-80-2 of the Illinois Municipal Code, 65 ILCS 5/11-80-2, the City is authorized to regulate the use of its streets and other municipal property; and
- **WHEREAS**, the City is the owner of the Metra Parking Lot adjacent to the Metra Train Station, located at 199 Division Street, Wood Dale, Illinois (the "Property"); and
- **WHEREAS,** Sanitize This, LLC d/b/a/ Woody's Sports Bar (the "Lessee") is the Owner of interest in property located within the corporate limits of the City of Wood Dale, commonly identified as 230 East Irving Park Road, Wood Dale, Illinois; and
- WHEREAS, the Lessee is seeking City approval granting use of a portion of the Property for use of twelve (12) additional parking spaces in conjunction with its Restaurant operation; and
- WHEREAS, the allocation of additional parking spaces to the Lessee will facilitate a convenience to the residents and customers of the Restaurant, and the City Staff, having reviewed Lessee's request, determined that it is the best interests of the City and Lessee to allow Lessee to use limited portions of the Property for additional parking; and
- WHEREAS, the City Staff has determined that such use of the Property will not obstruct or deter public use of the Property and will be of general benefit to the Lessee and to the City and its residents by allowing an existing land use in the City to remain in operation, while at the same time, will enhance the use of the Lessee's property; and
- WHEREAS, the City deems it desirable to enter into a Non-Exclusive License Agreement allowing Lessee to use of a certain portion of the Property for access and parking; and
- WHEREAS, a Non-Exclusive License Agreement (hereinafter the "Agreement") has been negotiated with Lessee, a copy of which is attached hereto and incorporated herein by

# reference as Exhibit "A;" and

WHEREAS, the City Council has reviewed the Agreement and deems it in the best interests of the City and its residents to authorize execution of the Agreement on the terms set forth therein.

# NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WOOD DALE, DUPAGE COUNTY, ILLINOIS, as follows:

- SECTION 1: The recitals set forth above are incorporated herein and made a part hereof.
- <u>SECTION 2:</u> The Agreement with Lessee, in substantially the same form as attached to this Resolution as Exhibit "A," is approved and accepted by the City of Wood Dale.
- SECTION 3: The Mayor is authorized to execute said Agreement on behalf of the City of Wood Dale, which signature shall be attested to by the City Clerk.
- <u>SECTION 4:</u> The City Manager, staff and the City Attorney shall take the steps necessary to put the terms and conditions of the Agreement into effect.
- <u>SECTION 5:</u> That all Ordinances and Resolutions, or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.
- SECTION 6: That this Resolution shall be in full force and effect, from and after its adoption, approval and publication in pamphlet form, as provided by law.

PASSED this day of November, 2023.
AYES:
NAYS:
ABSENT:
APPROVED this day of November, 2023
SIGNED:
Annunziato Pulice, Mayor
ATTEST:
Lynn Curiale City Clerk

# Exhibit A

# <u>CITY OF WOOD DALE AND SANITIZE THIS, LLC NON-EXCLUSIVE PARKING LICENSE AGREEMENT</u>

THIS NON-EXCLUSIVE PARKING LICEN	NSE AGREEMENT ("Agreement") is made
and entered this day of	_, 2023, by and between the City of Wood
Dale, an Illinois municipal corporation, and Sanitize	e This, LLC d/b/a Woody's Sports Bar (the
"Lessee"), an Illinois limited liability corporation.	

# WITNESSETH:

WHEREAS, the City of Wood Dale (hereinafter the "City") is a body politic and corporate, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 et seq.; and

WHEREAS, the City possesses the authority, pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*, to adopt ordinances and resolutions pertaining to the public health, safety and welfare of the City; and

WHEREAS, the City Council of the City (hereinafter referred to as the "City Council") is the corporate authority for the City and is authorized by law to exercise all powers and to control the affairs of the City; and

WHEREAS, the City Council possesses full power and authority to approve and pass all necessary ordinances, resolutions, rules and regulations necessary for carrying into effect the objects for which the City was formed, in accordance with the Illinois Municipal Code; and

WHEREAS, the City owns a certain Parcel of Property, the Metra Parking Lot adjacent to the Metra Train Station, located at 199 Division Street, Wood Dale, Illinois, for the purposes of providing parking to Metra Train Commuters; and

WHEREAS, Lessee operates a Restaurant business currently located at 230 East Irving Park Road, Wood Dale, Illinois; and

WHEREAS, Lessee has requested the use of a portion of the Metra Parking Lot for use of twelve (12) additional parking spaces in conjunction with the Restaurant operation; and

WHEREAS, the request for parking spaces will not hinder or impair the vehicular or pedestrian traffic along the portion of the Metra Parking Lot and will facilitate a convenience to the residents and customers the Restaurant; and

WHEREAS, Lessee has requested the permission of the City to license and use twelve (12) parking spaces located at the Eastern portion of the Metra Parking Lot adjacent to the Metra Train Station (hereinafter referred to as "Licensed Parking Area"); and

WHEREAS, the City Council of the City has determined that it is in the best interest of the City to grant a non-exclusive Parking License for parking to Lessee for additional Restaurant Patron parking, as provided for herein.

NOW THEREFORE, in consideration of the recitals hereinabove set forth and other good and valuable considerations, the sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

- 1. City hereby conveys, without grant of any possessory estate or interest or rights in the land depicted below, except as set forth in this Agreement, the Licensed Parking Area unto Lessee in connection with the Restaurant operation, its successors and assigns, a non-exclusive License to use the Licensed Parking Area under the terms set forth herein, which is depicted in Exhibit A, attached hereto and incorporated herein by this reference.
- 2. Said License is for twelve (12) parking spaces, along a portion of the Metra Parking Lot adjacent to the Metra Train Station.
- 3. The non-exclusive License shall be for a period of six (6) months, subject to renewal by the Parties.
- 4. City agrees to include the Licensed Parking Area in any scheduled or routine street maintenance and street resurfacing being performed, at the City's cost.
- 5. City conveys said non-exclusive License subject to the following terms, covenants and conditions:
  - A. City may at any future time in the event of a breach of this Parking Licensing Agreement by Lessee revoke this License with fourteen (14) days' notice to Lessee and without costs to the City, subject to Lessee's right to cure any alleged default within fourteen (14) days after receipt of such notice.
  - B. Lessee shall indemnify, defend, protect and save the City and its Officials, employees, and agents harmless from and against any and all claims, demands, expenses, losses, suits, damages and attorney's fees, related to the acts of the Lessee, Lessee's employees, agents, contractors, or invitees (unless caused by the acts or omissions of City, City's employees, agents or contractors) as may be occasioned by reason of: (i) any accident, injury or damage occurring in or about the Licensed Parking Area causing injury to persons or damage to property (including, without limitation, the Licensed Parking Area); and (ii) the use, operation, maintenance, alteration, repair, replacement, removal of the Licensed Parking Area by the Lessee, including any and all signage upon the public right-of-way; and (iii) the failure of Lessee to fully and faithfully perform the obligations and observe the conditions of this Agreement.
  - C. Lessee shall pay the City a License Fee of dollars (\$\_\_\_\_) each month during the term of the License on or before the first day of each of the six (6) months during the term of the License Agreement. The City will provide written notice of default

of the payment of the Annual License Fee from City and shall have fourteen (14) days from receipt of such notice to cure such default.

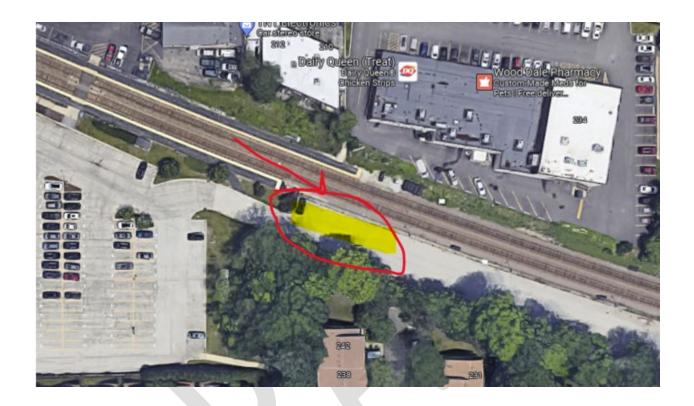
- D. City shall not be liable to Lessee, its employees, licensees, agents, lessees, or invitees for any damage or injuries (including death) to any persons or to any of their properties except to the extent that injuries or damages are caused by the willful acts or omissions of City.
- E. Any notice herein provided to be given shall be deemed properly given if in writing and delivered personally or by certified mail, return receipt requested to (a) Daniel Schneider, at 741 John St., Bensenville Illinois 60106 or (b) City at 404 N. Wood Dale Road, Wood Dale, Illinois 60191, Attn: City Manager, or to such other person or addresses as the Lessee or City may from time to time designate upon written notice to the other Party.
- F. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

(Signature Page to Follow)

**IN WITNESS WHEREOF**, the Parties hereto caused this Parking License Agreement to be executed by a duly authorized Representative and have set their hands and seals the day and year first above written.

	CITY OF WOOD DALE,
	By:
	Annunziato Pulice, Mayor
ATTEST:	
Lynn Curiale, City Clerk	
Lyini Curiaie, City Clerk	
DANIEL SCHNEIDER	
DANIEL SCHNEIDER	
Dec	
By:	
Title:	
WITNESSED:	

# **EXHIBIT A**



# CITY OF WOOD DALE AND SANITIZE THIS, LLC NON-EXCLUSIVE PARKING LICENSE AGREEMENT

THIS NON-EXCLUSIVE PARK	XING LICENSE AGREEMENT ("Agreement") is made and
entered this day of	, 2023, by and between the City of Wood Dale, an
Illinois municipal corporation, and Sani	tize This, LLC d/b/a Woody's Sports Bar (the "Lessee"), an
Illinois limited liability corporation.	

# **WITNESSETH:**

WHEREAS, the City of Wood Dale (hereinafter the "City") is a body politic and corporate, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 et seq.; and

WHEREAS, the City possesses the authority, pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*, to adopt ordinances and resolutions pertaining to the public health, safety and welfare of the City; and

WHEREAS, the City Council of the City (hereinafter referred to as the "City Council") is the corporate authority for the City and is authorized by law to exercise all powers and to control the affairs of the City; and

WHEREAS, the City Council possesses full power and authority to approve and pass all necessary ordinances, resolutions, rules and regulations necessary for carrying into effect the objects for which the City was formed, in accordance with the Illinois Municipal Code; and

WHEREAS, the City owns a certain Parcel of Property, the Metra Parking Lot adjacent to the Metra Train Station, located at 199 Division Street, Wood Dale, Illinois, for the purposes of providing parking to Metra Train Commuters; and

WHEREAS, Lessee operates a Restaurant business currently located at 230 East Irving Park Road, Wood Dale, Illinois; and

WHEREAS, Lessee has requested the use of a portion of the Metra Parking Lot for use of twelve (12) additional parking spaces in conjunction with the Restaurant operation; and

WHEREAS, the request for parking spaces will not hinder or impair the vehicular or pedestrian traffic along the portion of the Metra Parking Lot and will facilitate a convenience to the residents and customers the Restaurant; and

WHEREAS, Lessee has requested the permission of the City to license and use twelve (12) parking spaces located at the Eastern portion of the Metra Parking Lot adjacent to the Metra Train Station (hereinafter referred to as "Licensed Parking Area"); and

WHEREAS, the City Council of the City has determined that it is in the best interest of the City to grant a non-exclusive Parking License for parking to Lessee for additional Restaurant Patron parking, as provided for herein.

NOW THEREFORE, in consideration of the recitals hereinabove set forth and other good and valuable considerations, the sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

- 1. City hereby conveys, without grant of any possessory estate or interest or rights in the land depicted below, except as set forth in this Agreement, the Licensed Parking Area unto Lessee in connection with the Restaurant operation, its successors and assigns, a non-exclusive License to use the Licensed Parking Area under the terms set forth herein, which is depicted in Exhibit A, attached hereto and incorporated herein by this reference.
- 2. Said License is for twelve (12) parking spaces, along a portion of the Metra Parking Lot adjacent to the Metra Train Station.
- 3. The non-exclusive License shall be for a period of six (6) months, subject to renewal by the Parties.
- 4. City agrees to include the Licensed Parking Area in any scheduled or routine street maintenance and street resurfacing being performed, at the City's cost.
- 5. City conveys said non-exclusive License subject to the following terms, covenants and conditions:
  - A. City may at any future time in the event of a breach of this Parking Licensing Agreement by Lessee revoke this License with fourteen (14) days' notice to Lessee and without costs to the City, subject to Lessee's right to cure any alleged default within fourteen (14) days after receipt of such notice.
  - B. Lessee shall indemnify, defend, protect and save the City and its Officials, employees, and agents harmless from and against any and all claims, demands, expenses, losses, suits, damages and attorney's fees, related to the acts of the Lessee, Lessee's employees, agents, contractors, or invitees (unless caused by the acts or omissions of City, City's employees, agents or contractors) as may be occasioned by reason of: (i) any accident, injury or damage occurring in or about the Licensed Parking Area causing injury to persons or damage to property (including, without limitation, the Licensed Parking Area); and (ii) the use, operation, maintenance, alteration, repair, replacement, removal of the Licensed Parking Area by the Lessee, including any and all signage upon the public right-of-way; and (iii) the failure of Lessee to fully and faithfully perform the obligations and observe the conditions of this Agreement.
  - C. Lessee shall pay the City a License Fee of one hundred fifty dollars (\$150.00) each month during the term of the License on or before the first day of each of the six (6) months during the term of the License Agreement. The City will provide written notice of default of the payment of the Annual License Fee from City and shall have fourteen (14) days from receipt of such notice to cure such default.
  - D. City shall not be liable to Lessee, its employees, licensees, agents, lessees, or invitees for any damage or injuries (including death) to any persons or to any of their properties except to the extent that injuries or damages are caused by the willful acts or omissions of City.
  - E. Any notice herein provided to be given shall be deemed properly given if in writing and delivered personally or by certified mail, return receipt requested to (a) Daniel Schneider, at 741 John St., Bensenville Illinois 60106 or (b) City at 404 N. Wood Dale Road, Wood Dale, Illinois 60191, Attn: City Manager, or to such other person or addresses as the Lessee or City may from time to time designate upon written notice to the other Party.

F. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

(Signature Page to Follow)



IN WITNESS WHEREOF, the Parties hereto caused this Parking License Agreement to be executed by a duly authorized Representative and have set their hands and seals the day and year first above written.

	CITY OF WOOD DALE,		
	D		
	By:Annunziato Pulice, Mayor		
ATTEST:			
Lynn Curiale, City Clerk			
DANIEL SCHNEIDER			
By:			
Title:			
WITNESSED:			

# **EXHIBIT A**





# REQUEST FOR COUNCIL ACTION

Referred to Council: November 16, 2023

Subject: DuPage Water Commission – Customer Agreement

Staff Contact: Brad Wilson, Finance Director

Department: Finance

TITLE: AN ORDINANCE APPROVING A WATER PURCHASE AND SALE CONTRACT BETWEEN THE DUPAGE WATER COMMISSION AND CONTRACT CUSTOMERS

# **RECOMMENDATION:**

Approve the attached Ordinance between the DuPage Water Commission and the City of Wood Dale.

# **BACKGROUND:**

The existing agreement between the City and the Water Commission expires on February 24, 2024. In order for the City to continue to receive water from them, the City must enter into this agreement.

# ANALYSIS:

This is the first of 2 agreements that the City needs to be approved to continue its relationship with the Water Commission. They are requesting both agreements be approved by the end of the calendar year.

This agreement was worked out by various municipalities, DuPage County, the Water Commission, and various legal departments. Please see the attached slides for information relating to whom those entities are.

You will see references to "wheeling" agreements. The City does not have such an arrangement, and as such those references are of no concern to us.

# DOCUMENTS ATTACHED ✓ Ordinance

- ✓ Customer Agreement
   ✓ Slides Customer Contract presentation

STRA	<b>NTE</b>	<b>GIC</b>	PL/	AΝ	ITEM
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	Yes
$\boxtimes$	No

# DU PAGE WATER COMMISSION Counties of DuPage, Cook, Kane and Will, Illinois

# WATER PURCHASE AND SALE CONTRACT

Between

The DuPage Water Commission

and

**Contract Customers** 

### **DuPAGE WATER COMMISSION**

#### COUNTIES OF DuPAGE, COOK, KANE AND WILL ILLINOIS

#### AND

VILLAGE OF ADDISON VILLAGE OF BARTLETT VILLAGE OF BENSENVILLE VILLAGE OF BLOOMINGDALE VILLAGE OF CAROL STREAM VILLAGE OF CLARENDON HILLS CITY OF DARIEN VILLAGE OF DOWNERS GROVE COUNTY OF DUPAGE CITY OF ELMHURST VILLAGE OF GLENDALE HEIGHTS VILLAGE OF GLEN ELLYN VILLAGE OF HINSDALE VILLAGE OF ITASCA VILLAGE OF LISLE VILLAGE OF LOMBARD CITY OF NAPERVILLE VILLAGE OF OAK BROOK CITY OF OAKBROOK TERRACE VILLAGE OF ROSELLE VILLAGE OF VILLA PARK VILLAGE OF WESTMONT CITY OF WHEATON VILLAGE OF WILLOWBROOK VILLAGE OF WINFIELD CITY OF WOOD DALE VILLAGE OF WOODRIDGE ILLINOIS-AMERICAN WATER COMPANY ARGONNE NATIONAL LABORATORY **AQUA ILLINOIS** 

WATER PURCHASE A	ND SALE CONTRACT
DATED AS OF	,

# WATER PURCHASE AND SALE CONTRACT

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## Dupage Water Commission Counties of Dupage, Cook, Kane and Will, Illinois Water Purchase and Sale Contract

This Water Purchase and Sale Contract, dated as of XX, by and between the DuPage Water Commission, Counties of DuPage, Cook and Will, 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 each of the following units of local government and private water providers in the State of Illinois:

### Unit of Local Government

Village of Addison
Village of Bartlett
Village of Bensenville
Village of Bloomingdale
Village of Carol Stream
Village of Clarendon Hills
City of Darien
Village of Downers Grove
County of DuPage
City of Elmhurst
Village of Glendale Heights
Village of Glen Ellyn
Village of Hinsdale
Village of Itasca

Village of Lisle
Village of Lombard
City of Naperville
Village of Oak Brook
City of Oakbrook Terrace
Village of Roselle
Village of Villa Park
Village of Westmont
City of Wheaton
Village of Willowbrook
Village of Willowbrook
Village of Winfield
City of Wood Dale
Village of Woodridge

#### Others

Illinois-American Water Company Argonne National Laboratory Aqua Illinois

#### WITNESSETH:

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

WHEREAS, the aforementioned units of local government (the "Contract Customers" as hereafter defined) have each executed counterparts of this Contract and are authorized under the Acts to receive potable water from Lake Michigan ("Lake Water" as hereafter defined) through the instrumentality of the Commission and, by executing this Contract are enabling the Commission to construct and complete its waterworks system (the "Waterworks System" as hereafter defined); and

WHEREAS, the Contract Customers each have a waterworks system (a "Unit System" as hereafter defined) and have each received or may properly petition to receive from the State of Illinois Department of Natural Resources, Office of Water Resources, a "Water Allocation" as hereafter defined; and

WHEREAS, the Commission has entered into a contract to purchase Lake Water sufficient to meet the water supply needs of the Commission and the Contract Customers and others (the "Water Supply Contract" as hereafter defined); and

WHEREAS, the Commission proposes to issue and sell its "Bonds" as hereafter defined from time to time during the term of this Contract in sufficient amounts for the payment of: "Cost of the Project" as hereafter defined; and

WHEREAS, the Bonds will be issued from time to time by the Commission pursuant to a "Bond Resolution" as hereafter defined; 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.*, as amended, and the Public Utilities Act, 220 ILCS 5/1 *et seq.*, as amended, the Commission and its Customers are authorized to enter into this Contract; and

WHEREAS, by the execution of this Contract, its Customers are surrendering none of their respective rights to the ownership and operation of their respective Unit Systems, except as expressly limited to this Contract, nor is the Commission surrendering any of its rights to the ownership and operation of its Waterworks System, but all expressly assert their continued right to operate such systems; and

WHEREAS, it is known to its Customers that the Commission may use this Contract as the basis for obtaining loans from time to time to be evidenced by the issuance of the Bonds and for payment of the principal of and premium, if any, and interest on the Bonds and as the means for the payment of its maintenance and operating expenses; and for the establishment and maintenance of accounts and reserves for such purposes as may be required in the Bond Resolution authorizing issuance of Bonds or authorized by applicable statutes; and

WHEREAS, its Customers recognize that the Commission may in the future enter into contracts with other "Subsequent Customers" as hereafter defined and other customers as may be served from time to time who have Water Allocations; and

WHEREAS, the Commission, in Article VI, Section 7.b of its By-Laws, requires a greater than majority vote containing a certain composition of Commissioners to validate certain motions, resolutions or ordinances; and the Contract Customers enter into this Contract in reliance upon the continuation of procedural rules of the Commission as set forth in said Article VI, Section 7.b which grant this vote and composition; and

WHEREAS, this Contract also contains certain requirements for the nature and composition of the vote of the Commission required to effectuate certain actions relating to the contractual rights of the Contract Customers herein; and such Contract Customers execute this Contract in reliance upon the continuation of such requirements for the term of this Contract; and

WHEREAS, the Contract Customers have entered into this Contract in reliance upon Section 2 (j) of the Water Commission Act of 1985 which provides that units of local government may enter into contracts for the supply of Lake Water with the Commission in contemplation of and reliance upon the pledge of the State of Illinois that no subsequent legislation would impair or limit the power or ability of a County Water Commission or a unit of local government fully to carry out the terms of any contract for the supply of Lake Water; and, in particular, the rights of the Contract Customers and the obligations of the Commission under this Contract are intended by the Contract Customers and acknowledged by the Commission to be subject to such pledge and agreement of the State of Illinois:

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

The preambles hereto are hereby incorporated herein by reference, as if set out in full. Section numbers and captions are for reference and convenience only and do not expand or limit the meaning as contained in the text of this Contract. A definition in the singular may be used in the plural, and vice-versa.

**Section 1. Definitions.** The following words and phrases shall have the following meanings when used in this Contract, unless the context clearly indicates a different meaning is intended.

"Aggregate Costs" means Operation and Maintenance Costs, Fixed Costs and Underconsumption Costs, collectively, as herein defined.

"Bonds" means all of the Commission's obligations which are payable from the revenues of the Waterworks System, whether in the form of bonds, notes, or other evidences 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.

"Bond Resolution" means the Commission's bond resolution or bond resolutions or bond ordinance or bond ordinances under which the Commission will authorize the issuance of and issue Bonds.

"Charter Customers" means the units of local government that executed the original contract between the Commission and its customers dated June 11, 1986.

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

"Contract" means this Contract.

"Contract Customers" collectively means Charter Customers and any other entity that has executed a contract with the Commission to receive Lake Michigan Water from the Commission and wholesale it to the public prior to the date of this Contract.

"Cost of the Project" means, with respect to a Project, all costs of the Project, including costs of the acquisition of necessary lands, easements, and rights-of-way over lands and waters; the erection, construction, rehabilitation, repair and replacement of pumping, storage or other facilities, and the installation of mains and pipelines; costs of financing and administration during any period of acquisition, erection, construction, rehabilitation, repair, replacement or installation, as aforesaid; costs of repayment of such interim indebtedness as may be incurred for such costs, including administrative expenses prior to issuance of Bonds for a Project; and costs for such other purposes, including without limitation reasonable reserves and working capital, as may be determined by the Commission.

"Customer" means any customer purchasing water from the Commission.

"Fiscal Year" means the fiscal year of the Commission.

"Fixed Costs" means an amount sufficient, at all times, to pay the principal of and premium, if any, and interest on Bonds, to provide reserves required therefor, to provide an adequate depreciation fund for the Waterworks System, to comply with the covenants of the Bond Resolution, and to pay reasonable capital costs necessary to carry out the corporate purposes and powers of the Commission; and except as any of the above are included in Operations and Maintenance Costs.

"Full Water Requirements" means, with respect to a Customer, the amount of water necessary from time to time to meet the potable water requirements of all then current customers served by the Unit System of such Customer (including municipal use where applicable) whether within or without the corporate limits or applicable service area of such Customer.

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

"Minimum Take or Pay Requirement" means a requirement that a certain minimum amount of Lake Water from the Waterworks System will be taken or, if not taken, will be paid for on the same basis as if taken.

"Operations and Maintenance Costs" means amounts payable under the Water Supply Contract, but not including Underconsumption Costs except as provided in

Section 10 of this Contract, and similar water supply contracts, 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. Upon the adoption of a Bond Resolution by the Commission in connection with the sale of Bonds, Operation and Maintenance Costs payable under this Contract shall in any month at least be equal to the amount required to be deposited in that month into the operation and maintenance fund or account created under the Bond Resolution.

"Project" means any acquisition or construction for the provision of Lake Water related to the Waterworks System including initial acquisition and construction thereof and all future improvements or extensions, acquisition, construction, repair, maintenance or replacement thereof.

"Subsequent Customer" means a customer of the Waterworks System which has a Water Allocation, is not a Contract Customer and is served pursuant to a Subsequent Contract executed after the Effective Date of this contract.

"Subsequent Contract" means a contract which provides for a Customer to take its Full Water Requirements from the Waterworks System or contains a Minimum Take or Pay Requirement and which contract further provides for storage and other requirements, terms of payment (expressly subject to the following sentence), Force Majeure and Commission Defaults substantially the same as Sections 3, 6, 13, 14, and 15 hereof (which provisions may relate to a Full Water Requirements agreement or a Minimum Take or Pay Requirement agreement as the case may be). The rate or charges for Lake Water may be higher than those provided herein, and only the terms of payment need be substantially the same.

"Trustee" means the trustee provided in the Bond Resolution.

"Underconsumer" means, for any given year, a Contract Customer which takes less Lake Water in such year than its Water Allocation times 365 times the Underconsumption Ratio for such year.

"Underconsumption" means the amount by which the amount of Lake Water actually taken by a Contract Customer is less than the Underconsumption Ratio times such customer's Water Allocation times 365.

"Underconsumption Costs" means any amount which 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.

"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 times 365.

"Unit System" means the waterworks system or combined waterworks and sewerage system (if such systems are combined for financing and accounting purposes) from time to time of a Contract Customer.

"Water Allocation" means, with respect to a Customer, such Customer's allocation and allowable excess from time to time of Lake Water pursuant to the Level of Lake Michigan Act, as amended from time to time as ordered by the Illinois Department of Natural Resources; or such other amounts of Lake Water as a Customer may lawfully take

"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.

"Waterworks System" means all the Commission's facilities, including land, easements, rights-of-way over lands and waters, pumping, storage and other facilities, mains and pipelines acquired and used for the purposes of providing and transmitting Lake Water to Customers which may be modified, amended and supplemented from time to time by the Commission in its sole discretion to serve the Lake Water needs of only those Customers or potential Customers located within the territorial limits of the Commission or within territory which becomes part of "included units" in the Acts.

# Section 2. Water Supply.

- (a) Agreement to Purchase and Sell. Subject to the provisions of this Contract, the Commission shall sell to each Contract Customer and each Contract Customer agrees to purchase from the Commission an amount of Lake Water necessary from time to time to serve its Full Water Requirements. The Commission's obligation to each Contract Customer, however, to deliver Lake Water hereunder shall be limited to a maximum annual amount equivalent to such Contract Customer's then current Water Allocation and to a maximum rate of Lake Water in any one hour equal to 1.7 times such Contract Customer's Water Allocation divided by 24. Further, the Commission's obligation to each Contract Customer to deliver Lake Water at a maximum hourly rate shall be divided among the connection points, if more than one of each such Contract Customer as provided in the design of the Waterworks System.
- (b) Certain Limits on Supply and Commission's Power to Contract. The Commission shall use its best efforts to furnish Lake Water to the Contract Customers as hereinabove provided, but its obligation hereunder shall be limited by (i) the amount of Lake Water from time to time available to the Commission; (ii) contracts between the Commission and its other Customers; (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 points of delivery. The Commission shall not enter into contracts with other Customers that would cause the Commission to be obligated to sell Lake Water in excess of the least of (i) Waterworks System capacity, (ii)

the maximum amount of Lake Water available under the Water Supply Contract or (iii) an amount which would decrease the amount of Lake Water then being supplied or to be supplied in the future to the Contract Customers.

- (c) Emergency or Maintenance Shut-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 temporarily to turn off the Lake Water in its mains for emergency and maintenance purposes. The Commission shall give to the Contract Customers notice not less than forty-eight (48) hours in advance of any such turn-off, except that in emergencies it shall give notice which is reasonable under the particular circumstances.
- (d) 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, each Contract Customer shall be entitled to the fullest extent possible to receive during such period of curtailment its pro rata share of Lake Water available as determined by the ratio of its total Lake Water use during the prior Fiscal Year to the sum of Lake Water use during the prior Fiscal Year of all Customers entitled to Lake Water during such period of curtailment. Nothing in this Contract shall be construed to prohibit each Contract Customer from serving its customers in cases of emergency, or when the Commission for whatever reason is unable to meet such Contract Customer's Full Water Requirements, from any source including wells owned by such Contract Customer and maintained for emergency use.
- (e) Water Quality. The Commission further undertakes to provide that all Lake Water delivered to the Commission under said contracts shall be of such quality, at the point of delivery to the Commission under said contracts, as to meet the requirements of any Federal, State or local agency as shall have jurisdiction from time to time for the operation of public water supplies. The Commission shall supply each Contract Customer with Lake Water of a quality commensurate with that furnished other Contract Customers, and meeting state and federal water quality standards. The Commission bears no responsibility for the contamination of Lake Water or deterioration of water quality occurring beyond the points of delivery to the Contract Customers.

## Section 3. Storage, Delivery, Distribution and Conservation.

(a) Storage. The Water Supply Contract currently requires the Commission to provide for and maintain water storage within the Waterworks System and certain Customer Unit Systems, collectively, of sufficient capacity to store not less than two times the annual average daily water demands (including operable shallow well capacity which may be counted towards meeting up to ten percent (10%) of the storage requirements.) In the event the City of Chicago enforces the minimum water storage standards and thereby requires the Commission to provide additional water storage and capacity, then this Section will apply. Each Contract Customer agrees to use its best efforts to increase the water storage capacity of its Unit System; but in no event shall a Contract Customer be required to increase the water storage capacity contained in its Unit System (including

its operable shallow well capacity which may be counted towards meeting up to ten percent (10%) of its storage requirements) to an amount more than twice the amount of its then annual average daily water demand, less that portion of the Commission's storage capacity in its Waterworks System equal to such Contract Customer's annual average daily water demand divided by the total annual average daily water demands of all Customers (to the extent that such Customers are included as parties for whom storage must be provided and maintained under the provisions of the Water Supply Contract).

(b) Points of Delivery, Back-Flows, Pressure. The points of delivery shall be defined as the points of outlet where the Lake Water delivered hereunder leaves the Waterworks System and enters a Unit System. These points will be to the lesser of ten feet downstream from the Commission's metering stations or a common dividing wall between the Commission's metering station and the Contract Customer's pressure adjusting or rate control stations. The number and location of connections to each Contract Customer's system are shown on Exhibit 1. Each Contract Customer shall receive its supply of Lake Water downstream of the Commission's metering stations at pressures that will vary from time to time. Each point of delivery shall have a pressure adjusting or rate control station. Each Contract Customer is responsible for the siting, design, construction, operation, maintenance and replacement of the pressure adjusting or rate control stations supplied by Contract Customer to convey water from the Waterworks System into the Unit System.

Future construction and modification of plans and specifications of the pressure increasing/reducing stations shall be submitted to the Commission for review and approval, which shall not be unreasonably withheld.

Each Contract Customer's operation of its pressure adjusting or rate control stations shall not cause surges or back-flows into the Waterworks System nor shall the operation of the Customer's pressure adjusting or rate control facilities cause the Waterworks System pressure to drop below 20 psi. The Commission shall not be responsible for any damage to the Unit System caused by design, operation or maintenance of the Customer's connection facilities to the Waterworks System.

(c) Contract Customer to Maintain Water Quality and Unit System and to Prevent Waste. Each Contract Customer agrees to operate its Unit System from the points of delivery on to the consumer 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 for its operation of public water supplies. Each Contract Customer also agrees to notify the Commission as promptly as possible of all emergency and other conditions which may directly or indirectly affect the quantity or quality of the Lake Water received hereunder or the Waterworks System.

## **Section 4. Measuring Equipment.**

(a) Commission to Supply Equipment, Official Record. The Commission shall furnish, install, own, operate, maintain, repair and replace, at its own expense, at the

points of delivery the necessary equipment and devices of a type meeting the standards of the American Waterworks Association for measuring properly the quantity of Lake Water delivered under this Contract, together with such above-ground structures as the Commission shall deem necessary to house such equipment and devices. Such meter or meters and other equipment so installed and structures so constructed shall remain the property of the Commission. Such structures and equipment shall be located at sites selected and provided by each Contract Customer, respectively, for Lake Water delivered to it, for such purpose. Such sites shall be subject to review and approval by the Commission, which shall not be unreasonably withheld. Each Contract Customer shall grant to the Commission a property interest in each respective site sufficient to enable the Commission to install, use, operate and maintain such structures and equipment during the term of this Contract; however, each Contract Customer shall be responsible for maintaining the grounds and landscaping, including but not limited to shrubbery and other plantings, located on each site provided. The Commission and each Contract Customer shall have access to such structures and equipment for examination and inspection at all reasonable times, but the reading for billing purposes, calibration and adjustment thereof shall be done only by the employees or agents of the Commission. For the purpose of this Contract, the official record of readings of the meter or meters 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 a Contract Customer, the Commission will give the Contract Customer a copy of such journal or record book, or permit the Contract Customer to have access thereto in the office of the Commission during regular business hours.

- (b) Calibration. At least once in each Fiscal Year, the Commission shall calibrate its meters dedicated to measuring Lake Water to a Contract Customer if requested in writing by such Contract Customer to do so, in the presence of a representative of the Contract Customer, and the Commission and such Contract Customer shall jointly observe any adjustments which are made to the meters in case any adjustments shall be necessary, and if any check meters as hereinafter provided for have been installed, such meters shall also be calibrated by the Contract Customer in the presence of a representative of the Commission and the Commission and such Contract Customer shall jointly observe an adjustment in case any adjustment is necessary.
- (c) Check Meters. A Contract Customer may, at its option and its own expense, install and operate a check meter to check each meter installed by the Commission, but the measurement of Lake Water for the purpose of this Contract shall be solely by the Commission's meters, except in the cases hereinafter specifically provided to the contrary. All such check meters shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of the Commission, but the calibration and adjustment thereof shall be made only by such Contract Customer, except during any period when a check meter may be used under the provisions hereunder for measuring the amount of water delivered, in which case the calibration and adjustment thereof shall be made by the Commission with like effects as if such check meter or meters had been furnished and installed by the Commission.

- (d) Variations between Meters; Reconciliation. Notwithstanding the foregoing, if the Commission or any Contract Customer at any time observes a variation between a delivery meter and a check meter, if any such check meter shall have been installed, or any other evidence of meter malfunctions, such party shall promptly notify the other party and the Commission and such Contract Customer shall then cooperate to procure an immediate calibration test and adjustment of such meter to accuracy and shall jointly observe any such adjustment. The party who discovers such variation shall give the other party notice not less than forty-eight (48) hours prior to the time of all tests of meters (which tests shall be conducted during normal working hours) so that the other party may conveniently have a representative present. If said representative is not present at the time set in such notice, calibration and adjustment may, notwithstanding any other provision of this paragraph, proceed in the absence of said representative. If, upon any test, the percentage of inaccuracy of any meter is found to be in excess of two percent (2%), registration thereof shall be corrected by agreement of the Commission and such Contract Customer based upon the best data available, for a period extending back to the time when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a period extending back one-half (1/2) of the time elapsed since the last date of calibration, but in no event further back than a period of 183 calendar days of meter operation. If for any reason any meters are out of service or out of repair so that the amount of Lake Water delivered cannot be ascertained or computed from the reading thereof, the Lake Water delivered during the period such meters are out of service or out of repair shall be deemed to be the registration of any check meter or meters if the same have been installed and are accurately registering. Otherwise, the amount of Lake Water delivered during such period shall be estimated (i) by correcting the error if the percentage of the error is ascertainable by calibration tests of 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.
- (e) Removal of Commission Metering Station. Within ninety (90) days after the termination of this Contract (absent a failure to renew), the Commission shall at its own expense remove metering equipment and stations from and restore the property of each Contract Customer to which such termination without renewal applies. If the Commission fails to remove and restore, as aforesaid, the Contract Customer affected may elect to enforce its right to same or to take title to such equipment and station.
- **Section 5. 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, unless the Commission and affected Contract Customer otherwise agree, to be so calibrated. In the event that it should become necessary or desirable to use other units of measurement, the basis of conversion shall be that 7.48 gallons is equivalent to one (1) cubic foot.

Section 6. Prices and Terms of Payment.

(a) Operation and Maintenance Costs; Underconsumption Costs. Contract Customer shall pay a share of 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 such Contract Customer for such month. At any time no Lake Water is being supplied through the Waterworks System to Contract Customers, each Contract Customer's share of monthly Operation and Maintenance Costs shall be that proportion of those costs which such Contract Customer's Water Allocation bears to the total Water Allocations of all Contract Customers required to make Operation and Maintenance Costs payments during the same period. The Commission may require Subsequent Customers to pay for any month a share of Operation and Maintenance Costs, which share may be based upon a rate or proportion higher than that which is applicable to Contract Customers. Such requirement of a greater share may but need not be applied by the Commission to reduce the shares of said costs payable in any month by the Contract Customers; provided, however, that in no event shall the Commission reduce the shares of Contract Customers by an amount which exceeds the amount that is available due to such greater share being paid by a Subsequent Customer.

Each Underconsumer shall pay its share of Underconsumption Costs as determined and assessed by the Commission after notification of such costs by the City of Chicago or any subsequent water supplier. Each Underconsumer's share of Underconsumption Costs for a year shall be equal to the ratio of its Underconsumption to the aggregate Underconsumption of all Underconsumers for such year.

- (b) Fixed Costs. Each Contract Customer agrees to pay its share of Fixed Costs for each Fiscal Year, which share shall be payable monthly and shall be that proportion of Fixed Costs which such Contract Customer'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 of Pay Requirements, as applicable, of all those Contract Customers for such two preceding calendar years. The Commission may require Subsequent Customers to pay for any month a share of Fixed Costs which is greater than said proportion. Such requirement of a greater share may but need not be applied by the Commission to reduce the shares of said costs payable in any month by the Contract Customers; provided, however, that in no event shall the Commission reduce the shares of Contract Customers by an amount which exceeds the amount that is available due to such greater share being paid by a Subsequent Customer. Prior to the Commission's delivery of Lake Water to any Contract Customer for two (2) calendar years, each Contract Customer's share of monthly Fixed Costs shall be that portion of Fixed Costs which such Contract Customer's Water Allocation bears to the total Water Allocations of Contract Customers.
- (c) Bills and Due Date. The Commission shall notify each Contract Customer of such Contract Customer's share of Aggregate Costs for a month on or before the tenth (10th) day of the following month. The Contract Customer's share of Aggregate Costs for a month shall be due and payable and must be received at the offices of the Commission on or before the tenth day of the month following the month of the

Commission's notification. If the Commission provides the notice later than the tenth (10th) day of the month, Contract Customer shall have twenty-eight (28) days from the date of notification to make said payment.

- (d) Default Shares. If any Customer shall default in the payment to the Commission of any part of its share of Aggregate Costs, or any part of the payment of its share due pursuant to this subsection 6(d), each Contract Customer agrees to pay a share of the amount so in default to the Commission, which share shall be in the same proportion as such Contract Customer's share of the 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 Contract Customers obligated to make payments under this subsection 6(d) not in default. A Contract Customer's share of defaulted Aggregate Costs, or such defaulted payment of shares, as the case may be, shall be due and payable twenty-one (21) days after the Commission's written demand therefor. The demand shall include the Commission's calculations of the amount due by the Contract Customer hereunder. If and when the defaulting Customer makes a payment to the Commission of a defaulted amount or interest thereon for which the Contract Customers have made a payment to the Commission under this paragraph, the Commission will pay to each Contract Customer its proportionate share of such amount, including any such interest paid thereon.
- **(e) Disputed Payments.** If a Contract Customer desires to dispute all or any part of any payments under this Agreement, the Contract Customer 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.

Upon receipt of notification of dispute, representatives of the Commission shall meet with representatives of the Contract Customer 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 Contract Customer of the bill, or within a reasonable period from the time the Contract Customer knew or should have known of the facts giving the rise to the dispute.

The Commission and the Contract Customer shall promptly attempt and continue efforts to resolve the dispute. In the event that it is determined that the Contract Customer shall have overpaid, it shall receive a refund with interest at the rate set out in subsection (f).

(f) Interest on Overdue Payments. If a Contract Customer shall fail to make any payment required under this Contract on or before its due date, such Contract Customer shall be in default, and interest on the amount of such payment shall accrue during the period of non-payment at the maximum legal rate payable by an Illinois non-home rule unit, not to exceed the higher of the weighted average effective interest rate on all series of Bonds of the Commission any of which are then outstanding plus two percent (2%) or the prime rate from time to time announced by the largest commercial bank, measured in

terms of total assets, located and doing banking business in the State of Illinois, plus five percent (5%), from the date such payment becomes due until paid in full with interest as herein specified. In the event such payment is not made within thirty (30) days from the date such payment becomes due, the Commission may at its option and in its discretion reduce or discontinue delivery of Lake Water to the Contract Customer until the amount due the Commission is paid in full with interest as herein specified. The Commission shall give notice to the Contract Customer not less than twenty (20) days prior to the event of its intention to reduce or discontinue delivery of Lake Water in accordance with this subsection (f) and shall provide the Contract Customer an opportunity for a hearing prior to any reduction or discontinuance. If the Commission reduces or discontinues the delivery of Lake Water under such circumstances, the Contract Customer shall, nevertheless, continue to be liable to pay all charges herein provided for. The rights specified in this subsection shall be in addition to all other rights and remedies available to the Commission at law or in equity for breach of any of the provisions of this Contract.

- (g) Security Deposit. If a Contract Customer is in default in any payment due under this Contract and the default is not cured within thirty (30) days after the due date of the defaulted payment, the Commission may, at its option, require such Contract Customer, as a further obligation under this Contract, to deposit as security for the payment of such Contract Customer's obligations hereunder a reasonable amount The Contract Customer's compliance with the determined by the Commission. Commission's demand for a security deposit shall be a condition precedent to the curing of such Contract Customer's default and the restoration of the Lake Water service to such Contract Customer, if abated or reduced by reason of such default. The security deposit or any part thereof may, at the Commission's discretion, be applied to any subsequent default by the Contract Customer in any payments due hereunder. If so applied, the Contract Customer shall provide funds within three (3) business 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, a term of two (2) years after the curing of the most recent default by the Contract Customer, or at such time that the Commission may in its sole discretion determine, any security deposit shall be returned to the Contract Customer if the Contract Customer has performed all its obligations under this Contract.
- (h) Rates to Contract Customers Same. No change in the rates or charges under this Contract for any Contract Customer may be made unless the same change is made for all Contract Customers.
- (i) Limitation on Payments; Net Indebtedness of Contract Customers. Notwithstanding any other provisions of this Contract to the contrary, the payments required to be made by each Contract Customer under this Contract shall be required to be made solely from revenues to be derived by such Contract Customer from the operation of its Unit System. This Contract shall not constitute an indebtedness of any Contract Customer within the meaning of any statutory or constitutional limitation.

- **(j) May Use Other Moneys.** Notwithstanding the provisions of Subsection (i) of this Section, the Contract Customers are not prohibited by this Contract from using other available funds to make the payments required by this Contract.
- (k) Sole Method for Contract Customers to Enforce Provisions Hereof Against Other Customers. Each Contract Customer acknowledges that its obligations to make payments hereunder are of benefit to each other Contract Customer and to Subsequent Customers as such other Customers' obligations are of benefit to the Contract Customer. Accordingly, each Contract Customer agrees that, in addition to the Commission, Bondholders, a Trustee or other parties by law entitled to enforce the provisions of this Contract, any three (3) or more Subsequent Customers acting together may enforce the provisions of this Section 6, but only if the Commission has not acted to enforce such provisions within ninety (90) days of failure to make a payment hereunder. Any rights any Contract Customer has under this Contract or other contracts with the Commission shall be limited in enforcement as set forth herein.
- (I) Beginning of Obligation to Pay. The obligation to make any and all payments under this Contract shall begin the month immediately following the issuance of any Bonds or the obtaining of Lake Water from the Commission, whichever is later.
- (m) Provision in Lieu of Water Allocation. At any time when no Water Allocation is in effect for a Customer and reference to a Water Allocation is necessary to give meaning to a term of this Contract, the Water Allocation for such Customer shall be deemed to be such Customer's Full Water Requirements for the then most recently completed calendar year divided by 365.
- Section 7. Procedural and Other Limitations; Further Covenants of the Commission. Notwithstanding any other provisions of this Contract, the Contract Customers shall have the rights enumerated within this section and the Commission in its activities shall be obligated in the manner provided in this section.
- (a) Procedural Rule. No motion, resolution or ordinance concerning the subjects enumerated below shall be adopted by the Commission except by at least a majority affirmative vote of all of the Commissioners which majority must contain the votes of at least one-third (1/3) of the Commissioners appointed by the County Board Chairman and forty percent (40%) of the Commissioners appointed by the Mayors as provided in the Acts: (1) Approval of individual contracts or a series of contracts related to a single Project in an amount in excess of \$100,000; (2) Setting of rates for the sale of Lake Water to Contract Customers; (3) Borrowing funds; (4) Exercise of eminent domain powers; (5) Employment of the General Manager and Financial Administrator, and managerial and professional consultants; (6) Amendment of the Water Supply Contract or (7) entering into any agreement to provide Lake Water to a Subsequent Customer.
- **(b) Lake Water Only.** Without the prior approval of the corporate authorities of any Contract Customer affected, the Commission shall not deliver any water to a Contract

Customer other than Lake Water. Costs for Lake Water charged by the Commission shall only include Aggregate Costs relating to the purchase and delivery of Lake Water.

## (c) Intentionally Omitted.

**(d) Covenants to Be Set Out in Bond Ordinance.** Any Bond Resolution passed by the Commission shall contain language to the following effect:

Any holder or registered owner of a bond or any of its coupons, in any civil action, mandamus, or other proceeding, may enforce and compel performance of all duties required by law to be performed by the Commission or by any customers of the Commission, including the making of rates and charges, the collecting of sufficient revenue and the application thereof, as provided by applicable law, and including, expressly, all of the terms and provisions of Sections 6, 7 and 16 of the Contract [referring to this Contract].

The parties or persons which make loans of funds to the Commission [by this Bond Resolution] have received the pledge of the State of Illinois that it will not impair or limit the power or ability of the Commission or a unit of local government fully to carry out the terms of any contract for the supply of water entered into by the Commission and a unit of local government for the term of such contract. For purposes of such impairment or limitation, the contracts for the supply of water executed by units of local government and the Commission contain terms and conditions intended by the parties thereto and by the Bondholders to be absolute conditions thereof.

- **(e) Absolute Conditions.** For purposes of the pledge and agreement of the State of Illinois that it will not impair or limit the power or ability of the Commission or the Contract Customers fully to carry out the terms and conditions hereof, all terms and conditions contained herein are intended to be absolute conditions hereof and are agreed to by the parties. It is hereby intended that no change in the Act or other law or regulation subsequent to the date hereof shall affect any of the terms or provisions of this Contract, and neither the Contract Customers nor the Commission, without the unanimous consent of all of them, shall take any actions under a change in the Act or other law or regulation contrary to the terms and conditions herein.
- **(f) Emergency Supply.** A Contract Customer may contract for a temporary supply of water in case of an emergency from any other unit of local government or any entity.
- **(g) Governance.** For the term of this Contract, the number of Commissioners appointed by the Mayors as provided in the Act shall be not less than one-half (1/2) the total number of Commissioners (excluding, expressly, for purposes of said count, the Chairman).
- (h) Retail Sales. The Commission shall not engage in the retail sale or distribution of water to residents or customers of any Contract Customer.

- (i) Evidence of Customer Action. Wherever in this Contract the consent or authorization of a Contract Customer or a group of Contract Customers are required, the consent may only be evidenced by a resolution or motion passed by the corporate authorities of the Contract Customer.
- (j) Limitation on Funds. No funds received by the Commission from Operation and Maintenance Costs or Fixed Costs payable from Contract Customers may be expended for the planning, construction, operations or maintenance of a waterworks system other than the Waterworks System, or the extension thereof, specified within this Contract.
- (k) Certain Budget, Rate Limitation, Notice and Hearing Provisions. Not less than sixty (60) days prior to the beginning of each Fiscal Year, the Commission shall prepare and send to the Contract Customers a tentative budget. Each such budget shall include, among such other items as the Commission may choose, an estimate of Fixed Costs to be payable by each Contract Customer in a stated aggregate dollar amount per month for each and an estimate of Operations and Maintenance Costs in a stated price per 1,000 gallons. The Commission will hold a hearing on such budget, at which the Contract Customers may be heard, and shall give the Contract Customers not less than twenty-one (21) days notice of such hearing. Operations and Maintenance Costs payable in each Fiscal Year shall be determined and assessed by the Commission on a price per 1,000 gallons basis; such price may not exceed the estimate as set forth in the tentative budget unless the Commission shall hold a hearing on such higher price, at which the Contract Customers may be heard, and shall give the Contract Customers not less than twenty-one (21) days' notice of such hearing.

## Section 8. Special Conditions and Covenants.

- (a) Commission to Build Waterworks System and Supply Lake Water. The Commission shall, subject to the other terms and conditions of this Contract, continually hold itself ready, willing and able to supply Lake Water to any Contract Customer. The Commission shall also use its best efforts, consistent with its legal obligations to its other Customers and consistent with fair and equitable treatment of all of its Customers, to supply each Contract Customer with such additional amounts of Lake Water as may be from time to time allocated to such Contract Customer over and above its present Water Allocation, but the Commission does not hereby guarantee a supply of such additional amounts.
- (b) Title to Lake Water. Title to all Lake Water supplied hereunder shall remain in the Commission to the lesser of the points ten feet (10 ft.) downstream from the Commission's metering stations or a common dividing wall between the Commission's metering station and the Contract Customer's pressure adjusting or rate control stations for each Unit System and thereupon shall pass to such Contract Customer.

- (c) Payments Hereunder an Operation Expense of Unit Systems. Obtaining water is an essential item of expense of the Unit Systems. To the fullest extent permitted by law or contract, all of the payments to be made by each Contract Customer hereunder shall constitute operating expenses of the Unit Systems as to any and all revenue bonds of such Contract Customer which are supported in whole or in part by a pledge of the revenues of its Unit System, with the effect that such Contract Customer's obligation to make payments from its water revenues under this Contract has priority over its obligation to make payments of the principal of and premium, if any, and interest on any such bonds which are or will be supported in whole or in part by a pledge of such Unit System revenues. Each Contract Customer shall make all budgetary, emergency and other provisions and appropriations necessary to provide for and authorize the prompt payment by such Contract Customer to the Commission of its shares of Aggregate Costs. The obligations of each Contract Customer under this Contract are further payable from all other accounts of the Unit System of each Contract Customer, respectively, for its shares, in which there are lawfully available funds. In any revenue bond ordinances or resolutions hereafter enacted by a Contract Customer, the priority of lien established pursuant to this Contract shall be expressly provided and set forth in said bond ordinances or resolutions. If legal action is brought against a Contract Customer challenging the priority of such Contract Customer's obligations hereunder over the lien of any revenue bonds supported by a pledge of the revenues of its Unit System, the Commission shall, if requested to do so by such Contract Customer, undertake the defense of the legal action at the Commission's expense.
- (d) Commission Insurance. The Commission will carry insurance and/or maintain self-insurance with respect to the Waterworks System of the kinds and in the amounts which are customarily carried or maintained by parties operating similar properties, including, without limiting the generality of the foregoing, fire and other casualty and public liability insurance or protection. All moneys received for loss under the insurance policies or on deposit as self-insurance reserve funds shall be used in making good the loss or damage in respect of which they were paid except to the extent no longer deemed useful to or profitable in the operation of the Waterworks System, 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.
- **(e) Commission to Continue to Serve.** The Commission will use its best efforts to continue serving all the Contract Customers.
- **(f)** Commission Covenant to Operate Properly. From time to time, the Commission will take steps reasonably necessary so that the Waterworks System may at all times be operated properly.

**Section 9. Additional Contract Customer Covenants.** Each Contract Customer further covenants as follows:

- (a) Maintain and Operate Unit System. It will own and maintain its Unit System, and all improvements and extensions of its Unit System, in good repair and working order, will operate the same efficiently, and will punctually perform all duties with respect to its Unit System as may be required by the Constitution and laws of the State of Illinois and all other applicable laws and by all resolutions and ordinances of such Contract Customer.
- (b) Rate Covenant. It will establish, maintain, revise as necessary and collect, rates and charges for customers of its 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 and to pay all other costs of operation and maintenance of its Unit System, (ii) to provide an adequate depreciation fund for its Unit System, (iii) to make all deposits in all funds and accounts required by the terms of resolutions or ordinances authorizing bonds payable from revenues of its Unit System and (iv) to pay the principal of and interest on all bonds of such Contract Customer payable from the revenues of its Unit System. Commission may not sue to enforce the provisions of this Section as they relate to clauses (ii) through (iv) unless it can show that the ability of the Contract Customer to make the payments set forth in clause (i) is substantially impaired by the inadequacy of said rates and charges. The rates and charges for customers of a Unit System shall not be required. however, to be sufficient to produce amounts required to make payments under this Contract so long as available amounts sufficient for making such payments for the next six (6) months or the remainder of such Contract Customer's fiscal year, whichever is longer, shall have been set aside in cash or investments in a separate account in its Unit System Fund designated for the purpose of making payments under this Contract,
- **(c) Segregate Revenues.** It shall provide for the segregation of all revenues of its Unit System in such Unit System Fund and provide for the application of the revenues for the purpose of subsection (b) of this Section. Moneys of a Unit System of a Contract Customer which exceed the obligations of such Contract Customer hereunder may be used for any lawful corporate purposes.
- (d) Future Subordination of Revenue Bond Lien. Any resolution or ordinance of the Contract Customer which authorizes the issuance after the date of this Contract of any obligation of the Contract Customer to be paid from revenues of its Unit System will expressly provide that revenues of its Unit System may be used to pay principal of and premium, if any, and interest of those obligations only to the extent that those revenues exceed the amounts required to pay the operation and maintenance expenses of its Unit System including, expressly, all amounts payable from time to time under this Contract.
- **(e) General Covenant to Operate Properly.** From time to time, it will take steps reasonably necessary so that its Unit System may at all times be operated in accordance with industry standards.

- (f) Accounting and Audit. It will make and keep proper books and accounts (separate and apart from all other records and accounts of such Contract Customer) in which complete entries shall be made of all transactions relating to its Unit System, and, within two hundred ten (210) days following the close of each fiscal year of such Contract Customer, it will cause the books and accounts of its Unit System to be audited annually by independent certified public accountants, showing the receipts and disbursements on account of its Unit System.
- (g) Maintain Ownership of Unit System and Properties. It will continue to own and possess its Unit System and will, within the exercise of reasonable business judgment and in a manner so as not to cause a default hereunder, dispose of property which is part of its Unit System only to the extent that the Commission consents in writing, which consent shall not be unreasonably withheld. This subsection (g) does not prohibit a Contract Customer from selling specific equipment that it considers surplus and that is no longer needed or utilized to operate its Unit System.
- (h) Insurance. It will carry insurance or maintain self-insurance with respect to its Unit System of the kinds and in the amounts which are customarily carried or maintained by parties operating similar properties, including, without limiting the generality of the foregoing, fire and other casualty and public 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 except to the extent that the property damaged or lost would be permitted to be disposed of under subsection (g) of this Section, whether by repairing the property damaged or replacing the property destroyed, and provisions 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) Budget and Appropriations. It will adopt a budget or appropriations ordinance for each fiscal year of such Contract Customer, or otherwise in accordance with applicable state laws, provide lawful authority for payment of all sums anticipated to be due to the Commission during such fiscal year.
- (j) Continue to Serve. It will use its best efforts to continue serving all customers of its Unit System within its territorial limits which are served as of the date of this Contract.
- **(k) Maintain Water Allocation.** It will use its best efforts to obtain or retain, from time to time, a Water Allocation at least equal to its Full Water Requirements from time to time.
- (I) Combining or Separating Unit System Accounts. It may combine its waterworks system with its sewerage system or separate its combined waterworks system and sewerage system into separate systems only on the conditions as follows: (i) the Contract Customer shall provide the Commission with written evidence that the

proposed combination or separation will not materially and adversely affect the Contract Customer's ability to comply with all of the terms, conditions and covenants of this Contract; and (ii) if the Commission shall then determine the proposed combination or separation will not materially and adversely affect the Contract Customer's ability to comply with all of the terms conditions and covenants of this Contract, then and only then the Commission shall approve such combination or separation and advise such Contract Customer in writing.

(m) Customer Covenants as to Rate of Withdrawal. Each Contract Customer will take Lake Water at the most uniform and continuous rate of withdrawal practicable.

Section 10. Election as to Water Purchase Requirements. Any Contract Customer electing to take less than its Full Water Requirements, as determined by the Commission, shall pay its pro rata share of the Operations and Maintenance Costs and the Fixed Costs for the period of time during which its Full Water Requirements are not taken. In the event such Contract Customer elects to purchase less than its Full Water Requirements in any year pursuant to this Section, it shall pay a share of Underconsumption Costs, if any, incurred for such year and such Contract Customer's share of such Underconsumption Costs shall be deemed to be Operation and Maintenance Costs under this Contract. The prior sentence shall not be applicable where the Underconsumption is caused by an emergency situation as approved in writing by the highest executive of the Commission and lasts for less than thirty (30) days, Such Contract Customer's share of Operation and Maintenance Costs and Fixed Costs, if any, for the year shall be that proportion of those costs which the Operation and Maintenance Costs and Fixed Costs of such Contract Customer for that year was to the sum of the Operation and Maintenance Costs and Fixed Costs and Fixed Costs of all Customers for such year.

**Section 11. Resale Limitations.** Contract Customers shall not resell more than five percent of the water purchased from the Commission *except:* (i) to retail water customers under published rates and charges, without any special contract; or(ii) any contract approved in writing by the Commission, which approval shall be in the sole discretion of the Commission.

## Section 12. Subsequent and Other Contracts.

- (a) No Contract with Rate More Favorable. The Commission shall not supply Lake Water except pursuant to a written contract. No contract entered into after the Effective Date shall provide rates, charges or terms lower or more favorable to the Subsequent Customer than those provided in this Contract for Contract Customers.
- **(b) Occasional Service Only Except to Contract Customers.** Other than the providing of service to Contract Customers, the Commission shall not contract for a supply of Lake Water to any person except to a Subsequent Customer or for occasional water use. Occasional water use is the use of Lake Water for not more than thirty (30) days during any two-year period.

(c) Subsequent Contract Terms. After the Effective Date, the Commission shall not enter into a contract with any unit of local government or private entities that is not a Contract Customer, unless such contract provides for an equitable and lawful differential rate or charge in the formula for Aggregate Costs which may take into account any pertinent factor and shall take into account each of the factors as follows: (i) the utility rate which would be chargeable by a regulated utility for the proposed service, (ii) replacement cost of the Waterworks System less depreciation and net outstanding Bonds, and (iii) the amount and time of payment of Fixed Costs which would have been payable by the proposed Customer had such Customer become a Contract Customer, plus interest on such costs from the time when they would have been paid, compounded semiannually.

The differential may be satisfied by a lump sum payment or by surcharge for any term of years not longer than the then remaining term of this Contract. The differential shall inure to the benefit of the previous Contract Customers as their interests may appear (that is, those that have borne greater costs shall benefit proportionally greater) in such reasonable manner as the Commission may determine.

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 Contract Customers.

For the purpose of making such list of three (3) individuals or firms, the Commission shall call a meeting of only the Contract Customers that are units of local government by giving notice to the Contract Customers as provided in this Contract not less than thirty (30) days prior to a proposed meeting date. The Commission shall convene the meeting, but thereupon the Contract Customers that are units of local government shall elect a presiding officer from among their number. Such meeting may be adjourned from time to time without notice. The majority of Contract Customers that are units of local government present and voting at said meeting shall be empowered to select such individuals or firms. The Commission shall keep the minutes of the meeting.

If the Contract Customers that are units of local government do not act at said meeting or within twenty-one (21) days thereof, the Commission shall proceed to select such persons or firms itself.

If the Commission shall impose the recommended differential, then the differential as imposed shall not be subject to any dispute or claim by any Contract Customer. This provision shall not require the Commission to follow such recommendations.

This entire subsection is qualified by 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. It is the intent of the Commission in entering into this provision of the Contract to recognize that the Contract Customers that are units of local government, solely, enable the Commission to proceed to construct the Waterworks System, that the units of

local government hereinafter referred to need to be induced to become Contract Customers and that this provision is an express inducement, that by its essential design in accordance with good engineering practice, the Waterworks System must be built in many ways sufficient upon initial completion to serve all of said units, but that only those units of local government who become Contract Customers will pay for such from the start of construction.

**Section 13. Force Majeure.** In case by reason of force majeure event any party hereto 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 parties within seven (7) days after the 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" as employed herein shall 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, insurrection, riots, epidemics, 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 any Contract Customer to receive Lake Water hereunder, on account of any other causes not reasonably within the control 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 that the above requirement that any force majeure events 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 settlements is unfavorable to it in the judgment of the party having the difficulty. No force majeure event which renders any of the parties unable to perform under this Contract shall relieve a Contract Customer of its obligation to make payments to the Commission as required under Section 6.

Section 14. Commission Defaults. Failure by the Commission to deliver Lake Water to any Contract Customer 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 thirty (30) days after written notice from such Contract Customer 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 13 of this Contract. If the Commission defaults under this Contract, the Contract Customer or Contract Customers affected may bring any action against the Commission, including an action for money damage or in equity and actions for mandamus and specific performance of the Commission's obligations to the extent allowed by law. Election of any remedy shall not be a waiver of any other remedy.

Section 15. Contract Customer's Obligation Unconditional. The Contract Customers shall have no right to terminate, cancel or rescind this Contract, no right to withhold from the Commission or the Trustee who is an assignee of the Commission pursuant to Section 17 of this Contract payments due or to become due under this Contract, no right to recover from the Commission or such Trustee amounts previously paid under this Contract unless paid 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 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 the Contract Customers 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; the output of the Waterworks System in whole or in part is suspended, interrupted, interfered with, reduced or curtailed; any party to the Water Supply Contract does not perform in whole or in part thereunder; the Water Allocation of any Customer is modified or terminated or any Customer does not perform in whole or in part under this Contract or any other agreement or instrument; it being the intent hereof that the Contract Customers shall be absolutely and unconditionally obligated to make all payments hereunder. Commission may issue Bonds in specific reliance on the limitations set forth in this Section with respect to the rights of the Contract Customers.

Section 16. Modification of this Contract or of the Water Supply Contract. Except for revisions and adjustments otherwise expressly provided for, neither this Contract nor the Water Supply Contract may be changed or modified unless the consent of the Commission and of three-fourths of the Contract Customers shall have been obtained. Such modification may be requested by any party, in which event a joint meeting of representatives of all governing bodies shall be called by the Commission and held not more than sixty (60) days after such request is made and not less than thirty (30) days before the giving of notice of such meeting. At the joint meeting, the requested changes or modifications shall be considered and discussed. No such change or modification may materially impair or adversely affect the ability or obligation of any Contract Customer under the Contract to make payments to the Commission at the times, in the amounts, and with the priority required in order for the Commission timely to meet its obligations under this Contract, the Water Supply Contract, other water purchase or sale contracts of the Commission and the Bond Ordinances/Resolutions, including without limitation the making of all deposits in various funds and accounts created under the Bond Ordinances/Resolutions; or materially impair or adversely affect the ability of the holders of the Bonds or the Trustee, under the Contract or Bond Ordinances/Resolutions, to enforce the terms of the Contract. No such change of modification which will affect the rights and interest of the holders of the Bonds shall be made without the written approval of an authorized representative of the holders of at least seventy percent (70%) of the outstanding Bonds and no such change or modification shall be effective which would cause a violation of any provisions of the Bond Ordinances/Resolutions or any ordinance authorizing bonds of any Contract Customer.

**Section 17. Non-Assignability.** Except to the extent hereinafter provided, no party shall assign or transfer this Contract or any rights or interests herein without the written consent of three-fourths of the Contract Customers and the Commission. The right to receive all payments which are required to be made by the Contract Customers to the Commission in accordance with the provisions of this Contract may be assigned by the Commission to any Trustee as provided in the Bond Ordinances/Resolutions to secure the payment of the principal of, 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 the Bond Ordinances/Resolutions. The Contract Customers will, upon notice of assignment to any such Trustee, make all payments directly to such Trustee. The rights of the Commission to enforce the provisions of this Contract may be assigned to such Trustee and, in such event, the Trustee will 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 may also retain the right to enforce this Contract.

Section 18. Cooperation in Construction of Commission Water Supply. The Contract Customers shall cooperate with the Commission in the construction and acquisition of the Waterworks System. Each Contract Customer shall grant without charge to the Commission any reasonable required construction easements and any easements necessary for portions of the Waterworks System to be located on such Contract Customer's property, provided the Commission agrees to restore the easement property in a reasonable manner after construction. Each Contract Customer shall grant the Commission access to its property to the extent reasonably necessary to construct and maintain the Waterworks System.

Section 19. Mutual Cooperation in Issuance of Obligations. Each Contract Customer shall cooperate with the Commission in the issuance of the Bonds, and the Commission shall cooperate with each Contract Customer in the issuance of the Contract Customer's general obligation bonds or revenue bonds of its Unit System. In such connection, each Contract Customer and the Commission will comply with all reasonable requests of each other and will, upon request, do as follows:

- (i) Make available general and financial information about itself in accordance with GAAP;
- (ii) Consent to publication and distribution of its financial information;
- (iii) Certify that general and financial information about it is accurate, does not contain any 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;
- (iv) Make available certified copies of official proceedings;
- (v) Provide reasonable certifications to be used in a transcript of closing documents; and

- (vi) Provide and pay for reasonably requested opinions of counsel as to the validity of its actions taken with respect to and the binding effect of this Contract, title to its Unit System or the Waterworks System, as applicable, pending or threatened litigation which could materially affect its performance hereunder, and other reasonably related opinions.
- **Section 20. Regulatory Bodies.** The parties through this Contract seek to exercise and maintain all sovereign rights granted to them 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, or any governmental body or agency having lawful jurisdiction, or any authorized representative or agency or 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 21. Commission Cooperative Arrangements With 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 of Lake Water to provide Lake Water to each other to meet their water needs, provided that these arrangements do not interfere, except in emergencies, with the delivery of Lake Water to the Contract Customers.
- **Section 22. Notices and Evidence of Actions.** All notices or communications provided for herein shall be in writing and shall be delivered to the Contract Customers affected or the Commission either in person or by United States mail, via certified mail, return receipt requested, postage prepaid, addressed to the principal office thereof.

Any action hereunder to be taken by the Commission or any Contract Customer may be evidenced by copy of official proceedings (including pertinent minutes, motions, resolutions, or ordinances) duly certified by the Clerk of such Contract Customer or the Commission.

- **Section 23. Severability.** Should any part, term, or provision of this Contract be determined by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected thereby.
- **Section 24. Effective Date and Term.** This Contract shall be effective when all the parties have executed this Contract (the "Effective Date"). This Contract shall continue in force and effect until February 24, 2064. The Contract Customers and the Commission agree to begin negotiation of a succeeding Water Purchase and Sale Contract not later than five (5) years prior to the end of the term of this Contract.
- **Section 25. Governing Law; Superseder.** This Contract shall be construed exclusively under the applicable laws of the State of Illinois. All other contracts between

the Commission and the Contract Customers are hereby superseded and shall be null and void.

**Section 26. Venue.** Any action brought to enforce the terms of this Contract shall be brought in the Eighteenth Judicial Circuit, DuPage County, Illinois.

**Section 27. Execution in Counterparts.** This Contract may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall 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.

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

# By \_\_\_\_\_ Rich Veenstra, Mayor Date: [SEAL] Attest: By \_\_\_\_\_ Lucille Zucchero, Village Clerk **VILLAGE OF BARTLETT** By \_\_\_\_\_ Kevin Wallace, President Date: \_\_\_\_\_ [SEAL] Attest: By Lorna Giless, Village Clerk VILLAGE OF BENSENVILLE By \_\_\_\_\_ Frank DeSimone, President Date: \_\_\_\_\_ [SEAL] Attest: By Nancy Quinn, Village Clerk

VILLAGE OF ADDISON

# By \_\_\_\_\_ Franco A. Coladipietro, President Date: \_\_\_\_\_ [SEAL] Attest: By \_\_\_\_ Pamela S. Hager, Village Clerk VILLAGE OF CAROL STREAM By \_\_\_\_\_ Frank Saverino, Mayor Date: \_\_\_\_\_ [SEAL] Attest: VILLAGE OF CLARENDON HILLS By Eric Tech, President Date: \_\_\_\_\_ [SEAL] Attest:

VILLAGE OF BLOOMINGDALE

	CITY OF DARIEN
Date: [SEAL] Attest:	By
By JoAnne Ragona, City Clerk	
	VILLAGE OF DOWNERS GROVE  By Robert T. Barnett, Mayor
Date:	
[SEAL] Attest:	
By Rosa Berardi, Village Clerk	
	COUNTY OF DUPAGE
	By Deborah A. Conroy, Chair
Date:	·
[SEAL]	
Attest:	
By Jean Kaczmarek, County Clerk	

	CITY OF ELMHURST
	By Scott M. Levin, Mayor
Date:	Scott M. Levin, Mayor
[SEAL] Attest:	
By Jackie Haddad-Tamer, City Clerk	
	VILLAGE OF GLENDALE HEIGHTS
	By Chodri Ma Khokhar, President
Date:	Chodri Ma Khokhar, President
[SEAL]	
Attest:	
By Marie Schmidt, Village Clerk	
	VILLAGE OF GLEN ELLYN
	By Mark Senak, President
Date:	Mark Senak, President
[SEAL]	
Attest:	
By Caren Cosby, Village Clerk	

# By \_\_\_\_\_ Thomas K. Cauley, Jr., President Date: [SEAL] Attest: By \_\_\_\_\_ Emily Tompkins, Village Clerk VILLAGE OF ITASCA By \_\_\_\_\_ Jeff Pruyn, Mayor Date: \_\_\_\_\_ [SEAL] Attest: By \_\_\_\_\_\_ Jody Conidi, Village Clerk VILLAGE OF LISLE By \_\_\_\_\_ Christopher Pecak, Mayor Date: \_\_\_\_\_ [SEAL] Attest: By \_\_\_\_\_ Kristy Grau, Village Clerk

VILLAGE OF HINSDALE

### VILLAGE OF LOMBARD By \_\_\_\_\_ Keith T. Giagnorio, President Date: \_\_\_\_\_ [SEAL] Attest: By \_\_\_\_\_ Liz Brezinski, Village Clerk CITY OF NAPERVILLE By Scott A. Wehrli, Mayor Date: \_\_\_\_\_ [SEAL] Attest: By \_\_\_\_\_ Doug A. Krieger, City Manager VILLAGE OF OAK BROOK By \_\_\_\_\_ Laurence Herman, President Date: [SEAL] Attest: By \_\_\_\_\_ Netasha Scarpiniti, Village Clerk

### CITY OF OAKBROOK TERRACE By \_\_\_\_\_ Paul Esposito, Mayor Date: \_\_\_\_\_ [SEAL] Attest: By\_\_\_\_\_ Michael Shadley, City Clerk VILLAGE OF ROSELLE By\_\_\_\_\_\_ David Pileski, Mayor Date: \_\_\_\_\_ [SEAL] Attest: Amanda Hausman, Village Clerk VILLAGE OF VILLA PARK By Nick Cuzzone, President Date: [SEAL]

Attest:

By \_\_\_\_\_ Hosanna Korynecky, Village Clerk

### By Ron Gunter, Mayor Date: [SEAL] Attest: By \_\_\_\_\_ Virginia Szymski, Village Clerk CITY OF WHEATON By \_\_\_\_\_\_Philip J. Suess, Mayor Date: \_\_\_\_\_ [SEAL] Attest: By \_\_\_\_\_\_Andrea Rosedale, City Clerk VILLAGE OF WILLOWBROOK By Frank A. Trilla, Mayor Date: \_\_\_\_\_ [SEAL] Attest: By \_\_\_\_\_\_ Deborah A. Hahn, Village Clerk

VILLAGE OF WESTMONT

### VILLAGE OF WINFIELD By \_\_\_\_\_ Carl Sorgatz, President Date: \_\_\_\_\_ [SEAL] Attest: By Nicole Cannizzo, Village Clerk CITY OF WOOD DALE By Annunziato Pulice, Mayor Date: \_\_\_\_\_ [SEAL] Attest: By \_\_\_\_\_ Lynn Curiale, City Clerk VILLAGE OF WOODRIDGE By Gina Cunningham, Mayor Date: [SEAL] Attest: By \_\_\_\_\_ Joseph Heneghan, Village Clerk

#### Illinois-American Water Company

	By President
Date:	President
[SEAL]	
Attest:	
Ву	_
	Argonne National Laboratory
	Ву
Date:	Director
[SEAL]	
Attest:	
By	
	Aqua Illinois, Inc.
	By President
Date:	President
[SEAL]	
Attest:	
B <sub>V</sub>	

# DuPAGE WATER COMMISSION By \_\_\_\_\_\_ Jamez F. Zay, Chairman [SEAL] Attest: By \_\_\_\_\_ Danna M. Mundall, Clerk

#### ORDINANCE NO. O-23-032

### AN ORDINANCE APPROVING A WATER PURCHASE AND SALE CONTRACT BETWEEN THE DUPAGE WATER COMMISSION AND CONTRACT CUSTOMERS

WHEREAS, the City of Wood Dale is a current customer of the DuPage Water Commission (the "Commission") pursuant to the Water Purchase and Sale Contract Between the DuPage Water Commission and Charter Customers dated June 11, 1986 (the "Original Contract"); and

WHEREAS, the Original Contract expires on February 24, 2024;

WHEREAS, the Commission and current customers desire and intend to enter into a new Water Purchase and Sale Contract Between The DuPage Water Commission and Contract Customers (the "New Contract") (attached hereto as Exhibit 1 and incorporated as if fully set forth herein) whereby the Commission will supply water to the customers according to the terms and conditions of the New Contract negotiated between them; and

WHEREAS, the City Council deems it to be in the best interests of the [city/village] and its residents to approve and enter into the New Contract.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wood Dale as follows:

<u>SECTION ONE</u>: The foregoing recitals are hereby incorporated herein and made a part hereof as findings of the City Council.

<u>SECTION TWO</u>: The Water Purchase and Sale Contract Between The DuPage Water Commission and Contract Customers attached hereto and by this reference incorporated herein and made apart hereof as Exhibit 1, shall be and hereby is approved and ratified.

SECTION THREE: The Mayor is hereby authorized and directed to execute the Water Purchase and Sale Contract Between The DuPage Water Commission and Contract Customers attached as Exhibit 1 on behalf of the City

<u>SECTION FOUR</u>: This Ordinance shall be in full force and effect from and after its adoption.

Passed this	16th day of November, 2023
AYES:	
NAYS:	
ABSENT:	
	ADOPTED THIS 16 <sup>th</sup> day of November, 2023.
SIGNED:	Annunziato Pulice, Mayor
ATTEST:	Lynn Curiale, City Clerk

#### **EXHIBIT 1**

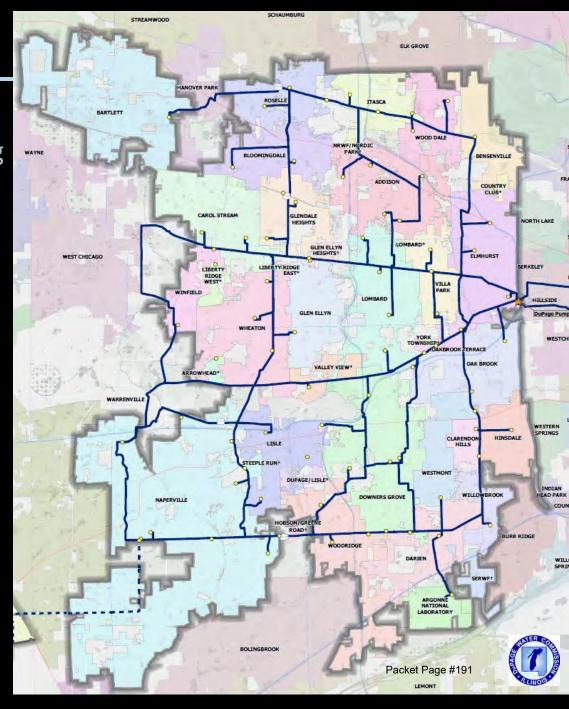
### WATER PURCHASE AND SALE CONTRACT BETWEEN THE DUPAGE WATER COMMISSION AND CONTRACT CUSTOMERS



DWC / Customer Contract Joint Meeting #1

## **DWC / Customer Contract:**

- **28** governing bodies / municipalities
  - Including emergency connection to Schaumburg
- 2 public (non-governmental) corporations
  - Illinois American Water
  - Aqua Illinois
- 1 Federal Institution (Argonne Lab)
- ❖ 6+ "Wheeling" agreements
- DWC System:
  - 84 delivery points
  - 284 delivery meters
  - 75 MGD average daily demand
  - Nearly 1 Trillion Gallons since 1994
- **ONE CONTRACT**



# **DWC / Customer Contract:**

### Customer Steering Group

- Included participants from 8 governing bodies
- Group met many times over several years
- Collaboration relative to contract terms and process



- DWC Legal Counsel
- DuPage County States Attorney
- City of Naperville Legal Department
- **Recommended for approval by all parties**

















### **Summary of Contract Terms & Modifications**

- \* Attempted to retain as much **continuity** as possible
- ❖ 40-year term ending February 24, 2064
- All formerly "Charter" and "Subsequent" customers become "Contract Customers"
- ❖ All customers that join after the execution date become "Subsequent Customers"
- \* Revision of source water language from "Chicago Water" to "Lake Michigan Water"
- \* Removal of "Minimum Volume" requirement throughout
- **Special Vote Requirements** retained [Procedural Rule, Section 7]
  - 1/3 of County Representative affirmative (3 votes)
  - 40% of Municipal Representatives affirmative (3 votes)
- Language added relative to private resale limitations, 5% (Section 11)
  - Clarifying language to retain DWC tax-advantaged bond issuance status
- \* Removal of language relative to **original construction**:
  - Section 6b / partial (Fixed Costs)
  - Section 7c (Taxes)
  - Section 7k (G.O. Bonds)
  - Section 7m (Sales Taxes & Rebates, incomplete construction)
  - Section 8a (Waterworks Construction)
  - Section 11 (Abandonment)



# **DWC / Customer Contract:**

### **Critical Contract Dates:**

- **❖** Joint Meeting #1: 9/28/2023
- **❖** Target municipal approval Q3/Q4, 2023
- ❖ Target DWC approval Q4 2023 (December 21, 2023)
  - ❖ Fall-back date: January 18, 2024
- Wheeling agreements approval by end-of-calendar year 2023
  - ❖ DWC approval: January 18, 2024
  - ❖ DWC fall-back date: February 15, 2024
- Termination date for current contract: February 24, 2024





### REQUEST FOR COUNCIL ACTION

Referred to Council: November 16, 2023

Subject: DuPage Water Commission – Chicago Agreement

Staff Contact: Brad Wilson, Finance Director

Department: Finance

TITLE: A RESOLUTION APPROVING AN EXTENSION OF THE WATER SUPPLY CONTRACT BETWEEN THE DUPAGE WATER COMMISSION AND THE CITY OF CHICAGO

#### **RECOMMENDATION:**

Approve the attached Resolution between the DuPage Water Commission and the City of Wood Dale authorizing the Water Commission to extend the agreement between them and the City of Chicago for not less than 15 years, and not more than 20 years.

#### **BACKGROUND:**

The existing agreement between the City of Chicago and the Water Commission expires on Mach 19, 2024. In order for the Water Commission to continue to receive water from them, they must extend the existing agreement of enter into a new agreement by this time.

#### **ANALYSIS:**

This is the second of 2 agreements that the City needs to be approved to continue its relationship with the Water Commission. They are requesting both agreements be approved by the end of the calendar year.

The proposed plan by the Water Commission is to extend the existing contract. This is to protect the interests of the Water Commission due to how negotiations with the City of Chicago have progressed. Please see slide 10 of the attached slides (Chicago Contract Recommendation) for information relating to why this is the desired course of action.

As mentioned during the Water Workshop on the 9<sup>th</sup>, the Water Commission is pondering constructing their own water supply system from Lake Michigan referred to in the slides as the Alternative Source Water Project. Slide 6 gives an overview of the project and slide 8 gives an overview of how it is projected to work financially for the Water Commission and its members. In the slide "Total DPWC Expenditure 2023-2064" you will a number or horizontal bar graphs. The hashed section to the far left of each of them is what the Water Commission is expecting to pay for water to Chicago until the Source Water Project has been completed. The trailing colors are expected debt service payments. As the water would be sourced by and for the Water Commission for its customers, there would no longer be payment to Chicago. It is estimated that doing the Source Water Project could save the member communities approximately \$2.25 billion dollars versus staying with Chicago based upon current construction estimates and current rate structure in the existing contract with Chicago.

#### **DOCUMENTS ATTACHED**

- ✓ Resolution
- ✓ Slides Chicago Contract presentation

#### STRATEGIC PLAN ITEM

☐ Yes ⊠ No

#### **RESOLUTION NO. R-23-74**

# A RESOLUTION APPROVING AN EXTENSION OF THE WATER SUPPLY CONTRACT BETWEEN THE DUPAGE WATER COMMISSION AND THE CITY OF CHICAGO

WHEREAS, in 1984, the DuPage Water Commission (the "Commission") entered into a Water Supply Contract Between the DuPage Water Commission and the City of Chicago (the "Water Supply Contract") for the Commission to purchase Lake Michigan water from the City of Chicago (the "City") to provide to the Commission's customers;

WHEREAS, the City is a customer of the Commission and purchases Lake Michigan water from the Commission;

WHEREAS, the Water Supply Contract expires on March 19, 2024;

WHEREAS, the Water Supply Contract grants the Commission the option to unilaterally extend the Water Supply Contract on the same terms and conditions for a period not less than ten (10) years nor more than forty (40) years;

WHEREAS, the Commission has commenced negotiations with the City on a new water supply contract, but the Commission does not believe that a new water supply contract will be executed before the current Water Supply Contract expires;

WHERAS, pursuant to Section 16 of the Water Purchase and Sale Contract Between the DuPage Water Commission and Charter Customers, the Commission held a public meeting of its customers on October 31, 2023 to present the status of negotiations and current proposed terms and conditions regarding a new water supply contract with the City;

WHEREAS, the Commission has deemed it to be in the interest of the Commission and its customers to exercise its option to extend the Water Supply Contract under its current terms and conditions for a period not less than 15 years and not more than 20 years; and

WHEREAS, the City Council deems it to be in the best interests of the City and its residents to approve and consent to an extension of the Water Supply Contract for a period not less than 15 years and not more than 20 years.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wood Dale as follows:

<u>SECTION ONE</u>: The foregoing recitals are hereby incorporated herein and made a part hereof as findings of the City Council

SECTION TWO: The City Council hereby approves and consents to the Commission's extending the Water Supply Contract for a period not less than 15 years and not more than 20 years, without further action by the City Council.

<u>SECTION THREE</u>: The Clerk is hereby authorized and directed to provide a copy of this Resolution to the Commission immediately after its approval.

<u>SECTION FOUR</u>: This Ordinance shall be in full force and effect immediately upon and after its adoption.

AYES:	
NAYS:	
NATO.	
ABSENT:	
	ADOPTED THIS 16 <sup>th</sup> day of November, 2023.
SIGNED:	Annunziato Pulice, Mayor
ATTEST:	Lynn Curiale, City Clerk

Passed this 16th day of November, 2023



DWC / Customer Contract Joint Meeting #2

# Chicago Negotiation Status:

### Chicago Contract

- Contract expiration 3/19/2024
- **DWC Negotiation Positions:** 
  - **Cost-of-Service rate parity with Joliet Contract**
  - Commitment to benchmark COS rate
  - **❖** Improved operations control of Lexington Pump Station
- DWC can unilaterally extend contract under existing terms
  - Retain "Favored Nations" status

### **\*** Lexington Pumping Station

- Draft condition assessment received, \$16M of repairs/work needed
- ❖ Proposed Chicago contract is **less favorable** than previous

### Cost-of-Service Rate Model

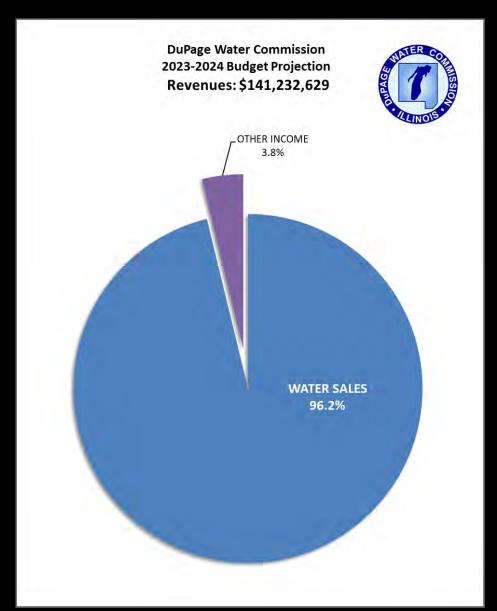
- ❖ Initial calculations indicate DWC rate should be about ½ of current rate.
- Chicago HAS committed to implement COS in 2030; however
- Chicago has NOT committed to COS estimate previously provided

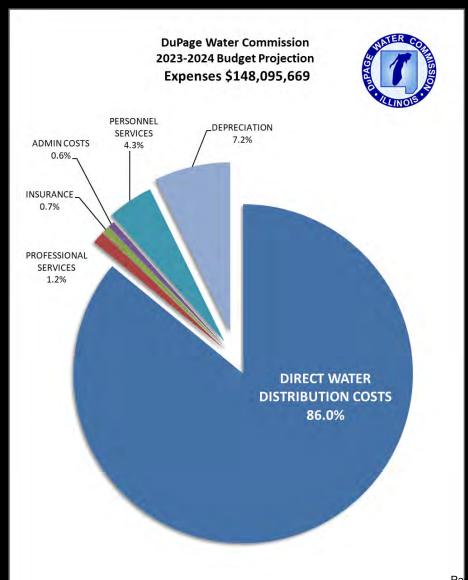






### 2023/2024 REVENUES & EXPENSES





# Chicago's WATER COMMODITY COST: water rate INCREASE for 2023

Effective Date	Percent Increase	Water Rate per 1,000 Cubic Feet	Approximate Water Cost per 1,000 Gallons
6/1/2023	5.00%	\$33.95	\$4.55
6/1/2022	5.00%	\$32.33	\$4.33
6/1/2021	1.10%	\$30.79	\$4.13
6/1/2020	2.45%	\$30.46	\$4.08
6/1/2019	0.82%	\$29.73	\$3.98
6/1/2018	1.54%	\$29.49	\$3.95
6/1/2017	1.83%	\$29.04	\$3.88
1/1/2016	0%	\$28.52	\$3.81
1/1/2015	15%	\$28.52	\$3.81
1/1/2014	15%	\$24.80	\$3.31
1/1/2013	15%	\$21.56	\$2.88
1/1/2012	25%	\$18.75	\$2.51



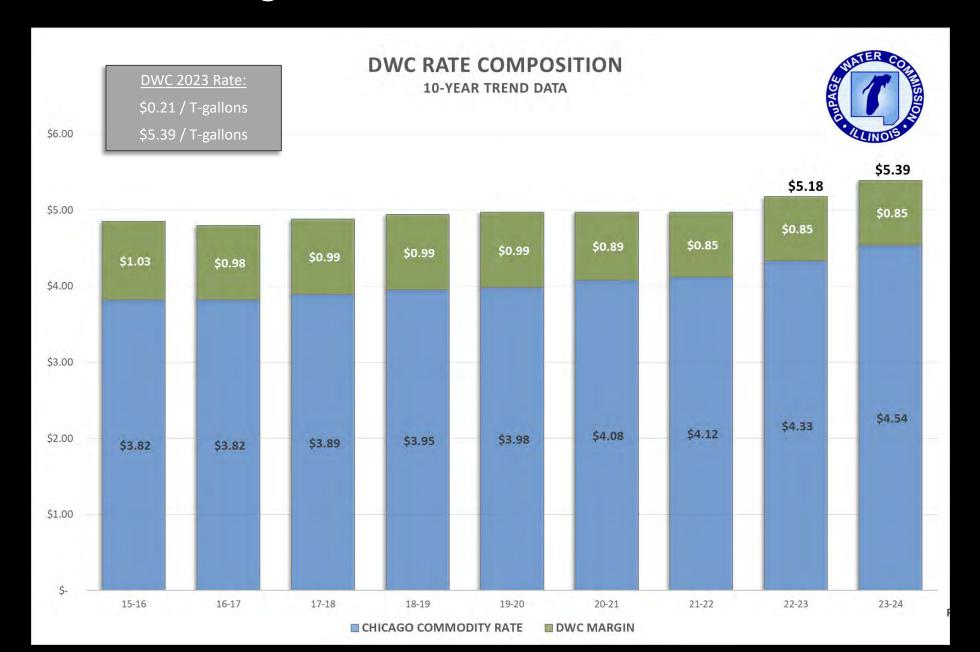
2023 Chicago water commodity rate increase:

5%

\$0.21 / T-gallons

\$4.54 / T-gallons

### **DuPage Water Commission 2023-24 rate**

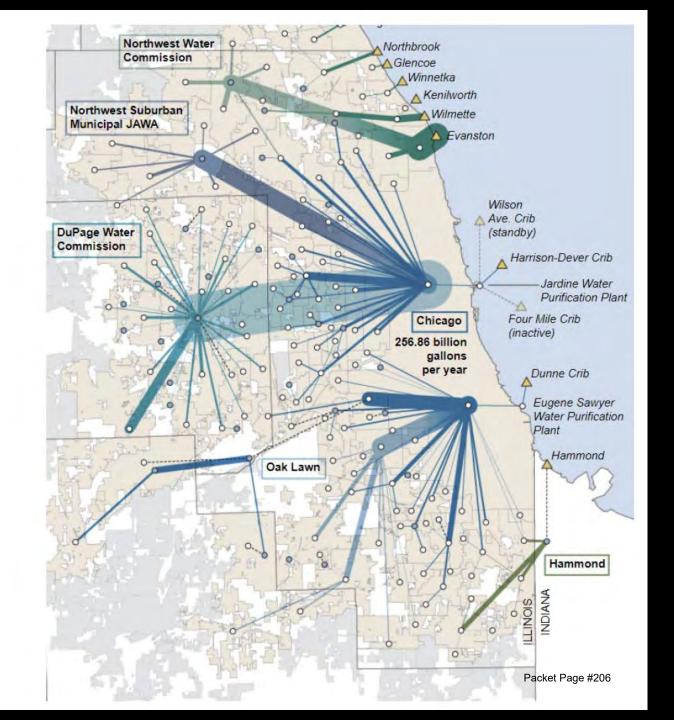


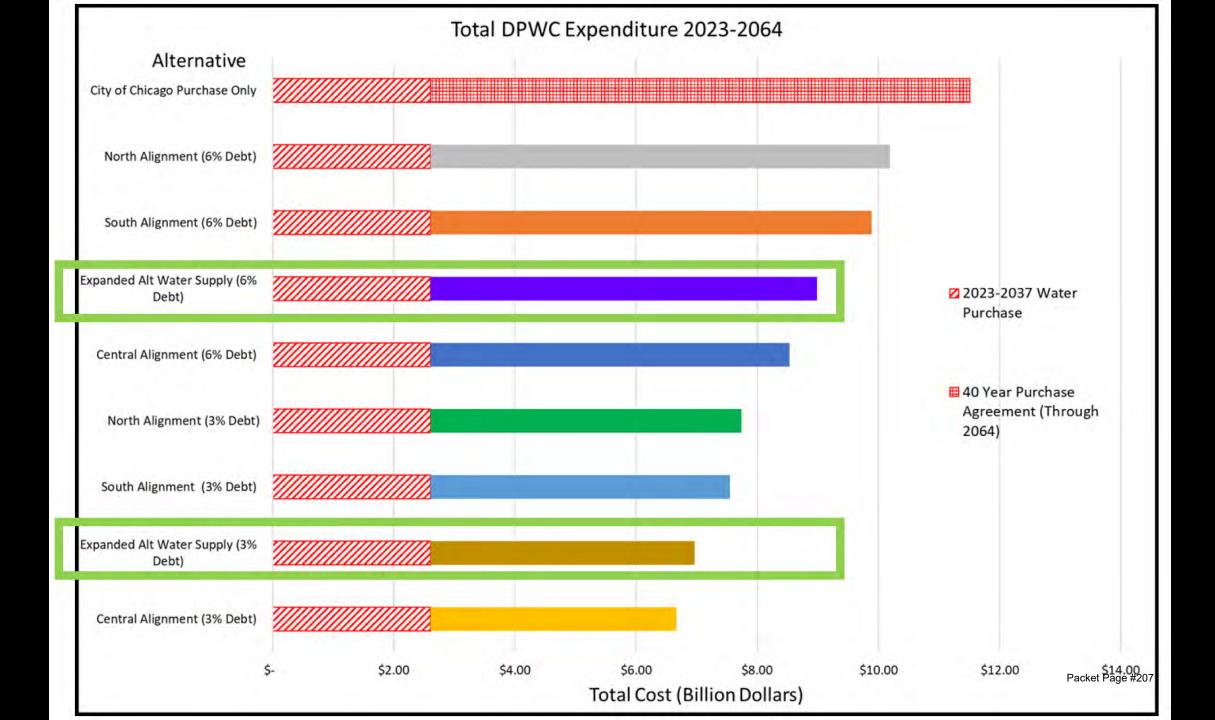
# Alternative Source Water Project:

- DWC expects to expend over \$10B during a 40-year contract with Chicago
- An alternative source water study was prepared to evaluate alternatives:
  - Study commenced in 2022
  - ❖ Initial presentation to DWC Board in April 2023
  - Study evaluated 3 routes
  - All 3 routes were technically feasible and financially viable
  - "North" route appears most favorable because of potential for engaging partner agencies
- DWC commenced regular meetings with NSMJAWA & NWC
- "North" alignment feasibility update received from Carollo
- Financial validation & strategy report completed by Raftelis, Inc.
- **Engineering validation** study underway by Burns & McDonnell



- DuPage Water Commission (Chicago)
  - »Additional Chicago customers along existing transmission mains
- Northwest Suburban Municipal Joint Action Water Agency (Chicago)
- Northwest Water Commission (Evanston)





# Other Considerations:

### Cost-of-Service rate

- Chicago has committed to implementing COS in 2030
- COS rate not benchmarked and currently uncertain
- Chicago is undertaking system-wide condition assessment
- Joliet has COS in contract, but construction project just beginning
  - DWC can retain favored-nations clause

### Chicago negotiations / future

New Chicago Administration in place, but conflicting priorities

### Project Considerations

- ❖ NSMJAWA and NWC are receiving presentation this month (November)
- Governance structure
- Engineering validation continues (cost/schedule)
- Project approach continues to develop (design-build, property acquisition, etc)
- Interest rate environment is currently volatile/unpredictable



# Chicago Contract Recommendation:

- **❖ DWC Board recommends extending existing contract 15-20 years** 
  - Retain favored nations protection
  - Provide time for completion of Chicago's condition assessment
  - Provide time for advancement of regional Source Water Project
    - Consultants to identify most likely construction schedule
  - Negotiations to continue with Chicago in good faith, pursuing
    - Cost-of-Service rate parity with Joliet Contract
    - Commitment to benchmark COS rate
    - Improved operations control of Lexington Pump Station





# Municipal Legislative Activities:

### Municipal approval of [DWC/Customer Contract]

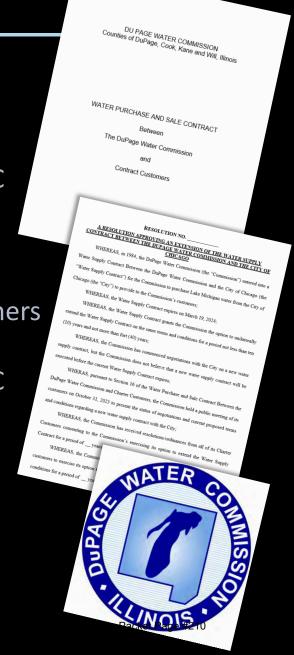
- Water Supply contracts to be approved by municipal boards
- Wheeling contracts to be approved by municipal boards and vendor
- Original signed documents and (resolution/ordinance) provided to DWC
  - Completion of all municipal activities by end of calendar year, 2023

### Municipal concurrence resolution [Chicago Contract]

- ❖ Section 16 of customer contract requires concurrence from ¾ of customers
- Municipal Boards to approve resolution documenting concurrence
- Original signed documents and (resolution/ordinance) provided to DWC
  - Completion of all municipal activities by end of calendar year, 2023

### **DWC Board of Commissioners**

- ❖ January 18, 2024: Approval of DWC/Customer Contract
  - ❖ DWC to circulate assembled signature documents following approval
- **February 15, 2024:** Chicago contract extension term determination
- Notice of extension provided to Chicago prior to March 19, 2024



# DWC / Customer Contract:

### **DWC Water Contracts Sequencing Matrix:**

<u>Date</u>	<u>Action</u>	Responsible Party
9/28/2023	DWC/Customer Contract [Joint Meeting #1]	DWC / Municipalities
10/19/2023*	Alternative Source Water Presentation	DWC / Consultants
10/31/2023	DWC/Chicago Contract [Joint Meeting#2]	DWC / Municipalities
9/28/23 – 12/31/23	Municipal Board Customer contract approval	<b>Municipalitie</b> s
11/1/23 – 12/31/23	Municipal Board Chicago contract consent	Municipalities
11/1/23 - 12/31/23 1/1 - 1/18/2023	Municipal Board Chicago contract consent  Customer contract municipal signatures	Municipalities  DWC/Municipalities
1/1 – 1/18/2023	Customer contract municipal signatures	DWC/Municipalities

<sup>\*</sup> DWC Board meeting



### **REQUEST FOR COUNCIL ACTION**

Referred to Council: November 16, 2023

Subject: List of Bills

Staff Contact: Brad Wilson, Finance Director

Department: Finance

**TITLE:** List of Bills - 11/16/2023

#### **RECOMMENDATION:**

The Finance Department recommends that the City Council approve bills for the 11/16/2023 City Council meeting in the amount of \$1,770,032.48.

#### **BACKGROUND:**

<u>Fund</u>		<u>Amount</u>
General Fund	\$	218,616.66
Road & Bridge Fund	\$	376.81
Motor Fuel Tax Fund	\$	9,720.10
Tourism Fund	\$	4,374.97
Narcotics Fund	\$	-
TIF District #1	\$	550,945.80
TIF District #2	\$	-
Capital Projects Fund	\$	65,496.66
Land Acquisition Fund	\$	-
Commuter Parking Lot Fund	\$	419.72
Sanitation Fund	\$	-
Water & Sewer Fund	\$	920,081.76
CERF	\$	-
Special Service Area Fund	\$	-
Total of all Funds	\$	1,770,032.48
Total Number of Checks:		76
Check number range	17950	-17957, 17959-18026

Purchases are made in accordance with the City's purchasing policies and procedures manual.

Items of interest:

IEPA (\$659,541.59) – Debt payment for the NWWTP Martam (\$550,945.80) - Klefstad L/S project

Vehicle Purchases:

There are no vehicle purchases on this list of bills.

Committee date: Council date:

### DOCUMENTS ATTACHED ✓ List of Bills

CHECK VENDOR NAME	FULL DESCRIPTION	AMOUNT		INVOICE	DATE	A	CCOUNT		ACCOUNT DESCRIPTION
17950 Goding Electric	Service Work to Motor for Deep Bed Scrubber	268.00		558515	10/6/2023	63005082	42015	Sewer	Maintenance - Other Equipment
			268.00						
17951 Layne Christensen Company	Reuse Pump for North Plant	10,348.00		2562136	9/18/2023	63005085	46047	Water CIP	Wastewater
		-	10,348.00						
17952 Petty Cash - Police Dept	Conference/Meetings- Deputy Chief Meeting	25.00		102323-1	10/20/2023	10024041	42036	PD	Community Services
	Community Service- 1st Day of School	8.78		102323-2	10/20/2023	10024041	42036	PD	Community Services
	Community Service- 1st Day of School	34.46		102323-3	10/20/2023	10024041	42036	PD	Community Services
			68.24						
17953 ABC Humane Wildlife Control & Prevention	Raccoon Removed	65.00		628453	10/25/2023	10024041	42048	PD	Animal Control
	Trap Serviced/Reset and Rebaited	65.00		628887	10/27/2023	10024041	42048	PD	Animal Control
	Trap Serviced/Reset and Rebaited	65.00		626604	10/21/2023	10024041	42048	PD	Animal Control
			195.00						
17954 Adam Mendoza	CIT Mileage Reimbursement	115.15		2	10/28/2023	10024041	42089	PD	Education And Training
			115.15						
17955 Al Warren Oil Co Inc	2500 Gal Split Tank Removal	3,300.00		W1604146	10/30/2023	50010000	46036	CIP	PW Building Improvements
	1604.6 Gals of Unleaded Gas	4,855.36		W1603838	10/30/2023	10	13001	GF	Gasoline Inventory
			8,155.36						
17956 Allscape Inc.	Contracted Landscape Maintenance	1,050.00		23-1052	10/25/2023	10035052	42106	Streets	Landscaping - City Property
			1,050.00						
17957 AlphaGraphics #468	200 Notice of Trespass Forms	86.50		52754	10/17/2023	10024041	42005	PD	Printing
			86.50						
17959 Anderson	Insurance Refund	27.98		2	11/6/2023	10011011	42061	Admin	Health Insurance
			27.98						
17960	Insurance Refund	4.00		1	11/6/2023	10011011	42061	Admin	Health Insurance
	modification (Notation	4.08	4.08		1 1/0/2020	10011011	72001	/ WITHIT	Hodai Hodianoe
		-	4.00						

CHECK VENDOR NAME	FULL DESCRIPTION	AMOUNT		INVOICE	DATE	A	CCOUNT	г	ACCOUNT DESCRIPTION
17961 Associated Technical Services LTD	Emergency Leak Services	932.00	932.00	37644	10/13/2023	63005081	42113	Utilities	Maintenance - Water Mains
17962 Baxter and Woodman Inc	FY21-22 Road Project	3,932.50	3,932.50	0251891	10/24/2023	50030000	46031	CIP	Street Improvement Program
17963 Bender	Insurance Refund	13.14	13.14	1	11/6/2023	10011011	42061	Admin	Health Insurance
17964 Bronwyn Sill	City Newsletter Design/Layout- Nov/Dec 23	2,700.00	2,700.00	27	10/17/2023	10011016	42005	Marketing	Printing
17965 CDS Office Technologies	BWC Licensing Renewal	4,875.00	4,875.00	501234	10/19/2023	10024041	46466	PD	Police Operating Equipment
17966 Chiappetta	CDC Meeting- 10/16/23	150.00	150.00	2023-5	10/30/2023	10	22001	GF	Escrow Account
17967 Christine Headley	Insurance Refund	6.58	6.58	1	11/6/2023	10011011	42061	Admin	Health Insurance
17968 Christopher Burke Engineering Ltd	ROW-2023-0015, Summit IG Summit IG- 950 Lively Blvd Nicor- Central and Foster Summit IG- 1100 Thorndale Ave	382.00 811.75 334.25 334.25		187384 187383 187382 187381	11/1/2023 11/1/2023 11/1/2023 11/1/2023	10015051 10015051 10015051 10015051	42050 42050	PW Admin	Engineering Services Engineering Services Engineering Services Engineering Services
17969 Cintas Corp	Traffic Mat- PW 3 AEDs Traffic Mat- PW Medical Kit Resupply- PD Medical Kit Resupply- PW Medical Kit Resupply- City Hall Medical Kit Resupply- City Hall Medical Kit Resupply- City Hall	70.34 261.00 70.34 135.15 91.14 85.41 83.28 63.36		4172006892 9237997825 4172716807 5182006872 5182006889 5182006861 5182006861	10/26/2023 8/31/2023 11/2/2023 10/30/2023 10/30/2023 10/30/2023 10/30/2023 10/30/2023	10015051 63005082 10015051 10015051 10015051 10013000 10011014 10024041	44022 42019 49043	Sewer PW Admin PW Admin	Maintenance Agreements Safety Equipment Maintenance Agreements Safety Program Safety Program Professional Services Safety Program Safety Program

CHECK VENDOR NAME	FULL DESCRIPTION	AMOUNT		INVOICE	DATE	A	CCOUNT		ACCOUNT DESCRIPTION
	Medical Kit Resupply- City Hall	56.01		5177631052	9/29/2023	10013000	42034	Finance	Professional Services
	Medical Kit Resupply- City Hall	50.62		5177631052	9/29/2023	10011014	49043	HR	Safety Program
	Medical Kit Resupply- City Hall	68.65		5177631052	9/29/2023	10024041	49043	PD	Safety Program
			1,035.30						
		_		-					
17970 Commonwealth Edison	152 Janis	55.65		1977013032nov23	10/26/2023	63005081	44051	Utilities	Electric Utilities
	475 Arbor	70.80		0931132071nov23	10/26/2023	63005081	44051	Utilities	Electric Utilities
	387 Preserve	78.70		1935098099nov23	10/26/2023	63005082	44051	Sewer	Electric Utilities
	Clock Tower	527.93		2397133276nov23	10/24/2023	21035059	44051	MFT	Electric Utilities
	970 Lively	5.36		1891117124nov23	10/24/2023	21035059	44051	MFT	Electric Utilities
	144 Commercial	124.71		6018658025nov23	10/24/2023	63005081	44051	Utilities	Electric Utilities
	790 N Central Ave	1,474.58		7530503011nov23	10/24/2023	21035059	44051	MFT	Electric Utilities
	948 Edgewood	17.60		1091045118nov23	10/24/2023	21035059	44051	MFT	Electric Utilities
	411 Irving	43.57		4578064010nov23	10/20/2023	21035059	44051	MFT	Electric Utilities
	Street Lights	4,537.96		5551084019nov23	10/20/2023	21035059	44051	MFT	Electric Utilities
	Street Lights	327.78		2003164030nov23	10/25/2023	21035059	44051	MFT	Electric Utilities
	L/S Street Lights	226.83		2811168048nov23	10/27/2023	21035059	44051	MFT	Electric Utilities
	269 Irving	12.59		3531026055nov23	10/20/2023	21035059	44051	MFT	Electric Utilities
	SS Irving	419.72		5850739020nov23	10/24/2023	60	44051	Metra	Electric Utilities
	121 E Irving Lights	1,452.49		2720145042nov23	10/24/2023	21035059	44051	MFT	Electric Utilities
			9,376.27						
		_		-					
17971 Concentric Integration	2023-2024 Managed Support	2,186.00		0251892	10/24/2023	63005081	42021	Utilities	Maintenance Equipment Distribu
	2023-02024 Managed Support T&M	1,500.00		0251893	10/24/2023	63005081	42021	Utilities	Maintenance Equipment
			3,686.00						Distribu
		-	0,000.00	-					
17972 Conduent State & Local Solutions	Camera Fixed Monthly/Pay by Web- Sept 2023	7,515.00		1699349	10/25/2023	10024041	42093	PD	Cops Administration
	Camera Fixed Monthly/Pay by Web- Sept 2023	668.75		1699349	10/25/2023	10	36130	GF	Trax-Guard Enforcement
			8,183.75						
		-		_					
17973 Daily Herald	Newsprint Surcharge- 10/13/23-12/08/23	93.00		166588nov23	11/9/2023	10011011	42091	Admin	Dues And Subscriptions -
									Admin
		-	93.00	-					
17974 Davis & Stanton Police Awards Divisio	n 5 Uniform Police Rare			149020	11/1/2023	10024041	44015	PD	Maintenance - Other
17314 Davis & Stanton Police Awards Divisio	II J OHIIOHH FUIICE DAIS	54.50		143020	11/1/2023	1002404 l	44015	Pυ	Maintenance - Other Equipment
			54.50						
		-		-					

CHECK VENDOR NAME	FULL DESCRIPTION	AMOUNT		INVOICE	DATE	A	CCOUNT		ACCOUNT DESCRIPTION
17975 Delcarlo	Insurance Refund	13.14	13.14	1	11/6/2023	10011011	42061	Admin	Health Insurance
17976 Delgado	Insurance Refund	13.14		1	11/6/2023	10011011	42061	Admin	Health Insurance
17977 DuPage Mayors and Managers Conference	Innovation Celebration & Conference Meeting	65.00	65.00	11856A	10/5/2023	10011011	49006	Admin	Conferences/Meetings - Legis
17978 DuPage Water Commission	City Water Purchase	192,978.17	192,978.17	01-2300-00nov23	10/31/2023	63005081	44053	Utilities	DPWC Water Purchase
17979 EGM, Inc.	Semi-Annual HVAC Maintenance- 269 IP	997.00	997.00	2481	9/1/2023	63005082	42011	Sewer	Maintenance - Building/Grounds
17980 Forest Awards & Engraving	1 Matte Black Plaque	65.00	65.00	14772	10/26/2023	10024041	49099	PD	Miscellaneous
17981 France Media, Inc	Tabloid Page- Heartland Real Estate Business	2,250.00	2,250.00	2023-60256	10/13/2023	22050000	49055	Tourism	Economic Development
17982 Fulton Siren Services	Monitoring of the Outdoor Warning Siren System	421.68	421.68	2541	11/1/2023	10024041	44028	PD	Emergency Services
17983 Gerard Printing Company	500 Business Cards- PW/CD 1,000 Business Cards 500 Business Cards- CD	63.50 127.00 44.50	235.00	119446 119315 119689	9/13/2023 7/24/2023 10/19/2023	10011011 10011011 10012021	42005 42005 42005	Admin Admin CD	Printing Printing Printing
17984 Global Industrial	Cantilever Rack Starter	2,417.95	2,417.95	121129125	10/21/2023	50010000	46036	CIP	PW Building Improvements
17985 GOA Regional Business Association	State of the City Address Footgolf Outing	400.00 250.00	650.00	2636225-10 2636267-10	10/10/2023 10/18/2023	10011011	49005 49005	Admin Admin	Conferences/Meetings - Admin Conferences/Meetings - Admin

CHECK VENDOR NAME	FULL DESCRIPTION	AMOUNT		INVOICE	DATE	A	CCOUNT		ACCOUNT DESCRIPTION
17986 Guardian Alliance Technologies, Inc	Use of Triage Center	254.00	254.00	21768	10/31/2023	10024041	44039	PD	Detective's Expense
17987 H&H Electric Co	Street Lighting Maintenance- 355 Irving Park Rd	1,093.41	1,093.41	42240	9/2/2023	21035059	42010	MFT	Maintenance - Street Lights
17988 Hawkins Inc	Wastewater Supplies Wastewater Supplies	1,584.50 414.96		6563947 6612843	8/21/2023 10/23/2023	63005082 63005082	44063 44063	Sewer Sewer	Chemical Supplies Chemical Supplies
17989 Healy Asphalt Company LLC	1.26 Tons of UPM Cold Mix 3.68 Tons of N50 Surface/1 Load Asphalt Dump	195.30 296.56		38410 38482	10/20/2023 10/24/2023	50030000 50030000	46031 46031	CIP CIP	Street Improvement Program Street Improvement Program
17990 Heartland Business Systems, LLC	HBS Managed Services- October 2023 CSP Monthly- October 2023	550.00 4,896.00		644174-H 641763-H	10/18/2023 10/17/2023	10011015 10011015	42105 42105	IT IT	IT - Software Licenses & M/As IT - Software Licenses & M/As
17991 Hits DJ Service	Trunk or Treat Music	350.00	350.00	CG4KA4	10/23/2023	22040000	49036	Tourism	Community Events
17992 HR Green	Potter Street- Tall Oaks New Traffic Signal- Irving Park Rd/Central Ave	1,236.95 7,993.07		4-168405 2-168439	10/27/2023 10/27/2023	50010000 50030000	46034 46031	CIP CIP	Storm Sewer Street Improvement Program
17993 IL LEAP	Member Renewal	75.00	75.00	2024	11/9/2023	10024041	42090	PD	Dues And Subscriptions
17994 Illinois Association of Chiefs of Police	Membership Renewal	115.00	115.00	14006	10/1/2023	10024041	42090	PD	Dues And Subscriptions

CHECK VENDOR NAME	FULL DESCRIPTION	AMOUNT	INVOIG	CE DATE	А	ACCOUNT		ACCOUNT DESCRIPTION
17995 Illinois Environmental Protect	Principal/Interest Payment- IEPA	523,771.42	117-232	22-17 11/6/2023	63005082	45269	Sewer	Principal - 2012 A/IEPA
	Principal/Interest Payment- IEPA	135,770.17	117-232	22-17 11/6/2023	63005082	47269	Sewer	Interest - LT Debt
			659,541.59					
17996 Illinois Tactical Officers Ass	One-Day Executive Symposium	150.00	05805	10/25/2023	10024041	42089	PD	Education And Training
			150.00					
17997 Infosend, Inc.	Utility Billing/7-Day Notices- November 2023	20.89	250336	6 10/31/2023	63005081	42032	Utilities	Data Processing Service
	Utility Billing/7-Day Notices- November 2023	644.96	250336	6 10/31/2023	63005081	42032	Utilities	Data Processing Service
	Utility Billing/7-Day Notices- November 2023	47.14	250336	6 10/31/2023	63005081	44002	Utilities	Postage
	Utility Billing/7-Day Notices- November 2023	1,334.41	250336	6 10/31/2023	63005081	44002	Utilities	Postage
	Utility Billing/7-Day Notices- November 2023	47.15	250336	6 10/31/2023	63005082	44002	Sewer	Postage
	Utility Billing/7-Day Notices- November 2023	1,334.42	250336	6 10/31/2023	63005082	44002	Sewer	Postage
			3,428.97					
17998 IPBC - Intergovernmental Personnel Benefit Coopera	Monthly Insurance Premium- November 2023	46,082.95	11/23	10/31/2023	10011011	42061	Admin	Health Insurance
23.13.11	Monthly Insurance Premium- November 2023	689.17	11/23	10/31/2023	10012021	42061	CD	Health Insurance
	Monthly Insurance Premium- November 2023	2,409.74	11/23	10/31/2023	10012022	42061		Health Insurance
	Monthly Insurance Premium- November 2023	4,989.63	11/23	10/31/2023	10013000	42061	Finance	Health Insurance
	Monthly Insurance Premium- November 2023	8,563.30	11/23	10/31/2023	10024041	42061	PD	Health Insurance
	Monthly Insurance Premium- November 2023	53,374.37	11/23	10/31/2023	10024042	42061		Health Insurance
	Monthly Insurance Premium- November 2023	7,546.52	11/23	10/31/2023	10024043	42061		Health Insurance
	Monthly Insurance Premium- November 2023	3,188.40	11/23	10/31/2023	10024044	42061		Health Insurance
	Monthly Insurance Premium- November 2023	3,851.39	11/23	10/31/2023	10024045	42061		Health Insurance
	Monthly Insurance Premium- November 2023	9,007.67	11/23	10/31/2023	10015051	42061	PW Admin	Health Insurance
	Monthly Insurance Premium- November 2023	13,583.37	11/23	10/31/2023	10035052	42061	Streets	Health Insurance
	Monthly Insurance Premium- November 2023	4,549.53	11/23	10/31/2023	10015053	42061	VGM	Health Insurance
	Monthly Insurance Premium- November 2023	12,016.19	11/23	10/31/2023	63005081	42061	Utilities	Health Insurance
	Monthly Insurance Premium- November 2023	20,786.28	11/23	10/31/2023	63005082	42061	Sewer	Health Insurance
	Monthly Insurance Premium- November 2023	674.97	11/23	10/31/2023	22010000	42061	Tourism	Health Insurance
	Monthly Insurance Premium- November 2023	137.50	11/23	10/31/2023	10011014	42034	HR	Professional Services
			191,450.98					
17999 Itasca Bank & Trust	LOC Interest	15,123.72	106379 15,123.72	91501123 10/17/2023	50010000	46056	CIP	Strategic Plan

CHECK VENDOR NAME	FULL DESCRIPTION	AMOUNT		INVOICE	DATE		CCOUNT	•	ACCOUNT DESCRIPTION
18000 Julie Garcia	DJ for Tree Lighting	800.00	800.00	2026	11/1/2023	22040000	49036	Tourism	Community Events
18001 Kwik-print Inc	500 Trunk or Treat Flyers/400 Shape of Wood Dale 1 Shape of Wood Dale Display	1,120.40 1,268.00		74529 74545	10/25/2023 10/27/2023	10015051 10011016		PW Admin Marketing	Telephone/Alarm Line Printing
18002 Lamorte	Insurance Refund	6.58	6.58	1	11/6/2023	10011011	42061	Admin	Health Insurance
18003 LEAF	6 Copier Systems	2,298.74	2,298.74	15453392	11/5/2023	10011015	42105	ΙΤ	IT - Software Licenses & M/As
18004 LERMI	LERMI Holiday Meeting	120.00	120.00	110223	11/2/2023	10024041	42089	PD	Education And Training
18005 Linda Pieczynski	Roll Call News	140.00	140.00	196	10/23/2023	10024041	42089	PD	Education And Training
18006 Living Water Consultants, Inc.	Silver Creek Watershed Committee Coordination	33.72	33.72	2975	10/25/2023	63005082	42052	Sewer	IEPA Permit Fees
18007 Martam Construction, Inc.	Klefstad Lift Station/Force Main Improvements	550,945.80	550,945.80	14520	11/1/2023	24	46045	TIF 1	Sewer
18008 Nicor Gas	144 Commercial 180 Brookhurst 331 Edgewood 475 Arbor 387 Preserve Royal Oaks 269 Irving-A 890 Lively	71.64 245.42 59.44 58.60 59.35 376.81 549.14 50.46		06863454192nov23 5943090007nov23 77616386478nov23 03000235840nov23 05465097177nov23 28882900005nov23 21347800001nov23 61032393516nov23	10/27/2023 10/24/2023 10/24/2023 10/24/2023 10/24/2023 10/30/2023 10/23/2023	63005081 63005082 63005081 63005081 20035058 63005082 63005081	44052 44052 44052 44052 44052 44052 44052 44052	Utilities Sewer Utilities Utilities Utilities RB Sewer Utilities	Natural Gas Utilities
	429 Knollwood	49.74		99560406466nov23	10/23/2023	63005081	44052	Utilities	Natural Gas Utilities

CHECK VENDOR NAME	FULL DESCRIPTION	AMOUNT		INVOICE	DATE	ACCOUNT		Г	ACCOUNT DESCRIPTION
	444 Potter	165.59		53400900006nov23	10/20/2023	63005081	44052	Utilities	Natural Gas Utilities
	412 Park	87.31		55400900001nov23	10/20/2023	63005081	44052	Utilities	Natural Gas Utilities
	277 Edgebrook	50.46		63335878946nov23	10/23/2023	63005081	44052	Utilities	Natural Gas Utilities
	256 Mittel	50.46		69653763057nov23	10/23/2023	63005082	44052	Sewer	Natural Gas Utilities
	150 Janis	49.74		38546902156nov23	10/23/2023	63005081	44052	Utilities	Natural Gas Utilities
	388 Irving	50.38		46617400000nov23	10/23/2023	63005081	44052	Utilities	Natural Gas Utilities
	269 Irving	49.74		44347800003nov23	10/23/2023	63005082	44052	Sewer	Natural Gas Utilities
			2,024.28						
18009 PACE SUBURBAN BUS	City Bus Service	100.00		627347	10/25/2023	22010000	42038	Tourism	Public Transportation
			100.00						
18010 Regional Truck Equipment Co	Plow Mount for #502	1,072.95		278395	10/27/2023	63005081	44017	Utilities	Maintenance - Vehicles
			1,072.95						
18011 Robinson Engineering, Ltd	Pretreatment Program	8,461.25		23100000	10/5/2023	63005082	42059	Sewer	Industrial Pretreatment
	Stormwater Management Drainage Issues	497.00		23100165	10/16/2023	10015051	42050	PW Admin	Engineering Services
	Stormwater Management & On-Going Tasks	284.00		23100164	10/16/2023	10015051	42050	PW Admin	Engineering Services
			9,242.25						
18012 Runco Office Supply	6 Packs of Pads	86.91		920565-0	10/18/2023	10011011	44031	Admin	Office Supplies
			86.91						
18013 Sikich LLP	City Audit	5,500.00		33203	10/26/2023	10013000	42031	Finance	Auditing Services
	,		5,500.00						· ·
18014 Stanard & Associates	2023 Police Officer Application Process			SA000055791	10/12/2023	10024047	49044	PD Brd	Testing Program
10014 Clanara a 76300lates	2020 Foliace Officer Application Frocess	6,390.00	6,390.00	C/1000000731	10/12/2020	10024047	45044	1 D DIG	resulig r regium
								_	
18015 Suburban Laboratories Inc	Wastewater Water Lab Testing	1,293.85	1,293.85	219677	10/31/2023	63005082	42033	Sewer	Laboratory Services
18016 Superior Ground Service, Inc	City Bed Maintenance- November 2023	4,460.73		5371	11/1/2023	10035052	42106	Streets	Landscaping - City Property
			4,460.73						
18017 T-Mobile	PD Phones	86.70		971416281nov23	10/20/2023	10024041	42001	PD	Telephone/Alarm Line
			86.70						

CHECK VENDOR NAME	FULL DESCRIPTION	AMOUNT		INVOICE	DATE ACCOUNT		-	ACCOUNT DESCRIPTION	
18018 Tammy Miller	Portable Generator Reimbursement-289 Catalpa	250.00	250.00	1	11/8/2023	10013000	49085	Finance	Generator Grant Program
18019 The Center	Trunk or Treat 2023	200.00		6	10/23/2023	22040000	49036	Tourism	Community Events
18020 The Locker Shop	Uniform Allowance Uniform Allowance	129.00		E116158 E116158	10/27/2023 10/27/2023	10013000 10015051	44021 44021	Finance PW Admin	Uniforms Uniforms
18021 Commercial Funding Inc.	FY23-25 Road Projects	19,990.92	19,990.92	23-461	10/23/2023	50030000	46031	CIP	Street Improvement Program
18022 Toscas Law Group	Building Code and Ordinance Violations- 10/24/23 Traffic Control Railroad Violations- 10/26/23 Traffic Control Railroad Violations- 10/20/23 Tow/Seizure Violations- 10/24/23	625.00 175.00 175.00 675.00		1024232 102623 102023 102423	10/25/2023 10/30/2023 10/23/2023 10/25/2023	10012021 10024041 10024041 10024041	42034 42034 42034 42034	CD PD PD PD	Professional Services Professional Services Professional Services Professional Services
	Railroad Crossing Violations- 10/24/23	500.00	2,150.00	1024231	10/25/2023	10024041	42034	PD	Professional Services
18023 TransUnion Risk	Person Searches- October 2023	237.90	237.90	427957-202310-1	11/1/2023	10024041	44039	PD	Detective's Expense
18024 Villa Park Office Equipment	Deposit for Office Equipment Office Equipment- CD	11,009.69 2,882.95	13,892.64	1 78094	11/7/2023 9/7/2023	50010000 10012021	46037 46001	CIP CD	City Hall Improvements Office Equipment
18025 Williams	Insurance Refund	13.14	13.14	1	11/6/2023	10011011	42061	Admin	Health Insurance
18026 Wilson	Insurance Refund	2.28	2.28	1	11/6/2023	10011011	42061	Admin	Health Insurance
Grand Total Total number of checks - 76		=	1,770,032.48						

#### **EXECUTIVE SESSION**

November 16, 2023 --- Tape Recording is the Law!

Pursuant to Illinois Open Meetings Act, 5ILCS120/2-1 et seq. to discuss:

- 1. Executive Session Official Minutes (Pursuant to 5ILCS120/2(c)(21)
- 2. Land Acquisition (Pursuant to 5ILCS120/2(c)(5))
- 3. Land Disposition (Pursuant to 5ILCS120/2(c)(6))
- 4. Pending Litigation (Pursuant to 5ILCS120/2(c)(11))
- 5. Probable Litigation (Pursuant to 5ILCS120/2(c)(11))
- 6. Collective Bargaining (Pursuant to 5ILCS120/2(c)(2))
- 7. Personnel (Pursuant to 5ILCS120/2(c)/1)