

**RESOLUTION 18-1**

**A RESOLUTION AUTHORIZING THE APPROVAL AND EXECUTION OF A WATER SUPPLY AGREEMENT BETWEEN THE MORTON GROVE-NILES WATER COMMISSION AND THE VILLAGE OF MORTON GROVE AND THE VILLAGE OF NILES**

**WHEREAS**, in 2017, the Morton Grove-Niles Water Commission (“MGNWC” or “Commission”) was established by the Village of Morton Grove, a home rule Illinois municipal corporation (“Morton Grove”), and the Village of Niles, a home rule Illinois municipal corporation (“Niles”), by the adoption of ordinances pursuant to Division 135 of Article 11 of the Illinois Municipal Code (65 ILCS 5/11-135-1, *et seq.*) (“Division 135”). The establishing ordinances are Morton Grove Ordinance 17-5, which was adopted on March 13, 2017, and Niles Ordinance No. 2017-19, which was adopted on March 14, 2017. In order to accomplish the objectives set forth in the above-referenced Ordinances, Morton Grove and Niles also approved, under those same Ordinances, an intergovernmental agreement entitled, “Intergovernmental Agreement For The Establishment And Operation Of The Morton Grove-Niles Water Commission And For The Purchase And Sale Of Water To The Commission For Commission Use And To Commission Wholesale Water Customers” (the “IGA”), to provide for the governance and operation of the MGNWC and to create the Board of Commissioners of the Morton Grove-Niles Water Commission (“MGNWC Board”) to govern the MGNWC; and

**WHEREAS**, the MGNWC was established for purposes of constructing and operating a public water supply system (the “MGNWC System”) consisting of water transmission mains, pumping, storage, and other related water delivery and receiving infrastructure between a connection point on the Evanston water system and existing water receiving points of Niles and Morton Grove (the “Project”); and

**WHEREAS**, in 2017, the corporate authorities of Evanston, Morton Grove, and Niles, each adopted an Ordinance or Resolutions that authorized the approval and execution of an agreement entitled “Water Supply Agreement Between The City Of Evanston And The Village Of Morton Grove And The Village Of Niles” (the “Evanston WSA”) which requires Evanston to supply Morton Grove and Niles their full water needs. The respective Ordinance and Resolutions approving the Water Supply Agreement are identified as follows: Evanston approved Ordinance Number 5-O-17 on February 13, 2017; Morton Grove approved Resolution Number 17-03 on January 23, 2017; and Niles approved Resolution Number 2017-02R on January 24, 2017; and

**WHEREAS**, pursuant to Section 15 of the Evanston WSA, upon the creation of the MGNWC, all of Morton Groves’ and Niles’ rights and obligations under this Evanston WSA were automatically assigned to, and assumed by the MGNWC; and

**WHEREAS**, the MGNWC is currently constructing the MGNWC water system, which will serve as a common source of supply of Lake Michigan water for the Villages and will consist of water transmission mains, pumping, storage, and other related water delivery and receiving infrastructure between a connection point on the Evanston Water System near the intersection

of Emerson Street and McCormick Boulevard and the existing water receiving storage facilities of Niles and Morton Grove (the "MGNWC Water System") and

**WHEREAS**, the MGNWC is preparing to issue and sell revenue bonds to finance the construction of the MGNWC Water System, which may include alternate revenue bonds and has applied for Public Water Supply Loans through the State Revolving Funds ("SRF") from the Illinois Environmental Protection Agency (IEPA Loans) in an amount adequate to complete the construction of the MGNWC Water System; and

**WHEREAS**, the MGNWC, Morton Grove and Niles desire to approve and enter into an Agreement entitled "Water Supply Agreement Between The Morton Grove-Niles Water Commission And The Village Of Morton Grove And The Village Of Niles" ("WSA") in order to consolidate the provisions of the Evanston WSA and the IGA and to provide for the establishment of water rates to be paid by Morton Grove and Niles to the MGNWC and for the purposes set forth in the WSA. A copy of the WSA is attached hereto as Exhibit "A" and made a part hereof; and

**WHEREAS**, the MGNWC will use the WSA as the basis for obtaining credit and as the source of funds for payment of the principal, if any, and interest on its loans and bonds, 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 or authorized by applicable statutes and the ordinance or ordinances authorizing the issuance of its bonds; and

**WHEREAS**, neither the MGNWC, Morton Grove and Niles are surrendering any of their rights to the ownership and operation of their respective water systems pursuant to this WSA; and

**WHEREAS**, the MGNWC, Morton Grove and Niles have each taken all necessary steps for the adoption of this WSA as a legal and binding document among them, and the individuals executing this WSA have been duly authorized to do so; and

**WHEREAS**, the MGNWC Board and the corporate authorities of the Village of Morton Grove and the Village of Niles are authorized to enter into this WSA pursuant to Article VII, Section 10 of the 1970 Constitution of the State of Illinois, the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.* and the Illinois Municipal Code (65 ILCS 5/1, *et seq.*, including Division 135); and

**WHEREAS**, the MGNWC Board and the corporate authorities of the Village of Morton Grove and the Village of Niles have found that entering into this WSA will promote public health, safety and welfare, and that it is in the mutual best interests of all Parties to approve and enter into this WSA.

**NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF MORTON GROVE, ILLINOIS, AS FOLLOWS:**

**SECTION 1:** Each Whereas paragraph above is incorporated by reference into this Section 1 and made a part hereof as material and operative provisions of this Resolution.

**SECTION 2:** The governing authority of the Morton Grove-Niles Water Commission authorize the approval and execution of an Agreement entitled "Water Supply Agreement Between The Morton Grove-Niles Water Commission And The Village Of Morton Grove And The Village Of Niles" (the "WSA") attached hereto as Exhibit "A".

**SECTION 3:** The MGNWC Board further authorizes and directs the Chair and the Clerk to execute the final version of the WSA, which may contain certain non-substantive modifications that are approved by the Village Manager of Niles and the Village Administrator of Morton Grove, and to execute and deliver all other instruments and documents and pay all costs and fees that are necessary to fulfill MGNWC's obligations under the WSA.

**SECTION 4:** This Resolution shall be in full force and effect from and after its adoption and approval as provided by law.

**ADOPTED** this 8th day of January 2018, pursuant to a roll call vote as follows:

**AYES:** John Pietron and Steven Vinezeano  
**NAYS:** None  
**ABSENT:** None (Cook County Appointee not appointed yet)

**PASSED** by the Board of Commissioners of the Morton Grove-Niles Water Commission, Cook County, Illinois on a roll call vote at a Regular Meeting thereof held on the 8th day of January 2018, and approved by the Chair, and attested by the Clerk on the same day.

  
\_\_\_\_\_  
Steven Vinezeano, Chair

ATTEST:  
  
\_\_\_\_\_  
John Pietron, Clerk

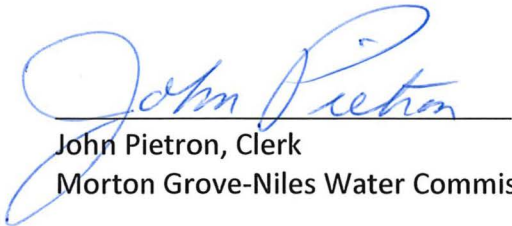
**CLERK'S CERTIFICATION**

I, John Pietron, certify that I am the duly appointed, qualified Clerk of the Morton Grove-Niles Water Commission. I do further certify that the above and foregoing, identified as Resolution Number 18-01, is a true, complete and correct copy of a Resolution otherwise identified as:

A RESOLUTION AUTHORIZING THE APPROVAL AND EXECUTION OF A WATER SUPPLY AGREEMENT BETWEEN THE MORTON GROVE-NILES WATER COMMISSION AND THE VILLAGE OF MORTON GROVE AND THE VILLAGE OF NILES

Which Resolution was passed by the Morton Grove-Niles Water Commission on the 8th day of January 2018, the original of which is part of the books and records within my control as Clerk of the Morton Grove-Niles Water Commission.

Dated this the 8th day of January 2018



John Pietron, Clerk  
Morton Grove-Niles Water Commission

**WATER SUPPLY AGREEMENT**

**BY AND AMONG**

**THE MORTON GROVE-NILES WATER COMMISSION**

**AND**

**THE VILLAGE OF MORTON GROVE**

**AND**

**THE VILLAGE OF NILES**

**Dated: Jan. 24, 2018**

## WATER SUPPLY AGREEMENT

### BY AND AMONG THE MORTON GROVE-NILES WATER COMMISSION AND THE VILLAGE OF MORTON GROVE AND THE VILLAGE OF NILES

**THIS WATER SUPPLY AGREEMENT**, dated as of Jan. 24, 2018 (“Agreement” or “WSA”), is made by and among the Morton Grove-Niles Water Commission (“MGNWC” or “Commission”), a water commission created by an intergovernmental agreement that was approved pursuant to Division 135 of Article 11 of the Illinois Municipal Code (65 ILCS 5/11-135-1, *et seq.*) (“Division 135”), Article VII, Section 10 of the 1970 Constitution of the State of Illinois and the Illinois Intergovernmental Cooperation Act (§ 5 ILCS 220/1, *et seq.*), and the Village of Morton Grove and the Village of Niles. The MGNWC, Morton Grove and Niles are referenced in this WSA at times collectively as the “Parties” and individually as a “Party” and Morton Grove and Niles are referenced in this WSA at times collectively as the “Villages”.

#### RECITALS

**WHEREAS**, the Village of Morton Grove (“Morton Grove”) is an Illinois home rule municipal corporation located in Cook County, Illinois, the Village of Niles (“Niles”) is an Illinois home rule municipal corporation located in Cook County, Illinois, and the City of Evanston (“Evanston”) is an Illinois home rule municipal corporation located in Cook County, Illinois; and

**WHEREAS**, Evanston is the owner and operator of a water system providing intake, treatment and distribution facilities for Lake Michigan water, consisting of transmission mains, reservoirs, pumping stations and related facilities capable of supplying Lake Michigan water to meet the requirements of Morton Grove and Niles (the “Evanston System” or the “Evanston Water System”); and

**WHEREAS**, in 2017, the corporate authorities of Evanston, Morton Grove, and Niles, each adopted an Ordinance or Resolutions that authorized the approval and execution of an agreement entitled “Water Supply Agreement Between The City Of Evanston And The Village Of Morton Grove And The Village Of Niles” (the “Evanston WSA” or the “Evanston Water Supply Agreement”) which requires Evanston to supply Morton Grove and Niles their full water needs. The respective Ordinance and Resolutions approving the Water Supply Agreement are identified as follows: Evanston approved Ordinance Number 5-O-17 on February 13, 2017; Morton Grove approved Resolution Number 17-03 on January 23, 2017; and Niles approved Resolution Number 2017-02R on January 24, 2017; and

**WHEREAS**, after the approval of the Evanston Water Supply Agreement, the MGNWC was established by an intergovernmental agreement entitled “Intergovernmental Agreement For The Establishment And Operation of The Morton Grove-Niles Water Commission And For The Purchase And Sale Of Water To The Commission For Commission Use And To Commission Wholesale Water Customers” (the “IGA”) that was approved by Morton Grove and Niles by the

adoption of ordinances (Morton Grove Ordinance 17-5 adopted on March 13, 2017, and Niles Ordinance No. 2017-19 adopted on March 14, 2017); and

**WHEREAS**, pursuant to Section 15 (MG-N Option to Create a JAWA or a Water Commission; Assignment) of the Evanston WSA, upon the creation of the MGNWC, all of Morton Groves' and Niles' rights and obligations under the Evanston WSA were automatically assigned to, and assumed by the MGNWC; and

**WHEREAS**, the IGA provides for the governance and operation of the MGNWC and also established the Board of Commissioners of the Morton Grove-Niles Water Commission (the "MGNWC Board") to govern the MGNWC. The MGNWC's primary purpose is the construction and operation of a public water supply system (the "MGNWC System" or the "Water System" or the "System") to serve Morton Grove and Niles and their residents, property owners and businesses and potentially other water customers with drinkable Lake Michigan water from Evanston's Water System; and

**WHEREAS**, the MGNWC is currently constructing the MGNWC water system, which will serve as a common source of supply of Lake Michigan water for the Villages and will consist of water transmission mains, pumping, storage, and other related water delivery and receiving infrastructure between a connection point on the Evanston Water System near the intersection of Emerson Street and McCormick Boulevard and the existing water receiving storage facilities of Niles and Morton Grove (the "MGNWC Water System" or the "MGNWC System"); and

**WHEREAS**, under the Evanston WSA, Morton Grove and Niles agreed to purchase Lake Michigan water from Evanston through the MGNWC, in amounts equal to the lesser of each Village's Full Water Requirements or the water allocation approved by the State of Illinois or the amount otherwise made available under the Evanston WSA. Accordingly, the MGNWC agrees to deliver and sell to the Villages and the Villages agree to receive and purchase Lake Michigan Water from the MGNWC in accordance with the terms and conditions set forth in this WSA, the IGA and the Evanston WSA; and

**WHEREAS**, subject to the terms of the IGA and the Evanston WSA, Morton Grove and Niles recognize that the MGNWC is authorized to provide Lake Michigan water to additional customers; and

**WHEREAS**, the MGNWC is preparing to issue and sell its revenue bonds, which may include alternate revenue bonds and has applied for Public Water Supply Loans through the State Revolving Funds ("SRF") from the Illinois Environmental Protection Agency ("IEPA Loans") in an amount adequate to complete the construction of the MGNWC Water System and for such other purposes as may be required or authorized by applicable statutes or in the ordinance or ordinances authorizing the issuance of such IEPA Loans and/or bonds (such IEPA Loans, bonds together with any additional bonds issued by the MGNWC for the completion, reconstruction, replacement, improvement, alteration or extension of the MGNWC Water System, and any bonds issued to refund such bonds, either as to principal or interest, or for

making deposits in reserve funds and accounts, or for paying capitalized interest, and for paying the costs of issuance of such bonds and IEPA Loans, hereinafter referred to as ("the Bonds"); and

**WHEREAS**, the MGNWC and the Villages desire to enter into this WSA in order to consolidate the provisions of the aforementioned Evanston WSA and the IGA and to provide for the establishment of water rates to be paid by the Villages to the MGNWC; and

**WHEREAS**, the MGNWC and the Villages each acknowledge that the MGNWC will use this WSA as the basis for obtaining credit through the issuance of the Bonds and as the source of funds for payment of the principal, if any, and interest on the Bonds, 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 or authorized by applicable statutes and the ordinance or ordinances authorizing the issuance of the Bonds; and

**WHEREAS**, by the execution of this WSA, the Villages are surrendering none of their rights to the ownership and operation of their respective Water Systems, nor is the MGNWC surrendering any of its rights to the ownership and operation of the MGNWC Water System, but each expressly asserts its ownership of and continued right to operate such Water Systems consistent with this WSA; and

**WHEREAS**, the Parties have each taken all necessary steps for the adoption of this WSA as a legal and binding document among them, and the individuals executing this WSA have been duly authorized to do so; and

**WHEREAS**, the MGNWC Board and the corporate authorities of the Village of Morton Grove and the Village of Niles are authorized to enter into this WSA pursuant to Article VII, Section 10 of the 1970 Constitution of the State of Illinois, the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.* and the Illinois Municipal Code (65 ILCS 5/1, *et seq.*, including Division 135); and

**WHEREAS**, the MGNWC Board and the corporate authorities of the Village of Morton Grove and the Village of Niles have found that entering into this WSA will promote public health, safety and welfare, and that it is in the mutual best interests of all Parties to approve and enter into this WSA.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:**

#### **Section 1. INCORPORATION**

The above Recitals are 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 WSA. A definition in the singular may be used in the plural, and vice-versa.

## **Section 2. DEFINITIONS**

All terms defined in the IGA shall have the same meaning in this WSA, unless specifically provided otherwise herein.

## **Section 3. SUBORDINATION**

Except as specifically provided otherwise in this WSA, the terms and conditions contained in this WSA are not intended to supersede, and are subordinate to, the IGA. The Parties, through this WSA, seek to exercise and maintain all sovereign rights granted to them under and through the United States Constitution, the 1970 Illinois Constitution and the laws of the State of Illinois. However, this WSA 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 of any of them; provided, however, that this clause shall not be construed as waiving the right of any Party to challenge the validity of such rule, regulation or law on any basis, including the impairment of this WSA.

## **Section 4. WATER SUPPLY**

### **A. Quality.**

- a. The MGNWC has and shall provide in any and all contracts for its water supply that all water delivered to the MGNWC under said contracts shall be drinkable water of such quality, at the Point of Delivery that meets or exceeds applicable requirements of any Federal, State or local agency as shall have jurisdiction from time to time for establishing public water supply standards.
- b. The MGNWC shall supply the Villages with drinkable water of a quality that meets or exceeds standards and regulations of all applicable Federal and State or local agencies as shall have jurisdiction from time to time for establishing public water supply standards.
- c. The MGNWC shall use its best efforts to prevent contamination during transmission through the MGNWC System to the respective Points of Delivery to the Villages. The MGNWC shall not, however, be responsible for water treatment except to the extent necessary to maintain bacteriological standards in accordance with applicable regulations of the State of Illinois.
- d. The MGNWC bears no degree of responsibility for the water quality beyond the respective Points of Delivery to the Villages.
- e. The MGNWC shall not deliver any water other than Lake Michigan water to the Villages without prior written notice to and approval of the Villages.

### **B. Quantity to be sold to Morton Grove.**

- a. Subject to the provisions stated in this WSA, Morton Grove agree to purchase from the MGNWC and the MGNWC agrees to sell to Morton Grove an amount of Lake Michigan water necessary from time to time to serve the Full Water Requirements of Morton Grove and its current and future customers within its corporate boundaries and its current customers outside of its corporate boundaries listed in attached **Exhibit "A"** ("Retail Customers of Morton Grove"), including municipal use, system leakage and metering losses, located within or without the corporate limits of Morton Grove ("Morton Grove's Full Water Requirements"). Morton Grove is responsible to obtain and maintain a water allocation from the Illinois Department of Natural Resources ("IDNR") for its Full Water Requirements. In this WSA, "Morton Grove's Average Daily Demand" or "Morton Grove ADD" means the IDNR water allocations for Morton Grove. MGNWC's obligation to deliver water to Morton Grove during each calendar year shall be limited to Morton Grove's Average Daily Demand in effect for such calendar year times 365 days. MGNWC shall not be obligated hereunder to provide to Morton Grove water for resale by Morton Grove to any person other than the Retail Customers of Morton Grove without the written consent of the MGNWC and Niles.
- b. The maximum quantity of water that the MGNWC shall be required to deliver to Morton Grove in any one day shall be an amount equal to 1.65 times of Morton Grove's then Average Daily Demand.
- c. The current Maximum Flow Rate ("MFR") at Points of Delivery by MGNWC to Morton Grove shall be 6.402 Million Gallons Per Day ("MGD") The MFR to Morton Grove is based on the IDNR water allocation assigned to Morton Grove multiplied by a 1.65 peaking factor. The illustrative formula for calculating the MFR for the Village: Morton Grove Year 2030 IDNR water allocation =  $3.880 \times 1.65 = 6.402$  Million Gallons per Day ("MGD").
- d. MGNWC agrees to not utilize off-peak pumping to meet Morton Grove's water requirements, unless requested by Morton Grove.
- e. The MGNWC agrees to keep in force the Evanston WSA and any renewal agreements with Evanston for Lake Michigan water as will meet the Full Water Requirements of Morton Grove and Niles, under such terms and conditions as are most advantageous to Morton Grove, Niles and the MGNWC.

C. Quantity to be sold to Niles.

- a. Subject to the provisions stated in this WSA, Niles agree to purchase from the MGNWC and the MGNWC agrees to sell to Niles an amount of Lake Michigan water necessary from time to time to serve the Full Water Requirements of Niles and its current and future customers within its corporate boundaries and its current customers outside of its corporate

boundaries listed in attached **Exhibit "B"** ("Retail Customers of Niles") including municipal use, system leakage and metering losses, located within or without the corporate limits of Niles ("Niles' Full Water Requirements"). Niles is responsible to obtain and maintain a water allocation from the Illinois Department of Natural Resources ("IDNR") for its Full Water Requirements. In this WSA, "Niles' Average Daily Demand" or "Niles ADD" means the IDNR water allocations for Niles. MGNWC's obligation to deliver water to Niles during each calendar year shall be limited to Niles' ADD in effect for such calendar year times 365 days. MGNWC shall not be obligated hereunder to provide to Niles water for resale by to any person other than the Retail Customers of Niles without the written consent of the MGNWC and Morton Grove.

- b. The maximum quantity of water that the MGNWC shall be required to deliver to Niles in any one day shall be an amount equal to 1.65 times of Niles' then Average Daily Demand.
  - c. The current MFR at Points of Delivery by MGNWC to Niles shall be 8.491 MGD. The MFR to Niles is based on the IDNR water allocation assigned to Niles multiplied by a 1.65 peaking factor. The illustrative formula for calculating the MFR for the Village: Niles Year 2030 IDNR water allocation =  $5.146 \times 1.65 = 8.491$  MGD.
  - d. MGNWC agrees to not utilize off-peak pumping to meet Niles's water requirements, unless requested by Niles.
  - e. The MGNWC agrees to keep in force the Evanston WSA and any renewal agreements with Evanston for Lake Michigan water as will meet the Full Water Requirements of Morton Grove and Niles, under such terms and conditions as are most advantageous to Morton Grove, Niles and the MGNWC.
- D. Villages' Storage Requirements. Each Village shall provide facilities adequate at all times to receive all water required to be delivered hereunder, and shall provide storage capacity for not less than their respective ADD.
- E. MGNWC Obligation. The MGNWC shall use its best efforts to become and remain in a position to furnish water as herein contracted to be sold to the Villages, but its obligation hereunder shall be limited by the completion and capacity of the MGNWC Water System, the amount of water from time to time available to the MGNWC, accounting for ordinary transmission loss, including standard metering error, between the MGNWC's source of supply and the Points of Delivery, and contracts between the MGNWC and its other customers. The MGNWC shall use reasonable care and diligence to provide a constant supply of water as herein provided for, but reserves the right at any time to turn off the water in its mains for emergency and maintenance purposes. The MGNWC shall give, at least forty-eight (48) hours' notice of any such turn-off, except that in emergencies it shall give notice which is reasonable under the particular circumstances.

- F. **Take-or-Pay Obligation.** If at any time any Village fails to take from the MGNWC its Full Water Requirements for whatever reason, that Village shall nevertheless be deemed to be taking such Full Water Requirements from the Commission for purposes of determining payments due the Commission under Section 9 (Charges; Computation and Terms of Payment) of this WSA. Each of the Villages acknowledges its unconditional obligation to make all payments coming due under Section 9 on the basis of its Full Water Requirements regardless of whether all or any portion of its Full Water Requirements are or are not received from or delivered by the MGNWC, regardless of the reason for any failure to receive or deliver such Full Water Requirements.
- G. **Limited Supply.** In the event that it should become necessary for the MGNWC to limit the delivery of water through the MGNWC Water System for any reason ("Limited Supply"), each of the Village shall be entitled to receive during such period of Limited Supply its respective pro-rata share, based upon the Village's Adjusted Shares (as defined under Section 9 (Charges; Computation and Terms of Payment) of this WSA) for the most recent quarterly billing period, of water available for delivery to the Villages. Nothing in this WSA shall be construed to prohibit the Villages from serving their customers in cases of emergency from any source other than the MGNWC. It is expressly understood and agreed, however, that each of the Villages shall nevertheless be deemed to be taking its respective Full Water Requirements during any such period of Limited Supply or emergency for the purpose of determining payments due from it to the MGNWC under Section 9 hereof, and no such Limited Supply or emergency shall in any way affect or relieve the Village's respective payment obligations hereunder. The MGNWC shall use due diligence to operate the MGNWC System during any period of Limited Supply to provide water to the Villages insofar as practicable, and shall, as promptly as possible, take such actions, including expediting repairs or adjustments, as are necessary to restore delivery to the Villages. If the MGNWC is required to temporarily restrict the supply of water or if Evanston temporarily restricts the supply of water to MGNWC, the MGNWC shall deliver immediate written notice to the Village that explains the reason(s) for the restriction, identifies the estimated reduction in the volume of water to be supplied to the Village and the anticipated duration of the reduction in water supply service. All notices regarding water restrictions imposed by Evanston shall be promptly forwarded to the Village.

## **Section 5. TITLE TO WATER.**

Title to all water, supplied under this WSA and under the Evanston WSA and other water supply agreements entered into by the MGNWC, shall remain in the name of the MGNWC upon receipt of such water from Evanston or other water suppliers, and title shall pass to Morton Grove and Niles respectively immediately upon passage through the meter(s) and entry into the respective Water Systems of Morton Grove or Niles.

## **Section 6. POINTS OF DELIVERY**

- A. Each Village's "Points of Delivery" shall be defined as the points of outlet where the water delivered hereunder leaves the MGNWC's Water System and enters such Village's receiving storage facilities. The Village's Points of Delivery and the respective elevations for each are as follows:
- a. Morton Grove:
    - i.) 8820 National Avenue, Morton Grove, Illinois (North Reservoir)  
Elevation: 644 ft.
    - ii.) 6702 Oakton Street, Morton Grove, Illinois (South Reservoir)  
Elevation: 622 ft.
  - b. Niles:
    - i.) 7114 Touhy Avenue, Niles, Illinois (Niles Main Reservoir)  
Elevation: 632 ft.
    - ii.) 7900 Nagle, Morton Grove, Illinois  
(Water delivered at Niles Water System operating pressure)
- B. Delivery Pressure. The Commission will supply water at a minimum pressure of 40 psi (92 ft. of water) as measured at the average ground surface elevation at all Points of Delivery. Except as specifically agreed otherwise in this WSA, water shall be delivered at atmospheric pressure such that an air gap exists between the MGNWC's Water Supply System and each Village's receiving storage facilities; provided, however, that in the case of Niles' Point of Delivery at 7900 Nagle, Morton Grove, Illinois water shall be delivered at direct pressure and backflow prevention equipment will be provided and maintained in good working order at all times by Niles at Niles' expense.

## **Section 7. FACILITIES, EQUIPMENT AND OPERATION**

- A. Systems Responsibilities. The MGNWC and the Villages will each, at its own expense, operate, maintain, replace and improve their respective Water Systems and facilities as necessary for the MGNWC to deliver Lake Michigan water to each Village and for each Village to receive Lake Michigan water and deliver said water to its customers during the term of and any extensions of this WSA.
- B. Village Charges and Rates Covenant. Each of the Villages covenants to establish such charges and rates for water supplied by it to consumers as will be sufficient at all times (1) to pay the cost of operation and maintenance of its Water System, including those amounts necessary to pay the charges and rates established by the MGNWC hereunder; (2) to provide an adequate depreciation fund for its Water System; and (3) to pay the principal of and interest on all of the Bonds payable from the revenues of its Water System and to meet all other requirements of any ordinances authorizing the Bonds.

- C. License Granted. The MGNWC and the Villages grant to each other, for the term of this WSA, a license for the right to interconnect their respective Water Systems and facilities, and access and use the Water Systems and facilities of the other for the purposes set forth in this WSA.
- D. Supervisory Control and Data Acquisition. The Villages and the MGNWC shall provide and maintain any and all devices (e.g., Supervisory Control and Data Acquisition (“SCADA”) system) and related technology, in an interconnected manner, reasonably necessary for the purpose of controlling, measuring, transmitting and recording flows and leak detection of the supply of water furnished to the Villages, and for the transmitting and recording of pressures, reservoir levels, leakage, and other required operational information. The MGNWC with support from the City of Evanston will operate and control the control valves at the MGNWC’s booster station / receiving reservoir(s) through the use of the SCADA system. The system operators of the MGNWC System and each Village Water System shall have access to and shall share this information on a “real-time” daily basis.
- a. The MGNWC shall in real time provide to each Village the following SCADA information, except during SCADA failure:
- i). total plant flow data;
  - ii). flow through the Village master meter data;
  - iii). pressure and flow at the following locations:
    - (a) Incoming water main at the booster station (influent side);
    - (b) Discharge water main at the booster station (effluent side);
    - (c) Transition water main telemetry as available;
    - (d) Incoming water main at the Nagle Ave. Pumping Station (influent side);
    - (e) Discharge water main at the Nagle Ave. Pumping Station (effluent side); and
    - (f) Distribution water main telemetry as available;
  - iv). MGNWC control valve position;
  - v). Nagle Ave Pumping Station water reservoir/standpipe elevations;
  - vi). available telemetry for pumps dedicated to Morton Grove;
  - vii). available telemetry for pumps dedicated to Niles; and
  - viii). any security surveillance telemetry or video at the Nagle Avenue Pumping Station.
- b. The Villages shall, in real time, provide to the MGNWC incoming and outgoing flow data from each receiving reservoir as well as the water level in each receiving reservoir, except during SCADA system failure or mutual agreement. The Parties agree to promptly repair any SCADA system failures.
- E. Inspections. Each Party may inspect the other Parties’ Water System facilities and perform any tests deemed reasonably necessary to protect the Parties’ rights or

fulfill the Parties' obligations under this WSA. Except in emergencies, inspections shall be conducted during normal business hours with forty eight (48) hours advance by written notice to the receiving Parties and shall comply with all security protocols. A designated representative of the receiving Parties shall be present during any on-site visit or inspection. The receiving Parties shall cooperate in scheduling such on-site visits and inspections.

- F. Permits and Approvals. The MGNWC and the Villages will assist each other in obtaining all required governmental and regulatory permits, licenses, inspections, approvals and access to public rights-of-way for any construction of or work on the Villages' Water System or construction of or work on the MGNWC System, provided the MGNWC and the Villages have reviewed and approved the plans and specifications as provided herein.
- G. Reservoir Storage. Each Village's Water System shall be operated so as to properly utilize reservoir storage within the Village's Water System and its customer's connections in such a manner as to assist the MGNWC in maintaining a balanced flow within the MGNWC System.
- H. Maintenance. Each Party shall provide the other Parties with prior written notice of scheduled maintenance and repair to the MGNWC System or a Village Water System that may impact water supply and service in accordance with the notice provisions of the Evanston WSA (i.e., written notice to the other Parties of not less than five (5) calendar days prior to the work). Scheduled maintenance to water system infrastructure during peak demand periods shall be avoided to the extent possible. Notice of emergency maintenance or repair will be provided by the Party performing the maintenance and repair to the other Parties as soon as practicable under the circumstances. Each Party agrees to maintain their respective Water Systems in accordance with the manufacturers' warranty and operational specifications.
- I. Surges and Back-Flows. No surges or back-flows into any Party's Water System are allowable under this WSA.
- J. Village Responsibility for Damage to the MGNWC System. Each Village is responsible for damage to the MGNWC System or the Water System of Morton Grove or Niles due to surges and back-flows caused by malfunction or misuse of its own Village Water System, including, without limitation, valve operation or pump station operation, excluding damage where the MGNWC is responsible for the operation of the Village's Water System, including, without limitation, its valve operation or booster/pump station. At the request of MGNWC, either or both Villages shall install a flow control system and a pressure recording system consisting of remotely operated flow control valve(s) at the Village receiving reservoir(s). The Villages shall provide the necessary equipment to transmit pressures, rates of flow and receiving reservoir(s) elevations prior to delivery of water by the MGNWC. All devices

necessary for the control and transmission of pressures, levels and rates of flow of water furnished to a Village that are part of that Village's Water System shall be provided and maintained by the respective Village, and comply with the provisions of this WSA. Water pressure and rate of flow readings shall be transmitted to the MGNWC pumping station. All flow control valves within the MGNWC System shall be controlled by the MGNWC in accordance with the provisions of this WSA.

- K. MGNWC's Responsibility for Damage to the Village Water System. The MGNWC is responsible for damage to a Village's Water System or to the water systems of any of its customers due to surges and back-flows caused by malfunction or misuse of the MGNWC System, including, without limitation, valve operation, booster station operation or pump station operation.
- L. Operating Meetings and Plan. The MGNWC shall provide each Village with a copy of the MGNWC's most recently prepared annual operating plan and capital plan relating to the MGNWC System ("Operating Plan") no less than thirty (30) calendar days before each operations meeting provided for in this Section. The MGNWC shall convene an operations meeting with the Villages at least two (2) times per year for every year this WSA is in effect. Meetings may be in person or may be convened through mutually acceptable electronic means. The MGNWC shall provide the Villages with copies of all required State or Federal filings that the MGNWC is required to file regarding its operation of its Water System. The MGNWC shall provide the Villages with its then-applicable Operating Plan related to the MGNWC Water System prior to the date of first delivery of Water to the Village.
- M. Notice of Operators. The Villages and the MGNWC shall notify and keep all parties informed of the name of the individual(s) in charge of operations of their respective Water Systems.
- N. Recordkeeping. Each Village shall maintain and make available to the MGNWC, suitable records of water used by the Village, the prevailing water rate charged to its water customers including all rates and relevant information and the premise on which rates have been established.

## **Section 8. MEASUREMENTS**

- A. Unit of Measure. The unit of measurement for water delivered pursuant to this WSA will be gallons of water, U.S. Standard Liquid measure, and all meters installed pursuant to this WSA must, unless the Parties otherwise agree, be so calibrated, and must read at one thousand (1,000) gallons of water.
- B. Measurement Point. The quantity of Lake Michigan water furnished to the Villages under this WSA will be measured by mutually acceptable master meters for



measuring the flow of water at the Points of Delivery as indicated in Section 6 (the "Measurement Point").

- C. Master Meters. The MGNWC shall provide master meters for measuring the supply of water on the discharge side of each pump and any points where the Villages' Water System interconnect with any other System. The master meters will be the primary devices used for the registration and billing of quantities of water supplied under this WSA. Provisions shall be made for the use of pitot tubes adjacent to the master meter for calibration and test purposes.
- D. Responsibility. The MGNWC shall operate, maintain, repair, replace and house the master meters referred to in this Section.
- E. Inspection of Meters. The MGNWC will regularly inspect and test the meters measuring the supply of water furnished and will repair or replace any part of a meter which has a total registration deviation greater than the industry standards, or which has been in service for a period greater than the industry standard or which is known or suspected to be registering incorrectly. The MGNWC shall check the master meter for accuracy semi-annually and after repairs, maintenance or replacement by use of pitot tubes, in the presence of each Village's representatives and at the expense of the MGNWC.
- F. Readings. The readings made for purposes of billing the Villages shall be made by the MGNWC once every calendar month. Monthly readings shall be transmitted to the Villages.
- G. Incorrect Measurement. When it is determined that a measuring device is registered incorrectly, an estimate of the amount of water furnished through the faulty device shall be prepared by the MGNWC's Superintendent, or his/her designee, for the purpose of billing the Village. The estimate shall be based upon the best available information, including summation of other available meter readings, the average of twelve preceding readings of the meter, exclusive of incorrect reading, and calibration of the master meter.
- H. Village Meters. Each Village, at its cost, may provide mutually acceptable meters for measuring the supply of water received by the Village from the MGNWC at any points where the Village's Water System interconnects with the MGNWC System. The Village, at its cost, shall operate, maintain, repair and replace the meters referred to in this subsection. The Village, at its cost, will regularly inspect and test the meters to verify that the meter(s) is registering correctly.

## Section 9. CHARGES; COMPUTATION AND TERMS OF PAYMENT

- A. Annual Charges. During each Service Year, each Village agrees to pay the MGNWC an Annual Charge as determined by this Section 9, which shall supersede the IGA to the extent it is inconsistent. Example calculations of the estimated and actual Annual Charges are set forth in attached **Exhibit "C."**
- B. Definitions: For purposes of this section:
- a. The MGNWC's "Net Annual Cost" shall be an amount calculated as MGNWC Expenses less MGNWC Receipts during the Service Year.
  - b. "MGNWC Expenses" shall be those amounts determined from time to time by the MGNWC to be necessary:
    - i. to pay, as they come due, the costs of operation and maintenance of the MGNWC's Water Supply System, including those charges payable by the Commission under the Evanston WSA;
    - ii. to pay, as they come due, the principal of, at maturity or pursuant to mandatory redemption requirements, premium, if any, and interest on the Bonds;
    - iii. to provide an adequate depreciation fund for the MGNWC's Water Supply System as determined by the MGNWC on the basis of its statutory duties and its obligations under the Bonds and the ordinance or ordinances authorizing the issuance of the Bonds;
    - iv. to comply with the covenants and requirements of the ordinance or ordinances authorizing the issuance of the Bonds, including the establishment and maintenance of reserve accounts; and
    - v. to repay all obligations incurred by the MGNWC for which other adequate provision has not been made.
  - c. "MGNWC Receipts" shall be those amounts (if any) determined from time to time by the MGNWC to be available from:
    - i. rates and charges to be collected by the MGNWC under water service contracts with MGNWC customers other than the Villages;
    - ii. any other revenues other than revenues collected by the MGNWC pursuant to this WSA to be collected by the MGNWC for or with respect to the use or services of its Water Supply System;
    - iii. interest to be credited to the Water Fund established by the initial ordinance authorizing the issuance of the Bonds; and
    - iv. any surplus on hand, without regard to its source, and, in the sole discretion of the MGNWC, available to the MGNWC to pay or provide for MGNWC Expenses during the Service Year.
  - d. "Village's Share" or the Village's "Annual Charge" shall be the respective Village's Share of the MGNWC's Net Annual Cost during the Service Year, subject to the True-Up provisions of this Section. The estimated Village's Share is a percentage of the estimated Net Annual Cost calculated as a fraction of which:



charge or credit shall be paid by the responsible Party within twenty-one (21) calendar days of the issuance of the invoice or credit by separate payment or as otherwise mutually agreed to in writing by the Parties.

- F. Adjusted Annual Charge. Throughout the duration of each Service Year, the MGNWC shall analyze and, if necessary, revise its budget and review each estimated Village's Share and its estimated Annual Charge required hereunder to determine if such estimated Annual Charges are sufficient to meet the MGNWC's reasonably foreseeable obligations as they come due and to determine if each estimated Village's Share is equitable as among the Villages. In the event that such estimated Annual Charges are deemed insufficient for any reason, or in the event that a Village's Share is deemed inequitable due to any substantial unforeseen change in any Village's water needs, the MGNWC shall adjust any or all of the Villages' estimated Annual Charges to provide sufficient and equitable amounts; provided, however, that in no event shall the Villages' estimated Annual Charges, taken together, be less than an amount sufficient to cover the Net Annual Cost; and, provided further, that no such adjustment shall be permitted if, as a result, the MGNWC would not be able to meet MGNWC Expenses as they came due or if such adjustment would violate any MGNWC obligation under the Bonds or the ordinance or ordinances authorizing the issuance of the Bonds. A detailed statement setting forth the reason for any such adjustments and the calculation thereof shall be delivered to each of the Villages no less than thirty (30) calendar days prior to the due date of the first installment payment to be based thereon. Any additional amounts due the MGNWC or reductions due any Village pursuant to any such adjustment shall be paid or credited, as the case may be, in equal installments as part of the installment payments remaining to be paid during the Service Year in question.
- G. Evanston True-Up Charges. In addition to any adjustments that may be made pursuant to the foregoing paragraph, the MGNWC may also bill the Villages for their respective Village's Shares of any amounts required by the MGNWC to cover any final Quantity Charge issued by the City of Evanston to the MGNWC pursuant to the provisions of subparagraph 5.08 (True-Up) of the Evanston WSA, and each of the Villages hereby agrees to pay its share the amount of any such bill to the MGNWC within twenty-one (21) calendar days after delivery by the MGNWC of such bill.
- H. Guarantee Payment. In the event that any Village shall fail to make in full any quarterly installment payment claimed by the MGNWC to be due under Section 9-D (Payment of Estimated Annual Charge) of this WSA or any True-Up charge due under Section 9-E (True-Up) of this WSA, and such non-payment shall continue for a period in excess of thirty (30) calendar days from the due date, the non-defaulting Village shall on each of its regular quarterly installment payment dates following such non-payment and until all arrearages, including any additional non-payments by the defaulting Village, have been eliminated, make, in addition to all other payments hereunder required, a quarterly "Guarantee Payment" which shall be calculated by

multiplying its "Guarantee Share" by the "Guarantee Revenue Need." The non-defaulting Village's "Guarantee Share" shall be a fraction of which (1) the numerator is the amount of water delivered, or deemed to be delivered under Section 4-B for Morton Grove and Section 4-C for Niles, to that Village during the most recent quarterly billing period for which the MGNWC has complete data and (2) the denominator is the total amount of water delivered, or deemed to be delivered under Section 4-B for Morton Grove and Section 4-C for Niles, during the same quarterly period to all of the Villages which are then not in default in their payments due to the MGNWC pursuant to this section. The "Guarantee Revenue Needed" shall be an amount determined by the MGNWC to be necessary to be collected on or before the next quarterly installment payment date in order to permit the MGNWC to meet all of its obligations as they come due, including amounts sufficient: (1) to pay the costs of operation and maintenance of the Water Supply System, including those charges payable by the MGNWC under the Evanston WSA; (2) to provide an adequate depreciation fund for the Water Supply System as determined by the MGNWC on the basis of its statutory duties and its obligations under the Bonds and the ordinance or ordinances authorizing the issuance of the Bonds; (3) to pay the principal of, at maturity or pursuant to mandatory redemption requirements, premium, if any, and interest on the Bonds; (4) to comply with the covenants of the ordinance or ordinances authorizing the issuance of the Bonds; and (5) to carry out the MGNWC's corporate purposes and powers, notwithstanding the defaulting Village's failure to make the payments claimed to be due from it under this section. For purposes of this section a "sufficient" amount shall mean an amount adequate, when taken together with any and all other amounts available, in the sole discretion of the MGNWC, to enable the MGNWC to meet its obligations and responsibilities as they come due, including without limitation the making of all deposits required to be made under the ordinance or ordinances authorizing the issuance of the Bonds. The MGNWC agrees to notify the non-defaulting Village of the amount of any Guarantee Payment required under this subparagraph (c) at least thirty (30) calendar days in advance of the next quarterly installment payment date, to supply the Village with supporting calculations, and to certify to the Village that the Guarantee Payment is necessary to permit the MGNWC to meet its obligations as they come due. The MGNWC further agrees to advise the non-defaulting Village of steps being taken to cure the default. Nothing in this section shall be construed to relieve the defaulting Village of its obligation to make all payments due hereunder, calculated in accordance with Sections 9-D and 9-H or to limit the rights of the MGNWC, the non-defaulting Village, the holders of the Bonds or any trustee appointed for the benefit of the holders of the Bonds from enforcing this WSA at law or in equity, by specific performance, mandamus or otherwise. The MGNWC agrees to reimburse the non-defaulting Village for any additional sums paid by them as Guarantee Payments in accordance with this section, and will further pay the non-defaulting Party a "Guarantee Fee" equal to the greater of ten percent (10%) of the Guarantee Payments made by the non-defaulting Village or annual interest on the Guarantee Payments at the prime rate charged by the largest bank located in Illinois, based on

assets plus two percent (2%). The reimbursement of the "Guarantee Payments" and the Guarantee Fee shall be paid to the non-defaulting Party, by appropriate adjustments to the quarterly installment payments of the non-defaulting Village's Annual Charges, after the past due amounts have been paid to the MGNWC and become available in the Surplus Account or such other fund or account from which such reimbursement may be paid under the ordinance or ordinances authorizing the issuance of the Bonds; provided, however, that the Parties hereto hereby acknowledge and agree that the MGNWC's obligations under this section shall be subordinate to the MGNWC's obligations under the ordinance or ordinances authorizing the issuance of the Bonds and applicable statutes.

- I. Payment Defaults; Remedies. In the event that any Village shall fail to make, on or before the due date, any payment or portion thereof claimed by the MGNWC to be due pursuant to this WSA, the defaulting Village shall pay the greater of (1) a late payment fee equal to ten percent (10%) of any payment not paid within thirty (30) calendar days of its due date or (2) annual interest on any such unpaid payment at the prime rate charged by the largest bank located in Illinois, based on assets plus two percent (2%). The late payment fee or said interest shall accrue and be paid during the period of non-payment whether or not such payment is disputed. In the event that any payment or portion thereof claimed by the MGNWC to be due pursuant to this WSA is not made within thirty (30) calendar days from the date such payment becomes due, the MGNWC may at its option and in its discretion, and whether or not such payment is disputed, reduce or discontinue delivery of water to the defaulting Village until the amount claimed to be due to the MGNWC is paid in full with interest as herein specified. The MGNWC shall give the defaulting Village ten (10) calendar days' notice of its intention to reduce or discontinue delivery of water and shall provide the defaulting Village a reasonable opportunity for a hearing prior to any reduction or discontinuance. If the MGNWC reduces or discontinues the delivery of water under such circumstances, the Village shall, nevertheless, continue liable to make all payments hereunder as if it were taking its Full Water Requirements. In addition, the MGNWC, any non-defaulting Village, the holders of the Bonds and any trustee appointed for the benefit of the holders of the Bonds shall have all other rights and remedies available at law or in equity for breach of any of the provisions of this WSA, including the right to specifically enforce or to mandamus the payments herein required to be made, which rights shall be available with respect to any and all payments claimed to be due hereunder, whether or not such payments are in dispute, it being the intent of the parties that said payments shall continue to be made during periods of dispute, subject to refund as provided in Section 16-D (Dispute Resolution) of this WSA in the event that such dispute is resolved in favor of a disputing Village.
- J. Character of Payment Obligations as Water Revenue Obligations. This WSA shall not be construed to constitute an indebtedness of any Village within the meaning of any statutory or constitutional limitation. It is expressly understood and agreed that all

payments to be made by the Villages may be required to be made only from revenues to be derived by each of them from the operation of its respective Water Systems, and this WSA shall be a continuing valid and binding obligation of each of the Villages payable from such revenues throughout the term hereof, the obligation to pay for the water and related MGNWC costs shall be characterized as being an obligation of the operating fund, thus giving it superiority over village water debt service payments.

- K. Without in any manner limiting the foregoing provisions of this section, it is also expressly understood and agreed that the aforesaid revenues from the operation of the Villages' Water Systems shall remain available for payments due or claimed to be due under this WSA without regard to any designation of such revenues by the Villages from time to time as operating revenue, retained earnings, reserves, surplus or otherwise. Nothing in this WSA shall, however, prohibit any Village from using any other legally available funds for payments due hereunder.

#### **Section 10. AUDIT**

The MGNWC's financial books and records shall be audited annually by a qualified independent certified public accountant. Each of the Villages shall be provided with a report of each such annual audit.

#### **Section 11. SALE OR PURCHASE OF WATER TO/FROM OTHERS**

- A. Right of the Villages to Supply Water to their Retail Customers. Subject to the terms, conditions and water allocation of the Evanston WSA, the IGA and this WSA, each Village has the right to resell Water it owns under this WSA to its Retail Customers as defined in Section 4 (Water Supply) of this WSA.
- B. Right of the Villages to Supply Water to New Water Customers.  
Each Village may, with the approval of the MGNWC and the Villages of Niles and Morton Grove, resell water it owns under this WSA to water users who are not its Retail Customers ("New Water Customers") under the following two (2) situations:
  - a. First, a Village may enter into an agreement to resell water to New Water Customers, provided: the Village does not exceed its ADD under its IDNR water allocation, as determined by the IDNR or its successor regulatory agency; the resale of water does not have an adverse effect upon the MGNWC System or the Village of Morton Grove or the Village of Niles; and the agreement has been approved in writing by the MGNWC and the Villages of Morton Grove and Niles. Said approvals shall not be unreasonably withheld by the MGNWC or the Villages. A Village shall give the MGNWC at least six (6) calendar months prior written notice before the Village enters into an agreement to service any new water customer(s), and the Village shall provide the MGNWC with copies of the agreement and the cost / benefit analysis report prepared in regard to

the addition of a new wholesale water customer. All water supply agreements that a Village enters into with its customers shall contain a provision that expressly states that the right of the Village to sell and deliver quantities of water to the customer is subject to the water allocation restriction and the water delivery obligations, limitations and restrictions set forth in this WSA, the Evanston WSA and any such similar obligations, limitations and restrictions contained in the IGA. After approval, the Village shall provide the MGNWC with an executed copy of the water supply agreement.

- b. Second, a Village may with the approval of the MGNWC, resell water to New Water Customers on a temporary basis for emergencies. The Village shall promptly advise the MGNWC of the need and nature of the emergency water service to be provided, and the estimated duration. At least forty-five (45) calendar days prior to approval by the corporate authorities, the Village shall provide to the MGNWC a copy of any emergency water supply agreement that it plans to enter into with any other unit of local government, public agency or private entity or person. After approval, the Village shall provide the MGNWC with an executed copy of the agreement. Prior to the execution of this WSA, each Village shall provide to the MGNWC copies of all current emergency water supply agreements that it has entered into with other units of local government, public agencies or private entities or persons.
- C. Village Option to Purchase Water from Other Suppliers. Notwithstanding any other provision in this WSA, a Village may purchase water from other water suppliers only under the following three (3) situations:
- a. First, a Village may purchase water from other water suppliers to the extent the MGNWC fails to deliver to the Village its Full Water Requirements.
  - b. Second, a Village may purchase water from any source approved by the MGNWC under emergency conditions if it requires more than its Full Water Requirements, and the MGNWC is unable to provide such additional water. The Village shall notify the MGNWC as to the nature and duration of the emergency as soon as possible.
  - c. Third, a Village may purchase water from the City of Chicago or other sources approved by the City of Evanston under non-emergency conditions in order to maintain an active, operational water supply connection.
- D. Sale of Water by MGNWC to Others. The MGNWC shall not enter into any agreement with any new wholesale water customer without the written consent of the Village of Morton Grove and the Village of Niles. The MGNWC shall give the Villages at least six (6) calendar months prior written notice before the MGNWC enters into a water supply agreement to serve a new wholesale water customer or enters into an addendum to amend any water supply agreements with existing wholesale water customers. The MGNWC shall provide the Villages with copies of the water supply agreement and/or the addendum and the cost / benefit analysis



report provided to the MGNWC Board, prepared in regard to the addition of a new wholesale water customer.

## **Section 12. INSURANCE**

All Parties will carry insurance or maintain self-insurance with respect to its Water System of the kinds and in the amounts which are customarily carried or maintained by entities operating similar water systems, including, without limiting the generality of the foregoing, fire and other casualty and public liability insurance or protection. The specific insurance coverage shall be set by mutual agreement of the corporate authorities of the Villages and the MGNWC from time to time. 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 this Section, 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.

## **Section 13. FORCE MAJEURE**

“Force Majeure,” as used in this WSA, shall mean acts of God and any event or effect that cannot reasonably be anticipated or controlled. In any case, by reason of Force Majeure, if the MGNWC or either Village is rendered unable wholly or in part to carry out its respective obligations under this WSA, notice and full particulars of such Force Majeure are to be given in writing within a reasonable period of time by the Party unable to carry out its obligations to the other Parties. The obligation of the Party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability claimed, but no longer. The MGNWC and the Villages may exercise their rights under this Force Majeure section with regard to all provisions of this WSA.

## **Section 14. TERM**

This WSA shall have an initial term (the “Term”) commencing on the date that the last signatory executes this Agreement (the “Effective Date”) and ending at 1:59 p.m. on December 31, thirty-nine (39) years after the Effective Date of this WSA. The Initial Term shall be automatically extended for up to two (2) consecutive ten (10) year terms (generally referred to as an “Extended Term” or specifically referred to as the “First Extended Term” and the “Second Extended Term”) unless either party conveys written notice of its intention to terminate this Agreement not less than five (5) years prior to the termination date of the then-existing Term. The MGNWC shall begin delivery of water to the Villages on a date(s) mutually agreed by the Parties, but no later than sixty (60) calendar days after the MGNWC gives written notice to the Villages that the MGNWC is ready to begin the delivery of water to the Villages.

## Section 16. GENERAL CONDITIONS

- A. Termination by the MGNWC. This WSA shall be subject to termination if a court of competent jurisdiction restricts or limits any of the MGNWC's rights to obtain, sell, WSA for or distribute water to the Village, or any of the Village's rights to obtain, sell, WSA for or distribute water to the MGNWC, in a manner that prohibits the MGNWC from complying with its obligations to the Village under this WSA.
- B. Termination by Mutual Agreement. Only upon mutual consent, the Parties may agree to terminate this WSA, in writing, after the approval of a termination or wind-down agreement by their respective corporate authorities.
- C. Default; Cure Period; Relief. In the event any Party defaults in regard to any obligation under this WSA, the non-defaulting Party shall send written notice of the default, with a description of the default, and a request that the defaulting Party cure the default. Either Party deemed to be in default under this WSA by the other Party shall have a thirty (30) calendar day cure period to resolve the default to the other Party's satisfaction or to initiate and continue to take actions that are designed to cure the default in a reasonable time period so that the Party in default is in conformance with the terms of this WSA. In the event that a default is not cured, the non-defaulting Party and the defaulting Party shall participate in the "Dispute Resolution" process contained in Section 16-D (Dispute Resolution) below. If the Dispute Resolution process is not successful, then either Party may seek to pursue all remedies in this WSA including Section 16-E (Remedies) below to enforce the provisions of this WSA.
- D. Dispute Resolution. If a dispute arises between the Parties concerning this WSA, the Parties will first attempt to resolve the dispute by negotiation. Each Party will designate persons to negotiate on their behalf. The Party contending that a dispute exists must specifically identify in writing all issues and present it to the other Parties. The Parties will meet and negotiate in an attempt to resolve the matter. If the dispute is resolved as a result of such negotiation, there must be a written determination of such resolution, and ratified by the corporate authorities of each Party, which will be binding upon the Parties. If necessary, the Parties will execute an addendum to this WSA. Each Party will bear its own costs, including attorneys' fees. If the Parties do not resolve the dispute through negotiation, any Party to this WSA may pursue other remedies under Section 16-E (Remedies) below to enforce the provisions of this WSA. No Party shall be entitled to any adjustment or relief on account of any disputed charges unless the disputed charges are brought to the attention of the other Parties within the time and in the manner herein specified, or within a reasonable period from the time the Party knew or should have known of the facts giving rise to the dispute.

- E. Remedies. In any action with respect to this WSA, the Parties are free to pursue any legal remedies at law or in equity. Each and every one of the rights, remedies and benefits provided by this WSA shall be cumulative and shall not be exclusive of any other rights, remedies and benefits allowed by law. . Except as provided by Court Order, each Party will bear its own costs, expenses, experts' fees and attorneys' fees incurred in all litigation arising under this WSA.
- F. Venue and Applicable Law. All questions of interpretation, construction and enforcement, and all controversies with respect to this WSA, will be governed by the applicable constitutional, statutory and common law of the State of Illinois. The Parties agree that, for the purpose of any litigation relative to this WSA and its enforcement, venue will be in the Circuit Court of Cook County, Illinois or the Northern District, Eastern Division of the United States District Court, Chicago, Illinois, and the Parties consent to the *in personam* jurisdiction of said Courts for any such action or proceeding.
- G. Service of Notice. All notices required or permitted to be given under this WSA shall be in writing and shall be delivered: (1) by personal delivery; (2) by a reputable overnight courier; (3) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid; or (4) by email delivery to the Party's business email address set forth below. Unless otherwise expressly provided in this WSA, notices shall be deemed received upon the earlier of: (a) actual receipt; (b) one (1) business day after deposit with an overnight courier, as evidenced by a receipt of deposit; (c) four (4) business days following deposit in the U.S. mail, as evidenced by a return receipt; or (d) date of delivery of the email. By notice complying with the requirements of this Section, each Party shall have the right to change the address or the addressee, or both, for all future notices and communications to the other Party, but no notice of a change of addressee or address shall be effective until actually received. All notices or communications provided for herein shall be in writing and shall be delivered to the MGNWC or the Village via email delivered to the below individuals' business email address or either in person or by United States mail, via Registered or Certified Mail, return receipt requested, postage prepaid, addressed to the MGNWC as follows:

Superintendent  
Morton Grove-Niles Water Commission  
1000 Civic Center Drive  
Niles, Illinois 60714  
Phone: 847-588-8000  
Email: Business email address

and to Morton Grove as follows:

Village of Morton Grove  
Village Administrator  
Richard T. Flickinger Municipal Center  
6101 Capulina Avenue  
Morton Grove, Illinois 60053  
Phone: 847-663-3001  
Email: Email: rczerwinski@mortongroveil.org

and to Niles as follows:

Village of Niles  
Village Manager  
1000 Civic Center Drive  
Niles, Illinois 60714  
Phone: 847-588-8002  
Email: scv@niles.com *scv@niles.com*

until and unless other addresses are specified by notice given in accordance with this Section.

- H. Entire Agreement. This WSA constitutes the entire agreement of the Parties concerning all matters specifically covered by this WSA. There are no representations, covenants, promises or obligations not contained in this WSA that form any part of this WSA or upon which any of the Parties is relying in entering into this WSA. Except for the IGA and the Evanston WSA, and the Cost Sharing Agreement Regarding Morton Grove And Niles Water Supply Matters approved by the corporate authorities of Morton Grove pursuant to Resolution 17-02 adopted on January 23, 2017 and approved by the corporate authorities of Niles pursuant to Resolution 2017-04R adopted on January 24, 2017, there are no other commitments, understandings, promises or conditions among the Parties in any other WSA or agreement, whether oral or written, and this WSA supersedes all other prior written or oral agreements, commitments and understandings among the Parties.
- I. Amendments. No officer, official or agent of the MGNWC or the Village has the power to amend, modify or alter this WSA or waive any of its conditions as to bind the MGNWC or the Village by making any promise or representation not contained herein. All addenda shall be executed by an authorized official of each Party. If any governmental agency with regulatory authority enacts new rules or regulations or new nationally recognized water system engineering requirements are adopted that require the method of water production or any components of the infrastructure used for the delivery of water under this WSA to be changed or modified, the Parties

agree to negotiate an addendum to this WSA that addresses the construction and operation of the required water system improvements to the MGNWC System and/or the Village Water System, the cost allocation of such improvements among the Parties and the financing of such improvements.

- J. No Assignment. This WSA shall not be assigned or transferred by any Party without the consent of the other Parties.
- K. Counterparts. This WSA may be executed in counterparts (including facsimile signatures), each of which shall be deemed to be an original and all of which shall constitute one and the same WSA.
- L. Severability. In the event any term, provision or condition of this WSA is held invalid by a court of competent jurisdiction, such invalidity shall not affect other terms, provisions or conditions of this WSA which can be given effect without the invalid term, provision or condition. To this extent and purpose, the terms, provisions and conditions of this WSA are declared severable. If any part of this WSA is adjudged invalid, such adjudication shall not affect the validity of this WSA as a whole or of any other part.
- M. No Separate Legal Entity; No Joint Venture or Partnership or Agency. This WSA establishes a cooperative intergovernmental undertaking, but the Parties do not intend to create a new or separate legal entity by entering into this WSA. This WSA does not establish or create a joint venture or partnership between the Parties, and no Party shall be responsible for the liabilities and debts of the other Party hereto. No Party shall be deemed to be the agent, employee or representative of any other Party.
- N. Independent Sovereign Status. The Parties to this WSA are independent, sovereign units of local government and no Party shall exercise control over either the performance of any other Party or the employees of any other Party.
- O. No Third-Party Beneficiaries. This WSA is not intended to benefit any person, entity or municipality not a Party to this WSA, and no other person, entity or municipality shall be entitled to be treated as beneficiary of this WSA. This WSA is not intended to nor does it create any third-party beneficiary or other rights in any third person or party, including, but not limited to, any agent, contractor, subcontractor, consultant, volunteer or other representative of any Party hereto. No agent, employee, contractor, subcontractor, consultant, volunteer or other representative of the Parties hereto will be deemed an agent, employee, contractor, subcontractor, consultant, volunteer or other representative of any other Party.
- P. No Individual or Personal Liability. The Parties agree that the actions taken in regard to and the representations made by each respective Party in this WSA and by their

respective corporate authorities have not been taken or made in anyone's individual capacity and no mayor/president, board member, council member, official, officer, employee, volunteer or representative of any Party will incur personal liability in conjunction with this WSA.

- Q. Compliance with Laws. The Parties shall comply with all applicable Federal, State and local laws, rules and regulations in carrying out the terms and conditions of this WSA. Each Party and its officers, corporate authorities, employees and agents agree not to commit unlawful discrimination and agree to comply with all applicable provisions of the Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, as amended; the Americans with Disabilities Act, the Age Discrimination in Employment Act, Section 504 of the Federal Rehabilitation Act, and all applicable rules and regulations. Each Party maintains a written Sexual Harassment Policy in compliance with Section 2-105 of the Illinois Human Rights Act (775 ILCS 5/2-105(A)(4)). Each Party certifies that it is an "Equal Opportunity Employer" as defined by Federal and State laws and regulations, and agrees to comply with the Illinois Department of Human Rights ("IDHR") Equal Opportunity Employment clause as required by the IDHR's Regulations (44 Ill. Adm. Code, Part 750, Appendix A). As required by Illinois law and IDHR Regulation, the Equal Opportunity Employment clause is incorporated by reference in its entirety as though fully set forth herein. Each Party certifies that it agrees to comply with the Prohibition of Segregated Facilities clause, which is incorporated by reference in its entirety as though fully set forth herein. See, Illinois Human Rights Act (775 ILCS 5/2-105). See also, Illinois Department of Human Rights Rules and Regulations, Title 44, Part 750. Administrative Code, Title 44: Government Agreements, Procurement and Property Management, Subtitle B: Supplemental Procurement Rules, Chapter X: Department of Human Rights, Part 750: Procedures Applicable to All Agencies, Section 750.160: Segregated Facilities (44 Ill. Adm. Code 750.160).
- R. Regulatory Bodies. This WSA 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 of any of them; provided, however, that this section shall not be construed as waiving the right of any Party to challenge the validity of any such rule, regulation or law on any basis, including impairment of this WSA.
- S. Illinois Freedom of Information Act. The definition of a "public record" in the Illinois Freedom of Information Act (5 ILCS 140/1, *et seq.*) ("FOIA") includes a "public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body and that directly relates to the governmental function and is not otherwise exempt under this Act." (5 ILCS 140/7(2)). Consequently, the Parties shall maintain and make available to the other Parties, upon request, their public records

relating to the performance of this WSA in compliance with the requirements of the Local Records Act (50 ILCS 205/1, *et seq.*) and FOIA.

- T. Interpretation; Headings. This WSA shall be construed and interpreted so as to preserve its validity and enforceability as a whole. No rule of construction that a document is to be construed against any of the drafting Parties shall be applicable to this WSA. Section headings and titles are descriptive only and do not in any way limit or expand the scope of this WSA.
- U. Waiver. The failure of any Party to enforce any section, subsection, term, condition or covenant (collectively referred to as "provision") of this WSA shall not be deemed a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with such provision and every other provision of this WSA. No provision of this WSA shall be deemed waived by any Party, unless the provision to be waived and the circumstances giving rise to such waiver are set forth specifically in a duly authorized and written waiver of the Party charged with such waiver. No waiver by any Party of any provision of this WSA shall be deemed or construed as a waiver of any other provision of this WSA, nor shall any waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or a different provision of this WSA.
- V. Survival. The aforesaid covenants, agreements, representations and warranties shall survive the expiration or termination of this WSA.

## **Section 16. EXHIBITS**

The below-listed documents are part of this WSA and are attached to and incorporated by reference into this WSA:

**Exhibit "A"** List of Current Water Customers of the Village of Morton Grove Located Outside the Corporate Boundaries of the Village of Morton Grove

**Exhibit "B"** List of Current Water Customers of the Village of Niles Located Outside the Corporate Boundaries of the Village of Niles

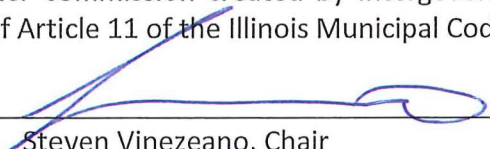
**Exhibit "C"** Illustration of Annual Charge Calculations and True-Up Process

**[THIS SPACE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the Morton Grove-Niles Water Commission and the Village of Morton Grove and the Village of Niles have caused this WSA to be approved by their respective corporate authorities and executed their respective authorized corporate officials, signed in duplicate originals (each executed copy constituting an original), signed by its Clerk or Secretary, and have caused its Corporate Seal to be hereto affixed. The Effective Date of this WSA is the date and year of execution by the last signatory below, which shall be inserted on the page following the cover page of this WSA.

**MORTON GROVE-NILES WATER COMMISSION,**

a water commission created by intergovernmental agreement and organized under Division 135 of Article 11 of the Illinois Municipal Code (65 ILCS 5/11-135-1, *et seq.*)

By:   
Steven Vinezeano, Chair  
Morton Grove-Niles Water Commission

Date: 1/24, 2018

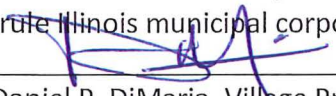
**ATTEST:**

By:   
John Pietron, Clerk  
Morton Grove Niles Water Commission

Date: 1/24, 2018

**VILLAGE OF MORTON GROVE,**

a home rule Illinois municipal corporation

By:   
Daniel P. DiMaria, Village President  
Village of Morton Grove

Date: 1/24, 2018


**ATTEST:**

By:   
Eileen Scanlon Harford, Village Clerk  
Village of Morton Grove

Date: 1-24-18, 2018

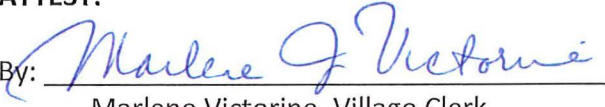
**VILLAGE OF NILES,**

a home rule Illinois municipal corporation

By:   
Andrew Przybylo, Village President  
Village of Niles

Date: 1/24, 2018

**ATTEST:**

By:   
Marlene Victorine, Village Clerk  
Village of Niles

Date: 1/24, 2018



**Exhibit "A"**

List of Current Water Customers of the Village of Morton Grove  
Located Outside the Corporate Boundaries of the Village of Morton Grove

1. Menards, Inc., 6001 Oakton Street, Skokie IL 60077 (165' west of the center line of Austin Avenue in the Center Line of Oakton Street, Vault).
2. Niles Township High School, 7700 Gross Point Road Skokie, IL 60077(Connection No. 1: Major and Frontage, north of Oakton Street, vault; Connection No. 2: in the parking lot drive, west side of the main building, Vault).
3. Castwell Products, 7800 Austin Ave., Skokie, IL 60077 (Southwest corner of Austin Avenue and Oakton Street, Vault).
4. Block Steel, 6101 Oakton Street, Skokie, IL 60076, (6101 Oakton in front, in the stone parkway, Vault).
5. Village of Golf, Golf & Narragansett Golf, IL 60029, (Northeast corner of Narragansett and Palma Lane in a Vault).
6. Aqua Illinois (North Maine Utilities) (1000 South Schuyler Avenue Kankakee, IL 60901) (265' south of the center line of Golf Road on the west side of Washington Street in the sidewalk, Vault).

**Exhibit "B"**

List of Current Water Customers of the Village of Niles  
Located Outside the Corporate Boundaries of the Village of Niles

7. Aqua Illinois (North Maine Utilities) (1000 South Schuyler Avenue Kankakee, IL 60901)  
(10' north of the north edge of the building, Vault)

**Exhibit "C"**  
**Illustration of Annual Charge Calculations and True-Up Process**

<b>Estimated Net Annual Cost Example</b>				
	<b>Full Water Requirement</b>	<b>MGNWC Annual Expenses</b>	<b>Village's Share Morton Grove</b>	<b>Village's Share Niles</b>
Prior Year's Full Water Requirement (kg)	2,299,500		949,000	1,350,500
Villages' Share (%)			41.27%	58.73%
Estimated Annual Cost of Water at \$0.81/kg		\$1,862,595		
MGNWC Operating & Maintenance Cost		\$300,000		
MGNWC Annual Debt Service		\$6,000,000		
Estimated Net Annual Cost		\$8,162,595		
Estimated Net Annual Cost (kg)		\$3.55		
Village's Share of Estimated Net Annual Cost			\$3,368,690	\$4,793,905
<b>Actual Net Annual Cost Example (5% Decrease in Water Consumption vs. Estimate)</b>				
Actual Annual Full Water Requirement (kg)	2,184,525		901,550	1,282,975
Villages' Share (%)			41.27%	58.73%
Actual Annual Cost of Water at \$0.81/kg		\$1,769,465		
MGNWC Operating & Maintenance Cost		\$300,000		
MGNWC Annual Debt Service		\$6,000,000		
Actual Net Annual Cost		\$8,069,465		
Net Annual Cost (kg)		\$3.69		
Villages' Share			\$3,330,256	\$4,739,210
True-Up Credit (Charge)			\$38,434	\$54,695
<b>Actual Net Annual Cost Example (5% Increase in Water Consumption vs. Estimate)</b>				
Actual Annual Full Water Requirement (kg)	2,414,475		996,450	1,418,025
Villages' Share (%)			41.27%	58.73%
Actual Annual Cost of Water at \$0.81/kg		\$1,955,725		
MGNWC Operating & Maintenance Cost		\$300,000		
MGNWC Annual Debt Service		\$6,000,000		
Actual Net Annual Cost		\$8,255,725		
Net Annual Cost (kg)		\$3.42		
Villages' Share			\$3,407,125	\$4,848,600
True-Up Credit (Charge)			\$(76,869)	\$(109,391)