



Lake County Illinois

Master

File Number: 08-0688

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Type: Resolution

Status: Old Business

Version: 2

Reference:

Controlling Body: Public Works and Transportation Committee

File Created Date : 09/25/2008

File Name: Hawthorn Woods Water Supply & Sales Agrmt.

Final Action:

Title: Joint Resolution approving a Water Supply and Sales Agreement with Aqua Illinois and the Village of Hawthorn Woods relating to the Hawthorn Woods-Glenshire Water Supply System.

Notes: Water Supply & Sales Agrmt. between Aqua IL, Inc., Village of Hawthorn Woods and the County.

Sponsors:

Agenda Date:

Attachments: 2008 11 18x Final Aqua-Village-Cty Water Agrmt.doc

Enactment Number:

Authorizer:

Hearing Date:

Entered by: Victoria Ostrander

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Financial and Administrative Committee	10/01/2008	Deferred				
	Action Text:	A motion was made by Member Mountsier, seconded by Member Bassi, that this Resolution be deferred. Motion carried.					
1	Public Works and Transportation Committee	10/01/2008	Postponed				Pass
	Action Text:	A motion was made by Member Carter, seconded by Member Douglass, that this Resolution be Postponed. The motion carried unanimously.					
	Notes:	<i>Director Kolb presented the proposed agreement and noted that he just received comments yesterday from the Village, so unfortunately we will need to get back to the Village. Chair O'Kelly wanted information on the process. County Administrator Barry Burton stated that if the terms are agreed upon, we will bring it back to the Committee's next meeting. The Village Administrator for the Village of Hawthorn Woods stated that they will call a special village meeting so the document can come before the committee next Wednesday. Discussion followed.</i>					
1		10/01/2008					
1	Public Works and Transportation Committee	10/08/2008	Approved and referred on to Financial and Administrative Committee				Pass

Action Text: A motion was made by Member Stolman that this Resolution be Approved and referred on to Financial and Administrative Committee. The motion carried by the following vote:

Notes: *County Administrator Barry Burton stated that we are recommending approval of an agreement which has been modified since the last meeting. Director Kolb noted the changes in the water supply agreement and advised that the final version had been sent to the Village and to Aqua Illinois and we have an agreement that we recommend that you adopt as the final product. Chair O'Kelly asked what the changes were. Dan Jasica advised that main changes which included finalization of language outlining what circumstances would require the County to be paying connection fees and recapture fees to the Village and as long as that suit remains outstanding we don't know if we have the authority to surcharge the residents. The goal overall is that the County and the Village are on the same boat and recognize that we are in this together. There was a provision added that parties recognize that to fund the system there was to be the issuance of bonds to be paid out of local revenues. The main change is working on language that the village would accept and representations that we are in this together in terms of these recapture fees. Discussion followed. Mr. Burton noted that the Village will have a special call meeting on Thursday where they will take this up this issue. Mr. Jasica noted that we are not sure what Aqua will do with section 12 of the agreement. Discussion on Section 12 followed.*

Director Kolb advised that we need this agreement so that Aqua Illinois will sign the IEPA permit. We can then proceed with the project. Mr. Jasica noted that IEPA action is still pending. It is set for a pre-trial conference with Judge Hoffman on October 20, 2008.

1	Financial and Administrative Committee	10/08/2008	Recommended for adoption to the Regular Agenda		Pass
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Action Text: This matter was Recommended for adoption to the Regular Agenda

Notes: *Barry Burton explained that this agreement includes several provisions, most notably that the County will issue bonds for the building of the Glennshire Water System, and as part of that, will collect approximately \$448,000 of Village connection fees from the residents.*

1	Lake County Board	10/14/2008	Referred	Public Works and Transportation Committee	Pass
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Action Text:

2	Public Works and Transportation Committee	11/12/2008	Amended		Pass
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Action Text: A motion was made by Member Stolman, seconded by Member Carter, that this Resolution be Amended. The motion carried by the following vote: The motion carried by the following vote:

2	Financial and Administrative Committee	11/12/2008	Recommended for adoption to the Regular Agenda		Pass
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Action Text: A motion was made by Member Stolman, seconded by Member Mountsier, that this Resolution be Recommended for adoption to the Regular Agenda. The motion carried by the following vote:

Notes: *Peter Kolb explained the amendments to the resolution and the agreement that were approved by the PWT Committee meeting today.*

2	Lake County Board	11/18/2008			
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Text of Legislative File 08-0688

Title

Joint Resolution approving a Water Supply and Sales Agreement with Aqua Illinois and the Village of Hawthorn Woods relating to the Hawthorn Woods-Glennshire Water Supply System.

Body

RESOLUTION

WHEREAS, the County of Lake (“County”) entered into agreements in 1973 and in 1975 with the Village of Hawthorn Woods (“Village”) to take over operation and ownership of a water supply system (hereinafter referred to as “1975 Contract”), later known as the Hawthorn Woods-Glennshire water system (“HWG WS”), due in part to the age of the system and the Village’s financial inability to operate a public water supply system in compliance with IEPA standards; and

WHEREAS, prior to 1975 the HWG WS was permitted by the Village to be constructed without compliance with public water system standards; and

WHEREAS, the IEPA allowed the County to operate the non-compliant HWG WS for 30 years, but in 2005 and 2006, at which time the HWG WS was more than 50 years old, did send Notices of Violation of public drinking water standards, which violations were remedied by the County in 2006 by the installation of IEPA-permitted interim water chlorination facilities; and

WHEREAS, the IEPA in 2006 did advise the County’s Public Works Department that no further permits would be issued for in-kind replacement(s) of HWG WS non-compliant facilities, and that the HWG WS needed to be replaced; and

WHEREAS, County representatives, in conjunction with Village representatives, did on September 19, 2006 hold a public meeting, attended by a large numbers of HWG WS residents, to discuss the need, and IEPA demand, that the HWG WS be replaced and the financial requirements of such a Code-compliant water system replacement; and

WHEREAS, the Illinois Attorney General did on November 30, 2006 file an IEPA enforcement lawsuit, entitled *People ex rel. Madigan v. County of Lake*, 06 CH 2569, against the County (because the County under the 1975 Contract operates and owns the HWG WS), which seeks *inter alia* the replacement of the HWG WS; and

WHEREAS, this County Board did on February 13, 2007, although not required to do

so under the terms of the 1975 Contract, did pass a Resolution authorizing a contribution of \$1 million dollars towards the abandonment of the existing HWG WS, and the design and obtaining approvals for, and construction of a new Code-compliant public HWG WS, subject only to the Village first providing all permits or local approvals required to site and construct a new Code-compliant HWG WS; and

WHEREAS, the County did cause design plans for a new Code-compliant HWG WS to be prepared, and did enter into a contract to purchase real estate (to site a Well House and Water Reservoir), and did submit those plans to the Village for approval on September 20, 2007, but the Village failed or refused to even consider those initial design plans for a Code-compliant public HWG WS; and

WHEREAS, the County, solely because of the Village refusal to consider those initial HWG WS design plans and because of the insistence of Village officials that any water supply for the HWG WS be purchased in bulk from Aqua Illinois, was required to cancel the contract to purchase real estate, and was required to undertake the added expense of preparing a second HWG WS design plan, which second design plan was submitted to the Village on February 4, 2008 for Village approval; and

WHEREAS, the Village Mayor on February 25, 2008 did advise the County's Director of Public Works that the Village would not even consider the County's second design plans for the HWG WS, unless the County first signed off on a Village sewer project tributary to the County's Des Plaines WRF, even though the Village had refused to enter into a Wholesale Sewage Contract, which is a requirement of all municipalities that transport municipal sanitary sewage to the regional Des Plaines WRF for treatment by the County; and

WHEREAS, the Village thereafter failed and refused to approve the second HWG WS design plan, even though those second HWG WS design plans were approved by the IEPA on April 25, 2008, subject to the water supplier (Aqua Illinois) signing off on the IEPA permit; and

WHEREAS, the County did, on April 29, 2008, provide the Village and Aqua Illinois with a Bulk Water Agreement, for the purchase by the County from Aqua Illinois of a bulk public water supply for the new Code-compliant HWG WS, to be constructed, and Aqua Illinois advised the County's Director of Public Works that Aqua would not sign the Bulk Water Agreement until it had been approved by the Village: and

WHEREAS, as a result of the Village refusal to act on the second HWG WS design plans (which had been approved by the IEPA), the Attorney General, joined by the County, filed a motion in May 2008 in the *People ex rel. Madigan v. County of Lake* case, to add the Village as a party defendant in that IEPA enforcement lawsuit relating to the HWG WS; and

WHEREAS, after the IEPA had approved the second HWG WS design plans, subject to Aqua Illinois signature, certain residents of the HWG WS territory did, on May 29, 2008, file a lawsuit in federal court against the County, entitled *Donovan, et al. v. County of Lake*, 08 CV 3098, which seeks a Court order that the County be held responsible, contrary to the terms of the 1975 Contract, for all costs relating to the construction of a new Code-compliant HWG WS; and

WHEREAS, the Village was made a party defendant in the now *People ex rel. Madigan v. County of Lake and Village of Hawthorn Woods*, 06 CH 2569, case, and, on behalf of the County, the Lake County State's Attorney's office on June 18, 2008 did file a third-party complaint against the Village in that IEPA enforcement lawsuit, for the Village's breaches of the 1975 Contract; and

WHEREAS, the Village thereafter on or about July 11, 2008 did approve a Village permit to site the new HWG WS in Village right-of-ways and public easements and did grant a variance from another Village ordinance, but the Village continued to fail and refuse to approve the Bulk Water Agreement, which Village refusal prevents the issuance of an IEPA permit for the construction of the new Code-compliant HWG WS; and

WHEREAS, County representatives did thereafter continue in August and September 2008 to attempt to work with Village representatives toward a Bulk Water Agreement that would be accepted and approved by the Village, and the County representatives did believe that there had been an agreement on the terms of a Bulk Water Agreement, which was presented to and approved by the Public Works & Transportation Committee on October 6, 2008, and placed on this County Board's October 14, 2008 agenda for approval, subject only to prior approval by the Village; and

WHEREAS, the October 6, 2008 PW&Tr. Committee-approved Bulk Water Agreement provided that, if a County subordinate revenue bond issuance, secured by a surcharge on HWG WS customers' water bills, is used to fund construction of the new Code-compliant HWG WS (all in accordance with the terms of the 1975 Contract), that the Village authorized and directed the County to include the Village-imposed charge called connection fees in the subordinate revenue bond issuance, with the Village indemnifying the County regarding those Village imposed connection fees (which Village imposed connection fees are not a term or condition contained in the 1975 Contract), subject only to the County being the prevailing party in a final judgment in the *Donovan, et al. v. County of Lake*, 08 CV 3098, federal court case; and

WHEREAS, the Village then refused to approve the October 6, 2008 Bulk Water Agreement, and instead, other Village representatives demanded changes to the Bulk Water Agreement, including to those provisions relating to the Village-imposed charge of (\$2,000 per HWG WS residence) connection fees; and

WHEREAS, this County Board did remove said October 6, 2008 Bulk Water Agreement from its October 14, 2008 agenda, because of the Village refusal to approve the same; and

WHEREAS, on October 21, 2008 the Village sent the County a re-draft of the Bulk Water Agreement, which made fundamental changes to the October 6, 2008 PW&Tr. Committee-approved Bulk Water Agreement, including, among other things, imposing a

contractual obligation on the County (not found in the 1975 Contract) to collect and pay over Village connection fees to the Village, and a contractual obligation to not allow any connection to the new HWG WS until the County made the HWG WS customer pay the County a Village connection fee; and removed any indemnification regarding Village connection fees and Village recapture fees arising out of the *Donovan, et al. v. County of Lake* federal court lawsuit by certain HWG WS residents; and, removing a paragraph identifying a County subordinate revenue bond financing mechanism, secured by a surcharge on HWG WS customers water bills, as a funding means permitted under the 1975 Contract; and

WHEREAS, this County Board could reasonably conclude, from the changes demanded to the Bulk Water Agreement on October 21, 2008 by the Village representatives, that Village representatives are working in concert with those residents in the HWG WS territory, who have sued the County in *Donovan, et al. v. County of Lake*, 08 CV 3098, to attempt to transfer the funding responsibility for the construction of a new Code-compliant HWG WS from HWG WS customers to other residents of the County, all in violation of and in breach of the express terms of the 1975 Contract; and

WHEREAS, the County has, for more than 2 years now, attempted to work with the Village, always within the terms of the 1975 Contract, towards a solution for replacing the current, more than 50+ years old, HWG WS, but the County finds itself prevented from making HWG WS improvements to IEPA standards, by the Village refusal to approve the October 6, 2008 PW & Tr. Committee-approved Bulk Water Agreement, which Agreement is consistent with and follows the terms of the 1975 Contract; and

WHEREAS, the public health concerns that existed in the 1970s, where the Village had permitted the HWG WS to be constructed without compliance with public water system standards, and the Village was then unable to financially operate a water system in compliance with IEPA standards, no longer exist, as the Village now has a water system in operation in other areas of the Village, which operates in compliance with public water system standards

NOW, THEREFORE, BE IT RESOLVED by this County Board of Lake County, Illinois, as follows:

1. Bulk Water Agreement. In a continuing attempt to work with the Village under the terms of the 1975 Contract to improve the HWG WS to IEPA standards, and at the same time to provide the Village with a means for the Village to collect at one time the entirety of a Village-imposed fee against HWG WS residences called a connection fee by the Village, this County Board does hereby approve, and direct and authorize the County Board Chairman and County Clerk to execute on behalf of the County of Lake, a three-party Bulk Water Agreement with Aqua Illinois and with the Village of Hawthorn Woods, which Bulk Water Agreement is attached to this Resolution. This Bulk Water Agreement is the same as approved October 6, 2008 by the Public Works & Transportation Committee, with revisions, including that the County shall include and collect the Village connection fees in a County subordinate revenue bond issuance, for construction of a new Code-compliant HWG WS, and that the Village will not owe or be responsible for any of the costs of such a subordinate revenue bond issuance.

2. That, in the event the Village of Hawthorn Woods, and its water supplier, Aqua Illinois, have not agreed to and have not executed the subject County Board-approved Bulk Water Agreement, on or before December 15, 2008, any such failure to accept and to enter into this Bulk Water Agreement shall constitute nonperformance and a breach of the terms of the 1975 Contract, under which the County accepted operation and ownership of the HWG WS from the Village, and such nonperformance and breach shall be an act of rescission by the Village of the 1975 Contract, thereby relieving the County of Lake from any further obligation to operate or to own the HWG WS under the 1975 Contract.

3. In the event that the subject County Board-approved Bulk Water Agreement is not accepted and entered into by the other parties to the Bulk Water Agreement, on or before December 15, 2008, the Director of the Lake County Public Works Department is directed to prepare a record of the condition of the HWG WS property and equipment, and to

prepare an inventory of the same, and to prepare a list of customers, and to, in conjunction with a Bill of Sale prepared by the Lake County State's Attorney, transfer and return ownership and operation of the HWG WS to the Village of Hawthorn Woods, on a date 30 days following December 15, 2008.

4. Village Connection Fees, Assignment and/or Waiver. In the event the Village should choose either, to contractually assign the Village connection fees, with the right to waive said Village connection fees, to the County, or, to waive the subject Village connection fees, the county will consider a revision to the attached three-party Bulk Water Agreement provided such revision is limited solely and exclusively to memorializing said assignment and/or waiver of Village connection fees, and further provided that (1) any such revised Bulk Water Agreement is approved and executed by both the Village, and the Village's potable public water supply purveyor, Aqua Illinois, on or before December 15, 2008; and (2) no additional, different, or other contractual obligations or responsibilities are imposed on or placed on the County, not found in the 1975 Contract or the attached three-party Bulk Water Agreement.

5. February 13, 2007 Resolution. In the event the Bulk Water Agreement approved herein is not accepted and entered into by the other parties on or before December 15, 2008, the Village of Hawthorn Woods failure to provide the required Village approvals for construction of a new Code-compliant HWG WS, which were an express condition of the \$1 million County contribution, shall be placed on the Public Works & Transportation Committee agenda at the first meeting in February 2009, for consideration, review, and comment by members of this County Board.

DATED AT WAUKEGAN, ILLINOIS this 18th day of November, 2008, A.D.

Staff Summary

- A previous version of this Water Supply and Sales Agreement was submitted for County Board approval on the October 14, 2008 agenda, but was sent back to Committee because of modifications that were requested by the Village of Hawthorn Woods.
- The revised Water Supply Agreement incorporates language to address Village concerns including an acknowledgment that the County shall incorporate and collect the Village connection fees in a County subordinate revenue bond issuance, and that the Village will not owe or be responsible for any of the costs of such a subordinate bond issuance.

- Resolution approves the attached Water Supply and Sales Agreement with Aqua Illinois and Village of Hawthorn Woods and directs staff to send approved copies to the Aqua Illinois and the Village of Hawthorn Woods to request their approval of the Water Supply and Sales Agreement.

WATER SUPPLY AND SALES AGREEMENT

By and Between

Aqua Illinois, Inc.

And

County of Lake

And

Village of Hawthorn Woods

Dated: as of _____, __, 2008

THIS WATER SUPPLY AND SALES AGREEMENT ("**Agreement**") is made this _____ day of October, 2008 by and between the Aqua Illinois, Inc. ("**Aqua**"), an Illinois corporation, the County of Lake ("**Lake County**"), an Illinois body politic and corporate, and the Village of Hawthorn Woods ("**Village**"), an Illinois municipal corporation (Aqua and Lake County and Village being collectively referred to as the "**Parties**", and each individually referred to as a "**Party**").

WHEREAS, Lake County has, pursuant to contracts entered into in 1973 and 1975 with the Village (hereinafter "1975 Contract"), operated a public water supply within the Village boundaries, in an area generally consisting of the Glennshire subdivision, and known as the Hawthorn Woods - Glennshire area ("HWG area"); and

WHEREAS, the water supply system in the HWG area was not originally constructed to public water system standards, and that HWG area water supply system is now more than 50 years old; and

WHEREAS, the HWG area water supply system has been cited for violation(s) of State drinking water standards by the Illinois Environmental Protection Agency ("IEPA"), and the Illinois Attorney General has filed an enforcement action against Lake County, in a case known as, *People ex rel. Madigan v. County of Lake*, 06 CH 2569, now pending in Lake County Circuit Court, which lawsuit seeks, among other things, the replacement of the HWG area water supply system with a State Code compliant public water system ("PWS"); and

WHEREAS, Lake County's initial attempt to site a PWS in the HWG area, which included wells and a water storage facility within the HWG area, was met with opposition and objections from some the Village and HWG area residents; and

WHEREAS, Aqua provides a public water supply to other areas within the Village by agreement between Aqua and the Village, and the Village has proposed that no HWG area water storage facility be constructed and that Lake County obtain and purchase its required bulk water supply for the HWG area, lying within Village boundaries, from Aqua; and

WHEREAS, Aqua is willing to sell water to Lake County as provided herein; and

WHEREAS, Lake County has a need for a source of water supply to serve customers within the HWG area within the Village; and

WHEREAS, as the original HWG area water supply system was not constructed to PWS standards, the 1975 Lake County / Village contract provides that improvements to the HWG area water system shall be paid by revenues from the HWG area; and, to construct a new State Code-compliant PWS, Lake County, pursuant to the terms of the 1975 Contract, intends to issue subordinate revenue bonds, secured by revenues generated by (a) surcharge(s) applied to water bills of HWG area Customers; and

WHEREAS, since the time of the 1975 Lake County / Village contract, the Village has adopted a Village ordinance which mandates the payment to the Village of a \$2,000/residence connection fee (for water lines less than 2") ("Connection Fee") for Village residences connecting to or being supplied through the Aqua water supply system within the Village boundaries; and

WHEREAS, on or about October 18, 2004, United Land Development L.L.C. and others ("Kemper Parties") entered into a certain settlement agreement ("Settlement Agreement") with the Village. The Settlement Agreement, among other things, required the Kemper Parties to construct a certain water main along Old McHenry Road ("Water Main"), as provided for therein. The Settlement Agreement was incorporated in the stipulated dismissal of the case entitled *Village of Hawthorn Woods v. Amcore Investment Group N.A. as Trustee, et al*, 04 ED 56, consolidated with *Village of Hawthorn Woods v. Kemper Lakes Golf Course, L.L.C., et al*, 04 ED 57; and

WHEREAS, the Settlement Agreement provided that, upon completion of the Water Main, the Kemper Parties and the Village would enter into a recapture agreement ("Recapture Agreement") by which property owners being supplied from the Water Main would pay their allocable share of the cost of construction of said Water Main. The HWG area PWS will be connected to and supplied water through the Water Main which is now owned by Aqua; and

WHEREAS, there is currently pending before the Circuit Court of Lake County a Motion to Enforce Settlement Agreement, whereby the Kemper Parties are seeking to compel the Village

to enter into the Recapture Agreement. There are currently Court supervised settlement discussions taking place regarding the terms of the Recapture Agreement, and for purposes of this Water Supply and Sales Agreement, the Village agrees and stipulates that the recapture that will be charged to the HWG area (“ HWG Recapture Amount” or “Recapture Amount”) to be included as a part of County-issued subordinate revenue bonds will be \$96,000; and

WHEREAS, the HWG area contains 224 residences to be served and this Agreement is intended to provide the mechanism by which the Connection Fees and Recapture Amount are, included as a project expense, and said Connection Fees and Recapture Amount are paid by HWG area Customers by inclusion in the County’s subordinate revenue bonds to be issued, and if issued, for this project, and to be paid over to the Village as otherwise provided pursuant to this agreement; and

WHEREAS, all parties acknowledge and agree that said Village connection fees and HWG Recapture Amount will not be used to pay for any of the construction costs and other fees and costs attributable to the new HWG PWS, except as may be otherwise provided herein; and

WHEREAS, HWG area residents did, on May 29, 2008, file a lawsuit against the County, in the United States District Court, Northern District of Illinois, Eastern Division, entitled *Donovan, et al. v. County of Lake*, 08 CV 3098, which challenges the County’s ability and authority to impose and collect a surcharge on HWG area Customers water bills to pay for the costs of the subordinate revenue bonds to be used to fund the construction and other costs of the new HWG area PWS, which lawsuit remains pending.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth below, the Parties hereby agree as follows:

1. **Definitions.**

The following terms when used in this Agreement shall, unless the context clearly establishes otherwise, have the following meanings:

“**Applicable Law**” means all federal, State, and local statutes, laws, ordinances, regulations, rules, codes and orders applicable to the operations, facilities and activities of Aqua, Lake County, and Village.

“**Aqua System**” means the water supply system along Old McHenry Road owned or operated by Aqua with IEPA facility PWS IL0975040 which will supply the HWG Area PWS. The Aqua System includes the sources, various water treatment, pumping, and conveyance facilities owned or operated by Aqua.

“**Lake County System**” means that portion of the Lake County’s water supply system located within the HWG area, within the municipal boundaries of the Village, in Lake County, Illinois, on the Execution Date of this Agreement that is intended to become interconnected by pipeline with the Aqua System under the terms of this Agreement.

“**Effective Date**” means the date on which Aqua commences delivery of water to Lake County pursuant to this Agreement.

“**Execution Date**” means the date on which all Parties have executed this Agreement, as set forth in the first paragraph of this Agreement.

“**Change in Law**” means any of the following acts, events, or circumstances to the extent that compliance therewith materially increases the cost of performing, or the scope of, a Party’s obligations hereunder:

(1) the adoption, amendment, promulgation, issuance, modification, repeal or written change in administrative or judicial interpretation of any Applicable Law on or after the Execution Date;

(2) the order or judgment of any Governmental Body issued on or after the Execution Date (unless such order or judgment is issued to enforce compliance with Applicable Law which was effective as of the Execution Date) to the extent that such order or judgment is not the result of willful or negligent action, error or omission of the Party seeking relief; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission; or

(3) the suspension, termination, or interruption of any Governmental Approval, a failure to obtain or unusual delay in obtaining any Governmental Approval, or the imposition of a term, condition or requirement which is more stringent or burdensome than the requirements in effect as of the Execution Date, to the extent that such occurrence is not the result of willful or negligent action, error or omission of the Party seeking relief or the failure of the party seeking

relief to diligently submit and prosecute Governmental Approval Applications; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission.

Notwithstanding any of the foregoing, any ruling, court order, or Consent Order entered in the currently pending case of *People ex rel. Madigan v. County of Lake*, 06 CH 2569, is excluded from this definition and shall not be considered a “Change in Law”.

Further, notwithstanding any of the foregoing, any ruling, court order, or Consent Order entered in the currently pending case of *Donovan et al v. County of Lake*, 08 CV 3098 in the U.S. District Court, is excluded from this definition and shall not be considered a “Change in Law”.

“Drinking Water Requirements” means all requirements (including water quality, monitoring, reporting, recordkeeping, notification and other requirements) imposed under the Federal Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*, and the Illinois Safe Drinking Water Act, and the regulations adopted pursuant thereto.

“Drinking Water Standards” means the primary and secondary maximum contaminant level standards established under the Federal Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*, and the Illinois Safe Drinking Water Act, and the regulations adopted pursuant thereto.

“Easement” means the permanent easement obtained from the Village by the County and attached as **Exhibit E**.

“Existing Customer” means any of the 224 residences which are served by the current HWG area PWS, as depicted on **Exhibit A**.

“Governmental Approval” means any permit, license, authorization, consent, approval, waiver, exception, variance, order, or exemption issued by any Governmental Body pursuant to an Applicable Law.

“Governmental Body” means any agency of the United States Government, state or other governmental entity exercising executive, legislative, judicial, regulatory or administrative functions of a government with jurisdiction over the operations, facilities and activities of Aqua, Lake County, and Village.

“gpd” means gallons per day.

“gpm” means gallons per minute

“**HWG area**” means the territory within the Village served by the Hawthorn Woods – Glennshire public water supply system, as depicted on the map thereof attached as **Exhibit A**.

“**ICC**” means the Illinois Commerce Commission.

“**IEPA**” means the Illinois Environmental Protection Agency, or any successor agency.

“**Interconnection Facilities**” means a meter, meter pit, and all necessary appurtenances at the Points of Delivery as shown on **Exhibits B1** and **B2**.

"**mgd**" means million gallons per day.

"**Point of Delivery**" means the location of interconnection between the water supply systems of Aqua and Lake County as shown on **Exhibits B1, B2, and B3** attached hereto and made a part hereof. The Points of Delivery may be modified by mutual agreement of Aqua and Lake County.

“**Potential Customer**” means any residence which is located within the HWG Area, but is not an Existing Customer, but may in the future be served by the new HWG area PWS, but was not considered or was not able to be served at the time of execution of this Agreement.

“**Prudent Industry Practice**” means the methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally as reasonably prudent operation, maintenance, repair, replacement and management practices followed by the municipal water supply and treatment industry in the northeastern region of the United States.

“**PWS**” means public water system

“**State**” means State of Illinois.

"**TG**" means one thousand (1000) gallons.

“**Uncontrollable Circumstance**” means any act, event, or condition beyond the reasonable control of a Party which materially affects the ability of that Party to perform any obligation under this Agreement (except payment obligations), including (i) a Change of Law, (ii) earthquake, flood, hurricanes, or other natural disaster, (iii) acts of God, (iv) war, civil insurrection, acts of terrorism, or acts of any public enemy; (v) an act of eminent domain or taking, (vi) catastrophic equipment failure or contamination of

water sources which are not the result of the willful or negligent actions or omissions by the Party claiming relief; or (viii) failure or interference with normal sources of supply, accident, or other circumstances beyond a party’s reasonable control. “Uncontrollable Circumstances” does *not* include: (1) any act, event or circumstance that would not have occurred if the affected Party had complied with its obligations under the Agreement; (2) changes in interest rates, inflation rates, wage rates, insurance costs, taxes, commodity prices or other general economic conditions, except as otherwise specifically provided in this Agreement; (3) changes in the financial condition of a Party affecting the ability to perform its obligations; (4) any ruling, court order, or Consent Order entered in the currently pending case of *People ex rel. Madigan v. County of Lake v. Village of Hawthorn Woods*, 06 CH 2569; (5) any ruling, court order, or Consent Order entered in the currently pending case of *Donovan et al v. County of Lake*, 08 CV 3098 in the U.S. District Court.

2. Sale of and Purchase of Water and Term.

(a) *Aqua to Sell Water.* Aqua agrees to sell water to Lake County at the Points of Delivery and upon terms and conditions hereinafter provided. Lake County agrees to purchase water at the following rate:

(1) Usage Charges

a. Upon execution of the Agreement, the rate charged for water will be \$1.80 per TG (the “Usage Charge”) for Year 1.

b. Each year thereafter, the Usage Charge will increase by \$0.10 per TG until the Usage Charge charged under this Agreement equals \$2.4329 per TG. Thereafter, the Usage Charge shall change from time to time as approved by the ICC. If the ICC should approve a new Usage Charge for Water Service - Municipalities for Resale Service during the eight (8) years the rate increases annually, then the rates shown in the following table will increase by the percentage increase approved by the ICC.

<u>Year</u>	<u>Usage Charge per 1000 Gallons</u>
1	\$1.80
2	\$1.90

3	\$2.00
4	\$2.10
5	\$2.20
6	\$2.30
7	\$2.40
8	\$2.4329 or current charge

(2) **Customer Charge.** In addition to the Usage Charge, Lake County shall pay a Customer Charge for each of the meters located within the Interconnection Facilities, currently set at \$15.00 per meter per month, which Customer Charge is subject to change from time to time as approved by the ICC.

(3) **ICC Approval.** This Agreement, the Usage Charge, and Customer Charge are subject to ICC approval.

(b) **Limit On Obligation of Aqua to Supply Water.** Aqua shall supply a maximum day demand of 90,000 gpd for domestic use. In addition, the Aqua water distribution system is designed to deliver 1750 gpm of fire flows for 2 hours duration during a fire event. The Aqua water distribution system is designed to deliver operating pressure within the range of 60 psi to 70 psi at the Interconnection Facilities during normal operations. Aqua shall not be obligated, but shall make its best efforts, to supply a maximum day volume of water in excess of 90,000 gpd, if necessary. Furthermore, Aqua shall not restrict flow by installing any flow control devices at the Points of Delivery or any point downstream.

(c) **Aqua Delivery of Water at Points of Delivery.** Lake County shall construct, install and complete the Interconnection Facilities. Lake County shall transfer ownership of the Easement and tapping sleeves and valves at the three Points of Delivery to Aqua as set forth in section 3.

(d) **Use of Purchased Water.** The water purchased by Lake County shall be used solely for the purpose of supplying Existing and Potential Customers within the HWG area, in the Village boundaries, at the Execution Date and may not be resold for use in other portions of Lake County's utility system, unless otherwise agreed to by Aqua, the Village, and Lake County in writing.

(e) **Term.** The term of this Agreement shall be for a period of 20 years from the Effective Date (the “**Term**”). The Term of this Agreement shall automatically renew for up to two (2) successive periods of five (5) years each unless any Party provides the other Parties with written notice of its intention to terminate the Agreement at least three (3) years prior to the expiration of the Term.

3. **Construction, Ownership and Maintenance of Facilities.**

(a) **Points of Delivery.** Upon obtaining a funding source consistent with the terms of the 1975 Contract, Lake County shall provide or arrange for the design, construction, and completion of a PWS which will consist of an 8 inch diameter water transmission main, a 4 inch diameter water distribution main, Interconnection Facilities, the Points of Delivery, and the Easement as laid out in this agreement.

(b) **Meters.** As laid out in section 3(d) Lake County shall dedicate and transfer ownership of the 2 meters located within the Interconnection Facilities, at which time Aqua will be responsible for maintaining said meters, and installing appropriate meter reading devices at the meter pit locations.

(c) **Maintenance of Facilities.** Aqua shall operate, inspect, maintain, and repair the Aqua System, to include the tapping sleeves and valves at the three Points of Delivery in accordance with Prudent Industry Practice and in compliance with all Applicable Laws and Governmental Approvals.

(d) **Transfer of Ownership.** On the date the Interconnection Facilities are placed in service and bulk water is being delivered by Aqua to Lake County for distribution through the new HWG area PWS, Lake County shall transfer ownership of the tapping sleeves and valves at the Points of Delivery to Aqua, by a duly executed Bill of Sale. At this time, Aqua shall also assume all obligations of Grantee under the Easement.

(e) **No Title.** This Agreement shall not create or vest in Lake County any ownership interest in, or title to, any part of the facilities installed, owned, operated and maintained by Aqua.

(f) ***No Extension of Rights.*** Nothing in this Agreement, whether explicit or implicit, express or implied, or by operation of law, shall give rise or create any additional right, argument, or entitlement by Lake County over the Aqua System, including any rights of condemnation pursuant to Applicable Law.

(g) **Village Connection Fees and Village (Kemper Parties) Recapture Amount.** The Village represents that for each of the 224 residences (Existing Customers) in the HWG area to be served by and connected to the new PWS through the Aqua Water Main, pursuant to Village ordinance, there is due and owed to the Village from the HWG area resident(s) a Connection Fee of \$2,000 per residence, for a total sum of \$448,000. In addition, the Village represents that, pursuant to the Recapture Agreement to be entered into between the Village and the Kemper Parties, the HWG Recapture Amount that is \$96,000, or such other amount as provided in any settlement agreement and/or court order in *Village of Hawthorn Woods v. Amcore Investment Group N.A. as Trustee, et al*, 04 ED 56, consolidated with *Village of Hawthorn Woods v. Kemper Lakes Golf Course, L.L.C., et al*, 04 ED 57, as certified by the Village to the County, prior to adoption by the County Board of any bond ordinance relating to issuance by the County of HWG WS subordinate revenue bonds. The Village agrees that the County is hereby authorized and directed, to collect the HWG area Village Connection Fees, and the County agrees to collect, by inclusion of the \$448,000 connection fees sum, and to collect the HWG Recapture Amount of \$96,000, or such different Village-certified amount, in the subordinate revenue bonds to be issued, and if issued, by the County for the HWG area PWS construction project, which subordinate revenue bonds shall be paid for by a surcharge imposed by the County on the water bills of the HWG PWS customers.

(1) ***Payment by the County to the Village.*** The Village agrees that the County is not obligated to pay and is not responsible for the payment of HWG area Village Connection Fees, and is not obligated to pay and is not responsible for the payment to the Village of the Recapture Amount, unless and until thirty (30) days following a final and non-appealable judgment is entered in favor of the County in the pending *Donovan, et al. v. County of Lake*, 08 CV 3098, case, and unless and until not less than thirty (30) days following receipt by the County of the HWG PWS subordinate revenue bonds proceeds.

(i) **Funding Mechanism for new HWG PWS.** The Village acknowledges and agrees that the County is authorized, under the terms of the 1975 Contract between the Village and County, to charge and collect from HWG area Customers, for the proposed new Code-compliant HWG PWS construction and related costs, by the proposed subordinate revenue bonds, secured by a surcharge on the water bills to HWG area Customers.

(ii) **Indemnification and Hold Harmless.** The Village agrees to indemnify and save harmless the County against all claims, objections, causes of action, suits, damages, and demands (collectively, “**Claims**”), and to defend the County against such Claims (including all costs, charges, expenses, and attorneys’ fees relating to such defense) that may arise out of or in connection with the actions or inactions of the Village or its authorized agents, servants, employees, or officers, and of the County or its authorized agents, servants, employees, or officers, in relation to the imposition of or collection of Village connection fees or recapture payments in or from HWG area residents (Customers) relating to the subject new PWS. Notwithstanding the foregoing, this Village indemnification of the County shall not, and does not, apply to any County attorneys fees or legal expenses relating to the County’s defense of the case entitled *Donovan, et al. v. County of Lake, 08 CV 3098*.

4. **Billing Procedures.**

(a) **Meter Reading and Invoicing.** Each month Aqua shall read the meters contained within the Interconnection Facilities and invoice Lake County for the Usage Charge, Customer Charge and any other charges as delineated on the attached **Exhibit C (ICC Schedule of Rates for Water Service)** pursuant to Aqua’s tariff which charges are subject to change from time to time as approved by the ICC.

(b) **Due Date and Payment.** Lake County shall make payment within thirty (30) days after receipt of the invoice (the “**Due Date**”). All payment and past due charges shall be governed by the terms of the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 et seq.

(c) **Disputed Sums.** If Lake County disputes any amount set forth in an invoice presented by Aqua, Lake County must, on or before the Due Date: (i) pay the invoice, and (ii) notify Aqua in writing of the basis for any such the dispute. Following the resolution of

any such dispute, if the Lake County owes any amount to Aqua, such amount shall bear interest as provided in the Illinois Local Government Prompt Payment Act, 50 ILCS 505/8, from the original Due Date; and if Aqua owes any reimbursement of any amounts paid by Lake County, such amounts shall be paid with interest at the 50 ILCS 505/8 rate accruing from the date on which the Lake County made payment of such amounts.

(d) ***Disputes Regarding Meter Accuracy.*** If any dispute arises in which any Party disputes the accuracy of the meter, a meter test shall be performed by a qualified firm acceptable to the Parties and an authorized representative of the Parties shall have the right to be present for such meter test. If the meter test determines that the meter is measuring flow within the accuracy limits set forth in applicable ICC regulations, the Party disputing the accuracy of the meter shall pay for the meter test. If the meter test determines that the meter is not measuring flow within the accuracy limits set forth in applicable ICC regulations, (i) the meter shall be replaced or recalibrated at the cost of Aqua, (ii) any disputed amounts set forth in invoices based upon the readings of such meter shall be adjusted by an amount to reflect the accuracy error value shown in the meter test, and (iii) Aqua shall pay for the cost of the meter test.

5. **Meter Testing and Calibration.**

(a) The Interconnection Facilities' meters shall be tested and calibrated annually by and at the cost of Aqua according to accepted industry standards and Prudent Industry Practice. An authorized representative of Lake County shall have the right to be present when meter testing is performed.

(b) Lake County may request that Aqua test the Interconnection Facilities' meters more frequently but any such tests shall be performed at the sole expense of Lake County.

6. **Water Quality.**

(a) The water delivered by Aqua shall meet all applicable Drinking Water Standards at each Point of Delivery and shall comply with all applicable Drinking Water Requirements.

(b) Aqua shall not be responsible for any contamination or degradation in the quality of the water that occurs after each Point of Delivery. Upon written request, Aqua shall provide Lake County with reports of any water quality test results for water samples taken at each Point of Delivery and, upon written request, with seven calendar days prior notice, Lake County shall be entitled to take split samples with Aqua at each Point of Delivery.

(c) Upon seven calendar days' written notice or request, Aqua shall provide Lake County access to the meter pit in order to take its own water samples at each Point of Delivery.

(d) The Parties shall meet and discuss any planned changes in treatment processes or chemicals, prior to making such changes, and determine if the planned changes will have any adverse impact on the other Party.

7. **Planned Service Interruptions.**

Planned service interruptions that would impact Lake County's provision of a potable water supply to HWG area residents, may be required in the course of operation, repair or maintenance of the Aqua System. All parties acknowledge that the HWG area PWS does not possess any water storage facilities, and Aqua shall use its best efforts and apply Prudent Industry Practice to minimize the number, duration and impact of such occurrences, and limit any such service interruptions to a maximum twenty-four (24) hour service interruption. Aqua shall provide Lake County with 72 hours advance notice of any planned service interruptions.

8. **Responsibility of Parties.**

To the extent authorized by law, each Party shall be solely responsible to provide water service to customers of its respective system at adequate flow rates and pressures and neither Party shall have any responsibility to the other Party, or any customer of the other Party's water system, for any costs, expenses, damages, liability, loss, claims, suits, or proceedings of any nature arising out of alleged inadequate water pressure or alleged inadequate flow rate in the other Party's water system.

9. **Uncontrollable Circumstances and Change in Law.**

(a) *Uncontrollable Circumstances.* If by reason of Uncontrollable Circumstances, any Party shall be rendered unable, wholly or in part, to satisfy its obligations under this Agreement, then those obligations, to the extent affected by such Uncontrollable Circumstances, shall be suspended or reduced during the continuance of the inability to perform hereunder. Such Party shall be excused from performance only during the period and to the extent that the affected Party, acting with all due diligence and dispatch, is prevented from performing by the Uncontrollable Circumstance. The Party suffering such Uncontrollable Circumstances shall provide notice by telephone to the other Parties at the earliest possible time, and shall thereafter provide a written description of such Uncontrollable Circumstance event, and the actions being taken to mitigate the effect of such Uncontrollable Circumstance, within three (3) working days after the occurrence of such Uncontrollable Circumstance event. Notwithstanding the foregoing, however, to the extent an Uncontrollable Circumstance similarly affects or applies to the water supply obligations of Aqua to others, Aqua shall be excused from performance hereunder only to the same extent and to the same measure as Aqua is unable to perform its obligations to any other public water supply purchaser.

(b) *Duty to Mitigate.* The Party experiencing an Uncontrollable Circumstance event shall use its best efforts to remove or overcome such Uncontrollable Circumstance as soon as reasonably possible.

(c) *Drought Contingency Plan.* Lake County has a Water Restriction Ordinance, to regulate water usage from public water supply during times of water shortages or drought. (A copy of the current Ordinance is attached as **Exhibit D.**) In the event of drought, Lake County agrees to impose drought restrictions that are no less stringent than those imposed by Lake County elsewhere within the county corporate limits. To permit Lake County Water Restriction Ordinance enforcement in the HWG area, the Village agrees to adopt the County Water Restriction Ordinance by reference, and authorize Lake County to enforce said Ordinance within the HWG area of the Village. To the extent that Aqua or the Village have more stringent water restriction or drought water supply regulations or ordinances, any such more stringent regulations or ordinances shall be enforced by either Aqua or the Village.

10. **Events of Default and Remedies.**

(a) ***Lake County Event of Default.*** The following events shall constitute a Lake County Event of Default under this Agreement:

(1) Lake County's failure, neglect, or refusal to pay any payment due to the Aqua under this Agreement, which continues for thirty (30) days after written notice to Lake County.

(2) Lake County's failure to keep and perform any of Lake County's obligations under this Agreement, which failure or breach continues for thirty (30) days after written notice thereof by Aqua to Lake County, unless the nature of the failure or breach is such that more than 30 days is required for its cure and Lake County has commenced such cure within such 30 day period and thereafter diligently prosecutes the same to completion.

(b) ***Remedies for Lake County Event of Default.***

(1) If a Lake County Event of Default shall occur, Aqua shall have the right to seek specific performance or any other remedy at law or equity.

(2) If a Lake County Event of Default shall occur, if such default shall not be cured as provided herein, Aqua shall have the right to terminate this Agreement. No act by Aqua other than giving express notice to Lake County shall terminate this Agreement.

(c) ***Aqua Event of Default.*** The following events shall constitute an Aqua Event of Default under this Agreement:

(1) Aqua's failure to keep and perform any of Aqua's obligations under this Agreement, which failure or breach continues for thirty (30) days after written notice thereof by Lake County to Aqua, unless the nature of the failure or breach is such that more than 30 days is required for its cure and Aqua has commenced such cure within such 30 day period and thereafter diligently prosecutes the same to completion.

(d) ***Remedies for Aqua Event of Default.***

(1) If an Aqua Event of Default shall occur, Lake County shall have the right to seek specific performance or any other remedy at law or equity.

(2) If an Aqua Event of Default shall occur, and if such default shall not be cured as provided herein, Lake County shall have the right to terminate this Agreement. No act by Lake County other than giving express notice to Aqua shall terminate this Agreement.

(e) Neither Party shall initiate a remedy of any Event of Default without first giving at least thirty (30) days prior written notice thereof to the other Parties.

11. **Dispute Resolution.**

(a) *Objective.* It is the stated intent of the Parties to seek to amicably resolve any disputes under the Agreement, where possible, through negotiation between the Parties.

(1) *Venue for Disputes.* The venue for any and all disputes, not compromised or settled under Section 11(a) above, shall be in the Circuit Court of Lake County, Illinois.

12. **Assignment; Successors.**

This Agreement may be assigned by any Party without the prior written consent of the other Parties, except that any assignment by Aqua, or any successor, as the purveyor or supplier of a potable public drinking water supply shall only be to either an Illinois unit of local government authorized and permitted to provide public water supply, or to an Illinois public utility authorized and permitted to provide public water supply in Illinois by the ICC and IEPA.. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.

13. **Village Hall Water Service.**

Village Hall water service has been provided in the past as one of the 224 Existing Customers. The Village agrees that upon completion of construction of a new PWS serving the HWG Area, the Village Hall shall no longer be connected to, or be a part of, the HWG Area PWS. The Village and Aqua agree that the Village shall make a direct connection to the Aqua

System and that the Village Hall shall receive public water service and supply from the Aqua System, and not from the HWG Area PWS. Therefore the Village will not be responsible for any costs regarding the new HWG Area PWS.

14. **Notices.**

All notices, demands, requests or other communications required by this Agreement (collectively “**Notices**”) shall be in writing and given as follows by: (i) personal delivery; (ii) established overnight commercial courier with delivery costs prepaid or duly charged; (iii) electronic transmittal via telecopy machine (provided that the receiving Party provides a written acknowledgement by telecopy or other means of Notice); or (iv) certified mail, return receipt requested, postage prepaid. All Notices shall be addressed to the applicable addresses and telecopy machine telephone numbers set forth below, or to any other address or addressee as a Party entitled to receive Notices shall designate, from time to time, by Notice given to the other Parties in the manner provided in this Section. Service of any such notice by express service or certified mail shall be deemed complete the second business day after mailing. Service of any such Notice by telecopy machine shall be deemed complete upon confirmation that the transmission was successful. Service of such notice by personal delivery shall be deemed complete upon tender to an employee of the Party at the office of the person identified to receive such Notice.

If to Aqua:

Terry J. Rakocy, President
Aqua Illinois, Inc.
1000 S. Schuyler Avenue
Kankakee, IL 60901
Fax (815) 935-8809.

For Uncontrollable Circumstances, contact Aqua at (877) 987-2782.

If to Lake County:

Peter E. Kolb, P.E., Director
Lake County Public Works Department

1650 Winchester Road
Libertyville, IL 60048
Fax (847) 377-7173

For Uncontrollable Circumstances, contact LCPW at (847)377-7500.

If to Village of Hawthorn Woods:

James E. Bassett, Village Administrator
Village of Hawthorn Woods
2 Lagoon Drive
Hawthorn Woods, IL 60083
Fax (847) 438-1459

For Uncontrollable Circumstance, contact the Village Administrator at (847)438-5500.

15. **Entire Agreement.**

This Agreement, including all Exhibits attached hereto, constitutes the entire understanding between the Parties respecting the subject matter hereof, and the Parties shall not be bound by any agreements, understandings or conditions, whether written or oral, respecting the subject matter hereof.

16. **Amendment.**

This Agreement may be amended only by a written instrument signed by the Parties.

17. **Governing Law.**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois.

18. **Execution in Counterparts.**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

19. **Effective Date.** This Agreement shall be effective upon execution by the last of the Parties to execute.

NOW THEREFORE, intending to be legally bound hereby, the Parties hereto have set their hand and seal the day and date first above written.

Witness	Aqua Illinois, Inc.
	By: Name: Terry J. Rakocy Title: President

Witness	County of Lake
	By: Name: Title:

Witness	Village of Hawthorn Woods
	By: Name: Title:

EXHIBIT A

HWG area map

EXHIBIT B1

Circle Drive Point of Delivery map

EXHIBIT B2

Lagoon Drive Point of Delivery map

EXHIBIT B3

Old McHenry Road Point of Delivery map

EXHIBIT C

ICC Authorized Schedule of Rates for Water Service

EXHIBIT D

Lake County Water Restriction Ordinance

EXHIBIT E

Village Hall Easement