



AGENDA – Administration Committee

Thursday, August 17, 2023

- I. Roll Call
- II. Approval of the June 15, 2023 Administration Committee Minutes

RECOMMENDED MOTION: To approve the Minutes of June 15 2023, Administration Committee Meeting of the DuPage Water Commission.

- III. Resolution No. R-32-23: A Resolution to Review Executive Session Minutes
- IV. Resolution No. R-33-23: A Resolution Approving and Authorizing the Execution of a Memorandum of Understanding for Geographic Information System Data Sharing with Kane County, Illinois.
- V. Resolution No. R-36-23: A Resolution Authorizing and Ratifying the Disposal of Certain Personal Property Owned by the DuPage Water Commission.
- VI. Resolution No. R-37-23: A Resolution to approve the Amended Intergovernmental Escrow Agreement with WaterLink Communities of Montgomery, Oswego, and Yorkville.
- VII. Resolution No. R-42-23: A Resolution Authorizing the Chairman of the DuPage Water Commission to negotiate a Source Water Contract extension with the City of Chicago.
- VIII. Resolution No. R-43-23: A Resolution Ratifying Purchase Order No. 40278 to Willowbrook Ford for the purchase of a 2023 utility vehicle, at a cost of \$81,500.00
- IX. Old Business
- X. New Business
- XI. Other
- XII. Adjournment

**Minutes of a Meeting
of the**

ADMINISTRATION COMMITTEE

DuPage Water Commission
600 E. Butterfield Road, Elmhurst, Illinois

June 15, 2023

- I. Commissioner Healy called the meeting to order at 6:15 PM.

Commissioners in attendance: N. Cuzzone, J. Healy , K. Rush, D. Van Vooren, J. Zay

Commissioners absent:

Also in attendance: P. May, D. Mundall

- II. Commissioner Van Vooren moved to approve the Minutes of the May 18, 2023, Administration Committee Meeting, seconded by Commissioner Rush, unanimously approved by a voice vote. All aye, motion carried.
- III. Commissioner Van Vooren made a motion to approve the R-23-23, A Resolution to authorize the purchase of two (2) 2023-2024 Ford Explorer Sport Utility Vehicles from Roesch Ford of Bensenville Illinois in the estimated amount of \$83,520.00

Chairman Zay informed the committee that the State cooperative bid process is no longer able to effectively source vehicles. Alternative sources must be sought out due to the high demand for vehicles.

The motion was seconded by Commissioner Rush, unanimously approved by a voice vote. All aye, motion carried.

- IV. Commissioner Cuzzone made a motion to approve Resolution No. R-27-23, A Resolution approving the Intergovernmental Escrow Agreement with WaterLink communities of Montgomery, Oswego and Yorkville.

General Manager May explained the project status to the Committee. The Illinois Department of Natural Resources (IDNR) hearings are underway, but are taking longer than expected. The project is moving forward into the Engineering phase, and regular meetings have been held with the Village Managers and engineering staff. The agreement before the committee has been approved by the WaterLink village boards. It is suggested that an amendment be made to the Resolution to allow the Chairman to approve the amended IGA with the deposit schedule and contract dollar amount.

Seconded by Commissioner Rush, unanimously approved by a voice vote. All aye, motion carried.

V. Old Business

No Old Business was offered.

VI. New Business

No New Business was offered.

VII. Other

VIII. Adjournment

Commissioner Rush moved to adjourn the meeting at 6:30 PM, seconded by Commissioner Van Vooren, unanimously approved by a voice vote. All aye, motion carried. Meeting adjourned.



Resolution #: R-32-23

Account: N/A

Approvals: *Author / Manager / Finance / Admin*

DM RCB CAP PDM

REQUEST FOR BOARD ACTION

Date: 8/10/2023

Description: A Resolution Reviewing/Releasing certain Executive Session Minutes

Agenda Section: Administration Committee

Originating Department: Administration

Pursuant to the Open Meetings Act, the Board is required to periodically review its closed meeting minutes to determine if they are eligible for release to the public.

Schedule A:

Staff recommends that the minutes of a closed meeting of the December 16, 2021 Regular Meeting, the January 20, 2022 Regular Meeting and the April 21, 2022 not be released to the public at this time. In staff's view, these minutes contain information requiring continued confidential treatment. (See copies attached to Schedule A in Executive Session packet).

Recommended Motion:

To adopt Resolution R-32-23, a Resolution Reviewing/Releasing certain Executive Session Minutes.

DUPAGE WATER COMMISSION

RESOLUTION NO. R-32-23

A RESOLUTION REVIEWING/RELEASING
CERTAIN EXECUTIVE SESSION MINUTES

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

WHEREAS, as required by the Act, the Clerk has kept written minutes of all such closed sessions; and

WHEREAS, on August 17, 2023 the Board of Commissioners of the DuPage Water Commission met to review the minutes of all such closed sessions that have not heretofore been made available for public inspection as required by Section 2.06(d) of the Act; and

WHEREAS, the Board of Commissioners of the DuPage Water Commission determined that the need for confidentiality still exists as the minutes of the closed session meetings set forth in Schedule A attached hereto and by this reference incorporated herein and made a part hereof; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the DuPage Water Commission as follows:

SECTION ONE: Recitals. The foregoing recitals are incorporated herein as if fully set forth.

SECTION TWO: No Release. The minutes of the closed session meetings set forth in Schedule A attached hereto, being the only minutes of closed session meetings of the Board that have not heretofore been made available for public inspection as required by Section 2.06(d) of the Act, continue to contain information requiring confidential treatment and shall not be released at this time.

SECTION THREE: Effective Date. This Resolution shall be in full force and effect from and after its adoption.

	Aye	Nay	Absent	Abstain
Bouckaert, D.				
Cuzzone, N.				
Fennell, J.				
Healy, J.				
Novotny, D.				
Pruyn, J.				
Rush, K.				
Russo, D.				
Saverino, F.				
Suess, P.				
Van Vooren, D.				
Zay, J.				

ADOPTED THIS _____ DAY OF _____, 2023.

James Zay, Chairman

ATTEST:

Danna Mundall, Clerk
Board/Resolutions/2023/R-32-23

SCHEDULE A

DECEMBER 16, 2021

JANUARY 20, 2022

APRIL 21, 2022

SCHEDULE B

NONE ON FILE



Resolution #: R-33-23

Account: N/A

Approvals: *Author / Manager / Finance / Admin*

JR RCB CAP PDM

REQUEST FOR BOARD ACTION

Date: 7/19/2023

Description: **Geographic Information System Data Sharing with Kane County**

Agenda Section: Administration Committee

Originating Department: Information Technology

Resolution No. R-33-23 would approve an inter-agency agreement to allow sharing of Geographic Information System (GIS) data between the Commission and the Kane County GIS-Technologies Department. This agreement is necessary to share data in advance of the pipeline extension designs into Montgomery, Oswego and Yorkville.

The Kane County GIS-Technologies Department maintains detailed GIS databases for Kane County, including areas where future Waterlink Communities Commission assets will reside. The GIS data includes information on jurisdictions; parcel boundaries; physical features such as roads, soil, bodies of water and structures; and topography.

Approval of the agreement will provide the Commission with continued access to current Kane County GIS base map data and periodic updates. It also requires the Commission to make available to Kane County limited spatial data developed by the Commission, which will be data of the location of future assets for the Waterlink Communities.

The agreement also defines parameters of acceptable data usage; mutually limits each party's liability for use of the data; and outlines that the Commission's data will not be sold, given or distributed in digital form to any other person or entity, or placed on a public Internet site without written permission from the Commission.

The Commission will receive this data three times per year on DVD via mail.

Recommended Motion:

Adopt R-33-23, Approving and Authorizing the Execution of a Memorandum of Understanding for Geographic Information System Data Sharing with Kane County, Illinois.

RESOLUTION NO. R-33-23

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION
OF A MEMORANDUM OF UNDERSTANDING FOR GEOGRAPHIC INFORMATION
SYSTEM DATA SHARING WITH KANE COUNTY, ILLINOIS

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

WHEREAS, Kane County and the Commission have each developed a Geographical Information System ("GIS") encompassing coincident geography and compatible technology, and

WHEREAS, Kane County and the Commission desire to share and cooperatively use their GIS spatial data, and

WHEREAS, there is mutual public benefit to the Commission and Kane County to sharing spatial data in future overlapping jurisdictions;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the DuPage Water Commission as follows:

SECTION ONE: The foregoing recitals are hereby incorporated herein and made a part hereof as findings of the Board of Commissioners of the DuPage Water Commission.

SECTION TWO: The Memorandum of Understanding, in substantially the form attached hereto and by this reference incorporated herein and made a part hereof as Exhibit 1, with such modifications as may be required or approved by the General Manager of the Commission, shall be and it hereby is approved. The General Manager shall be and hereby is authorized and directed to execute the Memorandum of Understanding in substantially the form attached hereto as Exhibit 1 with such

modifications as may be required or approved by the General Manager; provided, however, that the Memorandum of Understanding shall not be so executed on behalf of the Commission unless and until the General Manager shall have been presented with copies of the Memorandum of Understanding by Kane County.

SECTION THREE: This Resolution shall be in full force and effect from and after its adoption.

	Aye	Nay	Absent	Abstain
Bouckaert, D.				
Cuzzone, N.				
Fennell, J.				
Healy, J.				
Novotny, D.				
Pruyn, J.				
Rush, K.				
Russo, D.				
Saverino, F.				
Suess, P.				
Van Vooren, D.				
Zay, J.				

ADOPTED THIS ____ DAY OF _____, 2023.

James Zay, Chairman

ATTEST:

Danna Mundall, Clerk

Board/Resolutions/2023/R-33-23.docx

EXHIBIT 1

COUNTY OF KANE

GIS -TECHNOLOGIES

Thomas S. Nicoski, CIAO, Director



County Government Center
719 S Batavia Avenue
Geneva, Illinois 60134
(630) 208-8655
Fax: (630) 208-8659
email: gistech@co.kane.il.us

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is established between the County of Kane, Illinois ("County") and the Unit of Government listed below for the purpose of sharing digital geographic information.

The County and the Unit of Government listed below agree to exchange digital geographic information subject to the following understanding and may continue to do so as long as both parties deem such exchange to be beneficial, without further written agreements.

1. This Agreement does not constitute a transfer of title or interest in the digital information.
2. All information is provided on an as-is basis, with no guarantee of accuracy, completeness or currency, and at no cost.
3. Provided information will not be used as a base for engineering design, or as a substitute for on-site survey for regulatory functions.
4. Information received from the other party will not be sold, given or distributed in digital form to any other person or entity, or placed on a public Internet site without written permission from the provider.
5. Map products may incorporate information received from the other party, but may not consist exclusively of data received from the other party. A citation shall be placed on any map product, which includes information from the other party acknowledging the source and date.
6. Both parties agree to share the data in the format they use internally, without translation.
7. The receiving party will not alter the provided information in any manner.
8. All sub-contractors to or for the public body must adhere to these requirements.
9. Either party upon a thirty(30) day written notice may terminate this Agreement. Upon such termination, each party must cease use of shared data and return same to the originating party.

Unit of Government

Name

Title

Date

KaneGIS Contact Information



1. Unit of Government - ☐ Federal ☐ State ☐ County ☐ Township
☐ Municipality ☐ District ☐ School

2. Government Agency Name_____

3. Department Unit_____

4. Client Name_____

Contact Information

Print Name_____
Phone Number_____
Email_____
Date Added_____
Address_____
Municipality_____ State_____ Zip_____

Notes:



Resolution #: R-36-23

Account: N/A

Approvals: *Author / Manager / Finance / Admin*

JR RCB CAP PDM

REQUEST FOR BOARD ACTION

Date: 8/3/2023

Description: A Resolution Authorizing and Ratifying the Disposal of Certain Personal Property Owned by the DuPage Water Commission

Agenda Section: Administration Committee

Originating Department: Information Technology

Resolution No. R-36-23 is a Resolution Authorizing and Ratifying the Disposal of Certain Personal Property Owned by the DuPage Water Commission. This Resolution authorizes the General Manager to dispose of the assets listed on Exhibit 1 to the Resolution or, if already disposed of, ratifies and confirms their disposal because these assets are or were no longer useful to the Commission.

The computer and electronic equipment listed in Exhibit 1 will be donated to ATEN – Assistive Technology Exchange Network, A Program of United Cerebral Palsy of Greater Chicago - they refurbish and recycle donated computers and distribute them free of charge to children with disabilities.

Assistive Technology Exchange Network

7550 W. 183rd Street

Tinley Park, IL 60477

708-444-8460

Recommended Motion:

Adopt R-36-23, A Resolution Authorizing and Ratifying the Disposal of Certain Personal Property Owned by the DuPage Water Commission.

DUPAGE WATER COMMISSION

RESOLUTION NO. R-36-23

**A RESOLUTION AUTHORIZING AND RATIFYING
THE DISPOSAL OF CERTAIN PERSONAL PROPERTY OWNED BY THE
DUPAGE WATER COMMISSION**

WHEREAS, the DuPage Water Commission is authorized to sell or otherwise dispose of personal property pursuant to 65 ILCS 5/11-135-6; and

WHEREAS, in the opinion of the Board of Commissioners of the DuPage Water Commission, the personal property described in Exhibit 1 attached hereto and by this reference incorporated herein and made a part hereof (the "Property") is no longer necessary or useful to or for the best interests of the DuPage Water Commission to retain or, if already disposed of, was not necessary or useful to or for the best interests of the DuPage Water Commission to retain;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the DuPage Water Commission as follows:

SECTION ONE: The Board of Commissioners of the DuPage Water Commission hereby finds and determines that the Property is no longer necessary or useful to the DuPage Water Commission and the best interests of the DuPage Water Commission will be served by its disposal or, if already disposed of, was not necessary or useful to the DuPage Water Commission and the best interests of the DuPage Water Commission were served by its disposal.

SECTION TWO The General Manager is hereby authorized to dispose of the Property in such manner as the General Manager shall determine or, if already disposed of, the Board of Commissioners of the DuPage Water Commission hereby ratifies and confirms its disposal.

SECTION THREE: This Resolution shall be in full force and effect from and after its adoption.

	Aye	Nay	Absent	Abstain
Bouckaert, D.				
Cuzzone, N.				
Fennell, J.				
Healy, J.				
Novotny, D.				
Pruyn, J.				
Rush, K.				
Russo, D.				
Saverino, F.				
Suess, P.				
Van Vooren, D.				
Zay, J.				

ADOPTED THIS _____ DAY OF _____, 2023.

James Zay, Chairman

ATTEST:

Danna Mundall, Clerk
Board/Resolutions/2023/R-36-23.docx

EXHIBIT 1

Qty	Serial Number	Description
1	N/A	Box of miscellaneous monitor components
1	N/A	Box of miscellaneous cables
1	N/A	Box of miscellaneous mice and keyboards
1	2UA6253HSC	HP Z230 Workstation
1	2UA6253HT1	HP Z230 Workstation
1	2UA8071HR6	HP Z230 Workstation
1	MXL0121XBK	HP EliteDesk G4 Workstation
1	MXL0121X9X	HP EliteDesk G4 Workstation
1	MXL0121XBD	HP EliteDesk G4 Workstation
1	AY43701275	HP AlphaServer DS25 DUPMVA
1	N/A	HP AlphaServer DS15A Old DUPVS1
1	Z28270717	AIWA Compact Disc Player
1	L089207080205	AIWA Stero Cassette Receiver
5	N/A	APC UPS Battery backup
1	CNBGD37303	HP LaserJet 2300 (Old printer in room 214)
1	909864-2	Sinclair Radio Duplexer
1	882996	MDS LEDR 900S Microwave Radio controller
1	1212342	MDS LEDR 900S Microwave Radio controller
1	00334/0400	Argus RSM Rectifier
8	N/A	Monitor Stands
1	AD1824AQ037	FireEye PX



Resolution #: R-37-23

Account: N/A

Approvals: *Author / Manager / Finance / Admin*

PDM RCB CAP PDM

REQUEST FOR BOARD ACTION

Date: 7/25/2023

Description: **Amended IGA with WaterLink communities**

Agenda Section: Administration Committee

Originating Department: Administration

The communities of Montgomery, Oswego, and Yorkville (the “WaterLink communities”) have petitioned to the Illinois Department of Natural Resources for a Lake Michigan water allocation, to be distributed through the DuPage Water Commission. The IDNR allocation process is expected to be concluded in mid-late summer, 2023. The municipalities of Oswego and Yorkville desire water service commencing in 2027 (Montgomery in 2032).

29 miles of pipeline will need to be constructed along with ancillary water delivery structures and various appurtenances. Due to the size and complexity of the project, DWC staff has regularly engaged with Village Managers of the WaterLink communities to establish project goals and a timeline of critical tasks, including discussion of project financing, execution of a Subsequent Customer Agreement, and commencement of engineering. In previous, smaller projects, a Subsequent Customer Agreement has been executed prior to commencement of engineering work. However, currently DWC is negotiating a Customer Contract extension with current customers, as the current contract expires in February 2024. At the time of contract extension all current customers will become “Contract Customers”, and the WaterLink communities will execute Subsequent Customer Agreements, becoming the first “Subsequent Customers” under the new contract – these contracts are expected to be executed in Q4 2023. Therefore, due to the pending extension of the DWC/Customer Contract, and the desire to provide water service in 2027, initial Phase I Engineering work will precede the execution of the Subsequent Customer Agreement. This approach will take advantage of summer work conditions for field data collection, surveying, and other initial engineering activities.

The entire cost of the new infrastructure to deliver water to the WaterLink communities will be paid for by the municipalities of Montgomery, Oswego, and Yorkville – including the Phase I Engineering costs. In order to provide a mechanism to properly fund the Phase I Engineering work, an Intergovernmental Agreement was drafted to establish a funding escrow maintained by DWC and funded by the WaterLink communities. The initial IGA approved 6/15/22 was prepared and approved

by the municipalities in advance of the engineering consultant selection, therefore the contract cost and schedule of payments was unknown at that time. Section 2 of the amended IGA has been revised to include these items. The amended IGA has been approved by all three municipalities, and direction was provided at the 6/15/2023 meeting for the Commission to approve it as well. That approval now appears for formal ratification on the 8/17/2023 DWC Agenda.

Recommended Motion:

Approve R-37-23, ratifying approval of the Amended Intergovernmental Escrow Agreement with the WaterLink communities of Montgomery, Oswego, and Yorkville.

	Aye	Nay	Absent	Abstain
Bouckaert, D.				
Cuzzone, N.				
Fennell, J.				
Healy, J.				
Novotny, D.				
Pruyn, J.				
Rush, K.				
Russo, D.				
Saverino, F.				
Suess, P.				
Van Vooren, D.				
Zay, J.				

ADOPTED THIS ____ DAY OF _____, 2023.

James Zay, Chairman

ATTEST:

Danna Mundall, Clerk

Board/Resolutions/2023/R-37-23.docx

DUPAGE WATER COMMISSION

RESOLUTION NO. R-37-23

A RESOLUTION RATIFYING APPROVAL OF AN AMENDED AND RESTATED ESCROW INTERGOVERNMENTAL AGREEMENT BETWEEN THE DUPAGE WATER COMMISSION, VILLAGE OF MONTGOMERY, VILLAGE OF OSWEGO AND CITY OF YORKVILLE

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

WEHREAS the Commission is a public agency within the meaning of the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) and is authorized by Article VII, Section 10 of the Constitution of the State of Illinois to enter into intergovernmental agreements; and

WHEREAS, the Commission previously entered into an intergovernmental agreement with the Village of Montgomery, Village of Oswego and City of Yorkville (the “WaterLink Communities”) as a precursor to the WaterLink Communities’ becoming customers of the Commission (the “Escrow Intergovernmental Agreement”); and

WHEREAS, the parties have agreed in principle to amend the Escrow Intergovernmental Agreement between them and have prepared an Amended and Restated Escrow Intergovernmental Agreement; and

WHEREAS, the WaterLink Communities have already approved the Amended and Restated Escrow Intergovernmental Agreement; and

WHEREAS, the at the June 15, 2023 Board Meeting, the Commissioners directed the execution of an Amended and Restated Escrow Intergovernmental Agreement and wishes to ratify that approval; and

WHEREAS, the Commission desires to approve and ratify the Amended and Restated Escrow Intergovernmental Agreement between it and the WaterLink Communities and finds it to be in the best interests of the Commission and its customers to do so;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the DuPage Water Commission as follows:

SECTION ONE: The foregoing recitals are hereby incorporated herein and made a part hereof as findings of the Board of Commissioners of the DuPage Water Commission.

SECTION TWO: The execution of the Amended and Restated Escrow Intergovernmental Agreement attached hereto and by this reference incorporated herein and made apart hereof as Exhibit 1, shall be and hereby is approved and ratified.

SECTION THREE: This Resolution shall be in full force and effect from and after its adoption.

	Aye	Nay	Absent	Abstain
Bouckaert, D.				
Cuzzone, N.				
Fennell, J.				
Healy, J.				
Novotny, D.				
Pruyn, J.				
Rush, K.				
Russo, D.				
Saverino, F.				
Suess, P.				
Van Vooren, D.				
Zay, J.				

ADOPTED THIS _____ DAY OF _____, 2023.

James Zay, Chairman

ATTEST:

Danna Mundall, Clerk

Board/Resolutions/2023/R-37-23.docx

EXHIBIT 1

AMENDED AND RESTATED ESCROW INTERGOVERNMENTAL AGREEMENT

This Amended and Restated Escrow Intergovernmental Agreement (the “Amended Escrow Agreement”) is dated the _____ day of _____, 2023 between the Village of Montgomery (“Montgomery”), the Village of Oswego (“Oswego”) and the United City of Yorkville (“Yorkville”) (Oswego, Montgomery and Yorkville are collectively referred to herein as the “Municipalities”) and the DuPage Water Commission (the “Commission”), a county water commission and public corporation under Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.*, and the Water Commission Act of 1985, 70 ILCS 3720/0.01 *et seq.* (the “Acts”).

WITNESSETH:

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

WHEREAS, the Municipalities currently own and operate municipal drinking water systems served by wells which extract source water from the Ironton-Galesville aquifer; and

WHEREAS, the Municipalities are within the territorial limits of the Commission; and

WHEREAS, the Municipalities intend to change from the Ironton-Galesville groundwater source to Lake Michigan source water, through a future water purchase agreement (the “Customer Agreement”) with the DuPage Water Commission, and have applied to the State of Illinois Department of Natural Resources, Office of Water Resources (“IDNR”), for a Lake Michigan Water Allocation Permit (“Permit”); and

WHEREAS, the Municipalities have conducted extensive study and have concluded that the most sustainable alternative water source to serve the Municipalities through the municipal waterworks systems currently serving the Municipalities, as well as any extensions or improvements of those systems (collectively the “Municipal Systems”) is Lake Michigan water from the Commission; and

WHEREAS, the Commission owns and maintains a waterworks system as a supplier of Lake Michigan water to member customers that contract for such service (“Commission’s Waterworks System”); and

WHEREAS, Oswego seeks to connect to Lake Michigan water through the Commission in 2027, Yorkville in 2030, and Montgomery in 2032; and

WHEREAS, pending a Permit from the IDNR, the Municipalities seek to connect to Lake Michigan through the DWC; and

WHEREAS, the Commission has entered into a water supply contract with the City of Chicago to purchase Lake Michigan water sufficient to meet the water supply needs of the Commission and its customers; and

WHEREAS, the Commission’s water supply contract with the City of Chicago is set to expire in 2024 and the Commission is 1) exploring an alternative solution to obtaining Lake Michigan water and at the same time, 2) in discussions and negotiations with the City of Chicago for a new water supply agreement; and

WHEREAS, the Municipalities and the Commission are in the process of negotiating Water Purchase and Sale Contracts for the sale of Lake Michigan water to the Municipalities from the Commission’s Waterworks System; and

WHEREAS, the Municipalities and the Commission are in the process of negotiating a Construction Contract for the construction of a transmission line and be directly connected to the Commission’s Waterworks System (the “Direct Connection”), through the construction and extension of the Commission’s water transmission infrastructure as preliminarily described in Exhibit A (the “Transmission Main”), such that the Municipal Systems will connect through the Transmission Main to the Commission’s Waterworks System facilities directly; and

WHEREAS, the Commission will design, construct, own, operate, and maintain the Transmission Main (the “Project”); and

WHEREAS, the Commission will incur expenses for the design and construction of the Project and the eventual Direct Connections to serve the Municipal System, costs which will include but not be limited to engineering, property acquisition, and easement acquisitions (the “Commission Expenses”); and

WHEREAS, the Municipalities and Commission mutually agree and desire to commence the preliminary engineering design of the Transmission Main and Direct Connections prior to the execution of the Water Purchase and Sale Contracts and Construction Contract in order to accelerate the schedule for the delivery of Lake Michigan water to the Municipalities; and

WHEREAS, the Commission requires the Municipalities to establish an escrow fund with the Commission as stated herein to provide a funding source for the design engineering portion of the Commission Expenses; and

WHEREAS, the Commission has executed a contract with Lockwood, Andrews and Newnam, Inc. (“LAN”) to perform Phase I engineering services, including preliminary design and determination of transmission main routings (the “Phase I Services”); and

WHEREAS, the cost of services to complete the Phase I Services from LAN by February 28, 2024, is in the amount of \$4,263,649.00 plus reimbursable costs; and

WHEREAS, the Municipalities agree that they are responsible for those expenses incurred for Phase I Services performed and completed within the scope of services of the contract between the Commission and LAN; and

WHEREAS, pursuant to Article VII, Section 10 of the Illinois Constitution of 1970, and the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., the Commission and the Municipalities are authorized to enter into this Amended Escrow Agreement.

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

AGREEMENT

1. The recitals contained in the Preamble above will become a part of this Amended Escrow Agreement as if fully set forth herein.
2. Montgomery, Oswego, and Yorkville will each make deposits into the Commission's escrow account in accordance with the following schedule:
 - a. On or before June 16, 2023 - \$200,000.00;
 - b. On or before July 21, 2023 - \$800,000.00; and
 - c. On or before September 30, 2023 - \$410,000.00,for a total amount of \$4,230,000.00 in the form of cash to be held by the Commission in escrow ("Escrow Account").
3. The Commission will establish a segregated Escrow Account for the sole purpose of funding the Commission Expenses. The Commission will draw from the Escrow Account to pay for or reimburse the design engineering costs of Commission Expenses.
4. The Escrow Account will be insured and interest bearing, and the Commission will provide the Municipalities with Quarterly Statements: 1) showing the starting and ending balances for that quarter in the Escrow Account; 2) detailing the design engineering costs of Commission Expenses incurred for that quarter including any amounts received or paid from the Escrow Account. The Municipalities will have the right to conduct audits for three years after the termination of this Escrow Agreement relative to the Escrow Account.
5. The Commission will keep a record of all pay requests from the Escrow Account for reimbursement of Commission Expenses incurred (the "Pay Request") and sufficient documentation of the Commission Expenses incurred in support of the Pay Request. The documentation will be retained for review by the Municipalities upon request and included within the Quarterly Statements issued by the Commission.
6. The Municipalities and the Commission will resolve any Escrow Account disputes using the dispute resolution procedure in Paragraph 10.

7. This Escrow Agreement will terminate, and any monies not paid or incurred for Commission Expenses, including any interest therein will be returned to the Municipalities, unless mutually extended by the Municipalities and the Commission, upon the earlier of:

- a. Two years from the date of this Escrow Agreement;
- b. Upon the signing of Water Purchase and Sale Agreements between the Commission and the Municipalities for the purchase of water from the Commission;
- c. Upon the Municipalities' written notification to the Commission that they are no longer pursuing Water Purchase and Sale Agreements with the Commission for the purchase of water from the Commission; or
- d. Any failure of one or more of the Municipalities to make any payment required under this Agreement within seven days after being notified of the failure to pay.

No monies will be returned to the Municipalities until a full accounting has been completed of the expenditures incurred under this Agreement.

8. If at any time during the term of this Amended Escrow Agreement, the balance in the Escrow Account is less than Two Hundred Thousand Dollars (\$200,000.00), the Commission will notify the Municipalities. Within thirty (30) days of the Commission notifying the Municipalities under this Paragraph 8, Montgomery, Oswego, and Yorkville will each pay the Commission its proportionate or equal share of the request but not to exceed One Hundred Thousand Dollars (\$100,000.00) for deposit into the Escrow Account.

9. The Commission will follow generally accepted engineering principles and regularly conduct Project progress meetings with the Municipalities to review and seek consensus of the progress of the Project and at each engineering design milestone such as 30, 50, 90% completion.

10. All claims, disputes, and other matters in question among the Municipalities and the Commission arising out of, or relating to, this Amended Escrow Agreement shall be decided by arbitration, in accordance with the Arbitration Rules of the American Arbitration Association,

unless the Municipalities and the Commission mutually agree otherwise. The award rendered by the arbitrator shall be final, and judgment may be entered on it in accordance with applicable law in the Eighteenth Judicial Circuit, DuPage County, Illinois. Demand for arbitration shall be made in accordance with the notice provisions contained in Paragraph 13 below, with copies sent to the American Arbitration Association.

11. If any Municipality or the Commission defaults in the full and timely performance of any of its obligations hereunder, the non-breaching entity or entities, after first providing written notice to the breaching entity of the event of default and providing the breaching entity ten (10) days to cure the same, will be entitled to invoke its legal rights and remedies as a result thereof, including, but not limited to, its equitable remedy of specific performance. THE FOREGOING NOTWITHSTANDING, NO ENTITY WILL BE LIABLE TO ANOTHER ENTITY OR ANY OF ITS AFFILIATES, AGENTS, EMPLOYEES OR CONTRACTORS FOR SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES.

12. There are no third-party beneficiaries of this Amended Escrow Agreement and nothing in this Amended Escrow Agreement, express or implied, is intended to confer on any person other than the Parties hereto (and their respective successors, heirs and permitted assigns), any rights, remedies, obligations or liabilities.

13. Any notices under this Amended Escrow Agreement will be personally delivered, delivered by the deposit thereof in the U. S. Postal Service, postage prepaid, registered, or certified, return receipt requested, or by overnight courier service to the Party at the address listed below or at another address hereafter designated by notice or by email transmission. Any such notice will be deemed to have been delivered and given upon personal delivery or delivery by a nationally recognized overnight courier service, or deposit with the United States Postal Service or upon receipt of written confirmation that facsimile or email transmission has been successfully completed:

If to the Commission:

Paul D. May, P.E., General Manager
DuPage Water Commission
600 E. Butterfield Road
Elmhurst, IL 60126
Email: may@dpwc.org

With a copy to:

Phillip A. Luetkehans
Luetkehans, Brady, Garner & Armstrong
105 E. Irving Park Road
Itasca, IL 60143
Email: pal@lbgalaw.com

If to the Municipalities:

Village Manager
Village of Oswego
100 Parkers Mill
Oswego, IL 60543

Village Manager
Village of Montgomery
200 N River Street
Montgomery, IL 60538

City Manager
United City of Yorkville
800 Game Farm Road
Yorkville, IL 60560

With a copy to:

Irene Schild Caminer
Caminer Law, LLC
2612 W. Sunnyside Ave.
Chicago, IL 60625

14. Each Municipality will hold the Commission harmless and defend the Commission from any claims or litigation that arise out of the Phase I Services due to that Municipality's failure to comply with the payment obligations arising under this Amended Escrow Agreement.

15. Miscellaneous.

- a. Except as provided herein, the Municipalities and the Commission will not assign this Amended Escrow Agreement or any right or privilege any Municipalities and the Commission may have under this Amended Escrow Agreement without the prior written consent of all Parties hereto, not to be unreasonably withheld conditioned or delayed.
- b. This Amended Escrow Agreement will be governed by the internal laws of the State of Illinois.
- c. The person(s) executing this Amended Escrow Agreement on behalf of the Parties hereto warrant that: (i) such each Municipality and the Commission are duly organized and existing; (ii) the individual signing is duly authorized to execute and deliver this Amended Escrow Agreement on behalf of said Municipality or the Commission; (iii) by so executing this Amended Escrow Agreement, such Municipality and the Commission are formally bound to the provisions and conditions contained in this Amended Escrow Agreement; and (iv) the entering into this Amended Escrow Agreement by a Municipality and the Commission does not violate any provision of any other agreement to which said Municipality and the Commission is bound.
- d. Each Municipality and the Commission acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to complete the objectives and requirements that are set forth in this Amended Escrow Agreement. Each Municipality and the Commission hereby agree to cooperate with each other by executing such other documents or taking such other actions as may be reasonably necessary to complete the objectives and requirements set forth herein in accordance with the intent of each Municipality and the Commission as evidenced by this Amended Escrow Agreement.

- e. This Amended Escrow Agreement is the entire agreement between the Municipalities and the Commission regarding its subject matter and may not be changed or amended except pursuant to a written instrument signed by each Municipality and the Commission.
- f. This Amended Escrow Agreement may be executed in any number of identical counterparts each of which will be considered an original, but which together will constitute one and the same Agreement.

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

ATTEST:

DuPage Water Commission

BY: _____

ATTEST:

Village of Montgomery

BY: _____

ATTEST:

Village of Oswego

BY: _____

ATTEST;

United City of Yorkville

BY: _____



Resolution #: R-42-23

Account: N/A

Approvals: *Author / Manager / Finance / Admin*

DM - CAP PDM

REQUEST FOR BOARD ACTION

Date: 8/10/2023

Description: **A Resolution Authorizing the Chairman of the DuPage Water Commission to negotiate a Source Water Contract extension with the City of Chicago**

Agenda Section: Administration Committee

Originating Department: Administration

Resolution No. R-42-23 is a Resolution authorizing the Chairman of the DuPage Water Commission to engage in negotiation of a source water contract extension with the City of Chicago, including acknowledgement of the Chicago waiver of the notification of the intent to extend the contract, prior to the September 19, 2023 trigger date prescribed in Section I.1 of the current Chicago-DWC contract. Any negotiated source water contract will be presented to the Board for consideration and will not be finalized or approved without a vote of the DWC Board of Commissioners.

Recommended Motion:

To adopt Resolution R-42-23 to authorize the Chairman of the DuPage Water Commission to negotiate a source water contract extension with the City of Chicago.

DUPAGE WATER COMMISSION

RESOLUTION NO. R-42-23

A RESOLUTION AUTHORIZING THE CHAIRMAN OF THE DUPAGE WATER COMMISSION TO
NEGOTIATE A SOURCE WATER CONTRACT WITH THE CITY OF CHICAGO

WHEREAS, the DuPage Water Commission (the "Commission") is a county water commission created and existing under the Water Commission Act of 1985, 70 ILCS 3720/0.01 et seq., and Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 et seq.; and

WHEREAS, the Commission previously entered into a source water contract (the "Contract") with the City of Chicago (the "City") by which the Commission purchases water from the City; and

WHEREAS, the term of the Contract expires on February 24, 2024;

WHEREAS, the Commission desires to authorize the Chairman to negotiate a new source water contract with the City of Chicago, provided, however, that the terms of the new source water contract with the City of Chicago are subject to approval by the Commission's Board of Commissioners;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the DuPage Water Commission as follows:

SECTION ONE: The Board of Commissioners of the DuPage Water Commission hereby authorizes the Chairman of the DuPage Water Commission to negotiate a new source water contract between it and the City of Chicago provided, however, that the new source water contract shall not be finalized and shall not be executed until the Board of Commissioners has approved the terms and conditions of the new source water contract and has authorized the Chairman to execute the new source water contract on behalf of the Commission.

SECTION TWO: This Resolution shall be in full force and effect after passage and approval as required by law.

	Aye	Nay	Absent	Abstain
Bouckaert, D.				
Cuzzone, N.				
Fennell, J.				
Healy, J.				
Novotny, D.				
Pruyn, J.				
Rush, K.				
Russo, D.				
Saverino, F.				
Suess, P.				
Van Vooren, D.				
Zay, J.				

ADOPTED THIS _____ DAY OF _____, 2023.

James Zay, Chairman

ATTEST:

Danna Mundall, Clerk

Board/Resolutions/2023.R-42-23.docx

[DWM LETTERHEAD]

August __, 2023

James F. Zay
Chairman
DuPage Water Commission
600 East Butterfield Road
Elmhurst, Illinois 60126-4642

Re: Waiver of the Renewal Notice Deadline Date under the DuPage Water Supply Contract

Dear Chairman Zay:

The City of Chicago (“Chicago”) and the DuPage Water Commission (the “Commission”) entered into that certain Water Supply Contract Between the City of Chicago and the DuPage Water Commission on March 19, 1984 (“Original Water Contract”), which was subsequently supplemented by the Intergovernmental Agreement Concerning the Construction, Operation, and Maintenance of Electrical Generation Facilities and Other Capital Improvements at the Lexington Pumping Station dated January 22, 2007. The term of the Original Water Contract is forty (40) years and will expire on March 19, 2024 (the “Expiration Date”), unless cancelled at an earlier date or renewed as per the provisions of Paragraph I, Section (1) of the Original Water Contract.

Paragraph I, Section (1) of the Original Water Contract provides that the Commission has the option to renew the Original Water Contract for a “...like term or lesser term of not less than ten (10) years”, upon submitting written notice to Chicago, “...no less than six (6) months prior to the expiration of the then active Contract...”. Consequently, the Original Water Contract requires the Commission to provide Chicago with a renewal notice by no later than September 19, 2023 (the “Original Renewal Notice Deadline Date”).

Chicago and the Commission are currently negotiating the terms for the renewal of the Original Water Contract. Both parties agree that additional time is needed to negotiate and enter into the renewal of the Original Water Contract. Therefore, both parties desire to extend the Original Renewal Notice Deadline Date to make it the same date as the Expiration Date.

For purposes of engaging in negotiations regarding the renewal of the Original Water Contract, the City hereby agrees to waive the requirement in Paragraph I, Section (1) of the Original Water Contract that a renewal notice be provided by the Commission to the City by no later than September 19, 2023. The City hereby agrees that a renewal notice may be provided by the Commission to the City by no later than March 19, 2024.

All other terms and conditions in the Original Water Contract not affected by this letter shall remain unchanged and continue in full force and effect. Please sign where indicated below and return a fully executed copy. Your signature below indicates the acknowledgement of the Commission regarding the waiver by the City described above.

CITY OF CHICAGO,
an Illinois home rule municipal corporation

By: _____
Andrea R.H. Cheng, Ph.D., P.E.
Commissioner of Water Management

ACKNOWLEDGED:

DUPAGE WATER COMMISSION,
a Public Municipal Corporation

By: _____
James F. Zay
Chairman



Resolution #: R-43-23

Account: 01-60-686000, \$81,500.00

Approvals: *Author / Manager / Finance / Admin*

D.P. RCB CAP PDM

REQUEST FOR BOARD ACTION

Date: 8/10/2023

Description: A Resolution Ratifying Purchase Order No. 40278 to Willowbrook Ford for the Purchase of a 2023 Utility Vehicle.

Agenda Section: Administration Committee

Originating Department: Pipeline

The FY 2023/2024 Management Budget includes \$100,000 for the purchase and outfitting of a utility vehicle to replace a 2004 utility vehicle with over 80,000 miles in accordance with the Commission's Vehicle Replacement Policy.

On March 16, 2023, the Board approved R-12-23 which granted the General Manager the authority to process Vehicle Replacement Purchase Orders for an amount not-to-exceed \$196,000. This authorization was granted to provide temporary flexibility for acquisition of budgeted vehicles due to continued uncertainty in vehicle manufacturing caused by ongoing supply chain issues.

Initially, DWC staff engaged several Ford dealerships to determine potential manufacturing dates for a Commission-specified vehicle. We received responses indicating manufacturer uncertainty would continue well into 2024, and a reliable manufacturing date could not be provided at this time.

DWC Staff then embarked on dealer inventory search to determine if a suitable inventory vehicle could be found on a dealership lot. Staff did locate a suitable vehicle (2024 Ford E-Series Utility Vehicle) at Willowbrook Ford and then negotiated to a fair market price of \$81,500 which includes minor enhancements to meet the Commission's typical specification.

The cost of outfitting the truck with ancillary equipment is not included in this vehicle purchase; however, it also has been included within the FY 2023/2024 Management Budget; this equipment will be purchased and installed separately in accordance with Commission purchasing procedures.

Recommended Motion:

To approve R-43-23 for the ratification of Purchase Order No. 40278 to Willowbrook Ford in the amount of \$81,500.00.

DUPAGE WATER COMMISSION

RESOLUTION NO. R-43-23

A RESOLUTION RATIFYING PURCHASE ORDER NO. 40278
TO WILLOWBROOK FORD FOR THE PURCHASE OF A 2023 UTILITY VEHICLE

WHEREAS, pursuant to Resolution R-12-23, the General Manager was granted temporary authority to process Vehicle Replacement Purchase Orders for an amount not-to-exceed \$196,000.00 due to the uncertainty in vehicle manufacturing caused by ongoing supply chain issues in the industry;

WHEREAS, pursuant to Article VIII, Section 4 of the Commission's By-Laws, and as required by State statute, the Commission solicited bids to Furnish and Deliver one new and unused 2023 Ford Utility Vehicle; and

WHEREAS, staff was unable to secure a firm manufacturing schedule from the Ford Motor Company; and

WHEREAS, staff searched existing Ford Dealer Inventory for an existing vehicle to closely match Commission specifications; and

WHEREAS, staff was able to locate a singular Utility Vehicle that closely matched Commission specifications at Willowbrook Ford; and

WHEREAS, pursuant to Article VIII, Section 4 of the Commission's By-Laws, in cases where only one bid is received, the awarding of a contract must be approved by the Board of Commissioners; and

WHEREAS, based upon representations made by staff, the Board of Commissioners of the DuPage Water Commission has determined that the bid of Willowbrook Ford is favorable to the interests of the Commission;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the DuPage Water Commission as follows:

SECTION ONE: The foregoing recitals are hereby incorporated herein and made a part hereof as findings of the Board of Commissioners of the DuPage Water Commission.

SECTION TWO: The DuPage Water Commission hereby approves the ratification of Purchase Order No. 40278 for the purchase of one new and unused 2024 Ford E-350 Utility Vehicle from Willowbrook Ford for the net price set forth in Its bid of \$81,500.00.

SECTION THREE: This Resolution shall be in full force and effect from and after its adoption.

	Aye	Nay	Absent	Abstain
Bouckaert, D.				
Cuzzone, N.				
Fennell, J.				
Healy, J.				
Novotny, D.				
Pruyn, J.				
Rush, K.				
Russo, D.				
Saverino, F.				
Suess, P.				
VanVooren, D.				
Zay, J.				

ADOPTED THIS ____ DAY OF _____, 2023.

James Zay, Chairman

ATTEST:

Danna Mundall, Clerk

Board/Resolutions/2023/R-43-23.docx

EXHIBIT 1



DuPage Water Commission
600 E. Butterfield Road
Elmhurst, IL 60126
Phone: (630) 834-0100
Fax: (630) 834-0120



Purchase Order

40278

2024 Ford E-Series Utility Vehicle-Willowbrook Ford - Incl. Vehicle Wrapping

Revision Number 1

All previous revisions are no longer valid.

Not Confirmed

Ordered by CHRIS BOSTICK

Order Date 07/20/2023

Purchase Order Due Date 07/20/2023

Delivery/Invoice Address DuPage Water Commission
600 E. Butterfield Road
Elmhurst, IL 60126

Supplier

Willowbrook Ford

Address

Telephone

Fax No.

Contact

Joseph Bellavia

Service Line Items

Line	Task Plan Account-Fiscal Year	Date Qty Requested	UOM	Quantity Rate Total Tax Amount	Total Received Remaining
1	01-60-686000-2024	07/21/2023 1		81,500.00 0.00	81,500.00 0.00 81,500.00

Activity/PO Line Comments:

VIN 1FDWE3FN8RDD18286

From: MAY Date: 07/20/2023 13:58

Services Total 81,500.00

PO Value	81,500.00
Received	
Remaining	

Approv CHRIS
er BOSTICK

Date

PO Total 81,500.00

Purchase Order: 40278**DuPage Water Commission**

600 E. Butterfield Road

Elmhurst, IL 60126

Phone: 630 834-0100 Fax: 630 834-0120

TERMS & CONDITIONS

1. **ACCEPTANCE OF PURCHASE ORDER** This Purchase Order shall be effective when Seller executes it, otherwise indicates its acceptance, or delivers to the DuPage Water Commission (the "Owner") any of the goods ordered herein or renders for the Owner any of the services ordered herein. If this Purchase Order has been issued by the Owner in response to an offer then the issuance of this Purchase Order by the Owner shall constitute an acceptance of such offer subject to the express condition that the Seller assent to any additional or different terms contained herein. Any additional or different terms or conditions contained in any acknowledgement of the purchase by the Seller shall automatically be deemed objected to by the Owner and shall not be binding upon the Owner unless specifically accepted by the Owner in writing.

2. **ENTIRE AGREEMENT.** Upon acceptance of this Purchase Order, this Purchase Order and all specifications, drawings, and data submitted to the Seller with this Purchase Order or the solicitation for this Purchase Order shall constitute the entire contract between the Owner and the Seller (the "Contract"). The Contract replaces, supersedes, and merges all prior discussions, agreements, or understandings between the parties and shall be changed only by written agreement of the parties.

3. **INDEMNIFICATION AND INSURANCE.** The goods or services to be furnished under this Contract shall be provided at the sole risk and cost of the Seller until final payment therefor. The Seller shall, promptly and without charge to the Owner repair, replace, or pay for any damage or loss suffered as a result of the work of this Contract. The Seller shall indemnify, keep, and hold harmless the Owner and its agents, officials and employees from and against all injuries, losses, damages, claims, suits, liabilities costs, and expenses (including attorneys' fees) arising out of or resulting in any way from any defect in tile goods or services purchased hereunder, or from any act or omission of the Seller, its agents, employees, or subcontractors. This indemnification and hold harmless shall be in addition to the warranty obligations of the Seller. The Owner, including its Board members and elected and appointed officials, its officers, employees, agents, attorneys, consultants, and representatives shall be named as an Additional Insured on all insurance required under this Contract and any such insurance requirements shall be deemed to be minimum requirements and shall not be construed in any way as a limitation on the Seller's liability for losses or damages under this Contract.

4. **DEFAULT.** Time is of the essence of this Contract and if delivery of acceptable items or rendering of services is not completed by the time promised, the Owner reserves the right, without liability and in addition to its other rights and remedies, to terminate this Contract by notice effective when received by the Seller and to purchase substitute items or services elsewhere and to charge the Seller with any and all losses incurred.

5. **TRANSPORTATION CHARGES.** Transportation expense for all shipments shall be prepaid, F.O.B. point of destination. No charges will be allowed by the Owner for transportation, packing, cartage, or containers unless otherwise authorized in this Contract.

6. **UNAVOIDABLE DELAY.** If the Seller is delayed in the delivery of goods purchased under this Contract by a cause beyond its control then the Seller, upon receiving knowledge of such delay, must give written notice immediately to the owner and request an extension of time or such extension shall be waived. An extension shall be granted at the sole and absolute discretion of the Owner.

7. **WARRANTY.** The Seller warrants that the prices for the goods or services sold to the Owner under this Contract are not less favorable than those currently extended to any other customer for the same or like goods or services in equal or less quantities. In the event the Seller reduces its price for such goods or service during the term of this Contract, the Seller agrees to reduce the prices hereof correspondingly. The Seller warrants that all goods and services furnished hereunder will be new and will conform in all respects to the terms of this Contract and that they will be free from latent and patent defects in materials, workmanship, title and design. In addition, the Seller warrants that said goods and services are suitable for the purposes for which they are purchased, manufactured, and designed or for such other purposes as are expressly specified in this Contract. The Owner may return any nonconforming or defective items to the Seller or require correction or replacement of the item at the time the defect is discovered, all at the Sellers risk and expense. No inspection, test, acceptance, payment, or use of the goods or services furnished hereunder shall affect the Seller's obligation under these warranties and such warranties shall survive such inspection, test acceptance, payment, and use. The Seller's warranties shall run to the Owner and its successors and assigns.

8. **REGULATORY COMPLIANCE.** The Seller represents and warrants that the goods or services furnished hereunder (including all labels, packages, and containers for said goods) will have been produced in compliance with, and the Seller agrees to be bound by, all applicable Federal, State, and local laws, standards, rules and regulations. Without limiting the generality of the foregoing, the Seller shall furnish Material Safety Data Sheets in compliance with the Illinois Toxic Substances Disclosure to Employees Act.

9. **PAYMENT.** Payments will be made in accordance with the terms on the face of this Contract, or the Seller's invoice, whichever are more favorable to the Owner and payment date therefor shall be calculated from the receipt of invoice or receipt or final acceptance of the goods or services, whichever is later. All claims for money due or to become due from the Owner shall be subject to deduction or setoff by the Owner by reason of any counterclaim arising out of this or any other transaction with the Seller. The acceptance by the Seller of final payment shall operate as a full and complete release of the Owner. No payment for goods or services shall constitute acceptance of any defective or nonconforming goods or services by the Owner.

10. **TERMINATION.** The Owner may, at any time suspend or terminate this Contract, in whole or in part, by written notice. Upon suspension or termination for convenience of the Owner, the Owner shall reimburse the Seller for expenses (which shall not include lost profits) resulting directly from any such termination or suspension, which amount shall in no event exceed the applicable pro rata portion or the Contract Price. The Seller shall not be paid for any work done after receiving notice of such suspension or termination for convenience nor for any expenses incurred which could have been reasonably avoided. Any and all services, property, publications or materials provided during or resulting from the Contract shall become the property of the Owner. The foregoing states the Owner's entire liability and the Sellers exclusive remedy for any termination or suspension of all or any part of this Contract for convenience of the Owner. If, however, termination is occasioned by the Seller's breach of any condition hereof, including breach of warranty, or by the Seller's delay, except due to circumstances beyond the Seller's control and without the Seller's fault or negligence, the Seller shall not be entitled to any claim or costs or to any profit and the Owner shall have against the Seller all remedies provided by law and equity.

11. **TAXES.** The Owner is exempt from Federal, State, and local taxes.

12. **LIMIT OF LIABILITY.** In no event shall the Owner be liable for anticipated profits, incidental or consequential damages, or penalties of any description. The Owner's liability on any claim arising out of or connected with or resulting from this Contract or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof which gives rise to the claim.

13. **ASSIGNMENTS AND SUBCONTRACTING.** Neither this Contract, nor any interest herein, shall be assigned or subcontracted by the Seller except upon the prior written consent of the Owner.

14. **REMEDIES.** The Owner's remedies shall be cumulative and remedies herein specified do not exclude any remedies allowed by law or in equity. Waiver of any breach shall not constitute waiver of any other breach of the same or any other provision. Acceptance of any items or payment therefor shall not waive any breach.

15. **LAW GOVERNING.** This Contract shall be governed by and construed according to the internal laws, but not the conflict of law rules, of the State of Illinois.

Purchase Order: 40278