



DuPage Water Commission

MEMORANDUM

TO: Chairman Vondra & Commissioners

FROM: Robert L. Martin, P.E.
General Manager 

DATE: November 9, 2004

SUBJECT: Supplemental Board Meeting Information

Attached is the following supplemental information for the November 11, 2004 Commission meeting:

1. Resolution No. R-71-04
2. Resolution No. R-72-04

The following is the summary of the engineering firms that submitted proposals to conduct an Electric Reliability Assessment.

Consolidated Consulting Corporation	\$30,000
Black & Veatch Corporation	\$35,000
Commonwealth Associates Inc.	\$54,700
Willson Design L.L.C.	\$83,500

REQUEST FOR BOARD ACTION

AGENDA SECTION	Omnibus Vote Requiring Super-Majority or Special Majority Vote	ORIGINATING DEPARTMENT	General Manager's Office
ITEM	<p>A Resolution Approving and Authorizing the Execution of a Contract between the DuPage Water Commission and Consolidated Consulting Corporation for an Electric Reliability Assessment</p> <p>Resolution No. R-71-04</p>	<p>APPROVAL</p> 	

Account Number: WF-7912

The Commission retained Camp Dresser & McKee Inc. (CDM) to evaluate and design new electrical generation facilities at the DuPage Pump Station. At the October 14th meeting, the Board directed staff to hire CDM to perform a Commonwealth Edison Electrical Transmission and Distribution System reliability study. However, to eliminate any criticism of bias, a Request for Proposals for an Electric Reliability Assessment was issued to firms deemed qualified by CDM and, in addition and as required by State Statute, a public notice requesting proposals was published in the *Chicago Tribune*.

Resolution No. R-71-04 would approve an agreement with Consolidated Consulting Corporation, the most favorably ranked firm, to perform the power reliability assessment. Consolidated Consulting Corporation proposes to provide such an assessment for a lump sum of \$30,000.

Another action related to this Request is Resolution No. R-70-04: A Resolution Approving and Authorizing the Execution of a Second Amendment to the Contract for Evaluation, Design, and Bidding of Electrical Generation Supply Facilities at the DuPage Pump Station, approving an amendment to the existing agreement with CDM to add, at a cost not-to-exceed \$44,490.00, a benchmarking evaluation by CDM and CDM's assistance with a power reliability assessment to be performed by Consolidated Consulting Corporation.

MOTION: To approve Resolution No. R-71-04.

DUPAGE WATER COMMISSION

RESOLUTION NO. R-71-04

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF A
CONTRACT BETWEEN THE DUPAGE WATER COMMISSION AND
CONSOLIDATED CONSULTING CORPORATION FOR AN ELECTRIC RELIABILITY
ASSESSMENT

WHEREAS, the Commission solicited statements of interest, qualifications, and proposals from qualified firms to perform an electric reliability assessment of the existing electrical transmission system at both the DuPage and Lexington water pumping facilities; and

WHEREAS, the Commission ranked the proposals received based on previous experience and ability to meet time and budget constraints among other factors; and

WHEREAS, based on the factors identified above, the Commission selected Consolidated Consulting Corporation, the most favorably ranked firm, to perform the assessment;

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: A Contract between the DuPage Water Commission and Consolidated Consulting Corporation, 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 DuPage Water Commission, shall be and it hereby is approved.

SECTION THREE: The General Manager of the DuPage Water Commission shall be and hereby is authorized and directed to execute the Contract, in substantially the form

Resolution No. R-71-04

attached hereto as Exhibit 1 with such modifications as may be required or approved by the General Manager; provided, however, that the Contract shall not be so executed on behalf of the Commission unless and until the General Manager shall have been presented with copies of the Contract executed by Consolidated Consulting Corporation. Upon execution by the General Manager, the Contract, and all things provided for therein, shall be deemed accepted by the DuPage Water Commission without further act.

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

AYES:

NAYS:

ABSENT:

ADOPTED THIS ____ DAY OF _____, 2004.

Chairman

ATTEST:

Clerk

Resolution No. R-71-04

Exhibit 1

**CONTRACT BETWEEN
DuPAGE WATER COMMISSION
AND
CONSOLIDATED CONSULTING CORPORATION
FOR
ELECTRIC RELIABILITY ASSESSMENT**

CONTRACT BETWEEN
DUPAGE WATER COMMISSION
AND
CONSOLIDATE CONSULTING CORPORATION
FOR
ELECTRIC RELIABILITY ASSESSMENT

TABLE OF CONTENTS

		<u>Page</u>
ARTICLE 1	THE SERVICES	1
1.1	Performance of the Services	1
1.2	Commencement and Completion Dates	2
1.3	Required Submittals	2
1.4	Review and Incorporation of Contract Provisions	2
1.5	Financial and Technical Ability to Perform.....	2
1.6	Time.....	3
1.7	Consultant's Personnel and Subcontractors	3
1.8	Owner's Responsibilities.....	4
1.9	Owner's Right to Terminate or Suspend Services for Convenience.....	4
ARTICLE II	CHANGES AND DELAYS	5
2.1	Changes	5
2.2	Delays.....	5
2.3	No Constructive Change Orders.....	5
ARTICLE III	CONSULTANT'S RESPONSIBILITY FOR DEFECTIVE SERVICES.....	6
3.1	Warranty of Services	6
3.2	Corrections	6
3.3	Risk of Loss	6
ARTICLE IV	FINANCIAL ASSURANCES	7
4.1	Insurance.....	7
4.2	Indemnification	7

ARTICLE V	PAYMENT	7
5.1	Contract Price	7
5.2	Taxes, Benefits and Royalties	8
5.3	Progress Payments	8
5.4	Final Acceptance and Final Payment	8
5.5	Deductions.....	9
5.6	Accounting.....	9
ARTICLE VI	REMEDIES.....	10
6.1	Owner's Remedies	10
6.2	Terminations and Suspensions Deemed for Convenience.....	10
ARTICLE VII	LEGAL RELATIONSHIPS AND REQUIREMENTS	11
7.1	Binding Effect	11
7.2	Relationship of the Parties.....	11
7.3	No Collusion/Prohibited Interests.....	11
7.4	Assignment.....	12
7.5	Confidential Information.....	12
7.6	No Waiver.....	12
7.7	No Third Party Beneficiaries	12
7.8	Notices.....	12
7.9	Governing Laws.....	13
7.10	Changes in Laws	13
7.11	Compliance with Laws and Grants	13
7.12	Documents	14
7.13	Time.....	14
7.14	Severability	14
7.15	Entire Agreement.....	15
7.16	Amendments	15

ATTACHMENT A - Supplemental Schedule of Contract Terms

ATTACHMENT B - Scope of Services

ATTACHMENT C - Submittal Schedule

ATTACHMENT D - Special Project Requirements

CONTRACT BETWEEN
DUPAGE WATER COMMISSION
AND
CONSOLIDATED CONSULTING CORPORATION
FOR
ELECTRIC RELIABILITY ASSESSMENT

In consideration of the mutual promises set forth below, the DuPage Water Commission, 600 East Butterfield Road, Elmhurst, Illinois 60126-4642, a unit of local government created and existing under the laws of the State of Illinois ("Owner"), and Consolidated Consulting Corporation, 107 Gale Avenue, River Forest, IL 60305-2011, an Illinois Corporation ("Consultant"), make this Contract as of the 12th day of November, 2004, and hereby agree as follows:

ARTICLE I
THE SERVICES

1.1 Performance of the Services

Consultant shall, at its sole cost and expense, provide, perform, and complete all of the following, all of which is herein referred to as the "Services":

1. Labor, Equipment, Materials, and Supplies. Provide, perform, and complete, in the manner described and specified in this Contract, all necessary work, labor, services, transportation, equipment, materials, apparatus, information, data, and other items necessary to accomplish the Project, as defined in Attachment A, in accordance with the Scope of Services attached hereto as Attachment B, the Submittal Requirements attached hereto as Attachment C, and the Special Project Requirements attached hereto as Attachment D.
2. Approvals. Procure and furnish all approvals and authorizations specified in Attachment A.
3. Insurance. Procure and furnish all certificates and policies of insurance specified in this Contract.
4. Quality. Provide, perform, and complete all of the foregoing in a proper and workmanlike manner, consistent with the highest standards of professional practice and in full compliance with, and as required by or pursuant to, this Contract.

1.2 Commencement and Completion Dates

Consultant shall commence the Services not later than the "Commencement Date" set forth on Attachment A and shall diligently and continuously prosecute the Services at such a rate as will allow the Services to be fully provided, performed, and completed in full compliance with this Contract not later than the "Completion Date" or, if the Services are to be performed in separate phases with separate completion dates, the "Completion Dates" set forth in Attachment A. The time of commencement, rate of progress, and time of completion are referred to in this Contract as the "Contract Time."

1.3 Required Submittals

A. Submittals Required. Consultant shall submit to Owner all reports, documents, data, and information specifically set forth in Attachment C or otherwise required to be submitted by Consultant under this Contract and shall, in addition, submit to Owner all such reports, documents, data, and information as may be requested by Owner to fully document the Services ("Required Submittals").

B. Time of Submission and Owner's Review. All Required Submittals shall be provided to Owner no later than the time, if any, specified in Attachment C or otherwise in this Contract. If no time for submission is specified for any Required Submittal, such Submittal shall be submitted within a reasonable time in light of its purpose and, in all events, in sufficient time, in Owner's sole opinion, to permit Owner to review the same prior to the commencement of any part of the Services to which such Required Submittal may relate. Owner shall have the right to require such corrections as may be necessary to make any Required Submittal conform to this Contract. No Services related to any Required Submittal shall be performed by Consultant until Owner has completed review of such Required Submittal with no exception noted. Owner's review and stamping of any Required Submittal shall not relieve Consultant of the entire responsibility for the performance of the Services in full compliance with, and as required by or pursuant to this Contract, and shall not be regarded as any assumption of risk or liability by Owner.

C. Responsibility for Delay. Consultant shall be responsible for any delay in the Services due to delay in providing Required Submittals conforming to this Contract.

1.4 Review and Incorporation of Contract Provisions

Consultant represents and warrants that it has carefully reviewed, and fully understood, this Contract, including all of its Attachments, all of which are by this reference incorporated into and made a part of this Contract.

1.5 Financial and Technical Ability to Perform

Consultant represents and warrants that it is financially solvent, and has the financial resources necessary, and that it is sufficiently experienced and competent, and has the necessary capital, facilities, plant, organization, and staff necessary, to provide, perform, and complete the Services in full compliance with, and as required by or pursuant to, this Contract.

1.6 Time

Consultant represents and warrants that it is ready, willing, able, and prepared to begin the Services on the Commencement Date and that the Contract Time is sufficient time to permit completion of the Services in full compliance with, and as required by or pursuant to, this Contract for the Contract Price.

1.7 Consultant's Personnel and Subcontractors

A. Consultant's Personnel. Consultant shall provide all personnel necessary to complete the Services, including without limitation the "Key Project Personnel" identified in Attachment D. Consultant shall provide to Owner telephone numbers at which the Key Project Personnel can be reached on a 24 hour basis. Consultant and Owner may by mutual written agreement make changes and additions to the designations of Key Project Personnel. Prior to terminating the employment of any Key Project Personnel, or reassigning any of the Key Project Personnel to other positions, or upon receiving notification of the resignation of any of the Key Project Personnel, Consultant shall notify Owner as soon as practicable in advance of such proposed termination, reassignment, or resignation. Consultant shall submit justification, including a description of proposed substitute personnel, in sufficient detail to permit evaluation by Owner of the impact of the proposed action on the Services. No such termination or reassignment shall be made by Consultant without prior written approval of Owner. Consultant shall have no claim for damages, for compensation in excess of the Contract Price, or for a delay or extension of the Contract Time as a result of any such termination, reassignment, resignation, or substitution.

B. Approval and Use of Subcontractors. Consultant shall perform the Services with its own personnel and under the management, supervision, and control of its own organization unless otherwise approved by Owner in writing. All subcontractors and subcontracts used by Consultant shall be acceptable to, and approved in advance by, Owner. Owner's approval of any subcontractor or subcontract shall not relieve Consultant of full responsibility and liability for the provision, performance, and completion of the Services in full compliance with, and as required by or pursuant to, this Contract. All Services performed under any subcontract shall be subject to all of the provisions of this Contract in the same manner as if performed by employees of Consultant. Every reference in this Contract to "Consultant" shall be deemed also to refer to all subcontractors of Consultant. Every subcontract shall include a provision binding the subcontractor to all provisions of this Contract.

C. Removal of Personnel and Subcontractors. If any personnel or subcontractor fails to perform the part of the Services undertaken by it in a manner satisfactory to Owner, Consultant shall immediately upon notice from Owner remove and replace such personnel or subcontractor. Consultant shall have no claim for damages, for compensation in excess of the Contract Price, or for a delay or extension of the Contract Time as a result of any such removal or replacement.

1.8 Owner's Responsibilities

Owner shall, at its sole cost and expense and except as otherwise provided in Attachment D: (a) designate in writing a person with authority to act as Owner's representative and on Owner's behalf with respect to the Services except those matters that may require Board approval of Owner; (b) provide to Consultant all criteria and full information as to Owner's requirements for the Project or work to which the Services relate, including Owner's objectives and constraints, schedule, space, capacity and performance requirements, and budgetary limitations relevant to the Project; (c) provide to Consultant all existing studies, reports, and other available data relevant to the Project; (d) arrange for access to and make all provisions for Consultant to enter upon public and private property as reasonably required for Consultant to perform the Services; (e) provide surveys describing physical characteristics, legal limitations, and utility locations for the Project and the services of geotechnical engineers or other consultants when such services are reasonably requested by Consultant, are necessary for the performance of the Services, and are not already provided for in Attachments B and D; (f) provide structural, mechanical, chemical, air and water pollution tests, test for hazardous materials, and other laboratory and environmental tests, inspections, and reports required by law to be provided by Owner in connection with the Project; (g) review and comment on all Required Submittals and other reports, documents, data, and information presented by Consultant; (h) except as otherwise provided in Attachment A, provide approvals from all governmental authorities having jurisdiction over the Project when such services are reasonably requested by the Consultant, are necessary for the performance of the Services, and are not already provided for in Attachments B and D; (i) except as provided in Article IV of this Contract provide, all accounting, insurance, and legal counseling services as may be necessary from time to time in the sole judgment of Owner to protect Owner's interests with respect to the Project; (j) attend Project related meetings; and (k) give prompt written notice to Consultant whenever Owner observes or otherwise becomes aware of any development that affects the scope or timing of the Services, provided, however, that failure to give such notice shall not relieve Consultant of any of its responsibilities under this Contract.

1.9 Owner's Right to Terminate or Suspend Services for Convenience

A. Termination or Suspension for Convenience. Owner shall have the right, for its convenience, to terminate or suspend the Services in whole or in part at any time by written notice to Consultant. Every such notice shall state the extent and effective date of such termination or suspension. On such effective date, Consultant shall, as and to the extent directed, stop Services under this Contract, cease all placement of further orders or subcontracts, terminate or suspend Services under existing orders and subcontracts, and cancel any outstanding orders or subcontracts that may be canceled.

B. Payment for Completed Services. In the event of any termination pursuant to Subsection 1.9A above, Owner shall pay Consultant (1) such direct costs, including overhead, as Consultant shall have paid or incurred for all Services done in compliance with, and as required by or pursuant to, this Contract up to the effective date of termination; and (2) such other costs pertaining to the Services, exclusive of

overhead and profit, as Consultant may have reasonably and necessarily incurred as the result of such termination. Any such payment shall be offset by any prior payment or payments and shall be subject to Owner's rights to withhold and deduct as provided in this Contract.

ARTICLE II CHANGES AND DELAYS

2.1 Changes

Owner shall have the right, by written order executed by Owner, to make changes in the Contract, the Project, the Services and the Contract Time ("Change Order"). If any Change Order causes an increase or decrease in the amount of the Services, an equitable adjustment in the Contract Price or Contract Time may be made. No decrease in the amount of the Services caused by any Change Order shall entitle Consultant to make any claim for damages, anticipated profits, or other compensation.

2.2 Delays

For any delay that may result from causes that could not be avoided or controlled by Consultant, Consultant shall, upon timely written application, be entitled to issuance of a Change Order providing for an extension of the Contract Time for a period of time equal to the delay resulting from such unavoidable cause. No extension of the Contract Time shall be allowed for any other delay in completion of the Services.

2.3 No Constructive Change Orders

No claims for equitable adjustments in the Contract Price or Contract Time shall be made or allowed unless embodied in a Change Order. If Owner fails to issue a Change Order including, or fully including, an equitable adjustment in the Contract Price or Contract Time to which Consultant claims it is entitled, or, if Consultant believes that any requirement, direction, instruction, interpretation, determination, or decision of Owner entitles Consultant to an equitable adjustment in the Contract Price or Contract Time that has not been included, or fully included, in a Change Order, then Consultant shall submit to Owner a written request for the issuance of, or revision of, a Change Order, including the equitable adjustment, or the additional equitable adjustment, in the Contract Price or Contract Time that Consultant claims has not been included, or fully included, in a Change Order. Such request shall be submitted before Consultant proceeds with any Services for which Consultant claims an equitable adjustment is due and shall, in all events, be submitted no later than two business days after receipt of such Change Order or receipt of notice of such requirement, direction, instruction, interpretation, determination, or decision. Notwithstanding the submission of any such request, Consultant shall, unless otherwise directed by Owner within two business days after receipt by Owner of such request, proceed without delay to perform the Services in compliance with the Change Order or as required, directed, instructed, interpreted, or decided by Owner and shall, pending a final resolution of the issue, keep a daily record of such Services. Unless Consultant submits such a request within two business days after receipt of such Change Order or receipt of notice of such requirement, direction,

instruction, interpretation, determination, or decision, Consultant shall be conclusively deemed (1) to have agreed that such Change Order, requirement, direction, instruction, interpretation, determination, or decision does not entitle Consultant to an equitable adjustment in the Contract Price or Contract Time and (2) to have waived all claims based on such Change Order, requirement, direction, instruction, interpretation, determination, or decision.

ARTICLE III

CONSULTANT'S RESPONSIBILITY FOR DEFECTIVE SERVICES

3.1 Warranty of Services

A. Scope of Warranty. Consultant warrants that the Services and all of its components shall be free from defects and flaws in design; shall strictly conform to the requirements of this Contract; shall be fit, sufficient, and suitable for the purposes expressed in, or reasonably inferred from, this Contract; and shall be performed in accordance with the highest standards of professional practice, care, and diligence practiced by recognized consulting firms in performing services of a similar nature in existence at the time of performance of the Services. The warranty herein expressed shall be in addition to any other warranties expressed in this Contract, or expressed or implied by law, which are hereby reserved unto Owner.

B. Opinions of Cost. It is recognized that neither Consultant nor Owner has control over the costs of labor, material, equipment or services furnished by others or over competitive bidding, market or negotiating conditions, or construction contractors' methods of determining their prices. Accordingly, any opinions of probable Project costs or construction costs provided for herein are estimates only, made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as an experienced and qualified professional, familiar with the industry. Consultant does not guaranty that proposals, bids or actual Project costs or construction costs will not vary from opinions of probable cost prepared by Consultant.

3.2 Corrections

Consultant shall be responsible for the quality, technical accuracy, completeness and coordination of all reports, documents, data, information and other items and services under this Contract. Consultant shall, promptly and without charge, provide, to the satisfaction of Owner, all corrective Services necessary as a result of Consultant's errors, omissions, negligent acts, or failure to meet warranty.

3.3 Risk of Loss

The Services and everything pertaining thereto shall be provided, performed, and completed at the sole risk and cost of Consultant. Consultant shall be responsible for any and all damages to property or persons as a result of Consultant's errors, omissions, negligent acts, or failure to meet warranty and for any losses or costs to repair or remedy any work undertaken by Owner based upon the Services as a result of any such errors, omissions, negligent acts or failure to meet warranty. Notwithstanding

any other provision of this Contract, Consultant's obligations under this Section 3.3 shall exist without regard to, and shall not be construed to be waived by, the availability or unavailability of any insurance, either of Owner or Consultant, to indemnify, hold harmless or reimburse Consultant for such damages, losses or costs.

ARTICLE IV **FINANCIAL ASSURANCES**

4.1 Insurance

Contemporaneous with Consultant's execution of this Contract, Consultant shall provide certificates and policies of insurance evidencing at least the minimum insurance coverages and limits set forth in Attachment A. For good cause shown, Owner may extend the time for submission of the required policies of insurance upon such terms, and with such assurances of complete and prompt performance, as Owner may impose in the exercise of its sole discretion. Such policies shall be in a form acceptable to Owner and from companies with a general rating of A, and a financial size category of Class V or better, in Best's Insurance Guide and otherwise acceptable to Owner. Such insurance shall provide that no change, modification in, or cancellation of any insurance shall become effective until the expiration of 30 days after written notice thereof shall have been given by the insurance company to Owner. Consultant shall, at all times while providing, performing, or completing the Services, including, without limitation, at all times while correcting any failure to meet warranty pursuant to Section 3.2 of this Contract, maintain and keep in force, at Consultant's expense, at least the minimum insurance coverages and limits set forth in Attachment A.

4.2 Indemnification

Consultant shall, without regard to the availability or unavailability of any insurance, either of Owner or Consultant, indemnify, save harmless, and defend Owner against any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses, including attorneys' fees and administrative expenses, that may arise, or be alleged to have arisen, out of or in connection with Consultant's performance of, or failure to perform, the Services or any part thereof, whether or not due or claimed to be due in whole or in part to the active, passive, or concurrent negligence or fault of Consultant, except to the extent caused by the sole negligence of Owner.

ARTICLE V **PAYMENT**

5.1 Contract Price

Owner shall pay to Consultant, in accordance with and subject to the terms and conditions set forth in this Article V and Attachment A, and Consultant shall accept in full satisfaction for providing, performing, and completing the Services, the amount or amounts set forth in Attachment A ("Contract Price"), subject to any additions, deductions, or withholdings provided for in this Contract.

5.2 Taxes, Benefits and Royalties

The Contract Price includes all applicable federal, state, and local taxes of every kind and nature applicable to the Services as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or other similar benefits and all costs, royalties, and fees arising from the use on, or the incorporation into, the Services, of patented equipment, materials, supplies, tools, appliances, devices, processes, or inventions. All claim or right to claim additional compensation by reason of the payment of any such tax, contribution, premium, costs, royalties, or fees is hereby waived and released by Consultant.

5.3 Progress Payments

A. Payment in Installments. The Contract Price shall be paid in monthly installments in the manner set forth in Attachment A ("Progress Payments").

B. Pay Requests. Consultant shall, as a condition precedent to its right to receive each Progress Payment, submit to Owner an invoice accompanied by such receipts, vouchers, and other documents as may be necessary to establish Consultant's prior payment for all labor, material, and other things covered by the invoice and the absence of any interest, whether in the nature of a lien or otherwise, of any party in any property, work, or fund with respect to the Services performed under this Contract. In addition to the foregoing, such invoice shall include (a) employee classifications, rates per hour, and hours worked by each classification, and, if the Services are to be performed in separate phases, for each phase; (b) total amount billed in the current period and total amount billed to date, and, if the Services are to be performed in separate phases, for each phase; (c) the estimated percent completion, and, if the Services are to be performed in separate phases, for each phase; and (d) Consultant's certification that all prior Progress Payments have been properly applied to the Services with respect to which they were paid. Owner may, by written notice to Consultant, designate a specific day of each month on or before which pay requests must be submitted.

5.4 Final Acceptance and Final Payment

The Services, or, if the Services are to be performed in separate phases, each phase of the Services, shall be considered complete on the date of final written acceptance by Owner of the Services or each phase of the Services, as the case may be, which acceptance shall not be unreasonably withheld or delayed. The Services or each phase of the Services, as the case may be, shall be deemed accepted by Owner if not objected to in writing within 60 days after submission by Consultant of the Services or such phase of Services for final acceptance and payment plus, if applicable, such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the Services, or phase of Services, as the case may be. As soon as practicable after final acceptance, Owner shall pay to Consultant the balance of the Contract Price or, if the Services are to be performed in separate phases, the balance of that portion of the Contract Price with respect to such phase of the Services, after deducting therefrom all charges against

Consultant as provided for in this Contract ("Final Payment"). The acceptance by Consultant of Final Payment with respect to the Services or a particular phase of Services, as the case may be, shall operate as a full and complete release of Owner of and from any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses of, by, or to Consultant for anything done, furnished for, arising out of, relating to, or in connection with the Services or a particular phase of Services, as the case may be, or for or on account of any act or neglect of Owner arising out of, relating to, or in connection with the Services or a particular phase of Services, as the case may be.

5.5 Deductions

A. Owner's Right to Withhold. Notwithstanding any other provision of this Contract and without prejudice to any of Owner's other rights or remedies, Owner shall have the right at any time or times, whether before or after approval of any pay request, to deduct and withhold from any Progress or Final Payment that may be or become due under this Contract such amount as may reasonably appear necessary to compensate Owner for any actual or prospective loss due to: (1) Services that are defective, damaged, flawed, unsuitable, nonconforming, or incomplete; (2) damage for which Consultant is liable under this Contract; (3) liens or claims of lien regardless of merit; (4) claims of subcontractors, suppliers, or other persons regardless of merit; (5) delay in the progress or completion of the Services; (6) inability of Consultant to complete the Services; (7) failure of Consultant to properly complete or document any pay request; (8) any other failure of Consultant to perform any of its obligations under this Contract; or (9) the cost to Owner, including attorneys' fees and administrative costs, of correcting any of the aforesaid matters or exercising any one or more of Owner's remedies set forth in Section 6.1 of this Contract.

B. Use of Withheld Funds. Owner shall be entitled to retain any and all amounts withheld pursuant to Subsection 5.5A above until Consultant shall have either performed the obligations in question or furnished security for such performance satisfactory to Owner. Owner shall be entitled to apply any money withheld or any other money due Consultant under this Contract to reimburse itself for any and all costs, expenses, losses, damages, liabilities, suits, judgments, awards, attorneys' fees, and administrative expenses incurred, suffered, or sustained by Owner and chargeable to Consultant under this Contract.

5.6 Accounting

Consultant shall keep accounts, books, and other records of all its billable charges and costs incurred in performing the Services in accordance with generally accepted accounting practices, consistently applied, and in such manner as to permit verification of all entries. Consultant shall make all such material available for inspection by Owner, at all reasonable times during this Contract and for a period of three years following termination of this Contract. Copies of such material shall be furnished, at Owner's expense, upon request.

ARTICLE VI REMEDIES

6.1 Owner's Remedies

If it should appear at any time prior to Final Payment for all work that Consultant has failed or refused to prosecute, or has delayed in the prosecution of, the Services with diligence at a rate that assures completion of the Services in full compliance with the requirements of this Contract, or has attempted to assign this Contract or Consultant's rights under this Contract, either in whole or in part, or has falsely made any representation or warranty in this Contract, or has otherwise failed, refused, or delayed to perform or satisfy any other requirement of this Contract or has failed to pay its debts as they come due ("Event of Default"), and has failed to cure any such Event of Default within five business days after Consultant's receipt of written notice of such Event of Default, then Owner shall have the right, at its election and without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

1. Owner may require Consultant, within such reasonable time as may be fixed by Owner, to complete or correct all or any part of the Services that are defective, damaged, flawed, unsuitable, nonconforming, or incomplete; to accelerate all or any part of the Services; and to take any or all other action necessary to bring Consultant and the Services into strict compliance with this Contract.
2. Owner may accept the defective, damaged, flawed, unsuitable, nonconforming, incomplete, or dilatory Services or part thereof and make an equitable reduction in the Contract Price.
3. Owner may terminate this Contract without liability for further payment of amounts due or to become due under this Contract.
4. Owner may withhold from any Progress Payment or Final Payment, whether or not previously approved, or may recover from Consultant, any and all costs, including attorneys' fees and administrative expenses, incurred by Owner as the result of any Event of Default or as a result of actions taken by Owner in response to any Event of Default.
5. Owner may recover any damages suffered by Owner.

6.2 Terminations and Suspensions Deemed for Convenience

Any termination or suspension of Consultant's rights under this Contract for an alleged default that is ultimately held unjustified shall automatically be deemed to be a termination or suspension for the convenience of Owner under Section 1.9 of this Contract.

ARTICLE VII
LEGAL RELATIONSHIPS AND REQUIREMENTS

7.1 Binding Effect

This Contract shall be binding upon Owner and Consultant and upon their respective heirs, executors, administrators, personal representatives, and permitted successors and assigns. Every reference in this Contract to a party shall also be deemed to be a reference to the authorized officers, employees, agents, and representatives of such party.

7.2 Relationship of the Parties

Consultant shall act as an independent contractor in providing and performing the Services. Nothing in, nor done pursuant to, this Contract shall be construed (1) to create the relationship of principal and agent, partners, or joint venturers between Owner and Consultant or (2) to create any relationship between Owner and any subcontractor of Consultant.

7.3 No Collusion/Prohibited Interests

Consultant hereby represents and certifies that Consultant is not barred from contracting with a unit of state or local government as a result of (i) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 et seq.; or (ii) a violation of the USA Patriot Act of 2001, 107 Public Law 56 (October 26, 2001) (the "Patriot Act") or other statutes, orders, rules, and regulations of the United States government and its various executive departments, agencies and offices related to the subject matter of the Patriot Act, including, but not limited to, Executive Order 13224 effective September 24, 2001.

Consultant hereby represents that the only persons, firms, or corporations interested in this Contract as principals are those disclosed to Owner prior to the execution of this Contract, and that this Contract is made without collusion with any other person, firm, or corporation. If at any time it shall be found that Consultant has, in procuring this Contract, colluded with any other person, firm, or corporation, then Consultant shall be liable to Owner for all loss or damage that Owner may suffer thereby, and this Contract shall, at Owner's option, be null and void.

Consultant hereby represents and warrants that neither Consultant nor any person affiliated with Consultant or that has an economic interest in Consultant or that has or will have an interest in the Services or will participate, in any manner whatsoever, in the Services is acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by the United States Treasury Department as a Specially Designated National and Blocked Person, or for or on behalf of any person, group, entity or nation designated in Presidential Executive Order 13224 as a person who commits, threatens to commit, or supports terrorism, and neither Consultant nor any person affiliated with Consultant or that has an economic interest in Consultant or that has or will have an interest in the Services or will participate, in any manner whatsoever,

in the Services is, directly or indirectly, engaged in, or facilitating, the Services on behalf of any such person, group, entity or nation.

7.4 Assignment

Consultant shall not (1) assign this Contract in whole or in part, (2) assign any of Consultant's rights or obligations under this Contract, or (3) assign any payment due or to become due under this Contract without the prior express written approval of Owner, which approval may be withheld in the sole and unfettered discretion of Owner; provided, however, that Owner's prior written approval shall not be required for assignments of accounts, as defined in the Illinois Commercial Code, if to do so would violate Section 9-318 of the Illinois Commercial Code, 810 ILCS 5/9-318. Owner may assign this Contract, in whole or in part, or any or all of its rights or obligations under this Contract, without the consent of Consultant.

7.5 Confidential Information

All information supplied by Owner to Consultant for or in connection with this Contract or the Services shall be held confidential by Consultant and shall not, without the prior express written consent of Owner, be used for any purpose other than performance of the Services.

7.6 No Waiver

No examination, inspection, investigation, test, measurement, review, determination, decision, certificate, or approval by Owner, nor any order by Owner for the payment of money, nor any payment for, or use, occupancy, possession, or acceptance of, the whole or any part of the Services by Owner, nor any extension of time granted by Owner, nor any delay by Owner in exercising any right under this Contract, nor any other act or omission of Owner shall constitute or be deemed to be an acceptance of any defective, damaged, flawed, unsuitable, nonconforming, or incomplete Services, nor operate to waive or otherwise diminish the effect of any warranty or representation made by Consultant; or of any requirement or provision of this Contract; or of any remedy, power, or right of Owner.

7.7 No Third Party Beneficiaries

No claim as a third party beneficiary under this Contract by any person, firm, or corporation other than Consultant shall be made or be valid against Owner.

7.8 Notices

All notices required or permitted to be given under this Contract shall be in writing and shall be deemed received by the addressee thereof when delivered in person on a business day at the address set forth below or on the third business day after being deposited in any main or branch United States post office, for delivery at the address set forth below by properly addressed, postage prepaid, certified or registered mail, return receipt requested.

Notices and communications to Owner shall be addressed to, and delivered at, the following address:

DuPage Water Commission
600 East Butterfield Road
Elmhurst, Illinois 60126-4642
Attention: Robert L. Martin, P.E.

Notices and communications to Consultant shall be addressed to, and delivered at, the following address:

Consolidated Consulting Corporation
107 Gale Avenue
River Forest, IL 60305-2011
Attention: Thomas M. McCauley, P.E.

The foregoing shall not be deemed to preclude the use of other non-oral means of notification or to invalidate any notice properly given by any such other non-oral means.

By notice complying with the requirements of this Section 7.8, Owner and Consultant each shall have the right to change the address or addressee or both for all future notices to it, but no notice of a change of address or addressee shall be effective until actually received.

7.9 Governing Laws

This Contract and the rights of Owner and Consultant under this Contract shall be interpreted according to the internal laws, but not the conflict of laws rules, of the State of Illinois.

7.10 Changes in Laws

Unless otherwise explicitly provided in this Contract, any reference to laws shall include such laws as they may be amended or modified from time to time.

7.11 Compliance with Laws and Grants

Consultant shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Services are provided, performed, and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations that may be required in connection with providing, performing, and completing the Services, and with all applicable statutes, ordinances, rules, and regulations, including without limitation the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. Consultant shall also comply with all conditions of any

federal, state, or local grant received by Owner or Consultant with respect to this Contract or the Services.

Consultant shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with Consultant's, or its subcontractors', performance of, or failure to perform, the Services or any part thereof.

Every provision of law required by law to be inserted into this Contract shall be deemed to be inserted herein.

7.12 Documents

Drawings, plans, specifications, photos, reports, information, observations, calculations, notes and any other reports, documents, data or information, in any form, prepared, collected, or received by Consultant in connection with any or all of the Services (the "Documents") shall be and remain the property of Owner and shall not, without the prior express written consent of Owner, be used for any purpose other than performance of the Services. At Owner's request, or upon termination of this Contract, the Documents shall be delivered promptly to Owner. Consultant shall have the right to retain copies of the Documents for its files. Consultant shall maintain files of all Documents unless Owner shall consent in writing to the destruction of the Documents. Consultant shall make, and shall cause all of its subcontractors to make, the Documents available for Owner's review, inspection and audit during the entire term of this Contract and for three years after termination of this Contract; provided, however, that prior to the disposal or destruction of the Documents by Consultant or any of its subcontractors following said three year period, Consultant shall give notice to Owner of any Documents to be disposed of or destroyed and the intended date, which shall be at least 90 days after the effective date of such notice of disposal or destruction. Owner shall have 90 days after receipt of any such notice to give notice to Consultant or any of its subcontractors not to dispose of or destroy said Documents and to require Consultant or any of its subcontractors to deliver same to Owner, at Owner's expense.

7.13 Time

The Contract Time is of the essence of this Contract. Except where otherwise stated, references in this Contract to days shall be construed to refer to calendar days.

7.14 Severability

The provisions of this Contract shall be interpreted when possible to sustain their legality and enforceability as a whole. In the event any provision of this Contract shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, in whole or in part, neither the validity of the remaining part of such provision, nor the validity of any other provisions of this Contract shall be in any way affected thereby.

7.15 Entire Agreement

This Contract sets forth the entire agreement of Owner and Consultant with respect to the accomplishment of the Services and the payment of the Contract Price therefor, and there are no other understandings or agreements, oral or written, between Owner and Consultant with respect to the Services and the compensation therefor.

7.16 Amendments

No modification, addition, deletion, revision, alteration, or other change to this Contract shall be effective unless and until such change is reduced to writing and executed and delivered by Owner and Consultant.

IN WITNESS WHEREOF, Owner and Consultant have caused this Contract to be executed in two original counterparts as of the day and year first written above.

(SEAL)

Attest/Witness:

DUPAGE WATER COMMISSION

By: _____

By: _____

Robert L. Martin, P.E.

Title: _____

Title: General Manager

Attest/Witness:

CONSOLIDATED CONSULTING CORPORATION

By: _____

By: _____

Thomas M. McCauley, P.E.

Title: _____

Title: President

ATTACHMENT A

SUPPLEMENTAL SCHEDULE OF CONTRACT TERMS

1. **Project:**

Electric reliability assessment of the existing electrical transmission system at both the DuPage and Lexington water pumping facilities.

2. **Approvals and Authorizations:**

Consultant shall obtain the following approvals and authorizations: None.

3. **Commencement Date:**

November 12, 2004

4. **Completion Date:**

January 13, 2005, plus extensions, if any, authorized by a Change Order issued pursuant to Section 2.1 of the Contract.

5. **Insurance Coverages:**

A. **Worker's Compensation and Employer's Liability** with limits not less than:

(1) **Worker's Compensation:** Statutory;

(2) **Employer's Liability:**

\$500,000 injury-per occurrence

\$500,000 disease-per employee

\$500,000 disease-policy limit

Such insurance shall evidence that coverage applies in the State of Illinois.

B. **Comprehensive Motor Vehicle Liability** with a combined single limit of liability for bodily injury and property damage of not less than \$1,000,000 for vehicles owned, non-owned, or rented.

All employees shall be included as insureds.

C. **Comprehensive General Liability** with coverage written on an "occurrence" basis and with limits no less than:

(1) General Aggregate: \$5,000,000

- (2) Bodily Injury:
 - \$1,000,000 per person
 - \$1,000,000 per occurrence
- (3) Property Damage:
 - \$1,000,000 per occurrence

Coverages shall include:

- Broad Form Property Damage Endorsement
- Blanket Contractual Liability (must expressly cover the indemnity provisions of the Contract)

- D. Professional Liability Insurance. With a limit of liability of not less than \$1,000,000 per occurrence and covering Consultant against all sums that Consultant may be obligated to pay on account of any liability arising out of the Contract.
- E. Umbrella Policy. The required coverages may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss.

6. **Contract Price:**

SCHEDULE OF PRICES

For providing, performing, and completing all Services, the total Contract Price of:

Thirty Thousand (in writing)	Dollars and <u> No </u> Cents (in writing)
30,000 (in figures)	Dollars and <u> 00 </u> Cents (in figures)

7. **Payments:**

For purposes of payments to Consultant, the value of the Services shall be determined as follows:

Consultant shall, not later than 10 days after execution of the Contract and before submitting its first pay request, submit to Owner a schedule showing the value of each component part of such Services in form and with substantiating

data acceptable to Owner ("Breakdown Schedule"). The sum of the items listed in the Breakdown Schedule shall equal the amount set forth in the Schedule of Prices. An unbalanced Breakdown Schedule providing for overpayment of Consultant on component parts of the Services to be performed first will not be accepted. The Breakdown Schedule shall be revised and resubmitted until acceptable to Owner. No payment shall be made for Services until Consultant has submitted, and Owner has approved, an acceptable Breakdown Schedule.

Owner may require that the approved Breakdown Schedule be revised based on developments occurring during the provision and performance of the Services. If Consultant fails to submit a revised Breakdown Schedule that is acceptable to Owner, Owner shall have the right either to suspend Progress and Final Payments for Services or to make such Payments based on Owner's determination of the value of the Services completed.

ATTACHMENT B
SCOPE OF SERVICES



Consolidated Consulting Corporation

107 Gale Avenue
River Forest, Illinois 60305-2011

River Forest, Illinois

Vero Beach, Florida

Proposal

Understanding of Project

DWC is evaluating the necessity of installing on-site generation at the DuPage and/or Lexington Pumping Stations to ensure the reliability of the water supply. A key element in that evaluation is the determination of the reliability of the current 34.5 kV sub-transmission system feeding these stations. DWC wants a lay-man friendly but technical adequate written assessment of the reliability of the 34.5 kV sub-transmission system that will include the following items:

- Past electric power outages.
- Reason for these outages.
- Enhancements to the system to improve reliability.
- Overall reliability of each electric service.

Project Approach

CCC will perform the following two tasks to evaluate the reliability of the current 34.5 kV sub-transmission system feeding the pumping stations:

Task 1

Working with the ComEd contact provided by DWC, CCC will obtain, review, evaluate and comment on the following information pertaining to the ComEd sub-transmission system:

- Sub-Transmission Line Outage History
- Peak Load Conditions for each line as a percentage of the normal and emergency rating of the lines
- ComEd procedures during contingency conditions
- Description and reliability of the source substations
- Construction standards and Engineering design practices
- Maintenance practices
- SAIFI, SAIDI, CAIFI and ASAI indices provided by ComEd for the subject sub-transmission system(s)
- Other customers and load types upstream from the DWC facilities and any associated reliability concerns

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- Line protection and sectionalizing capability to restore DWC service in the event of upstream consumer problems
- Benchmark analysis of 4 other utilities of comparable size, configuration and service area two of which should have been involved in the August 2003 blackout (using both pre- and post-blackout reliability data) to compare ComEd with other utilities.
- Detailed and concise summary of ComEd's transmission system reliability

Task 2

CCC will perform a walk-down of each substation and sub-transmission line to document the condition of each piece of major equipment for each source feeding the DuPage and Lexington Pumping Stations. The walk-down will include the following:

- Photographs of each major piece of equipment and sub-transmission line – photographs of only those distribution line poles that appear to be potential sources of conditions adverse to reliability
- Identification of factors affecting reliability including physical configuration, tree trimming, lightning protection, pole condition and exposure of equipment to damage (vehicle collision, etc.)
- Condition of overhead to underground transitions
- Condition of overhead line shield conductors
- General condition and maintenance of 34.5 kV circuit breaker and recloser switchgear at each source substation

In addition to the above items called for in the RFP, CCC proposes to also obtain the following documents from ComEd:

- ComEd 34.5 kV Distribution Line Construction Standards
- ComEd Engineering Guides for 34.5 kV Distribution System Design
- Pole line maps associated with the lines serving the pumping stations

Deliverables

Draft Report

Tasks 1 and 2 will be summarized in a draft report for submission to DWC. Ten (10) copies of the draft will be provided to DWC.

Final Report

Following review of the draft report by DWC and incorporation of DWC's comments twenty (20) copies of the final report will be submitted to DWC.

Report Format

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The draft and final reports will be in 8.5"x11" format and will include a table of contents, an executive summary, supporting data including ComEd data, digital color photographs as required to support the report conclusions,.

Project Schedule

CCC understands the project schedule to be as follows:

Proposal due:	2:00 pm local time. November 8, 2004
Award and Notice to Proceed:	November 12, 2004
Kick-off Meeting:	November 16, 2004
Draft report due:	December 17, 2004
Draft report review meeting:	December 21, 2004
Final report due:	January 6, 2005
Board presentation:	January 13, 2005

Kick-off Meeting

CCC views the kick-off meeting as a method of confirming its understanding of the scope and schedule of the project. Should the scope or schedule of the project be changed during the kick-off meeting CCC reserves the right to revise its price and schedule.

DWC Assistance

CCC' proposal and pricing is based on receiving the following from DWC:

- ComEd contact information
- Electrical one-line data and information on existing electrical systems at the water pumping stations
-

Assumptions and Exceptions

CCC's proposal, price and schedule is based on

- CCC, if awarded this project, will be authorized to start work on November 12, 2004
- ComEd contact information on award, November 12, 2004
- The receipt of all required information from ComEd by November 29, 2004
- The receipt of draft report comments from DWC no later than December 24, 2004

Any slippage in these dates will result in a day-for-day slippage of the schedule milestones dependent on these dates.

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In the course of the walk-downs discussed above CCC will not take any measurements or make any inspections that involve any physical contact with the distribution system equipment. If access to any facility or equipment is required CCC will expect DWC to arrange this with ComEd.

For 34.5 kV sub-transmission lines longer than 5 miles from the DWC facility to the closest ComEd 34.5 kV substation, CCC will provide spot checks on the poles and conductors of the lines and detailed walk-downs of the terminations at either end of the lines and any taps involved in feeding the DWC facilities.

Contacts

The following individuals will be the contacts for all questions on this project:

DWC contact: Chris Bostick – 630-834-0100 – Bostick@dpwc.org

CCC contact: Tom McCauley – 708-366-1486 – tmmccauley@conconco.com

Communication

CCC expects all communications on this project, with the exception of the draft and final reports, to be by e-mail in the interest of speed. CCC will not be responsible for delays caused by transmittal of data by regular mail.

Scope Changes

CCC requires any scope or schedule changes requested by DWC in the course of the project to be communicated to CCC in writing (e-mail). CCC will provide DWC with a written (e-mail) estimated budget and schedule impact within 3 days of receipt of the change request.

Price

Based on the scope and schedule defined in the DWC RFP, CCC can complete this project for a fixed price of \$30,000.00. This price is valid for 60 days.

Invoicing

CCC will invoice DWC on a monthly basis for charges incurred during that month. Payment will be due thirty (30) days after invoice date. CCC may, at its discretion, impose a late penalty of 1% per month on any balance not paid in thirty days.



Consolidated Consulting Corporation

107 Gale Avenue
River Forest, Illinois 60305-2011

River Forest, Illinois

Vero Beach, Florida

Reliability Projects

As Manager of the Electrical & Controls of the Raymond Professional Group (formerly Doyen & Associates) Tom McCauley participated in a joint ComEd/City of Chicago Chicago Central Business District Planning consortium to develop methods for completing ComEd substation projects in a more cost effective manner. Mr. McCauley participated in the System Planning committee activities developing system expansion plans to meet future load growth. The ComEd key personnel involved were Dave, Helwig, Senior VP and Dave DeCampi VP in charge of T&D.

As President of the Consolidated Consulting Corporation Mr. McCauley provided consulting services to the T&D group of the Montgomery Watson Harza company (now NWH). In that capacity he participated in a task force working with ComEd distribution engineers to review the reliability of the 12 kV and 34.5 kV distribution systems feeding the 50 precincts of the City of Chicago to determine why some precincts were less reliable than others. This involved reviewing the CAIFI and SAIFI indices for these precincts to assess what factors were affecting them adversely and inspecting overhead distribution lines to evaluate physical and electrical factors that were adversely affecting their reliability. The key ComEd person involved was Mike Perz.

In 2000 Mr. Remijan was a key Raymond member of the ComEd Central Business District planning. This committee met on a daily basis for six weeks to determine the necessary plan of action for ComEd to undertake to ensure an increasing reliability of service for Chicago's central business district. This plan was then presented to the City of Chicago and the Illinois Commerce Commission. The work on this committee required an excellent knowledge of T&D systems, communication skills, the ability to interface with diverse groups and the ability to organize and track the details of the different project scopes. On January 1, 2001 Mr. Remijan assumed the role of Project Manager for the reliability projects generated by the planning committee. These projects included the Dekoven, Crosby 5th Transformer addition, Fisk Station work and West Loop (2003), ComEd central business district projects.

ATTACHMENT C

SUBMITTAL SCHEDULE

Submittal:

Due Date:

Draft Report

December 17, 2004

Final Report

January 6, 2005

ATTACHMENT D

SPECIAL PROJECT REQUIREMENTS

1. Key Project Personnel:

Name: Thomas M. McCauley, P.E.

Telephone: 708-366-1486

Name: Richard A. Remijan

Telephone: 708-366-1486

2. Security:

- A. Description. For security purposes, Owner investigates the background of personnel at its facilities and personnel engaged to perform services of a similar nature to the Services to be provided under the Contract and implements other security measures as it determines are necessary from time to time ("Security Program"). To obtain authorization to work at Owner's facilities or to be engaged to perform the Services, Consultant and its subcontractors must comply with the requirements of Owner's Security Program. Consultant shall remain as fully responsible and liable for the acts and omissions of all subcontractors and their respective agents and employees in connection with Owner's Security Program as it is for its own acts and those of its agents and employees.
- B. Background Investigations. Consultant personnel, including subcontractor personnel, that will require access to Owner's facilities or that will be engaged to perform the Services shall submit all information requested by Owner in order to perform the necessary background investigations. Background information required by Owner may include:
- a. Information needed to complete a Conviction Information Request Non-Fingerprint Form (for background checks, including conviction information, conducted by the Illinois State Police Bureau of Identification)
 - b. Education History
 - c. Military Service
 - d. Character and Reputation References
 - e. Verification of Identity
 - f. Fingerprints

No Consultant personnel, including subcontractor personnel, will be granted unescorted access to Owner's facilities, nor shall any Consultant personnel, including subcontractor personnel, be engaged to perform the Services, until any background investigation required by Owner has been successfully completed. Owner reserves the right to order Consultant to remove from Owner's facilities any personnel, including subcontractor personnel, who Owner determines pose a threat to the security of Owner or its facilities. Any such person so removed shall not be engaged again on the Services.

- C. Search. Consultant personnel and vehicles, including subcontractor personnel and vehicles, allowed on Owner's property shall be subject to search when entering and leaving the property. By entering the property, Consultant personnel, including subcontractor personnel, authorize Owner to perform or have performed such searches of their persons or vehicles.
- D. Identification Badges. Owner shall issue identification badges to all Consultant personnel, including subcontractor personnel. All such personnel shall pick up their identification badges prior to entry onto Owner's property and shall return the badges at the end of each work day. All such personnel shall wear the identification badges in a prominent manner at all times when working on Owner property.
- E. No Liability. Neither Owner, nor any official or employee of Owner, nor any authorized assistant or agent of any of them, shall be responsible for the adequacy of Owner's security precautions and programs or any liability arising therefrom.

REQUEST FOR BOARD ACTION

AGENDA SECTION Settlement Agreement(s)/Authorization to Initiate Litigation Related to Contract TIB-1/03 Utility Conflicts	ORIGINATING DEPARTMENT General Manager's Office
ITEM A Resolution Approving and Authorizing the Execution of a Settlement Agreement with BP Pipelines (North America) Inc. related to Contract TIB-1/03 Utility Conflicts Resolution No. R-72-04	APPROVAL 

Account Number: WF-7500

During the past twenty-two months, Commission staff and staff of Alvord, Burdick & Howson, the consulting engineers for the Commission, have discussed with BP Pipelines (North America) Inc. (BP) staff and consulting engineers the conflict between BP's 8" gas pipeline and the Commission's 72" transmission main (the "Inner Belt Transmission Main"). One of the stumbling blocks to obtaining relocation has been BP's position that it is entitled to reimbursement of all costs attributable to the relocation. It is the Commission's position that the Commission is not required to reimburse BP for these costs and that BP is required to permanently relocate the gas pipeline, at its own expense, as necessary to make way for the Commission's vital public improvement project.

It is critical to the Commission's ability to complete its project in a timely and efficient manner that all necessary utility relocation work be undertaken immediately. And it is essential to the health and general welfare of DuPage County residents that the Commission's project be kept on schedule. As a result, it is appropriate and in the best interests of the Commission to settle the matter to cooperate in serving the public interest, to assure that inconvenience to each others operations is avoided to the greatest extent possible, to avoid controversy, and to resolve by compromise matters related to the relocation of BP's facilities due to the design, construction, and installation of the Inner Belt Transmission Main.

AGENDA SECTION	Settlement Agreement(s)/Authorization to Initiate Litigation Related to Contract TIB-1/03 Utility Conflicts	ORIGINATING DEPARTMENT	General Manager's Office
ITEM	<p>A Resolution Approving and Authorizing the Execution of a Settlement Agreement with BP Pipelines (North America) Inc. related to Contract TIB-1/03 Utility Conflicts</p> <p>Resolution No. R-72-04</p>	APPROVAL	
<p>Resolution No. R-72-04 would approve and authorize a Settlement Agreement with BP, which Settlement Agreement staff is reasonably confident BP will approve, whereby the Commission will install the Inner Belt Transmission Main by tunneling instead of in open-cut trench, at no cost to BP and as needed to avoid the conflict with BP's facilities north of Riverside Drive, and BP will immediately relocate their conflicting facilities south of Riverside Drive at no cost to the Commission.</p> <p>Based upon information reasonably available to date, it is believed by both parties that BP's relocation work and the Commission's tunneling work can be limited to the areas specifically described in the Settlement Agreement attached to Resolution No. R-72-04. However, both parties also acknowledge that unknown and/or unexpected conditions or obstructions may be encountered. Thus, pursuant to the Settlement Agreement, BP will assume the risk and cost of extending its relocation work south of Riverside Drive, and the Commission will assume the risk and cost of extending its tunneling work (or requiring BP to relocate) north of Riverside Drive, as may be needed to eliminate all conflicts between the Inner Belt Transmission Main and BP's facilities.</p>			
MOTION: To approve Resolution No. R-72-04.			

DUPAGE WATER COMMISSION

RESOLUTION NO. R-72-04

A RESOLUTION APPROVING AND AUTHORIZING
THE EXECUTION OF A SETTLEMENT AGREEMENT
WITH BP PIPELINES (NORTH AMERICA) INC.
RELATED TO CONTRACT TIB-1/03 UTILITY CONFLICTS

WHEREAS, the DuPage Water Commission (the "Commission") is a county water commission and as such a political subdivision and unit of local government organized and existing under the laws of the State of Illinois for the public purpose of acquiring and operating a common source of supply of Lake Michigan water; and

WHEREAS, the Commission is empowered to extend its water mains along, upon, under, and across any highway, street, alley, or public ground in the state, including highways within a municipality, without payment of a fee and as a proper use of highways; and

WHEREAS, in furtherance of its statutory purpose, the Commission is proceeding with the construction of a 72" transmission main to connect, along the Route 83 corridor, the Commission's existing 72" Southwest Transmission Main on Butterfield Road in the City of Oakbrook Terrace with its existing 72" Northwest Transmission Main on the Illinois Prairie Path just South of Randolph Street in the City of Elmhurst (the "TIB-1/03 Inner Belt Transmission Main"); and

WHEREAS, pursuant to permit, BP Pipelines (North America) Inc. ("BP") installed an 8" gas pipeline along the Route 83 corridor that is, in some areas, in conflict with the TIB-1/03 Inner Belt Transmission Main; and

WHEREAS, disputes have arisen between BP and the Commission concerning the Commission's right to require relocation of the conflicting 8" gas pipeline and any

Resolution R-72-04

other conflicting BP facilities along the Route 83 corridor (collectively, the "Conflicting Facilities") at no cost to the Commission; and

WHEREAS, to cooperate in serving the public interest, to assure that inconvenience to each others operations is avoided to the greatest extent possible, to avoid controversy, and to resolve by compromise matters related to the relocation of the Conflicting Facilities due to the design, construction, and installation of the TIB-1/03 Inner Belt Transmission Main, the Board of Commissioners of the DuPage Water Commission has found and determined that it is appropriate and in the best interests of the Commission to settle the matter on terms and conditions substantially similar to those set forth in the draft agreement attached hereto and by this reference incorporated herein and made a part hereof as Exhibit 1;

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: A Settlement Agreement, in substantially the form attached hereto and by this reference incorporated herein and made a part hereof as Exhibit 1, shall be and it hereby is approved with such changes and revisions as may be approved or deemed necessary or desirable by the General Manager of the Commission (the "Settlement Agreement").

SECTION THREE: The General Manager of the DuPage Water Commission shall be and hereby is authorized and directed to execute the Settlement Agreement, in

substantially the form attached hereto as Exhibit 1 with such changes and revisions as may be approved or deemed necessary or desirable by the General Manager of the Commission; provided, however, that the Settlement Agreement shall not be so executed on behalf of the DuPage Water Commission unless and until the General Manager shall have been presented with copies of the Settlement Agreement executed by a duly authorized representative of BP.

SECTION FOUR: Upon execution by the General Manager, the Settlement Agreement, and all things provided for therein, shall be deemed approved and accepted by the DuPage Water Commission without further act, and the General Manager and the Commission's counsel shall be and they hereby are authorized and directed to execute all documents related to the settlement in accordance therewith.

SECTION FIVE: Resolution No. R-11-04, entitled "A Resolution Approving and Authorizing the Execution of an Interim Agreement with BP Pipelines (North America) Inc.," adopted by the Board of Commissioners of the DuPage Water Commission on March 11, 2004, and conditionally approving an interim agreement whereby BP would relocate the Conflicting Facilities without delay, and the Commission would pay, in advance but under protest, the estimated cost of such relocation, without either party having to acknowledge or acquiesce in the other's assertion of superior rights to use the property in question, shall be and it hereby is repealed and shall be of no further force or effect.

Resolution R-72-04

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

AYES:

NAYS:

ABSENT:

ADOPTED THIS _____ DAY OF _____, 2004.

Chairman

ATTEST:

Clerk

EXHIBIT 1

SETTLEMENT AGREEMENT

This AGREEMENT, made and entered into as of this ____ day of November, 2004 (“Effective Date”), by and between the DUPAGE WATER COMMISSION, a county water commission created and existing under the laws of the State of Illinois (the “Commission”), and BP Pipelines (North America) Inc. (“BP”), a Maine corporation (“BP”),

WITNESSETH:

WHEREAS, the Commission is a county water commission and as such a political subdivision and unit of local government organized and existing under the laws of the State of Illinois for the public purpose of acquiring and operating a common source of supply of Lake Michigan water; and

WHEREAS, the Commission is empowered to extend its water mains along, upon, under, and across any highway, street, alley, or public ground in the state, including highways within a municipality, without payment of a fee and as a proper use of highways; and

WHEREAS, in furtherance of its statutory purpose, the Commission is proceeding with the construction of a 72” transmission main to connect, along the Route 83 corridor, the Commission’s existing 72” Southwest Transmission Main on Butterfield Road in the City of Oakbrook Terrace with its existing 72” Northwest Transmission Main on the Illinois Prairie Path just South of Randolph Street in the City of Elmhurst (the “TIB-1/03 Inner Belt Transmission Main”); and

WHEREAS, pursuant to permit, BP Pipelines (North America) Inc. (“BP”) installed an 8” gas pipeline along the Route 83 corridor that is, in some areas, in conflict with the TIB-1/03 Inner Belt Transmission Main; and

WHEREAS, disputes have arisen between BP and the Commission concerning the Commission's right to require relocation of the conflicting 8" gas pipeline and any other conflicting BP facilities along the Route 83 corridor (collectively, the "Conflicting Facilities") at no cost to the Commission; and

WHEREAS, to cooperate in serving the public interest, to assure that inconvenience to each others operations is avoided to the greatest extent possible, to avoid controversy, and to resolve by compromise matters related to the relocation of the Conflicting Facilities due to the design, construction, and installation of the TIB-1/03 Inner Belt Transmission Main, the Commission and BP desire to settle the matter on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the Commission and BP hereby agree as follows:

SECTION ONE. PREAMBLES

The foregoing recitals are by this reference incorporated herein and made a part hereof as if fully set forth herein.

SECTION TWO. RELOCATION WORK SOUTH OF RIVERSIDE DRIVE

A. BP shall, entirely at its own expense, promptly relocate the Conflicting Facilities south of the east-west intersection of Riverside Drive and the Route 83 Frontage Road, from approximately St. 5+70 to St. 57+00, as may be reasonably required due to the design, construction, and installation of the TIB-1/03 Inner Belt Transmission Main (the "Relocation Work"). Based upon information reasonably available to date, it is believed by both parties that the Relocation Work can be limited to those areas where (1) the TIB-1/03 Inner Belt Transmission Main will be installed in between BP's facilities and West Shore Pipeline Company ("West Shore") facilities and

the separation between the West Shore facilities and the BP facilities, measured from outer edge to outer edge, is less than 16 feet and (ii) the TIB-1/03 Inner Belt Transmission Main will be installed east of BP's and West Shore's facilities and the distance between the eastern edge of BP's trench and the curb line is less than 14 feet, all as shown on Exhibit A attached hereto and by this referenced incorporated herein and made a part hereof; provided, however, that both parties acknowledge that unknown and/or unexpected subsurface, underground, or other concealed conditions or obstructions, buried structures, utility locations or conditions, adverse soil conditions, changed conditions due to work by other contractors, and similar adverse site conditions may be encountered. Therefore, in the event the Relocation Work shown on Exhibit A attached hereto does not or cannot eliminate all conflicts between the TIB-1/03 Inner Belt Transmission Main and the Conflicting Facilities along the Route 83 corridor south of the east-west intersection of Riverside Drive and the Route 83 Frontage Road, as reasonably determined by the Commission, BP shall promptly relocate such additional portion or portions of the Conflicting Facilities along the Route 83 corridor south of the east-west intersection of Riverside Drive and the Route 83 Frontage Road designated by the Commission at BP's sole cost and expense.

B. BP shall provide, perform, and complete the Relocation Work in a proper and workmanlike manner, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, applicable law.

C. BP shall remove and properly dispose of, or abandon in place in accordance with applicable law and best engineering practices, any obsolete pipe and fittings needed to be removed or abandoned in place to effect the relocation of the

Conflicting Facilities. The Commission, at no expense to BP, shall remove and stockpile, at a location provided by BP at no expense to the Commission and agreed to between BP and the Commission's contractor, any obsolete pipe and fittings abandoned in place by BP that were not removed to effect the relocation of the Conflicting Facilities but will conflict with the construction and installation of the TIB-1/03 Inner Belt Transmission Main. BP, at no expense to the Commission, shall properly dispose of the stockpiled obsolete pipe and fittings in accordance with applicable law and BP's waste disposal requirements.

D. BP shall commence the Relocation Work not later than (i) the date of execution of this Agreement by BP, (ii) the Effective Date, or (iii) the date of issuance by the Commission of Change Order No. 7 to the Commission's Contract for the Construction of the TIB-1/03 Inner Belt Transmission Main (the "Contract TIB-1/03"), whichever occurs first (the "Commencement Date").

E. BP shall diligently and continuously prosecute the Relocation Work from the Commencement Date until completed in full compliance with, and as required by or pursuant to, this Agreement. BP shall use all reasonable efforts to prosecute the Relocation Work at such a rate as will allow the Relocation Work to be fully provided, performed, and completed in full compliance with, and as required by or pursuant to, this Agreement not later December 31, 2004.

F. The time of commencement, rate of progress, and time of completion of the Relocation Work are of the essence of this Agreement.

G. In no event shall the Commission be responsible for any costs incurred to date or thereafter to be incurred by BP in connection with the design, construction, or installation of the TIB-1/03 Inner Belt Transmission Main or the relocation of the

Conflicting Facilities along the Route 83 corridor south of the east-west intersection of Riverside Drive and the Route 83 Frontage Road.

SECTION THREE. TUNNELING WORK NORTH OF RIVERSIDE DRIVE

A. The Commission shall, entirely at its own expense, construct and install the TIB-1/03 Inner Belt Transmission Main, from approximately St. 57+00 to St. 61+00, in minimum 96-inch inside diameter steel rib and timber lagging tunnel instead of in open-cut trench along the Route 83 corridor north of the east-west intersection of Riverside Drive and the Route 83 Frontage Road (the "Tunneling Work").

B. The Commission shall provide, perform, and complete the Tunneling Work in a proper and workmanlike manner, consistent with the highest standards of professional and construction practices and in full compliance with, and as required by or pursuant to, applicable law.

C. BP has (i) disclosed to the Commission the depth and location of its facilities along the Route 83 corridor north of the east-west intersection of Riverside Drive and the Route 83 Frontage Road by potholing at 10 different locations as illustrated on a marked-up set of Sheet Numbers 6 and 7 from the original final design plans for the TIB-1/03 Inner Belt Transmission Main prepared by Alvord, Burdick & Howson and dated 7/16/2003 and (ii) represented to the Commission that BP is not aware of any Conflicting Facilities installed at a depth greater than 10 feet below grade along the Route 83 corridor north of the east-west intersection of Riverside Drive and the Route 83 Frontage Road; provided, however, that both parties acknowledge that unknown and/or unexpected subsurface, underground, or other concealed conditions or obstructions, buried structures, utility locations or conditions, adverse soil conditions, changed conditions due to work by other contractors, and similar adverse site conditions

may be encountered. Therefore, in the event the Tunneling Work does not or cannot eliminate all conflicts between the TIB-1/03 Inner Belt Transmission Main and the Conflicting Facilities along the Route 83 corridor north of the east-west intersection of Riverside Drive and the Route 83 Frontage Road, as reasonably determined by the Commission, the Commission shall extend the Tunneling Work to eliminate such conflicts at the Commission's sole cost and expense or BP shall promptly relocate such portion of the Conflicting Facilities along the Route 83 corridor north of the east-west intersection of Riverside Drive and the Route 83 Frontage Road designated by the Commission at the Commission's sole cost and expense.

D. In no event shall the Commission be responsible for any costs incurred to date or thereafter to be incurred by BP in connection with the design, construction, or installation of the TIB-1/03 Inner Belt Transmission Main or the relocation of the Conflicting Facilities along the Route 83 corridor north of the east-west intersection of Riverside Drive and the Route 83 Frontage Road except for those costs, and only those costs, to be incurred by BP if the Commission directs BP to relocate any portion of the Conflicting Facilities along the Route 83 corridor north of the east-west intersection of Riverside Drive and the Route 83 Frontage Road pursuant to Section 3C of this Agreement.

SECTION FOUR. LEGAL RELATIONSHIPS AND REQUIREMENTS

A. Contemporaneously with the commencement of the Relocation Work, the Commission shall issue Change Order No. 7 to Contract TIB-1/03 directing the construction contractor to perform the Tunneling Work.

B. The Commission and BP, on behalf of themselves and their officers, directors, employees, agents, attorneys, successors, assigns, and subsidiary and

affiliated corporations, if any, each hereby releases and forever discharges the other and the other's officers, directors, employees, agents, attorneys, successors, assigns, and subsidiary and affiliated corporations, if any, of and from any and all claims, demands, and causes of action, whatsoever, whether known or unknown, relating to the relocation of the Conflicting Facilities due to the design, construction, and installation of the TIB-1/03 Inner Belt Transmission Main; it being understood, however, that the foregoing mutual releases shall not apply to the enforcement of this Agreement nor to any claims, demands, or causes of action, whatsoever, whether known or unknown, relating to any violation by BP or its officers, directors, employees, agents, attorneys, successors, assigns, or subsidiary or affiliated corporations, of any applicable environmental statutes, ordinances, rules, regulations, or orders issued by any federal, state or local environmental agency relating to the design, construction, installation, use, operation, relocation, removal, or abandonment of the Conflicting Facilities by BP, and BP shall assume all liability for, and hold harmless and indemnify the Commission from and against, any such claim, demand, or cause of action.

C. The parties agree that this is a settlement of all claims related to the relocation of the Conflicting Facilities due to the design, construction, and installation of the TIB-1/03 Inner Belt Transmission Main and that in reaching this compromise and settlement neither party makes any admission of any liability or any admission of improper conduct or any admission of any fact or legal contention.

D. The parties agree that damages and any other remedies available at law would be inadequate to redress or remedy any loss or damage suffered by the parties upon any breach of the terms of this Agreement, and the Commission and BP therefore agree that the parties may, in law or in equity, by suit, action, mandamus or any other

proceeding, including without limitation specific performance, enforce or compel the performance of this Agreement. The parties waive the requirement of proof of irreparable harm as a prerequisite to the issuance of preliminary or permanent injunctive relief or specific performance relating to violations of this Agreement, but do not waive the moving party's obligation to demonstrate the existence of such violations by competent evidence and legal argument, and do not waive the right to money damages. In the event of a judicial proceeding brought by one party to this Agreement against the other party to this Agreement upon any breach of the terms of this Agreement, the prevailing party in such judicial proceeding shall be entitled to reimbursement from the unsuccessful party of all costs and expenses, including reasonable attorneys' fees, incurred in connection with such judicial proceeding.

E. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed received by the addressee thereof when delivered in person on a business day at the address set forth below or on the third business day after being deposited in any main or branch United States post office, for delivery at the address set forth below by properly addressed, postage prepaid, certified or registered mail, return receipt requested.

Notices and communications to the Commission shall be addressed to, and delivered at, the following address:

DuPage Water Commission
600 East Butterfield Road
Elmhurst, Illinois 60126-4642
Attention: Robert L. Martin, P.E.
General Manager

Notices and communications to BP shall be addressed to, and delivered at, the following address:

BP Pipelines (North America) Inc.
28100 Torch Parkway, MC6S-601E
Warrenville, Illinois 60555
Attention: Todd M. Schutte
Manager, Mid America Business District

The foregoing shall not be deemed to preclude the use of other non-oral means of notification or to invalidate any notice properly given by any such other non-oral means.

By notice complying with the requirements of this Section 4E, the Commission and BP each shall have the right to change the address or addressee or both for all future notices to it, but no notice of a change of address shall be effective until actually received.

F. This Agreement sets forth the entire agreement of the Commission and BP with respect to the settlement and compromise of the claims and disputes that might otherwise arise between them with regard to the relocation of the Conflicting Facilities due to the design, construction, and installation of the TIB-1/03 Inner Belt Transmission Main, and there are no other understandings or agreements, oral or written, by or between the Commission and BP with respect thereto, nor was the making and execution of this Agreement induced by any representation, statement, warranty, agreement, or action other than those expressed or explicitly referenced in this Agreement.

G. No course of dealing or failure of either party to this Agreement to enforce strictly any term, right, or condition of this Agreement shall be construed as a waiver of such term, right, or condition. No express waiver of any term, right, or condition of this Agreement shall operate as a waiver of any other term, right, or condition.

H. This Agreement is entered into solely for the benefit of the Commission and BP, and nothing in this Agreement is intended, either expressly or impliedly, to

provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement, or to acknowledge, establish, or impose any legal duty to any third party.

I. This Agreement shall be governed by and construed exclusively under the applicable laws of the State of Illinois, without regard to conflicts of law principles.

IN WITNESS WHEREOF, the Commission and BP have caused this Agreement to be executed by their duly authorized officers as of the date first stated above.

DUPAGE WATER COMMISSION

BP PIPELINES (NORTH AMERICA)
INC.

By: _____

By: _____

Name: Robert L. Martin, P.E.

Name: _____

Its: General Manager

Its: _____