

WATER SALE AND PURCHASE AGREEMENT  
BETWEEN THE CITY OF CHICAGO HEIGHTS, ILLINOIS  
AND THE VILLAGE OF HOMEWOOD, ILLINOIS

This Agreement is made on the date hereinafter set forth, by and between the VILLAGE OF HOMEWOOD, an Illinois municipal corporation, by its duly authorized Board of Trustees and its Village President (hereinafter referred to as "VILLAGE") and the CITY OF CHICAGO HEIGHTS, an Illinois municipal corporation, by its duly authorized City Council and its Mayor (hereinafter referred to as the "CITY") (VILLAGE and the CITY together hereinafter referred to as the "Parties" or alone as a "Party").

WHEREAS, the VILLAGE is a municipal corporation, organized and existing under and by virtue of the laws of the State of Illinois, and

WHEREAS, the VILLAGE needs an adequate supply of potable water to serve its residents, businesses, and industries, as well as other water users herein defined; and

WHEREAS, the CITY anticipates it will be able to supply during normal times all the potable water that the VILLAGE should need or desire; and

WHEREAS, the VILLAGE is authorized by law to enter into contracts for a term of 25 years to buy water; and

WHEREAS, the VILLAGE needs a water purchase agreement which will provide an adequate supply of potable water in order to serve its water users. It is agreed and understood that the VILLAGE's water users shall include residential, commercial, and industrial consumers located within the territorial limits of the VILLAGE, as well as other municipal customers approved by the CITY; and

WHEREAS, the CITY is a municipal corporation organized and existing under and by virtue of the laws of the State of Illinois; and

WHEREAS, the CITY is currently a wholesale purchaser of potable water under a contract with the City of Hammond, located in Hammond, Indiana which owns and operates a complete water works system via the Hammond Water Works Department providing intake, treatment, and transmission of Lake Michigan Water; and

WHEREAS, the CITY is authorized by law to enter into contracts for a term of 25 years; and,

WHEREAS, the VILLAGE desires to obtain a supply of potable water from the CITY in order to provide reliable, adequate supplies of potable water on an economical and efficient basis for the VILLAGE's water users; and

WHEREAS, the CITY deems itself able to so deliver and sell potable water in amounts herein described to the VILLAGE from water mains presently in place and used by the CITY to an existing "Point of Delivery"; and

WHEREAS, the CITY and VILLAGE have determined that it is necessary and in their best interests for the CITY to contract with VILLAGE to supply its potable water.

NOW, THEREFORE, the VILLAGE OF HOMEWOOD, ILLINOIS, and the CITY OF CHICAGO HEIGHTS, ILLINOIS, do agree as follows:

### DEFINITIONS

For purposes of this Agreement, the following definitions shall apply:

*Point of Connection* - The intersection between the existing 36-inch Chicago Heights water main and the new 30-inch diameter water transmission main to be constructed by the Village of Homewood to tap into the existing Chicago Heights main. The Point of Connection is located generally on the east side of Indiana Avenue/Glenwood-Thornton Road at 183<sup>rd</sup> Street on the border of Thornton and Glenwood.

*Point of Delivery* - The location approximately 2,000 feet west of the Point of Connection where the measuring devices described in Article IV are installed.

*Hammond* - The City of Hammond, Indiana and the Hammond Water Works Department, its municipally-owned utility.

*Rate of Withdrawal* - The average daily usage by the VILLAGE and its approved municipal customer(s) each respective month, divided by twenty-four (24) hours for each day.

*Peak Hours* - 6:00 a.m. to 10:00 p.m.

*Off-Peak Hours* - 10:00 p.m. to 6:00 a.m. the following day.

*Hammond Water Base Rate* - The cost per 1,000 gallons charged to Chicago Heights by Hammond for water sold by Chicago Heights to Homewood.

*Chicago Heights Delivery Rate* - The cost per 1,000 gallons charged by Chicago Heights to Homewood for delivery of water to Homewood.

*Total Base Rate* – The sum of the Hammond Water Base Rate and the Chicago Heights Delivery Rate.

## ARTICLE I - SERVICE TO BE FURNISHED

### 101 Purchase and Sale

CITY agrees to furnish and deliver potable water to the VILLAGE and the VILLAGE agrees to purchase potable water from CITY under the terms agreed to herein, at the Point of Delivery in the Village of Thornton, Illinois. The parties agree and understand that while CITY is, at the inception of this Agreement, not the sole source provider of water to the VILLAGE, upon commencement of delivery of water the CITY shall be the sole source provider of water to the VILLAGE, subject to exceptions set forth below.

### 102 Maintenance and Capacity

(a) CITY shall maintain the capacity necessary to supply the VILLAGE's potable water needs through its water supply agreement with Hammond. CITY shall at its sole cost and expense maintain in good working condition its existing 36-inch water supply main and related pumps, storage facilities, valves, and related equipment used to supply water from Hammond.

(b) CITY shall furnish and sell potable water to the VILLAGE during the Term of this Agreement and agrees to supply the potable water to the VILLAGE as required under this Agreement to the extent that water is available to the CITY for such purpose.

(c) The VILLAGE acknowledges that it is familiar with the terms and conditions of the supply of potable water available to the CITY in its purchase agreement with HAMMOND. A copy of the CITY's agreement with Hammond is attached to this Agreement as Exhibit A. CITY agrees that it will not take any intentional action to reduce the amount of potable water available to CITY for resale to the VILLAGE under this Agreement or under any agreement for potable water that the CITY may enter into from time to time. The VILLAGE agrees that it will not, through any act or omission, cause CITY to be in breach of this Agreement.

(d) CITY represents that:

(1) Subject to approval of its City Council and Mayor, CITY has the right to enter into and carry out all the terms and conditions of this Agreement during its full term;

(2) This Agreement is valid and binding upon CITY; and

(3) CITY presently has the right to obtain sufficient potable water from HAMMOND for the purpose of reselling same to the VILLAGE during the entire term of this Agreement in order to furnish the quantities of potable water from the City of Hammond required under this Agreement, and CITY warrants that it will secure adequate quantities of potable water under any future contracts it may enter for purposes of supplying VILLAGE water under this agreement.

## **ARTICLE II - QUANTITIES OF WATER**

### **201 Quantities of Water to be Furnished**

CITY agrees to furnish and deliver to the VILLAGE quantities of potable water as provided in this Agreement to enable it to supply potable water for the VILLAGE.

### **202 State Water Allocations**

(a) The quantities of potable water supplied to the VILLAGE by the CITY pursuant to Section 201, and the VILLAGE's use of that potable water, shall, on an annual basis, not exceed the total of the annual Illinois Department of Natural Resources (IDNR) Water Allocations, including any allowable excess, in effect from time to time for the VILLAGE. VILLAGE may sell water outside of its territorial boundaries from time to time, provided Homewood's water usage does not exceed its State IDNR allowance (including allowable excesses) and is otherwise in compliance with the CITY contract with its supplier, and with the CITY's consent, which shall not be unreasonably withheld. VILLAGE may not sell water to any of CITY'S customers listed on Exhibit B.

(b) The VILLAGE shall keep on file with the CITY a current list of the IDNR Water Allocation in effect for the VILLAGE. It is agreed and understood that it is the VILLAGE's sole responsibility to ensure that the VILLAGE complies with its IDNR Water Allocation as mandated by the State of Illinois.

### **203 Emergency**

(a) If for any reason, including emergency failure or malfunction in the CITY's or its supplier's water distribution systems, the CITY is unable to furnish the quantities of potable water to be furnished from time to time to the VILLAGE, then CITY and its supplier shall use reasonable due diligence during any such occurrence to provide potable water (insofar as practicable) to the VILLAGE; pursuant thereto, CITY shall immediately request that its water supplier promptly take such actions, including making and expediting repairs or adjustments as are necessary to restore delivery to the VILLAGE of the potable water to be furnished from time to time under this Agreement.

(b) CITY shall, as soon as reasonably possible under the circumstances, give the VILLAGE notice of leaks, malfunctions, or any other unplanned conditions that might impact the CITY's ability to provide all VILLAGE's potable water needs or otherwise cause the CITY to temporarily shut down any portion of its supply source for potable water sold to the VILLAGE for a period of more than two (2) hours. The notice shall include the nature of the problem, the CITY's plan to respond to the problem, and any known and estimated timelines for resolving the problem. CITY recognizes and agrees that notice to the VILLAGE pursuant to this paragraph is crucial to the public health and safety as it allows the VILLAGE to begin preparations that may be necessary to insure adequate water capacity, including but not limited to: (1) notification to its water users; (2) placing limitations on water usage; (3) increasing its storage; (4) notification of neighboring municipalities with whom VILLAGE has emergency cross connections and the preparation for the potential need to open and operate such emergency cross connections.

(c) CITY shall provide VILLAGE at least 14 days written notice of any planned maintenance and repair activities which will result in removing from service any portion of the water main, pumps, or storage facilities by which CITY obtains the supply of water sold to VILLAGE for a period of two (2) hours or more. The notice shall include the nature of the planned work being performed, identify the equipment or items being removed from service, and advise of the time for which the equipment is estimated to remain off-line.

#### 204 City as Village's Exclusive Water Vendor.

Subject to the provisions of Section 203 above, the VILLAGE shall purchase its potable water supply exclusively from the CITY, to the exclusion of all other water vendors except in the event of an emergency that precludes the CITY from meeting its water delivery obligations to the VILLAGE hereunder. The CITY shall advise the VILLAGE as soon as reasonably possible under the circumstances should such an emergency arise. The CITY shall also advise the VILLAGE once the emergency has been resolved and CITY delivery resumed, at which time delivery from an emergency source to the VILLAGE shall cease.

#### 205 Sale of Water by Village

(a) VILLAGE is hereby authorized by CITY to resell water to the Village of Flossmoor. If VILLAGE contracts to resell water to the Village of Flossmoor, the water quantity limitations in paragraph 202(a) shall include the Village of Flossmoor's annual Illinois Department of Natural Resources (IDNR) Water Allocation.

(b) CITY understands that VILLAGE now has, or in the future may have, cross-connections between its waterworks system and those of other communities, and may from time to time hereafter relocate, add, or delete such connections. CITY further

understands that the purpose thereof is to enable VILLAGE to engage in mutual assistance programs with such municipalities, to furnish water or to receive water from the same in an emergency. Nothing herein shall be construed to limit the VILLAGE's right to engage in such mutual assistance programs.

(c) At such time as territory is annexed to VILLAGE, consumers within such territory may be sold water hereunder.

(d) At such time as territory is detached from VILLAGE and annexed to another municipality, VILLAGE may continue to sell water to consumers located in such territory until the right of such consumers to purchase water from VILLAGE is terminated as provided in Section 7-1-37 of the Illinois Municipal Code (65 ILCS 5/7-1-37) or as such statute may be amended.

(e) At such time as territory is detached from VILLAGE but not annexed to another municipality, VILLAGE may, in its discretion, continue to sell water to consumers located in such territory.

### **ARTICLE III - DELIVERY AND STORAGE**

#### **301 Point of Delivery**

Water shall be deemed delivered to Homewood at the Point of Delivery.

#### **302 Village-Owned Water Facilities**

The VILLAGE shall provide, operate, maintain, repair, replace, improve and expand transmission mains, pumps, appurtenance and any other necessary equipment, on its distribution system that it either now has or is in the process of providing, and any other necessary equipment to ensure itself that it can receive and distribute the potable water to be furnished from time to time under this Agreement.

#### **303 Commencement of Delivery**

The delivery of potable water by CITY under the terms of this Agreement shall commence no later than December 31, 2022.

#### **304 Rate of Withdrawal**

The potable water to be furnished from time to time under this Agreement shall be withdrawn at the Point of Delivery on an hourly even flow basis. The VILLAGE may exceed the Rate of Withdrawal only with the consent of CITY during Peak Hours. The VILLAGE may exceed the Rate of Withdrawal during Off-Peak Hours, subject to Section 307. The Parties agree that CITY shall have the right to restrict the supply of water to the VILLAGE in the same manner that it restricts the supply available to other

customers and to its residents in order to ensure an adequate supply to all purchasers of the CITY for public health and fire protection.

### 305 Pressure

(a) The VILLAGE further agrees to operate its supply system so that normally all water supplied by CITY will pass through ground-storage tanks prior to being pumped to the VILLAGE's distribution system. No direct pumpage from the CITY's supply or supply lines or shall be utilized by the VILLAGE at any time except at such times when it is necessary to take the tanks out of service for maintenance, repairs and painting and then only after receiving the approval of the CITY in writing. This paragraph does not apply to emergency situations. It is understood and agreed that an emergency is not defined as a peak demand hour or day.

(b) The VILLAGE shall accept potable water at the Point of Delivery at the pressure that exists in the main of the CITY at such point. The intent of CITY is that the CITY is to maintain pressure satisfactory for its own potable water users in the immediate area of the Point of Delivery, these pressures therefore being available for the service to the VILLAGE. CITY shall furnish potable water to the VILLAGE at a minimum of 35 P.S.I.

In the event that the VILLAGE desires to construct additional facilities to carry the potable water from the Point of Delivery and/or from some other point or points to and through its own distribution system to serve its customers, all such extensions, pumps, equipment and system shall be furnished, installed, operated and maintained by the VILLAGE. CITY shall not have control, responsibility, or any duty to maintain any such equipment or system.

The CITY shall in no event be responsible to the VILLAGE or any of its residents or water users, nor shall any right of action arise or exist against the CITY in favor of the VILLAGE or any of its residents or water users by reason of variations in the main pressure at the point of delivery of such potable water caused by the VILLAGE, and the VILLAGE shall hold the CITY harmless from and indemnify any and all claims relating to main pressure at the point of delivery of such potable water. It is understood and agreed that the VILLAGE shall take the potable water at the Point of Delivery at the water quality as provided in Section 306 and as further defined in Section 304 and Section 307 herein.

### 306 Water Quality

(a) CITY shall supply the VILLAGE at the Point of Delivery with potable water of a quality commensurate with that furnished by the CITY to its own residential customers within the CITY. At a minimum all potable water furnished to the VILLAGE at the Point of Delivery shall meet all applicable potable water quality standards

established by any Federal or State Environmental Protection agency with jurisdiction over the CITY for public potable water supply.

(b) In the event that the potable water fails to meet the minimum water quality standards at Point of Delivery established by Section 306(a), the CITY shall, after receiving notice, take immediate action to correct any such water quality deficiency.

(c) The CITY shall bear no responsibility for water quality of potable water beyond the Point of Delivery.

(d) The VILLAGE and CITY shall each immediately notify the other as promptly as practicable of any failure of potable water to meet the water quality standards set by the Federal or State Environmental Protection Agency in either Party's system. Notifications under this Section going to either party shall be given directly to the City Council and Mayor of the CITY and Board of Trustees and Village President of the VILLAGE;

(e) The CITY shall not be responsible to the VILLAGE or any of its residents or water users, for any pollution that might exist in the potable water furnished under this Agreement that arises in any distribution system of the VILLAGE. The facilities to prevent pollution that the CITY now uses are, for the purpose of the Agreement, deemed adequate by the Parties. The Parties recognize and acknowledge that currently, (i) the source of water supply is Lake Michigan at the boundary of the City of Hammond, Indiana, with Lake Michigan, (ii) both Parties are familiar with the conditions existing at the source, and (iii) the CITY and VILLAGE are familiar with the method employed by HAMMOND and its water works UTILITY to secure Lake Water, treat it for consumption, and distribute it in its distribution mains.

(f) If the VILLAGE causes any pollution of the water in the system of the CITY, the Parties shall immediately investigate the condition, and the VILLAGE shall immediately remedy and remove any such condition. If the remedying of such VILLAGE caused pollution requires work to be done, by the CITY on the CITY's own system, then the VILLAGE promises and agrees to reimburse and indemnify the CITY directly for such remedial work done and the damages resulting therefrom.

(g) If the CITY causes any pollution of the water in the system of the VILLAGE, the Parties shall immediately investigate the condition, and the CITY shall immediately remedy and remove any such condition. If the remedying of such CITY caused pollution requires work to be done, by the VILLAGE on the VILLAGE'S own system, then the CITY promises and agrees to reimburse and indemnify the VILLAGE directly for such remedial work done and the damages resulting therefrom.



307 Water Storage and Time of Pumpage

(a) The VILLAGE shall provide and maintain at all times during the term of this Agreement water storage of sufficient capacity to store not less than 1.5 times the average daily usage from time to time in effect for the VILLAGE (per IEPA Title 35, Subtitle F, Section 653.110). In the event the VILLAGE's storage capacity falls below this capacity for a reason that is unrelated to the temporary removal of a storage facility for repairs or maintenance, VILLAGE shall construct and provide additional storage that is sufficient to increase its storage to the required amount.

(b) In the event the supply from CITY is, for any reason, temporarily unavailable, the VILLAGE shall utilize its water storage capacity for supply during Peak Hours to minimize strain on the CITY's water system.

308 Territorial Responsibilities

The VILLAGE and the CITY shall furnish, install, operate and maintain their respective equipment and systems located within their territorial boundary limits, except as herein otherwise provided, and the CITY shall in no way, or at no time, be obligated to do, or perform any act inside the VILLAGE limits except as may be provided in Section 306 herein above set out.

## ARTICLE IV - MEASUREMENT

401 Point of Delivery

The CITY shall measure the quantity of potable water furnished to the VILLAGE under this Agreement during each hour of each day at the Point of Delivery. The unit of measurement shall be gallons of water, U. S. Standard Liquid Measure, or such other unit of measurement as the Parties may agree in writing.

402 Measuring Devices

(a) The measuring devices, together with a meter housing or other suitable meter enclosure, structure or building to house them, all as described in "Exhibit C" (collectively, the "Devices"), shall be used at the Point of Delivery for the purpose of controlling, measuring, and recording the quantity of potable water furnished under the Agreement and of transmitting and recording pressures and other required operational information to the VILLAGE and CITY. The devices shall be compatible with CITY's SCADA system and shall be capable of reporting said measurements/readings/data as required to CITY. A remote terminal unit (RTU) compatible with the CITY's SCADA system and programmed by CITY's System Integrator shall be provided in the meter enclosure to facilitate communication to CITY's SCADA system. The Devices shall be subject to the approval of the CITY's

engineers. "Exhibit C" shall be a complete set of working drawings of the Devices prepared and provided by the VILLAGE subsequent to the execution of this Agreement and subject to the approval of the CITY Engineer which approval shall not be unreasonably withheld. "Exhibit C" may be amended from time to time by the VILLAGE, only with the prior approval of CITY.

#### 403 Installation and Maintenance of Devices

(a) At the Point of Delivery, the VILLAGE, if required by CITY, will be responsible for the cost and the installation of new meter housing. Said new meter housing shall contain all necessary valves, check valves, special fittings, special castings, drains, suitable entrance to the same, and any other additional equipment and devices to provide a complete installation. All such meters, valves and other appliances, devices and materials shall be subject to the approval of the CITY. All materials for the meter housing, including the equipment located therein, shall be furnished and installed by the VILLAGE subject to the approval of CITY. After installation, the meters shall be maintained, both as to repair and replacement, by the CITY, and the meter housing and other related equipment shall be maintained, both as to repair and replacement, by the VILLAGE. The VILLAGE shall also install such devices as are necessary for CITY to measure water flow and water pressure at the Point of Delivery by telemetry. VILLAGE shall be responsible for all costs and expenses associated with the installation of said meters, meter housing and all appurtenant equipment. Upon completion of the construction and installation of said meters, meter housing and all appurtenant equipment, ownership of the meters shall be vested in the CITY and ownership of the meter housing and all appurtenances and equipment shall be vested in the VILLAGE. The CITY shall then be responsible for the maintenance of the meters and the expenses for such maintenance, and the VILLAGE shall then be responsible for the maintenance of the meter housing and all related appurtenances and the expenses for such maintenance.

(b) Title to all materials, equipment, meters, booster pumps, pump stations, all associated appurtenances, and water lines, including the existing 36-inch main and the new 30-inch main to be constructed by the Village of Homewood and described in Article VII below, up to the Point of Delivery is vested in the CITY. Ownership of the meter housing, and all materials, equipment, water lines, booster pumps, pump stations, and all associated appurtenances beyond the Point of Delivery is vested in the VILLAGE. The VILLAGE shall permit the CITY unfettered access to the meter housing at all times. Once constructed by the VILLAGE, the CITY shall be responsible for the operation, maintenance, repair, and replacement of the water main from Point of Connection to the Point of Delivery.

(c) Prior to beginning construction of the new 30-inch main, the VILLAGE shall provide CITY with a complete set of working drawings, diagrams, and plans for the construction leading to the Point of Delivery. The CITY Engineer shall have the right

to approve same and such approval shall not be unreasonably withheld. Said plans shall also contain the legal descriptions of any easements acquired by the VILLAGE for such purpose. Said drawings, diagrams, plans, and easement descriptions are attached and incorporated as Exhibit D.

(d) The VILLAGE agrees to notify the CITY at least fifteen (15) days before performing any planned installation, repair or replacement of the VILLAGE owned water supply line or related appurtenances. Included with said notice shall be detailed plans of the proposed installation, repair or replacement and the CITY shall have fifteen (15) days after notice to review said plans and specify what, if any, modifications to the plans must be made by the VILLAGE to have the water pipeline and related appurtenances conform to the plans and specifications set forth in "Exhibit B and Exhibit D".

(e) CITY shall have the right during the process of any installation, repair, or replacement of the water supply line, measuring devices, or related equipment, to inspect such work at any time and shall promptly notify the VILLAGE of its findings as to the conformance of the work with the plans and specifications for Devices set forth in "Exhibits C and D".

(f) CITY shall install and implement a fourth pump and permanent generator at the Lansing Pumping station by June 30, 2022.

(g) CITY shall conduct and complete an engineering study to determine the feasibility of installing a second water delivery pipeline beneath the Calumet River. Said study shall be completed by December 31, 2022.

#### 404 Access to Devices

Authorized representatives of the VILLAGE and the CITY shall have access at all reasonable times to all of the Devices for examination, inspection, and testing.

#### 405 Operation, Inspection and Calibration of Devices

The CITY will annually calibrate the accuracy of each of the meters and appurtenant equipment for the purpose of measuring the supply of potable Water furnished under this Agreement. The results of any such inspection and calibration shall be immediately provided to the VILLAGE.

#### 406 Readings

The readings made of the meters for the purpose of billing the VILLAGE shall be made by the CITY on the first business day of every calendar month. CITY shall immediately provide the readings to the VILLAGE.

The amount of water purchased and sold shall be determined by the meter readings installed at the Point of Delivery, as aforesaid, and the VILLAGE shall pay for water as shown by such readings. In the event that such meter or meters shall become out of repair for a period of ninety (90) days, until such meter(s) are repaired or replaced, then the parties shall compute the water delivered and not metered on a basis of the water readings for the same month of the previous year, and the daily average for such period shall be used as the basis for computing the amount of water delivered and not metered, and the amount to be paid for such unmetered period shall be based upon such computation.

## ARTICLE V - WATER RATES

### 501 Total Base Rate

For the water furnished and delivered by the CITY under this Agreement, the VILLAGE agrees to pay the following Total Base Rate:

Hammond Water Base Rate: \$ 2.05 per 1,000 U.S. gallons;

Chicago Heights Delivery Rate: + \$2.00 per 1,000 U.S. gallons; equals

= Total Base Rate: \$4.05 per 1000 gallons.

### 502 Rate Modifications

(a) At the time the CITY begins delivering water to the VILLAGE (estimated to be no later than December 31, 2022) the total base rate for water quantity supplied hereunder shall be \$4.05 per one-thousand gallons ("Total Base Rate"). The Total Base Rate excluding any surcharge or tax imposed by a third party pursuant to Section 503 shall be adjusted annually on the anniversary of the commencement of water delivery or January 1, 2023, whichever occurs first, by increasing the Total Base Rate by the increase in the Consumer Price Index - For All Urban Consumers (CPI-U) for the preceding 12-month period ("Adjusted Base Rate"), provided, however that the amount of the annual increase to the Total Base Rate shall not be less than 1 percent (1%) and shall not be more than 3 percent (3%), irrespective of the actual change in the CPI-U. Each annual increase thereafter in the Adjusted Base Rate shall be cumulative of the preceding annual increase.

(b) The CITY shall give VILLAGE annual written notice of any increase in the Rate thirty (30) days prior to the effective date of the modification of the Total Base Rate.

(c) The VILLAGE agrees that, with respect to any future rate adjustments imposed by a third party, including, but not limited to, modifications of the Hammond Water Base Rate, in the event any approval is required by law, that the VILLAGE will, without objection, join any petition, rate schedule, tariff, or other documents or proceedings which may be necessary to be filed with any public body. Further, the VILLAGE agrees to abide by such adjusted rate and to pay same.

#### 503 Surcharge or Tax

No surcharge fee or tax shall be added to the Hammond Water Base Rate or Chicago Heights Delivery Rate provided for in this Agreement by CITY. Except that, in the event that a tax or other fee is imposed on the CITY by a third-party government authority with respect to its sale of potable water under this Agreement, such tax or fee will immediately be added to the then current Hammond Water Base Rate and/or Chicago Heights Delivery Rate charged to the VILLAGE.

#### 504 Customer Charges

The CITY shall have no right to determine charges for potable water furnished by VILLAGE to its water users.

### ARTICLE VI - BILLING

#### 601 Frequency

(a) The CITY shall bill the VILLAGE each month for the water used each month and the VILLAGE promises to pay such statement in full without discount within thirty (30) days after the receipt of such bill. Late Charges shall be assessed against the VILLAGE at 5% of the past due amount.

(b) In the event the CITY shall be required to alter, amend or establish a new rules or rules, by order of the State of Illinois, or by law, then the existing rules of the CITY and such alterations, amendments, or new rules, shall apply and govern the parties hereto.

(c) The VILLAGE agrees to budget annually sufficient money to pay for the water furnished by CITY hereunder. The VILLAGE further agrees that it will at all times charge its water users sufficient rates in order to provide adequate funds for the payment of water furnished by CITY.

(d) In the event the VILLAGE shall not pay its water bill on time, then to secure prompt payment of the water bills, CITY shall also have the right at any time to require the VILLAGE to pay in advance a sum of money estimated by the CITY Treasurer to be equal to the cost of water required by the VILLAGE for a period of

ninety (90) days at the then-prevailing metered rate, which said advance payment the VILLAGE hereby agrees to make upon written demand

(e) If the VILLAGE shall refuse, neglect or fail to pay promptly the water bills rendered for the potable water supplied it hereunder within the time or times prescribed herein, and the CITY shall deliver by mail to the VILLAGE's Board of Trustees Office a notice in writing of its intention to shut off the supply of Lake Water on account of such failure, refusal or neglect, then CITY shall have the right to shut off the supply at the expiration of fifteen (15) days after the giving of such notice, and to terminate this agreement unless within such fifteen (15) days, the VILLAGE shall make good such failure. The shutting off of the supply of Potable Water for any such cause shall not release the VILLAGE from its obligation to make payments of any amount or amounts due or to become due in accordance with the terms hereof.

602 Basis

Bills shall be based on readings of the Devices at the Point of Delivery, subject to the terms of Section 407 above.

603 Form

(a) Each bill shall indicate the total amount of potable water delivered as evidenced by the readings of the meters at the beginning and end of each billing period.

(b) Each bill shall specify the basic charge per unit of potable water furnished and such adjustments, if any, as are applicable.

## **ARTICLE VII -CONSTRUCTION BY THE VILLAGE**

(a) Immediately after the effective date of this Agreement, the VILLAGE will take such steps as are necessary to construct a thirty (30) inch diameter water transmission main and all related appurtenances necessary from the Point of Connection to the Point of Delivery and transport said water to its reservoir, said reservoir, water main, and appurtenances and the locations of same as described on Exhibit D attached hereto.

(b) In addition to the above construction, the VILLAGE shall also simultaneously construct a meter housing at the said Point of Delivery.

(c) The plans, specifications, bid documents, contracts, construction documents, and construction observation of the water main and meter housing to be constructed by the VILLAGE shall be prepared by the engineering firm as directed by the VILLAGE. The plans, specifications, and bid documents for the meter housing will be subject to prior approval by the CITY'S Engineer. All improvements constructed under this section when installed shall be sufficient to comply with the intent of this Agreement.

(d) During any construction by the VILLAGE, the CITY may have its Engineer present on the job site to make recommendations and to observe the construction.

(e) The CITY and VILLAGE agree that the work as shown on the approved plans is acceptable.

(f) All construction, engineering, and real property acquisition costs required of the VILLAGE by this Article VII shall be at the VILLAGE's expense. All engineering or plan review costs undertaken by the CITY shall be at the CITY's expense.

(g) VILLAGE shall obtain a permanent easement for location of the new 30-inch transmission main, naming VILLAGE and CITY as grantees. VILLAGE also shall obtain temporary easements required for construction of the new 30-inch main described in Exhibit D, or as otherwise required by final engineering plans approved by CITY, naming the VILLAGE as grantee. CITY will not be required to provide water or make any other improvements hereunder until such time as the easements are obtained.

(h) VILLAGE shall also be required to obtain permits from all applicable federal, state, and local authorities having jurisdiction over the construction of any of the improvements set forth in Exhibit D or as otherwise required in the final engineering plans approved by CITY.

(i) Immediately after the effective date of this Agreement, the VILLAGE will take such steps as are necessary to construct internal water system improvements sufficient to comply with the intent of this Agreement.

(j) Any specifications for improvements to be constructed by the VILLAGE under this Agreement shall be under the VILLAGE's control. All such improvements, when completed, shall be sufficient to comply with the intent of this Agreement.

## **ARTICLE VIII - TERM AND STANDARD CONDITIONS**

### **801 Term**

This Agreement shall expire twenty-five (25) years from the commencement of water delivery.

### **802 Assignment**

The payments due to CITY from the VILLAGE pursuant to this Agreement shall be assignable by the CITY without the prior written consent of or notice to the VILLAGE. In regard to any assignment, novation, or transfer of the CITY's rights and obligations to VILLAGE hereunder, the CITY shall provide VILLAGE with no less than 60 days advance notice of the effective date of such assignment, novation, or transfer.

803 Title to Water

Title to all potable water supplied under this Agreement shall remain in CITY to the Point of Delivery, and upon passing the Point of Delivery, title to the potable water shall pass to the VILLAGE.

804 Amendment

This Agreement may be amended only by a written agreement between the Parties hereto.

805 Notices

All notices under this Agreement shall be in writing either delivered or mailed, certified mail return receipt requested, to the CITY at:

Office of the Mayor  
The City of Chicago Heights, Illinois  
1601 Chicago Road  
Chicago Heights, Illinois 60411

and to VILLAGE at:

Village President  
Village of Homewood  
2020 Chestnut Road  
Homewood, Illinois 60430

With copies to:

Christopher J. Cummings  
Village Attorney  
2024 Hickory Road Suite#205  
Homewood, IL 60430

and

Village Manager  
2020 Chestnut Road  
Homewood, IL 60430

or at such other address as such party by written notice may designate and shall be deemed given when so delivered.



806 Indemnification

The CITY shall not be responsible for damages to person or property for any failure to supply water or for interruption of the potable water supply furnished hereunder.

The VILLAGE agrees to hold harmless and indemnify CITY against any and all claims for losses, liability or damage, including fees and expenses, arising out of or in connection with any intentional, willful or negligent actions or omissions of the VILLAGE, and the VILLAGE hereby assumes all risks of loss, damage or injury to person or property, in the distribution of said potable water after received at the Point of Delivery.

The CITY agrees to hold harmless and indemnify VILLAGE against any and all claims for losses, liability, or damage, including fees and expenses, arising out of or in connection with any intentional, willful, or negligent actions or omissions of the CITY.

The VILLAGE further agrees to hold harmless and indemnify the CITY against all claims for any dispute, loss, damage, or injury sustained, of any kind, nature or description, including attorneys fees and expenses incurred by the CITY by reason of any claims made against the CITY by residents or Authorized Users of the VILLAGE, relating to the CITY's furnishing potable water to the VILLAGE under this Agreement.

807 Miscellaneous

(a) This Agreement supersedes all prior negotiations or understandings and is the whole agreement of the parties. There are no other oral or written agreements concerning the subject of this Agreement.

(b) The provisions of this Agreement shall be interpreted when possible in a manner to sustain their legality and enforceability. The unenforceability of any provision of this Agreement in a specific situation shall not affect the enforceability of that provision in another situation or the remaining provisions of this Agreement. If any part of this Agreement shall be held invalid for any reason, the remainder of this Agreement shall remain valid to the maximum extent possible.

(c) This Agreement is performed in the State of Illinois and is to be construed under applicable Illinois law which shall apply to its enforcement, construction, and interpretation.

(d) The parties stipulate that the sales under this Agreement constitute wholesale sales between Illinois municipalities. By executing this Agreement, neither party acquiesces that the rights and obligations contained within this Agreement are subject to the interpretation, enforcement, or jurisdiction of any administrative agency.

(e) In the event of need for enforcement or interpretation of any provision in this agreement, the parties agree that the Federal and State Courts located in the State of Illinois shall have exclusive jurisdiction. However, in the event that CITY requests that the VILLAGE cooperate and assist CITY in any proceeding before any other regulatory body, then the VILLAGE agrees to cooperate or assist the CITY as requested.

(f) In the event any statute, either of the United States, the State of Illinois, or any rule is subsequently promulgated by any governmental agency of the United States or the State of Illinois, binding upon CITY, and solely by reason thereof, CITY shall not be permitted to deliver water to the VILLAGE, as provided for in this contract, then this contract may be cancelled by CITY without any liability to the CITY. However, in the event of same, VILLAGE shall have four (4) years to find an alternative water source and the CITY shall continue to provide water to VILLAGE under the terms herein to the extent permitted by law.

(g) Further, should any law, rule or regulation be passed and adopted by any governmental agency binding on the CITY as to the grade of water to be furnished, or its distribution, then the VILLAGE agrees that when the CITY delivers water in compliance with such law, rule or regulation, that it has completed the obligation on its part to be performed under this Agreement.

(h) In the event that the VILLAGE shall desire, at the expiration of this Agreement, to continue to purchase potable water from CITY, it shall twelve (12) months before the expiration of this contract so notify CITY, and, if CITY desires to continue to sell, and if and only if, the parties hereto agree to the terms and conditions of a new Purchase Agreement, including a new base rate, before the expiration of this Agreement, shall CITY be obligated to continue to supply potable water to the VILLAGE and its water users beyond the expiration of this Agreement. If VILLAGE decides not to negotiate a new Purchase Agreement, or if the VILLAGE and CITY fail to agree on a new Purchase Agreement, the VILLAGE shall have four (4) years from the current contract expiration date to identify and connect to a new water source. During this four year period, the CITY shall continue to provide water to the VILLAGE under the terms in effect at the contract expiration date, subject to approval by HAMMOND, and further subject to a new "Hammond Base Rate" as may be imposed upon the CITY by HAMMOND pursuant to the contract between HAMMOND and CITY at that time.

(i) This Agreement may be canceled by CITY in the event a court of competent jurisdiction or a governmental agency: (1) decrees that CITY has no right to contract for, sell, or distribute potable water; (2) limits the amount of potable water CITY may use for domestic pumpage or otherwise places a material burden on CITY in connection with the provision of water; or (3) limits disposition of water from Lake Michigan or any other source providing water to the CITY from time to time.

(j) The CITY shall form a Wholesale Customer Water Committee within one year of water delivery under this agreement. Said Committee shall be advisory in nature and shall be comprised of up to two representatives from each of CITY's wholesale municipal customers. The purpose of said Committee shall be to serve as a basis for discussion of the water system operations, concerns, capital improvements, and issues relevant to same.

(k) The authority of the officials of the VILLAGE to execute this Agreement is evidenced by the authority of the Village President and Board of Trustees of the Village of Homewood given by the attached Ordinance adopted at a regular meeting held on the 28<sup>th</sup> day of July, 2020.

(l) The authority of the officials of the CITY to execute this Agreement is evidenced by the Resolution adopted by the CITY OF CHICAGO HEIGHTS, ILLINOIS, at a regular meeting of its Mayor and City Council duly held on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

(m) The CITY agrees to appropriate annually sufficient money to pay for water furnished by HAMMOND. The CITY further agrees that it will at all times charge its water users sufficient rates in order to provide adequate funds for the payment of the water furnished by HAMMOND.

(n) The CITY agrees to appropriate annually sufficient money to pay for the maintenance and repair of its water system up to the Point of Delivery.

(o) If the CITY is in arrears with its payments to HAMMOND for more than six (6) months, VILLAGE shall have the right to pay HAMMOND'S Water Base Rate directly to HAMMOND for water sold to VILLAGE by CITY until such time that the CITY's arrearage to HAMMOND is paid in full.

(p) If the CITY does not repair damage to its water system within a reasonable time so that it will function as required under the agreement, VILLAGE shall have the option to make repairs to the CITY water system necessary to restore functionality. CITY shall reimburse VILLAGE for the reasonable cost of repair. If CITY fails to reimburse VILLAGE for the reasonable cost of repair, VILLAGE may deduct those reasonable repair costs from the water billing to VILLAGE by CITY. Such deductions for such purpose shall not be a default under this Agreement.

(q) Upon receiving payment from VILLAGE, CITY shall promptly pay to HAMMOND that portion of VILLAGE'S payment attributable to the HAMMOND Water Base Rate charge. CITY shall, upon request, provide proof of such payments to VILLAGE.

(r) CITY shall annually provide VILLAGE a copy of its audit report prepared in compliance with the Illinois Municipal Auditing Law (65 ILCS 5/8-8-1 *et seq.*) within 180 days of its fiscal year end.

(s) The CITY and VILLAGE shall each notify and keep the other informed of the name of the individuals(s) in charge of operations of its respective water system.

## ARTICLE IX - ADDITIONAL TERMS

### 901 Village Remedies Upon City Default

The CITY shall be in default of this Agreement if the CITY fails to perform or observe any covenant, duty, or obligation of this Agreement within 30 days after receipt of written notice thereof from the VILLAGE (which written notice shall specifically describe the covenant, duty, or obligation which the other party has allegedly failed or refused to perform or observe). If such default is cured by or on behalf of the CITY within such 30-day period, the default shall be deemed waived. If the default is one which cannot be reasonably cured within 30 days and if the CITY shall commence curing the same within such 30-day period and thereafter diligently proceed obtain cure of the default, the said 30-day period shall be extended for such time as is reasonably necessary for the curing of the same. So long as the defaulting party diligently proceeds therewith, if such default is cured within such extended period, the default shall be deemed waived.

If and when any Default by the CITY shall occur, and not be cured as set forth in this Agreement, the VILLAGE may, at its option, (1) seek injunctive relief compelling the CITY to perform its obligations under this Agreement; (2) pursue all other rights and remedies that may be available by law or equity, including suit for accounting or damages; or (3) terminate this Agreement by giving written notice of termination to CITY.


### 902 Legal Fees and Costs

If either Party institutes legal proceedings against the other Party relating to a default under this Agreement and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in its judgment all expenses of such legal proceedings incurred by the prevailing party, including court costs, reasonable attorneys' fees, and witness fees in connection therewith.

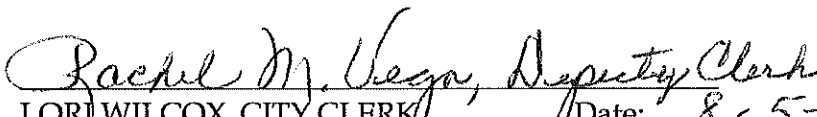
SIGNATURE PAGE FOLLOWS

IN WITNESS this Agreement, the CITY and VILLAGE have executed this Agreement as dated below by each Mayor:


APPROVED for the City of Chicago Heights:

  
\_\_\_\_\_  
DAVID A. GONZALEZ, MAYOR Date: 8/5/20

Attest:

  
\_\_\_\_\_  
LORI WILCOX, CITY CLERK Date: 8-5-20

APPROVED for the Village of Homewood:

  
\_\_\_\_\_  
RICHARD A. HOFELD, VILLAGE PRESIDENT Date: 7/28/2020

Attest:

  
\_\_\_\_\_  
MARILYN THOMAS VILLAGE CLERK Date: 7-28-20

## **EXHIBIT INDEX**

Exhibit A: CITY's 2013 Water Supply Agreement with Hammond; the CITY's 2018 Contract with Hammond for additional water supply; and, the 1st Amendment to the CITY's 2018 Contract with Hammond for Additional water supply; and the 2nd Amendment to the CITY's 2018 Contract with Hammond for Additional Water Supply.

Exhibit B: List of CITY customers to which water sales are prohibited.

Exhibit C: Complete set of working drawings of measuring devices and pertinent equipment.

Exhibit D: Complete set of working drawings, plans, diagrams, and easements for the new 30-inch diameter water transmission main to be constructed by the VILLAGE.

## EXHIBIT A

City of Chicago Heights 2013 Water Supply Agreement with Hammond; the City of Chicago Heights 2018 Contract with Hammond for additional water supply; and, the 1st and 2<sup>nd</sup> Amendments to the City of Chicago Heights 2018 Contract with Hammond for Additional water supply.

(to be added)

## EXHIBIT B

List of Chicago Heights municipal customers to which water sales are prohibited:

South Chicago Heights

Glenwood

Thornton

Ford Heights

Sauk Village



## EXHIBIT C

Complete set of working drawings of measuring devices and pertinent equipment.

TO COME

## EXHIBIT D

Complete set of working drawings, plans, diagrams, and easements for the new 30-inch diameter water transmission main to be constructed by Homewood.

TO COME