



TO: Mayor Satterthwaite and Urbana City Council

FROM: Steve Holz, City Attorney

DATE: January 12, 2005

**RE: Proposed Ordinance Authorizing the Mayor to Execute
An Agreement with Illinois-American Water Company
Concerning the Use of Public Ways of the City,
Fire Protection, and Other Related Matters**

A. Introduction:

This Report summarizes negotiations with Illinois-American Water Company and summarizes a proposed agreement between the City of Urbana and the Illinois-American Water Company.

The City and Water Company's current 15-year agreement expired on December 31, 2004. Staff has concluded negotiations that have resulted in an agreement with more protection for the City, but with no option to purchase. Since the option to purchase would have provided some ultimate assurance, a short (2-year renewable) term has been negotiated to provide an acceptable, though lesser, alternative.

B. Background:

1. Existing Agreement. After over 40 years without a written agreement or payment for use of the City's right-of-way, the City (in conjunction with the City of Champaign) and Northern Illinois Water Company concluded an agreement in 1989. The 15-year agreement provided for the payment of right-of-way fees and certain other protections relative to right-of-way protection and fire hydrants. With several extensions that were authorized by the Council, the agreement remained in effect until December 31, 2004.

2. Sale of Company.

a. Sale to American. After a complex series of transactions, the owner of Northern Illinois Water Company (National Enterprises Inc.), which was headquartered in Champaign, sold the local water company (and others that it controlled) to the American Waterworks Company of Voorhees, New Jersey, in 1999. Upon the sale, billing functions, along with other many regional central office functions moved to Alton, site of some of American's multi-state operations.

The American Waterworks Company had an existing presence in Illinois under the name of Illinois-American Water Company, including in Pekin and Peoria. Peoria is still in the process of exercising its option to purchase local water operations while Pekin is in the Appellate Court after the Illinois Commerce Commission failed to approve its condemnation action.

b. Sale to RWE. In 2003, American Waterworks Company was purchased by the Thames Water Company, headquartered in London, England. Thames had been purchased several years before by R.W.E., a German multinational firm, headquartered in Essen, Germany. (Interestingly, R.W.E. was started by a consortium of German municipalities, which still reputedly own 30% of the company's stock, a controlling interest.)

3. Negotiations. Negotiations commenced in June 2003 between the company and both the City of Champaign and City of Urbana. Negotiations originally began on a biweekly basis; however, in the past two months, the attorneys/negotiators have been meeting on a weekly basis. The company has sought to maintain the status quo (i.e., the existing agreement language), in negotiations, while the two cities have sought increased protections and accountability. The negotiators for the Cities have consulted with both City Councils over the past year and a half in public sessions, while the Company has consulted privately, up the corporate chain of command.

As the Council is aware from prior updates, all of the company's original negotiators have transitioned - the local manager to another position with the company, the local engineer out of the company, and the attorney out of the company. The former General Counsel of Illinois-American Water Company has continued negotiations on behalf of the company.

4. Illinois Power Backdrop. The negotiations have been significantly influenced by successive sales of the company, as well as the problems involving successive sales presented by another utility -- Illinois Power. When Illinois Power was sold to Dynegy, significant areas -- including customer service, system maintenance, and capital projects implemented -- dropped significantly, all negatively effecting service reliability. The Cities have been very aware that the same could unfold in the case of the water company. Certainly, some of the recent reorganization actions point in that direction. However, it is difficult to determine how the changes in ownership and the reorganization will impact the operations "on the ground" and the rates.

C. Negotiation Results:

In the proposed agreement negotiated to date, the Cities have achieved a greater degree of enforceable accountability from the company. However, the Company has not agreed to the ultimate accountability goal, an option to purchase.

1. Option to Purchase and Right of First Refusal. The Council expressed a desire that a new agreement with the company should contain an option to purchase. In essence, a typical option to purchase would allow the City to decide to purchase the company without the need to go through a condemnation action. Such an option would be the most direct and significant method of ensuring an efficient and effective company, because it would carry the threat of an involuntary purchase of the company by the City in the event the company fails to perform satisfactorily. Though the Cities' negotiators explored many facets of the "option" alternative, the company was not willing to agree to an option to purchase.

The company was willing to agree to a "right of first refusal," albeit a very limited one. A right of first refusal enables the City to demand to purchase the system if the system is placed on the market for sale. The best language the company was willing to offer establishes a right of first refusal that comes into play only in the limited and narrow situation where the company decides to place the local system on the market as an isolated sale. The language does not give the Cities the right to purchase the local system if the local system is sold as part of an overall sale to another company. In the view of the Cities' negotiators, this renders the right of first refusal of little value. (The company indicates that it did recently purchase the "assets" of a local company in Illinois (Citizens Utilities Company of Illinois); however, this situation is not likely to repeat itself.)

In lieu of the option to purchase, the Cities' negotiators believe that the best method to maintain close tabs on the company's performance has two prongs: first, new standards in the proposed agreement, in essence mandating a certain level of performance, and, second, a relatively short agreement term. As a consequence, we negotiated, and the company is willing to agree to, various performance standards and a short term. The term of the proposal is two years, renewable in two-year increments, and terminable on 180 days notice at every renewal period – which gives the Cities the option of going back to the negotiating table on a regular basis if the need arises. The short term of the agreement also gives the Cities the ability to reassess the agreement in light of changes in statutes or case law over time.

2. Performance Standards. The company's position is that the company's performance is best regulated by the Illinois Commerce Commission and Illinois Environmental Protection Agency. The Cities' position has been that local interests are best monitored at the local level. This negotiation "tension" drove many of the elements of the agreement. The Cities, for the first time (in a public utility agreement) have incorporated customer service standards as well as increased cooperation and information sharing in this area.

3. Other Improvements. Other significant improvements in the agreement are an area restriction on water sales (50 miles), improved GIS cooperation, water emergency provisions,

and relocation of mains during City projects. A more detailed summary of agreement changes is contained in Exhibit A to this Report.

D. Alternatives:

1. Approve the Agreement as negotiated.
2. Decline to approve the Agreement as negotiated and provide direction to Staff concerning any aspect of the agreement and postpone consideration of the full agreement until those elements are considered.
3. Decline to approve any version of the Agreement.

E. Discussion of Alternatives:

Alternative 1. would be to approve the Agreement as negotiated.

a. Advantages

- Concludes negotiations thereby permitting Staff to utilize time for other projects.
- Secures the improvements that the City has negotiated in many areas.
- Does not affect the ability of the City to institute a condemnation action for purchase of the Company's local system.

b. Disadvantages

- Agreement does not provide an outright option to purchase.
- Other desirable provisions will be foreclosed for a period of two years.

Alternative 2 would be to decline to approve the Agreement as negotiated and provide direction to Staff concerning any aspect of the agreement and postpone consideration of the full agreement until those elements are considered.

a. Advantages

- Council would identify important issues that have not previously been identified.

b. Disadvantages

- Would delay implementation of the agreement.
- May require a longer extension of the agreement.
- May jeopardize the gains made thus far in the negotiations.
- Would require the further commitment of staff time and expense.

Alternative 3 would be to decline to approve any version of the Agreement.

a. Advantages

- None. Water Company would remain subject only to regulation by State and federal agencies.

b. Disadvantages

- Would result in loss of all benefits gained by negotiations.
- Would result in loss of all staff time expended in negotiations and review.
- Would leave City without any agreement with the Company.

F. Budget Impact: The Company currently pays the City the sum of \$62,037.00 per year, as one of the benefits of the Agreement. This amount will increase by the cost of living over the term of this agreement.

G. Staffing Impact: The City Attorney has acted as the negotiator for the City (the City Attorney of Champaign negotiated for Champaign) but has been assisted by other staff from Engineering and Finance during the course of the negotiations.

Attachments: Summary of Agreement changes
Proposed ordinance authorizing Agreement
Proposed Agreement
Current (recently expired) Agreement

SUMMARY OF AGREEMENT CHANGES

Article I - General

1.1. Definitions. Adds new definitions for “best effort”, “confidential” and “water emergencies”

Article II - Grant and Use of Public Ways

2.2. Relocation Costs. The company has agreed to equally share the costs of main relocation on City projects where a main is located on an easement acquired by the company and where the location of the main conflicts with a need to run storm sewer (which operates by gravity) at a place where the two would cross. Previously, the City was required to pay all of the costs.

Timing. The company has agreed to move its facilities within a time period defined by the City Engineer. This section addresses relocations identified in both the planning stages and in the field. The section provides a charge of \$200/day for failure to meet the time frame specified. (Amount of penalty not final.)

2.3. Pavement Restoration. Provides a time frame (21 days) to restore property and permits the City to repair (at the company’s cost) if company fails to do so.

2.4.

- Permits. Continues to require company to obtain permits, and to pay for them.
- Emergency Work - Notice. Requires immediate notice to the City of work being done on arterial and collector streets and notice within 24 hours for other work.

2.5. Obstruction and Safety. Permits greater latitude of City Engineer to determine that Company’s obstructions are unreasonable.

2.6. Planning and Scheduling of Work. Requires exchange of annual and 5-year capital improvements plans and rescheduling by company, if feasible.

2.7. Plans and Data. Requires cooperation. Requires company to supply GIS data to Consortium in electronic format. Recognizes confidentiality and security issues with respect to infrastructure information.

Article III - Fire Protection and Hydrants

3.1-3.4. Continues to make company responsible for installation, inspection and repair of hydrants.

3.5. Use of Water. Permits the City to use water from fire hydrants without charge for fire fighting and all public water purposes. (City required, as now, to pay for “normal” use.) Company, which had imposed a requirement that a City employee be present when the contractors used hydrants (e.g., for sewer repair), removed the requirement.

3.6. Information. Information on fire hydrants will now be supplied to the Fire Department in electronic format.

Article IV - Standards for Service; Emergencies

This article is entirely new.

4.1. Service Standards. Customer service standards are similar to what are contained in the CATV franchise, including limited to staffing and facility requirements and standards for timeliness of responses to customers.

4.2. Water Quality. Company will provide information to the City relative to water quality (generally the enforcement issues are under the jurisdiction of the Illinois Environmental Protection Agency).

4.3. Water Supply. Company agreed to a basic 50-mile limitation to sale of water without the consent of the Council, subject to certain standards, and to provide information relative to its well water supply. It is important to bear in mind, however, that current Illinois law does not limit others from tapping into the Mahomet-Teays aquifer for the purposes of bottling or otherwise exporting water.

4.4. Audit. The company agrees to an audit of its performance reviewed based on defined standards every four (4) years based on certain industry defined standards. The company will fund 50% of the cost of a consultant up to \$10,000.

4.5. Water Emergencies. This section creates a Water Emergency Task Force to plan for water emergencies and establishes the Task Force as a standard setter for water emergency communication.

Article V - Payment and Fees

No changes from prior agreement. The agreement currently requires a base payment which is adjusted at set intervals by the Consumer Price Index. The current payment to the City of Urbana is \$62,037.00 annually.

Article VI - Insurance and Performance Security.

This section is entirely new.

6.1. Letter of Credit. This section requires a \$20,000 letter of credit as security for the Company's performance required under the agreement.

6.2. Insurance. Company will provide according to standard City specifications.

Article VII - Data and Reports

7.1. Data Provisions. This is not new, but requires the Company to provide electronic billing data. This is needed for the City to compute sewer bills.

7.2. Verification of Compliance. Permits the City access to company records and sites. Additionally, the City will be provided certain standard reports concerning service calls, annual reports, copies of federal and state communications and the Company's business plan. This section also could permit a special review of water service.

Article VIII - Defaults and Remedies

8.1 and 8.2. There is a section added concerning violations of the agreement that are less than major defaults. Major defaults could result in termination.

8.3. Abandonment and Removal. This is a new section that provides flexibility in the abandonment and removal of water lines. Makes this a City decision.

Article IX - Miscellaneous

9.1. Term. This section provides for a 2-year term, renewable in 2-year increments, with the ability to terminate upon 180 days notice before every renewal. The term of the prior agreement was 15 years.

9.2. Annexation. If the law permits (and currently it does not), authorizes a provision similar to that in place with Sanitary District, i.e., requires annexation prior to water service.

9.5. Assignment. The company would agree that the City is entitled to review any transfer to another entity (other than a subsidiary).

9.13. Right of First Refusal. This provision grants the City a right of first refusal to purchase the local assets the Company if the Company places its Champaign District assets up for sale. In that case, the cities of Champaign and Urbana would have the first option to purchase such assets. This does not apply to a sale by the company of substantially all of its assets.

9.14. Economic Development. This provision commits the company to contribute time and resources to local economic development efforts (currently \$8,500/year).

9.15. Aquifer Study. This section commits both the company and City to support a study of the Mahomet-Teays aquifer in non-financial ways.

9.16. Water Tower Painting. This section requires the company to paint community-identifying information on its water towers. (Already accomplished.)

ORDINANCE NO. 2005-01-003

An Ordinance Authorizing the Mayor to Execute
An Agreement with Illinois-American Water Company
Concerning the Use of Public Ways of the City,
Fire Protection, and Other Related Matters

WHEREAS, the administrations of the City of Urbana and the City of Champaign have jointly drafted parallel, proposed Agreements with the Illinois American Water Company, the version for the City of Urbana being entitled "AN AGREEMENT BETWEEN THE CITY OF URBANA AND ILLINOIS-AMERICAN WATER COMPANY CONCERNING THE USE OF THE PUBLIC WAYS OF THE CITY, FIRE PROTECTION, AND OTHER RELATED MATTERS", a copy of which is attached to this ordinance and incorporated into it by reference; and

WHEREAS, it is in the best interest of the citizens of the City of Urbana, a Home Rule City, to enter into such agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That the Mayor is hereby authorized to execute and deliver "AN AGREEMENT BETWEEN THE CITY OF URBANA AND ILLINOIS-AMERICAN WATER COMPANY CONCERNING THE USE OF THE PUBLIC WAYS OF THE CITY, FIRE PROTECTION, AND OTHER RELATED MATTERS" on behalf of the City. The Agreement shall be in substantially the form of the Agreement that is before this Council. The City Clerk is authorized to attest to the execution thereof.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a regular meeting of said Council.

PASSED by the City Council this ____ day of _____, ____.

AYES:

NAYS:

PRESENT:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this ____ day of _____, _____.

Tod Satterthwaite, Mayor

***AN AGREEMENT BETWEEN THE CITY OF URBANA AND
ILLINOIS-AMERICAN WATER COMPANY CONCERNING
THE USE OF THE PUBLIC WAYS OF THE CITY,
FIRE PROTECTION, AND OTHER RELATED MATTERS***

THIS AGREEMENT (the “Agreement”) is made and entered into as of the ____ day of _____, 2005 by and between the CITY OF URBANA, an Illinois municipal corporation (the “City”), and ILLINOIS-AMERICAN WATER COMPANY (the “Company”).

W I T N E S S E T H:

WHEREAS, on June 15, 1885, the Urbana City Council approved an ordinance entitled “An Ordinance Authorizing the Union Water Company to Construct and Maintain the Water Works Within the City of Urbana and Granting it Certain Privileges in Relation Thereto,” regarding a thirty (30)-year agreement with Union Water Supply Company; and

WHEREAS, on September 7, 1885, the Urbana City Council adopted, and on September 8, 1885 the Mayor approved, an ordinance entitled “An Ordinance providing for a supply of Water to the City of Urbana, and Contracting with the Union Water Supply Company for a Supply of Water for public use,” regarding an agreement with Union Water Supply Company for a period of ten years with the privilege of thirty years; and

WHEREAS, on January 22, 1912 the Urbana City Council passed, and on January 25, 1912 the Mayor approved, an ordinance entitled “An Ordinance Providing for a Supply of Water to the City of Urbana and Its Inhabits, Fixing the Rate and Charges for the Same, and Authorizing the Champaign and Urbana Water Company, Its Successors and Assigns to Construct and Maintain Water Works and Distributing System for Said Supply in Said City and Giving Said City Option to Purchase Said Works”, which such ordinance provided for an

agreement with Champaign-Urbana Water Company (successor of the Union Water Supply Company) with thirty (30)-year term, which ordinance was accepted as a contract by the Champaign and Urbana Water Company on February 6, 1912; and

WHEREAS, the Illinois Public Utilities Act was adopted in 1913 and vested regulatory oversight of investor-owned public utilities in the Illinois Commerce Commission; and

WHEREAS, the Northern Illinois Water Corporation was the successor and assignee of the Champaign-Urbana Water Company; and

WHEREAS, on March 18, 1985 the City Council passed, and March 25, 1985 the Mayor approved an Ordinance entitled “An Ordinance Authorizing and Approving an Interim Agreement with Northern Illinois Water Corporation,” Ordinance No. 8485-64, providing for an interim agreement with Northern Illinois Water Corporation and recognizing the need to express a new agreement formally and in writing; and

WHEREAS, the City of Urbana and Northern Illinois Water Corporation entered into an agreement entitled “An Agreement Concerning the Right of Northern Illinois Water Corporation to Use the Public Ways of the City, Fire Protection and Other Related Matters” (the “Prior Agreement”), which the City Council approved on July 17, 1989, in Ordinance No. 8990-4, providing for a fifteen (15)-year agreement by its terms, effective as of May 1, 1989 and terminating on April 30, 2004; and

WHEREAS, the Company is the successor to the Northern Illinois Water Corporation and is an Illinois corporation and a public utility as defined in the Illinois Public Utilities Act, 220 ILCS 5/1-101 et seq., and, as such, is fully regulated by the Illinois Commerce Commission in the provision of water service to, inter alia, the residents of the City; and

WHEREAS, the Prior Agreement was extended several times to facilitate the negotiation of a successor agreement; and

WHEREAS, the City and the Company both recognize the benefit to express formally and in writing, in lieu of the Prior Agreement, such new terms and conditions of agreement as have now been agreed upon by the City and the Company;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the City and the Company do mutually covenant and agree as follows:

ARTICLE I

GENERAL

1.1. Definitions. Unless the context clearly indicates otherwise, the words, terms and phrases above defined in the preambles and recitals hereto shall have the same meanings in this Agreement. In addition, certain other words, terms and phrases used in this Agreement shall have the meanings as follows:

“Best Efforts” means all actions necessary to implement that are commercially reasonable.

“Commission” means the Illinois Commerce Commission as established by the Public Utilities Act of the State of Illinois or any successor agency or other regulatory body as may then have authority to regulate public utility services.

“Confidential” means documents, drawings, maps, or other materials which are proprietary in nature, which contain information not generally available to the public concerning the Company’s position in litigated or administrative matters, or which would pose a security risk if made available to the public, all as contemplated under the Illinois Freedom of Information Act, and which are labeled by the Company as Confidential or verbal

communications stated to be Confidential; provided, however, that “Confidential” shall not include information which becomes generally available to the public through no wrongful act on the part of the City or its representatives, agents, or employees. A failure to label material/information as “Confidential” upon delivery to the City shall not prohibit the Company from correcting such failure upon discovery of the failure or the confidential nature of the material/information. Confidential material may be used by the City for public purposes in accordance with this Agreement.

“IEPA” or “Illinois Environmental Protection Agency” means the Environmental Protection Agency, or successor agency, of the State of Illinois.

“Public Ways” means the entire width between boundary lines of every right-of-way owned by the City, controlled by the City, or dedicated to the public.

“Relocate” means to establish or lay out in a new place, including a change in grade.

“Water Emergencies” shall include the following:

(1) Water Quality Emergency. Every situation in which the water to any customer in the City is unsuitable for human consumption according to industry standards or the standards set by any governmental agency with regulatory jurisdiction; or

(2) Water Supply Emergency. Every situation in which a significant number (as determined by the Task Force established pursuant to Section 4.5.A) of customers or a customer which provides critical services (i.e., a hospital; health care clinic; school; day care; hotel; motel; main City Building; Emergency Operations Center; fire facilities; public works facilities; libraries; and police facilities; or an industry with a significant number of employees) in the City experience an unintended loss of water supply, which shall not include intentional, temporary shutoffs of water by the Company for maintenance, repair or facility installation.

(3) **Hydrant Known to be Out of Service:** A situation where the Company knows the pressure available from a public fire hydrant owned by the Company is less than twenty (20) pounds per square inch (20 psi) or otherwise knows the hydrant is inoperable.

“Water Facilities” means mains, pipes, valves, valve boxes, hydrants, and other fixtures, appliances and equipment of the Company for operating and providing public water services.

“Work” means constructing, installing, operating, maintaining, relocating, removing, repairing, inspecting and protecting water facilities.

1.2. **Number and Gender of Words.** The defined words and terms used herein include both singular and plural. Whenever used herein, any pronoun shall be deemed to include both singular and plural and to cover all genders.

1.3. **Subdivisions.** References to sections and other subdivisions of this Agreement are to the designated sections and other subdivisions of this Agreement as originally executed.

1.4. **Headings.** The headings of this Agreement are for convenience of reference only and shall not define or limit its provisions.

1.5. **Representations.** Each of the parties to this Agreement, as applicable to each, hereby represents and covenants that each has the power and authority to enter into this Agreement, has duly authorized the execution and delivery of this Agreement, and that neither this Agreement nor anything contained in it contravenes or constitutes a default under any other agreement, instrument or indenture or any other requirement of law as the same respectively concern each such party.

ARTICLE II

GRANT AND USE OF PUBLIC WAYS

2.1 Grant. For and during the term of this Agreement, the City hereby grants to the Company the non-exclusive right to install, operate and maintain Water Facilities in, upon, along, across and under the public ways of the City for the purpose of providing and distributing water for public use, subject to the following:

- A. Such other terms and conditions as are otherwise set forth in this Agreement; and
- B. The rights of any other utility, person or entity currently having rights, licenses, easements or franchises in and about the public ways.

2.2. Rights Granted Subordinate.

A. Subordinate. The rights granted to the Company by the City are and shall be at all times subordinate to the City's use of the public ways for public purposes.

B. Relocation.

1. Requirement. The City may require the Company to relocate its facilities. The Company shall relocate such facilities upon the City's request consistent with this section. The City shall take reasonable steps to minimize the need to relocate the Company's facilities.

2. Cost.

(a) The entire cost of such relocation shall be borne by the Company when the City determines such relocation is related to any project funded in whole or part by public funds ("Public Project"), subject to Subsection B.2.(b) below.

(b) The Company shall not be obligated to pay the cost to relocate any such water facilities pursuant to Subsection B.2.(a) of this Section 2.2 when:

(1) The water facilities are located in easements (which, if within the right-of-way, pre-existed the date of dedication as right-of-way) or property owned or leased by the Company; provided, however, that if a conflict exists between a water facility located in easement and a proposed storm sewer for which reasonable engineering design cannot avoid such conflict, if the City has provided notice to the Company of such conflict by no later than June 1st of the year preceding the anticipated date of relocation, the Company and the City shall divide the cost of relocation equally. Such costs shall include all reasonable engineering and construction costs. If such notice is not provided, the Company shall not be obligated to pay its fifty per cent (50%) share of such costs until twelve (12) months after the date of the relocation; or

(2) Some development adjacent to the public ways which is otherwise unrelated to a public improvement of the public ways requires such relocation.

3. Timeliness of Relocation Caused by City Projects.

(a) The City shall use its best efforts to determine, as soon as possible in the planning stages for City projects, when relocation of Company facilities will be required. For any relocations identified in the planning stages, the City shall request the Company to relocate its water facilities by presenting a written request to the individual that the Company has identified as responsible for field operations. The request shall identify the project, location, reason, and a deadline or time frame for such relocation to take place. The time line requested by the City shall provide the Company with a reasonable time given the nature and the extent of the work to be done by the Company, the weather conditions, and the public project schedule. The Company will respond promptly, but in any event

within thirty (30) days after the date the request has been received by the Company. The Company shall specify in response to the City when the work will be done consistent with the City's request, or specify under (b) that it is unable to comply with the City's request; provided that such request is reasonable.

(b) If the Company responds that it is unable to comply with the City's time frame, it shall provide specific written explanation of its inability to comply and an alternative date by which it will comply. After providing an opportunity to meet and confer with the Company, the City shall either confirm the original time frame or adjust the time frame requested, as is reasonable under the specific circumstances. The Company shall perform the relocation within the confirmed original or adjusted time frame specified by the City.

(c) Should the Company fail to properly identify its facilities upon request of the City during the planning stages, and should such facilities be later identified during prosecution of the public project, the City may request the Company to relocate its water facilities by presenting a written request to the individual in the Company identified as responsible for field operations. The request shall identify the project, location, reason, and time frame for such relocation. The time frame specified by the City shall provide the Company with a reasonable time given the nature and extent of the work to be done by the Company, the weather conditions, and the current state of the public project. The Company shall respond promptly, but in any event within two (2) business days of its receipt of such request. If the Company responds that it is unable to comply with the City's time frame, it shall provide a specific written explanation of its inability to comply. After providing

an opportunity to meet and confer with the Company, the City shall either confirm the original time frame or adjust the time frame required, as is reasonable under the specific circumstances. If the Company is unable or unwilling to undertake the work in a reasonable time specified by the City, the City may undertake such work and charge the costs thereof to the Company, to the extent such costs are to be borne by the Company pursuant to Subsection 2.2.B.2 above; provided that, to the extent costs are caused by expedited handling which was not necessary under the circumstances, the City shall bear such costs.

(d) Should the City not properly request the Company to identify its facilities during the planning stages and later identify Company facilities during the prosecution of a public project, the City may request the Company to relocate its water facilities by presenting a written request to the individual in the Company identified as responsible for field operations. The request shall identify the project, location, reason, and time frame for such relocation. The time specified by the City shall provide the Company with a reasonable time given the nature and extent of the work to be done by the Company, the weather conditions, the current state of the public project, and the state the project would have been in had a proper request for location have been made. The Company shall respond promptly, but in any event within five (5) business days of such request. If the Company responds that it is unable to comply with the City's time frame, it shall provide specific written explanation of its inability to comply. After providing an opportunity to meet and confer with the Company, the City shall either confirm the original time frame or adjust the time frame required, as is reasonable under

the specific circumstances. Should the Company be unable or unwilling to meet the City's specified time frame, the City may undertake such work; provided, however, that the additional costs required by the expedited nature of the relocation resulting from the City's failure to request the Company to identify its facilities during the planning stages or which is unreasonable under the circumstances shall be borne exclusively by the City; and provided, further, that the remainder of the costs incurred shall be borne by the party specified in Subsection 2.2.B.2 above.

(e) Should the City undertake relocation of water facilities pursuant to subsections (c) or (d) above, the City shall do so in a manner which shall not interfere with public water service and the City shall insure that it has obtained all proper permits and authorizations from any State or other agency with jurisdiction over the prosecution of such work.

(f) If the Company fails to respond or relocate as provided in this Section 2.2.B., the City Engineer may assess a charge against the Company equal to Two Hundred Dollars (\$200.00) per day, up to a maximum of Five Thousand Dollars (\$5,000.00). It shall be a defense to such assessment that the time frame for utility relocation was unreasonable under the circumstances or that circumstances beyond the Company's control, such as actions or inactions of other utilities or the City, prevented the Company's compliance.

(g) Time of Payment.

(1) The Company shall pay costs incurred by the City and to be borne by the Company pursuant to Sections 2.2.B.3.(c) and (d) above, and any charges

authorized by Section 2.2.B.3.(f) above, within thirty (30) days after receipt of a written invoice for such costs. Costs properly charged to the Company may be those of third party contractors or the City's own work force, so long as such costs are to be borne by the Company in accordance with subsections (c) and (d) above.

(2) The City shall pay costs incurred by the Company and to be borne by the City pursuant to this Section 2.2, within thirty (30) days after receipt of a written invoice for such costs. Costs properly charged to the City may be those of third party contractors or the Company's own work force, so long as such costs are to be borne by the City in accordance with this Section 2.2.

2.3 Damage to Property; Restoration by the Company.

A. Damage. In the event that any personal or real property or improvement lawfully located on or adjacent to the public ways is altered or damaged by the Company or any of its contractors, agents, or employees in connection with undertaking work pursuant to this Agreement, the Company shall promptly, at the Company's sole cost and expense, restore as nearly as practicable to their former condition the property or improvement which was so altered or damaged or, in the case of personal property and at the option of the owner, pay for the fair market value of the personal property damaged.

B. Restoration.

1. In the event that any right-of-way, real property, or fixed improvement thereon shall later become uneven, unsettled, or otherwise require restoration, repair or replacement because of such disturbance or damage by the Company, then the Company shall promptly, but in no event longer than twenty-one (21) days after receipt of notice from the City or the property

owner, and at the Company's sole cost and expense, restore as nearly as practicable to its former condition said property or improvement which was disturbed or damaged.

2. Should adverse weather conditions cause a delay in completing the work, the Company shall promptly notify the City or the property owner immediately upon onset of the delay and provide a date certain for such completion, subject to further extension necessitated by weather, which date shall be reasonable under the circumstances. The date extension shall take into account the weather conditions and other factors affecting the work. The Company shall complete the work on or before the date certain, unless additional weather delay is experienced, in which case the Company shall undertake the notice herein again.

3. Notwithstanding anything to the contrary contained herein, the Company and the owner of the property may agree that the property owner shall personally undertake the restoration and receive a credit or cash payment from the Company, in which case the Company shall be relieved of its responsibility to cause that restoration.

C. Specifications. In regard to city-owned or controlled property or facilities, any such restoration of the City's right-of-way by the Company shall be made in accordance with such materials and specifications as may, from time to time, be then provided for by ordinance or regulations of the City and to the reasonable satisfaction of the City Engineer.

D. Notification. The Company shall notify the City or the owner, if different from the City, when the work is completed, unless the owner has agreed to complete the work themselves.

E. Failure. If the Company fails to restore the property in accordance with subsections A through C above, then the City may, if it so desires, contract with a third party for such restoration or utilize its own work forces, to restore such property. The Company shall pay the

reasonable cost incurred by the City for such restoration within thirty (30) days after the receipt of a written invoice for such cost.

2.4. Permits.

A. Required. Prior to commencing any work in the City, the Company shall obtain any and all permits lawfully required by such codes and ordinances of general application of the City for such work.

B. Emergency Work.

1. In the event that emergency work may be required to be undertaken by the Company, the Company shall obtain any and all such permits within three (3) work days after the beginning of such emergency work.

2. When the Company undertakes emergency work in traffic lanes of arterial or collector streets as set forth in the list attached hereto or successor lists which the City provides, the Company shall provide immediate telephone notice to the City in accordance with the written direction received from the City's Director of Public Works. Notice of emergency work in the traffic lanes of non-arterial or non-collector streets which blocks any portion of a lane for more than two hours or when restoration is required shall be provided within 24 hours of such work.

3. In the absence of such direction or personal contact, the Company shall provide telephone notice of the location and nature of the emergency work to the City through METCAD, when such work will obstruct the right-of-way for more than two (2) hours or if restoration will be required.

C. Monthly List. The Company may, unless otherwise directed by the City Engineer, submit a monthly list of work undertaken by the Company which requires any such permit

within two (2) weeks after the last day of any such calendar month in lieu of obtaining individual permits as required by this section.

2.5. Obstructions and Safety.

A. Obstructions. The Company shall not unreasonably nor unnecessarily obstruct the public ways of the City or private ways including private drives in connection with any of the work provided for in this Agreement. The City Engineer shall determine when such obstruction is unreasonable based upon local standards for construction and such determinant shall be presumed correct. This shall not diminish the Company's ability to contest the City Engineer's determination in an appropriate forum.

B. Barriers and Signs. The Company shall maintain such barriers, signs, and warning signals as may be necessary to reasonably avoid injury or damage to life and property and as otherwise provided for in the City's Manual of Practice and Manual of Uniform Traffic Control Devices of the State of Illinois, as such manuals may, from time to time, be in effect, or any successor provisions.

C. Other Laws. The Company shall comply with all federal, state, and City laws, ordinances, and regulations applicable to any work performed within the City.

2.6. Planning and Schedule of Work.

A. Joint Planning.

1. On an annual basis, the parties shall seek input from one another in the compilation of their respective five year capital improvement plans and in scheduling improvements.

2. The Company shall, on an annual basis and prior to final approval of its five year Capital Improvement Plan, provide the Director of Public Works (or the Director's successor in

function) with a draft of the plan for facilities within the City and request the Director's comments. The City shall treat such plan as Confidential to the extent that such information is not otherwise publicly available. The City recognizes that such plan is subject to change, particularly in years 2-5, and the City will use such plan for planning purposes only.

3. The City shall, on an annual basis and prior to final approval of its five year Capital Improvement Plan, provide the Company with a draft of the plan and request the Company's comments. The Company recognizes that such plan is subject to change, particularly in years 2-5, and the Company will use such plan for planning purposes only.

B. By the Company. On or before December 31 of each year, the Company shall provide the City's Director of Public Works with a schedule of all planned work scheduled to be undertaken by the Company within the next succeeding one (1) year period. The City agrees to use said schedule only for the purpose of scheduling and coordinating its construction and repair of the public ways and public improvements located thereon. The Company shall, at the written request of the City, use its best efforts to reschedule any such scheduled work in order to coordinate with the City's construction and repair of public ways and public improvements located thereon, as disclosed in the City's annual Capital Improvement Plan provided pursuant to Section 2.6.C below.

C. By the City. On or before June 30 of each year, the City shall provide to the Company a schedule of work to be undertaken by the City during the next succeeding one (1) year period involving the construction or repair of the public ways. The Company shall use its best efforts to coordinate any subsurface work which is likely to be done by the Company in such one (1)-year period such that the Company shall advance any such subsurface work on its water facilities prior to any such planned work on the public ways to be performed by the City, as previously

disclosed in the City's five year Capital Improvement Plan provided to the Company in the immediately preceding year.

2.7. Information for Maps and GIS.

A. Cooperation. The City and the Company agree to cooperate with each other in reasonably providing and making available, without cost to the other, such data and information with respect to the location of water facilities of the Company and the location of public improvements of the City in the public ways as may reasonably be required by the other.

B. GIS. The Company shall contribute information concerning all of its water facilities in the County to the Champaign County GIS (Geographic Information System) Consortium at no cost in the standard format required by the Consortium, so long as the standards are reasonable and customary. The City will require the Consortium to restrict dissemination to governmental members of the Consortium, to be used by such members for governmental purposes only.

C. As-Built Plans. The Company shall annually file with the City's Director of Public Works accurate "as-built" maps of the location and character of all existing installations of the water system in the City, or within 1.5 miles thereof, regardless of whether located over, upon or under public ways, public property, or private property, and identifying the facilities as being in use, abandoned during the past year, or otherwise unused, as the case may be, in accordance with Section 2.7. Within three (3) months of any substantial changes or additions to the existing installations of the water system, the Company shall provide updated "as-built" maps to the City's Director of Public Works. The maps required by this section shall conform to the requirements of the Director of Public Works, which may require an electronic format compatible with or convertible to the City's automated mapping standards provided that the

standards are reasonable and customary. The Company shall provide the City access to all records of abandoned water lines in its possession at reasonable times at the City's request.

D. Confidentiality. The City and Company recognize that information relative to water system and other public infrastructure components as a whole could be misused to damage the health and safety of people in the community. Both the City and the Company shall implement a process necessary to prevent dissemination of this information to persons who may desire to misuse the information. If either the Company or the City believes that information generated as the result of operation of the water system or rights granted under this Agreement are being used in an improper manner, the parties agree to notify the other in writing of such concerns and to meet and confer, seeking a mutually satisfactory outcome.

2.8. Other Easements or Licenses. No provisions of this Agreement shall be construed as preventing the Company from asserting any and all rights it may have under law:

- A. To undertake work with respect to its water supply and distribution system; or
- B. To use any easements or licenses for water service or general public utility purposes which have been granted by any person, firm or company other than the City and which are shown on any recorded plat or plats of any portion of the City heretofore or hereafter platted or recorded, or on any other easement or license which heretofore or which may hereafter be created, granted, or dedicated for any water service or general utility purposes by any person, firm, or company other than the City.

ARTICLE III

FIRE PROTECTION AND HYDRANTS

3.1 Fire Protection. Subject to the rights of any municipalities or other legally organized fire protection district to use water in street mains through hydrants for fire protection and suppression purposes and except as may otherwise be provided in this Agreement, the Company shall provide the City with such facilities and water as may be required to meet the fire protection and suppression needs of the City. The right is reserved by the Company to shut off the supply of water in the case of accident or other cause requiring the making of alterations, extensions, connections, or repairs and the Company makes no guarantee as to the pressure or supply of water in fire service connections, fire hydrants, or the mains supplying the same. The Company shall provide notice to the City's Fire Department immediately upon learning that there is insufficient pressure to fight fires. To the extent practicable given the circumstances of a particular event, the Company shall make all reasonable efforts and take all reasonable precautions to ensure that customers and hydrant locations are not left without water for extended periods of time. The Company shall have no obligations under this article with respect to fire protection or hydrants for locations where there are no existing water mains six (6) inches or larger. The Company shall have no obligation to install any main or mains solely for fire protection purposes, unless otherwise provided for by law.

3.2 Fire Hydrants, Installation. To the extent that such fire hydrants have not previously been installed, the Company shall, upon the written request of the City Fire Chief and within a reasonable time following notice of such request, install or cause to be installed, at the sole cost and expense of the Company (subject to allocation in accordance with law and ICC determination), such fire hydrants as may be required to meet the spacing requirements for fire

hydrants in accordance with the Insurance Service Office Municipal Grading Criteria dated 2003, and in accordance with recommendations of the Fire Chief, if such recommendations are based on industry standards. Such requirement to install shall be expressly limited to those locations in public ways having an appropriate width where an existing water main of six (6) inches or larger is located. All newly installed fire hydrants by the Company shall be of modern style and with two (2) nozzles of 2-1/2 inches diameter and one (1) nozzle of 4-1/2 inches diameter, all with national standard fire hose coupling threads with a counter-clockwise direction of opening. The Company shall not install fire hydrants of a type with which the Fire Chief has reasonable objection.

3.3 Fire Hydrants, Inspection and Repair.

A. The City may, from time to time and at any time, inspect or cause fire hydrants to be inspected and, if any are found to be in disrepair or not in good effective working order, the Company shall be notified by the City in writing of the location of any such fire hydrant, and, upon receipt of such notice, the Company shall restore or repair such hydrant to effective working order as soon as reasonably possible. The City shall notify the Company in advance of when the City is going to inspect fire hydrants, including which fire hydrants are being inspected and the dates the inspection will be performed. The Company may have a representative present at the time of any such inspection.

B. The Company shall maintain its fire hydrants and shall, at regular intervals, test the operation of such hydrants consistent with standards provided by the Illinois Commerce Commission and Insurance Service Office or their successors.

3.4. Fire Hydrants, City Use.

A. The City is hereby granted the use of water without any charge or expense to the City from fire hydrants located in the public ways for the purpose of fire suppression and practice, testing of fire apparatus, periodic uses, including but not limited to re-lining of sewers, the flushing of public gutters, sewers and streets, and testing, street sweeping and emergency responses.

B. In cases other than emergency fire suppression and other emergency City use (e.g., flushing of a hazardous spill), the City, in advance, shall provide the Company with a list of its employees who are authorized to open and use the hydrants, including their positions and employee numbers.

C. If the City needs access to a hydrant for other than fire suppression or other emergency City use, the City will telephone and notify the individual identified by the Company and provide the employee's name, employee number, and location(s) of the hydrant(s) which will be used. The identified employee(s) will remain in the general vicinity of the hydrant in use and will notify the Company when the employee is finished with their use of the hydrant.

D. The City shall provide the Company with a list of its contractors who are authorized by the City to use hydrants for City purposes and of projects where such use will be made. The City's contractors shall contact the Company to notify of their use at the time thereof; remain in the vicinity of the hydrant; and notify the Company of completion of use.

E. The City agrees to notify the Company as soon as reasonably practicable when any fire hydrant or hydrants are used for fire suppression purposes or emergency responses.

F. In all situations other than fire suppression or emergency situations utilizing fire fighting equipment for withdrawal of water, the City and its contractors shall utilize backflow prevention

protection devices, in accordance with industry standards, if required by applicable regulations of the Illinois Pollution Control Board and the Illinois Environmental Protection Agency.

G. Within five (5) days following each use, the City shall estimate for the Company the amount of water used.

3.5. Fire Hydrants, Meters. The Company reserves the right at any time to place a meter meeting the requirements of the National Fire Protection Association on any fire hydrant located in the public ways in order to measure such amounts of water as may be used by entities or persons other than the City or by the City for any purpose. In case a meter is installed, and except for such uses as are authorized for the City pursuant to Section 3.4 above, all established rates for general metered service may apply, but nothing herein shall be construed as requiring the Company to install a meter.

3.6. Fire Hydrant Information. The Company will supply the Fire Department of the City information relative to fire hydrant location, inspection and testing within the City. Such information shall be reasonable and customary electronic format as agreed by the Fire Chief and the Company.

ARTICLE IV

STANDARDS FOR SERVICE; EMERGENCIES

4.1. Customer Service Standards.

A. General. The Company shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time practicable. Such service shall be in accordance with the best practices of the industry and all applicable laws and regulations.

B. Specific Standards. Except as otherwise provided in this Agreement, the Company shall maintain an office or offices within the corporate limits of the City of Champaign, the City of Urbana, or the Village of Savoy and shall provide the necessary facilities, equipment and personnel to comply with the following consumer protection and service standards under normal conditions of operations:

1. Provide and maintain operational telephone numbers such that the Company's supervisory personnel can be reached directly (not through a call center) in the event of an emergency on a twenty-four (24)-hour per day, three hundred sixty-five (365) days per year basis. Such numbers shall be provided to METCAD, the Fire Chief, and the Chief Administrative Officer and shall be updated immediately upon any changes and confirmed annually by the Company. The numbers provided shall be for, at minimum, the highest-ranking Company representative and operational official with the authority to make emergency system decisions for the system serving the City.

2. Toll-free customer telephone service twenty-four (24) hours per day, seven days per week. Such system need not be located in the Champaign-Urbana area; but the toll-free number will be published in the local telephone directory. While an automated response system may be utilized, should a customer elect to talk to a call representative, a minimum of seventy percent (70%) of such electors' calls from within the State of Illinois will be answered within thirty (30) seconds.

3. Emergency telephone line capacity on a twenty-four (24) hour basis, including weekends and holidays.

4. The business and service office or offices shall be open during normal business hours at least eight (8) hours daily (excepting weekends and holidays) and shall be adequately staffed to accept customer payments and respond to service requests and complaints.

5. An emergency system maintenance and repair staff shall be based in the Cities of Champaign or Urbana or Savoy, capable of responding to and repairing major system malfunction within one (1) hour of notification on a twenty-four (24) hour per day basis, three hundred sixty-five (365) days per year; provided same may reasonably be repaired in one (1) hour and, if not, the Company shall maintain staff capable of responding and commencing repair within one (1) hour and diligently prosecuting repair to completion.

6. Staff, capable of initiating service to any customer within one (1) business day after receipt of a request, where a meter currently exists. New service which requires the Company to install a meter shall be provided within fourteen (14) calendar days after the receipt of a request.

7. At the customer's request, the Company shall specify either morning or afternoon appointments for installation of service. For each business day, one "first appointment" shall be available for each morning and each afternoon, on a first scheduled basis. The Company representatives will offer a "call ahead" option where the representative will call a requested phone number to advise when they are on their way to the service location.

8. The Company shall respond to water quality concerns promptly and shall respond to the customer within one (1) business day or such shorter time as the nature of the inquiry may dictate. The Company shall respond to billing inquiries within three (3) business days.

9. Meter Testing. The Company shall test the accuracy of any meter upon request by the customer served by such meter, provided that the meter in question has not been tested by

the Company or by the Illinois Commerce Commission (ICC) within two (2) years previous to such request. If the customer so desires, he/she or his/her representatives shall have the privilege of witnessing the test. A written report, giving the results of the test, shall be made to the customer. The Company may charge for such tests in accordance with Commission regulation.

10. Photo Identification. All officers or employees of the Company who, in the normal course of work, come into contact with members of the public or who require entry onto customer's premises shall carry a photo-identification card. The Company shall account for all identification cards at all times. Every vehicle of the Company used in the construction, maintenance or service of the water system shall be clearly identified as working for the Company.

11. Planned Maintenance.

(a) The Company shall advise the City whenever there is a planned maintenance or construction project that has the potential to either:

- (1) impact more than twenty (20) City residents or the University; or
- (2) involve a major infrastructure component of the water system

which may alter aesthetics or flow of the water in the system to a degree which would likely be noticeable by more than twenty (20) residential customers within the City.

(b) The Company will endeavor to identify such project(s) in its annual Capital Improvements Plan, but in any event, provide written notice of these projects to the Chief Administrative Officer of the City and to the Executive Director of METCAD at least twenty-one (21) days prior to the inception of the project.

12. Changes in Treatment System. The Company shall notify the City and the University through its office of Facility Planning and Programs if the Company changes any

treatment technique that impacts the chemical qualities of the water distributed by the Company through its system serving the City.

C. Non-Compliance. A repeated and verifiable pattern of noncompliance with the consumer protection standards of A and B above, after the Company's receipt of due notice and an opportunity to cure, may be deemed a material breach of this Agreement

D. Procedures. No later than sixty (60) days after the effective date of this Agreement, the Company shall establish reasonable written procedures for receiving, acting upon and resolving customer complaints without intervention by the City. The written procedures shall prescribe the manner in which a customer may submit a complaint either orally or in writing specifying the customer's grounds for dissatisfaction. The Company shall file a copy of these procedures with the City's Director of Public Works.

E. Annual Notice. Commencing fourteen (14) days after the date hereof, upon a customer's installation of service, and at least once annually thereafter, the Company shall provide to each customer a summary of the minimum consumer protection and service standards set forth in subsection B above.

F. Continuing Service. It shall be the right of all customers to continue receiving service insofar as their financial and other obligations to the Company are honored.

G. Should the City receive significant customer complaints during the term hereof, the City may request the Company to consider additional standards designed to address such complaints. The Company shall consider such additional standards and adopt the same unless they are unreasonable. This subsection shall not apply to breakpoint chlorination issues.

4.2. Water Quality. The Company shall provide the City with the following reports concerning the quality of water provided to customers:

- A. Monthly treatment facility operating report filed with IEPA for the system serving the City.
- B. Annual Consumer Confidence Report required by US EPA.
- C. Monthly distribution system summary report filed with the IEPA for the system serving the City.
- D. Copies of all boil orders issued for the system serving the City and affecting the City's inhabitants.
- E. Notices of any violations or non-compliance advisory engineering evaluations of the system received concerning the system serving the City.
- F. Any other non-attorney/client privileged report concerning water quality.

4.3. Water Supply.

- A. Annual Report. The Company shall provide a report to the City annually concerning the amount of water supply available to customers within the City as evidenced by the current known reserves available to the Company through its then existing wells. The report shall discuss the adequacy of the supply relative to the demand.
- B. Area Restriction on Delivery. The Company will not deliver water to a new customer (or group of customers applying for service jointly), for end use more than fifty (50) miles from the limits of the cities of Champaign or Urbana at the closest point to the use, if the expected demand from the new customer(s) would be greater than five per cent (5%) of the then current average day system demand, without first obtaining the City's consent, which consent shall not be unreasonably withheld, based upon concerns with the water supply or material compliance with any term of this Agreement.

4.4. Audit

A. Independent Analysis. On or before July 1, 2005, and not more than once every four (4) years thereafter, the cities of Champaign and Urbana may cause an independent audit of the Company's physical facilities within the Champaign-Urbana metro area, including an evaluation of the Company's water processing plant and transmission system, to be conducted in accordance herewith. The Company shall pay fifty per cent (50%) of the actual cost of such audit, provided that the Company's share shall not exceed Ten Thousand Dollars (\$10,000.00). The Company shall be provided a true copy of the invoice for such services and pay the City within thirty (30) days after receipt of the invoice. The analysis shall be conducted by a person or entity that shall be selected through a process conducted by the Cities of Champaign and Urbana and qualified by technical expertise to evaluate such systems, subject to concurrence by the Company, which concurrence shall not be unreasonably withheld. The analyst shall prepare a report and make recommendations with respect to compliance with the following standards:

1. The Company will maintain an ISO rating (or such rating's successor) in each category in which it is rated, at or above the level that it obtained in the most recent evaluation prior to the effective date of this Agreement, unless the standards are materially changed.
2. "Unaccounted for water" as generally understood in the industry, shall not exceed fifteen per cent (15%); and, to this end, the Company shall provide information on an annual basis on the number of main breaks as well as the water lost from such breaks.
3. The treatment and distribution facilities will be operated and maintained so that water delivered to consumers meets all applicable state and federal regulations governing water quality of potable water, unless otherwise specified by contract.

4. Tank inspection shall be conducted every three (3) years; tanks shall be regularly maintained to remove sedimentation, coated to maintain a rust free appearance, and maintained to function in accordance with sound engineering principles with minimum disruption of service to customers.

5. Basins shall be inspected on a biennial basis and maintained in accordance with sound engineering practices.

6. The system's pumping and treatment capacity shall be maintained so that the average day demand does not exceed 67.5% of the pumping/treatment capacity.

7. Residential meters and those up to 2" in size will continue to be replaced on a fifteen (15)-year cycle and larger meters will be inspected annually.

8. Insofar as within the Company's control, water pressure shall be maintained so as to prevent the need for boil orders or unreasonable spikes in pressure.

9. The Company will make progress toward automating its systems to provide more effective responses to system failures.

10. The distribution system shall be analyzed regularly and shall be maintained in accordance with a preventative maintenance process that addresses, and to the extent reasonably possible, prevents failures of the system due to age, degradation of equipment or facilities, or equipment and other preventable interruptions in service.

B. Company's Efforts. The Company shall comply with the above standards.

C. Capital Improvement Plan and Other Information to Support the Independent Analysis.

The Company shall provide a capital improvement plan and other information required by the City's analyst to assess compliance with the standards; provided that, to the extent applicable, the

Company may designate, and, if the Company does so, the City and such analyst shall treat, such plan as Confidential.

4.5. Water Emergencies.

A. Community Water Emergency Task Force. The City, together with the City of Urbana and other communities which have an interest therein, shall establish a Community Water Emergency Task Force; and shall appoint to the Task Force such officials and other representatives as are appropriate for developing comprehensive and effective community and Company responses to Water Emergencies, for analyzing the causes and effects of Water Emergencies, and for making recommendations for reducing or preventing future Water Emergencies. The Company shall appoint to the Task Force at least two (2) individuals who shall be the highest ranking Company administrative and operational officials with the authority to make emergency system decisions for the system serving the City. The Company's representatives shall participate and cooperate in good faith in all aspects of the work of the Task Force.

B. Immediate Notice to Be Given. The Company shall give immediate notice of every Water Emergency to local officials, officials of other utilities, and the general public, in accordance with reasonable procedures established by the Community Water Emergency Task Force; provided that noticed of a Hydrant Known to be Out of Service need only be given to the representative designated by the Fire Department affected and in other Water Emergencies that affect only a localized area of the community, the Company may elect to give immediate notice only to those officials, utilities, customers, and members of the public who will be affected by the localized Water Emergency.

C. Response During Emergencies. The Company shall respond to every Water Emergency as may be reasonably necessary to preserve the safety of all citizens and property in the City.

D. Reports to City. The Company shall provide the following reports to the Chief Administrative Officer of each the City of Champaign and the City of Urbana:

1. Copies of any report to the IEPA of a Water Quality Emergency, within thirty (30) minutes of the report being given to the IEPA, at a phone number or e-mail address to be supplied by the respective City.

2. Written information detailing date, time, and location of main breaks or leaks in the City, once per month, by the tenth (10th) day of the calendar month following the month of occurrence.

3. Written or electronic information detailing the date, time, location, and Fire Department personnel contacted for Hydrants Known to be Out of Service, once per month, by the tenth (10th) day of the calendar month following the month of occurrence.

4. Annual Water Quality Report summarizing water quality for the system for the previous calendar year, when published by the Company's water quality group; provided that security sensitive information may be redacted.

ARTICLE V

PAYMENT AND FEES

5.1. Annual Payment. So long as the Company exercises and enjoys the rights granted to it by and during the term of this Agreement, and in consideration for the right of using the public ways, the Company shall pay to the City a minimum annual amount equal to \$62,037. The

Company shall make payment of the annual amount monthly, in twelve (12) equal installments, due on the last day of the calendar month.

5.2. Adjustment. The minimum annual amount specified in Section 5.1 of this Agreement shall be subject to adjustment, when new or modified rates including such adjustment go into effect for the Company from time to time. Such adjustment shall be made in accordance with changes in the Consumer Price Index for All Urban Consumers for the Chicago, Illinois areas promulgated by the Bureau of Labor Statistics of the United States Department of Labor, using the year 2003 as a base of 100 (the "CPI"). Such adjustment shall be made by multiplying the minimum annual amount as so specified in Section 5.1 above by a fraction, the numerator of which is the CPI on the date when any new or modified rates of the Company are filed with the Commission and the denominator of which is the CPI on the date when the then current rates of the Company were filed with the Commission in accordance with Section 5.3 hereof. In no event, however, shall any such adjustment cause the minimum annual payment to be less than the minimum annual amount specified in Section 5.1 hereof. The Company shall request an amount sufficient to make the minimum annual payment specified in Section 5.1 as modified and adjusted by this Section 5.2, in each general rate increase case that applies to any customer within the jurisdiction of the City that the Company makes before the Commission. The effective date of the adjustment hereunder shall be the last day of the next succeeding calendar month after the month such rates go into effect. In the event the Commission does not allow the full amount of the minimum annual payment by the Company under Section 5.1 hereof, as such payment may be adjusted from time to time under this Section 5.2 hereof, such payments shall be suspended to the extent that such payments are disallowed by the Commission, subject to negotiation between the City and the Company as provided in Section 9.3.

5.3. Other Conditions. In connection with any proceeding as may be required to obtain any ratemaking allowances by the Commission in connection with any payments to be made by the Company to the City under this Agreement, the Company agrees that it will not raise, or in any other manner request, that any other term or condition be made a part of its request to obtain Commission approval of such allowances. The Company further agrees that it shall use its best efforts in attempting to obtain such ratemaking allowances of the Commission as are referenced in this Agreement.

5.4. Permit Fees. The Company shall pay such lawful fees as may, from time to time, be established by any ordinance of general application of the City for any and all permits as may be required pursuant to Section 2.4 of this Agreement provided, however, that if the Company fails or neglects to obtain any such required permits, the Company shall pay to the City double such permit fees unless the City unreasonably refuses to issue such permit or permits.

5.5. Furnishing of Water; Payment by City; and Change in Rates.

A. Payment. The Company shall furnish water to the City for all public purposes of the City including, but not limited to, general use in all municipal buildings, including the Library. The City agrees to pay the Company for the water so furnished for general use in all municipal buildings, including the Library, and for other purposes not covered in Section 3.4.A. The rates to be charged by the Company and paid by the City and the rules and regulations governing the furnishing of such water service for such general use by the City shall be in accordance with those authorized and on file with the Commission, but the City shall not be charged or be obligated to pay, in addition thereto, for the cost of any and all water which may be used by the City pursuant to Section 3.4.A of this Agreement.

B. Rate Changes. At least seven (7) days before the Company makes any request for a change of rates to be paid by the City or customers within the City by filing the same with the Commission, the Company shall provide the City with a notice of its intent to file and, within five (5) business days after the filing, the Company shall provide to the City a copy of any filing that affects the applicable rate or rates that may be paid by the City or by customers within the City. If requested to do so by the City, the Company further agrees to meet with the City in connection with any such proposed rate change request within thirty (30) days after the date of such filing.

5.6. Payment for Fire Protection. To the extent consistent with the provisions thereof, any fire protection charge that may be imposed by the Company pursuant to Section 9-223 of the Public Utilities Act of the State of Illinois, as from time to time amended, to cover the cost of providing the capacity, facilities and the water necessary to meet the fire protection needs of the City shall not be imposed on the City unless the City otherwise subsequently elects to pay any such charge or portion thereof in a separate written agreement between the City and the Company. Any payment for fire protection shall be governed by the laws of the State of Illinois and the Commission rules related to those laws, as from time to time enacted or adopted by the General Assembly or the Commission.

5.7. Payment Not Release. Except as otherwise provided by law, no acceptance of any payment by the City shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable as a franchise fee under this Agreement or for the performance of any other obligation of the Company.

5.8. Late Payment. In the event that any payment or recomputed amount is more than thirty (30) days overdue, and if the Company fails to make payment within ten (10) days after receipt

of a written notice from the City, then interest shall be due and payable at an annual rate equal to the national prime lending rate plus one per cent (1%) as published in the Wall Street Journal during the period for which payment was due.

ARTICLE VI

INSURANCE AND PERFORMANCE SECURITY

6.1 Letter of Credit. Within sixty (60) days of the resolution adopting this Agreement, the Company shall provide to the City a letter of credit in a form reasonably acceptable to the City's Attorney.

A. Amount of Letter of Credit. The letter of credit shall be in the amount of Twenty Thousand Dollars (\$20,000.00). The letter of credit shall be maintained at the Twenty Thousand Dollar (\$20,000.00) level throughout the term of this Agreement in accordance with the provisions of Subsection D, provided that at intervals no more often than each three (3) years, the City shall have the right to require that this amount be increased to reflect changes in the Chicago Metropolitan Area Consumer Price Index (all consumers) during the prior three (3)-year period.

B. Use of Bond. The letter of credit shall be available to the City to satisfy all claims, liens and/or taxes due to the City from the Company which arise by reason of work by the Company, to satisfy any actual damages arising out of a breach of this Agreement, and to satisfy any assessments under this Agreement.

C. No Litigation. As long as the City follows the procedures specified in this Agreement under Section 8.2, the Company shall not initiate litigation or non-City administrative action to prevent or impair the City from accessing the letter of credit. In the event the Company believes

any taking of security funds is improper, the Company may initiate legal action. If the City's action or taking is found to be improper by any court or agency of competent jurisdiction, the Company shall be entitled to recover the amount taken plus interest and/or any other awards which such court or agency shall make.

D. Reissuance. If the letter of credit is drawn upon by the City in accordance with the procedures in this Agreement, the Company shall cause the letter of credit to be reissued in the full amount required in Subsection A no later than the later of thirty (30) days after the last withdrawal or the January 1st following each withdrawal by the City. Failure to reissue the letter of credit shall be deemed a breach of this Agreement, unless the Company has initiated legal action pursuant to Subsection C above, in which the Company alleges that the City's withdrawal of money from the letter of credit was improper. If the court or other trier of fact does not find that the City's withdrawal was improper, after all appeals have been exhausted, the Company shall be deemed in breach, if it has not reissued the Letter of Credit in the full amount within thirty (30) days following such final ruling.

E. No Waiver. Nothing in this Agreement shall be deemed a waiver of the normal permit and bonding requirements generally applicable to persons performing work in the City's right-of-way, except as specifically agreed in other Sections of this Agreement.

6.2 Insurance.

A. General. During the term of this Agreement, at its own cost and expense, the Company shall maintain in full force and effect insurance policies as enumerated below. All policies shall be written on an occurrence basis. The City and its officers and employees shall be included as additional insured parties on the general liability policy on a primary and non-contributory basis for the Company's operations under this Agreement. All policies will be written with insurance

carriers qualified to do business in the State of Illinois rated A- VIII or better in the latest Best's Key Rating Guide. The Company shall provide the City with certificates of insurance showing evidence the insurance policies noted below are in full force and effect and giving the City at least 30 days written notice prior to any material change in reduction in coverage, cancellation, or non-renewal except in the case of cancellation for non-payment of premium, in which case notice shall be 10 days. Any renewal certificates of insurance shall be automatically provided to the City prior to policy expiration. The Company shall, upon request of the City, provide copies of any or all insurance policies for review at the offices of the City.

B. Types:

1. Workers' Compensation:

Coverage A: Statutory Limits

Coverage B: One million dollars (\$1,000,000) employer's liability limits for each accident or per disease, per employee. Said policies shall be endorsed to cover any Federal compensation acts if applicable.

2. General Liability: Combined single limits of at least one million dollars (\$1,000,000) per occurrence. General Liability Insurance shall include:

(a) Products and completed operations coverage.

(b) Contractor's Protective coverage.

(c) Personal Injury Liability coverage.

3. Automobile Liability: Combined single limits of at least one million dollars (\$1,000,000) per occurrence. Auto liability shall include hired and non-owned autos.

4. Umbrella Liability limits of at least one million (\$1,000,000) per occurrence.

C. Self Insured Retention. Any self-insured retentions must be declared to and approved by the City; which approval shall not be unreasonably withheld.

D. Insurance Prior to Work. Work under this Agreement shall not commence until the Company has complied with the aforementioned provisions of this section.

E. Company's Failure to Maintain Insurance. In the event the Company fails to maintain any of the above-described policies in full force and effect or fails to cooperate in a reasonable manner to allow the City to verify the content of and inspect the policies upon the City's request, the City shall, upon forty-eight (48) hours notice to the Company, have the right, but not the obligation, to procure the required insurance and recover the cost of such insurance from the Company.

F. Increase in Insurance. In order to account for increases in consumer prices, no more than once during any two (2)-year period, the City shall have the right to request the Company to increase the amounts of the insurance provided in this Agreement. Increases in insurance coverage shall be based upon current prudent business practices of like enterprises involving the same or similar risks.

ARTICLE VII

DATA AND REPORTS

7.1. Data Provision.

A. If the Company is not utilizing the Sanitary District as a billing agent or otherwise obtaining billing data from the Sanitary District, the Company agrees to provide at the City's request without any cost or expense to the City, within a reasonable time after the City's request, information from its regular billing file, namely: account number, revenue class, actual usage, date read, previous date read, and service address for all customers of the Company within the corporate limits of the City.

B. If the City uses the information provided by the Company under Section 1, the City agrees that the basis for its billing:

1. To all of its residential users, who are customers of the Company, shall be based on the water usage of those customers for the months of January, February, and March; and

2. To all of its commercial, governmental, industrial, and institutional users, who are customers of the Company and are billed on the basis of water usage, may be on the same basis as residential users or may be on actual usage except for usage that is, by mutual agreement, between City and the user, not discharged to City sewers.

C. The City agrees that the City shall not make available or release any such data so furnished it by the Company to any other individual, firm, or governmental unit for any purpose whatsoever without the express written consent of the Company.

D. The City agrees to notify the Company of any ordinances annexing property to or disconnecting property from its corporate limits and agrees to provide the Company an accurate map of such changes showing, if available, street name and number detail. "Within the corporate limits of the City" means the corporate boundaries of the City as recorded in the Office of the Champaign County Recorder and as provided to the Company by the City.

E. The City shall indemnify and hold the Company harmless from any and all liability, loss or damage the Company may suffer as a result of claims, demands, costs, including costs of defense, or judgments against the Company arising out of the furnishing of the information provided herein by the Company, or in any manner arising from performance of this Agreement by the Company.

7.2. Verification of Compliance.

A. General

1. Documents and Records.

(a) Upon reasonable notice from the City, considered in light of the circumstances giving rise to the City's request, the Company shall establish its compliance with this Agreement.

(b) During normal business hours, a duly authorized representative of the City may request to review and receive copies of documents and records of the Company which verify that the Company's obligations hereunder are being met. The City and the Company shall make reasonable efforts to cooperate to identify the appropriate types of documents and records and limit the scope of requests for documentation so as to facilitate timely, complete and accurate disclosure of information relating to the Company's performance of its obligations under this Agreement.

2. Site Inspections. In addition, upon reasonable notice, and during normal business hours, the Company shall permit examination by any duly authorized representative of the City, of all Company property and facilities located in public right of way, City owned property, or easements dedicated to the City, if the City reasonably believes such inspections will be useful to enable the City to verify the Company's compliance with this Agreement. The Company shall have the right to be present at any such examination.

3. Specified Categories of Information. Without limiting the foregoing, the parties agree to the following types of requests for information that may occur on a more routine basis, recognizing that technology may change the form of reports available, from time to time:

(a) City Right to Review. The City shall have the right to review the Company's billing records regarding, and response to, Customer complaints in order to

determine the Company's compliance with any Agreement requirements, subject to the Customer's right to privacy, which the City shall honor and protect.

(b) Service Call Summary. A summary of service calls, identifying the number, general nature and disposition of such calls, on a monthly basis, in a form reasonably acceptable to the City. Such summary shall be provided to the City annually.

(c) Interruptions. A record of all service calls for interruptions or degradation of service experienced for the preceding two (2) years, provided that such complaints result in or require a service call.

(d) Annual Reports. Within ninety (90) days after the end of the calendar year, the Company shall submit a written annual report to the City, if requested, with respect to the preceding calendar year, which shall include the following:

(1) A summary of the previous year's (or in the case of the initial reporting year, the initial year's) activities in development of the water system, including services begun or discontinued during the reporting year;

(2) A list of the Company's officers and members of its Board of Directors;

(3) A list of stockholders or other equity investors holding five per cent (5%) or more of the voting interest in the Company;

(e) Public Reports. If the Company is publicly held, a copy of the Company's annual and other periodic reports shall be submitted to the City within forty-five (45) days of its issuance. If the Company is not publicly held, this requirement shall apply to any publicly held company in the chain of parentage of the Company; provided that, should such

reports be available on the World Wide Web/Internet, the Company may furnish instead the web address where such reports may be accessed.

(f) Copies of Federal and State Communications. The Company shall submit to the City, copies of all pleadings, application and reports submitted by the Company to, as well as copies of all decisions, correspondence and actions by, any federal, state, or local court, regulatory agency, or other governmental body which are non-routine in nature and which materially affect its operations within the City. To the extent permitted by law, information otherwise confidential and so designated by the Company, which is submitted to the City, shall be retained in confidence by the City and its authorized agents and shall not be made available for public inspection.

(g) Business Plan.

(1) The Company shall consult with the City during the development stage of its annual business plan that includes operations within the City.

(2) A copy of the Company's most current business plan shall be supplied to the Chief Administrative Officer of the City within seven (7) days after approval of such plan by the Company.

B. Reports Generally.

1. Confidential. All reports or copies thereof required under this article, except those agreed hereunder or otherwise required by law to be kept confidential, shall be available for public inspection in the Company's local offices during normal business hours.

2. Company Expense. All reports and records required under this article shall be furnished at the sole expense of the Company.

C. Special Review of System Performance. When there have been complaints made concerning water service or where there exists other evidence which, in the reasonable judgment of the City, casts doubt on the reliability or quality of the water service to the effect that the Company is not in compliance with the requirements of this Agreement, the City shall have the right to compel the Company to test, analyze and report on the performance of the system in order to protect the public against loss or degradation of water service. The City may not compel the Company to provide such tests or reports unless and until the City has provided the Company with at least thirty (30) days notice of its intention to exercise its rights under this section and has provided the Company with an opportunity to be heard prior to its exercise of such rights. Such test or tests shall be made and the report shall be delivered to the City no later than forty-five (45) days after the City notifies the Company that it is exercising such right, and shall be made at the Company's sole cost; provided that such tests shall be limited to those which may reasonably be conducted within thirty (30) days. If the City compels the Company to do any such test more than once during any twelve (12)-month period and the results of the subsequent test indicate that Company is in compliance with this Agreement, then the test shall be at the City's cost. Such report shall include the following information: The nature of the complaints which precipitated the special tests; what system component was tested; the equipment used and procedures employed in said testing; the results of such tests; and the method by which such complaints were resolved. Any other information pertinent to the special test shall be recorded.

D. The City may use confidential material/information solely for the City's own municipal purposes and shall allow access to such information/material only to such of its employees or contractors who have a need for such information/materials to perform the City's municipal functions. All such employees or contractors shall be advised that such confidential

information/material is to be handled and maintained as confidential and not disclosed nor made available to third parties nor used for any purpose other than the municipal purpose for which they have been given access to such information/materials. Prior to receipt of any such information/materials, all such contractors shall sign a confidentiality agreement in a form reasonably acceptable to the Company and City.

ARTICLE VIII

DEFAULTS AND REMEDIES

8.1 City's Power to Terminate.

A. The City may terminate this Agreement and rescind all rights and privileges associated with it in the following circumstances, each of which shall represent a default by the Company and a material breach of this Agreement:

1. If the Company shall default in the performance of its material obligations under this Agreement and shall continue such default after receipt of notice and reasonable opportunity to cure the default;

2. If the Company shall fail to provide or maintain in full force and effect the insurance coverage, or letter of credit as required in the Agreement;

3. If the Company shall violate any order or ruling of any regulatory body having jurisdiction over the Company relative to this Agreement, unless such order or ruling is being contested by the Company by appropriate proceedings conducted in good faith;

4. If the Company practices any fraud or deceit upon City;

5. If the Company becomes insolvent, unable, or unwilling to pay its debts or is adjudged a bankrupt.

B. The termination of this Agreement shall not affect any right of City to pursue any remedy under this Agreement or any provision of law, whether at law or in equity.

8.2 Procedure for Remedying Violations. Prior to imposing any remedy or other sanction against the Company, the City shall give the Company notice and opportunity to be heard on the matter, in accordance with the following procedures:

A. The City shall first notify the Company of the violation in writing by personal delivery or certified mail, return receipt requested, and demand institution of corrective action within a reasonable time, which shall not be less than seven (7) days in the case of the failure of the Company to pay any sum or other amount due the City under this Agreement and thirty (30) days in all other cases. The notice shall specify the violations alleged to have occurred. The Company shall institute corrective action within such time and diligently prosecute correction to completion.

B. If the Company fails to correct the violation within the time prescribed or if the Company fails to commence correction of the violation within the time prescribed and diligently remedy such violation thereafter, the City shall then give written notice of not less than ten (10) days of a meeting with the Chief Administrative Officer of the City or a delegate. Said notice shall specify the violations alleged to have occurred.

C. At the meeting, the Chief Administrative Officer of the City, or delegate, shall hear and consider all relevant information presented by the Company.

D. In the event the Chief Administrative Officer, or delegate, finds that the Company has corrected the violation or has diligently commenced correction of such violation after notice from the City and is diligently proceeding to fully remedy such violation, or that no material violation has occurred, no penalty or other sanction shall be imposed.

E. In the event the Chief Administrative Officer, or delegate, finds that material violations exist and that the Company has not corrected the same in a satisfactory manner or has not diligently commenced correction of the violation after notice of it from City and is not diligently proceeding to fully remedy the violation, the Chief Administrative Officer may, in his or her sole discretion, impose one (1) or more of the remedies provided in this Agreement, subject to Section 9.12.

F. Sanctions. The Chief Administrative Officer may assess an amount of One Hundred Dollars (\$100.00) per day per violation for so long as it may continue unabated after notice and hearing, subject to a maximum assessment of \$5,000.00 per violation, and \$5,000.00 per calendar year under this Agreement. This amount shall be a contractual remedy in addition to all other remedies provided for in this Agreement or otherwise available in law or equity.

8.3 Abandonment and Removal of Franchise Property.

A. Use Discontinued. Except as otherwise provided in Article II, in the event that the use of any property of the Company within the public rights-of-way or other public property is discontinued for a continuous period of two (2) years or more, the Company shall be deemed to have abandoned such property; provided, however, that if the City notifies the Company of property that appears abandoned and the Company does not indicate, in writing, within ninety (90) days to the City, that the property is still in use, the property shall be deemed abandoned.

B. Underground Abandonment. The City may permit the Company to abandon any underground franchise property in place so long as it does not interfere with the use of the streets or public rights-of-way in which such property is located or with the use thereof by any public utility or other company, provided, however, that the Company must notify the City of the location of all facilities proposed to be abandoned hereafter in public ways or other public

property, and shall provide accurate maps of such abandoned or unused facilities to the City in accordance with Subsection 2.7.C. If the City determines that some or all of such underground property abandoned after the date hereof would interfere with the use of the streets or public rights-of-way, the City may require the Company to remove the property in accordance with Subsection 8.3.C below.

C. Removal. The City, upon such terms as the City may impose, may request the Company to remove any facility the Company intends to abandon in the public right-of-way. If such request is made, the Company shall remove all such post-date abandoned facilities so directed to be removed within a reasonable time specified by the City Engineer, but in any event within one hundred eighty (180) days of receipt of written notice from the City and shall restore any affected street to the state it was in prior to such removal. In removing its abandoned facilities, the Company shall refill, at its own expense, any excavation that shall be made by it and shall restore all public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any other utilities. The City shall have the right to inspect and approve the condition of the public ways and public places prior to and after removal.

D. Transfer of Abandoned Property. Upon abandonment of any property in place, the Company, if required by the City, shall submit to the City an instrument, satisfactory in form to the City, transferring to the City the ownership of the facilities abandoned, provided, however, that the City's acquiescence to the Company's request to abandon the property shall constitute an offer by the Company to transfer ownership and acceptance of said property by the City of ownership rights.

8.4 Extended Operation and Continuity of Services.

A. In the event that the Company elects to rebuild, modify, or sell its water system, or the City gives notice of intent to terminate or not to renew this Agreement, the Company shall act so as to ensure that all customers receive service so long as this Agreement remains in force.

B. Expiration. Upon expiration or termination of this Agreement, the City shall have the discretion to permit the Company to operate the system under the terms and conditions of this Agreement and to provide the regular customer service and any and all of the services that may be provided at that time. It shall be the right of all customers to continue to receive all available services provided that financial and other obligations to the Company are honored. The Company shall use reasonable efforts to provide continuous, uninterrupted service to its customers, including operation of the system during periods following agreement expiration or termination.

C. Receiver Appointed. This Agreement shall, at the option of the City, cease and terminate one hundred twenty (120) days after appointment of a receiver or receivers, or trustee or trustees, to take over and conduct the business of the Company, whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

1. Such receivers or trustees shall have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this article and this Agreement, and the receivership or trustees within said one hundred twenty (120) days shall have remedied all the faults under this Agreement or provided a plan for the remedy of such faults which is satisfactory to the City; and

2. Such receivers or trustees shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction in the premises whereby

such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Agreement.

D. Foreclosure or Judicial Sale. In the case of a foreclosure or other judicial sale of the Company's water system serving the City, or any material part thereof, the City may serve notice of termination upon the Company and the successful bidder at such sale, in which event this Agreement and all rights and privileges of the Company hereunder shall cease and terminate thirty (30) days after service of such notice, unless:

1. The City shall have approved the transfer of this Agreement, as and in the manner that Section 9.5 provides; and

2. Such successful bidder shall have covenanted and agreed with the City to assume and be bound by all terms and conditions of this Agreement.

8.5 Rights Reserved to City.

A. General. In addition to any rights specifically reserved to the City by this article, the City reserves to itself every right and power which is reserved by a provision of any ordinance or under the Agreement.

B. Waiver.

1. The City shall have the right to waive any of City's rights under the Agreement, except those required by federal or state regulation, if the City determines:

(a) That it is in the public interest to do so, and

(b) That the enforcement of such provision will impose an undue hardship on the Company or customers.

2. To be effective, such waiver shall be evidenced by a statement in writing signed by a duly authorized representative of the City. Waiver of any provision in one (1) instance shall

not be deemed a waiver of such provision subsequent to such instance nor be deemed a waiver of any other provision of the agreement unless the statement so recites.

ARTICLE IX

MISCELLANEOUS

9.1. Term.

A. This Agreement shall have an initial two (2)-year term, commencing January 4, 2004, and ending January 4, 2006.

B. The Agreement shall be automatically renewed for successive two (2)-year terms, such terms ending on the first Wednesday of January of the year of termination, unless either party provides the other party with notice of termination at least one hundred eighty (180) days prior to the end of the term.

C. Such notice of termination shall be effective when personally delivered to either party at the address set forth herein or when deposited in the mail, certified mail, to the other party at the address set forth herein.

9.2. Annexation and Water Services. The City recognizes that state law currently contemplates that the Company provide water service to all persons without discrimination or delay, so that the Company may not condition water service on annexation by the customer to the City. Should such law change during the term hereof, the Company agrees to do the following:

A. Annexation or Development Agreements. To the extent permitted by law, the Company shall not provide water service to any new retail customer residing on property within a mile and a half of the City limits which is not within the corporate limits of Champaign or Urbana or

Savoy, unless the property is subject to an annexation or development agreement with Champaign, Urbana, or Savoy.

B. Wholesale Customers. This provision shall not prevent the Company from providing service to wholesale customers who are currently the University of Illinois, Village of Tolono, Village of Seymour, Village of Philo, Village of Sidney, Arcola/Tuscola Joint Water Agency, and Embarrass Water District. The Company may serve additional wholesale customers, in accordance with applicable laws and regulations.

C. Indemnification. The City shall defend, indemnify, and hold the Company harmless if the Company is sued and the basis for such suit is the obligation imposed by this section.

D. Enforcement. The provisions of this section shall be enforceable by a suit for specific performance.

9.3. Savings. If any provision of this Agreement is subsequently declared or determined by the Commission or any legislative or judicial authority to be unlawful, unenforceable or not in accordance with applicable statutes, or if the Commission does not, for rate making purposes, subsequently allow the full amount of the minimum annual payment by the Company under Section 5.1 hereof or as such payment may be adjusted from time to time under Section 5.2 hereof as a continuing operating expense after the Company has attempted to obtain such allowance, all other provisions of this Agreement shall remain in full force and effect, and the parties agree to meet and to negotiate in good faith with respect to any substitute provision as may be affected thereby. In the event that the parties are unable to agree upon such a substitute provision within a period of ninety (90) days from and after the date of any such declaration or determination, either party may elect to terminate this Agreement by providing notice in writing to the other party at least thirty (30) days prior to the date of any such termination.

9.4. Limitations of Rights. With the exception of rights expressly and unequivocally conferred, nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be construed to give to any person other than the parties to this Agreement any legal or equitable right, remedy or claim under or in respect to this Agreement, any terms, agreements, covenants, conditions and provisions of this Agreement being intended to be and being for the sole and exclusive benefit of the parties to this Agreement and not otherwise.

9.5. Successors and Assigns.

A. Binding Nature. This Agreement shall, to the extent now or hereafter permitted by the statutes or laws of the State of Illinois, inure to the benefit of and be binding upon any municipality or other unit of state or local government in or to which the City may hereafter be included, attached or annexed or into which it may be incorporated, and shall also inure to the benefit of and be binding upon the successors and assigns of the Company, as provided herein.

B. Right to Assign.

1. Subject to the remainder of this section, the Company shall have the right at any time to assign the entire Agreement to any public utility corporation organized under the laws of the State of Illinois or authorized to engage in public utility business within the State of Illinois or to any other person, firm, or corporation authorized or empowered to own and/or operate a water utility business within the corporate limits of the City.

2. Consent. The Company shall not assign or transfer through merger under 7-102 of the Public Utilities Act, 220 ILCS 5/7-102, in whole or in part, any of the rights or privileges granted by this Agreement, without the prior consent of the City, and then only upon such reasonable terms and conditions as may be prescribed by the City, which consent shall not be unreasonably denied or delayed. Any attempt to assign or transfer this Agreement or any rights

or privileges granted by this Agreement without such consent of the City shall be null and void; provided, however, that nothing contained herein shall be construed so as to prevent the Company from contracting with third parties, in the Company's sole and absolute discretion, to have services performed on its behalf, so long as the Company remains responsible for the performance hereunder. The prohibition set forth in this section shall not apply to any assignment or transfer by the Company to an affiliate of the Company, including a subsidiary entity under common control of the Company. The granting of a security interest in any Company assets, or any mortgage or other hypothecation, shall not be considered a transfer for the purposes of this section.

3. Involuntary Sale. The Company shall notify the City in writing of any foreclosure or any other judicial sale of all or a substantial part of the water facilities serving the City or upon the termination of any lease or interest covering all or a substantial part of said water facilities. Such notification shall be deemed notice that an assignment of this Agreement has taken or is contemplated to take place and the provisions under this section governing the consent of the City to such assignment shall apply.

4. Application to Assign.

(a) For the purpose of determining whether it shall consent to an assignment or merger, the City may inquire into the qualifications of the prospective assignee, and the Company shall assist the City in such inquiry. In seeking the City's consent to any assignment or merger, the Company shall have the responsibility of ensuring that the assignee completes an application which shall include the following information:

(1) Resume of prior history of proposed assignee, including the expertise of the proposed assignee in the water utility field.

(2) List of the partners, general and limited, of the proposed assignee, if a partnership, list of the member and managing member, if a limited liability company, or the percentage of stock owned or controlled by each stockholder holding more than a ten per cent (10%) interest, if a corporation.

(3) List of officers, directors and top five (5) managing employees of the proposed assignee, together with a description of the educational and professional background and qualifications of each such person.

(4) The names and addresses of any parent of the proposed assignee or any other business entity which owns a controlling interest in the proposed assignee.

(5) A current financial statement of the proposed assignee verified by a certified public accountant or otherwise certified to be true, complete and correct in accordance with the accounting standards that are applicable to such proposed assignee.

(6) The proposed assignee's agreement to be bound by the terms hereof and to assume the Company's obligations hereunder.

(7) History of enforcement actions, related to environmental violations, water quality, water service, or financial manipulation, taken by any governmental enforcement agency against the proposed assignee or any subsidiary, any partner, member, officer, director, or manager of the proposed assignee or any subsidiary commenced within the five (5)-year period prior to the application and the outcomes of such enforcement action.

(8) Current pending litigation against the proposed assignee or any subsidiary of the proposed assignee related to water quality, water service, or alleged failure to pay amounts when due.

(b) An application which provides the information required by this section shall be submitted to the City not less than forty-five (45) days prior to the proposed date of assignment or merger. The City shall consent to the assignment or merger should the Company establish that the proposed Assignee possesses the qualifications and financial and technical capability to operate and maintain the system and comply with all franchise agreement requirements for the remainder of the term of this Agreement. The consent of the City to such assignment shall not be unreasonably denied or delayed.

5. Changes of Control. Should the Company or its parent company be sold, the Company will be required to seek approval from the Commission under Section 7-204 of the Illinois Public Utilities Act, 220 ILCS 5/7-204, for such “change of control”. Should the Company file with the Commission for a change of control or merge with another company under Section 7-102 of the Public Utilities Act, 220 ILCS 5/7-102, during the term hereof, the Company shall provide the information set forth in Subsection (iv) above in regard to the proposed acquirer to the City within fourteen (14) days of filing its Petition with the Commission. If the City consents to the assignment or merger under B.2 of this Section 9.5, the City shall not object before the Commission. This provision shall not apply to a transfer of ownership to an affiliate of the Company.

9.6. Waiver of Default or Breach. No waiver by either party of any default or breach on the part of the other party of any provision, covenant or condition of this Agreement shall be construed to be a waiver of any preceding or succeeding default or breach on the part of such other party of such provision, covenant or condition or of any other provision, covenant, or condition. Any failure to take advantage of any default or breach on the part of such other party shall not be construed as a waiver thereof nor shall any custom or practice that may grow up

between the parties in the course of administering this Agreement be construed to waive or to lessen the right of either party to insist on the performance of the provisions of this Agreement.

9.7. Notices. Any notice required under this Agreement to be served upon the City or the Company shall be in writing and shall be served either by (a) certified mail, return receipt requested; (b) personal service; or (c) a national overnight courier service, addressed to each of the parties as follows, or to such other address as the City or the Company may hereafter furnish in writing to the other party:

CITY OF URBANA, ILLINOIS:

City of Urbana
400 South Vine Street
Urbana, IL 61801

Attention: Chief Administrative Officer

COMPANY:

Illinois-American Water Company
201 Devonshire Drive
Champaign, IL 61820

Attention: Champaign County
Network Operations Manager

9.8. Other Laws; Effect of Other Ordinances. Nothing contained in this Agreement shall be deemed to affect any ordinance of general application of the City and any and all such ordinances shall be effective against the Company so far as such ordinances are reasonably applicable to the condition and business of the Company.

9.9. Indemnity.

A. Company to Indemnify. Except as provided in Subsection B of this Section 9.9, the Company agrees at its sole cost and expense to protect, indemnify, hold and save harmless, and defend the City, its officers and employees, against any and all claims, costs, causes, expenses and fees, including reasonable attorneys' fees, incurred by reason of:

1. Any suit or any other claim for injury or damages arising in favor of any person, including, but not limited to, the Company or any contractors, agents, or employees of the

Company, on account of or in connection with any breach or other violation by the Company of any of the obligations or other terms and conditions imposed upon or assumed by the Company pursuant to this Agreement; or

2. Any personal or bodily injuries or death, or damage to property, including the water facilities, occurring, growing out of, incident to, or resulting directly or indirectly from any work by the Company or the existence of its water facilities in or about the public ways, whether such loss, damage, injury or liability is contributed to by the condition of the public ways or other property, improvement or facilities thereon, whether latent or patent, or from any other cause whatsoever.

B. Company Not Required to Indemnify. The Company shall not be required to indemnify the City, its officers and employees, against any claims, costs, causes, expenses and fees, including reasonable attorneys' fees, incurred by reason of any of the following:

1. Claims for personal or bodily injuries, death, or damage to property, including the water facilities, to the extent contributed to or caused by any negligence of the City, or any of its officers, employees, or agents. "Negligence of the City", as used herein, shall not be construed to include any action or inaction related to the condition of the public ways or other property, improvement or facilities thereon, or any failure to act on the part of the City where the City might otherwise have a legally imposed duty to act in connection with any work by the Company or the existence of its water facilities in or about the public ways, but shall include actual negligent physical interference or contact with the water facilities by the City, its officers, employees or agents; or

2. Any willful or wanton conduct of the City or any of its officers, employees or agents to the extent such conduct contributed to the claim; or

3. Any breach by the City of any of the obligations or other terms and conditions imposed upon or assumed by the City pursuant to this Agreement to the extent such breach contributed to the claim.

9.10. **Prior Franchises Terminated.** All grants, franchises, franchises-in-fact, rights, licenses, and privileges heretofore made or granted by the City by ordinance or otherwise to the Company and all rights of the Company thereunder made by the City to others from which the Company may have purchased any part of its water facilities or plan, are hereby terminated, it being the intention of the parties that this Agreement shall contain all grants, rights, licenses, and privileges of the Company in connection with this Agreement.

9.11. **Choice of Law.** This Agreement shall be governed by the laws of the State of Illinois.

9.12. **Non-Waiver.**

A. Nothing contained herein should be construed as a waiver by the Company of any other right it would have under law or equity, including the right to object to proposed or enacted ordinances of the City, and the right to assert any such right or any legal theory or position in any administrative or judicial forum.

B. Nothing contained herein shall be construed as a waiver by the City of any right it would have under law or equity, including but not limited to, the right to assert any such right or any legal theory or position in any administrative or judicial forum.

9.13. **Right of First Refusal.** Should the Company, during the term of this Agreement, determine to sell its Champaign District assets to a third party, the cities of Champaign and Urbana shall have the first right to purchase such assets. To that end, the Company shall give notice to the cities of its intent to sell the Champaign District assets. Such notice shall indicate what the fair market value of such assets is, being the price such third party would pay for such

assets. If the cities wish to exercise such option, they shall provide written notice of their intent to exercise within thirty (30) days of their receipt of notice from the Company of its intent to sell such assets. If the cities fail to provide written notice within such thirty days, they shall be deemed to have waived such option. If the cities properly elect to exercise such option, they shall pay such fair market value to the Company in full in cash within three hundred sixty-five (365) days following receipt of notice that the Company intends to sell such assets. If the cities fail to make such payment, they will be deemed to have waived such option. Notwithstanding the foregoing, the cities' right of first refusal under this Section 9.13 shall not apply to a sale or proposed sale by the Company of substantially all of its assets, including the assets of the Champaign District, or of the Company's stock.

9.14 Economic Development. The Company will continue support through employee participation and other financial contribution efforts for the economic development of Champaign County at least at the same levels as exist on the date of this Agreement.

9.15 Aquifer Study. The Company and City will continue to support through employee participation and other efforts to study, understand and protect the Mahomet-Teays Aquifer.

9.16 Water Tower. The Company will paint or otherwise mark "Champaign-Urbana" or such other community identifying phrase as Champaign, Urbana, and the Company may agree on its water tower near Interstate 74 so that such identification is visible to traffic on Interstate 74. Such identification shall be maintained continuously during the term of this Agreement.

IN WITNESS WHEREOF, the City of Urbana, Illinois, has caused this Agreement to be executed by its Mayor in its corporate name and its municipal seal to be hereunto affixed and

attested by its City Clerk, and the Company has caused this Agreement to be executed by its President in its corporate name and its corporate seal to be hereunto affixed and attested by its Secretary, all as of the date first above written.

CITY OF URBANA, ILLINOIS

ILLINOIS-AMERICAN WATER COMPANY

By _____
 Tod Satterthwaite, Mayor
(SEAL)

By: _____

Print Name and Title

ATTEST:

City Clerk

(SEAL)

ATTEST:
By: _____
Its: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
 Steve Holz, City Attorney
 City of Urbana, Illinois

By: _____
 Sue A. Schultz, Esq.,
Attorney for Illinois-American Water Co.