

ORDINANCE NO. 8990-4

AN ORDINANCE
APPROVING AND AUTHORIZING THE EXECUTION OF
CERTAIN AGREEMENTS WITH NORTHERN ILLINOIS WATER CORPORATION

WHEREAS, it is desirable and in the best interests of the City of Urbana, Illinois (the "City"), to enter into the following agreements with the Northern Illinois Water Corporation, a corporation of the State of Illinois:

1. An Agreement Concerning the Right of Northern Illinois Water Corporation to Use the Public Ways of the City, Fire Protection and Other Related Matters

2. Agreement Concerning the Payment of Fire Protection Charges

3. Agreement for Providing Data

(collectively, the "Agreements"); and

WHEREAS, copies of the Agreements have been presented to and are now before this meeting.

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

Section 1. That the terms and provisions of the Agreements, in substantially the form thereof now before this meeting, be and the same are hereby approved.

Section 2. That the Mayor of the City be and the same is hereby authorized and empowered to execute and deliver the Agreements, and the City Clerk of the City be and the same is authorized and empowered to attest to such execution thereof, with such changes therein as are not inconsistent herewith and as may be approved by the officers of the City executing the same, their execution or acceptance thereof, as the case may be, to constitute conclusive evidence of such approval of any and all changes or revisions therein from the form of the Agreements now before this meeting.

Section 3. From and after the effective date of this Ordinance, the proper officials, agents and employees of the City are hereby authorized, empowered and directed to do all such acts and things and to execute and deliver all such documents as may be necessary to carry out the intent and accomplish the purposes of this Ordinance and the Agreements as executed and delivered.

Section 4. This Ordinance shall become effective immediately upon its passage and approved as required by law.

This ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the

members of the City Council of the City of Urbana, Illinois, at
regular meeting of said City Council.



1989. PASSED by the City Council this 17th day of July,
Ruth S. Brookens
Ruth S. Brookens, City Clerk

1989. APPROVED by the Mayor this 24th day of July,
Jeffrey T. Markland
Jeffrey T. Markland, Mayor

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Jeffrey T. Markland
Jeffrey T. Markland, Mayor

AN AGREEMENT
CONCERNING THE RIGHT OF NORTHERN ILLINOIS
WATER CORPORATION TO USE THE PUBLIC WAYS OF
THE CITY, FIRE PROTECTION AND OTHER RELATED MATTERS

THIS AGREEMENT, made and entered into as of the 1st day of May, 1989, by and between the City of Urbana, a municipal corporation of the State of Illinois (the "City") and Northern Illinois Water Corporation, a corporation of the State of Illinois (the "Corporation"),

W I T N E S S E T H:

WHEREAS, on January 22, 1912, the City Council of the City duly passed an ordinance, entitled "An Ordinance Providing For a Supply of Water to the City of Urbana and Its Inhabitants, 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 was duly approved by the Mayor on January 25, 1912 (the "Original Franchise Ordinance"); and

WHEREAS, pursuant to Section 1 of the Original Franchise Ordinance, the right, privilege, authority and franchise was thereby given and granted by the City to the Champaign-Urbana Water Company, its successors and assigns, for a period of thirty (30) years from and after the date of the passage of that Original Franchise Ordinance; and

WHEREAS, the Corporation is now the successor and assignee of the Champaign-Urbana Water Company; and

WHEREAS, while the Original Franchise Ordinance expired by its terms after thirty (30) years, the City and the Corporation have continued to observe the terms and conditions of some of the principal features of the Original Franchise Ordinance, with each giving or extending to the other the same consideration required by such terms and conditions of the Original Franchise Ordinance; and

WHEREAS, the City and the Corporation both recognize the need to express formally and in writing, in lieu of the Original Franchise Ordinance, such new terms and conditions of agreement as have now been agreed upon between the City and the Corporation.

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

ARTICLE I
IN GENERAL

Section 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:

"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 of the State of Illinois as may then have authority to regulate public utility services.

"Public Ways" means the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel, including streets, alleys and bridges.

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

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

"Work" means constructing, installing, operating, maintaining, relocating, removing, repairing, inspecting and protecting Water Facilities.

Section 1.2. Certain Phrases. The words "hereof", "herein", "hereunder", "hereto", and other words of similar import refer to this Agreement as a whole and not solely to the particular portion thereof in which any such word is used. 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.

Section 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.

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

Section 1.5. Representations. Each of the parties hereto, 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 herein contained 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

Section 2.1. Grant. For and during the term of this Agreement, the City hereby grants to the Corporation the nonexclusive 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:

(i) such other terms and conditions as are otherwise set forth in this Agreement; and

(ii) the rights of any other utility, person or entity currently having rights, licenses, easements or franchises in and about the Public Ways.

Section 2.2. Rights Granted Herein Subordinate.

A. Corporation to Relocate. It is expressly understood and agreed that the rights herein granted to the Corporation by the City are and the same shall be at all times subordinate to the City's proper use of the Public Ways, and if the City, for good and reasonable cause, shall determine that it is necessary for the Corporation to Relocate certain Water Facilities within the Public Ways in connection with a public improvement of such Public Ways by the City, the Corporation shall Relocate any such Water Facilities within a reasonable period of time in connection with such public improvement and shall pay the entire cost and expense of such relocation.

B. Corporation Not Obligated to Relocate. The Corporation shall not be obligated to Relocate any such Water Facilities at its own cost and expense pursuant to Subsection A of this Section 2.2 where:

(i) the Water Facilities are located in easements which were acquired by the Corporation and such Water Facilities pre-existed the Public Ways in the location from which the Water Facilities are to be relocated; or

(ii) a permanent relocation of the Water Facilities is not involved or required; or

(iii) some development adjacent to the Public Ways which is otherwise unrelated to a public improvement of the Public Ways requires such relocation.

Section 2.3. Restoration by the Corporation. In the event that any property or improvement of the City in the Public Ways is disturbed or damaged by the Corporation or any of its contractors, agents or employees in connection with undertaking any and all Work pursuant to the right granted to the Corporation pursuant to this Agreement, the Corporation shall promptly, at

the Corporation's sole cost and expense, restore as nearly as practicable to their former condition said property or improvement of the City which was so disturbed or damaged, and in the event that any such property or improvement of the City shall later become uneven, unsettled or otherwise require restoration, repair or replacement because of such disturbance or damage by the Corporation, then the Corporation shall promptly, upon receipt of notice from the City and at the Corporation's sole cost and expense, restore as nearly as practicable to their former condition said property or improvement of the City which was disturbed or damaged. Subject to the limitations of Section 2.6 hereof, any such restoration by the Corporation shall be made in accordance with such materials and specifications as may, from time to time, be then provided for by ordinance of the City.

Section 2.4. Permits. Prior to commencing any Work in the Public Ways, the Corporation shall obtain any and all permits lawfully required by such codes and ordinances of general application of the City for such Work. In the event that emergency Work may be required to be undertaken by the Corporation, however, the Corporation shall obtain any and all such permits within three (3) work days after the beginning of such emergency Work. It is provided, however, that the Corporation may, with the consent of the City Engineer, submit a monthly list of Work undertaken by the Corporation 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.

Section 2.5. Obstructions and Safety. There shall be no unreasonable or unnecessary obstruction of the Public Ways of the City by the Corporation in connection with any of the Work herein provided for, and the Corporation shall maintain such barriers, signs and warning signals during any such Work performed on or about the Public Ways or adjacent thereto as may be necessary to reasonably avoid injury or damage to life and property and as otherwise provided for in the Uniform Manual of Traffic Control Devices of the State of Illinois, as such Manual may, from time to time, be in effect, or any successor provisions.

Section 2.6. Effect of Other Ordinances. Nothing contained in this Agreement shall be deemed to affect any ordinance of general application of the City that contains or provides any lawful regulation for the control and maintenance of the Public Ways of the City and any and all such ordinances shall be effective against the Corporation so far as such ordinances are reasonably applicable to the condition and business of the Corporation.

Section 2.7. Indemnity.

A. Corporation to Indemnify. Except as provided in Subsection B of this Section 2.7, the Corporation 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:

(i) any suit or any other claim for injury or damages arising in favor of any person, including, but not limited to, the Corporation or any contractors, agents or employees of the Corporation, on account of or in connection with any breach or other violation by the Corporation of any of the obligations or other terms and conditions imposed upon or assumed by the Corporation pursuant to this Agreement, or

(ii) 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 Corporation 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.

The City may, if it so desires, assist in defending any such claim or suit but shall not, in any event, be obligated to do so.

B. Corporation Not Required to Indemnify. The Corporation 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:

(i) 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 Corporation 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

(ii) 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

(iii) 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; or

(iv) any claims or suits for bodily injuries or death or damage to property instituted by the City, its officers, employees or agents.

C. Notice. Notice, in writing, shall be promptly given to the Corporation of any claim or suit against the City and its officers and employees which, by the terms hereof, the Corporation shall be obligated to defend, or against which the Corporation has hereby agreed to save and keep harmless the City. The City shall furnish to the Corporation all information in its possession relating to said claim or suit, and cooperate with the Corporation in the defense of any said claim or suit. The Corporation further agrees to provide notice, in writing, to the City of any claim or suit against the Corporation and/or its officers or employees which may directly or indirectly affect this Agreement or the property referred to herein whether or not the City has been made a defendant or respondent to any such legal action.

Section 2.8. Schedule of Work.

A. By the Corporation. On or before December 31 of each year, the Corporation shall provide the City with a schedule of all planned Work scheduled to be undertaken by the Corporation within the next succeeding one-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 Corporation 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.

B. By the City. On or before June 30 of each year, the City shall provide to the Corporation a schedule of work to be undertaken by the City during the next succeeding one-year period involving the construction or repair of the Public Ways. The Corporation shall use its best efforts to coordinate any subsurface Work which is likely to be done by the Corporation in such one-year period such that the Corporation 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.

Section 2.9. Other Easements or Licenses. Subject to the provisions of Section 2.6 of this Agreement, no other provision of this Agreement shall be construed as preventing the Corporation from undertaking Work with respect to its water supply and distribution system or from using any easements or licenses for water service or general public utility purposes which have been granted by any person, firm or corporation 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 corporation other than the City.

ARTICLE III
FIRE PROTECTION AND HYDRANTS

Section 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 herein, the Corporation shall provide the City with such capacity, facilities and water as may be required to meet the fire protection and suppression needs of the City. The right is reserved by the Corporation 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 Corporation makes no guarantee as to the pressure or supply of water in fire service connections, fire hydrants, or the mains supplying the same. The Corporation shall have no obligations under this Article with respect to fire protection or hydrants for locations where there are no existing water mains six inches or larger in Public Ways having a width of thirty (30) feet or more. The Corporation shall have no obligation to install any main or mains solely for fire protection purposes.

Section 3.2. Fire Hydrants, Installation. To the extent that such fire hydrants have not previously been installed, the Corporation shall, upon the written request of the City and within a reasonable time following notice of such request, install or cause to be installed, at the sole cost and expense of the Corporation, such fire hydrants as may be required by this Section 3.2. The City may request the Corporation to install any such fire hydrant as may be required to meet the spacing requirements for fire hydrants in accordance with the Insurance Service Office Municipal Grading Criteria dated 1980, with a minimum spacing of no less than four hundred (400) feet and a maximum spacing of no greater than eight hundred (800) feet between any such hydrant. Such requirement to install shall be expressly limited to those locations in Public Ways having a width of thirty (30) feet or more where an existing water main of six (6) inches or larger is located. All newly installed fire hydrants by the Corporation shall be of modern and appropriate style, with two nozzles of 2 1/2 inches diameter and one nozzle of 4 1/2 inches diameter, all with national standard fire hose coupling threads.

Section 3.3. Fire Hydrants, Inspection and Repair. 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 Corporation shall be notified by the City in writing of the location of any such fire hydrant, and, upon receipt of such notice, the Corporation shall restore or repair such hydrant to effective working order as soon as reasonably possible. The City shall notify the Corporation in advance of when the City is going to inspect fire hydrants, indicating which fire hydrants are being inspected and the dates the inspection will be performed. The Corporation may have a representative present at the time of any such inspection.

Section 3.4. Fire Hydrants, City Use. 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 such as the flushing of public gutters, sewers and streets and testing, street sweeping and emergency responses. The City agrees to notify the Corporation as soon as reasonably practicable when any fire hydrant or hydrants are used for fire suppression purposes or emergency responses.

Section 3.5. Fire Hydrants, Meters. The Corporation 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 Corporation to install a meter.

ARTICLE IV PAYMENT AND FEES

Section 4.1. Initial Lump Sum Payment. In addition to the annual payments provided for in Section 4.2 hereof, the Corporation shall pay to the City an initial one time lump sum payment of \$53,308.70. Such payment shall be for the rights granted herein including the right of using the Public Ways and shall be due and payable within ten (10) days from the date the Commission allows the amortization of such payment as provided in Section 4.4 hereof. Such lump sum payment shall be considered the amount due the City for the period of time prior to and until the initial monthly payment is due under Section 4.2 below.

Section 4.2. Annual Payment. So long as the Corporation exercises and enjoys the rights granted to it hereunder during the term hereof, and in consideration thereof, and for the right of using the Public Ways, the Corporation shall pay to the City a minimum annual amount equal to \$42,500, effective when the rates required to provide the Corporation revenue to make such payment go into effect and collection of those rates begin, but in no event to be later than as of May 1, 1989. The Corporation shall make such payment of the minimum annual amount monthly, in twelve (12) equal installments, due on the last day of the next succeeding calendar month after the month such rates go into effect.

Section 4.3. Adjustment. The minimum annual amount specified in Section 4.2 of this Agreement shall be subject to adjustment in accordance with changes in the Consumer Price Index for All Urban Consumers for the Chicago, Illinois area as promulgated by the Bureau of Labor Statistics of the United States Department of Labor, using the years 1982-1984 as a base of 100 (the "CPI"). Such adjustment shall be made by multiplying the minimum annual amount as so specified in Section 4.2 above by a fraction, the numerator of which is the CPI on the date when any

new or modified rates of the Corporation are filed with the Commission and the denominator of which is the CPI on the date when the then current rates of the Corporation were filed with the Commission in accordance with Section 4.4 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 4.2 hereof. The Corporation shall request an amount sufficient to make the minimum annual payment specified in Section 4.2 as modified and adjusted by this Section 4.3, in each general rate increase case for the Champaign Division of the Corporation that the Corporation makes before the Commission. The effective dates of the adjustments hereunder shall be the dates the adjusted rates go into effect.

Section 4.4. Contingency of Agreement; Other Conditions and Subsequent Authorizations.

A. Contingency of Agreement. This Agreement is contingent upon the authorization by the Commission of recovery in the Corporation's rates of the lump sum payment provided for in Section 4.1 of this Agreement and the minimum annual payment provided for in Section 4.2 of this Agreement. For purposes of this Section, "recovery in the Corporation's rates" means that the Commission, for ratemaking purposes, beginning with the Corporation's next general rate case order, allows the amortization of the initial payment under Section 4.1 hereof over a three (3) year period as an operating expense, with the unamortized balance included in rate base, and allows the full amount of the minimum annual payments under Section 4.2 hereof as a continuing operating expense. In the event that the Corporation does not obtain such allowances by the Commission within a period of eleven (11) months from and after the Corporation's current general rate filing, this Agreement and all rights hereunder shall terminate and be of no force and effect.

B. 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 Corporation to the City under this Agreement, the Corporation 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 Corporation further agrees that it shall use due diligence in attempting to obtain such ratemaking allowances of the Commission as are referenced herein.

C. Payments After Initial Authorization. In the event that the Corporation, after the initial authorization by the Commission as provided in Subsection A of this Section 4.4, does not obtain any subsequent authorization by the Commission of recovery in the Corporation's rates of the full amount of the minimum annual payment, as last adjusted pursuant to Section 4.3 hereof, the provisions of Section 6.3 of this Agreement shall control.

Section 4.5. Permit Fees. The Corporation 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 Corporation fails or neglects to obtain any such required permits, the Corporation shall pay to the City double such permit fees unless the City unreasonably refuses to issue such permit or permits.

Section 4.6. Furnishing of Water; Payment by City and Change in Rates. The Corporation 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 Corporation 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 hereof. The rates to be charged by the Corporation 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 from any fire hydrants pursuant to Section 3.4 of this Agreement. Within seven (7) days after the Corporation makes any request for a change of rates by filing the same with the Commission, the Corporation shall provide the City with a copy of any document filed with the Commission that affects the applicable rate or rates that may be paid by the City. If requested to do so by the City, the Corporation 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.

Section 4.7 Payment for Fire Protection. To the extent consistent with the provisions thereof, any fire protection charge that may be imposed by the Corporation 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 Corporation. Any payment for fire protection shall be governed by the laws of the State of Illinois and the Commission rules related thereto, as from time to time enacted or adopted by the General Assembly or the Commission. In the event there is any change from such laws and Commission rules existing on the date of the execution of this Agreement with respect to the amounts paid for fire protection or who or what entity pays said amounts, such change shall be subject to the provisions of Section 6.3 of this Agreement.

ARTICLE V DEFAULT AND REMEDIES

Section 5.1. Default, Invalidity. Any failure by the Corporation to make any payment or any installment thereof as provided in Article IV of this Agreement, or to make any other payment due and required to be made by the Corporation hereunder,

as and when due, or in the event that the Corporation shall fail or neglect to comply with any of the other provisions of this Agreement, the City reserves the right to rescind this Agreement, in which such event the rights hereby created or sought to be created shall become null and void and of no force and effect, provided that no such rescission shall exist or be claimed because of any failure or neglect on the part of the Corporation until written notice of such failure or neglect so claimed shall have been sent to said Corporation, and a reasonable opportunity is afforded to the Corporation to comply with the provisions of this Agreement or to prove that such compliance exists.

Section 5.2. 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.

ARTICLE VI MISCELLANEOUS

Section 6.1. Term. The term of this Agreement shall be for a period of fifteen (15) years, commencing as of May 1, 1989, and ending on April 30, 2004.

Section 6.2. Information for Maps. The City and the Corporation 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 Corporation and the location of public improvements of the City in the Public Ways as may reasonably be required by the other.

Section 6.3. 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 Corporation under Section 4.2 hereof, as such payment may be adjusted from time to time under Section 4.3 hereof, as a continuing operating expense after the Corporation 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. In the event the Commission does not allow the full amount of the minimum annual payment by the Corporation under Section 4.2 hereof, as such payment may be adjusted from time to time under Section 4.3 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 Corporation as provided in this Section.

Section 6.4. Limitations of Rights. With the exception of rights herein expressly 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 hereto any legal or equitable right, remedy or claim under or in respect to this Agreement, any terms, agreements, covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto as herein provided and not otherwise.

Section 6.5. Successors and Assigns. 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 Corporation. The Corporation shall have the right at any time to assign this 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.

Section 6.6. Notices. Any notice required under this Agreement to be served upon the City or the Corporation shall be in writing and shall be mailed by certified mail, addressed to each of the parties as follows or to such other address as the City or the Corporation may hereafter furnish in writing to the other party:

CITY:

City of Urbana
400 S. Vine Street
P.O. Box 219
Urbana, IL 61801
Attention: Mayor

CORPORATION:

Northern Illinois Water Corporation
206 W. White Street
P.O. Box 718
Champaign, IL 61824
Attention: President

Section 6.7. 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 Corporation and all rights of the Corporation thereunder made by the City to others from which the Corporation may have purchased any part of its Water Facilities or plants, including particularly the Original Franchise Ordinance and Ordinance No.

8485-64, entitled "An Ordinance Authorizing and Approving An Interim Agreement With Northern Illinois Water Corporation", passed the 18th day of March, 1985, and approved the 25th day of March, 1985, are hereby terminated, it being the intention of the parties that this Agreement shall contain all grants, rights, licenses, and privileges of the Corporation and all the obligations of the Corporation in connection therewith.

IN WITNESS WHEREOF, the City 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 Corporation 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,

(SEAL)

By: _____
Jeffrey T. Markland, Mayor

ATTEST:

Ruth S. Brookens, City Clerk

NORTHERN ILLINOIS WATER
CORPORATION,

(SEAL)

By: _____
Its President

ATTEST:

Its Secretary

AGREEMENT
CONCERNING THE PAYMENT OF FIRE PROTECTION CHARGES

WHEREAS, the Illinois Commerce Commission did, during 1983, revise the fire protection charge due from the City of Urbana ("City") to the Northern Illinois Water Corporation ("Corporation") from Twenty Dollars (\$20.00) to Sixty Dollars (\$60.00) per hydrant in ICC Case Docket No. 83-0049;

WHEREAS, the Cities of Champaign and Urbana, Illinois, filed suit in Circuit Court to challenge such a price rise in Case No. 84-L-152, which suit was decided in the favor of the Cities in an opinion dated February 1, 1985;

WHEREAS, the ICC appealed such case to the Fourth District Court of Appeals, Case No. 4-85-0360, in which case the Circuit Court was reversed by the Appellate Court in an opinion dated February 25, 1986;

WHEREAS, Public Act 83-1925 (para. 9-223 of the Illinois Public Utilities Act) became effective on July 1, 1985, whereupon the City was not responsible for payment of a fire protection charge unless such charge was imposed pursuant to an agreement;

WHEREAS, the City and the Corporation entered into a written agreement with respect to the payment of fire protection charge, which agreement expired by its own terms on December 31, 1986;

WHEREAS, the Corporation has made claims against the City for Forty Dollars (\$40.00) per hydrant per year for a time period between December 1, 1983 and July 1, 1985;

WHEREAS, the City has concurrently herewith entered into an agreement with the Corporation concerning certain rights granted by the City in the City's right-of-way; and

WHEREAS, the City and the Corporation desire to compromise the claims referenced to herein.

NOW, THEREFORE, in consideration of the foregoing recitals and the following promises, the City and the Corporation agree as follows:

Section 1.

- (a) The City shall pay to the Corporation the sum of Forty-nine Thousand Five Hundred Fifty-one Dollars and Twenty Cents (\$49,551.20) at the time and in the manner specified herein.
- (b) The payment of the amount specified in subsection (a) hereof is contingent upon the receipt by the City of the payment required to be made by the Corporation under Section 4.1 of "An Agreement Concerning the Right of Northern Illinois Water Corporation to Use the Public Ways of the City, Fire Protection and Other Related Matters" (hereinafter "Agreement").
- (c) Upon receipt of a check from the Corporation for such payment pursuant to the Agreement, the City shall promptly pay to the Corporation the amount specified herein.
- (d) Payment other than identified and made in the manner as set forth herein shall not be required of the City for any of the fire protection charges heretofore billed to the City by the Corporation, other than as specified and in the time and manner set forth in this Section.

Section 2. In the event the Illinois Commerce Commission, or any successor agency or regulatory body of the State of Illinois that may have authority to regulate public utility services, adjusts the amount of lump sum payments due to the City under Section 4.1 of the Agreement, then the payments made hereunder shall be reduced in like amount.

Section 3. As payment is made and received hereunder by the Corporation, such receipt shall constitute a complete release of any and all claims by the Corporation against the City for any and all amounts due and owing for fire protection charges billed to the City prior to the effective date of this Agreement.

IN WITNESS WHEREOF, the City has caused this Agreement to be executed by its Mayor in its Corporate name and attested by its City Clerk and sealed with its the municipal seal, and the Corporation has caused the Agreement to be executed by its President in its Corporate name attested by its secretary and sealed with its corporate seal.

CITY OF URBANA, ILLINOIS

NORTHERN ILLINOIS WATER CORPORATION

By: _____
Jeffrey Markland
Mayor

By: _____
Robert Shierry
President

(SEAL)

(SEAL)

ATTEST: _____
City Clerk

ATTEST: _____
Its Secretary

AGREEMENT FOR PROVIDING DATA

THIS AGREEMENT, made and entered into this ____ day of _____, 1989, by and between Northern Illinois Water Corporation, an Illinois Corporation ("Corporation"), and the City of Urbana, Illinois, a municipal corporation ("City").

W I T N E S S E T H:

WHEREAS, Corporation maintains certain information related to water usage by its customers located within the geographical boundaries of the City, and which information the City has requested the Corporation to make available to the City for its use.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. The Corporation agrees to provide annually and 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, read code, actual usage, date read, previous date read, and service address for all customers of the Corporation within the corporate limits of the City.

Section 2. If the City uses the information provided by the Corporation under Section 1 for the purposes of sewer fees or charges, the City agrees that the basis for its billing to all of its residential users, who are customers of the Corporation, shall be based on the water usage of those customers for the months of February and March.

If the City uses the information provided by the Corporation under Section 1 for the purposes of sewer fees or charges, the City further agrees that the basis of its billing to all of its commercial, governmental, industrial, and institutional users, who are customers of the Corporation 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.

Section 3. The City agrees that the City shall not make available or release any such data so furnished it by the Corporation to any other individual, firm, or governmental unit for any purpose whatsoever without the express written consent of the Corporation.

Section 4. The City agrees to notify the Corporation of any ordinances annexing to or disconnecting from such corporate limits and agrees to provide the Corporation 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 Urbana County Recorder and as provided to the Corporation by the City.

Section 5. The City shall indemnify and hold the Corporation harmless from any and all liability, loss or damage the Corporation may suffer as a result of claims, demands, costs, including costs of defense, or judgments against the Corporation arising out of the furnishing of the information provided herein by the Corporation, or in any manner arising from performance of this Agreement by the Corporation.