

**AGREEMENT FOR RETAIL WATER SUPPLY
SERVICES TO METTAWA ST. MARY'S ROAD SERVICE AREA**

Entered Into By and Between

The County of Lake

and

The Village of Mettawa

As of

Nov. 20, 2012

**AGREEMENT FOR RETAIL WATER SUPPLY
SERVICES TO METTAWA ST. MARY'S ROAD SERVICE AREA**

THIS AGREEMENT is dated as of this 20th day of November, 2012, and is made and entered into by and between the COUNTY OF LAKE, an Illinois unit of local government, hereinafter referred to as the "County," and the VILLAGE OF METTAWA, an Illinois municipal corporation, hereinafter referred to as the "Village."

RECITALS

1. The public health, welfare, and safety of the residents of the County (including residents of the Village) will benefit from a coordinated and adequate system for the provision of safe and sufficient public water supplies.

2. Pursuant to "An Act in Relation to Water Supply, Drainage, Sewage, Pollution, and Flood Control in Certain Counties," as amended, 55 ILCS 5/5-15001 through 5/5-15022, and other applicable statutory authority, the County has established a Department of Public Works for the purpose of providing sanitary sewer and water supply services to designated areas of the County, including portions of the Southeast Central Lake Facilities Planning Area established pursuant to the Illinois Water Quality Management Plan, and has prepared plans and programs for providing such services and the related facilities.

4. Consistent with such plans and programs, the County is a member of the Central Lake County Joint Water Agency ("CLCJWA"), has an existing allocation of Lake Michigan water from the Illinois Department of Natural Resources to serve areas within Mettawa, and in conjunction with CLCJAWA has constructed, owns, and operates a system of water sources, treatment and storage facilities, and, through its Public Works Department, has constructed, owns, and operates a system of pumping stations, transmission mains, distribution mains, service lines, hydrants, meters, and other necessary facilities to provide water supply services to limited portions of the County.

5. On August 25, 2010, CLCJWA passed a Resolution authorizing the extension of water service by the County to portions of Mettawa, provided such service begins by January 1, 2014, and established a CLCJAWA connection fee of \$2,564 for each new unit to be served with

CLCJWA water by the County.

6. The County and Village have previously entered into agreements for and the County otherwise provides retail water service to certain areas of the Village through the County's Knollwood-Rondout water system, including the Intergovernmental Agreement for Sanitary Sewer and Water Supply Services to the so-called Hamilton, Estate and Bennett Properties dated December 28, 1998, the First Amendment to said agreement dated April 16, 1999, the Intergovernmental Agreement Regarding Water Supply Services to the Oasis Business Park dated June 12, 2001, and the provision of water to the parcel located on the southeast corner of Route 60 and Riverwoods Road pursuant to the October 1, 2008 Agreed Order entered in Case No. 06 MR 752.

7. Approximately eight lots located on St. Mary's Road in the Village and currently developed and used for detached single-family residential purposes obtain water service from individual private shallow wells.

8. The County and the Village desire to enter into this agreement to permit the Village, subject to the terms, conditions, and limitations herein specified, to obtain water supply services for the eight lots from the County's Knollwood-Rondout water system.

9. The County and the Village enter into this Agreement to promote and provide for the efficient and economic development and use of costly public infrastructure pursuant to sound and logical public plans and to avoid wasteful duplication of public facilities.

AGREEMENT

In consideration of the mutual covenants and agreements contained herein, the County and the Village do hereby agree as follows:

ARTICLE I

RECITALS

The foregoing recitals are, by this reference, fully incorporated into and made a part of this Agreement.

ARTICLE II

DEFINITIONS

2.1 Connection Charges.

The charges from time-to-time imposed by the County on Customers newly connecting to the County's Knollwood-Rondout Waterworks System, including the CLCJWA connection fee, as a condition of such connections.

2.2 County Knollwood-Rondout Waterworks System.

All sources of water and related facilities; all connection points and related facilities; all treatment plants and related facilities; all pumping stations and related facilities; all elevated tanks, standpipes, ground storage reservoirs, and related facilities; all water transmission and distribution mains, service lines, hydrants, and related facilities; and all metering equipment and related facilities, as well as associated lands, easements, and rights-of-way, that the County, from time-to-time, owns or operates for the purpose of, or relating to, providing Water Supply Services in the Knollwood-Rondout Regional Area, or portions thereof, as well as other areas within the County that the County may determine to extend Water Supply Service from time-to-time. Upon the County's acceptance of ownership of the Mettawa St. Mary's Road Water Supply Facilities, or any portion of them, such Facilities, or such portion of them, shall become part of the County Knollwood-Rondout Waterworks System.

2.3 County Water Ordinances.

Any and all ordinances adopted by the County or CLCJWA relating in any way to the use, operation, or management of the County Knollwood-Rondout Waterworks System or to the provision of Water Supply Service.

2.4 **Customer.**

Any dwelling, business, office, industrial, institutional, or other building, facility, or entity located in the Knollwood-Rondout Regional Area that accepts water, either directly or indirectly, from the County Knollwood-Rondout Waterworks System.

2.5 **Effective Date.**

The date on which this Agreement shall become effective pursuant to Subsection 9.8A of this Agreement.

2.6 **Force Majeure.**

Orders of the United States, State of Illinois, or other civil or military authority, changes in applicable law, strikes, lock-outs, acts of God, inability to obtain labor or materials, enemy action, civil commotion, fire, unavoidable casualty, or other similar events or circumstances.

2.7 **Knollwood-Rondout Regional Area.**

The areas within the County in the general vicinity of the unincorporated areas of Knollwood and Rondout that the County may determine from time-to-time to extend the County Knollwood-Rondout Waterworks System to for purposes of providing Water Supply Service.

2.8 **Mettawa St. Mary's Road Service Area.**

Such portions of the area outlined and shaded on Exhibit A attached hereto that are also located within the corporate limits of the Village.

2.9 **Mettawa St. Mary's Road Water Supply Facilities.**

All wells or other sources of water and related facilities; all connection points and related facilities; all treatment plants and related facilities; all pumping stations and related facilities; all elevated tanks, standpipes, ground storage reservoirs, and related facilities; all water transmission and distribution mains, service lines, hydrants, and related facilities; and all metering equipment and related facilities, as well as associated lands, easements, and rights-of-way, whether located within or without the Mettawa St. Mary's Road Service Area, necessary to secure and deliver a safe, sufficient, and reliable supply of potable water to Customers within the Mettawa

St. Mary's Road Service Area in accordance with the County Water Ordinances, all other applicable laws, ordinances, and regulations, and sound engineering practices. The Mettawa St. Mary's Road Water Supply Facilities are to be dedicated to the County and to become part of the County Knollwood-Rondout Waterworks System as provided in Section 3.2 of this Agreement.

2.10 **Mettawa St. Mary's Road Water Supply Facilities Cost.**

The entire actual cost of designing, constructing, installing, and placing in operation the Mettawa St. Mary's Road Water Supply Facilities or a portion of such facilities necessary or convenient to serve a particular tract, parcel, or area for which Water Supply Service is being sought.

2.11 **Water Supply Service.**

The delivery of water from the County Knollwood-Rondout Waterworks System, or any other public or private water service, to Customers.

2.12 **Water User Fee.**

The standard rate charged by the County for the distribution and delivery of water of a specified volume.

ARTICLE III

CONSTRUCTION

3.1 **County Knollwood-Rondout Waterworks System.**

Notwithstanding any other provision of this Agreement, the County shall have no obligation, other than as stated in Subsection 3.2B of this Agreement, with respect to the construction or expansion of the County Knollwood-Rondout Waterworks System within the Mettawa St. Mary's Road Service Area.

3.2 **Mettawa St. Mary's Road Water Supply Facilities.**

A. **Village Obligations.** The Village shall design, construct, install, and dedicate to the County all portions of the Mettawa St. Mary's Road Water Supply Facilities as necessary to serve such tract or parcel in accordance with this Agreement, the Water Ordinances, all other

requirements of law, and sound engineering practices. Moreover, the Village shall adopt and approve all ordinances, regulations, and agreements necessary, and take all other action necessary, to require all owners, subdividers, and developers of tract or parcel in the Mettawa St. Mary's Road Service Area, in connection with the new development of any such tract or parcel and as a condition to receiving (i) any subdivision, planned development, or other development approval for such tract or parcel from the Village or (ii) Water Supply Service for such tract or parcel from the County Knollwood-Rondout Waterworks System, to design, construct, install, and dedicate to the County all portions of the Mettawa St. Mary's Road Water Supply Facilities as necessary to serve such tract or parcel in accordance with this Agreement, the Water Ordinances, all other requirements of law, and sound engineering practices. In fulfilling its responsibilities hereunder, the Village shall, at a minimum, undertake, or cause to be undertaken, at least the following work relating to the Mettawa St. Mary's Road Water Supply Facilities necessary or convenient to serve such tract or parcel:

1. Obtain engineering services, from a firm acceptable to the County, for the design, plans and specifications, and construction of the Mettawa St. Mary's Road Water Supply Facilities necessary or convenient to serve such tract or parcel;
2. Obtain and convey to the County, on such forms as may be acceptable to the County, all easements, rights-of-way, licenses, and other property rights that are necessary or convenient to construct, install, operate, and maintain the Mettawa St. Mary's Road Water Supply Facilities necessary or convenient to serve such tract or parcel, including the preparation of appropriate surveys, agreements, and other relevant documents;
3. Negotiate, prepare, and enter into, on such forms as may be acceptable to the County and with firms acceptable to the County and with firms experienced in the construction and installation of public water supply systems, all contracts in connection with the construction and installation of the Mettawa St. Mary's Road Water Supply Facilities necessary or convenient to serve such tract or parcel;
4. Secure, on behalf of itself, the County, the Village, and all other necessary parties, all permits, approvals, and authorizations that may be necessary or appropriate to construct, install, and operate the Mettawa St. Mary's Road Water Supply Facilities necessary or convenient to serve such tract or parcel;
5. Submit to the County, for the County's review and approval, all preliminary and final engineering plans, drawings, and specifications, all contract documents, and all permit

applications for all portions of the Mettawa St. Mary's Road Water Supply Facilities necessary or convenient to serve such tract or parcel;

6. Convey, or caused to be conveyed, to the County all right, title, and interest in all portions of the Mettawa St. Mary's Road Water Supply Facilities necessary or convenient to serve such tract or parcel as and when such Facilities, or portions of them, have been completed in accordance with the requirements of this Agreement and have been approved by the County as being in full compliance with this Agreement, all applicable contracts, plans, and specifications, the County Water Ordinances, and all other requirements of law; and
7. Perform all other activities necessary or convenient in connection with the design, construction, installation, and placing into service of all portions of the Mettawa St. Mary's Road Water Supply Facilities necessary or convenient to serve such tract or parcel, including associated administrative activities.

Such Village ordinances, regulations, and agreements shall provide for and require the orderly expansion of the County Knollwood-Rondout Waterworks System in accordance with the County Water Ordinances, all other requirements of law, and sound engineering practices and shall, when necessary for such purpose, require appropriate oversizing of facilities and may, in connection with such oversizing, provide rights of recapture to the extent permitted by Illinois law; provided, however, that any recapture shall only apply against other parcels within the Village. Moreover, the Village shall be solely responsible for the enforcement of any such recapture rights and shall defend, indemnify and hold harmless the County from any and all claims, causes of action or liability relating to or arising out of such Village recapture ordinance.

The County shall have the following rights with respect to all work required pursuant to this Subsection 3.2A, and all such Village ordinances, regulations, and agreements shall specifically provide the County with:

1. The right to review, comment on, and approve all designs, all plans and specifications, all contract documents, and all easements, rights-of-way, licenses, and other property rights required to be prepared or supplied pursuant to this Subsection 3.2A;
2. The right to review, comment on, and approve all permit applications required to be filed pursuant to this Subsection 3.2A; and
3. The right to conduct such inspections of the work required to be performed pursuant to this Subsection 3.2A as the County may deem necessary or appropriate to protect its interests.

Failure of the Village to initiate construction of the St. Mary's Road Water Supply Facilities shall not be deemed a breach of the Agreement. The County acknowledges that the construction and financing thereof is dependent upon the establishment of a Special Service Area for the provision of water services to the Mettawa St. Mary's Road Service Area. Notwithstanding the foregoing, if the Village elects to construct the St. Mary's Road Water Supply Facilities, it shall complete construction of the St. Mary's Road Water Supply Facilities by January 1, 2014.

B. County Obligations. Subject to the conditions and limitations set forth in Article V and to the other terms and conditions of this Agreement and subject, further, to all of its costs and expenses associated therewith being reimbursed by, or on behalf of, the Village, or the owner, subdivider, or developer obligated to perform the work required pursuant to Subsection 3.2A above, the County shall have the following obligations with respect such work:

1. The obligation to approve, when completed in accordance with this Agreement, the County Water Ordinances, all other requirements of law, and sound engineering practices, all designs, all plans and specifications, all contract documents, and all easements, rights-of-way, licenses and other property rights required to be prepared or supplied pursuant to Subsection 3.2A above;
2. The obligation to execute all permit applications required to be filed pursuant to Subsection 3.2A above, when completed in accordance with this Agreement, the County Water Ordinances, all other requirements of law, and sound engineering practices, but only when the signature of the County is required by the permitting agency; and
3. The obligation to accept ownership of the Mettawa St. Mary's Road Water Supply Facilities, or portions of them, when, but only when, satisfied that (i) the Mettawa St. Mary's Road Water Supply Facilities, or portions of them, have been completed in accordance with the requirements of this Agreement and are in full compliance with this Agreement, all plans and specifications, all contract documents, the County Water Ordinances, all other requirements of law, and sound engineering practices and (ii) all costs and expenses associated with the Mettawa St. Mary's Road Water Supply Facilities, or the portion of them to be accepted by the County, have been paid in full.

3.3 **Payment and Guaranty of Costs.**

The Village shall pay, or cause to be paid, the full Mettawa St. Mary's Road Water Supply Facilities Cost and shall adopt and approve all ordinances, regulations, and agreements necessary, and take all other action necessary, to require the owner, subdivider, or developer of any tract or parcel in the Mettawa Service Area, in connection with the new development of such tract or parcel and as a condition to receiving (i) any subdivision, planned development, or other development approval for such tract or parcel from the Village or (ii) Water Supply Service for such tract or parcel from the County Knollwood-Rondout Waterworks System, to pay, or cause to be paid, the full Mettawa St. Mary's Road Water Supply Facilities Cost for all portions of the Mettawa St. Mary's Road Water Supply Facilities necessary or convenient to serve such tract or parcel.

ARTICLE IV

SERVICE

4.1 **County Obligations.**

After the St. Mary's Road Water Supply Facilities, or any portion of them, have been conveyed to, and accepted and placed in service by, the County pursuant to Section 3.2 of this Agreement, the County shall, subject to the conditions precedent and limitations set forth in Article V of this Agreement, and to the other terms and conditions of this Agreement, use its best efforts to operate and maintain the County Knollwood-Rondout Waterworks System, or the portions of such System that have been placed in service pursuant to Article III of this Agreement, in accordance with its customary practices and good engineering practices. Use of the County Knollwood-Rondout Waterworks System shall be governed by the County Water Ordinances and this Agreement.

4.2 **Village Obligations.**

Except as provided in Section 4.3 of this Agreement, the Village shall not, at any time during the term of this Agreement, (i) offer, authorize, or permit any Water Supply Service within the Mettawa St. Mary's Road Service Area other than such Service as is delivered by the County

by and through the County Knollwood-Rondout Waterworks System; (ii) construct, or cause, permit, or consent to the construction of, any facilities designed or intended to provide Water Supply Service (other than via the County Knollwood-Rondout Waterworks System) within the Mettawa St. Mary's Road Service Area; or (iii) accept Water Supply Service from any waterworks system other than the County Knollwood-Rondout Waterworks System without, in each such case, the prior written consent of the County.

4.3 Connection to County System and Existing Water Supply Services.

A. Connection of Existing Development to County System. The Village shall ensure that within six months after the Water Supply Facilities, or any portion of them, have been conveyed to, and accepted and placed in service by, the County (pursuant to Section 3.2 of this Agreement Ordinances), existing development within the Mettawa St. Mary's Road Service Area connects to the County Knollwood-Rondout Waterworks System in accordance with the Illinois Plumbing Code, including the prohibitions against cross-connection and the requirements concerning back-flow prevention. Such connection shall be without cost or expense to the County and shall proceed in accordance with Sections 3.2 and 3.3 of this Agreement. A Customer within the Mettawa St. Mary's Road Service Area may continue to use water drawn from an existing private well for irrigation and fire suppression purposes only.

B. Connection of New Development to County System. After the Effective Date of this Agreement, the Village shall not permit any new development that is otherwise subject to Section 3.2 of this Agreement to utilize Water Supply Services other than those provided through the County Knollwood-Rondout Waterworks System.

C. Back-Flow Prevention . To prevent contamination of the County Knollwood-Rondout Waterworks System, a reduced pressure zone (rpz) back-flow prevention device shall be installed on each individual water service line for any existing or new development making connection to the County Knollwood-Rondout Waterworks System. The Village shall require that the back-flow prevention device installed on each lot or parcel connected to the County Knollwood-

Rondout Waterworks System be inspected and certified by a licensed plumber certified as a Cross Connection Control, Device Inspector (CCDI) with the State of Illinois.

1. Each backflow preventer shall be inspected and tested annually;
2. A copy of each device(s) backflow inspection report must be submitted to the Lake County Public Works Department within 30 days of the inspection.

The Village shall adopt regulations consistent with this Section 4.3.C.

4.4 **Other Agreements and Laws.**

Nothing in this Agreement shall be construed or interpreted as a waiver by the County of its rights under any other agreement or law governing the County's right to provide exclusive Water Supply Services within any portion of the County, including the Mettawa St. Mary's Road Service Area.

ARTICLE V

CONDITIONS AND LIMITATIONS

5.1 **Conditions Beyond County's Control.**

The County shall not be responsible for any failure to perform the undertakings, obligations, or commitments assumed by it pursuant to this Agreement caused by a Force Majeure.

5.2 **Conditions Precedent to County Performance.**

Notwithstanding any other provision of this Agreement, the right of the Village or any Customer located within the Mettawa St. Mary's Road Service Area to receive Water Supply Services from the County pursuant to this Agreement, and the County's obligation to provide Water Supply Services within the Mettawa St. Mary's Road Service Area, shall be subject to all of the following conditions precedent having first been satisfied:

1. Receipt by the County, at no expense to the County, of all necessary governmental approvals to operate all of the components of the County Knollwood-Rondout Waterworks

System as may be necessary to provide Water Supply Service to the Mettawa St. Mary's Road Service Area, or the portion of such Service Area for which such Services are being sought, pursuant to this Agreement.

2. Receipt by the County, at no expense to the County and by documents reasonably satisfactory to the County, of any and all easements, licenses, and permits, whether across private property, Village property, or other public property, including public streets, that the County determines in its sole discretion are necessary for the construction, installation, operation, maintenance, repair, removal, or replacement of any of the components of the County Knollwood-Rondout Waterworks System, or the portions of such System to be placed in service, and any facilities related thereto to be owned or maintained by the County.
3. Construction and dedication to the County, at no expense to the County, of all portions of the Mettawa St. Mary's Road Water Supply Facilities necessary to provide the Water Supply Services being sought.
4. Completion of all work required pursuant to Clauses 5.2(3) and 5.2(4) above:
 - (a) pursuant to applications, designs, plans, specifications, and contract documents reviewed and approved by the County, which approval shall not be unreasonably delayed or withheld;
 - (b) pursuant to permits issued by the County to the extent such permits are required by the County Water Ordinances;
 - (c) in accordance with all applicable laws and regulations, including specifically, but without limitation, the County Water Ordinances; provided, however, that whenever the Village standards for any portion of the Mettawa St. Mary's Road Water Supply Facilities are, in the opinion of the County, more stringent than the County standards, the Village standards shall apply;
 - (d) subject to inspection by the County to ensure compliance with the requirements of this Section 5.2 and with the other terms and conditions of this Agreement and the County Water Ordinances; and
 - (e) in a manner acceptable to the County in accordance with sound engineering practices.
5. The ability of the County to provide Water Supply Services as required by this Agreement without violating any applicable laws or regulations.
6. All other terms and conditions of this Agreement.

5.3 **Limitations on County Service.**

Notwithstanding any other provision of this Agreement, the right of the Village or any Customer located within the Mettawa St. Mary's Road Service Area to receive and Water Supply Service from the County, and the County's obligation to provide Water Supply Services within the Mettawa St. Mary's Road Service Area, shall be subject to the following limitations and conditions:

1. The total number of residential dwelling units receiving Water Supply Service within the Mettawa St. Mary's Road Service Area shall not exceed fifteen (15)
2. The point of connection between the Mettawa St. Mary's Road Water Supply Facilities and any other portion of the County Knollwood-Rondout Waterworks System shall be at the County's existing water main located on the southwest corner of Park Avenue and St. Mary's Road, as depicted in Exhibit A attached hereto, unless otherwise authorized in writing by the County Administrator.
3. The Water Services to be provided by the County pursuant to this Agreement shall be on a first come-first serve basis and within the limits of available capacity.
4. The Water Supply Services to be provided by the County pursuant to this Agreement shall be subject to the County Water Ordinances and all other applicable laws, ordinances, rules, and regulations.
5. The Water Supply Services to be provided by the County pursuant to this Agreement shall be subject to all other terms and conditions of this Agreement.

ARTICLE VI

CHARGES AND FEES

6.1 **Service Conditioned on Payment.**

Notwithstanding any other provision of this Agreement, the County shall have no obligation to provide Water Supply Service to any Customer located within the Mettawa St. Mary's Road Service Area unless all County Connection Charges and Water User Fees required by the County for such Services have been paid.

6.2 **Connection Charges.**

Every Customer located within the Mettawa St. Mary's Road Service Area connecting, either directly or indirectly, to the County Knollwood-Rondout Waterworks System shall pay to the County a Connection Charge at the same rate as the County from time-to-time charges for similar Water Supply Services provided by the County through the County Knollwood-Rondout Waterworks System, which Connection Charge shall include the applicable CLCJWA connection fee (currently \$2,564). The County shall be solely responsible for setting, billing, and collecting all Water Supply Connection Charges. The County will establish an additional connection fee/sector surcharge for properties outside the Mettawa St. Mary's Road Service Area connecting to the Mettawa St. Mary's Road Water Supply Facilities in addition to the standard connection fees for the Knollwood-Rondout Waterworks System. This additional fee will be determined by dividing the cost to establish the Mettawa St. Mary's Road Water Supply Facilities by eighteen (18). The proceeds from this additional connection fee will be retained by the County to be utilized in the discretion of the County for improvements and maintenance of its waterworks and sewerage system, including the Knollwood –Rondout Waterworks System within the Village of Mettawa.

6.3 Water User Fees.

A. Payment of Water User Fees. The County shall issue bills for, and shall be entitled to payment of, Water User Fees based upon the actual volume of water delivered from the County Knollwood-Rondout System to each Customer located within the Mettawa St. Mary's Road Service Area. The County shall be solely responsible for setting, billing, and collecting all such Water User Fees.

B. Level of Water User Fees. Water User Fees shall be uniform for all Customers of the County Knollwood-Rondout Waterworks System receiving similar service. Such Water User Fees shall at all times be set at levels designed to assure that the County revenues from such Fees will always be sufficient, when considered in light of any other moneys legally available for and applied to such purposes, (i) to provide adequate and proper levels of service; (ii) to pay the County's costs of maintenance, replacement, and operation; (iii) to pay the principal of, and

premiums and interest upon, bonds secured, in whole or in part, by the revenues of the County Knollwood-Rondout Waterworks System; (iv) to provide a reasonable depreciation fund; and (v) to provide such other reserves and sinking funds as may be deemed necessary or desirable by the County for the payment of such bonds and for the replacement, extension, or improvement of the County Knollwood-Rondout Waterworks System.

6.4 **Metering.**

A. Each connection to the County Knollwood-Rondout Waterworks System for Customers located within the Mettawa St. Mary's Road Service Area shall require a County Public Works Department permit and shall require a meter to be installed by the County. The County shall have the right to establish and enforce reasonable requirements for all Customers located within the Mettawa St. Mary's Road Service Area for the installation, calibration, inspection, maintenance, repair, and replacement of meters to measure each Customer's water consumption for billing and other purposes.

B. All connections, individual service lines and internal plumbing must comply with the Illinois Plumbing Code, including the prohibitions against cross-connection and the requirements for back-flow prevention. All internal plumbing work associated with connection of individual service lines shall require a building permit from the Village and the Village shall ensure that such work is performed by a licensed plumber. Each homeowner shall submit to the County a connection plan prepared by a licensed plumber or a registered architect or Engineer, certifying compliance with the Illinois Plumbing code.

C. Nothing in this Section 6.4 shall be deemed to limit the County's ability to establish minimum fees irrespective of usage or to estimate any Customer's water consumption for purposes of establishing Water User Fees.

ARTICLE VII

OWNERSHIP AND MAINTENANCE

After the Mettawa St. Mary's Road Water Supply Facilities, or any portion of such Facilities, have been conveyed to, and accepted and placed in service by, the County pursuant to Article III of this Agreement, the County shall be the sole owner of, and shall have the duty to maintain, the Mettawa St. Mary's Road Water Supply Facilities or such portion thereof, as part of the County Knollwood-Rondout Waterworks System. Nothing in this Agreement shall be construed to give the Village, or any other person or entity, except the County, any ownership or other interest in any part of the County Knollwood-Rondout Waterworks System.

ARTICLE VII

OTHER CONTRACTS AND SERVICE

8.1 County Rights.

The County shall have the right to contract with other persons, natural or corporate, private or public, to perform services similar to those to be performed under this Agreement; provided, however, that nothing in this Agreement shall be construed to require the County to provide Water Supply Service to any area of the Village other than to the Mettawa St. Mary's Road Service Area.

8.2 Village Acknowledgements. The Village acknowledges and agrees that: (i) the County does not act or operate as a public or private utility; (ii) the County does not act or operate in a business or proprietary capacity in providing and Water Supply Services to the Mettawa St. Mary's Road Service Area; (iii) the County does not by this Agreement, or its performance pursuant to this Agreement, hold itself out as offering to, and is under no obligation to, provide Water Supply Services to any tract, parcel, or area other than tracts, parcels, or areas located within the Mettawa St. Mary's Road Service Area; (iv) the County is under no obligation to provide Water Supply Service to any tract, parcel, or area other than tracts, parcels, or areas located within the Mettawa St. Mary's Road Service Area; and (v) the County's sole obligation to provide Water Supply Service to Customers located within the Mettawa St. Mary's Road Service Area is the contractual obligation set forth in this Agreement.

8.3 **Other County Service.** Nothing in this Agreement shall be construed or interpreted to prevent or limit the right of the County, or to require the consent of the Village, to provide Water Supply Services to parties other than the Village on such terms and conditions as the County may, in its sole discretion, determine to be appropriate, including, without limitation, Water Supply Service utilizing the County Knollwood-Rondout Waterworks System.

8.4 **No Third Party Beneficiaries.**

Nothing in this Agreement shall create, or shall be construed or interpreted to create, any third party beneficiary rights.

8.5 **Sewer Service.**

This Agreement does not pertain to public sanitary sewer service within the Village and shall not affect the rights or obligations of either the County or the Village with respect to such service within the Village.

ARTICLE IX

LEGAL RELATIONSHIPS AND REQUIREMENTS

9.1 **Exhibits.**

Exhibits A, the "Mettawa St. Mary's Road Service Area Map" attached to this Agreement, is, by this reference, incorporated into and made a part of this Agreement.

9.2 **Entire Agreement.**

There are no representations, covenants, promises, or obligations not contained in this Agreement, or in any Exhibits attached hereto and incorporated herein, that form any part of this Agreement or upon which any of the parties is relying in entering into this Agreement.

9.3 **Amendments.**

Except as expressly provided otherwise in this Agreement, this Agreement shall not be modified, changed, altered, amended, or terminated without the written and duly authorized

consent of the County and the Village.

9.4 **Waivers.**

No term or condition of this Agreement shall be deemed waived by any party unless the term or condition to be waived and the circumstances giving rise to such waiver are set forth specifically in a duly authorized and written waiver of such party. No waiver by any party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition of this Agreement, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach whether of the same or different provisions of this Agreement.

9.5 **Interpretation and Severability.**

It is the intent of the County and the Village that this Agreement be construed and interpreted so as to preserve its validity and enforceability as a whole. In case of any conflict among the provisions of this Agreement, including any exhibits hereto, the provision that best promotes and reflects the intent of the parties shall control. If any provision of this Agreement is construed or held to be void, invalid, or unenforceable in any respect, the remaining provisions of this Agreement shall not be affected thereby but shall remain in full force and effect.

9.6 **Regulatory Bodies.**

This Agreement shall be subject to all valid rules, regulations, and laws applicable hereto passed and promulgated by the United States of America, the State of Illinois, or any other governmental body or agency having lawful jurisdiction, or any authorized representative or agent of any of them; provided, however, that this Section 9.6 shall not be construed as waiving the right of any party to challenge the validity of any such rules, regulations, or laws on any basis, including the impairment of this Agreement. The County reserves the right to adopt ordinances, rules, and regulations governing the design, installation, and use of the County Knollwood-Rondout Waterworks System.

9.7 **Successors; Assignment.**

This Agreement shall be binding on, and shall inure to the benefit of the successors

and permitted assigns of the County and the Village.

The Village shall not assign this Agreement in whole or in part, or any of its rights or obligations under this Agreement, without the prior express written consent of the County, which consent may be withheld in the sole and unfettered discretion of the County. The County may, upon notice to the Village, assign this Agreement, in whole or in part, or any or all of the County's rights or obligations under this Agreement, without the consent of the Village.

9.8 **Effective Date and Term.**

A. **Effective Date.** This Agreement shall take effect as of the date first above written when executed by the duly authorized representatives of the County and the Village.

B. **Term.** This Agreement shall be in full force and effect for a period of 30 years from and after its Effective Date.

9.9 **Notices.**

All notices and other communications in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee thereof when delivered in person or by express mail or messenger at the address set forth below or three business days after deposit thereof in any main or branch United States post office, certified or registered mail, return receipt requested, postage prepaid, properly addressed to the parties, respectively, as follows:

For notices and communications to the County:

County of Lake
18 North County Street
Waukegan, Illinois 60085
Attn: County Administrator

and

Director of Public Works
Lake County Department of Public Works
650 Winchester Road
Libertyville, Illinois 60048

For notices and communications to the Village:

Village of Mettawa
26225 N. Riverwoods Road
Box M
Mettawa, IL 60045
Attn: Village President

By notice complying with the foregoing requirements of this Section, each party shall have the right to change the addressees or addresses or both for all future notices and communications to such party, but no notice of a change of address shall be effective until actually received.

9.10 **Execution in Counterparts.**

This Agreement may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute one and the same Agreement.

9.11 **Remedies.**

The parties hereto may in law or in equity enforce or compel the performance of this Agreement, and shall otherwise have all remedies provided by applicable United States of America, State of Illinois, and local laws, ordinances, rules, and regulations, except that the Village shall not seek or recover monetary damages against the County or any of its officials, agents, representatives, attorneys, or employees on account of the negotiation, execution, or breach of any of the terms and conditions of this Agreement.

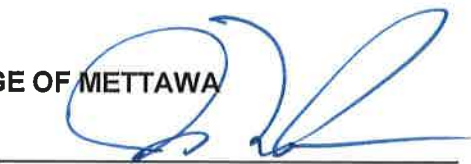
IN WITNESS WHEREOF, the County and the Village have, by their duly authorized officers, set their hands and affixed their seals on the date first above written.

COUNTY OF LAKE

BY: 
Chairman, Lake County Board

ATTEST: 
County Clerk

(SEAL)

VILLAGE OF METTAWA
BY: 
President

ATTEST: 
Village Clerk

(SEAL)

EXHIBIT A
 METTAWA - ST. MARY'S ROAD SERVICE AREA

