

4-R-18

A RESOLUTION

**AUTHORIZING THE APPROVAL AND EXECUTION OF
THE FIRST ADDENDUM TO THE WATER SUPPLY AGREEMENT
BETWEEN THE CITY OF EVANSTON AND THE MORTON GROVE-NILES
WATER COMMISSION**

WHEREAS, in 2017, the corporate authorities of the City of Evanston ("Evanston"), the Village of Morton Grove ("Morton Grove") and the Village of Niles ("Niles") each adopted an ordinance or resolution that authorized the approval and execution of an agreement entitled "Water Supply Agreement Between The City Of Evanston And The Village Of Morton Grove And The Village Of Niles" (the "Water Supply Agreement"). The respective ordinance and resolutions approving the Water Supply Agreement are identified as follows: Evanston approved Ordinance Number 5-O-17 on February 13, 2017; Morton Grove approved Resolution Number 17-03 on January 23, 2017; and Niles approved Resolution Number 2017-02R on January 24, 2017; and

WHEREAS, after the approval of the Water Supply Agreement, the Morton Grove-Niles Water Commission ("MGNWC" or "Commission") was established by an intergovernmental agreement approved by Morton Grove and Niles by the adoption of ordinances pursuant to Division 135 of Article 11 of the Illinois Municipal Code (65 ILCS 5/11-135-1, *et seq.*) ("Division 135"), Article VII, Section 10 of the 1970 Constitution of the State of Illinois, and the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1, *et seq.*) for purposes of constructing and operating a public water supply system (the "MGNWC System") consisting of water transmission mains, pumping,

storage, and other related water delivery and receiving infrastructure between a connection point on the Evanston water system and existing water receiving points of Niles and Morton Grove (the "Project"). Evanston's "Connection Point" is near the intersection of Emerson Street and McCormick Boulevard, which is Evanston's western border; and

WHEREAS, Section 15(A) (MG-N Option to Create a JAWA or a Water Commission; Assignment) of the Water Supply Agreement states that, in the event Morton Grove and Niles create a water commission (i.e., the MGNWC): (a) all of Morton Grove's and Niles' rights and obligations under the Water Supply Agreement are automatically assigned to, and assumed by, the MGNWC; (b) Morton Grove and Niles shall have no further rights or obligations under the Water Supply Agreement; (c) the MGNWC and Evanston will enter into an addendum to the Water Supply Agreement to formally recognize the automatic assignment set forth in the Water Supply Agreement; and (d) Morton Grove and Niles shall have no further rights or obligations under the Water Supply Agreement, provided they are current in all required payments and charges owing to Evanston prior to such assignment taking effect; and

WHEREAS, now that the MGNWC has been created, the MGNWC and Evanston desire to approve and enter into an agreement entitled "First Addendum to Water Supply Agreement Between The City Of Evanston And The Morton Grove-Niles Water Commission" (the "First Addendum") in substantially the same form as the copy attached hereto as Exhibit "A" and made a part hereof; and

WHEREAS, Evanston stated that Morton Grove and Niles are current in all required payments and charges owing to Evanston under the Water Supply

Agreement prior to the automatic assignment of the Water Supply Agreement from Morton Grove and Niles to the MGNWC taking effect; and

WHEREAS, Evanston's approval of this Resolution is conditioned upon the corporate authorities of the MGNWC adopting an ordinance or a resolution that contains the same findings and content, and is in substantially the same format, as this Resolution; and

WHEREAS, the Mayor and City Council of the City of Evanston have the authority to enter into the First Addendum pursuant to Evanston's home rule powers as provided by Article VII, Section 10 of the 1970 Constitution of the State of Illinois, the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1, *et seq.*) and the Illinois Municipal Code (65 ILCS 5/1, *et seq.*), and the City Council finds that approving and entering into the First Addendum is in the best interests of the City of Evanston.

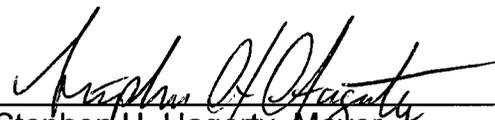
NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: Each Whereas paragraph above is incorporated by reference into this Section 1 and made a part hereof as material and operative provisions of this Resolution.

SECTION 2: The City Council of the City of Evanston authorizes the approval of the attached form of an agreement entitled "First Addendum To Water Supply Agreement Between The City Of Evanston And The Morton Grove-Niles Water Commission" (the "First Addendum") for the purposes set forth in the First Addendum, attached hereto as Exhibit "A". The City Council of the City of Evanston authorizes and directs the Mayor and the City Clerk to execute the final version of the First Addendum,

which may contain certain non-substantive and non-financial modifications that are approved to form by the Corporation Counsel, and to execute and deliver all other instruments and documents and pay all costs that are necessary to fulfill Evanston's obligations under the First Addendum.

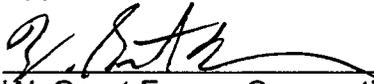
SECTION 3: This Resolution 4-R-18 shall be in full force and effect from and after its passage and approval in the manner provided by law.



Stephen H. Hagerty, Mayor

Attest: 

Devon Reid, City Clerk

Approved as to form:


W. Grant Farrar, Corporation Counsel

Adopted: January 22, 2018

Exhibit "A"

**First Addendum To The Water Supply Agreement Between The
City Of Evanston And The Morton Grove-Niles Water Commission**

(attached)

**FIRST ADDENDUM TO THE WATER SUPPLY AGREEMENT
BETWEEN THE CITY OF EVANSTON AND THE
MORTON GROVE-NILES WATER COMMISSION**

This **FIRST ADDENDUM TO THE WATER SUPPLY AGREEMENT BETWEEN THE CITY OF EVANSTON AND THE MORTON GROVE-NILES WATER COMMISSION** (the "First Addendum") is entered into on _____, 2018 (the "Effective Date") by and between the City of Evanston ("Evanston"), an Illinois home rule municipal corporation (the "City") and the Morton Grove-Niles Water Commission ("MGNWC" or "Commission"), an Illinois water commission created in 2017 by the approval of an intergovernmental agreement by the Village of Morton Grove, a home rule Illinois municipal corporation ("Morton Grove"), and the Village of Niles, a home rule Illinois municipal corporation ("Niles"). The City and the MGNWC may be referred to herein collectively as the "Parties" and individually as a "Party."

WHEREAS, in 2017, the corporate authorities of Evanston, Morton Grove and Niles each adopted an Ordinance or Resolutions that authorized the approval and execution of an agreement entitled "Water Supply Agreement Between The City Of Evanston And The Village Of Morton Grove And The Village Of Niles" (the "Water Supply Agreement"). The respective Ordinance and Resolutions approving the Water Supply Agreement are identified as follows: Evanston approved Ordinance Number 5-O-17 on February 13, 2017; Morton Grove approved Resolution Number 17-03 on January 23, 2017; and Niles approved Resolution Number 2017-02R on January 24, 2017; and

WHEREAS, after the approval of the Water Supply Agreement, the Morton Grove-Niles Water Commission ("MGNWC" or "Commission") was established by an intergovernmental agreement approved by Morton Grove and Niles by the adoption of ordinances pursuant to Division 135 of Article 11 of the Illinois Municipal Code (65 ILCS 5/11-135-1, *et seq.*) ("Division 135"), Article VII, Section 10 of the 1970 Constitution of the State of Illinois, and the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1, *et seq.*) for purposes of constructing and operating a public water supply system (the "MGNWC System") consisting of water transmission mains, pumping, storage, and other related water delivery and receiving infrastructure between a connection point on the Evanston water system and existing water receiving points of Niles and Morton Grove (the "Project"). Evanston's "Connection Point" is near the intersection of Emerson Street and McCormick Boulevard, which is Evanston's western border; and

WHEREAS, Section 15(A) (MG-N Option to Create a JAWA or a Water Commission; Assignment) of the Water Supply Agreement states that, in the event Morton Grove and Niles create a water commission (i.e., the MGNWC): (a) all of Morton Grove's and Niles' rights and obligations under the Water Supply Agreement are automatically assigned to, and assumed by, the MGNWC; (b) Morton Grove and Niles shall have no further rights or obligations under the Water Supply Agreement; (c) the MGNWC and Evanston will enter into an addendum to the Water Supply Agreement to formally recognize the automatic assignment set forth in the Water Supply Agreement; and (d) Morton Grove and Niles shall have no further rights or obligations under the Water Supply Agreement, provided they are current in all required payments and charges owing to Evanston prior to such assignment taking effect; and

WHEREAS, now that the MGNWC has been created, the MGNWC and Evanston desire to approve and enter into an agreement entitled "First Addendum to Water Supply Agreement Between The City Of Evanston And The Morton Grove-Niles Water Commission" (the "First Addendum") in

compliance with the provisions of Section 15(A) (MG-N Option to Create a JAWA or a Water Commission; Assignment) of the Water Supply Agreement; and

WHEREAS, Evanston stated that Morton Grove and Niles are current in all required payments and charges owing to Evanston under the Water Supply Agreement prior to the automatic assignment of the Water Supply Agreement from Morton Grove and Niles to the MGNWC taking effect; and

WHEREAS, the corporate authorities of Evanston and MGNWC both approved this First Addendum by each adopting a resolution that contained the same findings and content; and

WHEREAS, the corporate authorities of Evanston and MGNWC were authorized to approve and enter into this First Addendum pursuant to Article VII, Section 10 of the 1970 Constitution of the State of Illinois, the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1, *et seq.*) and the Illinois Municipal Code (65 ILCS 5/1, *et seq.*, including 65 ILCS 5/11-135-1, *et seq.*), and found that entering into the First Addendum was in their best respective interests.

NOW, THEREFORE, in consideration of the mutual consideration exchanged between the Parties as set forth herein, the sufficiency and receipt of which are mutually acknowledged, the Parties agree as follows:

1. **Recitals**: The foregoing Recitals are incorporated into this First Addendum as material terms of this First Addendum.
2. **Incorporation**: The Water Supply Agreement is incorporated herein by reference and made a part hereof, in all respects, except as specifically amended by this First Addendum, or, unless the action or obligation or term has been completed or satisfied, the obligations, terms, conditions and provisions of the Water Supply Agreement shall otherwise remain in full force and effect. In the event of any conflict between the terms of the Water Supply Agreement and this First Addendum, this First Addendum shall control.
3. **Assignment and Assumption of Obligations Under the Water Supply Agreement:**
 - A. **Evanston**: Evanston agrees as follows:
 - a. All of Evanston's obligations and rights as set forth in the Water Supply Agreement that related to Morton Grove and Niles are automatically assigned to and assumed by the MGNWC by operation of Section 15(A) (MG-N Option to Create a JAWA or a Water Commission; Assignment) of the Water Supply Agreement and the creation of the MGNWC by Morton Grove and Niles.
 - b. All of Evanston's obligations and rights as set forth in the Water Supply Agreement remain in full force and effect and now relate to the MGNWC.
 - c. Morton Grove and Niles were current in all required payments and charges owing to Evanston under the Water Supply Agreement prior to such automatic assignment taking effect, and, therefore, Morton Grove and Niles have no further rights or obligations under the Water Supply Agreement.

- B. **MGNWC:** The MGNWC agrees as follows:
- a. All of Morton Grove's and Niles' obligations and rights as set forth in the Water Supply Agreement have been automatically assigned to and assumed by the MGNWC by operation of Section 15(A) (MG-N Option to Create a JAWA or a Water Commission; Assignment) of the Water Supply Agreement and the creation of the MGNWC by Morton Grove and Niles.
 - b. All of the obligations and rights of Morton Grove and Niles as set forth in the Water Supply Agreement that have been automatically assigned to and assumed by the MGNWC remain in full force and effect.
 - c. Morton Grove and Niles were current in all required payments and charges owing to Evanston under the Water Supply Agreement prior to such automatic assignment taking effect, and, therefore, Morton Grove and Niles have no further rights or obligations under the Water Supply Agreement.

4. **General Terms:**

- A. **Validity:** The Parties warrant and represent that the execution, delivery of and performance under this First Addendum is pursuant to authority, validly and duly conferred upon the Parties and the signatories hereto.
- B. **Binding:** This First Addendum shall inure to the benefit of, and shall be binding upon, the transferees, assignees, representatives, owners, insurers, agents, servants, employees, administrators and/or successors in interest of any kind whatsoever of the Parties hereto.
- C. **Entire Agreement; Amendment:** This First Addendum amends the Water Supply Agreement and contains the entire understanding between the Parties and supersedes any prior written or oral understanding or agreement between them with respect to the subject matter of this First Addendum. There are no representations, agreements, arrangements or understandings, oral or written, between and among the Parties hereto relating to the subject matter of this First Addendum which are not fully expressed herein. This First Addendum may only be amended in writing with the mutual consent of the Parties or their successors in interest.
- D. **Effective Date:** This First Addendum shall be deemed dated and become effective on the date that the last Party signs this First Addendum, which date shall be inserted on page 1 of this First Addendum.

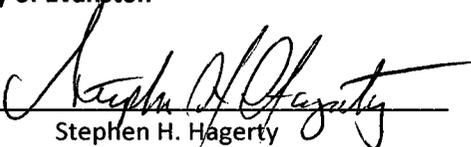
IN WITNESS WHEREOF, this First Addendum was executed on behalf of the Parties, through their authorized representatives, after all duly required corporate action was taken, as set forth below on the signature pages.

SIGNATURE PAGES TO FOLLOW

**SIGNATURE PAGE FOR
CITY OF EVANSTON**

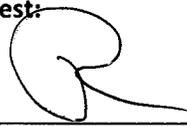
IN WITNESS WHEREOF, the below authorized officials of the City of Evanston signed this First Addendum pursuant to legal authorization granted to him/her under Article VII, Section 10 of the 1970 Illinois Constitution, the Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*) and the corporate approval granted by passage of Resolution 4-R-18 by the Corporate Authorities of the City of Evanston.

City of Evanston

By: 
Stephen H. Hagerty
Mayor, City of Evanston

Date: February 5, 2018

Attest:


By: _____
Devon Reid
City Clerk, City of Evanston

Date: January 31st, 2018

Approved as to form and legality:

By: 
W. Grant Farrar, Corporation Counsel
City of Evanston

Date: February 5, 2018

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

CLERK'S CERTIFICATE

I, Devon Reid, Clerk of the City of Evanston, in the County of Cook and State of Illinois, certify that the attached and foregoing is a true and correct copy of that certain Resolution now on file in my Office, entitled:

RESOLUTION NO. 4-R-18

**AN ORDINANCE AUTHORIZING THE APPROVAL AND EXECUTION OF
THE FIRST ADDENDUM TO THE WATER SUPPLY AGREEMENT BETWEEN THE
CITY OF EVANSTON AND THE MORTON GROVE-NILES WATER COMMISSION**

(City of Evanston)

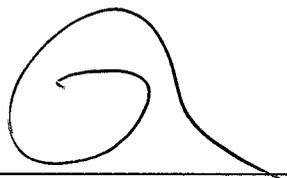
which Resolution was passed by the City Council of the City of Evanston at a Regular City Council Meeting on the 22nd day of January, 2018, at which meeting a quorum was present, and approved by the Mayor of the City of Evanston on the 31st day of January, 2018.

I further certify that the vote on the question of the passage of said Resolution was taken by Ayes and Nays and recorded in the Regular City Council Meeting Minutes of the City of Evanston, and that the result of said vote was as follows:

AYES: 9
NAYS: 0
ABSENT: 0

I do further certify that the original Resolution, of which the foregoing is a true copy, is entrusted to my care for safekeeping, and that I am the lawful keeper of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Evanston, this 6 day of February 2018.



City Clerk

