

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT ("Agreement") is made and entered into as of the 23 day of August, 2017 ("Effective Date"), by and between Illinois-American Water Company, an Illinois corporation ("Company"), and the Village of Homer Glen, Illinois, an Illinois municipal corporation ("Village"), for the purposes and consideration set forth hereinafter.

RECITALS

A. The Company is engaged in the furnishing of water utility service within portions of the Village and holds a certificate of public convenience and necessity, issued by the Illinois Commerce Commission, granting it the right to furnish water utility service within said area.

B. The Village is planning the construction of a 16-inch water main of approximately 7,230 feet in length, together with the necessary valves, fittings, and related necessary items, excepting meters, along 159th Street between Cedar Road and Gougar Road (the "Water Main"). A copy of preliminary engineering plans for construction of the Water Main is attached as Exhibit A and made a part hereof.

C. The Company is willing to allow the connection of the Water Main to the Company's existing 16-inch ductile iron water main that terminates approximately 650 feet west of the intersection of 159th Street and Cedar Road, as provided hereinafter.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and agreements set forth herein, the parties hereto agree as follows:

AGREEMENTS

1. Water Main Construction.

(a) The Village will construct and install the Water Main, in accordance with final engineering plans to be submitted to and approved in writing by the Company prior to the Village's construction permit application to the Illinois Environmental Protection Agency (the "IEPA"). The Water Main's size, design, type, and quality of materials, and its manner of installation, shall comply with the requirements of the Company, the IEPA, the Illinois Department of Historic Preservation, and any other public agencies having authority over the construction and installation of the Water Main.

(b) The Village shall pay all costs and expenses associated with the construction and installation of the Water Main. An itemized cost estimate of the Water Main to be constructed pursuant to this Agreement is attached as Exhibit B and made a part hereof.

(c) Upon completion of construction of the Water Main, the Village intends to apply a charge (the "Development Impact Fee") to all users who make connection to the Water Main upon completion of construction. No part of the Development Impact Fee shall be paid to the Company. The Village shall report to the Company by February 1 of each year the amount of the Development Impact Fee collected by the Village during the previous calendar year.

2. Construction and Transfer of Water Main.

(a) The Village shall construct and complete the Water Main free of all security interests, liens, and encumbrances of any nature. Any general contract and all subcontracts shall contain a provision requiring a written release of the contractor's and subcontractors' and supplier's liens. Copies of all such releases shall be conveyed to the Company upon completion of construction.

(b) The Company shall have the right at all times during construction to inspect the progress of the work performed and to determine whether the work is being performed in accordance with the plans and specifications and all agreements between the parties. The Company may, at its discretion, retain the services of an engineering firm for the purpose of inspecting and monitoring the performance of work and to ensure compliance with the plans and specifications, or the Company may utilize its own associate engineers to perform any of such services. If, in the Company's reasonable opinion, the work has not been, or is not being, performed in a good and workmanlike manner and in accordance with the plans and specifications, the Company shall have the right to require the correction of any defects and compliance with the plans and specifications. A Company representative shall be present during all pressure testing, flushing, and disinfection activities.

(c) At the conclusion of construction, the Village shall deliver to the Company: a current and complete set of record drawings and other pertinent information of the completed Water Main showing its exact location and configuration; documentation showing that the Village complied with the Company's GIS requirements for water main construction projects; an IEPA water main operating permit; and records of satisfactory pressure and disinfection testing. The Village shall also deliver to the Company a detailed itemization of all amounts paid in connection with the construction of the Water Main ("Final Construction Cost"), together with satisfactory evidence of full and final payment (or provision for payment satisfactory to Company) of all amounts due and payable in connection with such construction.

(d) The Village shall be the owner of the Water Main, subject to the provisions of paragraph 2(f).

(e) The Village and the Company shall enter into an agreement, in the form of Exhibit C attached hereto, for operation and maintenance of the Water Main by the Company during the time that the Village is the owner of the Water Main. The Village agrees that it will not charge any fee to the Company for the delivery of water through the Water Main during the time that the Village is the owner of the Water Main.

(f) Within thirty (30) days after the Village recovers the Final Construction Cost through collection of the Development Impact Fee, or twenty (20) years after the Effective Date, whichever occurs first, and full compliance by the Village with the provisions of Section 2(c) above, ownership of the Water Main shall be transferred to the Company. In the event that the Village has not recovered the Final Construction Cost through collection of the Development Impact Fee within twenty (20) years of the Effective Date, the Village intends to continue collecting the Development Impact Fee after such time with no objection by the Company. For such purpose, the Village shall execute and deliver to the Company a written bill of sale, in the

form of Form D-7, describing the Water Main with reasonable specificity. In such bill of sale, the Village shall represent and warrant to the Company that (i) the Water Main has been properly constructed and completed in accordance with the plans and specifications therefor; (ii) the Water Main are free and clear of all liens and encumbrances of any nature; and (iii) the Water Main have been inspected and approved by all public agencies and governmental authorities having authority over the construction and installation of potable water systems. Upon the transfer of the Water Main, as provided herein, the Village shall retain no right, title, or interest in them and the Company shall indemnify and hold harmless the Village from any and all causes of action, damages or physical injury relating to the use and maintenance of the Water Main after said transfer. Prior to such transfer, all risk of loss shall be with the Village, and the Company shall have no right or interest in the Water Main.

(g) The Village shall protect, indemnify, and hold harmless the Company from and against any and all loss, damage, claims of damage, liability, judgments, or causes of action (including, but not limited to, court costs and reasonable attorneys' fees), caused or occasioned by or resulting from the Village's construction of the Water Main and/or any action undertaken by or on behalf of the Village, or its agents or employees, during or following such construction.

3. Commencement of Company's Obligation to Serve.

(a) It is understood and agreed that all users who connect to the Water Main or to extensions of the Water Main, both before and after the transfer of the Water Main to the Company pursuant to the provisions of paragraph 2(f), shall be and remain the customers of the Company, and not the customers of the Village. The provision of water service to all customers shall be subject to the Rules and all applicable rates, fees, charges, and tariffs of the Water Company as approved by the Illinois Commerce Commission ("Commission") from time to time. The Water Company shall have the unilateral right to apply to the Commission for changes or modifications in any of its rates or charges and to alter or amend its terms and conditions of service and to otherwise charge for its services as may be permitted by the Commission.

(b) The Company shall not be obligated or required to provide water utility service to any dwelling, building, lot, or area from the Water Main unless and until the Village has fully performed and satisfied all duties, obligations, conditions, and requirements imposed on the Village hereunder, including (without limitation) those duties and obligations set forth in Sections 2(c) and 2(e), above. Under no circumstances shall the Village cause the establishment of water utility service to any dwelling or person without the prior written approval of the Company. Further, the Village shall not represent to nor advise any third party that water utility service is presently available, until its obligations hereunder have been fully performed.

(c) If necessary prior to the full performance of this Agreement, the Company shall provide temporary water service to the Village in connection with the construction of the Water Main. All water provided on a temporary basis shall be metered, and the Village shall be billed for such temporary water usage on the basis of the Company's current charges for its non-residential customer class. Temporary water service hereunder shall be subject to termination, upon five-(5) days written notice, in the event any bill remains unpaid for more than thirty (30) days.

4. Easements and Rights-of-Way.

The Village shall provide to the Company satisfactory evidence of perpetual easements and rights-of-way over, under, and across all portions of the Water Main route as may be necessary to serve each parcel or lot along the Water Main route. All easements and rights-of-way shall be perpetually free of obstacles that may interfere with the operation, maintenance, and use of the Water Main.

5. Binding Effect of Agreement.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided, however, that an assignment or other transfer of this Agreement or any rights or obligations hereunder by the Village shall not be binding upon the Company or create any rights in the assignee until such assignment or other transfer is approved and accepted in writing by the Company.

6. Notice.

Any notice required or permitted to be given under this Agreement shall be deemed delivered and be effective on the date physically delivered to the party to whom notice is being provided or two (2) calendar days following the date on which the notice is deposited in the United States Mail, postage prepaid, certified delivery, and addressed to the party to whom notice is being provided, as follows:

Company:

Illinois-American Company
100 North Waterworks Dr.
Belleville, IL 62223-9040

Attn: President

The Village:

Village of Homer Glen
14240 W. 151st Street
Homer Glen, IL 60491

Attn: Village Manager

with a copy to:

Illinois-American Company
1000 Internationale Parkway
Woodridge, IL 60517

Attn: District Manager

Mahoney, Silverman & Cross, LLC
822 Infantry Drive, Suite 100
Joliet, IL 60435

Attn: Eric Hanson

Each party shall promptly provide written notice to the other party, as provided herein, of any subsequent change of address, and the failure to do so shall preclude any subsequent claim that notice was improperly given hereunder.

7. Miscellaneous.

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. This Agreement, together with the attachments hereto, sets forth the entire agreement between the parties and supersedes all prior negotiations, understandings, and agreements between them. No change in, addition to, or waiver of any of the provisions of this Agreement shall be binding upon any party unless in writing and signed by the party sought to be bound. Time is of the essence of this Agreement and each and every term contained herein. This Agreement does not create any agency, employment, joint employer, joint venture or partnership between the Village and the Company. Neither party will have the right, power or authority to act for the other in any manner or capacity. Any such attempt shall be deemed ineffective and declared null and void.

Illinois-American Water Company, an Illinois corporation

By: Michael A. Smith
Michael A. Smith
September 18, 2017

The Village of Homer Glen, Illinois, an Illinois municipal corporation

By: George Yukich
George Yukich, Mayor
Clerk: Andrew Holtz

