

Motion to defer this item until the February 16, 2010, Policy Session was approved by roll call vote.

Yeas: Gulley, Irving, Jacob, Montelongo, Riggerbach, Sandberg, Spain, Spears, Turner, Van Auken, Mayor Ardis – 11;

Nays: None.

(10-055) Communication from the City Manager and Corporation Counsel Requesting Approval of the MAIN CONSTRUCTION and DEVELOPMENT AGREEMENT with ILLINOIS-AMERICAN WATER COMPANY, and Requesting Authorization for the City Manager to Execute the Necessary Documents.

Council Member Irving moved to approve the Main Construction and Development Agreement with Illinois-American Water Company and to authorize the City Manager to execute the necessary documents; seconded by Council Member Van Auken.

Council Member Irving noted the agreement would bring great benefit to the City.

Council Member Sandberg expressed concern regarding the potential financial impact of the agreement to the City. He said he felt giving developers the option that the City would develop water mains meant the City would be spending money.

Corporation Counsel Randy Ray clarified the document would not approve the City spending any money on this at this time. He added any money expended would have to come before the Council.

Council Member Sandberg said the language of the agreement left the developer an option of not doing the work. He said if the word "or" was not included in the language, he would not have any problem supporting the agreement.

Mayor Ardis reiterated the agreement did not obligate the City to develop the water mains.

In discussion with Council Member Van Auken, Corporation Counsel Ray said the "or" did not mean the developer had an automatic option.

Motion to approve the Main Construction and Development Agreement with Illinois-American Water Company and to authorize the City Manager to execute the necessary documents was approved by roll call vote.

Yeas: Gulley, Irving, Jacob, Montelongo, Riggerbach, Spain, Spears, Turner, Van Auken, Mayor Ardis – 10;

Nays: Sandberg – 1.

(10-056) Communication from the City Manager and Director of Planning and Growth Management with Request to Concur with Either the Recommendation from the Zoning Commission to ADOPT or Concur with the Recommendation from the Staff to DENY the Following:

- A. **ORDINANCE Rezoning Property Located at 1717 W. GLEN AVENUE from the Present Class R3 (Single Family Residential) District to a Class O2 (Exclusive Office Park) District, with Conditions;**

Council Member Spears moved to concur with the Zoning Commission's recommendation to adopt the Ordinance rezoning property located at 1717 W. Glen Avenue from the present Class R3 (Single Family Residential) District to a Class O2 (Exclusive Office Park) District, with conditions; seconded by Council Member Van Auken.

MAIN CONSTRUCTION AND DEVELOPMENT AGREEMENT

THIS MAIN CONSTRUCTION AND DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this 24th day of March, 2010, by and between **Illinois-American Water Company**, an Illinois public utility corporation (the "Water Company"), and the **City of Peoria**, an Illinois municipal corporation (the "City"). The Water Company and the City may hereinafter be referred to individually as a "Party" and jointly as the "Parties".

RECITALS

A. The Water Company is an Illinois corporation engaged in furnishing water utility service within the City and certain unincorporated portions of Peoria County in the State of Illinois, and holds a Certificate of Public Convenience and Necessity, issued by and on file with the Illinois Commerce Commission (the "Commission"), granting it the right to furnish water utility service within said certificated area.

B. In accordance with the City's economic Development Zone plans, the City has a vested interest in the Development Zone of certain land, which the City plans to annex into the corporate boundaries of the City, for residential and/or commercial purposes. Said land, and its boundaries, is more specifically described on Exhibit A attached hereto and incorporated herein by this reference (the "Development Zone").

C. The Water Company is willing to furnish water utility service to the Development Zone, but presently has no Certificate of Public Convenience and Necessity authorizing it to provide service to the Development Zone, nor does it currently own water distribution mains or facilities within the Development Zone.

D. The City anticipates constructing and installing water distribution mains and facilities as may be required by the Water Company to provide water utility service to the Development Zone and to transfer the ownership of such water distribution mains and facilities to the Water Company, as provided hereinafter.

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

1. Water Service Facilities.

(a) At its sole discretion, and in accordance with construction plans approved by the Water Company, the City agrees to construct and install all water distribution mains, together with the necessary valves, fittings, and related necessary items, excepting meters, necessary to provide a potable water supply to portions of the Development Zone (hereinafter referred to individually as the "Facility" and in the plural as the "Facilities").

(b) The City shall pay the costs and expense associated with the construction and installation of each Facility, including the reasonable administrative costs incurred by the Water Company prior to the transfer of each additional Facility to the Water Company pursuant to Section 3(d); except that an amount equal to one and one half times (1/1/2) the estimated annual revenue to be received from all potential customers who commit to take service from the

Water Company within ten (10) years (or such other time period as mandated by Commission rules, Water Company tariffs or orders regarding developer funded main extensions) following the date water is provided to a Facility by the Water Company shall be credited to the City ("Credit Amount"). The Credit Amount shall offset the costs of the Water Company to be reimbursed by the City pursuant to the preceding sentence. For purposes of determining the Credit Amount, the estimated annual revenue to be deemed received from a residential customer shall be the average residential revenue received by the Water Company in the immediately preceding calendar year from a residential customer within the Water Company's Peoria District; and the estimated average annual revenue to be deemed received from a non-residential customer shall be that determined by the Water Company, in its reasonable judgment.

(c) The size, design, type and quality of materials, system location and manner of installation, shall be specified by the Water Company for each prospective Facility and shall comply with the requirements of the Illinois Environmental Protection Agency, the Illinois Department of Historic Preservation, and any other public agencies having authority over the construction and installation of a water distribution system. No material change shall be made in the plans and specifications for any Facilities without the prior written approval of the Water Company.

2. Easements. This Agreement shall be subject to the City providing to the Water Company satisfactory evidence of a grant of perpetual easements and rights-of-way over, under, and across all portions of the main and pipeline routes as may be necessary to serve each parcel or lot within the Development Zone and to operate, repair, and maintain the Facilities. All easements and rights-of-way shall be perpetually free of obstacles, which may interfere with the operation, maintenance, and use of the Facilities by the Water Company.

3. Construction and Transfer of Facilities.

(a) The City shall construct and complete each Facility free of all security interests, liens, and encumbrances of any nature. Except with the prior written approval of the Water Company, no materials, equipment, or fixtures shall be supplied, purchased, or installed for the construction or operation of any Facilities pursuant to security agreements or other agreements or understandings whereby a security interest or title is reserved or may accrue to any Party to remove or repossess any materials, equipment, or fixtures intended to be utilized in the construction or operation of any Facilities.

(b) The Water 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 Water 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 Water Company may utilize its own associate engineers to perform any of such services. The reasonable fees and expenses charged by such engineering firm or the reasonable overhead expense of such associate engineers shall be paid by the City, and all amounts so paid shall be included in the total cost of constructing and installing each of the Facilities hereunder. If, in the Water 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 Water Company shall have the right to require the correction of any defects and compliance with the plans and specifications. Complete and satisfactory completion of the Facility shall be a condition precedent to the Water Company's obligation to accept the transfer of the Facility and to furnish water utility service to any portion within the Development Zone, as provided below. The right of the City to indemnify, reimburse or to provide any other remedy based on the representations made in Section 3(d) below shall not be affected by any investigation or inspection by the Water Company under this provision.

(c) At the conclusion of construction, the City shall deliver to the Water Company, at the City's expense, a current and complete set of "Record" drawings and other pertinent information of each completed Facility showing their exact location and configuration within and outside, if applicable, the Development Zone. The City shall also deliver to the Water Company a detailed itemization of all amounts paid in connection with the construction of each Facility together with satisfactory evidence of full and final payment (or provision for payment satisfactory to the Water Company) of all amounts due and payable in connection with such construction. The City shall further deliver the following to the Water Company: (i) the original, if available, or otherwise a copy of all applicable permits and approvals, including, but not limited to, Construction Permits and Operating Permits relating to each Facility; (ii) final waivers of lien for all services, materials and labor; (iii) documentation reasonably acceptable to the Water Company transferring to the Water Company all warranties provided by manufacturers, suppliers, contractors, subcontractors, design/builders and/or other entities with respect to components of each Facility; and (iv) all operating manuals, instructional documents or other material provided to the City by design/builders, contractors and subcontractors or by manufacturers or entities installing components of each Facility.

(d) Upon the satisfactory completion of a Facility, and full compliance by the City with the provisions of Section 3(c) above, ownership of that Facility and all associated land rights and easements shall be transferred to the Water Company. For such purpose, the City shall execute and deliver to the Water Company a written bill of sale describing the Facility with reasonable specificity. In such bill of sale, the City shall represent and warrant to the Water Company that: (i) the Facility has been properly constructed and completed in accordance with the plans and specifications therefor; (ii) the Facility is free and clear of all liens and encumbrances of any nature; and (iii) the Facility has been inspected and approved by all public agencies and governmental authorities having authority over the construction and installation of potable water systems. The City shall also execute and deliver to the Water Company instruments and documents of conveyance, in a form acceptable to the Water Company and its counsel, necessary and effective to transfer all required easements and land rights needed to serve each parcel or lot within the Development Zone and to operate, repair, and maintain the Facility. Upon the transfer of each of the Facilities, as provided herein, the City shall retain no right, title, or interest in them. Prior to such transfer, all risk of loss shall be with the City, and the Water Company shall have no right or interest in any of the Facilities. The City's contractor shall warrant all work for a period of one (1) year from date of transfer.

(e) The City shall protect, indemnify, and hold harmless the Water 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 City's construction of a Facility and/or any action

undertaken by or on behalf of the City, or its agents or employees, during or following such construction.

4. Commencement of Water Company's Obligation to Serve.

(a) It is understood and agreed that the Water Company shall not be obligated or required to provide water utility service to any dwelling, lot, or area within the Development Zone unless and until the City has fully performed and satisfied all duties, obligations, conditions, and requirements imposed on the City in this Agreement. Under no circumstances shall the City cause the permanent establishment of water utility service to any dwelling or person without the prior written approval of the Water Company, which shall not be unreasonably withheld. Further, the City shall not represent to, nor advise any third party, that water utility service is presently available until its obligations hereunder have been fully performed.

(b) If necessary prior to the full performance of this Agreement, the Water Company may, in its sole discretion, provide temporary water service to the City, and its respective contractors and subcontractors and employees, for construction-related purposes within the Development Zone. All water provided on a temporary basis shall be metered, and the City shall be billed for such temporary water usage on the basis of the Water Company's current charges for its commercial customer class. Temporary water service hereunder shall be subject to termination, upon five-(5) day's written notice, in the event any City bill remains unpaid for more than thirty (30) days.

5. Certificate; Covenant not to Expand Certificate without Consent; Governmental Approvals Required.

(a) The Water Company shall file an application with the Commission for a Certificate of Public Convenience and Necessity ("Certificate") authorizing the Water Company to provide water utility service (and/or temporary water service) within the defined boundaries of the Development Zone contemporaneously with the transfer of each Facility from the City to the Water Company. It is understood and agreed that the Water Company shall not be obligated or required to accept the ownership transfer of any Facility or provide water utility service (and/or temporary water service) to any dwelling, lot, or area within the Development Zone unless and until the Water Company has obtained a Certificate, including all necessary approvals of this Agreement, authorizing the Water Company to provide water utility service (and/or temporary water service) to any area within the Development Zone.

(b) In exchange for the conveyance of each of the contemplated Facilities hereunder, and in consideration of the economic development plans of the City, and following receipt of a Certificate from the Commission as described in 5(a) above, the Water Company shall not voluntarily seek to obtain a new or expanded Certificate to provide water utility service by connecting its distribution system to any Facilities within the Development Zone, except to connect a Facility to the Peoria distribution system for the purpose of providing water or system redundancy without the prior written consent of the City, which shall not be unreasonably withheld. It is hereby agreed that the City may reasonably withhold such approval where connecting said Facilities would be inconsistent with the City's Comprehensive Plan (as such

Comprehensive Plan is formally adopted in accordance with 65 ILCS 5/11-12-6) and where such approval would limit the City's ability to recapture its Development Zone costs for said area. The expression of these examples of circumstances justifying reasonable withholding of the City's consent is for purposes of example only and does not limit the City's ability to withhold consent for other reasons.

(c) The Water Company shall, at its expense, promptly and diligently after the City has informed the Water Company of its intention to construct additional Facilities in accordance with this Agreement seek a Commission order granting the Certificate and such approvals as are required under applicable laws, rules and/or regulations from the Commission (including approval of the terms of this Agreement as necessary). If this Agreement is not fully approved by the Commission in a manner satisfactory to the Water Company in its sole discretion, this Agreement may be terminated upon written notice given to the City by the Water Company within thirty (30) days after the date on which the Commission issues its order (the "ICC Order"), in which event this Agreement shall be terminated and neither Party shall have any further obligations or liabilities hereunder. If this Agreement is rejected in full by the Commission, this Agreement shall be deemed terminated effective as of the date of the Commission Order without any further notice required. The Parties shall not have any further obligations or liabilities hereunder.

(d) The Water Company shall promptly inform the City of any notice it receives from the Commission regarding a request for service in the Development Zone, including any appeal made by a third party that was initially rejected by the City under section (b) above.

6. Applicability of Water Company's Rules.

(a) This Agreement, and all rights and obligations hereunder, including those regarding water service to the Development Zone, shall be subject to the Rules and all applicable rates, fees, charges, and tariffs of the Water Company as approved by the Commission and in effect from time to time.

(b) 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. The Water Company shall comply with all laws and regulations regarding notice to affected parties.

7. Refunds to the City.

(a) If any of the customers who commit to take service from the Water Company within ten (10) years following the date water is available to the Facilities and for which the City is given a credit pursuant to Subsection 1(b) were not customers similarly situated to other customers of the Water Company, so that the Water Company has estimated the expected revenue to be received from such customer for purposes of the calculation made in Subsection 1(b), upon completion of the first yearly billing period of such customers, the Water Company shall refund an amount equal to one and one-half (1-1/2) times the difference between

the annual revenue originally estimated by the Water Company and the actual revenue received, provided that the actual revenue is greater than the estimated revenue.

(b) The aggregate amount refunded to the City pursuant to this Section 7 shall, in no event, exceed the amount actually paid by the City towards the cost of constructing each of the Facilities, without interest, and the Water Company will not require any payment from a new applicant in excess of the unrefunded cost of the City.

(c) The Parties hereto agree that the City shall not be entitled to any form of refund or other reimbursement or compensation as the result of further extensions of water mains from or beyond the main(s) installed by the City pursuant to this Agreement, or for customers taking service from such further extensions.

8. Binding Effect of Agreement. This Agreement shall be assignable by the Water Company to any affiliate of the Water Company or to any purchaser of all or substantially all of the assets or a controlling voting interest of the Water Company. 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 City shall not be binding upon the Water Company or create any rights in the assignee until such assignment or other transfer is approved and accepted in writing by the Water Company.

9. 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 for 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:

if to the City:

Attn: City Manager
 City of Peoria, Illinois
419 Fulton Street, Suite 207
 Peoria, Illinois 61602

If to the Water Company:

Attn: President
 Illinois American Water Company
 100 North Water Works Drive
 Belleville, Illinois 62223

With a copy to:

Attn: Legal Department
 American Water Works
 727 Craig Road

St. Louis, Missouri 63141

Each Party shall promptly provide written notice to the other Party, as provided herein, of any subsequent change of address. If a Party fails to notify the other Party of a change of address, then the Party who failed to provide such notice shall be precluded from claiming that notice was improperly given hereunder.

10. Term. This Agreement shall be in full effect for a period of five (5) years from the date of execution, unless terminated earlier by ninety (90) days written notice by either Party to this Agreement.

11. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. The Commission shall have sole jurisdiction to resolve any dispute between the Parties that pertains to the terms and conditions set forth in this Agreement. 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. The Agreement shall be solely for the benefit of the Parties and shall not confer any rights to any third party. 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 may be executed by the Parties hereto on any number of separate counterparts, and all such counterparts so executed constitute one agreement binding on all the Parties hereto notwithstanding that all the Parties hereto are not signatories to the same counterpart.

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their authorized individuals to be effective as of the day, month, and year first above written.

The City of Peoria, Illinois

Illinois-American Water Company

By: _____
Name: ~~Scott Moore~~ 2/9/10
Title: City Manager

By: Karla Olson Teasley
Name: Karla Olson Teasley
Title: President

APPROVED
LEGAL DEPT.
BY: Randall [Signature]

