

CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the "Agreement") is made and entered into as of the 18th day of SEPTEMBER, 2020, by and between Illinois-American Water Company, an Illinois corporation ("IAWC"), and the City of Peoria, Illinois, an Illinois municipal corporation ("Peoria"). Hereinafter, IAWC and Peoria may be referred to individually as a "Party" or together as the "Parties."

RECITALS:

- A. IAWC is engaged in furnishing water utility service within Peoria.
- B. Peoria in conjunction with the Illinois Department of Transportation ("IDOT") is planning the reconstruction of Western Avenue between approximately Adams Street and Howett Street, which reconstruction will require the relocation of IAWC's water main along a portion of Western Avenue at IAWC's cost (hereinafter referred to as the "Work").
- C. IDOT and Peoria are entering into a separate contract to conduct the Work. IDOT and Peoria are willing to perform, through IDOT's contractors, the relocation of IAWC's water main and installation of the facilities as further detailed in Exhibit 1 ("Water Main Project") in return for cost reimbursement by IAWC to Peoria, which will then reimburse IDOT for the cost of the Work, subject to the limitations set forth herein.

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

Article I Water Service Facilities

1.1 Construction. In accordance with the approved plans and specifications attached hereto as Exhibit 1 and incorporated herein by reference, Peoria through its contract with IDOT and IDOT's contractors, shall effect the construction and installation of approximately 3,656 lineal feet of water main along the designated portion of Western Avenue, together with all valves, fittings, hydrants, and other items indicated in Exhibit 1, hereinafter collectively referred to as the "Facilities." The size, design, type and quality of materials and of the system location and manner of installation of the Facilities shall be as indicated on Exhibit 1 and shall meet the construction standards set forth in Exhibit 1. No material change shall be made in the plans and specifications for the Facilities without the prior written approval of IAWC.

1.2 Transfer of Completed Facilities. During the Work, the Facilities shall remain the property of IDOT until the construction of the Facilities is completed. Once completed, IDOT shall transfer the legal ownership of the Facilities to IAWC.

1.3 Cost Reimbursement. IAWC shall pay to Peoria all costs actually paid by Peoria associated with the construction and installation of the Facilities in accordance with Exhibit 1. An itemized total cost estimate of the Facilities to be constructed pursuant to this Agreement is outlined in blue text in the attached Exhibit 2 and incorporated herein by reference. Peoria shall advise IAWC of any material changes in the cost estimate (either increased or decreased costs). Final cost shall be determined by the unit prices of the successful bidder and quantities actually installed with IAWC's consent ("Final Cost"). Any changes to the planned Work must be approved by IAWC. Peoria shall invoice IAWC periodically as the work progresses. IAWC shall have the right to seek back up documentation for any invoice and challenge the amount of any invoice submitted. IAWC shall pay the Final Cost within ninety (90) days of receipt of an invoice and after any questions by IAWC have been resolved. Any amount not paid within ninety (90) days shall be subject to interest at ten (10) percent per annum. No interest shall accumulate if IAWC is seeking additional information or back up information about an invoice from Peoria.

Article II Rights-of-Way

Peoria shall provide to IAWC satisfactory evidence of rights-of-way for all portions of the route along which the water main is installed as may be necessary to provide water service to each parcel or lot on said route and to operate, repair, and maintain the Facilities.

Article III Performance

3.1 No Encumbrances. Copies of all releases, showing the Facilities and Work to be to be free of all security interests, liens, and encumbrances of any nature shall be conveyed to IAWC upon transfer of the Facilities in accordance with Section 1.2.

3.2 Inspection. IAWC 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 contained in Exhibit 1. IAWC shall 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 contained in Exhibit 1, or IAWC may utilize its own associate engineers to perform any of such services. If, in IAWC'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 contained in Exhibit 1, IAWC shall have the right to require the correction of any defects and compliance with the plans and specifications contained in Exhibit 1.

3.3 Documentation. Peoria shall deliver to IAWC a detailed itemization of all amounts paid in connection with the construction of the Facilities together with satisfactory evidence of full and final payment (or provision for payment satisfactory to IAWC) of all amounts due and payable in connection with the Work.

3.4 Indemnity. Peoria shall protect, indemnify, and hold harmless IAWC 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 construction of the Facilities and/or any action undertaken by or on behalf of Peoria, or its agents or employees, during or following the Work and construction of the Facilities. In addition, Peoria shall cause IDOT to include the following in the contract with the general contractor retained to construct and install the Facilities to contain the following provision: "Contractor shall protect, indemnify, and hold harmless IAWC 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 Contractor's construction of the Facilities and/or any action undertaken by or on behalf of Peoria, or its agents or employees, during or following such construction."

Article IV Service Connections

IAWC shall be responsible for making all service connections from the Facilities to customers along the portions of the route in which the water main is installed. IAWC shall make the service connections in a timely manner, coordinating with the general contractor's schedule.

Article V 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:

IAWC:

Illinois-American Water Company
7500 N. Harker Drive
Peoria, IL 61615
Attn: Charles Barton

City of Peoria:

City of Peoria
3505 N. Dries Lane
Peoria, IL 61604
Attn: Bill Lewis

Each party shall promptly provide written notice to the other party, as provided herein, of any subsequent change of address.

Article VI Miscellaneous

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. This Agreement, together with the exhibits 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. 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 Peoria shall not be binding upon IAWC or create any rights in the assignee until such assignment or other transfer is approved and accepted in writing by IAWC.

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.

ILLINOIS-AMERICAN WATER COMPANY



By: CHARLES BARTON

Engineering Manager – Project Delivery

CITY OF PEORIA, ILLINOIS



By: JIM ARDIS
Mayor

ATTEST:



By: BETH BALL, CITY CLERK



September 25, 2020

Bill Lewis, PE
City Engineer/Assistant Public Works Director
City of Peoria – Department of Public Works
3505 N. Dries Lane
Peoria, IL 61604

Western Avenue Improvement – Adams Street to Howett Street

Dear Bill,

Please find enclosed three signed copies of the agreement as requested.

Please let me know if you have any questions or need any additional information. Thanks again for the partnership from the City of Peoria. We look forward to a successful project.

Sincerely,

ILLINOIS-AMERICAN WATER

Charles (Trip) Barton, PE, GISP
Engineer Manager – Project Delivery