

## CONSTRUCTION AGREEMENT

THIS CONSTRUCTION AGREEMENT (the "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2014, by and between Illinois-American Water Company, an Illinois corporation ("IAWC"), and the City of Peoria, Illinois, an Illinois municipal corporation (the "City"). 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 is planning the reconstruction of the intersection of Main Street and University Street, which reconstruction will require the relocation of IAWC's water main along that portion of both referenced streets at IAWC's cost.
- C. Peoria is willing to perform, through its contractors, the relocation of IAWC's water main in return for cost reimbursement by IAWC.

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 shall construct and install approximately 1,600 lineal feet of 12-inch ductile iron water main along the designated portions of Main Street and University Street, 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. No material change shall be made in the plans and specifications for the Facilities without the prior written approval of IAWC.

**1.2 Cost Reimbursement.** IAWC shall pay to Peoria all costs actually paid by Peoria to its contractors 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 attached hereto as Exhibit 2 and incorporated herein by reference. The final cost to be paid by IAWC shall not exceed the Exhibit 2 estimate by more than ten (10) percent (the "Final Cost") plus a reimbursement of \$40,000 for engineering services. Peoria shall invoice IAWC for the Final Cost after completion of construction. IAWC shall pay the Final Cost within forty-five (45) days of receipt of the invoice. Any amount not paid within forty-five (45) days shall be subject to interest at ten (10) percent per annum.

## **Article II Rights-of-Way**

Peoria shall provide to IAWC satisfactory evidence of rights-of-way and permits 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.** Peoria shall construct and complete the Facilities free of all security interests, liens, and encumbrances of any nature. Peoria's general contract and all subcontracts shall contain a provision requiring a written release of the contractor's and subcontractors' and supplier's liens before IAWC's payment for any work performed by such persons will be made. Copies of all such releases shall be conveyed to IAWC upon transfer of the Facilities in accordance with Section 3.4.

**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. Peoria 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. Complete and satisfactory completion of the Facilities shall be a condition precedent to IAWC's obligation to accept the transfer of the Facilities.

**3.3 Documentation.** At the conclusion of construction, Peoria's hired engineering firm shall provide a current and complete set of "Record" drawings and other pertinent information of the completed Facilities showing their exact location and configuration within and outside, if applicable, the route. Peoria shall also 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 Water Company) of all amounts due and payable in connection with such construction.

**3.4 Ownership Transfer.** Upon the satisfactory completion of the Facilities, and full compliance by Peoria with the provisions of Section 3.3 above, ownership of the Facilities shall be transferred to IAWC. For such purpose, Peoria shall execute and deliver to IAWC a written bill of sale, in the form of Exhibit 3, describing the Facilities with reasonable specificity. In such bill of sale, Peoria shall represent and warrant to IAWC that (i) the Facilities have been properly constructed and completed in accordance with the plans and specifications therefor; (ii) the Facilities are free and clear of all liens and encumbrances of any nature; and (iii) the Facilities 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 Facilities, as provided herein, Peoria shall retain no right, title, or interest in them. Prior to such transfer, all risk of loss shall be with Peoria, and IAWC shall have no right or interest in the Facilities. Peoria's contractor shall warrant all work for a period of one (1) year from date of transfer.

**3.5 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 Peoria'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. In addition, Peoria shall cause its contract with its 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.

#### **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: Christian S. Volz, PE

Peoria:

City of Peoria  
3505 N. Dries Lane  
Peoria, IL 61604  
Attn: Scott Reeise, PE

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**

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By: CHRIS JOHNSON  
Senior Manager

**CITY OF PEORIA, ILLINOIS**

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By: PATRICK URICH  
City Manager

REVIEWED AND APPROVED:

\_\_\_\_\_  
Interim Corporation Counsel

\_\_\_\_\_  
Public Works Director