

**CONSTRUCTION AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between **ILLINOIS-AMERICAN WATER COMPANY**, an Illinois corporation, hereinafter referred to as the "Water Company," and \_\_\_\_\_, a \_\_\_\_\_, hereinafter referred to as "Developer," for the purposes and consideration set forth hereinafter.

**RECITALS:**

A. The Water Company is an Illinois corporation engaged in furnishing water utility service within portions of the City of \_\_\_\_\_ and certain unincorporated portions of \_\_\_\_\_ County in the State of Illinois 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. Developer is the owner of certain real property located within the Water Company's certificated area, and is currently developing a residential subdivision (and/or commercial development) thereon, to be known as \_\_\_\_\_ (the "Development").

C. The Water Company is willing and able to furnish water utility service to the Development, but presently has no water distribution mains or facilities within the Development.

D. Developer is willing to construct and install water distribution mains and facilities as may be required for the Water Company to provide water service to the Development, and to transfer ownership of such 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:

**AGREEMENTS:**

1. Water Service Facilities.

(a) In accordance with the approved plans prepared and submitted by \_\_\_\_\_ (Name of Engineering Firm), Developer agrees to construct and install approximately \_\_\_\_\_ lineal feet of \_\_\_\_\_-inch \_\_\_\_\_ water main, together with the necessary valves, fittings, and related necessary items, excepting meters, hereinafter collectively referred to as the "Facilities." A copy of said plans is attached as Exhibit "A" and made a part of this Agreement by reference.

(b) An itemized cost estimate of the Facilities to be constructed pursuant to this Agreement, prepared on Form D-2, is attached hereto and made a part hereof. Developer shall pay all costs and expense associated with the construction and installation of the Facilities, including the reasonable administrative costs incurred by the Water Company prior to transfer of the Facilities to 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 sixty (60) days following the date water is to be turned into the Facilities shall be credited to Developer ("Credit Amount"). The Credit Amount shall be offset from the costs of Water Company to be reimbursed by Developer pursuant to the preceding sentence. Should the Credit Amount exceed such administrative costs, the Water Company shall pay such difference to Developer within thirty (30) business days following transfer of the Facilities to the Water Company pursuant to Section 3(d). Should the Credit Amount be less than such administrative costs, Developer shall pay the Water Company the difference, prior to transfer of the Facilities pursuant to Section 3. 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 district which will be providing service to the Development; 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 and of the system location and manner of installation, shall be specified by the Water Company 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 the Facilities. No material change shall be made in the plans and specifications for the Facilities without the prior written approval of the Water Company.

2. Easements.

This Agreement shall be subject to Developer providing to the Water Company satisfactory evidence 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 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) Developer shall construct and complete the Facilities 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, in the form of Forms C-8 and C-9, respectively, before payment for any work performed by such persons will be made. Copies of all such releases shall be conveyed to the Water Company upon transfer of the Facilities in accordance with Section 3(d). 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 the 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 the 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. 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 Developer, and all amounts so paid shall be included in the total cost of constructing and installing 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 Facilities shall be a condition precedent to the Water Company's obligation to accept the transfer of the Facilities and to furnish water utility service to the Development, as provided below.

(c) At the conclusion of construction, Developer shall deliver to the Water Company, at the Developer's expense, 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 Development. Developer shall also deliver to the Water Company a detailed itemization of all amounts paid in connection with the construction of the Facilities, prepared on Form D-7, 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.

(d) Upon the satisfactory completion of the Facilities, and full compliance by Developer with the provisions of Section 3(c) above, ownership of the Facilities shall be transferred to the Water Company. For such purpose, Developer shall execute and deliver to the Water Company a written bill of sale, in the form of Form D-8, describing the Facilities with reasonable specificity. In such bill of sale, Developer shall represent and warrant to the Water Company 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, Developer shall retain no right, title, or interest in them. Prior to such transfer, all risk of loss shall be with Developer, and the Water Company shall have no right or interest in the Facilities. The Developer's contractor shall warrant all work for a period of one (1) year from date of transfer.

(e) Developer 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 Developer's construction of the Facilities and/or any action undertaken by or on behalf of Developer, 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 unless and until Developer has fully performed and satisfied all duties, obligations, conditions, and requirements imposed on Developer hereunder, including (without limitation) those duties and obligations set forth in Sections 3(c) and 3(d), above.

Under no circumstances shall Developer cause the permanent establishment of water utility service to any dwelling or person without the prior written approval of the Water Company. Further, Developer 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 shall provide temporary water service to Developer, and its respective contractors and subcontractors and employees, for construction-related purposes within the Development. All water provided on a temporary basis shall be metered, and Developer 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) days written notice, in the event any bill remains unpaid for more than thirty (30) days.

5. Applicability of Water Company's Rules.

(a) This Agreement, and all rights and obligations hereunder, including those regarding water service to the Development, 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.

(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.

6. Refunds to Developer.

(a) If any of the customers who commit to take service from the Water Company within thirty (30) days following the date water is turned into the Facilities and for which Developer 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, provide that the actual revenue is greater than the estimated revenue. If the actual revenue is less than the estimated revenue, the difference shall be used as an offset against revenues, which would otherwise become the basis for a refund pursuant to Subsection (b) of this Section 6.

(b) During the first ten (10) years after the date upon which the Facilities are conveyed to the Water Company pursuant to Subsection 3(d), the Water Company shall refund to Developer, for each additional new customer (i.e., a customer which was not considered in the credit given to Developer pursuant to Subsection 1(b)) taking service from the water main(s) constructed by Developer pursuant to this Agreement under a regular yearly contract, at the end of the first year's billing for service to such additional new customer, an amount equal to one and one-half (1 1/2) times the annual average water revenue of similarly situated customers. If there are no similarly situated customers, the Water Company shall refund one and one-half (1-1/2) times the actual annual revenue received.

(c) If the water main(s) constructed by Developer pursuant to this Agreement abut(s) property not owned by Developer or in which Developer has no legal interest at the date hereof, the Water Company will determine the cost-per-serviceable-front-foot of the main(s), so that if the owner or other party having an interest in the aforementioned non-abutting property should make application to receive water service from the main(s) during the first ten (10) years after the date on which Developer transfers the Facilities to the Water Company pursuant to Section 3(d) above, the Water Company will collect from said new applicant an amount equal to his pro-rata share of the cost of the main(s), based on such cost-per-serviceable-front-foot. For this purpose, the "cost-per-serviceable-front-foot" shall be determined by dividing the actual costs paid by Developer in constructing the Facilities by the "net-serviceable-front-footage." "Net-serviceable-front-footage" shall be determined by multiplying the length of the main(s), in feet, by two, and subtracting therefrom the length of all non-frontage property and all frontage property from which service may not be provided, due to the physical characteristics of the property (e.g., where the main is under a street or railroad line, or

next to a cliff). In determining "net-serviceable-front-footage", both sides of the main shall be considered. For purposes of the preceding, non-frontage property will only be deemed to exist where a single lot or parcel of property is abutted by a main on more than one side (e.g., a corner lot). In such a case, only the length of main running parallel to the street from which such parcel takes its postal address shall be considered as "serviceable." If a parcel does not have a street address, the "serviceable" footage shall be deemed to be the length of main which runs most parallel to the lot line which the principal structure located on such parcel faces. If there is no structure on the parcel at the time the calculation is made, the longest length of main abutting a single side of such parcel shall be the portion deemed serviceable frontage. The amounts so collected from new applicants shall be transferred to Developer by the Water Company, and, other than the refunds required pursuant to Subsections 6(a) and (b), shall be considered as the only form of reimbursement due to Developer as a result of any such future connections.

(d) The aggregate amount refunded to Developer pursuant to this Section 6 shall, in no event, exceed the amount actually paid by Developer towards the cost of constructing the Facilities, without interest, and the Water Company will not require any payment from a new applicant in excess of the unrefunded cost of Developer.

(e) The parties hereto agree that Developer 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 Developer pursuant to this Agreement, or for customers taking service from such further extensions.

#### 7. Binding Effect of Agreement.

(a) 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 Developer 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.

#### 8. 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:

Water Company:

Developer:

Illinois-American Water Company

Local Street Address

Local City and Zip

Attn: Local Coordinator

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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.

9. 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.

**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.

**"WATER COMPANY"**

**ILLINOIS-AMERICAN WATER**

**COMPANY**

ATTEST:

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
General Manager - Network

**"DEVELOPER"**

ATTEST:

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
Its: \_\_\_\_\_



**CONSTRUCTION AGREEMENT**

**EXHIBIT A**

**PLANS**