

**RESOLUTION R-2024-07**

**A RESOLUTION AUTHORIZING THE EXECUTION OF A WATER TRANSMISSION AND DELIVERY AGREEMENT AMONG THE CITY OF WHEATON, ILLINOIS-AMERICAN WATER COMPANY AND THE DUPAGE WATER COMMISSION (ARROWHEAD WATER WHEELING AGREEMENT)**

**WHEREAS**, the City of Wheaton, Illinois, ("City") is an Illinois Home Rule Municipality pursuant to the provisions of Article VII, Section 6, of the Illinois Constitution of 1970; and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

**WHEREAS**, Illinois-American Water Company ("Illinois-American") and the City have entered into a Water Purchase and Sale Contract dated January 18, 2024 ("Water Purchase Agreement"), with the DuPage Water Commission ("Commission") for the sale of water by the Commission; and

**WHEREAS**, since 1993, Illinois-American, formerly Citizens Utilities Company of Illinois, has operated a water distribution system for the supply of domestic drinking water to approximately 606 customer connections located in unincorporated Wheaton, Illinois ("Arrowhead System") through delivery of water by the City pursuant to the Arrowhead Water Wheeling Agreement which expires on February 24, 2024; and

**WHEREAS**, the City agrees to continue to deliver water purchased by Illinois-American from the Commission to Illinois-American's Arrowhead System; and

**WHEREAS**, the City, Illinois-American and the Commission desire to formalize the Water Transmission and Delivery Agreement ("Delivery Agreement").

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Wheaton, Du Page County, Illinois, pursuant to its home rule powers, as follows:

**SECTION 1:** The foregoing recitals are hereby incorporated herein and made a part hereof as findings of the City Council.

**SECTION 2:** The City Council hereby approves and consents to the Delivery Agreement, without further action by the City Council.

**SECTION 3:** The Mayor is hereby authorized to execute and the City Clerk is hereby directed to attest to the Water Transmission and Delivery Agreement Among the City of Wheaton, Illinois-American Water Company and the DuPage Water Commission; and that a copy of that certain Delivery Agreement is on file with the City Clerk and is incorporated herein as if fully set forth as Exhibit A.

**SECTION 4:** The City Clerk is hereby authorized and directed to provide a copy of this Resolution and Delivery Agreement to Illinois-American and the Commission after its approval.

**ADOPTED** this 5<sup>th</sup> day of February 2024.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

	<u>Roll Call Vote:</u>
Ayes:	Councilman Barbier
	Councilwoman Bray-Parker
	Councilman Brown
	Mayor Suess
	Councilman Clousing
	Councilwoman Robbins
	Councilman Weller
Nays:	None
Absent:	None
	<u>Motion Carried Unanimously</u>

**WATER TRANSMISSION AND DELIVERY AGREEMENT  
AMONG THE CITY OF WHEATON, ILLINOIS-AMERICAN WATER COMPANY  
AND THE DUPAGE WATER COMMISSION**

This Water Transmission and Delivery Agreement, dated as of January 18, 2024, is by and between the **City of Wheaton**, a municipal corporation of the State of Illinois (the “City”), **Illinois-American Water Company**, an Illinois public utility corporation (“Illinois-American”), and the **DuPage Water Commission**, Counties of DuPage, Cook, Kane and Will, Illinois (the “Commission”), a county water commission and public corporation, organized under Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.* and the Water Commission Act of 1985, 70 ILCS 3720/1 *et seq.* (collectively, the “Acts”),

**WITNESSETH**

**WHEREAS**, Illinois-American owns and operates a water distribution system for the supply of domestic drinking water to approximately 606 customer connections located in unincorporated Wheaton, Illinois (“Arrowhead System”);

**WHEREAS**, the City owns and operates a water distribution system (the “City System”) which is interconnected to the Arrowhead System;

**WHEREAS**, Illinois-American and the City have entered into a Water Purchase and Sale Contract dated January 18, 2024 (“Water Purchase Agreement”) with the Commission for the sale of water by the Commission to Illinois-American for its Arrowhead System and to the City to serve the City System;

**WHEREAS**, pursuant to this Water Transmission and Delivery Agreement (“Delivery Agreement”), the City agrees to deliver the water purchased by Illinois-American from the Commission to Illinois-American’s Arrowhead System;

**WHEREAS**, the Commission has reviewed and approved this Delivery Agreement and the Commission provides its consent for the City to deliver such water to the Arrowhead System for Illinois-American.

**NOW, THEREFORE**, in consideration of the foregoing recitals and of the mutual covenants and agreements herein contained, the City, Illinois-American, and the Commission agree as follows:

**Section 1. Water Supply.**

(a) **Agreement to Deliver.** Subject to the provisions of this Delivery Agreement, the City agrees to transmit and deliver water purchased by Illinois-American from the Commission through the City System to the Arrowhead System, subject to availability of such water from the Commission. The City’s availability of such water hereunder, shall be limited to a maximum annual amount equivalent to the Arrowhead System’s then current water allocation, and provided further that the maximum rate of water that the City shall be required to deliver to the Arrowhead System in any one hour shall be in an amount equal to 1.7 times the Arrowhead System’s water allocation as determined on an hourly basis.

(b) **Interconnection.** The City will deliver water to the Arrowhead System through the interconnection between the City System and the Arrowhead System ("Point of Delivery"). The Commission shall own, operate and maintain, at its own expense, a meter station at the Point of Delivery for purposes of measuring the water delivered through the Point of Delivery. Illinois-American shall own, operate, maintain and be responsible for a pressure adjusting or rate control station at the Point of Delivery. Illinois-American shall operate the rate control station to adjust and control the flow of water from the City System into the Arrowhead System. Said deliveries shall be at a pressure not to exceed 85 pounds per square inch and not to be less than 35 pounds per square inch, measured at the Arrowhead System Metering Station.

(c) **Title to Water.** Title to all water delivered pursuant to this Delivery Agreement shall remain in the Commission to the lesser of the points ten feet (10 ft) downstream from the Commission's Wheaton metering station or a common dividing wall between the Commission's Wheaton metering station and Wheaton's pressure adjusting control station for its City System. At the Commission's Arrowhead Metering Station, title to the water delivered shall pass from the City to Illinois-American at the point the lesser of ten feet (10 ft) downstream from the Commission's Arrowhead metering station or a common dividing wall between the Commission's Arrowhead metering station and Illinois-American's pressure adjusting control for the Arrowhead Station.

(d) **Water Quality.** The City will maintain the quality of the water delivered by the Commission to the point of delivery to Illinois-American. The City shall bear no responsibility for the contamination of such water or deterioration of water quality occurring beyond the City's Point of Delivery to the Arrowhead System. The Commission shall bear no responsibility for the contamination of such water or deterioration of water quality occurring beyond the Commission's point of delivery to the City System.

(e) **Storage.** The City and Illinois-American shall each for its own system, construct and maintain, during the life of the term of this Delivery Agreement and any renewal or extension of it, effective water storage capacity equal to the water storage capacity required by the Water Purchase Agreement. Such water storage capacity shall be constructed, maintained, and expanded as necessary in accordance with the terms of the Water Purchase Agreement.

## **Section 2. Measuring Equipment.**

(a) **Commission to Supply Equipment, Official Record.** The Commission has furnished and installed, and will continue to own, operate, maintain, repair and replace, at its own expense, at the Point of Delivery the necessary equipment and devices for measuring properly the quantity of water delivered under this Delivery Agreement, together with such above-ground structures as the Commission shall deem necessary to house such equipment and devices. Such meter or meters and other equipment so installed and structures so constructed shall remain the property of the Commission. The Commission shall provide Illinois-American and the City access to such structures and equipment for examination and inspection at reasonable times, but the reading for billing purposes, calibration and adjustment thereof shall be done only by the employees or agents of the Commission. For the purpose of this Delivery Agreement, the official record of readings of the meter or meters shall be the journal or other record book of the Commission in its office in which the records of the employees or agents of the Commission who take the readings are or may be transcribed. Upon written request of Illinois-American or the City, the Commission will give Illinois-American or the City a copy of such journal or record book, or permit Illinois-American or

the City to have access thereto in the office of the Commission during regular business hours.

**(b) Check Meters.** Illinois-American may, at its option and its own expense, install and operate a check meter to check each meter installed by the Commission, but the measurement of water for the purpose of this Agreement shall be solely by the Commission's meters, except in the cases hereinafter specifically provided to the contrary. All such check meters shall be of standard make and shall be subject at all reasonable times to inspection and examination by any employee or agent of the Commission, but the calibration and adjustment thereof shall be made only by Illinois-American, except during any period when a check meter may be used under the provisions hereunder for measuring the amount of water delivered, in which case the calibration and adjustment thereof shall be made by the Commission with like effects as if such check meter or meters had been furnished and installed by the Commission.

**(c) Meter Readings.** The Commission shall read the meters at the Arrowhead System Metering Station ("Arrowhead System Meter") and the Commission meters installed or maintained pursuant to the Water Purchase Agreement to serve the City System ("City System Meter") as close to simultaneously as possible.

**Section 3. Unit of Measurement.** The unit of measurement for water delivered hereunder shall be gallons of water, U.S. Standard Liquid Measure, and all measuring devices shall, unless the parties otherwise agree, to be so calibrated.

**Section 4. Limitations on Supply of Water.**

**(a) Curtailment.** If at any time it becomes necessary for the Commission to limit generally its delivery of water to its customers for any reason, then the City and Illinois-American together shall take all reasonable and appropriate actions to provide that such water as is delivered by the Commission is shared by the City and Illinois-American on a pro rata basis provided, however, that if as a result of such limitations of delivery of such water, the City deems it necessary to impose water use limitations on customers of the City System, then Illinois-American shall impose similar water use limitations on customers of the Arrowhead System, and shall actively enforce such limitations through all reasonable means, including shut-off of water service to offending customers. Upon written notice from the City to Illinois-American that Illinois-American has failed to actively enforce such limitations as to customers of the Arrowhead System, and the failure of Illinois-American to remedy such violation, the City shall be entitled to restrict the supply and delivery of the water to the Arrowhead System to a level consistent with the amount to be supplied if such water use limitations had been and were being enforced. In addition, the City is under no obligation to provide Illinois-American with the City's well system water in the event the Commission limits the supply of water for any reason.

**(b) Limitation on Supply to City.** If at any time it becomes necessary for the Commission to limit its delivery of water to the City System (but not to the Arrowhead System) for any reason pursuant to the Water Purchase Agreement and specifically related to the City, then the City shall take all reasonable and appropriate actions, including without limitation the imposition of water use limitations on customers of the City System, to limit the use of water in the City System so that the Arrowhead System's pro rata share of water is delivered by the City to the Arrowhead System.

**(c) Limitation on Supply to Illinois-American.** If at any time it becomes necessary for the Commission to limit its delivery of water to the Arrowhead System (but not to the City System) for any reason specifically related to Illinois-American, then Illinois-American shall take all reasonable and appropriate actions, including without limitation the imposition of water use limitations on customers of the Arrowhead System, and the City shall, and shall be entitled to, make all necessary and appropriate adjustments to the City System, to assure that the appropriate amount of water to which the City System is entitled is delivered to the City System during such period of curtailment to Illinois-American.

**(d) Emergency Use of Other Sources.** Illinois-American may contract for a temporary supply of water in case of an emergency from any other unit of local government or any entity. Nothing in this Agreement shall be construed to prohibit Illinois-American or the City from serving its customers in cases of emergency, or when the Commission for whatever reason is unable to meet such water requirements of the City or Illinois-American, from any source including wells owned by Illinois-American or the City and maintained for emergency use.

**(e) No Liability of Commission.** Illinois-American and the City each hereby acknowledge and agree that the Commission shall not be liable either to Illinois-American or to the City for any damages occasioned by or in any way related to any limitation on, or delay in, the delivery of water to them or to either one of them.

**(f) No Liability of City.** Illinois-American acknowledges and agrees that the City shall not be liable to Illinois-American for any damages occasioned by or in any way related to any limitation on, or delay in, the delivery of water to Illinois-American.

**(g) Expansion of the Arrowhead System Service Area.** The current service area of the Arrowhead System is designated on the map attached hereto as Exhibit A. Illinois-American shall obtain written approval from the City prior to expanding the current service area of the Arrowhead System and such consent shall not unreasonably be withheld by the City. If the proposed service area expansion of the Arrowhead System affects property serviceable by the City System, the City reserves the right of first refusal to annex the affected property and require its connections to the City System. Notwithstanding any requirements of the Water Purchase Agreement to the contrary, and subject to all of the provisions of the Water Purchase Agreement, the Commission shall only be required to sell and deliver to Illinois-American an amount of water necessary from time to time to serve the water requirements of the Arrowhead System's current service area designated on Exhibit A attached hereto.

## **Section 5. Prices and Terms of Payment.**

**(a) Illinois-American's Payments to the Commission.** Illinois-American shall make all required payments to the Commission in accordance with the Water Purchase Agreement. To the extent that such payments depend upon the amount of water delivered to the Arrowhead System, Illinois-American's payments to the Commission pursuant to the Water Purchase Agreement shall be based on readings taken by the Commission of the Arrowhead System Meter.

**(b) City's Payments to the Commission.** The City shall make all required payments to the Commission in accordance with the terms of the Water Purchase Agreement. To the extent that such payments depend on the amount of water delivered to the City System, the City's payments to the Commission pursuant to the Water Purchase Agreement shall be based on the difference between

the readings taken by the Commission of the City System Meter and the readings taken by the Commission of the Arrowhead System Meter. If, for any billing period, the measurement of the amount of water delivered through the Arrowhead System Meter exceeds the measurement of the amount of water delivered through the City System Meter, then the difference between such readings shall be deemed zero.

**(c) Illinois-American's Payments to the City.** Illinois-American shall pay to the City, for the water transmission and delivery services under this Agreement, the amount of \$1.1550 per thousand gallons of water, or fraction thereof, metered by the Arrowhead System Meter (the "wheeling rate"). The City shall invoice Illinois-American monthly for such services, and payment shall be due within 30 days of invoicing by the City. The City and Illinois-American will review the variable components of the operational and maintenance expense to determine if any adjustments are required to the wheeling rate. Illinois-American agrees that the wheeling rate may be adjusted in the same proportion that the City's water rate to its customer base increases or decreases. The City agrees to give Illinois-American sixty (60) days written notice prior to any rate change going into effect, but any change in rates can go into effect only upon Illinois-American receiving approval from the Illinois Commerce Commission, if necessary.

#### **Section 6. Special Covenants and Conditions.**

**(a) City to Continue to Serve.** The City will use its best efforts to continue to serve Illinois-American with water.

**(b) City to Maintain and Operate City System Properly.** The City shall take all reasonable steps to maintain and operate the City System properly and in good condition and to continue to serve the customers in the City System.

**(c) Illinois-American to Maintain and Operate Arrowhead System Properly.** Illinois-American shall take all reasonable steps to maintain and operate the Arrowhead System properly and in good condition and to continue to serve the customers in the Arrowhead System.

**(d) Accounting and Audit.** The Commission, the City and Illinois-American will make and keep proper books and accounts in which complete entries shall be made of all transactions relating to its system.

**(e) Insurance.** The City and Illinois-American will carry insurance or maintain self-insurance with respect to its system of the kinds and in the amounts which are customarily carried or maintained by parties operating similar properties, including, without limiting the generality of the foregoing, fire and other casualty and public liability insurance or protection. All moneys received for loss under the insurance policies or on deposit as self-insurance reserves shall be used in making good the loss or damage in respect of which they were paid except to the extent that the property damaged or lost would be permitted to be disposed, whether by repairing the property damaged or replacing the property destroyed, and provisions for making good such loss or damage or replacing the property destroyed shall be made within a reasonable time from date of loss. The proceeds derived from any and all policies or available from self-insurance reserves for public liability losses shall be used in paying or reimbursing any accounts from which payments, settlements, judgments or expenses were advanced.

**Section 7. Force Majeure.** In case by reason of force majeure event occurs as to the obligations

of the City or Illinois-American under this Delivery Agreement and the City and/or Illinois-American shall be rendered unable wholly or in part to carry out its obligation under this Delivery Agreement, then if such party shall give notice and full particulars of such force majeure event in writing to the other parties within seven (7) days after the occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure event shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States, of the State of Illinois, or of any civil or military authority, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or tunnels, partial or entire failure of water supply, and inability on the part of the Commission or the City to deliver water hereunder, or of any party to receive water hereunder, on account of any other causes not reasonably within the control of the party claiming such inability. The settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any force majeure events shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlements are unfavorable to it in the judgment of the party having the difficulty. No force majeure event which renders any of the parties unable to perform under this Delivery Agreement shall relieve a party of its obligation to make payments pursuant to the terms of this Delivery Agreement.

#### **Section 8. Releases and Indemnification.**

**(a) Indemnification of the Commission by Illinois-American.** To the fullest extent permitted by law, Illinois-American hereby releases the Commission, and its respective officers, agents and employees, from and agrees that the Commission, and its respective officers, agents and employees, shall not be liable for, and agree to indemnify and hold the Commission, and its respective officers, agents and employees, harmless from: (1) any liabilities for any loss or damage to property or any injury to, or death of, any person that may be occasioned by or related to any cause whatsoever pertaining to the construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Arrowhead System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of Illinois-American to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

**(b) Indemnification of the Commission by the City.** To the fullest extent permitted by law, the City hereby releases the Commission, and its respective officers, agents and employees, from and agrees that the Commission, and its respective officers, agents and employees, shall not be liable for, and agrees to indemnify and hold the Commission, and its respective officers, agents and employees, harmless from: (1) any liabilities for any loss or damage to property or any injury to, or death of, any person that may be occasioned by or related to any cause whatsoever pertaining to the construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the City System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of the City to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including, in each such case, any attorneys' fees.

**(c) Indemnification of the Commission by the City and Illinois-American for Third-**



**Party Claims.** To the fullest extent permitted by law, Illinois-American and the City agree to indemnify and hold harmless the Commission, and its respective officers, agents and employees, harmless to the fullest extent permitted by law from any losses, costs, charges, expenses (including attorneys' fees), judgments, and liabilities incurred by the Commission, and its respective officers, agents and employees, in connection with any action, suit, or proceeding instituted or threatened by any third party in connection with this Delivery Agreement.

**(d) Indemnification Claims Made by the Commission.** If any such claim provided for in subsections (a), (b) or (c), is asserted, the Commission shall give prompt notice to Illinois-American or the City or both, as applicable, and Illinois-American or the City or both, as applicable, if requested by the Commission, shall assume the defense thereof, it being understood, however, that neither Illinois-American nor the City shall settle or consent to the settlement of any such claim without the written consent of the Commission. In connection with any such claims, litigation or liabilities, the Commission and its respective officers, agents, employees, representatives and assigns shall have the right to defense counsel of their choice. Illinois-American and the City, as applicable, shall be solely liable for all reasonable costs of such defense and for all reasonable expenses, fees, judgments, settlements and all reasonable other costs arising out of such claims, litigation, or liabilities. Illinois-American and the City, as applicable, shall have the right to participate in the defense of any such claim, or litigation and, upon the request of the Commission as stated above, shall assume the defense of the Commission, and its respective officers, agents and employees.

**(e) Indemnification of Illinois-American by the City.** To the fullest extent permitted by law, the City hereby releases Illinois-American, and its respective officers, agents and employees, from and agrees that Illinois-American, and its respective officers, agents and employees, shall not be liable for, and agrees to indemnify and hold Illinois-American, and its respective officers, agents and employees, harmless from any liabilities for any loss or damage to property or any injury to, or death of, any person that may be occasioned by or related to any cause whatsoever pertaining to the construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the City System and any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of the City to comply with its covenants or obligations contained in this Agreement.

**(f) Indemnification of the City by Illinois American.** To the fullest extent permitted by law, Illinois-American hereby releases the City, and its respective officers, agents and employees, from and agrees that the City, and its respective officers, agents and employees, shall not be liable for, and agrees to indemnify and hold the City, and its respective officers, agents and employees, harmless from: (1) any liabilities for any loss or damage to property or any injury to, or death of, any person that may be occasioned by or related to any cause whatsoever pertaining to the construction, installation, removal, relocation, replacement, extension, improvement, maintenance, or operation of the Arrowhead System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of Illinois-American to comply with its covenants or obligations contained in this Delivery Agreement, or (3) the failure to supply water or for any interruption of the water supply, including in each such case, any attorneys' fees.

**Section 9. Interpretation; Compliance with Existing Contracts.** This Delivery Agreement shall be deemed to be a separate written contract between the Commission, the City and Illinois-American in compliance with the Water Purchase Agreement. Except where expressly provided in this Agreement, nothing in this Delivery Agreement shall be construed to be, or applied in any manner, inconsistent with the terms of the Water Purchase Agreement, and if there is any conflict or

inconsistency between the terms of this Delivery Agreement and the terms of the Water Purchase Agreement, then the terms of the Water Purchase Agreement shall apply.

Both the City and Illinois-American shall at all times comply with all terms and conditions of the Water Purchase Agreement, including without limitation the making of all payments due thereunder promptly to the Commission. Under no circumstances shall any dispute of any nature under this Delivery Agreement, or Illinois-American's inability to receive water through the Point of Delivery provided by this Delivery Agreement, excuse, delay, or in any way other way affect the City's or Illinois-American's performance under the Water Purchase Agreement.

**Section 10. Termination.** Illinois-American may terminate this Agreement upon twelve (12) months advance written notice to the City as long as Illinois-American continues to purchase water from the Commission pursuant to the Water Purchase Agreement.

**Section 11. ICC Approval.** This Agreement may be subject to the approval of the Illinois Commerce Commission, and the City agrees to cooperate with Illinois-American in support of Illinois-American's application seeking said approval, if necessary. If the Illinois Commerce Commission approves some but not all of the provisions of this Agreement, then the parties to this Agreement may, each in the exercise of their own discretion, agree by written amendment to revise the provisions of this Agreement to a form satisfactory to the Illinois Commerce Commission. In the event of such an agreed revision, this Agreement shall take effect as revised. Nothing in this Agreement shall be construed to require any party to agree to any revision to this Agreement as a result of any action by the Illinois Commerce Commission.

**Section 12. Effective Date and Term.** This Delivery Agreement shall be effective when all the parties have executed it (the "Effective Date"). This Delivery Agreement shall continue in force and effect until February 24, 2064 which is the term of the Water Purchase Agreement. The parties agree to negotiate in good faith a subsequent Delivery Agreement if desired by the parties.

**Section 13. Notices and Evidence of Actions.** All notices or communications provided for herein shall be in writing and shall be delivered to the party affected either in person, by overnight delivery service (UPS/Fed Ex) or USPS first class mail, return receipt requested, addressed to the principal office thereof.

Any action hereunder to be taken by the parties may be evidenced by copy of official proceedings (including pertinent minutes, motions, resolutions, or ordinances) duly certified by the Clerk or Secretary of such party.

**Section 14. Amendment.** This Agreement shall not be modified, revised, amended or annulled in any way except in writing approved by all parties hereto.

**Section 15. Severability.** Should any part, term, or provision of this Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining portions or provisions shall not be affected thereby.

**Section 16. Governing Law; Superseder.** This Agreement shall be construed exclusively under the applicable laws of the State of Illinois. All other wheeling contracts between the City, Illinois-American and the Commission are hereby superseded and shall be null and void.

The Parties agree that venue for any litigation shall only be proper in the Eighteenth Judicial Circuit, DuPage County, Illinois.

**Section 17. Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. Any such counterpart may be signed by one or more of the parties hereto so long as each of the parties hereto has signed one or more of such counterparts.

**IN WITNESS WHEREOF**, the City, Illinois-American, and the Commission have caused their respective corporate names to be subscribed hereto and their respective corporate seals to be hereto affixed and attested by their duly authorized officers, all on the date set opposite their respective corporate names.

CITY OF WHEATON

By: Philip J. Suen

Mayor

Attest:

Andrea Rensdale

City Clerk

ILLINOIS-AMERICAN WATER COMPANY

By: Rebecca B. Lavin

President

Attest:

[Signature]

DUPAGE WATER COMMISSION

By: James F. Zay

Chairman

Attest:

James M. Mudall



