

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
 Recommendations of Boards, Commissions & Committees (Green)
 Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: Scott Niehaus, Village Manager

DATE: December 20, 2023 (B of T) Date: January 18, 2024

TITLE: A Resolution to approve a WATER TRANSMISSION AND DELIVERY AGREEMENT AMONG THE VILLAGE OF LOMBARD, ILLINOIS-AMERICAN WATER COMPANY AND THE DUPAGE WATER COMMISSION.

SUBMITTED BY: Carl Goldsmith, Director of Public Works *g*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Public Works transmits for your consideration a Resolution that authorizes the Village President and Village Clerk to execute an agreement between the Village of Lombard, Illinois American Water Company and the DuPage Water Commission for the purposes of wheeling water to Illinois American Water Company to serve 264 customers in Lombard.

Fiscal Impact/Funding Source:

Review (as necessary):

Village Attorney X _____ Date _____

Finance Director X _____ Date _____

Village Manager X _____ Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



December 19, 2023

TO: Village President and Board of Trustees

THROUGH: Scott Niehaus, Village Manager

FROM: Carl Goldsmith, Director of Public Works 

SUBJECT: Water Wheeling Agreement between the Village of Lombard and Illinois American Water Company

BACKGROUND:

The Village of Lombard's treated water supply is purchased from the DuPage Water Commission who receives water from the City of Chicago. The Village of Lombard began to receive Lake Michigan Water in 1992 at such time as the DuPage Water Commission was created. The Village maintains emergency back-up wells that have not been put into service since the Village began to receive Lake Michigan water.

In addition to buying supply for residents/businesses, Lombard has been successful in establishing a water supply "wheeling" agreement with private water system customers in Lombard who are served by Illinois American Water Company (ILAW). Through this "wheeling agreement", water is purchased at negotiated rates from the DuPage Water Commission and then is "wheeled" through the Village system and sold to Illinois American Water Company customers at a rate specified in the agreement.

Lombard has been wheeling water to Illinois American Water Company in 1992. The term of the agreement between the Village and Illinois American Water Company mirrored the terms of the Village's Charter Customer Agreement with DWC, which will expire in 2024. The original agreement with IAWC, a private utility system operator regulated by the Illinois Commerce Commission (ICC), has been in place since 1992 (original agreement was with Citizens Utilities Company of Illinois which was bought out by ILAW in 2002). The ILAW system serves 264 customers in the northeast portion of Lombard near the Lombard Lagoon. At the time that the original agreement was executed, ILAW was required to construct and maintain a metering station to monitor flow.

In return for providing the infrastructure that provides water at the proper pressure for ILAW system use, Lombard receives a cost-of-service return, above the actual cost of the water, which is typically invested in maintenance and capital costs for the Lombard water system. A Lombard rate model, administered by the Lombard Finance Department, is used to calculate an ILAW water rate that provides compensation to Lombard for the water service.

A new Water Supply Agreement has been negotiated with ILAW and a copy has been provided as Appendix A. The proposed agreement term would be through February 24, 2064, which is the end of Lombard's current agreement with the DuPage Water Commission.

Under the proposed wheeling agreement, ILAW will pay the Village, for the water transmission and delivery services under this Delivery Agreement, the amount of: 1) \$1.1550 per thousand gallons of water, or fraction thereof, for transportation (the "wheeling rate"), plus 2) the rate of storage services in the amount of \$0.1900 per thousand gallons of water (the "storage rate"), or fraction thereof, both as metered by the Illinois-American System Meter. Illinois American Water Company receives a separate invoice from DuPage Water Commission for the provision of water.

RECOMMENDATION:

Staff recommends consideration of a Resolution to approve a WATER TRANSMISSION AND DELIVERY AGREEMENT AMONG THE VILLAGE OF LOMBARD, ILLINOIS-AMERICAN WATER COMPANY AND THE DUPAGE WATER COMMISSION.

RESOLUTION NO. _____

**A RESOLUTION APPROVING A WATER TRANSMISSION AND DELIVERY
AGREEMENT AMONG THE VILLAGE OF LOMBARD, ILLINOIS-AMERICAN
WATER COMPANY AND THE DUPAGE WATER COMMISSION**

WHEREAS, the Village of Lombard (“Lombard”) is a nonhome-rule municipality located in DuPage County, Illinois;

WHEREAS, since 1991, Lombard has been the contracted water service provider for an incorporated area of Lombard located on the northeast side of Lombard, which is served by the Illinois American Water Company;

WHEREAS, Lombard has had a Water Service Agreement for these areas, first with Citizens Utilities from 1991 through 2002 and now with the Illinois-American Water Company (ILAW) from 2002 to present;

WHEREAS, the corporate authorities of Lombard have discussed and considered entering into a new Water Transmission and Delivery Agreement with ILAW and the DuPage Water Commission (DWC) for a term through February 24, 2064;

WHEREAS, the corporate authorities have reviewed the negotiated Water Transmission and Delivery Agreement between Lombard, Illinois American Water Company and the DuPage Water Commission (the “Parties”) and determined that it is in the best interest of the Village to enter into the Water Transmission and Delivery Agreement with the ILAW and DWC.

NOW, THEREFORE, BE IT RESOLVED, by the President and Board of Trustees of the Village of Lombard, as follows:

SECTION 1: The Village President and Village Clerk are hereby authorized to execute a Water Transmission and Delivery Agreement between the Village of Lombard, Illinois American Water Company and the DuPage Water Commission through February 24, 2064. The Water Transmission and Delivery Agreement will become effective upon the execution of the Water Transmission and Delivery Agreement by the Parties; provided, however, that if the Water Transmission and Delivery Agreement

SECTION 2: The foregoing recitals are hereby incorporated herein and made a part hereof as findings of the Village Board of Trustees.

SECTION 3: The Clerk is hereby authorized and directed to provide a copy of this Resolution to the Commission immediately after its approval.

SECTION 4: This Resolution shall be in full force and effect immediately upon and after its adoption.

Adopted this _____ day of _____, 2024, pursuant to a roll call vote as follows:

Ayes: _____

Nays: _____

Absent: _____

Approved by me this _____ day of _____, 2024.

Keith Giagnorio
Village President

ATTEST:

Elizabeth Brezinski
Village Clerk

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

This Water Transmission and Delivery Agreement, dated as of XX, is by and between the **Village of Lombard**, a municipal corporation of the State of Illinois (the "Village"), **Illinois-American Water Company**, an Illinois public utility corporation ("Illinois-American"), and the **DuPage Water Commission**, Counties of DuPage, Cook and Will, Illinois (the "Commission"), a county water commission and public corporation, organized under Division 135 of Article II 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 264 customer connections located in the Village ("Illinois-American System");

WHEREAS, the Village owns and operates a water distribution system (the "Village System") which is interconnected to the Illinois-American System;

WHEREAS, Illinois-American and the Village have entered into a Water Purchase and Sale Contract dated XX ("Water Purchase Agreement") with the Commission for the sale by the Commission of water to Illinois-American its Illinois-American System and the Village to serve the Village System;

WHEREAS, pursuant to this Water Transmission and Delivery Agreement ("Delivery Agreement"), the Village agrees to deliver the water purchased by Illinois-American from the Commission to the Illinois-American System;

WHEREAS, the Commission has reviewed and approved this Delivery Agreement and the Commission provides its consent for the Village to deliver such water to the Illinois-American System;

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and agreements herein contained, the Village, 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 Village agrees to transmit and deliver water purchased by Illinois-American from the Commission through the Village System to the Illinois-American System, subject to availability of such water from the Commission. The Village's availability of such water hereunder, shall be limited to a maximum annual amount equivalent to the Illinois-American System's then current water allocation, and provided further that the maximum rate of water that the Village shall be required to deliver to the Illinois-American System in any one hour shall be in an amount equal to 1.7 times the Illinois-American System's water allocation as determined on an hourly basis.

(b) Interconnection. The Village will deliver water to the Illinois-American System through the interconnection between the Village System and the Illinois-American 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 Village System into the Illinois-American 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 Illinois-American 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 metering station or a common dividing wall between the Commission's metering station and the Village's pressure adjusting control station for its Village System. At the Commission's Metering Station, title to the water delivered shall pass from the Village to Illinois-American at the point the lesser of ten feet (10 ft) downstream from the Commission's metering station or a common dividing wall between the Commission's metering station and Illinois-American's pressure adjusting control station.

(d) Water Quality. The Village undertakes to provide that all water delivered to Illinois-American shall be of such quality, at the point of delivery as to meet the requirements of any Federal, State or local agency as shall have jurisdiction from time to time for the operation of public water supplies. The Village shall bear no responsibility for the contamination of such water or deterioration of water quality occurring beyond the Village's Point of Delivery to the Illinois-American 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 Village System.

(e) Storage. The Village 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 Village 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, the

Commission will give Illinois-American a copy of such journal or record book, or permit Illinois-American 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 Delivery 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 Illinois-American System Metering Station ("Illinois-American System Meter") and the Commission meters installed or maintained pursuant to the Water Purchase Agreement to serve the Village System ("Village 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 Village and Illinois-American Water together shall take all reasonable and appropriate actions to provide that such water as is delivered by the Commission is shared by the Village and Illinois-American Water on a pro rata basis.

(b) Limitation on Supply to City. If at any time it becomes necessary for the Commission to limit its delivery of water to the Village System (but not to the Illinois-American System) for any reason pursuant to the Water Purchase Agreement and specifically related to the Village, then the Village shall take all reasonable and appropriate actions, including without limitation the imposition of water use limitations on customers of the Village System, to limit the use of water in the Village System so that the Illinois-American System's pro rata share of water is delivered by the Village to the Illinois-American 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 Illinois-American System (but not to the Village 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 Illinois-American System, and the Village shall be entitled to, make all necessary and appropriate adjustments to the Village System, to assure that the appropriate amount of water to which the Village System is entitled is delivered to the Village 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 Delivery Agreement shall be construed to prohibit Illinois-American or the Village from serving its customers in cases of emergency, or when the Commission for whatever reason is unable to meet such water requirements of the Village or Illinois-American, from any source including wells owned by Illinois-American or the Village and maintained for emergency use.

(e) No Liability of Commission. Except as set forth in the Water Purchase Agreement, Illinois-American and the Village each hereby acknowledge and agree that the Commission shall not be liable either to Illinois-American or to the Village 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 Village. Illinois-American acknowledges and agrees that the Village 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 Illinois-American System Service Area. The current service area of the Illinois-American System is designated on the map attached hereto as Exhibit A. Illinois-American shall obtain written approval from the Village prior to expanding the current service area of the Illinois-American System and such consent shall not unreasonably be withheld by the Village. If the proposed service area expansion of the Illinois-American System affects property serviceable by the Village System, the Village reserves the right of first refusal to annex the affected property and require its connections to the Village 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 Illinois-American 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 Illinois-American System, Illinois-American payments to the Commission pursuant to the Water Purchase Agreement shall be based on readings taken by the Commission of the Illinois-American System Meter.

(b) Village's Payments to the Commission. The Village 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 Village System, the Village'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 Village System Meter and the readings taken by the Commission of the Illinois-American System Meter. If, for any billing period, the measurement of the amount of water delivered through the Illinois-American System Meter exceeds the measurement of the amount of water delivered through the Village System Meter, then the difference between such readings shall be deemed zero.

(c) Illinois-American's Payments to the Village. Illinois-American shall pay to the Village, for the water transmission and delivery services under this Delivery Agreement, the amount of: 1) \$1.1550 per thousand gallons of water, or fraction thereof, for transportation (the "wheeling

rate”), plus 2) the rate of storage services in the amount of \$0.1900 per thousand gallons of water (the “storage rate”), or fraction thereof, both as metered by the Illinois-American System Meter. The Village shall invoice Illinois-American monthly for such services, and payment shall be due within 30 days of invoicing by the Village. The Village 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 Village’s water rate to its customer base increases or decreases. The Village 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.

(d) **System Storage.** The Village shall maintain effective water storage capacity equal to the water storage capacity required by the Village’s Water Purchase Agreement with the Commission for the Village System plus the storage capacity required for the Illinois-American System in Illinois-American’s Water Purchase Agreement with the Commission. For purposes of calculating the water storage capacity required by the Water Purchase Agreement, the Village hereby acknowledges and agrees that the effective water storage capacity maintained by the Village in the Village System shall be reduced by the storage capacity to be provided by the Village for Illinois-American’s System pursuant to this Delivery Agreement. If at any time the Village’s effective water storage capacity is not sufficient to meet the storage requirements of both the Village’s Water Purchase Agreement with the Commission and Illinois-American’s Water Purchase Agreement with the Commission then the deficiency, up to the maximum extent requirement of the Water Purchase Agreement, shall be deemed attributable to the Illinois-American System and shall be corrected by Illinois-American, unless an amendment to this Delivery Agreement is made and the Village agrees to correct the deficiency. If at any time during the term of this Delivery Agreement the Village’s storage capacity is not sufficient to meet the storage requirements of both the Village’s Water Purchase Agreement with the Commission and Illinois-American’s Water Purchase Agreement with the Commission, then Illinois-American shall, at its sole cost and expense, promptly plan, design, permit, and construct additional storage capacity upon demand by the Village or the Commission.

Section 6. Special Covenants and Conditions.

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

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

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

(d) **Accounting and Audit.** The Commission, the Village 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 Village 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 Village or Illinois-American under this Delivery Agreement and the Village 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 Village 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 Illinois-American 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 Village. To the fullest extent permitted by law, the Village 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 Village System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of the Village 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 Village and Illinois-American for Third-Party Claims. To the fullest extent permitted by law, Illinois-American and the Village agree to indemnify and hold harmless the Commission, and its respective officers, agents and employees, 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 Village or both, as applicable, and Illinois-American or the Village or both, as applicable, if requested by the Commission, shall assume the defense thereof, it being understood, however, that neither Illinois-American nor the Village 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 Village, 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 Village, 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 Village. To the fullest extent permitted by law, the Village 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: (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 Village System, (2) any liabilities, losses, or damages, or claims therefor, arising out of the failure, or claimed failure, of the Village 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.

(f) Indemnification of the Village by Illinois American. To the fullest extent permitted by law, Illinois-American hereby releases the Village, and its respective officers, agents and employees, from and agrees that the Village, and its respective officers, agents and employees, shall

not be liable for, and agrees to indemnify and hold the Village, 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 Illinois-American 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 Village and Illinois-American in compliance with the Water Purchase Agreement. Except where expressly provided in this Delivery Agreement, nothing in this Delivery Agreement shall be construed to be, or applied in any manner, inconsistent with the terms of this 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.

The Village shall at all times comply with all terms and conditions of the Water Purchase Agreement, 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 Village's or Illinois-American's performance under the Water Purchase Agreement.

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

Section 11. ICC Approval. This Delivery Agreement may be subject to the approval of the Illinois Commerce Commission, and the Village agree 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 Delivery Agreement, then the parties to this Delivery Agreement may, each in the exercise of their own discretion, agree by written amendment to revise the provisions of this Delivery Agreement to a form satisfactory to the Illinois Commerce Commission. In the event of such an agreed revision, this Delivery Agreement shall take effect as revised. Nothing in this Delivery Agreement shall be construed to require any party to agree to any revision to this Delivery 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 or by overnight delivery service (UPS/Fed Ex) 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 Delivery 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 Delivery 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 Delivery Agreement shall be construed exclusively under the applicable laws of the State of Illinois. All other “wheeling contracts” between the Village, Illinois-American and the Commission, related to the Illinois-American service area seen in Exhibit A, 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 Delivery 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 Village, 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.

VILLAGE OF LOMBARD

By: _____
Village President

Attest:

Village Clerk

ILLINOIS-AMERICAN WATER COMPANY

By: _____
President

Attest:

DUPAGE WATER COMMISSION

By: _____
Chairman

Attest:

Exhibit A

Illinois American Water

