

CHAPTER 15

FRANCHISES

ARTICLE I – ILLINOIS AMERICAN WATER COMPANY

15-1-1 **INCORPORATION CLAUSE.** The President and Board of Trustees of the Village hereby find that all of the recitals hereinbefore stated as contained in the preambles to this Chapter are full, true and correct and does hereby, by reference, incorporate and make them part of this Chapter.

15-1-2 **PURPOSE.** This Chapter is to authorize Illinois-American Water Company its Successor and assigns to contract, operate and maintain a water transmission and distribution system throughout the Village.

15-1-3 **FRANCHISE AGREEMENT AUTHORIZED.** This Chapter hereby authorizes the President and Board of Trustees and Village Clerk to execute the Franchise Agreement with Illinois-American Water Company, (a copy of which is attached hereto and by reference incorporated herein as **Exhibit "A"**) at closing upon satisfaction of all terms and obligations under the Asset Purchase Agreement referenced herein and all under such terms and upon a start date as they deem appropriate.

15-1-4 **INVOCATION OF AUTHORITY.** This Chapter is enacted pursuant to the authority granted to this Village by the Constitution of the State of Illinois and Illinois Compiled Statutes. **(65 ILCS 11/24-1)**

15-1-5 **STATE LAW ADOPTED.** All applicable provisions of the Illinois Compiled Statutes, including the Illinois Municipal Code, as may be amended from time to time, relating to the purposes of this Chapter are hereby incorporated herein by reference.

15-1-6 **APPROVAL AND EXECUTION OF DOCUMENTS.** The President and Village Clerk are hereby authorized and directed to execute Franchise Agreement and the Village Clerk is authorized and directed to attest, countersign and affix the seal of the Village to such documents and any and all other documents necessary to carry out and give effect to the purpose and intent of this Chapter.

15-1-7 **OTHER ACTIONS AUTHORIZED.** The President, Village Clerk and Village Attorney are hereby authorized and directed to do all things necessary, essential, or convenient to carry out and give effect to the purpose and intent of this Chapter.

15-1-8 **ACTS OF VILLAGE OFFICIALS.** All acts and doings of the officials of the Village, past, present, and future which are in conformity with the purpose and intent of this Chapter, are hereby in all respects, ratified, approved, authorized and confirmed.

(Ord. No. 2018-05; 03-08-18)

(65 ILCS 11/24-1)

EXHIBIT "A"

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT ("Agreement") is made and entered into as of the 28th day of March, 2018 by and between the Village of Fisher, an Illinois municipal corporation (the "Village"), and Illinois-American Water Company, an Illinois public utility corporation (the "Water Company").

RECITALS

WHEREAS, the Village owns and operates its own municipal water and waste water systems; and

WHEREAS, the Board of Trustees of the Village (the "Board") has determined that it would be in the best interests of the citizens of the Village for it to enter into agreements to sell certain portions of its water and waste water system and otherwise enter into a franchise agreement for the provision of potable water and the removal of wastewater within the Village; and

WHEREAS, the Board has determined that the Water Company, which provides water treatment, storage and distribution services to many communities in the State of Illinois, is the most suitable entity with which to enter into such transactions and agreements; and

WHEREAS, the Board has passed one or more ordinances approving the execution of an asset purchase agreement and within the franchise agreement with the Water Company; and

WHEREAS, this Agreement memorializes the terms and conditions of the franchise, which have been mutually agreed upon by the Village and the Water Company.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the Village and Water Company do mutually covenant and agree as follows:

SECTION ONE: In consideration of the covenants contained herein, and for other and further advantages accruing to the Village there is hereby given and granted to Water Company, its successors and assigns, the exclusive right, privilege, authority, license, and permission to construct, install, operate, repair, replace, remove, and maintain in and through the Village a potable water supply and distribution system and a wastewater distribution and processing system and to construct, install, operate, repair, replace, remove, and maintain all such facilities as may be necessary and convenient for such water systems, in, upon, along, over, across, and under the public ways and public property in the Village for a term of **twenty (20) years** and after the effective date of this Agreement. The rights set forth herein shall be subject to such other terms and conditions as are otherwise set forth in this Agreement, and the rights of any person or entity currently having rights, licenses, easements or franchises in or about the public ways of the Village. Such potable water and waste water system shall be respectively used, inter alia, for the purpose of supplying water and/or distributing and processing wastewater in the Village for domestic, public, manufacturing, and other purposes, and to transport water and wastewater through said Village to other municipalities and unincorporated areas where services may now or hereafter be furnished by means of the existing distribution system and transmission mains or as the same may be hereafter extended, enlarged, replaced, relocated, or paralleled by additional mains from time to time hereafter.

SECTION TWO: The Village hereby contracts with the Water Company to take from said company all water and dispose of all required for municipal purposes. The Village agrees to pay for all

such water and wastewater at the rates and/or wastewater rates approved, from time to time, by the Illinois Commerce Commission ("Commission").

SECTION THREE: It is understood that a separate fire department ("FD") exists and provides fire protection service in the Village. The Water Company agrees the FD may request fire hydrants as deemed necessary for public fire protection and that installation of such hydrants and services requested by the FD will be installed under the rules and regulations of the Water Company as now in effect and approved by the Commission and the regulations of the Illinois Environmental Protection Agency, as such rules and regulations may be lawfully modified in the future. Village may from time to time and at any time, inspect or cause fire hydrants to be inspected, and if any are found to be in disrepair or not in good, effective working order, the Water Company shall be notified by the Village in writing of the location of any such fire hydrant, and upon receipt of such notice, the Water Company shall restore or repair such hydrant to effective working order as soon as reasonably possible. The Village shall notify the Water Company in advance of when the Village is going to inspect fire hydrants, including which fire hydrants are being inspected and the dates the inspection will be performed. The Water Company may have a representative present at the time of any such inspection.

SECTION FOUR: Upon the annexation of any territory to the Village, the portion of the Water Company's facilities that may be located within such annexed territory and in, under, or upon the streets, alleys, or public ways, shall thereafter be subject to all the terms of this franchise grant.

SECTION FIVE: The Village will not permit or allow the public fire hydrants erected in its streets and public right-of-ways to be used for any purpose other than extinguishments of fires, necessary and proper testing of its firefighting equipment, and necessary washing or flushing of sewers, and gutters; and the Village will take all necessary steps and adopt any ordinances which it determines are necessary to protect and afford protection to the property of the Water Company located within the Village. Except for emergency purposes, when water is used for the purposes expressly stated in this Section, the approval of the Fire Chief of the FD for the use of the hydrant or hydrants shall first be obtained and the Water Company shall be notified of the time, place, estimated volume of water to be used, and the person employed by the Village or FD who will be conducting each such use. No unauthorized person may use the hydrants for any purpose. Within **one (1) calendar month** of the approved usage, Village or FD will advise the Water Company of the volume of water used.

SECTION SIX: In the event that the Water Company causes an opening in any street or right-of-way within the Village during the operation of the water system, the Water Company will repair or replace the street or right-of-way at its expense and shall place the paving or other surface back in substantially the same condition as prior to such opening as expediently as reasonably possible upon considering all relevant factors, including without limitation weather conditions. The Water Company agrees to notify the Village in advance of the opening of any such street or right-of-way for non-emergency repairs or maintenance to the water system and will apply for all required permits prior to initiation of any such street or right-of-way openings. Subject to Section 14, the Village shall not adopt any ordinance or other fee schedule which would impose fees upon the Water Company for the privilege granted hereby of utilizing such streets and right-of-ways for the purposes of public water service. The Water Company shall provide the Village with a list of all such openings which have been made in the prior calendar month no later than the **tenth (10th) day** of the immediately following month. The Water Company shall not unreasonably obstruct the public ways of the Village or private ways including private drives in connection with any of the work undertaken. Furthermore, the Water Company shall maintain such barriers, signs, and warning signals as may be reasonably necessary to avoid injury or damage to life and property and as otherwise provided for in the Manual of Uniform Traffic Control Devices of the State of Illinois, as such manuals may, from time to time be in effect, or any successor provisions.

SECTION SEVEN: Any person or corporation shall not be permitted, and the Village shall not grant to any person or corporation, the right to install, extend, or maintain any water, gas, telephone, sewer, or other system, or any pipes, mains, conduits, or wires, so as to injure, damage, or interfere with

the water system, pipes, hydrants, or mains of the Water Company; the Village shall not vacate or convey away any rights-of-way containing Water Company facilities without the Water Company's prior approval or reservation of an easement providing a right to construct, operate, maintain, extend, or replace its facilities, and no person or corporation shall be permitted or granted the right to interfere in any way with any of the rights granted hereunder to the Water Company to construct, operate, install, extend, maintain, or replace its water system or use the streets, avenues, alleys, parks, and other public places as provided herein.

SECTION EIGHT: The Village shall adopt no ordinances in conflict herewith for the term of this Agreement except as required by State or Federal law.

SECTION NINE: The Water Company and the Village recognize that communication of planned improvements or maintenance of infrastructure is beneficial to each party and to the residents of the Village. To that end, the parties shall meet at least once each year during the first quarter thereof to discuss their respective plans in order to coordinate, to the extent possible, any such construction activities. At the annual meeting, the Company will provide a summary of the immediately preceding year's activities affecting the water facilities. In furtherance of communication during emergency situations, each party shall also provide to the other a list of contact telephone numbers or other contact information which will allow either party to contact a representative of the other **twenty-four (24) hours** per day, **three hundred sixty-five (365) days** per year.

SECTION TEN: Any waiver of any provision of this Agreement and any consent to any departure from the terms of any provision of this Agreement is to be effective only in the specific instance and for the specific purpose for which given. No failure on the part of any party hereto to exercise, and no delay in exercising, any right, power or privilege hereunder operates as a waiver thereof; nor does any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. No notice to or demand on any party hereto in any case entitles such part to any other or further notice or demand in similar or other circumstances.

SECTION ELEVEN: The Water Company shall render efficient services, make repairs promptly, and interrupt service only for good cause and for the shortest time practicable. Such service shall be in accordance with industry standards and all applicable laws and regulations. It shall provide and maintain operational telephone numbers such that the Water Company's supervisory personnel can be reached directly (not through a call center) in the event of an emergency on a **twenty-four (24) hour** per day, **three hundred sixty-five (365) days** per year basis. Such numbers shall be provided to the FD, the Mayor of the Village, and the President of the Board, and shall be updated promptly upon any changes.

SECTION TWELVE: The Water Company shall inform the Village whenever there is a planned maintenance or construction project that has a significant impact on the water system. The Water Company shall notify the Village if it changes any treatment technique that impacts the chemical qualities of the water distributed by the Water Company through its system serving the Village.

SECTION THIRTEEN: The Village shall permit the Water Company to abandon any underground franchise property in place so long as such property does not interfere with the use of the streets or public rights-of-way in or at which such property is located or with the use thereof by any public utility, other entity or person, and the Water Company shall notify and provide the Village with suitable maps and other documents, which shall identify the location of the abandoned property.

SECTION FOURTEEN: The Water Company shall collect and process all gross receipts tax or any other surcharge of any kind levied or imposed by any appropriate taxing jurisdiction, including without limitation the Village's municipal utility tax in effect from time to time. In the event that the Village should change or add any additional tax or surcharge, the Village shall give the Water Company at least **sixty (60) days'** notice of such change or addition.

SECTION FIFTEEN: This Agreement shall, to the extent now or hereafter permitted by statutes, laws and regulations of the State of Illinois, inure to the benefit of and be binding upon any municipality or other unit of state or local government in or to which the Village may hereafter be included, attached or annexed or into which it may be incorporated, and shall also inure to the benefit of and be binding upon the successors and assigns of the Water Company as provided herein. The Water Company shall have the right at any time to assign the entire Agreement to any public utility corporation organized under the laws of the State of Illinois or authorized to engage in public utility business within the State of Illinois or to any other person, firm, or corporation authorized or empowered to own and/or operate a water utility business within the corporate limits of the Village.

SECTION SIXTEEN: If any provision of this Agreement, or the application of such provision to particular circumstances, shall be held invalid, the remainder of this Agreement, or the application of such provision to circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION SEVENTEEN: Any notice required under this Agreement to be served upon the Village or the Water Company shall be in writing and served by either (a) certified mail, return receipt requested; (b) personal service; or (c) a national overnight carrier service, addressed to each of the Parties as follows or to such other address as the Village or Water Company may hereafter furnish in writing to the other Party:

Village of Fisher, Illinois:

The Water Company:

Acting Village President
Village of Fisher
100 E School St
Fisher, IL 61843

District Manager
Illinois-American Water Company
120 S Sterling St
Streator, IL 61364

With a copy to (which shall not constitute notice):

With a copy to (which shall not constitute notice):

Marc R Miller
Miller & Hendren LLP
30 E Main, Suite 200
Champaign, IL 61820

Corporate Counsel
Illinois American Water
100 North Water Works Drive
Belleville, IL 62223

SECTION EIGHTEEN: The provisions herein constitute the complete agreement between the Village and the Water Company. All acts, ordinances, and parts of acts heretofore passed inconsistent with this Agreement are hereby repealed.

SECTION NINETEEN: The Water Company and the Village respectively agree that certain confidential and proprietary information relating to the operations, business, properties and assets of the water system (collectively, "Confidential Information") may be exchanged between the parties in order to comply with this Agreement. The Village hereby acknowledges that maintaining the confidence of this information is imperative to the security of the water system. To that end, the parties hereby agree to maintain the Confidential Information to the extent allowed by law, in confidence, giving it the same degree of care, but no less than a reasonable degree of care, as the parties exercise with their own confidential or proprietary information. Neither party, without the prior written consent of the other party (which may be withheld in such other party's sole discretion), will disclose any portion of the Confidential Information to others, except to their employees, attorneys, agents, consultants or contractors having a need to know in order to accomplish the purpose of this Agreement and who are bound by a like obligation of confidentiality under this Agreement; provided, however, that the restrictions of this sentence shall not apply (a) as may otherwise be required by law, (b) to the extent necessary for regulatory purposes, including without limitation, the requirements of the Commission, and (c) to the extent such information shall have otherwise become publicly available.

SECTION TWENTY: Village shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by the Water Company of its facilities hereunder, except to the extent caused or contributed to by the negligence of Village. The Water Company shall indemnify, become responsible for and forever save harmless the Village from any and all judgments, damages, decrees, costs and expenses, including attorney's fees, which the Village may legally suffer in incur, or which may be legally obtained against the Village for or by reasons of the use and occupation of any street, alley, avenue or other public way or place in the Village by the Water Company pursuant to the terms of this ordinance or legally resulting from the exercise by the Water Company of any of the privileges herein granted, except to the extent caused or contributed to by the negligence of Village. As additional security therefore the Water Company shall, during the life of this Agreement, include Village as an additional insured on Water Company's policies of insurance, excluding any workman's compensation policies, for claims resulting from the exercise by the Water Company of any of the privileges herein granted.

Water Company shall secure and maintain at all times during the term of this Franchise, insurance coverage, in the amounts stated below for customary comprehensive general liability insurance. The comprehensive general limits shall be no less than **Two Million Dollars (\$2,000,000.00)** per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than **Five Million Dollars (\$5,000,000.00)** annual aggregate for each personal injury liability and products-completed operations. Village shall be named as an Additional Insured with respect to all operations of the insured and the applicable Water Company's insurance policy shall contain a waiver of subrogation against Village, its departments, agencies, boards, commissions, officers, agents, and employees for losses arising from the service provided by or on behalf of that Water Company in the event that Water Company is found to be negligent. Insurance coverage must be provided by an insurance company admitted to do business in Illinois and rated B+ or better by AM Best's Insurance Rating. Subsequently, a certificate of insurance, signed by an authorized representative of the insurer with **thirty (30) days'** notice of cancellation or non-renewal, shall be presented a minimum of **five (5) days** after the date of expiration of the policy term. In the event a Water Company fails to provide such certificate of coverage, Village may – but shall not be required to – purchase insurance if available, to protect itself against any losses. If Village elects to purchase the insurance under the provision, Village shall provide the applicable Grantee with at least **five (5) business days'** prior written notice and that Water Company shall be liable to Village for all costs incurred by Village for purchasing such insurance.

Water Company shall submit to Village Clerk, Village of Fisher, Village Hall, 100 E School St, Fisher, IL 61843, a certificate of insurance, evidencing the coverage and limits stated in the foregoing paragraph within **ten (10) days** of award of this Franchise. Insurance evidenced by the certificate shall not expire, be cancelled, nor non-renewed without **thirty (30) days'** prior written notice to Village. A statement to that effect must appear on the face of the certificate, and certificate shall be signed by a person authorized to bind the insurer.

During the term of this Franchise, it may become commercially reasonable for Water Company to proactively increase its coverage levels or purchase new insurance coverage. The terms herein are not a limitation on Water Company's rights to determine the level and types of insurance it seems proper to purchase at any time but do establish a level of minimum coverage.

SECTION TWENTY-ONE: Water Company shall bill, collect and pay to the Village a franchise fee ("Franchise Fee") beginning **January 1, 2019, two percent (2%)** of all amounts billed for water service.

To the extent that Village imposes a utility tax on water, Water Company shall bill, collect and pay a utility tax as set by the Village Trustees, upon **thirty (30) days** written notice to Water Company of the imposition of such utility tax. Payment shall be remitted to Village within **sixty (60) days** of receipt by Water Company except as otherwise provided by law.

For purposes of this Agreement, amounts billed for water means amounts billed to customers which reside within the Village only as customer charges, demand charges, usage charges, private fire protection charges and public fire protection charges (and not including other billed amounts, for example fee, franchise fees, charges, taxes and miscellaneous charges).

SECTION TWENTY-TWO: Water Company shall provide water service to the fire district for fire protection purposes, hydrant flushing, and municipal hall building for domestic use within said building.

SECTION TWENTY-THREE: At the time(s) it repaints the water tower, Water Company shall, at the request of the Village, paint or otherwise mark "Fisher" or such other community identifying logo on the water tower, with any incremental cost attributable to the painting of the Village's mark or logo to be paid by the Village. Water Company shall also consult with Village regarding the color of the water tower and will reasonably accommodate and request by the Village. Before painting any third-party mark or logo on the water tower, Water Company shall obtain the written consent of the Village.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

Village of Fisher, Illinois

Illinois-American Water Company

By: _____
Name: Michael Bayler
Title: President

By: _____
Name: _____
Title: _____

ATTEST

ATTEST

Christa Moore, Village Clerk
(Seal)

Secretary
(Seal)

(Ord. No. 2018-05; 03-08-18)