

VILLAGE OF TOLONO  
CHAMPAIGN COUNTY, ILLINOIS

ORDINANCE NO. 2023-O-5

AN ORDINANCE AUTHORIZING EXECUTION OF A SECOND AMENDMENT TO ASSET  
PURCHASE AGREEMENT FOR THE SALE OF THE VILLAGE WATER & WASTEWATER  
SYSTEMS

Adopted by the  
Board of Trustees of the Village of Tolono, Illinois  
This 21<sup>st</sup> day of March, 2023

---

Published in pamphlet form by authority of the President and Board of Trustees of the Village  
of Tolono, Champaign County, Illinois this 21<sup>st</sup> day of March, 2023.

VILLAGE OF TOLONO  
CHAMPAIGN COUNTY, ILLINOIS

Ordinance No. 2023-O-5

March 21, 2023

AN ORDINANCE AUTHORIZING EXECUTION OF A SECOND AMENDMENT TO  
ASSET PURCHASE AGREEMENT FOR THE SALE OF THE VILLAGE WATER &  
WASTEWATER SYSTEMS

WHEREAS, the Village of Tolono, Champaign County, State of Illinois (the "Village") is a duly organized and existing Village created under the provisions of the laws of the State of Illinois, and is now operating under the provisions of the Illinois Municipal Code and all laws amendatory thereof and supplementary thereto with full powers to enact ordinance for the benefit of the residents of the Village; and

WHEREAS, on June 27, 2022 the President and Board of Trustees adopted an ordinance approving the execution of an agreement for the sale of the Village water and wastewater systems by reference incorporated herein; on July 19, 2022 which was subsequently revised said agreement which subjected said sale to oversight by the Illinois Commerce Commission ("ICC");

WHEREAS, the Village and Illinois American have reached an agreement to further revise said agreement to reduce the sewer rates charged to Village users; and

WHEREAS, the parties have reached an agreement as described on the contract second amendment comprised of Exhibit A attached hereto and by reference incorporated herein; and

WHEREAS, 65 ILCS 5/ Article 5 "Water Supply and Sewage Systems" authorizes the Village to contract for a supply of water and for sanitary sewer service; and

WHEREAS, the Constitution of the State of Illinois and Illinois Compiled Statutes including, but not limited to, 65 ILCS 5/11-76-1, 65 ILCS 5/11-76-2, 65 ILCS 5/11-76-4, 220 ILCS 5/9 and applicable case law authorize the Village to sell and/or transfer assets; and

WHEREAS, it is in the best interest of the Village to enter into the attached Second Amendment referenced herein.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF TOLONO, ILLINOIS AS FOLLOWS:

Section 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 Ordinance are full, true and correct and does hereby, by reference, incorporate and make them part of this Ordinance.

Section 2. Purpose.

This ordinance is to enter into a Second Amendment To Asset Purchase Agreement for the sale of the Village water and wastewater systems to Illinois American Water Company comprised of Exhibit A.

Section 3. Execution Authorized.

This Ordinance hereby authorizes the President, Board of Trustees and Village Clerk to execute the Second Amendment To Asset Purchase Agreement with Illinois American Water Company, in form substantially similar to Exhibit A, all under such terms as they deem appropriate.

Section 4. Invocation of Authority.

This ordinance is enacted pursuant to the authority granted to this Village by the Constitution of the State of Illinois and Illinois Compiled Statutes including but not limited to 65 ILCS 5/11-76-1, 65 ILCS 5/11-76-2, 65 ILCS 5/11-76-4, 220 ILCS 5/9 and applicable case law.

Section 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 Ordinance are hereby incorporated herein by reference.

Section 6. Approval and Execution of Documents.

The President and Village Clerk are hereby authorized and directed to execute Second Amendment To Asset Sales 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 Ordinance.

Section 7. Other Actions Authorized.

That 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 Ordinance. The within authorization shall include, but not limited to, adjustments to legal descriptions for conveyed parcels, transfer of easements, adjustments to equipment and/or inventory, reconciliation of credits, payment of obligation(s), modification of exhibits, and other adjustments which they determine to be in the Village's interest consistent with the intent of this Ordinance.

Section 8. Acts of Village Officials.

That 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 ordinance, are hereby in all respects, ratified, approved, authorized and confirmed.

Section 9. Headings.

The headings for the articles, sections, paragraphs and sub-sections of this ordinance are inserted solely for the convenience of reference and form no substantive part of this ordinance nor should they be used in any interpretation or construction of any substantive provisions of this ordinance.

Section 10. Severability.

The provisions of this Ordinance are hereby declared to be severable and should any provision, clause, sentence, paragraph, sub-paragraph, section, or part of this Ordinance be determined to be in conflict with any law, statute or regulation by a court of competent jurisdiction, said provision shall be excluded and deemed inoperative, unenforceable, and as though not provided for herein, and all other provisions shall remain unaffected, unimpaired, valid and in full force and effect. It is hereby declared to be the legislative intent of the Village Board of Trustees that this Ordinance would have been adopted had not such unconstitutional or invalid provision, clause, sentence, paragraph, sub-paragraph, section, or part thereof had not been included.

Section 11. Superseder and Publication.

All code provisions, ordinances, resolutions and orders, or parts thereof, in conflict herewith, are to the extent of such conflict hereby superseded. A full, true and complete copy of this Ordinance shall be published in pamphlet form as provided by the Illinois Municipal Code, as amended.

Section 12. Effective Date.

This Ordinance shall be in full force and effect upon passage and approval, as provided by the Illinois Municipal Code, as amended.

Motioned for approval by Trustee Jared Robbins

With a second by Trustee Kyle Hayden, roll call vote:

Buffo, Vicki aye

Robbins, Jared aye

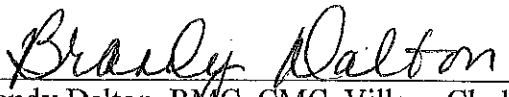
Kyle Hayden aye

Stuber, Terrence aye

Ann Jack-Haluzak aye

SO PASSED, ADOPTED, APPROVED AND ENACTED IN AND AT THE VILLAGE OF  
TOLONO, COUNTY OF CHAMPAIGN, STATE OF ILLINOIS, THIS 21<sup>ST</sup> DAY OF  
MARCH, 2023

  
Robert Murphy, Village President

  
Brandy Dalton, RMC, CMC, Village Clerk

[SEAL]

Recorded in the Municipal Records: March 21, 2023  
Published in pamphlet form: March 21, 2023

## Exhibit A

## SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT

This Second Amendment to Asset Purchase Agreement (“Second Amendment”) is made and entered on the \_\_\_\_ day of March, 2023, by and between Illinois-American Water Company, an Illinois corporation (“Illinois-American”), and the Village of Tolono, Illinois, an Illinois municipal corporation (“Tolono”). Hereinafter, Illinois-American and Tolono may be referred to individually as a “Party” or together as the “Parties”.

### RECITALS:

A. The Parties entered into an Asset Purchase Agreement (“Agreement”) dated August 11, 2022, pursuant to which Tolono agreed to sell, and Illinois-American agreed to purchase, substantially all of Tolono’s water treatment and distribution system assets (the “Water Assets”) and Tolono’s wastewater collection and treatment system assets (the “Wastewater Assets”).

B. The Parties entered into an Amendment to the Agreement dated December 7<sup>th</sup>, 2022 which amended Section 2.2(a) of the Agreement.

C. The Parties desire to amend the Agreement as set forth in this Second Amendment.

NOW, THEREFORE, in consideration of the foregoing recitals, and the representations, warranties, and covenants contained herein, and in exchange for other consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. The foregoing Recitals are incorporated into this Amendment.
2. Section 6.9(b) of the Agreement is hereby deleted and replaced with the following:

(b) Sewer Rates. After Closing, for residential sewer customers, Illinois-American shall charge a customer charge of \$26.73 and \$1.2699 per 100 gallons after the first 1000 gallons of usage and for all other customers apply the then-current Central Tariff sewer rates, reduced by 13.081%, including all applicable surcharges until such time as Illinois-American shall apply the rates supported by a full cost of service study all subject to the approval by the ICC.

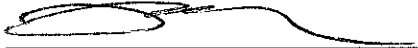
3. The remaining terms, provisions, conditions and obligations of and under the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment to Asset Purchase Agreement as of the date first set forth above:

**Illinois-American Water Company, an  
Illinois corporation**

**Village of Tolono, an Illinois municipal  
corporation**

By: \_\_\_\_\_  
Rebecca Losli, President

By:  \_\_\_\_\_  
Rob Murphy, President