

RESOLUTION NO. 18-01

A RESOLUTION AUTHORIZING THE EXECUTION OF A WATER DISCONNECTION AGREEMENT BETWEEN THE VILLAGE OF MANTENO AND AQUA ILLINOIS, INC.

WHEREAS, the Village of Manteno (the "Village") provides wastewater treatment and/or collection services to the residential, commercial, and industrial customers (the "Customers") within its corporate limits (the "Territory");

WHEREAS, Aqua Illinois, Inc. ("Aqua") is the owner and operator of an investor-owned public water supply system serving the Customers;

WHEREAS, numerous Customers are delinquent, by 30 days or more, in paying their sewer user charges to the Village;

WHEREAS, the sewer user charge delinquencies are having an adverse impact on the Village's financial condition;

WHEREAS, it is unfair and inequitable for those inhabitants paying the sewer user charges to effectively subsidize the delinquent users;

WHEREAS, there are limited cost-effective options available to the Village allowing for the collection of the delinquent sewer user charges; and

WHEREAS, the provisions of 65 ILCS 5/11-141-7 and 65 ILCS 5/11-141-16 authorize the Village to contract with Aqua to shut off the supply of water from its system to any premise at which the user charges for sewer service supplied by the Village are delinquent for more than thirty (30) days.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Manteno, Kankakee County, Illinois, as follows:

Section 1

The recitals set forth above are incorporated herein by reference the same as if they were set forth herein verbatim and they are adopted as the findings of the Village of Manteno.

Section 2

The Water Disconnection Agreement between the Village of Manteno and Aqua Illinois, Inc., which shall be in substantially the form attached hereto and made a part of this resolution by reference as Exhibit "A," is hereby approved.

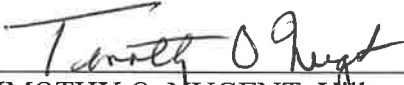
Section 3

The President and Village Clerk are hereby authorized and directed to execute the Water Disconnection Agreement, and to do all things necessary and essential, including the execution of any further agreements, instruments, documents and certificates incidental thereto or necessary to carry out the provisions and effectuate the purpose thereof.

Section 4


That this Resolution shall be in full force and effect from and after its adoption.

PASSED by the President and Board of Trustees of the Village of Manteno, Illinois and deposited in the office of the Village Clerk this 7th day of May, 2018.



TIMOTHY O. NUGENT, Village President

ATTEST:



ROBIN BATKA, Village Clerk

WATER DISCONNECTION AGREEMENT

THIS AGREEMENT is made this 7th day of May, 2018, and becomes effective as of June 1, 2018 ("Effective Date") between the VILLAGE OF MANTENO, a municipal corporation of the State of Illinois, hereinafter called the "Village", and AQUA ILLINOIS, INC, ("Aqua") a corporation of the State of Illinois, having an office at 1000 S. Schuyler Avenue, Kankakee, Illinois, hereinafter called "AQUA".

WITNESSETH:

WHEREAS, the Village is engaged in providing wastewater treatment and/or collection services to the residential, commercial, and industrial customers who reside within the Village's boundaries, which boundaries may be amended from time to time (the "Territory"); and

WHEREAS, the Village collects user charges from the customers it serves; and

WHEREAS, Aqua is the owner and operator of an investor-owned public water supply system serving customers within the Territory, under the applicable Rules and Regulations of the Illinois Commerce Commission ("ICC"); and

WHEREAS, Aqua is authorized, at the request and direction of the Village, pursuant to the provisions of the Illinois Municipal Code, Sections 11-141-7 and 11-141-16 (65 ILCS 5/11-141/7 and 65 ILCS 5/11-141-16) ("Municipal Code") to contract to shut off the supply of water from its system to any premise at which the user charges for sewer service supplied by the Village are delinquent for more than thirty (30) days;

NOW, THEREFORE, in consideration of the mutual covenants and consideration stated herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto do mutually agree as follows:

1. **Termination Request.** When, in the course of its business, the Village determines that user charges for sewer service remain unpaid and are in arrears for more than thirty (30) days after rendition of a written notice of such charge to the sewer user, the Village may make a written request to Aqua to terminate water service provided by Aqua to the Village's sewer user until such time as the user charges and all related costs are paid. Prior to making such request, the Village shall by written certification signed by its designated Village staff, certify to Aqua by way Exhibit "A":
 - (a) the name and address of the sewer user that is in arrears in payment of user charges;
 - (b) the address of the premises where such sewer service was received;
 - (c) the amount of said arrearages;
 - (d) that said sewer user's charges are in arrears for more than thirty (30) days;
 - (e) that said sewer user(s) have been afforded written notice by the Village ("Customer Termination Notice") of:

- (1) the arrearage amount owed;
 - (2) that said arrearage amount is delinquent more than thirty (30) days; and,
 - (3) the Village's intent to terminate water service after (i) five (5) days from the personal delivery date of such Customer Termination Notice, or; (ii) after eight (8) days from the mailing date of such Customer Termination Notice, by means of a written request to Aqua to disconnect said Village's sewer user's water service;
- (f) a date on or after which such termination shall occur ("Termination Date"), which shall be at least thirty (30) days after the due date for any applicable charges and, in addition thereto, either after (i) five (5) days from the personal delivery date of the "Customer Termination Notice", or; (ii) after eight (8) days from the mailing date of the "Customer Termination Notice";
- (g) that the Village's sewer user has been afforded a right to be heard on the correctness of the Village's record of arrearage and that the arrearage has been determined valid by the Village;
- (h) that all Federal and State Constitutional as well as all Federal and State statutory prerequisites applicable to the collection of debt have been properly satisfied by the Village; and
- (i) that the Village has complied with the Code, its own ordinances and procedures.

Such request and certification by the Village shall be in the form of Exhibit A which is attached hereto and incorporated by reference.

2. **Termination of Water Service.** On or after the Termination Date, an employee of Aqua shall go to the premises identified by the Village and terminate the water service to such premises. Before the end of business on the day that water service was terminated, the Village shall be notified by email that water service was terminated.

Notwithstanding anything to the contrary herein stated, Aqua reserves the exclusive right at its sole discretion to process the Village's requests for termination of water service on such schedules and at such times as are convenient to Aqua consistent with Aqua's normal business practice and procedure.

3. **Restoration of Water Service.** Aqua shall restore water service to the premises where water service has been terminated as herein provided upon written request from the Village, on the following business day such written request is received by Aqua, excluding weekend reconnections. If reconnection is requested on Friday, Saturday, or Sunday the reinstatement will occur on Monday. Before the end of business on the day that service was restored, the Village shall be notified by email that water service was restored. A responsible adult, at least 18 years of age, must be present at the affected premise at the time of service restoration. If a responsible adult is not present at the time of service restoration, Aqua will notify the Village, and the Village may elect to re-submit the premise for service restoration on a date when a

responsible person can be present.

4. **Contract Fee.** (a) The Village shall pay to Aqua, on the 1st day of each month, a sum equal to two hundred fifty (250) dollars multiplied by the number of service termination executed in the previous month to cover Aqua's cost of terminating and restoring water supply to each premise as well as the estimated loss of water revenues to Aqua resulting from each such termination made hereunder.

(b) Under the Municipal Code, the Village is required to pay to Aqua the reasonable cost of the discontinuance and the restoration of water service, any lost water service revenues, and the costs of discontinuing water service. The parties agree that the Contract Fee hereunder, as may be amended, satisfies the reasonable costs in the Code. The parties agree that all such costs will be included in and covered by the Contract Fee and the Village will not owe Aqua any additional amounts in respect of any discontinuance, disconnect, reconnect or resumption of water service, or any lost water service revenues, by Aqua. Such payment shall be payable regardless of the amount or whether any Termination Notices were requested during the month.

(c) The fees fixed hereunder may be amended from time to time as mutually agreed by the parties in writing.

5. **Excusal / Declination of Termination.** Notwithstanding anything contained herein:

(a) Aqua may decline to initiate termination of water service in the following instances:

- i. The involved premise is not receiving water service from Aqua;
- ii. Termination of the water service to be terminated will adversely affect service to other Aqua customers, other premises served by Aqua or Aqua's water distribution system;
- iii. If a governmental authority including but not limited to a board of health, municipality, fire district, ICC, court of competent jurisdiction, or an authority with jurisdiction over Aqua, water service or the this Agreement, issues instruction or an order (verbal or written) applicable to Aqua prohibiting termination of service;
- iv. The nature of the facilities involved makes termination impractical;
- v. Aqua receives advice from legal counsel that termination is prohibited under the circumstances;
- vi. The termination of water service in the particular circumstances would be a violation of applicable law or regulation;
- vii. Other reasons mutually Agreed to between the Village and Aqua;

(b) Should a new water customer who was not a sewer user at the time the

arrears owed to the Village was incurred at a terminated premises apply for water service to that premises, Aqua may provide such service. If water service has been terminated to the premises, Aqua may restore such water service. The Village agrees that it will not submit a Termination Request and/or seek to have Aqua terminate service hereunder in relation to such new water customer for payment of such prior sewer arrears;

(c) In no event shall Aqua be required to disconnect a fire line service without authorization from the governmental authority responsible for fire protection to the affected property, even in cases of combined fire and domestic service lines. The Village shall be responsible for garnering such authorization.

(d) Aqua's actions required under this Agreement shall be excused if due to matters beyond its control, including but not limited to employee work stoppages, strikes, inclement weather, or emergencies requiring utilization of manpower or resources elsewhere.

In the event Aqua declines to terminate service hereunder, Aqua shall relay to the Village the particular reasons why termination cannot be affected. In the event that such subsection 5(a)(iv) or 5(c) is cited, the Village may take any and all actions to rectify the situation, including obtaining a vacation of any applicable instructions or order, in which case Aqua shall terminate service upon further written notice from the Village that all actions necessary to effectuate such termination have been secured. In the event that the Village desires to contest any reason relayed by Aqua, and the same cannot be informally resolved between the Village and Aqua, the dispute shall be resolved by submission to the ICC.

6. **Indemnification.** Aqua shall not be liable for any loss, damage, or other claim asserted by the Village's sewer users, the owner and/or tenant of the premises, the water customer, the Village or any other person, corporation, or entity based upon or arising out of the termination of water service at the request of the Village. As provided by Municipal Code, the Village agrees to indemnify, defend and hold Aqua, and its employees and agents, harmless from and against any and all claims (including attorneys' fees), complaints or causes of action (whether judicial, administrative, or otherwise) arising out of actions taken by Aqua in accordance with or arising out of this Agreement, including but not limited to any attempt or actual termination of services, unless arising out of the sole negligence of Aqua, its employees or agents.
7. **Customer Communication.** The Village shall handle all user communications regarding service terminations implemented pursuant to this Agreement and shall conduct all communications with the applicable customer regarding negotiation or payment of arrears. Communications from Village customers to Aqua shall be referred and directed to the Village at the phone number provided by the Village.
8. **Term.** This Agreement shall have a term of six (6) months from the Effective Date and shall automatically renew for additional six (6) month periods unless one party gives notice to the other party of its intent not to renew thirty (30) days prior to anniversary of the Effective Date.

In addition, this Agreement may be terminated by either of the parties hereto, for any reason by ninety (90) days written notice given to the other party at its principal place of business.

9. **Assignment.** This Agreement may not be assigned without the express written consent of the other party.
10. **Governing Law.** This Agreement shall be construed in accordance with Illinois law.
11. **Notices.** All notices given pursuant to this agreement shall be in writing and given by actual delivery of the notice into the hands of the party entitled to receive it or by mailing the notice in the United States mail, certified mail, return receipt requested, to the following addresses:

Craig Blanchette
President
Aqua Illinois, Inc.
1000 S. Schuyler Avenue
Kankakee, IL 60901

Timothy Nugent
Mayor
Village of Manteno
98 East Third Street
Manteno, IL 60950

With a copy, other than the Termination Notice to:

Legal Department
Aqua America, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010

12. **Notification of Termination Dispute.** The Village shall immediately notify Aqua of (1) any payment, (2) any disputes raised; or (3) any other reason why termination should not be affected or which would make water service termination unlawful. Notwithstanding any such notification in this paragraph, at all times, Aqua shall be entitled to rely on the determination of the Village in this regard.
13. **Authority.** The parties respectively represent that the parties executing this Agreement have the authority to do so and that all applicable corporate and/or municipal authority to enter into this Agreement has been validly exercised.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

VILLAGE OF MANTENO

AQUA ILLINOIS, INC.

By: Timothy O Nugent

By: C Blanchet

Printed: TIMOTHY A. NUGENT

Printed: Craig Blanchette

Title: VILLAGE PRESIDENT

Title: President

ATTEST:
Rabla R. Baska

ATTEST:
Cooper

Exhibit A

Aqua Illinois, Inc.
Request to Terminate Water Service

Name and Address of Customer: _____

Address of Water Termination: _____

Arrearage Amount: \$_____

User's charges are in arrears for more than thirty (30) days (Circle One): Yes / No

Written notice has been (Circle One): Hand Delivered / Mailed

Date of Notice: _____

Arrearage is delinquent more than thirty (30) days (Circle One): Yes / No

Certification:

The Village certifies that the User has been notified, in writing, of the following:

- I. The Village intends to terminate water service after (i) five (5) days from the personal delivery date of such Customer Termination Notice, or; (ii) after eight (8) days from the mailing date of such Customer Termination Notice, by means of a written request to Aqua to disconnect said Village's sewer user's water service.
- II. A date on or after which such termination shall occur, which shall be at least thirty (30) days after the due date for any applicable charges.
- III. That the Village's sewer user has a right to be heard on the correctness of the Village's record of arrearage and that the arrearage has been determined valid by the Village.

The Village certifies to Aqua that all information contained herein is accurate and that all Federal and State Constitutional as well as all Federal and State statutory prerequisites applicable to the collection of debt have been properly satisfied by the Village and that the Village has complied with the Code, its own ordinances and procedures.

Signature of Village Official and Title

Date