

THIS INSTRUMENT PREPARED  
BY, AND AFTER RECORDING,  
PLEASE RETURN TO:

City of Chicago Dept. of Law  
Real Estate & Land Use Div.  
121 N. LaSalle Street, Suite 600  
Chicago, Illinois 60602

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(The Above Space for Recorder's Use Only)

EASEMENT AGREEMENT  
FOR  
DURKIN PARK

This Easement Agreement (“Agreement”) is entered into as of this \_\_\_ day of \_\_\_\_\_, 2023 (“Effective Date”), by and between the City of Chicago, an Illinois municipal corporation and home rule unit of government (“Chicago”), by and through its Department of Water Management (including any successor department thereto, “DWM”), and the City of Joliet, an Illinois municipal corporation and home rule unit of government (“Joliet”). Chicago and Joliet are sometimes referred to herein jointly as the “Parties” or individually as a “Party.” This Agreement has been authorized by an ordinance adopted by the City Council of the City of Chicago (“Chicago City Council”) on \_\_\_\_\_, 2023, and by an ordinance adopted by the City Council of the City of Joliet (“Joliet City Council”) on \_\_\_\_\_, 2023.

RECITALS

WHEREAS, Chicago, is the owner of the approximately 87,500 square feet of land legally described on Exhibit 1 attached hereto and depicted on the plat of easement (the “Plat”) attached hereto as Exhibit 2 (such described and depicted land, the “Easement Area”), which is a portion of Durkin Park located at 8445 South Kolin Avenue, Chicago, Illinois 60652, the remainder of which park is owned by the Chicago Park District (the “District”); and

WHEREAS, the Easement Area is directly adjacent on the west to Chicago-owned property located at 8422 South Kedvale Avenue a/k/a 8405 S. Keeler Avenue, Chicago, Illinois 60652 (PIN 19-34-412-011-0000), which is the site of DWM’s Southwest Pumping Station (the “Station”); and

WHEREAS, pursuant to an Intergovernmental Agreement dated July 30, 2021 (the “IGA”) by and between the District and Chicago, the District has previously conveyed, via quitclaim deed

(the "District Deed"), the Easement Area to Chicago for the construction and operation of that certain suction well to be installed as an underground tank in the Easement Area and including all underground and above-ground structures and appurtenances necessary for the operation and maintenance of said suction well, which will be used to supply water to Joliet and any regional commission or similar body which may succeed Joliet with respect to such water supply (collectively, the "Suction Well"), all as depicted in Exhibit 3 attached hereto; and

WHEREAS, Chicago and the District have entered into a lease dated concurrently herewith ("Lease"), which Lease or a memorandum thereof may be recorded with the Office of the Cook County Clerk, pursuant to which the District will use the Easement Area for normal active and passive sports and public recreational use as part of the larger Durkin Park; and

WHEREAS, Joliet shall use the Easement Area for the construction, operation, maintenance and repair of the Suction Well as well as for an access road serving the Southwest Pumping Station Site located on the vacated Keeler Avenue portion of the Easement Area, and for construction activities during the initial construction of the remaining portion of the Joliet New Water Supply Infrastructure and the Chicago New Water Supply Infrastructure (collectively, the "Permitted Use") pursuant to this Agreement and that certain water supply agreement with Chicago dated \_\_\_\_\_, 2023 (the "Water Supply Agreement"). Capitalized terms not defined in this Agreement shall have the meanings set forth in the Water Supply Agreement; and

WHEREAS, pursuant to the Water Supply Agreement, not later than (a) the end of the period of contractor use described in Exhibit 4 of two (2) years and six (6) months, unless amended pursuant to Exhibit 4, and (b) the completion of construction of the Suction Well and construction activities during the initial construction of the remaining portion of the Joliet New Water Supply Infrastructure and the Chicago New Water Supply Infrastructure, Joliet shall at its sole cost and expense restore the surface (i.e., at grade) of the Easement Area (the "Surface Easement Area") as a natural grass turf surface or any other improvement on the Durkin Site, the Durkin Temporary Construction Area (which is defined in the Water Supply Agreement as "that certain designated land area the temporary use of which CPD grants to Joliet pursuant to the Durkin Temporary Construction Area Access permit") or both, mutually agreed upon up to Nine Hundred Thousand Dollars (\$900,000) construction value in 2020 dollars, for normal active and passive sports and public recreational usage. Upon acceptance of this restoration of this Surface Easement Area by Chicago with concurrence of the District, the District's use of the Easement Area for normal active and passive sports and public recreational usage shall no longer be suspended and shall continue pursuant to the Lease, and Joliet shall have the right to use the Surface Easement Area for the Permitted Use and the Permitted Use shall be performed on those areas on which are located the above-ground structures and appurtenances necessary for the operation and maintenance of the Suction Well and other areas as necessary for the Permitted Use from time to time;

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The recitals set forth above constitute an integral part of this Agreement and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the Parties.

2. Grant of Easement. Subject to the terms and conditions of this Agreement, Chicago hereby grants to Joliet an exclusive easement (“Easement”) on and under the Easement Area for the Permitted Use, which Joliet shall undertake at Joliet’s sole cost and expense.

3. Terms. The following terms and conditions apply to the Easement:

(a) The Easement is an easement appurtenant in favor of Joliet.

(b) The Easement granted under this Agreement commences on the date hereof and is coterminous with the Water Supply Agreement. The “Term” of this Agreement shall be the date on which the Agreement commences through the date on which it expires, unless terminated earlier in accordance with its terms. If disposition of the Suction Well is required following the termination of the Water Supply Agreement, then the termination date of this Agreement shall be extended by mutual agreement of the Parties for the purpose of performing such disposition as required by Article 7 (Disposition of Joliet New Water Supply Infrastructure) of the Water Supply Agreement.

(c) Joliet represents and warrants to Chicago that its contractors are and shall be licensed, as applicable, to perform the Permitted Use.

(d) Compensation. Within thirty (30) days after the effective date of this Agreement, Joliet will pay to Chicago the dollar amounts set forth in Exhibit 4 attached hereto, which represents the Parties’ determination of the value of the Easement.

4. Joliet’s Obligations.

(a) Prior to the commencement of construction or of any alterations to the Easement Area, Joliet shall provide proposed plans and specifications to Chicago for design review as provided in Articles 8 and 15 of the Water Supply Agreement. As provided in Articles 8 and 15 thereof, any such alterations shall be designed and constructed in compliance with all applicable Laws in effect at the time. For purposes of this Agreement, “Law” means any order, writ, injunction, decree, judgment, law, ordinance, decision, principle of common law, opinion, ruling, policy, statute, code, rule, or regulation of any Governmental Authority. “Governmental Authority” means any court, federal, state, or local government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-governmental authority. Chicago may, at its discretion, involve the District in Chicago’s design review of proposed plans and specifications for proposed work on the Easement Area and other land owned by the District.

(b) Joliet shall be responsible for obtaining approvals of, and paying at its sole cost and expense for, any and all removals, relocations, alterations, additional maintenance and restorations of or to any utility or public service structures or any other structures, located in, adjacent to, or in close proximity to, the Easement Area which are owned by Chicago, the District, or any third-party utility or entity, including, but not limited to, the Station, including the Station site and the Station’s appurtenances, pavements, bridges, poles and other infrastructure and utilities, which are or may be necessary or appropriate to facilitate work by Joliet or its contractors or its agents related to the Suction Well. Joliet shall be responsible for obtaining the consent of and making suitable arrangements with all applicable entities owning or having an interest in such structures, including any department of Chicago.

(c) Joliet, at its sole cost and expense, shall secure all necessary permits and approvals for the Permitted Use, and provide all legally required public notices, if any, for the Permitted Use in accordance with the requirements of the Water Supply Agreement.

(d) Disposal Obligations. Joliet shall be responsible for the proper removal, transportation and disposal of all hazardous substances as defined in 415 ILCS 5/3.215, waste as defined in 415 ILCS 5/1 et seq. (including but not limited to 415 ILCS 5/3.535), contaminants as defined in 415 ILCS 5/3.165, as amended from time to time, and any "Other Regulated Material" as defined in Sections 4(d)(i) to (iii), that is encountered as part of or resulting from its use of the Easement Area.

Unless sufficient testing is performed to determine compliance with Illinois Environmental Protection Agency's ("IEPA") Clean Construction and Demolition Debris ("CCDD") regulations, all soil being removed during construction must be disposed of in accordance with applicable regulations to a Resource Conservation and Recovery Act ("RCRA") Subtitle D landfill. If soil or CCDD must be removed from the Easement Area, it must be disposed of at a properly permitted landfill with prior approval from the Chicago Department of Assets, Information and Services, or any successor department thereto ("AIS"). No soil or materials generated from the Easement Area can be disposed as "uncontaminated soil" using an IEPA LPC-662 Source Site Certification, unless approved by AIS, with such approval not to be unreasonably withheld, conditioned, or delayed. All soil disposed as CCDD or uncontaminated soil must be sampled and an LPC-663 Uncontaminated Soil Certification must be used.

Joliet must obtain written approval from AIS of all reuse, recycling and disposal locations before any Hazardous Substances, Waste, Contaminants or Other Regulated Material, each as defined in the first paragraph of this Section 4(d) may be sent to such locations. If soil is sent to a location that is not approved by AIS, Joliet must retrieve the materials and take it to an approved location at Joliet's sole cost and expense.

Definitions. The following terms have the following meanings for purposes of this Agreement:

i. "Contaminant" means any of those materials set forth in 415 ILCS 5/3.165, as amended from time to time, that are subject to regulation under any Environmental Law.

ii. "Environmental Law(s)" means any Federal, state, or local law, statute, ordinance, code, rule, permit, plan, regulation, license, authorization, order, or injunction which pertains to health, safety, any Hazardous Substance or Other Regulated Material, or the environment (including, but not limited to, ground, air, water or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; the Hazardous Material Transportation Act, 49 U.S.C. § 1801 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, as amended by the Hazardous and Solid Waste Amendments of 1984; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.* ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. §

1251 *et seq.*; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*; the Gasoline Storage Act, 430 ILCS 15/0.01 *et seq.*; the Sewage and Waste Control Ordinance of the Metropolitan Water Reclamation District of Greater Chicago (“MWRD”); the Municipal Code of Chicago; and any other local, state, or federal environmental statutes, and all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

iii. “Hazardous Substance” has the meaning set forth in 415 ILCS 5/3.215, as amended from time to time.

iv. “Law” means any applicable federal, state, county, municipal or other laws (including common law), statutes, codes, ordinances, rules, regulations, executive orders or other requirements, now or hereafter in effect, as amended or supplemented from time to time, and any applicable judicial or administrative interpretation thereof, including any applicable judicial or administrative orders, consent decrees or judgments.

v. “Other Regulated Material” means any Waste, Contaminant, material meeting 35 IAC Part 742.305, or any other material, not otherwise specifically listed or designated as a hazardous substance, as defined in 415 ILCS 5/3.215, that (a) is or contains: petroleum, including crude oil or any fraction thereof, motor fuel, jet fuel, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixtures of natural gas and such synthetic gas, asbestos, radon, any polychlorinated biphenyl, urea, formaldehyde foam insulation, explosive or radioactive material, materials known to contain per- and polyfluoroalkyl substances, i.e. PFAS, or (b) is a hazard to the environment or to the health or safety of persons, such as chlorine.

vi. “Waste” means those materials defined in the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* as waste and identified subcategories thereof, including but not limited to, construction or demolition debris, garbage, household waste, industrial process waste, landfill waste, landscape waste, municipal waste, pollution control waste, potentially infectious medical waste, refuse, or special waste.

(e) Generator Designation. In such cases, in the event a signature as “Generator” is required on waste manifests, waste profile sheets or generator’s certifications of non-special waste, Joliet shall ensure that either Joliet or its contractor, subcontractor, or other party working on behalf of Joliet signs such documents.

(f) Imported Material. Any backfill material brought on to the Easement Area must be either a) certified virgin stone or b) tested for Target Compound List parameters (35 Ill. Adm. Code 740, Appendix A) and meet the most stringent objects for residential land use included in 35 Ill. Adm. Code 742, Appendix B, Table A. Based on the scope of work, AIS may waive this requirement. , with such waiver not to be unreasonably withheld, conditioned, or delayed.

i. Quarry generated virgin source materials do not need to be tested, but certification from the source (quarry) must be provided to AIS prior to importing the material to the Easement Area.

ii. Tested material shall be verified by providing results from a laboratory accredited by the IEPA’s Environmental Laboratory Accreditation Program. The date of

the analysis shall be within 90 days of importing such material to the Easement Area unless otherwise approved by Chicago. Prior to importing, non-virgin source materials shall be sampled at a frequency of one (1) sample per 500 cubic yards per source unless otherwise approved by Chicago, with such approval not to be unreasonably withheld, conditioned, or delayed.

iii. Joliet must keep copies of all daily reports, transport manifests, and weight tickets or receipts (as applicable) documenting all materials imported to the Easement Area and detailing where they were specifically placed for a period of five (5) years from the inception of any construction work authorized by this Agreement. At the end of the five (5) year period, all records must be provided to the Department of Water Management and such other Chicago department that is identified by Chicago, in writing, as responsible for records relating to the Easement Area. In the alternative, Joliet, at its option, may provide such records to the Department of Water Management or such other Chicago department that is identified by Chicago, in writing, as responsible for records relating to the Easement Area, sooner than such five (5) year period and Joliet will not be obligated to maintain copies of such records after they are provided to Chicago in accordance with this sentence.

iv. No biosolids or biosolids-based products from the Metropolitan Water Reclamation District or any other source may be imported for any purpose.

(g) Environmental Requirements.

i. Any underground storage tanks (“USTs”) identified must be removed and closed in accordance with applicable regulations including 41 Ill. Adm. Code 175 and any identified leaking USTs must be properly addressed in accordance with 35 Ill. Adm. Code 734.

ii. All sampling should be conducted in accordance with all applicable subsections of Title 35: Environmental Protection, Subtitle G: Waste Disposal and Chapter I: Pollution Control Board of the Illinois Administrative Code.

iii. Unless otherwise approved by Chicago, all soil boring and/or monitoring wells installed must be properly abandoned within the Term of the Agreement and pursuant to the requirements provided in Section 920.120 of the Illinois Water Well Construction Code (77 Ill. Adm. Code 920).

iv. If any bore holes exceed 30 feet in depth, gas levels must be measured at the surface of the borehole. If gas levels exceed the warning level (10-20% of Lower Explosive Limit (LEL)), all drilling and construction activities in the immediate vicinity of the borehole must be stopped. Once the gas meter levels indicate that the methane in the borehole has dissipated or is below the warning level (10-20% of LEL), the construction activities may continue.

v. Joliet shall not use or store any Hazardous Substances on the Easement Area, other than as may be necessary for the vehicles and equipment to accomplish the Permitted Uses using standard industry practices and for disinfection of the Chicago New Water Supply Infrastructure (other than the Tunnel Connection) and the Joliet New Water Supply Infrastructure, unless otherwise approved by Chicago, with such approval not to be unreasonably withheld, conditioned, or delayed. If use of Hazardous Substances is

necessary, Joliet shall provide the City (AIS) with an annual inventory of the Substances stored on site including the material, container size, maximum quantity stored, and storage location. The Safety Data Sheets for the Hazardous Substances will also be provided. Joliet shall at all times exercise due caution in their application to ensure appropriate use and prevent any accidental spillage or contamination. Joliet shall promptly notify Chicago if any Hazardous Substances are found or spilled on the Easement Area

vi. A Soil Management Plan (“SMP”) must be prepared and implemented during construction to document, at a minimum: the site-specific soil excavation, disposal, storage, and reuse procedures; imported material testing requirements; and environmental oversight plan. The SMP is subject to AIS review and approval prior to being implemented, with such approval not to be unreasonably withheld, conditioned, or delayed. Based on the scope of work, AIS may waive this requirement.

vii. If Joliet or its Agents causes a spill or release of a hazardous substance during the construction of the Joliet New Water Supply Infrastructure or the Chicago New Water Supply Infrastructure except the Tunnel Connection (as those terms are defined in the Water Supply Agreement), Joliet or its Agents must stop work immediately and contact AIS’s Environmental Health and Safety Bureau’s Deputy Commissioner at 312-744-9139 and [kimberly.worthington@cityofchicago.org](mailto:kimberly.worthington@cityofchicago.org), or other person as Chicago may identify by notifying Joliet. Joliet shall be responsible for cleaning up the spill including waste disposal as well as all notifications and reporting to any applicable agencies.

viii. Joliet and its Agents shall comply at all times with any and all applicable municipal, county, state, federal or other statutes, or Laws. Contract provisions that are required to be included in this Agreement by any such Laws shall be deemed included.

ix. In the event that the construction of the Joliet New Water Supply Infrastructure and the Chicago New Water Supply Infrastructure, except the Tunnel Connection, is not completed, Joliet must restore the Easement Area in accordance with Article 7 (Disposition of Joliet New Water Supply Infrastructure) of the Water Supply Agreement. In addition, Joliet shall be responsible for any contamination that was caused, permitted or exacerbated during the construction of the Joliet New Water Supply Infrastructure and the Chicago New Water Supply Infrastructure, except the Tunnel Connection, or any damage to the Easement Area or any surrounding property, structures, utility lines or subsurface lines or cables caused by the acts or omissions of Joliet, including but not limited to, vandalism or misuse of the Easement Area, and shall undertake any repairs necessitated by such acts or omissions.

(h) Access Requirements.

i. For the purposes of this Lease and the Easement, the following terms shall have the following meanings:

“Future Maintenance and Repair” means planned activities requiring use of an Easement Area that would prevent park uses, which are (1) disturbing soils in the Easement Area, (2) bringing in heavy equipment, or (3) securing all or a portion of the Easement Area in order for maintenance and repair to be done.

“Emergency Action” means any work that results from unplanned events that require prompt or immediate action to protect the Joliet New Water Supply Infrastructure or the water supply, or property or persons within Durkin Park or the Southwest Pump Station Site and the immediate vicinity.

“Normal Operations” means water system operational and maintenance activities, other than Future Maintenance and Repair, that are performed in a manner so as not to interfere with the District’s routine use and enjoyment of the Easement Area.

- ii. Joliet will use the Easement Area for Normal Operations and no access permit or access agreement will be required by the District.
- iii. If Joliet plans to perform “Future Maintenance and Repair,” Joliet must notify the City and the District’s Department of Planning and Construction, or any successor department, of same prior to the commencement of work, and must comply with the District’s then-current requirements for a general access permit or access agreement, which determination of compliance shall be made by the District or the City, and not unreasonably withheld or delayed. Future Maintenance and Repair will be scheduled to minimize impacts to the District’s use, and the public’s enjoyment, of the Easement Area.
- iv. Joliet must notify the City and the District as soon as practicable of any “Emergency Action.” In addition, Joliet must, as soon as practicable, but in no event more than 24 hours after the commencement of the Emergency Action, comply with the District’s then-current requirements for a general access permit or access agreement, which determination of compliance shall be made by the District or the City, and not unreasonably withheld or delayed.

5. Uses within the Easement Area.

(a) Joliet may not use or permit the use of the Easement Area for any purpose other than the Permitted Use, subject to the Lease. Joliet is not, and shall not be deemed responsible, for any uses and activities of the Easement Area by Chicago and the District on the Easement Area.

(b) Chicago reserves the right to access the Easement Area at Chicago’s sole discretion and as provided in the Water Supply Agreement. However, Chicago shall have no right to enter the Suction Well except in connection with matters pertaining to the Water Supply Agreement, and only with notice to and being accompanied by a representative of Joliet.

(c) This Easement shall be subject to the Lease, and the Lease shall be subject to this Easement. Chicago shall provide Joliet copies of the Lease and any amendments to it; any such amendments to the Lease that adversely affect Joliet’s rights and obligations hereunder shall be subject to Joliet’s prior written consent, which shall not be unreasonably withheld and shall be provided to Chicago within forty-five (45) business days. If Joliet does not provide Chicago within such forty-five (45) business days its written

objection to a proposed Lease amendment that adversely affects its rights and obligations under this Agreement, Joliet shall be deemed to have consented to it.

(d) Joliet, its contractors, and its employees shall not perform or permit any work or use of the Easement Area that is illegal. Joliet, its contractors, and its employees shall not perform or permit any work that disturbs area residents beyond the normal construction activities that would occur in connection with facilities of the type included in the Joliet New Water Supply Infrastructure and the Chicago New Water Supply Infrastructure during periods of initial construction and any periods of Future Maintenance and Repair and Emergency Action. At the remaining times within the term of this Easement, Joliet, its contractors, and its employees shall not perform or permit any work that (i) is injurious to the Easement Area, (ii) unreasonably disturbs area residents, (iii) is illegal, or (iv) causes or may cause increases to the rate of insurance on the Easement Area. Joliet and its agents and employees shall not sell, give away or consume any alcoholic beverages or illegal drugs of any kind or nature on the Easement Area.

(e) Joliet shall not interfere, and shall not permit its contractors to interfere, with the District's access to the surface of Durkin Park that is above the Easement Area, or with the District's security, parking, equipment storage or grounds maintenance at Durkin Park.

(f) Chicago shall require the District and the District's agents, contractors or subcontractors under the District's control not to use any pesticides, herbicides or other chemicals within or adjacent to the Existing Parkland or Joliet New Water Supply Infrastructure.

(g) Chicago shall state in the Lease that the District shall own, operate and maintain the drainage system to be installed by Joliet to provide stormwater drainage under Durkin Park, including the Existing Parkland, in place of the existing drainage structures that are removed for placement of the Joliet New Water Supply Infrastructure on the Existing Parkland; provided, however, that the District shall not own, operate or maintain the underdrain system of the Joliet New Water Supply Infrastructure on the Existing Parkland (which underdrain system is completely separate from the drainage system). Joliet warrants to Chicago and the District for the term of the Lease that the drainage system and the underdrain system shall be free of any defects due to either design or construction deficiencies, errors, defects or otherwise any acts or omissions by Joliet or their contractors that would cause the drainage system or the underdrain system to not operate as otherwise intended. Any issues of operation of the drainage system due to deficiencies in maintenance by the District or normal wear and tear through use, or due to deficiencies in the existing drainage system of Durkin Park outside of the Easement Area that were not disturbed by Joliet, shall not be the responsibility of Joliet.

(h) Chicago shall notify Joliet of any work of which it becomes aware that is proposed to be performed by others who are not a party to this Agreement, such as utilities or holders of other easements in the Easement Area, during periods of planned construction by Joliet within the Easement Area.

6. Alterations. Other than the Suction Well and its above-ground structures and appurtenances, Joliet may not erect any structures, install any infrastructure or make any use of the Easement Area which in the judgment of Chicago would interfere with: Chicago's use, operation, inspection, maintenance, repair, renewal or reconstruction of the Station or other

property or facilities owned by Chicago; the District's use of the Surface Easement Area under the Lease; or any third-party infrastructure.

7. Termination and Closure. Termination of this Easement shall be subject to the terms of Articles 4 (Term; Renewal) and 6 (Termination) of the Water Supply Agreement, and Joliet shall have the right to terminate this Easement at any time. Disposition of the Suction Well on the Easement Area upon termination shall be in accordance with Article 7 (Disposition of Joliet New Water Supply Infrastructure) of the Water Supply Agreement.

8. Assignment. In the event of the assignment of the Water Supply Agreement pursuant to Article 22 of the Water Supply Agreement, this Agreement shall be assigned as provided in such Article 22.

9. Restoration.

(a) Upon completion of the initial construction of the Suction Well, Joliet shall perform the restoration as described in the Sixth Whereas clause.

(b) To the extent that Joliet performs construction (other than the initial construction), maintenance, repair, replacement or removal of the Suction Well, and all work related thereto, Joliet shall, at Joliet's cost and expense, restore the Easement Area to a condition comparable to the condition of the Easement Area prior to the commencement of any such activities.

10. Indemnity.

(a) Except with respect to the wrongful intentional acts of Chicago or the District (to the extent the same are the cause of an injury or loss to a third person), Joliet hereby indemnifies and agrees to hold harmless and defend Chicago and the District from and against any and all claims, demands, damages, lawsuits, legal proceedings, losses, liens, liabilities, judgments, orders or decrees, and all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees, court costs, and other reasonable expenses related to litigation), arising from or as a result of the death of, or any accident, injury, loss or damage whatsoever caused to Chicago or the District, any natural person, or Chicago's or the District's property, including but not limited to the Easement Area, the Station (including the Station site and the Station's appurtenances), the property of any person, arising out of this Agreement or the Water Supply Agreement or the occupancy, use, operation, maintenance, repair or replacement of the Suction Well or the Easement Area by Joliet, its officers, employees, agents and invitees. If legal action is taken against Chicago or the District or their agents or any claim is made relating to the Easement Area or the Suction Well as a result of the foregoing, Chicago or the District may elect to tender said defense to Joliet which shall and must defend such action or claim at Joliet's own expense and Chicago or the District shall cooperate with Joliet in the defense thereof. Chicago and the District shall have the right to join Joliet as a party defendant in any such legal action. This indemnity shall not be the exclusive remedy of Chicago or the District, and Chicago and the District shall maintain whatever other rights of indemnity they may have under common law, by statute, or by ordinance. This indemnification shall survive any termination or expiration of this Agreement and shall not be limited by any insurance coverages set forth in the Water Supply Agreement.

(b) Joliet, on behalf of itself and its officers, directors, employees, successors, assigns and anyone claiming by, through or under any of them, including, without limitation, each and every person, firm, corporation, limited liability company, trust or other entity leasing, occupying,

using or possessing any portion of the Easement Area under or through Joliet following the date of this Agreement (collectively, the "Joliet Parties"), hereby releases, relinquishes and forever discharges Chicago and District, and their employees, agents, officers and officials (individually, an "Indemnified Party," and collectively, the "Indemnified Parties"), from and against any and all Losses (as defined below) which the Joliet Parties ever had, now have, or hereafter may have, whether grounded in tort or contract or otherwise, in any and all courts or other forums, of whatever kind or nature, whether known or unknown, foreseen or unforeseen, now existing or occurring after the date of this Agreement, based upon, arising out of or in any way connected with, directly or indirectly, solely to the extent attributable to the actions or inactions of any of Joliet's Parties: (i) any environmental contamination, pollution or hazards associated with the Easement Area or any improvements, facilities or operations located or formerly located thereon, including, without limitation, any release, emission, discharge, generation, transportation, treatment, storage or disposal of Hazardous Substances, or threatened release, emission or discharge of Hazardous Substances; (ii) the structural, physical or environmental condition of the Easement Area, including, without limitation, the presence or suspected presence of Hazardous Substances or Other Regulated Material in, on, under or about the Easement Area or the migration of Hazardous Substances or Other Regulated Material from or to other property; (iii) any violation of, compliance with, enforcement of or liability under any Environmental Laws, including, without limitation, any governmental or regulatory body response costs, natural resource damages or Losses arising under CERCLA; and (iv) any investigation, cleanup, monitoring, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision or other third party in connection or associated with the Easement Area or any improvements, facilities or operations located or formerly located thereon (collectively, "Released Claims"). The Joliet Parties waive their rights of contribution and subrogation against any Indemnified Parties, solely to the extent attributable to the actions or inactions of any of Joliet's Parties. "Losses" means any and all debts, liens, claims, causes of action, demands, complaints, legal or administrative proceedings, losses, damages, obligations, liabilities, judgments, amounts paid in settlement, arbitration or mediation awards, interest, fines, penalties, costs and expenses (including, without limitation, reasonable attorney's fees and expenses, consultants' fees and expenses and court costs). Furthermore, Joliet shall indemnify, defend (through an attorney reasonably acceptable to Chicago) and hold the Indemnified Parties harmless from and against any and all Losses which may be made or asserted by any third parties (including, without limitation, any of Joliet's Parties) arising out of or in any way connected with, directly or indirectly, any of the Released Claims, solely to the extent attributable to the actions or inactions of any of Joliet's Parties. Joliet waives its rights of contribution and subrogation against the Indemnified Parties.

(c) The covenant of release set forth in Section 10(b) shall run with the Easement Area and shall be binding upon all successors and assigns of Joliet with respect to the Easement Area, including, without limitation, each and every person, firm, corporation, limited liability company, trust or other entity owning, leasing, occupying, using or possessing any portion of the Easement Area under or through Joliet following the date of this Agreement. Joliet acknowledges and agrees that the foregoing covenant of release constitutes a material inducement to enter into this Agreement, and that, but for such release, Chicago would not have agreed to grant an easement to the Easement Area to Joliet. It is expressly agreed and understood by and between Joliet and Chicago that, should any future obligation of Joliet or the Joliet Parties arise or be alleged to arise in connection with any environmental, soil or other condition of the Easement Area, neither Joliet nor any other Joliet Parties shall assert that those obligations must be satisfied in whole or in part by Chicago, because this covenant contains a full, complete and final release of all such claims.

(d) Chicago will require the District to provide indemnification to Joliet for Losses resulting from District uses and activities occurring on the Easement Area, and enforce such indemnification from the District on behalf of Joliet, or assign such indemnification rights to Joliet to allow Joliet to undertake enforcement on its own behalf.

11. Operation, Maintenance and Security of the Easement Area and Suction Well.

(a) Joliet shall maintain the Suction Well as required hereunder and pursuant to the terms of the Water Supply Agreement, at its sole cost and expense.

(b) Joliet shall maintain the Suction Well so that the Suction Well does not unduly interfere with any use of the Easement Area by Chicago, the District, the public, or any person or entity authorized to use or occupy the Easement Area.

(c) Joliet shall conduct regular documented inspections of the Suction Well and the Easement Area and maintain the Suction Well and restore the Easement Area in accordance with applicable Law and to the satisfaction of the Commissioner. All maintenance records for the Suction Well and Easement Area shall be made available to DWM upon DWM's written request for such documentation.

(d) Joliet shall cooperate with Chicago concerning the coordination of uses of the Easement Area, including prompt responses to inquiries, attending meetings and site visits, and providing complete disclosure of information concerning the Easement Area and the Suction Well.

(e) Joliet shall pay for any and all costs and expenses incurred with respect to the operation, maintenance, repair, replacement, and/or removal of the Suction Well, or any part thereof, within the Easement Area.

(f) Prior to providing its consent to an assignment or sublease of the Lease, Chicago shall notify Joliet that an assignment or sublease of the Lease has been proposed for which Chicago has been requested to provide its consent under the terms of the Lease. Any assignment or sublease of the Lease shall not allow any activities that would materially, substantially or detrimentally interfere with the Joliet New Water Supply Infrastructure on the Easement Area, the provision of Water by Chicago to Joliet, and Joliet's provision of Water to the Joliet Customers. Joliet shall not have a right to consent to any such assignment or sublease or a right to review the terms of such proposed transaction(s), as long as the conditions of the previous sentence are met.

12. Chicago and the District Have No Maintenance, Operational and Security Duties; "As Is - Where-Is Condition". Joliet acknowledges that neither Chicago nor the District is responsible for the operation, maintenance, repair, replacement and/or removal or security of the Suction Well or the Easement Area, and Chicago and the District each has no obligations with respect thereto. Chicago acknowledges that it will not expect Joliet to be responsible for the District's operations, activities, use, maintenance, repair, replacement and/or removal activities on the Easement Area.

Chicago and the District make no covenant, representation or warranty, express or implied, of any kind, as to the structural, physical or environmental condition of the Easement Area or the suitability of the Easement Area for any purpose whatsoever. Joliet acknowledges that it has had adequate opportunity to inspect and evaluate the structural, physical and environmental conditions and risks of the Easement Area and accepts the risk that any inspection

may not disclose all material matters affecting the Easement Area. Joliet agrees to accept the Easement Area in their "AS IS," "WHERE IS" and "WITH ALL FAULTS" condition at closing, with all faults and defects, latent or otherwise, and the Chicago has not made and does not make any covenant, representation or warranty, express or implied, of any kind, or give any indemnification of any kind to Joliet, with respect to the structural, physical or environmental condition of the Easement Area, their compliance with any statute, ordinance or regulation, or its suitability, merchantability or fitness for any purpose whatsoever. Joliet acknowledges that it is relying solely upon its own inspection and other due diligence activities and not upon any information (including, without limitation, environmental studies or reports of any kind) provided by or on behalf of the Chicago or the District or any of their agents or employees with respect thereto. Joliet agrees that it is its sole responsibility and obligation to perform at its expense any such action as is necessary to put the Easement Area in a condition which is suitable for its intended use.

13. Insurance. Joliet shall at all times maintain, and shall cause its contractors to maintain, the insurance coverages and endorsements identified in Article 21 of the Water Supply Agreement, which is incorporated here by this reference. On an annual basis, Chicago will provide, or require the District provide, to Joliet evidence of the District's insurance.

14. Default. If a Party is in default under this Agreement, Article 20 of the Water Supply Agreement shall govern and control.

15. No Liens. Joliet shall not permit any lien to stand against the Easement Area or the Suction Well for any labor or material in connection with work of any character performed in the Easement Area at the direction or sufferance of Joliet.

16. Compliance with Law. Joliet agrees that the Easement Area and the Suction Well shall be used, and any alterations to the structures located within the Easement Area shall be constructed, installed, used, operated, inspected, maintained, repaired and replaced in complete compliance with all applicable Laws.

17. Partial Invalidity. If any clause, sentence or other portion of this Agreement shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portion hereof shall remain in full force and effect.

18. Notices. For purposes of this Agreement, any notice, demand or request required by this Agreement shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) electronic communications, such as facsimile or email; (c) nationally recognized overnight courier service; or (d) Certified Mail; provided, however, that any notice of default or termination provided by electronic communications shall also be delivered by another method of notice under this Section 18.

If to Chicago:                   City of Chicago  
  Department of Water Management  
  1000 East Ohio Street  
  Chicago, Illinois 60611  
  Attn: Commissioner

With copies to: City of Chicago Department of Law  
121 North LaSalle Street, Suite 600  
Chicago, Illinois 60602  
Attn: Real Estate and Land Use Division

and

City of Chicago Department of Law  
121 North LaSalle Street, Suite 600  
Chicago, Illinois 60602  
Attn: Finance and Economic Development Division

and

City of Chicago  
Department of Finance  
121 North LaSalle Street, Room 700  
Chicago, Illinois 60602  
Attention: Chief Financial Officer

If to Joliet: City of Joliet  
150 West Jefferson Street  
Joliet, Illinois 60432  
Attention: Director of Public Utilities and City Manager

Each Party to this Agreement has the right to change, add or remove the addressee or addressee contact information, for future notices and communications to them in matters pertaining to this Agreement by giving notice complying with the requirements of this section. No notice of a change of address will be effective until actually received.

Notices shall be deemed received upon the first to occur of (a) the date of actual receipt, (b) the date an email is sent, unless notice of non-delivery is received; (c) the date that is one (1) business day after deposit with a nationally recognized overnight courier service as evidenced by a receipt of deposit, or (d) the date that is three (3) days after deposit in the U.S. mail, as Certified Mail, evidenced by a receipt.

19. No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit solely of Joliet and Chicago and their respective successors and assigns. This document and the terms hereof are intended solely for the benefit of the Parties hereto and their successors and assigns, as expressly referred to herein. No other person shall have any rights, responsibilities or obligations hereunder nor may such person enforce any of the terms or be entitled to any of the benefits hereof. Notwithstanding the foregoing, the District is and during the term of the Lease shall be a third-party beneficiary of this Agreement.

20. Authority and Validity. Each Party represents and warrants to the other Party that (i) this Agreement has been duly authorized, executed and delivered by it and (ii) this Agreement constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with its terms.

21. Miscellaneous.

(a) The terms, benefits, and privileges set forth in this Agreement shall be deemed and taken to be covenants running with the Easement Area and shall be binding upon Joliet and Chicago, and their respective successors and assigns having any interest in the Easement Area.

(b) If any provision of this Agreement, or any paragraph, sentence, clause, phrase, or word or the application thereof is held invalid, illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that this Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of either of the Parties.

(c) In the event the time for performance hereunder falls on a Saturday, Sunday, or legal holiday, the actual time for performance shall be the next business day.

(d) This Agreement has been negotiated, executed and delivered in Illinois, and it and the accompany plat shall be governed by, and construed in accordance with, the internal laws of the State of Illinois including the law of public trust with respect to the use and occupation of the Easement Area. In the event that an adjudication of any kind shall be required in connection with this Agreement, the Parties agree that the venue therefor shall be the state or federal courts located in Cook County, Illinois, whichever may be applicable.

(e) This Agreement, and any provisions of the Water Supply Agreement that govern the Suction Well, constitute the entire agreement between the Parties with respect to the subject matter of this Agreement, and may not be modified except by an instrument in writing signed by all the Parties and dated a date subsequent to the date of this Agreement. In the event of a conflict between the Water Supply Agreement and this Agreement, the Water Supply Agreement shall govern.

(f) Each Party agrees that it will execute and deliver such other reasonable documents and take such other reasonable actions as may be reasonably requested by the other party to effectuate the purposes and intention of this Agreement.

(g) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute a single, integrated instrument.

(h) Joliet shall record, at its expense, this Easement Agreement and any amendments thereto; or, in the alternative, the Parties may agree prepare a memorandum of easement agreement in a mutually agreeable form which will be recorded by Joliet.

22. Waste Ordinance Provisions. In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago ("Municipal Code"), Joliet warrants and represents that it, and to the best of its knowledge, its contractors and subcontractors, have not violated and are not in violation of any provisions of Section 7-28 or Section 11-4 of the Municipal Code and agrees that a violation of Section 7-28-390, 7-28-440, 11-4-1410, 11-4-1420, 11-4-1450, 11-4-1500, 11-4-1530, 11-4-

1550, or 11-4-1560 of the Municipal Code by Joliet, whether or not in the performance of this Agreement, shall constitute a breach of this Agreement.

THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, Joliet and Chicago have caused this Agreement to be executed by their duly authorized officers as of the day and year first written above.

CITY OF CHICAGO, an Illinois municipal corporation and home rule unit of government

By: \_\_\_\_\_  
Andrea R.H. Cheng, Ph.D., P.E.  
Commissioner  
Department of Water Management

CITY OF JOLIET, an Illinois municipal corporation and home rule unit of government

By: \_\_\_\_\_  
Robert O'Dekirk  
Mayor

ATTEST:

By: \_\_\_\_\_  
Christa M. Desiderio  
City Clerk



Exhibit 1 to Easement Agreement

Easement Area (legal description)

PE-1:

THAT PART OF BLOCKS 37 AND 38 OF FREDERICK H. BARTLETT'S CITY OF CHICAGO SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 19, 1925 AS DOCUMENT 8743507, ALSO THAT PART OF VACATED TRIPP AVENUE, VACATED KEELER AVENUE, AND ALSO THAT PART OF THE VACATED ALLEYS LYING WITHIN SAID BLOCKS 37 AND 38, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF VACATED KEELER AVENUE AND THE NORTH LINE OF WEST 85TH STREET; THENCE SOUTH 88 DEGREES 16 MINUTES 57 SECONDS WEST, ALONG SAID NORTH LINE, 350.00 FEET; THENCE NORTH 01 DEGREES 50 MINUTES 35 SECONDS WEST, 250.00 FEET; THENCE NORTH 88 DEGREES 16 MINUTES 57 SECONDS EAST, 350.00 FEET TO THE CENTERLINE OF SAID VACATED KEELER AVENUE; THENCE SOUTH 01 DEGREES 50 MINUTES 35 SECONDS EAST, ALONG SAID CENTERLINE, 250.00 FEET TO THE POINT OF BEGINNING.

Exhibit 2 to Easement Agreement

Plat of Easement

[To Come]

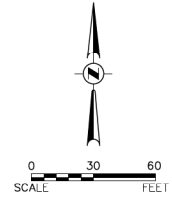
# EASEMENT EXHIBIT

LEGAL DESCRIPTIONS:

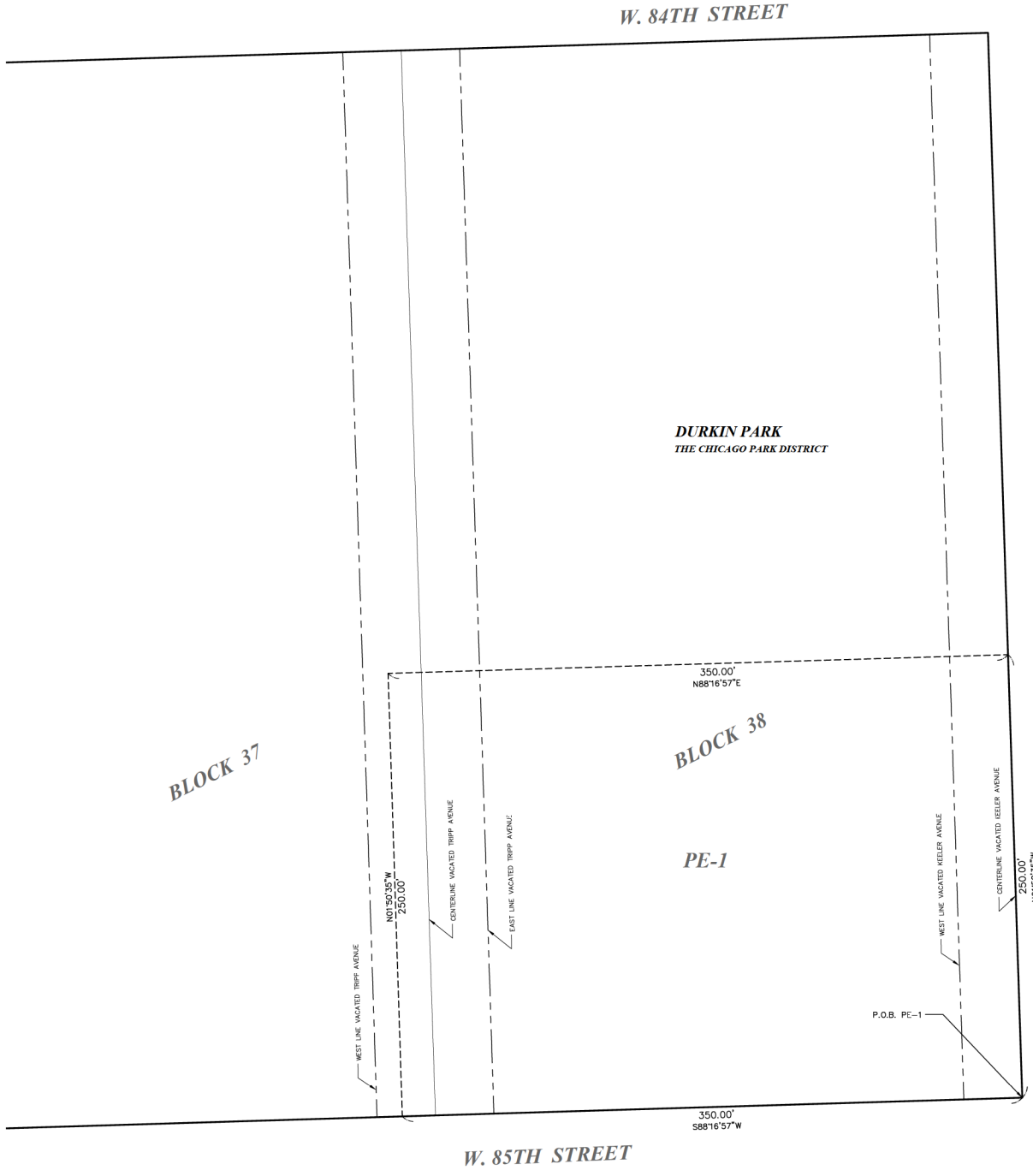
PE-1:

THAT PART OF BLOCKS 37 AND 38 OF FREDERICK H. BARTLETT'S CITY OF CHICAGO SUBDIVISION, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 19, 1925 AS DOCUMENT 8742807, ALSO THAT PART OF VACATED TRIPP AVENUE, VACATED KEELER AVENUE, AND ALSO THAT PART OF THE VACATED ALLEYS LYING WITHIN SAID BLOCKS 37 AND 38, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF VACATED KEELER AVENUE AND THE NORTH LINE OF WEST 85TH STREET; THENCE SOUTH 88 DEGREES 16 MINUTES 57 SECONDS WEST, ALONG SAID NORTH LINE, 350.00 FEET; THENCE NORTH 01 DEGREES 50 MINUTES 35 SECONDS WEST, 250.00 FEET; THENCE NORTH 88 DEGREES 16 MINUTES 57 SECONDS EAST, 350.00 FEET TO THE CENTERLINE OF SAID VACATED KEELER AVENUE; THENCE SOUTH 01 DEGREES 50 MINUTES 35 SECONDS EAST, ALONG SAID CENTERLINE, 250.00 FEET TO THE POINT OF BEGINNING.



THE CHICAGO PARK DISTRICT  
P.I.N. 19-34-410-009  
P.I.N. 19-34-411-011



**Engineering Enterprises, Inc.**  
CONSULTING ENGINEERS  
52 Wheeler Road  
Sugar Grove, Illinois 60554  
630.466.6700 / www.eeiweb.com

**CITY OF JOLIET**  
150 W. JEFFERSON ST.  
JOLIET, IL 60432

		4-11-23
NO.	DATE	REVISIONS

**EASEMENT EXHIBIT**

DATE:	MARCH 8, 2023
PROJECT NO.:	JO2201RB
FILE NO.:	JO2201RB-DURKIN PE EXHIBIT
<b>PAGE 1 OF 1</b>	

Exhibit 3 to Easement Agreement

Depiction of Suction Well (site plan)

[EXHIBIT ON FILE—Contains confidential information,  
including materials relating to water system security]

Exhibit 4 to Easement Agreement

Compensation to be Paid by Joliet to Chicago

Site	Easement Name	Area* (square feet)(SF)	Type of Easement	Land Ownership	Chicago Contractor Use*	Joliet Contractor Use*	Duration of Joliet Contractor Use for Calculation of TE Compensation*
Durkin Park	PE-1	87,500	Permanent	Chicago	None	10/1/2025 to 3/31/28	N/A
						Road area at the eastern end of PE-1: 5/1/24 to 12/31/29	

\*Subject to change based on advancement of final design. The Joliet contractor periods of use of PE-1 shall be as shown above. PE-1 includes a portion of vacated Keeler Avenue that will become part of the permanent access road to the Southwest Pumping Station Site, on which both the Low Service Pump Station and the High Service Pump Station are located. This road will also be used by contractors during the entire construction period, from 5/1/24 through 12/31/29. The Joliet contractor period of use for PE-1 other than the road is two (2) years and six (6) months. The contractor periods of use may be modified with the prior written approval of the Commissioner of DWM.

Site	Easement Name	Area* (square feet)(SF)	Type of Easement	Land Ownership	Duration of Joliet Contractor Use for Calculation of TE Compensation*	Unit Price Compensation (DIV = Diminution in Value)	Total Compensation
Durkin Park	PE-1	87,500	Permanent	Chicago	N/A	\$5.86/per SF plus \$0.50/SF Premia, 2.5% DIV for Remainder, 398,521 SF whole site	\$430,275

\*Subject to change based on advancement of final design.