

**PRELIMINARY AGREEMENT WITH RESPECT TO AN  
ANTICIPATED WATER SUPPLY AGREEMENT  
BETWEEN THE CITY OF CHICAGO AND THE CITY OF JOLIET**

This Preliminary Agreement With Respect to an Anticipated Water Supply Agreement Between the City of Chicago and the City of Joliet (“Agreement”) is made and entered into by and between the City of Chicago (“Chicago”), a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution (“Illinois Constitution”) of the State of Illinois (“State”), by and through its Department of Water Management (“DWM”), and the City of Joliet (“Joliet”), a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the Illinois Constitution. Together Chicago and Joliet shall be referred to as the “Parties”, and at times, individually a “Party”. The Agreement is authorized by an ordinance adopted by the City Council of the City of Chicago (“Chicago City Council”) on February 24, 2021, and by an ordinance adopted by the City Council of the City of Joliet (“Joliet City Council”) on January 28, 2021.

**RECITALS**

**WHEREAS**, in 2019 Joliet issued a Request for Information (“RFI”) for the purpose of identifying possible available alternate water supply sources and providers. Joliet has been investigating a variety of alternative sources of water supply for its residents and businesses; and

**WHEREAS**, Chicago is the owner and operator of waterworks providing intake, treatment and distribution of Lake Michigan water (“Water”) to customers (“Chicago Water System”); and

**WHEREAS**, on August 22, 2019, Chicago filed its Notice of Intent and provided Joliet with options for the provision of Water from the Chicago Water System to Joliet; and

**WHEREAS**, Joliet has engaged a team of consultants (“Consulting Team”) to assist in analyzing the two alternatives for a source of Water supply designated by the Joliet City Council, and to prepare and present a report and recommendations to the Joliet City Council on the two alternatives; and

**WHEREAS**, Chicago and Joliet have been engaged in continuing and ongoing discussions regarding the possibility of establishing the New Water Supply Infrastructure (as defined in Section 2) in preliminary concept plans and designs for Chicago to supply Water to Joliet (“Preliminary Concept Plan”); and

**WHEREAS**, the Preliminary Concept Plan currently anticipates the construction of New Water Supply Infrastructure, some of which will be on the Southwest Pumping Station site, located at 8422 South Kedvale Avenue, in Chicago, Illinois (“Southwest Pumping Station Site”). The New Water Supply Infrastructure may include, but not be limited to the Project Elements (as defined in Section 2); and

**WHEREAS**, the Preliminary Concept Plan also currently anticipates the construction of the Suction Well as an underground tank on land which is part of Durkin Park, a public park owned by the Chicago Park District, which is located at 8445 South Kolin Avenue, Chicago, Illinois (“Durkin Site”), just west of the Southwest Pumping Station; and

**WHEREAS**, Chicago has entered into discussions with the Chicago Park District to obtain the necessary title to, and other interests in land of, the Durkin Site from the Chicago Park District; and

**WHEREAS**, as part of the negotiations between the Parties relating to entering into the Water Supply Agreement, the Parties have reached an understanding regarding certain key terms that would provide a basis for an ongoing, long-term agreement between Chicago and Joliet that would facilitate the provision of a new, safe, clean and reliable source of Water supply to Joliet, which the Parties currently intend to occur not later than January 1, 2030 (“Targeted Water Delivery Date”) to allow for initial testing of the Project Elements (defined herein), subject to execution of a Water Supply Agreement between the Parties and which shall include establishing a mutually agreed-upon Planning, Design and Construction Coordination Plan (defined herein); and

**WHEREAS**, the Consulting Team presented its analysis of the two Water alternatives to the Joliet City Council in November 2020 as well as additional information regarding the alternatives in December 2020 and January 2021, and the Joliet City Council anticipates completing its review and analysis to determine which alternative Joliet will pursue soon thereafter; and

**WHEREAS**, Joliet has requested that Chicago approve this Agreement to demonstrate its commitment to being the Water supplier for the City of Joliet and enter into a long-term agreement to provide Water supply on the proposed terms and conditions included in this Agreement; and

**WHEREAS**, pursuant to Article VII, Section 6(a) of the Illinois Constitution of 1970, a home rule unit of government may exercise any power and perform any function pertaining to its government and affairs, including the power to regulate for the protection of the public health, safety, morals, and welfare, and Chicago and Joliet are both home rule units; and

**WHEREAS**, each of the Parties hereby determines that Joliet’s purchase of Water from Chicago and Chicago’s sale of Water to Joliet, including the Parties’ negotiating and entering into both this Agreement and the Water Supply Agreement, is a function pertaining to each Party’s government and affairs;

NOW THEREFORE, the Parties, in consideration of the premises and promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby agree as follows:

## **AGREEMENT**

### **SECTION 1. INCORPORATION OF RECITALS**

The recitals set forth above are incorporated in and made a part of this Agreement by this reference.

### **SECTION 2. DEFINITIONS**

Certain capitalized terms herein shall have the meanings ascribed to them in this Section 2, unless otherwise provided in this Agreement.

“Chicago New Water Supply Infrastructure” shall mean the portion of the New Water Supply Infrastructure consisting of the Tunnel Connection, the Tunnel Extension, the Low Service Pump Station and the Chicago Service Valve.

“Chicago Service Valve” shall mean a valve installed downstream and outside of the Low Service Pump Station and upstream of the Meter Vault for (a) connecting the Joliet New Water Supply Infrastructure to the Chicago New Water Supply Infrastructure; and (b) separating the Joliet New Water Supply Infrastructure from the Chicago Water System.

“High Service Pump Station” shall mean that certain high service pumping station to be located on the Southwest Pumping Station Site.

“IDNR” shall mean the Illinois Department of Natural Resources, or any successor agency.

“IEPA” shall mean the Illinois Environmental Protection Agency, or any successor agency.

“Joliet Customers” shall mean the Joliet Retail Customers, the Joliet Retail Outside Customers and the Subsequent Purchasers.

“Joliet New Water Supply Infrastructure” shall mean the portion of the New Water Supply Infrastructure consisting of the Meter Vault, Suction Well, High Service Pump Station and Transmission Main-Chicago.

“Joliet Retail Customers” shall mean retail Water customers of Joliet located within the corporate limits of Joliet.

“Joliet Retail Outside Customers” shall mean retail Water customers of Joliet located outside the corporate limits of Joliet.

“Low Service Pump Station” shall mean that certain low service pumping station to be located on the Southwest Pumping Station Site.

“Meter Vault” shall mean a vault located on the Southwest Pumping Station Site between the Low Service Pump Station and the Suction Well and containing the primary Joliet meter(s).

“New Water Supply Infrastructure” shall mean a new Chicago-to-Joliet water supply infrastructure for Chicago to supply Water to Joliet, and shall include infrastructure located both within and outside the corporate limits of Chicago. New Water Supply Infrastructure includes, without limitation, the Chicago New Water Supply Infrastructure, the Joliet New Water Supply Infrastructure, and the Project Elements.

“Point of Demarcation” shall refer to the location of the Chicago Service Valve.

“Project Element” shall mean any of the following to the extent located within the corporate limits of Chicago: the Tunnel Connection, the Tunnel Extension, the Low Service Pump Station, the Chicago Service Valve, the Meter Vault, the Suction Well, the High Service Pump Station and the Transmission Main-Chicago. “Project Elements” shall mean all of the Project Elements.

“Subsequent Purchasers” shall mean wholesale purchasers of water located outside of Joliet’s corporate limits.

“Suction Well” shall mean that certain suction well to be installed as an underground tank on the Durkin Site and including all underground and above-ground structures and appurtenances necessary for the operation and maintenance of said suction well.

“Transmission Main” shall mean that certain water main and other appurtenances required for a complete system running from the Southwest Pumping Station Site to Joliet for the transmission of Water from Chicago to Joliet.

“Transmission Main-Chicago” shall mean that certain portion of the Transmission Main located within the corporate limits of Chicago.

“Tunnel Connection” shall mean that certain tunnel connection at the Southwest Pumping Station Site including a below-ground shaft, gates, and appurtenances for connecting the Tunnel Extension to the existing tunnels of the Chicago Water System.

“Tunnel Extension” shall mean that certain tunnel extension at the Southwest Pumping Station Site between the Tunnel Connection extending to and serving as the suction well for the Low Service Pump Station and including all below-ground shafts, gates, and appurtenances for the construction and operation of said tunnel extension.

**SECTION 3. COMMITMENT TO CONTINUE NEGOTIATIONS TO ENTER INTO A LONG-TERM WATER SUPPLY AGREEMENT**

3.1. In the event that the Joliet City Council determines to pursue the acquisition of a long-term supply of Water from Chicago, and this Agreement is approved by Joliet and entered into by and between Chicago and Joliet, the Parties hereby acknowledge and agree that they will enter into additional discussions regarding the details of the conceptual terms and conditions of this Agreement for inclusion in a long-term agreement for the supply of Water by Chicago to Joliet and for the development of New Water Supply Infrastructure to facilitate the supply of Water to Joliet (“Water Supply Agreement”).

3.2. The Parties agree that the Water Supply Agreement will include language finalizing and setting out in detail, the agreed-upon conceptual terms outlined in Sections 2, and 5 through 20 of this Agreement, unless otherwise mutually agreed by the Parties.

3.3. The Parties agree that the Water Supply Agreement will include additional provisions that are not specifically mentioned in this Agreement but that are necessary to provide an agreement that will establish the ongoing relationship of the Parties regarding the provision of Water by Chicago to Joliet.

3.4. Each Party acknowledges and agrees that, subject to completion of negotiations and obtaining all requisite authority for execution, said Party intends to enter into the Water Supply Agreement no later than October 31, 2021, unless the Parties mutually agree to a different date, and that each Party will work in good faith to achieve such result.

3.5. During the term of this Agreement, Joliet agrees to provide periodic updates to Chicago regarding: (a) the status of Joliet’s application to the IDNR for a permit for an allocation of Water from Lake Michigan; (b) the status of activities relating to the possible formation of the Regional Water Commission (as defined herein); (c) the status of Joliet’s program to obtain financing for the Joliet New Water Supply Infrastructure as well as the rest of the Project Elements to the extent Chicago is unable to do so, including without limitation an update after Chicago acquires the Durkin Site, an update between 60 and 90 days prior to submission of the Water Supply Agreement to the Chicago City Council and Joliet City Council, and in the event of a material change in the financing program, Joliet shall provide an update on a quarterly basis; (d) the status of Joliet’s planning, design, financing and

construction of the New Water Supply Infrastructure located outside the corporate limits of Chicago, and (e) the status of the development of Joliet's water source transfer testing plan, and provide a copy of any final approved plan to Chicago.

3.6. City Council Support. As a further indication of Chicago's support of the Advisory Council concept described in this Agreement, the Chicago City Council has adopted an ordinance on February 24, 2021 endorsing the creation by the Commissioner of DWM of the Advisory Council to be consistent with the concepts and principles in Section 17 and Attachment A of this Agreement.

3.7. Staff Liaison. During the term of this Agreement, each Party shall assign certain personnel to act as staff liaisons to the other Party. Chicago shall assign the Commissioner of DWM, the Chief Financial Officer and the Deputy Comptroller of Financial Policy or their designees to be staff liaisons with Joliet, for matters regarding the negotiation of the terms of the Water Supply Agreement and performance of the cost of service audits described in Section 15 below; and the Commissioner of DWM or a designee for matters relating to water and water supply, including without limitation, DWM design standards and preferences, water quality standards, and the water source transfer testing plan (as described in Section 3.10). Joliet will assign the Director of Public Utilities or a designee to be the staff liaison with Chicago. The Parties will identify and appoint any replacement personnel, as needed and as necessary and will notify the other Party as to such replacement.

3.8. Chicago Support. As a further indication of Chicago's support for the transactions contemplated by this Agreement and the Water Supply Agreement, such as formation of a Regional Water Commission (as defined in Section 16.1), Joliet's application for an allocation of Lake Michigan Water, and pursuing and obtaining funding for contemplated water improvements described in this Agreement or as required for implementation of the Water Supply Agreement, Chicago will provide assistance to Joliet where appropriate in connection with efforts related to such transactions from time to time where necessary and useful to support Joliet in its efforts to implement this Agreement and the Water Supply Agreement.

3.9. Technical Assistance. In the event that the Parties are unable to reach agreement on the application or interpretation of the M1 Manual (as defined in Section 15.2) to the initial cost of service study described in Section 15.2 below during negotiation of the Water Supply Agreement, the Parties agree that, in addition to their own water rate and waterworks valuation consultant, they may jointly retain a mutually acceptable independent, neutral, reputable and qualified water rates and waterworks evaluation consultant, who may be part of a reputable and qualified engineering firm. Such consultant and firm shall not be in a contractual or business relationship with either Chicago or Joliet other than for the work assisting with the negotiation of the Water Supply Agreement. The role of the independent consultant shall be to meet and confer with the consultants retained by each Party for the purpose of clarifying the M1 Manual and enabling the Parties to reach agreement on the methodology for determining the cost of service. The total cost incurred with respect to said independent consultant shall be paid by the Parties on a 50/50 basis.

3.10. Water Source Transfer Testing Plan Support. Chicago and Joliet agree to collaborate and provide support and assistance in connection with Joliet's completion of its water source transfer testing plan to enable a smooth transition from well water to Lake Michigan Water for Joliet. Such assistance may include, without limitation and as reasonably required, providing relevant source transfer information, providing a point of connection to obtain either finished water prior to corrosion control

addition or finished water after corrosion control addition (depending on the type of corrosion control being used by Chicago), the ability to use Chicago's existing water testing equipment, as available, providing space for testing including at the Eugene Sawyer Purification Plant or the Southwest Pumping Station or other location, providing Water for testing and other items required for Joliet to complete its water source transfer testing plan. If testing requires use of pipe loops, Joliet will construct and use its own water testing loop, including any testing-related equipment and capital improvements. Joliet shall pay the costs relating to water sampling and testing.

3.11. Preliminary Cost of Service Information.

a. Chicago agrees to provide to Joliet cost of service studies, including all supporting documentation, showing what the cost of service would be for Joliet based on the costs incurred by Chicago:

- i. For the year 2018, no later than seven days after the approval and execution of this Agreement by both Parties and execution by Joliet of a confidentiality agreement with Chicago regarding the information contained in the cost of service studies; and
- ii. For the year 2019, no later than April 1, 2021,

which cost of service studies shall together constitute the audit required pursuant to Section 15.2(b)(i) of this Agreement. Each such study shall include all audited information including detailed calculations as well as backup materials to support the study, to the extent practicable and available.

b. After Joliet's receipt of the 2018 cost of service study required by Section 15.2(b)(i) of this Agreement, including all supporting documentation as described in Section 3.11(a) above:

- i. Joliet will commence its open book review as provided in Section 15.2(b)(i) and provide its comments and questions regarding the audit within 150 days of receipt of the 2018 cost of service study including all supporting documentation, as long as Chicago has provided the 2019 cost of service study and all supporting documentation as described in Section 3.11(a) above by April 1, 2021; and
- ii. Chicago will provide a written response not later than 45 days after receipt of Joliet's comments and questions as provided pursuant to Section 3.11(b)(i) above.

c. The Parties agree to use their best efforts to provide the information they are each obligated to provide to the other as described in this Section 3.11 as soon as it is available.

3.12. Negotiation Schedule. Chicago and Joliet agree to meet on the following schedules for each of the following purposes:

- a. not less than once each month during the term of this Agreement for the purpose of discussions regarding the details of the conceptual terms and conditions of this Agreement other than water rates and charges for inclusion in the Water Supply Agreement; and

- b. at least once a week starting not longer than one week after delivery of comments by Joliet to Chicago pursuant to Section 3.11(b)(i) and continuing for the remaining term of this Agreement.

At each such meeting, representatives of each Party shall participate and be prepared for discussion of the subject matter of the meeting.

#### **SECTION 4. AGREEMENT TERM AND TERMINATION**

- 4.1. This Agreement will be effective upon the approval and execution by both Parties.
- 4.2. This Agreement shall automatically terminate in the event that the Parties do not enter into a Water Supply Agreement by October 31, 2022, unless the Parties agree to a different date.
- 4.3. Upon the date the Parties enter into a Water Supply Agreement, this Agreement will be superseded by the Water Supply Agreement and shall cease to be effective as of said date.
- 4.4. Termination by Joliet. Joliet may terminate this Agreement by giving 30 days' written notice to Chicago in the event of any one or more of the following:
  - a. Chicago has not entered into a final agreement with the Chicago Park District for the transfer of the Durkin Site by July 31, 2021;
  - b. Chicago has failed to meet the requirements of Section 3.7 of this Agreement;
  - c. Chicago has failed to meet the requirements of Section 3.10 of this Agreement;
  - d. Chicago has failed to deliver any one or both of the cost of service studies required by Section 3.11(a) of this Agreement, provided Joliet has entered into a confidentiality agreement regarding such studies;
  - e. Chicago has failed to deliver its required responses to Joliet's comments and questions regarding the studies as required by Section 3.11(b)(ii) of this Agreement;
  - f. Chicago has unreasonably failed to attend and participate in meetings as required by Section 3.12 of this Agreement;
  - g. In the event that Chicago refuses to execute the Water Supply Agreement unless first having material changes made to one or more key terms in the sections of the Water Supply Agreement corresponding to Sections 15 and 17 of this Agreement, the Parties shall jointly retain a mutually acceptable independent, neutral, reputable and qualified mediator in an effort to resolve such issues. If such mediation shall be unsuccessful after a 60-day period during which both Parties have engaged in good faith negotiations, Joliet shall have the right to terminate this Agreement;
  - h. if Joliet determines that it is unable to procure sufficient financing for the New Water Supply Infrastructure; or

- i. if Joliet determines that the 2030 water rate could be substantially different than what was expected based on Joliet's 2020 Alternative Water Source Program Evaluation (as presented to the Joliet City Council in 2021) of DWM as a water source alternative after the Parties complete the comprehensive audit of the cost of service study to be provided pursuant to Section 15.2(b)(i).

4.5. Termination by Chicago. Chicago may terminate this Agreement by giving 30 days' written notice to Joliet in the event of any one or more of the following:

- a. Joliet has failed to meet the requirements of Section 3.7 of this Agreement;
- b. Joliet has failed to deliver comments and questions about any one or both of the cost of service studies as required by Section 3.11(b)(i) of this Agreement;
- c. Joliet has unreasonably failed to attend and participate in meetings as required by Section 3.12 of this Agreement; or
- d. In the event that Joliet refuses to execute the Water Supply Agreement unless first having material changes made to one or more key terms in the sections of the Water Supply Agreement corresponding to Sections 15 and 17 of this Agreement, the Parties shall jointly retain a mutually acceptable independent, neutral, reputable and qualified mediator in an effort to resolve such issues. If such mediation shall be unsuccessful after a 60-day period during which both Parties have engaged in good faith negotiations, Chicago shall have the right to terminate this Agreement.

4.6. Termination Costs.

- a. Paid by Chicago. In the event that this Agreement is terminated by Joliet pursuant to Section 4.4(a)-(g) above, as applicable, Joliet shall be reimbursed by Chicago for the following out-of-pocket costs incurred by Joliet during the term of this Agreement prior to such termination (which shall not include the cost of internal Joliet personnel):
  - i. costs for professional services and associated costs for preliminary design and field investigation in connection with the New Water Supply Infrastructure;
  - ii. costs for professional services in connection with preparing and negotiating the Water Supply Agreement;
  - iii. costs in connection with the acquisition of real estate or other interests in land for the New Water Supply Infrastructure, including without limitation appraisals, Phase I environmental studies, title searches and title insurance, surveys and reasonable attorneys' fees; and
  - iv. costs for water testing and sampling described in Section 3.10 of this Agreement.

Any other costs not included in subsections i-iv above for which Joliet would seek reimbursement shall be mutually agreed by the Parties prior to being incurred by Joliet.

- b. Paid by Joliet. In the event that this Agreement is terminated by Joliet pursuant to Section 4.4(h) above, or if Chicago terminates this Agreement pursuant to Section 4.5, Joliet shall reimburse Chicago for the following out-of-pocket costs incurred by Chicago during the term of this Agreement prior to such termination (which shall not include the cost of internal Chicago personnel):
- i. costs in connection with the transfer of the Durkin Site from the Chicago Park District, such as an appraisal or Phase I environmental study of the Durkin Site or title insurance and, if Chicago elects to sell the real estate purchased from the Chicago Park District within two years after the date of termination of this Agreement, Joliet will reimburse Chicago for any loss in value of the real estate in an amount equal to the difference between the price Chicago paid for the real estate and the price for which Chicago sells the real estate, but in no event an amount that is more than ten percent of the appraised value of the real estate;
  - ii. costs for professional services for design and field investigation on the Southwest Pumping Station Site in connection with the Tunnel Connection;
  - iii. costs for water testing and sampling described in Section 3.10 of this Agreement incurred by Chicago, if any;
  - iv. costs for professional services in connection with preparing and negotiating the Water Supply Agreement; and
  - v. costs for professional services for coordination by Chicago with Joliet on the design of the rest of the Project Elements to be located on the Southwest Pumping Station Site and the Durkin Site.

Any other costs not included in subsections i-v above for which Chicago would seek reimbursement shall be mutually agreed by the Parties prior to being incurred by Chicago.

- c. In the event that this Agreement is terminated by Joliet pursuant to Section 4.4(i) above, neither Party shall be required to pay any costs to the other Party due to the termination.

4.7. The Parties agree that this Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party.

## **SECTION 5. WATER SUPPLY AGREEMENT—TERM**

5.1. The Parties agree that the initial term of the Water Supply Agreement, to be adopted by and approved by both the Chicago City Council and the Joliet City Council, shall be in force and effect for a term that shall begin on the date of execution of the Water Supply Agreement by both Parties and ending on December 31 of the year that is 100 years from the date of execution, unless a shorter term is required by law or a different term is mutually agreed by the Parties (“Initial Term”), or as otherwise provided in this Agreement.

5.2. Chicago and Joliet agree that the Water Supply Agreement will automatically renew for successive 10-year terms to the extent permitted by law (each a “Renewal Term” and together with the Initial Term, the “Term”), unless (a) either Party provides to the other Party a notice of its intent not to renew the Water Supply Agreement pursuant to Section 5.3 below, or (b) a longer or shorter period for any Renewal Term is mutually agreed by the Parties.

5.3. Chicago and Joliet shall provide written notice to the other Party of its intent not to renew the Water Supply Agreement for any Renewal Term not later than January 1 of the fifth calendar year before the end of the Initial Term or of each Renewal Term, as applicable. Notice under this Section shall be given via certified mail, return receipt requested, and if desired by the Parties, may also be given by electronic communications, such as facsimile or email.

5.4. If Joliet determines that: (a) all of the real estate necessary to perform the Water Supply Agreement is not able to be obtained on mutually acceptable terms, or (b) if Joliet is unable to procure sufficient financing for the New Water Supply Infrastructure as described in Section 11.3(b), then Joliet may terminate the Water Supply Agreement by giving 30 days’ written notice to Chicago.

5.5. In the event that Joliet terminates the Water Supply Agreement pursuant to Section 5.4 prior to the Targeted Water Delivery Date, Joliet shall reimburse Chicago for out-of-pocket costs incurred by Chicago in the following categories during the term of the Water Supply Agreement prior to such termination (which shall not include the cost of internal Chicago personnel):

- a. costs for professional services for design and field investigation and construction management on the Southwest Pumping Station Site in connection with the Tunnel Connection;
- b. costs for professional services for coordination by Chicago with Joliet on the design and construction management of the rest of the Project Elements to be located on the Southwest Pumping Station Site and the Durkin Site; and
- c. costs in connection with any construction related to the Tunnel Connection, the Tunnel Extension and the Low Service Pump Station.

These categories of costs, and how to address unanticipated costs, will be further detailed as mutually agreed by the Parties and included in the Water Supply Agreement, and will include costs incurred between the effective date of the Water Supply Agreement and the date of Joliet’s termination of the Water Supply Agreement.

5.6. Chicago and Joliet agree that the Water Supply Agreement may be terminated by Joliet, for any reason in its sole discretion, at any time during the Term of the Water Supply Agreement so long as it is after the end of the first 50 years of the Initial Term, by providing written notice to Chicago of its intent to terminate the Water Supply Agreement not later than January 1 of the fifth calendar year before the date on which Joliet intends that the Water Supply Agreement be terminated. Notice under such action shall be given via certified mail, return receipt requested, and if desired by the Parties, may also be given by electronic communications, such as facsimile or email.

5.7. The Parties will negotiate certain provisions relating to the termination or non-renewal of the Water Supply Agreement requiring the removal of a portion or all of the New Water Supply

Infrastructure constructed and installed by Joliet on the Southwest Pumping Station Site or the Durkin Site (“New Water Supply Infrastructure Removal”). Said New Water Supply Infrastructure Removal provisions shall include, but not be limited to, the following: (a) the terms under which each Party shall be responsible for (i) the physical removal of all or a portion of the New Water Supply Infrastructure Removal, and (ii) the payment for all or a portion of costs of the New Water Supply Infrastructure Removal; (b) the specific Project Elements to be removed; and (c) the timeframe for completion of the New Water Supply Infrastructure Removal.

## **SECTION 6. WATER SUPPLY AGREEMENT—AMENDMENTS DURING THE TERM**

6.1. Upon the agreement of both Parties, certain provisions of the Water Supply Agreement may be modified or amended during its Term. No such amendment or modification shall be effective unless made in writing and executed by both Parties.

6.2. The Parties agree that the Water Supply Agreement will provide that Joliet may cause negotiations regarding the terms of the Water Supply Agreement on and after the end of the first 50 years of the Initial Term by providing written notice to Chicago of its intent to commence negotiations regarding the terms of the Water Supply Agreement (“Reopening”). Notice of such action shall include the proposed subject matter of the amendment or amendments to, and the potentially affected provisions of, the Water Supply Agreement and shall be given via certified mail, return receipt requested, and if desired by the Parties, may also be given by electronic communications, such as facsimile or email. Should Joliet request Reopening, Joliet and Chicago shall promptly commence negotiations towards determination of the proposed amendment or amendments. Such negotiations shall be limited to consideration of the subject matter of the amendment or amendments to the Water Supply Agreement proposed in the written notice submitted by Joliet, and may result in an agreement that no change should be made in the Water Supply Agreement.

## **SECTION 7. WATER SUPPLY AGREEMENT—PURCHASE AND SALE OF WATER**

7.1. Not later than the Targeted Water Delivery Date, Chicago shall furnish Joliet with Water which Joliet shall supply to the Joliet Customers. Provisions with respect to the sale of Water to Joliet for use outside Joliet’s corporate limits, including sale to Joliet Retail Outside Customers and Subsequent Purchasers, will be addressed in the Water Supply Agreement.

7.2. Joliet may also supply Water to Subsequent Purchasers within 35 miles of Joliet’s corporate limits, but in no event shall Joliet supply Water to Subsequent Purchasers that do not have an allocation permit from IDNR for Lake Michigan Water pursuant to the Level of Lake Michigan Act, 615 ILCS 50/1 *et seq.* (“Level of Lake Michigan Act”).

7.3. The Parties will review the areas outside of the corporate limits of Joliet that are, or are proposed to be, supplied Water by Joliet and the locations of the Joliet Retail Outside Customers and Subsequent Purchasers, and the Parties will mutually agree on language describing such areas, customers and purchasers for inclusion in the Water Supply Agreement.

7.4. Joliet shall obtain a permit for an allocation of Lake Michigan Water from IDNR, or any successor agency, pursuant to the Level of Lake Michigan Act and regulations promulgated thereunder, for all Water to be supplied to Joliet by Chicago.

## **SECTION 8. WATER SUPPLY AGREEMENT—QUANTITY OF WATER**

8.1. The Water supplied to and drawn by Joliet from the Chicago Water System shall be at a uniform rate during the 24 hours of each day at the Point of Demarcation. The Chicago Service Valve shall be under the sole and complete control of Chicago.

8.2. The Annual Average Daily Amount, Maximum Hourly Rate of Withdrawal and Minimum Annual Volume shall be determined by the Parties and will be as defined in the Water Supply Agreement. The Annual Average Daily Amount, Maximum Hourly Rate of Withdrawal and Minimum Annual Volume shall take into account the water supply needs of the Joliet Customers. The Parties have discussed that the maximum day demand of the Joliet Customers will be in a range between 30 million gallons per day (“MGD”) and 95 MGD (“Range”) and Chicago acknowledges and agrees that the Chicago Water System has sufficient current capacity to supply Water to the Joliet Customers in amounts within the Range and that it will continue to have sufficient capacity to supply Water to the Joliet Customers in amounts within the Range during the anticipated Term of the Water Supply Agreement. For water supply quantities in excess of the Range, the Parties agree to include in the Water Supply Agreement a process by which the Parties will evaluate and negotiate those additional or future water supply needs in light of the feasibility of providing such additional supply, based on the capacity of the Chicago Water System at that time and, where possible, such improvements as may be necessary to make it feasible to provide such additional supply.

8.3. Joliet shall provide Chicago with an annual report of the total average daily amount, maximum hourly rates of withdrawal and annual volume for the Joliet Customers, including Joliet Retail Customers and Joliet Retail Outside Customers, and each of the Subsequent Purchasers based on the annual period for which IDNR requires submission of annual Water use by Water permit holders. As of the date of this Agreement, the annual period is October 1 through the following September 30. Joliet shall provide this information for each reporting year during the Term no later than February 1 following each reporting year.

## **SECTION 9. WATER SUPPLY AGREEMENT—QUALITY OF WATER**

9.1. Chicago shall supply Joliet with Water of a quality commensurate with that furnished to its consumers within the Chicago limits, the Water quality being consistent with the applicable standards of any federal, State or local agency with jurisdiction over public water supplies.

9.2. Throughout the Term of the Water Supply Agreement, Chicago will take action, including without limitation treatment with appropriate chemicals such as activated carbon, to remove unpleasant tastes and odors in the Water and to ensure that the Water quality meets the secondary maximum contaminant level (MCL) for taste and odor as established by the United States Environmental Protection Agency National Secondary Drinking Water Regulations and also is consistent with the applicable standards of any federal, State or local agency with jurisdiction over public water supplies.

9.3. Joliet shall be responsible for maintaining the Water quality at all points beyond the Point of Demarcation in a manner consistent with the applicable standards of any federal, State or local agency with jurisdiction over public water supplies.

9.4. The Chicago Water System shall be safeguarded by means of an air gap at the Suction Well, which shall be designed and constructed to conform to the standards of DWM, as well as all applicable local, State and federal laws and regulations.

9.5. The Parties agree to develop a plan of mutual notice in the event of:

- a. any failure of the Water to meet the applicable standards of any federal, State or local agency with jurisdiction over public water supplies, or if the Water exhibits changes in taste, odor, texture or appearance; and
- b. an emergency due to a failure, malfunction or catastrophic event that will materially impact the quality of Water supplied by Chicago to Joliet.

9.6. Water Source Transfer Plan. The Water Supply Agreement shall provide that: (i) Chicago agrees to provide assistance to Joliet in connection with the completion of its water source transfer testing plan to enable a smooth transition from well water to Lake Michigan water for Joliet, and (ii) Joliet shall pay the costs relating to water sampling and testing, all as more fully described in Section 3.10 of this Agreement.

#### **SECTION 10. WATER SUPPLY AGREEMENT—TITLE TO WATER**

Joliet shall take title to the Water at the Point of Demarcation.

#### **SECTION 11. WATER SUPPLY AGREEMENT—NEW WATER SUPPLY INFRASTRUCTURE**

11.1. Coordinated Approach to the New Water Supply Infrastructure.

- a. Chicago and Joliet shall negotiate an arrangement whereby the Parties shall establish a coordinated approach to the financing, planning, design and construction of the Parties' respective Project Elements and setting out certain goals of the Parties in connection with said financing, planning, design and construction. For this purpose, the Water Supply Agreement shall require preparation of a Planning, Design and Construction Coordination Plan, as well as additional terms regarding the financing, planning, design and construction of the Project Elements necessary for Chicago to deliver Water to Joliet.
- b. Joliet is responsible for the financing, planning, design and construction of the New Water Supply Infrastructure located outside the corporate limits of Chicago, and agrees to provide periodic updates to Chicago regarding the status thereof. In addition, Joliet will be responsible for the ongoing ownership, operation and maintenance of the New Water Supply Infrastructure located outside the corporate limits of Chicago.

11.2. Ownership, Operation and Maintenance of the Project Elements. Each of the Parties will own, operate and maintain those Project Elements designated for such Party as listed below, unless otherwise mutually agreed by the Parties:

- a. Chicago will be the owner and operator of, and responsible for maintenance of, the Tunnel

Connection, the Tunnel Extension, the Low Service Pump Station and the Chicago Service Valve.

- b. Joliet will be the owner and operator of, and responsible for maintenance of, the Meter Vault, the Suction Well, the High Service Pump Station and the Transmission Main-Chicago.

11.3. Financing the New Water Supply Infrastructure in Chicago.

- a. In connection with the Water Supply Agreement, the Parties agree to negotiate the responsibilities of the respective Parties with respect to obtaining financing for certain of the Project Elements. Unless otherwise mutually agreed by the Parties, Chicago shall obtain financing for the Tunnel Connection, the Tunnel Extension, the Low Service Pump Station and the Chicago Service Valve and Joliet shall obtain financing for the Meter Vault, the Suction Well, the High Service Pump Station and the Transmission Main-Chicago. In connection with the Water Supply Agreement, the Parties agree to further discuss issues pertaining to financing and payment mutually beneficial to both Parties.
- b. In the event that Chicago is unable to procure sufficient financing for the Chicago New Water Supply Infrastructure, Joliet may elect to procure financing for the Chicago New Water Supply Infrastructure. In the event that Joliet is unable to procure financing for the New Water Supply Infrastructure, Chicago may explore the option of providing financing to Joliet for the New Water Supply Infrastructure if requested by Joliet, and Joliet may consider but is not obligated to approve such financing by Chicago.

11.4. Planning, Design, and Construction Coordination Plan. Chicago and Joliet agree to work together on the planning, financing, design and construction of the Project Elements at the Southwest Pumping Station Site and the Durkin Site. The Parties intend to enter into a Planning, Design, and Construction Coordination Plan which shall set forth certain provisions with respect to the following including, but not limited to: (a) the Parties' roles with respect to each Project Element; (b) design standards; (c) milestones for Project Element design and construction; (d) milestones for financing of the Project Elements; (e) milestones for completion of each of the Project Elements; and (f) milestones for the delivery of Water to Joliet; all to be consistent with the goal of delivery of Water to Joliet by the Targeted Water Delivery Date. The Water Supply Agreement and the Planning, Design and Construction Coordination Plan, as appropriate, shall include a description of the rights and duties of the Chicago and Joliet project site representatives, including serving as the applicable Party's representative on site to help coordinate and monitor construction.

11.5. Design, Contracting, Construction and Construction Management of Project Elements; Approvals and Permits.

- a. Each Party shall be responsible for the design, construction contracting, construction and construction management of the Project Elements for which such Party is responsible under the Water Supply Agreement, and shall obtain, and ensure that all contractors and subcontractors obtain, all applicable design and construction approvals, permits and authorizations necessary for such Party's respective components of the design and construction from such local, State and federal agencies, including but not limited to the IEPA, as have jurisdiction over the sites on which such Party's respective components of

the Project Elements are located.

- b. The Parties intend that each Party shall be responsible for the following Project Elements:
  - i. Chicago: Tunnel Connection.
  - ii. Joliet: Tunnel Extension, Low Service Pump Station, Chicago Service Valve, Meter Vault, Suction Well, High Service Pump Station and Transmission Main-Chicago.
- c. Joliet agrees and acknowledges that, when contracting for any of the Project Elements primarily located on the Southwest Pumping Station Site or the Durkin Site, Joliet shall conduct bidding for and award of those contracts pursuant to the laws applicable to Chicago, including the Municipal Purchasing Act for Cities Over 500,000, 65 ILCS 5/8 -10-1 et seq., as well as Chapter 2-92 of the Municipal Code of Chicago (“Municipal Code”), and shall include in any solicitation the requirements therein, including but not limited to: (i) provisions with respect to Chicago resident construction worker employment requirements under Section 2-92-330 of the Municipal Code; (ii) the minority-owned and women-owned business enterprise procurement program under Section 2-92-420 et seq. of the Municipal Code; (iii) the minority-owned and women-owned business enterprise construction program under Section 2-92-650 et seq. of the Municipal Code; and (iv) all other applicable Chicago laws, regulations and policies. Joliet agrees to contractually obligate its general contractor and all subcontractors to comply with said requirements and shall coordinate with Chicago to ensure compliance with said requirements.
- d. Chicago shall coordinate and collaborate with Joliet, and support and assist Joliet in its efforts, to obtain any approvals, permits and authorizations necessary for the construction and operation of the Project Elements (other than the Tunnel Connection). Joliet will coordinate and collaborate with Chicago in its efforts in relation to the Tunnel Connection.
- e. Chicago shall charge Joliet only the applicable standard fees under the Municipal Code in connection with any permits, approvals and other items required to design, construct, and operate the Project Elements for which Joliet is responsible under the Water Supply Agreement.

11.6. Operational Requirements. The Parties shall negotiate and agree to certain operational requirements relating to the New Water Supply Infrastructure including, but not limited to requirements with respect to each Party’s access to its respective Project Elements (including access during an emergency); requirements with respect to security for the Project Elements; requirements relating to retaining the Project Elements in the location where initially installed; and requirements relating to the protection from damage to or interference with the Project Elements.

11.7. Operational Standards. The New Water Supply Infrastructure shall generally conform in its operation and operational standards to the Water Supply Agreement, as well as all applicable local, State and federal laws and regulations, including without limitation the IEPA regulations in Title 35 of the Illinois Administrative Code.

**SECTION 12. WATER SUPPLY AGREEMENT—REAL ESTATE MATTERS**

12.1. The Parties agree that Chicago will grant to Joliet, subject to approval by the Chicago City Council, the necessary easements, access rights and other necessary property interests on the Southwest Pumping Station Site for the construction and permanent placement of the Project Elements to be owned by Joliet and for the construction of the Project Elements to be constructed by Joliet and owned by Chicago. The terms and provisions of the easements and other property interests shall be mutually acceptable to Joliet and Chicago.

12.2. Chicago and Joliet agree to coordinate in discussions and negotiations with the Chicago Park District to obtain and enter into the agreements necessary for the Parties to implement the Water Supply Agreement, including, without limitation, each of the following:

- a. Subject to referral to the Chicago Plan Commission and approval by the Chicago City Council, for Chicago to obtain title to that portion of the Durkin Site from the Chicago Park District that is necessary for the construction and permanent placement of the Suction Well on the Durkin Site;
- b. Subject to approval by the Chicago City Council, for Chicago to grant to Joliet the necessary easements, access rights and other necessary property interests on the Durkin Site for the construction and permanent placement, operation and replacement of, and regularly scheduled and/or emergency inspection, repair and maintenance of the Suction Well, and for the construction of any Project Elements constructed by Joliet and owned by Chicago, with the terms and provisions of the easements and other property interests to be mutually acceptable to Joliet and Chicago; and
- c. If requested by the Chicago Park District for purposes of maintaining the surface of the Durkin Site as public parkland, subject to approval by the Chicago City Council, Chicago shall negotiate with the Chicago Park District, the terms of a lease, license, easement or other real property interest in the surface of the Durkin Site between Chicago and the Chicago Park District. The terms and provisions of any such document or interest shall be such that it shall not allow any activities that would interfere with the Suction Well on the Durkin Site, the provision of Water by Chicago to Joliet and Joliet's provision of Water to the Joliet Customers. Similarly, the terms and provisions of the easements and other property interests referenced in Section 12.2(b) shall be such that they would not allow any activities (other than Joliet's operation and replacement of, and regularly scheduled and/or emergency inspection, repair and maintenance of the applicable portion of the Project Elements) that would interfere with the Chicago Park District's use and enjoyment of the surface of the Durkin Site as public parkland.

**SECTION 13. WATER SUPPLY AGREEMENT—WATER SUPPLY SHUT-OFF OR RESTRICTION DUE TO MAINTENANCE AND EMERGENCY**

13.1. Joliet understands that as part of Chicago's operation of its Water System, Chicago will perform routine maintenance on the Chicago Water System, and it is also understood that Chicago will perform such routine maintenance within a timeframe consistent with the Water storage capacity of Joliet and its Subsequent Purchasers. If Chicago believes it cannot do so within such timeframe, Chicago will

notify Joliet and the Parties will discuss how to resolve the issue. The Parties agree to develop, and to include in the plan required in Section 13.3, a plan of mutual coordination of such maintenance and advance notice to the extent possible with respect to such maintenance of the Chicago Water System that will materially impact the Water supply to Joliet as agreed upon in the Water Supply Agreement.

13.2 If, from time to time and for any reason, including extended maintenance, emergency, failure or malfunction in the Chicago Water System, Chicago is unable to furnish in full the quantities of Water to be furnished to Joliet, Chicago shall use due diligence to operate the Chicago Water System during any such occurrence to provide Water to Joliet insofar as practicable and shall, as promptly as possible, take such actions, including making and expediting repairs or adjustments, as are necessary to restore delivery to Joliet of the Water to be furnished under the Water Supply Agreement.

13.3. The Parties agree to develop a plan of mutual notice in the event of any routine maintenance, extended maintenance, or any emergency due to a failure, malfunction, maintenance or catastrophic event, that will materially impact the Water supply to Joliet and the ability of Chicago to supply Water to Joliet.

#### **SECTION 14. WATER SUPPLY AGREEMENT—STORAGE CAPACITY**

14.1. Joliet shall ensure that Joliet maintains, and shall ensure that each of its Subsequent Purchasers maintains, sufficient water storage capacity, to be determined by the Parties based on the State Water allocations in each of their distribution systems (not including transmission system storage), in an amount not less than twice the annual daily average allocation of Water as authorized by IDNR, as adjusted and amended from time to time, for Joliet and each of its Subsequent Purchasers, respectively. All reservoirs and storage tanks provided by Joliet’s and any Subsequent Purchasers’ water systems shall be considered in meeting their individual storage requirement.

14.2. Notwithstanding the storage capacity requirements in this Section 14, Joliet understands that Joliet and the Subsequent Purchasers should have access to alternate sources of water in the event of extended maintenance or in the event of an emergency whereby the Water supply from Chicago is restricted for a period in excess of two (2) days.

14.3. Joliet shall submit an annual report of Joliet’s total storage capacity and the storage capacity of any Subsequent Purchasers’ water systems.

#### **SECTION 15. WATER SUPPLY AGREEMENT—RATES**

##### **15.1. Wholesale Rate.**

- a. Establishment. The charges for Water furnished to Joliet shall be at the rate (“Uniform Water Rate”) fixed for large quantities of Water furnished through meters to customers inside Chicago limits and on a wholesale basis to suburban communities served by Chicago, said rate being fixed and adjusted from time to time by ordinance, with a credit or debit equal to the difference between the amount charged as the previous year’s Uniform Water Rate and the actual cost of service incurred by Chicago in the previous year in providing Water service to Joliet based on the results of an annual cost of service study, which study is prepared pursuant to, and meets the standards of, Section 15.2. The

Water Supply Agreement will provide mutually agreed-upon terms for the application of the credit or debit to the invoices for Water provided to Joliet, which shall include the following and which will be subject to Section 15.1(b) and (c):

1. for each year, an estimated credit or debit for that year's projected cost of service based on the prior year's actual cost of service, except for the first year of service, in which the projected cost of service shall be based on an estimate of the prior year's cost of service;
2. for each year, a true-up adjustment for the difference between the projected cost of service and the actual cost of service for the prior year; and
3. provisions for true-up adjustments that shall include the actual cost of service, volume of Water purchased, audited financial information when available and other mutually agreed-upon items.

Chicago and Joliet agree that the initial rate to be charged by Chicago to Joliet for the first delivery of Water by Chicago to Joliet shall not exceed the water rate calculated pursuant to the audited 2019 cost of service study adjusted to the year of first delivery of Water in accordance with the water rate calculation methodology as described in Section 15.1(b), but which water rate increase limitations will only apply to growth in costs attributable to the following: administration (including pension expenses that can be attributed pursuant to this Agreement) and capital expenditures, commodity costs and personnel expenses (including pension expenses that can be attributed pursuant to this Agreement) related to Dunne/68<sup>th</sup> Street Crib, Eugene Sawyer Purification Plant, and South Tunnel Zone, and subject to Section 15.4 and Section 19. Any other factors (such as but not limited to Peaking Factor and Average Day Demand) which may cause the rate in the year of the first delivery of Water to increase above these rate caps will be mutually agreed to by the Parties in the Water Supply Agreement.

- b. Charged AWWA Rate. Each year at the time agreed upon pursuant to Section 15.2(c), the rate actually charged to Joliet in a given year ("Charged AWWA Rate") shall be adjusted to be equal to the lowest of the amounts determined by the three water rate calculation methods below, exclusive of the Annual True-Up in section 15.1(c):
  1. *Cost of Service Water Rate*. The Projected AWWA Rate for the next rate year based on the cost of service study that determines the actual cost of service for the previous year.
  2. *Inflation Index Water Rate*. A rate to be determined as follows:
    - i. For the calculation of the Inflation Index Water Rate imposed during the 11<sup>th</sup> year of water service, the Inflation Index Water Rate is determined by multiplying the Audited AWWA Rate ("AAR"; defined below) calculated for the first year of water service by the change in the CPI (defined below) in the first year of service, expressed as a decimal, plus one:

$$\text{Year 1 AAR} \times (1 + \text{Year 1 CPI}) = \text{Interim AAR1}$$

Then multiplying the product, referred to as the Interim AAR1, by the change in the CPI in the second year of water service, expressed as a decimal, plus one:

$$\text{Interim AAR1} \times (1 + \text{Year 2 CPI}) = \text{Interim AAR2}$$

Then continuing in similar fashion by multiplying the resulting Interim AAR by the change in the CPI expressed as a decimal plus one in each subsequent year of water service up to and including for the tenth year of water service to determine the Inflation Index Water Rate for Year 11:

$$\text{Interim AAR9} \times (1 + \text{Year 10 CPI}) = \text{Year 11 Inflation Index Water Rate}$$

- ii. For the calculation of the rate imposed during the 12<sup>th</sup> and subsequent years of water service, the Inflation Index Water Rate shall be determined in a similar manner, starting with the Capped Audited AWWA Rate (“CAAR”) that is calculated for the year that is ten years prior to the new service year and multiplying it by the change in the CPI in that first year of the prior ten years of service, expressed as a decimal, plus one; for example, for service year 12, the calculations start as follows:

$$\text{Year 2 CAAR} \times (1 + \text{Year 2 CPI}) = \text{Interim CAAR1}$$

Then multiplying the product, referred to as the Interim CAAR1, by the change in the CPI in the third year of water service, expressed as a decimal, plus one:

$$\text{Interim CAAR1} \times (1 + \text{Year 3 CPI}) = \text{Interim CAAR2}$$

Then continuing in similar fashion by multiplying the resulting Interim CAAR by the change in the CPI in expressed as a decimal plus one each subsequent year of water service for a total of ten years of water service to determine the Inflation Index Water Rate for Year 12:

$$\text{Interim CAAR9} \times (1 + \text{Year 11 CPI}) = \text{Year 12 Inflation Index Water Rate}$$

- iii. For the calculation of the rate caps imposed during the 2<sup>nd</sup> year of water service through the 10<sup>th</sup> year of water service, the Inflation Index Water Rate calculated for each year shall be determined in similar manner, starting with the Audited AWWA Rate calculated for the first service year and multiplying it by change in the CPI in the first service year, expressed as a decimal, plus one:

$$\text{Year 1 AAR} \times (1 + \text{Year 1 CPI}) = \text{Interim AAR1}$$

And continuing in similar fashion by multiplying the resulting Interim AAR by the change in the CPI expressed as a decimal plus one for the number of preceding service years that will have been completed prior to the water service year for which the rate cap is being calculated.

- iv. CPI shall mean and refer to Consumer Price Index—Urban Wage Earners and Clerical Workers (“Chicago All Items) (commonly referred to as “CPI-W” or as “CPI” in this Agreement), as published by the U.S. Department of Labor, Bureau of Labor Statistics, (1982-1984=100).
3. *Fixed Limit Water Rate.* The Audited AWWA Rate calculated for the year prior to the year for which a rate is being calculated multiplied by 105%.

The Charged AWWA Rate under this Section shall apply, as determined pursuant to this Section 15.1(b), except as provided in Section 15.4 of this Agreement. To the extent that the necessary audited or inflation information is not available to calculate the Charged AWWA Rate, then the most recent available information will be used or the Parties will meet and confer to determine the proposed changes necessary to calculate the Charged AWWA Rate.

- c. Annual True-Up. Each year at the time agreed upon pursuant to Section 15.2(c), the Audited AWWA Rate for the prior year shall be adjusted pursuant to the lowest of the amounts determined by the three adjustment options below, which shall be referred to as the “Capped Audited AWWA Rate” for that year:
  1. The Audited AWWA Rate;
  2. Inflation Index Water Rate as described in Section 15.1(b)(2); and
  3. Fixed Limit Water Rate as described in Section 15.1(b)(3).

The Capped Audited AWWA Rate under this Section shall apply, as determined pursuant to this Section 15.1(c), except as provided in Section 15.4 of the Water Supply Agreement. To the extent that the necessary audited or inflation information is not available to calculate the Capped Audited AWWA Rate, then the most recent available information will be used or the Parties will meet and confer to determine the proposed changes necessary to calculate the Capped Audited AWWA Rate.

The difference between the Capped Audited AWWA Rate for a given year and the Charged AWWA Rate for that year multiplied by the total consumption by Joliet in that year will be charged to the appropriate Party in the following year (the “Annual True-Up”). If the Capped Audited AWWA Rate for a given year is greater than the Charged AWWA Rate, then Joliet will pay the Annual True-Up to Chicago in the following year. If the Capped Audited AWWA Rate for a given year is less than the Charged AWWA Rate for that year, then Chicago will pay the Annual True-Up to Joliet in the following year. If the difference between the Capped Audited AWWA Rate and the Charged AWWA Rate for a given year is \$0, then Annual True-Up is also \$0 and neither Party

will make a payment. The exact timing and manner of payment of the Annual True-Up will be determined in the Water Supply Agreement.

15.2. Annual Cost of Service Study.

- a. Basis. An annual cost of service study shall be completed by Chicago in accordance with a methodology agreed upon by the Parties in the Water Supply Agreement, based on the then generally recognized principles and practices in the American Water Works Association Manual of Water Supply Practices M1, Principles of Water Rates, Fees, and Charges (“M1 Manual”) with modifications as provided in Section 15.2(e) herein and any other modifications only as mutually agreed. The Parties will identify those portions of the M1 Manual that are applicable to the agreed-upon methodology to be used in the annual cost of service study, which shall be included in the Water Supply Agreement. If the M1 Manual is revised in a manner that either Party believes will affect the agreed-upon methodology for the annual cost of service study, that Party will notify the other Party and the Parties will meet and confer to discuss the proposed revisions and the impact on the calculation of cost of service. The annual cost of service study shall establish the Chicago Water Fund’s annual revenue requirement by the utility-basis approach, and shall allocate such revenue requirements by the commodity-demand method based on the specific facilities used and useful in providing Water service to Joliet. The Parties agree that these specific facilities are: 68<sup>th</sup>/Dunne (South) Crib; Eugene Sawyer Water Purification Plant; South Tunnel Zone; Tunnel Connection and Tunnel Extension; Low Service Pump Station; and Chicago Service Valve. The rate base on which any rate of return on rate base will be calculated under the Water Supply Agreement shall be determined in accordance with the M1 Manual and include the fair value net plant in service, working capital, and construction work in progress.
- b. Timing of Initial Studies.
  - i. The Parties agree that prior to execution of the Water Supply Agreement, Chicago will provide a complete cost of service study to Joliet for comprehensive audit by Joliet in order that the Parties can confer and agree on the methodology to be included in the Water Supply Agreement. As part of this comprehensive audit and any other audit under the Water Supply Agreement, Chicago shall provide to Joliet all information and back-up materials used to perform the study and allow Joliet to make a complete, open-book review of the study, the various elements of operations and maintenance as well as inspection and valuation of all capital facilities included in the study.
  - ii. Chicago will also provide a complete cost of service study to Joliet one year prior to the expected first delivery of Water by Chicago to Joliet for audit by Joliet as described above. The Parties will confer and agree on any differences in the application of the methodology and calculations to allow Joliet to establish its rates to its retail customers and Subsequent Purchasers.

- c. Annual Studies. The Water Supply Agreement will set forth the timing for performance of the annual cost of service study and associated adjustments in Water charges. This will include the manner and timing by which Chicago (i) will periodically make available information on overall rate methodology to the Advisory Council (as defined herein) in order to allow the Advisory Council to review and provide input and feedback; and (ii) will provide Joliet with all information necessary to allow Joliet to complete an open-book review of the result of the study as it relates to Joliet. In addition, Joliet may, at its option, conduct a comprehensive audit of the cost of service study not more often than once every five years, and, in addition, for any year in which the cost of service to Joliet increases by five percent or more over the prior year.

The annual cost of service study will be performed using audited financials in conjunction with other information available:

- i. to determine the actual cost of service to Chicago to provide Water to Joliet for the prior year (“Audited AWWA Rate”); and
  - ii. to estimate what that cost of service to Chicago to provide Water to Joliet will be in the following year ( “Projected AWWA Rate”).
- d. Cost of Service Supporting Information. The Parties acknowledge that as of the date of this Agreement, there is certain information that is not yet available relating to certain elements of the cost of service that are needed to complete the cost of service study and audit. Chicago agrees that to the extent practicable based on the information available to Chicago, Chicago shall provide such information prior to the execution of the Water Supply Agreement, such that the cost of service will be mutually agreed upon based on the information provided. Chicago acknowledges that as part of its annual audits of the City of Chicago Department of Water Management Water Fund beginning no later than December 31, 2027 or such information being recorded such that it is included in the 2028 calendar/fiscal year audit, Chicago shall collect the information as agreed upon by the Parties under the Water Supply Agreement which shall relate to the elements of the cost of service needed to complete the cost of service study and audit.
- e. Limitations on Cost of Service. The Parties acknowledge and agree that Joliet’s cost of service will exclude, without limitation, and to the extent practicable based on the information available to Chicago, the costs incurred by Chicago: (i) to replace the lead water service lines of Chicago’s retail water customers, (ii) to install new or replacement water meters of Chicago’s retail water customers, (iii) to replace Chicago’s water transmission and distribution mains (other than those facilities listed in Section 15.2(a) above), (iv) for administrative and all other functions, activities, costs and expenses performed or incurred by DWM or other Chicago departments that do not directly pertain to the elements of water service and delivery used to provide water service to Joliet, including without limitation items such as retail customer service, retail customer billing, and retail water distribution system mains, (v) to pay any amounts due to Chicago employees who do not perform work that pertains to the elements of water service and delivery used to provide water service to Joliet, including without limitation for wages, salaries, employee benefits, and pension contributions, and (vi) to pay any amounts due

to the pension fund for Chicago employees that are attributable to work performed prior to the date of first delivery of Water to Joliet or any contributions made to that pension fund to cover work performed prior to the date of first delivery of Water to Joliet.

15.3. Resolution of Water Charge Disputes. The Water Supply Agreement will provide a mutually agreed-upon process for review and resolution of any disputes regarding the charges for Water furnished to Joliet.

15.4. Changes Affecting Water Charges.

- a. Process for Review. The Parties will negotiate and agree to a process to be included in the Water Supply Agreement, for use by the Parties to review possible changes in service or circumstances and determine whether and how those changes can be addressed in the charges for Water paid by Joliet. These changes may include: (a) catastrophic events impacting the Chicago Water System, the New Water Supply Infrastructure or the Joliet water system; (b) material changes in the laws and regulations governing the operation of the Chicago Water System and the production and quality of Water provided to Joliet; (c) material changes in the rate structure used by Chicago to establish the Uniform Water Rate; (d) changes in the M1 Manual that may affect the calculation of the annual cost of service study; and (e) other items mutually agreed by the Parties.
- b. Rate Increases Outside of Maximum Increase. Notwithstanding the agreement of the Parties to include a process to be included in the Water Supply Agreement pertaining to possible changes in water charges pursuant to Section 15.4(a), the Parties agree that each annual adjustment to the Charged AWWA Rate and the Capped Audited AWWA Rate as well as the calculation of the Annual True-Up shall be made pursuant to Section 15.1(b) and (c) except for those portions of the cost of service study calculations for the Charged AWWA Rate, the Capped Audited AWWA Rate and the Annual True-Up to the extent that Chicago has incurred costs due to the occurrence of one of the following: (i) catastrophic events caused by Force Majeure impacting the Chicago Water System or the New Water Supply Infrastructure for which there is insufficient commercial insurance to cover any losses incurred (each a “Catastrophic Event”); or (ii) material changes in the laws and regulations governing the operation of the Chicago Water System and New Water Supply Infrastructure and the production and quality of Water provided to Joliet but not including laws and regulations that require additional water treatment where the operational requirement could be met with advanced water treatment technology consisting of ozonation and biologically active granular activated carbon (GAC) filters (each a “Regulatory Change”). In the event of any Catastrophic Event or Regulatory Change under this section, Chicago shall provide notice to Joliet in the manner provided in the Water Supply Agreement and provide such data and information to Joliet to demonstrate the costs Chicago believes it has incurred in connection with the Catastrophic Event or Regulatory Change. The Parties may agree to include additional procedures in the Water Supply Agreement in connection with these exceptions to the annual adjustment to the Charged AWWA Rate and the Capped Audited AWWA Rate and calculation of the Annual True-Up. Chicago and Joliet agree to collaborate and define how fluctuations in the Annual Average Day Demand and Maximum Day Demand (and its effect on peaking factor) affect annual changes in water rates and their treatment

with respect to the Maximum Limit. The Parties agree that such treatment will be reflected in the Water Supply Agreement.

## **SECTION 16. WATER SUPPLY AGREEMENT—ASSIGNMENT**

16.1. The Parties acknowledge that Joliet has engaged in discussions with other municipalities in the southwest suburban region regarding the possibility of forming a regional water commission that would be a separate unit of government created under Illinois law (“Regional Water Commission”).

16.2. Joliet agrees to provide periodic updates to Chicago regarding the status of activities relating to the possible formation of a Regional Water Commission.

16.3. If a Regional Water Commission is established, Joliet may wish to assign the Water Supply Agreement, as well as any real estate agreements related to the Water Supply Agreement to which Joliet is a party, to the Regional Water Commission subsequent to the establishment of the Regional Water Commission (“Assignment”). If Joliet wishes to make the Assignment, prior to said Assignment:

- a. Joliet will provide notice to Chicago of its intent to make the Assignment (“Assignment Notice”) not less than 90 days prior to the date on which Joliet proposes the Assignment will become effective. The Assignment Notice shall include an explanation of the legal status of the Regional Water Commission, its member communities and their respective water supply requirements, as well as anticipated activities by Joliet and/or the Regional Water Commission that are expected or required to occur within 90 days following the proposed effective date for the Assignment.
- b. Joliet and Chicago agree to review the proposed Assignment to determine whether any terms and provisions of the Water Supply Agreement would require: (i) adjustments to be consistent with State law applicable to the Regional Water Commission, including the length of the Term of the Water Supply Agreement; (ii) in light of the water supply requirements of the Regional Water Commission, adjustments related to Water quantity and Subsequent Purchasers; and (iii) adjustments to reflect any other mutually agreed-upon subject, such as provisions regarding the length of the Term of the Water Supply Agreement. Joliet and Chicago agree to promptly and jointly prepare any necessary written amendments to the Water Supply Agreement based on such review (“Assignment Amendments”) and provide the proposed Assignment Amendments to the Regional Water Commission for review within 60 days following the Assignment Notice or provide a written statement to the Regional Water Commission that no amendments are required. The Parties agree to work in good faith with the Regional Water Commission to reach agreement on the Assignment Amendments.
- c. Chicago and Joliet each agree to take such actions as are necessary to promptly approve the Assignment with any agreed-upon Assignment Amendments not less than 90 days after the Assignment Notice, contingent on acceptance of the Assignment with such Assignment Amendments by the Regional Water Commission.

16.4. Other than the Assignment described in Section 16.3 above, the Water Supply Agreement and the duties, obligations and requirements therein, shall not be assigned or transferred by either Party without the prior written consent of the other Party.

16.5. Chicago agrees that it will not sell the Chicago Water System during the Term of the Water Supply Agreement, unless otherwise agreed to by Joliet.

16.6. In the event that, without the prior written consent of Joliet, Chicago: (i) sells, or executes a contract to sell, the Chicago Water System or (ii) assigns, or executes a contract to assign, this Agreement or the Water Supply Agreement, Joliet may exercise any of its rights or remedies at law or in equity.

**SECTION 17. WATER SUPPLY AGREEMENT—THE PARTIES’ COMMITMENT TO TRANSPARENCY AND COLLABORATION**

17.1. Advisory Plan. The Parties agree to collaborate to develop a plan (“Advisory Plan”) that reflects the Parties’ commitment to transparency and collaboration with respect to the long-term relationship of Joliet and Chicago for a reliable supply of Water to Joliet on a cost-effective basis.

17.2. Advisory Council.

- a. Council Membership and Goals. The Parties will collaborate to develop an Advisory Council composed of representatives from Chicago, Joliet, and the other municipalities and entities that are, or are under contract to become, wholesale purchasers of Water from Chicago (with Joliet collectively, the “Members”, individually a “Member”). The primary goals of the Advisory Council will be to (1) obtain meaningful input and feedback from Chicago and the Members regarding the management, operation, and financial aspects, including Water rates and capital investments, of the Chicago Water System, (2) establish standing mechanisms for regular and enhanced communication between Chicago and the Members, (3) collaborate on water supply and water policy issues in northeastern Illinois, and (4) provide a process for the Members to make recommendations for Chicago’s consideration as it relates to the reliable and cost-effective delivery of Water. The Advisory Council’s primary goals as stated herein, and its tasks and functions as stated in this Agreement shall not pertain to Water issues relating to retail customers. Member representatives on the Advisory Council shall be employees or staff of their Member, in order to establish working relationships among the Members and Chicago regarding goals and tasks of the Advisory Council. The Parties agree that the target date for establishing the first Advisory Council is June 30, 2022, or as otherwise agreed to by the Parties. The Advisory Council shall meet at least once during the calendar quarter during the Term.

- b. Advisory Council Tasks. The Water Supply Agreement will provide that tasks assigned to the Advisory Council shall be generally in furtherance of the goals described in Section 17.2(a) of this Agreement and shall include, without limitation, those listed in Attachment A attached hereto and incorporated herein, and shall provide that Chicago shall devote the necessary resources to supporting the activities of the Advisory Council and intends to dedicate one employed staff member for said purpose. Chicago's Chief Financial Officer ("CFO") and the Commissioner of DWM shall share the responsibilities of collaboration with the Advisory Council. Any non-public information provided to the Advisory Council shall be used by the Advisory Council in accordance with applicable law, as well as the provisions under any non-disclosure or confidentiality agreements that Chicago may require to be executed by the Members of the Advisory Council, and to the extent authorized by applicable law. In the event of a future vacancy in the position of Commissioner of DWM, Chicago will appoint a new Commissioner of DWM with the qualifications to lead the operation and management of DWM in a way that it continues to provide quality Water to all of the customers of the Chicago Water System. In all decision-making, DWM will follow its mission of protecting the public health in the most environmentally and fiscally responsible manner by delivering a sufficient supply of exceptional quality Water and efficiently managing waste and stormwater.
- c. Advisory Council Voting. The Advisory Council will vote to make recommendations for Chicago's consideration. For votes concerning the Chicago Water System as a whole, each Member will have voting rights allocated based on its proportionate share of total Water allocations for all wholesale Customers of the Chicago Water System. For votes concerning aspects of the Chicago Water System that affect or serve only a portion of the Members, each of the affected Members will have voting rights based on its proportionate share of total Water allocations of those Members. Criteria to determine whether or not Members are "affected" Members shall be developed by the Parties. The votes of Chicago alone will not be sufficient to establish a majority or supermajority vote. The Parties shall collaborate on specifying in the Advisory Plan the details as to Members' voting rights and the appropriate occasions for such votes.
- d. Action on Recommendations. The Advisory Council shall provide its recommendations to the Commissioner of DWM and a copy to the CFO. Members that disagree with any majority recommendations may submit a minority report or recommendation to the Commissioner of DWM and a copy to the CFO stating their positions on the matter. Within 90 days after receipt of any recommendation, the Commissioner of DWM shall notify the Advisory Council in writing whether the Commissioner of DWM will accept and implement the recommendation, reject the recommendation without implementation, or accept in part and reject in part, and the reasons for the action. If a recommendation of the Advisory Council is rejected by the Commissioner of DWM, the Commissioner of DWM shall report said recommendation to members of the Chicago City Council and Chicago shall notify the Members of the Advisory Council that a report of such a recommendation has been filed with the members of the Chicago City Council.

- e. Advisory Council Working Groups. The Advisory Council may establish certain specific goals, and may establish working groups necessary in order to execute specific goals (collectively, “Working Groups” and each separate group a “Working Group”). Working Groups shall meet when necessary based on pending work and matters referred to them, and may make recommendations to the Advisory Council. Members may appoint individuals to Working Groups, based upon the individual’s relevant expertise on the subject matter considered in each Working Group.

17.3. Chicago Staff Liaisons. The Water Supply Agreement will include language continuing the practice of designated key staff liaisons from Chicago to Joliet as described in Section 3.7 of this Agreement.

17.4. Chicago Support. The Water Supply Agreement will include language continuing the type of support and assistance by Chicago to Joliet in Joliet’s efforts to implement the Water Supply Agreement as described in Section 3.8 of the Preliminary Agreement.

17.5. Regional Collaboration. Chicago is committed to deepening regional cooperation and collaboration by exploring the future possibility of a more formalized regional water structure on issues relating to water system and water supply operation, maintenance, improvements and rate-setting.

## **SECTION 18. INDEMNIFICATION**

18.1. The Parties agree that the Water Supply Agreement will include appropriate language to address the allocation of certain risks in this transaction, and that the Parties will reach mutual agreement on a provision establishing the scope and process for indemnification and holding each other harmless with respect to the Water Supply Agreement.

18.2. Joliet shall, to the extent permitted by law, indemnify, keep and save harmless Chicago, its agents, officials, and employees, against all losses, damages, claims, suits, liabilities, judgments, costs and expenses, including costs described in and due pursuant to Section 4.6(b) of this Agreement, which may anyway accrue against Chicago as a consequence of this Agreement or which may in anyway result therefrom.

18.3. Chicago shall, to the extent permitted by law, indemnify, keep and save harmless Joliet, its agents, officials, and employees, against all losses, damages, claims, suits, liabilities, judgments, costs and expenses, including costs described in and due pursuant to Section 4.6(a) of this Agreement, which may anyway accrue against Joliet as a consequence of this Agreement or which may in anyway result therefrom.

## **SECTION 19. FORCE MAJEURE**

19.1. The term “Force Majeure” as used in this Agreement shall mean the event caused by acts of God, and other events including but not limited to material damage or destruction by fire or other casualty, acts of terrorism, riots, demonstrations, pandemics, and other events or conditions beyond the reasonable anticipation or control of the Party affected, which in fact interferes with the ability of such Party to discharge its obligations under this Agreement.

19.2. The Party affected by Force Majeure shall, upon the occurrence of the Force Majeure event, immediately give written notice and full particulars of such Force Majeure event to the other Party.

19.3. The obligation of the Party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability claimed, but no longer.

**SECTION 20. NOTICE**

For purposes of this Agreement, unless otherwise specified, any notice, demand or request required hereunder 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) overnight courier; or (d) registered or certified, first class mail, return receipt requested.

If to Chicago:

City of Chicago  
Department of Water Management – Commissioner’s Office  
1000 East Ohio Street  
Chicago, Illinois 60611  
Attention: Acting Commissioner  
Email: andrea.cheng@cityofchicago.org

With a copy to:

City of Chicago  
City Hall  
121 North LaSalle Street -7<sup>th</sup> Floor  
Chicago, Illinois 60602  
Attention: Chief Financial Officer  
Email: Jennie.Bennett@cityofchicago.org

With a copy to:

City of Chicago  
Department of Law  
121 North LaSalle Street -6<sup>th</sup> Floor  
Chicago, Illinois 60602  
Attention: Finance and Economic Development Division  
Email: James.McDonald@cityofchicago.org

If to Joliet:

City of Joliet  
150 West Jefferson Street  
Joliet, Illinois 60432  
Attention: Director of Public Utilities  
Email: [aswisher@joliet.gov](mailto:aswisher@joliet.gov)

With a copy to:

City of Joliet  
150 West Jefferson Street  
Joliet, Illinois 60432  
Attention: City Manager  
Email: [jcapparelli@joliet.gov](mailto:jcapparelli@joliet.gov)

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the City of Chicago and the City of Joliet have caused this Agreement to be executed by their respective officials on the dates as shown.

CITY OF CHICAGO,  
an Illinois home rule municipal corporation

CITY OF JOLIET,  
an Illinois home rule municipal corporation

By:  /s/ Andrea R.H. Cheng  
Andrea R.H. Cheng, Ph.D., P.E.  
Acting Commissioner  
Department of Water Management

By:  /s/ Robert O'Dekirk  
Robert O'Dekirk  
Mayor

Date:  March 10, 2021

Date:  March 17, 2021

ATTEST:

By:  /s/ Christa M. Desiderio  
Christa M. Desiderio  
City Clerk

**ATTACHMENT A**

**ADVISORY COUNCIL TASKS**

The Advisory Council's functions include, without limitation, the following:

1. Review on an annual basis, the Capital Improvement Program of the Chicago Water System and inform the wholesale customers about scheduled capital improvements, routine operation and maintenance that may, in part, impact wholesale customers;
2. Periodically review and evaluate the rates, rate methodology, and performance of the Chicago Water System based on the information furnished by Chicago, and discuss issues related to rate setting methodology, the status of any rate adjustments, and the inputs and assumptions required for the annual cost of service study for wholesale customers;
3. Review and provide input on the budget components for the Chicago Water System in connection with Chicago's annual budget process;
4. Collaborate regarding matters affecting the water industry and customers of the Chicago Water System and supply of water in the northeastern Illinois region, including development and implementation of water policy as well as public information and education;
5. Encourage continued and ongoing day-to-day communications between operators of the Chicago Water System and operators of the wholesale customers' water systems;
6. Review Lake Michigan water use requirements, non-revenue water reduction, and the impact of potential future wholesale and other large quantity customers on the Chicago Water System;
7. Provide input regarding the quality and source of raw Lake Michigan water as well as treated Lake Michigan water provided by Chicago to the wholesale customers;
8. Provide input to Chicago to develop appropriate methods for, and to improve, operational coordination in the operation of the Chicago Water System as it delivers Lake Michigan water to the wholesale customers;
9. Review, discuss and communicate regarding potential and actual events that may result in planned curtailment or planned shut-downs of, or other impacts on, the Lake Michigan water supply;
10. While acknowledging that Chicago is subject to applicable provisions under the Municipal Code and other procurement rules and regulations, suggest, review and provide input to Chicago on cost effectiveness and cost control initiatives in contractual services, commodities and services provided by Chicago directly related to Chicago's provision of Lake Michigan water to wholesale customers where Chicago departments provide support and services to the DWM;
11. Review and communicate regarding changes or adjustments to Chicago water rates and rate methodology for Lake Michigan water;
12. Review and discuss operational cost effectiveness and efficiencies affecting water rates;

13. Conduct a review of the billing procedures, schedules and invoices from Chicago to the wholesale customers who are Members of the Advisory Council, and any changes or adjustments to the rate; and

14. Review Chicago's debt schedules and financing plans pertaining to the Chicago Water System, as well as any costs allocated to the wholesale customers.