



City of Chicago



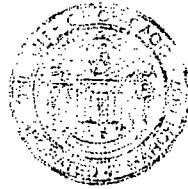
O2020-5784

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	11/24/2020
Sponsor(s):	Lightfoot (Mayor)
Type:	Ordinance
Title:	Authorization for Department of Water Management to enter into preliminary water supply intergovernmental agreement with City of Joliet
Committee(s) Assignment:	Committee on Finance

FIN



OFFICE OF THE MAYOR
CITY OF CHICAGO

LORI E. LIGHTFOOT
MAYOR

November 24, 2020

TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Chief Financial Officer, I transmit herewith an ordinance authorizing the Department of Water Management to enter into a preliminary Water Supply Agreement with the City of Joliet.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

A handwritten signature in black ink that reads "Lori E. Lightfoot". The signature is fluid and cursive, with the first name "Lori" being particularly prominent.

Mayor

ORDINANCE

WHEREAS, in accordance with the provisions of Article VII, Section 6(a) of the Constitution of the State of Illinois (the “State Constitution”), the City of Chicago (the “City”) as a home rule unit of government may exercise any power and perform any function relating to its government and affairs; and

WHEREAS, the City of Joliet, Illinois (“Joliet”) is a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the State Constitution; and

WHEREAS, in 2019, Joliet issued a Request for Information (“RFI”) for the purpose of searching for alternate water supply sources and providers; and

WHEREAS, on August 22, 2019, the City filed its Notice of Intent in response to the RFI and provided Joliet with options for the provision of Lake Michigan water from the City's water system to Joliet pursuant to a water supply agreement to be negotiated and entered into between the City and Joliet (the “Water Supply Agreement”); and

WHEREAS, Joliet is now considering the City and the City of Hammond, Indiana (“Hammond”) as the final two candidates, one of which Joliet shall select to continue negotiations with respect to entering into a water supply agreement after the City Council of the City of Chicago (the “City Council”) has approved this ordinance; and

WHEREAS, the City Council has determined that it is in the best interests of the City for the City to supply Lake Michigan water to Joliet pursuant to the Water Supply Agreement; and

WHEREAS, the City and Joliet have come to a preliminary understanding with respect to certain terms of the Water Supply Agreement, as stated in that certain Preliminary Agreement with Respect to the Anticipated Water Supply Agreement Between the City of Chicago and the City of Joliet, as attached hereto and incorporated in this ordinance as Exhibit A (the “Pre-Agreement”); and

WHEREAS, the Pre-Agreement provides (a) that the Water Supply Agreement shall have a term exceeding 40 years as further described in Exhibit A, (b) the rates at which Lake Michigan water shall be sold by the City to Joliet as further described in Exhibit A, and (c) provisions regarding Joliet supplying water to subsequent purchasers of water outside of Joliet's corporate limits (“Subsequent Purchasers”) as further described in Exhibit A.

WHEREAS, the City Council has determined that it is in the best interests for the City to enter into the Pre-Agreement with Joliet; now, therefore,

BE IT ORDAINED BY THE CITY OF CHICAGO:

SECTION 1. The above recitals are expressly incorporated in and made a part of this ordinance as though fully set forth herein.

SECTION 2. This ordinance is an exercise of home rule power under Article VII, Section 6(a) of the State Constitution.

SECTION 3. Notwithstanding the Municipal Code of Illinois, 65 ILCS 5/11-124-1 et seq., the Pre-Agreement is hereby authorized and approved in substantially the form attached hereto as Exhibit A, including a contract term exceeding 40 years.

SECTION 4. Notwithstanding the Metropolitan Water Reclamation District Act, 70 ILCS 2605/1 et seq. (the "MWRD Act"), the Pre-Agreement is hereby authorized and approved in substantially the form attached hereto as Exhibit A, including the rates at which Lake Michigan water shall be sold by the City to Joliet.

SECTION 5. Notwithstanding the MWRD Act, the Pre-Agreement is hereby authorized and approved in substantially the form attached hereto as Exhibit A, including provisions regarding Joliet supplying water to Subsequent Purchasers.

SECTION 6. The Pre-Agreement shall contain such revisions in text as the Chief Financial Officer of the City (the "Chief Financial Officer") or the Commissioner of Water Management (the "Commissioner") executing the same shall determine are necessary or desirable, the execution thereof, and any amendment thereto, by the Chief Financial Officer or the Commissioner to evidence the City Council's approval of all such revisions. The Commissioner and the Chief Financial Officer are each hereby authorized to execute the Pre-Agreement on behalf of the City and to take such actions and do such things as shall be necessary to perform, carry out, give effect to and consummate the transactions contemplated by this ordinance, including, but not limited to, the exercise of any power or authority delegated to such official of the City under this ordinance with respect to the Pre-Agreement, but subject to any limitations on or restrictions of such power or authority as herein set forth, and any actions heretofore taken by such officers of the City in accordance with the provisions of this ordinance are ratified and approved.

SECTION 7. To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this ordinance.

SECTION 8. This ordinance shall be effective as of the date of its passage and approval.

Exhibit A

**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”. This Agreement has been authorized by an ordinance adopted by the City Council of the City of Chicago (“Chicago City Council”) on _____, 2020 and by an ordinance adopted by the City Council of the City of Joliet (“Joliet City Council”) on _____, 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”), 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, 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; and (d) the status of Joliet’s planning, design, financing and construction of the New Water Supply Infrastructure located outside the corporate limits of Chicago.

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, 2024, 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. Joliet may terminate this Agreement by giving 30 days' written notice to Chicago in the event 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; or
- b. if Joliet determines that it is unable to procure sufficient financing for the New Water Supply Infrastructure.

4.5. In the event that this Agreement is terminated by Joliet pursuant to Section 4.4 above, 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):

- a. 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 (but not the cost of the purchase of the real estate);
- b. costs for professional services for design and field investigation on the Southwest Pumping Station Site in connection with the Tunnel Connection; and
- c. 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 out-of-pocket costs not included in subsections a-c above for which Chicago would seek reimbursement shall be mutually agreed by the Parties prior to being incurred by Chicago.

4.6. 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 period of 50 years, from the date of execution of the Water Supply Agreement by both Parties and ending on December 31, [____], unless a longer term is mutually agreed by the Parties ("Initial Term").

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 may 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, 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 as described in 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. 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 (the "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

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.

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, daily 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. 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.

9.3. 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.

9.4. 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.

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) milestone 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, 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 of Chicago; (ii) the minority-owned and women-owned business enterprise procurement program under Section 2-92-420 et seq. of the Municipal Code of Chicago; (iii) the minority-owned and women-owned business enterprise construction program under Section 2-92-650 et seq. of the Municipal Code of Chicago; 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 of Chicago 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. 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. 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:

- a. 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; and
- b. 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
- c. provisions for true-up adjustments that shall include the actual cost of service, volume of Water purchased and other mutually agreed-upon items.

15.2. Annual Cost of Service Study.

- a. 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”). 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. If the M1 Manual is revised in a manner that either Party believes will affect the 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: 68th/Dunne (South) Crib; Eugene Sawyer Water Purification Plant; South Tunnel Zone; Tunnel Connection and Tunnel Extension; Low Service Pumping Station; and Chicago Service Valve.
- b. 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. 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. 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.
- d. The Parties acknowledge and agree that Joliet's cost of service will exclude, without limitation, 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, and (iii) to replace Chicago's water transmission and distribution mains (other than those facilities listed at the end of Section 15.2(a) above).

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. 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 catastrophic events impacting the Chicago Water System; the New Water Supply Infrastructure or the Joliet water system; 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; material changes in the rate structure used by Chicago to establish the Uniform Water Rate; changes in the M1 Manual that may affect the calculation of the annual cost of service study; and other items mutually agreed by the Parties.

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; (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. 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.

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. 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, and (3) 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 Parties agree that the target date for establishing the first Advisory Council is June 30, 2022, or as otherwise agreed to by the Parties.

17.3. 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 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. In addition, Members that disagree with any majority recommendations may submit a minority report or recommendation to Chicago stating their positions on the matter.

17.4. 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.

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, 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, 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 of any delay 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 event causing delay, 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: Commissioner
Email: Randy.Conner@cityofchicago.org

With a copy to:

City of Chicago
City Hall
121 North LaSalle Street -7th 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 -6th 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

With a copy to:

City of Joliet
150 West Jefferson Street
Joliet, Illinois 60432
Attention: City Manager
Email: jolietcitymanager@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: _____
Alfonso Conner
Commissioner of Water Management

By: _____
Robert O'Dekirk
Mayor

Date: _____

Date: _____

ATTEST:

By: _____
Christa M. Desiderio
City Clerk