

Prepared by and after
Recording mail to:

Village of Oak Lawn
9446 S Raymond Avenue
Oak Lawn, Illinois 60453
Attn: Village Manager

Parcel Nos.: 27-15-212-001

8900 Thistlewood Lane
Orland Park
Cook County, Illinois

TEMPORARY CONSTRUCTION AND PERMANENT UTILITY EASEMENT AGREEMENT

This **TEMPORARY CONSTRUCTION AND PERMANENT UTILITY EASEMENT AGREEMENT** (“Agreement”) is effective as of the __ day of _____, 2023 (“Effective Date”), by and between the VILLAGE OF ORLAND PARK, an Illinois home rule municipal corporation (“Grantor”), and the VILLAGE OF OAK LAWN, an Illinois home rule municipal corporation (“Grantee”). Grantor and Grantee are sometimes referred to in this Agreement individually as “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Grantor is the owner of record of certain real property commonly known as 8900 Thistlewood Lane, Orland Park, Illinois and legally described in **Exhibit A** attached hereto and made a part hereof (“Grantor’s Property”); and

WHEREAS, Grantee is the owner and operator of the Oak Lawn Regional Water System, which is undergoing major improvements and expansion to support growth in the Chicago’s southwest suburbs; and

WHEREAS, as part of the improvements and expansion of the Oak Lawn Regional Water System, new underground water transmission mains and related appurtenances (collectively, the “Facilities”) will be installed to convey potable water from the Village of Oak Lawn to twelve (12) southwest suburb communities; and

WHEREAS, to install the Facilities, Grantee needs a temporary construction easement on a portion of Grantor’s Property to temporarily locate equipment and materials and a permanent utility easement on a portion of Grantor’s Property in which to construct, install, operate, maintain, repair, replace and use the Facilities; and

WHEREAS, Grantee has offered, and Grantor is willing to accept payment of TEN AND NO/100 DOLLARS (\$10.00) as compensation for the requested temporary construction and permanent easements; and

WHEREAS, Grantor is willing to grant Grantee temporary construction and permanent utility easements in and along a portion Grantor's Property for the construction, installation, operation, maintenance, repair, replacement and use the Facilities on the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the sums to be paid by Grantee to Grantor as specified herein, and the covenants and agreements set forth in this Agreement, Grantor and Grantee covenant and agree as follows:

1. **INCORPORATION OF RECITALS.** The above recitals are hereby incorporated by reference as if set forth fully herein.

2. **GRANT OF EASEMENTS.**

2.1 Temporary Construction Easement. Subject to the terms of this Agreement, Grantor, for itself and for its successors and assigns, hereby conveys and grants to Grantee, its successors and assigns, a temporary, non-exclusive easement ("Temporary Construction Easement") over, across and upon the portion of Grantor's Property legally described and depicted in **Exhibit B** attached hereto and made a part hereof ("Construction Easement Area"). Grantee may use the Construction Easement Area for the purposes of constructing and installing the Facilities within the Permanent Easement Area (as defined in Section 2.2 below), and other work necessary and incident to the construction and installation of the Facilities, including but not limited to the right to temporarily place and store equipment, vehicles and materials; the right to trim, cut, and remove trees, structures, and any other obstruction or obstacles. All costs and expenses for the construction of the Facilities shall be at Grantee's sole cost and expense. Except as in cases of emergencies, Grantee's access to the Construction Easement Area shall be restricted to 6 A.M. to 6 P.M. Mondays through Fridays, with access on Saturdays and Sundays requiring approval of the Grantor, which approval shall not be unreasonably withheld or delayed.

2.2 Permanent Easement. Subject to the terms of this Agreement, Grantor, for itself and for its successors and assigns, hereby conveys and grants to Grantee, its successors and assigns, a permanent, non-exclusive public utility easement ("Permanent Easement") over, under, in, along, across and upon the portion of Grantor's Property legally described and depicted in **Exhibit B** attached hereto and made a part hereof ("Permanent Easement Area," which together with the "Construction Easement Area" are collectively referred to as the "Easement Areas"), including the right to ingress and egress over the Easement Areas for the lawful construction, installation, operation, maintenance, repair, replacement and use of the Facilities, as well as the ability to connect the Facilities to the existing

pump station on the Grantor's Property. Grantee shall at all times during the applicable term of the respective easements granted in this Agreement have ingress to and egress from the applicable Easement Area for the stated purpose of said easement by such reasonable route as may be designated by Grantor and agreed upon by Grantee.

Grantee's rights in the Easement Areas above include the right to have Grantee's contractors and subcontractors upon the Easement Areas for the purposes described above as long as those contractors and subcontractors comply with the terms of this Agreement.

3. TERM OF EASEMENTS.

3.1 Temporary Construction Easement. The Temporary Construction Easement shall commence after Grantee has given Grantor written notice of no less than sixty (60) calendar days that construction of the Facilities shall begin, and construction of the Facilities shall begin promptly after the sixty (60) calendar days have passed from the date of the notice. Grantee estimates construction of the facilities shall occur between approximately September 1, 2023 and December 31, 2025, and Grantee shall keep Grantor generally informed of the schedule of construction of Grantee's construction project in the vicinity of Grantor's Property, which project includes construction of the Facilities. The Temporary Construction Easement shall automatically terminate and expire upon the earlier of: (i) the date construction of the Facilities is completed, or (ii) December 31, 2025. Grantee shall have the right to extend the Temporary Construction Easement for up to sixty (60) calendar days by delivering written notice to Grantor no later than November 1, 2025. Upon the expiration of the term of the Temporary Construction Easement, (a) all of the rights and benefits of Grantee in, to and under this Agreement with respect to the Temporary Construction Easement shall automatically terminate and be of no further force and effect and (b) Grantee must remove from the Construction Easement Area all of Grantee's materials, equipment, and other property and restore Grantor's Property to the condition it was in prior to the date Grantee began the work.

3.2 Permanent Easement. The Permanent Easement shall commence on the Effective Date of this Agreement and shall run with the land and continue in full force and effect in perpetuity. Grantee's rights hereunder shall be subject to all valid and existing easements, rights, leases, licenses, reservations and encumbrances, whether of record or not, affecting Grantor's Property or any portion thereof. Grantee's occupancy or use of the Easement Areas shall not create nor vest in Grantee any ownership or interest of whatsoever nature in the Property other than as specifically given herein. If Grantee desires to obtain an insurance policy insuring its rights in the Easement Areas as granted in this Agreement, Grantor shall reasonably cooperate with Grantee's requests to provide information and materials to the insurer as may be necessary for Grantee to obtain such policy.

4. **RESTORATION/IMPROVEMENTS.** The Easement Areas disturbed by Grantee's exercise of any of its rights under this Agreement shall be restored or replaced, as reasonably as practical, to the condition in which it existed at the commencement of such activities.
5. **RESERVATION BY GRANTOR/NON-EXCLUSIVE USE.** All right, title and interest in and to the Easement Areas under this Agreement which may be used and enjoyed without impairing, interfering or obstructing the rights conveyed by this Agreement are reserved to Grantor; provided, however, that other than paving, Grantor shall not locate any permanent structure in the Permanent Easement Area without the express written consent of the Grantee. To the extent that the Easement Areas are not paved as of the date of this Agreement, Grantor and its successors and assigns, shall have the right to grade and pave the Easement Areas.
6. **INSURANCE.** During the term of this Agreement, Grantee, at its sole cost and expense, shall carry and maintain and cause itself and its assigns and their respective employees, agents, representatives, consultants, contractors, subcontractors, directors and invitees (collectively, the "Grantee Parties") that access the Easement Areas to obtain and maintain (a) commercial general liability insurance, protecting against claims for damages for bodily injury, including death, resulting therefrom as well as for property damage that may arise from Grantee's and the Grantee Parties' access and use of the Easement Areas, with a minimum combined single limit of \$1,000,000.00 per occurrence and in the aggregate; (b) workers' compensation insurance as required by law; and (c) Umbrella or Excess Liability Insurance with limits of no less than \$3,000,000 excess of the underlying general liability coverage. Before accessing the Easement Areas, Grantee shall provide (and cause its consultants and contractors to provide) Grantor with certificates of insurance and copies of the additional insured endorsements reasonably acceptable to Grantee evidencing the existence of the coverage described above. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by Grantee which may cover other property in addition to the property described in this Agreement. Grantor and any lender shall be named as an additional insured on such policies.
7. **COMPLIANCE WITH RULES AND REGULATIONS.** The Facilities installed under or, as expressly permitted in this Agreement, on the Permanent Easement Area by Grantee shall be installed, operated, repaired, maintained, used, and removed in compliance with all applicable laws and regulations and in such a manner as not to interfere with the operations of Grantor, its agents, contractors or employees, on the Property. Furthermore, any and all work relating to this Agreement and/or rights granted herein shall be done in a workmanlike manner, and by acceptance of this document, Grantee agrees to comply with Grantor's reasonable guidelines during any construction period, including, but not limited to:
 - 7.1 Except in an emergency, prior to the entrance by Grantee or any of the Grantee Parties upon the Easement Areas for any reason, including, but not limited to the times of initial construction or any future construction of the Facilities or for maintenance purposes, that in each case would not limit, prevent, or otherwise

affect the use of the surface of any part of the Easement Areas by Grantor or Grantor's tenants or customers, Grantor will be given forty eight hours (48) hours prior written notice in order to allow Grantor, if desired, to have a representative present during such entrance.

- 7.2 Except in an emergency, prior to the entrance by Grantee or any of the Grantee Parties upon the Easement Areas for any reason, including, but not limited to the times of initial construction or any future construction of the Facilities or for maintenance purposes, that in each case would limit, prevent, or otherwise affect the use of the surface of any part of the Easement Areas by Grantor or Grantor's tenants or customers or any of their respective members, managers, agents, employees, contractors, tenants or subtenants, successors or assigns (collectively, the "Grantor Parties"), then Grantee shall give Grantor at least thirty (30) calendar days prior written notice before Grantee or any of the Grantee Parties accesses the Easement Areas for that purpose, which notice shall state the commencement date of the access and the length of time that access will be needed. After the Facilities are initially constructed and commissioned, and except as otherwise agreed to by the Parties, Grantee shall not limit, prevent, or otherwise affect the use of the surface of any part of the Easement Areas by Grantor or any of the Grantor Parties for more than thirty (30) calendar days from the first date of that access.
- 7.3 In the event of any emergency such as water main breaks, Grantee may enter the Easement Areas on Grantor's Property without advance notice to Grantor; provided, however, that prior to such entrance by Grantee, Grantee shall make reasonable attempts to notify Grantor of Grantee's need for immediate entrance on the Property.
- 7.4 Grantor or third-party facilities may exist in or near the Easement Areas, which must be located prior to any digging by Grantee. Except as necessary for the construction and installation of the Facilities, Grantee will not disturb any of Grantor's or third-party facilities.
- 7.5 Grantee covenants that access to Grantor's Property other than in the Easement Areas will be maintained during the construction period. Except as agreed to by Grantor, Grantee shall not block or impede any access to the remainder of Grantor's Property or to the Easement Areas granted herein while performing any construction, maintenance, repair or operation within the Easement Areas or at any other time. Grantee shall place and maintain in the Easement Areas suitable markers indicating the presence of the Facilities. After installation of the Grantee's Facilities, Grantor's Property shall not be altered by Grantee in a manner so as to interfere with the operation and maintenance of the Property by Grantor thereof.
- 7.6 Grantee agrees to pay for all labor used upon and all materials installed in or affixed to the Easement Areas by Grantee and shall save the Property and hold Grantor harmless from any lien or claim of lien relating thereto. If Grantee fails to have any lien released or bonded over within thirty (30) calendar days after it is filed, then,

in addition to any other right or remedy of Grantor, Grantor may discharge the lien by paying the amount claimed to be due, and the amount Grantor pays and all actual out-of-pocket costs and expenses, including reasonable attorneys' fees, Grantor incurs in procuring the discharge of the lien shall be due and payable on demand by the Grantee to Grantor.

- 7.7 Grantee's maintenance, repair, replacement, and use of the Easement Areas and the Facilities shall in all cases be (a) at Grantee's sole cost and (b) in a manner that causes the least possible interference with the use, occupancy, and enjoyment of Grantor's Property by Grantor and the other Grantor Parties. Grantee shall take all appropriate safety measures to ensure that Grantor and its tenants and their respective customers and other users of the Property are not at an increased risk for injury as a result of any work associated with the easement granted by this Agreement.
8. **HAZARDOUS MATERIALS.** Grantee agrees that none of Grantee or any of the Grantee Parties shall use, have present nor transport on or about Grantor's Property any hazardous or toxic materials, wastes or substances or any pollutants or contaminants ("Hazardous Substances"), without the prior express written consent of Grantor. If at any time during the term of this Agreement, Grantee knows or has reason to believe that any Hazardous Substances have come, or will come, to be located upon, about, or underneath the Property, then Grantee shall, as soon as reasonably possible, give verbal and written notice of that condition to Grantor. Grantee covenants to investigate, clean-up and otherwise remediate any release of such Hazardous Substances by Grantee, its agents, employees, representatives, contractors, permitted assigns, or those under Grantee's control at Grantee's cost and expense. Grantee shall notify Grantor prior to commencing any clean-up or remediation.
9. **INDEMNIFICATION.** Grantee shall indemnify, defend (with counsel reasonably acceptable to Grantor), and hold harmless Grantor and the Grantor Parties, from and against any and all claims, losses, damages, costs, expenses (including reasonable attorney's fees and court costs), and liabilities for any and all injuries to, or death of, any person, or damage to any property, or for any financial loss of whatever nature, in any way arising out of or in connection with this Agreement or activities undertaken pursuant to this Agreement, whether caused by the acts, negligence or willful misconduct of Grantee or any of the Grantee Parties, or those under Grantee's control or by Grantee's or any of the Grantee Parties' failure to perform the covenants or conditions of this Agreement, or otherwise. Grantee's obligations to indemnify, defend, and hold harmless shall survive any termination of this Agreement.
10. **COMPLIANCE WITH LAWS.** Grantee shall construct and install the Facilities in a workmanlike manner and in compliance with applicable laws, statutes, ordinances, rules and regulations of all governing public authorities as those statutes, ordinances, rules and regulation are amended from time to time.

11. **COVENANTS RUNNING WITH THE LAND.** The Parties agree that the easements and other rights conferred by this Agreement are intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the Parties and their respective grantees, heirs, successors and assigns.

12. **AUTHORIZED REPRESENTATIVE.** Each individual signing on behalf of a Party to this Agreement states that he or she is the duly authorized representative of the signing Party and that his or her signature on this Agreement has been duly authorized by, and creates the binding and enforceable obligation of, the Party on whose behalf the representative is signing.

13. **NOTICES.** Any notice, request or other communication to be given by any Party hereunder shall be in writing and shall be deemed adequately given only if (i) sent by personal delivery, (ii) by Federal Express or other overnight messenger service, (iii) first class registered or certified mail, postage prepaid, return receipt requested, or (iv) by electronic mail, and addressed to the Party for whom such notices are intended, addressed in each case as follows:

All notices to Grantor shall be sent to:

To Grantor:

[Redacted]
[Redacted]
Attention : [Redacted]
Email : [Redacted]

With a copy to:

[Redacted]
[Redacted]
Attention: [Redacted]
Email: [Redacted]

All notices to Grantee shall be sent to:

To Grantee:

Village of Oak Lawn
9446 S. Raymond Avenue
Oak Lawn, Illinois 60453
Attention: Thomas Phelan, Village Manager
tphelan@oaklawn-il.gov

With a copy to:

Michael Marrs
Klein, Thorpe and Jenkins, Ltd.
900 Oakmont Lane, Suite 301
Westmont, Illinois 60559
mamarrs@ktjlaw.com

14. **ASSIGNMENT.** Grantee may not assign their rights hereunder without the prior written consent of Grantor.
15. **ENTIRE AGREEMENT; AMENDMENT.** This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by the Parties hereto. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter of this Agreement, and the Parties acknowledge and understand that, upon completion, any and all such Schedules and Exhibits shall be deemed to be made a part collectively hereof.
16. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without regard to conflict of laws provisions. This Agreement concerns Property located in Cook County, Illinois, and if legal action, arbitration or some other proceeding is brought to enforce or to resolve any dispute arising under this Agreement, such legal action, arbitration or other proceeding shall be brought in the Circuit Court of Cook County, Illinois, and the prevailing Party shall be entitled to recover reasonable Attorneys' fees and other costs incurred in such proceeding, in addition to any other relief to which it may be entitled.
17. **SEVERABILITY.** Should any one or more of the provisions of this Agreement be determined to be invalid, unlawful or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby and each such provision shall be valid and remain in full force and effect.
18. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be an original; but such counterparts shall together constitute but one and the same instrument. Facsimile and electronic mail signatures shall be treated as original signatures of the Parties for the purposes hereto.
19. **ELECTRONIC/FAX SIGNATURES.** Unless required otherwise elsewhere in this Agreement, any signed document transmitted electronically or by facsimile (fax) machine shall be treated in all manner and respect as an original document and the signature of any Party hereto upon a document transmitted electronically or by fax machine shall be considered an original signature.
20. **NO THIRD-PARTY BENEFICIARIES.** No claim as a third-party beneficiary under this Agreement by any person shall be made, or be valid, against Grantor or Grantee.
21. **NO IMPLIED EASEMENT.** No easements, except those expressly set forth in this Agreement, shall be implied by this Agreement.
22. **TIME OF ESSENCE.** Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement by persons legally entitled to do so as of the day and year first set forth above.

[SIGNATURES ON FOLLOWING PAGE]

GRANTOR:

VILLAGE OF ORLAND PARK, an
Illinois
municipal corporation

By: _____

Its: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he signed and delivered the said instrument as his free and voluntary act for the uses and purposes herein set forth.

Given under my and official seal, this ____ day of _____, 2023.

Notary Public

Printed Name of Notary

My Commission Expires:

GRANTEE:

VILLAGE OF OAK LAWN, an Illinois
municipal corporation

By: _____
Terry Vorderer, Village President

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Terry Vorderer, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he signed and delivered the said instrument as his free and voluntary act for the uses and purposes herein set forth.

Given under my and official seal, this ____ day of _____, 2023.

Notary Public

Printed Name of Notary

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF GRANTOR'S PROPERTY

[ADD APPLICABLE LEGAL DESCRIPTION]

PIN: 27-15-212-001-0000

Commonly Known As: 8900 Thistlewood Lane, Orland Park, IL

EXHIBIT B

**LEGAL DESCRIPTION AND DEPICTION OF TEMPORARY
CONSTRUCTION AND PERMANENT EASEMENT**

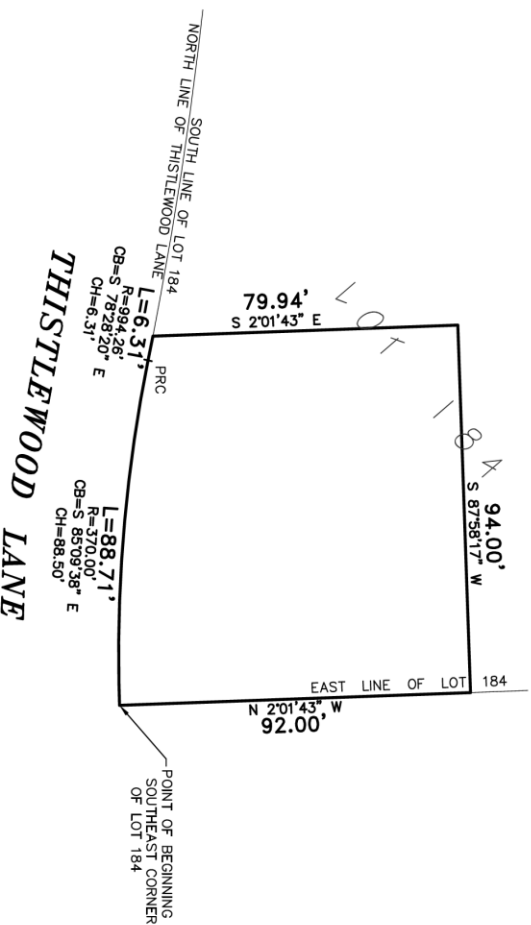
PIN: 27-15-212-001-0000 (part of)

Commonly Known As: 8900 Thistlewood Lane, Orland Park, IL

(DEPICTION ATTACHED)

PROPOSED WATERMAIN EASEMENT

THAT PART OF LOT 184 IN HUGUELLET'S ORLAND TERRACE UNIT FIVE, A SUBDIVISION OF PART OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 6, 1979, AS DOCUMENT 25271249, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 184; THENCE NORTH 2 DEGREES 01 MINUTE 43 SECONDS WEST 92.00 FEET; ALONG THE EAST LINE OF SAID LOT 184; THENCE SOUTH 87 DEGREES 58 MINUTES 17 SECONDS WEST 94.00 FEET; THENCE SOUTH 2 DEGREES 01 MINUTE 43 SECONDS EAST 79.94 FEET TO THE NORTH LINE OF THISTLEWOOD LANE; THENCE EASTERLY, ALONG SAID NORTH LINE, BEING A CURVE CONVEX TO THE NORTH AND HAVING A RADIUS OF 994.26 FEET AND A 6.31 FOOT CHORD BEARING SOUTH 78 DEGREES 28 MINUTES 20 SECONDS EAST, AN ARC DISTANCE OF 6.31 FEET TO A POINT OF REVERSE CURVATURE; THENCE EASTERLY, ALONG SAID NORTH LINE, BEING A CURVE CONVEX TO THE SOUTH AND HAVING A RADIUS OF 370.00 FEET AND A 88.50 FOOT CHORD BEARING SOUTH 85 DEGREES 09 MINUTES 38 SECONDS EAST, AN ARC DISTANCE OF 88.71 FEET TO THE POINT OF BEGINNING; IN COOK COUNTY, ILLINOIS.



PREPARED FOR:
CDM SMITH
PREPARED BY:

LANDMARK

ENGINEERING LLC
DESIGN FROM REGISTRATION NO. 164-000577-0010
7008 S. TOLSON STREET
PALOS HEIGHTS, ILLINOIS 60463
Phone (708) 599-3737
PROJECT No. 13-01-026-Earnt 2715212001
DATED: APRIL 10, 2023

