

Agreement prepared by and after  
Recording mail to:

Dominick L. Lanzito  
Peterson Johnson & Murray, LLC  
200 W Adams, Suite 2125  
Chicago, Illinois 60606

Legal description prepared by:  
Willett Hofmann & Associates, Inc.  
809 East 2nd Street  
Dixon, IL 61021-0367

**TEMPORARY CONSTRUCTION AND  
PERMANENT UTILITY EASEMENT AGREEMENT FOR STORMWATER  
DRAINAGE AND DETENTION**

This Temporary Construction and Permanent Utility Easement Agreement for Stormwater Drainage and Detention (this “Agreement”) is effective as of the \_\_\_\_ day of \_\_\_\_\_, 2017 (“Effective Date”), by and between Creekside Land Holdings LLC, an Illinois limited liability company (“Grantor”) and the City of Rochelle, an Illinois 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 with parcel numbers 24-11-426-002 and 24-11-300-001, Rochelle, Ogle County, Illinois and legally described on the attached and incorporated Exhibit A and Exhibit B and collectively referred to as “Grantor’s Property”; and

WHEREAS, Grantee is the owner and operator of the Rochelle Municipal Utility, which is undergoing major improvements and expansion to one of its wells in order to support surrounding municipalities; and

WHEREAS, as part of the improvements, stormwater drainage infrastructure and water retention area identified and depicted in Exhibits A and B (referred to hereafter as “Stormwater

Drainage and Detention Improvements”) are necessary and will be installed and constructed to convey stormwater from the water filtration facility and adjacent high school property to Grantor’s property and existing water retention pond; and

WHEREAS, to install the Stormwater Drainage and Detention Improvements, Grantee needs a temporary and permanent construction easement on Grantor’s Property to construct the improvements, locate equipment and materials and a permanent utility easement; and

WHEREAS, Grantee has offered and Grantor is willing to accept payment of THIRTY EIGHT THOUSAND FOUR HUNDRED AND SIXTY-FOUR DOLLARS AND NO CENTS (\$38,464.00) as consideration for the requested easements; and

WHEREAS, Grantee has offered and Grantor is willing to accept payment of TEN THOUSAND SIX HUNDRED AND SEVENTY-TWO DOLLARS AND NO CENTS (\$10,672.00) as consideration for any soil compaction caused by the construction of the Stormwater Drainage and Detention Improvements; and

WHEREAS, Grantor desires to grant Grantee a temporary construction and permanent utility easement in and along and on Grantor’s Property for the construction and installation of the Stormwater Drainage and Detention Improvements on terms and conditions contained herein; and

NOW, THEREFORE, for sum of FORTY-NINE THOUSAND ONE HUNDRED AND THIRTY-SIX DOLLARS AND NO CENTS (\$49,136.00) to be paid by Grantee to Grantor, 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.** Grantor, for themselves and for their successors and assigns, hereby conveys and grants to Grantee, its successors and assigns, the following:
  - 2.1 Temporary Construction Easement. A temporary, non-exclusive 30-foot easement over, under, in, along, across and upon the portion of Grantor’s Property described on the attached and incorporated Exhibit A and Exhibit B and illustrated in Exhibit C (“Construction Easement Area”). Grantee may use the Construction Easement Area for the purposes of constructing and installing the Stormwater Drainage and Detention Improvements, and other work necessary and incident to the construction and installation of the Stormwater Drainage and Detention Improvements, including but not limited to the right to conduct studies, tests, examinations and surveys; the right to temporarily place and store equipment, vehicles and materials, and to erect structures; the right to trim, cut, and remove all trees, structures, and any other obstruction or obstacles. Except as in cases of emergencies, Grantee’s access to the Construction Easement Area shall be restricted to normal business hours.

2.2 Utility and Stormwater Drainage and Detention Easement. A permanent, non-exclusive easement over, under, in, along, across and upon the portion of Grantor's Property on the attached and incorporated Exhibit A and Exhibit B and illustrated in Exhibit C ("Utility Easement Area"), including the right to ingress and egress for the lawful construction, installation, operation, maintenance, repair, replacement and use of the Stormwater Drainage and Detention Improvements.

Grantee's rights in the Easement Areas described above include the right to have Grantee's contractors and subcontractors upon the Easement Areas for the purposes described above.

### 3. **TERM OF EASEMENTS.**

3.1 Temporary Construction Easement. The Temporary Construction Easement shall commence on the Effective Date of this Agreement and shall automatically terminate and expire upon the later of: (i) the date construction of the Stormwater Drainage and Detention Improvements are completed, or (ii) twelve (12) months after the effective date of this Agreement. Upon the expiration of the term of the Temporary Construction Easement, 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.

3.2 Utility Easement. The Utility and Stormwater Detention Easement shall commence on the Effective Date of this Agreement and shall run with the land and continue in full force and effect until Grantee formally vacates the Utility Easement.

4. **RESERVATION BY GRANTOR/NON-EXCLUSIVE USE.** All right, title and interest in and to the Temporary Construction Easement and Utility Easement under this Agreement which may be used and enjoyed without interfering with the rights conveyed by this Agreement are reserved to Grantor; provided, however, that Grantor shall not locate any structures which may cause damage to or interfere with the Stormwater Drainage and Detention Improvements to be placed within the Utility Easement Area; or develop, landscape, or beautify any easement area in any way which would unreasonably or materially increase the costs to Grantee of constructing and installing the Stormwater Drainage and Detention Improvements or restoring any of the Easement Areas after such installation.

5. **RESTORATION, SOIL COMPACTION, AND CROP DAMAGE.** In the event the surface of any easement area is disturbed by Grantee's exercise of any of its easement rights under this Agreement, such area shall be restored by Grantee, as reasonably as practical, to the condition in which it existed at the commencement of such activities.

In addition to the consideration provided for soil compaction for the four-year time period from the execution of this Agreement (the calculations are set forth herein), in the event of any future crop damage or soil compaction at any time as a result of future maintenance of the facilities, the Grantee agrees that it will compensate the Grantor (or

the party farming the property or the owner of the crops, as the case may be) in the amount of TEN THOUSAND SIX HUNDRED AND SEVENTY-TWO DOLLARS AND NO CENTS (\$10,672.00), and is calculated at a rate of \$800 per acre for the crop losses sustained from said soil damage and compensate the Grantor (or the party farming the property, as the case may be) for the affected area, which is currently estimated to be 6.67 acres.

For purposes of calculating compaction damage resulting from the construction of the improvements, as set forth in the recitals, the following formula based upon a crop value of \$800 per acre has been applied:

<u>Compaction Damage Formula</u>			
1 <sup>st</sup> year post-maintenance	.8 x \$800	=	\$4268.80
2 <sup>nd</sup> year	.6 x \$800	=	\$3201.60
3 <sup>rd</sup> year	.4 x \$800	=	\$2134.40
4 <sup>th</sup> year	.2 x \$800	=	\$1067.20
			\$10,672.00

For purposes of calculating future crop damage resulting from the construction and/or maintenance of the improvements, damages shall be calculated and based upon a crop value of \$800 per acre for the actual area of the crops that are damaged.

6. **INDEMNIFICATION.** Grantee (including its employees, contractors, and agents) does hereby agree to defend, hold harmless, and indemnify Grantor, its successors and assigns, from and against any and all claims, causes of action, liability, loss, damage, costs and expenses (including reasonable attorneys' fees) for damage to property or persons whatsoever, arising from or caused by Grantee's negligent exercise of any of Grantee's rights under this Agreement. Nothing contained herein shall be interpreted to waive any statutory or common law grant of privilege of immunity.

Grantor does hereby agree to defend, hold harmless, and indemnify Grantee, its successors and assigns, from and against any and all claims, causes of action, liability, loss, damage, costs and expenses (including reasonable attorneys' fees) for damage to property or persons whatsoever, arising from or caused by Grantor's negligent maintenance or security of the water detention area.

7. **COMPLIANCE WITH LAWS.** Grantee shall construct and install the Stormwater Drainage and Detention Improvements 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.

8. **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.
9. **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.
10. **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:

Creekside Land Holdings LLC  
Attn: Timothy J. Hayden and James Gensler  
221 E. Illinois Route 38  
Rochelle, IL 61068

With a copy to: Robert T. Chadwick  
Fearer, Nye & Chadwick  
420 Fourth Avenue  
Rochelle, IL 61068  
robert@fnclaw.com

All notices to Grantee shall be sent to:

City of Rochelle  
420 North 6th St.  
PO Box 601  
Rochelle, IL 61068  
Attention: Jeff Fiegenschuh, City Manager

With a copy to: Dominick L. Lanzito, City Attorney  
Peterson Johnson & Murray  
200 W. Adams, Suite 2125  
Chicago, Illinois 60606  
dlanzito@pjmlaw.com

11. **ASSIGNMENT.** Grantee may not assign their rights hereunder without the prior written consent of Grantor.
12. **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.
13. **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. If legal action, arbitration or other proceeding is brought to enforce or to resolve any dispute arising under this Agreement, 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.
14. **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.
15. **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.
16. **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.

**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]*







**GRANTEE:**

**City of Rochelle**, an Illinois municipal corporation

By: \_\_\_\_\_  
Jeff Fiegenschuh, City Manager

**STATE OF ILLINOIS )**  
**) SS.**  
**COUNTY OF OGLE )**

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that Jeff Fiegenschuh 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 \_\_\_\_\_, 2017

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name of Notary

My Commission Expires: