City of Chicago

O2013-5798

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	7/24/2013
Sponsor(s):	Emanuel, Rahm (Mayor)
Type:	Ordinance
Title:	Intergovernmental agreement with Metropolitan Water Reclamation District to extend sewer easement for additional twenty-five year term
Committee(s) Assignment:	Committee on Housing and Real Estate

HSG.

OFFICE OF THE MAYOR

CITY OF CHICAGO

RAHM EMANUEL
MAYOR

July 24, 2013

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

Ladies and Gentlemen:

At the request of the Commissioner of Water Management, I transmit herewith an ordinance authorizing the execution of an intergovernmental agreement with the Metropolitan Water Reclamation District.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Rahm Emanuel

Mayor

ORDINANCE

WHEREAS, the City of Chicago ("City") is a duly constituted and existing municipality within the meaning of Section 1, Article VII, of the 1970 Constitution of the State of Illinois ("Constitution"), and is a home rule unit of local government under Section 6(a), Article VII, of the Constitution; and, as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the Metropolitan Water Reclamation District of Greater Chicago ("MWRD"), is a body corporate and politic organized and existing under the laws of the State of Illinois; and

WHEREAS, by ordinance adopted by the City Council on November 15, 1989, and published at pages 6836 to 6856 of the Journal of Proceedings (the "1989 Ordinance") the City accepted a twenty-five (25) year MWRD non-exclusive sewer easement (the "Sewer Easement"), expiring on September 7, 2013, to reconstruct, operate, maintain, repair and remove an 18-inch storm sewer and outfall on MWRD property (the MWRD Property") which discharges into the North Branch of the Chicago River north of Bradley Place and west of Rockwell, and as legally described on **Exhibit A** attached hereto; and

WHEREAS, the City, by and through its Department of Water Management ("DWM"), desires to extend the Sewer Easement for an additional twenty-five year term pursuant to the terms of a Sewer Easement Agreement (the "Sewer Easement Agreement"), substantially in the form attached hereto as **Exhibit B**; and

WHEREAS, MWRD is willing to grant and extend the twenty-five year Sewer Easement for an additional twenty-five (25) year term expiring on September 7, 2038 for a one-time easement fee in the amount of Ten and No/100 Dollars ($10.00); **now, therefore,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

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

SECTION 2. The City is hereby authorized to accept the grant of the Sewer Easement on the MWRD Property, for the one-time easement fee in the amount of Ten and No/100 Dollars ($10.00), subject to the terms of a Sewer Easement Agreement, substantially in the form attached hereto as **Exhibit B**.

SECTION 3. The Commissioner (the "Commissioner") of the Department of Water Management or a designee of the Commissioner are each hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver a Sewer Easement Agreement substantially in the form attached hereto as **Exhibit B**, and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of the Sewer Easement Agreement, with any such amendments, changes, deletions and insertions as shall be authorized by the persons executing the Sewer Easement Agreement, with the approval of the City's Corporation Counsel.

SECTION 4. If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this ordinance.

SECTION 5. All ordinances, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 6. This ordinance shall be in full force and effect immediately upon its passage and approval.

Attachments:

Exhibit A - Legal Description of MWRD Property
Exhibit B - Form of Sewer Easement Agreement

EXHIBIT A

LEGAL DESCRIPTION OF MWRD PROPERTY
(Attached)

LEGAL DESCRIPTION OF STORM SEWER EASEMENT

THAT PART OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTH LINE OF WEST ADDISON STREET (SAID NORTH LINE BEING 33.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 24) AND A LINE BEARING NORTH 9 DEGREES 15 MINUTES 33 SECONDS WEST AS DRAWN FROM A POINT IN THE SOUTH LINE OF THE NORTHEAST QUARTER WHICH IS 2055.47 FEET WEST OF THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 24, (THE LAST DESCRIBED LINE BEING THE EASTERLY PROPERTY LINE OF THE SANITARY DISTRICT OF CHICAGO AS DESCRIBED IN DEEDS RECORDED AS DOCUMENT NUMBERS 3375130 AND 3452391); THENCE EAST ALONG THE NORTH LINE OF SAID WEST ADDISON STREET, A DISTANCE OF 240.35 FEET TO AN INTERSECTION WITH THE WEST LINE OF NORTH TALMAN AVENUE (50.00 FEET WIDE); THENCE NORTH AT RIGHT ANGLES TO THE NORTH LINE OF SAID WEST ADDISON STREET AND ALONG THE WEST LINE OF NORTH TALMAN AVENUE A DISTANCE OF 797.50 FEET; THENCE CONTINUING NORTH ALONG THE WEST LINE OF SAID NORTH TALMAN AVENUE AND ITS NORTHERLY PROLONGATION THEREOF, A DISTANCE OF 801.72 FEET TO A LINE WHICH IS 369.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF BLOCKS 8 AND 9 IN RINZIE'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE WEST ALONG SAID PARALLEL LINE AND MAKING AN ANGLE OF 89 DEGREES 58 MINUTES 30 SECONDS WITH THE LAST DESCRIBED COURSE (AS MEASURED FROM SOUTH TO WEST) A DISTANCE OF 270.88 FEET TO THE EASTERLY PROPERTY LINE OF THE SANITARY DISTRICT OF CHICAGO; THENCE SOUTHWEST ALONG THE EASTERLY LINE OF THE SANITARY DISTRICT OF CHICAGO AND MAKING AN ANGLE OF 114 DEGREES 34 MINUTES 04 SECONDS WITH THE LAST DESCRIBED COURSE AS MEASURED FROM EAST TO SOUTH TO SOUTHWEST) A DISTANCE OF 30.00 FEET FOR A POINT OF BEGINNING; THENCE CONTINUING SOUTHWEST, ALONG THE LAST DESCRIBED COURSE, A DISTANCE OF 20.00 FEET; THENCE NORTHWEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, 35.00 FEET; THENCE NORTHEAST, AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, 20.00 FEET; THENCE SOUTHEAST, AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, 35.00 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

EXHIBIT A

LEGAL DESCRIPTION OF STORM SEWER EASEMENT

THAT PART OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE NORTH LINE OF WEST ADDISON STREET (SAID NORTH LINE BEING 33.00 FEET NORTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 24) AND A LINE DRAWN NORTH 0 DEGREES 19 MINUTES 20 SECONDS WEST AS [illegible] BEARING [illegible] IN THE NORTHEAST QUARTER WHICH IS 2033.87 FEET WEST OF THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 24 (THE LAST DESCRIBED LINE BEING THE EASTERLY PROPERTY LINE OF THE SANITARY DISTRICT OF CHICAGO AS DESCRIBED IN DEEDS RECORDED AS DOCUMENT NUMBERS 93160130 AND 93159911); THENCE EAST ALONG THE NORTH LINE OF SAID WEST ADDISON STREET, A DISTANCE OF 269.35 FEET TO AN INTERSECTION WITH THE WEST LINE OF NORTH TALMAN AVENUE (99.00 FEET WIDE); THENCE SOUTH AT RIGHT ANGLES TO THE NORTH LINE OF SAID WEST ADDISON STREET AND ALONG THE WEST LINE OF NORTH TALMAN AVENUE A DISTANCE OF 207.30 FEET; THENCE CONTINUING SOUTH ALONG THE WEST LINE OF SAID NORTH TALMAN AVENUE AND THE NORTHERLY PROLONGATION THEREOF, A DISTANCE OF 801.72 FEET TO A LINE WHICH IS 383.00 FEET NORTH OF AND PARALLEL WITH THE NORTH LINE OF BLOCKS 8 AND 9 IN BIRSTEN'S SUBDIVISION OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE WEST ALONG SAID PROLONGED LINE AND MAKING AN ANGLE OF 89 DEGREES 59 MINUTES 30 SECONDS WITH THE LAST DESCRIBED COURSE (AS MEASURED FROM EAST TO WEST) A DISTANCE OF 270.00 FEET TO THE EASTERLY PROPERTY LINE OF THE SANITARY DISTRICT OF CHICAGO; THENCE NORTHEAST ALONG THE EASTERLY LINE OF THE SANITARY DISTRICT OF CHICAGO AND MAKING AN ANGLE OF 114 DEGREES 36 MINUTES 00 SECONDS WITH THE LAST DESCRIBED COURSE (AS MEASURED FROM EAST TO NORTH) TO SOUTH LINE A DISTANCE OF 30.00 FEET (ON A POINT ON SEGMENT); THENCE CONTINUING NORTHEAST ALONG THE LAST DESCRIBED COURSE, A DISTANCE OF 30.00 FEET; THENCE NORTHWEST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE 33.00 FEET; THENCE NORTHEAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE 80.00 FEET; THENCE SOUTHEAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, 33.00 FEET; THENCE NORTHEAST AT RIGHT ANGLES TO THE LAST DESCRIBED COURSE, 33.00 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

Exhibit A

EXHIBIT A

BRADLEY PLACE BUSINESS
CENTER

IRVING PARK
AVE.
RIVER
"B"
"A"
200
ST.
LOCATION OF SEWER EASEMENT
GRACE
ST.
BRADLEY PL.
AVE.
206
210
TALMAN
CALIFORNIA
ADDISON
ST.

EXHIBIT B

FORM OF SEWER EASEMENT AGREEMENT

EASEMENT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2013, by and between the METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO, a body corporate and politic organized and existing under the laws of the State of Illinois, hereinafter called the "District" and the CITY OF CHICAGO, a municipal corporation, organized and existing under the law of the State of Illinois, hereinafter called the "Grantee."

WHEREAS, the Grantee desires a 20' x 35' 25-year non-exclusive easement, to reconstruct, operate, maintain, repair and remove an 18-inch storm sewer and outfall which discharges into the North Branch of the Chicago River north of Bradley Place and west of Rockwell Avenue in Chicago, Illinois, the real estate legally described and depicted in Exhibit A which is attached hereto and made a part hereof; and

WHEREAS, the District is willing to grant to the Grantee the easement aforesaid upon the conditions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the representations, covenants, conditions, undertakings, and agreements herein made, the parties hereto agree as follows:

ARTICLE ONE

1.01 The District hereby grants unto the Grantee a non-exclusive easement, right, privilege and authority for 25 years commencing on September 8, 2013, and terminating on September 7, 2038, for the sole and exclusive purpose to construct, reconstruct, operate, maintain, repair and remove an 18-inch storm sewer and outfall which discharges into the North Branch of the Chicago River north of Bradley Place and west of Rockwell Avenue in Chicago, Illinois, hereinafter for convenience sometimes called "Improvements and Facilities", the real estate legally described and depicted in Exhibit A which is attached hereto and made a part hereof, hereinafter called the "Easement Premises".

1.02 The District reserves the right of access to and use of the surface of the Easement Premises.

1.03 The Grantee covenants and agrees in consideration of the grant of said easement to pay to the District an easement fee in the amount of TEN AND No/100 DOLLARS ($10.00).

1.04 In addition to the aforesaid, the Grantee shall also pay, when due, all real estate taxes and assessments, if any, that may be levied, charged or imposed upon or against the Easement Premises described in Exhibit A and submit to the District evidence of such payment within 30 days thereafter.

ARTICLE TWO

2.01 The construction and installation of the Improvements and Facilities of the Grantee on the Easement Premises shall be in accordance with plans and specifications therefor prepared at Grantee's expense and supplied to the District by the Grantee. No work shall commence until said plans and specifications have been approved in writing by the Executive Director of the District.

2.02 The construction and installation of the Improvements and Facilities by the Grantee on the Easement Premises shall be done to the satisfaction of the Executive Director of the District.

2.03 Grantee shall construct, install, operate, maintain and remove the "Improvements and Facilities", in a good and workmanlike manner at its sole cost, risk and expense.

2.04 The Grantee shall compensate the District for any additional costs that the District may sustain in any future construction of sewers, reservoirs or any other surface or underground structures caused by the presence of the Improvements and Facilities of the Grantee on the Easement Premises.

2.05 The Grantee shall relocate or remove the Improvements and Facilities existing or constructed upon the Easement Premises at no cost to the District:

A. In the event that the subject premises are adjacent to any channel, waterway or reservoir, and said channel, waterway or reservoir is to be widened by the District or any other governmental agency; or

B. In the event that any agency of government, having jurisdiction over said channel, waterway or reservoir requires the relocation or removal of said improvements; or

C. In the event that said relocation or removal is required for the corporate purposes of the District.

ARTICLE THREE

3.01 The District expressly retains its interest in and rights to the use and occupation of the Easement Premises subject to the easement rights herein granted, and the District may grant further easements, assign, sell or lease the same to other parties subject to the Grantee's right of use and a reasonable means of access to said Improvements and Facilities for construction, reconstruction, operation, maintenance, repair or removal thereof.

3.02 The Grantee shall, subject to available appropriations and any necessary legislation, be solely responsible for and shall defend, indemnify, keep and save harmless the District, its Commissioners, officers, agents and employees, against all injuries, deaths, losses, damages, claims, patent claims, liens, suits, liabilities, judgments, costs and expenses which may in any wise accrue, directly or indirectly, against the District, its Commissioners, officers, agents or employees, in consequence of the granting of this Easement, or which may in anywise result therefrom or from any work done hereunder,

whether or not it shall be alleged or determined that the act was caused through negligence or omission of the Grantee or Grantee's contracts, subcontractors or their agents and the Grantee shall, at Grantee's sole expense, appear, defend and pay all charges of Attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the District, its Commissioners, officers, agents or employees, in any such action, the Grantee shall, at the Grantee's sole expense, satisfy and discharge the same provided that Grantee shall first have been given prior notice of the suit in which judgment has been or shall be rendered, Grantee shall have been given an opportunity to defend the same and the District shall have given Grantee its full cooperation. Grantee expressly understands and agrees that any performance bond or insurance protection required by this Easement, or otherwise provided by Grantee, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the District as herein provided.

3.03 (a) The Grantee, prior to entering upon said premises and using the same for the purposes for which this Easement is granted, shall procure, maintain and keep in force, at Grantee's expense, the following public liability and property damage insurance in which the District, its Commissioners, officers, agents and employees, are a named insured as well as fire and extended coverage, and all-risk property insurance ("CLAIMS MADE" policies are unacceptable) in which the District is named loss payee from a company to be approved by the District, each afore-referenced policy shall have limits of not less than the following:

COMPREHENSIVE GENERAL LIABILITY
Combined Single Limit Bodily Injury Liability
Property Damage Liability (Including Liability for Environmental Contamination of Adjacent Properties)
in the amount of not less than $4,000,000.00
per Occurrence

and

ALL RISK PROPERTY INSURANCE
(Including Coverage for Environmental Contamination of Easement Premises)
in the amount of not less than $4,000,000.00
per Occurrence

Prior to entering upon said premises, and thereafter on the anniversary date of such policies, the Grantee shall furnish to the District certificates of such insurance or other suitable evidence that such insurance coverage has been procured and is maintained in full force and effect. Upon District's written request, Grantee shall provide District with copies of the actual insurance policies within ten (10) days of District's request for same. Such certificates and insurance policies shall clearly identify the premises and shall provide that no change, modification in or cancellation of any insurance shall become effective until the expiration of thirty (30) days after written notice thereof shall have been given by the insurance company to the District. The provisions of this paragraph shall in no wise limit the liability of the Grantee as set forth in the provisions of paragraph 3.02 above, or

3.03 (b) The Grantee prior to entering upon said premises and using the same for

the purposes for which this Easement is granted, shall prepare and transmit to the District an acknowledged statement that the Grantee is a self-insurer, and that it undertakes and promises to insure the District, its Commissioners, officers, agents, servants and employees on account of risks and liabilities contemplated by the indemnity provisions of this Easement (Article Three, Paragraph 3.02) above; and that such statement is issued in lieu of policies of insurance or certificates of insurance in which the District, its Commissioners, officers, agents, servants and employees would be a named or additional insured, and that it has funds available to cover those liabilities in the respective amounts therefor, as set forth as follows:

COMPREHENSIVE GENERAL LIABILITY
Combined Single Limit Bodily Injury Liability
Property Damage Liability (Including Liability for Environmental Contamination of Adjacent Properties)
in the amount of not less than $4,000,000.00
per Occurrence

and

ALL RISK PROPERTY INSURANCE
(Including Coverage for Environmental Contamination
of Easement Premises)
in the amount of not less than $4,000,000.00
per Occurrence.

This statement shall be signed by such officer or agent of the Grantee having sufficient knowledge of the fiscal structure and financial status of the Grantee, to make such a statement on behalf of the Grantee and undertake to assume the financial risk on behalf of the Grantee and will be subject to the approval of the District.

3.04 In lieu of carrying private insurance that would otherwise be required under paragraph 3.03(a) above, Grantee has, prior to the date hereof, provided to Grantee, and District has accepted, an acknowledged statement that the Grantee is a self-insurer, and that it undertakes and promises to insure the District, its Commissioners, officers, agents, servants and employees on account of risks and liabilities contemplated by the provisions of paragraph 3.03 above; and that such statement is issued in lieu of policies of insurance or certificates of insurance in which the District, its Commissioners, officers, agents, servants and employees would be a named or additional insured, and that it has funds available to cover those liabilities in the respective amounts therefor, as set forth as follows:

COMPREHENSIVE GENERAL LIABILITY
Combined Single Limit Bodily Injury Liability
Property Damage Liability
(Including Liability for Environmental Contamination of Adjacent Properties)
in the amount of not less than $4,000,000.00 per occurrence
and
ALL RISK PROPERTY INSURANCE
(Including Coverage for Environmental Contamination of Easement Premises)
in the amount of not less than $4,000,000.00 per occurrence
INCLUDING FIRE AND EXTENDED COVERAGE

in an amount not less than the replacement cost of improvements
located on the Easement Premises*

This statement shall be signed by such officer or agent of the Grantee having sufficient knowledge of the fiscal structure and financial status of the Grantee to make such a statement on behalf of the Grantee and undertake to assume the financial risk on behalf of the Grantee and will be subject to the approval of the District.

The provisions of this Section shall in nowise limit the liability of the Lessee as set forth under the provisions of Article Four, Paragraph 4.01.

ARTICLE FOUR

4.01 In the event of any default on the part of the Grantee to faithfully keep and perform all singular the covenants, agreements and undertakings herein agreed by it to be kept and performed, or if said Improvements and Facilities are abandoned, the District shall give the Grantee notice in writing of such default or abandonment; and if such default or abandonment shall not have been rectified within thirty (30) days after receipt of such notice by the Grantee, all rights and privileges granted herein by the District to the Grantee may be terminated by the District; and upon such termination, the Grantee shall immediately vacate the Easement Premises and remove its Improvements and Facilities from said real estate and restore the land to its condition prior to Grantee's entry thereon, all at the sole cost of the Grantee.

4.02 The Grantee shall have the right to give the District written notice to cease and terminate all rights and privileges under this agreement. In the event of such termination, the Grantee shall have a period of one-hundred twenty (120) days from and after such termination date to remove the Improvements and Facilities and to restore the land to its original condition at no cost to the District.

The expiration of said removal and restoration date shall in no event extend beyond the expiration date of this Easement.

4.03 The Grantee understands and agrees that upon the expiration of this Easement, Grantee shall have removed or caused to be removed its Improvements and Facilities and any other things which Grantee has erected or placed upon said Easement Premises. Grantee further agrees to yield up said Easement Premises in as good condition as when the same was entered upon by the Grantee. Upon Grantee's failure to do so, the District may do so at the sole expense and cost of Grantee.

4.04 Grantee expressly understands and agrees that any insurance protection or bond required by this Easement, or otherwise provided by Grantee, shall in no way limit the responsibility to defend, indemnify, keep and save harmless the District, as hereinabove provided.

ARTICLE FIVE

5.01 The Grantee also agrees that if the District incurs any additional expense for additional work which the District would not have had to incur if this Easement had not

been executed, then, in that event, the Grantee agrees to pay to the District such additional expense as determined by the Executive Director of the District, promptly upon rendition of bills therefor to the Grantee.

5.02 The Grantee covenants and agrees that, subject to the terms of Article Three, Paragraph 3.02, it will reimburse the District, make all necessary repairs at its sole cost and expense and otherwise keep and save harmless the District from any loss, cost or expense arising out of the granting of this Easement suffered to property of the District by way of damage to or destruction thereof, caused by any act or omission of the Grantee, Grantee's agents, employees, contractors, subcontractors, or anyone else acting through or on behalf of Grantee, its agents, employees, contractors, or subcontractors.

5.03 During the term of this Easement, the District shall not be liable to the Grantee for any loss, cost or expense which the Grantee shall sustain by reason of any damage to its property or business caused by or growing out of the construction, repair, reconstruction, maintenance, existence, operation or failure of any of the sewers, structures, channels or other works or equipment of the District now located or to be constructed on said Easement Premises, or on the land of the District adjacent to said Easement Premises.

ARTICLE SIX

6.01 Detailed plans of subsequent construction or material alteration of the Grantee's Improvements and Facilities shall first be submitted to the Executive Director of the District for approval. Construction work shall not begin until such approval is given to Grantee in writing.

6.02 Any notice herein provided to be given shall be deemed properly served if delivered in writing personally or mailed by registered or certified mail, postage prepaid, return receipt requested to the District in care of the Executive Director, 100 East Erie Street, Chicago, Illinois 60611, or to the Grantee in care of:

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

With a Copy to:

City of Chicago
Department of Law
Real Estate and Land Use Division
City Hall, Suite 600
121 North LaSalle Street
Chicago, Illinois 60602
Attn: Deputy Corporation Counsel

or to such other persons or addresses as either party may from time to time designate.

_____

ARTICLE SEVEN

7.01 The Grantee, prior to entering upon said premises and using the same for the purposes for which this Easement is granted, shall, at Grantee's sole cost and expense, obtain all permits, consents and licenses which may be required under any and all statutes, laws, ordinances and regulations of the District, the United States of America, the State of Illinois, the County of Cook, or the City of Chicago, in which the subject property is located, and furnish to the District suitable evidence thereof.

7.02 The Grantee covenants and agrees that it shall strictly comply with any and all statutes, laws, ordinances and regulations of the District, the United States of America, the State of Illinois, the County of Cook and the City of Chicago, in which the subject property is located, which in any manner affects this Easement, any work done hereunder or control or limit in any way the actions of Grantee, its agents, servants and employees, or of any contractor or subcontractor of Grantee, or their employees.

7.03 The Grantee agrees to protect all existing District facilities within the Easement Premises, including, but not limited to, intercepting sewers, sludge lines, utility lines, dropshafts, connecting structures, siphons and manholes.

7.04 No blockage or restriction of flow in the water will be tolerated at any time. No construction or improvements of any kind can project into the waterway during construction or after permanent repairs are completed.

ARTICLE EIGHT

8.01 The Grantee shall not voluntarily or by operation of law assign, or otherwise transfer or encumber all or any part of Grantees' interest in this Easement or in the Premises to any other governmental agency, individual, partnership, joint venture, corporation, land trust or other entity without prior written consent of the District.

8.02 Grantee shall notify the District in writing not less that sixty (60) days prior to any proposed assignment or transfer of interest in this Easement. Grantee shall identify the name and address of the proposed assignee/transferee and deliver to the District original or certified copies of the proposed assignment, a recital of assignee's personal and financial ability to comply with all the terms and conditions of the Easement Agreement and any other information or documentation requested by the District. The District shall not unreasonably withhold the consent to assignment or transfer.

8.03 Any attempted assignment or transfer of any type not in compliance with these sections shall be void and without force and effect.

ARTICLE NINE

GENERAL ENVIRONMENTAL PROVISIONS
9.01 DEFINITIONS

A. "Environmental Laws" shall mean all present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations and similar items, of all government

agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, state and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, orders, notices or demands relating to industrial hygiene, and the protection of human health or safety from exposure to Hazardous Materials, or the protection of the environment in any respect, including without limitation:

(1) all requirements, including, without limitation, those pertaining to notification, warning, reporting, licensing, permitting, investigation, and remediation of the presence, creation, manufacture, processing, use, management, distribution, transportation, treatment, storage, disposal, handling, or release of Hazardous Materials;

(2) all requirements pertaining to the protection of employees or the public from exposure to Hazardous Materials or injuries or harm associated therewith; and

(3) the Comprehensive Environmental Response, Com-pensation and Liability Act (Superfund or CERCLA) (42 U.S.C. Sec. 9601 et seq.), the Resource Conservation and Recovery Act (Solid Waste Disposal Act or RCRA) (42 U.S.C. Sec. 6901 et seq.), Clean Air Act (42 U.S.C. Sec 7401 et seq.), the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. Sec, 1251 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. Sec. 11001 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec, 2601 et seq.), the National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.), the Rivers and Harbors Act of 1988 (33 U.S.C. Sec. 401 et seq.), the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the Safe Drinking Water Act (42 U.S.C. Sec. 300 (f) et seq., the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.) and all rules, regulations and guidance documents promulgated or published thereunder, Occupational Safety and Health Act (29 U.S.C. Sec. 651 et seq.) and all similar state, local and municipal laws relating to public health, safety or the environment.

B. "Hazardous Materials" shall mean:

(1) any and all asbestos, natural gas, synthetic gas, liquefied natural gas, gasoline, diesel fuel, petroleum, petroleum products, petroleum hydrocarbons, petroleum by-products, petroleum derivatives, crude oil and any fraction of it,

polychlorinated biphenyls (PCBs), trichloroethylene, urea formaldehyde and radon gas;

(2) any substance (whether solid, liquid or gaseous in nature), the presence of which (without regard to action level, concentration or quantity threshold requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, policy or common law;

(3) any substance (whether solid, liquid or gaseous in nature) which is toxic, explosive, corrosive, flam-mable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous or dangerous;

(4) any substance (whether solid, liquid or gaseous in nature) the presence of which could cause or threaten to cause a nuisance upon the area subject to easement or to adjacent properties or pose or threaten to pose a hazardous threat to the health or safety of persons on or about such properties;

(5) any substance (whether solid, liquid or gaseous in nature) the presence of which on adjacent properties could constitute trespass by or against Grantee or District;

(6) any materials, waste, chemicals and substances, whether solid, liquid or gaseous in nature, now or hereafter defined, listed, characterized or referred to in any Environmental Laws as "hazardous substances," "hazardous waste," "infectious waste," "medical waste," "extremely hazardous waste," "hazardous materials," "toxic chemicals," "toxic substances," "toxic waste," "toxic materials," "contaminants," "pollutants," "carcinogens," "reproductive toxicants," or any variantor similar designations;

(7) any other substance (whether solid, liquid or gaseous in nature) which is now or hereafter regulated or controlled under any Environmental Laws (without regard to the action levels, concentrations or quantity thresholds specified herein); or

(8) any result of the mixing or addition of any of the substances described in this Subsection B with or to other materials.

C. "Phase I Environmental Assessment" shall mean:

(1) an assessment of the Easement Premises

performed by an independent and duly qualified, licensed engineer with experience and expertise in conducting environmental assessments of real estate, bedrock and groundwater of the type found on the Easement Premises and said assessment shall include, but not necessarily be limited to a historical review of the use (abuse) of the Easement Premises, a review of the utilization and maintenance of hazardous materials on the Easement Premises review of the Easement Premises' permit and enforcement history (by review of regulatory agency records), a site reconnaissance and physical survey, inspection of Easement Premises, site interviews and site history evaluations, basic engineering analyses of the risks to human health and the environment of any areas of identified concerns, and preparation of a written report which discusses history, site land use, apparent regulatory compliance or lack thereof and which includes historical summary, proximity to and location of USTs, LUSTs, TSDFs, CERCLA site flood plain, maps, photograph log references, conclusions and recommendations.

D. "Phase II Environmental Assessment" shall mean:

(1) an assessment of the Easement Premises performed by an independent and duly qualified, licensed engineer with experience and expertise in conducting environmental assessments of real estate, bedrock and groundwater of the type found on the Easement Premises and said assessment shall include, but not necessarily be limited to, extensive sampling of soils, ground waters and structures, followed by laboratory analysis of these samples and interpretation of the results, and preparation of a written report with boring logs, photograph logs, maps, investigative procedures, results, conclusions and recommendations.

9.02 MANUFACTURE, USE, STORAGE, TRANSFER OR DISTRIBUTION OF HAZARDOUS MATERIALS UPON OR WITHIN THE EASEMENT

Grantee, for itself, its heirs, executors, administrators, and successors covenants that to the extent that any Hazardous Materials are manufactured, brought upon, placed, stored, transferred, conveyed or distributed upon or within the Easement Premises, by Grantee or its subtenant or assigns, or any of its agents, servants, employees, contractors or subcontractors, same shall be done in strict compliance with all Environmental Laws.

Construction or installation of new or reconstruction of any underground interconnecting conveyance facilities for any material or substance is not permitted without the advance written consent of the Executive Director of the District.

9.03 USE OF PREMISES (RESTRICTIONS - ENVIRONMENTAL)

Grantee shall use the Easement Premises only for purposes expressly authorized by Article 1.01 of this Easement Agreement. Grantee will not do or permit any act that may impair the value of the Easement Premises or any part thereof or that could materially increase the dangers, or pose an unreasonable risk of harm, to the health or safety of persons to third parties (on or off the Easement Premises) arising from activities thereon, or that could cause or threaten to cause a public or private nuisance on the Easement Premises or use Easement Premises in any manner (i) which could cause the Easement Premises to become a hazardous waste treatment, storage, or disposal facility within the meaning of, or otherwise bring the Easement Premises within the ambit of the Resource Conservation and Recovery Act of 1976, Section 6901 et seq. of Title 42 of the United States Code, or any similar state law or local ordinance, (ii) so as to cause a release or threat of release of Hazardous Materials from the Easement Premises within the meaning of, or otherwise bring the Easement Premises within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 9601 et seq. of Title 42 of the United States Code, or any similar state law or local ordinance or any other Environmental Law or (iii) so as to cause a discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions which would require a permit under the Federal Water Pollution Control Act, Section 1251 of Title 33 of the United States Code, or the Clean Air Act, Section 741 of Title 42 of the United States Code, or any similar state law or local ordinance.

9.04 CONDITION OF PROPERTY (ENVIRONMENTAL)

A. In the event Grantee has used the Easement Premises under a prior easement agreement, Grantee warrants and represents that as a result of the easement grant, the Easement Premises and improvements thereon, including all personal property, have not been exposed to contamination by any Hazardous Materials, that there has not been thereon a release, discharge, or emission, of any Hazardous Materials during its occupancy of the premises as defined by any Environmental Laws, and that the Easement Premises does not contain, or is not affected by underground storage tanks, landfills, land disposal sites, or dumps.

B. In the event of a release, emission, discharge, or disposal of Hazardous Materials in, on, under, or about the Easement Premises or the improvements thereon, during the Term of the Easement Agreement except such release, emission, discharge or disposal by the District, its employees, or agents. Grantee will take all appropriate response action, including any removal and remedial action after the execution date of this Easement Agreement.

9.05 INDEMNIFICATION (ENVIRONMENTAL)

A. In consideration of the execution and delivery of this Easement Agreement, the Grantee indemnifies, exonerates, and holds the District and its officers, officials, Commissioners, employees, and agents ("Indemnified Parties") free and harmless from and against any and all actions, causes of action, suits, losses, costs, liabilities and damages and expenses incurred in connection with any of these, including reasonable Attorney's fees, costs and disbursements incurred by the Indemnified Parties caused by Grantee at the Easement Premises as a result of or arising out of or relating to (i) the imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of Grantee's activities, or (ii) any investigation, litigation, or proceeding related to any environmental response, audit, compliance, or (iii) the release or threatened release by Grantee, of any Hazardous Materials.

B. The District shall be responsible for all costs for remediation of the Easement Premises for contamination that migrates from adjacent property during the Term of this Agreement but the District may seek recovery from any responsible third party.

9.06 ENVIRONMENTAL COVENANTS

Grantee agrees to and covenants as follows with respect to the Easement Premises:

A. The City of Chicago's Department of Water Management has no knowledge of any pending or threatened:

(1) claims, complaints, notices, or requests for information directed to Grantee with respect to any alleged violation of any Environmental Laws, or

(2) complaints, notices, or requests for information directed to Grantee regarding potential liability under any Environmental Law, relating to or arising from the Easement Premises.

B. That throughout the Term of this Agreement, all Hazardous Materials which may be used by any person, under the control of Grantee, for any purpose upon the Easement Premises shall be used or stored thereon only in a safe, approved manner, in accordance with all generally accepted industrial standards and all Environmental Laws.

C. Grantee will obtain and comply with all permits, certificates, approvals, licenses, and other authorizations relating to environmental matters and necessary for its business at the

Easement Premises, if any.

D. Grantee will take all reasonable steps to prevent a violation of any Environmental Laws. Grantee will take all reasonable steps to assure that there will be no spill, discharge, leaks, emission, injection, escape, dumping, or release of any toxic or Hazardous Materials by any persons on the Easement Premises during the Term of this Easement Agreement.

E. During the Term of this Easement Agreement, Grantee will not allow the installation of asbestos on the Easement Premises, or any item, article, container or electrical equipment including but not limited to transformers, capacitors, circuit breakers, reclosers, voltage regulators, switches, electro-magnets and cable, containing PCBs.

F. If Grantee installs utility trenches during the Term of this Easement Agreement, Grantee shall be responsible to install "plugs" of compacted impermeable soil material at intervals of no greater than 100 feet between such plugs along utility trenches which have been backfilled with compacted granular materials in order to minimize cross-site and off-site environmental contaminant migration. The spacing of these plugs should be based on the characteristics of the site, the configuration of the trench or trenches, the characteristics (nature and extent) of the site environmental contamination, and/or the potential for site contamination should a surface of subsurface chemical release occur. Special emphasis should be placed on locating these plugs at all utility trenches where they cross: other utility trenches, containment berms or walls, property boundaries, and lease boundaries.

G. The aforesaid representations and warranties shall survive the expiration or termination of the Easement Agreement.

9.07 COVENANTS (ENVIRONMENTAL)

Grantee shall cause its contractors, subcontractors, employees and agents to:

A. (1) Use and operate all of the Easement Premises in compliance with all applicable Environmental Laws, keep all material permits, approvals, certificates, and licenses in effect and remain in material compliance with them;

(2) undertake reasonable and cost-effective measures to minimize any immediate environmental impact of any spill or leak of any Hazardous Materials caused by Grantee or any person permitted to use the Easement Premises by Grantee, excluding the District, during the Term of this Easement Agreement;

B. Notify District by telephone within two hours of Grantee's actual

knowledge of the release of Hazardous Materials, including the extent to which the identity of the Hazardous Materials is known, the quantity thereof and the cause(s) of the release, and provide the District within 72 hours of the event with copies of all written notices by Grantee, that are reported to government regulators or received from the government regulators.

C. Provide such information that the District may reasonably request from time to time to determine compliance by the Grantee with this Article.

D. Grantee covenants and agrees to cooperate with the District in any inspection, assessment, monitoring, or remediation instituted by the District during the Easement Agreement.

9.08 COMPLIANCE (ENVIRONMENTAL)

The Grantee will exercise due diligence to comply with all applicable treaties, laws, rules, regulations, and orders of any government authority.

A. In the event of a spill, leak or release of hazardous waste carried by Grantee, its employees, or its agents Grantee shall conduct a Phase I Environmental Assessment, at its own expense, with respect to the Easement Premises and submit the written report to the District within 90 days after the spill, leak or discharge. After review of each Phase I Environmental Assessment, District, at its sole discretion, may require Grantee, at Grantee's expense, to obtain a Phase II Environmental Assessment with respect to the premises used under the Easement Agreement. The written report of the Phase II Environmental Assessment shall be submitted to District within 120 days of District's request for same. If the Phase II Assessment discloses the presence of any Hazardous Materials contamination on the Easement Premises, Grantee shall take immediate action to remediate the contamination and to restore the Easement Premises described in Exhibit A to a clean and sanitary condition and to the extent required by any and all Environmental Laws.

B. Capacitators, transformers, or other environmentally sensitive installations or improvements installed by Grantee shall be removed at the end of the Easement Agreement at the District's direction.

C. If any Environmental Assessment reveals, or District otherwise becomes aware of, the existence of any violation of any Environmental Laws that either Grantee is unwilling to remediate or that District is unwilling to accept, District shall have the right and option to terminate this Agreement and to declare it null and void.

D. In the event Grantee should receive a Notice of Environmental Problem, Grantee shall promptly provide a copy to the District, and in no event later than seventy-two (72) hours from Grantee's receipt or submission thereof. "Notice of Environmental Problem" shall

mean any notice, letter, citation, order, warning, complaint, inquiry, claim, or demand that: (i) the Grantee has violated, or is about to violate, any Environmental Laws; (ii) there has been a release, or there is a threat of release, of Hazardous Materials, on the Easement Premises, or any improvements thereon; (iii) the Grantee will be liable, in whole or in part, for the costs of cleaning up, remediating, removing, or responding to a release of Hazardous Materials; (iv) any part of the Easement Premises or any improvements thereon is subject to a lien in favor of any governmental entity for any liability, costs, or damages, under any Environmental Laws, arising from or costs incurred by such government entity in response to a release of Hazardous Material.

E. Not less than one (1) year prior to the expiration of the Easement, Grantee shall have caused to be prepared and submitted to the District a written report of a site assessment in scope, form and substance, and prepared by an independent, competent and qualified professional and engineer, registered in the State of Illinois, satisfactory to the District, and dated not more than eighteen (18) months prior to the expiration of the Easement, showing that:

(1) the Easement Premises and any improvements thereon to materially deviate from any requirements of the Environmental Laws, including any licenses, permits or certificates required thereunder;

(2) the Easement Premises and any improvements thereon to contain: (i) asbestos in any form; (ii) urea formaldehyde; (iii) items, articles, containers, or equipment which contain fluid containing polychlorinated bi-phenyls (PCBs); or (iv) underground storage tanks which do not comply with Environmental Laws;

(3) the engineer has identified, and then describes, any Hazardous Materials utilized, maintained or conveyed on or within the property, the exposure to which is prohibited, limited, or regulated by any Environmental Laws;

(4) if any Hazardous Materials were utilized, maintained or conveyed on the Easement Premises, the engineer has conducted and submitted a Phase II Environmental Assessment of the Easement Premises, which documents that the Easement Premises and improvements are free of contamination by Hazardous Materials;

(5) the engineer has identified and then describes, the

subject matter of any past, existing, or threatened investigation, inquiry, or proceeding concerning environmental matters by any federal, state, county, regional or local authority, (the Authorities"), and describing any submission by Grantee concerning said environmental matter which has been given or should be given with regard to the Easement Premises to the Authorities; and

(6) the engineer includes copies of the submissions made pursuant to the requirements of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), Section 11001 et seq. of Title 42 of the United States Code.

9.09 INSPECTION AND RIGHT OF INSPECTION (ENVIRONMENTAL)

A. In the event Grantee receives a Notice of Environmental Problem, Grantee shall, within ninety (90) days, submit to District a written report reasonably satisfactory to the District, showing that Grantee made all appropriate inquiry consistent with good commercial and customary practice, indicating whether there was a release of substances on the Easement Premises which could necessitate an environmental response action pursuant to Environmental Laws.

B. District hereby expressly reserves to itself, its agents, attorneys, employees, consultants, and contractors, an irrevocable license and authorization to enter upon and inspect the Easement Premises and improvements thereon, and perform such tests, including without limitation, subsurface testing, soils, and groundwater testing, and other tests which may physically invade the Easement Premises or improvements thereon as the District, in its sole discretion, deter mines is necessary to protect its interests.

ARTICLE TEN

All discharges to the North Branch of the Chicago River must comply with all local and State of Illinois water quality standards, including but not limited to: National Pollutant Discharge Elimination System Permit, General Storm Water Permit (MS4) issued by the Illinois Environmental Protection Agency, any and all terms and conditions of Appendix A to the District's Sewage and Waste Control Ordinance (Exhibit B).

IN WITNESS WHEREOF, on the day and year first above written, the parties hereto have caused these presents, including Riders and Exhibits, if any, to be duly executed, duly attested and their corporate seals to be hereunto affixed.

METROPOLITAN WATER RECLAMATION DISTRICT
OF GREATER CHICAGO

By:_____
Mariyana T. Spyropoulos
Chairman of Committee on Finance

ATTEST:

_____
Jacqueline Torres, Clerk

CITY OF CHICAGO

By:_____

Title:_____

ATTEST:

By:_____

Title:_____