

9/2/94

56-R-94

A RESOLUTION

Authorizing The City Manager to
Execute the Permits for Use of
the Main Street Site for Construction Purposes

WHEREAS, the City of Evanston ("City") and the Metropolitan Water Reclamation District ("District") have entered into an Easement Agreement for the use of a parcel of land located on the South side of Main Street, West of the Main Street Commons on land located in the Village of Skokie; and

WHEREAS, the District will issue to the City a permit and license to use the real estate described in Exhibit A for the sole and exclusive purpose of continued access and equipment set up to facilitate completion of construction of sewer and related road resurfacing operations and for crushing and storage of asphalt and concrete on District property located on the East bank of the North Shore of the Channel, just South of Main Street, in Skokie, Illinois; and

WHEREAS, such permit is necessary and required by the City for use of the Main Street Commons construction site,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the City Manager of the City of Evanston is hereby authorized and directed to sign and the City Clerk hereby authorized and directed to attest on behalf of the City of Evanston Permits with the Metropolitan Water Reclamation District for the

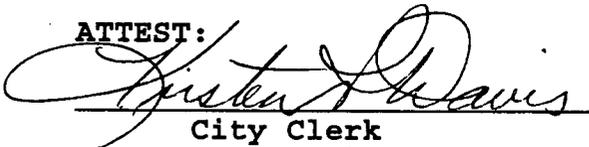
use of Main Street for construction purposes.

SECTION 2: That the City Manager is hereby authorized and directed to negotiate any additional conditions or terms on the aforesaid Permits.

SECTION 3: This Resolution shall be in full force and effect following its passage and approval in the manner required by law.



Mayor

ATTEST:


City Clerk

Adopted: September 12, 1994



MAIN STREET

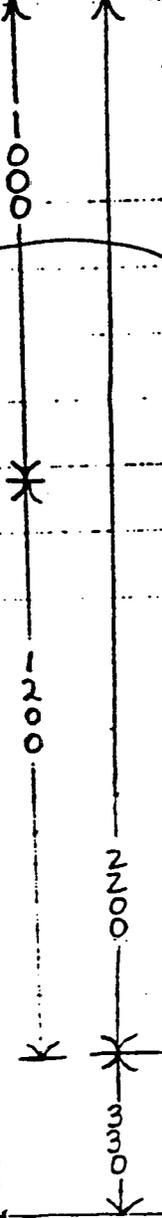
W. B. KCHERONIS

NORTH SHORE CANAL

MSD PROPERTY

3230 Oak St
MSD field office

Downward



Current temporary construction easement (permitted use area)

OAKTON STREET

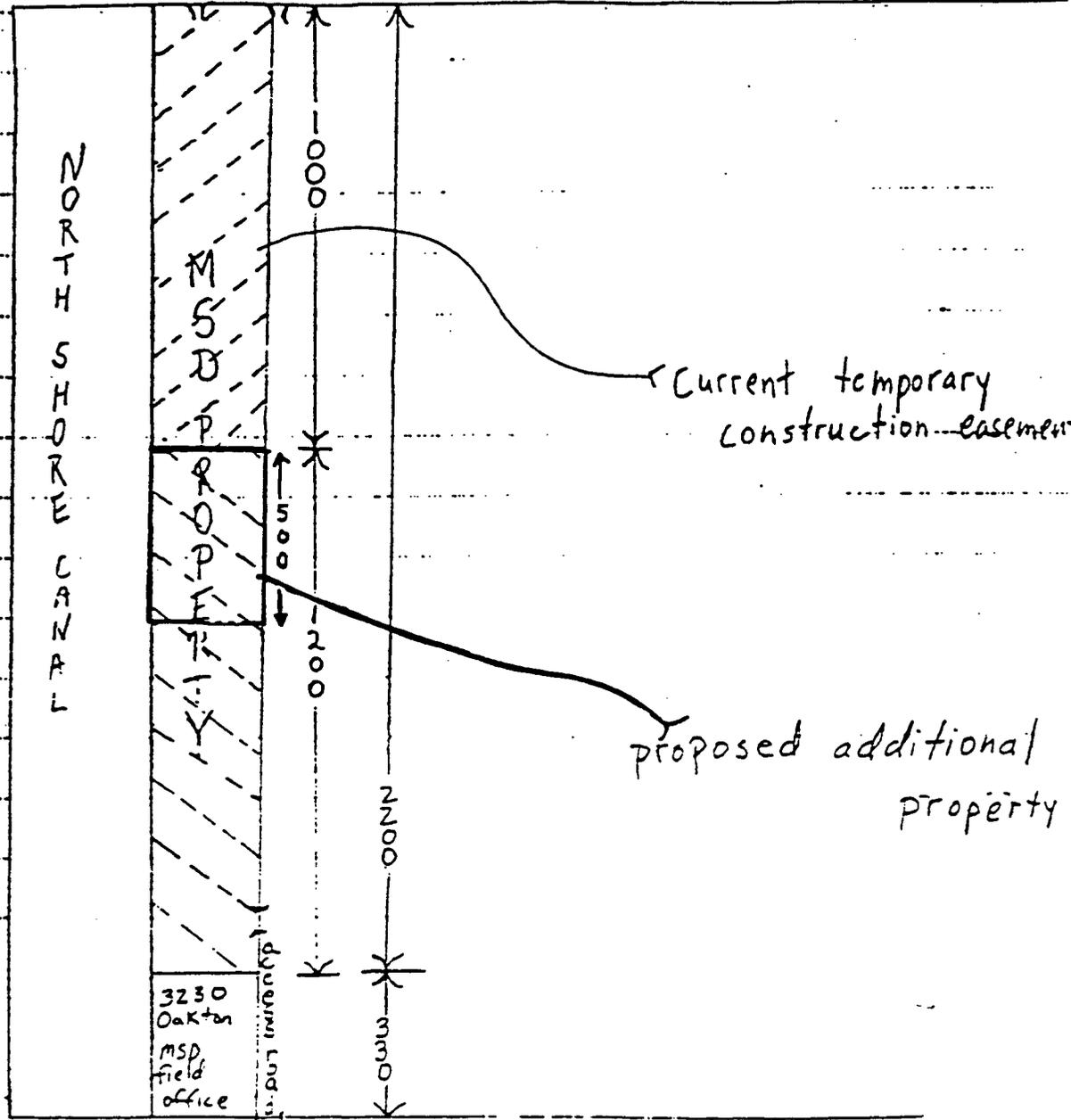
330 * 270

All MSD Property Is Fenced In

EXHIBIT A



MAIN STREET



Current temporary construction easement

proposed additional property

3230
Oakton
MSD
field
office

DRAINAGE EASEMENT

OAKTON STREET

← 330 * 290 →

All MSD Property Is Fenced In

EXHIBIT A

GENERAL PERMIT

THIS PERMIT made this 14th day of July, 1994, by and between THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO, a municipal corporation, organized and existing under the laws of the State of Illinois hereinafter called "District," and CITY OF EVANSTON, a municipal corporation organized and existing under the laws of the State of Illinois hereinafter called "Permittee."

ARTICLE ONE

1.01 The District for and in consideration of the payment of the permit fees hereinafter set forth, hereby issues to the Permittee a permit and license to use the following described real estate situated in the County of Cook, State of Illinois for the sole and exclusive purpose of access and equipment set up upon the District's North Shore Channel right-of-way for construction of storm sewers under its Phase II Flood Relief Project in Skokie, Illinois, and for no other purpose whatsoever. (For pictorial representation of permit premises, see Exhibit A attached hereto and made a part hereof).

1.02 This Permit shall be effective from the 21st day of May, 1994 to the 20th day of August, 1994, at which time Permittee shall vacate said premises and remove Permittee's effects therefrom at Permittee's cost, unless said Permit shall be terminated sooner by virtue of the provisions hereinafter provided.

ARTICLE TWO

2.01 Permittee hereby agrees that in consideration for the granting of this Permit, Permittee shall pay to the District the sum of TEN AND NO /100 DOLLARS, receipt of which is hereby acknowledged.

2.02 In addition thereto, Permittee shall pay on or before the due date therefor, all real estate taxes, special assessments and all other taxes, assessments and charges which may be levied against the property or the District by any governmental authority empowered to do so, on account of Permittee's use of the Permit Premises.

ARTICLE THREE

3.01 Permittee agrees and specifically understands that this Permit is confined solely to the non-exclusive privilege to Permittee to use the premises set forth in Article One, and no other; that the authority and permission herein given does not thereby grant unto Permittee any interest or estate in the said lands of the District and that the District retains dominion, possession and control of said lands, including access thereto at all times.

3.02 Permittee further agrees and specifically understands that the District shall have the right to enter upon the premises herein described for the purpose of making such surveys, soil borings or other purposes as may be deemed necessary by the District in the furtherance of its corporate purpose.

3.03 The District shall not be liable for any loss, cost or damage to the Permittee by reason of the exercise of the right to make such surveys, soil borings or other purposes as may be deemed necessary by the District in the furtherance of its corporate purpose.

ARTICLE FOUR

4.01 The District hereby reserves the right to terminate this Permit upon giving thirty (30) days notice, in writing, of such termination to Permittee and thereupon Permittee shall vacate said premises and remove its effects therefrom, and restore the premises to the condition existing prior to Permittee's entry thereon, at Permittee's cost.

4.02 In the event Permittee uses or allows the premises to be used for any illegal or immoral purposes, or for any purpose other than that hereinabove specifically provided, or violates any of the provisions hereof, this Permit may be terminated by the District upon giving three (3) days notice, in writing, to Permittee, and thereupon Permittee shall forthwith vacate said premises and remove Permittee's effects therefrom, and restore the premises to the condition existing prior to Permittee's entry thereon, at Permittee's cost.

4.03 The District shall not be liable to Permittee for any loss, cost or damage incurred by the Permittee by reason of the exercise of the right of the District to cancel this Permit.

ARTICLE FIVE

5.01 The Permittee shall 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 Permit, 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 Permittee, or Permittee's employees, or of any contractor or subcontractor, or their employees, if any,

and the Permittee shall, at Permittee'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 Permittee shall, at the Permittee's sole expense, satisfy and discharge the same.

~~5.02 (a) The Permittee, prior to entering upon said premises and using the same for the purposes for which this Permit is issued, shall procure, maintain and keep in force, at Permittee's or Permittee's contractors expense, 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 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 ("CLAIMS MADE" policies are unacceptable):~~

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 Permit Premises)
in the amount of not less than \$4,000,000.00
per Occurrence
INCLUDING
An Amount Not Less Than the
Replacement Cost of Improvements
Located on the Premises*

~~Prior to entering upon said Permit Premises, the Permittee 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~~

*Strike where applicable.

~~effect. Upon District's written request, Permittee 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 Permit 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 Permittee as set forth in the provisions of 5.01 above, or~~

5.02 (b) Permittee prior to entering upon said premises and using the same for the purposes for which this Permit is granted, shall prepare and transmit to the District an acknowledged statement that the Permittee 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 paragraph 5.01 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 Permit Premises)
in the amount of not less than \$4,000,000.00
per Occurrence
INCLUDING
An Amount Not Less Than the
Replacement Cost of Improvements
Located on the Premises*

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

*Strike where applicable

~~5.03 The Permittee, prior to entering into possession, shall execute and lodge with the District, its indemnity bond in the sum of Five Thousand Dollars (\$5,000.00), conditioned upon the performance of each and every condition of this Permit; such bond shall be in a form satisfactory to the Attorney for the District. The furnishing of the bond required in this Article shall in no wise limit or affect the liability of the Permittee or its insurance carrier under any other provision of this Permit.~~

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

ARTICLE SIX

6.01 It is further expressly understood that the District shall not be liable to the Permittee for any loss, cost, or expense which the Permittee 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, or other works or equipment of the District now located or to be constructed on said premises, or on the land of the District adjacent to said premises.

6.02 The Permittee also agrees that if the District incurs any additional expense for additional work which the District would not have had to incur if this Permit had not been executed, then, in that event, the Permittee agrees to pay to the District such additional expense as determined by the Chief Engineer of the District, promptly upon rendition of bills therefor to the Permittee.

ARTICLE SEVEN

7.01 It is understood and agreed by and between the parties hereto that the Permittee shall not erect any structure of any type or kind upon said premises except with the consent, in writing of the Chief Engineer first had and obtained.

7.02 The Permittee, prior to entering upon said premises and using the same for the purposes for which this Permit is granted, shall, at Permittee'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, or the city, village, town or municipality in which the subject property is located, and furnish to the District suitable evidence thereof.

7.03 The Permittee covenants and agrees not to maintain any nuisance on the Permit premises which shall be in any manner injurious to the health and comfort of persons residing or being in the vicinity of said premises, and the Permittee further covenants and agrees to keep the Permit premises in a clean and sanitary condition.

7.04 The Permittee 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 and the city, village, town or municipality in which the subject property is located which in any manner affect this Permit, any work done hereunder or control or limit in any way the actions of Permittee, its agents, servants and employees, or of any contractor or subcontractor of Permittee, or their employees.

7.05 Permittee covenants and agrees that on or before the termination date of this Permit, Permittee shall remove or cause to be removed, any and all debris on the premises described in this Permit, and any and all equipment, facilities, or other things erected or placed upon said premises, and will yield up said premises to the District in as good condition as when the same was entered upon by Permittee. Upon Permittee's failure so to do, the District may do so at the sole expense and cost of Permittee.

ARTICLE EIGHT

8.01 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 General Superintendent, 100 East Erie Street, Chicago, Illinois 60611, or to the Permittee in care of:

City Manager
City of Evanston
2100 North Ridge Avenue
Evanston, Illinois 60201

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

8.02 In the event that the Permittee hereinabove contemplated shall consist of two or more parties, each and every party shall be jointly and severally liable for the faithful and complete performance of each and every provision of this Permit.

8.03 Permittee expressly acknowledges that the District has made no representations, warranties, express or implied, as to the adequacy, fitness or condition of permit premises or the improvements upon the permit premises. Permittee accepts the permit premises and the improvements thereon, if any, 'AS-IS" and 'WITH ALL FAULTS". Permittee acknowledges that it has inspected the permit premises and has satisfied itself as to the adequacy, fitness and condition thereof.

8.04 Permittee agrees and specifically understands that the District shall not issue or execute this Permit and license, unless within 28 days of Permittee's receipt of this Permit Agreement, Permittee causes same to be duly executed and returned to the District with evidence of compliance with all terms contained herein.

8.05 This Permit Agreement shall be mutually cancelable by the Permittee upon Permittee's giving ninety (90) days notice in writing, of such cancellation to the District and thereupon Permittee shall vacate said premises and remove its effects therefrom, and restore the premises to the condition existing prior to Permittee's entry thereon, at Permittee's cost.

8.06 If the land is to be used for public use and recreation, Permittee shall, during the term of this Permit, at its sole cost and expense, construct, erect and maintain, at one or more prominent locations on the permit premises, tastefully designed and constructed permanent signs which acknowledge the cooperation and support of the District in connection with Permittee's use of the permit premises. The style, text and size of the sign(s) shall be approved in advance of erection thereof by the Chief of Maintenance and Operations of the District, and shall, at minimum state that:

"THIS FACILITY IS PROVIDED IN PART AS A COMMUNITY
SERVICE WITH THE COOPERATION AND SUPPORT OF THE
METROPOLITAN WATER RECLAMATION DISTRICT OF
GREATER CHICAGO".

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, Compensation and Liability Act (Superfund or CERCLA) (42 U.S.C. Sec. 9601 et seq.), the Resource Conservation and Recovery Act 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, ureaformaldehyde 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, flammable, 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 Permit 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 Permittee 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 variant or 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) environmental assessments of real estate, bedrock and groundwater of the type found on the Permit Premises and said assessment shall include, but not necessarily be limited to a historical review of the use (abuse) of the Permit Premises, a review of the utilization and maintenance of hazardous materials on the Permit Premises review of the Permit Premises' permit and enforcement history (by review of regulatory agency records), a site reconnaissance and physical survey, inspection of Permit 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 Permit Premises and a reasonable area of the adjacent property owned by the District 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 Permit Premises and said assessment shall include, but not necessarily be limited to, extensive sampling of soils, groundwaters 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 PERMIT

Permittee, 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 Permit Premises, by Permittee 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 Chief Engineer of the District.

9.03 USE OF PREMISES (RESTRICTIONS - ENVIRONMENTAL)

Permittee shall use the Permit Premises only for purposes expressly authorized by Article 1.01 of this Permit Agreement. Permittee will not do or permit any act that may impair the value of the Permit 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 Permit Premises) arising from activities thereon, or that could cause or threaten to cause a public or private nuisance on the Permit Premises or use Permit Premises in any manner (i) which could cause the Permit Premises to become a hazardous waste treatment, storage, or disposal facility within the meaning of, or otherwise bring the Permit 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 Permit 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 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 Permittee has used the Permit Premises under a prior Permit agreement, Permittee warrants and represents that as a result of the Permit grant, the Permit Premises and improvements thereon, including all personal property, have not been exposed to release, 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 Permit 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 Permit Premises or the improvements thereon, during the term of this Permit (except such release,

emission, discharge or disposal by the District, its employees, agents or its other permittees. Permittee will take all appropriate; response action, including any removal and remedial action after the execution date of this Permit Agreement.

9.05 INDEMNIFICATION (ENVIRONMENTAL)

A. In consideration of the execution and delivery of this Permit Agreement, the Permittee 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 (irrespective of whether any such Indemnified Party is a party to the action for which indemnification is here sought, including reasonable attorney's fees, costs and disbursements, incurred by the Indemnified Parties 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 Permittee's activities, or (ii) any investigation, litigation, or proceeding related to any environmental response, audit, compliance, or other matter relating to the protection of the environment, resulting from or related to Permittee's activities, or (iii) the release or threatened release by Permittee, its subsidiaries, or its parent company, of any Hazardous Materials, or the presence of Hazardous Materials on or under the Permit Premises, (except such presence created by the District, its employees, agents or its other permittees), or any property to which the Permittee, its parent company or any of its subsidiaries has sent Hazardous Materials, (including any losses, liabilities, damages, injuries, costs, expenses, or claims asserted or arising under any Environmental Law), to the extent caused by or within the control of the Permittee, its parent company or its subsidiaries, provided that, to the extent District is strictly liable under any Environmental Laws, Permittee's obligation to District under this indemnity shall be without regard to fault on the part of the Permittee with respect to the violation of law which results in liability to the District.

9.06 ENVIRONMENTAL COVENANTS

Permittee agrees to and covenants as follows:

A. Permittee covenants and agrees that, throughout the term of the Permit Agreement, all Hazardous Materials which may be used by Permittee or person permitted by Permittee upon the Permit 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.

B. Permittee has been issued and is in compliance with all permits, certificates, approvals, licenses, and other authorizations relating to environmental matters and necessary for its business, if any.

C. Permittee, to the best of its knowledge, is not a potentially responsible party with respect to any other facility receiving waste of the Permittee (whether or not from the Permit Premises) under CERCLA or under any statute providing for financial responsibility of private parties for cleanup or other actions with respect to the release or threatened release of any Hazardous Materials.

D. Permittee will take all reasonable steps to prevent a violation of any Environmental Laws and 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 area to be used and under the Permit Agreement.

E. Permittee will not allow the installation of asbestos on the area described in Exhibit A 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. The aforesaid representations and warranties shall survive the expiration or termination of the Permit Agreement.

9.07 COVENANTS (ENVIRONMENTAL)

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

A. (1) Use and operate all of the Permit 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 or permitted by Permittee;

B. Notify District by telephone within two hours 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 District within 72 hours of

the event, with copies of all written notices by Permittee, its parent and its subsidiaries that are reported to government regulators or received from the governmental regulators.

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

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

9.08 COMPLIANCE (ENVIRONMENTAL)

The Permittee will cause its contractors, subcontractors, employees and agents, if any, to 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 Permittee, its employees or its agents, Permittee shall conduct a Phase I Environmental Assessment, at its own expense, with respect to the Permit Premises and a reasonable area of the adjacent property owned by the District, 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 Permittee, at Permittee's expense, to obtain a Phase II Environmental Assessment with respect to the premises used under the Permit 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 Permit Premises or adjacent premises, Permittee shall take immediate action to remediate the contamination and to restore the Permit Premises described in Exhibit A and adjacent premises owned by the District to a clean and sanitary condition and to the extent required by any and all environmental laws.

B. Capacitors, transformers, or other environmentally sensitive installations or improvements shall be removed at the end of the Permit Agreement, at District's election.

C. If any Environmental Assessment reveals, or District otherwise becomes aware of, the existence of any violation of any Environmental Laws that either Permittee 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 Permittee should receive a Notice of Environmental Problem, Permittee shall promptly provide a copy to the District, and in no event later than seventy-two (72) hours from Permittee's and any tenant'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 Permittee 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 Permit premises, or any improvements thereon; (iii) the Permittee 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 Permit 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 Materials, Permittee shall promptly provide a copy to the District, and in no event later than seventy-two (72) hours from Permittee's and any tenant's receipt or submission thereof.

9.09 INSPECTION AND RIGHT OF INSPECTION (ENVIRONMENTAL)

A. In the event Permittee gives notice pursuant to the provisions of Notice of Environmental Problem, within ninety (90) days Permittee shall submit to District a written report of a site assessment and environmental audit, in scope, form and substance and prepared by an independent, competent and qualified, professional, registered engineer, satisfactory to the District, showing that the engineer made all appropriate; inquiry consistent with good commercial and customary practice, such that, consistent with generally accepted engineering practice and procedure, no evidence or indication came to light which would suggest there was a release of substances on the Site or Property which could necessitate an environmental response action, and which demonstrates that the Site and Property complies with, and does not deviate from, all applicable environmental statues, laws, ordinances, rules and regulations, including licenses, permits, or certificates required thereunder, and that the Permittee is in compliance with, and has not deviated from, the representations and warranties previously set forth.

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 Permit 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 Permit Premises or improvements thereon, as the District, in its sole discretion, determines is necessary to protect its interests.

C. Paragraphs 5.02(a) and 5.03 hereof, which have been crossed out, are expressly excluded as operative terms of this permit.

ARTICLE TEN

10.01 District facilities in the area must be safeguarded and fee vehicular access maintained at all times including access for heavy construction equipment such as cranes, etc.

10.02 No trees shall be cut or damaged on District property.

10.03 The issuance of this permit is subject to the written consent of the Skokie Park District.

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.

**THE METROPOLITAN WATER RECLAMATION DISTRICT
OF GREATER CHICAGO**

By: _____
Chairman, Committee on Finance

ATTEST:

Clerk

CITY OF EVANSTON

By: _____

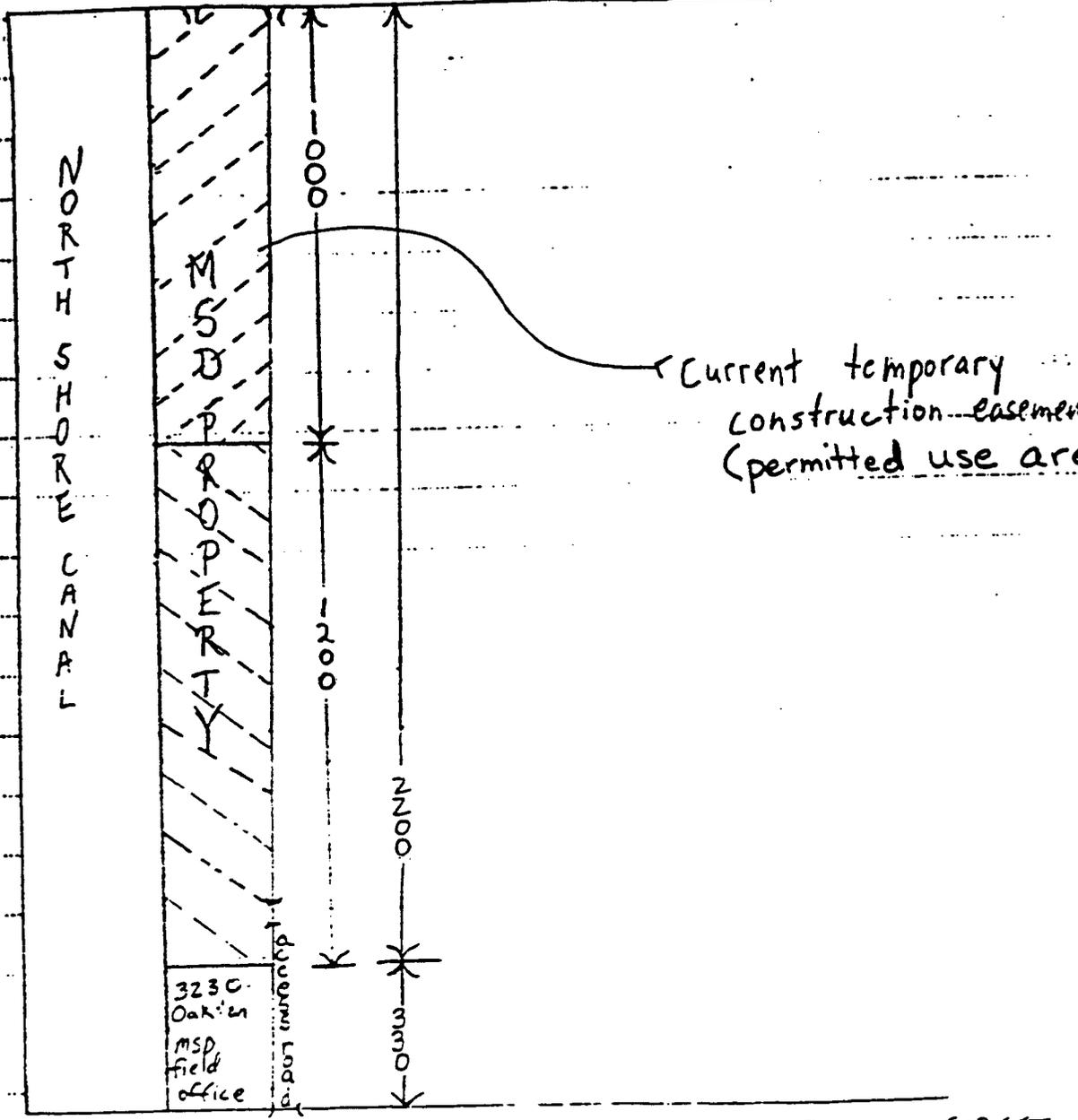
Its: _____
Title

ATTEST:

Its: _____
Title



MAIN STREET



Current temporary construction easement (permitted use area)

3230 Oakton
MSD Field office

OAKTON STREET

330 270

All MSD Property Is Fenced In

EXHIBIT A

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Theodore Williamson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Nancy Drew Sheehan, personally known to me to be the Chairman of the Committee on Finance of the Board of Commissioners of the Metropolitan Water Reclamation District of Greater Chicago, a municipal corporation, and Mary C. West, personally known to me to be the Clerk of said municipal corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Chairman of the Committee on Finance and such Clerk, they signed and delivered the said instrument as Chairman of the Committee on Finance of the Board of Commissioners and Clerk of said municipal corporation, and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Board of Commissioners of said municipal corporation, as their free and voluntary act and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this ____ day of _____, A.D. 1994.

NOTARY PUBLIC

My Commission Expires:

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, _____, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the President of _____, a corporation, and _____, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such _____ President and such Clerk (Secretary) they signed and delivered the said instrument as _____ President and such Clerk (Secretary) of said _____ corporation and caused the corporate seal of said _____ corporation to be affixed thereto pursuant to authority given by the Board of _____ of said _____ corporation, as their free and voluntary act and as the free and voluntary act and deed of said _____ corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this ____ day of _____, A.D. 19__.

NOTARY PUBLIC

My Commission Expires:

APPROVED AS TO FORM AND LEGALITY:

Head Assistant Attorney

Attorney

APPROVED:

General Superintendent