

1-4-95

7-R-95

A RESOLUTION

Authorizing the City Manager to Negotiate Conditions
for Easements with the Metropolitan Water
Reclamation District of Greater Chicago
Phase IV Sewer System Improvements

WHEREAS, the City of Evanston requires two temporary easements and two 25 year easements from the Metropolitan Water Reclamation District of Greater Chicago (MWRDGC) for Phase IV of the Sewer System Improvements Plan; and

WHEREAS, such easements are in the best interest of the citizens of the City of Evanston.

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

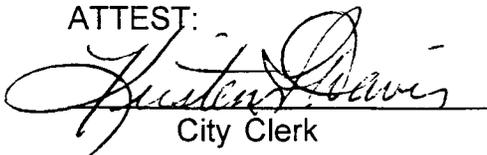
SECTION 1: That the City Manager of the City of Evanston is hereby authorized to sign the easement agreement marked as Exhibit A attached hereto and incorporated herein by reference.

SECTION 2: That the City Manager of the City of Evanston is hereby authorized and directed to negotiate any additional conditions as are in the best interest of the City of Evanston.

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: January 9, 1995



EASEMENT AGREEMENT
(Environmental)

THIS AGREEMENT, made and entered into this 1st day of September, 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 the "District" and the CITY OF EVANSTON, hereinafter called the "Grantee".

WHEREAS, the Grantee desires two 25-year non-exclusive easements and two temporary construction easements as part of Phase IV of its sewer system improvement program as follows:

- A. A 25-year easement for relief sewer and facilities as shown and described in Exhibit A, depicted as P.E.-G.
- B. A 25-year easement for relief sewer as shown and described in Exhibit A, depicted as P.E.-I.
- C. A temporary easement to facilitate construction of the improvement and facilities as shown and described in Exhibit A, depicted as T.E.-F.
- D. A temporary easement to facilitate construction of the improvement and facilities as shown and described in Exhibit A, depicted as T.E.-J.

The above described easements to be for 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 1, 1994, and terminating on August 31, 2019, for the sole and exclusive purpose to construct, reconstruct, operate, maintain, repair and remove its improvements and facilities and access thereto hereinafter for convenience sometimes called "Improvements and Facilities" upon 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 a one-time easement fee in the amount of TEN AND NO/100 DOLLARS (\$10.00), which is payable contemporaneously with Grantee's execution and delivery hereof.

~~1.04 INTERIM ANNUAL EASEMENT FEE ADJUSTMENTS. On the anniversary of the effective date of this Easement, the annual fee to be paid by Grantee to District shall be adjusted by multiplying the initial annual fee or the fee in effect for the previous one-year period by the percentage of change in the Consumer Price Index for the Chicago Metropolitan Area, more specifically, the "Chicago All Items Consumer Price Index for All Urban Consumers (CPIU) on a 1982-1984 Base" which for the month of January, 1993 was 143.2, published by the United States Department of Labor, Bureau of Labor Statistics, as established for the month of January immediately preceding the term of this Easement (in the case of the first annual fee~~

~~adjustment hereunder) and every month of January thereafter during the term hereof. In the event the CPIU is discontinued, the Board of Commissioners of the District shall, in its sole discretion select and utilize any other economic activity index of the United States government which reasonably reflects economic activity in the Metropolitan Chicago Area.~~

1.05 In addition to the aforesaid, the Grantee shall also pay, when due, all real estate taxes and assessments 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 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.

ARTICLE THREE

3.01 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 Chief Engineer of the District.

3.02 The construction and installation of the Improvements and Facilities by the Grantee on the Easement Premises shall be done to the satisfaction of the Chief Engineer of the District.

3.03 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.

3.04 Upon completion of the construction of the dropshaft and connecting structures by the Grantee, the District shall assume ownership of the dropshaft and TARP structures.

3.05 The attached drawings described as Exhibit B which are listed below depict the existing District facilities in the area. Grantee agrees to safeguard the facilities during proposed construction and to provide District with unrestricted vehicular access to maintain the facilities at all times.

Drawing Sheet

Facility

S-21

Mainstream Tunnel System
Contract No. 73-058-AH

3.06 A separate sewer permit application for this project is currently under review by the District. This permit will be issued upon satisfaction of all the technical requirements and execution of this easement agreement.

3.07 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 FOUR

4.01 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.

4.02 The Grantee 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 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.

~~4.03 (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 4.02 above, or

4.03 (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 Four, Paragraph 4.02) 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.

ARTICLE FIVE

5.01 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.

5.02 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.

5.03 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.

ARTICLE SIX

6.01 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 Chief Engineer of the District, promptly upon rendition of bills therefor to the Grantee.

6.02 The Grantee covenants and agrees that 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.

6.03 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 SEVEN

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

7.02 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, and any other regulatory body having jurisdiction over the Easement Premises, the Grantee or its activities thereunder, 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 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 Grantee in care of:

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

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

ARTICLE EIGHT

8.01 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, or the city, village, town or municipality in which the subject property is located, and furnish to the District suitable evidence thereof.

8.02 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 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 Grantee, its agents, servants and employees, or of any contractor or subcontractor of Grantee, or their employees.

8.03 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.

8.04 Grantee agrees to abide by and implement the District's Waterway Strategy Resolution as adopted by the District's Board of Commissioners, and attached hereto as Exhibit C and made a part hereof.

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 (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 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 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) an assessment of the Easement Premises and a reasonable area of the adjacent premises 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 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 inter-

views 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 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 Easement 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 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 Chief Engineer 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 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, 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 (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 Grantee'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, or

(iii) the release or threatened release by Grantee, its subsidiaries, or its parent company, of any Hazardous Materials, or the presence of Hazardous Materials on or under the Easement Premises, or any property to which the Grantee, 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), regardless of whether caused by or within the control of the Grantee, its parent company or its subsidiaries, provided that, to the extent District is strictly liable under any Environmental Laws, Grantee's obligation to District under this Indemnity shall be without regard to fault on the part of the Grantee with respect to the violation of law which results in liability to District.

9.06 ENVIRONMENTAL COVENANTS

Grantee agrees to and covenants as follows:

A. Grantee covenants and agrees that, throughout the term of the Easement Agreement, all Hazardous Materials which may be used 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.

B. Grantee 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. Grantee, to the best of its knowledge, is not a potentially responsible party with respect to any other facility receiving waste of the Grantee (whether or not from the Easement 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. Grantee will take all reasonable steps to prevent a violation of any Environmental Laws. 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 Easement Agreement.

E. Grantee 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 Easement Agreement.

9.07 COVENANTS (ENVIRONMENTAL)

Grantee shall cause its parent company and each of its respective subsidiaries, 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;

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 Grantee, its parent and its subsidiaries that are reported to government regulators or received from the government regulators.

C. Provide such information that 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 District in any inspection, assessment, monitoring or remediation instituted by District during the Easement Agreement.

9.08 COMPLIANCE (ENVIRONMENTAL)

The Grantee will cause its parent company and each of its subsidiaries, 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 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 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 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 or adjacent premises, Grantee shall take immediate action to remediate the contamination and to restore the Easement 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 by Grantee prior to the end of the Easement Agreement unless directed to the contrary in writing by the District.

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 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 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, Grantee shall promptly provide a copy to the District, and in no event later than seventy-two (72) hours from Grantee's and any tenant's receipt or submission thereof.

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 Grantee has not caused 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 Grantee has not caused 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 biphenyls (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 gives notice pursuant to the provisions of Notice of Environmental Problem, within ninety (90) days Grantee 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 statutes, laws, ordinances, rules, and regulations, including licenses, permits, or certificates required thereunder, and that the Grantee 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 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, determines is necessary to protect its interests.

C. Paragraphs 1.04 and 4.03(a) hereof, which have been crossed out are expressly excluded as operative terms of this permit.

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: _____

ATTEST:

Its: _____

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:

Rev. 3/93

EXHIBIT

WATERWAY STRATEGY RESOLUTION

On March 21, 1985, the Board of Commissioners of the Metropolitan Water Reclamation District of Greater Chicago ("District") adopted an Order establishing Generic Criteria for Implementation of the Waterway Strategy Resolution in connection with the leasing or long-term permit occupancy of District waterways lands. A copy of that Order, transmittal letter, and Waterway Strategy Resolution are attached. Also attached is a copy of Commissioner Troy's Ordinance prohibiting storage of solid materials in proximity to a waterways bank where there is risk that the materials will fall into the water.

These Criteria must be addressed and specifically provided for in connection with each District waterways land lease and permit. Prospective bidders or permittees are advised that these Criteria will be imposed as conditions of the occupancy of District land.

EXHIBIT C

March 21, 1985

7 277 2 R.E. 27
Re la

To the Honorable, the President and Members of
the Board of Commissioners of The Metropolitan
Sanitary District of Greater Chicago

Ladies and Gentlemen:

The General Superintendent reports that he is in receipt of a communication from the Attorney consisting of two (2) pages and attachment, concerning a request for Order approving Generic Criteria for Implementation of the Waterway Strategy Resolution of the Board of Commissioners of The Metropolitan Sanitary District of Greater Chicago with respect to Sanitary District Lands which Abut Waterways (a copy of which letter is attached hereto and made a part hereof).

The General Superintendent recommends passage of appropriate orders as requested in said letter.

Your Committee, having considered the matter, recommends passage of the following orders:

ORDERED: That the Generic Criteria for Implementation of the Waterway Strategy Resolution of the Board of Commissioners of The Metropolitan Sanitary District of Greater Chicago with respect to Sanitary District lands which abut waterways, as set forth in the attachment to the transmittal letter under this agenda item, be and the same is hereby authorized and approved; and it is further

ORDERED: That the attached letter be printed in full in the Record of Proceedings.

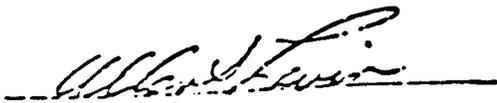
Respectfully submitted,

Joanne H. Alter, Chairman,
Committee on Real Estate.

Approved as to Form & Legality:


Head Assistant Attorney

APPROVED:


Attorney

Nicholas J. Melas, President,
Board of Commissioners of The
Metropolitan Sanitary District
of Greater Chicago.



THE METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO
Transmittal Letter For Board Meeting

February 26, 1985 for the
March 7, 1985 Board Meeting
Deferred and Resubmitted for the
March 21, 1985 Board Meeting

Mr. Raymond R. Rimkus
General Superintendent

O F F I C E

AGENDA SUMMARY: Request for Order Approving Generic Criteria for
Implementation of the Waterway Strategy Resolution
of the Board of Commissioners of The Metropolitan
Sanitary District of Greater Chicago with respect
to Sanitary District Lands which Abut Waterways.

Dear Sir:

Since the adoption of the Waterway Strategy Resolution by the Board of Commissioners of The Metropolitan Sanitary District of Greater Chicago on February 23, 1984, which Resolution established the policy whereby the Metropolitan Sanitary District dedicated a portion of its real estate adjacent to waterways to recreational and aesthetic interests which would be balanced with the desire to commercially rent and develop said lands, the Chief Engineer, under the direction of the General Superintendent, has been working to establish specific criteria for the uniform implementation of the Resolution with respect to all of the Sanitary District's waterways lands. This has proved to be a Herculean task.

At the meeting of the Board of Commissioners of The Metropolitan Sanitary District of Greater Chicago on February 21, 1985, authority was granted to the General Superintendent to develop site-specific criteria for addressing the Waterway Strategy Resolution with respect to three particular parcels of Sanitary District land on the Sanitary and Ship Canal due to the fact that overall criteria for all of the waterways had not yet been developed and the Chief Engineer advised against any long-term leasing activity until uniform procedures implementing the Board's policy as stated in the Waterway Strategy Resolution were prepared and presented to the Board of Commissioners for its approval. Under separate agenda items, we are presenting the matter of the request to commence statutory procedures for lease of those three specific parcels previously alluded to, addressing not only the usual matters relating to leasing but the site-specific Waterway Resolution implementing criteria for each parcel.

Mr. Raymond R. Rinkus
General Superintendent

- 2 -

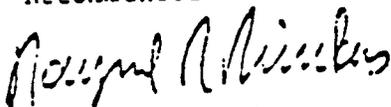
March 7, 1985 Board Meeting
Deferred & Resubmitted for the
March 21, 1985 Board Meeting

In the course of the development of the site-specific criteria for these parcels, the Chief Engineer reviewed the specific criteria for each parcel and distilled same into general criteria for implementation of the Waterway Strategy Resolution, which, it is felt, addresses most contingencies to be encountered in connection with leasing or other use of any site along the District's waterways. A copy of those general criteria is attached hereto. It is believed that the approval of these criteria by the Board of Commissioners will provide the general guidelines by which the General Superintendent may evaluate requests for the leasing of Sanitary District waterway lands and determine applicants' willingness to comply therewith so that when any specific parcel is considered for offer for leasing, all or some of these general criteria may be developed and applied as specific restrictions in connection with the proposed leasing of a parcel developed to address the Waterway Strategy Resolution.

Accordingly, it is respectfully requested that the General Superintendent recommend to the Board of Commissioners that it accept and approve the attached criteria as being adequate to provide general guidance in addressing the impact of the Waterway Strategy Resolution with respect to leasing or development of any parcel of Sanitary District waterways land. Henceforth, with respect to each specific leasing activity, site-specific criteria developed in conformity with these guidelines, will be established by staff and presented to the Board of Commissioners when approval to commence statutory leasing procedures is requested with respect to any specific parcel.

Respectfully submitted,

Recommended:



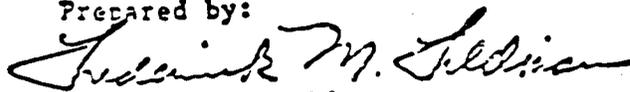
Raymond R. Rinkus
General Superintendent


Allen S. Lavin, Attorney

Approved:


Frank E. Dalton
Chief Engineer

Prepared by:


Frederick M. Feldman
Head Assistant Attorney

ASL:FMF:sg

It is the intent of the Sanitary District to have a well-maintained and attractive river edge on all of the property it owns adjacent to the inland waterway system. In order to accomplish this goal, the Sanitary District requires a 60-foot waterway edge easement to be included in its land leases. The lessee will be responsible for bank stabilization and the construction and maintenance of a landscaped visual screen.

The Sanitary District will allow a 20 percent plus or minus variation in the 60-foot scenic easement in order to allow for site development criteria, existing topography, existing vegetation, and the development of a "natural" river's edge.

The Sanitary District will allow its river edge property to be utilized by the lessee for the purpose of waterborne commerce. However, the lessee will be responsible for the construction and maintenance of a docking facility compatible with the visual intent of the scenic easement.

The Sanitary District will not allow the permanent storage of unsightly materials and/or debris within either the scenic easement or the docking area. In addition, the unscreened storage of material will not be allowed anywhere within the lease.

It is the intent of the Sanitary District to maintain, where possible, a "natural" appearance to its properties by retaining existing vegetative cover. However, the Sanitary District recognizes that site development will sometimes necessitate the removal of existing vegetative cover. In those cases the Sanitary District will require the lessee to reestablish vegetative cover in the same quantities and qualities as those removed. The reestablished plant materials are to be considered as an addition to the landscaping required within the scenic easement.

The Sanitary District, within its leasing procedures, requires that the lessee comply with local zoning and setback requirements. In addition, the Sanitary District will reserve the right to retain access across the leased parcel to obtain access to the water-edged lands.

ORDINANCE

WHEREAS, The Metropolitan Sanitary District of Greater Chicago is empowered to prevent pollution of waterways within its jurisdiction;

WHEREAS: The Metropolitan Sanitary District of Greater Chicago is charged with the duty to study, investigate, and from time to time determine ways and means for removing from the waters within such Sanitary District so far as practicable, all pollution, and to determine methods of abating pollution that is detrimental to public health or to animals, fish, or aquatic life, or detrimental to the practicable use of the waters for the purposes of recreation, industry, or agriculture;

WHEREAS: In recent years, the introduction of debris into waterways under the jurisdiction of The Metropolitan Sanitary District of Greater Chicago from privately-owned lands adjacent to such waterways, has been experienced with increasing frequency;

NOW, THEREFORE, BE IT ORDAINED, by the Board of Commissioners of The Metropolitan Sanitary District of Greater Chicago

ARTICLE I

Section 1) That all persons, whether legal or natural, who own land adjacent to waterways under the jurisdiction of The Metropolitan Sanitary District of greater Chicago shall maintain his property in such a way as to prevent any debris, garbage, wastes, or other wastes as defined in Ch. 42, Ill. Rev. Stat., Sec. 326bb (1), from entering waterways under the jurisdiction of The Metropolitan Metropolitan Sanitary District of Greater Chicago.

Section 2) Failure of landowners for property adjacent to waterways under the jurisdiction of The Metropolitan Sanitary District of Greater Chicago to use, operate, or maintain their property as

set forth in Section 1 herein, shall be deemed a violation of this Ordinance.

Section 3) When in the opinion of the General Superintendent of The Metropolitan Sanitary District of Greater Chicago, the land-owner of property has acted contrary to the terms of this Ordinance, the General Superintendent, shall, by conference, conciliation, or persuasion, endeavor to the fullest extent possible to eliminate or remedy such violation.

If those efforts have been unsuccessful, the General Superintendent may order any person who causes or allows actions contrary to this Ordinance to show cause before the Board of Commissioners of the Sanitary District why such actions should not be discontinued. A notice shall be served on the offending party, specifying the time and place of a hearing to be held by the Board of Commissioners regarding the violation, and directing the offending party to show cause before the Board why an order should not be made directing the discontinuance of such actions. The notice of the hearing shall be served personally or by Registered or Certified Mail at least ten (10) days before the hearing; service may be had on any agent or officer of a corporation or municipality.

The Board of Commissioners may, itself, conduct the hearing and take the evidence or may designate any of its members or any officer or employee of the District:

(a) to issue in the name of the Board, notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in any such hearings;

(b) to take the evidence; and

(c) to transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the Board of Commissioners for action thereon.

At any public hearing, testimony taken before the Board or any person designated by it, must be under oath and recorded stenographically. The transcript so recorded, will be made available to any member of the public or any party to the hearing upon payment of the usual charges therefor.

After the Board has reviewed the evidence, it may issue an order to the party responsible for the action directing that within a specific time period, the discharge be discontinued unless adequate facilities or devices shall have been installed or existing adequate facilities or devices are properly operated to prevent actions contrary to the terms of this Ordinance and any other such orders as the Board may deem necessary.

ARTICLE II

Court Proceedings

Section 1) Violation of Order to be Considered Nuisance.

A violation of an Order of the Board of Commissioners shall be considered a nuisance. If any person maintains or operates his property so as to be in violation of the order of the Board of Commissioners, the Sanitary District, acting through the General Superintendent, may commence an action or proceeding in the Circuit Court in and for the county in which the Sanitary District is located, or operates facilities, for the purpose of having the violation stopped either by mandamus or injunction.

Section 2) Penalties

Whoever fails to comply with any provisions of this Ordinance or with an Order of the Board of Commissioners issued in pursuance of this Ordinance, shall be fined not less than \$100.00, nor more than \$1,000.00, for each offense. Each day's continuance of such failure is a separate offense. The penalties so imposed, plus reasonable attorneys' fees, court costs and other expenses of litigation, are recoverable by the Sanitary District upon its suit, as debts are recoverable at law.

Section 3) Injunctive Relief

In addition to the penalties provided in the foregoing Section, whenever a person violates any provision of this Ordinance or fails to comply with any Order of the Board of Commissioners, the Sanitary District acting through the General Superintendent, may apply to the Circuit Court of Cook County for the issuance of an injunction restraining the person violating the Ordinance or failing to comply with the Board Order.

ARTICLE III
Savings Clause

If the provisions of any paragraph, section or article of this Ordinance are declared unconstitutional or invalid by the final decision of any court of competent jurisdiction, the provisions of the remaining paragraphs, sections or articles shall continue in full force and effect.

ARTICLE IV
Effective Date

This comprehensive Amendment shall take effect immediately upon passage by the Board of Commissioners.

DATED: THIS 7TH DAY OF FEBRUARY, 1985.

Respectfully submitted,

Approved as to Form & Legality:

Michael H. Rosenberg
Principal Assistant Attorney

Albert S. Lewis
Attorney

RICHARD J. TROY, Vice President

Approved:

NICHOLAS J. MELAS, President,
of Commissioners of The Metrop
Sanitary District of Greater C

APPROVED AS TO FORM AND LEGALITY:

Head Assistant Attorney

Attorney

APPROVED:

General Superintendent