

June 7, 1995

47-R-95

A RESOLUTION

Authorizing the City Manager to
Execute the TARP Assignment Agreement for
the Metropolitan Water Reclamation District

WHEREAS, the Metropolitan Water Reclamation District ("District") Tunnel and Reservoir Plan, (TARP) is designed to collect the flow from combined sewers prior to discharging to the waterways in order to significantly reduce pollution of the waterways and provide flood relief for Chicago and neighboring communities; and

WHEREAS, the District desires sole ownership, control over and access to all structures and facilities located at or connected with or involved in the operation of TARP for the purpose of maintaining uniformity in the operation of TARP; and

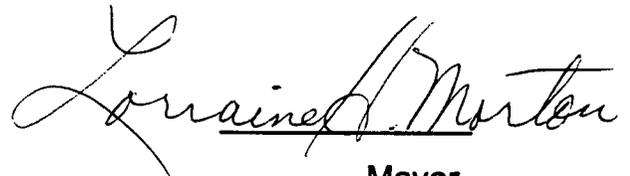
WHEREAS, the City of Evanston ("City") seeks connection of its local sewer to TARP,

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

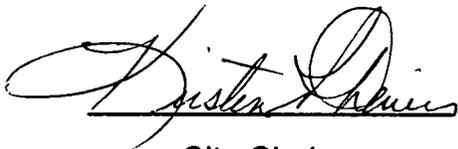
SECTION 1: That the City Manager of the City of Evanston is hereby authorized and directed to sign and the City Clerk hereby authorized and directed to attest on behalf of the City of Evanston the TARP Assignment Agreement marked as Exhibit A and attached hereto and incorporated herein.

SECTION 2: That the City Manager of the City of Evanston is hereby authorized and directed to negotiate any additional conditions or terms 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: June 12, 1995

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 Gloria Alitto Majewski, 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. 1995.

NOTARY PUBLIC

My Commission Expires:

APPROVED:

Chief, Maintenance and Operations

APPROVED:

Engineer of Field Services

Assistant Chief Engineer

Chief Engineer

APPROVED AS TO FORM AND LEGALITY:

Head Assistant Attorney

Attorney

APPROVED:

General Superintendent

ARTICLE V
ASSUMPTION BY GRANTEE

1. The District shall own and operate the stated Structures and assume the responsibility of maintenance and upkeep of the stated Structures as long as the City fully complies with all the terms and conditions set forth herein.

2. In the event, a defect occurs within the two-year warranty period for new construction and alterations, the City shall reimburse the District for the cost of repair and any consequential damages related thereto.

ARTICLE VI
MISCELLANEOUS PROVISIONS

1. Upon completion of construction of the Structures, the City shall furnish to the District one set of reproducible as-built drawings of the Structures, signed and sealed by a professional engineer registered in the State of Illinois.

2. That all terms and conditions of this agreement shall remain in force and effect, and are not modifiable except by the mutual written agreement of the parties.

METROPOLITAN WATER RECLAMATION
DISTRICT OF GREATER CHICAGO

By: _____

Chairman, Committee on Finance

Attest:

Clerk

CITY OF EVANSTON:

By: _____

Clerk

Executed on the _____ day of _____, 1995.

ARTICLE III
NEW CONSTRUCTION

1. Detailed plans of subsequent construction or material alteration of the Structures as defined herein shall first be submitted to the Chief Engineer of the District for approval. The work on such construction shall not begin until such approval is given to the City in writing, which approval shall not be unreasonably withheld.

2. Any new construction shall be conveyed to the District in accordance with the terms and conditions of this agreement, and shall be inspected by the Chief Engineer of the District and the District's Maintenance and Operations Department prior to being placed in operation.

3. The City hereby warrants any new construction against defects for a period of two years.

ARTICLE IV
INDEMNITY AND OTHER CONDITIONS

1. The City shall compensate the District for any damages that the District may sustain as a result of the City opening, closing, entering or exiting the stated Structures as set forth in Exhibit "A".

2. The City shall be solely responsible for and shall defend, indemnify, keep and save harmless the District, its Commissioners, officers, agents and employees, against all injuries, death, 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 this conveyance, or which may in any wise 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 City or City's employees, or of any contractor or subcontractor, or their employees, if any, and the City shall, at City'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 judgement shall be rendered against the District, its Commissioners, officers, agents or employees, in any such action the City shall, at the City's sole expense, satisfy and discharge the same.

3. The City covenants and agrees that it shall defend, indemnify and hold harmless the District, from any suits, claims, expenses (including attorney's fees) or losses which may be imposed by law for any bodily injury, including death resulting therefrom, or property damage, including loss of use thereof, arising out of or in connection with any new construction or alteration performed by the City.

4. The City shall be exclusively liable for any claims from its employees, contractors or agents arising from opening, closing, entering or exiting the stated structures and shall indemnify and hold harmless the District for any costs or expenses which may incur for those purposes.

3. The City further grants to the District a perpetual easement with the right to enter upon the related premises, herein described in the attached plans marked as Exhibit "B", for the purpose of conducting maintenance operations or other purposes with respect to the aforesaid Structures as may be deemed necessary by the District in the furtherance of the TARP program. Said easement is to terminate if the MWRD removes and does not replace the Structures conveyed hereby or if use or operation ceases of the structures conveyed hereby and their replacements and accessions.

4. The City shall not make any alterations, additions or improvements to the Structures without the consent of the District.

5. The City specifically warrants for a period of two years that the Structures conveyed pursuant to this article are free from any defects.

6. The City shall give the District immediate notice of any damage or defect in the Structures conveyed pursuant to this agreement. Provided, however, that the City is under no obligation a) to inspect for damage or defects and b) to correct any damage or defects should any come to the attention of the City after conveyance thereof to the District and the warranty period has expired.

ARTICLE II **ACCESS**

1. The City shall not open, close, cover, remove, modify or alter any of the Structures, or enter upon the same without notice to and approval of the District.

2. It is understood and agreed by and between the parties hereto that the City shall not erect any barricades or structures of any type or kind that would or could in the future interfere with the District's access to the Structures as set forth in Exhibit "A".

3. The District shall be given a minimum of forty-eight hours advance notice of the City's need to access the Structures, except if an emergency situation exists which warrants otherwise. The District shall not unreasonably withhold approval for access to the Structures by the City.

4. Any notice herein required to be given shall be served upon the Chief Engineer of the District, and shall include the reason for access and a description of the activities to be performed. Notice to the City shall be served upon the City Manager.

5. With respect to opening, closing, entering or exiting the Structures as set forth in Exhibit "A", all determinations, directions, and orders by the District representatives at the site regarding the Structures shall be binding and conclusive.

6. The District's Maintenance and Operations Department shall have unlimited access for the purpose of periodic inspection of any old or new construction.

TARP

ASSIGNMENT AGREEMENT MWRD PERMIT NUMBER 92-041

THIS AGREEMENT, made and entered into this _____ day of _____, 19____, by and between the Metropolitan Water Reclamation District of Greater Chicago (henceforth "the District" or "MWRD"), a municipal corporation, organized and existing under the laws of the State of Illinois, and the City of Evanston, organized and existing under the laws of the State of Illinois (henceforth the "City").

WHEREAS, the District's Tunnel and Reservoir Plan, (TARP) is designed to collect the flow from combined sewers prior to discharging to the waterways in order to significantly reduce pollution of the waterways and provide flood relief for Chicago and neighboring communities; and

WHEREAS, the District desires sole ownership, control over and access to all structures and facilities located at or connected with or involved in the operation of TARP for the purpose of maintaining uniformity in the operation of TARP; and

WHEREAS, the City seeks connection of its local sewer to TARP.

NOW, THEREFORE, the District and the City enter into this agreement among themselves:

ARTICLE I CONVEYANCE

1. The City for and in consideration of \$10.00 (ten and no/100 dollars) and other valuable consideration, including the mutual promises made herein, hereby specifically conveys and quit-claims to the District all of City's right, title and interest in and to all dry weather flow take off structures, connecting structures, connecting conduits, and dropshafts if applicable, along with all items specifically set forth in the attached Exhibit "A" (henceforth "the Structures") in accordance with the terms and conditions as set forth herein; and the District shall henceforth own and operate said Structures in accordance with the purpose of TARP. This agreement specifically excludes any part of the City's local sewer system and control of any outfall to the North Shore Channel, and such remains the exclusive responsibility of the City, and the City shall be solely responsible for complying with all laws, orders, rules and regulations of the Federal, State, County and Municipal Authorities in relation thereto.

2. The City does hereby grant to the District the exclusive right, privilege, authority, and obligation to maintain, remove, improve, and repair any and all items as set forth in the attached Exhibit "A".

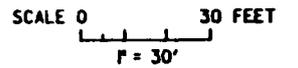
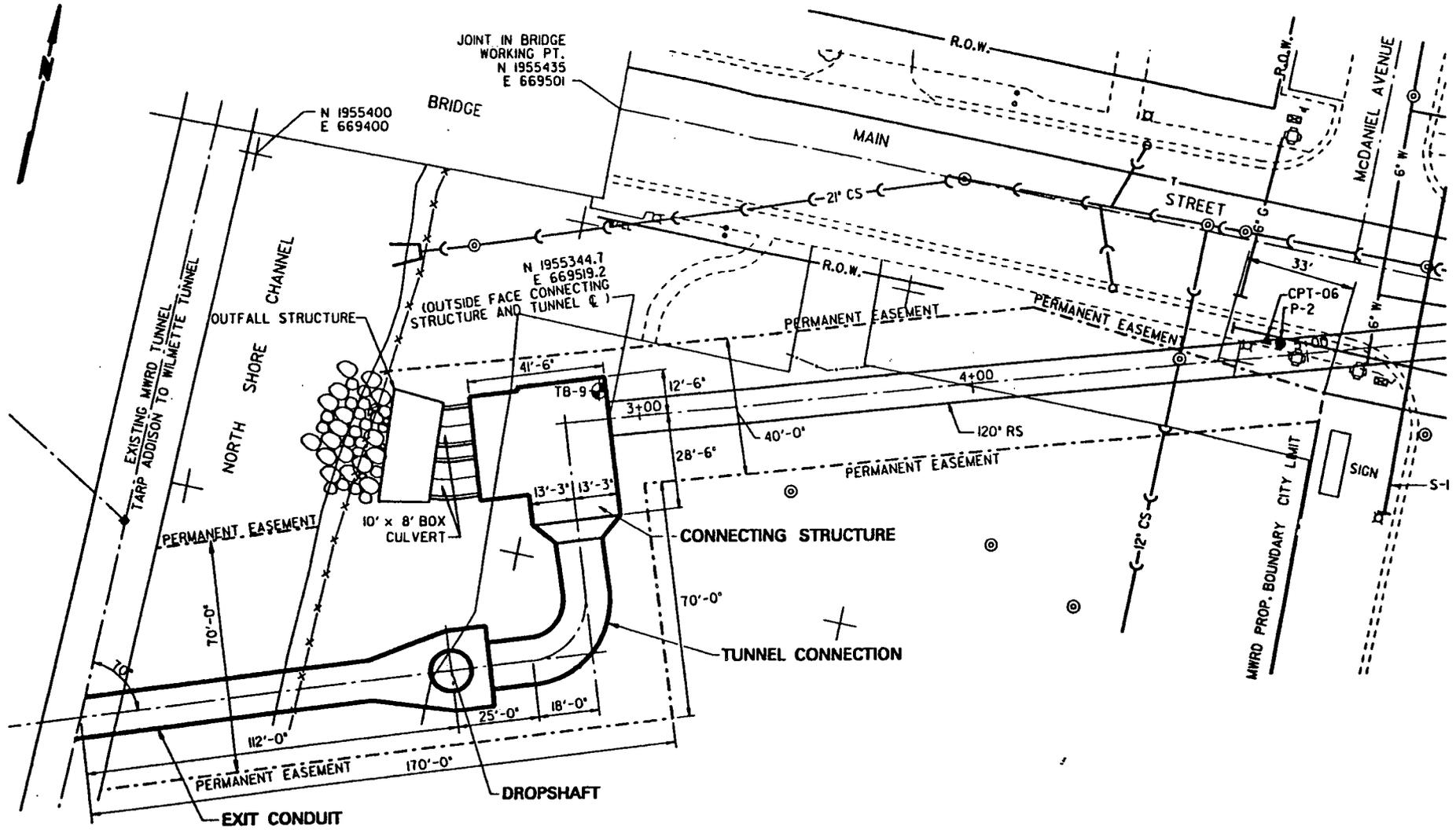
STATE OF ILLINOIS)
)
COUNTY OF COOK) SS.

I, Carolyn A. Taylor, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Eric A. Anderson, personally known to me to be the City Manager of the City of Evanston, a municipal corporation, and Kirsten F. Davis, its City Clerk, 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 City Manager and City Clerk they signed and delivered the said instrument as City Manager and City Clerk of said municipal corporation and caused the corporate seal of said municipal corporation to be affixed thereto pursuant to authority given by the City Council 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. 1995.

NOTARY PUBLIC

My Commission Expires:



MAIN STREET CONNECTING STRUCTURE
 (SHEET 1 OF 1)
 EVANSTON RELIEF SEWER PROJECT
 City of Evanston, Illinois