

9-22-98

54-R-98

A RESOLUTION

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

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

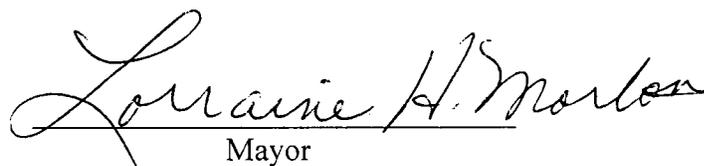
WHEREAS, such easements are in the best interest of the citizens of the City of Evanston.

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: September 28, 1998

**EASEMENT AGREEMENT
(Environmental)**

THIS AGREEMENT, made and entered into this _____ day of _____, 1998, 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 one 25 - year Easements, and one temporary construction Easement as for Phase VI 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-2 and P-3.
- B. A temporary Easement to facilitate construction of the improvement and facilities as shown and described in Exhibit A, depicted as T-1.

The above described easement 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 fourth;

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 grant unto the Grantee a non-exclusive easement, right privilege and authority for 25 years commencing on _____, 1998, and terminating on _____, 2023, and one temporary construction easement commencing on _____, 1998 and terminating on _____, 2000, 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 land 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 of TEN AND NO/100 DOLLARS (\$10.00) which is payable contemporaneously with Grantee's execution and delivery hereof.

1.04 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 Improvements and Facilities of the Grantee on the subject premises shall be in accordance with plans and specifications 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 the Improvements and Facilities by the Grantee on the subject premises shall be done to the satisfaction of the Chief of 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 A separate sewer permit application for this project is currently under review by the District. This permit will be issued upon satisfaction of all technical requirements and execution of this agreement.

3.06 The Grantee shall relocate or remove the Improvements and Facilities existing or constructed upon the subject 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 purpose of the District.

ARTICLE FOUR

4.01 The District expressly retains its interest in and the rights to 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 its construction, reconstruction, operation, relocation, 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, suite 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 The Grantee prior to entering upon said premises and using the same for the purposes for which this Easement is granted, shall prepared and transmit to the District an acknowledge statement that the Grantee is a self-insured, and that it undertakes and promises to insure the District, its Commissioners officers, agents, servants, and employees on account of risk 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, servant, 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.

COMPREHENSIVE GENERAL LIABILITY

**Combined Single Limit Bodily Injury Liability
Property Damage Liability (Including Liability for Environmental
Contamination of Adjacent Properties)
in the amount not less than \$4,000,000
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
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 and 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 have 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 the 25-year term 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 expenses 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 expenses and otherwise keep and save harmless the District from any loss, cost or expenses 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 said 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 evident thereof.

8.02 The Grantee covenants and agrees that is 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 the existing District facilities within the proposed easement premises, including, but not limited to, intercepting sewers, sludge lines and 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) 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 the 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 A(29 U.S.C. Sec. 651 et seq.) and all similar state, local and municipality 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 substance," "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 an 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 records), a site reconnaissance and physical survey, inspection of Easement Premises, site interviews and site history evaluations, basic engineering analyses of the risks to human health and the environment of any areas of identified concerns, and preparation of a written report which discusses history, site land use, apparent regulatory compliance or lack thereof and which includes historical summary, proximity to and location of USTs, LUSTs, TSDFs, CERCLA site flood plain, maps, photograph log references, conclusions and recommendations.

D. "Phase II Environmental Assessment" shall mean:

(1) an assessment of the Easement Premises 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 subtenants 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 State 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 or, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 9601 et seq. of Title 42 of the United States Code, or any similar state law or local ordinance or any other Environmental Law or (iii) so as to cause a discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act, Section 1251 of Title 33 of the United States Code, or the Clean Air Act, Section 741 of Title 42 of the United States Code, or any similar state law or local ordinance.

9.04 CONDITION OF PROPERTY (ENVIRONMENTAL)

A. In the event Grantee has used the Easement Premises under a prior Easement Agreement, Grantee warrants and represents that as a result of the easement grant, the Easement Premises and improvements thereon, including all personal property, have not been exposed to a 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 an 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 to 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 or 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 the extent required by any and all Environmental Laws.

B. Capacitors, transformers, or other environmentally sensitive installation 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, reediting, 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 1101 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 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 of 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

By: _____

Its: _____

ATTEST:

Its: _____

