

4/5/2013

**26-R-13**

**A RESOLUTION**

**Authorizing the City Manager to Execute an Intergovernmental Agreement for the Repair of the Davis Street Sewer with the Metropolitan Water Reclamation District of Greater Chicago**

**WHEREAS**, the Metropolitan Water Reclamation District of Greater Chicago (hereinafter, "District") intends to transfer ownership of the Davis Street Sewer to the City of Evanston (hereinafter "City") and to reimburse the City for the replacement of the Davis Street Sewer as shown in the Intergovernmental Agreement attached hereto as Exhibit 1 and incorporated herein by reference.

**WHEREAS**, the Davis Street Sewer serving a portion of the City has exceeded its useful life, the potential for sewer collapse is possible and therefore the sewer must be replaced in order to adequately serve and protect the needs of the City; and

**WHEREAS**, the City and District seek to enter into an Intergovernmental Agreement providing aid to the City for Davis Street Sewer repairs,

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

**SECTION 1:** The City Manager is hereby authorized and directed to sign, and the City Clerk hereby authorized and directed to attest, on behalf of the City, the Intergovernmental Agreement set forth in Exhibit 1, by and between the City of Evanston and District.

**SECTION 2:** The City Manager is hereby authorized and directed to negotiate any additional conditions or terms of the Agreement as may be determined to be in the best interest of the City and as may be approved as to form by the Corporation Counsel.

**SECTION 3:** This resolution shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.

  
Elizabeth B. Tisdahl, Mayor

Attest:

  
Rodney Greene, City Clerk

Adopted: April 22, 2013

**INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF EVANSTON AND THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO FOR REPAIR OF THE DAVIS STREET SEWER**

**THIS AGREEMENT** is entered into by and between the Metropolitan Water Reclamation District of Greater Chicago, a unit of local government, (hereinafter called "District") and the City of Evanston, a -home rule municipality, (hereinafter called "CITY").

**WITNESSETH:**

**WHEREAS**, Section 10 of Article VII of the Illinois Constitution and Intergovernmental Cooperation Act, 5 ILCS 220/1 et. seq., allow and encourage intergovernmental cooperation; and

**WHEREAS**, the District is a unit of local government and has certain powers pursuant to Article VII, Section 8 of the Illinois Constitution and Metropolitan Water Reclamation District Act, 70 ILCS 2605/1 et. seq.; and

**WHEREAS**, the CITY is a home rule municipality and has certain powers pursuant to Article VII, Section 7 of the Illinois Constitution; and

**WHEREAS**, the District conveyed the Davis Street Sewer and Manholes (hereinafter called "the Project") to the CITY on JUNE 20, 2013 through the attached sewer and manhole assignment agreement, thereby relinquishing any and all ownership rights in the Davis Street Sewer and Manholes , the approximate location of these facilities is depicted in the attached Exhibit A, incorporated by reference herein; and

**WHEREAS**, the CITY conveyed the check valve to the DISTRICT on , 2013 through the attached sewer and manhole assignment, thereby relinquishing any and all ownership rights to the check valve (hereinafter the "valve"); and

**WHEREAS**, upon execution of the above referenced agreement, the CITY owns, operates and maintains the sewer, and

**WHEREAS**, the District's Board of Commissioners authorized the District to enter into an intergovernmental agreement on April 18, 2013 with the CITY for the sole purpose of aiding in the rehabilitation of the Davis Street Sewer, and

**WHEREAS**, the Davis Street Sewer serving a portion of the CITY has exceed its useful life, the potential for a sewer collapse is possible and therefore the sewer must be replaced in order to adequately serve and protect the needs of the CITY, and

**WHEREAS, upon the terms specified herein**, the District has committed to the reconstruction of the new sewer and manholes that will convey flow from local connection to the District's Terrence J. O'Brien Water Reclamation Plant for treatment by the District; and

**WHEREAS**, the CITY has committed to the installation of a valve at the drop manhole located near Main Street; and

**WHEREAS**, the District has no legal obligation to repair the sewer and manholes.

**NOW, THEREFORE**, in consideration of the matters set forth, the mutual covenants and agreements contained in this agreement and other good and valuable consideration, the CITY and the District hereby agree as follows:

**Article 1. Incorporation of Recitals.** The recitals set forth above are incorporated herein by reference and made a part hereof.

**Article 2. Scope of Work.**

1. The CITY shall prepare construction drawings, specifications, and details for the Project.
2. The District shall review and approve said construction drawings and details.
3. The CITY shall incorporate the District review comments with reasonable discretion.
4. The CITY, at its sole cost and expense, shall construct the sewer and manholes in accordance with the final approved Construction Documents.
5. The CITY, at its sole cost and expense, shall install a valve at the drop manhole.
6. The District shall pay \$860,353.00 to the CITY for the sole and exclusive purpose of reconstructing the new sewer and manholes that will convey flow from local connection to the District's Terrence J. O'Brien Water Reclamation Plant for treatment by the District within 60 days following final approval by the District of the construction of the sewer.

**Article 3. Permits.**

1. The CITY shall obtain all consents, permits and approvals necessary for the construction of the Project itself in accordance with all Federal, State, and County Regulations, and shall assume any costs incurred in procuring all such consents, permits and approvals necessary to construct the Project.
2. The CITY shall procure any and all required Federal, State, and Local permits required for performing maintenance.

**Article 4. Easements.**

1. The CITY owns the property the sewer is located underneath
2. The CITY shall acquire all easement for construction, maintenance and access from property owners prior to construction
3. No additional easements will be required.

**Article 5. Maintenance.**

1. The CITY at its sole cost and expense, shall perpetually maintain the sewer and structures.
2. The CITY shall not alter the sewer or structures without prior written consent from the District.
3. The District at its sole cost and expense, shall perpetually maintain the valve.

**Article 6. Deadlines.** Unless an extension is agreed to in writing by the District's Director of Engineering, which said consent will not be unreasonably withheld, the CITY shall complete all work relating to the Project in its entirety no later than December 31, 2013.

**Article 7. Termination by the District.** Prior to commencement of the Work, at its option, and upon giving notice to the CITY in the manner provided in Article 22 below, the District may terminate this Agreement as it pertains to the entire Project, or any portion thereof.

If the CITY fails to comply with any conditions set forth in this Agreement, the District may give notice to the CITY in the manner provided in Article 22, of such failure to comply. The CITY shall make every effort to comply with conditions set forth in this Agreement within 90 days of said notice. The CITY may request an extension of time in writing by the District's Director of Engineering within thirty (30) days of the date that written notice of such non-

compliance is given to the CITY, in the event that the CITY will not be in compliance within 90 days of said notice.

Absent a written extension as provided above, beginning on the ninety-first (91<sup>st</sup>) day after notice of termination was given to the CITY, the District shall have authority to make all such corrections not previously undertaken or completed by the CITY as part of the Agreement. The CITY shall reimburse the District for any expenses incurred by the District in making or completing such corrections.

**Article 8. Termination by the CITY.** Prior to commencement of the Work, the CITY may, at its option, terminate this Agreement in its entirety at any time. The CITY shall provide the District with notice of the termination in accordance with Article 22 below at least thirty (30) days before the date of termination, specifying in the notice the effective date of termination.

**Article 9. Duration.** Subject to the terms and conditions of Articles 7 and 8 above, this Agreement shall remain in full force and effect in perpetuity.

**Article 10. Non-Assignment.** Neither party may assign its rights hereunder without the written consent of the other party.

**Article 11. Waiver of Personal Liability.** No official, employee, or agent of either party to this Agreement shall be charged personally by the other party with any liability or expenses of defense incurred as a result of the exercise of any rights, privileges, or authority granted herein, nor shall he or she be held personally liable under any term or provision of this Agreement, or because of a party's execution or attempted execution of this Agreement, or because of any breach of this Agreement.

**Article 12. Indemnification.** To the extent authorized by applicable law, the CITY shall defend, indemnify, and hold harmless the District, its commissioners, officers, employees, and other agents from any and all claims, liabilities, judgments (including costs and attorneys' fees), and demands, whether they are meritorious or not, for personal injury or property damage which arise or are asserted against the District Party and are proximately caused by the Work or the exercise of any rights, privileges, or authority granted to either the District or the CITY under this Agreement, or that are asserted by any federal, state, or local government or agency against the District Party and are proximately caused by any act of the CITY that causes, or contributes to, the District's violation of any federal, state, or local law, rule, or regulation, except to the extent proximately caused by an District Party.

**Article 13. Disclaimers.** This Agreement is not intended, nor shall it be construed, to confer any rights, privileges, or authority not permitted by Illinois law. Nothing in this Agreement shall be construed to establish a contractual relationship between the District and any party other than the CITY.

**Article 14. Waivers.** Whenever a party to this Agreement by proper authority waives the other party's performance in any respect or waives a requirement or condition to performance, the waiver so granted, whether express or implied, shall only apply to the particular instance and shall not be deemed a waiver for subsequent instances of the performance, requirement or condition. No such waiver shall be construed as a modification of this Agreement regardless of the number of times the performance, requirement, or condition may have been waived.

**Article 15. Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other provisions of this Agreement, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision has never been contained herein. The remaining provisions will remain in full force and will not be affected by the invalid, illegal, or unenforceable provision or by its severance. In lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as part of this Agreement a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

**Article 16. Necessary Documents.** Each party agrees to execute and deliver all further documents, and take all further action reasonably necessary to effectuate the purpose of this Agreement. Upon the completion of the Project, the CITY shall provide the District with a full sized set (24" x 36"), unbounded on vellum, of "As-Built" drawings for the Project. The drawings shall be affixed with the "As-Built" printed mark and must be signed by both the resident engineer and contractor.

**Article 17. Deemed Inclusion.** Provisions required (as of the effective date) by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertions. However, in no event will the failure to insert such provisions before or after this Agreement is signed prevent its enforcement.

**Article 18. Entire Agreement.** This Agreement, and any exhibits or riders attached hereto, shall constitute the entire agreement between the parties. No other warranties, inducements, considerations, promises, or interpretations shall be implied or impressed upon this Agreement that are not expressly set forth herein.

**Article 19. Amendments.** This Agreement shall not be amended unless it is done so in writing and signed by the authorized representatives of both parties.

**Article 20. References to Documents.** All references in this Agreement to any exhibit or document shall be deemed to include all supplements and/or authorized amendments to any such exhibits or documents to which both parties hereto are privy.

**Article 21. Judicial and Administrative Remedies.** The parties agree that this Agreement and any subsequent Amendment shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois in all respects, including matters of construction, validity and performance. The parties further agree that the proper venue to resolve any dispute which may arise out of this Agreement is the appropriate Court of competent jurisdiction located in Cook County, Illinois.

This Agreement shall not be construed against a party by reason of who prepared it. Each party agrees to provide a certified copy of the ordinance, bylaw or other authority to evidence the reasonable satisfaction of the other party that the person signing this Agreement for such party is authorized to do so and that this Agreement is a valid and binding obligation of such party. The parties agree that this Agreement may be executed in counterpart, and that facsimile copies of executed original copies of this Agreement shall be sufficient and admissible evidence of the content and existence of this Agreement to the same extent as the originally executed copy or copies (if executed in counterpart).

The rights and remedies of the District or the CITY shall be cumulative, and election by the District or the CITY of any single remedy shall not constitute a waiver of any other remedy that such party may pursue under this Agreement.

**Article 22. Notices.** Unless otherwise stated in this Agreement, any and all notices given in connection with this Agreement shall be deemed adequately given only if in writing and addressed to the party for whom such notices are intended at the address set forth below. All notices shall be sent by personal delivery, UPS, Fed Ex or other overnight messenger service, first class registered or certified mail, postage prepaid, return receipt requested, email, or by

facsimile. A written notice shall be deemed to have been given to the recipient party on the earlier of (a) the date it is hand-delivered to the address required by this Agreement; (b) with respect to notices sent by mail, two days (excluding Sundays and federal holidays) following the date it is properly addressed and placed in the U.S. Mail, with proper postage prepaid; or (c) with respect to notices sent electronically or by facsimile, on the date sent, if sent to the facsimile number(s) set forth below and upon proof of delivery as evidenced by the sending fax machine. The name of this Agreement i.e., "INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF EVANSTON AND THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO FOR REPAIR OF THE DAVIS STREET SEWER" must be prominently featured in the heading of all notices sent hereunder.

Any and all notices referred to in this Agreement, or that either party desires to give to the other, shall be addressed as follows, unless otherwise specified and agreed to by the parties:

**Article 23. Representatives.** Immediately upon execution of this Agreement, the following individuals will represent the parties as a primary contact and receipt of notice in all matters under this Agreement.

For the District:  
Catherine A. O'Connor  
Director of Engineering  
Metropolitan Water Reclamation District  
of Greater Chicago  
100 East Erie Street  
Chicago, Illinois 60611  
Phone: (312) 751-3169  
FAX: (312) 751-5681

For the City:  
Wally Bobkiewicz  
City Manager  
2100 Ridge Ave.  
Evanston, IL. 60201  
Phone: (847) 866-2936  
FAX: (847) 448-8083

Each party agrees to promptly notify the other party of any change in its designated representative, which notice shall include the name, address, telephone number and fax number of the representative for such party for the purpose hereof.

**Article 24. Tax Exempt Status.** The City shall not use or permit to be used the Davis Street Sewer or operate the Project or the wastewater system of which it is a part in any manner or for any purpose or take any action or omit to take any action which could result in loss of the exclusion from gross income for federal income tax purposes of the interest on any obligations of the District or the loss of any credit payment or tax credit to the District or any

other party from the United States Treasury (such as, for example, was available to units of local government for "build America bonds") (any of such advantages being "Tax Advantaged Status"), as such Tax Advantaged Status is governed by the federal income tax laws, as amended from time to time, including but not limited to, Sections 54 through 57, 103, and 141 through 150 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations or any rulings promulgated there under or decisions of any court of competent jurisdiction (collectively, the "Tax Laws"). The City agrees to provide a certification and agreement, in the form as attached to this Agreement, regarding compliance with the Tax Laws (the "Tax Agreement"). In the event modification of such form of certification is required, such modification shall be passed upon by bond counsel to the District.

**Article 25. Compliance with the Intergovernmental Cooperation Act.** Any and all work performed under this Agreement must be in compliance with the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq.

Pursuant to 5 ILCS 220.3/5, any expenditure of funds to repair the Sewer shall be in accordance with any law or ordinance applicable to the public agency with the largest population which is a party to the Agreement if the State is not a party to the Agreement. This includes but is not limited to the Purchasing Act for the Metropolitan Water Reclamation District of Greater Chicago (70 ILCS 2605/1 1/1 et seq.), the Affirmative Action Ordinance of the District, and the Multi-Project Labor Agreement, as applicable.

**IN WITNESS WHEREOF**, the Metropolitan Water Reclamation District of Greater Chicago and the City of Evanston, the parties hereto, have each caused this Agreement to be executed as of the date first above written by their duly authorized officers, duly attested and their seals hereunto affixed.

**IN WITNESS WHEREOF**, the City of Evanston and the Metropolitan Water Reclamation District of Greater Chicago have executed this Agreement on the 20TH day of JUNE, 2013.

Catherine A. O'Connor  
Director of Engineering

Don GP  
Executive Director

[Signature]  
Chairman of the Committee on Finance

Attest:  
Jacqueline Torres (SEAL)  
Clerk

**APPROVED AS TO FORM AND LEGALITY:**

Helen S. Wright  
Head Assistant Attorney *pk*

Ronald M. Hill  
General Counsel

CITY OF EVANSTON

BY: Wally Bobkiewicz  
Wally Bobkiewicz, City Manager

ATTEST:

Rodney Greene (SEAL)  
Rodney Greene, City Clerk

Approved as to form:

W. Grant Farrar  
W. Grant Farrar  
Corporation Counsel

**Tax Exemption Certificate and Agreement  
Grant Program Only**

The City of Evanston (the "*Recipient*") is executing this Tax Exemption Certificate and Agreement ("*Tax Agreement*") to allow the Metropolitan Water Reclamation District of Greater Chicago (the "*MWRDGC*") to transfer ownership or control to the Recipient of facilities financed with proceeds of tax-exempt bonds. This Tax Agreement covers the facilities or property listed in Appendix D (the "*Facilities*"). Appendix D may be amended from time to time if additional facilities or the cash to acquire or improve such facilities are transferred.

The Recipient and the MWRDGC have previously executed or will execute documents transferring ownership or control of Facilities to the Recipient. The Recipient is aware that the MWRDGC has limited resources and might be unable to fund facilities to be transferred to the Recipient without this Tax Agreement.

*Section 1. Definitions and Appendices.* Attached hereto are four Appendices, made a part hereof. Appendix A contains certain covenants and representations that may or may not impose burdens on the Recipient. The Recipient is responsible for determining which covenants and representations, if any, in Appendix A relate to the Recipient. Appendix B contains a glossary of definitions applicable to the tax covenants, including Appendix A. Appendix C, if any, includes a description of certain funds or accounts that, as described in Appendix A, may be subject to investment restrictions or rebate payments. Appendix D lists or describes the facilities that are hereby made the subject of restrictions described herein.

*Section 2. Expectations.* These certifications set forth various facts regarding the transfers and establish the expectations of the Recipient as to future events regarding the transfers and the use of facilities transferred. These certifications also establish facts and expectations related to any transferred facilities, and any moneys of the Recipient or related entities held in funds or accounts related to the facilities. The Recipient recognizes that the facilities were or will be financed in whole or in part with obligations that are intended to be tax exempt. Certain certifications and covenants are presented here in summary form. Attached hereto as Appendix A are further details explaining how to comply with these covenants.

*Section 3. Purpose of the Transfer.* The Facilities listed in Appendix D have been or are being transferred to the Recipient to allow the Recipient to better collect and transmit wastewater to the MWRDGC. The Recipient, and not the MWRDGC, will control the operation and use of these facilities.

*Section 4. Cash Transfer.* The MWRDGC may from time to time transfer cash rather than facilities to the Recipient. Such cash transfers will either be to reimburse (in whole or in part) the Recipient for capital costs of facilities for the collection of or transmission of wastewater to the MWRDGC or to provide the funds to purchase or construct such facilities. In either case, the Recipient will add any such Facilities to Appendix D before such Facilities become operational.

In the case of reimbursement, the Recipient will not accept such cash more than 18 months after the expenditure to be reimbursed. The Recipient also understands that the MWRDGC will be unable to make such a transfer if the expenditure was made prior to a date<sup>1</sup> set by the MWRDGC.

If any portion of cash transferred is for capital expenditures not made by the Recipient prior to the date of the transfer, the Recipient will segregate such funds for investment and tracking purposes. Such funds will be invested and disbursed only in accordance with a separate Appendix A and supplemental tax agreement.

*Section 5. Payments to MWRDGC, Security for MWRDGC Debt.* Unless the Recipient executes a separate supplemental tax agreement indicating otherwise, the Recipient will not provide any security for any debt of MWRDGC and the Recipient will not make payments to MWRDGC that could be used by MWRDGC to pay or secure its debt. No fees will be paid by the Recipient for use of the financed facilities. No repayments will be required. This section will not be read to limit future contractual arrangements including separate tax covenants.

*Section 6. Hedges.* Neither the Recipient nor any member of the same Controlled Group as the Recipient has entered into or expects to enter into any hedge (e.g., an interest rate swap, interest rate cap, futures contract, forward contract or an option) with respect to any debt of the MWRDGC.

*Section 7. Internal Revenue Service Audits.* The Internal Revenue Service has not contacted the Recipient regarding any obligations issued by or on behalf of the Recipient in connection with its wastewater system and no such obligations are currently under examination by the Internal Revenue Service.

*Section 8. Records.* The Recipient agrees to keep and retain or cause to be kept and retained adequate records with respect to the investment of all amounts transferred by the MWRDGC to the Recipient and provide such records to the MWRDGC on reasonable request. The Recipient further agrees to maintain sufficient records to demonstrate compliance with all of the covenants set forth herein. Such records will be maintained at least until December 1, 2035 or such later date provided by the MWRDGC.

*Section 9. Investment Restrictions.* Any money transferred by the MWRDGC to the Recipient must be invested in investments purchased at the market price therefore at all times to the greatest extent practicable, and no amounts may be held as cash or be invested in zero yield investments other than obligations of the United States of America purchased directly from the United States of America. In the event moneys cannot be invested, other than as provided in this sentence due to the denomination, price or availability of investments, the amounts shall be invested in an interest bearing deposit of a bank with a yield not less than that paid to the general public or held uninvested to the minimum extent necessary. Except as provided in Appendix A,

all moneys transferred by the MWRDGC to the Recipient shall be invested at a Yield not in excess of 3.702%. Appendix A contains further details related to investment restrictions.

*Section 10. Use Test.* (a) No more than five percent of any of the facilities identified in Appendix D will be used by any entity, other than a state or local government unit, including as a result of (i) ownership, (ii) actual or beneficial use pursuant to a lease or a management, service, incentive payment, research or output contract or (iii) any other similar arrangement, agreement or understanding, whether written or oral, except for use of the Project on the same basis as the general public. Such prohibited use includes any formal or informal arrangement with any entity, other than a state or local governmental unit, that conveys special legal entitlements to any portion of the Project that is available for use by the general public or that conveys to any entity, other than a state or local governmental unit, any special economic benefit with respect to any portion of the Project that is not available for use by the general public. Such prohibited use might arise pursuant to a management contract, an output contract, or a contract to accept effluent from an entity. Such prohibited use will be deemed to occur if the Recipient entered into any contract with a third party to process wastewater of the third party for a fee that is not generally applicable to similar entities with no contract.

(b) None of the amounts transferred to the Recipient will be used, directly or indirectly, to make or finance loans to any entity.

*Section 11. No Sale of the Project.* Except as provided in Appendix A, none of the facilities identified on Appendix D is expected to be sold or otherwise disposed of prior to the earlier of (i) the last date of the economic life of the property or (ii) December 1, 2032.

*Section 12. Use Contracts.* Except as provided herein, the Recipient will not enter into any contract with any other person that provides special legal entitlements in any of the facilities identified in Appendix D. The Recipient will not allow another entity to manage, control, or operate any of the facilities listed in Appendix D. The Recipient will not contractually provide that any of the facilities identified on Appendix D will be used to process wastewater of a specific entity. The Recipient may enter into a management contract or other contract concerning such property if it establishes that such contract does not create private use in excess of use permitted under Section 10 and it delivers an opinion of Bond Counsel to that effect with a copy of the contract.

*Section 13. Cooperation.* The Recipient will cooperate with the MWRDGC at the expense of the Recipient in defending any examination of bonds of the MWRDGC that financed any of the facilities itemized in Appendix D.

*Section 14. Annual Reporting.* The Recipient will provide a report to the MWRDGC at least annually. The report shall state whether the Recipient has over the previous year complied with all of its covenants and shall enumerate any covenant violations. The Recipient shall maintain adequate procedures to allow it to make these annual reports. The Recipient shall also notify the MWRDGC within 60 days of discovery of any covenant violations.

*Section 15. Remediation and VCAP.* The Recipient will work with the MWRDGC to remediate any violation (at the expense of the Recipient). If the MWRDGC with the assistance of the Recipient is unable to remediate the violation, the Recipient, at the Recipient's expense, will cooperate with the MWRDGC on seeking a voluntary closing agreement with the Internal Revenue Service.

*Section 16. Future Events.* The Recipient covenants that it will not take any action, omit to take any action or permit the taking or omission of any action within its control (including, without limitation, making or permitting any use of facilities or money transferred to it by the MWRDGC if taking, permitting or omitting to take such action would cause any debt of the MWRDGC to be an arbitrage bond or a private activity bond within the meaning of the Internal Revenue Code of 1986 or would otherwise cause the interest on such bonds to be included in the gross income of the recipients thereof for federal income tax purposes. The Recipient agrees that it will cooperate with the MWRDGC in responding to any inquiries from the Internal Revenue Service in connection with an examination of any of such debt.

If the Recipient has any questions regarding its responsibilities under these covenants, it will contact the MWRDGC and request clarification or additional guidance.

CITY OF EVANSTON

BY: Wally Bobkiewicz  
Wally Bobkiewicz, City Manager

DATE: 6-5-13

ATTEST:

Rodney Greene (SEAL)  
Rodney Greene, City Clerk

## APPENDIX A

*Appendix A, Section 1. Funds and Accounts.* Listed in Appendix C are all of the funds or accounts into which the Recipient may deposit cash transferred from the MWRDGC or earnings derived there from. Also included is a brief but accurate description of each.

The Recipient acknowledges that any such fund or account or portion of such fund or account (whether or not noted in Appendix C) is subject to rebate and investment restrictions except for any portions meeting exceptions described herein.

*Appendix A, Section 2. Market Price Investment Restrictions.* The Recipient will not invest any of the amounts received from the MWRDGC in any investment that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, or any agreement to supply investments on two or more future dates (including any guaranteed investment contract, forward supply contract, repurchase agreement, or any similar agreement) unless it awards such investment contract pursuant to competitive bidding in a manner approved by the MWRDGC and its counsel.

The Recipient may until July 1, 2014 invest such amounts in certificates of deposit of banks or savings and loan associations that have a fixed interest rate, fixed payment schedules and substantial penalties for early withdrawal only if the yield on the certificate of deposit (A) is not less than the yield on reasonably comparable direct obligations of the United States of America and (B) is not less than the highest yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

*Appendix A, Section 3. Federal Guarantees.* Except for investments meeting the requirements of Appendix A, or prior to July 1, 2014 investments of moneys received from the MWRDGC shall not be made in (a) investments constituting obligations of or guaranteed, directly or indirectly, by the United States of America (except obligations of the United States Treasury or investments in obligations issued pursuant to Section 21B(d)(3) of the Federal Home Loan Bank Act, as amended (*e.g.*, Refcorp Strips)), or (b) federally insured deposits or accounts (as defined in Section 149(b)(4)(B) of the Code). No portion of the moneys received from the MWRDGC has been or will be used to make loans the payment of principal or interest with respect to which is or will be guaranteed (in whole or in part) by the United States of America (or any agency or instrumentality thereof). A federal guarantee does not include any guarantee by the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the Student Loan Marketing Association or the Bonneville Power Administration pursuant to the Northwest Power Act (16 U.S.C. 839d) as in effect on the date of enactment of the Tax Reform Act of 1984.

*Appendix A, Section 4. Rebate.* Amounts received from the MWRDGC except as noted herein are subject to the Rebate requirement. The Recipient is responsible for calculating the amount of rebate if any due on such funds or accounts including those listed in Appendix C.

Such rebate calculations shall be based on bond yields equal to yields provided from time to time by the MWRDGC. Such rebate computations shall be based upon a bond year ending on dates provided by the MWRDGC, and installment computation dates provided by the MWRDGC, and such other dates as may be provided by the MWRDGC from time to time. Such computations shall ignore "rebate credits" and shall not reflect any hold back amount permitted under the regulations. For example, the rebate amount shall be 100% on each computation date, not reduced to 90% as might be permitted under regulations. The Recipient shall pay to the MWRDGC the amount of rebate due with respect to each such account no later than 50 days after each installment computation date.

*Appendix A, Section 5. Records.* The Recipient shall retain records relating to each computation performed and all other investment records of amounts identified in Appendix A, Sections 1 and 2.

Such records shall include: (a) purchase price; (b) purchase date; (c) type of investment; (d) accrued interest paid; (e) interest rate; (f) principal amount; (g) maturity date; (h) interest payment date; (i) date of liquidation; and (j) receipt upon liquidation. If any investment becomes allocable to one of the funds or accounts described in Section 7 of the Tax Covenants on a date other than the date such investment is purchased, the records required to be kept shall include the fair market value of such investment on the date it becomes so allocated. Amounts or investments will be segregated whenever necessary to maintain these records. Upon request of the MWRDGC, such records will be provided to the MWRDGC.

*Appendix A, Section 6. Sale of the Project.* The Recipient shall not sell or otherwise dispose of portion of the facilities identified on Appendix D without prior written approval of the MWRDGC or as specifically allowed as described below:

(a) Other than as provided in the next sentence, no Facility identified on Appendix D nor any portion thereof has been, is expected to be, or will be sold or otherwise disposed of, in whole or in part, prior to the earlier of (i) the last date of the reasonably expected economic life to the Recipient of the property or (ii) the last maturity date of the Loan. The Recipient may dispose of personal property in the ordinary course of an established government program prior to the earlier of (i) the last date of the reasonably expected economic life to the Recipient of the property or (ii) December 1, 2014 provided: (A) 13.4 years is not greater than 120 percent of the reasonably expected use of that property for governmental purposes; (B) the Recipient reasonably expects on receipt of the property that the fair market value of that property on the date of disposition will be not greater than 25 percent of its cost; (C) the property is no longer suitable for its governmental purposes on the date of disposition; and (D) the Recipient deposits amounts received from the disposition in a commingled fund with substantial tax or other governmental revenues and the Recipient reasonably expects to spend the amounts on governmental programs within six months from the date of the commingling.

(b) The Recipient acknowledges that if property identified on Appendix D is sold or otherwise disposed of in a manner contrary to (a) above, such sale or disposition may constitute a "deliberate action" within the meaning of the Regulations that may require remedial actions to prevent bonds financing the Loan from becoming private activity bonds. The Recipient shall

promptly contact the MWRDGC if a sale or other disposition of property identified on Appendix D is considered by the Recipient.

*Appendix A, Section 7. Maintenance of Tax Exemption.* The Recipient recognizes that investors in tax exempt bonds are relying on these covenants, and will contact the MWRDGC if the Recipient determines that it may have violated any covenant or if it is unsure of any action required of it. The MWRDGC may under such circumstances provide the Recipient with additional instructions.

These tax covenants may be supplemented or amended by the Recipient and the MWRDGC, and covenants contained herein need not be observed if such supplementation, amendment, or non-observance will not adversely affect the tax status of any bonds of the MWRDGC intended to be tax exempt, and the Recipient obtains and delivers to the MWRDGC an opinion of Bond Counsel addressed to the MWRDGC to that effect.

## APPENDIX B

### GLOSSARY

*"Bona Fide Debt Service Fund"* means any fund or account (i) established and maintained primarily for the proper matching of revenues and debt service within a bond year and which is depleted at least once every year to an amount not in excess of a reasonably carryover amount not to exceed the greater of earnings on investments in such fund or account during the preceding bond year, or (ii) 1/12th of the principal and interest payments made from such fund for the preceding year.

*"Bond Counsel"* means Chapman and Cutler LLP or any other nationally recognized firm of attorneys experienced in the field of municipal bonds whose opinions are generally accepted by purchasers of municipal bonds.

*"Commingled Fund"* means any fund or account containing both Gross Proceeds and an amount in excess of \$25,000 that are not Gross Proceeds if the amounts in the fund or account are invested and accounted for, collectively, without regard to the source of funds deposited in the fund or account. An open-ended regulated investment company under Section 851 of the Code is not a Commingled Fund.

*"Control"* means the possession, directly or indirectly through others, of either of the following discretionary and non-ministerial rights or powers over another entity:

(a) to approve and to remove without cause a controlling portion of the governing body of a Controlled Entity; or

(b) to require the use of funds or assets of a Controlled Entity for any purpose.

*"Controlled Group"* means a group of entities directly or indirectly subject to Control by the same entity or group of entities, including the entity that has Control of the other entities.

*"External Commingled Fund"* means a Commingled Fund in which the Issuer and all members of the same Controlled Group as the Issuer own, in the aggregate, not more than ten percent of the beneficial interests.

*"MWRDGC"* means the Metropolitan Water Reclamation Agency of Greater Chicago.

*"Non-AMT Tax-Exempt Investments"* (i) any obligation described in Section 103(a) of the Internal Revenue Code of 1986 (the *"Code"*), the interest on which is excludable from gross income of any owner thereof for federal income tax purposes and is not an item of tax preference for purposes of the alternative minimum tax imposed by Section 55 of the Code; (ii) an interest in a regulated investment company to the extent that at least ninety-five percent of the income to the holder of the interest is interest that is excludable from gross income under Section 103 of the Code of any owner thereof for federal income tax purposes and is not an item of tax preference for purposes of the alternative minimum tax imposed by Section 55 of the Code; and (iii)

certificates of indebtedness issued by the United States Treasury pursuant to the Demand Deposit State and Local Government Series program described in 31 C.F.R. part 344 (to the extent permitted by law).

*"Project"* means the facilities identified on Appendix D.

*"Recipient"* is defined in the preamble.

*"Related Person"* means a member of the same controlled group.

*"Yield"* means that discount rate which when used in computing the present value of all payments of principal and interest paid and to be paid on an obligation (using semiannual compounding on the basis of a 360-day year) produces an amount equal to the obligation's purchase price (or in the case of the Bonds, the issue price), including accrued interest.

APPENDIX C

FUNDS OR ACCOUNTS CONTAINING MONEY TRANSFERRED  
FROM MWRDGC TO THE RECIPIENT

1. \$860,353.00

**APPENDIX D**

**FACILITIES SUBJECT TO USE RESTRICTIONS**

1. The Davis Street Sewer and Manholes

**SEWER AND MANHOLE ASSIGNMENT AGREEMENT**  
**METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO**

THIS AGREEMENT, made and entered into 20<sup>TH</sup> day of JUNE, 2013, by and between the City of Evanston (hereinafter "the City"), an Illinois municipality, and the Metropolitan Water Reclamation District of Greater Chicago (hereinafter "the DISTRICT"), a body corporate and politic organized and existing under the laws of the State of Illinois.

WHEREAS, the DISTRICT is the Owner of the Davis Street Sewer (the "sewer"), the approximate location of these facilities is depicted in the Attached Exhibit A, incorporated by reference herein; within Evanston, Illinois between Orrington Avenue and the alley east of Chicago Avenue.

WHEREAS, this Agreement is entered into by the DISTRICT, with the approval of its Board of Commissioners, and by the City, pursuant to the Evanston Municipal Code.

NOW THEREFORE, the City and the DISTRICT enter into this Agreement in accordance with the following provisions:

**ARTICLE I**  
**CONVEYANCE**

1. The DISTRICT, for and in consideration of \$10.00 (Ten and No/100 Dollars) and other valuable consideration, including the promises made herein, hereby specifically warrants and conveys to the City, all of its rights, title, and interest in the sewer and associated manholes. The sewer extends northwest in Davis Street from an existing manhole located between Chicago Avenue and Hinman Avenue to Orrington Avenue, as specifically shown on the attached Exhibit A in accordance with the terms and conditions as set forth herein; and the City shall henceforth own and operate the Davis Street Sewer in accordance with the usual procedures of the City.
2. The City agrees to take ownership of the sewer and associated manhole as-is condition and hold the DISTRICT harmless of cost associated with the repairs of the sewer in perpetuity.
3. The CITY, for and in consideration of \$10.00 (Ten and No/100 Dollars) and other valuable consideration, including the promises made herein, hereby specifically warrants and conveys to the DISTRICT, all of its rights, title, and interest in the check valve. The check valve is located on the east bank of the North Shore Channel south of Main Street in the City of Evanston with the terms and conditions as set forth herein; and the

DISTRICT shall henceforth own and operate the check valve in accordance with the usual procedures of the DISTRICT.

4. The DISTRICT agrees to take ownership of the check valve and hold the CITY harmless of cost associated with the repairs of the check valve in perpetuity.

## ARTICLE II

### ACCESS

1. The DISTRICT shall not open, cover, remove, modify, or alter the sewer and associated manholes or enter upon same without providing notice to, and receiving the written approval of, the City.
2. The City shall be solely responsible for, and shall defend, indemnify, and hold 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 otherwise accrue, directly or indirectly, against them as a result of any work being done heretofore by or on behalf of the City, whether it shall be alleged or determined that the act was caused through negligence or omission of the City of the City's employees, or any contractor or subcontractor of the City, or their employees, if any. The City shall, at its sole expense, defend against such claims and pay all attorneys fees, court costs, and other expenses arising there from or incurred in connection therewith. If any judgment shall be rendered against the DISTRICT, its Commissioners, officers, agents, or employees in any such action, the City shall, at its sole expense, satisfy and discharge the same. The City shall not, however indemnify and/or hold harmless the DISTRICT from any consequences of the DISTRICT's own negligent or other fault, or that of the DISTRICT's officers, employees, contractors, subcontractors, or agents. This provision shall survive closing and execution and delivery of this document of conveyance.
3. The City shall be exclusively liable for any claims from its employees, contractors, or agents arising from its opening, closing, entering, or exiting the sewer and associated manhole.

## ARTICLE III

### ASSUMPTION BY GRANTEE

1. The City shall own and operate the sewer and associated manholes and assume responsibility for maintenance and upkeep of the sewer and manholes.

2. The District shall own and operate the check valve and assume responsibility for maintenance and upkeep of the check valve.

#### ARTICLE IV

#### MISCELLANEOUS PROVISIONS

1. All terms and conditions of this Agreement shall remain in full force and effect and are not modifiable except by the mutual written agreement of the parties.
2. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which when taken together, shall constitute a single agreement.

*[Faint handwritten signature or initials]*

IN WITNESS WHEREOF, the Metropolitan Water Reclamation District of Greater Chicago has caused this Agreement to be duly executed in its name and on its behalf by its appropriate officers as set forth below, and the City of Evanston has caused this Agreement to be duly executed in its name and on its behalf by its Mayor and Clerk on or as of the date of this Agreement.

IN WITNESS WHEREOF, CITY and District have executed this Agreement on the 20TH day of JUNE, 2013.

CITY OF EVANSTON

By: Wally Bobkiewicz  
Wally Bobkiewicz, City Manager

ATTEST:

Rodney Greene  
Rodney Greene, City Clerk

*Catherine A. O'Connor*

Director of Engineering

*Don G.P.*

Executive Director

*[Signature]*  
Chairman, Committee on Finance

ATTEST:

*Jacqueline Lores*

(SEAL)

Clerk/Director of Finance

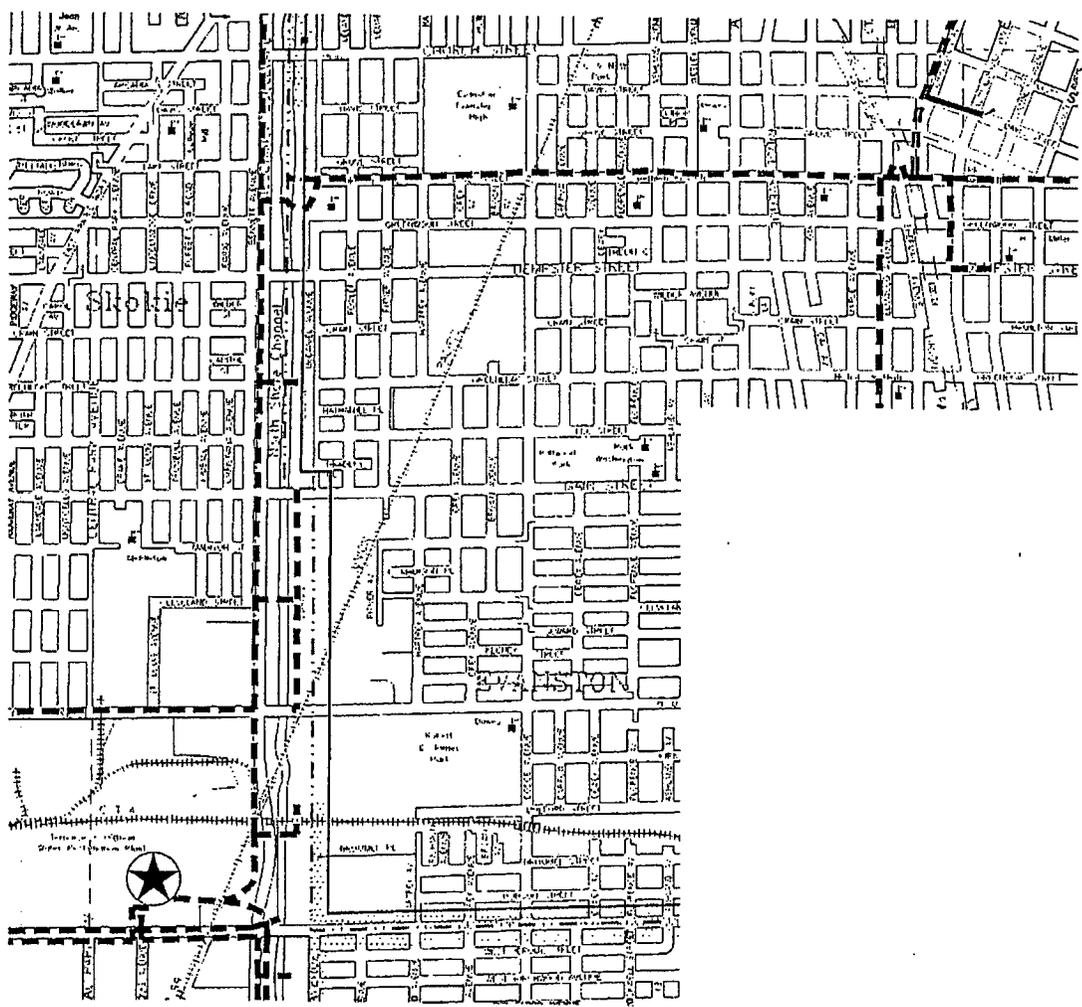
APPROVED AS TO FORM AND LEGALITY:

*Hees S Wright*

Head Assistant Attorney *BA*

*Ronald M. Hill*

General Counsel



DAVIS STREET SEWER

**LEGEND:**  
- - - - - EXISTING MWRD SEWER NOT INCLUDED IN IGA  
————— SEWER TO BE INCLUDED IN IGA

### EXHIBIT A

# DAVIS STREET SEWER

METROPOLITAN WATER RECLAMATION  
DISTRICT OF GREATER CHICAGO  
ENGINEERING DEPARTMENT  
10-12 COLLECTION FACILITIES FW:SDO