RESOLUTION NO. 17- 21

RESOLUTION AUTHORIZING THE APPROVAL AND EXECUTION OF THE EASEMENT AGREEMENT BETWEEN THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO AND THE MORTON GROVE-NILES WATER COMMISSION

(Morton Grove-Niles Water Commission)

WHEREAS, in 2017, the Morton Grove-Niles Water Commission ("MGNWC" or "Commission") was established by the Village of Morton Grove, a home rule Illinois municipal corporation ("Morton Grove"), and the Village of Niles, a home rule Illinois municipal corporation ("Niles"), by the adoption of ordinances pursuant to Division 135 of Article 11 of the Illinois Municipal Code (65 ILCS 5/11-135-1, *et seq.*) ("Division 135"). The establishing ordinances are Morton Grove Ordinance 17-5, which was adopted on March 13, 2017, and Niles Ordinance No. 2017-19, which was adopted on March 14, 2017. In order to accomplish the objectives set forth in the above-referenced Ordinances, Morton Grove and Niles also approved, under those same Ordinances, an intergovernmental agreement entitled, "Intergovernmental Agreement For The Establishment And Operation Of The Morton Grove-Niles Water Commission And For The Purchase And Sale Of Water To The Commission For Commission Use And To Commission Wholesale Water Customers" (the "IGA"), to provide for the governance and operation of the MGNWC and to create the Board of Commissioners of the Morton Grove-Niles Water Commission ("MGNWC Board") to govern the MGNWC; and

WHEREAS, the MGNWC was established for purposes of constructing and operating a public water supply system (the "MGNWC System") consisting of water transmission mains, pumping, storage, and other related water delivery and receiving infrastructure between a connection point on the Evanston water system and existing water receiving points of Niles and Morton Grove (the "Project"); and

WHEREAS, the Metropolitan Water Reclamation District of Greater Chicago ("MWRDGC" or the "District") is the fee simple owner of real estate located within the North Shore Channel Park Area. The District desires to approve and enter into a document entitled "Easement Agreement" with the MGNWC, a copy of which is attached hereto as **Exhibit "A"** and made a part hereof, for the purposes of granting certain temporary construction easement rights and permanent easement rights to allow the MGNWC to construct and operate a water distribution system pump station and related infrastructure improvements (electrical and mechanical components, pipes, valves, vaults and meters). The temporary construction easement areas and permanent easement areas are legally described in the attached Easement Agreement and will be imposed on two (2) portions of the District's real estate that are referred to as Parcel 3.02 (real estate located within the City of Evanston) and Parcel 3.05 (real estate located within the Village of Skokie) (collectively the "Easement Premises"); and

WHEREAS, the MGNWC desires to approve and enter into the attached Easement Agreement with the District (**Exhibit "A"**) for the purposes of obtaining certain temporary construction easement rights and permanent easement rights to allow the MGNWC to construct and operate a water distribution system pump station and related infrastructure improvements (electrical and mechanical components, pipes, valves, vaults and meters) on Parcel 3.02 (real estate located within the City of Evanston) and Parcel 3.05 (real estate located within the Village of Skokie); and

388200_1

WHEREAS, in consideration of the grant of the temporary construction easement rights and permanent easement rights under the Easement Agreement by the District, the MGNWC agrees to pay to the District an initial annual permanent easement fee in the amount of THIRTY-ONE THOUSAND ONE HUNDRED FIFTY-SIX AND NO/100 DOLLARS ($31,156.00) (the "Annual Easement Fee"), which will relate to the period from the Effective Date of the Easement Agreement through December 31, 2018 ("Initial Term Year"). For each calendar year after the Initial Term Year, the Annual Easement Fee will be adjusted by multiplying the initial Annual Easement Fee in effect for the previous one (1) year period by the percentage of change in the Consumer Price Index for the Chicago Metropolitan Area, more specifically the "Chicago All Items Consumer Price Index for All Urban Consumers (CPIU)" published by the United States Department of Labor, Bureau of Labor Statistics, as established for the month of October immediately preceding the Initial Term Year of the Easement Agreement. In addition, the MGNWC agrees to pay to the District a one-time temporary easement fee in the amount of TWENTY-EIGHT THOUSAND SIX HUNDRED TWENTY-FIVE AND NO/100 DOLLARS ($28,625.00) (the "Temporary Easement Fee"); and

WHEREAS, the initial Annual Easement Fee is based on the District's formula of ten percent (10%) of the appraised fair market value of the permanent easement areas for: (a) the pump station site (5,455.00 square feet) as determined by the Appraisal dated September 9, 2017 and prepared by William Enright of Appraisal Associates, which equals TEN THOUSAND NINE HUNDRED TEN AND NO/100 DOLLARS ($10,910.00); and (b) the permanent easement areas for below grade infrastructure (13,491 square feet for Permanent Easement #1 and 2,902 square feet for Permanent Easement #2) as determined by the Appraisal dated December 6, 2017 and prepared by William Enright of Appraisal Associates, which equals TWENTY THOUSAND TWO HUNDRED FORTY-SIX AND NO/100 DOLLARS ($20,246.00). The Temporary Easement Fee was determined by the Appraisal dated December 6, 2017 and prepared by William Enright of Appraisal Associates; and

WHEREAS, the Board of Commissioners of the Morton Grove-Niles Water Commission has the authority to approve of and enter into the Easement Agreement pursuant to Article VII, Section 10 of the 1970 Constitution of the State of Illinois, the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1, *et seq.*) and the Illinois Municipal Code (65 ILCS 5/1, *et seq.*, including 65 ILCS 5/11-135-1, *et seq.*), and find that entering into the Easement Agreement is in the best interests of the MGNWC and its members, the Village of Morton Grove and the Village of Niles.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE MORTON GROVE-NILES WATER COMMISSION, COOK COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: Each Whereas paragraph above is incorporated by reference into this Section 1 and made a part hereof as material and operative provisions of this Resolution.

SECTION 2: The Board of Commissioners of the Morton Grove-Niles Water Commission ("MGNWC Board") authorizes the approval of an agreement entitled "Easement Agreement" for the purposes set forth in the Easement Agreement, attached hereto as **Exhibit "A"**, including the payment of the Annual Easement Fee and the Temporary Easement Fee as set forth in the Easement Agreement. The MGNWC Board further authorizes and directs the Chair, the Clerk and the General Counsel, or their respective designees, to execute the final version of the Easement Agreement, which may contain certain non-substantive modifications that are

approved by the Village Manager of Niles and the Village Administrator of Morton Grove, and to execute and deliver all other instruments and documents and pay all costs and fees that are necessary to fulfill MGNWC's obligations under the Easement Agreement.

SECTION 3: For purposes of this Resolution, non-substantive modifications shall include modifications to the Annual Easement Fee and the Temporary Easement Fee if such modification(s) is/are requested by the MWRDGC and do not exceed one hundred and twenty percent (120%) of the appraised fair market values of the permanent and temporary easement areas as determined by appraisals dated September 9, 2017 and December 6, 2017 prepared by William Enright of Appraisal Associates.

SECTION 4: This Resolution shall be in full force and effect from and after its adoption and approval as provided by law.

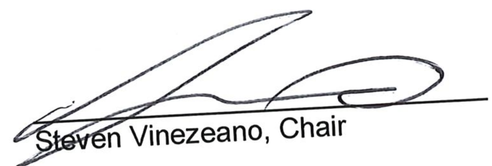
ADOPTED this 7 day of December, 2017, pursuant to a roll call vote as follows:

AYES: John Pietron and Steven Vinezeano

NAYS: None

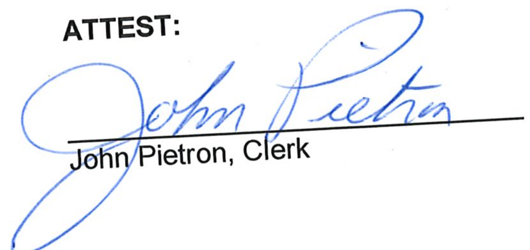
ABSENT: None (Cook County Appointee not appointed yet)

PASSED by the Board of Commissioners of the Morton Grove-Niles Water Commission, Cook County, Illinois on a roll call vote at a Regular Meeting thereof held on the 7 day of December, 2017, and approved by the Chair, and attested by the Clerk on the same day.



Steven Vinezeano, Chair

ATTEST:



John Pietron, Clerk

Exhibit "A"

EASEMENT AGREEMENT BETWEEN THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO AND THE MORTON GROVE NILES WATER COMMISSION

(attached)

DOCUMENT PREPARED BY AND AFTER
RECORDING, RETURN TO:

Metropolitan Water Reclamation District
Of Greater Chicago
Law Department/Real Estate Division
100 E. Erie St.
Chicago, IL 60611
Attn:

P.I.N.s:

This space reserved for recorder's use only.

EASEMENT AGREEMENT
(Annual Increase-Environmental)

THIS EASEMENT AGREEMENT, made and entered into this _____ day of ____________, 20__, by and between the METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO, a body corporate and politic organized and existing under the laws of the State of Illinois, hereinafter called the "District" and Morton Grove Niles Water Commission, hereinafter called the "Grantee" ("Agreement").

WHEREAS, the Grantee desires a seventy (70) year non-exclusive easement to construct, install, reconstruct, operate, maintain, replace, repair and remove a water distribution system pump station and related infrastructure improvements (electrical and mechanical components, pipes, valves, vaults and meters) on the real estate located just north of Emerson Street on North Shore Channel Parcel 3.01 in Evanston, Illinois extending south onto North Shore Channel Parcel 3.03 in Skokie, Illinois as depicted on Exhibit A consisting of approximately 600 feet of a 30-inch diameter pipe and a booster pumping station containing three water pumps, one engine generator and the required power supply equipment.

WHEREAS, the easement parcel will be located on land leased to the City of Evanston dated December 1, 1966 and terminating May 21, 2032 and the Village of Skokie dated April 1, 1994 and terminating March 31, 2032. The easement is subject to the consent of both municipalities. A Plat of Easement legally describing the premises is attached as Exhibit B.

WHEREAS, the District is willing to grant to the Grantee the Easement aforesaid upon the conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the representations, covenants, conditions, undertakings, and agreements herein made, the sufficiency of which is acknowledged, the parties hereto agree as follows:

ARTICLE ONE

1.01 The District grants unto the Grantee a non-exclusive easement, right, privilege and authority for seventy (70) years commencing on January 1, 2018, and terminating on December 31, 2087 (the "Term"), for the sole and exclusive purpose to construct, install, reconstruct, operate, maintain, repair, replace and remove a water distribution system pump station and related infrastructure improvements (electrical and mechanical components, pipes, valves, vaults and meters) hereinafter for convenience sometimes called "Improvements and Facilities", on the real estate legally described and depicted in Exhibit A and B

1.02 The District reserves the right of access to and use of the surface of the Easement Premises, provided such use does not impact the Improvements and Facilities.

1.03 The Grantee, and its officials, employees, agents and contractor(s) and any governmental or regulatory agency personnel with oversight authority of the Grantee or the Improvements and Facilities, shall be permitted to access and travel with their equipment upon and over the District's real property to access the Easement Premises on an as-needed basis for purposes of installing, placing, constructing, reconstructing, maintaining, rehabilitating, operating and/or repairing the Improvements and Facilities. Grantee shall notify the Village of Skokie and the City of Evanston, to the extent it is on either leasehold at least 24 hours prior to accessing its Improvements and Facilities. Grantee shall be liable for any damages done to the District's, Evanston or Skokie's property while accessing the Facilities and Improvements.

1.04 The Grantee covenants and agrees in consideration of the grant of the Easement to pay to the District an initial annual easement fee in the amount of THIRTY-ONE THOUSAND ONE HUNDRED FIFTY-SIX AND NO/100 DOLLARS ($31,156.00), which shall be 10% of the highest appraised fair market value of the land, payable contemporaneously with Grantee's execution and delivery of this Agreement. This amount represents the "Annual Easement Fee" for the period from the Effective Date of this Agreement through December 31, 2018 ("Initial Term Year").

For each calendar year after the Initial Term Year that this Agreement is in effect ("Subsequent Term Years"), the Annual Easement Fee shall be calculated in accordance with Paragraph 1.05 below and shall be paid to the District on the 1st day of January each subsequent year. The Initial Term Year and the Subsequent Term Years are collectively referred to as the "Term".

1.05 INTERIM ANNUAL EASEMENT FEE ADJUSTMENTS. On the anniversary of the effective date of this Agreement, the Annual Easement Fee to be paid by Grantee

to the District shall be adjusted by multiplying the initial Annual Easement Fee or the Fee in effect for the previous one (1) year period by the percentage of change in the Consumer Price Index for the Chicago Metropolitan Area, more specifically the "Chicago All Items Consumer Price Index for All Urban Consumers (CPIU) published by the United States Department of Labor, Bureau of Labor Statistics, as established for the month of October immediately preceding the Initial Term Year of this Agreement (in the case of the first Annual Easement Fee adjustment hereunder) and every October thereafter during the Term hereof. In the event the Consumer Price Index is discontinued, the Board of Commissioners of the Lessor shall, in its sole discretion select and utilize any other economic activity index of the United States government which reasonably reflects economic activity in the Metropolitan Chicago Area. If the percentage of change in the CPI decreases to an amount less than zero (0) for any given year, then the change will treated as zero percent (0%) for that year and in no event shall the Annual Easement Fee decrease from the Fee in effect for the previous one (1) year period.

1.06 If this Agreement is terminated by either Party prior to the end of its Term, the Annual Easement Fee, whether already paid or due to be paid for the Initial Term Year or any Subsequent Years, shall be prorated and payable on a 365 day basis to cover the period of time that the Grantee was in actual possession of the Easement Premises and Improvements and Facilities remain on the property.

1.07 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 thirty (30) calendar days thereafter. Failure to submit evidence of the payment within said thirty (30) calendar day period shall not be grounds for terminating this Agreement.

ARTICLE TWO

2.01 The construction, installation, reconstruction, maintenance, repair, replacement and removal of the Improvements and Facilities of the Grantee on the Easement Premises shall be completed in accordance with the District-approved plans and specifications, or any District-approved amendments thereto, prepared at Grantee's expense and supplied to the District by the Grantee. No work shall commence until said plans and specifications, and any amendments thereto, have been approved in writing by the Executive Director of the District, which approval shall be processed, considered and granted in accordance with the District's permit and plan review and approval process.

2.02 The construction, installation, reconstruction, maintenance, repair, replacement and removal of the Improvements and Facilities by the Grantee on the Easement Premises shall be done to the satisfaction of the Executive Director of the District in accordance with the District-approved plans and specifications prepared at Grantee's expense and supplied to the District by the Grantee.

2.03 Grantee shall construct, install, reconstruct, operate, maintain, repair, replace and remove the "Improvements and Facilities", in a good and workmanlike manner at its sole cost, risk and expense.

2.04 The Grantee shall compensate the District for any incurred and documented 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.

2.05 Subject to the District providing the Grantee with at least three (3) months advanced written notice, the Grantee shall relocate or remove the Improvements and Facilities existing or constructed upon the Easement Premises at no cost to the District:

A. In the event that the Easement 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 the Improvements and Facilities; or

C. In the event that said relocation or removal is required for the corporate purposes of the District.

ARTICLE THREE

3.01 The District expressly retains its interest in and rights to the use and occupation of the Easement Premises subject to the easement rights herein granted, and the District may grant further easements, assign, sell or lease the same to other parties subject to the Grantee's right of use and a reasonable means of access to said Improvements and Facilities for installation, construction, reconstruction, operation, maintenance, repair, replacement or removal thereof.

3.01.1 Temporary Easement Area: The Grantor, for itself and its successors and assigns, conveys and grants to the Grantee, its successors and assigns, a temporary, non-exclusive easement over, under, in, along, across and upon the Temporary Easement Area of the Grantor's real property for the installation, placement, construction, reconstruction, maintenance, rehabilitation, operation and/or repair of the Improvements and Facilities in the Temporary Easement Area. This Temporary Easement and other rights conferred to the Grantee by this Agreement are intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns for the Term of this Agreement. In regard to the Temporary Easement Area and the permanent, perpetual, non-exclusive easement rights granted by the Grantor to the Grantee,

the Parties further agree as follows:

a. **All rights, title and interest in and to the Temporary Easement Area which may be used and enjoyed without interfering with the rights conveyed by this Agreement to the Grantee are reserved to the Grantor, provided, however, that the Grantor shall not itself, or allow another to, install, place, construct, reconstruct, maintain, rehabilitate, operate and/or repair any structures, improvements or other encumbrances which cause or which in the Grantee's reasonable determination may cause, contribute or lead to damage to or interference with the Improvements and Facilities placed or to be placed within the Temporary Easement Area; or develop, landscape or beautify any portion of the Temporary Easement Area in any way which would unreasonably or materially increase the costs to the Grantee of installing, placing, constructing, reconstructing, maintaining, rehabilitating, operating and/or repairing the Improvements and Facilities.**

b. **If any of the Improvements and Facilities within the Temporary Easement Area or the Grantee's other improvements or personal property are removed or damaged by the Grantor or its officials, employees, agents and contractor(s) or other invitees or permittees of the Grantor, the Grantor, at its expense, shall be responsible for completing basic restoration costs to restore, repair or replace such Improvements and Facilities or other improvements or personal property of the Grantee to its/their original, existing condition immediately prior to such removal or damage using like-kind and quality materials.**

c. **If the Grantor's improvements within the Temporary Easement Area or elsewhere within the Grantor's Property are removed or damaged by the Grantee or its officials, employees, agents and contractor(s) or other invitees or permittees of the Grantee in exercising its easement rights, the Grantee, at its expense, shall be responsible for completing basic restoration costs to restore, repair or replace such improvements to its/their original, existing condition immediately prior to such removal or damage using like-kind and quality materials.**

3.02 The Grantee shall be solely responsible for and shall defend, indemnify, keep and save harmless the District, its Commissioners, officers, agents and employees, against all injuries, deaths, losses, damages, claims, patent claims, liens, suits, liabilities, judgments, costs and expenses which may in any way 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 any way 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 reasonable charges of attorneys and all costs and other expenses arising therefrom 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 Grantee shall, at the Grantee's sole expense, satisfy and discharge the same provided that (a) the Grantee shall first have been given prior notice of the suit in which judgment has been or shall be rendered, (b) the Grantee shall have been given an opportunity to defend the same and (c) the District shall have given the Grantee its full cooperation. The Grantee expressly understands and agrees that any performance bond or insurance protection required by this Agreement, or otherwise provided by the Grantee, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the District as herein provided.

3.03 (a) The Grantee, prior to entering upon the Easement Premises and using the same for the purposes for which this Easement is granted, shall procure, maintain and keep in force, at the Grantee's expense, the following public liability and property damage insurance in which the District, its Commissioners, officers, agents and employees, are a named additional insured as well as fire and extended coverage, and all-risk property insurance ("CLAIMS MADE" policies are unacceptable) in which the District is named loss payee from a company to be approved by the District, each afore-referenced policy shall have limits of not less than the following:

COMPREHENSIVE GENERAL LIABILITY
Combined Single Limit Bodily Injury Liability
Property Damage Liability (Including Liability for Environmental Contamination of Adjacent Properties)
in the amount of not less than $4,000,000.00
per Occurrence

and

ALL RISK PROPERTY INSURANCE
(Including Coverage for Environmental Contamination of Easement Premises)
in the amount of not less than $4,000,000.00
per Occurrence

Prior to entering upon the Easement Premises, and thereafter on the anniversary date of such policies, the Grantee shall furnish to the District certificates of such insurance or other suitable evidence that such insurance coverage has been procured and is maintained in full force and effect. Upon District's written request, the Grantee shall provide the District with copies of the actual insurance policies within ten (10) calendar days of District's request for same. Such certificates and insurance policies shall clearly identify the Easement Premises and shall provide that no change, modification in or cancellation of any insurance shall become effective until the expiration of thirty (30) calendar days after written notice thereof shall have been given by the insurance company to the District. The provisions of this Paragraph

shall in no way limit the liability of the Grantee as set forth in the provisions of Paragraph 3.02 above.

ARTICLE FOUR

4.01 In the event of any default on the part of the Grantee to faithfully keep and perform all singular the covenants, agreements and undertakings herein agreed by it to be kept and performed, or if said Improvements and Facilities are abandoned, the District shall give the Grantee notice in writing of such default or abandonment; and if such default or abandonment shall not have been rectified within thirty (30) calendar 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 Easement Premises and restore the Easement Premises to its condition prior to Grantee's entry thereon, all at the sole cost of the Grantee, unless the District approves in writing that allows the Grantee may abandon in place the Improvements and Facilities, or portions thereof.

4.02 The Grantee shall have the right to give the District written notice to cease and terminate all rights, privileges and obligations under this Agreement. In the event of such termination, the Grantee shall have a period of one-hundred twenty (120) calendar days from and after such termination date to remove the Improvements and Facilities and to restore the Easement Premises to its original condition at no cost to the District (the "Removal and Restoration Date"), unless the District approves in writing that the Grantee may abandon in place the Improvements and Facilities, or portions thereof.

The expiration of said Removal and Restoration Date shall in no event extend beyond the expiration date of this Agreement.

4.03 The Grantee understands and agrees that upon the expiration of this Agreement, 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, unless the District approves in writing that the Grantee may abandon in place the Improvements and Facilities, or portions thereof. The Grantee further agrees to yield up said Easement Premises in as good condition as when the same was entered upon by the Grantee. Upon the Grantee's failure to do so, the District may do so at the sole expense and cost of the Grantee.

4.04 The Grantee, prior to entering into possession, shall execute and file with the District its performance bond in the sum of FIVE THOUSAND AND NO/100 DOLLARS ($5,000.00) conditioned upon the performance of each and every condition of this Agreement, such bond shall be in a form satisfactory to the Attorney for the District. The furnishing of the bond required in this Article shall in no way limit or affect the liability of the Grantee or its insurance carrier under any other provision of this Agreement.

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

ARTICLE FIVE

5.01 The Grantee also agrees that if the District incurs any additional expense for additional work which the District would not have had to incur if this Easement had not been executed, then, in that event, the Grantee agrees to pay to the District such additional expense as determined by the Executive Director of the District, promptly upon rendition of bills therefor to the Grantee.

The Grantee covenants and agrees that it will reimburse the District, make all necessary repairs at its sole cost and expense and otherwise keep and save harmless the District from any loss, cost or expense arising out of the granting of this Agreement suffered to Easement Premises 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.

5.02 During the Term of this Agreement, 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 personal 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 real property of the District adjacent to said Easement Premises.

ARTICLE SIX

6.01 Detailed plans of subsequent construction or material alteration of the Grantee's Improvements and Facilities shall first be submitted to the Executive Director of the District for review and approval in accordance with the District's permit and/or plan review and approval process. Construction work shall not begin until such District approval is given to Grantee in writing.

6.02 On or before the commencement of the last five (5) year period of the Term of this Agreement, Grantee shall file with the Grantor its Environmental Site Restoration/Remediation Bond in the penal sum of FIVE THOUSAND AND NO/100 DOLLARS ($5,000.00), secured either by cash, irrevocable letter of credit, or a commercial bond with surety to secure Grantee's performance of and compliance with the provisions and intent of Article Ten of this Agreement. A cash payment securing the bond hereunder will be placed in an interest bearing account established by the Grantor specifically for this purpose. Any interest paid on account of said deposit shall be the property of and payable periodically to the Grantee. Such account shall be draw able only by Lessor upon its unilateral act. At no time shall the amount on deposit in said account be less than the penal sum of this Bond. Any commercial bond with

surety shall be fully prepaid by the Grantee and documented as such at the time it is filed with the Grantor. Said Bond shall be in a form approved by the Grantor and shall be maintained in full force and effect until such time as Grantee has demonstrated and documented to the reasonable satisfaction of Grantor (and Grantor has executed its written release thereof to the issuer), full compliance with all Environmental laws relating to Grantee's use or occupancy of the Easement Premises and its environmental restoration or remediation. This provision shall survive the termination or expiration of this Agreement.

6.03 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 Executive Director, 100 East Erie Street, Chicago, Illinois 60611, or to the Grantee in care of:

Attn: Chair of the Morton Grove-Niles Water Commission
Morton Grove Niles Water Commission
Village Hall
Village of Niles
1000 Civic Center Drive
Niles, Illinois 60714
Phone #:
Fax #:

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

ARTICLE SEVEN

7.01 The Grantee, prior to entering upon the Easement 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 Easement Premises is located, and furnish to the District suitable evidence thereof.

7.02 The Grantee covenants and agrees that it shall strictly comply with any and all statutes, laws, ordinances and regulations of the District, the United States of America, the State of Illinois, the county and the city, village, town or municipality in which the Easement Premises is located, which in any manner affects this Easement, 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.

7.03 The Grantee agrees to protect all existing District facilities within the Easement Premises, including, but not limited to, intercepting sewers, sludge lines, utility lines, dropshafts, connecting structures, siphons and manholes during its construction, installation, reconstruction, maintenance, operation, repair, replacement and removal of the Grantee's Improvements and Facilities.

7.04 No blockage or restriction of flow in the water will be tolerated at any time. No construction or improvements of any kind can project into the waterway during construction or after permanent repairs are completed.

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

7.06 Tree Mitigation

A. No alterations, construction or maintenance work upon the Easement Premises involving any material change in the location, installation or construction of the Improvements and Facilities, or involving the removal of any trees on District real property, shall be performed by any person or municipality without having first obtained District approval. However, the Grantee may conduct routine trimming of trees, brush or other overgrown vegetation to the extent it interferes with the safety or proper functioning of any Improvements and Facilities.

B. If the proper maintenance and operation of the Improvements and Facilities on the Easement Premises necessitates the removal of any trees on District real property, Grantee shall give no less than fourteen (14) calendar day written notice, exclusive of Saturdays, Sundays and state recognized holidays, of its intent to remove any trees on the Easement Premises, setting forth the number, location and species of trees to be removed.

C. Grantee shall submit to the District a plan to replace any trees removed that provides for planting the same or greater number and quality of trees on the Easement Premises, or on alternate areas owned by the District as designated and approved in writing by the District.

D. The Grantee is responsible for obtaining any local permits necessary for tree removal.

ARTICLE EIGHT

8.01 The Grantee shall not voluntarily or by operation of law assign, or otherwise transfer or encumber all or any part of Grantees' interest in this Easement or in the Easement Premises to any other governmental agency, individual, partnership, joint venture, corporation, land trust or other entity without prior written consent of the District.

8.02 A change in the control of the Grantee shall constitute an assignment requiring the District's consent. The transfer of a cumulative basis of the twenty-five percent (25%) or more of the cumulative voting control of Grantee shall constitute a change in control for this purpose.

8.03 Grantee shall notify the District in writing not less than sixty (60) calendar days prior to any proposed assignment or transfer of interest in this Agreement. The Grantee shall identify the name and address of the proposed assignee/transferee and deliver to the District original or certified copies of the proposed assignment, a recital of assignee's personal and financial ability to comply with all the terms and conditions of this Agreement and any other information or documentation requested by the District. The District shall not unreasonably withhold the consent to assignment or transfer.

8.04 Any attempted assignment or transfer of any type not in compliance with this Agreement shall be void and without force and effect.

ARTICLE NINE

GENERAL ENVIRONMENTAL PROVISIONS

9.01 DEFINITIONS

A. "Environmental Laws" shall mean all present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations and similar items, of all government agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, state and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, orders, notices or demands relating to industrial hygiene, and the protection of human health or safety from exposure to Hazardous Materials, or the protection of the environment in any respect, including without limitation:

(1) all requirements, including, without limitation, those pertaining to notification, warning, reporting, licensing, permitting, investigation, and remediation of the presence, creation, manufacture, processing, use, management, distribution, transportation, treatment, storage, disposal, handling, or release of Hazardous Materials;

(2) all requirements pertaining to the protection of employees or the public from exposure to Hazardous Materials or injuries or harm associated therewith; and

(3) the Comprehensive Environmental Response, Compensation and Liability Act (Superfund or CERCLA) (42 U.S.C. Sec. 9601 et seq.), the Resource Conservation and Recovery Act (Solid Waste Disposal Act or RCRA) (42 U.S.C. Sec. 6901 et seq.), Clean Air Act (42 U.S.C. Sec 7401 et seq.), the

Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. Sec, 1251 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. Sec. 11001 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec, 2601 et seq.), the National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.), the Rivers and Harbors Act of 1988 (33 U.S.C. Sec. 401 et seq.), the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the Safe Drinking Water Act (42 U.S.C. Sec. 300 (f) et seq., the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.) and all rules, regulations and guidance documents promulgated or published thereunder, Occupational Safety and Health Act (29 U.S.C. Sec. 651 et seq.) and all similar state, local and municipal laws relating to public health, safety or the environment.

B. "Hazardous Materials" shall mean:

(1) any and all asbestos, natural gas, synthetic gas, liquefied natural gas, gasoline, diesel fuel, petroleum, petroleum products, petroleum hydrocarbons, petroleum by-products, petroleum derivatives, crudeoil 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 Premises or to adjacent properties or pose or threaten to pose a hazardous threat to the health or safety of persons on or about such properties;

(5) any substance (whether solid, liquid or gaseous in nature) the presence of which on adjacent properties could constitute trespass by or against Grantee or District;

(6) any materials, waste, chemicals and substances, whether solid, liquid or gaseous in nature, now or hereafter defined, listed, characterized or referred to in any Environmental Laws as "hazardous substances," "hazardous waste," "infectious waste," "medical waste," "extremely hazardous waste," "hazardous materials," "toxic chemicals," "toxic substances," "toxic waste," "toxic materials," "contaminants," "pollutants," "carcinogens," "reproductive toxicants," or any variantor similar designations;

(7) any other substance (whether solid, liquid or gaseous in nature) which is now or hereafter regulated or controlled under any Environmental Laws (without regard to the action levels, concentrations or quantity thresholds specified herein); or

(8) any result of the mixing or addition of any of the substances described in this Subsection B with or to other materials.

C. "Phase I Environmental Assessment" shall mean:

(1) an assessment of the Easement Premises and a reasonable area of the adjacent premises owned by the District performed by an independent and duly qualified, licensed engineer with experience and expertise in conducting environmental assessments of real estate, bedrock and groundwater of the type found on the Easement Premises and said assessment shall include, but not necessarily be limited to a historical review of the use (abuse) of the Easement Premises, a review of the utilization and maintenance of hazardous materials on the Easement Premises review of the Easement Premises' permit and enforcement history (by review of regulatory agency records), a site reconnaissance and physical survey, inspection of Easement Premises, site 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 real 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, ground waters 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 Executive Director of the District, which shall not be unreasonably withheld and such consent shall be based on the District's permit and/or plan review and approval process.

9.03 USE OF EASEMENT PREMISES (RESTRICTIONS - ENVIRONMENTAL)

Grantee shall use the Easement Premises only for purposes expressly authorized by Paragraph 1.01 of this 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 the Easement Premises in any manner (i) which could cause the Easement Premises to become a hazardous waste treatment, storage, or disposal facility within the meaning of, or otherwise bring the Easement Premises within the ambit of the Resource Conservation and Recovery Act of 1976, Section 6901 et seq. of Title 42 of the United States Code, or any similar state law or local ordinance, (ii) so as to cause a release or threat of release of Hazardous Materials from the Easement Premises within the meaning of, or otherwise bring the Easement Premises within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 9601 et seq. of Title 42 of the United States Code, or any similar state law or local ordinance or any other Environmental Law or (iii) so as to cause a discharge of pollutants or effluents into any water source or system, or the discharge into the air of any 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 EASEMENT PREMISES (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 prior easement grant, the Easement Premises and improvements thereon, including all personal property, have not been exposed to contamination by any Hazardous Materials, that there has not been thereon a release, discharge, or emission, of any Hazardous Materials during its occupancy of the Easement Premises as defined by any Environmental Laws, and that the Easement Premises does not contain, or is not affected by underground storage tanks, landfills, land disposal sites, or dumps.

B. In the event of a release, emission, discharge, or disposal of Hazardous Materials in, on, under, or about the Easement Premises or the improvements thereon, Grantee will take all appropriate response action, including any removal and remedial action after the execution date of this Agreement.

9.05 INDEMNIFICATION (ENVIRONMENTAL)

~~A.~~ In consideration of the execution and delivery of this 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 (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 real 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~~ except for the negligent or intentional acts of the District. ~~provided that, to the extent the District is strictly liable under any Environmental Laws, the Grantee's obligation to the District under this indemnity shall be reduced by the District's strict liability without regard to fault on the part of the Grantee with respect to the violation of law which results in liability to the District.~~

9.06 ENVIRONMENTAL COVENANTS

Grantee agrees to and covenants as follows:

A. Grantee covenants and agrees that throughout the Term of this Agreement all Hazardous Materials which may be used upon the Easement Premises shall be used or stored thereon only in a safe, approved manner in accordance with all generally accepted industrial standards and all Environmental Laws.

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

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

D. Grantee will take all reasonable steps to prevent a violation of any Environmental Laws. There will be no spill, discharge, leaks, emission, injection, escape, dumping, or release of any toxic or Hazardous Materials by any persons on the area to be used and under this Agreement.

E. Grantee will not allow the installation of asbestos on the area described in Exhibit "B" 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. Grantee shall be responsible to install "plugs" of compacted impermeable soil material at intervals of no greater than one hundred (100) feet between such plugs along utility trenches which have been backfilled with compacted granular materials in order to minimize cross-site and off-site environmental contaminant migration. The spacing of these plugs should be based on the characteristics of the site, the configuration of the trench or trenches, the characteristics (nature and extent) of the site environmental contamination, and/or the potential for site contamination should a surface of subsurface chemical release occur. Special emphasis should be placed on locating these plugs at all utility trenches where they cross: other utility trenches, containment berms or walls, real property boundaries, and Easement Premises boundaries.

G. The aforesaid representations and warranties shall survive the expiration or termination of this 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 (2) 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 the District within seventy-two (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 the 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 the District in any inspection, assessment, monitoring, or remediation instituted by the District during the Term of this 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, the 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 real property owned by the District and submit the written report to the District within ninety (90) calendar days after the spill, leak or discharge. After review of each Phase I Environmental Assessment, the District, at its sole discretion, may require the Grantee, at Grantee's expense, to obtain a Phase II Environmental Assessment with respect to the Easement Premises used under this Agreement. The written report of the Phase II Environmental Assessment shall be submitted to District within one-hundred twenty (120) calendar days of the 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, the Grantee shall take immediate action to remediate the contamination and to restore the Easement Premises described in Exhibit "A" and adjacent premises owned by the District to a clean and sanitary condition and to the extent required by any and all Environmental Laws.

B. Capacitators, transformers, or other environmentally sensitive installations or improvements shall be removed by Grantee prior to the end of this Agreement unless directed to the contrary in writing by the District.

C. If any Environmental Assessment reveals, or the 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, the District shall have the right and option to terminate this Agreement and to declare it null and void.

D. In the event the Grantee should receive a Notice of Environmental Problem, the Grantee shall promptly provide a copy to the District, and in no event later than seventy-two (72) hours from Grantee's and any tenant's receipt or submission thereof. "Notice of Environmental Problem" shall mean any notice, letter, citation, order, warning, complaint, inquiry, claim, or demand that: (i) the Grantee has violated, or is about to violate, any Environmental Laws; (ii) there has been a release, or there is a threat of release, of Hazardous Materials, on the Easement Premises, or any improvements thereon; (iii) the Grantee will be liable, in whole or in part, for the costs of cleaning up, remediating, removing, or responding to a release of Hazardous Materials; (iv) any part of the Easement Premises or any improvements thereon is subject to a lien in favor of any governmental entity for any liability, costs, or damages, under any Environmental Laws, arising from or costs incurred by such government entity in response to a release of Hazardous Material, Grantee shall promptly provide a copy to the District, and in no event later than seventy-two (72) hours from Grantee's and any tenant's receipt or submission thereof.

E. Not less than one (1) year prior to the expiration of this Agreement, the 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 this Agreement, 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 bi-phenyls (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 real property of the Easement Premises, the exposure to which is prohibited, limited, or regulated by any Environmental Laws;

(4) if any Hazardous Materials were utilized, maintained or conveyed on the Easement Premises, the engineer has conducted and submitted a Phase II Environmental Assessment of the Easement Premises, which documents that the Easement Premises and improvements are free of contamination by Hazardous Materials;

(5) the engineer has identified and then describes, the subject matter of any past, existing, or threatened investigation, inquiry, or proceeding concerning environmental matters by any federal, state, county, regional or local authority, (the Authorities"), and describing any submission by Grantee concerning said environmental matter which has been given or should be given with regard to the Easement Premises to the Authorities; and

(6) the engineer includes copies of the submissions made pursuant to the requirements of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), Section 11001 et seq. of Title 42 of the United States Code.

9.09 INSPECTION AND RIGHT OF INSPECTION (ENVIRONMENTAL)

A. In the event Grantee gives notice pursuant to the provisions of Notice of Environmental Problem, within ninety (90) calendar days Grantee shall submit to the District a written report of a site assessment and environmental audit, in scope, form and substance, and prepared by an independent, competent and qualified, professional, registered engineer, satisfactory to the District, showing that the engineer made all appropriate inquiry consistent with good commercial and customary practice, such that consistent with generally accepted engineering practice and procedure, no evidence or indication came to light which would suggest there was a release of substances on the Easement Premiseswhich could necessitate an environmental response action, and which demonstrates that the Easement Premises 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. The District 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. <u>Due Diligence Period.</u> Within the initial ninety (90) days of this Agreement, the ~~District grants temporary access to the Easement Premises to the~~ Grantee its agents, attorneys, employees, consultants, and contractors ~~, an irrevocable license and authorization to enter upon and inspect the Easement Premises and improvements thereon, and will~~ perform such tests, including without limitation, a Phase I and Phase II environmental assessment, subsurface testing, soils, and groundwater testing, and other tests to determine whether there is any Environmental Contamination or Hazardous Materials present in, on or under the Easement Premises. If the reports disclose that Environmental Contamination or Hazardous Materials are present in, on or under the Easement Premises, the Grantee shall have the right to terminate this Agreement and shall not be liable for any remediation costs associated with the Easement Premises or any adjacent real property.

IN WITNESS WHEREOF, on the day and year first above written, the parties hereto have caused these presents, including its Exhibits, if any, to be duly executed, duly attested and their corporate seals to be hereunto affixed.

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

By:______________________________
Frank Avila
Chairman of Committee on Finance

ATTEST:

____
Jacqueline Torres, Clerk

Morton Grove Niles Water Commission

By:______________________________

Title:______________________________

ATTEST:

By:______________________________

Title:______________________________

CONSENTED TO

By: ______________________________
VILLAGE OF SKOKIE

By:______________________________
CITY OF EVANSTON

Exhibit "A"

Depiction of Easement Premises

385506_1

Exhibit B

Plat of Easement

Exhibit "C"

Waterway Strategy Resolution
As Adopted By The District's Board of Commissioners
Of the Metropolitan Water Reclamation District Of Greater Chicago

(attached)

385506_1

THE WATERWAY STRATEGY RESOLUTION

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

That henceforth all Metropolitan Sanitary District waterway property leases will encourage public open space, recreation and water edge accessibility in harmony with appropriately scaled industrial, commercial, and residential development thus motivating an extension of the benefits of Chicago's magnificent lakefront throughout the inland waterway system.

The resolution was unanimously adopted on February 23, 1984 and affects the 7,000 acres owned by the MSD bordering the inland waterway system. This resolution represents another formal commitment in a long series of carefully engineered innovations. The MSD has been entrusted with the preservation of clean water for almost 100 years. Initial clean water efforts required the MSD to redirect the polluted water flowing into Lake Michigan, the region's primary water supply. Reversing the flow of the polluted rivers was accomplished by the construction of locks and canals. The MSD waterway property was acquired as a right-of-way for the canal construction, river reversals and improvements. This waterway property stretches from Lake Michigan to Joliet, Illinois, a distance of more than 30 miles and totaling more than 7,000 acres. The water quality in the lake gradually improved through the 30-year canal construction period. Upon completion, industrial development along the canals and rivers was encouraged and contributed to the growth of Chicago and the region.

In 1925 and 1930, the United States Supreme Court limited the amount of water which could be diverted from Lake Michigan for dilution of the inland waterways. Post World War II population increases and associated development resulted in severe flooding of rivers and their tributaries during heavy rainstorms. Pollution control and treatment facilities required constant expansion and improvements, but the water quality in the waterways continued to deteriorate. During the 1960s the United States Environmental Protection Act set national standards for clean water. The need to meet these new standards to clean the polluted waterways spurred the MSD to propose another innovative solution - a system of deep tunnels and flood control reservoirs. Initial phases of this construction program, known as the Tunnel and Reservoir Plan, will be completed in 1985 and will stimulate dramatic improvements in the water quality of the inland waterways.

As the commitment to a clean lake made possible the magnificent parks and world famous skyline of Chicago, the clean inland water will be the impetus for the development of the 7,000 acres of MSD property along the canals and rivers. With prudent planning, the challenge of new development along the waterways can incorporate a wide range of land uses while providing a variety of intrinsic and tangible benefits.

INTENTION OF THE RESOLUTION

...an extension of the benefits of Chicago's magnificent lakefront throughout the inland waterway system.

Originally, the canals were constructed to reverse the flow of the rivers away from the lake and to dilute wastewater overflows. Historically, they have been used as a transportation link between the Great Lakes and the Mississippi River. These important shipping lanes have been primarily an industrial asset and an occasional source of pleasure and recreation. The anticipated clean inland waterways will become a revitalized asset throughout the three-county area they traverse. As the water quality improves dramatically with the completion of the Tunnel and Reservoir Plan in 1985, the MSD waterway property will become an attractive resource for surrounding communities and the metropolitan area. The MSD resolution recognizes the potential usefulness of the MSD property as valuable development sites. The waterways and MSD property will, for the first time in history, provide a handsome environment for everyday activities - working, living, shopping and relaxing. The MSD waterway property leasing program will entice a broader range of land uses such as housing complexes, shopping malls, office centers, professional buildings, restaurants, marinas, parks, manufacturing, warehousing and industry.

Development of the MSD waterway property will be a gradual but continual process meeting the needs of each current and prospective leaseholder. The projected development will occur as vacant parcels are leased and as existing leases are renewed. Each site must reserve a portion for access and use by the general public; and each site must link its reserved area with the adjacent site. In this manner, a linear easement the entire length of the inland waterway system will be created. Wherever possible this easement will allow access to the water's edge. Leaseholders and lease requesters must demonstrate a willingness to include development of this linear easement prior to approval of the lease renewal or request. The character of the easement and the development will be tailored to match the accompanying requirements of the nearby municipality. Thereby, these public benefits will be accrued as the private sector finances approved projects on MSD leased land.

Although development can be expected to come in many forms, shapes and sizes, some common characteristics will knit the individual uses together with continuity and unity without sacrificing diversity. The comprehensive development will be a continual ribbon of enterprising land uses, each meshing with the next, and integrating the inland waterway system into the environment of daily life.

C H A L L E N G E   O F   T H E   R E S O L U T I O N

...public open space, recreation and water edge accessibility in harmony with appropriately scaled industrial, commercial, and residential development

While the MSD continues to preserve and improve water quality in the inland waterways, accessibility and usefulness of the waterways will be increased through implementation of the MSD waterway strategy resolution. This goal will be attained through the development of the linear easement on the MSD waterway property. As vacant sites are leased and existing leases are renewed, the linear easement will progressively evolve into one of three general types: public use easement, multiple use easement, or scenic easement.

A variety of elements will be integrated into the development of the linear easement, including bank stabilization, erosion control, pathways, fences, berms, retaining walls, landscaping and lighting. While increased accessibility and usefulness of the MSD waterways and waterway property is the primary goal, these elements used advantageously can offer a range of other desirable effects, e.g. noise barriers, visual barriers, energy conservation and site enhancement. Use and selection of the elements will be determined by their respective appropriateness on the specific site. While the plan and development costs are the responsibility of the leaseholder of the specific site, the complete development of the easement on the individual parcel can be series of phases staged to occur over a period of 2-3 years.

The primary linear easement will be a public use easement allowing public access to the water's edge and canal bank by means of a pathway. The linear easement will take the form of a multiple use easement in those areas where water-oriented industries require use of the water for docks and barge slips. Wherever possible public access to the water's edge would be maintained, while other portions of the easement will continue to traverse the site without interference with the industrial leaseholders' activity. A scenic easement, where direct public access is minimized, will occur only as a necessity to protect a site of unique, historical value. Some sites may have temporary scenic easement designations while the parcel is unleased or while the parcel is under construction or development.

While information concerning minimum allowable easements is available, the MSD expects that the private sector will cooperate with and recognize the many benefits resulting from the full implementation of the MSD waterway strategy resolution.

Development of the MSD waterway property will be a gradual but continual process meeting the needs of each current and prospective leaseholder. The projected development will occur as vacant parcels are leased and as existing leases are renewed. Each site must reserve a portion for access and use by the general public; and each site must link its reserved area with the adjacent site. In this manner, a linear easement the entire length of the inland waterway system will be created. Wherever possible this easement will allow access to the water's edge. Leaseholders and lease requesters must demonstrate a willingness to include development of this linear easement prior to approval of the lease renewal or request. The character of the easement and the development will be tailored to match the accompanying requirements of the nearby municipality. Thereby, these public benefits will be accrued as the private sector finances approved projects on MSD leased land.

A variety of elements will be integrated into the development of the linear easement, including bank stabilization, erosion control, pathways, fences, berms, retaining walls, landscaping and lighting. While increased accessibility and usefulness of the MSD waterways and waterway property is the primary goal, these elements used advantageously can offer a range of other desirable effects, e.g. noise barriers, visual barriers, energy conservation and site enhancement. Use and selection of the elements will be determined by their respective appropriateness on the specific site. While the plan and development costs are the responsibility of the leaseholder of the specific site, the complete development of the easement on the individual parcel can be a series of phases staged to occur over a period of 2-3 years.

The primary linear easement will be a public use easement allowing public access to the water's edge and canal bank by means of a pathway. The linear easement will take the form of a multiple use easement in those areas where water-oriented industries require use of the water for docks and barge slips. Wherever possible public access to the water's edge would be maintained, while other portions of the easement will continue to traverse the site without interference with the industrial leaseholders' activity. A scenic easement, where direct public access is minimized, will occur only as a necessity to protect a site of unique, historical value. Some sites may have temporary scenic easement designations while the parcel is unleased or while the parcel is under construction or development.

mv NB
1a

WATERWAY STRATEGY RESOLUTION

WHEREAS, The Metropolitan Sanitary District of Greater Chicago is entrusted with and dedicated to the preservation of clean water; and

WHEREAS, The Metropolitan Sanitary District of Greater Chicago recognizes that dramatic improvements in water quality will occur in the inland waterway system upon completion of the initial phases of the Tunnel and Reservoir Plan in 1985; and

WHEREAS, The Metropolitan Sanitary District of Greater Chicago is the owner of more than 7,000 acres of property adjacent to the inland waterway system;

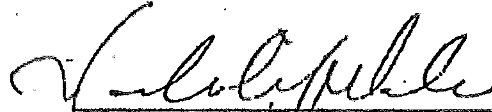
NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of The Metropolitan Sanitary District of Greater Chicago:

1. That henceforth all Metropolitan Sanitary District waterway property leases will encourage public open space, recreation and water edge accessibility in harmony with appropriately scaled industrial, commercial, and residential development thus motivating an extension of the benefits of Chicago's magnificent lakefront throughout the inland waterway system.

2. This Resolution shall be effective immediately upon its passage.

Dated: February 23, 1984.

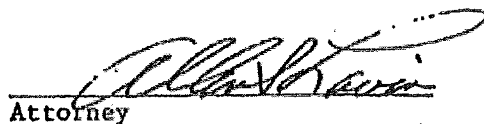
Approved:



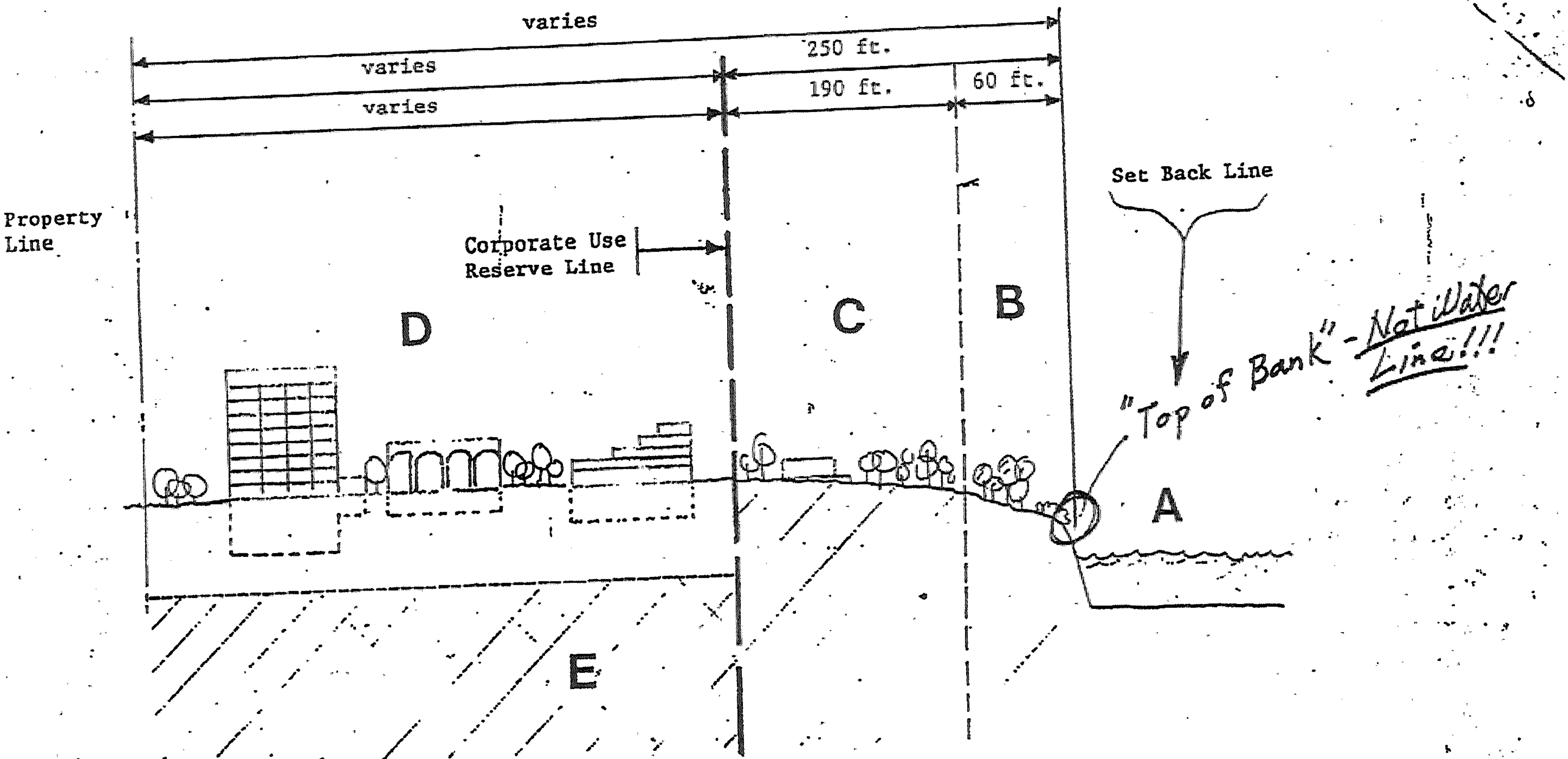
Nicholas J. Melas, President
Board of Commissioners
The Metropolitan Sanitary District
of Greater Chicago

Approved as to Form & Legality:

Head Assistant Attorney



Attorney



LEGEND

A. Waterway
B. 60 foot Open Space Setback Area ← From "Top of Bank".
C. 190 foot Corporate Use Reserve Area
D. Development Area
E. Subsurface and Mineral Rights Reservation.

THE METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO

Transmittal Letter For Board Meeting

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

Mr. Raymond R. Rimkus
General Superintendent
O F F I C E

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

Dear Sir:

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

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

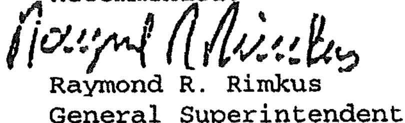
In the course of the development of the site-specific criteria for these parcels, the Chief Engineer reviewed the specific criteria for each parcel and distilled same into general criteria for implementation of the Waterway Strategy Resolution which, it is felt, addresses most contingencies to be encountered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

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

Respectfully submitted.

Allen S. Lavin, Attorney

Recommended:



Raymond R. Rimkus
General Superintendent

Approved:

Frank E. Dalton
Chief Engineer

Prepared by:

Frederick M. Feldman
Head Assistant Attorney

ASL:FMF:sg

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

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

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

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

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

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

WATERWAY STRATEGY RESOLUTION R84-005

WHEREAS, The Metropolitan Sanitary District of Greater Chicago is entrusted with and dedicated to the preservation of clean water; and

WHEREAS, The Metropolitan Sanitary District of Greater Chicago recognizes that dramatic improvements in water quality will occur in the inland waterway system upon completion of the initial phases of the Tunnel and Reservoir Plan in 1985; and

WHEREAS, The Metropolitan Sanitary District of Greater Chicago is the owner of more than 7,000 acres of property adjacent to the inland waterway system;

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

1. That henceforth all Metropolitan Sanitary District waterway property leases will encourage public open space, recreation and water edge accessibility in harmony with appropriately scaled industrial, commercial, and residential development thus motivating an extension of the benefits of Chicago's magnificent lakefront throughout the inland waterway system.

2. This Resolution shall be effective immediately upon its passage.

DATED: February 23, 1984.

Approved as to Form & Legality:

FREDERICK M. FELDMAN
Head Assistant Attorney

ALLEN S. LAVIN
Attorney

Approved:

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

On roll call the motion was carried by the following vote:

Yeas: Mrs. Alter, Mr. Fuller, Mr. Kirie, Mrs. Peters; Messrs. Troy, Viverito, Voss, Melas - (EIGHT)

Nays: None.

O R D I N A N C E

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

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

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

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

ARTICLE I

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

Section 2) Failure of landowners for property adjacent to waterways under the jurisdiction of The Metropolitan Sanitary District of Greater Chicago to use, operate, or maintain their property as set forth in Section 1 herein shall be deemed a violation of this Ordinance.

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

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

at least ten (10) days before the hearing; service may be had on any agent or officer of a corporation or municipality.

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

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

(b) to take the evidence; and

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

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

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

ARTICLE II

Court Proceedings

Section 1) Violation of Order to be Considered Nuisance.
A violation of an Order of the Board of Commissioners shall be considered a nuisance. If any person maintains or operates his property so as to be in violation of the Order of the Board of Commissioners, the Sanitary District, acting through the General Superintendent, may commence as action or proceedings in the Circuit Court in and for the county in which the Sanitary District is located or operates facilities for the purpose of having the violation stopped either by mandamus or injunction.

Section 2) Penalties.
Whoever fails to comply with any provisions of this Ordinance or with an Order of the Board of Commissioners issued in pursuance of this Ordinance shall be fined not less than \$100.00 nor more than \$1,000.00 for each offense. Each day's continuance of such failure is a separate offense. The penalties so imposed, plus reasonable attorneys' fees, court costs, and other expenses of litigation, are recoverable by the Sanitary District upon its suit, as debts are recoverable at law.

Section 3) Injunctive Relief.

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

ARTICLE III

Savings Clause

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

ARTICLE IV

Effective Date

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

DATED: THIS 7TH DAY OF FEBRUARY, 1985.

Respectfully submitted,

RICHARD J. TROY, Vice President

Approved as to Form and Legality:

Principal Assistant Attorney

Attorney

Approved:

NICHOLAS J. MELAS, President Member of the Commissioners of The Metropolitan Sanitary District of Greater Chicago

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

CLERK'S CERTIFICATE

I, John Pietron, Clerk of the Morton Grove-Niles Water Commission, Cook County, State of Illinois, certify that the attached and foregoing is a true and correct copy of that certain Resolution now on file in my office, entitled:

RESOLUTION NO. 17- 21

RESOLUTION AUTHORIZING THE APPROVAL AND EXECUTION OF THE EASEMENT AGREEMENT BETWEEN THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO AND THE MORTON GROVE-NILES WATER COMMISSION

(Morton Grove-Niles Water Commission)

which Resolution was passed by the Board of Commissioners of the Morton Grove-Niles Water Commission at a Regular Meeting held on the 7 day of December, 2017, at which meeting a quorum was present.

I further certify that the vote on the question of the passage of said Resolution by the Board of Commissioners of the Morton Grove-Niles Water Commission was taken by Ayes and Nays and recorded in the minutes of the Board of Commissioners of the Morton Grove-Niles Water Commission, and that the result of said vote was as follows, to-wit:

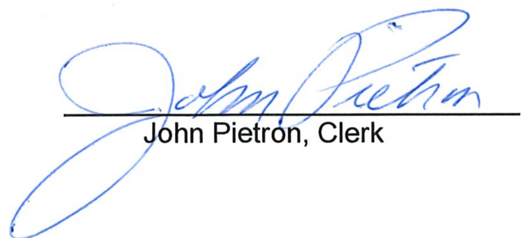
AYES: *John Pietron and Steven Vinezeano*

NAYS: None

ABSENT: None (Cook County Appointee not appointed yet)

I do further certify that the original Resolution, of which the foregoing is a true copy, is entrusted to my care for safekeeping, and that I am the lawful keeper of the same.

IN WITNESS WHEREOF, I have hereunto set my hand this 7 day of December, 2017.



John Pietron, Clerk