

RESOLUTION NO. 18-24

AUTHORIZING THE APPROVAL AND EXECUTION OF THE TEMPORARY CONSTRUCTION EASEMENT AGREEMENT AND THE EASEMENT AGREEMENT BETWEEN THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO AND THE 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 and the MGNWC desire to approve and enter into a document entitled "Temporary Construction Easement Agreement" (the "Temporary Easement Agreement") and a document entitled "Easement Agreement" (the "Easement Agreement"), copies of which are attached hereto as **Exhibit A** and **Exhibit B**, respectively 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) on temporary construction easement areas and permanent easement areas owned by the District. The temporary construction easement areas and permanent easement areas are legally described in the attached Temporary Easement Agreement and Easement Agreement and will be imposed on three (3) portions of the District's real estate that are referred to as Parcel 3.04 and Parcel 3.02 (real estate located within the City of Evanston) and Parcel 3.05 (real estate located within the Village of Skokie); and

WHEREAS, in consideration of the District's grant of the temporary construction easement rights under the Temporary Easement Agreement for the period from February 15, 2018 through February 14, 2019, the MGNWC agrees to pay to the District a one-time temporary easement fee in the amount of SEVENTY-ONE THOUSAND NINE AND 00/100 DOLLARS (\$71,009.00)(the "Temporary Easement Fee"); and

WHEREAS, in consideration of the District's grant of the permanent easement rights under the Easement Agreement for the period from February 15, 2018 through February 14, 2019 ("Initial Term Year"), the MGNWC agrees to pay to the District an initial annual permanent easement fee in the amount of FIFTY-NINE THOUSAND EIGHTEEN AND 20/100 DOLLARS \$59,018.20 (the

"Annual Easement Fee"). 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; and

WHEREAS, the Board of Commissioners of the Morton Grove-Niles Water Commission has the authority to approve of and enter into the Temporary Easement Agreement and 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 Temporary Easement Agreement and 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 "Temporary Construction Easement Agreement" for the purposes set forth in the Agreement, attached hereto as **Exhibit A**, including the payment of the Temporary Easement Fee as set forth in the Temporary 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 Temporary 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 Temporary Easement Agreement.

SECTION 3: 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 Agreement, attached hereto as **Exhibit B**, including the payment of the Annual 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 4. All ordinances, resolutions, orders, or parts thereof including Resolution 17-21 and 17-22, which conflict with the provisions of this Resolution, to the extent of such conflict, are repealed.

SECTION 5: This Resolution shall be in full force and effect from and after its adoption and approval as provided by law.

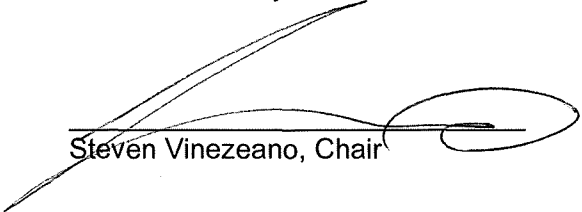
ADOPTED this 15th day of February 2018, pursuant to a roll call vote as follows:

AYES: John Pietron and Steven Vinezeano

NAYS: None

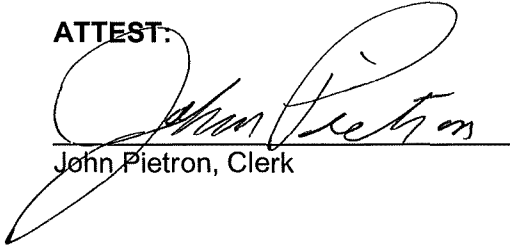
ABSENT: None (Cook County Appointee not appointed yet)

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 15th day of February 2018, and approved by the Chair, and attested by the Clerk on the same day.



Steven Vinezeano, Chair

ATTEST:



John Pietron, Clerk

Exhibit A

**TEMPORARY CONSTRUCTION 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., 3rd Floor
Chicago, IL 60611
Attn: Mark Dressel

P.I.N.s:
10-14-227-006-0000
10-14-227-010-0000
10-14-227-012-0000
10-14-205-016-0000

This space reserved for recorder's use only.

STM:CM:MD:vp

REV. 2-13-18

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT ("Agreement"), made and entered into this 15th day of February, 2018, 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 the MORTON GROVE NILES WATER COMMISSION, a municipal corporation organized and existing under the laws of the State of Illinois, hereinafter called the "Grantee".

WHEREAS, the Grantee desires a one year, 41,770 sq. ft. temporary construction easement to construct and install a pump station, access road, two subterranean 24-inch water mains and one subterranean 30-inch water main on the real estate located on and beneath the surface of North Shore Parcels 3.02, 3.04 and 3.05 in Evanston and Skokie, Illinois, legally described and depicted on the Plat of Easement attached hereto as Exhibit A and made a part hereof (hereinafter "Easement Premises"), and generally depicted in the aerial photograph attached hereto as Exhibit B and made a part hereof.

WHEREAS, the Easement Premises are located on lands leased by the District to the City of Evanston under a public recreational lease dated December 1, 1966 and terminating May 21, 2032 (North Shore Channel Parcel 3.02) and another public recreational lease dated January 4, 2018 and terminating January 31, 2068 (North Shore Channel Parcel 3.04), and to the Village of Skokie under a public recreational lease

dated April 1, 1994 and terminating March 31, 2032 (North Shore Channel Parcel 3.05). The easement granted herein is subject to the written consents of both municipalities.

WHEREAS, the District is willing to grant to the Grantee the requested 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 temporary construction easement ("Easement"), right, privilege and authority for one year commencing on February 15, 2018, and terminating on February 14, 2019 (the "Term"), for the sole and exclusive purpose to construct, install, reconstruct, operate, maintain, repair, replace and remove a pump station, access road, two subterranean 24-inch water mains and one subterranean 30-inch water main, hereinafter for convenience sometimes called "Improvements and Facilities", on the Easement Premises.

1.02 The Grantee covenants and agrees in consideration of the grant of the Easement to pay to the District an easement fee in the amount of SEVENTY-ONE THOUSAND NINE AND 00/100 DOLLARS (\$71,009.00), payable contemporaneously with Grantee's execution and delivery of this Agreement.

1.03 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.

1.04 The Grantee, and its officials, employees, agents and contractor(s) 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 property of the District, the City of Evanston or the Village of Skokie while accessing the Easement Premises.

1.05 If this Agreement is terminated by the Grantee pursuant to Paragraph 4.02 below and prior to the end of its Term, any future Annual Easement Fee not already due to the District pursuant to Paragraph shall not be owed to the District, provided that, upon such date each such Annual Easement Fee is due hereunder, the Easement Premises have been vacated and restored to their original condition, as provided in Paragraph 4.03 below.

1.06 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 Exhibits A and B 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/or 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 and 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.

3.02 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 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 expressly allows the Grantee to 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 their original conditions at no cost to the District (the "Removal and Restoration Date"); unless the District approves in writing that expressly allows the Grantee to abandon in place the Improvements and Facilities, or portions thereof. With respect to the Easement Premises, its original condition is as described in the environmental report that is to be attached hereto as Exhibit C, which shall be submitted by the Grantee to the District for review and approval no later than 90 days following the effective date of this Agreement, and, upon such approval, attached hereto as said exhibit.

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 expressly allows the Grantee to 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.

The Grantee may conduct environmental testing upon the Easement Premises to determine the condition, but must provide 5 days prior written notice to the District, Evanston and Skokie concerning any environmental testing to be performed pertaining to the report and must receive District approval to perform such testing prior to commencement.

4.04 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 [Intentionally Omitted]

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:

Morton Grove Niles Water Commission
1000 Civic Center Drive
Niles, Illinois 60714
Attn: Superintendent
847-398-8399 (o)
847-863-7101 (c)
bill@wrblc.com (e)

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 are 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 are 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 D 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 variant or similar designations;
- (7) any other substance (whether solid, liquid or gaseous in nature) which is now or hereafter regulated or controlled under any Environmental Laws (without regard to the action levels, concentrations or quantity thresholds specified herein); or
- (8) any result of the mixing or addition of any of the substances described in this Subsection B with or to other materials.

C. "Phase I Environmental Assessment" shall mean:

- (1) an assessment of the Easement Premises and a reasonable area of the adjacent premises owned by the District performed by an independent and duly qualified, licensed engineer with experience and expertise in conducting environmental assessments of real estate, bedrock and groundwater of the type found on the Easement Premises and said assessment shall include, but not necessarily be limited to a historical review of the use (abuse) of the Easement Premises, a review of the utilization and maintenance of hazardous materials on the Easement Premises review of the Easement Premises' permit and enforcement history (by review of regulatory agency records), a site reconnaissance and physical survey, inspection of Easement Premises, site 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)

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) except for those matters caused by the negligent or intentional conduct of the District, Commissioners, officers, employees and agents.

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 Exhibits A and 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 Exhibits A and B and adjacent premises owned by the District to a clean and sanitary condition and to the extent required by any and all Environmental Laws.**
- B. Capacitors, transformers, or other environmentally sensitive installations or improvements shall be removed by Grantee prior to the end of 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 Premises which 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.**

ARTICLE TEN

10.01 There is a TARP drop shaft (DS-M107) at that location and other important District infrastructure associated with the drop shaft including outfall/relief structures. Also, the proposed water main route crosses both the District's North Side 1 and North Side 11A interceptor servers. All District facilities must be protected and the District must continue having 24-hour access to them.

10.02 Any bike path currently located, or to be located, on North Shore Channel Parcels 3.02, 3.03, and 3.05 shall remain open at all times, and the Grantee shall be responsible for re-routing the path (and incurring all costs related thereto) as instructed by either the City of Evanston or the Village of Skokie, subject to the District's review and written approval, if either municipality determines that a temporary re-route of the path is necessary during construction or maintenance of any of the Improvements and Facilities. The Grantee shall also take all necessary safety precautions, including installing all necessary signage (subject to the District's written approval), to protect the general public from harm during such construction and maintenance activities.

10.03 The Grantee must hold a field coordination meeting with the District prior to both the final location of the pump station and water mains and during the construction phase so the District can assure it will not impede access to or interfere with District infrastructure. The District contacts for coordination of this meeting with the Morton Grove Niles Water Commission is Mr. Roland Derylo, Engineering Technician V and Mr. Steve Whitehead. Mr. Derylo can be reached at: 847-568-8325 or derylor@mwrdd.org. Mr. Whitehead can be reached at: 847-568-4080 or whiteheads@mwrdd.org.

10.04 The Grantee must request a Joint Utility Locate from JULIE to locate all utilities at this location.

10.05 The Grantee must obtain all required permits for the construction and maintenance of the Improvements and Facilities, including, but not limited to, any required permits from the United States Army Corps of Engineers and the Illinois Department of Natural Resources.

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 COMMIS-
SION**

By: _____

Title: _____

ATTEST:

By: _____

Title: _____

CONSENTED TO:

VILLAGE OF SKOKIE

By: _____

CITY OF EVANSTON

By: _____

APPROVED AS TO FORM AND LEGALITY:

Head Assistant Attorney

General Counsel

APPROVED:

Executive Director

RECEIVED:

Fee_____

Insurance_____

Bond_____

Exhibit "A"

Plat of Easement of Easement Premises

Exhibit "B"

Aerial Photograph – Easement Premises

Exhibit "C"

Environmental Report - Baseline

Exhibit "D"

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

3.3 Sale of District Land

- A. **Permissible Sales:** The sale of Surplus Land located in Cook, DuPage, and Will Counties that is isolated and not contiguous to waterways, and the sale of District land in Fulton County, is permitted, but only upon the Executive Director's recommendation and at the sole discretion of the Board of Commissioners.
- B. **Prohibited Sales:** The sale of Corporate Use Land, and any District land contiguous to waterways in Cook, DuPage, or Will County, is prohibited.

3.4 The District's Waterway Strategy

- A. **District Lands Contiguous to Waterways**
 - 1. **Setback Requirements:** It is the intent of the District to have a well-maintained and attractive river edge of all of the property it owns adjacent to waterways, including the Chicago River, the Chicago Sanitary & Ship Canal (a.k.a. Main Channel), the North Shore Channel, and the Cal-Sag Channel. In order to accomplish this goal, the District requires a waterway edge easement to be included in its land leases. Unless otherwise authorized by the Board of Commissioners, the width of the easement shall be a minimum of 60 feet and up to 100 feet, when feasible. Such width shall be measured from the edge of the water at normal water levels, then inward across the leased premises at a 90 degree angle, or best approximation thereof, from the water's edge. No lessee of the District shall cause, or allow to be caused, any impediment to be constructed or placed upon such easement, whether it be a permanent structure such as a building, or moveable objects such as unsightly materials and debris. Buildings existing at the time this policy is enacted shall be grandfathered in.
 - 2. **Bank Stabilization and Landscaped Visual Screening:** All lessees shall be responsible for bank stabilization and the construction and maintenance of a landscaped visual screen that effectively screens the leased premises from the viewpoint of the waterway edge easement. The recommended landscaped visual screen, whenever possible, shall consist of native vegetative cover. In the event that site development necessitates removal of existing vegetative cover, the lessee shall be required to promptly reestablish native vegetative cover in the same quantities as those removed during the development.
 - 3. **Penalties:** Any lessee's failure to comply with the requirements contained in subsections A(1) and A(2) above shall constitute a breach of the lease agreement by the lessee and shall be grounds for the District, at its option, to terminate the lease agreement. The District shall also have the right to recover from the lessee any and all reasonable costs associated with correcting each such violation, including, but not limited to, remediation costs to have the violations corrected, as well as court costs

and attorneys' fees for filing an action in circuit court seeking an order to have the lease agreement terminated on these grounds.

B. North Shore Channel – Additional Requirements

1. **Limitations on Use of Lands Contiguous to North Shore Channel:** All District lands contiguous to either side of the North Shore Channel, starting from the south at Devon Avenue and continuing north to, and including, Wilmette Harbor, shall be dedicated and used exclusively as open green space and public recreational use.
2. **Special Lease Conditions:** All District leases pertaining to lands contiguous to the North Shore Channel shall require continuous trails, boat access, and bank stabilization; however, in the case of renewed District leases to public agencies, the stated policy shall apply only to the extent it is economically feasible and consistent with existing public uses.

C. Exceptions: Any use of District land that is prohibited by or inconsistent with the terms of this Paragraph 3.4 shall be permitted only upon one or more of the following conditions:

1. **Uses Permitted Under Pre-Existing Leases:** The use is authorized by the terms of an unexpired lease agreement with the District that was entered into before the date of passage of this Comprehensive Land Use Policy. Such use shall continue to be permitted until such time as the lease agreement expires or is terminated, unless otherwise extended by the Board of Commissioners.
2. **Variances:** The use is authorized by a variance granted by the Board of Commissioners whenever, and to the extent, it deems that the variance is necessary and in the best interests of the District considering the location, existing topography and vegetation, and use or proposed use of the leased premises. All variances shall be granted only by approval of the Board of Commissioners at its sole discretion, with recommendation by the Executive Director.
3. **Waterborne Commerce:** The use is for the purpose of waterborne commerce pursuant to a lease agreement with the District. In such instances, no variance from the Board of Commissioners is necessary. However, the lessee shall, to the extent possible, construct and maintain a docking facility compatible with the visual intent of the scenic easement, with the District maintaining the sole discretion to determine whether compatibility has been achieved.

3.5 Land Use Categories

A land use category is a designation by District staff as to the a) manner that District land is presently being used in the case of land that is already occupied, or b) recommended use of District land in the case of land that is vacant. District staff shall be responsible for

Exhibit B

**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., 3rd Floor
Chicago, IL 60611
Attn: Mark Dressel

P.I.N.s:
10-14-227-006-0000
10-14-227-010-0000
10-14-227-012-0000
10-14-205-016-0000

This space reserved for recorder's use only.

STM:CM:MD:vp

REV. 2-13-18

EASEMENT AGREEMENT
(Annual Increase-Environmental)

THIS EASEMENT AGREEMENT ("Agreement"), made and entered into this 15th day of February, 2018, 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 the MORTON GROVE NILES WATER COMMISSION, a municipal corporation organized and existing under the laws of the State of Illinois, hereinafter called the "Grantee".

WHEREAS, the Grantee desires a seventy (70) year, 33,440 sq. ft. non-exclusive easement to construct, install, operate, maintain, repair and remove a pump station, access road, two subterranean 24-inch water mains and one subterranean 30-inch water main on the real estate located on and beneath the surface of North Shore Parcels 3.02, 3.04 and 3.05, and beneath the North Shore Channel itself, in Evanston and Skokie, Illinois, legally described and depicted on the Plat of Easement attached hereto as Exhibit A and made a part hereof (hereinafter "Easement Premises"), and generally depicted in the aerial photograph attached hereto as Exhibit B and made a part hereof.

WHEREAS, the Easement Premises are located on lands leased by the District to the City of Evanston under a public recreational lease dated December 1, 1966 and terminating May 21, 2032 (North Shore Channel Parcel 3.02) and another public recreational lease dated January 4, 2018 and terminating January 31, 2068 (North

Shore Channel Parcel 3.04), and to the Village of Skokie under a public recreational lease dated April 1, 1994 and terminating March 31, 2032 (North Shore Channel Parcel 3.05). The easement granted herein is subject to the written consents of both municipalities.

WHEREAS, the District is willing to grant to the Grantee the requested 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 ("Easement"), right, privilege and authority for seventy (70) years commencing on February 15, 2018, and terminating on February 14, 2088 (the "Term"), for the sole and exclusive purpose to construct, install, reconstruct, operate, maintain, repair, replace and remove a pump station, access road, two subterranean 24-inch water mains and one subterranean 30-inch water main, hereinafter for convenience sometimes called "Improvements and Facilities", on the Easement Premises.

1.02 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 FIFTY-NINE THOUSAND TWENTY-FOUR AND 00/100 DOLLARS (\$59,024.00), payable contemporaneously with Grantee's execution and delivery of this Agreement. This amount represents the "Annual Easement Fee" for the period from February 15, 2018 through February 14, 2019 ("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 15th day of February each subsequent year. The Initial Term Year and the Subsequent Term Years are collectively referred to as the "Term".

1.03 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.

1.04 The Grantee, and its officials, employees, agents and contractor(s) 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 property of the District, the City of Evanston or the Village of Skokie while accessing the Easement Premises.

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 the term 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 be 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 the Grantee pursuant to Paragraph 4.02 below and prior to the end of its Term, any future Annual Easement Fee not already due to the District pursuant to Paragraph shall not be owed to the District, provided that, upon such date each such Annual Easement Fee is due hereunder, the Easement Premises have been vacated and restored to their original condition, as provided in Paragraph 4.03 below.

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 Exhibits A and B 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/or 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 and 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.

3.02 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 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 expressly allows the Grantee to 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 their original conditions at no cost to the District (the "Removal and Restoration Date"); unless the District approves in writing that expressly allows the Grantee to abandon in place the Improvements and Facilities, or portions thereof. With respect to the Easement Premises, its original condition is as described in the environmental report that is to be attached hereto as Exhibit C, which shall be submitted by the Grantee to the District for review and approval no later than 90 days following the effective date of this Agreement, and, upon such approval, attached hereto as said exhibit.

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 expressly allows the Grantee to 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.

The Grantee may conduct environmental testing upon the Easement Premises to determine the condition, but must provide 5 days prior written notice to the District, Evanston and Skokie concerning any environmental testing to be performed pertaining to the report and must receive District approval to perform such testing prior to commencement.

4.04 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:

Morton Grove Niles Water Commission
1000 Civic Center Drive
Niles, Illinois 60714
Attn: Superintendent
847-398-8399 (o)
847-863-7101 (c)
bill@wrblc.com (e)

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 are 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 are 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 D 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 variant or similar designations;**
- (7) any other substance (whether solid, liquid or gaseous in nature) which is now or hereafter regulated or controlled under any Environmental Laws (without regard to the action levels, concentrations or quantity thresholds specified herein); or**
- (8) any result of the mixing or addition of any of the substances described in this Subsection B with or to other materials.**

C. "Phase I Environmental Assessment" shall mean:

- (1) an assessment of the Easement Premises and a reasonable area of the adjacent premises owned by the District performed by an independent and duly qualified, licensed engineer with experience and expertise in conducting environmental assessments of real estate, bedrock and groundwater of the type found on the Easement Premises and said assessment shall include, but not necessarily be limited to a historical review of the use (abuse) of the Easement Premises, a review of the utilization and maintenance of hazardous materials on the Easement Premises review of the Easement Premises' permit and enforcement history (by review of regulatory agency records), a site reconnaissance and physical survey, inspection of Easement Premises, site 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)

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) except for those matters caused by the negligent or intentional conduct of the District, Commissioners, officers, employees and agents.

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 Exhibits A and 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 Exhibits A and B and adjacent premises owned by the District to a clean and sanitary condition and to the extent required by any and all Environmental Laws.**
- B. Capacitors, transformers, or other environmentally sensitive installations or improvements shall be removed by Grantee prior to the end of 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 Premises which 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.**

ARTICLE TEN

10.01 There is a TARP drop shaft (DS-M107) at that location and other important District infrastructure associated with the drop shaft including outfall/relief structures. Also, the proposed water main route crosses both the District's North Side 1 and North Side 11A interceptor servers. All District facilities must be protected and the District must continue having 24-hour access to them.

10.02 Any bike path currently located, or to be located, on North Shore Channel Parcels 3.02, 3.03, and 3.05 shall remain open at all times, and the Grantee shall be responsible for re-routing the path (and incurring all costs related thereto) as instructed by either the City of Evanston or the Village of Skokie, subject to the District's review and written approval, if either municipality determines that a temporary re-route of the path is necessary during construction or maintenance of any of the Improvements and Facilities. The Grantee shall also take all necessary safety precautions, including installing all necessary signage (subject to the District's written approval), to protect the general public from harm during such construction and maintenance activities.

10.03 The Grantee must hold a field coordination meeting with the District prior to both the final location of the pump station and water main and during the construction phase so the District can assure it will not impede access to or interfere with District infrastructure. The District contacts for coordination of this meeting with the Morton Grove Niles Water Commission is Mr. Roland Derylo, Engineering Technician V and Mr. Steve Whitehead. Mr. Derylo can be reached at: 847-568-8325 or derylor@mwrdr.org. Mr. Whitehead can be reached at: 847-568-4080 or whiteheads@mwrdr.org.

10.04 The Grantee must request a Joint Utility Locate from JULIE to locate all utilities at this location.

10.05 The Grantee must obtain all required permits for the construction and maintenance of the Improvements and Facilities, including, but not limited to, any required permits from the United States Army Corps of Engineers and the Illinois Department of Natural Resources.

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:

VILLAGE OF SKOKIE

By: _____

Title: _____

CITY OF EVANSTON

By: _____

Title: _____

APPROVED AS TO FORM AND LEGALITY:

Head Assistant Attorney

General Counsel

APPROVED:

Executive Director

RECEIVED:

Fee_____

Insurance_____

Bond_____

Exhibit "A"

Plat of Easement of Easement Premises

Exhibit "B"

Aerial Photograph – Easement Premises

Exhibit "C"

Environmental Report - Baseline

Exhibit "D"

**Waterway Strategy Resolution
As Adopted By The District's Board of Commissioners
Of the Metropolitan Water Reclamation 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. 18- 24

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

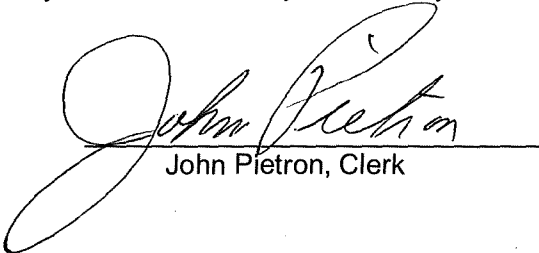
which Resolution was passed by the Board of Commissioners of the Morton Grove-Niles Water Commission at a Regular Meeting held on the 15th day of February 2018, at which meeting a quorum was present.

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 15th day of February 2018.


John Pietron, Clerk