



# City of Chicago



O2015-112

Office of the City Clerk

## Document Tracking Sheet

<b>Meeting Date:</b>	1/21/2015
<b>Sponsor(s):</b>	Emanuel (Mayor)
<b>Type:</b>	Ordinance
<b>Title:</b>	Intergovernmental agreement with Metropolitan Water Reclamation District of Greater Chicago for access to Geographic Information System (GIS) data
<b>Committee(s) Assignment:</b>	Committee on Budget and Government Operations

BUDG.



OFFICE OF THE MAYOR  
CITY OF CHICAGO

RAHM EMANUEL  
MAYOR

January 21, 2015

TO THE HONORABLE, THE CITY COUNCIL  
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Water Management, I transmit herewith an ordinance authorizing the execution of an intergovernmental agreement with the Metropolitan Water Reclamation District.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

A handwritten signature in cursive script that reads "Rahm Emanuel".

Mayor

## ORDINANCE

**WHEREAS**, the City of Chicago (the "City") is a home rule unit of government under Article VII, Section 6(a) of the Constitution of the State of Illinois, and as such may exercise any power and perform any function pertaining to its government and affairs, and

**WHEREAS**, the Metropolitan Water Reclamation District of Greater Chicago is a body corporate and politic, organized and existing under the laws of the State of Illinois (hereinafter the "District"); and

**WHEREAS**, the District and the City have each a computerized data management system used to capture, store, manage, retrieve, analyze, and display geospatial information ("Geographic Information System" or "GIS"), and

**WHEREAS**, the District has compiled GIS data for its underground facilities to include intercepting sewers, force mains, connecting structures, outfalls, Tunnel and Reservoir Plan ("TARP") structures and appurtenances ("District GIS Data"); and

**WHEREAS**, the City has compiled GIS data for its underground facilities, including sewers, force mains, connecting structures, outfalls and water mains ("City GIS Data"); and

**WHEREAS**, portions of the District GIS Data, portions of the City GIS Data and the related data dictionaries, are proprietary materials of the District and the City, respectively; and

**WHEREAS**, the City has expressed an interest in having access to the District GIS Data to increase coordination of operation and improvement of its sewer system; and

**WHEREAS**, the District has expressed an interest in having access to the City GIS Data to increase coordination of operation and improvement of its systems; and

**WHEREAS**, the District desires to make the District GIS Data available without charge to the City, and

**WHEREAS**, the City desires make the City GIS Data, available without charge to the District; and

**WHEREAS**, the City and the District have agreed to enter into an agreement attached hereto as Exhibit A (the "Agreement") in order to memorialize their respective roles in such an effort; now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO**

**SECTION 1.** The above recitals are expressly incorporated in and made part of this ordinance as though fully set forth herein

**SECTION 2.** The City grants authority to the City of Chicago's Department of Water Management ("DWM") to share the City GIS Data with the District without charge subject to such limitations pursuant to the Agreement

**SECTION 3.** Subject to the approval of the Corporation Counsel of the City as to form and legality, the Commissioner of DWM (the "Commissioner") is authorized to execute the Agreement, substantially in the form attached hereto as Exhibit A, with such changes therein as the Commissioner may approve, provided that such changes do not amend any essential terms of the Agreement and such other documents as are necessary, between the City and the District. The City Clerk of the City is authorized to attest, by the manual or facsimile signature of the City Clerk, to the Agreement executed by the Commissioner

**SECTION 4.** To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause, or provision shall not affect any of the other provisions of this ordinance.

**SECTION 5.** This ordinance shall be in full force and effect from and after the date of its passage and approval.

EXHIBIT A

AGREEMENT

(See Attachment)

## AGREEMENT

### FOR ACCESS TO GEOGRAPHIC INFORMATION SYSTEM (GIS) DATA

This AGREEMENT is entered into as of the \_\_\_\_th day of \_\_\_\_\_, 201\_\_, by and between the City of Chicago (the 'City') and the Metropolitan Water Reclamation District of Greater Chicago (the 'District')

#### WITNESSETH:

**WHEREAS**, Section 10 of Article VII of the Illinois Constitution and the Intergovernmental Cooperation Act, 5 ILCS 220/5, provides that units of local government may contract with each other "to perform any governmental service, activity or undertaking to combine, transfer, or exercise any powers, functions, privileges, or authority which any of the public agencies entering into the contract is authorized by law to perform;

**WHEREAS**, the District and the City have each a computerized data management system used to capture, store, manage, retrieve, analyze, and display geospatial information ("Geographic Information System" or "GIS"); and

**WHEREAS**, the District has compiled GIS data for its underground facilities to include intercepting sewers, force mains, connecting structures, outfalls, Tunnel and Reservoir Plan ("TARP") structures and appurtenances (the "District GIS Data"); and

**WHEREAS**, the City has compiled GIS data for its underground facilities, including sewers, force mains, connecting structures, outfalls and water mains (the "City GIS Data"); and

**WHEREAS**, portions of the District GIS Data, portions of the City GIS Data and the related data dictionaries, are proprietary materials of the District and the City, respectively; and

**WHEREAS**, the City has expressed an interest in having access to the District GIS Data to increase coordination of operation and improvement of its systems;

**WHEREAS**, the District has expressed an interest in having access to the City GIS Data to increase coordination of operation and improvement of its systems;

**WHEREAS**, the District desires to make the District GIS Data available, without charge, to the City,

**WHEREAS**, the City desires make the City GIS Data, available without charge, to the District; and

**WHEREAS**, the City acknowledges and agrees that mutual access to the City GIS Data and the District GIS Data (collectively, the "GIS Data") is conditioned upon access provided as set forth in this Agreement solely for use in performing the official functions of the City, and that any other use, alteration, sale, dissemination, lease or transfer of the District GIS Data by the City or by any employee or agent of same, without written consent by the District is strictly

prohibited, and shall be deemed to warrant immediate termination of this Agreement, as well as entitle the District to pursue any other remedies to which it is entitled.

**WHEREAS,** the District acknowledges and agrees that mutual access to the GIS Data is conditioned upon access provided as set forth in this Agreement solely for use in performing the official functions of the District, and that any other use, alteration, sale, dissemination, lease or transfer of the City GIS Data by the District, or by any employee or agent of same, without written consent by the City is strictly prohibited, and shall be deemed to warrant immediate termination of this Agreement, as well as entitle the City to pursue any other remedies to which it is entitled

**WHEREAS,** on \_\_\_\_\_, 201\_\_, the City Council of Chicago (the "City Council") adopted an ordinance published in the Journal of the Proceedings of the City Council for said date at pages \_\_\_ to \_\_\_, among other thing, authorizes the execution of this agreement and pursuant to action recorded in the Regular Board Meeting Minutes of the Board of Commissioners of the District, dated November 6, 2014, the District is Authorized to enter into this Agreement,

**NOW, THEREFORE,** in consideration of the mutual promises and covenants and the terms and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**SECTION 1: INCORPORATION OF RECITALS.**

The foregoing recitals are incorporated into and made a part of this Agreement as is fully set forth herein.

**SECTION 2: STATEMENT OF OFFICIAL PURPOSES; RESTRICTIONS ON USE.**

(a) The City agrees that access to the District GIS Data is conditioned upon and provided as set forth in this Agreement solely for its use in performing its official purposes. Any other use of the District GIS Data, without express written consent is strictly prohibited, including the display, sale, transfer, lease, dissemination or lease of the District GIS Data in any location or manner in its current form, or in derivative or altered form, or otherwise Any such prohibited use shall be deemed to be a breach which warrants immediate termination of this Agreement. This Section 2(a) shall survive the termination of this Agreement

(b) The District agrees that access to the City GIS Data is conditioned upon and provided as set forth in this Agreement solely for its use in performing its official purposes Any other use of the City GIS Data, without express written consent is strictly prohibited, including the display, sale, transfer, lease, dissemination or lease of the City GIS Data in any location or manner in its current form, or in derivative or altered form, or otherwise Any such prohibited use shall be deemed to be a breach which warrants immediate termination of this Agreement This Section 2(b) shall survive the termination of this Agreement

### **SECTION 3: INFORMATION PROVIDED.**

The City agrees to provide the District access to the City GIS Data only upon the conditions and based upon the representations and warranties set forth in this Agreement. The District agrees to provide to the City access to the District GIS Data only upon the conditions and based upon the representations and warranties set forth in this Agreement.

### **SECTION 4: LIMITED LICENSE TO USE.**

Subject to the provisions of this Agreement, the City hereby grants to the District a non-exclusive, nontransferable license to use the City GIS Data only as specifically provided for in this Agreement. Subject to the provisions of this Agreement, the District hereby grants to the City a non-exclusive, nontransferable license to use the District GIS Data only as specifically provided for in this Agreement. The City and the District acknowledge that the title, copyright and all other rights to GIS Data remain with the original developer of the data, whether it is the City or the District. Neither the City, the District, nor any other authorized user shall have any right, title or interest in the GIS Data that originated from the other party except as expressly described herein. The City and the District reserve the right to withdraw from the City GIS Data and the District GIS Data, respectively, any item or part of an item for which it no longer retains ownership rights or which it has reasonable grounds to believe infringes copyright or is unlawful or otherwise objectionable.

### **SECTION 5: TERM AND EXTENSION.**

This Agreement is for ten years, effective from the date of execution. It may be extended by a written agreement between the parties and may be extended for no more than two additional ten-year periods. At least 30 days prior to the expiration of any term, either party must notify the other in writing of its intent not to renew the Agreement.

### **SECTION 6: DISCLAIMER OF WARRANTIES.**

The City GIS Data is provided "as is" without any warranty or representation whatsoever, including any representation as to accuracy, timeliness, completeness, infringement of rights of privacy, copyright or trademark rights or disclosure of confidential information. All burdens, including any burden for determining accuracy, completeness, timeliness, merchantability and fitness for or the appropriateness for use rests solely on the requestor. The City makes no warranties, express or implied, as to the use of the City GIS Data. There are no implied warranties of merchantability or fitness for a particular purpose. There is no warranty to update any of the information provided hereunder.

The District GIS Data is provided "as is" without any warranty or representation whatsoever, including any representation as to accuracy, timeliness, completeness, infringement of rights of privacy, copyright or trademark rights or disclosure of confidential information. All burdens, including any burden for determining accuracy, completeness, timeliness, merchantability and fitness for or the appropriateness for use rests solely on the requestor. The District makes no warranties, express or implied, as to the use of the District



GIS Data There are no implied warranties of merchantability or fitness for a particular purpose  
There is no warranty to update any of the information provided hereunder

THE DISTRICT EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED, ORAL OR WRITTEN) RELATING TO THE DISTRICT GIS DATA, INCLUDING BUT NOT LIMITED TO ANY AND ALL IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, ACCURACY, COMPLETENESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE THE CITY ACKNOWLEDGES AND ACCEPTS THE LIMITATIONS OF THE DISTRICT GIS DATA, INCLUDING THE FACT THAT DISTRICT GIS DATA IS DYNAMIC AND IS IN A CONSTANT STATE OF MAINTENANCE, CORRECTION AND UPDATE.

THE CITY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES (EXPRESS OR IMPLIED, ORAL OR WRITTEN) RELATING TO THE CITY GIS DATA, INCLUDING BUT NOT LIMITED TO ANY AND ALL IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, ACCURACY, COMPLETENESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE DISTRICT ACKNOWLEDGES AND ACCEPTS THE LIMITATIONS OF THE CITY GIS DATA, INCLUDING THE FACT THAT CITY GIS DATA IS DYNAMIC AND IS IN A CONSTANT STATE OF MAINTENANCE, CORRECTION AND UPDATE.

**SECTION 7: LIMITATION OF LIABILITY.**

THE CITY EXPRESSLY AGREES THAT NO MEMBER, OFFICIAL, EMPLOYEE, REPRESENTATIVE OR AGENT OF THE DISTRICT, OR THEIR RESPECTIVE SUCCESSORS, HEIRS OR ASSIGNS, SHALL BE LIABLE, INDIVIDUALLY OR PERSONALLY OR OTHERWISE, TO THE CITY OR ANY OTHER PERSON OR ENTITY, OR THEIR RESPECTIVE SUCCESSORS, HEIRS OR ASSIGNS, FOR ANY LOSS OR CLAIM, INCLUDING BUT NOT LIMITED TO ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSS OF GOODWILL DATA OR IN THE EVENT OF ANY DEFAULT OR BREACH BY THE DISTRICT UNDER THIS AGREEMENT OR ANY INACCURACY OF THE DISTRICT GIS DATA, IN ANY WAY ARISING FROM OR RELATING TO THIS AGREEMENT OR RESULTING FROM THE USE OR INABILITY TO USE THE DISTRICT GIS DATA

THE DISTRICT EXPRESSLY AGREES THAT NO MEMBER, OFFICIAL, EMPLOYEE, REPRESENTATIVE OR AGENT OF THE CITY, OR THEIR RESPECTIVE SUCCESSORS, HEIRS OR ASSIGNS, SHALL BE LIABLE, WHETHER INDIVIDUALLY OR PERSONALLY OR OTHERWISE, TO THE DISTRICT OR ANY OTHER PERSON OR ENTITY, OR THEIR RESPECTIVE SUCCESSORS, HEIRS OR ASSIGNS, FOR ANY LOSS OR CLAIM, INCLUDING BUT NOT LIMITED TO ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSS OF GOODWILL DATA OR IN THE EVENT OF ANY DEFAULT OR BREACH BY THE CITY UNDER THIS AGREEMENT OR ANY INACCURACY OF THE CITY GIS DATA, IN ANY WAY ARISING FROM OR RELATING TO THIS AGREEMENT OR RESULTING FROM THE USE OR INABILITY TO USE THE CITY GIS DATA

**SECTION 8: INDEMNIFICATION.**

The City agrees to hold harmless and indemnify the District, its commissioners, officers, agents, employees, representatives and affiliates, and their respective heirs, successors and assigns, from and against, and defend, at its own expense (including reasonable attorneys', accountants' and consultants' fees), any suit, claim, action or proceeding brought by any third party against the District or any commissioner, officer, agent, employee, representative or affiliate of the District arising out of or incident to the performance or nonperformance of this Agreement by the City or any other entity. To the extent that the District incurs administrative expenses including attorneys' fees during the City's defense of any claim, the City shall reimburse the District, as appropriate, for all such expenses. The provisions of this Section shall survive the termination of this Agreement.

The District agrees to hold harmless and indemnify the City, its commissioners, officers, agents, employees, representatives and affiliates, and their respective heirs, successors and assigns, from and against, and defend, at its own expense (including reasonable attorneys', accountants' and consultants' fees), any suit, claim, action or proceeding brought by any third party against the City or any commissioner, officer, agent, employee, representative or affiliate of the City arising out of or incident to the performance or nonperformance of this Agreement by the District or any other entity. To the extent that the City incurs administrative expenses including attorneys' fees during the District's defense of any claim, the District shall reimburse the City, as appropriate, for all such expenses. The provisions of this Section shall survive the termination of this Agreement.

**SECTION 9: APPLICABLE LAW.**

This Agreement shall be interpreted and construed in accordance with, and governed by, the laws of the State of Illinois, excluding any such laws that might direct the application of the laws of another jurisdiction. Venue shall be in a court of competent jurisdiction located within the County of Cook, Illinois. The District and the City each acknowledge the existence of state and other applicable law defining the duties and responsibilities of each party regarding governmental functions. No part of this Agreement has the effect of or is intended to impact any applicable legal duty of either party under existing law. Both parties remain responsible under applicable law for performing all stated duties and responsibilities.

**SECTION 10: CONFIDENTIALITY.**

The City acknowledges and agrees that information regarding this Agreement, and the District GIS Data and other information disclosed hereunder, is confidential and shall not be disclosed, directly, indirectly or by implication, or be used by the City in any way, whether during the term of this Agreement or any time thereafter, except solely in accordance with the official purposes set forth above. District GIS Data shall be treated in confidential manner, except as otherwise expressly stated in a written document executed by the District.

The District acknowledges and agrees that information regarding this Agreement, and the City GIS Data and other information disclosed hereunder, is confidential and shall not be

disclosed directly, indirectly or by implication, or be used by the District in any way, whether during the term of this Agreement or any time thereafter, except solely in accordance with the official purposes set forth above. City GIS Data shall be treated in confidential manner except as otherwise expressly stated in a written document executed by the City.

**SECTION 11: MISCELLANEOUS.**

(a) This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, in relation to the matters dealt with herein. There are no representations, warranties, collateral agreements or conditions to this Agreement, except as expressly stated in this Agreement.

(b) The section headings are for reference and information purposes only, and shall not affect in any way the meaning or interpretation of this Agreement. References to singular shall include the plural and to plural shall include the singular. References to a person shall include a corporate or government body. Words such as "including" and similar expressions shall not be read as words of limitation.

\* \* \* \* \*

SIGNATORY PAGE

IN WITNESS WHEREOF, on the \_\_\_\_ day of \_\_\_\_\_ 2015, the parties have executed this Agreement. executed in quadruplicate

By \_\_\_\_\_  
Commissioner.  
Department of Water Management

\_\_\_\_\_  
(Print Name and Title)

Attest:  
\_\_\_\_\_  
Clerk

METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO

\_\_\_\_\_  
Director of Engineering

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
President of the Board

\_\_\_\_\_  
Chairman of the Committee on Finance

**Attest:**

\_\_\_\_\_ (SEAL)  
Clerk

**APPROVED AS TO FORM AND LEGALITY.**

\_\_\_\_\_  
Head Assistant Attorney

\_\_\_\_\_  
Attorney